Japan

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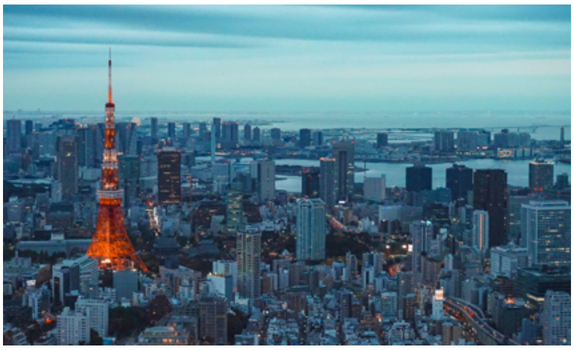

Market overview

The M&A market in Japan is showing an upward trend in both deal value and number. In 2024, according to data released by RECOF, a leading M&A adviser in Japan, M&A deals involving Japanese companies (including domestic, inbound, and outbound transactions) totalled 4,700, with a combined deal value of $131,333 million. This represents an 8.0% increase in total deal value compared with 2023.

This trend continues today, with a total of 2,509 deals and a combined deal value of $139,702 million in the first half of 2025, surpassing the total annual value for 2024, even though this record high number is led by two mega-deals: Toyota Industries' going-private transaction led by a Toyota group company and Akio Toyoda, and NTT Data's going-private transaction led by its parent company, NTT.

Public M&A

The defining feature of the recent public M&A market was intensified acquisition pressure on undervalued companies and a resulting increase in going-private deals. This trend has continued into 2025.

This acquisition pressure is not limited to activist funds; competing companies may also make proposals.

Below are two notable transactions and key takeaways from them.

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Hiroko has more than 20 years' experience advising numerous Japanese and international clients on a wide range of domestic and cross-border M&A transactions. She excels at handling multijurisdictional M&A, as well as novel transactions requiring complex, detailed structuring and implementation. In addition, she specialises in corporate governance and employment issues.

Hiroko has a bachelor's degree in law from the University of Tokyo and an LLM from the University of California, Berkeley School of Law. She is admitted to practice in Japan and New York.

Seven & i Holdings v Alimentation Couche-Tard

On August 19 2024, Alimentation Couche-Tard (ACT), a Canadian convenience and mobility operator, announced that it had submitted a "friendly", non-binding acquisition proposal totalling approximately JPY 5.7 trillion to Seven & i Holdings (7&i), a Japanese retail holdings company with subsidiaries operating convenience stores and supermarket chains. ACT emphasised that its proposal was "friendly" as it also expressed that the acquisition should be achieved by obtaining agreement from 7&i. In fact, US market concentration would have been an obvious issue, so without 7&i's cooperation, it seemed unrealistic to achieve the deal.

In response to the proposal, following the Ministry of Economy, Trade and Industry's Guidelines for Corporate Takeovers (see below), 7&i established a special committee of independent directors and announced its opposition by obtaining the committee's unanimous recommendation. During the negotiations, the founding family proposed an MBO, which was withdrawn due to a lack of funding. ACT also eventually withdrew the proposal "due to a lack of constructive engagement by 7&i".

The key takeaway is that market concentration could serve as an effective defensive measure, as in Japanese practice, a tender offer cannot be commenced without a sure prospect of antitrust clearance, and unless the acquirer accepts a 'hell or high water' clause, the acquisition cannot be achieved without the target company's agreement (including an agreement on divestiture, if necessary).

KKR v Bain over Fuji Soft

The dramatic fight over Fuji Soft, a Japanese software company, concluded with KKR making the company a wholly owned subsidiary in June 2025. This saga evolved from the activist fund 3D Investment Partners (3D) becoming Fuji Soft's largest shareholder in 2022. 3D eventually sought to make Fuji Soft go private together with several investment funds selected by 3D in 2023 and thereafter. In the end, Fuji Soft was acquired by KKR through a two-stage tender offer, which was backed by the tender agreement by 3D, together with Farallon Capital Management, holding a combined 32.7% stake.

As a result of the tender agreement, KKR successfully obtained a 34.1% stake at a JPY 8,800 per share price through the first-step tender offer in November 2024. Bain opposed KKR by proposing a competing tender offer at a price 7% higher than that of KKR's first tender offer, and Fuji Soft's founding family, holding an 18.57% stake, expressed its endorsement for Bain. However, in February, Bain announced the withdrawal of its proposal.

The key takeaway here is the importance of a 'blocking position', which is over one-third of the total voting rights. Under the Companies Act of Japan, special resolutions at shareholders' meetings require approval from two-thirds of the total voting rights. Therefore, holding more than one-third of the total voting rights grants a veto, and this blocking position serves as a defensive measure. Nonetheless, in this case, competition between two investment funds increased the acquisition costs – KKR obtained the remaining shares at JPY 9,850 per share, which was about 12% higher than the price for the first-step tender offer.

