

Corporate Value Report
Corporate Value Study Group
(Abstract)

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Since September 2004, the Corporate Value Study Group (Chairperson: Professor Hideki Kanda, The University of Tokyo) has engaged in studies on fair and reasonable hostile takeover defense measures that will lead to enhancing corporate value. The Study Group held repeated discussions with a focus on the following four principles: enhancement of corporate value; equal footing with global standards; no discrimination between foreign and domestic companies; and offering increased options for shareholders and management. Their work was published as **“Summary Outline of Discussion Points: Proposal toward Establishment of Rules for A Fair Business Community”** on April 22, 2005. Upon the publication of the Discussion Points, a procedure for inviting public comments was launched. To date, 69 public comments have been obtained from 19 persons, and many other comments and expectations have been received from both within Japan and the rest of the world. The Corporate Value Study Group, having reviewed and revised the Discussion Points as necessary while taking such comments into consideration, hereby publishes the **“Corporate Value Report.”**

1. Risk of Not Having Rules

In Japan, there is no consensus of conduct in the business community with regard to what constitutes a fair attack method and what constitutes a fair defense method. This is partly because Japan has less experience with hostile M&A. If such situation is left as it is, it will encourage repeated surprise attacks and excessive defense. Also, there are other concerns that companies may hesitate even to take reasonable defensive measures and fail to effectively block takeover proposals that could reduce their corporate value (concerns about ineffective defensive measures). Therefore, it is necessary to establish fair rules for hostile takeovers in the business community as soon as possible.

2. Experiences of Europe and the United States

In the United States, it took almost twenty years from the M&A boom in the 1980s to create rules concerning hostile takeovers. In Europe, EU unification was the stimulus, but it still took

approximately ten years to create unified rules concerning M&As centering on TOB rules. Although they are different institutional approaches, what is in common in the cases of Europe and the United States is that they have established rules that exclude hostile takeovers which hurt corporate value but do not operate against hostile takeovers which enhance corporate value. The experiences of Europe and the United States offer many recommendations for Japan as it enters the age of M&A.

3. Fair and Reasonable Rules Japan should Establish about Hostile Takeovers

In Japan, a rising number of companies are expected to adopt takeover defense measures as hostile takeovers increase. The following three are proposed as fair and reasonable rules about hostile takeovers:

- (1) Under Japanese Corporate Law, Western style defensive measures (including rights plans and golden shares) can be adopted. In this sense, **rules must be developed urgently for disclosure of defensive measures.**
- (2) The judgment on the reasonableness of defensive measures should be based on **the corporate value standard (that covers an existing threat to corporate value, the reasonableness of defensive measures, and the board's prudent and independent actions).**
- (3) The following principles should be met to develop defensive measures that are not excessive but reasonable for enhancing corporate value:
 - Companies should **adopt and disclose defensive measures before hostile approaches to fulfill accountability.**
 - Defensive measures should be those that **can be removed depending on decisions (a proxy contest) at a general meeting of shareholders.**
 - At least one of the following should be met so as to prevent board decisions from being designed to entrench board members:
 - **Independent party checks**
 - Priority is given to judgments of independent outside board members or auditors about decisions to maintain or remove defensive measures.
 - **“Chewable pill”**
 - The criteria for removal of defensive measures in takeover contests (including negotiation time and qualified decision makers) are developed beforehand as objectively as possible and the final decision of whether or not to accept a takeover proposal is left to shareholders through TOB, thereby weakening resistance to takeover proposals that are likely to enhance corporate value.
 - **Shareholder approval**
 - A mechanism for the general meeting of shareholders to approve the adoption of defensive measures before a hostile takeover approach and how to remove defensive

measures in takeover contests (including standards and processes for the board's decision-making).

4. Expected Changes in the Business Community in Japan

The government should improve the rules about disclosure based on Corporate Law and **establish guidelines for the protection of corporate value against hostile takeovers (Guidelines for Corporate Value Protection) in principle as soon as possible so that the Japanese business community can follow.**

In the business community in Japan, the infrastructure of management focusing on shareholders' values and the system of highly-independent outside directors and auditors is not yet fully established. Therefore some people are concerned that defensive measures against hostile takeovers might be abused to entrench management. However as business people comply with the rules, the infrastructure of the business community will improve.