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Japan's problems with shareholder voting underscores need for reform

Antiquated system for tallying investor views at AGMs must be improved

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Sumitomo Mitsui Trust Bank admitted it had failed to count some shareholder votes ahead of the annual meetings of about 1,000 companies © Kiyoshi Ota/Bloomberg

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Mail-in voting is a hot topic these days, not just in the US but also for Japanese equity investors. Some investors in large Japanese companies are learning that it is not so easy to vote their shares.

On Thursday, Sumitomo Mitsui Trust Bank admitted it had failed to count some shareholder votes ahead of the annual meetings of about 1,000 companies. It cited procedural mistakes for the errors, but investors are demanding an investigation. The revelation came after an activist fund complained that its hefty bloc of 5m votes (1.1 per cent of outstanding shares) had not been counted at Toshiba's highly contentious annual meeting on July 31.

The conglomerate later confirmed that 1,139 voting forms were invalidated by Sumitomo Mitsui, the registry administrator, even though they had been mailed three days before the July 30 deadline and were delivered in time. Toshiba's largest shareholder, Effissimo, which had tried to use the AGM to elect new independent directors, has demanded an independent investigation into whether there was a deliberate attempt to suppress negative votes.

Sumitomo Mitsui has a lot to explain, and investors should be asking whether the uncounted votes changed the outcome of any corporate AGMs.

But the real problem stems from Japan's antiquated voting and custody processes, which were overlooked by governance reformers, even as they enacted the much-heralded stewardship and corporate governance codes in 2013.

Not only is there a demonstrated problem with Japan's system of postal ballots, the country's in-person voting is archaic. Shareholders in attendance at the shareholder meetings vote by clapping approval for an agenda item or sitting silent to show disapproval. Seriously. If conflict is anticipated, an inspector is designated by the courts to watch and record whether potential dissenters actually clap. To be fair, if there is a disputed AGM, one can request an actual vote count.

Unfortunately, this can lead to confusion and missed opportunities. Consider what happened at the June shareholder meeting of Ootoya Holdings, which runs a popular restaurant chain. Colowide, the largest shareholder, proposed a plan to shuffle the directors, sending in their proxy statement and their votes by mail. But they also sent a representative to the meeting. When he failed to clap for the proposal in the meeting, (in-person votes supersede mail-in), their agenda item failed. Having learnt from their mistake, Colowide launched a hostile takeover that succeeded this month.

Voting problems affect foreign and domestic shareholders alike, but those domiciled outside Japan are at a major disadvantage in both receiving their proxy statements, which often arrive late, and in exercising their voting rights.

That must change. All shareholders must be allowed to vote in a timely manner. Most of these problems can be solved swiftly. Digital proxy voting systems, such as Broadridge, are widely available and could be used for all listed companies in Japan.

Online voting would vastly improve Japanese corporate governance and voting transparency. But the Tokyo Stock Exchange has yet to make it mandatory. Only 1,100 companies provide online voting, Broadridge says. More than 90 per cent of UK and US institutional investors vote electronically, but in Japan that figure was 14 per cent as of 2017, according to the government.

Despite the improvements in Japanese corporate governance, investors like Symphony have warned repeatedly that more needs to be done. Some day soon there will be a hostile proxy battle in which the failure to count votes thwarts the outcome shareholders prefer. Prime Minister Yoshihide Suga should make it part of his push for digitalisation. It is time to tackle this problem for the benefit of all shareholders in Japan.