

M&A Update

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(for a share exchange), (iii) the disclosure of certain documents, (iv) a shareholders' meeting, (v) a period for submission of share certificates, and (vi) registration.

Although the one month procedure for the protection of creditors is not generally required – except in exceptional cases as dictated by the *Corporation Law* which is supposed to become effective in May 2006 – a period of at least one month after the shareholders meeting must

be allowed for the submission of share certificates. Therefore, this procedure in total usually takes more than two months. However, if a company becomes a subsidiary by way of these transactions has not issued share certificates, the total schedule may be shortened significantly by omitting (v) above.

Business transfer

A business transfer is usually completed simply by means of a board meeting, although certain types of business transfer require a shareholders' meeting to be held – for example when all of the business of a company is transferred. In any event, business transfers generally require a much shorter period for completion than the other procedures.

The above is an introduction to selected procedures as required under Japanese corporate law, and does not cover the details and exceptions thereof or other supplemental procedures. However, I am grateful if this article has provided some guidance for the scheduling of an M&A transaction. Undoubtedly, a key to successfully completing an M&A transaction as planned is to list all of the necessary tasks required under not only corporate law, but also other laws and regulations, and to fully understand how long it will take to complete each of them.

Scheduling M&A Transactions



Yoshimasa Dan

This article is meant to provide a very brief explanation about the length of time needed under Japanese corporate law to complete certain procedures that are often a part of M&A transactions.

Merger

A merger is generally completed by means of (i) a board meeting, (ii) the execution of a merger agreement, (iii) the disclosure of particular documents, (iv) a shareholders' meeting, (v) the procedure for the protection of creditors, and (vi) registration.

It is important to note the following from a scheduling perspective: A board meeting requires one week's prior notice, which may, however, be omitted by obtaining the consent of all of the directors and statutory auditors. A merger agreement is executed after the board meeting (possibly on the same day). For disclosure purposes, various documents have to be made available at the head office at least two weeks prior to the shareholders' meeting. If a company intends to fix a record date for determining the shareholders who are able to vote, it needs to publicize that date at least two weeks beforehand. Further, two weeks prior to the shareholders' meeting, notice must be sent to those shareholders listed as of the record date. Also, to protect creditors, they must be allowed to raise objections for at least one month after the meeting. Considering these processes, it usually takes more than two months to complete a merger.

Company split

A company split is usually completed by means of (i) a board meeting, (ii) the execution of a company split agreement (except for certain types of company split), (iii) discussions with employees, (iv) the disclosure of particular documents, (v) a shareholders' meeting, (vi) the procedure for the protection of creditors, and (vii) registration.

The notes applicable to a merger arrangement, as above, are also applicable here, except for point (iii). Discussions with employees must be initiated prior to (iv) above. It also usually takes more than two months to complete a company split. However, in certain types of company splits that do not harm creditors, (vi) above may be omitted, which saves a significant amount of time.

Share exchange and share transfer

Typically, share exchanges and share transfers are completed by means of (i) a board meeting, (ii) the execution of a share exchange agreement