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PUBLIC MERGERS AND ACQUISITIONS

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Public mergers and acquisitions in Japan: overview

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M&A ACTIVITY

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

In 2015, the number of M&A transactions in which Japanese companies were involved was reported to be about 2,990, the total value of which was about JPY22.4 trillion. The value of M&A transactions in which Japanese companies were involved approximately doubled in 2015 compared to 2014. The total value of in-out M&A transactions in which Japanese companies were involved was about JPY10.6 trillion, an all-time high in terms of monetary amounts.

In 2015, 45 large-scale deals, the value of which is more than JPY10 billion, were reported. The big deals announced or completed over the past year include the following:

- In May 2015, Japan Post Co Ltd completed an acquisition of all issued shares of Toll Holdings Limited for about AU$6.48 billion through a scheme of arrangement (JPY620 billion).
- In October 2015, Tokio Marine Holdings Inc completed an acquisition of all issued shares of HCC Insurance Holdings Inc for about US$7.5 billion through a reverse triangular merger (JPY940 billion).

2. 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 4*). This method does not require an agreement with the target, and therefore can be used for hostile bids. Foreign companies can also use this method.

The procedures required under the Companies Act for the transfer of the shares of a subsidiary were recently amended (*see Question 29*).

Merger and stock-for-stock exchange

These methods of obtaining control require an agreement with the target, and therefore are only used for recommended bids. In addition, where the acquiring company is the target company's controlling shareholder, as defined in the Security Listing Regulations, the target company 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 minority shareholders of the target company (*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.

Stock-for-stock exchange. Company A becomes an absolute 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. However, by using a triangular merger (in which a subsidiary absorbs and merges with the target, and provides shares of its parent company to shareholders of the absorbed target), a subsidiary of a foreign company in Japan is able to absorb a Japanese company by using its parent company's shares (*Articles 749.1(2) and 751.1(3), Companies Act*). In addition, a stock-for-stock exchange, in which the parent company's shares are used for consideration, is allowed (*Articles 768.1(2) and 770.1(3), Companies Act*).

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, namely that minority shareholders remain and 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 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, in the case where a listed company issues new shares comprising 25% or more of the issued 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 (*Article 432, Security Listing Regulations*):

- An opinion from a person independent from the company's management regarding the necessity and reasonableness of the issuance.
- The shareholders' confirmation of the decision on the issuance (for example, from a shareholders' meeting).

The procedures required under the Companies Act for certain types of issuances of new stock after which a company's controlling shareholder will change were recently amended (*see Question 29*).

Business transfer and company split. An acquiring company takes over part or parts of a business, composed of the target's integrated assets, employees, commercial rights and so on (*Articles 4-67 and 757, Companies Act*). A business transfer and

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company split are used when a company intends to selectively pick which assets and debts to acquire.

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

HOSTILE BIDS

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

Hostile bids are allowed. They can be made by a stock purchase. The number of hostile bid attempts is increasing, although almost all are unsuccessful.

Until 2000, hostile bids were not common, partly because of the deep-rooted cross-shareholding among Japanese companies and the resistance to hostile bids within Japanese society. However, after 2000, the number of hostile bids started to increase, mainly due to the dissolution of cross-shareholding, and a change in attitudes towards hostile bids or takeovers by foreign companies.

The following are recent examples of hostile bids:

- PGM Holdings KK bid for Accordia Golf Co, Ltd in 2013 which failed due to the opposition of the target's board.
- Investment Limited Partnership DRCKJ and Investment Limited Partnership DRCII bid for KOJITU in 2011 which succeeded despite the opposition of the target's board.
- Steel Partners Japan Strategic Fund's bid for Bull-Dog Sauce in 2007, which failed due to defensive measures taken by the target (with shareholders' approval).

REGULATION AND REGULATORY BODIES

4. 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 the stock exchange market (including the OTC security market) and, after the purchase, the aggregate voting rights held by a 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 the stock exchange market (including the OTC market), 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 Tokyo Stock Exchange (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 the 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 (*see box, The regulatory authority*).

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 (*Articles 921 and 922, Companies Act*).
- Disclosure of certain matters after the merger (*Articles 791 and 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 disclosure on 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 (*Article 24.1(3), FIEL*):

- It is made concerning shares of the target of the reorganisation.
- It is not made concerning shares that will be issued or delivered to shareholders of the target through the reorganisation.

