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Majority Shareholders Power: Its Blockage in Japan and the U.K. Companies

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Abstract

Holding a perspective of majority shareholders being the long term stakeholders, the corporations set them as their preferences. As its flip side, a company is less attractive to new shareholders because the minority shareholders foresee the hardship of being minority shareholders. Nevertheless, the company law adopts some provisions to block the majority shareholders' ability is set in some circumstances. This research is the exploration of the fairness of such blockage of to shareholders by pulling the facts discussed by the earlier scholars. Aimed at how to make decision to invest in the securities market, the U.K's and Japanese ideas are selected to consider the optimum investment between these two countries based on the company laws rather than the market exchange regulations.

Introduction

Japan is one of the Asian Tigers in trading shares and other securities upholding the capitalist idea. Either the U.K. is an advanced country that started the collective business idea. They shared capitalism and welcomed the investors who held much leveraged exchange to be member of a company. Therefore, this study highlights that Japan and the U.K. pursued the same goal with different approaches. The goal is branded under the title of economic surge. However, the mediums they used are distinguished: Japan used the consolidated big business built-in to gain the so called long term wealth whereas the U.K. used the collective small investment built-in to higher up the investments. These built-ins were set up depending on the different situations and popular trends.

In other words, Japan was a fun of capitalism in the form of endogenous group, and the U.K. turned into gathering the divisible small ones to be a giant business in a heterogenic form. Similarly, the divergence comes up within the economic and legal perspective. Actually speaking, while Japanese's view spotlights on the giant investment from a single or few tycoon(s), the British men were considering to pull investment from thousands of individual to equate with such single or a few wealthy layer.

This situation reflects in either the company laws or legal cases from both nations. In Japan, according to ASAGI Shinichi (Heisei XV - 2003), Japanese company law was primarily proceeded from the Commercial Code by the Meiji government.¹ Then, due to the comments of the Department of Commerce and other organizations were expressed, the cabinet of Japan took them into account.² Therefore, these opinions were the factors for Japanese DIET (legislature) enacting the Companies Act.

With regard to the U.K., the idea of the company was ingrained in the Charter granted by Victoria, the British Queen.³ Having the British parliament, the Joint Stock Corporation Act was enacted under Queen Victoria reign. It was finally codified as Chapter 46 (c 46) of the public general statute.⁴ From these facts, it is to denote that the Japanese law derives from the legislature who listened up voices from all in Japan whilst that of the U.K. cascaded from the Royal authority. Depending on the different sources behind the laws, the ways to attract investment in the companies are not the same. Focused on these situations, this study elaborates the strategies to attract investment in a company. The finding spots

that the aged are possible cascade to the U.K` investment regime in private companies where there is fungibility⁵; the young won't generally have worry to invest in Japan where the so called long term perspective is focused.

Methodology

This research is an outcome of reviewing the scholars` literatures and checking with the author`s perspective. First the published books either in English or Japanese are referred. The self-understanding of Japanese language is checked and confirmed with the Google translation. Second, the cases reviewed in the books are traced in order to affirm the courts` considerations. Some webs are checked with the ideas of the scholars and the judges. Knowledge of facts relating to Tokyo Stock Exchange and London Stock Exchange are also impliedly used to confirm the situations of trading shares and other securities.

Japanese Company Law

The compact of Japanese Companies Act is clarified by many scholars; this research explores just a few. According to Tōkyō Chihō Saibansho Shōji Kenkyū Kai (Tokyo District Court Commercial Law Research Association) published in the Henrei Times Sha (2009), there were companies which set the rule in the articles of the corporation that restricted shares to be transferred or traded.⁶ This association pointed out that the company or a person wanted to get the shares transferred required to apply to the district court even though there was such restriction.⁷ The paramount of the application, as the association mentioned, was to attach the purchase price with the request Form in advance. The worst of the very minority shareholders in Japan was that they were not able to propose to call a general meeting.⁸

