

[Translation]  
September 16, 2016  
Toshiba Corporation

**Notice on Decision Not to File Action Against  
Ernst & Young Shin Nihon LLC**

TOKYO— Toshiba Corporation (TOKYO: 6502) (the “Company”) today announced that the Company, following an investigation into the matter, has decided not to file an action seeking compensatory damages against its former accounting auditor, Ernst & Young Shin Nihon LLC (the “Auditor”). On July 20, 2016, the Company received a representation from a shareholder to the effect that the Company should file such an action against the Auditor, seeking compensatory damages under Article 847(1) of the Companies Act for negligence on the part of the Auditor in carrying out its responsibilities in connection with the Company’s inappropriate accounting. The Company has also sent a notice to the shareholder explaining why it will not file such an action.

The Company deeply regrets that it inappropriately provided information to the Auditor, and has subsequently established and is implementing measures to prevent any recurrence of such inappropriate accounting. The Company believes that, rather than seek to apportion responsibility to parties other than the Company, it is in the best interests of shareholders, investors and other stakeholders for the Company to instead make every effort to improve its internal control system and corporate culture, and to regain the trust of society.

**1. Details of investigation conducted by the Company**

The investigation was conducted based on the facts found in the Independent Investigation Committee Report received on July 20, 2015. The Company conducted interviews with ten employees who had interacted with the Auditor during the accounting audits or who were in a position to have known the content of such interaction. Also, the Company sent written questions to the Auditor and received answers and related materials in response.

Based on the results of the said investigation, the Company examined whether the Auditor owes any legal liability to the Company and whether it would be appropriate to seek compensatory damages from the Auditor, and then made the judgment as set out in 2 below.

In connection to the above investigation and the judgment in 2 below, the Company retained Torikai Law Office as a legal advisor who possesses sufficient insight regarding corporate law and obtained assistance with the investigation and legal advice from an objective perspective. Torikai Law Office does not have any special interests in the Company or the Auditor.

## **2. Judgment by the Company as to the existence of liability or obligations of the Auditor, and reasons for such decision**

After examining the liability of the Auditor based on the results of the above-mentioned investigation and by also referring to the administrative order, etc. issued against the Auditor by the Financial Services Agency of Japan, the Company has judged that the Auditor may be responsible for negligence of duties at least in respect of the following points.

- (i) For the PC Business, the Auditor, in the course of its fiscal year-end audit for fiscal year 2012, was required to conduct additional auditing procedures that would have been reasonably necessary in order to clarify the factors behind the operating profit exceeding sales in the last month of the quarter. Although the Company found that the Auditor conducted audit procedures regarding receivables from the Company's consolidated subsidiary, Taiwan Toshiba International Procurement Corp. (TTIP), it cannot be found that the Auditor obtained sufficient and appropriate audit evidence, from the perspective of performing an audit of receivables recorded on the consolidated financial statements of the Company. In this respect, it is highly possible to find that the Auditor is responsible for negligence of duties.
- (ii) For percentage-of-completion method projects (the electronic toll collection facilities renewal project), the auditing procedures by the Auditor to check the reasonableness of the NET (total estimated cost of contract work, etc.) in the course of its fiscal year-end audit for fiscal year 2012 were limited to matching the NET figures against the order item numbering list, and since it cannot be denied the possibility that the Auditor neglected to perform adequate auditing procedures to check the reasonableness of the order item numbering list figures themselves, there is a possibility of finding that there was negligence of duties. However, the Company believes it would be significantly difficult to prove such negligence.

In addition to the above, for the Semiconductor Business, the Company found that there were inadequacies in the course of fiscal year-end audit for fiscal years 2011 and 2012 in respect of the fact that the Auditor did not judge that there were any indicative of irregularities or fraud in the amounts of cost variance and cost allocation calculations and did not perform procedures to check whether back-end TOV (standard costs) were linked together with revised front-end TOV when revising TOV during period. However, in the cost calculation system of the Semiconductor Business, back-end TOV were automatically linked to front-end TOV when revising TOV at the beginning of period. As long as back-end TOV had been automatically linked to front-end TOV when revising TOV at beginning of period, it is also possible to view that there was a reasonable degree of rationality in the Auditor conducting an audit based on an assumption that revising TOV during period had been conducted in a manner whereby both back-end and front-end TOV were linked. For this reason, the Company decided that the possibility that such inadequacies would be considered as negligence of duties in the legal sense is not necessarily high.

### **3. Reasons why the Company will not file an action to enforce liability or the like**

As set out above, since there is a possibility that the Auditor is responsible for negligence of duties, the Company also examined whether to file an action to enforce liability or the like against the Auditor.

As a result of such examination, the Company reached a decision that it would be appropriate not to file an action to enforce liability or the like, for the following reasons.

- (1) If the Company filed an action to enforce liability or the like against the Auditor, the degree of probability that the action would be successful is not necessarily high, due to the following circumstances and factors.
  - (i) Although the Company found a possibility that there was negligence of duties on the Auditor, opinion could be divided as to the extent to which audit procedures needed to be conducted in order to satisfy the duty of prudent management in light of the realities of auditing practice, and establishing proof would not necessarily be easy.
  - (ii) The award that the Company would be seeking against the Auditor would be compensation for damage arising from inappropriate accounting that was conducted based on the involvement of former top management and others of the Company. Based on past judicial precedent (the judgment of the Osaka District Court of April 18, 2008), there is a possibility that the court would render a judgment rejecting the very right of the Company to seek relief, on the basis that such award would be against the clean hands doctrine.
- (2) Even if the Company was successful in the action, there is a high degree of possibility that costs, etc. incurred by the Company would exceed the amount of damages awarded, due to the following circumstances and factors.
  - (i) Since a large number of uncertain factors intervened between any such negligence of duties and the damage, it is considered that the damage for which a causal relationship with negligence would be able to be proven would be limited.
  - (ii) It cannot be denied that the Company inappropriately provided information to the Auditor and that the Company's response during audits was inappropriate. Therefore, it is considered unavoidable that any amount of damages awarded would be significantly offset due to comparative negligence.
  - (iii) To actually make a demand for damages against the Auditor and to argue and prove a case through litigation or the like would unavoidably entail considerable costs and the like, including extensive personnel, time and monetary costs.

Further, the management is responsible for the preparation and fair presentation of financial reports of the Company, and since in this case the inappropriate accounting was conducted based on the involvement of former top management and others of the Company, it cannot be denied that the Company is primary responsible for the inappropriate accounting. In light of this, the Company decided that, rather than seek

to blame others parties outside the Company, it would be in the best interests of our shareholders, investors and other stakeholders to instead make every effort to improve the internal control system and corporate culture within the Company and regain society's trust based on the Company's sincere reflection.