PRE-BID

Due diligence

5. 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. It receives various information and documents as

agreed between the bidder and the target (for example, important contracts, board minutes, licences and approvals, and documents about contingent liabilities), and information and documents 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 (*Article 911.3, Companies Act*):

- The company's purpose.
- The trade name.
- The amount of stated capital.
- The total number of issued shares, and the classes and the number of them.
- The contents and number of each class of shares. If a transfer of shares requires the approval of the company, the Commercial Register also includes the provisions for the transfer from the articles of incorporation.
- The organisation of bodies of the company.
- The names of the directors.
- The way the company provides public notices and other information.

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*).
- 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 (*Article 24, FIEL*):

- An outline of the company, including changes in major business indices, the history of the company, structure of the business, status of related companies and status of employees.
- The condition of the business, including an outline of business results, production, orders and sales, problems to be resolved, risk factors and material contracts.
- The condition of the company's facilities, including an outline of business investments, the condition of principal facilities and plans for installation or removal.
- A description of the company, such as information about shares (including the total number of shares, changes in the number of issued shares and the capital, type of shareholders and major shareholders), dividend policy, directors and officers, and corporate governance.
- Accounting conditions.

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

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 with the Prime Minister, without delay, an extraordinary report if it intends to make a tender offering or secondary offering in a foreign country, or if required under Cabinet Office regulations (*Article 24-5.4, FIEL*). Cabinet Office regulations require such a report in the following cases:

- A change of the company's major shareholder.
- A disaster affecting the company.
- A determination on a stock-for-stock exchange, stock transfer, company split, merger, business transfer and so on.

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

Timely disclosure. Disclosure regulations of the stock exchange or a securities dealers' association 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 (*TSE, Security Listing Regulations*):

- Certain items determined by the company or its subsidiaries. This includes a reduction of capital, a stock-for-stock exchange, a stock transfer, a company split or merger, and a business transfer and dissolution.
- Certain 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.
- Account settlement by the company or its subsidiaries.

Secrecy

6. 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, obliging them to keep matters confidential.

Agreements with shareholders

7. 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 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 party may be required to disclose that it has entered into a memorandum of understanding and/or certain elements of the agreement (*see Question 12*).

In addition, under certain conditions, the bidder must disclose an agreement with key shareholders as an important agreement concluded regarding the shares in the tender offer notification (*see Question 12*).

Stakebuilding

8. 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 securities (issued by a listed company, including an OTC company) whose shareholding is larger than 5% (including a holder of options to obtain a shareholding larger than 5%) (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 fall into the category of a corporate insider.

If a corporate insider becomes aware of a material fact about the 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 a 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 certain issuers, it must file with the Prime Minister a report of this, 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 to surrender to it any profit that the major shareholder has made for its own account by selling, within six months of purchase, a security of the listed company (or by purchasing such 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*).

The insider trading regulations concerning tender offers were revised. There are two important issues that have an important influence on M&A practice in Japan.

- The applicable scope of insider trading regulations concerning Tender Offers have been broadened. If officers or employees of the target company 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, persons who receive insider information from such officers or employees of the target company are also subject to insider trading regulations (*Article 167.1.(5), FIEL*).
- The applicable scope of the exemption from insider trading regulations concerning Tender Offers have been broadened. Even if an entity which makes a decision to launch a tender offer tells another entity any information or facts concerning the launch of the tender offer before publication, the latter may not be subject to the insider trading regulations and could launch a tender offer in the following two cases:
  - when the latter publicises certain information or facts (such as the name of the former, 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; or
  - six months after the latter receives the information or facts from the former (*Article 167.5.(8), FIEL*).

Agreements in recommended bids

9. 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 the target. This may have been because all agreements between the bidder and the 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 12*).

Recently, however, the number of cases in which the bidder and the target have a formal agreement has begun to increase. 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 so-called fiduciary-out provision (*see below*).
- After the tender offer has been completed: rules including the rules of 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 12*).

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.

In this regard, directors of the target company 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, from the viewpoint of the target's directors it is advisable to establish "fiduciary out" provisions in the agreement that allow the target to obtain a release from that agreement if a third party makes a better offer for the target, as the target's directors would violate their duties of loyalty and care to the company if they did not recommend the third party's offer.

Break fees

10. 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 yet common on a recommended bid 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 or not a bid succeeds.