In addition to the annulment of the restricted shares, the association elaborated purchasing shares or options by the owned companies or other shareholders. It explained that if a company changed its articles for the reconstruction or other purposes, the dissenting shareholder may request the company to purchase his or her shares.⁹ It also explained that in the event that any rule adopted in Articles 107, 108, 116, 172, 192, 194, and 806 occurred, the company required to apply to the court for setting the fair price for selling the shares or others up.¹⁰ As the flip side of amendment of the articles to be able to buy the shares back or consolidation of shares, the rights of dissenting shareholders, as clarified by the association were quite impressive. The association also mentioned that shareholders or certain class of shareholders apprehended to suffer any damage by the amendments to the articles of incorporation for merging the companies might apply the court for buying shares back by the company.¹¹ It pointed out the situations in which share buy-back might be applied:

- if the company amended the articles of incorporation that transfer is to be restricted as part of the terms of all issued shares;
- if the articles were amended to shift from the transfer restrictions as part of the terms of a certain class of shares and inserted a clause for the acquisition of all shares; and
- if the company changed the articles to allow share consolidation or split of shares, allocation of new issued shares, setting share unit, solicitation of persons to subscribe for shares, solicitation of persons to subscribe for options and their allocation, when there is a risk of causing damage to shareholders of a certain class of shares.¹²

Further, the association pointed out that where a company issued shares with a compulsory acquisition clause, the dissenting shareholders may apply to the court for setting the fair price according to Article 172, Paragraph 1 of the Companies Act.¹³ Other reasons of share buyback it pointed out were that the shares were not enough to be consolidated as one unit of shares in pursuance of Article 192 and the fact that a shareholder dissented from the mergers according to Articles 469, 785 and 806 of the Companies Act.¹⁴

Professor UEDA Junko et al. compiled the theory and practices of rights of minority shareholders. They discussed the capacities and constraints of minority shareholders: Majority Shareholders vs Minority Shareholders` Right, Minority Shareholders` Participation in Company Management, Share Purchase Request and Setting Share Price, and Rights of Minority Shareholders and Notice to Individual Shareholders. Although these book series were titled under the minority shareholder rights, they conveyed the message that minority shareholders or individual shareholder was limited in the Companies Act, 2005.¹⁵ They could go on trial only by virtue of the shareholder representative action; a sole shareholder not having one/hundredth voting right could not file to the court for derivative claim. This book did not mention the issuance of shares to dilute shareholding proportion was the unfairness which could purport any shareholder to file to the court. As this research can review, the Japanese articulations which activate minority shareholder right were quite a few.

UEDA et al. revealed that minority shareholders` right was not practically the popular business idea in Japan although their compendium titled "Right of Minority Shareholders."<sup>16</sup> Actually, which they pointed out came up from the problems of minority shareholders` appraisal right to be bought up at the fair price.¹⁷ The appraisal rights which they discussed might be adopted in the Companies Act were followed by incorporating the idea from America.¹⁸ Japan based on two reasons to incorporate American idea in the Act: the relief being available regardless of whether the resolution by the majority was appropriate or inappropriate, legal or illegal and the outflow of company assets encouraged caution from the majority.¹⁹ The dissenting shareholders could claim the appraisal right against the absorption type merger, merging with the subsidiary company and consolidation type merger according to Articles 785, 797 and 806.^{185,20}

Further, other literatures pointed out that minority shareholders could challenge against the allocation of the issued shares or other securities, amendment of the articles with majority's fraud and the unfair price of shares which were bought out by the companies or other shareholders.²¹ As much as this research could reach, there were more famous cases which minority shareholders were defeated to block the merger than those shareholders won in suing to invalidate the merger. Similarly, blocking the new share issuance for takeover defense was not favoured yet. The induction of this research upon this issue is that Japan took into account the management cost in a high degree for merger case, and it protected against the outsider player in takeover defense case.

