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Editor
Stephen L Ritchie

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Stephen L Ritchie

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PREFACE

The 12th edition of *The Private Equity Review* comes in the wake of a successful – but bumpy – year for dealmakers, which came on the heels of 2021's record-breaking level of activity. While private equity dealmakers remained active in 2022, with merger and acquisition (M&A) activity at the second-highest level on record (and well above 2020 and pre-pandemic levels), that activity was largely a continuation of 2021's unprecedented momentum carrying into the first half of 2022 before dropping sharply in the latter part of the year. That drop was due to a confluence of factors, including rising borrowing costs, challenged debt markets, high inflation, fears of a potential recession and declining boardroom confidence. The net result was an overall reduction in deal activity of roughly 40 per cent by value and 15 per cent by deal count from 2021. Large deals were up slightly as a percentage of overall M&A value but down in absolute numbers from 2021 levels, driven by the steep drop in mega-deals in the second half of 2022. Private equity exit activity decreased substantially in 2022, with value down 63 per cent and count down 28 per cent. Consistent with these trends, initial public offering and M&A by special purpose acquisition corporations (SPACs) – one of the biggest drivers of 2021's record-breaking deal volume – came to a screeching halt in 2022. The number of liquidated SPACs, with SPAC funds being returned to investors without a deal being done, shot up in the fourth quarter of 2022, with more expected as additional SPACs face upcoming expirations. Although 2022 did see a steady increase in announced de-SPAC M&A activity, likely due in part to SPAC sponsors seeking a deal ahead of the significant number of SPACs approaching their expiry dates, these deals were done at much smaller average sizes than peak 2021 levels and amid an overall background of increasing numbers of terminated de-SPAC transactions.

That said, more than US$1 trillion of global activity in 2022 was attributed to private equity sponsors – at roughly 33 per cent of global deal value, exceeding the prior all-time-high metric set in 2021. Private equity sponsors continued to seek out larger public targets in record number, with overall take-private activity and value surpassing recent levels – the average take-private deal size was US$3.5 billion in 2022, up significantly from US$2.6 billion in 2021. With continued confidence in the performance of private equity as an asset class, fundraising activity remained strong as well, with private equity funds raising aggregate capital of over US$1.2 trillion and continued record amounts of available capital, or dry powder, at, by one estimate, over US$1.4 trillion.

The year 2022 again demonstrated private equity's enormous impact and the continuing creativity of private equity dealmakers. Given private equity funds' success, creativity and available capital, private equity will continue to play a major role in the global economy, not

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only in North America and Western Europe, but also in developing and emerging markets in Asia, South America, the Middle East and Africa, notwithstanding ongoing and potential additional political, regulatory and economic challenges.

Private equity professionals need practical and informed guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. We intend for *The Private Equity Review* to help address this need. It contains contributions from leading private equity practitioners in 14 different countries, with observations and advice on private equity dealmaking and fundraising in their respective jurisdictions.

As private equity has grown, it has faced increasing regulatory scrutiny throughout the world. Adding to this complexity is the fact that regulation of private equity is not uniform from country to country. As a result, the following chapters also summarise these various regulatory regimes.

I want to thank everyone who contributed their time and labour to making this 12th edition of *The Private Equity Review* possible. Each of these contributors is a leader in their respective markets, so I appreciate that they have used their valuable and scarce time to share their expertise.

Stephen L Ritchie
Kirkland & Ellis LLP
Chicago, Illinois
March 2023

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Part II

Investing

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Chapter 16

JAPAN

Norihiro Sekiguchi and Tomohiro Murakami[1]

I OVERVIEW

i Deal activity

More than 20 years have passed since the emergence of the Japanese private equity (PE) market. In recent years, we have seen many large buyout deals led by global-based sponsors. There have been three main trends in Japanese PE transactions.

The first trend is carve-out deals. The Practical Guidelines for Business Restructuring issued by the Japanese government in June 2020 strongly encourage listed companies to review their business portfolios. This is one of the factors encouraging large Japanese companies to sell their businesses. Many of the recent large-scale buyouts were carve-outs in which global-based PE funds were the buyers.

The second trend is buyouts from the founders' families, which serves as a form of business succession. Many founders of Japanese blue-chip companies are approaching retirement age and they do not always have suitable successors. Selling to PE funds lets them cash out their assets while allowing them to pass on the business to a professional management team. Business succession has become an important source of PE transactions in Japan.

