

REFERENCE TRANSLATION

*This English translation is a reference translation of the Japanese language
be any discrepancies, the Japanese language original shall prevail.*

For Public Comment



**Key Points of the “Guidelines for Corporate
Takeovers” (Draft)**

**～Reconfirmation of the Intent for More Appropriate
Practice～**

MM DD, 2026

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The following abbreviations are used in this document.

Official Name	Abbreviation
Guidelines for Corporate Takeovers https://www.meti.go.jp/press/2023/08/20230831003/20230831003-b.pdf	Guidelines
Q&A on the “Guidelines for Corporate Takeovers” ●●	Q&A
Fair M&A Guidelines https://www.meti.go.jp/policy/economy/keiei_innovation/keizai_housei/pdf/fairmaguidelines_english.pdf	Fair M&A Guidelines

Introduction

The “Guidelines for Corporate Takeovers” (hereinafter “the Guidelines”), published by the Ministry of Economy, Trade and Industry (METI) in August 2023, remain valid at the present time.

This document, “Key Points of the Guidelines for Corporate Takeovers,” proceeds on the firm premise that the Guidelines are maintained and not revised. In addition, based on the actual understanding and behavior of management and others since the Guidelines were formulated, this document aims to ensure that the intent of the Guidelines is properly and accurately understood by many stakeholders. It clarifies, from METI’s perspective, the fundamental principles, essence, and important points to be noted in the Guidelines.

First, the Guidelines primarily address transactions in which an acquiring party acquires corporate control of a listed company by acquiring its shares.

This scope includes cases where an acquisition proposal is made without such a request or an approach. The Guidelines may also apply to cases where corporate control is acquired through stock for stock acquisitions, or through organizational restructurings such as mergers, share exchanges and share deliveries.

Next, the Guidelines present the following three principles that should be respected in acquisitions of corporate control of listed companies in general.:

Principle 1: Principle of Corporate Value and Shareholders’ Common Interests

Whether or not an acquisition is desirable should be determined on the basis of whether it will secure or enhance corporate value and the shareholders’ common interests.

Principle 2: Principle of Shareholders’ Intent

The rational intent of shareholders should be relied upon in matters involving

the corporate control of the company.

Principle 3: Principle of Transparency

Information useful for shareholders' decision making should be provided appropriately and proactively by the acquiring party and the target company. To this end, the acquiring party and the target company should ensure transparency regarding the acquisition through compliance of acquisition-related laws and regulations.

1 Importance of Efforts to Enhance Corporate Value in Normal Phase

(1) Efforts to Enhance Corporate Value

- Essentially, each director and the board of directors are expected to increase corporate value by exerting management efforts during the normal phase¹, and to take steps to ensure that such increase of corporate value is reflected in market capitalization².
- Such efforts to enhance corporate value during the normal phase will also enable the board of directors, upon receiving an acquisition proposal, to promptly compare the details of the proposed acquisition with the measures to enhance corporate value if the incumbent management team continues to manage the company.

Guidelines
Chapter 3

(2) Dialogue with Capital Market

- Conducting dialogue with shareholders during normal phase contributes not only to refining corporate value enhancement measures, building a relationship of trust, and fostering future expectations, but also serves as an important foundation for obtaining shareholders' understanding and support regarding the board of directors' decisions on acquisition proposals.

Q&A Question 3

¹ The time when a target company is not aware of an acquisition plan, proposal or commencement by a particular party.

² From this perspective, it is important to structure the board of directors to have a high degree of independence (for example, by having a majority of outside directors). In such a board of directors, the business plan (including business strategy and capital policy) and capital structure should be reviewed; periodic reviews of the business portfolio should be conducted; dialogue with investors and enhancement of information disclosure should be promoted; efforts to increase the liquidity of shares should be undertaken; and issues such as management succession and strengthening, M&A, and other challenges should be identified. For best practices regarding the review of the business portfolio, please refer to the "Practical Guidelines for Business Transformations" (METI, formulated on July 31, 2020).

