



The Financial Instruments and Exchange Law and Hostile Takeovers

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The new takeover bid (TOB) regulations that came into effect in December 2006 include several amendments that will have an impact on legal practice with regard to hostile takeovers and the related defensive measures, both of which have been on the increase recently.

Before these regulations were amended, some believed that the information disclosure requirements were not sufficient. Therefore, in several situations – such as during hostile takeovers, when information disclosure is especially important – practical measures were often put into place. When hostile takeovers are launched, the party making the offer is requested to provide additional information to allow the shareholders to decide whether or not they will accept. From the board of directors' perspective, it is important to request information from the offering party in order to learn of its background and the management plan for after the acquisition. The new TOB regulations:

- (i) ensure there is time for the shareholders to decide whether they will accept the offer by granting the target company an extension of the TOB period if this period is less than 30 business days,
- (ii) provide information needed by the shareholders to decide whether they will accept the offer by requiring the board of directors of the target company, who are most familiar with the circumstances of the target, to submit an opinion report that includes their opinion on approving or rejecting the offer, and
- (iii) enhance the transparency of the procedure, clarify the issues and request further information by providing questioning rights to the target company.

The TOB regulations before the amendment were rigid under certain circumstances, especially in cases where defensive measures or competitive actions were taken from the third party. As a result, in some of the cases, the outcome was not always considered fair. The number of companies introducing defensive measures has recently increased and, once hostile takeovers are launched, there are some cases in which companies request a friendly third party to launch a TOB that competes with hostile takeovers.

The new TOB regulations prevent the offering party from suffering unforeseen damages when defensive measures are taken after the TOB is launched by

- (i) allowing the offering party to reduce the offer price once the

- target company exercises certain defensive measures, and
- (ii) allowing the offering party to withdraw its offer based on certain circumstances surrounding not only the target company but also its subsidiaries.

Furthermore, the new TOB regulations provide fair opportunities among investors and allow minority shareholders to sell their shares based on fair disclosures under the TOB regulations when large shareholders are to acquire the shares by obligating large shareholders to launch a separate TOB when they are to acquire more than 5% of the shares of the target company during another TOB period.

The new TOB regulations' provisions concerning information disclosure and measures to ensure the fairness of a TOB were based largely on the recent increase in hostile takeovers. These new regulations will have a significant impact on the legal procedures that govern hostile takeovers and the related defensive measures at a time when the number of hostile bids is only expected to increase.

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