Public Mergers and Acquisitions in Japan: Overview

by Takefumi Sato, Akihisa Yamamoto, and Takahisa Watanabe, *Nishimura & Asahi*

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A Q&A guide to public mergers and acquisitions law in Japan.

The country-specific Q&A looks at current market activity; the regulation of recommended and hostile bids; pre-bid formalities, including due diligence, stakebuilding, and agreements; procedures for announcing and making an offer (including documents and mandatory offers); consideration; post-bid considerations (including squeeze-out and de-listing procedures); defending hostile bids; tax issues; other regulatory requirements and restrictions; and any proposals for reform.

M&A Activity

1. What is the current status of the M&A market in your jurisdiction?

In 2020, M&A transactions involving Japanese companies totalled about:

- 3,730 in volume, down 8.8% compared to 2019.
- JPY14.7 trillion in value, down 17.2% compared to 2019.

The total value of in-out M&A transactions in which Japanese companies were involved was about JPY4.4 trillion, down 57.2% compared to 2019. Due to the global novel coronavirus disease (COVID-19) pandemic, there was a significant decrease, especially in the number and size of cross-border deals. However, domestic transactions remained at the same level as the previous year.

A particularly notable trend in domestic transactions in 2020 was the increase in the number of transactions involving tender offers. The number of management buyouts, dissolutions of a relationship between a listed parent and listed subsidiary, and hostile takeovers increased significantly in 2020, and this trend is likely to continue (*see Question 4 and Question 5*).

2. What have been the largest or most noteworthy sector-specific public M&A transactions in the past 12 months?

In the past 12 months, noteworthy deals were seen particularly in the technology, telecommunications, retail (convenience stores), financial, and pharmaceutical industries. The following is a summary of some of the largest deals in these fields.

Technology

- NVIDIA's acquisition of Softbank Group's Arm Holdings. The consideration was JPY4.2 trillion in cash and NVIDIA shares.
- Hitachi, Ltd.'s acquisition of GlobalLogic Inc. from GlobalLogic Worldwide Holdings, Inc. through a reverse triangular merger. The consideration was JPY1.3 trillion in cash.

Telecommunications

- Nippon Telegraph and Telephone Corporation (NTT)'s acquisition of NTT DOCOMO, INC. through a tender offer. The consideration was JPY4.2 trillion in cash.

Retail (Convenience Stores)

- 7-Eleven, Inc.'s acquisition of the Speedway brand business from Marathon Petroleum Corporation. The consideration was JPY2.2 trillion in cash.

Financial

- Mitsubishi UFJ Lease & Finance's merger with Hitachi Capital valued at JPY300 billion.

Pharmaceutical

- The Blackstone Group Inc. and its affiliates' acquisition of Takeda Pharmaceutical Company Limited's Takeda Consumer Healthcare Company Limited. The consideration was JPY242 billion in cash.

3. How were the largest or most noteworthy public M&A transactions financed?

Large-scale public M&A transactions often involve a tender offer with cash consideration. In these transactions, the bidder funds the transaction using cash from loans from financial institutions including banks, or bond issues on top of their cash on hand. NTT's acquisition of NTT DOCOMO, INC. shares through a cash tender offer, the largest tender offer in Japan, was carried out using bank loans. In particular, some of the large-scale tender offers involve leveraged buyout (LBO) arrangements, which are typically sponsored by private equity funds, and where the acquired shares and assets of the target company are pledged as collateral for lenders. A particularly notable deal which used an LBO arrangement was Showa Denko's acquisition of Hitachi Chemical (JPY964 billion). In LBO arrangements, lenders usually require strong covenants imposing restrictions on target companies' operational and financial activities.

Obtaining Control

4. What are the main means of obtaining control of a public company?

Stock Purchase

Shares of a listed target company (target) can be purchased through a stock exchange or outside a stock exchange. This must be done by a tender offer in some situations (*see Question 6*). This method does not require an agreement with the target and can therefore be used for hostile bids. Foreign companies can also use this method.

Merger, Stock-for-Stock Exchange, and Share Delivery

These methods of obtaining control require an agreement with the target, and therefore are used only for recommended bids. In addition, where the acquiring company is the target's controlling shareholder, as defined in the Security Listing Regulations of Tokyo Stock Exchange, Inc. (TSE) , the target must obtain an opinion, from a person independent from the acquiring company, that the contemplated merger or stock-for-stock exchange is not disadvantageous to its minority shareholders (*Articles 441-2 and 402(1)i, k, Security Listing Regulations*).

Merger. A merger integrates two or more companies into one corporate entity (*Article 748, Companies Act*). The shareholders of the absorbed company are usually allotted shares in the absorbing company according to the merger ratio (which is based on multiple factors, including the corporate value of the absorbed company relative to that of the absorbing company).

Foreign companies cannot use this method to obtain control of a company. However, by using a triangular merger (in which a subsidiary absorbs and merges with the target and then provides its parent company's shares to shareholders of the absorbed target), a foreign company's subsidiary in Japan can absorb a Japanese company using its parent company's shares (*Articles 749.1(2) and 751.1(3), Companies Act*).

Stock-for-Stock Exchange. Company A becomes a wholly owning parent company of Company B, by issuing new shares in Company A in exchange for all of the shares in Company B (*Article 767, Companies Act*). Foreign companies cannot use this method to obtain control of a company. A stock-for-stock exchange in which the parent company's shares are used for consideration is also permitted (*Articles 768.1(2) and 770.1(3), Companies Act*).

Share Delivery. Through share delivery (*kabushiki kofu*), Company A becomes a parent company of Company B, by issuing new shares in Company A in exchange for a portion of the shares in Company B. Share delivery, unlike a stock-for-stock exchange, is a method that can be used even where a company does not intend to establish a wholly-owned subsidiary. As with stock-for-stock exchanges, foreign companies cannot use this method.

Issue of New Stock, Business Transfer, and Company Split

Issue of New Stock. The acquiring company makes a subscription agreement with the target and receives new shares issued by the target (*Article 199, Companies Act*).

There are potential problems with this method, namely that minority shareholders remain and that more funds are needed to obtain control of the target in an issue of new stock than in a stock purchase. The issue of new stock is a method available to foreign companies.

The issue of new stock requires a decision by the target's board and therefore cannot be used in a hostile bid. In addition, where a listed company issues new shares and the ratio of voting rights of newly issued shares is 25% or more of the outstanding shares, or it is expected that the company's controlling shareholder will change due to the issuance, the company must obtain either of the following:

- An opinion from an entity with a certain degree of independence from the company's management about the necessity and suitability of the issuance.
- The shareholders' confirmation given by a resolution at a general shareholders' meeting.

(*Article 432, Security Listing Regulations*.)

In cases where a public company is willing to conduct a third-party allotment of new shares or new share warrants, the effect of which will be that a certain entity will hold a majority of the voting rights of the company, that company must provide a notice to shareholders or a public notice that contains certain matters required by law (*Article 206-2,1, 2, Companies Act*).

If shareholders who hold 10% or more of the voting rights of the company notify the company that they are opposed to the third-party allotment, the third-party allotment of new shares must be approved by a resolution at a shareholders' meeting (*Article 206-2,4, Companies Act*).

Business Transfer and Company Split. An acquiring company takes over part or parts of a business, composed of, among others, the target's integrated assets, employees, and commercial rights (*Articles 4-67 and 757, Companies Act*). A business transfer and company split are used when a company intends to selectively choose which assets and debts to acquire.