In addition, referring to the "Five Principles for Board of Directors to Enhance 'Growth Power'" and "Corporate Governance Guidance for Enhancement of 'Growth Power'", both formulated by the METI on April 30, 2025, it is also considered effective to build a value creation story and execute growth investments aimed at realizing it.

2 ”Desirable Acquisitions”

(1) Meaning of “Desirable Acquisitions”

- Whether or not an acquisition is desirable should be determined on the basis of whether it will secure or enhance corporate value and the shareholders’ common interests. A “Desirable Acquisition” is one that both (i) enhances corporate value and (ii) secures interests of shareholders of the target company.
- An acquisition is not considered as a “Desirable Acquisitions” solely because of a high purchase price; the premise is the enhancement of corporate value.

Guidelines 1.2

Guidelines 2.1

Q&A Question 1

(2) Meaning of “Corporate Value”

- “Corporate value” is a quantitative concept meaning “the sum of the present values of discounted future cash flows generated by a company.”
- Even if a value appears qualitative, if it is reasonably expected to increase future cash flows or reduce the discount rate used to calculate the present value of cash flows, thereby increasing the present values of discounted future cash flows, such value is also included in corporate value.
- In other words, corporate value includes, for example, the value resulting from an increase in future cash flows or reduction of the discount rate³, through the following factors:
 - (i) The contributions by employees, counterparties, and other stakeholders in business activities;
 - (ii) The prompt and decisive decisions, the establishment of governance structures, and the sustainable business activities in consideration of diverse stakeholders including local community and global environment, which lead to risk mitigation; and
 - (iii) The management addressing economic security (for example, strengthening supply chains and implementing measures to prevent the leakage of technical information of the company or its business partners).

Guidelines 1.4

Guidelines 2.2.2

Q&A Question 4

³ It should be noted that the discount rate reflects investors’ expected rate of return, and the board of directors of the target company should be careful not to arbitrarily manipulate the discount rate and overestimate or underestimate corporate value.

- Therefore, even if a value appears qualitative, if it is reasonably expected that an acquisition will affect the target company's future cash flows or discount rate generated from such value, such effects on future cash flows or discount rates may be taken into account when considering the enhancement of corporate value by the acquisition proposal.
- However, it should be noted that the target company management should not make the concept of corporate value unclear by overly emphasizing qualitative value, which is difficult to measure, nor should the "corporate value" concept be used as a tool for management to defend themselves.

(3) Relationship between Corporate Value and Purchase Price

- The purchase price offered by the acquirer is generally considered to be the acquirer's evaluation of the "prospect of enhancing the corporate value of the target company through the acquisition," and the purchase price is an important factor indicating the corporate value of the target company after the acquisition.
- Therefore, when the acquirer offers a purchase price considerably higher than the historical stock price level, it can be reasonably expected that corporate value will be enhanced. Moreover, when there are multiple bona fide offers aimed at full acquisition, (a) acquisition proposals that contribute to enhancing the corporate value of the target company and (b) acquisition proposals offering greater benefits (purchase price) to general shareholders usually coincide.
- Exceptionally, there may be cases where the post-acquisition corporate value of the target company and purchase price do not correspond, but if the board of directors makes such a judgment, a persuasive explanation to shareholders is required.

Guidelines 3.1.2
 Fair M&A
 Guidelines 3.4.4
 Q&A Question 5

3 Response upon Receipt of an Acquisition Proposal

(1) Submitting and Reporting the Proposal to the Board of Directors

Guidelines 3.1.1

- In principle, upon receipt of an acquisition proposal to acquire corporate control, management or directors should promptly submit or report such matter to the board of directors.

(2) Considerations for Acquisition Proposals to be Submitted

Guidelines 3.1.1

- Whether an acquisition proposal should be submitted to the board of directors shall be judged formally and objectively.
- For example, the following elements are important factors in judging whether the acquisition proposal is specific:
 - a) The proposal is in written form rather than oral
 - b) The acquiring party is identified, rather than anonymous
 - c) The purchase price and timing are included.
- In addition, in determining how to handle the proposal at the board of directors' meeting (e.g., whether to submit or merely to report), in addition to the specifics of the acquisition proposal, it is also considered appropriate to take into account the credibility of the acquiring party based on factors such as:
 - a) The track record as an acquiring party (past investment behavior, record of previous acquisitions successfully closed, or increased corporate value of an acquired company, etc.)
 - b) The probability of its financial strength.

