# Shareholder resolutions at listed public companies in major English-speaking countries: comparative arrangements[1]

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[1] For additional international context Japanese arrangements are also described.

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# Disclaimer

This document does not contain legal or financial advice. It has been prepared to assist Australian shareholders and interested observers to compare arrangements in Australia and other Anglophone jurisdictions regarding the lodgement of resolutions for consideration at general meetings of listed public companies.

# 1. Introduction

This paper deals with arrangements for shareholder resolutions at general meetings of listed public companies. It looks at such arrangements in the following English speaking (Anglophone) jurisdictions:

- Australia;
- New Zealand;
- Papua New Guinea;
- the UK;
- Canada;
- the USA;
- and for some further international perspective – Japan.

The shareholder's relationship with a board is one of 'principal' and 'agent'. Though the board has an overriding obligation to act in the interests of shareholders, the interests of the board will often diverge from those of shareholders. Shareholder resolutions are just one of the many 'principal monitoring' mechanisms commonly included in company law to check the extent to which the agent, in this case the board, can act in pursuit of its own interests rather than the interests of the principal, in this case the shareholders.

Arrangements for 'hostile' shareholder resolutions to appoint and remove directors vary across the jurisdictions studied in this paper. Such resolutions are common in a takeover situation or in the presence of a substantial minority of aggrieved shareholders. This paper does not deal with such director-identity-related resolutions. Rather it deals with the situation where shareholders (generally a minority of shareholders) publicly wish to disagree with the board on, or highlight, a particular governance, strategy or policy issue.

In most public companies with diverse ownership any one shareholder has a strong incentive to "free ride" in regard this monitoring opportunity. It takes careful study, firstly to become fully conversant with the activities of any particular company and secondly, to use this private research in the phrasing of, and in gathering support for, a resolution. Inevitably, such shareholder powers are used to a sub-optimal extent from society's perspective.

The current legal arrangements which apply to these powers in Anglophone countries share a common ancestry, but some countries could

now be seen as only distant 'cousins'. The differences between them are described below from a legal procedural perspective but they have a more significant impact. They have a profound effect on differences in the health of the 'corporate democracy' of each country. Although it is difficult to document their exact effects, these corporate governance arrangements are a vital determinant of differences in economic and social prosperity.

In all countries, arrangements for shareholder resolutions need to balance two basic opposing considerations:

- the social benefit of providing mechanisms to assist potentially vocal shareholders make their views and concerns clear to all shareholders, despite the inherent free-riding tendency; against
- the need to deter the vexatious misuse of shareholder rights for extraneous purposes by vocal shareholders with an 'axe to grind'.

Shareholder resolutions are extremely rare in Australia, with only a dozen or so having been filed in the last decade.[3] This is in sharp contrast to other countries, particularly the USA and Canada, which have cultures of comparatively rich shareholder engagement. These national variations are a product of the differing laws on shareholder engagement. It is not surprising that those countries with more burdensome requirements for a successful filing tend to have a lower number of proposals made each year.

This paper:

- firstly, sets out a table with a brief summary of the arrangements in each country;
- secondly, provides a brief description of practice in each country in order to assist understanding of the impact of the black-letter law;
- thirdly, describes briefly the extent of the similarities and differences between the various 'cousins';
- and finally, provides an appendix which describes in turn the arrangements in more detail in each country. The main focus is on the relevant provisions of the company law and, where relevant, regulations or rulings of the relevant regulator, for example, ASIC in Australia, the SEC in the US etc.

[3] The members section of the ACCR website www.accr.org.au contains a listing of resolutions lodged with ASX 200 companies over the past decade.

# 1. Summary table: main criteria and requirements for successful lodgement of shareholder resolutions (not supported by the board) in selected Anglophone countries & Japan. [4]

Table 1 below sets out, for each country of registration of a listed public company, the key criteria and requirements for the successful lodgement of resolutions for consideration by all shareholders at a general meeting. It is assumed to be the annual general meeting if different criteria apply to the AGM and other general meetings.

Notes:

- the relevant country for a particular company is the country of registration not the stock exchange where the company is listed. For example, there are companies listed on the ASX which are registered in the UK, New Zealand, PNG and Canada as well as Australian registered companies. Sometimes these companies are 'dual listed', sometimes they are listed on the ASX but not in their country of registration;
- in regard some of these requirements it may be permissible for companies to adopt quite different arrangements to the norm in their constitution. The table describes our understanding of the most common arrangements;
- the table is prepared for an Australian reader, there are some areas where the understanding of common terms varies considerably;
- the table focuses on federal law in those countries where both federal and state/province law can be relevant.

[4] Note that the focus of the table is on resolutions dealing with environmental and social rather than governance issues.

Table 1: main criteria and requirements for successful lodgement of shareholder resolutions

| Country | Minimum # of shareholders required | Minimum % holding required | Other requirements | Timing | Relation with constitution of company/ *status of resolution if passed* | Can members comment by resolution on management matters? |
|---|---|---|---|---|---|---|
| **Australia**<br><br>**Corp's Act 2001 (Cth)** | At least 100 members entitled to vote (s 249(1(b)) | OR Members with at least 5% of the votes that may be cast (s 249(1)(a)) | | To be considered, must be submitted **at least 2 months prior** to general meeting (s 249O(1)) If the resolution is not submitted prior to the company issuing notice of the meeting, the notice of the resolution is given at the members' expense. (s 249P(8)) | Constitution may not alter the requirements set out in the columns to the left. However it could but rarely does provide for members to comment on management matters.<br><br>*Binding* | To a limited extent. [5] |
| **New Zealand**<br><br>**Companies Act 1993** | 1 (Sch 2, cl 9(1)) | No minimum holding | | In order for the notice of the shareholder proposal to be at the company's expense, notice of the resolution must be given to the company not less than **20 working days before the last day** on which notice of the relevant meeting must be given. (Sch 2, cl 9(2)) | Constitution may alter the requirements under the Act and Regulations (s 124).<br><br>*Non-binding* | Yes (s 109) |
| **Papua New Guinea** | 1 (Sch 2, cl 8(1)) | No minimum holding | | In order for the notice of the | Constitution may alter the requirements | Yes (s 90) |

[5] As a consequence of the common law members in general meeting cannot pass a resolution commenting on a matter exclusively vested by the constitution in the board. Members can comment on other matters, for example, content of the Annual Report by the directors to the members.

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|---|---|---|---|---|---|---|
| **Companies Act 1997 (PNG)** | | | | shareholder proposal to be at the company's expense, notice of the resolution must be given to the company not less than **one month before the last day** on which notice of the relevant meeting must be given. (Sch 2, cl 8(2)) | under the Act and Regulations (s 105)<br><br>*Non-binding* | |
| **UK**<br><br>**Companies Act 2006 (UK)** | In effect, at least 100 members with an average of £100 of stocks paid up per person. (s 338(3)(a)) | OR In effect, at least 5% of the total voting rights of all members. (s 338(3)(b)) | Notice of the resolution must be given in order for the resolution to be validly passed (s 301) | Notice must be given at least **6 weeks** prior to the AGM, or if later, the time at which notice is given of the AGM (s 338(4)).<br>If notice is given in the prior financial year, the circulation of the resolution will be at the company's expense (s 340(1)) | Resolution must be effective if passed<br><br>*Binding* | Effectively Yes, the typical UK Constitution provides that members may pass a special resolution directing the board and this is how recent shareholder resolutions have been phrased |
| **Canada**<br><br>**Canada Business Corporations Act**<br><br>**Canada Business Corporations Regulations, 2001 (cited as Regs in the table)** | 1 | 1% of the total number of outstanding shares on the day the proposal is lodged (Regs, s 46(a)(i))<br>OR<br>No. of shares which have a value equivalent to at least $2,000 (Regs, s 46(a)(ii)) | Must have held the shares for the six month period immediately preceding the day on which the proposal is lodged. (Regs, s 46(b))<br><br>If the same proposal has been | The proposal must be lodged **at least 90 days before the anniversary date** (s 137(5)(c)) and Regs s 50)<br><br>The anniversary date is a year after the notice of the meeting that was sent to shareholders in connection with the | Constitution may not alter the requirements set out in the columns to the left.<br><br>*Non-binding* | Yes (s 137(1)(a)) |

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|---|---|---|---|---|---|---|
| | | | brought in previous years, there may be restrictions on whether it can be brought again, depending on how much support it had previously (s 137(5)(d) and Regs s 51)) | previous annual meeting of shareholders. (s 137(5)(a)) | | |
| **USA**<br><br>**Securities Exchange Act 1934 (US)**<br><br>**General Rules and Regulations (cited as Regs in the table)** | 1 | $2,000 worth of shares at their market value or 1% of the total number of securities that have voting rights (Regs, 240.14a-8(b)(1)) | Companies may exclude a resolution from being voted on if the shareholder fails to follow the correct procedure (Regs, 240.14a-8(f)(1) ), does not continuously hold the required number of stocks (Regs, 240.14a-8(f)(2)) or another ground is satisfied (Regs, 240-14a-8(i)) | The proposal must be filed at least 120 days before the date that the company's proxy statement in connection with the prior year's AGM is released to shareholders. (Regs, 240.14a-8(e)(1) and (2)) | Constitution may not alter the requirements set out in the columns to the left or the column to the right.<br><br>*Non-binding –aka 'precatory'* | Yes provided they deal with matters of 'policy' not relate to ordinary business ie "operational" matters as defined by the SEC. |
| **Japan**<br><br>**Companies Act 2005** | 1 (Art 303(1)) | 1% or 300 votes, or the percentage holding or number of shares that the company's Articles of Incorporation state. | If a proposal is substantially similar to one that has already been filed in the prior | Give at least eight weeks notice before meeting (Art 303(2)) | The Articles of a company can alter the percentage or number of shares, as well as the amount of notice, for lodging a resolutiion | Yes, although they can only comment on matters as provided in the Act and in that specific company's Articles (Art 295(2)). |

