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Topics

Amendments to Japan's Tender Offer Regulations (Including the July 2025 Amendments, Effective May 2026)

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I. General

The amendments to the Financial Instruments and Exchange Act ("FIEA"), encompassing revisions to both the tender offer and large shareholding reporting systems, were promulgated in May 2024. The accompanying Cabinet Orders and Ministerial Ordinances implementing these amendments (together with the amendments to the FIEA, collectively, the "Amendment") were issued in July 2025, and will take effect on May 1, 2026.

This memorandum focuses on the key amendments relating specifically to the tender offer regulations.

II. Revision of the Scope of the Tender Offer Regulations

1. Amendment to the One-Third Rule (Core of the Amendment)

(1) Background

Prior to the Amendment, the FIEA required a mandatory takeover bid ("TOB") for certain share acquisitions (mainly the shares of listed companies) exceeding certain thresholds including the following:

- Where an acquirer intends to purchase shares through off-market transactions from more than 10 sellers within a 60-day period and thereby exceeds 5% ownership (the so-called "5% Rule"); or
- Where an acquirer intends to purchase shares through off-market trading or on-market off-floor trading and thereby exceeds one-third ownership (the so-called "One-Third Rule").

The One-Third Rule was designed to ensure that the acquisition of substantial control - an event materially affecting not only solicited but also non-solicited investors - would be conducted through a transparent process. The rule requires disclosure of the purpose, number, and price of the intended share acquisition (disclosure regulation), allows investors the time for deliberation (speed regulation), and ensures equal treatment of shareholders (fairness of the sale, price uniformity).

However, on-market on-floor trading was outside the scope of these regulations, leading to criticism that non-solicited investors were insufficiently protected (see Tokyo High Court decision, November 9, 2021).

(2) Key Amendments

The Amendment includes the following revisions of the "One-Third Rule" (Article 27-2 of the amended FIEA):

- **Lowering of the threshold:** from "more than one-third" to "more than 30%" (the "30% Rule"); and
- **Inclusion of on-market on-floor trading:** extending the scope of the mandatory tender offer (under the 30% Rule) to on-market on-floor trading (previously exempt).

As a result, Japan now has a unified regulatory framework that governs substantial control-acquisition transactions of listed companies, whether conducted on-market or off-market.

The 5% Rule remains unchanged, as it is intended to protect investors who are directly solicited and thus continues to exclude on-market transactions from its scope.

2. Conceptual Characteristics of the Japanese-Style TOB System

(1) A System of *Ex-Ante* Regulation

The One-Third Rule represents Japan's unique *ex-ante* regulatory approach: it mandates the use of a tender offer at the time of acquiring substantial control (over one-third ownership). Namely, a person intending to acquire substantial control of listed companies must commence a tender offer in order to acquire such control.

The rationale lies in the strong aversion of target companies to "creeping acquisitions" whereby substantial control is obtained without prior notice. By requiring disclosure of the purpose, number, and price of the acquisition (disclosure regulation), ensuring a deliberation period (speed regulation), and securing shareholder equality (price uniformity), the system intends to protect transparency and fairness of the market at the moment of substantial control acquisition.

Accordingly, the Japanese model differs from the European-style *ex-post* regime, which focuses on protecting minority shareholders' exit rights *after* control has been obtained by the acquirer.

The 30% Rule introduced by the Amendment inherits and further refines Japan's *ex-ante* principle, expanding visibility over changes in corporate control.

Regulatory Model	Core Principle	Timing of Trigger	Key Feature
European Model	Protection of minority exit rights	After acquisition of control	A mandatory tender offer for all shares launched after acquisition of control; prohibition of partial offers
Japanese Model	Transparency and fairness	Prior to acquisition of control	A mandatory tender offer launched prior to acquisition of substantial control (the 30% Rule); partial offers generally permitted

(2) Permissibility of Partial Tender Offers

Unlike most Western jurisdictions where partial tender offers are effectively prohibited, Japan allows partial tender offers except where the acquisition would result in ownership of two-thirds or more (Article 8, Paragraph 5, Item (3) of the Order for Enforcement of the Financial Instruments and Exchange Act, the "Order for Enforcement"). This principle remains unchanged under the Amendment.