However, there has been an increase in the number of cases in which the target agrees with the bidder that the target will express its affirmative opinion regarding the tender offer and will not solicit or recommend other offers (*see Question 9*). The agreement can provide that if the target breaches this requirement, it must pay a break fee.

Committed funding

11. 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, such as 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 12*).
- A bidder must also file a document indicating that it has the necessary funds in relation to the offer (this includes its bank balance). This is 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*).

However, guarantees by financial institutions are not required, nor is the joint liability of financial advisers.

ANNOUNCING AND MAKING THE OFFER

Making the bid public

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

Timely disclosure based on stock exchange regulations

If the applicant 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 (*TSE regulations, Article 402(1)x, Security Listing Regulations* and *Part 2, Chapter 1, section 11(2) of the Timely Disclosure Guidebook*):

- 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 Security Listing Regulations.

Public notice of commencement of tender offer

If an entity must purchase shares by way of a tender offer (*see Question 4*), it must serve a public notice containing information on the following (*Article 27-3.1, FIEL* and *Article 9-3, Cabinet Order for Enforcement of FIEL (COEF)*):

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

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 contract. However, shareholders who accepted 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 an entity serves a 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 a tender offer, setting out:

- The offer conditions (including the grounds for calculating the purchase price).
- 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.)
- Matters concerning the bidder.
- 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 issuing 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*).

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 14*). Cabinet Office regulations also 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 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*).

Expression of position on the bid by the target

The target must file its Position Statement with the Prime Minister (*see Question 9*) 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, as well as other matters required by Cabinet Office regulations. This must be done 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, as well as 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, as well as other matters prescribed by Cabinet Office regulations (*Article 27-13.2, FIEL*).

Delivery and other procedures for settlement of the purchase

A notice containing 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 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

13. 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 total holding ratio of share certificates (and so on) of the bidder increases to two-thirds or more after the purchase, the bidder must make a mandatory offer for all shares (*see Question 16*).)
- A tender offer can be withdrawn if an important change takes place in the business or property of the target, or if another event seriously hinders execution of the offer. This only applies in situations set out in a Cabinet order, including where (*Article 27-11.1, FIEL* and *Article 14, COEF*):
  - 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;
  - situations arise in relation to the target, including 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.

Pre-conditions attached to the tender offer are limited to the conditions stated above.

As a general rule, the bidder cannot make changes to the offer conditions that are disadvantageous to applicants for 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 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*).

This is allowed as, in such cases, the value of the shares falls and, if a reduction of the purchase price was not allowed, the bidder would suffer unexpected and unreasonable damages.

Bid documents

14. 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 12, Preparing and delivering a tender offer statement*).

A tender offer statement aims to ensure the following:

- Proper allocation of consideration in a tender offer.
- That shareholders have sufficient information to make investment decisions.

It is based on information in the tender offer notification and is a means of direct disclosure.

The following are the main terms 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*).

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

Employee consultation

15. 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

16. 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 4*).

In addition, if, after the purchase, the total holding ratio of share certificates (and so on) 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 it receives acceptances (*Article 27-13.4, FIEL* and *Article 14-2-2 and 8.5(3), COEF*).

CONSIDERATION

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

Generally, only cash is offered on a public takeover.

Legally, there is no special regulation on the form of consideration, 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, a stock-for-stock exchange (*see Question 2*)).

If a bidder uses its own shares as consideration, continuous disclosure by the bidder is required under the FIEL. Foreign companies have 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 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.

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

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

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

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

POST-BID

Compulsory purchase of minority shareholdings

20. 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 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 (*Articles 749.1(2) and 768.1(2), Companies Act*).

Therefore, a bidder can obtain the shares of 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 regarding the suitability of such consideration (*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 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*).

See *Question 29*

Restrictions on new offers

21. 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 by a tender offer.

De-listing

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

The company must undertake a transaction that satisfies the criteria for de-listing.

On the TSE, companies may be de-listed if any of the following occurs (*Article 601, Security Listing Regulations*):

- 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 by 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.

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 shares in order to satisfy the above requirement.

