

HOSTAILE TAKEOVERS IN JAPAN: ANALYSIS AND SUGGESTIONS

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ABSTRACT

The recent succession of hostile tender offers is not a temporary phenomenon, but a sign of deeper structural changes in the Japanese takeover environment. These structural changes seem to be irreversible, and may eventually increase the number of hostile tender offers. Against this backdrop, defensive measures are being extensively discussed in Japan. Further, recent amendments to the Commercial Code seem to provide the opportunity for lawyers and directors to develop new defensive measures. Thus, legislators and/or courts will need to develop a national policy to govern this phenomenon.

However, thus far, there seems to be no sufficient theoretical or empirical basis for new legislation in Japan. If the lack of a legislative solution continues, the Japanese courts will likely be required to solve this problem in the near future. One possible solution for the Japanese courts is to adopt a modified version of the Delaware legal standards. This modified version of the Delaware legal standards seems to provide efficient tools to review various defensive tactics in diverse situations. In addition, under this modified version of the Delaware legal standards, the Japanese courts can make use of the precedents of the Delaware courts. While the Delaware legal standards are still evolving, a number of decisions elaborating such legal standards have already been developed by the Delaware courts, and the Japanese courts are in a position to take advantage of the standards. Thus, this thesis suggests that the Japanese courts should adopt the modified Delaware legal standards for reviewing target managements' adoption of defensive tactics.

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