Trends and Developments

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Overall Landscape Regarding Activists' Campaigns in the Japanese Market

In recent years, activist campaigns driven by both domestic and foreign shareholders have become very frequent in the Japanese market. According to articles by Bloomberg, Japan now ranks second in the world for activist activity, after the United States. In fact, the number of Japanese companies with publicly disclosed activist stakes is currently at an all-time high. This trend is illustrated by shareholder proposals – one of the standard forms of activist campaigns. The number of such proposals in the Japanese market reached a record high in 2024, marking the third consecutive year of record-breaking activity. Additionally, the total number is expected to reach a new record high in 2025. Major reasons for the increasing number of shareholder proposals are:

- the record-breaking weakness of the yen, which has made Japanese companies appear undervalued and accessible to foreign investors; and
- the growing likelihood of shareholder proposals obtaining general shareholder support, due to the Tokyo Stock Exchange's recent emphasis on capital efficiency, the tightening of proxy voting policies embraced by institutional investors, and the reduction of cross-held shares (*mochiai*).

Traditionally, activist shareholders have demanded that target companies:

- increase dividends or buy back shares; and/or
- address governance concerns, mainly by proposing the appointment of outside directors designated by activist shareholders.

Moreover, M&A activism has recently become increasingly active in the Japanese market. Activist hedge funds often require target companies to sell or divest unprofitable business divisions or subsidiaries in order to improve overall capital efficiency and reorganise their business portfolios. In the Japanese market, a characteristic feature is the frequent occurrence of cases in which the separation of real estate businesses is advocated. As another example of such type of campaign, some investors invest in listed companies that are the target or a party to M&A transactions, particularly in connection with tender offer bids (TOBs) or management buyouts (MBOs). In such cases, after publicly announcing these M&A transactions, they initiate to acquire stakes in target companies and launch public campaigns demanding more favourable terms. Once such favourable terms are secured, they exit their positions. With respect to M&A activism, it should be noted that the demands of activist shareholders pursuing short-term profits may conflict with the common interests of general shareholders seeking to enhance corporate value over the medium- to long-term.

Recent Notable Cases Regarding Unsolicited Takeover Bids

As reported in detail in the 2024 edition of this guide, since the publication in August 2023 of the Guidelines for Corporate Takeovers (the "Guidelines") by the Ministry of Economy, Trade and Industry (METI), unsolicited takeover offers for Japanese listed companies have become increasingly common. From the second half of 2024 through the first half of 2025, several notable unsolicited takeover proposals have been made in the Japanese market; brief summaries of some of these cases are provided below.

Seven & I v Alimentation Couche-Tard

In August 2024, Alimentation Couche-Tard, Inc (ACT), a Canadian multinational operating one of the world's largest convenience store networks, made a non-binding takeover offer to Seven & I Holdings Co, Ltd ("Seven & I"), the largest convenience store operator in Japan, to acquire all issued and outstanding shares of Seven & I at a price of USD14.86 per share (approximately JPY7 trillion in total). Upon receiving the takeover proposal, Seven & I established a special committee composed solely of independent outside directors to review the proposal. After the deep consideration of the proposal, Seven & I publicly announced its view that the proposal undervalued its intrinsic corporate value and failed to present any effective measures to address competition law issues under US antitrust regulations.

Amidst ongoing constructive dialogue between Seven & I and ACT, on 6 March 2025, Seven & I announced newly established measures to enhance its corporate value, which primarily included:

- appointing Mr Stephen Hayes Dacus as the new representative director and CEO;
- pursuing an IPO of 7-Eleven, Inc (which operates a convenience store business in North America) by the second half of 2026; and
- selling its food supermarket and specialty store businesses to Bain Capital for approximately JPY814 billion, and using the proceeds and other funds to carry out a total of JPY2 trillion yen in shareholder returns by the fiscal year 2030.

Finally, in July 2025, ACT officially withdrew its acquisition proposal; therefore, the acquisition was not consummated.

