

Shareholder Activism & Engagement 2020

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Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

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First published 2016
Fifth edition
ISBN 978-1-83862-402-6

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Shareholder Activism & Engagement 2020

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Shareholder Activism & Engagement 2020*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Willem Calkoen and Stefan Wissing of NautaDutilh, for their continued assistance with this volume.



London
April 2020

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This article was first published in May 2020
For further information please contact editorial@gettingthedealthrough.com

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Japan

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GENERAL

Primary sources

1 | What are the primary sources of laws and regulations relating to shareholder activism and engagement? Who makes and enforces them?

The Companies Act and its relevant ordinances provide for the rights of shareholders with regard to the company and its organisation, such as the right to make a shareholder proposal or initiate a derivative suit against directors. The rights stipulated in the Companies Act are, in principle, of a civil nature and enforced through court rulings.

The Financial Instruments and Exchange Act (the FIE Act) and its relevant orders and ordinances regulate or provide for:

- the disclosure obligations of companies whose securities are widely held;
- the rights of investors to sue the company or its related parties;
- the rules regarding a tender offer (a TOB);
- the disclosure obligations of an investor with large shareholdings;
- the rules protecting market fairness, such as prohibitions against market manipulation and insider trading; and
- the rules regarding a proxy fight.

The FIE Act has both civil and administrative aspects. It is therefore enforced through court rulings and administrative actions by the relevant authorities, such as the Financial Services Agency and the Securities and Exchange Surveillance Commission. In some cases, criminal sanctions may be imposed for certain violations.

Both the Companies Act and the FIE Act are legislated and amended by the Diet, while relevant Cabinet orders and ordinances are enacted by the Cabinet or by various ministries or agencies, such as the Financial Services Agency, as the case may be.

Securities exchange rules and guidelines also regulate disclosures by listed companies, and their communications with investors. While such rules and guidelines are not enforced through court rulings or administrative procedures, securities exchange regulatory entities may impose various sanctions against a violating company, including a suspension of transactions of the company's shares on the securities exchange, a designation as a security on alert, a monetary penalty for a breach of the listing contract, submission of an improvement report, and, in extreme cases, delisting.

Shareholder activism

2 | How frequent are activist campaigns in your jurisdiction and what are the chances of success?

In the recent Japanese market, the activists' campaigns have been very frequent. Based on a Japanese investment bank's report, activists held shares in listed companies more than ¥1.8 trillion worth of

shares in listed companies in terms of market value. In this stream, some funds try to have a dialogue with management to improve the governance structure, management plan, or financial structure of the targeted company. They will sometimes launch a formal shareholder proposal at a general shareholders' meeting to elect outside directors or to increase dividends. As these proposals are generally in line with other shareholders' common interests, and due to the fiduciary duty of financial institutions and non-activist type of funds as shareholders complying with the Stewardship Code (which may also be applied if a shareholder voluntarily chooses to accept the Stewardship Code and does not have any legally binding power), it is not uncommon for these proposals to attract general shareholder support even without intensive proxy campaigning.

3 | How is shareholder activism generally viewed in your jurisdiction by the legislature, regulators, institutional and retail shareholders and the general public? Are some industries more or less prone to shareholder activism? Why?

Shareholder activism has been mostly viewed negatively, as the activities of activists sometimes are deemed short-termism, which is criticised in the Stewardship Code, and the Corporate Governance Code. However, in some instances, those views may change if activist shareholders make proposals that are reasonable or constructive for mid-term or long-term investors. While there is little observable bias among the industries targeted by activist shareholders, on an individual company level, one or more of the following factors often apply to the targeted listed companies:

- low price-to-book ratio;
- excess reserved cash or cash equivalents;
- management scandals or inefficient management;
- status as a conglomerate; and
- status as a listed subsidiary.

4 | What are the typical characteristics of shareholder activists in your jurisdiction?

Although there are some individual activist shareholders who make shareholder proposals, or in some instances bring a lawsuit against the targeted company, most activist shareholders of Japanese companies are financial funds. Although the boundaries are not so clear, such activist funds can be categorised into three types.

The first are 'aggressive' or 'dogmatic' activists who seek short-term returns by putting pressure on the company's management in various ways. They criticise the existing management's plans or skills or, as the case may be, any management scandals to put pressure on management, via either private or public methods such as media appeals, proxy campaigns, or partial tender offers. Although their arguments are often too dogmatic and myopic to attract the support of other

shareholders, to avoid wasting management resources and damaging the company's reputation, management will sometimes compromise with an activist's proposal or support an exit of an activist's investment.

