ClientEarth

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Briefing on amendment proposals to the Companies Act modifying rights to make a shareholder proposal

Background

In September 2024, the Companies Act Study Group of the Association of Corporate Legal Department (**Keiei Hōyūkai**) made recommendations to amend the Companies Act. They concern the exercise of voting rights in advance of shareholders' meetings and the shareholders' right to make shareholder proposals.[1] In response to these recommendations, the Legislative Council of the Ministry of Justice began deliberations in July 2025 to revise the rules governing the structure and operation of shareholders' meetings.[2] The scope of the matters currently under discussion by the Legislative Council is quite broad, and it includes the two proposals put forward in the aforementioned recommendations by the Keiei Hōyūkai.

This briefing presents these two sets proposals that may be subject to public consultation in the future.

We consider that the proposed amendments would impose excessively stringent restrictions relative to their stated objectives — reducing burdens and risks for companies and improving the efficiency of shareholders' meetings — and would significantly affect the exercise shareholders

[1] Keiei Hōyūkai's Companies Act Study Group, '*Proposals to Amend the Companies Act – Regarding the Shareholders' Rights to Propose and Shareholders' Exercise Voting Rights in Advance of Shareholders' Meetings*' published in September 2024 (author's translation).
[2] Minister of Justice：The 4th meeting of the Legislative Council (Companies Act Subcommittee) dated on 30 July 2025.

rights for institutional investors, NGOs and individual investors. These proposals appear intended to further hollow out shareholders' meetings, which are already largely a formality.

1. Proposals to amend requirements for Shareholders' rights to propose

Under the Companies Act, shareholders continuously holding either at least 1% of the total voting rights or at least 300 voting rights for the preceding six months have the right to file shareholder proposals at a company with a board of directors.[3]

The threshold of 300 voting rights was established when shareholders' right to propose was introduced in 1981. At that time, it was considered that limiting eligibility solely to shareholders holding 1% or more of voting rights would make it practically impossible to submit proposals at large companies. Accordingly, comparative consideration was given to foreign laws — such as the requirement of 100 shareholders under UK law and the monetary threshold of one million marks under German law. The Japanese threshold of 300 shares was regarded as "not substantially different" from these under the foreign laws.[4]

In recent years, shareholder proposals have been on the rise. Indeed, among proposals submitted by minority shareholders holding less than 1%, there have been clearly abusive cases such as proposals to "*change the company name to XX*" or "*install Japanese-style toilets*." Companies have long expressed the need to restrict such abusive proposals from minority shareholders. Furthermore, 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 1981.[5] This has strengthened corporate demands for revising the eligibility requirements for shareholder proposals. The primary motivation behind the proposed amendment is that companies perceive the cost of responding to proposals from minority shareholders as an excessive burden.

At present, the Legislative Council is considering the following four proposals:

【A】Abolishing the threshold of "300 voting rights" and rely solely on the threshold of holding at least 1% of the voting rights

【B】Raising the threshold of "300 voting rights" to between 1,000 and 1,500 voting rights

【C】Permitting companies to raise the number of the threshold of voting rights further through provisions in their Articles of Incorporation, within the statutory upper limit (if the statutory

[3] Article 303 of the Companies Act.
[4] Shin Motoki, 'Explanation of the Act Partially Amending the Commercial Code, etc.', 1990's Hosokai (author's translation), at p.240 onwards.
[5] Tokyo Stock Exchange, 'Investment Units in 1981 and Today' submitted to the Legislative Council (Companies Act Subcommittee) on 30 July 2025 (author's translation). According to this document, the investment unit on the Tokyo Stock Exchange's First Section in 1981 was approximately ¥410,000, while the average investment unit on the Prime Market in recent times is approximately ¥280,000. The value of 300 investment units in 1981 is equivalent to the value of 441 investment units as of the end of June 2025.

limit is set at the equivalent of 1%, this proposal aligns with Proposal A. If set at 1,000-1,500 voting rights, it aligns with Proposal B)

【D】Restricting shareholders' proposals seeking amendments to the Articles of Incorporation concerning the execution of operations of a company

Adopting Proposal A, which abolishes the numerical voting-rights requirement and limits eligibility to shareholders holding at least 1%, would dramatically alter the nature of shareholder proposals. **Based on recent trends, it is said that proposals from minority shareholders would decrease by approximately 80%.**[6] For companies with a market capitalization of ¥1 trillion or more on the Tokyo Stock Exchange, shareholders would need to hold over ¥10 billion in shares, making it extremely difficult to submit proposals, even for a number of large institutional investors.

Moreover, foreign investors may effectively be unable to submit shareholder proposals, because holding 1% or more of voting rights in a listed company (including voting rights aggregated with other consenting shareholders) triggers a complex prior filing requirement under the Foreign Exchange and Foreign Trade Act[7]. Thus, **abolishing the 300-vote threshold would have a profound impact not only on individual shareholders but also on domestic and foreign institutional investors.**

Under Proposal B, raising the required number of threshold to 1,000–1,500 voting rights would increase the number of shares needed to submit a proposal to three to five times the current level, significantly affecting individual shareholders and civil-society shareholders. **While it is true that an increase in shareholder proposals has imposed additional burdens on companies, it is questionable whether there are sufficient legislative facts to justify altering the current requirement. Although some abusive proposals do exist, they are in practice simply voted down at the shareholders' meeting and do not impose any costs to companies**. Moreover, proposals that fail to pass are not necessarily devoid of value for corporate management. A dominant interpretation of the Corporate Governance Code holds that shareholder proposals receiving "a substantial level" of support warrant some degree of consideration or response from management.[8]