Nidec v Makino

On 27 December 2024, without any prior consultation or dialogue, Nidec Corporation ("Nidec"), Japan's leading comprehensive motor manufacturer, suddenly disclosed a plan to launch an unsolicited tender offer (commencing on 4 April 2025) to acquire all of the shares of Makino Milling Machine Co, Ltd ("Makino"), a comprehensive Japanese manufacturer of machine tools. Based on the acquisition plan, Nidec set the minimum acceptance number at one half of all voting rights in Makino. After Nidec's plan was made public, Makino repeatedly requested that Nidec:

- postpone the commencement date of the TOB to a date after May 9th, in order to secure sufficient time and information for Makino's shareholders to determine whether to approve the acquisition proposal and to explore other potentially favourable competing takeover offers; and
- raise the minimum acceptance number from one half to two thirds in order to mitigate the coercive nature of the TOB.

On March 10th, Makino received an initial letter of intent from a potential acquirer and therefore requested once again that Nidec extend the commencement date of the TOB in order to secure sufficient time for consideration. As Nidec continued to withhold a concrete response, Makino decided to introduce a takeover defence measure (a Japanese rights plan, which is similar to a poison pill in the United States) on March 19th. Nevertheless, Nidec commenced the TOB as scheduled on April 4th; on April 10th, Makino therefore decided to adopt a takeover defence measure on the condition that the plan be ratified by a simple majority vote in favour of its implementation at Makino's shareholders' meeting. With respect to the validity of the takeover defence measure, on May 7th the Tokyo District Court approved its implementation and did not enjoin the activation of the measure. In response to the court's decision, on May 9th, Nidec withdrew its unsolicited tender offer, and the TOB ultimately failed. Details of this decision are provided in **The Court Decision in Nidec v Makino** below.

Unsolicited Takeover Bits for Listed Real Estate Investment Companies

On 28 January 2025, Citco Trustees (UT) Ltd as trustee of 3D Endeavour Master Fund II ("Citco", which was an affiliate fund of the Singapore-based fund 3D Investment), without any prior consultation or dialogue, launched an unsolicited tender offer to acquire the investment units of NTT UD REIT Investment Corporation (NTT UD REIT). In this case, the unsolicited tender offer failed on 21 March 2025.

Furthermore, on 13 February 2025, without any prior consultation or dialogue, Citco also launched an unsolicited tender offer to acquire the investment units of Hankyu Hanshin REIT, Inc. As in the NTT UD REIT case, on 4 April 2025 the unsolicited tender offer was unsuccessful. In both cases, the number of targeted units offered for sale through the TOB did not reach the minimum acceptance number required to complete the TOB.

Although these TOBs were not successfully completed, they suggest that unsolicited takeover bids for listed real estate investment companies may become more active in the Japanese market.

Another key case

On 7 May 2025, Mr Hiroyuki Maki, the representative director of Buffalo, Inc, launched an unsolicited tender offer to acquire shares of BASE, Inc, a Japanese company engaged in e-commerce and other financial services, with a ceiling limit of 30%. In response, on 15 May 2025, BASE announced that it would actively oppose the unsolicited tender offer, mainly due to the unclear purpose of the investment and doubts as to whether it would contribute to enhancing BASE's

medium- to long-term corporate value. Through this unsolicited TOB, Mr Maki ultimately acquired over 20% of BASE's stakes on 14 August 2025.

After completing the TOB, and based on a press release issued by BASE on August 29th, BASE entered into a non-disclosure agreement with Mr Maki. The agreement included a standstill provision prohibiting him from acquiring additional shares of BASE for six months, in order to facilitate constructive dialogue between the parties with the goal of enhancing BASE's corporate value and shareholders' common interests. It is rare for a target company to enter into a settlement agreement with an unsolicited acquirer, and the existence of such an agreement was made public in the Japanese market. Accordingly, it is worth paying close attention to further developments in this case.