The second are 'soft' activists. They would prefer to have a dialogue with management to improve the governance structure, management plan, or financial structure of the targeted company. They will sometimes launch a formal shareholder proposal at a general shareholders' meeting to elect outside directors or to increase dividends. As such proposals are generally in line with other shareholders' common interests, it is not uncommon for such proposals to attract general shareholder support even without intensive proxy campaigning.

The third type are 'M&A activists'. They invest in a company who is the target of or the parties of M&A transactions. These funds do not necessarily object the transaction itself but demand as a minority shareholders more favourable conditions for the transactions. When favourable conditions have been reached, such funds exit.

In addition to those types, around 2016, another type of activist appeared in the Japanese market. However, those funds did not become the mainstream of shareholder activism in the Japanese market. Funds have started targeting companies whose shares are, in a fund's opinion, overvalued. First, the fund shorts the target shares by borrowing the shares from lenders, then the fund makes a public report to the effect that the target shares are overvalued. After the share price drops, the fund then acquires the shares and returns them to the lenders. Because of the nature of their strategy, this third type of activist typically does not make shareholder proposals.

5 | What are the main operational governance and sociopolitical areas that shareholder activism focuses on? Do any factors tend to attract shareholder activist attention?

Traditionally, activist shareholders in Japan have demanded that the targeted companies increase dividends or buy back shares. Another common request by activist shareholders is the introduction of or increase in the number of outside directors. On the contrary, US-based activist shareholders have sometimes requested that Japanese companies make drastic business divestitures.

Traditional proposals for the increase of dividends or share buybacks are still made, but activist shareholders have recently been campaigning over governance concerns more often. In addition to proposals regarding outside directors or opposition to a company's slate, activist shareholders, especially US-based activist shareholders, have campaigned for divestitures of cross-held shares (or *mochiai*). In addition, certain US-based activist shareholders have conducted campaigns to raise the tender offer (TOB) prices in some Japanese listed companies which were the targets in friendly M&A transactions by way of the TOB.

On the other hand, some individual activists tend to focus more on social issues, such as the abolition of atomic power plants.

SHAREHOLDER ACTIVIST STRATEGIES

Strategies

6 | What common strategies do activist shareholders use to pursue their objectives?

In most cases, activist shareholders first tried to negotiate with management privately. Aggressive activist shareholders sometimes disclose their proposals or requests publicly without any private negotiation, in order to put pressure on management.

With respect to general shareholders' meetings, which must be held at least annually, activist shareholders submit shareholder proposals, and sometimes wage proxy fights to pass their proposals.

Such shareholder proposals include proposals to appoint one or more outside directors. Another form of proxy fight is opposing a company's slate. Activist shareholders have rarely been successful in gaining mainstream investor support of such proxy fights. However, in 2017, Kuroda Electric's general shareholders' meeting approved the only candidate on the dissident slate.

In addition to the above strategies, while it is not so common, activist shareholders can also threaten to launch a TOB for target shares. Some activists use the threat of a lawsuit against the targeted company or its management. However, regulations on giving benefits to shareholders prohibit any person, including activists, from demanding money or any form of benefit, including a company buy-back of activist shares, in return for withdrawing their shareholder proposals or requests.

Processes and guidelines

7 | What are the general processes and guidelines for shareholders' proposals?

In principle, in a listed company, a shareholder who satisfies certain requirements may propose a matter to be discussed at a general shareholders' meeting up to eight weeks prior to the meeting (section 303, the Companies Act). The eligible shareholder must possess 1 per cent or more of the issued and outstanding shares, or 300 or more voting rights, for more than six months before submitting the proposal. The same shareholding minimum and shareholding period apply if a shareholder demands that the company describe the specific content of a proposal in the convocation notice of a general shareholders' meeting at the company's cost. A company may limit the number of words of the proposal description in accordance with its internal rules and procedures for managing shares. If the proposal violates any law or the articles of incorporation of the company, or if a substantially similar proposal was not supported by more than 10 per cent of the voting rights of all shareholders during the three-year period immediately preceding the proposal, the company may decline to include the proposal in the convocation notice. In 2019, though the National Diet discussed amending the Companies Act to limit the number of proposals and the abuse of proposals, that amendment was not made.

