

WHITE & CASE LLP

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An Overview of M&A in Japan and Structural Points of Interest

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I. Overall Numbers and Environment in Recent Years

- A. High Increases in Transaction Value
from Very Low Base


- B. Absolute Numbers of Transactions Still
Small

C. Domestic Mergers and Acquisitions Still Predominate

-  Very big numbers from financial institution mergers
-  Very slow process from date of announcement to actual integration

- ✎ None have produced any significant immediate savings in terms of reduced costs or other synergy benefit
- ✎ Classic concern is the Daiichi and Kangyo Bank merger of the early 1970's

D. Cross-border Transactions

 Distressed Sales are the Only Game in Town

- a. Financial Institutions
- b. Autos and Auto Parts



Positive Alliances

a. Very Few Examples

b. 2000 Experience

E. Political Environment for Continuing FDI



- ✉ Prospects in 2001-2002: the economy and fundamentals versus the Yen-Dollar exchange rates
- ✉ The Japan Management “Discount”: why do so many TSE First Section Companies trade below break up value?

II. Structural Considerations

A. Past Barriers Mostly Removed

- ✍ Foreign Exchange Control Law
- ✍ Use of Holding Companies as Acquisition Vehicles
- ✍ Securities Laws for Take Over Bids

Other General Technical and Legal Barriers

-  Limitations on capitalization in kind
-  Proxy fights and other hostile actions

B. New Potential Structures



- ✉ SPC Acquisition Vehicles
- ✉ Stock Exchanges under the Commercial Code: not available for cross-border deals directly, but some uses
- ✉ Spin-offs and the Potential for an MBO Market

C. Corporate Governance

- ✎ Largest Continuing Obstacle:
Japanese Board Practices, in
Both Targets and Institutional
Investors

- ❁ No transparency or reliable process requirement
- ❁ No accountability for shareholder value
- ❁ No accountability by pension managers to pension beneficiaries under current system of defined benefit plans: will institutional shareholders sell into a hostile bid

Accounting Principles and Practice

-  Improvements in principles are largely in place, but vigilance required against back-sliding
-  Practice standards still not up to international, so still requires very substantial consideration in valuations

- ✍ Pension Obligations into the Future
 - 🌸 Valuation Issues
 - 👁 Prospects for conversion from Defined Benefit Plans at present to Defined Contribution Plans


D. Work Outs: Attempts to Develop a More Rational Market

Corporate Revitalization Law: Early Intervention


 Lessons of Yamaichi Securities
and others

 Sogo and other cases

- New Debt Forgiveness Proposals
 - 🌀 Original Tax Rule Against Writing Off Bad Debt
 - 🌀 Yanagisawa Proposals to focus on direct write-offs rather than loss reserves

 Traditional Bankruptcy and
Financial Institution Variants
Will Continue to Predominate
in 2001-2002

E. Labor Issues

-  Rationalization
-  Pension Conversion Issues
-  Foreign Parent Company
Stock Options

F. Availability and Use of Advisors

-  By Foreign Acquirer
-  By Japanese Target