



Electronic Provision of Materials for Shareholders' Meetings

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I. Introduction

On September 1, 2022, a system that enables electronic provision of materials for shareholders' meetings (the "EP System") was introduced in accordance with the provisions of the "Act Partially Amending the Companies Act" (Act No. 70 of 2019, enacted into law on December 4, 2019; the "Amendment")¹.

This article comments on the EP System and explains the steps to be taken and the process to be followed when adopting the EP System and materials that may be provided electronically under the Companies Act as amended by the Amendment (Act No. 86 of 2005, as amended; the "Companies Act").

II. Outline of the System

The EP System allows stock companies (*kabusiki kaisha*) to provide all or part of their shareholders with materials for shareholders' meetings through the Internet, for example, by making such materials available on the company's website and notifying the shareholders in writing of certain information, including the address of the website.²

III. Background

Before the Amendment was made, "Reference Documents for Shareholders' Meetings" and other relevant documents (collectively, "Reference Documents")³ were, with some exceptions, required to be provided in writing⁴, whereby the burden of dealing with clerical works, such as preparing, printing, enclosing and sending Reference Documents, as well as costs associated

¹Most of the provisions of the Amendment went into effect on March 1, 2021, but the provisions relevant to the EP System went into effect separately on September 1, 2022.

² *Forthcoming Revision of the Companies Act* (a leaflet issued by the Ministry of Justice)/[001327488.pdf \(moj.go.jp\)](https://www.moj.go.jp/001327488.pdf)

³**Reference Documents** include Reference Documents for Shareholders' Meetings and Voting Forms (each as defined in the Companies Act), Financial Statements and business reports referred to in Article 437 of the Companies Act and Consolidated Financial Statements referred to in Article 444(6) of the Companies Act. **Reference Documents for Shareholders' Meetings** refer to a set of documents stating proposals to be discussed at the meetings, reasons for such proposals, matters reported by the company auditor(s) in connection with the proposals and matters considered to be useful for shareholders as a reference in exercising their voting rights.

⁴Articles 299(2), 301, 302(1) and 437 of the Companies Act, Article 133(2) of the Regulations for the Enforcement of the Companies Act (the "Regulations"), and Article 133(2) of the Regulations on Corporate Accounting (the "Accounting Regulations").

with printing and mailing, were imposed on companies. Moreover, the above-described process was considered problematic in light of the fact that shareholders were unable to sufficiently review the Reference Documents delivered to them before the shareholders' meeting because the delivery process was overly time-consuming once the documents were finalized.

With the aid of the Internet, stock companies will be able to reduce their printing and mailing costs. Moreover, providing shareholders with Reference Documents earlier should give them more time to review the materials. To resolve the above-mentioned issues by making a practical use of the Internet, the Companies Act introduced the EP System, under which Reference Documents are considered to have been delivered to shareholders even without obtaining approval from each of them when such documents are posted on the website and shareholders are notified of the required information (e.g., the address of the website).

IV. Process of Adopting the EP System

1. Modification of Articles of Incorporation

(1) Companies issuing Book-Entry Transfer Shares (e.g., listed companies)

In order to adopt the EP System, companies must state in their articles of incorporation that they may take measures for the utilization of the system (as defined in the Companies Act, "EP Procedure") (Companies Act, Art. 325-2). Companies issuing "Book-Entry Transfer Shares"⁵, such as listed companies (collectively, "Listed Companies") are required to have such provisions in their articles of incorporation.⁶

In accordance with Article 10(2) of the Act on the Arrangement of Related Laws Required in Connection with the Enforcement of the Act Partially Amending the Companies Act (Act No. 71 of 2019) (the "Arrangement Act"), Listed Companies are deemed to have passed a resolution to modify their articles of incorporation to the effect that they employ the EP Procedure, effective as of the date on which the provisions relating to the EP System included in the "Act Partially Amending the Companies Act" go into effect.