If a shareholder does not demand the inclusion of its proposal in the convocation notice, there are no shareholding minimums or shareholding period requirements, and every shareholder who has a voting right may submit a proposal at any time. However, a proposal is not permitted if it violates any law or the articles of incorporation of the company, or if a substantially similar proposal was not supported by more than 10 per cent of the voting rights of all shareholders during the three-year period immediately preceding the proposal.

The above rules apply to every shareholder regardless of the nature of the shareholder.

Due to several incidents, the Ministry of Justice, which drafts the Companies Act and its amendments, has tried to submit a bill to defend against abusive proposals, by limiting the number of shareholders' proposals and prohibiting certain proposals which mainly disparage others or disturb the shareholders' meeting.

8 | May shareholders nominate directors for election to the board and use the company's proxy or shareholder circular infrastructure, at the company's expense, to do so?

Shareholders may nominate directors who are not on the company's slate. Nominations are considered to be shareholder proposals. See question 7 for the appropriate procedures.

9 | **May shareholders call a special shareholders' meeting? What are the requirements? May shareholders act by written consent in lieu of a meeting?**

For a listed company, a shareholder who has more than 3 per cent of all voting rights during the six-month period immediately preceding the proposal may call an extraordinary shareholders' meeting (section 297, the Companies Act).

If the company does not send the convocation notice promptly, or if the convocation notice does not indicate that the extraordinary shareholders' meeting will be held within eight weeks of the shareholder's demand, the demanding shareholder may call, by himself or herself on behalf of the company, an extraordinary shareholders' meeting with court approval (section 297, the Companies Act). The courts must approve such convocation unless circumstances indicate that the shareholder is merely abusing his or her rights to create a nuisance or other similarly irrelevant purposes.

If shareholders unanimously approve a proposal by written consent in lieu of a meeting, the approval is deemed to be the equivalent of a resolution of a shareholders' meeting (section 319, the Companies Act). If the consent is not unanimous, the consent is not equivalent to a resolution. In listed companies, each shareholder may exercise its voting rights in writing or through a website without physically attending the meeting.

Litigation

10 | **What are the main types of litigation shareholders in your jurisdiction may initiate against corporations and directors? May shareholders bring derivative actions on behalf of the corporation or class actions on behalf of all shareholders? Are there methods of obtaining access to company information?**

Shareholders may bring derivative actions (section 847, the Companies Act). Although it may be theoretically possible to bring a tort claim against the company in some instances, the derivative actions are the main type of litigation shareholders initiate.

Shareholders who have continuously held shares for more than six months may demand that the company sue its directors (and other officers, if applicable). If the company does not file the lawsuit within 60 days of the demand, the shareholders may bring a derivative action on behalf of the company. The shareholders of the parent company may also file a derivative suit against directors (and officers, if applicable) of wholly owned subsidiaries of the parent company (ie, a double or multiple derivative suit) if such subsidiary does not file the lawsuit within 60 days of the demand against the subsidiary by the parent company's shareholders.

The company cannot strike down the lawsuit by itself even if it is an abusive action by a shareholder. However, if it is abusive, in theory, the company may pursue a tort claim against the shareholder and request damages. To ensure that the company may recover damages if a derivative action is found to be abusive, the court may order the shareholder to place a certain amount in escrow prior to the start of a derivative action (section 847-4, paragraph 2, the Companies Act).

Japan does not have class action lawsuits similar to those in the United States, and a person cannot file a multi-plaintiff litigation without obtaining the approval of each plaintiff. Although a new type of 'consumer litigation' was introduced on 1 October 2016, securities transactions may be outside the scope of this new type of litigation, as tort claims under the new type of litigation are limited to claims based on the Civil Code of Japan, even though litigation in Japan regarding securities transactions belongs to the wider category of tort claims.

SHAREHOLDERS' DUTIES

Fiduciary duties

11 | **Do shareholder activists owe fiduciary duties to the company?**

It is not commonly considered that the shareholders owe fiduciary duties to the company. The listing rules requires intensive disclosures with respect to the transactions between the parent company and its listed subsidiary.

Compensation

12 | **May directors accept compensation from shareholders who appoint them?**

The Companies Act is silent on this issue. However, a director must act for the best interests of the company. If an individual shareholder directly compensates a director, the payment is treated as a gift, not salary, for tax purposes. In addition, if a director acts for the benefit of any specific shareholders instead of for the benefit of the company due to being directly compensated by such shareholder, it may be a criminal breach of trust that violates regulations on giving benefits to shareholders.