Regarding Proposal C, the same concerns raised with respect to Proposal A and B apply, depending on how the statutory upper limit is defined. According to the data shown by Tokyo Stock Exchange,[9] the average investment unit on the Prime Market in recent times is approximately ¥280,000. Minority shareholders have invested approximately ¥82,000,000 to satisfy the threshold of 300 voting rights. **From a comparative law perspective, this investment amount is by no means low when compared with the investment standards of other countries**.[10] For example, in the UK and Australia, one of the thresholds is at least 100 members who are entitled to vote at a general meeting (the other threshold is

[6] Minister of Justice: The meeting minutes of the 8th meeting of the Legislative Council (Companies Act Subcommittee) (author's translation), an indication by a subcommittee member in the meeting, see page 49.
[7] Article 26, Paragraph 2, Item 4 of the Foreign Exchange and Foreign Trade Act and Article 2, Paragraph 19, Item 15 of the Cabinet order on Inward Direct investment, etc.
[8] ESG Practice Group of Law Firm Nagashima Ohno & Tsunematsu, 'ESG Law', Kin-yu Zai-sei ji-jo Study Group, 2023 at p.544 (author's translation) and Asahi Yamashita, 'Shareholder Proposal Calling for a Decarbonisation Transition,' Shun-kan Syo-ji Houmu Vol. 2409 (author's translation) at p.32 onwards.
[9] Ibid 5.
[10] Minister of Justice: The meeting material No.4 of the 4th meeting of the Legislative Council (Companies Act Subcommittee) (author's translation), at p.17, Note 2. According to this paper, although the number of voting rights are adopted as a threshold under these laws, in the US, shareholders need to hold shares of USD 2,000 for three years (roughly ¥310,000), USD 15,000 for two years (roughly ¥2,320,000), or USD 25,000 for one year (roughly ¥3,870,000). Germany likewise requires a contribution value of €500,000 (roughly ¥80 million), which is lower than Japan's threshold.

holding at least 5% of the total voting rights).[11] These thresholds are much lower than Japanese one. The **comparative data therefore make clear that Japan's current threshold cannot reasonably be characterized as low, and, in fact, stands at the higher end of international norms.**

Proposal D does not concern the numerical voting-rights requirement like Proposals A through C, but it similarly aims to restrict shareholders' rights to propose. In the first place, Japanese corporate law does not recognize shareholder-initiated advisory resolutions, which has led shareholders to submit proposals on management matters in the form of amendments to the articles of incorporation.[12]

Rather than limiting scope of permissible proposals to matters pertaining to execution of operations, establishing a statutory framework for advisory resolutions should take priority. While advisory resolutions proposed by companies such as those concerning takeover defence measures are widely permitted, advisory resolutions proposed by shareholders are not. This has resulted in a highly inequitable situation between company proposals and shareholder proposals. Proposal D would exacerbate this inequality and unfairness.

2. Proposals to amend rules on exercise of voting rights in advance of shareholders' meetings

Under the principle that members of a deliberative body are inherently entitled to raise questions, request explanations and submit motions to amend a proposal with respect to agenda items at a shareholders' meeting, the Companies Act accords all shareholders these rights as individual shareholder rights.[13] Proposals to amend rules governing the advance exercise of voting rights give rise to serious concerns that such rights may be impaired whether directly, or in substance.

At present, the Legislative Council is considering the following two proposals:

【A】 If the requirements for a shareholders' meeting resolution are satisfied through advance exercise of voting rights, the articles of incorporation may provide that the proposals are deemed to have been resolved at the time the deadline for exercising advance voting rights have passed.

【B】 If the requirements for a shareholders' meeting resolution are satisfied through advance exercise of voting rights, although the proposals are not deemed to have been resolved in advance, procedural defects in the conduct of the meeting on the day of the shareholders' meeting such as breaches of directors' duty to provide explanations would not constitute grounds for cancellation of the resolution.

Both Proposal A and Proposal B aim to eliminate the risk of lawsuits to cancel resolutions based on procedural defects, such as a breach of the directors' duty to explain, occurring on the day of the shareholders' meeting. However, in the first place, it is questionable whether the problems faced by companies are so serious as to justify such legislative intervention.

[11] For Australia, s 249N(1A) of the Corporations Act 2001 (Cth). For United Kingdom, s 338 of the Companies Act 2006. While 100 shareholders who have a right to vote on the resolution need to have paid up an average sum, per member, of at least £100 under the UK law, Australian law does not require shareholders to pay a certain amount.
[12] Asahi Yamashita, 'Shareholder Proposal Calling for a Decarbonisation Transition', Shun-kan Syo-ji Houmu Vol. 2409 (author's translation). at p.28 onwards.
[13] Article 314 of the Companies Act.

Under Proposal A, because the resolution would already be deemed passed before the meeting, shareholders would have no opportunity to submit a motion to amend a proposal on the day of the meeting, directly stripping them of their proposal rights. Until now, it has been understood that the meeting is not merely a venue for formal voting but, rather, it is a deliberative body where shareholders exercise their voting rights after engaging in dialogue with the company through their right to ask questions and the directors' duty to explain. **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 B, the company would no longer bear the risk of the cancellation of shareholders' resolution based on procedural defects on the day of the meeting. As a result, **this would eliminate the company's incentive to provide meaningful explanations and to deal with properly motions to amend a proposal, giving rise to concerns that the meeting is turned into nothing more than a perfunctory reporting and Q&A session.**

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