After all this drama, it is still unclear whether Fuji Soft's corporate value can be sufficiently enhanced to recoup the increased acquisition costs.

Private M&A

A driving factor behind outbound private M&A is challenges to domestic growth. One notable transaction illustrating this is Nippon Life Insurance's acquisition of Resolution Life for JPY 1.25 trillion, announced in December 2024 (expected to close in the second half of 2025), through which Nippon Life Insurance seeks to expand in the US life insurance market and enhance its Australian life insurance business. The same factor also influences public M&A transactions, such as Nippon Steel's acquisition of U.S. Steel, which finally closed in June 2025.

In the area of inbound M&A, according to statistics published by the Bank of Japan (BOJ), from April 2024 to March 2025 there were 1,460 share acquisitions that required clearances for inward direct investment under the Foreign Exchange and Foreign Trade Act of Japan (the Forex Act). Of those cases, 13% involved acquisitions of newly issued shares upon establishment, 47% were acquisitions of shares via share issuances by existing companies (i.e., capital increases), and 36% were share acquisitions via share transfers of outstanding shares.

According to the BOJ's analysis, the capital increases mainly involved subsidiaries of the foreign investors and startup companies. The top three jurisdictional homes of inward bound investors were the US, the Cayman Islands, and Singapore. As explained below, in 2025, the inbound regulations were tightened slightly, to scrutinise inbound investments by foreign investors that are under the substantial control of a foreign government.

Legislation and policy changes

The Guidelines for Corporate Takeovers

Regarding M&A-targeted listed companies, the Ministry of Economy, Trade and Industry published the Guidelines for Corporate Takeovers in August 2023. These guidelines outline best practices for acquirers and target companies when making and receiving proposals to acquire control of target companies via share acquisitions (i.e., takeover proposals), regardless of whether the proposals are friendly or hostile.

In practice, listed companies follow the guidelines when they receive takeover proposals. The guidelines suggest that both target companies and acquirers should maximise corporate value and shareholders' common interests, and maintain the fairness and transparency of the acquisition process.

A summary of the best practices recommended in the guidelines for a target company is as follows: the target company should establish a special committee composed of independent directors, and the board of directors should seek the committee's opinion. Although the special committee's opinion does not have binding effect on the board, the board of directors should pay "utmost respect" when deciding whether to approve or reject the takeover proposal. In addition, the board of directors should conduct a market check and make efforts to seek a better proposal.

In addition, the guidelines indicate best practices for countermeasures against hostile takeover proposals. Among others, the guidelines emphasise that:

- The target company should obtain shareholders' meeting approval when invoking countermeasures;
- The countermeasures must be restrictive; and
- The countermeasures must be temporary and applicable only to special circumstances.

In this regard, the countermeasure adopted by Makino Milling Machine (Makino) against Nidec in April 2025 was structured in line with the guidelines. Nidec filed a petition for a preliminary injunction against the countermeasure (technically a gratis allotment of stock acquisition rights) with the Tokyo District Court in May 2025, and the court ultimately dismissed the petition. Although the court did not refer to the guidelines, the court valued the following facts, which were also emphasised in the guidelines:

- Makino's countermeasure required shareholders' meeting approval as a prerequisite; and
- The countermeasure would be implemented only if Nidec did not postpone the launch of the tender offer by about one month as requested by Makino.

While these guidelines also indicate best practices for acquirers making takeover proposals, investors do not necessarily follow them. In light of this, certain regulations providing procedural requirements, including disclosure, for acquisitions of shares of listed companies have recently been amended (see below).

Large shareholding report

A large shareholding report (LSR) must be filed and disclosed to the public when an investor comes to hold more than 5% of the shares of a listed company. Thereafter, an amendment report is required when the investor's shareholding ratio increases or decreases by 1% or more or any material changes to the content of the report occur (such as the purpose of the investor's shareholding and information regarding its joint holders).

For listed companies and other investors, the LSR serves as a vital tool for recognising whether any shareholders hold 5% or more of the shares, the number of shares held, and the purpose of their shareholding. However, there have been more than a few instances of the LSR regulations being circumvented, primarily in the context of share acquisitions by activist funds. Consequently, amendments were made to tighten the regulations and provide clearer criteria for that purpose. These amendments will take effect on May 1 2026.