Given the rarity of exploitative partial offers in Japan (in practice, the tender offeror will need to explain in the tender offer statement the rationale of selecting a partial offer rather than a full offer) and the recognition that partial offers

can enhance corporate value, the legislature refrained from prohibiting them outright.

(3) Third-Party Allotments Will Remain Outside of TOB Regulations

Third-party allotment of new shares is not deemed as "purchases of shares" and thus fall outside the TOB regime (including the 30% Rule). To preserve the emergency financing function of such allotments, this exclusion remains under the Amendment.

That said, where a third-party allotment results in the acquisition of a majority of the voting rights of a public company (*i.e.,* a company without share transfer restrictions), the Companies Act (Article 206-2) requires the convening of a shareholders' meeting when shareholders holding at least one-tenth of the voting rights object, thereby ensuring a degree of transparency at the Companies Act level.

(4) Abolishment of the "Rapid Acquisition Rule"

The "Rapid Acquisition Rule", introduced by the 2006 amendment to the FIEA, prohibited transactions designed to circumvent the tender offer regulations by conducting certain subsequent transactions (described below) immediately after a transaction subject to the tender offer regulations, whereby more than one-third of the voting rights were acquired without launch of a tender offer. Under this rule, a "transaction" subject to the rapid acquisition restriction included the following:

(i) an on-market transaction, tender offer, and/or third-party allotment conducted within a three-month period, whereby the total acquisition exceeded 10%;

(ii) an off-market acquisition exceeding 5% of the shares was included in (i); and

(iii) ownership of the voting rights exceeded one-third as a result.

With the introduction of the 30% Rule under the Amendment, the Rapid Acquisition Rule has lost its significance and has been abolished. Nonetheless, integrated transactions combining on- and off-market acquisitions may still be subject to TOB regulations where circumvention is suspected.

3. Expansion of Exemptions from the TOB Regulations

(1) Purchases by Securities Firms

The 5% Rule had imposed excessive restrictions on the ordinary course of business conducted by securities firms. Accordingly, under the Amendment, the following two types of share acquisitions by securities firms - which are made from clients at fair prices based on market prices and prevailing trading conditions (excluding acquisitions that would result in ownership exceeding 30%) - have been newly added as *exempted acquisitions*:

- Acquisitions of shares less than one trading unit made for the purpose of promptly selling such shares in trading units; or
- Acquisitions of shares (excluding shares less than one trading unit) made for the purpose of immediately selling such shares.

(2) Parallel Purchases at a Lower Price

Before the Amendment, acquirers could not purchase shares from certain major shareholders at prices lower than the TOB price due to the "price uniformity" rule and restriction on purchases outside of the TOB, necessitating two separate TOBs.

Under the Amendment, it has become permissible, in parallel with a tender offer, to acquire shares from specific shareholders outside the tender offer at a price lower than the tender offer price, provided specific conditions - such as simultaneous settlement, disclosure of counterparties, and publication of contract terms - are met (Article 7, Paragraph 1, Item (13); Article 12, Item (6) of the amended Order for Enforcement).

(3) Elimination of the "50%-Holder Additional Acquisition" Exemption

The previous exemption allowing certain additional acquisitions by shareholders already holding more than 50% of the voting rights has been abolished. Such acquisitions will now generally be subject to TOB regulations.

4. Introduction of the "Minor Acquisition" Exemption

To avoid over-regulation under the new 30% Rule, a "minor acquisition" exemption has been newly established (Article 27-2, Paragraph 1, Item (1) of the amended FIEA; Article 7, Paragraph 3 of the amended Order for Enforcement):

- Acquisitions increasing ownership by less than 0.5% within six months are exempted;
- However, the exemption does not apply if the acquirer will be holding two-thirds or more of the voting rights after the acquisition.

III. Revision of the Definition of "Specially Related Parties"

1. Narrowing of Scope

In light of the fact that the new 30% Rule (tender offer regulation) now applies also to on-market on-floor trading, to avoid excessive regulations, the provision deeming persons to be "Specially Related Parties" (*i.e.,* the parties whose ownership must be aggregated with the acquirer) solely on the basis of a family relationship has been deleted (Article 9, Paragraphs 1 and 3 of the amended Order for Enforcement).