(2) Unlisted companies

Unlisted companies may implement EP Procedure if their articles of incorporation provide for such implementation (Companies Act, Art. 325-2 and 325-3(1)). Unlike Listed Companies, whose articles of incorporation are, as described above, deemed to have been modified automatically under the Arrangement Act, unlisted companies intending to implement the EP Procedure must modify their articles of incorporation by passing a specific resolution to that effect at their shareholders' meetings.

⁵*Furikae-kabushiki*, as defined in the Act on Book-Entry Transfer of Corporate Bonds and Shares.

⁶Article 159-2(1) of the Act on Book-Entry Transfer of Corporate Bonds and Shares.

2. Registration

If a company has provisions to employ EP Procedure in its articles of incorporation, the existence of such provisions must be registered on its company registry (Companies Act, Art. 911(3)(xii)-2). Furthermore, in the case of Listed Companies, it is required to register the existence of such provisions within six months from the time when a resolution to modify the articles of incorporation is deemed to have been agreed on, provided that whenever Listed Companies register any other matters during such a period of six months, the registration with respect to EP Procedure must be filed at the same time (Arrangement Act, Art. 10(4) and (5)).

3. Cases where implementation of EP Procedure is required

Stock companies whose articles of incorporation provide for EP Procedure must continue to implement it if their shareholders are entitled to exercise their voting rights in writing or in electromagnetic form, or when such stock companies are Companies with a Board of Directors⁷ (Companies Act, Art. 325-3(1)). However, even in such a case, it is still possible to provide Reference Documents in paper form as long as EP Procedure is being implemented at the same time, but it is not allowed to provide such documents solely in paper form without implementing EP Procedure.

All Listed Companies must utilize the EP Procedure because Listed Companies are deemed to have modified their articles of incorporation in the way described above and are also required to have a board of directors pursuant to Article 327(1)(i) of the Companies Act.

On the other hand, unlisted companies do not need to utilize the EP Procedure even when their articles of incorporation state that they may implement the procedure, provided that the above-mentioned cases in which EP Procedure is required to be implemented do not apply to such company.

V. Details of EP Procedure

1. How EP Procedure should be followed

As part of the EP Procedure, companies are required to (a) make information contained in Reference Documents available by posting such information on their Internet website, (b) make such information on the website accessible to their shareholders, and (c) allow such information to be stored on their shareholders' own computers (see Regulations, Art. 95-2 and 95-3(i)).

2. Timeline for implementing EP Procedure

(1) Period

⁷As defined in the Companies Act, Article 2(vii).

The EP Procedure must be implemented from the date three weeks prior to the date of the intended shareholders' meeting or the date of dispatch of the convocation notice for such a meeting, whichever is earlier, until the date three months after the date of the meeting (Companies Act, Art. 325-3(1)).

(2) Interruption during implementation of EP Procedure

As a general rule, if any part of EP Procedure is interrupted during its implementation period, for example, due to server downtime, such procedure will not be considered as legally effective for the reason of not complying with the requirements for the EP Procedure. The validity of such interrupted EP Procedure, however, will not be affected if all of the following circumstances enumerated in Article 325-6(1) of the Companies Act apply to the case:

- The stock company was unaware of such interruption without gross negligence, or there are justifiable grounds for the interruption;
- The total length of interruption does not exceed 10% of the period throughout which the EP Procedure was scheduled to be implemented;
- In the case of interruption taking place during the period from the commencement day of EP Procedure to the date of the intended shareholders' meeting, the total length of interruption does not exceed 10% of such period; and
- The stock company has carried out, upon becoming aware of the occurrence of interruption, an ancillary EP Procedure to announce the occurrence of such interruption, together with the time and details thereof, as part of the interrupted EP Procedure.

However, a failure to commence a scheduled EP Procedure on its commencement day might not be considered an "interruption" in the first place, and may consequently affect the validity of the implemented procedure.