Competing Takeover Bids

Competing takeover bid activity has also been seen in the Japanese market. For example, the acquisition vehicle incorporated by Kohlberg Kravis Roberts & Co LP (KKR) on 8 April 2024 announced its plan to launch a solicited TOB to acquire all of the shares of Fujisoft, Inc; it commenced this TOB on 5 September 2024.

Furthermore, the acquisition vehicle incorporated by Bain Capital Private Equity, LP ("Bain"):

- first disclosed, on 3 September 2024, a competing acquisition plan to launch a TOB to acquire all of Fujisoft's shares; and
- subsequently announced, on 11 October 2024, its submission of a binding offer for taking Fujisoft private with a planned tender offer price higher than the TOB price in that of the preceding TOB.

In response, on 15 November 2024, KKR announced a plan to launch a second TOB at a price one yen higher than that proposed by Bain. Additionally, KKR announced several acquisition proposals to raise its TOB price in order to maintain price competitiveness. Following the disclosure of KKR's new acquisition plans, on 17 February 2025, Bain announced that it would withdraw its tender offer, and KKR's second tender offer was successfully completed on 19 February 2025.

As the above cases illustrate, in the Japanese market, once a solicited acquisition plan is disclosed, the risk of competing takeover bids by unsolicited acquirers has increased significantly.

The Court Decision in Nidec v Makino

The basic mechanism of Makino's takeover defence measure was a typical countermeasure under Japanese rights plans: the plan allowed the issuing company to dilute the stake of the unsolicited acquirer by issuing new warrants to be automatically converted to new shares to existing shareholders (other than the unsolicited acquirer), thereby enabling them to acquire additional shares. However, Makino's countermeasure possesses remarkable characteristics that distinguish it from other typical takeover defence measures. This countermeasure was designed solely to secure the time necessary for Makino and its general shareholders to appropriately assess whether the unsolicited acquisition plan or any competing proposals presented by potential acquirers were superior. In other words, under the plan, Makino's board did not activate the countermeasure on grounds that the unsolicited takeover itself was detrimental to corporate value or to the common interests of the general shareholders of Makino.

The Tokyo District Court did not enjoin the activation of the countermeasure and approved the validity of the adopted takeover defence measure, primarily on the ground that securing a reasonable time to explore other competing takeover proposals serves the common interests of the general shareholders. It is also noteworthy that the court stated that, even though the unsolicited acquirer bore the disadvantage of being prevented from completing the takeover as scheduled, such disadvantage was subordinate to the common interests of the general shareholders in exploring other competing takeover proposals.

The *Nidec v Makino* case was notable as the first judicial decision to address the validity of a takeover defence measure against an unsolicited takeover bid since the Guidelines were made public. Accordingly, this court's decision may encourage target companies to activate takeover defence measures in order to secure a reasonable period to explore competing takeover proposals. However, the court did not make

any explicit determination as to the length of time that may be secured to explore potential competing bids. Therefore, it is necessary to ascertain, on a case-by-case basis, how long target companies may obtain additional negotiation periods for by implementing takeover defence measures.

Necessity of Investigating Beneficial Shareholders

With the recent intensification of shareholder activism, there is renewed recognition of the need to identify "beneficial shareholders" who actually exercise influence through shareholder proposals and proxy voting. In general, for individuals and ordinary business corporations, the shareholder whose name appears in the shareholder register is deemed the beneficial shareholder. However, with respect to other types of shareholders, listed companies may in some cases be unable to ascertain the beneficial shareholder, since the identities of the beneficial shareholders behind nominee shareholders do not clearly appear in the shareholder register. In some instances, there is a risk that campaigns contrary to the common interests of general shareholders may be initiated by activist funds pursuing short-term profits or by institutional investors with opaque or undisclosed investment intentions. Accordingly, it is desirable for listed companies to identify on an ongoing basis the beneficial shareholders behind nominee shareholders. Although the need for listed companies to scrutinise the identity of beneficial shareholders is increasing, they currently have no effective means of doing so.