Furthermore, officers of corporations having a special capital relationship with the acquirer (*i.e.,* 20% or more of the voting rights of the acquirer are held by the corporation, or the same rights of the corporation are held by the acquirer) have been excluded from the scope of "Specially Related Parties" under the Amendment, in view of the fact that such officers do not have any direct contractual or capital relationship with the acquirer (Article 9, Paragraph 1, Items (2) and (3) of the amended Order for Enforcement).

2. Exclusion of Investment Management and Trust Transactions from Aggregation

Under the Amendment, where (i) an investment management company purchases shares in the course of its client's investment management business, or (ii) a trust company purchases shares as trust property for its beneficiary, and certain requirements are satisfied, persons having a special capital relationship (such as a holding company) with such investment management company or trust company have been excluded from the scope of persons whose holdings are to be aggregated as "Specially Related Parties" (Article 27-2, Paragraph 1, Item (1) of the amended FIEA).

IV. Procedural Flexibility in TOB Operations

The Amendment introduces several measures enhancing procedural flexibility:

1. Tender Offer Price Reduction upon Dividend Declaration by the Target Company

Prior to the Amendment, a reduction of the tender offer price was permitted exceptionally, only in cases such as a share split by the target company.

Under the Amendment, however, where the target company distributes dividends of surplus during the tender offer period, the tender offer price may be reduced by an amount up to the value per share of the distributed dividend property (Article 27-6, Paragraph 1, Item (1) of the amended FIEA; Article 13, Paragraph 1, Item (3) of the amended Order for Enforcement).

2. Expansion of Withdrawal Grounds

Withdrawal of a launched TOB is permitted only under limited events. New withdrawal events added in the Amendment include (Article 14, Paragraph 1, Item (5) of the amended Order for Enforcement):

- Announcement of the adoption of a takeover defense measure introduced in response to an unsolicited bid after the commencement of the tender offer;
- The tender offer constitutes a violation of laws or regulations;
- Filing of a provisional injunction seeking suspension of the tender offer;
- Application for an emergency injunction (Article 192, Paragraph 1 of the FIEA);
- Occurrence of circumstances equivalent to the above, as specified by the tender offeror in the public notice of commencement of the tender offer; and
- Approval by the competent authorities.

3. Administrative Exemptions and Relaxations

Under the Amendment, the following flexibility measures will be implemented:

- Exemption from the obligation to make an offer to all shareholders, for example, in cases where it is practically difficult to acquire overseas depositary receipts or similar instruments, subject to the competent authority's approval;
- Exceptional extension of the tender offer period beyond the statutory maximum period of 60 business days,

subject to the competent authority's approval; and

- Exception to the mandatory extension of the tender offer period so that at least 10 business days are secured from the filing of an amendment to the tender offer statement, either (i) when antitrust or foreign direct investment clearance or other applicable regulatory clearance (which, prior to the Amendment, required an amendment filing when such clearance was obtained within less than 10 business days from the end of the tender offer period) is obtained without any conditions that materially affect investment decisions, or (ii) if the competent authority approves.

V. Review of Disclosure Items on the Tender Offer Statement

The Amendment reviewed the disclosure items on the tender offer statement. Specifically:

- It clarified that information such as the developments leading to the launch of the tender offer, the target company's opinion, measures to ensure fairness and important agreements relevant to the tender offer, although already disclosed in practice, are legally required;
- The tender offer terms shall be summarized at the beginning of the tender offer statement;
- In case of a partial tender offer, the (i) measures to avoid conflict between the remaining minority shareholders, and (ii) policy for responding to opposition by shareholders holding over a certain percentage of the voting rights of the target company, if implemented, shall be explained; and
- Status of large shareholding report submissions shall be stated.