4 “Sincere Consideration” to a “Bona Fide Offer”

(1) “Bona Fide Offer”

“Sincere Consideration” to a “bona fide offer”

- The board of directors to which the matter is submitted shall in general give “sincere consideration” to a “bona fide offer.”

Guidelines 3.1.2

Q&A Question 2

Requirements and Consideration Factors for a “bona fide offer”

- A “bona fide offer” means an acquisition proposal that is (i) specific, (ii) legitimate of purpose, and (iii) feasible.
- If any of these factors (i) to (iii) are reasonably doubtful, it may be determined that the proposal does not constitute a “bona fide offer.”
- When examining whether there is reasonable doubt, the following factors should be comprehensively considered, for example:

(i) Specifics may be reasonably doubtful if:

- a) Acquisition proposals that do not specify key terms of the transaction such as acquisition structure, amount and type of acquisition consideration, conditions precedent to the transaction, or schedule.

(ii) Legitimacy of purpose may be reasonably doubtful if:

- a) Acquisition proposal does not indicate the management strategy after acquiring corporate control
- b) Acquisition proposal is made for the purpose of raising the purchase price of other parties (in situations where there are other competing bidders)
- c) Acquisition proposal is made by competitors for a purpose such as gaining confidential information

(iii) Feasibility may be reasonably doubtful if:⁴

- a) Acquisition proposal without appropriate financing of the transaction (such as balance certificates, loan certificates,

⁴ Regarding element (iii), at the initial stage when an acquisition proposal is received (before conducting due diligence), there may be room to enhance feasibility through, for example, (a) negotiations with financial institutions based on due diligence, (b) taking necessary procedures and measures to resolve issues, and (c) the target company’s engagement with controlling shareholders. Therefore, it should be noted that it may be inappropriate to judge a lack of feasibility at the initial stage.

commitment letters, or a letter issued by a financial institution indicating a high degree of certainty of financing)

- b) Acquisition proposal is objectively unlikely to succeed due to the low probability of satisfying the conditions for acquisition, such as regulatory permits and approvals (e.g., competition laws, foreign direct investment laws)
 - c) Acquisition proposal aims to obtain controlling interest in situations where the controlling shareholder is known to have no intent of selling its controlling shares to a third party.
- It is important for the board of directors to take care not to arbitrarily interpret the meaning of a “bona fide offer” and avoid sincere consideration.

(2) “Sincere Consideration”

Management Decisions Based on “Sincere Consideration”

- The board of directors has broad discretion, under the Business Judgment Rule, in deciding whether to accept an acquisition or not.
- After sincere consideration, the board of directors, within their broad discretion, makes management decisions, including whether to accept the acquisition, pursue standalone management (such as management by the incumbent management team or under the current shareholder structure), or consider strategic options such as partnerships or collaborations with third parties.

Methods and Matters to Consider in “Sincere Consideration”

- In sincere consideration, the board should consider whether to accept the acquisition or not from the perspective of whether the acquisition will contribute to enhancing corporate value.
- In doing so, the following points, among others, are primarily considered:
 - a) The acquirer’s post-acquisition management strategy
 - b) The appropriateness of the purchase price and other transaction terms (including acquisition structure and basis for determining the purchase price)

Guidelines 3.1.2
Q&A Question3

- c) Attributes of the acquirer and its investors (including compliance status and systems)
 - d) The acquirer's financial resources, track record (past investment behavior, record of completing acquisitions, achievements in enhancing corporate value of acquired companies, etc.), and management capabilities
 - e) Feasibility and timing of the acquisition (probability and timing of obtaining necessary approvals)
 - f) Feasibility and timing of the acquirer's proposed measures to enhance corporate value
- Additionally, to obtain such additional information, it may be appropriate to ask the acquirer questions within a reasonable scope.
 - The acquirer is expected to respond, within a reasonable scope, concretely (quantitatively where possible) to questions received from the target company.

