Japan
Minority Shareholder Rights
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SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

As Japan is a civil law country, the protections for minority shareholders are provided for in statutes. Most such protections, including the rights of minority shareholders, can be found in the provisions of the Companies Act (CA). The provisions in the CA are mandatory, unless it is expressly provided otherwise. This means that companies may not alter minority protections provided for in the CA by providing otherwise in its articles of incorporation. The enforcement of the minority rights in the CA relies on the acts of minority shareholders themselves, ultimately through a court order. Under the amended CA, which came into force on 1 March 2021, listed companies must appoint one or more outside directors, which may pave the way for effective engagement with shareholders.[1]

In addition to the CA, the Financial Instruments and Exchange Act (FIEA) provides for regulations for various purposes, especially for the protection of investors of listed companies. Within such regulations, there are certain regulations that include aspects of minority shareholders' protection. There are some actions that may be initiated by an authority pursuant to a demand by a third party, including minority shareholders, such as filing for a court order for an emergency prohibition or the suspension of an act – including a takeover bid (TOB) – under the FIEA by the Prime Minister (which is delegated to the Minister of Finance).

Besides legislation, the Tokyo Stock Exchange (TSE) formulated the 'soft law' Corporate Governance Code (the Code) in June 2015, which includes certain principles relating to minority-shareholder protection. In accordance with the Code, listed companies would be required to either comply or explain the reason why they do not comply with its principles. While compliance with the Code is basically on a voluntary basis, if a company refuses to even explain the reason for its non-compliance with the principles, it would be in violation of the TSE listing rules and thus would be subject to enforcement by the TSE under its rules. Under the Code amended in June 2021, amongst other things, amendment to the Code aims to set higher corporate governance standards for companies listed on the Prime Market,[2] including a requirement that at least one-third of the board (or the majority, if necessary) be comprised of independent outside directors, which may be related to minority-shareholder protection.[3]

[1] This and other rules hereunder are based on the assumption that a company is a 'company with auditors' or a 'company with board of auditors' as defined in the CA. Different rules may apply to companies of other forms (ie, a 'company with committees' or a 'company with audit and supervisory committee' as defined in the CA).
[2] As a result of a review, the TSE has reorganised the market into three segments as of April 2022: the Prime Market, the Standard Market and the Growth Market.
[3] In particular, subsidiaries listed on the Prime Market should appoint a majority of independent outside directors or establish a special committee composed of independent persons, including independent outside directors, to deliberate and review material transactions or actions that conflict with the interests of the controlling and minority shareholders.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

The CA provides for multiple mechanisms to protect the interest of minority shareholders. One such mechanism is embedded in the procedures for issuing new shares and the disposal of company owned shares. Although rarely used in a Public Company (as defined below), if the articles of incorporation of a stock company do not require approval for the transfer of all or part of the issued shares (Public Company), and such company has granted its current shareholders the right to claim any allotment of shares pro-rated to their current number of shares, the stock company may determine the subscription requirements (such as the number of issue and price) upon a board of directors' resolution.[4] This is because current shareholders are provided opportunities to prevent the dilution of their own shares by subscribing to the new share allotment.

On the other hand, if the current shareholders are not granted such allotment rights (which is typical for listed companies, including Public Companies), the current shareholders' shareholding may be diluted. Therefore, the CA requires that subscription requirements be mandated to the (board of) directors via a special resolution at a shareholders' meeting (in principle). The exceptional case where a board of directors' resolution would suffice is when (1) the company is a Public Company AND (2) the amount to be paid in for the subscription is not particularly favourable. Condition (1) limits the exception to cases where the current shareholders are usually not interested in the control of the stock company. Condition (2) limits the exception to cases when the economic value of the current shares will not be undermined. As such, the board of directors may decide subscription matters only when the current shareholders are not disadvantaged by the issuance of new shares or disposal of company-owned shares.

As briefly stated above, it is unusual for shareholders of a Public Company to be interested in the control of the company, because the current shareholders cannot prevent an unauthorised person from becoming a shareholder. Nevertheless, if the board of directors resolves to issue new shares or dispose of company-owned shares, and such resolution results in one person holding more than 50 per cent of all issued shares, the board of directors would be effectively allowed to choose the majority shareholder. Therefore, the CA requires the disclosure of certain information regarding a potential controlling shareholder. Also, if 10 per cent or more of the shareholders dissent, the issuance of new shares or the disposal of company-owned shares must be approved by a shareholders' resolution.