VI. Take-Aways

The Amendment:

- **Lowers the TOB threshold for substantial control acquisitions from one-third to 30%;**
- **Extends the TOB obligation to on-market on-floor trading; and**
- **Upholds and refines Japan's ex-ante regulatory philosophy, emphasizing transparency and fairness at the point of control acquisition.**

The Amendment will apply to tender offers **commencing on or after May 1, 2026**, while TOBs initiated before that date will remain subject to the pre-amendment rules. Careful and strategic structuring, supported by practical insight and legal experience, is essential at every stage of a tender offer. This memorandum is intended to offer a modest contribution to understanding Japan's evolving *ex-ante* tender offer framework and its pursuit of transparency and fairness.

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Large Shareholding Reporting System

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I. Introduction

Many issues have been pointed out regarding the large shareholding reporting system under the laws of Japan in association with the changes in the market environment, such as the recent increase in passive investments and the expansion of so-called collaborative engagements. This Newsletter provides an overview of the fundamental matter of the large shareholding reporting system, and then outlines the content of the revision to the Financial Instruments and Exchange Act, which was enacted in consideration of such issues.

II. Outline of Japan's Large Shareholding Reporting System

1. Large Shareholding Reporting System

The large shareholding reporting system is a system that requires persons who have become Large Shareholders of share certificates, etc. issued by a listed company to disclose the status of their shareholdings, etc. by submitting a Large Shareholding Report or a Change Report.

The large shareholding reporting system is sometimes also referred to as the "5% Rule" because the threshold for the ownership ratio of share certificates, etc., which requires submission of a Large Shareholding Report is set at more than 5%.

2. Content of Specific Obligations

(1) Outline

A holder of share certificates, etc. whose ownership ratio of such share certificates, etc. exceeds 5% (the "Large Shareholder") must, other than in cases that fall under an exception, prepare a Large Shareholding Report using the prescribed form within five (5) business days from the day on which the holder becomes a Large Shareholder, and submit the same to the director-general of the competent local finance bureau. It should be noted that Large Shareholders also include persons who hold share certificates, etc. indirectly, and that in calculating the ownership ratio of share certificates, etc., those held by Joint Holders are also added.

In addition, after the date on which a person has become a Large Shareholder, the person must, if the ownership ratio of share certificates, etc. has increased or decreased by 1% or more or if there has been any other change in important matters to be stated in the Large Shareholding Report, prepare a Change Report using the prescribed form and submit the same to the director-general of the competent local finance bureau, etc. within five (5) business days of the date of such increase or decrease.

(2) Special Reporting System

Notwithstanding the foregoing, if, for a financial instruments business operator, the purpose of holding share certificates, etc. is not to engage in an act of material proposals, (meaning an act specified by Cabinet Order as

one that materially changes or affects the business activities of the issuer of the share certificates, etc.; for example, a significant change in the composition of directors or in the dividend policy), and if the ownership ratio of share certificates, etc. is 10% or less, then the frequency, deadline, and content of disclosure of the Large Shareholding Report may be relaxed or reduced to a certain extent compared to ordinary cases, as long as certain other requirements are met.

More specifically, if the ownership ratio of share certificates, etc. comes to exceed 5% for the first time on any of the following pre-registered reference dates, it is sufficient to submit a Large Shareholding Report (Form No. 3 of the Cabinet Office Ordinance on Disclosure of Large Volume Share Certificate, etc. Holding Status) stating the holding status of the relevant share certificates, etc. on such reference date within five (5) days from such reference date.

- 2nd and 4th Mondays of each month (the second, fourth, and fifth Mondays, if there is a fifth Monday) ;
- 15th and last day of each month (if such day falls on a Saturday, the day before, and if such day falls on a Sunday, the day two (2) days before such day)

In addition, with regard to a Change Report as well, if the ownership ratio of share certificates, etc. on the reference date that arrives subsequent to the reference date pertaining to the Large Shareholding Report or Change Report increases or decreases by 1% or more, or if there is any other change in important matters to be stated in the Large Shareholding Report, it is sufficient, in principle, for the person who is required to submit a Large Shareholding Report under the special reporting system, to submit a Change Report within five (5) business days from such subsequent reference date.