In addition, with the issue of new stock, in a business transfer and company split where the acquiring company is the target's controlling shareholder, the target must obtain an opinion from an entity with a certain degree of independence from the acquiring company that the contemplated issuance of shares, business transfer, or company split is not disadvantageous to the minority of the target's shareholders (*Articles 441-2 and 402(1)a, l, m, Security Listing Regulations*).

Trends in Deal Structures

A notable trend in recent M&A arrangements has been the increase in tender offers:

- In 2020, there were 57 tender offers, up 18.8% from 2019.
- The total value of purchases increased 1.8 times, from JPY2,841.4 billion in 2019 to JPY5,279.2 billion in 2020.

In particular, there were a number of noteworthy transactions in which 100% of the shares of a listed company were acquired through a tender offer, for example, in a management buyout or a controlling shareholder's acquisition of a controlled company.

In addition, with the share delivery arrangement established through amendment of the Companies Act (although share delivery is not widely used yet, there are a few examples including GMO Internet's acquisition of OMAKASE), it is expected that stock deals will become a more effective option to acquire public companies.

Hostile Bids

5. Are hostile bids allowed? If so, are they common?

Hostile bids are allowed and can be made by a share purchase. The number of hostile bid attempts is increasing.

Hostile bids were not common in Japan, partly because of the deep-rooted practice of cross-shareholding among Japanese companies and the resistance to hostile bids within Japanese society. However, since 2000, the number of hostile bids has increased. This trend has been significant in recent years. The main reasons are probably the:

- Change in public companies' share distribution because of the decrease cross-shareholdings associated with corporate governance reform.
- Engagement of activist funds in hostile proposals.

Consistent with this trend, five hostile takeover bids were announced in 2020, two of which were successful. The following are recent examples of hostile bids:

- Nippon Steel Corporation's bid for Tokyo Rope Mfg. Co., Ltd. in 2021, which succeeded despite the opposition of the target's board.
- COLOWIDE CO., LTD.'s bid for OTOTA Holdings CO., Ltd. in 2020, which succeeded despite the opposition of the target's board.
- Maeda Corporation's bid for Maeda Road Construction in 2020, which succeeded despite the opposition of the target's board.

- City Index Eleventh's (a fund backed by Yoshiaki Murakami) bid for Toshiba Machine in 2020, which failed due to the target's defensive measures (with non-mandatory shareholders' approval).

Regulation and Regulatory Bodies

6. How are public takeovers and mergers regulated, and by whom?

Regulation of Public Takeovers

Public takeovers are regulated by the Financial Instruments and Exchange Law (FIEL). If a party intends to purchase the shares of a company that is required to submit annual security reports (including listed companies and over-the-counter (OTC) companies), this must be done by tender offer in the following cases (with several exceptions):

- If the purchase is made outside a stock exchange market (including the OTC security market) and, after the purchase, the aggregate voting rights held by the purchaser and any affiliated persons (as defined in the FIEL) divided by the total voting rights of the target (total voting ratio) exceeds 5% (*Article 27-2.1(1), FIEL*). (An exception applies if the aggregate number of sellers in the contemplated share purchase and the sellers of shares to the purchaser outside the stock exchange market (total sellers) equals ten or fewer in the 60 days before the day the purchase is made.)
- If the purchase is made outside a stock exchange market (including the OTC market), and the number of total sellers is ten or fewer and the total voting ratio of the purchaser exceeds one-third after the purchase (*Article 27-2.1(2), FIEL*).
- If the total voting ratio of the purchaser exceeds one-third after the purchase and the purchase is made by a method of purchase prescribed by the Prime Minister (including purchasing through the Tokyo Stock Exchange Trading NeTwork System (ToSTNeT) of the TSE and certain off-floor trading methods) (*Article 27-2.1 (3), FIEL*).
- If, within three months:
    - over 5% of the voting shares are purchased outside a stock exchange market (including the OTC security market) or by a method of purchase prescribed by the Prime Minister as mentioned above;
    - a total of over 10% of the voting shares are obtained through the purchase (including purchases described in the preceding bullet point) or the issuance of new shares; and
    - the total voting ratio of the purchaser exceeds one-third after the purchase or issuance.

    (*Article 27-2.1 (4), FIEL.*)

- If, during the period in which one party's tender offer is made, another party, whose total voting ratio before the purchase exceeds one-third, purchases over 5% of the voting shares (*Article 27-2.1 (5), FIEL*).
- In other specified cases set out in a Cabinet order (*Article 27-2.1 (6), FIEL*).

There is no institution in Japan that corresponds to the Takeover Panel in the UK. The Financial Services Agency (FSA) supervises the securities markets.

Regulation of Mergers

Mergers are regulated by the Companies Act. The following are required for a merger:

- Conclusion of a merger agreement (*Article 748, Companies Act*).
- Advance disclosure of certain documents, including the merger agreement (*Articles 782 and 794, Companies Act*).
- Approval of the shareholders' meetings of the merging companies (*Articles 783 and 795, Companies Act*).
- Procedures to protect creditors (*Articles 789 and 799, Companies Act*).
- Procedures to resolve share purchase demands from dissenting shareholders (*Articles 785 and 797, Companies Act*).
- Registration of the merger (*Article 921, Companies Act*).
- Disclosure of certain matters after the merger (*Article 801, Companies Act*).

Where shares are issued or delivered through a corporate reorganisation (including a merger) that satisfies certain conditions, the issuer of the shares must make a disclosure of the issuance or delivery of the shares (by submitting a security registration statement) (*Article 4.1, FIEL*). After that, it must make the continuous disclosure prescribed in the FIEL if the disclosure meets both of the following criteria:

- It concerns shares of the target of the reorganisation.
- It does not concern shares that will be issued or delivered to shareholders of the target through the reorganisation.

(*Article 24.1(3), FIEL.*)

Additional Regulation

In addition, the merger controls of the Anti-Monopoly Act, procedural requirements under the Foreign Exchange and Foreign Trade Law, industry-specific regulations, and the Fair M&A Guidelines, also affect public takeovers and mergers (*see Question 27 and Question 28*).

Pre-Bid

Due Diligence

7. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended Bid

A bidder generally undertakes business, accounting, tax ,and legal due diligence. In some cases, specific additional types of due diligence are undertaken, for example, environmental, IT systems, or intellectual property due diligence. The bidder and the target agree on the information and documents to be provided (for example, important contracts, board minutes, licences, approvals, and documents about contingent liabilities) in addition to those in the public domain.

Hostile Bid

In general, a bidder's due diligence is based on information in the public domain.

Public Domain

There are several different sources of public information:

- **The Commercial Register.** This contains the following information on all companies:
    - the company's purpose;
    - the trade name;
    - the amount of stated capital;
    - the total number of issued shares, the classes of shares, and the number of shares in each class;
    - if a transfer of shares requires the approval of the company, the Commercial Register also includes the provisions in the articles of incorporation for transfer;
    - the company's organisational bodies;
    - the directors' names; and
    - the way the company provides public notices and other information.

    (*Article 911.3, Companies Act.*)
- **Accounts.** The following are publicly available:

- the target's balance sheet. Balance sheets of a joint-stock company (*kabushiki kaisha*) are made public through a public notice or its website (*Article 440, Companies Act*); and
- income statements for a large company (a company with a stated capital of JPY500 million or more, or liabilities of JPY20 billion or more) (*Article 440, Companies Act*).