Nevertheless, according to the clarification of Professor YOSHIDA Masayuki, the power of majority shareholders could cause the directors fired by their votes in shareholders' meeting; the procedures for dismissal were not the same for all kinds of company.²² He focused to explain that the term of directors was depended upon the articles of the company; in practice, the term of directors of Inkei Setchi Kaisha (Company with Committees) extended to ten years.²³ The shareholders could fire the directors with or without cause.²⁴ If simple majority of shareholders removed a director without cause, the concerning director could challenge under the civil code for unfair dismissal.²⁵

John Buchanan also traced back Japanese behavior of minority's concern. The general consent of Japanese corporate society was that there was likely a worry of shareholder activism that was used to happen in Japan as articulated.²⁶ They discussed the legal cases such as Livedoor and Bulldog Sauce. These cases involved with the fear of shareholder activism. The juristic reviews of these cases showed the different aspects: some were pro of shareholder primacy but some were pessimistic on shareholder primacy.²⁷ In fact, shareholder primary was the turning point of manager empowerment in a company as asserted by John Buchanan et al.²⁸

Livedoor case (2005) was, in fact, one of the cases which pushed Japanese society afraid of the activists by usurping shareholder right.²⁹ Livedoor Co.ltd was used as a tool to buy shares from the Nippon Broadcasting (NBS) Co Ltd. for tender offer and takeover bid. This incident might be a reason new share issuance was somewhat proper to defend takeover bid. The takeover bid in Japan can be performed, at that time, if one-third of shareholders requested. This fact did not push Japan to control the majority's abuse rule.

Regarded with Bulldog Sauce case (2007), the judgment in this case stressed on the economic concern of the company and could not order the injunction against the new share issuance and allocation of shares according to the possession of number of shares. This case was confirmed the takeover bid by the majority shareholders. Notwithstanding takeover bid in the form of market for cooperate control (increasingly purchase shares of a company to become a majority and demand board of directors what the majority wants) was supported to create corporate value as asserted by Ramseyer et al.,³⁰ this strategy was not that of Japan supported.³¹ The Tokyo Supreme Court upheld the guidelines issued by Ministry of Industries, Trade and Investment (METI) following by the conventional rule.³² However, the court did not cite the guidelines expressly; the principles of law which Ministry of Justice considered and guidelines of METI were in common.

In fact, Japanese Companies Act, 2005 has still maintained a legal provision on shareholder equal doctrine.³³ That doctrine was implanted in Article 9.³⁴ The Article states "A Stock Company must treat its shareholders equally...". As the Article reads, the first portion of the Article stresses on the individual shareholder right. Nevertheless, the second phrase of this Article restricts the doctrine by inserting "in accordance with the features and number of the shares they hold". It means that the majority shareholders shall have more voting rights than minority shareholders. Besides, Article 210 provides that where there is a disadvantage on any shareholder, that disadvantage paves the way for him or her to file the case.³⁵ The Tokyo Supreme Court decided citing this Article and the majority shareholders were defeated in Open Loop Inc. case. Nonetheless, the comments upon the judgment from Japanese jurists were not in positive views.³⁶

As of the betterment of majority shareholders' entitlement the shareholder could make a resolution for the environmental concern. A legal case involved with the application of the shareholders to the court for cancellation of company's investment in nuclear project in Japan reflected that not all shareholders in Japan looked for their own interest; generally, some considered the environmental concern.³⁷ Nonetheless, the overall insight of this research stresses that Japan holds the concept of economic right rather than the legal right.

U.K. Company Law

Literatures related with majority rule and rights of minority shareholders within the U.K. Companies Act are numerous. This research clarifies only a few of them. The majority rule was based on the shareholder democracy and the rule was criticized as the misbegotten factor.³⁸ However, majority shareholder could exercise their power unless it inflicted the minority shareholders. Based on this ideology, the derivative claim and unfair prejudice action could be filed to the court where minority shareholder was insulted even though the legal standing and harm to be proved were different; the ends of the suits were similar.

This research explores the unique points in common law derivative claim first, and the theocratic basis of the unfair prejudice action followed. The derivative action started by the common law suit (adjudicating according to the precedent rule instead of suing under the legal provisions).³⁹ Due to the complexity of the common law system, the action was

provided in the Companies Act by the 2006 revision. Actually, the proper claimant rule adopted in the common law system restricted minority shareholders to bring the action against the directors adopted in *Foss v. Harbottel*.⁴⁰ In addition, the principle of irregularity (the principle that majority shareholders rectifying the conduct of directors and the resolution to file to the case cannot be gained) barred the minority shareholders to set the motion.⁴¹ Nonetheless, at the time went by, the judge considered that where the wrong doers as the majority shareholders controlled the company, the suit would not be brought.⁴² Therefore, if the whole company including the minority shareholders suffered loss, the minority shareholders in the later cases, could bring the suit.