Comparison of Measures to Enhance Corporate Value from a Quantitative Perspective

- It is advisable for the board of directors to thoroughly compare from a quantitative perspective which of the following (i) or (ii) will contribute more to the enhancement of corporate value over the medium to long-term, taking into account both synergies and dis-synergies:
 - (i) Purchase price and measures to enhance corporate value through acquisitions proposed by the acquirer (such as new business models or innovations proposed by the acquirer, and synergies brought by the acquirer's management resources)
 - (ii) Measures to enhance corporate value if the target company were to operate on a standalone basis, etc.
- However, if quantitative analysis of (i) is difficult, it may be substituted by confirming whether the qualitative explanations provided by the acquirer are reasonable and persuasive, among other factors.

Points to Note When the Board Decides Not to Accept an Acquisition

- Even if the board of directors decides not to accept an acquisition, it

should be noted that shareholders ultimately decide the success or failure of the acquisition, and therefore there remains a possibility that the acquisition may ultimately be completed.

- When the target company’s directors and board of directors decide not to accept an acquisition, they are expected to implement corporate value enhancement measures that exceed, over the medium to long term, the corporate value assumed under the acquisition, thereby securing the common interests of shareholders.

5 When Deciding on a Direction toward Reaching Agreement of an Acquisition

(1) Basic Concept

- Even when deciding on a direction toward reaching agreement of an acquisition⁵, the directors and the board of directors of the target company (including the special committee if it is established; this inclusion shall apply hereinafter) shall make management decisions on whether to accept the acquisition (including whether to withdraw the direction toward reaching agreement of the acquisition) and which acquisition proposal to accept (or support), from the perspective of enhancing the company’s corporate value.
- This Guideline does not establish an obligation, such as the Revlon duties in Delaware, U.S., which require the board of directors to maximize shareholder’s interests (i.e., purchase price) when the company is put up for sale.
- In such cases, the directors and the board of directors should make reasonable efforts (such as diligent negotiations and search for potential acquisitions) to ensure that the acquisition will be based on terms that will secure the interest which shareholders should enjoy (including raising the purchase price and eliminating coercion).

Guidelines 3.2.1

Q&A Question 6

(2) When Multiple Bona Fide Offers Exist

- Through diligent negotiations and search for potential acquisitions, (i) the proposal that most contributes to enhancing corporate value and (ii) the proposal that most secures shareholder interests (such as the highest purchase price) usually coincide.
- Notwithstanding such efforts being carried out, though it is exceptional, situations where (i) the proposal that most contributes to enhancing corporate value and (ii) the proposal that most secures shareholder interests may differ. In such situations, the board of directors may make a management decision to support (i) the proposal that most contributes to enhancing corporate value,

Guidelines 3.2.3

Fair M&A

Guidelines 3.4.4

Q&A Question 6

⁵ For example, cases where (i) the target company actively seeks acquisition proposals for the transfer of corporate control and enters into negotiations to select a proposal and to fix the terms and conditions, or (ii) the target company enters into negotiations to reach an agreement to accept a proposal from an acquiring party to acquire corporate control, may be applicable.

- provided that sufficient accountability to shareholders is fulfilled.
- However, even if the board of directors makes a management decision to support (i) the proposal that most contributes to enhancing corporate value, it should be noted that shareholders ultimately decide the success or failure of the acquisition, and therefore there remains a possibility that an acquisition related to a proposal different from the board's decision (such as (ii) the proposal with the highest purchase price) may ultimately be completed.

6 Establishment of a Special Committee

(1) Basic Concept

- Depending on the degree of conflict of interests, the degree of information asymmetry issues, the circumstance surrounding the target company and the transaction structure, fair procedures (i.e., “Fairness Ensuring Measures”) such as the establishment of a special committee may be implemented. Utilization of such fair procedures usually contribute to ensure the interests of shareholders.
- Regarding the special committee, the necessity of its establishment should be considered on a case-by-case basis by taking into account factors such as:
 - a) The degree of conflicts of interest
 - b) The need to supplement the independence of the board of directors (e.g., whether outside directors constitute a majority of the board)
 - c) The degree of necessity for explanation to the market