- **Annual and Quarterly (or Semi-Annual) Securities Reports.** Listed companies, OTC companies, and certain other companies must file annual securities reports and quarterly securities reports (or semi-annual reports). Annual securities reports contain the following information:
  - an outline of the company, including changes in major business indices, the company's history, the structure of the business, the status of related companies, and the number of employees;
  - the condition of the business, including problems to be resolved, and risk factors; its management's analysis of its financial situation, business performance, and cash flow; and its material contracts and research and development activities;
  - the condition of the company's facilities, including an outline of its business investments, the condition of its principal facilities, and plans for installation or removal;
  - information about shares (including the total number of shares, changes in the number of issued shares and capital, types of shareholders, and major shareholders), acquisition of treasury shares, dividend policy, changes in share price, directors and officers' shareholdings, and corporate governance information; and
  - accounts, including consolidated financial statements and financial statements.

  (*Article 24, FIEL.*)

  It is also possible to obtain information about a rights plan that acts as a defence measure against hostile bids from annual securities reports.

  Quarterly securities reports (or semi-annual reports) contain similar information to that contained in the annual securities reports (*Articles 24-4-7.1 and 24-5.1, FIEL*).

  In addition, the articles of incorporation are attached to the annual securities report and can be inspected by anyone.
- **Extraordinary Reports.** A company that must file an annual securities report must also file an extraordinary report with the Prime Minister, without delay, if it intends to make a tender offer or secondary offering in a foreign country, or if required to under Cabinet Office regulations (*Article 24-5.4, FIEL*). Cabinet Office regulations require an extraordinary report in the following cases:
  - a change of the company's major shareholder;
  - a disaster affecting the company; and
  - a decision to undertake a stock-for-stock exchange, stock transfer, company split, merger, or business transfer.

  The extraordinary report serves as the means of publicising those events (*Article 25, FIEL*).

- **Timely Disclosure.** Disclosure regulations of the stock exchanges or securities dealers' associations require that listed companies and OTC companies make timely disclosure to investors of information that may impact their investment decisions. Information that must be disclosed includes the following:
    - certain actions of a company or its subsidiaries, including a reduction of capital, stock-for-stock exchange, stock transfer, company split or merger, business transfer, and dissolution;
    - significant facts affecting the company or its subsidiaries. This includes damages caused by a disaster or damages that have occurred in business operations, a change of the major shareholder, and any event that may cause de-listing; and
    - account settlement by the company or its subsidiaries.

    (*TSE, Security Listing Regulations*.)
- **Corporate Governance Reports.** Listed companies must file corporate governance reports which provide investors with information on corporate governance in a comparable format. The reports must contain information on the following matters:
    - their basic views on corporate governance, capital structure, corporate attributes, and other basic information;
    - business management organisation and other corporate governance systems regarding decision-making, execution of business, and managerial oversight;
    - implementation of measures for shareholders and other stakeholders, including revitalization of shareholders' general meetings and investor relations activities;
    - matters related to the internal control system; and
    - others (including the adoption of anti-takeover measures and other matters concerning the corporate governance system**)**.

    (*TSE, Security Listing Regulations*.)

In addition, listed companies are required to provide explanations for any non-compliance with the Principles of Japan's Corporate Governance Code in corporate governance reports.

Secrecy

8. Are there any rules on maintaining secrecy until the bid is made?

There are no rules on maintaining secrecy until the bid is made. However, in recommended bids, the parties often conclude confidential agreements mutually obliging them to keep matters confidential.

Agreements with Shareholders

9. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

Bidders often obtain a memorandum of understanding or an undertaking from key shareholders to sell their shares (or to apply for a tender offer).

A listed company must disclose certain matters when an "organ of administrative decision", including a board, decides to make a tender offer or makes another important decision about, for example, its management, operations, or assets (*Stock Exchange Rules*). Accordingly, a bidder or target may be required to disclose that it has entered into a memorandum of understanding and/or certain elements of the agreement (*see Question 14*).

In addition, under certain conditions, the bidder must disclose an agreement with the key shareholders as an important agreement concluded regarding the shares in the tender offer notification (*see Question 14*).

Stakebuilding

10. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives) before announcing the bid, what disclosure requirements, restrictions or timetables apply?

Disclosure Requirements

A holder of more than 5% of the voting shares (including a holder of options to obtain a shareholding larger than 5%) issued by a listed company (including an OTC company) (large shareholder) must make the following disclosures:

- File a large shareholding report within five business days of the day on which it became a large shareholder (*Article 27-23, FIEL*).
- Send, without delay, a copy of the report to the company that issued the shares and the stock exchange or securities dealers' association (*Article 27-27, FIEL*).

- File an amendment report within five business days of the day on which its shareholding has increased or decreased by 1% or more after becoming a large shareholder (*Article 27-25, FIEL*).

The number of shares held by the bidder and joint shareholders are aggregated to calculate this shareholding for filing a large shareholding report and an amendment report (*Article 27-23.4 to 6, FIEL*). An entity is a joint shareholder if either of the following criteria applies:

- It has agreed with the bidder that purchases the shares to jointly acquire or transfer those shares or to jointly exercise voting rights or other rights.
- It is in a relationship of share ownership, kinship, or other special relationship with the bidder that purchases the shares, as set out in a Cabinet order.

Regulations

Shareholders with 3% or more of the voting rights or issued shares can demand to inspect or copy the accounting books and materials (*Article 433, Companies Act*). These shareholders are classed as corporate insiders.

If a corporate insider becomes aware of a material fact about a listed company when exercising its inspection rights, the corporate insider cannot purchase, sell, assign, or acquire for value any security of the listed company, until the material fact has been made public (*Article 166.1(2), FIEL*).

In addition, if the shareholder is a major shareholder (holding 10% or more of the voting rights) of a listed company, the following rules apply:

- If a major shareholder purchases or sells the securities of a listed company, it must file a report of this with the Prime Minister no later than the fifteenth day of the month after the purchase or sale (*Article 163.1, FIEL*).
- A listed company can demand a major shareholder surrender to it any profit that the major shareholder has made on its own account by selling, within six months of purchase, a security of the listed company (or by purchasing a security within six months of sale) (*Article 164.1, FIEL*).
- A major shareholder cannot execute a short sale of shares exceeding the amount of shares it owns (*Article 165, FIEL*).

There are two important insider trading regulations that have a significant influence on M&A practice in Japan:

- If the target's officers or employees come to know relevant facts concerning a tender offer, they become a "person concerned with tender offeror" (*koukai-kaitsukesha-tou-kankeisha*) to whom insider trading regulations apply. In addition, people who receive insider information from those officers or employees are also subject to insider trading regulations (*Article 167.1 (5), FIEL*).
- If an entity which makes a decision to launch a tender offer tells another entity information or facts concerning this launch before publication of the offer, the latter is not be subject to insider trading regulations and can launch a tender offer in the following two cases:
    - when the latter publicises certain information or facts (including the name of the former, and when the latter received the information or facts from the former) concerning the former's launch of a tender

offer by a Public Notice for Commencing Tender Offer and Tender Offer Notification (*Article 167.5(8), FIEL*); or

- six months after the latter receives the information or facts from the former (*Article 167.5 (9), FIEL*).