To address this situation, as part of an amendment to the Companies Act, discussions are currently under way at the Ministry of Justice's council regarding the establishment of effective means to identify beneficial shareholders behind nominee shareholders. In addition, on 26 June 2025, the Financial Services Agency (FSA) amended Japan's Stewardship Code (which applies if a shareholder voluntarily chooses to adopt it) to set out new guidelines for improving the transparency of beneficial shareholder identification. Principle 4-2 of the amended code provides that financial institutions should:

- in response to requests from investee companies, explain how many shares they own or hold in the company; and
- disclose in advance a policy on how they will respond to such requests, in order to facilitate constructive dialogue.

Although the principle is not legally binding, the need to identify beneficial shareholders is expected to grow further in the context of constructive dialogue between investee companies and investors.

Submission of an Annual Security Report Before the Date of the Annual General Shareholders' Meeting

Previously, in practice, many listed Japanese companies submitted their annual securities reports only after the conclusion of their annual shareholders' meetings, taking into account the time required for audit procedures. Among listed companies that held their annual general shareholders' meetings in June 2024, only about 3% submitted their annual securities reports beforehand. With respect to this practice, there have been persistent requests – especially from foreign institutional investors – for annual securities reports to be made public before the date of annual shareholders' meetings. This would allow shareholders to engage in dialogue with the management of listed companies during the meetings and provide them with sufficient information to decide whether to vote in favour of the matters proposed by the companies.

In light of these circumstances, on 28 March 2025, the FSA – in the name of Mr Katsunobu Kato, Minister of State for Financial Services – issued a request to all Japanese listed companies to submit their annual securities reports prior to holding their annual general shareholders' meetings. The Minister stated that:

- it would be most desirable for annual securities reports to be submitted at least three weeks before the date of annual general shareholders' meetings; and
- starting this year, listed companies should consider submitting their annual securities reports at least one day – and preferably several days – prior to the date of the meetings.

Based on the request, during the 2025 annual shareholders' meeting season, approximately 55% of all listed companies published their securities reports in

advance of their annual shareholders' meetings. For instance:

- HOYA Corporation published its annual securities report three weeks before its annual general shareholders' meeting; and
- T&D Holdings, Inc published its report two weeks beforehand.

Moreover, in this season, among the listed companies that submitted their reports in advance, many published them just one day or a few days before the date of their annual shareholders' meetings. The fact that many companies submitted their annual securities reports only immediately before their shareholders' meetings is presumed to be primarily due to the lengthy audit process.

Given that the FSA explicitly stated that disclosing annual securities reports three weeks in advance is desirable, it is expected that more companies will begin disclosing their reports earlier starting in 2026. Alternatively, there is a possibility that some listed companies will try to postpone their annual general shareholders' meetings from June (the common season for such meetings in Japan) to July or later, in order to meet the requirement of submitting annual securities reports at least three weeks in advance.

Revision of Rules on MBOs and Going-Private Transactions by Controlling Shareholders

On 22 July 2025, the Tokyo Stock Exchange revised the rules on MBOs and going-private transactions by controlling shareholders in order to protect the common interests of general shareholders of target companies.

Until now, it has often been observed that opinions issued by special committees stated that the acquisition terms were not disadvantageous to minority shareholders on the grounds that the TOB price included a certain premium over the market price. However, the new rules explicitly require target companies to obtain an opinion from a special committee stating that the terms and conditions of the contemplated transactions are fair to minority shareholders. As a result of this amendment, special committees are now required to examine the fairness of acquisition terms more carefully and may no longer rely solely on the existence of a premium over the market price. Additionally, under the new rules, target companies are, in principle, required to disclose the full text of the opinions received from special committees. It is expected that making the full text publicly available will help minority shareholders and the market assess whether the acquisition terms are fair.