TARGET'S RESPONSE

23. 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:

- Introducing a rights plan using share warrants (with discriminatory conditions under which only certain shareholders can execute the warrant, and so on). This defence can be made by a resolution of a shareholders' meeting or a board meeting. In addition, it can be structured so that:
  - the company simply notifies in advance the possibility of using this defence and, after a bid is made, the company allots 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*).
- Issuing shares that have the effect of preventing the approval of a merger or election or removal of directors (by requiring a resolution of a shareholders' meeting of the holders of such classes of shares on these matters) (*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*).
- Amending the articles of incorporation so that the company can impose restrictions on the requirement of shareholders' meeting approval regarding a merger or the removal of directors (limited to the case where directors are elected pursuant to 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 such 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 such a 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 has no choice but to 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 (in other words, a resolution of a shareholders' meeting of the holders of such a class of shares is required) on important matters including 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.
- **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. This is similar to the arrangement used in the Bull-Dog case (*see Question 3*), in which a company issues new share warrants to all shareholders with discriminatory conditions, so a hostile bidder cannot execute the warrant (among other things).
- **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 such a 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 relation to defensive measures used against hostile bids, in past decisions the Supreme Court of Japan has generally respected the judgment of the shareholders' meeting concerning the use of such measures.

TAX

24. 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 shares in a company incorporated in Japan (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

25. Are any other regulatory approvals required, such as merger control and banking? 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 was amended in June 2009 and the amendments came into effect in January 2010. The AMA is

enforced by the Japan Fair Trade Commission (JFTC). The JFTC sets out guidelines detailing those mergers, company splits, joint share transfers, business acquisitions or share acquisitions that are considered to substantially restrain competition in a particular market (*Guidelines to Application of the Anti-monopoly Act Concerning Review of Business Combination (2004)*).

If mergers, company splits, joint share transfers, business acquisitions or share acquisitions are assessed as restraining competition in such a manner, 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 measure necessary to remedy the situation (*Article 17-2, AMA*).

In relation to mergers, company splits, joint share transfers and business acquisitions that 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 the case of a tender offer, if the 30-day waiting period has not ended by the last day of the tender offer period, a tender offer can be withdrawn because a necessary permission from a government body has not been obtained. This is 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 13*). 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 the:

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

If the share acquisition is viewed as substantially restraining competition in a particular market, the JFTC may order the bidder to dispose of all or part of its stock. Previously, a bidder intending to make a tender offer that may impact on competition, when appropriate, was able to consult with the JFTC and confirm that the share acquisition will not be assessed as substantially restraining competition, before issuing a public notice of commencement of tender offer (*see Question 12*). However, in 2011, the JFTC set out a new guideline (*Guideline Concerning Procedures of Review of Business Combination*) abolishing the consulting procedure with the JFTC prior to filing a pre-merger notification or a pre-acquisition notification, so that a bidder can no longer obtain the JFTC's opinion regarding whether a share acquisition will be assessed as substantially restraining competition before it files the notification with the JFTC.

Even after abolishing the above consulting procedure, the company can consult with the JFTC regarding the contents of a notification prior to filing, and it is general practice to utilise this consultation option in a large transaction.

Since 2004, the JFTC's Guidelines have required, in addition to a market share analysis, a review of the transaction's Herfindahl-Hirschman Index (HHI) to determine whether a merger, company split, joint share transfer, business acquisition or share acquisition substantially restrains competition in a particular market. In 2007, the JFTC's Guidelines were revised to define a safe harbour based on the HHI, where it is reasonably believed that the transaction will not substantially restrain competition. Case-by-case reviews are not required of transactions that fall within the safe harbour.

Regulation of bank shareholders

An entity that intends to hold more than a certain percentage (generally 20%) of 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 (*see Question 12*). 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 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 12*).
- Apply for approval in the early stages of the transaction.

Regulation of insurance companies' shareholders

Regulations similar to those imposed on banks are imposed on shareholders of insurance companies (*Article 271-10.1, Insurance Business Law*) (*see above, Regulation of bank shareholders*).

26. Are there restrictions on the foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

If a foreign company intends to obtain 10% 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*). Such industries include aircraft, weapons, atomic energy and space development.

Where prior notification is necessary, the foreign company cannot generally 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*). 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.

In relation to the Nippon Telegraph and Telephone Corporation (NTT), broadcasting companies, and air transport companies, there are specific regulations regarding 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 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 the ratio of voting rights in the company owned by foreign entities reaches or exceeds one-fifth. 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 the ratio of voting rights in the company owned by foreign

entities reaches or exceeds one-third (*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*).