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|---|---|---|---|---|---|---|
| | | (Art 303(2)) | three years, it cannot be filed again unless it received an affirmative vote of at least 10% (Art 304) | | (Art 303(2) )<br><br>*Binding* | |

# 2. Brief comment: shareholder resolutions in practice in each jurisdiction

## Australia

The following statistics deal with ASX 200 companies and for the period since 2000. We are aware of four campaigns by unions which involved a request for distribution of statements and lodging of resolutions. In addition we are aware of ten requests to distribute statements or place resolutions on AGM agendas lodged by non-union groups. Out of these ten resolutions:

- one was withdrawn as the board agreed to the request (Oilsearch, 2011);
- in three cases the board refused to put the resolution on the notice of meeting, arguing that shareholders did not have the power to pass a resolution dealing with the content of a board report to shareholders (ANZ, 2011;Paladin Energy, 2010 & Aquila Resources, 2010). In one of these cases (ANZ, 2011) the board refused to even distribute a statement to all shareholders (though the request satisfied the procedural requirements), implicitly arguing the content of the directors report to shareholders was not a matter for consideration at a general meeting. This kind of issue was conclusively addressed (in favour of shareholders' rights) long ago in regard US law[6];
- six resolutions were considered by shareholders (Woolworths, 2012; Woodside, 2011; Gunns & Boral, 2003;CBA & NAB, 2002). Of these, five were special resolutions and the average level of support for these six resolutions was 10%;
- no resolution has ever been put multiple years in a row although this is standard practice in the US.

On the basis of these statistics there does not appear to be any problem with vexatious abuse of shareholder rights in Australia. To the contrary, the statistics

[6] In a 1954 case Auer v. Dressel , a US appeal court held that shareholders could propound and vote upon resolutions which, even if adopted, would be purely advisory.
In a 1970 case Medical committee for Human Rights v SEC a US appeal court considered an SEC decision supporting a company which had refused to put a resolution on its agenda to amend the charter of Dow Chemical such that "napalm shall not be sold to any buyer unless that buyer gives reasonable assurance that the substance will not be used on or against **human** beings." The court found against the SEC stating
"*the proposal relates solely to a matter that is completely within the accepted sphere of corporate activity and control. No reason has been advanced in the present proceedings which leads to the conclusion that management may properly place obstacles in the path of shareholders who wish to present to their co-owners, in accord with applicable state law, the question of whether they wish to have their assets used in a manner which they believe to be more socially responsible but possibly less profitable than that which is dictated by present company policy.*"
In fact it appeared profit would increase if napalm production for military use was to be ceased.

support the view that current arrangements unduly stymy the exercise of shareholder rights and responsibilities.

## New Zealand

It appears that there have been very few shareholder resolutions filed in New Zealand in recent times.

However, in 2002, Greenpeace lodged a shareholder resolution with Auckland International Airport Limited (AIAL) asking the Airport to commit to ceasing the incineration of quarantined materials within 12 months.[7] The resolution was not passed, but it did achieve widespread community support from residents and councils in southern Auckland.[8] AIAL acceded to these requests however, and chose to install non-incineration, steam sterilising equipment that did not emit dangerous toxins.

## Papua New Guinea

We are familiar with only one resolution lodged with a PNG company in recent years. This was with Oilsearch which is ASX listed. As noted above, that resolution was withdrawn by the proponent prior to distribution of the notice of AGM because the company agreed to take the climate-change-related disclosure steps proposed.

## Canada

A substantial number of shareholder resolutions are proposed in Canada each year, primarily by an organisation called MEDAC (education and shareholder advocacy movement), but also by NEI Investments, Lowell Weir and other organisations and individuals.[9] In 2013 for example, 85 proposals were brought at Annual General Meetings, regarding topics such as management remuneration, gender equality in executive positions, disclosure about oversight of pension plans, environmental and social performance and the separation of the positions of the Chair of the Board and Chief Executive Officer.

## UK

Shareholder resolutions are an occasional but infrequent feature of corporate democracy in the UK. The two most recent high profile resolutions were lodged by ShareAction which coordinated two shareholder resolutions brought at Shell and BP's annual general meetings in 2010. ShareAction is a non-government organisation that aims to promote "responsible investment by pension funds

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[7] Chris Daniels, "Greenpeace adopts fresh tactic to pressure airport", *The New Zealand Herald* (Auckland), 16 November 2002. Also see Greenpeace, "Auckland International Airport Ltd. AGM Resolution" (11 October 2002) <http://www.greenpeace.org/new-zealand/en/reports/aial-resolution/>

[8] Greenpeace, "Victory - End of incineration at Auckland Airport" (6 December 2006) <http://www.greenpeace.org/new-zealand/en/campaigns/toxics/incineration/>

[9] Shareholder Association for Research and Education (SHARE), *Shareholder Proposals*, <http://www.share.ca/shareholderdb/?page=12>.

and fund managers"[10] It focusses not only on shareholder engagement through asking questions at AGMs and filing resolutions, but also on pressuring pension funds to change their investment policies.

These resolutions were on the same subject, with shareholders asking Shell and BP to disclose the environmental, social and financial risks of both companies' forthcoming tar sands projects. Each of the resolutions had more than 140 co-filers, including 15 institutional investors.[11] As part of the lead-up to the AGMs and the voting on the resolutions, approximately 6000 people contacted their pension funds asking for their support for the resolutions.[12]

The Shell resolution was supported by 11% of shareholders.[13]

The BP resolution was supported by 15% of shareholders.[14]

These resolutions, whilst not being successful, did result in changes of approach from Shell and BP. After the resolutions, both companies met with high level investors to explain their tar sands projects and new information was disclosed for examination by the public. For example, Shell disclosed its assessments of the risks to the projects from carbon pricing and demand.[15]

ShareAction has created numerous resources for the public to utilise in filing shareholder resolutions, including the handbook, 'A Guide to Shareholder Resolutions in the UK'.[16]

## USA

There is a rich culture of shareholder engagement and participation in the USA, with shareholder resolutions being relatively common. International Shareholder Services (ISS) recorded 595 shareholder proposals between January 1, 2013 and June 30, 2013, across a range of topics.[17] Shareholders filed 90 compensation-related proposals for consideration.[18] Environmental and social issues comprised the largest category of shareholder proposals, with 375 filings in 2013 compared to 349 in 2012.[19] Moreover, the number of these proposals that came to a vote in 2013 was 181, as opposed to 169 in 2012.[20] Furthermore, the number of governance-related shareholder resolutions totalled 118 and 12 proxy-access-related resolutions were filed in 2013, an increase from only nine in 2012.[21]

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[10] ShareAction, *About Us*, <http://shareaction.org/about
[11] FairPensions (now ShareAction), 'A Guide to Shareholder Resolutions in the UK' (2011), 20.
[12] FairPensions, 'Round Up: Tar Sands Shareholder Resolutions' (2010), <http://shareaction.org/tarsands/update>.
[13] FairPensions, '11% of Shell shareholders rebel or abstain on tar sands' (2010), <http://shareaction.org/tarsands/Shell>.
[14] FairPensions, 'BP' (2010), <http://shareaction.org/tarsands/BP>.
[15] FairPensions, 'Round Up: Tar Sands Shareholder Resolutions' (2010), <http://shareaction.org/tarsands/update>.
[16] Which can be downloaded here: http://www.shareaction.org/sites/default/files/uploaded_files/whatyoucando/ShareholderResolutionGuide.pdf
[17] International Shareholder Services (ISS) US Research Team, '2013 Proxy Season Review, United States', (Report, ISS, 2013).
[18] Id, 19.
[19] Id, 22
[20] Id, 22
[21] Id, 26

The average affirmative vote for proposals varies widely, although there is an increasing level of support for shareholder resolutions in the USA. The average level of support for a compensation-related proposal in 2013 was 26.7%,[22] and 21.4% for environment and social proposals.[23] In a further sign of the healthy state of US shareholder engagement, four proposals attained majority support.[24]

Generally, the proposals with the most public exposure regard environmental and social issues. As a tool of change-making, these proposals are also popular with activist organisations. This was highlighted by the ISS Post Season Review's finding that the largest category of proposals was based on environmental and social issues.

Two organisations centralise and coordinate much of the resolution activity in the US – the Interfaith Center on Corporate Responsibility (ICCR) and CERES. The ICCR coordinates resolution activity by both church and non-church related groups. CERES is a non-profit organisation with a secular membership which aims to instil sustainable business practices. It recorded 66 shareholder proposals in 2013 by its members on environmental sustainability alone. Much of Ceres' and ICCR's strategy in filing resolutions with companies is to achieve an agreement with that company prior to the AGM and voting, so that the resolution is never actually voted on by shareholders. In 2012, nearly half of the resolutions filed were subsequently withdrawn after an agreement was reached.[25] If agreement cannot be reached and resolutions are lodged, it is standard practice to lodge the same resolution many years in a row until a substantial level of support is reached.