Agreements in Recommended Bids

11. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

Traditionally, it was not common to have a formal agreement between the bidder and target. This may have been because all agreements between the bidder and target must be disclosed in the tender offer notification (*Article 12 and Form No. 2, Cabinet Office Regulation Concerning Disclosure in a Tender Offer by Entities Other Than the Issuer*) (*see Question 14*).

However, the number of cases in which the bidder and target have a formal agreement has increased. In those cases, the main issues that are likely to be covered in the agreement include the following:

- The target's obligation to express its affirmative opinion regarding the tender offer and not to solicit or recommend other offers.
- The break fees.
- The fiduciary-out provision (*see below*).
- Rules governing operations after the tender offer has been completed, including the selection of the target's board members, the target's dividend policy, and the relationship between the bidder and the target.

The target must, under Cabinet Office regulations, file with the Prime Minister a document stating its position on the tender offer and other matters required by Cabinet Office regulations (Position Statement) within ten business days of the date of the public notice of commencement of tender offer (*Article 27-10.1, FIEL*) (*see Question 14*). As a result, the agreement between the bidder and the target can include provisions obliging the target to express its affirmative opinion regarding the tender offer.

The target company's directors must perform their duties with the care of a good manager and owe a duty of loyalty to the company (*Articles 330 and 355, Companies Act and Article 644, Civil Law*). The board can agree not to solicit or recommend other offers if this is in compliance with its duties. Therefore, if the target makes an agreement with the bidder, it is advisable for the target's directors to establish fiduciary-out provisions in the agreement that allow the target to be released from that agreement if a third party makes a better offer.

Break Fees

12. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful?

It is not common for the target or the bidder to agree to pay a break fee if the bid is not successful. One reason for this is that the target and the bidder cannot control whether a bid succeeds.

However, there has been an increase in the number of cases in which the target agrees with the bidder that it will express its affirmative opinion about the offer and will not solicit or recommend other offers (*see Question 11*). The agreement can provide that if the target breaches this requirement, it must pay a break fee.

Committed Funding

13. Is committed funding required before announcing an offer?

Committed funding is required before announcing an offer subject to the following requirements:

- A bidder must disclose information about funding, including the method of funding, in the tender offer notification (*Article 12 and Form No. 2, Cabinet Office Regulations Concerning Disclosure in a Tender Offer by Entities Other Than the Issuer*) (*see Question 14*).
- A bidder must also file a document indicating that it has the necessary funds in relation to the offer (for example, its bank balance). This must be attached to the tender offer notification (*Article 13.1(7), Cabinet Office Regulations Concerning Disclosure in a Tender Offer by Entities Other Than the Issuer*).

In addition, it is a common practice to consult with the Local Finance Bureau on an informal basis several weeks prior to the announcement of a tender offer, and both the method of funding and the sufficiency of funds for the acquisition are examined during this consultation.

The target's board of directors and the special committee (if any) will take the method of funding into consideration when expressing their opinions on the tender offer.

Announcing and Making the Offer

Making the Bid Public

14. How (and when) is a bid made public? Is the timetable altered if there is a competing bid?

Public Notice of Commencement of Tender Offer

If the bidder making a tender offer is a listed company, it must disclose the following immediately after the board or other decision-making body decides to make the offer:

- Purpose of the purchase.
- Description of the target.
- Tender offer period.
- Purchase price.
- Grounds for calculating the purchase price.
- Number of shares to be purchased.
- Any other matters required by the Security Listing Regulations.
- Public Notice of Commencement of Tender Offer

(*TSE Regulations, Article 402(1)x, Security Listing Regulations* and *Part 2, Chapter 1, section 12, Timely Disclosure Guidebook*.)

If a bidder must purchase shares through a tender offer because they have exceeded a certain ownership threshold (*see Question 6, Regulation of Public Takeovers*), it must serve a public notice containing information on the following:

- Purpose of the tender offer.
- Purchase price.
- Number of shares to be purchased.
- Tender offer period.
- Any other matters required by Cabinet Office regulations.

(*Article 27-3.1, FIEL* and *Article 9-3, Cabinet Order for Enforcement of FIEL* (COEF).)

As a general rule, a bidder cannot, after it has served a public notice of commencement of tender offer, withdraw the offer or cancel the offer. However, shareholders who accept the offer can cancel a contract entered into in connection with that offer at any time during the offer period (*Articles 27-11.1 and 27-12.1, FIEL*).

Filing of Tender Offer Notification

On the same day as the bidder serves the public notice (*see above, Public Notice of Commencement of Tender Offer*), Cabinet Office regulations require that it file with the Prime Minister a notification of tender offer, setting out:

- The offer conditions (including the grounds for calculating the purchase price).
- Information about funding, including the method of funding, and a document indicating that it has the necessary funds to fulfil the offer (*see Question 13*).
- The contents of any agreement in which the bidder, after issuing a public notice of commencement of tender offer, agrees to purchase the target's shares by a method other than the tender offer.
- The purpose of the offer. (If de-listing is contemplated, it must also disclose this possibility and the reasons for it.)
- Any other matters required by Cabinet Office regulations.

It must also attach all documents required by Cabinet Office regulations (*Article 27-3.2, FIEL*).

A bidder must, immediately after filing a tender offer notification, send a copy of that notification to the target company and a stock exchange or securities dealers' association (*Article 27-3.4, FIEL*). A tender offer notification is made public at the Local Finance Bureau and a stock exchange or securities dealers' association (*Article 27-14, FIEL*).

In addition, it is a common practice to consult with the Local Finance Bureau on an informal basis to request that a tender offer notification be reviewed several weeks prior to the announcement of the tender offer. Therefore, typically, a draft of the tender offer notification is prepared by that time.

Preparing and Delivering a Tender Offer Statement

A public bidder must prepare a tender offer statement covering matters required in a tender offer notification (*see above, Filing of Tender Offer Notification*), and other matters prescribed by Cabinet Office regulations (*see Question 16*). Cabinet Office regulations require that a public bidder deliver a tender offer statement to any person who intends to sell shares (*Article 27-9, FIEL*).

Tender Offer Period

The bidder must determine the period in which the shareholders' acceptances are to be filed. This must be between 20 and 60 business days from the issue of the public notice of commencement of tender offer (*see above, Public Notice of Commencement of Tender Offer*) (*Article 27-2.2, FIEL* and *Article 8. 1, COEF*).

As a general rule, during the offer period, a public bidder cannot purchase target shares other than by the tender offer (*Article 27-5, FIEL*).

If a competing bid is made during the offer period, the tender offer period can be extended until the final day of the competing tender offer period (*Article 13.2 (2), COEF*). If the original tender offer's offer period (as stated in the

public notice of commencement of tender offer) is less than 30 business days, the target can require that the tender offer period be extended to 30 business days (*Article 27-10.3, FIEL* and *Article 9-3. 6, COEF*).

Target's Position Statement

The target must file its Position Statement with the Prime Minister (*see Question 11*) within ten business days from the date of the public notice of commencement of tender offer *(Article 27-10.1, FIEL* and *Article 13-2.1, COEF*).

The target can pose questions to the bidder in the Position Statement. If it does so, the bidder must file with the Prime Minister a document setting out its response to the questions, and other matters required by Cabinet Office regulations. The answers (and other information) must be filed within five business days of receiving the Position Statement (*Articles 27-10.2 and 11, FIEL* and *Article 13-2.2, COEF*).

Public Notice of Effects of a Tender Offer

On the day after the last day of the offer period, the bidder must serve a public notice or make a public announcement regarding the number of shares applied for in the tender offer, and other matters prescribed by Cabinet Office regulations (*Article 27-13.1, FIEL*).