Guidelines 3.3

(2) Cases Where Establishing a Special Committee is Useful

- For example, the establishment of a special committee is useful in the following context. However, the benefit of establishing a separate special committee may be relatively limited for a company with majority of its board of directors constituted by outside directors.
 - a) When the appropriateness of the transaction terms is considered particularly important to the interests of shareholders because the proposal includes cash-out (a full acquisition proposal)
 - b) When considering takeover response policies or countermeasures
 - c) Other cases where accountability to the market is considered high (e.g., when there are multiple publicly known acquisition proposals, or, depending on the circumstance, when the acquisition proposal involves share consideration)

Guidelines 3.3

(3) Cases Where Establishing a Special Committee is Required

- The “Code of Corporate Conduct for Matters to be Observed Pertaining to MBOs, etc.” (issued by the financial instruments exchanges) requires a target company to obtain an opinion from a

Q&A (Reference)

special committee when a squeeze-out procedure is conducted through a MBO, or a tender offer by a controlling shareholder or other associated company.

(4) Composition of the Special Committee

- The special committee should basically consist of outside directors. If it is not appropriate to have only outside directors as members of the special committee from the perspectives such as lack of independence and other factors, the next best approach may be to have outside auditors or external experts as members of the special committee as necessary.
- In cases where outside directors lack expertise in M&A, in addition to trying to improve the M&A literacy of the outside directors, one approach is to retain advisors to seek for professional advice.

Guidelines 3.3

7 Information Disclosure and Provision of Time to Consider to Shareholders, and Appropriate Decision by Shareholders

(1) Information Disclosure and Provision of Time to Consider by an Acquiring Party

Information Disclosure to Shareholders of the Target Company

- It is expected that the acquiring party will comply with the large shareholdings reporting regulation and the tender offer regulation to increase transparency and provide shareholders with sufficient information and time allowing to make an appropriate decision (informed judgment).
- Specifically, disclosure and provision of the following information to shareholders should be considered:
 - a) Purpose of the acquisition
 - b) Number of shares to be acquired
 - c) Summary of the acquiring party
 - d) Basic management strategy after the acquisition
 - e) Treatment of stakeholders after the acquisition (employees, major business partners, etc.)
 - f) Other impacts of the acquisition on the corporate value of the target company

Guidelines 4.1.1
Guidelines 4.1.1.1
Guidelines 4.1.2

Provision of Consideration Time to Shareholders of the Target Company

- For the target company's shareholders to have the opportunity to make an informed judgement, it is important that the shareholders and the board of directors are provided not only with information, but also given sufficient time to consider.

(2) Information Disclosure by Target Company

- Informed judgment by shareholders will be possible through substantial information disclosure by the target company and through providing important decision-making materials that contribute to the judgment on the appropriateness of the transaction terms.
- In addition, after the announcement, disclosure of information regarding how the target company reacted to the acquisition proposal

Guidelines 4.2

and how the acquisition was consummated, and improvement of transparency in relation to the process of how the transaction terms were agreed, can lead to more careful consideration and negotiation with an awareness of the views of general shareholders and other stakeholders.

(3) Preventing Acts that Distort Shareholder Decision-Making

- When shareholders make decisions on acquisitions, it is important to ensure that they are provided with the necessary information and are not prevented from making rational decisions.
- From this perspective, the following actions are not advisable (if it constitutes a violation of any law or regulation, such action should not be taken):

[For the acquiring party or the target company]

- a) Disclosing inaccurate information or providing or disclosing misleading information to shareholders
- b) Leveraging the acquiring party's dominant position, such as to approach the acquiring party's business partners who are also shareholders of the target company.
- c) Providing money or goods when soliciting votes and proxies.

[For the acquiring party]

- d) Engaging in aggressive coercive acquisition techniques, such as coercive two-step acquisition.
- e) Notwithstanding an intention to make an acquisition proposal, to conceal such intent and advance to make share purchases.
- f) Announcing advance notice of a planned tender offer without a reasonable basis for actually commencing the tender offer, such as by lacking the financial resources required for the acquisition.

Guidelines 4.3