'As You Sow'[26] is a non-government organisation that promotes ESG issues through "shareholder advocacy, coalition building, and innovative legal strategies". It filed 15 resolutions in 2013. Two of these resolutions were concerned with fracking and were presented at the AGMs of Chevron and ExxonMobil. They received support of 30% of the total votes in each case.[27]

The Green Century Equity Fund filed a shareholder resolution urging Safeway to label its house products that contain genetically-modified organisms.[28] This will be voted on in 2014.

Proposals are also based on social issues, and increasingly on the relationships between companies and governments. In the wake of the National Surveillance Agency scandals, and media attention on the information collection programs of governments, there have been shareholder proposals lodged for 2014 AGMs with the major telecommunications companies, AT&T and Verizon. They

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[22] Id, 19.
[23] Id, 22
[24] Id, 22
[25] Rob Berridge, 'The shareholders putting sustainability on the agenda', *The Guardian* (online), 16 April 2013 <http://www.theguardian.com/sustainable-business/blog/shareholders-putting-sustainability-on-the-agenda>.
[26] As You Sow, *About As You Sow*, <http://www.asyousow.org/about/>.
[27] As You Sow, *Corporate Social Responsibility: 2013 Shareholder Resolutions*, <http://www.asyousow.org/csr/2013_resolutions.shtml>.
[28] Gina-Marie Cheeseman, 'Shareholder resolution urges Safeway to adopt GMO labeling', *Justmeans* (online), 12 December 2013 <http://www.justmeans.com/blogs/shareholder-resolution-urges-safeway-to-adopt-gmo-labeling>.

express concerns regarding which information is to be handed over to the US government.[29]

## Japan

Shareholder activism, as we know it in Anglophone countries, has been increasingly utilised since the Fukushima nuclear disaster in 2011. Most relevant to the latter event, shareholders of the Tokyo Electric Power Co. lodged resolutions proposing that the company's nuclear program come to an end.[30] Similar resolutions were lodged at eight other electricity providers, including one lodged with Kansai Electric by the City of Osaka, although all such proposals were rejected.[31]

ISS recorded 119 shareholder proposals that were voted on in 2011, including 78 shareholder proposals regarding governance issues and 41 proposals regarding social issues, including the ending of nuclear power generation.[32] However, ISS did note that the number of targeted companies may hold more relevance as a barometer of the health of Japanese shareholder engagement, as there is no limit on how many resolutions an individual can lodge at Japanese AGMs, so long as they meet the ownership requirements.[33] For example, in 2011, one individual lodged 20 shareholder proposals with HOYA, a Japanese medical technology company.

Moreover, in 2012, ten shareholder resolutions were lodged with Mizuho Financial Group. Seven of these proposals received an affirmative vote of at least 23%.[34] The most successful resolution, regarding whether the Group had a training program for directors, received 28% of the total votes.[35] Some suggest that this reflects an increasing support for and prevalence of 'eminently reasonable' resolutions being put to companies by their shareholders.[36] Indeed, proposals relating to governance appear to be more prevalent in Japan. This may be due to the slow growth of the economy and companies. It may also be related to the incidence of several high-profile corruption and fraud cases, such as that which embroiled several Olympus board members, or mismanagement, such as the failure to manage risk by TEPCO.

Many of these resolutions required a two-thirds majority to pass, as they involve amendment of the company's Articles of Incorporation or the partial waiving of liability of directors for negligence.[37]

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[29] Brian X. Chen, 'AT&T and Verizon pressed to detail roles in US surveillance efforts', *The New York Times* (New York City), 20 November 2013, B1.
[30] Kevin Krolicki and Taiga Uranka, "Japan utility faces shareholder wrath over nuclear crisis", *Reuters (online)*, 28 June 2011, <http://www.reuters.com/article/2011/06/28/us-tepco-agm-idUSTRE75R05M20110628>
[31] "9 utilities reject all shareholders' anti-nuclear appeals', *The Asahi Shimbun* (Tokyo), 27 June 2012.
[32] Mark Goldstein, Akiko Ichinose, Takeyuki Ishida, John Taylor, Taketoshi Yoshikawa, '2011 Proxy Season Review, Japan", (Report, ISS, 2011), 14.
[33] Id, 14.
[34] Id, 18.
[35] Id, 18.
[36] Nicholas Benes, "*Shareholder Spring Comes to Japan…at least at Mizuho Financial Group*" (10 July 2012), GMI Ratings <http://www3.gmiratings.com/home/2012/07/shareholder-spring-comes-to-japan%E2%80%A6-at-least-at-mizuho-financial-group-2/>
[37] ISS Report .. and page 24.

It appears that Japanese companies attempt to stifle shareholder resolutions by holding their AGMs in close proximity, and even on the same day.[38] In 2011, ISS observed that 77.5% of Japanese companies held their AGMs in June, and of this number, 40.8% of companies held their AGMs on June 29.[39] This practice diminishes the opportunity for shareholders to engage with multiple companies and to properly scrutinise management.

# 3.Major similarities and differences

The countries can be readily seen to fall into two groups:

- In the US, Canada, NZ & PNG one shareholder can lodge a resolution, the resolutions are non-binding and may comment on the exercise of matters vested in the board. In the US and Canada, vexatious proposals are deterred by timing and mandatory support requirements rather than by required numbers as in the UK & Australia;
- In the UK & Australia it takes 100 shareholders or shareholders with 5% of the vote to lodge a resolution. However, there is a major difference between the UK and Australia from that point. The Australian 'twin organs with separate purviews' approach to the relation between the board and the shareholders is not applicable in the UK. It is standard in UK constitutions to provide for the possibility shareholders may give an instruction to the board, In general, in Australia, such resolutions are not permissible.

Australia stands as the 'odd man out'. It is the jurisdiction where shareholder resolutions are most curtailed by the law. The few resolutions that have been successfully lodged in Australia did receive substantial levels of support, although, contrary to standard practice in the US & Canada, they were not lodged again the subsequent year.

[38] Hiroko Tabuchi, "In a Shift, Japanese Shareholders Take a Stand", *The New York Times* (New York City), 28 June 2012, B3.

[39] Mark Goldstein, Akiko Ichinose, Takeyuki Ishida, John Taylor, Taketoshi Yoshikawa, '2011 Proxy Season Review, Japan", (Report, ISS, 2011), 2.

# 4. Conclusion

This paper has described arrangements for the lodgement of shareholder resolutions at listed public companies in the major Anglophone jurisdictions and Japan. It has not dealt with resolutions to appoint or remove Directors. Rather it has described the situation where shareholders (generally a minority of shareholders) publicly wish to disagree with the board on, or highlight, a particular governance, strategy or policy issue. It has also described recent practice in this area.

Australia stands out as the country where such activity is most severely curtailed by common and statutory law. The health of Australia's corporate democracy suffers because disagreement between the board and shareholders is most readily expressed if it is focused on director-identity or personality issues. Australian arrangements allow much less scope for public disagreement about matters of governance, strategy or policy to be addressed in a rational, cordial fashion. This stymies a gradual, non-antagonistic approach.

As well as reflecting differences in law, actual practice in each country, to some extent, reflects the place each of the countries sits in a very loose non-country-specific evolutionary development process. That pattern can be described as follows. A country tends to start off having few resolutions, which often entail constitutional change. [40] If resolutions get more frequent (for example, because the law allows them to be made more easily) they become more effective in influencing company behaviour. Eventually, the number of resolutions drops down, as change occurs more often as a result of engagement with the company, without the need to proceed to resolution. Table 2 depicts this pattern in a stylised form.

Table 2: Stylised pattern of development of use of shareholder resolutions

| | Frequency | Comment | Relevant Countries |
|---|---|---|---|
| 1. | Resolutions very infrequent. | Those that do proceed often focus on changes to Constitution. | Australia today,<br>US in the 50's & 60's before *Auer v Dressel* |
| 2. | Occasional resolutions but often enough to represent a credible threat | In Japan they are still, generally, resolutions to change the Constitution. In the UK 2 recent tar sands resolutions were sufficient to make the threat of resolutions realistic. | Japan & UK today |
| 3. | At a higher level the no. of resolutions/year reaches a plateau | | Canada today |
| 4. | Resolution no.s drop as it becomes apparent to boards negotiation is more attractive than belligerence | In the US it has taken a few hundred every year for some decades before the number has started to drop. | US today |

[40] For example, the common understanding of the legal situation in Australia today (and consequent practice) is quite similar to that which prevailed in the US in the 1950s and 60s when resolutions were few.

# Appendix: Legislative provisions by country

## 1. Australia

The relevant legislation is the *Corporations Act 2001 (Cth)*

Per s 249N, members may give a company notice of a resolution that they propose to move at a general meeting if their members total at least 5% of the votes that may be cast on the resolution, OR they number at least 100 members who are entitled to vote.

However, the regulations may prescribe a different number of members for the purposes of application of paragraph (1)(b) to a particular company ((1A)(a)) or a particular class of company ((1A)(b)). No different number has been prescribed.

The notice must be given in writing, set out the wording of the proposed resolution and be signed by the members proposing to move the resolution. (s 249N(2)).