The provisions relating to the derivative claim plays one of the actions to attract the investment of the public. That is why, as previously mentioned in this research, the U.K. tried to pull the investment from the individuals to create a huge industry. The U.K., by this way, has gained the investor's confidence and made a break through either for long or short term investment. The derivative action in the U.K. has been active because the company does not require paying the insurance of director liability; the company may pay the cost for director liability insurance in the US. This fact made the derivative action meaningless in the US;⁴³ whilst it was active in the U.K.⁴⁴ These situations happen because derivative claim is likely the burden of the company upon its payment for the insurance fee.

In addition to the derivative claim, minority shareholders in the U.K. could sue under the unfair prejudice action where their own interest got harmed by the act of majority shareholders.⁴⁵ The unfair action was adopted from the conduct of partners in partnership. Since the unfair action has come from the nature of partnership Act which based on the trust of the partners, it is hard to file the unfair action the publicly held companies which the trust has not been found. The U.K. indulges with the theory and it is hard to incorporate the principle into the statute covering the access of the unfair prejudice provisions to the publicly held company with dispersed share ownership.

However, Hong Kong as a country which applied the common law principle incorporated the unfair prejudice or oppression remedy in the listing rules.⁴⁶ Thus, the public companies listed in the Hong Kong Stock Exchange could clear up the oppressive conduct of the majority shareholders where an unfair or prejudice conduct was its attribute. Regarded with this point, this research does not view that Hong Kong corporate regime goes beyond the common law principle. It is because the rules are not which the legislature enacted; they are, in fact, of which the administrative authority issued.

As of overarch of the corporate governance, the U.K. has controlled by the corporate social responsibilities according to the Human Rights Act and the climate reaction under the administrative department. The research views that this statute and action were the stringent surveillances for human relation and environmental concern. This fact pushes the research whether directors in the U.K. are actionable as the employees of a company. Actually, directors are not automatically the employees of a company.⁴⁷ They are employees when they entered the director service contract.⁴⁸ When they contracted with the company, their dismissal without cause has to be settled according to the Employment Rights Act, 1996.⁴⁹ Here, this research would point out why the U.K. did not handle under the law of obligations or contract law for such case. Either in Japan, the unfair removal of directors would cause the removed directors trial according to the Civil Code as discussed by Professor YOSHIDA Masayuki.⁵⁰ Therefore, this research views that the director's service contract as for the U.K., and the articles of the corporation as for Japan are considered to be the critical points for a director.

Conclusion

With regard to majority and minority shareholder issues, Japanese Companies Act, 2005 does not bear the problematic provisions. Article 201 of the Act protects rights of the minority shareholders; it is restrained under Article 109. That Tokyo Supreme Court tried to attract the minority shareholders and applied Article 201 in the legal case was criticized that it ignored the main purpose of the conventional rule. Due to this fact, this research points out that Japanese legal and judicial department require to persuade its society to modernize corporate culture.

Contrary to the Japanese corporate culture, the U.K. tried to draw the small investors and pulled out their resources to become a large entity. The possible reason of the application of this method is that the U.K. wants to promote its liberal democracy to hedge against its shareholder primacy rule. By this way, liberalism in corporate society can be interpreted as the balance of majority and minority power where the abuse of pure democratic system takes place. Its strategy is proper in its situation.

Nevertheless, one thing to consider for Japan is that if the legal and judicial departments transform the corporate culture which deviates from the conventional rule, it is to wait and see whether the majority shareholders will claim the exit right or they won't do. Even though the exit right by minority shareholders are adopted in the Companies Acts of both Japan and the U.K., the exit right of majority shareholders are not mentioned in the Acts. Ultimately, the exit right for majority shareholders in Japan is no other than the just and equitable winding up of a company. The U.K. bans the exit right of majority shareholder by no fault divorce under the unfair prejudice rule this is the good point to maintain the big investors in a U.K company.