However, some subsidiaries of listed companies are also listed companies themselves, and directors of such subsidiaries are often employees seconded or dispatched from their parent companies. Under such circumstances, the compensation a director receives as an employee of the parent company may inevitably appear to be compensation for acting as a director of a subsidiary. Even in such circumstances, the director must act for the benefit of the subsidiary, not for the parent company.

Mandatory bids

13 | **Are shareholders acting in concert subject to any mandatory bid requirements in your jurisdiction? When are shareholders deemed to be acting in concert?**

The FIE Act requires a mandatory tender offer (TOB) be conducted when a party acquires shares from off-market trading and consequently holds one third or more of all voting rights. If multiple purchasers act in concert, the above threshold, one-third, is determined in aggregate. Therefore, if the aggregate shareholding ratio of shareholders acting in concert exceeds one-third and such shareholders intend to acquire additional shares in an off-market transaction, they must make a TOB. This requirement, however, does not apply to share acquisitions in the market. In addition, even a mandatory TOB does not necessarily result in the acquisition of all the shares of the targeted company, and the purchaser may make a capped TOB.

Under the FIE Act, persons having agreed (1) to jointly acquire or transfer the shares, (2) to jointly exercise voting rights or other rights as shareholders, or (3) to transfer or accept transfer of the shares between them after the planned acquisition are deemed to be acting in concert. In addition, those who (1) have certain family relationships or capital relationships (in latter case, including the entities), or (2) serve as an officer of the acquiring company or other certain company that has certain capital relationships with the acquiring entity, are deemed to be acting in concert.

Disclosure rules

- 14 | **Must shareholders disclose significant shareholdings? If so, when? Must such disclosure include the shareholder's intentions?**

The FIE Act requires a shareholder of a listed company to file a report of the possession of a large volume of shares within five business days after the shareholding ratio of the shareholder exceeds 5 per cent. In the report of the possession of a large volume of shares, the purpose of the investment has to be disclosed. If the shareholders intend to make certain managerial proposals and shareholders proposals, such intention has to be disclosed.

If multiple persons acquire shares of the same company in concert, or if multiple persons agree on the exercise of voting rights, the threshold is determined based on the aggregate of those persons' shares, but determining whether multiple persons are acting in concert is difficult and is not necessarily enforced.

Certain institutional investors, including banks, broker-dealers, trust banks, and asset management companies, may file the report based on the ratio on the record date, which in principle is set once per two weeks if the investor holds 10 per cent or less and does not intend to act to significantly influence the operation or management of the issuer company.

A violation of the reporting obligation may result in an administrative monetary penalty.

Additionally, in certain transactions where an acquiring company and a targeted company are considered to be large by industry standards, antitrust laws require a prior filing, including disclosure of the shareholding ratio, and mandate an appropriate waiting period. Further, the Japanese Foreign Exchange and Foreign Trade Control Law requires non-Japanese investors to make the filing prior to acquiring 10 per cent or more shares of listed companies in certain industries designated by the Japanese government as vital to national security, public order, or the protection of public safety. Such industries include, among others, electric power, natural gas, telecommunications, broadcasting, and railways.

- 15 | **Do the disclosure requirements apply to derivative instruments, acting in concert or short positions?**

To determine the shareholding ratio for a report of the possession of a large volume of shares, shares obtained by certain types of stock lending and certain share options have to be aggregated. Though the long positions of total return swaps are generally not included, certain types of total return swaps conducted for purposes other than pure economic profit or loss must also be aggregated. Consequently, in some cases, activists have not filed a report of the possession of a large volume of shares even though they purported to 'own' more than 5 per cent and have made certain demands or held certain conversations as large shareholders.

Insider trading

- 16 | **Do insider trading rules apply to activist activity?**

Trading by an activist is regulated by the insider trading rules. If the activist is aware of any material non-public information of the company through the activist activity, market trading by the activist is prohibited until the information becomes public. The mere fact that the activist made the shareholders' proposal may not be material non-public information, depending on the discussions with the company, but there may be material non-public information.

COMPANY RESPONSE STRATEGIES

Fiduciary duties

- 17 | **What are the fiduciary duties of directors in the context of an activist proposal? Is there a different standard for considering an activist proposal compared to other board decisions?**

In general, a director's duty with respect to an activist proposal is similar to other board decisions; namely, the business judgement rule. Unless there is a conflict of interest between the company and the directors, and unless there is a violation of laws or the articles of incorporation of the company, the courts generally respect the wide discretion of the board, assuming that the board made a reasonable decision that duly recognised the applicable facts and circumstances. However, even under this Japanese business judgement rule, Japanese courts may sometimes carefully scrutinise the context and situation surrounding the board's decision. In Japan, it has thus far been understood that no controlling shareholder owes any fiduciary duty to minority shareholders.