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

If there is a repatriation of profits of over 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 methods of payment. It is therefore advisable for an entity to contact and consult with the Bank of Japan on a case-by-case basis.

28. 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 12*).

If, during the period in which another party's tender offer is made, a party whose total voting ratio before the purchase exceeds one-third intends to purchase over 5% of the voting shares, it must do so through a tender offer (*see Question 4, Regulation of public takeovers*).

REFORM

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

The amendment to the Companies Act has been effective since 1 May 2015. In addition, the amendment to the Ordinance for Enforcement of the Companies Act and Ordinance on Company Accounting has been effective since 8 January 2016. These amendments include some issues that have an important influence on M&A practice in Japan.

Revising the rules on third-party allotment of new shares

Under the former Companies Act, third-party allotments of new shares by a public company must be approved only by a resolution of the board of directors unless the amount to be paid for the subscribed shares is particularly favourable to the subscribers even if control of the company changes.

Under the revised Companies Act, a certain kind of third-party allotment of new shares is required as a resolution of a shareholders' meeting. In concrete terms, a public company (except for a company which submits securities registration statements) willing to conduct a third-party allotment of new shares after which a certain person holds a majority of the voting rights of the company must provide a notice to shareholders or a public notice that contains certain matters required by the 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 of new shares within two weeks from the date of such notice to shareholders or public notice provided by the company, the third-party allotment of new shares must be approved by a resolution of a shareholders' meeting (however, this shall not apply when there is an urgent need to ensure the continuity of the business where the property of the company is significantly deteriorating) (*Article 206-2,4, Companies Act*).

The same rules apply to third-party allotments of new share warrants.

Revising the rules on transfer of the shares of a subsidiary

Under the former Companies Act, the transfer of the shares of a subsidiary does not need to be approved by a resolution of the shareholders' meeting.

Under the revised Companies Act, the transfer of the shares of a subsidiary needs to be approved by a special resolution that requires a two-thirds vote of the members present at a shareholders' meeting if the book value of such shares is 20% or more of the non-consolidated total asset value of the transferring company and, following the transfer, the transferring company will not hold the majority of the voting rights of the company whose shares are transferred (*Article 467-1(2-2), Companies Act*).

Revising the rules on company splits

In practice, abuses by unprofitable companies of company splits, in order to escape payment, have been increasing recently. However, under the former Companies Act, sufficient provision is not made to protect the remaining creditors of the splitting company from this type of abuse. Under these conditions, many lawsuits and important court precedents related to this issue have arisen in recent years.

Under the revised Companies Act, the rights and benefits of the creditors of the splitting company are better protected. To be more precise, when a company splits with knowledge that it will be detrimental to its remaining creditors, the creditors can demand payment from the succeeding company up to the value of the assets which are succeeded to from the splitting company.

Revising the rules on Injunctions

Under the former Companies Act, shareholders can request that a reorganisation or similar process should be stopped only when it corresponds to a Short Form Reorganisation (reorganisation between companies in which one holds 90% or more of the voting rights of the other company, which need to be adopted only by a resolution of the board of directors). Shareholders can exercise this right to request an injunction when the Short Form Reorganisation violates the applicable laws or articles of incorporation, or when the consideration for the Short Form Reorganisation is grossly improper in light of the financial status of the company.

Under the revised Companies Act, shareholders also can request that the company should stop the acquisition of shares subject to class-wide call (*zenbu-shutoku-joukoutsuki-kabushiki*), consolidation of shares, and types of reorganisation (except simplified reorganisation) other than Short Form Reorganisation. All for situations other than Short Form Reorganisation, shareholders can exercise the right to request an injunction when these actions violate the applicable laws or articles of incorporation.

Introducing a new cash-out method

Under the former Companies Act, a company is able to conduct a squeeze-out of minority shareholders by taking certain measures. In reality, companies commonly use "shares subject to class-wide call" (*zenbu-shutoku-joukoutsuki-kabushiki*) (*see Question 20*). However, the procedures for using this method are not appropriate because they are time-consuming and inefficient. For example, a special resolution of a shareholders' meeting must be adopted to amend the articles of incorporation.

Under the revised Companies Act, special controlling shareholders, who hold 90% or more of the voting rights of the target company, will have the right to purchase the remaining shares (including

share warrants) from the other shareholders without the procedures for a shareholders' meeting of the target company.