Furthermore, if any part of the EP Procedure implemented prior to the intended meeting is interrupted, and such interruption does not fulfill the above-enumerated requirements, it may constitute grounds for seeking a revocation of a resolution of a shareholders' meeting (Companies Act, Art. 831(1)(i)) because such interruption renders the implementation of the EP Procedure unlawful. On the other hand, an interruption of the EP Procedure that took place after the meeting should not constitute grounds for such revocation because the purpose of maintaining the EP Procedure after the intended meeting is understood as not serving shareholders directly in exercising their voting rights but rather as potential evidence in an action seeking a revocation of resolutions agreed on at the meeting.⁸

⁸*Q&A: Revised Companies Act 2019* (Toshikazu Takebayashi), page 42.

3. Information to be provided under EP Procedure

(1) Basic rule

Information required to be provided under the EP Procedure (Companies Act, Art. 325-3(1)) includes:

- Matters to be stated in the convocation notice for the intended shareholders' meeting;
- In case of employing a vote in writing, matters stated in the applicable Reference Documents for Shareholders' Meeting and Voting Forms⁹
- In case of voting in electronic form, matters stated in the applicable Reference Documents for Shareholders' Meeting;
- If any shareholder's right to request notification of the summary of proposal (as prescribed in the Companies Act) is exercised, the summary of the relevant proposal;
- In cases where a director of a Company with a Board of Directors convenes an annual shareholders' meeting, matters stated in the Financial Statements and business reports;
- In cases where a director of a company which is both a Company with Financial Auditor(s) (as defined in the Companies Act) and a Company with a Board of Directors convenes an annual shareholders' meeting, matters stated in the Consolidated Financial Statements; and
- If any modification is made to the matters enumerated above, the fact of making such modification and how it was before modification.¹⁰

(2) Exceptions

According to the Companies Act, if Voting Forms are delivered to shareholders in paper form, information concerning the matters stated in such documents will be excluded from information required to be provided under the EP Procedure (Companies Act, Art. 325-3(2)).

Furthermore, if a company required to submit an annual securities report on its issued shares pursuant to Article 24(1) of the Financial Instruments and Exchange Act (the "FIEA") submits its annual securities report by using EDINET, an electronic disclosure system operated in accordance with the FIEA, by the commencement day of a specific EP Procedure, and any of the matters to be informed through the EP Procedure in connection with an annual shareholders' meeting (excluding matters to be stated in Voting Forms) is included in such report, information relating to such matters will be excluded from matters to be informed under the EP Procedure (Companies Act, Article 325-3(3)).

⁹One problem inherent in providing the matters to be stated in Voting Forms under the EP Procedure is that, as a consequence of posting such matters on a website, each individual shareholder's name and number of exercisable voting rights may potentially be accessible to other shareholders. To address this problem, it is considered necessary to take appropriate systemic measures that limit shareholders to accessing the information relating solely to each of them (e.g., by setting a specific ID/password for each shareholder).

¹⁰Modifications are allowed to be made only when correcting errors in writing or when such modifications are required, unavoidably, due to a change of circumstances taking place after the date of the issuance of the convocation notice, provided that such modifications do not change the substance of the matters in question.

4. Convocation Notice

(1) Deadline

Convocation notice for a shareholders' meeting for which EP Procedure is implemented must be dispatched no later than two weeks prior to the meeting, regardless of the company's size or type (Companies Act, Art. 325-4(1)).

(2) Matters to be stated in convocation notice

Matters to be stated in a convocation notice (Companies Act, Article 325-4(2)) include:

- Matters listed in Articles 298(1)(i) to (iv) of the Companies Act;
- The fact of implementing EP Procedure;
- The fact of implementing EP Procedure by using EDINET (if used); and
- Matters set forth in the applicable Ordinance of the Ministry of Justice.¹¹

VI. Request for Written Documents

1. Outlines

A Request for Delivery in Paper Form, as defined in the Companies Act (a "Request"), is a shareholder's request made to the stock company for delivery of written documents stating matters to be informed under the EP Procedure, which is intended to serve the interests of shareholders who may not readily use the Internet. If a stock company receives a Request, a director of the company must provide the requesting shareholder with written documents containing the matters to be informed under the EP Procedure when giving convocation notice for a shareholders' meeting.