Preparation

- 18 | **What advice do you give companies to prepare for shareholder activism? Is shareholder activism and engagement a matter of heightened concern in the boardroom?**

As activist shareholders have enhanced their presence in Japanese businesses, we generally advise our clients to periodically check the shareholders' composition and improve their governance structures, business plans or financial structures, and recommend that they engage in proactive communication with their shareholders.

Defences

- 19 | **What defences are available to companies to avoid being the target of shareholder activism or respond to shareholder activism?**

Based on an analysis, as of the end of June 2019, 335 Japanese listed companies (which is less than 10 per cent of the companies listed on the Tokyo Stock Exchange) have adopted the Japanese rights plan or 'large-scale share purchasing policies', even though the ratio has been gradually decreasing (the ratio is higher among larger market capitalisation companies in comparison). Under this plan, a company implements procedures in advance that a potential raider must follow, although the company does not issue rights or warrants (unlike poison pills in the United States). If a potential raider crosses the threshold (typically, 20 per cent) without complying with the procedures, or a potential raider is recognised as an 'abusive raider', new shares will be issued and allocated to all shareholders other than the violating raider; thus, the raider's shareholding will be diluted.

Other than such a plan, structural defences such as dual capitalisation are rarely possible, although one company (Bull-Dog Sauce) was successful in this, because the defence measure was fair and reasonable. Although Bull-Dog Sauce had not adopted the rights plan, and the anti-takeover defence measures in the case were adopted after the raider announced its intent to launch a TOB, the Supreme Court stated in obiter that such rights plan had a net positive effect, as it heightened the predictability of the outcome of a takeover. The Supreme Court also followed this logic in the guidelines for defence measures against hostile takeovers issued by the Japanese Ministry of Economy, Trade and Industry.

In 2019, there were no changes in the laws and regulations or court rulings to limit the anti-takeover defences available to a company. In

addition, as the term of office of a director at a Japanese listed company is one or two years depending on its governance structure, a staggered board is not an effective measure in practice.

While there are few cases where the validity of the rights plan or anti-takeover defence measures has been tested, in the *Bull-Dog Sauce* case, the Supreme Court recognised the validity of an anti-takeover defence (similar to a poison pill in the United States) implemented by the target.

Proxy votes

20 | Do companies receive daily or periodic reports of proxy votes during the voting period?

Trust banks that act as standing agents receive voting forms from shareholders. Consequently, in practice, a company may receive early voting ratio and other information during the period for sending back voting forms (ie, after the convocation notice but before the due date of the voting forms). The company is not obliged to disclose any information it receives from the voting forms prior to the date of the general shareholders' meeting. During a proxy fight, however, a company does not have any way of determining how many proxies an opposing shareholder will receive.

Settlements

21 | Is it common for companies in your jurisdiction to enter into a private settlement with activists? If so, what types of arrangements are typically agreed?

'Soft' activists would prefer to have a dialogue with management to improve the governance structure, management plan, or financial structure of the targeted company. Though they will sometimes launch a formal shareholder proposal at a general shareholders' meeting, the company sometimes agrees on the proposals without the proxy campaign.

SHAREHOLDER COMMUNICATION AND ENGAGEMENT

Shareholder engagement

22 | Is it common to have organised shareholder engagement efforts as a matter of course? What do outreach efforts typically entail?

While organised engagement among activist shareholders is not common, when an activist shareholder launches a campaign, other activist shareholders may support the campaign. Consequently, engagement efforts tend to be public and formal. Even during a public campaign, the company may choose to compromise by accepting the activist's proposal or presenting the proposal during the shareholders' meeting as the company's proposal.

23 | Are directors commonly involved in shareholder engagement efforts?

Although the Japanese Corporate Governance Code recommends that directors take a leading role in engaging with shareholders, in most cases, management or the executive team is in charge of shareholder engagement efforts. Executive directors are sometimes directly involved in shareholder engagement, but it is at the company's discretion.

Disclosure

24 | Must companies disclose shareholder engagement efforts or how shareholders may communicate directly with the board? Must companies avoid selective or unequal disclosure? When companies disclose shareholder engagement efforts, what form does the disclosure take?

Under the Japanese Corporate Governance Code, the board of a listed company must determine and approve a corporate governance policy that facilitates constructive dialogue with shareholders, and disclose the policy in a corporate governance report that must be filed under section 419 of the Securities Listing Regulations. Individual communications need not be disclosed.