**Section 249N - Members' resolutions**

(1) The following members may give a company notice of a resolution that they propose to move at a general meeting:

(a) members with at least 5% of the votes that may be cast on the resolution; or

(b) at least 100 members who are entitled to vote at a general meeting.

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:

(a) a particular company; or

(b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

(2) The notice must:

(a) be in writing; and:

(b) set out the wording of the proposed resolution; and

(c) be signed by the members proposing to move the resolution.

(3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

(4) The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

A company that has been given notice of a resolution under s 249N will consider the resolution at the next AGM occurring more than two months after the notice is given (s 249O(1)).

Per s 249O, the company must give all members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting. It is responsible for the costs of giving members notice of the resolution. However, if the resolution is not filed in time to send out information to members with the notice of the meeting, the members proposing the resolution will be liable for the costs of informing the members (the company may subsequently choose to assume this cost).

The company does not need to give notice of the resolution if the supporting statement is longer than 1,000 words long, is defamatory, or if the members are paying for the notice to be given and the sum reasonably required to inform members is not paid (s 249O(5)).

**Section 249O - Company giving notice of members' resolutions**

(1) If a company has been given notice of a resolution under section 249N, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
(2) The company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
(3) The company is responsible for the cost of giving members notice of the resolution if the company receives the notice in time to send it out to members with the notice of meeting.
(4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving members notice of the resolution if the company does not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
(5) The company need not give notice of the resolution:
(a) if it is more than 1,000 words long or defamatory; or
(b) if the members making the request are to bear the expenses of sending the notice out—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

Section 249P - Members' statements to be distributed
(1) Members may request a company to give to all its members a statement provided by the members making the request about:
(a) a resolution that is proposed to be moved at a general meeting; or
(b) any other matter that may be properly considered at a general meeting.
(2) The request must be made by:
(a) members with at least 5% of the votes that may be cast on the resolution; or
(b) at least 100 members who are entitled to vote at the meeting.
(2A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:
(a) a particular company; or
(b) a particular class of company.
Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.
(3) The request must be:
(a) in writing; and
(b) signed by the members making the request; and
(c) given to the company.
(4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
(5) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.
(6) After receiving the request, the company must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
(7) The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to members with the notice of meeting.
(8) The members making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
(9) The company need not comply with the request:
(a) if the statement is more than 1,000 words long or defamatory; or
(b) if the members making the request are responsible for the expenses of the distribution—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

Unless the constitution specifically provides Australian common law precludes the members considering a resolution expressing a non-binding comment on a matter exclusively vested in the board.

## 2. New Zealand

The relevant law is found in the *Companies Act 1993*, and the relevant provisions include sections 109 and 124, and Schedule 1.

Section 109 - Management review by shareholders
(1) Notwithstanding anything in this Act or the constitution of the company, the chairperson of a meeting of shareholders of a company must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company.
(2) Notwithstanding anything in this Act or the constitution of the company, but subject to subsections (2A) and (3), a meeting of shareholders may pass a resolution under this section relating to the management of a company.
(2A) The provisions of Schedule 1 govern proceedings at a meeting of shareholders at which a resolution under this section is passed except to the extent that the constitution of the company provides for matters that are expressed in that schedule to be subject to the constitution of the company.
(3) Unless the constitution provides that the resolution is binding, a resolution passed pursuant to subsection (2) is not binding on the board.

Section 124 - Proceedings at meetings
The provisions of Schedule 1 govern proceedings at meetings of shareholders of a company except to the extent that the constitution of the company makes provision for the matters that are expressed in that schedule to be subject to the constitution of the company.

The provisions governing the proceedings of an AGM are set out in Schedule 1.

Timing of the meeting is set out in clause 2 of Schedule 1:

Clause 2 - Notice of meetings
(1) Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and an auditor of the company not less than 10 working days before the meeting.

Clause 9 - Shareholder proposals
(1) A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
(2) If the notice is received by the board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
(3) If the notice is received by the board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
(4) If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
(5) If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with

the notice given by the board a statement of not more than 1 000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
(6) The board is not required to include in or with the notice given by the board—
(a) any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
(b) any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).
(7) Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

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## 3. Papua New Guinea

### 1. Shareholder resolutions at AGMs

The relevant law is found in the *Companies Act 1997*, and the relevant provisions include sections 90 and 105 and Schedule 2.8. The PNG law is very similar to the NZ law.

Section 90 - Management review by shareholders.
(1) Notwithstanding anything in this Act or the constitution of the company the Chairman of a meeting of shareholders of a company shall allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company.
(2) Notwithstanding anything in this Act or the constitution of the company, but subject to Subsection (3), a meeting of shareholders may pass a resolution under this section relating to the management of a company.
(3) Unless the constitution provides that the resolution is binding, a resolution passed pursuant to Subsection (2) is not binding on the board..

Section 105 - Proceedings at meetings
The provisions of Schedule 2 govern proceedings at meetings of shareholders of a company except to the extent that the constitution of the company makes provision for the matters that are expressed in that Schedule to be subject to the constitution of the company.

Schedule 2.8 pursuant to section 105 provides for shareholder proposals.

Only one shareholder is required for a proposal to be raised (Sch 2.8(1)) and in order for the notice of the proposal to be given to other shareholders, the proposal must be lodged not less than one month before the last day on which notice of the relevant meeting of shareholders is required to be given (Sch 2.8(2)).

The shareholder may include a 1,000 word statement in support of the resolution where the directors intend that shareholders may vote by proxy. (Sch 2.8(5)).

Sch. 2.8 - Shareholder proposals.
(1) A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
(2) Where the notice is received by the board not less than one month before the last day on which notice of the relevant meeting of shareholders is required to be given by

the board, the board shall, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
(3) Where the notice is received by the board not less than seven days and not more than one month before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board shall, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
(4) Where the notice is received by the board less than seven days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board may, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
(5) Where the directors intend that shareholders may vote on the proposal by proxy, they shall give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1,000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
(6) The board is not required to include in or with the notice given by the board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.
(7) Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder shall, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

2. Timing
The schedule provides

Notice of meetings
(1) Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and an auditor of the company not less than 10 working days before the meeting.

However, the Constitution could impose a different requirement.

## 4. Canada

The federal provisions, contained in the *Canada Business Corporations Act, RSC 1985*, relevant to shareholder proposals include s 137.

In summary:
- A registered shareholder or beneficial owner of shares may submit to the corporation of a proposal and discuss at the meeting any matter where the person would have been allowed to submit a proposal (s 137(1))
- To be eligible to make a proposal you must
    - hold at least 1% of the outstanding shares of the corporation or shares worth at least $2000 for at least the last six months prior to the proposal being lodged (s 137(1.1)(a) of the Act read with s 46(a)(i) and (ii) and (b) of the Regulations) OR
    - have the support of persons who, in the aggregate, and for at least the last six months prior to the proposal being lodged, have been the registered holders or beneficial owners of at least 1% of the outstanding shares of the corporation or shares worth at least $2000. (s 137(1.1)(b) of the Act read with s 46(a)(i) and (ii) and (b)of the Regulations)
- The proposal and supporting statement must not exceed 500 words (s 137(3) of the Act read with s 48, Regulations)
- Per s 137(5)(a) of the Act and s 49 of the Regulations, the proposal must be submitted to the corporation at least 90 days before the anniversary date.

- Per s 137(5)(c) of the Act and s 50 of the Regulations, the Board does not have to allow a proposal if the person submitting it has, within the last two years prior to the receipt of a proposal, failed to present the previous proposal that they had requested at the meeting.
- Per s 137(5)(d) of the Act and s 51 of the Regulations, a proposal cannot be brought again if it has been presented at a prior AGM within the last five years (s 51(2)) and:
    - The proposal failed to receive 3% of the total number of shares voted, if introduced at one AGM
    - The proposal failed to receive 6% of the total number of shares voted at the last AGM, if it has been introduced at two AGMs.
    - The proposal failed to receive 10% of the total numbers of shares voted at the last AGM, if it has been introduced at three or more AGMs.

Proposals
Section 137
(1) Subject to subsections (1.1) and (1.2), a registered holder or beneficial owner of shares that are entitled to be voted at an annual meeting of shareholders may

- (*a*) submit to the corporation notice of any matter that the person proposes to raise at the meeting (a "proposal"); and
- (*b*) discuss at the meeting any matter in respect of which the person would have been entitled to submit a proposal.

Persons eligible to make proposals
(1.1) To be eligible to submit a proposal, a person

- (*a*) must be, for at least the prescribed period, the registered holder or the beneficial owner of at least the prescribed number of outstanding shares of the corporation; or
- (*b*) must have the support of persons who, in the aggregate, and including or not including the person that submits the proposal, have been, for at least the prescribed period, the registered holders, or the beneficial owners of, at least the prescribed number of outstanding shares of the corporation.

The prescribed period and prescribed number of outstanding shares of the corporation are provided in ss 46 and 47 of the *Canada Business Corporation Regulations 2001*.

Section 46.
For the purpose of subsection 137(1.1) of the Act,

- (*a*) the prescribed number of shares is the number of voting shares
    - (i) that is equal to 1% of the total number of the outstanding voting shares of the corporation, as of the day on which the shareholder submits a proposal, or
    - (ii) whose fair market value, as determined at the close of business on the day before the shareholder submits the proposal to the corporation, is at least $2,000; and
- (*b*) the prescribed period is the six-month period immediately before the day on which the shareholder submits the proposal.

