

# Public comments on the interim Draft Amendments of the Companies Act

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# 1. Amendments on shareholders' right to submit proposals (Part 2, Chapter 5-1)

## The Interim Draft Amendments on the proposals

### **Proposal A**

Abolishing the threshold of 300 voting rights.\*1

\*1: There is another idea that the articles of incorporation enable the company to eliminate the threshold of 300 voting rights.

### **Proposal B**

Raising the threshold of 300 voting rights to a certain number\*2 of voting rights.\*3

\*2: Specific numbers can be (i) 500, or (ii) 1,000 or (iii) 1,500 taking into account that future reduction in the minimum investment amount.

\*3: There are also other ideas that (i) the articles of incorporation can raise the threshold of 300 voting rights to a certain number, or (ii) the articles of incorporation can raise the threshold of voting rights further after threshold is raised to a certain number from 300 by the Proposal B.

## Our comments

We oppose Proposal A.

Given that the top-ranked companies on the Tokyo Stock Exchange in terms of a market capitalization (¥1 trillion or more) would require shareholders to hold over ¥10 billion in shares, it would become extremely difficult for shareholders, not only for individuals but even for a number of large institutional investors to submit shareholder proposals.

The reason why the threshold of 300 voting rights was established when shareholders' right to propose was introduced in 1981 was that limiting eligibility solely to shareholders holding 1% or more of voting rights would make it practically impossible to submit shareholder proposals at large companies. Proposal A would effectively make it impossible to submit shareholders proposals to companies with highest market capitalization on the Tokyo Stock Exchange. In fact, based on recent trends, it is said that proposals from minority shareholders would decrease by approximately 80%. Such a significant reduction in the number of shareholder proposals would lead to a loss of confidence in the corporate governance of Japanese companies among both domestic and international investors.

From a comparative legal perspective, in the United States which has the largest stock market, the requirements are set at US\$2,000 (held for three years), US\$15,000 (held for two years) and US\$25,000 (held for one year), and no percentage-based criteria are applied. In the UK, Australia and Germany, which also have relatively large stock markets, requirements such as 100 shareholders or contribution value of €500,000 have been established in addition to percentage thresholds. Proposal A would impose excessively strict requirements that restrict the involvement of minority shareholders compared to other countries. It will damage the international reputation of corporate governance in the Japanese stock market.

Especially, foreign investors are subject to procedural constraints other than the Companies Act. They are required to submit a prior filing under the Foreign Exchange and Foreign Trade Act if they hold 1% or more of the voting rights in a listed company (including voting rights aggregated with other consenting shareholders). Proposal A raises concerns that foreign investors will cease to submit shareholder proposals.

Furthermore, Proposal A is based on the argument that proposals from shareholders holding less than 1% of the shares will not be passed, and that shareholder proposals which are not passed are of no value to the company. However, shareholder proposals that receive around 20% or more votes in favour have the potential to bring about a change in the directors' behaviour and cannot be said to be of no value to the company. The Corporate Governance Code stipulates that a company should consider taking action if a considerable number of votes are cast against a proposal by the company. It is a reasonable interpretation that the company should also consider taking action if a shareholder proposal receives a considerable number of votes in favour. The reasoning behind Proposal A runs counter to the spirit of the Corporate Governance Code.

If the aim of the legislative amendment is to prevent the abusive use of shareholder proposals, Proposal A would constitute a measure that is grossly disproportionate to that aim. While an increase in shareholder proposals has imposed additional burdens on companies, it is questionable whether there are sufficient legislative facts to justify amending the current requirement. Although some abusive proposals do exist, they are, in practice, simply voted down at the general meeting and do not impose any costs on companies. Under the current law, shareholder proposals that receive less than 10% support at a general meeting are effectively prohibited from being resubmitted for three years. Thus, measures already exist to deal with abusive or low-value proposals.

Regarding Proposal B, we oppose any legislative amendment or accepting a provision in the article of association that would permit an increase exceeding 1.5 times the current threshold of 300 voting rights.

Under the policy initiative of shifting "from savings to investment," listed companies have been encouraged to reduce their minimum trading units and share splits have in practice lowered the investment amount required to exercise shareholders' right to propose compared to the time when the shareholders' right to propose in 1981. If this is the legislative rationale for amending the requirement, it is reasonable to determine an investment amount that is economically equivalent to that of 1981.

According to a report by the Tokyo Stock Exchange in July 2025, the level equivalent to the 300 voting rights required in 1981, following the reduction in the minimum investment unit, is stated to be 441 voting rights. There is currently no legislative basis indicating that the required investment amount has been reduced to one-third or one-fifth of the level in 1981. It is uncertain whether such a level will be achieved in the future. Therefore, the extent to which an increase can be reasonably justified by the reduction in the investment unit is up to approximately 1.5 times. There is no basis for an increase to 1,000 or 1,500 voting rights exceeding this. Setting the threshold at 1,000 or 1,500 voting rights is arbitrary, and there is no specific rational basis. The required investment amount would increase to three to five times the current level, and this cannot avoid criticism that it favours the wealthy.

We also oppose the idea of removing the voting rights requirement and increasing the minimum number of voting rights required to a certain level under the provisions of the articles of incorporation.

While the Companies Act permits the articles of incorporation to extend shareholders' rights beyond those provided for in the Act, it takes a highly cautious approach to allowing the articles of incorporation

to restrict such rights to a greater extent than the Act. The legitimacy of majority shareholders depriving minority shareholders of their rights through amendments to the articles of incorporation must be rigorously scrutinised. If the limit of the threshold were to be raised to a certain number exceeding 300 voting rights in accordance with the provisions of the articles of incorporation, this would effectively produce the same outcome as Proposal A. Given the legislative intent, the threshold of 300 voting rights is not a substitute for the 1% criterion. Proposal B, which allows the limit of 300 to be raised to a certain number in accordance with the articles of incorporation, would undermine the legislative intent of enabling shareholder proposals in large companies and is therefore unacceptable.