The third trend is the increase in growth equity investments. Since the mid-2010s, Japanese start-ups have been inclined to raise several rounds of additional financing before going public to increase their valuations at initial public offering (IPO). Domestic PE funds and strategic buyers are leading growth equity investments.

According to RECOF DATA, which is one of the most reliable statistical data sources for merger and acquisition (M&A) transactions in Japan, the number of acquisitions by PE firms involving Japanese targets from January to December 2022 was 1,071, 197 of which were inbound transactions, whereas the number of management buyouts (MBOs) involving PE firms during the same period was 15.

RECOF DATA also shows that there were 92 divestitures by PE firms from January to December 2022.

Major sponsors active in Japan include global-based firms such as KKR, Bain Capital, CVC, Carlyle, MBK and Apollo Global Management and domestic independent firms such as Unison Capital, Advantage Partners, Polaris Capital, Integral, Japan Industrial Partners, J-Star, J-GIA, J Will Partners and others. There are also domestic firms that are affiliated with financial institutions (banks and securities firms) and trading companies.

1 Norihiro Sekiguchi and Tomohiro Murakami are partners at Oh-Ebashi LPC & Partners.

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ii Operation of the market

It is common for sponsors acting in Japan to enter into a management services agreement with top management prior to the closing of the acquisition, which sets forth numerical performance targets, compensation packages and other matters.

In addition to the annual base compensation and performance-based bonuses paid in cash to top management, a compensation package may be agreed that is triggered by the sponsor's exit. The most typical arrangement under such compensation packages is to have the target company issue stock options to top management for no consideration, which allows top management to exercise the options for shares in the target company upon the sponsor's exit, and then sell the shares for cash.

If the owner of the target company continues to manage the company after the buyout, top management is often allowed to acquire a minority stake in the target company and enter into a shareholders' agreement with the sponsor. If this is the case, upon the sponsor's exit, top management can sell their shares jointly with the sponsor for cash by exercising their tag-along right.

When a PE fund acquires all of or a controlling interest in a Japanese target company, the major exit arrangement is a trade sale. However, secondary buyouts have been increasing in recent years. There has been an increase in the number of cases whereby an additional portfolio company acquired through post-investment roll-up (in many cases, the first portfolio company in a certain industry acquires several other companies in the same industry) is sold to other PE funds. The main reason for this trend is that when PE funds attempt to exit, they generally retain financial advisers to conduct a bidding process and maximise the sale proceeds, and they often approach not only strategic buyers but also other PE funds as potential bidders.

When a PE fund conducts a bidding process, it generally shortlists potential buyers to a few companies in the first round of bidding and then further limits the number of potential buyers to one or two companies in the second round of bidding after conducting due diligence, followed by negotiations for definitive agreements. For small- and medium-scale projects, it generally takes one to two months to conduct the first round of bidding; two to three months for the second round of bidding, including the due diligence process; and several more months to reach a definitive agreement with the selected buyer. For large projects, the bidding process itself is often longer.

II LEGAL FRAMEWORK

i Acquisition of control and minority interests

Buyouts of private companies

In a leveraged buyout (LBO) scheme, a purchase vehicle established by a sponsor acquires all the shares of a target company after borrowing funds for the acquisition from a financial institution. In acquiring a private company, a simple stock purchase agreement (SPA) is concluded between the purchase vehicle and all the shareholders of the target company (see Section III.iii, below, for the customary terms and conditions of an SPA), and there is no need for a tender offer process under the Financial Instruments and Exchange Act (FIEA), as described below. Although the articles of incorporation of a private company usually require the approval of the company's board of directors for the transfer of the company's shares, in practice, this is rarely an obstacle to a buyout.

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Buyouts of public companies

In buyouts of public companies, namely going-private transactions, it is common to conduct a two-step acquisition. A tender offer is made during the first phase, and the back-end squeeze-out of the remaining minority shareholders follows in the second phase.

In the preceding tender offer, a purchase vehicle established by a sponsor becomes the tender offeror and discloses information in accordance with the FIEA. The main disclosure documents are the public notice of the commencement of the tender offer and the tender offer statement filed by the tender offeror and the position statement filed by the target company. If a tender offeror intends to acquire more than one-third of the total voting rights of a listed company, it is legally required to conduct a tender offer. However, in going-private transactions, it is customary to aim for two-thirds or more of the total voting rights without setting a cap on the number of shares to be purchased in the tender offer.