2. Shareholders entitled to make a Request

Shareholders of a stock company whose articles of incorporation provide for the EP Procedure (excluding shareholders who have accepted to receive a convocation notice by electronic means in connection with the relevant shareholders' meeting¹²) are entitled to make a Request (Companies Act, Article 325-5(1)). If a deadline for making Requests is set, the stock company is only required to provide shareholders who made a Request on or before such record date with written documents stating the matters to be informed under EP Procedure (Companies Act, Art. 325-5(2)).

¹¹Such matters include the URL of the website onto which the information is posted, a password or other similar information, if any, to be required when accessing the posted information and, if EDINET is used, the URL of the website that is made available to the public.

¹²Article 299(3) of the Companies Act.

3 Documents subject to Request

Written documents to be delivered in response to a Request must include matters to be informed under the EP Procedure. On the other hand, among matters to be informed, all or part of matters specified in the applicable Ordinance of the Ministry of Justice¹³ can be omitted from such documents, provided that such omission is provided for in the articles of incorporation (Companies Act, Art. 325-5(3)).

4. When to deliver written documents

Written documents to be delivered in response to a Request must be delivered at the time of giving a convocation notice (Companies Act, Art. 325-5(2)). This means the deadline for delivering such documents is two weeks prior to the date of the intended shareholders' meeting because, as described above, a convocation notice is required to be given no later than two weeks prior to the date of the meeting.

5. Discontinuation

Once a Request is made, it will be deemed as a Request in relation to all shareholders' meetings to be held subsequently, unless it is withdrawn or ceases to be effective in accordance with the provisions of Articles 325-5(4) and (5) of the Companies Act, which provide that, when one year has passed since the day on which a Request was made by a shareholder, the stock company may notify the shareholder of its intention to discontinue the delivery of written documents and give notice to the effect that an objection must be made within a period of not less than one month, and the Request ceases to be effective upon the expiration of such period unless the shareholder makes any objection within the same period.

VII. Miscellaneous

According to Article 10(3) of the Arrangement Act, convocation procedures conducted by Listed Companies in connection with a shareholders' meeting to be held by the end of February 2023 remain subject to the provisions of the laws in force prior to the Amendment. Below is a summary of timetables recommended to be followed by Listed Companies intending to introduce the EP Procedure, in three likely scenarios of holding a shareholders' meeting annually in December, March or June.

1. Listed Companies regularly holding a meeting in December

In this scenario, the first shareholders' meeting for which the EP Procedure is required to be implemented is a meeting in December 2023. Therefore, it would be advisable to prepare for

¹³Article 95-4(1) of the Regulations.

that meeting by preliminarily passing necessary resolutions at the December 2022 meeting, for example, a resolution to modify the articles of incorporation to the effect that some matters may be omitted from written documents to be provided in response to a Request. To clarify, as mentioned in Section 1(1) of Part IV above, a resolution to amend the articles of incorporation required for employing the EP Procedure will be deemed to have been passed pursuant to the Arrangement Act.

2. Listed Companies regularly holding a meeting in March or June

In this case, the first shareholders' meeting for which the EP Procedure is required to be implemented is the meeting to be held in March or June 2023. Therefore, an ideal scenario would be to pass necessary resolutions within 2022, for example, a resolution to modify the articles of incorporation required for employing the EP Procedure and a resolution for omitting some matters from written documents to be provided in response to a Request.

However, the EP Procedure will have to be implemented anyway for the shareholders' meeting in 2023, regardless of whether a resolution to modify the articles of incorporation to employ the EP Procedure has been agreed on until then, because such resolution will be deemed to have been passed pursuant to the Arrangement Act.

3. Postscript

The outlines of the EP System offered in this article do not cover certain issues, such as lack of provisions specifying how shareholders expected to use the Request system (i.e., those who are unable to use the Internet) should be informed about the system. It is hoped, however, that this article may still serve readers in grasping the basics of the EP System at a time when many companies appear to be struggling with the introduction of the EP Procedure.