To further enhance such protections, the CA grants the right to demand that the company cease the issuance of new shares or the disposal of company-owned shares to shareholders who are likely to suffer disadvantage on two grounds:

- the violation of laws and regulations or the articles of incorporation; and
- the use of an extremely unfair method.

The purpose of diluting the shares of a specific shareholder or group thereof may be found to be an unfair method, although ultimately this would depend on the specific facts of the case. This right is typically enforced through an injunction by a court, thereby protecting the interests of minority shareholders.

[4] If the stock company is not a Public Company, the subscription requirement should be decided by a resolution at the shareholders' meeting, unless the articles of incorporation prescribe that such subscription requirement may be decided by a resolution of the board of directors.

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

There is no special right under Japanese law that enables minority shareholders to appoint directors to preserve their rights. Furthermore, it is generally interpreted that directors have the obligation to maximise the shareholder value as a whole, not the value of a specific shareholder or group thereof. Therefore, if a director pursues the interests of certain shareholders at the cost of the interests of others, the director may breach their duty of care.

It is possible for a company to issue a class share that has the right to appoint a certain number of directors and corporate auditors. This method, however, is only available for companies under certain conditions, which include restrictions on the transfer of all classes of shares. Thus, this cannot be used by public companies, including listed companies, and may be utilised only in limited situations, such as for start-up companies.

The CA grants shareholders the right to request that the company conduct a cumulative vote, if the agenda of a shareholders' meeting is to elect two or more directors. A cumulative vote would increase the chance for minority shareholders to elect directors by concentrating their votes. Further, a special resolution is necessary to remove a director that has been appointed by a cumulative vote. In practice, this method is not frequently utilised, because companies may restrict the right to request cumulative votes in their articles of incorporation, which most companies do (essentially, all listed companies).

There are methods for minority shareholders to have their voice heard at a shareholders meeting. Specifically, shareholders[5] who have continuously held at least three hundred votes or 1 per cent[6] of the total voting rights in a company with a board of directors[7] for the preceding six months[8] may demand that the directors include certain agendas for the shareholders' meeting upon request at least eight weeks before the date of the shareholders' meeting.[9,10] In addition, shareholders have the right to submit proposals regarding the agendas at a shareholders' meeting; shareholders[11] who have continuously held at least three hundred votes or 1 per cent[12] of the total voting rights in a company with a board of directors[13] for the preceding six months[14] may demand that the directors notify shareholders of a summary of the proposals (up to ten proposals under the amended CA) that the demanding shareholder intends to submit at the shareholders' meeting prior to the day of the shareholders' meeting if requested at least eight weeks before the date of the shareholders' meeting.[15] [16]

[5] Multiple shareholders may act jointly to meet this condition.
[6] This amount may be reduced if stipulated in the articles of incorporation.
[7] Shareholders of a company without a board of directors may demand that directors do so without limitation.
[8] This period may be shortened if stipulated in the articles of incorporation, and the period requirement is not applicable to companies that are not a Public Company.
[9] This period may be shortened by the articles of incorporation.
[10] Listed companies should be notified of a shareholder who intends to exercise its rights by the Book-Entry Transfer Institution at least eight weeks before the date of the meeting so that the company may determine whether the shareholder meets the requirements.
[11] Multiple shareholders may act jointly to meet this condition.
[12] This amount may be reduced if stipulated in the articles of incorporation.
[13] Shareholders of a company without a board of directors may demand that directors do so only upon request at least eight weeks before the date of the meeting.
[14] This period may be shortened if stipulated in the articles of incorporation, and the period requirement is not applicable to companies that are not a Public Company.
[15] This period may be shortened by the articles of incorporation.
[16] Listed companies should be notified of a shareholder who intends to exercise its rights by the Book-Entry Transfer

These rights enable minority shareholders to request that the election of directors be added to the agenda and/or to nominate candidates, among other things.

Additionally, under the amended CA, shareholders must be provided with sufficient information with respect to candidate directors in order to make proposals and decide how to vote. In this regard, the CA requires directors[17] to provide reference documents when shareholders may exercise their voting rights in writing.