Through the amendment to the FIE Act and new Cabinet orders and ordinances that were implemented from 1 April 2018, listed companies are required to make equal disclosure to a certain degree to all shareholders. The new regulation is similar to Regulation FD in the United States, rather than the EU Market Abuse Regulations. Even under the new regulations, a listed company may make selective or unequal disclosure if the recipient owes a non-disclosure obligation and is prohibited from making a transaction of the company's securities. If disclosure to a shareholder, investor, or other third party is not exempted and is intentionally made, the company must make public disclosure at the same time as the disclosure to that third party. If the disclosure is not intentionally made, the company must make public disclosure immediately after the disclosure to such third party. The company may make public disclosure through the Electronic Disclosure for Investors' Network (EDINET) run by the Financial Services Agency, TD-net (the electronic disclosure system of the Tokyo Stock Exchange) or its corporate website.

In addition to the above fair disclosure regulation, the disclosure of insider information to specific shareholders under certain circumstances may result in a violation of insider trading regulations.

Communication with shareholders

25 | What are the primary rules relating to communications to obtain support from other shareholders? How do companies solicit votes from shareholders? Are there systems enabling the company to identify or facilitating direct communication with its shareholders?

Regulations on proxy solicitations or Japanese proxy rules apply to both companies and shareholders when they solicit proxies (section 194, the FIE Act; section 36-2 to 36-6, Enforcement Order of the FIE Act; and Cabinet Office Ordinance on the Solicitation to Exercise Voting Rights of Listed Shares by Proxy). The regulations set forth certain requirements on the proxy, and also require that certain information be provided to the shareholders during a proxy solicitation. However, if the same information is disclosed in the reference documents that are typically enclosed with the convocation notice of a shareholders' meeting for which proxies are solicited, those who solicit the proxies (the company or the shareholders) do not have to separately provide the above-mentioned required information. Further, if a company solicits proxies, offering certain economic benefits to shareholders to facilitate favourable voting results may violate regulations on giving benefits under the Companies Act. Currently, social media platforms (such as Twitter and LinkedIn) are not commonly used as communication tools during campaigns between targeted companies and activists.

Access to the share register

- 26 | Must companies, generally or at a shareholder's request, provide a list of registered shareholders or a list of beneficial ownership, or submit to their shareholders information prepared by a requesting shareholder? How may this request be resisted?

A shareholder on the shareholders' list may request access to the shareholders' list (section 125, paragraph 2, the Companies Act). The company may reject such a request on certain grounds, including:

- if the request is made for purposes other than exercising general shareholder rights;
- if the request is made with the purpose of interfering with the execution of the operations of the company or prejudicing the common benefit of the shareholders;
- if the request is made to report facts obtained through a request to a third party for profit; or
- if the requesting shareholder reported facts obtained through a prior request to a third party within two years (section 125, paragraph 3, the Companies Act).

The shareholders' list in a listed company only records nominee shareholders, and the beneficial owners are not recognised by the shareholders' list.

UPDATE AND TRENDS**Recent activist campaigns**

- 27 | Discuss any noteworthy recent, high-profile shareholder activist campaigns in your jurisdiction. What are the current hot topics in shareholder activism and engagement?

In 2019, there were several unsolicited tender offers for Japanese listed companies. Some of the tender offers are still pending and may result in new developments in Japanese practice.

In addition to those movements regarding tender offers, there has been some movement in shareholder proposals. The number of shareholder proposals hit a record. Based on a media report, at the beginning of June 2019, 54 listed companies received proposals. As most Japanese companies hold their general shareholders' meetings in June or March, this number may not have changed greatly. Although only one proposal out of 54 was approved, some proposals at other companies' shareholders' meetings received 50 per cent support (those proposals require a super majority vote).

From a legal perspective, there was one remarkable case in which Yorozu Corporation (Yorozu), which is a Japanese automobile suspension manufacturer, successfully rejected a proposal made by Reno Inc (Reno), which was substantially led by Yoshiaki Murakami. Reno proposed abolishing the Japanese rights plan that Yorozu already had, but Yorozu refused to include the proposal in the items discussed in the shareholders' meeting on the ground that the matter was not one listed in the Companies Act or the articles of incorporation to be discussed in a shareholders' meeting. The rejection was supported by the district court and the high court, and an appeal lodged by Reno with the Supreme Court was also dismissed.

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Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

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