(3) Method of Submitting Reports

Other than in cases that fall under an exception, Large Shareholding Reports and Change Reports are required to be submitted through an electronic disclosure system called EDINET, and are not permitted to be submitted in writing. All documents must be prepared in Japanese and are not permitted to be prepared in English or any other foreign language.

In order to submit documents using EDINET, it is necessary to obtain an EDINET code by filing a prescribed notification with the competent local finance bureau (or the Kanto Local Finance Bureau in the case of non-residents) in advance. In filing such notification, a domestic corporation must submit (as attached documents thereto) its articles of incorporation or an equivalent document, and a foreign corporation must submit (as attached documents thereto) its articles of incorporation or an equivalent document, a certificate of registered matters or an equivalent document (such as a limited partnership agreement in the case of a fund), and a document certifying that the authority has been granted to a person domiciled in Japan. If these documents are prepared in a foreign language, they must all be accompanied by translations, and it often takes a considerable number of days to obtain an EDINET code. Therefore, if a foreign investor is expected to become a Large Shareholder in the near future, it is important for such investor to prepare well in advance in order to submit a

Large Shareholding Report by the deadline.

III. Objectives and Outline of the Revision of the Large Shareholding Reporting System

1. Scope of Joint Holders

(1) Joint Holders under the Current Financial Instruments and Exchange Act (the "FIEA")

Under the current FIEA, persons who have agreed to jointly exercise voting rights and other rights as shareholders with other holders of the relevant share certificates, etc. shall be deemed to be Joint Holders without exception. In this regard, concerns have been raised about whether institutional investors would fall under the category of Joint Holders when they collaborate together to engage with an investee company (commonly known as "collaborative engagement"). In conjunction with the formulation of the Japanese version of the Stewardship Code, the Financial Services Agency (the "FSA") has provided the following interpretation (*1).

- If an agreement between an investor and another investor remains within the scope of shareholders' general activities that are unrelated to the exercise of legal rights, such investors do not constitute Joint Holders;
- In the situation where an investor in discussions with another investor communicates its plan for the exercise of voting rights and finds that the plan is the same as that of the other investor, such investors do not constitute Joint Holders.

However, it has been pointed out that the term "agreement" mentioned herein includes implied agreements and that the determination as to what constitutes an "agreement" must be made based on individual circumstances, and that this has had a chilling effect on collaborative engagement by institutional investors (Financial Services Council, Working Group on the Tender Offer System and Large Shareholding Reporting System (the "Tender Offer System/Large Shareholding Reporting System Working Group"; and the report by such working group shall be referred to as the "Working Group Report")). Therefore, from the viewpoint of promoting collaborative engagement, the Working Group advised that it is necessary to clarify the scope of Joint Holders under the large shareholding reporting system.

(2) Joint Holders under the Revised FIEA

Under the revised FIEA, even if a holder and another holder have agreed to jointly exercise their voting rights and other rights as shareholders, such other holder does not fall under the category of a Joint Holder if: (i) the holder and such other holder are both financial instruments business operators, etc.; (ii) the purpose of such agreement is not to jointly engage in an act of making material proposals; and (iii) such agreement falls under the category of an agreement specified by Cabinet Order as an agreement for each individual exercise of rights,

[1] Clarification of legal issues related to the development of Japan's Stewardship Code by the FSA

among agreements to jointly exercise their voting rights and other rights as shareholders.

As for requirement (i) above, the persons to whom the special exceptions apply are limited to financial instruments business operators, etc. This is due to the fact that the purpose of the special exceptions is to reduce the chilling effect on collaborative engagement by institutional investors and that the administrative burden, etc. arising from becoming a Joint Holder is particularly excessive for financial instruments business operators, etc. who repeatedly and continuously trade share certificates, etc. in their daily business operations and the like.

In addition, as for requirements (ii) and (iii) above, as the reporting obligation is imposed in consideration of the impacts on management under the current FIEA, agreements which will increase the impacts on management shall be deemed not to be subject to the application of the aforementioned special exception, and such holders shall fall under the category of Joint Holders.