Section 47.
For the purpose of subsection 137(1.4) of the Act,

- (*a*) a corporation may request that a shareholder provide the proof referred to in that subsection within 14 days after the corporation receives the shareholder's proposal; and
- (*b*) the shareholder shall provide the proof within 21 days after the day on which the shareholder receives the corporation's request or, if the request was mailed to the shareholder, within 21 days after the postmark date stamped on the envelope containing the request.

The remainder of the *Canada Business Corporations Act, RSC 1985* establishes other procedural requirements in lodging a proposal.

Information to be provided
(1.2) A proposal submitted under paragraph (1)(*a*) must be accompanied by the following information:

- (*a*) the name and address of the person and of the person's supporters, if applicable; and
- (*b*) the number of shares held or owned by the person and the person's supporters, if applicable, and the date the shares were acquired.

Information not part of proposal
(1.3) The information provided under subsection (1.2) does not form part of the proposal or of the supporting statement referred to in subsection (3) and is not included for the purposes of the prescribed maximum word limit set out in subsection (3).

Proof may be required
(1.4) If requested by the corporation within the prescribed period, a person who submits a proposal must provide proof, within the prescribed period, that the person meets the requirements of subsection (1.1).

Information circular
(2) A corporation that solicits proxies shall set out the proposal in the management proxy circular required by  or attach the proposal thereto.

Supporting statement
(3) If so requested by the person who submits a proposal, the corporation shall include in the management proxy circular or attach to it a statement in support of the proposal by the person and the name and address of the person. The statement and the proposal must together not exceed the prescribed maximum number of words.

Section 48 of the Regulations states that a proposal and statement in support of it shall not together exceed 500 words.

Nomination for director
(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than five per cent of the shares or five per cent of the shares of a class of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations made at a meeting of shareholders.

Exemptions
(5) A corporation is not required to comply with subsections (2) and (3) if

- (*a*) the proposal is not submitted to the corporation at least the prescribed number of days before the anniversary date of the notice of meeting that was sent to shareholders in connection with the previous annual meeting of shareholders;
- (*b*) it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its directors, officers or security holders;
- (*b.1*) it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation;
- (*c*) not more than the prescribed period before the receipt of a proposal, a person failed to present, in person or by proxy, at a meeting of shareholders, a proposal that at the person's request, had been included in a management proxy circular relating to the meeting;
- (*d*) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held not more than the prescribed period before the receipt of the proposal and did not receive the prescribed minimum amount of support at the meeting; or
- (*e*) the rights conferred by this section are being abused to secure publicity.

Section s 137(5) determines the deadline for a proposal to be lodged, in conjunction with s 49 of the Regulations, below:

REGULATIONS
**49.**
For the purpose of paragraph 137(5)(*a*) of the Act, the prescribed number of days for submitting a proposal to the corporation is at least 90 days before the anniversary date

ACT
Corporation may refuse to include proposal
(5.1) If a person who submits a proposal fails to continue to hold or own the number of shares referred to in subsection (1.1) up to and including the day of the meeting, the corporation is not required to set out in the management proxy circular, or attach to it, any proposal submitted by that person for any meeting held within the prescribed period following the date of the meeting.

Immunity
(6) No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

Notice of refusal
(7) If a corporation refuses to include a proposal in a management proxy circular, the corporation shall, within the prescribed period after the day on which it receives the proposal or the day on which it receives the proof of ownership under subsection (1.4), as the case may be, notify in writing the person submitting the proposal of its intention to omit the proposal from the management proxy circular and of the reasons for the refusal.

Person may apply to court
(8) On the application of a person submitting a proposal who claims to be aggrieved by a corporation's refusal under subsection (7), a court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

Corporation's application to court
(9) The corporation or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the corporation to omit the proposal from the management proxy circular, and the court, if it is satisfied that subsection (5) applies, may make such order as it thinks fit.

Director entitled to notice
(10) An applicant under subsection (8) or (9) shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

Companies can either incorporate under federal or provincial law, and this will determine the relevant legislation to be considered for each specific company. Therefore, a company registered under federal law will be subject to the shareholder provisions under the Canada Business Corporations Act … , whilst a company registered in British Columbia will be subject to shareholder provisions in *Business Corporations Act, SBC 2002.* This is significant as laws do vary by province and there are some differences in procedure for bringing shareholder resolutions. For example, it appears that the *Business Corporations Act, SBC 2002* (the British Columbia Act) requires that the submitter be a qualified shareholder, entailing ownership of the shares for two years prior.

# 5. UK

## 1. Shareholder resolutions at AGMs

The relevant legislation is the *Companies Act 2006 (UK).*

Pursuant to s 281(2), a resolution of the members of a public company must be passed at a meeting of the members.

**Section 281 - Resolutions**

(1) A resolution of the members (or of a class of members) of a private company must be passed—

(a) as a written resolution in accordance with Chapter 2, or

(b) at a meeting of the members (to which the provisions of Chapter 3 apply).

(2) A resolution of the members (or of a class of members) of a public company must be passed at a meeting of the members (to which the provisions of Chapter 3 and, where relevant, Chapter 4 apply).

(3) Where a provision of the Companies Acts—

(a) requires a resolution of a company, or of the members (or a class of members) of a company, and

(b) does not specify what kind of resolution is required,

what is required is an ordinary resolution unless the company's articles require a higher majority (or unanimity).

(4) Nothing in this Part affects any enactment or rule of law as to—

(a) things done otherwise than by passing a resolution,

(b) circumstances in which a resolution is or is not treated as having been passed, or

(c) cases in which a person is precluded from alleging that a resolution has not been duly passed.

Pursuant to s 301, a resolution will be validly passed if notice of the meeting and the resolution is given, and the meeting is held and conducted in accordance with the relevant provisions of Chapter 3 and 4.

**Section 301 - Resolutions at general meetings**

A resolution of the members of a company is validly passed at a general meeting if—

(a) notice of the meeting and of the resolution is given, and

(b) the meeting is held and conducted,

in accordance with the provisions of this Chapter (and, where relevant, Chapter 4) and the company's articles.

**Section 314 - Members' power to require circulation of statements**

(1) The members of a company may require the company to circulate, to members of the company entitled to receive notice of a general meeting, a statement of not more than 1,000 words with respect to—

(a) a matter referred to in a proposed resolution to be dealt with at that meeting, or

(b) other business to be dealt with at that meeting.

(2) A company is required to circulate a statement once it has received requests to do so from—

(a) members representing at least 5% of the total voting rights of all the members who have a relevant right to vote (excluding any voting rights attached to any shares in the company held as treasury shares), or

(b) at least 100 members who have a relevant right to vote and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

(3) In subsection (2), a "relevant right to vote" means—

(a) in relation to a statement with respect to a matter referred to in a proposed resolution, a right to vote on that resolution at the meeting to which the requests relate, and

(b) in relation to any other statement, a right to vote at the meeting to which the requests relate.

(4) A request—

(a) may be in hard copy form or in electronic form,

(b) must identify the statement to be circulated,

(c) must be authenticated by the person or persons making it, and

(d) must be received by the company at least one week before the meeting to which it relates.

Section 315 - Company's duty to circulate members' statement

(1) A company that is required under section 314, to circulate a statement must send a copy of it to each member of the company entitled to receive notice of the meeting—

(a) in the same manner as the notice of the meeting, and

(b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to section 316(2) (deposit or tender of sum in respect of expenses of circulation) and section 317 (application not to circulate members' statement).

(3) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

Section 316 - Expenses of circulating members' statement

(1) The expenses of the company in complying with section 315 need not be paid by the members who requested the circulation of the statement if—

(a) the meeting to which the requests relate is an annual general meeting of a public company, and

(b) requests sufficient to require the company to circulate the statement are received before the end of the financial year preceding the meeting.

(2) Otherwise—

(a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the statement unless the company resolves otherwise, and

(b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than one week before the meeting, a sum reasonably sufficient to meet its expenses in doing so.

Section 317 - Application not to circulate members' statement

(1) A company is not required to circulate a members' statement under section 315 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 314 and that section are being abused.

(2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application.

Pursuant to s 338(2), a resolution may be moved if it is not ineffective, defamatory of any person or frivolous or vexatious. Strictly speaking, it appears that only one member is required to move a resolution at an annual general meeting, per s 338(2). However, such a resolution, in order to be properly moved, requires notice to be given to all members of the resolution (s 301). Therefore, s 301 effectively requires s 338(3) to be satisfied, with either members representing at least 5% of the total voting rights of all members who have a right to vote on the resolution at the AGM requesting the company give notice of the resolution, or at least 100 members whose holdings average out to be at least £100 per member request notice be given.

The £100 is not measured at its market value, but at its nominal ie paid up or par value.[41]

Per s 338(4), a request for notice of a resolution to be given may be in hard copy or electronic form, must identify the resolution of which notice is to be given, must be authenticated by the person or persons making it, and must be received by the company not later than 6 weeks before the AGM OR, if later, the time at which notice is given of that meeting.

**Section 338 - Public companies: members' power to require circulation of resolutions for AGMs**

(1) The members of a public company may require the company to give, to members of the company entitled to receive notice of the next annual general meeting, notice of a resolution which may properly be moved and is intended to be moved at that meeting.