In addition, on the date of the public notice or public announcement, the bidder must file with the Prime Minister a document reporting the content of this public notice or public announcement, and other matters prescribed by Cabinet Office regulations (*Article 27-13.2, FIEL*).

Delivery and Other Procedures for Settlement of the Purchase

A notice containing the matters set out in Cabinet Office regulations, including the number of shares to be acquired by the bidder, must be sent without delay to an accepting shareholder after the offer period ends.

In addition, delivery, settlement, and other procedures must be carried out without delay after the tender offer period ends (*Article 27-2.5, FIEL* and *Article 8.5, COEF*).

These procedures and timetables apply regardless of whether a bid is recommended or hostile.

Offer Conditions

> 15. What conditions are usually attached to a takeover offer? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

A bidder must offer the same terms and conditions to all shareholders (uniform price and proportional distribution) (*Article 27-2.3, FIEL*). The following conditions are usually attached to a takeover offer:

- The bidder will not purchase:
    - any of the shares tendered by the shareholders if the number of shares for sale is smaller than the number it originally planned to purchase (*Article 27-13.4, FIEL*); or
    - part or any of the tendered shares exceeding the number of shares it originally planned to purchase (*Article 27-13.4, FIEL*). (However, if the bidder's total holding ratio of share certificates increases to two-thirds or more after the purchase, the bidder must make a mandatory offer for all shares (*see Question 18*).)

- A tender offer can be withdrawn if an important change takes place in the business or to the property of the target, or if another event seriously hinders the execution of the offer. This only applies in situations set out in a Cabinet order, including where:
    - the target's decision-making body decides to carry out certain actions, including petitioning for bankruptcy, civil rehabilitation, corporate reorganisation, or imposing or sustaining certain defence measures against hostile bids;
    - a situation arises in relation to the target, including the filing of a petition to suspend its business; or
    - a necessary permission from a government body is not obtained before the last day of the offer period, or where bankruptcy or other changes set out in a Cabinet order take place in relation to the bidder.

    (*Article 27-11.1, FIEL and Article 14, COEF.*)

The pre-conditions that may be attached to the tender offer are limited to the above.

As a general rule, the bidder cannot make changes to the offer conditions that are disadvantageous to shareholders that have accepted the offer. However, the bidder can reduce the purchase price, within certain limitations, where the target splits shares or makes a free issue of shares or share warrants, on the condition that this is clearly stated in advance in both the public notice of commencement of tender offer and the tender offer notification (*Article 27-6.1, FIEL* and *Article 13.1, COEF*) (*see Question 14, Public Notice of Commencement of Tender Offer and Filing of Tender Offer Notification*). This is allowed as, in these cases, the value of the shares falls and if a reduction of the purchase price was not permitted the bidder would suffer unexpected and unreasonable damages.

Bid Documents

16. What documents do the target's shareholders receive on a recommended and hostile bid?

A bidder must provide a tender offer statement to shareholders who intend to accept a tender offer and sell their shares (*Article 27-9, FIEL*) (*see Question 14, Preparing and Delivering a Tender Offer Statement*).

A tender offer statement should provide sufficient information to protect investors and ensure the credibility of the securities market. A tender offer statement is based on information contained in the tender offer notification and is a means of direct disclosure.

The following are the main items required in a tender offer statement:

- The tender offer notification, excluding the name of any financial institution from which the public bidder is borrowing money.
- A statement that the offer is subject to Chapter 2-2, Section 1 of the FIEL.
- A statement that the tender offer statement has been made according to Article 27-9 of the FIEL (*Article 24, Cabinet Office Regulation concerning Disclosure in a Tender Offer by Entities other than the Issuer*).

If a tender offer statement contains a material misstatement or is not delivered, the bidder will be subject to a penalty (*Articles 197-2(8) and 200(9), FIEL*).

Employee Consultation

17. Are there any requirements for a target's board to inform or consult its employees about the offer?

There are no legal requirements for a target's board to inform or consult its employees about the offer.

Mandatory Offers

18. Is there a requirement to make a mandatory offer?

If a party intends to purchase shares of a public company, this must be done by a tender offer in certain cases (*Article 27-2.1, FIEL*) (*see Question 6*).

In addition, if, after the purchase, the total holding ratio of share certificates increases to two-thirds or more, the bidder must make a mandatory offer for all shares (all types of voting shares) in the target and must purchase all shares for which the bidder receives an acceptance (*Article 27-13.4, FIEL* and *Article 14-2-2 and 8.5(3), COEF*).

Consideration

19. What form of consideration is commonly offered on a public takeover?

Generally, only cash is offered as consideration in a public takeover.

Legally, there are no special regulations concerning the form consideration must take, so shares (including a bidder's own shares) can be used. However, there have been no tender offers in which shares have been used as consideration. The main reason for this is probably that shareholders cannot benefit from tax credits in a tender offer (unlike, for example, in a stock-for-stock exchange).

If a bidder uses its own shares as consideration, continuous disclosure by the bidder is required under the FIEL. Foreign companies experience difficulty with the time and cost of continuous disclosure in Japanese, although continuous disclosure in English has, since 2005, begun to be allowed under certain conditions (*Article 24.8 and 24-5.7, FIEL*).

If the bidder is a Japanese company, regulations apply concerning the making of an in-kind capital contribution (*Article 207, Companies Act*) and the issue of new shares to non-shareholders at a favourable issue price (*Articles 199.3 and 201.1, Companies Act*). Therefore, it is difficult for Japanese companies to use their own shares as consideration in takeover bids.

In a takeover of a listed company by share delivery (*kabushiki kofu*), a tender offer should be made. However, foreign companies are not permitted to use this method (*see Question 4*).

20. Are there any regulations that provide for a minimum level of consideration?

There are no regulations that provide for a minimum level of consideration.

21. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders?

There are no additional restrictions on, or requirements for, the consideration that a foreign bidder may offer to shareholders.

Post-Bid

Compulsory Purchase of Minority Shareholdings

22. Can a bidder compulsorily purchase the shares of remaining minority shareholders?

In mergers and stock-for-stock exchanges, an absorbing company or a company that will be a 100% parent company after the stock-for-stock exchange can use not only its shares but also any other kind of asset (including money) as consideration for shares of the absorbed company or the company that will be a wholly-owned subsidiary after the stock-for-stock exchange or merger (*Articles 749.1(2) and 768.1(2), Companies Act*).

A bidder can therefore obtain the shares of the remaining minority shareholders by using a merger or stock-for-stock exchange. In this case, the absorbed company or the company that will be a wholly owned subsidiary after the stock-for-stock exchange must publish in advance a document addressing the suitability of the consideration offered (*Article 782.1, Companies Act* and *Articles 182.1(1) and 184.1(1), Enforcement Regulation of Companies Act*).

In addition, a bidder can obtain the shares of the remaining minority shareholders using any of the following methods:

- Shares subject to wholly call (*zenbu-shutoku-joukoutsuki-kabushiki*).
- Consolidation of shares (*kabushiki-heigou*).
- Special controlling shareholders' right to demand the sale of shares (*kabushikitou-uriwatashi-seikyu*).

Restrictions on New Offers

23. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

There are no restrictions on a bidder launching a new offer or buying shares in the target if it fails to obtain control of the target through a tender offer.