2. Application of Cash-Settled Equity Derivatives

(1) Cash-Settled Equity Derivatives under the Current FIEA

In principle, cash-settled equity derivatives transactions (i.e., derivatives transactions in which share certificates, etc. are the underlying assets and only the economic profits and losses derived from such share certificates, etc. are attributed to either party), such as so-called total return swaps (*2), are exempt from the application of the large shareholding reporting system. This being said, if a holder of a long position in such derivatives transaction is considered to have control over the acquisition and disposal of the physical share certificates, etc., such holder shall be deemed to constitute a “holder” under the large shareholding reporting regulations as a person who holds physical share certificates, etc., which have been acquired by the holder of a short position for hedging purposes, in the name of another person, and this case is exceptionally construed as being subject to the large shareholding reporting system.

More specifically, a case in which a holder of a long position in a derivatives transaction conducts such transaction on the assumption that the holder of a short position will acquire and hold actual share certificates, etc. for hedging purposes due to a reason such as that the parties to such derivatives transaction may settle such transaction by delivering the share certificates, etc. (i.e., the underlying assets) at the end of such transaction, is construed as being an example of a case that falls under the cases to which the large shareholding reporting system applies. However, it has been pointed out that such interpretation lacks legal stability because the scope thereof is unclear.

In the Working Group Report, it is stated that (1) if emphasizing the fact that the large shareholding reporting system requires Large Shareholders to disclose information, focusing on the impacts on management, the degree of necessity to require information disclosure is not high for cash-settled equity derivatives transactions

[2] Transactions in which: (i) a payer (short position) delivers to a receiver (long position) all of the interests and capital gains derived from reference assets, such as listed shares; and (ii) the receiver pays the payer interest and capital losses calculated based on the notional principal.

which are conducted for the sole purpose of gaining economic profit and which do not involve a transfer of voting rights or other shareholder rights, and that (2) even among cases of cash-settled equity derivatives transactions, however, there are cases in which a change to physically settled equity derivatives is assumed, and these cases can be deemed as entailing potential impacts on management, and it can therefore be considered appropriate to include such cases in the applicable scope of the large shareholding reporting system.

Based on the points raised above, the Working Group Report has suggested that even in cash-settled equity derivatives transactions, if the relevant transaction can be deemed as entailing a potential impact on the management, it would be appropriate to include such transactions in the applicable scope of the large shareholding reporting system.

(2) Cash-Settled Equity Derivatives under the Revised FIEA

With respect to the scope of "holders" of share certificates, etc., the current FIEA stipulates that, in addition to those who hold share certificates, etc., (1) those who have the authority to give instructions as to the exercise of voting rights, etc., and (2) those who have the authority to invest, etc. shall also fall under the category of "holders". In addition to the foregoing, under the revised FIEA, certain cash-settled equity derivatives transactions shall be subject to the application of the large shareholding reporting system. Specifically, a person who has the purpose of acquiring share certificates, etc. from the other party to a derivatives transaction or has any other purposes specified by a Cabinet Order shall also be subject to the large shareholding reporting system as a holder of share certificates, etc. Consequently, the draft Cabinet Order specifies that the following purposes fall under the aforementioned purposes: (i) acquiring share certificates, etc. issued by the issuer of the share certificates, etc. from the counterparty to derivative transactions pertaining to such share certificates, etc.; (ii) making important suggestions to the issuer of the share certificates, etc. by indicating that such person has rights in the derivative transactions pertaining to such share certificates, etc. issued by such issuer; or (iii) influencing the exercise of voting rights (limited to those pertaining to share certificates, etc. issued by the issuer of such share certificates, etc.) held by the counterparty to the derivative transactions pertaining to the share certificates, etc.

IV. Proposed Revisions to Cabinet Orders and Cabinet Office Ordinances; Expected Revisions

1. Clarification of Scope of Act of Material Proposals, Etc.

As one of the requirements for the application of the special reporting system, it is required that the purpose of holding share certificates, etc. is not to engage in the act of material proposals. As for the interpretation of the specific content of the "material proposals", when formulating Japan's Stewardship Code, it was clarified that: as (i) an act of seeking explanations on management policies of investee companies (including policies on governance, capital policy, etc.); and (ii) an act of asking questions at a general shareholders meeting, are not considered "proposals, it is highly

likely that such acts will not be included in the "material proposals" (*3). However, it has been pointed out that the scope of "an act of material proposals" remains unclear.