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Footnotes:

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⁵According to Fungibility Meaning in UK Law - Glossary - LexisNexis UK, <https://www.lexisnexis.com/en-gb/legal/glossary/fungibility> (last visited Aug. 25, 2026).

⁶RUIKEI BETSU KAISHA HI SHŌ 76 (Tōkyō Chihō Saibansho Shōji Kenkyūkai ed.).

⁷Id, at 106,107.

⁸Id.

⁹Id.

¹⁰Id.

¹¹Id.

¹²Id.

¹³Id.

¹⁴Id.

¹⁵SHŌSŪ KABUNUSHI KENTŌ NO RIRON TO JITSUMU 184, 185 (Ueda Junko, Uematsu Tsutomu, & Matsushima Takahiro eds.).

¹⁶Id.

¹⁷Id.

¹⁸Id.

¹⁹Id.

²⁰Id.

²¹Nang Nwe Ni Nyunt, Personal Actions for Remedies by Minority Shareholders in U.K., Japan and Myanmar (2021) (PhD Thesis dissertation, Niigata University), <https://cir.nii.ac.jp/crid/1910020910698781568>.

²²YOSHIDA, MASAYUKI, KONPAKUTO KHAISHAHŌ 110-113.

²³Id.

²⁴Id.

²⁵Id.

²⁶JOHN BUCHANAN, DOMINIC HEESANG CHAI & SIMON DEAKIN, HEDGE FUND ACTIVISM IN JAPAN: THE LIMITS OF SHAREHOLDER PRIMACY 5.

²⁷Nang Nwe Ni Nyunt, Legal Settlements of Unfairness in New Share Issuance and Allocation Rights in Japan | CiNii Research, <https://cir.nii.ac.jp/crid/1051975278385734144> (last visited Aug. 25, 2026).

²⁸JOHN BUCHANAN, *supra* note 26, at 61–94.

²⁹Legal Settlements of Unfairness in New Share Issuance and Allocation Rights in Japan, *supra* note 27.

³⁰J. MĀKU RAMUZAIYĀ ET AL., AMERIKA KARA MITA NIHON HŌ 220–232.

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³³See also Legal Settlements of Unfairness in New Share Issuance and Allocation Rights in Japan | CiNii Research, *supra* note 27.

³⁴Id.

³⁵Id.

³⁶Id.

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³⁸MARIA GORANOVA & LORI VERSTEGEN RYAN, SHAREHOLDER EMPOWERMENT 81–97 (2015), <https://EconPapers.repec.org/RePEc:pal:palbok:978-1-137-37393-9>.

³⁹WENJING CHEN, A COMPARATIVE STUDY OF FUNDING SHAREHOLDER LITIGATION 15.

⁴⁰See ROBIN HOLLINGTON QC, HOLLINGTON ON SHAREHOLDERS' RIGHTS 112-114.

⁴¹Id.

⁴²Id.

⁴³John Coffee, New Myths and Old Realities: The American Law Institute Faces the Derivative Action, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?params=/context/faculty_scholarship/article/2133/&path_info=Coffee___New_Myths_and_Old_Realities.pdf (last visited Aug. 26, 2026).

⁴⁴See also, VICTOR JOFFE QC ET AL., MINORITY SHAREHOLDERS: LAW, PRACTICE, AND PROCEDURE (The frequent uses of minority shareholder rights were the derivative actions).

⁴⁵ROBIN HOLLINGTON QC, *supra* note 40.

⁴⁶Id.

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⁴⁷Is a Director an Employee of a Company?, <https://www.rapidformations.co.uk/blog/director-an-employee-of-a-company/> (last visited Aug. 26, 2026).

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⁴⁹See Board Members - an Update on Legal Requirements | Trowers & Hamlin Law Firm, <https://www.trowers.com/insights/2020/february/board-members---an-update-on-legal-requirements> (last visited Aug. 26, 2026).

⁵⁰YOSHIDA, *supra* note 22.