(2) A resolution may properly be moved at an annual general meeting unless—

(a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),

(b) it is defamatory of any person, or

(c) it is frivolous or vexatious.

(3) A company is required to give notice of a resolution once it has received requests that it do so from—

(a) members representing at least 5% of the total voting rights of all the members who have a right to vote on the resolution at the annual general meeting to which the requests relate (excluding any voting rights attached to any shares in the company held as treasury shares), or

(b) at least 100 members who have a right to vote on the resolution at the annual general meeting to which the requests relate and hold shares in the company on which there has been paid up an average sum, per member, of at least £100.

See also section 153 (exercise of rights where shares held on behalf of others).

(4) A request—

(a) may be in hard copy form or in electronic form,

(b) must identify the resolution of which notice is to be given,

(c) must be authenticated by the person or persons making it, and

(d) must be received by the company not later than—

(i) 6 weeks before the annual general meeting to which the requests relate, or

(ii) if later, the time at which notice is given of that meeting.

Section 339 establishes the method by which the company must circulate members' resolutions where s 338 has been satisfied. Per s 339(1), a company must send a copy of a resolution to each member of the company entitled to receive notice of the AGM, in the same manner as notice of the meeting and at the same time, or as soon as reasonably practicable after, it gives notice of the meeting.

**Section 339 - Public companies: company's duty to circulate members' resolutions for AGMs**

(1) A company that is required under section 338 to give notice of a resolution must send a copy of it to each member of the company entitled to receive notice of the annual general meeting—

(a) in the same manner as notice of the meeting, and

(b) at the same time as, or as soon as reasonably practicable after, it gives notice of the meeting.

(2) Subsection (1) has effect subject to section 340(2) (deposit or tender of sum in respect of expenses of circulation).

(3) The business which may be dealt with at an annual general meeting includes a resolution of which notice is given in accordance with this section.

[41] FairPensions (now ShareAction), 'A Guide to Shareholder Resolutions in the UK' (2011), 19.

(4) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
(5) A person guilty of an offence under this section is liable—
(a) on conviction on indictment, to a fine;
(b) on summary conviction, to a fine not exceeding the statutory maximum.

Per s 340, where the company must circulate the resolution it must be at the company's expense if the request is received before the end of the financial year preceding the meeting. Otherwise, per s 340(2), the members who requested the circulation of the resolution must pay for the circulation, and they need not circulate the resolution if the deposit of a sum reasonably sufficient to meet its expenses is made less than six weeks prior to the AGM or if later, the time at which notice is given of that meeting.

**Section 340 - Public companies: expenses of circulating members' resolutions for AGM**
(1) The expenses of the company in complying with section 339 need not be paid by the members who requested the circulation of the resolution if requests sufficient to require the company to circulate it are received before the end of the financial year preceding the meeting.
(2) Otherwise—
(a) the expenses of the company in complying with that section must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise, and
(b) unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it, not later than—
(i) six weeks before the annual general meeting to which the requests relate, or
(ii) if later, the time at which notice is given of that meeting,
a sum reasonably sufficient to meet its expenses in complying with that section.

2. Indirect shareholders
Where the shares are held for a beneficiary, the beneficiary may still constitute part of the 100 shareholders holding, on average, 100 pounds worth of shares.

In order for a beneficiary to take this action, they must provide:
- the full name and address of a person who is a member of the company, holds the shares.
- that member is holding the shares on behalf of that person in the course of a business
- the number of shares they own
- total amount paid up on those shares
- that those shares aren't held by anyone else, or, if they are, that the other individuals aren't involved in making the request
- that all or some of the shares confer voting rights relevant to making a request.
- that the person has the right to instruct the member how to exercise those rights

The member of the company must also provide a statement saying:
- that they hold the shares on behalf of the person OR
- that they hold them on behalf of several people, but are only making the request in relation to one person

**Section 153 - Exercise of rights where shares held on behalf of others: members' requests**
(1) This section applies for the purposes of—
(a) section 314 (power to require circulation of statement),
(b) section 338 (public companies: power to require circulation of resolution for AGM),

(ba )section 338A (traded companies: members' power to include matters in business dealt with at AGM),
(c) section 342 (power to require independent report on poll), and
(d) section 527 (power to require website publication of audit concerns).
(2) A company is required to act under any of those sections if it receives a request in relation to which the following conditions are met—
(a) it is made by at least 100 persons;
(b) it is authenticated by all the persons making it;
(c) in the case of any of those persons who is not a member of the company, it is accompanied by a statement—
(i) of the full name and address of a person ("the member") who is a member of the company and holds shares on behalf of that person,
(ii) that the member is holding those shares on behalf of that person in the course of a business,
(iii) of the number of shares in the company that the member holds on behalf of that person,
(iv) of the total amount paid up on those shares,
(v) that those shares are not held on behalf of anyone else or, if they are, that the other person or persons are not among the other persons making the request,
(vi) that some or all of those shares confer voting rights that are relevant for the purposes of making a request under the section in question, and
(vii) that the person has the right to instruct the member how to exercise those rights;
(d) in the case of any of those persons who is a member of the company, it is accompanied by a statement—
(i) that he holds shares otherwise than on behalf of another person, or
(ii) that he holds shares on behalf of one or more other persons but those persons are not among the other persons making the request;
(e) it is accompanied by such evidence as the company may reasonably require of the matters mentioned in paragraph (c) and (d);
(f) the total amount of the sums paid up on—
(i) shares held as mentioned in paragraph (c), and
(ii) shares held as mentioned in paragraph (d),
divided by the number of persons making the request, is not less than £100;
(g) the request complies with any other requirements of the section in question as to contents, timing and otherwise.

3. Timing

In the UK, it does not appear that the timing of the lodgement of a resolution per se is important for ensuring that a resolution is discussed. However, it is important that the resolution is circulated, and if the shareholders want this to be at the company's expense, this request must be made before the end of the prior financial year.

## 6. How can shareholders direct the directors?

Pursuant to the *Companies Act 2006 (UK*), every company must have articles of association. (s 18(1)). If the company does not register articles, or they register articles but they do not exclude or modify the relevant model articles, then the model articles will be taken to form part or whole of the articles of association (s 20(1)(a) and (b)).

Section 18 - Articles of association
(1) A company must have articles of association prescribing regulations for the company.
(2) Unless it is a company to which model articles apply by virtue of section 20 (default application of model articles in case of limited company), it must register articles of association.
(3) Articles of association registered by a company must—
(a) be contained in a single document, and
(b) be divided into paragraphs numbered consecutively.

(4) References in the Companies Acts to a company's "articles" are to its articles of association

**Section 20 - Default application of model articles**

(1) On the formation of a limited company—

(a) if articles are not registered, or

(b) if articles are registered, in so far as they do not exclude or modify the relevant model articles, the relevant model articles (so far as applicable) form part of the company's articles in the same manner and to the same extent as if articles in the form of those articles had been duly registered.

(2) The "relevant model articles" means the model articles prescribed for a company of that description as in force at the date on which the company is registered.

Pursuant to The Companies (Model Articles) Regulations 2008, s 4 of Schedule 3 provides that the shareholders have reserve powers. (If the company was constituted prior to 1 October, 2009, 'Table A' will apply instead of Sch 3. For further information, see the table in this link: http://www.companieshouse.gov.uk/about/tableA/. The provisions appear to have the same effect, providing shareholders with reserve powers, per s 70 via special resolution of Table A).

REGULATIONS

**Section 4 - Shareholders' reserve power**

(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

A special resolution has the same definition as that given in s 283 of the Companies Act 2006. A special resolution is passed by members representing not less than 75% of the total voting rights of eligible members.(s 283(1) and (2))

**Section 283 - Special resolutions**

(1) A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%.

(2) A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members (see Chapter 2).

(3) Where a resolution of a private company is passed as a written resolution—

(a) the resolution is not a special resolution unless it stated that it was proposed as a special resolution, and

(b) if the resolution so stated, it may only be passed as a special resolution.

(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 75% if it is passed by not less than 75% of—

(a) the members who, being entitled to do so, vote in person on the resolution, and

(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.

(6) Where a resolution is passed at a meeting—

(a) the resolution is not a special resolution unless the notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution, and

(b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

However, though these reserve powers appear to be common they may not exist in all companies' articles of association and those wishing to lodge a special resolution to

direct the management need to examine the specific company's articles of association to ensure that this course of action is available.

## 6. USA

Part 240 of the General Rules and Regulations of the Securities Exchange Act of 1934 governs the bringing of shareholder proposals at AGMs. The Regulations are structured in a question and answer format. The citing below will not include question numbers, but rather the pro-numerals and numbered sections.

In order to be eligible to submit a proposal, the shareholder must hold either $2,000 worth of shares at their market value or 1% of the total number of securities that have voting rights. They must also have held the shares for at least a year prior to the lodging of the proposal, and must hold those securities through to the date of the meeting.

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

Shareholders may only submit one proposal to a company for a particular shareholders' meeting, per (c).

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

The proposal, including supporting statements, must not exceed 500 words, per (d).

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

The deadline for submitting the proposal to the AGM is generally found in the prior year's proxy statement, per (e)(1). Moreover, the proposal must be received by the company at least 120 days before the date that the company's proxy statement in connection with the prior year's AGM is released to shareholders, per (e)(2).