The function of shareholder proposals to raise specific management issues for consideration at general meetings is a rational system for determining the allocation of management resources and is important for corporate governance. As there is no rational basis for this amendment other than the increased administrative burden resulting from a reduction in the minimum investment unit, amendments to the Companies Act or to the articles of incorporation that would permit a threshold exceeding 1.5 times must not be made.

## **2. Amendments on shareholders resolutions by exercise of voting rights in advance of shareholders' meetings (Part 2, Chapter 4-1)**

### The Interim Draft Amendments on the proposals

#### **Proposal A**

- (1) If the requirements for a shareholders' meeting resolution are satisfied through advance exercise of voting rights, the company may provide in the articles of incorporation that the proposals are deemed to have been resolved at the time the deadline for exercising advance voting rights have passed, when the company holds a shareholders' meeting; and
  - (2) The directors must report to the shareholders' meeting if the proposals are deemed to have been resolved in accordance with (1) above.
- \*1: Whilst Proposal A(1) applies to the case that resolutions to reject proposals are deemed to have passed in advance, it is envisaged that Proposal A(1) will not apply to reports on matters that are required to be reported to the general meeting of shareholders.
- \*2: Where a resolution of the general meeting of shareholders is deemed to have been passed pursuant to the provisions of the articles of incorporation under Proposal A(1) above, it is envisaged that: (i) shareholders may not submit proposals at the general meeting of shareholders regarding matters as prescribed in Proposal A(1); and (ii) procedural defects in the shareholders' meeting will not constitute grounds for the cancellation of the resolution of the general meeting of shareholders.
- \*3: There is another idea that, once the chair of the general meeting of shareholders has declared as such in the shareholders' meeting, it will be deemed that a resolution of the general meeting of shareholders has been passed to approve the relevant proposal.

## Proposal B

If the requirements for a shareholders' meeting resolution are satisfied through advance exercise of voting rights, procedural defects in the conduct of the meeting on the day of the shareholders' meeting (i.e. the manner in which a resolution is adopted contravenes the laws and the articles of incorporation, or is grossly unfair), such as breaches of directors' duty to provide explanations, would not constitute grounds for cancellation of the resolution.

It is noted that the interim draft amendments admits that either Proposal A or B, or both can be adopted.

### Our comments

We oppose Proposal A.

It has been understood that a meeting is not merely a venue for formal voting, but, rather, it is a deliberative body where votes should be cast by shareholders only after dedicating discussion of questions asked and proposed amendments raised by them. Proposal A directly negates the nature of the shareholders' meeting as a deliberative body and aims to reduce it to a mere formality.

Under Proposal A, because the resolution would already be deemed passed before the general meeting, shareholders would have no opportunity to submit a motion to amend a proposal by the company on the day of the meeting. Proposal A directly deprives them of such rights.

The Corporate Governance Code stipulates that general meetings of shareholders should be recognised as a forum for constructive dialogue between shareholders and the management. Given that the resolution has already been passed under Proposal A, it is in fact more logical to conclude that holding the meeting on the day itself is unnecessary. The Q&A session on the day of the general meeting would inevitably become a mere formality. This would run counter to the spirit of corporate governance and lead to a regression in governance standards.

Proposal A aims to eliminate the risk of lawsuits cancelling resolutions based on procedural defects, such as a breach of the directors' duty to explain occurring on the day of the general meeting. However, it is questionable whether the problems faced by companies are so serious as to justify such legislative intervention. The sense of tension arising from the existence of legal risks serves to prevent laxity in governance and cannot be regarded as a drawback.

Furthermore, as mentioned above, the practice of implementing deemed resolutions pursuant to the article of incorporation also restricts shareholders' rights such as by depriving them of the right to propose amendments on the day of the general meeting of shareholders. This is inconsistent with the fact that, while the Companies Act permits the articles of incorporation to extend shareholders' rights beyond those provided for in the Companies Act, it takes a highly cautious approach to allowing the articles of incorporation to restrict such rights to a greater extent than the Companies Act does. The legitimacy of majority shareholders depriving minority shareholders of their rights through amendments to the articles of incorporation must be rigorously scrutinised.

We also oppose Proposal B.

Proposal B aims to eliminate the risk of lawsuits cancelling resolutions based on procedural defects, such as a breach of the directors' duty to explain occurring on the day of the general meeting. Same as Proposal A, Proposal B would eliminate the company's incentive to provide meaningful explanations and to properly deal with shareholders' motions to amend a proposal by the company because the company is not exposed to the risk of a resolution being cancelled on the grounds of procedural defects.

This would give rise to concerns that the meeting is turned into nothing more than a perfunctory reporting and Q&A session.

The Corporate Governance Code stipulates that general meetings of shareholders should be recognised as a forum for constructive dialogue between shareholders and the management. Proposal B would run counter to the spirit of corporate governance and lead to a regression in governance standards.

Under current law, there is a system of discretionary dismissal whereby a claim for the cancel of a resolution may be dismissed if the procedural defect is not serious and does not affect the resolution. Furthermore, it is questionable whether the problems faced by companies are so serious as to justify such legislative intervention. The sense of tension arising from the existence of legal risks serves to prevent laxity in governance and cannot be regarded as a drawback.

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