Under these circumstances, the Working Group has stated that: (i) the concept of act of material proposals, in the first place, focuses on the impacts of such act on company management, and if share certificates, etc. are held for the purpose of engaging in an act of making such proposals, then the holder is required to make prompt information disclosures using the general reporting system instead of the special reporting system; and that (ii) the current scope of the material proposals focuses exclusively on the content of such act of making proposals, and if share certificates, etc. are held for the purpose of making certain types of proposals, prompt information disclosure is required using the general reporting system. Based on such premise, the Working Group pointed out that: (a) if share certificates, etc. are held for the purpose of engaging in an act of making proposals that are directly related to corporate control, etc., such as the nomination of officers and the acquisition of voting rights representing more than a certain percentage, such act itself has a significant impact on the management, and prompt information disclosure should be required; and that (b) on the other hand, if share certificates, etc. are held for the purpose of making proposals on matters not directly related to corporate control, such as changes in dividend policy and capital policy, it is difficult to say that conducting such act of making proposals alone will immediately have a significant impact on the management.

Based on the points made above, the Working Group Report has suggested establishing a discipline such that: if share certificates, etc. are held for the purpose of engaging in an act of making proposals that are directly related to corporate control, etc., then such acts shall broadly constitute acts of material proposals; and if the purpose of holding share certificates, etc. is to engage in an act of making proposals that are not directly related to corporate control, then such acts shall constitute acts of material proposals only if such purpose is to engage in an act of making proposals in a manner that does not leave the decision on whether or not to adopt such proposals to the issuing company's management. Based on the Working Group Report, the proposed revisions to the Cabinet Order and the Cabinet Office Ordinance broadly stipulate that the appointment of officers is included among the acts of making material proposals, etc. Furthermore, acts of acquiring substantially more than 50% of the voting rights in an issuer are also stipulated as being included among the acts of making material proposals, etc.

2. Recognition of Joint Holding

As stated above, with a view to promoting collaborative engagement, amendments were made to clarify the scope of Joint Holders in the large shareholding reporting system. On the other hand, there have been cases in which multiple investors have implicitly cooperated in buying out a large amount of shares in a target listed company in a short period of time in order to control or to replace the management of such company (so-called "wolfpack tactics"). In such cases, it has been pointed out that there are suspected violations of the laws and regulations, such as delaying the submission of a Large Shareholding Report or a Change Report or failing to list shareholders as Joint Holders despite their being deemed to fall under Joint Holders.

[3] Clarification of legal issues related to the development of Japan's Stewardship Code by the FSA.

In light of the matters pointed out, the Working Group has suggested that aggressive measures be taken to deal with cases that could jeopardize market fairness, such as suspected willful non-submission or significant delay in the submission of such reports, and that, from the perspective of promoting such aggressive measures, provisions that deem a person as a Joint Holder if certain external facts exist should be stipulated in order to resolve the issue of the difficulty of proving the existence of a Joint Holder relationship.

As a specific revision proposal based on this suggestion, the scope of so-called “deemed joint holders” has been substantially expanded by means such as stipulating the relationship between a company and its representative, etc. (meaning representative officers and officers who execute operations related to the acquisition, disposition or management of share certificates, etc., and including persons who are deemed to have equal or greater control over the company than those officers, regardless of their title).

In this connection, in June of 2024, a so-called “wolf pack tactic” was adopted and in cases of suspected intentional delay or of making false statements in the submission of a Large Shareholding Report or a Change Report, the Securities and Exchange Surveillance Commission advised that it would issue an order requiring the payment of a surcharge after pointing out that, in calculating the ownership ratio of share certificates, etc., it was necessary to aggregate the number of share certificates, etc. held by Joint Holders.

Foreign investors who intend to invest in Japan need to consider their investment by closely monitoring trends in the revision of laws and regulations and being timely aware of changes in the operational stance of the authorities.

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If you have any questions regarding the matters covered in this memorandum, please reach out to your usual TMI contact or the attorneys listed above.
