

## J. Y. Interpretation No.100 (February 27, 1963) \*

**ISSUE:** Is it legal for the rules of a company's Article of Incorporation to stipulate a higher threshold for the number of stockholders represented in a shareholders' meeting or for the number of votes required?

**RELEVANT LAWS:**

Articles 246 (277) and 264 (316) of the Company Act (公司法第二百七十七條及第三百十六條) .

**KEYWORDS:**

a meeting of shareholders (股東大會), the number of stockholders present (出席股東人數), the number of votes required (表決權數), a majority of shareholders (過半數股東), the resolution to amend its Article of Incorporation (變更公司章程之決議), the resolutions of dissolution or merger of the company (公司解散或合併之決議) .\*\*

**HOLDING:** The number of stockholders present and the number of votes required stipulated in Article 246, Paragraph 2 (as amended Article 277, Paragraph 2, of the current Company Act) and Article 264 of the Company Act (as

**解釋文：**公司法第二百四十六條第二項(現行法第二百七十七條第二項)及第二百六十四條(現行法第三百十六條)所定股東會之出席股東人數與及表決權數，均係指所需之最低額而言。如公司訂立章程，規定股東出席人

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\*\* Contents within frame, not part of the original text, are added for reference purpose only.

amended Article 316 of the Act) refer to a minimum number required. As a result, it is not illegal to have the number of stockholders present and the number of votes required under a company's Articles of Incorporation higher than the legal minimum requirement.

**REASONING:** Pursuant to Article 246, Paragraph 2, of the Company Act, the resolution of the meeting of shareholders to amend its Articles of Incorporation should be adopted by a majority of shareholders at a meeting attended by shareholders representing over two-thirds of the total number of issued shares. In addition, pursuant to Article 264 of the Company Act, a resolution for the dissolution or merger of the company shall be adopted by a majority vote at a meeting of shareholders attended by shareholders representing over three-fourths of the total number of issued shares. These indicate the minimum number of stockholders present and the number of votes required. These two Articles also do not stipulate any restriction on raising a minimum number. As a result, where stricter criteria

數及表決權數較法定所需之最低額為高時，自非法所不許。

**解釋理由書：**查公司法第二百四十六條第二項規定股東會之決議應有代表股份總數三分之二以上之股東出席及出席股東過半數之同意，第二百六十四條規定股東會之決議應有代表股份總數四分之三以上之股東出席及出席股東表決權過半數之同意，均係對股東出席人數及表決權數僅限定其最低額，而於最低額之提高並無限制，故公司如訂立章程規定股東會股東出席人數及表決權數較法定所需最低額為高時，自非法所不許。

for the total number of shares represented by shareholders presented at a shareholders' meeting and the number of votes required to pass a resolution as referred to in the aforementioned two Articles are specified in the Articles of Incorporation, such stricter criteria are not illegal.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋王大法官之侖提出不同意見書。