If the company did not hold an AGM in the prior year, or if they changed the date more than 30 days from last year's meeting, the deadline can generally be found in one of the company's quarterly reports or shareholder reports of investment companies, per (e)(1). Moreover, the deadline for submitting the proposal will be a reasonable time before the company begins to distribute its proxy materials. Therefore, shareholders should take care to ensure that their proposal is lodged at the earliest possible time.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

However, the company can exclude proposals if the procedure explained above is not followed. If there is a deficiency in your proposal that can be rectified, the company must notify you of this deficiency within 14 days of receiving the proposal, and you must rectify the deficiency within 14 days after the day you receive the notice. If you do not, the company may exclude your proposal, per (f)(1).

Moreover, if the deficiency cannot be rectified, the company need not give you notice of the deficiency and the proposal may be excluded, per (f)(1).

Furthermore, per (f)(2), if you fail to hold the requisite number of shares through to the meeting, the company may exclude the proposal.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).
(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

Per (g), the company bears the burden of demonstrating that it is entitled to exclude your proposal.

Per (i), the company can also exclude a proposal if:

- it is not a proper subject for action by shareholders under law (1)
- it will cause the company to violate any state, federal or foreign law, except where the violation of foreign law is a result of compliance with state or federal law (2).
- the proposal or supporting statement is contrary to any proxy rules, which prohibits false and misleading statements. (3)
- If the proposal relates to the redress of a personal claim or grievance, or designed to bring a benefit to you or to a further interest which is not shared by the shareholders at large. (4)
- if the proposal relates to operations which account for less than 5% of total assets (5)
- if the company lacks the power or authority to implement the proposal. (6)
- the proposal deals with a matter relating to the company's ordinary business operations (7). This particular provision has received attention lately, with several guidance documents from the Corporation Finance department of the

SEC being released in the late 2000's. Although these guidance notices do not constitute binding rules, the Corporation Finance department determines whether a proposal should be excluded. The Corporation Finance department noted that in regards to assessment of risk, they would examine the subject matter to determine whether it fell within ordinary, day-to-day management, as opposed to excluding it purely because it involved an assessment of risk.[42] Some have suggested that this will expand the number of issues on which proposals can be brought.[43]
http://www.sec.gov/interps/legal/cfslb14e.htm

- If it would disqualify a nominee who is standing for election, remove a director from office before his or her term expired, questions their competence, business judgment or character, seeks to include a specific individual in the company's proxy materials for election to the board of directors, or could otherwise affect the outcome of the upcoming election of directors. (8)
- conflicts with company's own proposal (9)
- it has already been substantially implemented (10)
- it is a duplicate of another proposal at the same meeting (11)
- if the subject matter has already been dealt with at an AGM within the preceding five calendar years, a company may exclude it from proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received (12):
    - less than 3% of the vote if proposed once within the preceding 5 calendar years
    - less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years
    - less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years
- If the proposal relates to specific amounts of cash or stock dividends. (13)

## 7. Japan

The relevant laws are found in the Companies Act 2005.

Shareholders of a company with a Board of Directors can only comment on management or direct management in a binding resolution, per Article 295(2), where it is provided for in the Act or Articles of Incorporation. As the Act does not provide for shareholder comment or direction of management, the Articles of the specific company would have to provide for these matters.

Article 295 - Authority of Shareholders Meeting
(1) Shareholders' meetings may resolve the matters provided for in this Act, the organization, operations and administration of the Stock Company, and any and all other matters regarding the Stock Company.
(2) Notwithstanding the provisions of the preceding paragraph, for a Company with Board of Directors, a shareholders meeting may resolve only the matters provided for in this Act and the matters provided for in the articles of incorporation.
(3) Provisions of the articles of incorporation which provide to the effect that any organization other than the shareholders meeting, such as directors, executive officers and board of directors, may determine any matter which, pursuant to the provisions of this Act, requires the resolution of the shareholders meeting shall not be effective.

[42] US Securities and Exchange Commission, *Shareholder Proposals* (27 October 2009) <http://www.sec.gov/interps/legal/cfslb14e.htm>
[43] Allens Linklaters, *Focus: New guidance on US shareholder resolutions* (11 December 2009) <http://www.allens.com.au/pubs/ldr/focsrdec09.htm>

Shareholders should take care to ensure they submit their proposal as soon as possible to the company, as the Board of Directors need only give two weeks' notice before the meeting date (Art 299(1)). Shareholders who have held shares in a company for the prior six months or more (or if the Articles state a shorter time, that time) and hold not less than three-hundredths votes (or if the Articles state a lesser amount, that amount), may demand a shareholder meeting is called to deal with a matter on which shareholders are permitted to vote (Art 297(1)).

Article 296 (Calling of Shareholders Meeting)
(1) Annual shareholders meeting shall be called within a defined period of time after the end of each business year.
(2) A shareholders meeting may be called whenever necessary.
(3) A shareholders meeting shall be called by directors, except in cases where it is called pursuant to the provisions of Paragraph 4 of the following Article.

Article 297 (Demand for Calling of Meeting by Shareholders)
(1) Shareholders having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) not less than three hundredths (3/100) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders may demand the directors, by showing the matters which shall be the purpose of the shareholders meeting (limited to the matters on which such shareholders may exercise their votes) and the reason of the calling, that they call the shareholders meeting.
(2) For the purpose of the application of the preceding paragraph to a Stock Company which is not a Public Company, "having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "having".
(3) The number of the votes of the shareholders who may not exercise their votes on the matters that are the purpose of the shareholders meeting referred to in Paragraph 1 shall not be included in the number of the votes of all shareholders under that paragraph.
(4) In the following cases, the shareholders who made the demand pursuant to the provisions of Paragraph 1 may call the shareholders meeting with the permission of the court.
(i) In cases where the calling procedure is not effected without delay after the demand pursuant to the provisions of Paragraph 1; or
(ii) In cases where a notice for the calling of the shareholders meeting which designates, as the day of the shareholders meeting, a day falling within the period of eight weeks (or, in cases where any period less than that is provided for in the articles of incorporation, such period) from the day of the demand pursuant to the provisions of Paragraph 1 is not dispatched.

Article 298 (Determination to Call Shareholders Meeting)
(1) Directors (in cases where shareholders call a shareholders meeting pursuant to the provisions of Paragraph 4 of the preceding Article, such shareholders. The same shall apply in the main clause of the next paragraph and in the following Article to Article 302 inclusive) shall decide the following matters in cases where they call a shareholders meeting:
(i) The date, time and place of the shareholders meeting;
(ii) If there is any matter which is the purpose of the shareholders meeting, such matter;
(iii) That shareholders who do not attend the shareholders meeting may exercise their votes in writing, if so arranged;
(iv) That shareholders may exercise their votes by an Electromagnetic Method, if so arranged;
(v) In addition to the matters listed in the preceding items, any matters prescribed by the applicable Ordinance of the Ministry of Justice.
(2) In cases where the number of the shareholders (excluding shareholders who may not exercise their votes on all matters which may be resolved at a shareholders meetings. The same shall apply in the next Article to Article 302 inclusive) is one thousand or more, the directors shall decide the matters listed in Item 3 of the preceding paragraph; provided, however, that this shall not apply to the cases where such Stock Company is a Stock Company which issues the shares provided for in Paragraph 16(2) of the Financial Products and Exchange Act and is an entity prescribed by the applicable Ordinance of the Ministry of Justice.

(3) For the purpose of the application of the provisions of the preceding paragraph to a Company with Board of Directors, "matters which may be resolved at the shareholders meetings" in that that paragraph shall be read as "matters listed in Paragraph 2 of the preceding paragraph".
(4) At a Company with Board of Directors, the decision of the maters listed in each item of Paragraph 1 shall be made by the resolution of the board of directors, except for the cases where the shareholders call the Company pursuant to the provisions of Paragraph 4 of the preceding Article.

Article 299 (Notice of Calling of Shareholders' meetings)
(1) In order to call the shareholders meeting, the directors shall dispatch the notice thereof to the shareholders no later than two weeks (or one week if the Stock Company is not a Public Company, except in cases where the matters listed in Item 3 or 4 of Paragraph 1 of the preceding Article are decided, (or if a shorter period of time is provided for in the articles of incorporation in cases where the Stock Company is a Stock Company other than the Company with Board of Directors, such shorter period of time)) prior to the day of the shareholders meeting.
(2) The notice referred to in the preceding paragraph shall be in writing in the following cases:
(i) Where the matters listed in Item 3 or 4 of Paragraph 1 of the preceding Article are decided; or
(ii) Where the Stock Company is a Company with Board of Directors.
(3) In lieu of the dispatch of the written notice referred to in the preceding paragraph, the directors may dispatch the notice by an Electromagnetic Method, with the consent of the shareholders, in accordance with the provisions of the applicable Cabinet Order. In such cases, such directors shall be deemed to have dispatched the written notice under such paragraph.
(4) The notice under the preceding two paragraphs shall specify or record the matters listed in each item of Paragraph 1 of the preceding article.

A shareholder may bring a resolution at a shareholders' meeting. They must have held the shares for at least the preceding six months (or however long the company's articles of incorporation state) and they must hold no less than a hundredth of the votes OR not less than 300 votes (ie. shares) in order to demand that the directors' put a resolution to the meeting (Art 303(2)). The shareholder must submit their proposed resolution not less than eight weeks prior to the day of the shareholders meeting.