De-Listing

24. What action is required to de-list a company?

On the TSE, companies may be de-listed if any of the following occurs in connection with an M&A transaction:

- The number of shareholders falls below 400 as of the last day of a fiscal year and does not return to that number within one year.
- The number of units of the negotiable shares falls below 2,000 as of the last day of a fiscal year and does not return to that number within one year (shares owned by any of the following are not negotiable: shareholders with a 10% or more shareholding ratio, officers of the issuing company, or the issuing company itself).
- The total market value of the negotiable shares falls below JPY500 million as of the last day of any fiscal year and does not return to that number within one year.
- The ratio of the negotiable shares divided by the number of all listed shares falls below 5% as of the last day of a fiscal year, and the company does not submit a scheduled plan of tender offering, secondary offering, or distribution.
- The company becomes a wholly owned subsidiary of another company through a stock-for-stock exchange or share transfer.
- The company issues new shares at a ratio of over 300% of the issued shares, or the company changes its controlling shareholder by the issue of shares, although there are exceptions in each case.

(*Article 601, Security Listing Regulations*.)

A stock-for-stock exchange or stock transfer can be used to de-list a company. If these methods cannot be used, the company can decrease the number of shareholders or increase the shareholding of the majority shareholders by purchasing its own shares to satisfy the above requirements.

Target's Response

25. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

Pre-Bid

A target's board can take the following defensive actions, depending on the situation:

- Introduce a rights plan using share warrants (with discriminatory conditions under which only certain shareholders can execute the warrant). This defence can be made by a resolution at a shareholders' meeting or a board meeting. In addition, it can be structured so that:
    - the company simply provides advance notification of the possibility of using this defence and, after a bid is made, the company allots the warrants to its shareholders; or
    - the company issues warrants to a trust bank (or special purpose company that entrusts the warrants to a trust bank), and the warrants are managed in a trust account.

- After a bid is made, the company can provide the warrants to shareholders (the trust bank distributes the warrants to shareholders). It is possible to issue warrants allowing the issuing company to compulsorily exchange the warrants for shares without the warrant-holders' consent. In this way, the issuing company can defend against hostile bids rapidly and without the execution of warrants by warrant-holders (*Article 236.1(7), Companies Act*).
- Issue a class of shares with, in effect, powers of prevention. That is a resolution of a shareholders' meeting of the holders of this class of shares is required to approve a merger, election, or removal of directors (*Article 108.1(8), Companies Act*), or issuing shares with multiple voting rights to an amicable third party in advance (*Article 108.1(3), Companies Act*).
- Amend the articles of incorporation so that the company can impose restrictions on the shareholders' meeting's approval of a merger or the removal of directors (limited to cases where the directors are elected under Articles 342.3 to 342.5 of the Companies Act). In particular, the company can require approval of over two-thirds of the attending holders of voting shares (the default requirement is approval of at least two-thirds of these shareholders) (*Article 309.2 (7), Companies Act*).

In practice, listed companies cannot use defensive measures if the TSE believes that they unreasonably restrict the rights of shareholders or the exercise of these rights (*Article 601.1 (17), Security Listing Regulations of the TSE*). The company will be de-listed if it introduces this kind of measure. The types of defensive measures that are effectively prohibited for listed companies include:

- Introduction of a rights plan, where the execution price of the share warrants is much lower than the market price and is given to shareholders as of the date of the introduction.
- Introduction of a rights plan that the company cannot abolish and must execute even if a change in over half of the directors of the company has been resolved.
- A resolution or determination to issue a class of shares with, in effect, powers of prevention (that is, a resolution of a shareholders' meeting of the holders of this class of shares is required) on important matters including the election or removal of over half of the directors.

Post-Bid

The following measures are considered defence measures but almost all of them have legal concerns and their effects are limited:

- **A Significant Increase in Dividends.** This decreases a bidder's incentive to obtain control of the target by removing liquid assets.
- **A Reduction of Capital or Fund Reserves with Compensation.** This has a similar effect as a significant increase in dividends.
- **Issuing New Shares to an Amicable Third Party.** This aims to increase the funds required to obtain control of the target by increasing the number of shares issued. A company issues new share warrants to all shareholders with discriminatory conditions, so a hostile bidder cannot execute the warrant (among other things). A similar tactic (with non-mandatory shareholders' approval) was used by Bull-Dog Sauce to defeat Steel Partners Japan Strategic Fund's bid in 2007.
- **Merger.** This increases the funds required to obtain control of the target by increasing the number of shares issued.
- **Forming a Joint Holding Company with an Amicable Company by Stock Transfer, or Acquiring an Amicable Company by Stock-for-Stock Exchange.** This increases the funds required to obtain control of the target (or its successor company), by increasing the number of shares issued.

In past decisions the Supreme Court of Japan has generally respected the judgment of the shareholders' meeting concerning the use of defensive measures used against hostile bids.

Tax

26. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in the jurisdiction? Can payment of transfer duties be avoided?

Transfer tax is not payable on the sale of the shares of a company incorporated in Japan. However, income tax or corporate tax and local tax calculated on capital gain (sale price minus acquisition cost) are imposed on the seller.

Other Regulatory Restrictions

27. Are any other regulatory approvals required, such as in relation to merger control, foreign ownership or specific industries? If so, what is the effect of obtaining these approvals on the public offer timetable?

Merger Control

Mergers, company splits, joint share transfers, business acquisitions, and share acquisitions that will substantially restrain competition in a particular market are prohibited under the Anti-Monopoly Act (AMA). The AMA is enforced by the Japan Fair Trade Commission (JFTC). If mergers, company splits, joint share transfers, business acquisitions, or share acquisitions are assessed as restraining competition, the JFTC can order the entity concerned to dispose of all or part of its stock, to transfer a part of its business, or to take any other measures necessary to remedy the situation (*Article 17-2, AMA*).

Where mergers, company splits, joint share transfers, and business acquisitions meet certain thresholds, the parties concerned must file a pre-merger notification or a pre-acquisition notification with the JFTC, and the parties cannot complete the transaction until 30 days have passed from the date that the JFTC accepted the notification (*Articles 15, 15-2, 15-3, and 16, AMA*). Under the AMA, this also applies to share acquisitions that meet certain thresholds (*Article 10, AMA*). This applies not only to share purchase transactions (including tender offers), but also to the issuance of shares for subscription and stock-for-stock exchange transactions.

In a tender offer, if the 30-day waiting period has not ended by the last day of the tender offer period, the tender offer can be withdrawn, on the condition that this withdrawal is expressly provided for in the public notice of commencement of a tender offer and the tender offer notification (*see Question 15*). However, the FSA has announced that the bidder must arrange for the waiting period to end by the last day of the tender offer period when it determines any of the following:

- Start date of the tender offer.
- Filing date of the pre-acquisition notification.
- Period of the tender offer.

There have been an increasing number of cases where it is likely that competition law clearances in each country will take a long time. As a result, the bidder and target announce that they will make a tender offer if they obtain clearance under all applicable competition laws, and launch the tender offer once they have obtained clearance. Therefore, competition law is a significant factor when considering the time schedule.

Foreign Ownership

Approvals for Listed Companies in Regulated Industries. If a foreign company intends to obtain 1% or more of the shares in a listed company operating in certain regulated industries, it must give prior notification to the Minister of Finance and the minister in charge of the relevant industry (*Articles 26.2(3) and 27, Foreign Exchange and Foreign Trade Law*). These industries include aircraft, weapons, atomic energy, and space development. In 2019, the scope of regulated industries was expanded to include:

- Manufacturing devices and components related to information processing.
- Producing software related to information processing.
- Telecommunications services.