Under the revised Companies Act, consolidation of shares becomes easier to use as a cash out method. Under the revised Companies Act, there are stipulated provisions protecting the rights and benefits of minority shareholders such as:

- Disclosure in advance and after the consolidation of shares (*Article 171-2 to 173-2, Companies Act*).
- Dissenting shareholders right to demand the purchase of shares (*Article 182-4, Companies Act*).
- Injunctive relief in certain situations (*Articles 171-3 and 182-3, Companies Act*).

However, the squeeze-out measures under the former Companies Act are not forbidden under the revised Companies Act.

After the amendment of the Companies Act came into effect, the consolidation of shares (*kabushiki-heigou*) and the special controlling shareholders' right to demand the sale of shares (*kabushikitou-uriwatashi-seikyu*) tend to be used frequently for cash squeeze-outs in practice.

THE REGULATORY AUTHORITY

Financial Services Agency (FSA)

W www.fsa.go.jp

Main area of responsibility. The following are the FSA's main areas of responsibility:

- The planning of the securities markets' system.
- Collecting, analysing and investigating materials and information concerning securities transactions.
- Supervising securities companies.

Practical Law **Contributor profiles**

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Recent transactions

- Represented Nichi-Iko Pharmaceutical Co Ltd in its acquisition of Sagent Pharmaceuticals Inc, a US listed company.
- Representing AOI Pro Inc in its integration with TYO Inc.
- Representing Nidec Corporation in its acquisition of Emerson Electric Co's motors and drives, and electric power generation businesses.
- Represented Idemitsu Kosan Co in its acquisition of Showa Shell Sekiyu KK shares from Royal Dutch Shell.
- Represented The Higashi-Nippon Bank in its integration with the Bank of Yokohama.
- Represented JAPAN POST Co in its acquisition of Toll Holdings, an Australian listed company.
- Represented Dwango Co in its integration with Kadokawa Corporation.
- 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.
- Represented Mitsubishi Material Corporation in its sale of 51% of the shares of MMC Superalloy Corporation to Hitachi Metals.
- Represented Mitsubishi Material Corporation in its acquisition of 51% of Hitachi Tool Engineering from Hitachi Metals.
- Represented Cerberus Capital Management LP on a cash tender offer through its affiliate to acquire the common stock of Seibu Holdings.
- Represented Mitsubishi Chemical Holdings Corporation on its acquisition of Qualicaps, including its subsidiaries in Spain, Canada, Romania and the US, from Carlyle.
- Represented Symantec Corporation in a transaction where VeriSign Japan KK, a Japanese listed company and a subsidiary of Symantec Corporation, went private.
- Represented Nihon Unisys in its business cooperation with Dai Nippon Printing and Dai Nippon Printing's acquisition of Nihon Unisys's common shares from Mitsui & Co.
- Represented Jibun Bank Corporation in its acquisition of a part of ACOM Co card loan business by a method of a company split.
- Represented Ajinomoto Co in its sale of 51% of the shares of its wholly-owned subsidiary to Nomura Research Institute, rendering it a joint venture company.
- Represented Mitsubishi UFJ Securities and Mitsubishi UFJ Financial Group in an alliance transaction with Morgan Stanley.

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Recent transactions

- Represented Nichi-Iko Pharmaceutical Co Ltd in its acquisition of Sagent Pharmaceuticals Inc a US listed company.
- Represented the Higashi-Nippon Bank in its integration with the Bank of Yokohama.
- Represented AISIN SEIKI Co in its integration with Shiroki Corporation.
- Representing Nidec Corporation in its acquisition of Emerson Electric Co's motors and drives, and electric power generation businesses.
- 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.
- Represented Mitsubishi Material Corporation in its sale of 51% 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, in its acquisition of 50% of Paygent Co and making a joint venture with DeNA Co.
- Represented Cerberus Capital Management LP on a cash tender offer through its affiliate to acquire the common stock of Seibu Holdings.
- Represented Mitsui Chemicals Inc in an alliance transaction with SKC Co.
- Represented Mitsubishi Chemical Holdings Corporation during its acquisition of Qualicaps, including its subsidiaries in Spain, Canada, Romania and the US, from Carlyle.
- 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 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 Ltd's shares, and in making a joint venture with Aozora Bank Ltd.
- 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 in its acquisition by Colowide Co.