Institution at least eight weeks before the date of the meeting so that the company may determine whether the shareholder meets the requirements.

[17] If a shareholder convenes a shareholders' meeting, such shareholder must provide the reference documents instead of the directors.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

Protections of shareholders when the company is subject to a TOB are primarily provided for in the FIEA. The TOB regulations under the FIEA are applied when the acquirer seeks a large portion of the shares[18] of a public company.[19]

There are two fundamental protections provided to minority shareholders under the TOB regulations. First, the acquirer must offer the same terms and conditions to all shareholders. Second, the acquirer may not acquire only from some of the shareholders that tendered shares. Together, these rules ensure that minority shareholders are given an equal opportunity to majority shareholders to dispose of their shares. Economically, this means that the FIEA forces the equal distribution of the premium of the TOB among the shareholders.

To further ensure such equal distribution, it is generally interpreted that a majority shareholder that has acquired or increased its shares under the TOB regulation may not squeeze out minority shareholders under the same or less favourable conditions than offered in the TOB. This avoids pressuring the minority shareholders into offering their shares in the TOB procedure for fear of being harmed by a subsequent squeeze-out.

Additionally, the FIEA requires various disclosures throughout the procedures under the TOB regulations. This is to correct the asymmetry of information, thereby ensuring that shareholders can make informed decisions. These include a public notice, TOB registration statement, TOB prospectus, announcement of an opinion by the target company, purchaser's response to the target company's inquiry, post-TOB disclosure, and other disclosure documents.

The TOB regulations are enforced through criminal sanctions, administrative monetary penalties, and/or civil lawsuits. In addition, the FIEA enables the Prime Minister (as delegated to the Minister of Finance) to file for a court order for emergency prohibition or suspension of an act under the FIEA, including a TOB that violates the TOB regulations.

[18] Under the TOB regulations of the FIEA, an acquirer shall conduct a TOB if the contemplated acquisitions are any of the following:(1) off-market transactions through which the acquirer's shareholding ratio following the acquisitions reaches 5 per cent, except for acquisitions from ten or fewer shareholders within 60 days; (2) off-market transactions through which the acquirer's shareholding ratio following the acquisitions exceeds one-third; (3) specific transactions on the market (eg transactions via ToSTNeT or J-NET) through which the acquirer's shareholding ratio following the acquisitions exceeds one-third; or (4) a combination of off-market transactions and specific on-market transactions through which the acquirer's shareholding ratio following the acquisitions increases 10 per cent in three months and more than 5 per cent of the total shares is acquired through off-market transactions or specific on-market transactions (eg transactions via ToSTNeT or J-NET), resulting in the acquirer's shareholding ratio exceeding one-third. Such transactions are generally prohibited without a TOB.

[19] A 'public company' in the context of the TOB regulations has a different meaning from 'Public Company' as defined in CA. Here, the phrase means a company (1) that is required to file an annual securities report and other disclosure documents regarding its shares in accordance with the FIEA; or (2) the shares of which are listed on the market for certain professional investors.

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

The CA provides shareholders the right to bring an action on behalf of the company against certain persons such as (former) officers and directors though a derivative claim. The actions that may be brought under such claims not only include the typical situation, where a company may claim damages due to a breach of the duty of care, but also other cases, such as where the company may claim back illegal payoffs.

Before filing a derivative claim, a shareholder must submit a written demand to the company requesting that it bring the action on its own. If the company does not bring the action within 60 days, or if the company may suffer irreparable harm by the passage of 60 days, the shareholder may bring the derivative claim.

There is no requirement regarding the number of shares a shareholder must possess to initiate a derivative claim. This means that a shareholder may bring a derivative claim even if they hold only one share. The shareholder must have continuously held its shares for at least six months[20].

The CA was amended in 2015 to add two situations where derivative claims may be brought. One such situation is when the shareholder ceases to be a shareholder before bringing the derivative suit due to certain situations such as stock-for-stock transfer (*kabushiki koukan*), under which the shareholder obtains the shares in the parent company, who holds 100 per cent of the shares of the company. The other situation is when a shareholder of an ultimate parent company[21] brings a suit against the directors of significant subsidiaries that are directly or indirectly wholly owned. As such, the shareholders' right to pursue a derivative claim has been enhanced under the amendment.