Where prior notification is necessary, the foreign company generally cannot invest until 30 days after the date on which the notification was received (this can be extended to up to five months by the relevant ministers). The Minister of Finance and the minister in charge of the relevant industry can recommend that the foreign company

alter the scope of the investment or suspend it on national security grounds (*Article 27, Foreign Exchange and Foreign Trade Law and Article 3, Cabinet Order Concerning Direct Inward Investment*).

If the target company has business activities in the regulated industries, it is sometimes more efficient to conduct informal consultations with the authorities in advance.

Where prior notification is unnecessary, if a foreign company intends to obtain 10% or more of the shares in a listed company, it must notify the Minister of Finance and the minister in charge of the relevant industry (with several exceptions) by the fifteenth of the month following the month in which the acquisition took place.

Approvals in the Banking and Insurance Sectors. An entity that intends to hold more than a certain percentage (generally 20%) of the voting rights in a bank must obtain the approval of the Commissioner of the FSA (*Articles 2.9, 52-9.1, and 59.1, Banking Law).*

Approval must be obtained by, at the latest, settlement of the purchase. If the entity concerned does not do this, it is subject to administrative fines (*Article 65(14), Banking Law*).

It takes at least one month from the application date to obtain approval (or at least two months for certain banks designated by the Commissioner of the FSA) (*Article 40, Enforcement Regulations of the Banking Law*). For practical reasons, the entity should take the following steps:

- Consult with the FSA before issuing the public notice of commencement of tender offer (*see Question 14, Public Notice of Commencement of Tender Offer*).
- Apply for approval in the early stages of the transaction.

Similar regulations apply to insurance companies (*Article 271-10.1, Insurance Business Law).*

Foreign Ownership Thresholds in Designated Industries. Other significant restrictions on the foreign ownership of shares of companies operating in designated industries are as follows:

- In relation to the Nippon Telegraph and Telephone Corporation (NTT) broadcasting companies and air transport companies, there are specific regulations governing the ownership of shares by foreign entities. The NTT Law provides that foreign entities cannot hold one-third or more of the voting rights in the NTT (*Article 6, Nippon Telegraph and Telephone Corporation Law).*
- Under the Radio Law, a radio station licence (which is necessary for broadcasting) cannot be granted to a company where foreign entities hold one-fifth or more of the voting rights. Accordingly, a broadcasting company can refuse to register shares held by foreign entities in these circumstances (*Article 116, Broadcast Law*).
- Under the Aviation Law, approval of the Minister of the Land, Infrastructure, Transport, and Tourism Ministry (which is necessary to conduct air transport business) cannot be granted to a company where foreign entities hold one-third or more of the voting rights (*Articles 4.1(4) and 101, Aviation Law*). Accordingly, an air transport company can refuse to register shares held by foreign entities in these circumstances (*Article 120-2, Aviation Law*).

Other Approvals

On 28 June 2019, the Ministry of Economy, Trade, and Industry issued the new Fair M&A Guidelines (the original guidelines were Guidelines for Management Buyouts (MBO) formulated on 4 September 2007). The guidelines mainly focus on management buyouts and acquisitions of controlled companies by controlling shareholders, and set out best practice procedures for achieving fair M&A in Japan. The guidelines include both:

- Specific, practical, and functional measures for ensuring that M&A is conducted using fair procedures.
- The typical measures that are generally considered to be highly effective in achieving fair M&A, for example, establishing an independent special committee.

The guidelines do not carry the force of law, but have a strong influence on M&A practices in Japan. In particular, special committees are commonly organised in tender offers involving a squeeze-out. The arrangement and terms are rigorously reviewed by the special committee and comprehensively negotiated with the target company and/or the special committee. Normally, if the special committee does not agree to the transaction, it will not be endorsed by the board of directors as the Fair M&A Guidelines recommend. Therefore, from the acquirer's perspective, it is essential to convince the special committee of the fairness of the transaction. The process generally takes approximately one to two months, while some complicated cases take longer.

Blocked Transactions

A recommendation to discontinue an investment, based on the Foreign Exchange and Foreign Trade Law has been issued only once in relation to the investment of TCI, a British investment fund, in J-Power Corp, which owned nuclear power plants.

28. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies?

If there is a repatriation of profits exceeding JPY30 million, a report on payment or receipt of payment must be submitted after the event (*Article 55, Foreign Exchange and Foreign Trade Law, Article 18-4.1, Cabinet Order concerning Foreign Exchange and Foreign Trade and Article 1, Ministerial Order concerning Report of Foreign Exchange and Foreign Trade*).

The department to which the report must be submitted and the relevant time limits, vary depending on factors including the method of payment. It is therefore advisable for an entity to consult with the Bank of Japan on a case-by-case basis.

29. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

During a tender offer period, a bidder generally cannot purchase target shares by means other than a tender offer (*Article 27-5, FIEL*) (*see Question 14, Tender Offer Period*).

If, during the period in which another party's tender offer is made, a party who holds more than one-third of the total voting rights before the purchase intends to purchase over 5% of the voting shares, it must do so through a tender offer (*see Question 6, Regulation of Public Takeovers*).

Future Developments

30. What do you think will be the main factors affecting the public M&A market over the next 12 months, and how do you expect the market to develop?

In 2020, due to the global COVID-19 pandemic, the number of public M&A transactions involving Japanese companies declined, particularly cross-border transactions. However, current global economic and financial trends, combined with newly adopted remote M&A practices (for example, conducting due diligence through web systems), has accelerated M&A transactions. In particular, the recent increasing trend in going-private transactions, for example management buyouts and the dissolution of a relationship between a listed parent and a listed subsidiary, and hostile takeovers is likely to continue. In addition, with the potential use of the share delivery system, there is likely to be an increase in stock deals (*see Question 4, Merger, Stock-for-Stock Exchange, and Share Delivery*).

Reform

31. Are there any proposals for the reform of takeover regulation in your jurisdiction?

Revisions of Japan's Corporate Governance Code and Guidelines for Investor and Company Engagement

Japan's Corporate Governance Code (Code) was compiled in 2015 and revised in 2018, and a new revised draft was published in April 2021.

The important points of the proposed revisions to the Code and guidelines for M&A transactions enhance board independence and are as follows.

- Prime Market listed companies must increase the number of independent directors from at least two to at least one-third of the board. In addition, Prime Market listed companies must appoint a number of independent directors which is sufficient to allow them to form a majority of a nomination committee and/or remuneration committee.
- Prime Market subsidiaries must appoint a number of independent directors which is sufficient to allow them to form a majority of the board or establish an independent special committee to address conflicts of interest between their parent company and minority shareholders.

Revisions of TSE Market Segments

The TSE will revise its current market structure in April 2022, abolishing the current market segments, for example the 1st Section, and reorganising into three new market segments: Prime Market, Standard Market, and Growth Market. A revision of stock indexes based on the current market classifications will also take place and is expected to have an impact on the Japanese stock market.

Contributor Profiles

Takefumi Sato

Nishimura & Asahi
T +81 3 6250 6283
F +81 3 6250 7200
E *t.sato@nishimura.com*
W *www.nishimura.com/en*

Professional Qualifications. Japan, 1995; New York, US, 2003

Areas of Practice. General corporate; M&A; compliance; corporate crisis management.