Articles 303 - Shareholders' Right to Propose
(1) Shareholders may demand that the directors include certain matters limited to the matters on which such shareholders may exercise their votes. The same shall apply in the following paragraph in the purpose of the shareholders meeting.
(2) Notwithstanding the provisions of the preceding paragraph, at a Company with Board with Directors, only shareholders having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) not less than one hundredth (1/100) (or in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders or not less than three hundred (or in cases where lesser number is prescribed in the articles of incorporations, such number of) votes of all shareholders may demand the directors that the directors include certain matters in the purpose of the shareholders meeting. In such cases, that demand shall be submitted no later than eight weeks (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) prior to the day of the shareholders meeting.
(3) For the purpose of the application of the preceding paragraph to a Company with Board of Directors which is not a Public Company, "having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "having"
(4) The number of the votes to which the shareholders who may not exercise their votes on the certain matters referred to in Paragraph 2 are entitled shall not be included in the number o the votes of all shareholders under that paragraph.

Moreover, they may only lodge a proposal where it does not violate the law or the Articles of Incorporation, or if a substantially similar resolution has not been lodged in the last three years. If a substantially similar resolution has been lodged in the last three years, it must have received affirmative votes totalling at least one-tenth of the vote when it was previously brought in order for it to be voted on again (Art 304).

Article 304
Shareholders may submit proposals at the shareholders meeting with respect to the matters that are the purpose of the shareholders meeting (limited to the matters on which such shareholders may exercise their votes. The same shall apply in Paragraph 1 of the following article); provided, however, that this shall not apply in cases where such proposals are in violation of the laws or the articles of incorporation, or in cases where three years have not elapsed from the day on which, with respect to the proposal which is essentially identical to such proposal, affirmative votes not less than one tenths (1/10) (or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their voting rights on such proposal) were not obtained.

Shareholders having held shares for the previous six months and holding at least one-hundredth of the total number of shares or not less than 300 votes (or a different time and level of holding, as provided by the Articles) can demand that no later than eight weeks prior to the AGM, information on all of the proposals be provided.

Article 305
(1) Shareholders may demand the directors that, no later than eight weeks (or, in cases where any period less than that is provided for in the articles of incorporation, such period) prior to the day of the shareholders meeting, shareholders be notified of the summary of the proposals which such demanding shareholders intend to submit with respect to the matters that are the purpose of the shareholders meeting (or, in cases where a notice pursuant to Paragraph 2 or Paragraph 3 of Article 299 is to be given, such summary be specified or recorded in that notice); provided, however, that, for a Company with Board of Directors, only shareholders having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) not less than one hundredth (1/100) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders or not less than three hundred (or, in cases where lesser number is prescribed in the articles of incorporation, such number of) votes of all shareholders may make such demand.
(2) For the purpose of the application of the proviso to the preceding paragraph to a Company with Board of Directors which is not a Public Company, "having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "having".
(3) The number of the votes to which the shareholders who may not exercise their votes on the matters that are the purpose of the shareholders meeting referred to in Paragraph 1 are entitled shall not be included in the number of the votes of all shareholders under the proviso to that paragraph.
(4) The provisions of the preceding three paragraphs shall not apply in cases where the proposals under Paragraph 1 are in violation of the laws or the articles of incorporation, or in cases where three years have not elapsed from the day on which, with respect to the proposal which is essentially identical to such proposal, affirmative votes not less than one tenths (1/10) (or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their voting rights on such proposal) were not obtained.

Generally, one share confers one vote on a shareholder, although the Articles of Incorporation may alter this arrangement.

Article 308 (Number of Votes)
(1) Shareholders (excluding the shareholder prescribed by the applicable Ordinance of the Ministry of Justice as the entity in a relationship that may allow the Stock Company to have substantial control of such entity through the holding of one quarter or more of the votes of all shareholders of such entity or other reasons) shall be entitled to one vote for each one share they hold at the shareholders meeting; provided, however, that, in cases where a Share Unit is provided for in the articles of incorporation, they shall be entitled to one vote for each one unit of the shares.
(2) Notwithstanding the provisions of the preceding paragraph, a Stock Company shall not have any votes with respect to its Treasury Shares.

Directors can only be dismissed by a two-thirds majority of total votes, per Art 309(2)(vii). A unanimous shareholder resolution can waive the liability of directors if they have neglected their duties (Art 424). However, a two-thirds majority of votes can also pass a resolution that decreases the amount of damages sought from the directors for neglect of duty if they were without knowledge and not grossly negligent (s 425(1)). Resolutions that amend the Articles of Incorporation also require a three-quarters majority of total votes, per Art 309(4).

Article 309 (Resolution of Shareholders Meetings)
(1) Unless otherwise provided for in the articles of incorporation, the resolution of a shareholders meeting shall be made by a majority of the votes of the shareholders
present at the meeting where the shareholders holding a majority of the votes of
the shareholders who are entitled to exercise their votes are present.
(2) Notwithstanding the provisions of the preceding paragraph, the resolutions of the following shareholders meetings shall be made by a majority of two thirds (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of the shareholders present at the meeting where the shareholders holding a majority (in cases where a proportion of one third or more is provided for in the articles of incorporation, such proportion or more) of the votes of the shareholders entitled to exercise their votes at such shareholders meeting are present. In such cases, it is not precluded from providing in the articles of incorporation, in addition to such requirements for resolution, additional requirements including those providing to the effect that the approval of a certain number or more of the shareholders are required:
(i) Shareholders meeting under Article 140(2) and (5);
(ii) Shareholders meeting under Article 156(1) (limited to the case where the specific shareholders under Article 160(1) are to be identified);
(iii) Shareholders meeting under Article 171(1) and Article 175(1);
(iv) Shareholders meeting under Article 180(2);
(v) Shareholders meeting under Article 199(2), Article 200(1), Item 4 of Article 202(3) and Article 204(2);
(vi) Shareholders meeting under Article 238(2), Article 239(1), Item 4 of Article 240(3) and Article 243(2);
(vii) Shareholders meeting under Article 339(1) (limited to the case where directors elected pursuant to the provisions of Item 3 through 5 of Article 342 are to be dismissed or company auditors are to be dismissed);
(viii) Shareholders meeting under Article 425(1); ACTUALLY, COULD BE RELEVANT
(ix) Shareholders meeting under Article 447(1) (excluding the cases which fall under both of the following conditions):
(a) That the matters listed in each item of Article 447(1) shall be determined at the annual shareholders meeting; and
(b) That the amount referred to in Item 1 of Article 447(1) shall not exceed the amount which is calculated in a manner prescribed by the applicable Ordinance of the Ministry of Justice as the amount of deficit at the day of the annual shareholders meeting referred to in Sub-item (a) (or, in the case provided for in the first sentence of Article 439, the day when the approval under Article 436(4) is effected).
(x) Shareholders' meeting under Article 454(4) (limited to the cases where it is to be arranged that the Dividend Property shall consist of any property other than cash, and that no Right to Demand Distribution of Monies provided for in Item 1 of that paragraph shall be granted to the shareholders);
(xi) Shareholders' meeting in cases where the resolution by such shareholders meeting is required pursuant to the provisions of Chapter 6 through Chapter 8;
(xii) Shareholders' meeting in cases where no resolution by such shareholders meeting is required pursuant to the provisions of Part 5.
(3) Notwithstanding the provisions of the preceding two paragraphs, the resolutions of the following shareholders meetings (excluding the shareholders meetings of a Company with Class Shares) shall be made by a majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the shareholders entitled to exercise their votes at such shareholders meeting, being a majority of two thirds (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of such shareholders:
(i) Shareholders' meetings where the articles of incorporation are amended creating a provision to the effect that, as the features of all shares issued by a Stock Company, the approval of such Stock Company is required for the acquisition of such shares by transfer;

(ii) Shareholders' meetings under Article 783(1) (limited to such shareholders meeting where the Stock Company which will be absorbed by merger or Stock Company which effects Share Exchange is a Public Company, and some or all of the Cash Etc. to be delivered to the shareholders of such Stock Company consist of Shares with Restriction on Transfer, Etc. (meaning the Shares with Restriction on Transfer, Etc. provided for in Paragraph 3 of that paragraph. The same shall apply hereinafter in the following item.)); or
(iii) Shareholders' meetings under Article 804(1) (limited to such shareholders meeting where the Stock Company which effects merger or Share Transfer is a Public Company, and some or all of the Monies, Etc. to be distributed to the shareholders of such Stock Company consist of Shares with Restriction on Transfer, Etc.).
(4) Notwithstanding the provisions of the preceding three paragraphs, resolutions of the shareholders meetings which effect any amendment in the articles of incorporation (excluding those which repeal such provisions of the articles of incorporation) with respect to the amendment in the articles of incorporation pursuant to the provisions of Article 109(2) shall be made by the majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of all shareholders, being a majority equating three quarters (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of all shareholders.
(5) At a Company with Board of Directors, the shareholders meeting may not resolve matters other than the matters listed in Item 2 of Article 298(1); provided, however, that this shall not apply to the election of the persons provided for in Paragraph 1 or Paragraph 2 of Article 316, nor to requests for the presence of an accounting auditor under Article 398(2).