As well as derivative claims, a shareholder may seek judicial intervention against an act of a director through an injunction. Such shareholder must have continuously held its shares for at least six months[22]. To succeed with such a claim, the shareholder must prove that:

- a director is engaging or is likely to engage in:
    - an act outside the scope of the company's business; or
    - other acts that violate laws, regulations, or the articles of incorporation; and that
- such act is likely to cause substantial harm to the company.

In light of the urgent nature of situations where such orders are sought, a shareholder typically first files a petition for a provisional order to temporarily suspend or prevent the act in issue from being performed.

[20] This period may be shortened if stipulated in the articles of incorporation. The period requirement is not applicable to companies that are not Public Companies.
[21] This generally means the top company in a corporate group structure.
[22] This period may be shortened if stipulated in the articles of incorporation. The period requirement is not applicable to companies that are not Public Companies.

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

Under the stock company system, shareholders – who are owners – are separated from management. Accordingly, participating in and voting at shareholders meetings is the most fundamental means by which shareholders can participate in the decision-making of a company. The CA and the FIEA, along with their enforcement orders, provide various mechanisms to substantiate this, even for shareholders who only hold a minority of the shares.

One such mechanism is enabling a shareholder to convene a shareholders meeting. Specifically, shareholders who have continuously held at least 3 per cent[23] of the total voting rights in a company for the preceding six months or more[24] may demand that the directors convene a shareholders meeting. In doing so, the shareholder must provide the agenda of the shareholders' meeting and the reason for convocation. If the shareholders meeting is not convened promptly or if a convocation notice is not dispatched within eight weeks,[25] the shareholders may convene a shareholders meeting with the permission of a court (which is not difficult if all conditions are met).

It is equally important that shareholders are granted the right to add agendas to the shareholders meeting and/or to submit proposals for agendas at the shareholders meeting. This is explained in detail above.

Additionally, shareholders must be provided with sufficient information to make proposals and to decide how to vote. In this regard, when the shareholders may exercise their voting rights in writing, the CA requires that directors[26] provide reference documents along with voting cards. Shareholders may exercise their votes by proxy by providing the company with a document evidencing the authority of such proxy, and, with regard to listed shares, the FIEA requires a person soliciting a proxy to provide reference documents. Further, shareholders may collect information proactively by exercising their right to request access to certain documents, such as the minutes of board of directors meetings, financial documents, and accounting books under limited conditions[27].

Additionally, the CA requires a special resolution on certain matters, which include but are not limited to:

- amendments to the articles of incorporation;
- transfer of business;
- merger;
- equity transfer;
- equity exchange;

[23] This amount may be reduced if stipulated in the articles of incorporation.
[24] This period may be shortened if stipulated in the articles of incorporation, and the period requirement is not applicable to companies that are not Public Companies.
[25] This period may be shortened if stipulated in the articles of incorporation.
[26] If a shareholder convenes a shareholders' meeting, such shareholder must provide the reference documents and proxy cards instead of the directors.
[27] Under the amended CA, a company may refuse a request of a shareholder to access proxy cards (or other documents evidencing the authority of such proxies) or voting cards when: (1) the shareholder who made such request did so for a purpose other than investigation for securing or exercising their rights; (2) the shareholder who made such request did so for the purpose for interfering with the operations of the company or prejudicing the common benefit of the shareholders; (3) the shareholder who made such request did so for the purpose of informing third parties of facts acquired by inspecting the relevant documents for profit; or (4) the shareholder who made such request informed third parties of facts acquired by inspecting the relevant documents for profit in the immediately preceding two years.

- company split; and
- consolidation of shares.

In the absence of any amendment of the articles of incorporation, a vote by two-thirds of the total voting rights with a quorum of a simple majority of the total voting rights is required to pass a special resolution. Although companies may reduce the quorum to a simple majority by providing so in their articles of incorporation, the CA does not allow any reduction to the approval percentage. Therefore, a matter resolved by a special resolution could be virtually vetoed by collecting more than one-third of the voting rights or less in practice, if not all shareholders attend the shareholders' meeting.