When conducting a going-private transaction, it is usual to take measures to ensure the fairness of the tender offer in respect of the public shareholders of the target company and eliminate the coercive nature of the tender offer. Specifically:

a in many cases, the tender offer statement sets out that the tender offeror intends to conduct a back-end squeeze-out at an amount equal to the tender offer price if the tender offer is completed successfully; and

b a tender offer period of 30 business days or more is provided.

If the transaction falls under an MBO (i.e., the current management invests all or part of the funds needed to acquire the target company's shares on the assumption of a going concern), the transaction is expected to comply with the Guidelines on Fair M&A published by the Japanese government in June 2019 (the Fair M&A Guidelines). In most cases, if a going-private transaction constitutes an MBO, in addition to performing the arrangements for items (a) and (b) above, the target company establishes a 'special committee' that is independent from the board of directors, in accordance with the Fair M&A Guidelines. The special committee is expected to examine and determine the merits of the buyout, the appropriateness of the terms of the transaction and the fairness of the procedures from the perspective of the interests of the public shareholders in the target company.

If the target company has major shareholders, a tender offer agreement is often concluded between the tender offeror and the major shareholders, whereby they agree that if the tender offeror conducts a tender offer for the target company's shares under certain conditions, the major shareholders will tender their shares and will not withdraw the tender. According to the Japanese Financial Services Agency's guidelines on tender offers, if a tender offer agreement is executed, the main terms and conditions of the agreement must be stated in the tender offer statement and in the public notice of commencement (see Section III.iii, below, for the details of what is generally stipulated in a tender offer agreement).

The back-end squeeze-out generally employs either an exercise of the squeeze-out right or a consolidation of shares. The squeeze-out right was introduced in the 2016 amendment to the Companies Act and allows an acquirer to demand that all other shareholders of the target company sell all their shares in the target company when the acquirer holds 90 per cent or more of all the voting rights in the target company. The back-end squeeze-out by consolidation of shares is a method whereby the target company conducts the consolidation of shares using an extreme consolidation ratio and the shares of the target company held by the minority shareholders other than the acquirer are reduced to fractions of less than one share, and then,

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in accordance with the statutory procedures under the Companies Act, with court approval, the target company sells the integer portion of the shares that is the sum of such fractions and delivers the cash-out to the minority shareholders in exchange for their equity portion.

In contrast to the consolidation of shares, the exercise of the squeeze-out right does not require a resolution at a general shareholders' meeting of the target company. It can be handled by a resolution of the board of directors and does not require a statutory cash-out procedure for fractional shares. In practice, it takes several months for a listed company to hold a general meeting of shareholders, and the statutory cash-out procedures for fractional shares require court approval. Therefore, the exercise of the squeeze-out right allows for a quicker cash-out compared with the consolidation of shares.

Prior to the 2016 amendments to the Companies Act, the consolidation of shares was not used as a cash-out scheme because it did not provide the minority shareholders with legal protections such as the dissenting shareholders' right to demand the purchase of their shares and injunctive relief. However, after the amendment, these remedies were introduced; therefore, the consolidation of shares is now widely used as a back-end squeeze-out method. The greatest advantage of the consolidation of shares over the exercise of the squeeze-out right is that it does not require the acquisition of 90 per cent or more of the total voting rights of the target company in the first-phase tender offer. The consolidation of shares requires approval through a special resolution of the target company's shareholders, but such a special resolution can be obtained once the acquirer secures two-thirds, not 90 per cent, of the total voting rights of the target company.

Considering the above, in practice, although the minimum number of shares to be purchased in the first-phase tender offer is set at two-thirds of the total voting rights of the target company, if the tender offeror succeeds in acquiring 90 per cent or more of the total voting rights, it often chooses to exercise the squeeze-out right as the scheme for the back-end squeeze-out. On the other hand, if the number of shares purchased is less than 90 per cent, the consolidation of shares is often chosen. In each of the buyouts of Hitachi Metals and Hitachi Transport System (discussed below), the consolidation of shares was planned at the time of the pre-announcement as a back-end squeeze-out, because it was assumed that Hitachi, Ltd, a major shareholder, would not apply for the tender offer and that the tender offeror would not be able to acquire 90 per cent or more of the shares in the first-phase tender offer.

Where to form a purchase vehicle

A global-based sponsor usually sets up a joint stock company under Japanese law as a purchase vehicle. In the financing context, the purchase vehicle would be the borrower, but the most efficient means of repaying the acquisition financing loan would be for the purchase vehicle to merge directly with the target company after the two-step acquisition is completed. Also, Japanese law does not allow a Japanese company to merge directly with a foreign company, so this may be one of the reasons for structuring a purchase vehicle as a Japanese company.