Recent Transactions

- Represented XTech Corporation on the TOB procedures for purposes of acquiring all of the issued shares in Excite Japan Co.
- Represented Topy Industries on the acquisition of all of the issued shares in ATC Holdings Co.
- Represented Kuraray Co on the establishment of a joint venture manufacturing company in Thailand with PTT Global Chemical Public Company and Sumitomo Corporation.

- Represented Technical Electron Co in connection with the TOB and subsequent cash-out procedures conducted by Daiwa Lease Co for purposes of acquiring all of the issued shares of Technical Electron Co.
- Represented Mitsubishi Materials Corporation on its sale of Hitachi Metals MMC Superalloy shares to Hitachi Metals.
- Represented Mizuho Securities Co on its sale of Mitsui Securities Co shares to Securities Japan Inc.
- Represented WOWOW Inc. on its establishment of a Video distribution service company with Tokyo Broadcasting System Holdings Inc, Nikkei Inc, TV Tokyo Holdings Corporation, Dentsu Inc and Hakuhodo DY Media Partners Inc.
- Represented Mitsubishi UFJ NICOS Co on its share exchange agreement with Mitsubishi UFJ Financial Group Inc under which MUN will become a 100% owned subsidiary of MUFG. The transaction is a part of strategic alliance among MUFG, The Norinchukin Bank and MUN.
- Represented TACHI-S Co on its acquisition of the seat business of Fuji Kiko Co and its sale of Fuji Kiko's shares to JTEKT Corporation through TOB.
- Represented Nippon Telegraph and Telephone Corporation on its sale of shares and business transfer of its six human resource service companies to Pasona Inc.
- Represented WOWOW Inc. on its acquisition of IMAJICA TV shares from Imagica Robot Holdings Inc.
- Represented Toyo Seikan Co on the establishment of a joint venture in Myanmar with Loi Hein Co.
- Represented Tokan Kogyo Co on the establishment of a joint venture in Taiwan with Yong Ji Xing Enterprise Co and Well Dragon Co.
- Represented KAPPA Create Holdings on the transaction where Colowide Co acquired a majority of the issued shares of KAPPA through TOB and KAPPA issued new shares to Colowide.
- Represented Mitsubishi UFJ NICOS Co on its acquisition of Paygent Co shares from The Bank of Tokyo-Mitsubishi UFJ and The Norinchukin Bank.

Akihisa Yamamoto

Nishimura & Asahi
T +81 3 6250 6631
F +81 3 6250 7200
E *a.yamamoto@nishimura.com*
W *www.nishimura.com/en*

Professional Qualifications. Japan, 2010

Areas of Practice. General corporate; M&A; corporate governance; labour law; compliance; corporate crisis management.

Recent Transactions

- Represented Nippon Telegraph and Telephone Corporation on its sale of shares and business transfer of its six human resource service companies to Pasona Inc.
- Represented the Higashi-Nippon Bank in its integration with the Bank of Yokohama.
- Represented Nidec Corporation in its acquisition of Honda Elesys Co (a subsidiary of Honda Motor Company).
- Represented Nidec Corporation in its sale of Nidec Logistics Corporation to Maruzen Showa Unyu Co.
- Representing Nidec Read Corporation in its acquisition of SV Probe Pte, a Singaporean company.
- Represented Toshiba Corporation in its sale of Toshiba Memory Corporation to K.K. Pangea.
- Represented Toshiba Corporation in its sale of Toshiba Medical Corporation to Canon Inc.
- Represented TACHI-S Co on its acquisition of the seat business of Fuji Kiko Co, and its sale of Fuji Kiko's shares to JTEKT Corporation through TOB.
- Represented Nichi-Iko Pharmaceutical Co in its acquisition of Sagent Pharmaceuticals Inc, a US listed company.
- Represented Mitsubishi Material Corporation in its sale of MMC Superalloy Corporation to Hitachi Metals.
- Represented Mitsubishi Material Corporation in its acquisition of 51% of Hitachi Tool Engineering from Hitachi Metals.
- Represented Mitsubishi UFJ NICOS Co on its acquisition of Paygent Co shares from The Bank of Tokyo-Mitsubishi UFJ and The Norinchukin Bank.
- Represented Mitsubishi UFJ NICOS Co on its transaction of being a wholly-owned subsidiary of Mitsubishi UFJ Financial Group, Inc. through Share Exchange.
- Represented Carlyle on a cash tender offer to acquire the common stock of Money Square Holdings Inc and cash squeeze-out.
- Represented Cerberus Capital Management LP on a cash tender offer through its affiliate to acquire the common stock of Seibu Holdings.
- Represented Yahoo Japan Corporation on a cash tender offer to acquire the common stock of Ikyu Corporation and cash squeeze-out.
- Represented Life Science Institute, in its acquisition of Clio, a start-up company for advanced medicine.
- Represented Rakuten General Insurance Co on a cash tender offer to acquire the common stock of Asahi Fire & Marine Insurance Co Limited and cash squeeze-out.

- Represented Rakuten in its acquisition of Fablic Inc, a start-up company for providing of C2C (customer-to-customer) marketplace app.
- Represented Rakuten in its acquisition of AIP Corporation, a start-up company for online research.
- Represented Rakuten in its acquisition of Voyagin Pte, a start-up company in Singapore for online travel service.
- Represented GMO Internet Inc in its acquisition of a part of Aozora Trust Bank's shares, and in making a joint venture with Aozora Bank.
- Represented GMO Internet Inc in its acquisition of NetDesign group, a start-up company in Thailand for domain-hosting business.
- Represented GMO Click Securities Inc capital and business tie-up with Daiwa Securities Group Inc.
- Represented KAPPA Create Holdings on the transaction where Colowide Co acquired a majority of the issued shares of KAPPA through TOB and KAPPA issued new shares to Colowide.

Takahisa Watanabe

Nishimura & Asahi
T +81 3 6250 6742
F +81 3 6250 7200
E *t.watanabe@nishimura.com*
W *www.nishimura.com/en*

Professional Qualifications. Japan, 2014

Areas of Practice. General corporate; M&A; corporate governance; labour law; compliance; corporate crisis management; entertainment.

Recent Transactions

- Represented the Higashi-Nippon Bank in its integration with the Bank of Yokohama.
- Represented TACHI-S Co on its acquisition of the seat business of Fuji Kiko Co and its sale of Fuji Kiko's shares to JTEKT Corporation through TOB.
- Represented Yahoo Japan Corporation on a cash tender offer to acquire the common stock of Ikyu Corporation and cash squeeze-out.
- Represented Rakuten in its acquisition of Fablic Inc, a start-up company for providing of C2C (customer-to-customer) marketplace app.
- Represented GMO Internet Inc in its acquisition of a part of Aozora Trust Bank's shares, and in making a joint venture with Aozora Bank.

- Represented FWD Group on its acquisition of all issued shares of AIG Fuji Life Insurance Company.
- Represented Toshiba Corporation in its sale of Toshiba Memory Corporation to K.K. Pangea.
- Represented Japan Display Inc in capital raising through share issue and sale of factory.
- Represented Hitachi Logistics in its capital and business alliance with AIT.
- Represented Panasonic in its establishment of a new company for its security business and strategic capital alliance with the Polaris Capital Group.
- Represented Japan Display Inc in its capital alliance with Ichigo Trust and refinancing of debt with INCJ.

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