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

A shareholder may seek to dissolve the company through a court order in such a situation. In order to file the action, the shareholder must have one-tenth or more[28] of all voting rights[29] or all issued shares. In order to succeed with such an action, the shareholder must first prove either that (1) the company faces extreme difficulty in executing business and the company suffers or is likely to suffer irreparable harm; or (2) the management or disposition of property of a stock company is extremely unreasonable and puts the existence of the company at risk. Additionally, the shareholder must prove that there are unavoidable circumstances.

Japanese courts have interpreted the requirement of 'unavoidable circumstances' in consideration of the valid interests of minority shareholders. More specifically, on 13 March 1986, the Supreme Court ruled that 'unavoidable circumstances' could be found – even if the company is able to keep its business running – if there is a conflict between the majority shareholders and minority shareholders, and the majority shareholders run the company in an unjust and self-centered manner, causing constant and unjustified harm to the interests of the minority shareholders.

[28] In cases where a lesser proportion is prescribed in the articles of incorporation, such proportion.
[29] Excluding shareholders who are unable to exercise voting rights on all matters that may be resolved at the shareholders' meeting.

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

Under Japanese law, shareholders do not owe a duty of care (or duty of loyalty) to the company or to other shareholders. Thus, there is no provision under the CA or FIEA that grants shareholders rights or protections against other shareholders. This, however, does not prevent a shareholder from claiming damages against another shareholder arising from a tort.

If a shareholder receives illegal payoffs from the company in relation to the exercise of rights by such shareholder, the company may demand that the shareholder return such illegal payoffs. This right belongs to the company but is enforceable by shareholders through derivative actions (see above).

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in Public Company[30] in Japan, organised according to the percentage threshold at which the various protections become available.

Shareholding (per cent)	Description	Reference (Provision under the CA)
Two-thirds or more of voting rights	Pass a special resolution	
Majority of voting rights	Pass an ordinary resolution	
More than one-third of voting rights	Veto a special resolution	
10 per cent of voting rights or issued shares	File a court order for dissolution of the company	833
3 per cent of voting rights (Continuous ownership of six months)	Request convocation of a shareholders' meeting Request dismissal of a liquidator Request dismissal of officers	297 479 854
3 per cent of voting rights or issued shares	Object to waiving liability of directors etc. Request appointment of an inspector to inspect on the execution of business Request an inspection of account books	426 358 433
1 per cent of voting rights or issued shares	Request a lawsuit to pursue the liability of directors of significant subsidiary	847-3
1 per cent of/300 voting rights (continuous ownership of six months)	Propose agenda for shareholders' meeting Request summary of shareholder's proposal for agenda in shareholders' meeting to be provided to other shareholders	303 305
1 per cent of voting rights (continuous ownership of six months)	Request appointment of an inspector for the shareholders' meeting	306
No limitation	Request suspension of director's illegal conduct	360, 422

[30] The descriptions in this chart are based on the assumption that the company is a Public Company. Conditions for a non-Public Company may be different (typically the period requirements are not applied).

(Continuous ownership of six months)	Request a lawsuit to pursue the liability of directors	847
	File for a court order to nullify acts pertaining to the company's organisation	828
	File for a court order to nullify resolutions at the general meeting of shareholders	831
One share	Vote at a shareholders' meeting	308
	Submit proposals for agendas at the meeting	304
	Request convocation of a board of directors' meeting (in a company without a board of statutory auditors)	367
	Request inspection/copy of documents/minutes, such as:	
	・ articles of incorporation	31
	・ shareholder registry	125
	・ share option registry	252
	・ minutes of shareholders' meeting	318
	・ minutes of board of directors' meeting	371
	・ minutes of board of company auditors	394, 413
	・ financial statements and business reports and ancillary documents	442
	Request suspension of various acts, such as:	
	・ acquisition of shares by class-wide call	171–3
	・ acquisition of shares by controlling shareholder's demand	179–7
	・ consolidation of shares	182–3
	・ issuance of new shares or disposition of treasury stock	210
	・ issuance of stock options	247
	・ Absorption-type merger, absorption-type company split, and share exchange	784-2, 796-2
	・ Consolidation-type merger, incorporation-type company split, and share transfer	805–2
	Apply for special liquidation	511