In terms of equity derivatives, even under the current regulations, if (i) economic profits and losses from the underlying equity belong to an investor before settlement of the derivatives transaction and (ii) the investor can substantially control the acquisition and disposal of shares (e.g., the investor has the option of a settlement by shares), the investor must include the number of underlying shares in the number of shares 'held' at the time the investor obtains the derivative position. However, by circumventing the regulations and taking advantage of equity derivatives, several investors suddenly emerged as shareholders that held well over 5% of the company shares, successfully obtained a large number of shares at lower prices, and prevented the implementation of defensive measures by the target companies, as well as interference by competitors.

After the amendment of the regulations, even if an investor simply holds an equity derivative position and its settlement is planned to be in cash, as long as the purpose of the equity derivative is (i) to acquire shares of a listed company, (ii) to make a material proposal to a listed company by indicating the derivative position, or (iii) to influence the voting rights held by the derivative counterparty, the underlying shares must be counted as shares 'held' by the investor at the time the investor obtains, or comes to have any of the purposes above after obtaining, the derivative position.

Also, when two or more investors agree to act in concert in exercising voting rights or other shareholder rights, or in share acquisitions or disposals, regardless of whether they intend to obtain control of a target company, they must disclose each other as "joint holders" in the relevant LSR. However, in practice, given the difficulty in proving such agreements, some investors employ the tactic of secretly securing control by acquiring shares around the same time and claiming that no 'agreement' exists (referred to as a Japanese version of a 'wolf pack' strategy). In light of the above, under the amended regulations, parties will be deemed joint holders if certain objective relationships exist, such as having a common representative or a funding relationship.

Furthermore, if an investor intends to make a "material proposal" to a target company, such as replacement of a representative director or divestment of a material business, it must state its intention in the relevant LSR. The amended regulations provide more detailed criteria for material proposals to prevent circumvention of this disclosure requirement (note: this amendment also aims to facilitate collaborative engagement by institutional investors qualified under the Financial Instruments and Exchange Act of Japan by clarifying the scope of material proposals).

Tender offer regulations

With respect to the tender offer regulations, among others, the following two amendments may have the most impact on M&A structuring. These amendments will take effect on May 1 2026:

First, the threshold for a mandatory tender offer will be decreased from one-third to 30%, because, as the average exercise rate of voting rights in Japanese listed companies is around 60%, it is highly likely that control of a listed company can be achieved if an investor can obtain at least 30% of the total voting rights.

Second, off-market transactions will also be governed by the tender offer regulations. Currently, all off-market transactions, except for certain types provided by law (such as those conducted via ToSTNet, operated by the Tokyo Stock Exchange, which are deemed to be "market transactions" for purposes of the mandatory tender offer regulations), are exempt from the mandatory tender offer requirement even if an investor's shareholding ratio exceeds one-third after they are conducted.

However, in a recent case where over one-third of a company's shares were acquired through off-market transactions within a short period, a high court noted that this manner of share acquisition brought coercive pressure on other shareholders of the target company because they were given very little time and information to consider whether they should remain as shareholders in the company even after the investor at issue secured control . This amendment is based on the recent argument and court decision above.

Inbound foreign exchange regulations

When a foreign investor makes certain types of investments in a Japanese company, inward direct investment clearance is required if the target company engages in any of the business sectors designated under the Forex Act. In terms of share acquisitions, the threshold requiring clearance is 1% for a listed company and one share for a non-listed company, and the scope of designated businesses is broad; therefore, the number of filings for inward direct investment clearance is increasing.

However, to avoid any unnecessary hurdles for inward investment, a certain exemption from the clearance requirement is available under the foreign exchange regulations if a foreign investor does not intend to control the target company's management and is not a foreign government or state-owned enterprise.

Nonetheless, considering recent inward investments posing threats to national security, a recent amendment, which came into effect in May 2025, established two new categories of investors: "Special Foreign Investors" and "Quasi Special Foreign Investors".

For these investors, the scope of the exemption from the clearance requirement is very limited, and inward investments made by them are highly scrutinised in light of national security. In short, a "Special Foreign Investor" means (i) an entity of which 50% or more of the voting rights or ownership is held by a foreign government or its officials, (ii) an entity in which one-third or more of the executives are officials of a foreign government, or (iii) an entity that is obliged to conduct intelligence-gathering activities for a foreign state or government, and a "Quasi Special Foreign Investor" means an entity controlled by or substantially linked to an entity as described in item (iii).

Looking ahead

As stated above, the volume of M&A transactions in Japan in the first half of 2025 has already surpassed the total annual value for 2024, and this growth trend is expected to continue.

Aiming to maintain transparency and to maximise corporate value and shareholder interests, the amendments to relevant regulations will become effective in 2026, and 2025 will serve as a preparatory period. However, as most of the amendments are intended to clarify the current regulations, this rationale should be taken into account when structuring M&A transactions even before the effective date of the amendments.