Foreign investment filing requirements

The Foreign Exchange and Foreign Trade Act (FEFTA) requires a foreign investor carrying out a foreign direct investment (FDI) in a Japanese target company to file a prior notification if the target company and its subsidiaries conduct certain restricted businesses that may have an impact on Japan's national security. Even when a non-Japanese sponsor uses a Japanese entity as a purchase vehicle, it is highly likely that the purchase vehicle will still be classified as a foreign investor under the FEFTA. An FDI for which prior notification is filed will be

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examined by the Ministry of Finance and other relevant ministries during a statutory waiting period of 30 days. This period may be extended for up to five months if the FDI raises strong national security concerns, but, usually, this is shortened to two weeks if the authorities do not find any such concerns.

There has been a series of amendments to the FEFTA, which may have an impact on PE transactions by a non-Japanese sponsor. The May 2020 amendments classified 'restricted businesses' into 'core industries' and 'other industries' (i.e., non-core industries), and a more rigorous prior screening is required to be conducted for core industries. In addition, the appointment of directors in target companies and succession to restricted businesses through reorganisations, such as by business transfers, company splits and mergers, were added to the list of FDIs subject to filing requirements.

When a global-based sponsor conducts a buyout in Japan, prior notification is required if it acquires 100 per cent of the shares of the target company (whether listed or unlisted) operating in a restricted business. This was the case whether the buyout was performed before or after the amendments. However, as a result of the amendments referred to above, after acquiring the company operating in a restricted business, its parent company, which is the purchase vehicle, is itself considered to be operating in the restricted business; thus, a prior notification is required each time a foreign sponsor appoints its members as directors of the purchase vehicle. In case of an absorption-type merger of the target company to help repay the acquisition financing, resulting in the purchase vehicle becoming the surviving company, prior notification may also be required.

Merger control

For new acquisitions of a certain percentage of shares in a Japanese company, there are prior notification requirements based on the sales proceeds in Japan of both the acquirer and the target company. Specifically, if the total domestic sales of the acquirer and all its affiliates exceed ¥20 billion, the total domestic sales of the target company and its subsidiaries exceed ¥5 billion, and the ratio of voting rights to be held by the acquirer in the target company will exceed 20 per cent or 50 per cent as a result of such share acquisition, the acquirer (e.g., the purchase vehicle) must file a prior notification with the Fair Trade Commission. For PE sponsors, depending on the capital structure of the purchase vehicle, the sales proceeds in Japan earned by their existing portfolio companies may be included in the domestic sales of the acquirer's group. As a rule, a share acquisition cannot be closed for 30 days from the filing date of the prior notification, and this may affect the overall deal schedule.

ii Fiduciary duties and liabilities

Under Japanese law, it is generally understood that controlling shareholders do not bear any fiduciary duties to minority shareholders.

Under the provisions of the Companies Act, a director of a target company who is appointed by the controlling shareholders has fiduciary duties to the company itself based on his or her capacity as such a director. This is understood to mean that such a director should act in the best interests of all the shareholders, including the minority shareholders.

With regard to the fiduciary duties of directors of a target company in an M&A transaction, (1) the Tokyo High Court, on 17 April 2013, ruled that in the case of an MBO going through a two-step acquisition, the directors have a duty to ensure the fair transfer of corporate value; and (2) the Osaka High Court, on 29 October 2015, ruled that if an MBO going through a two-step acquisition fails, the directors have a duty to negotiate with the

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acquirer's side through a fair process, taking the shareholders' interests into consideration. Notably, on 1 July 2016, the Supreme Court ruled that if the major shareholders of a target company jointly set up a tender offer and conduct a two-step takeover with squeeze-out, even in such a transaction with a structural conflict of interest, if the tender offer was made through procedures generally recognised as fair to eliminate the conflict of interest and a subsequent back-end squeeze-out was made at the same amount as the tender offer price, the price determined between the parties shall generally be respected.

Based on these precedents, the Fair M&A Guidelines discussed above were established as best practices to ensure fairness in transactions with structural conflicts of interest, such as MBOs. When a PE sponsor conducts a going-private transaction constituting an MBO, it is expected to implement the measures recommended by the Fair M&A Guidelines (e.g., establishing a special committee in the target company, etc.).

When a PE sponsor exits from an investment in a Japanese portfolio, as it is a sale of an unlisted company, the requirements under the FIEA, such as the tender offer regulations, do not apply, and a simple SPA will be executed with the buyer.

In Japanese M&A practice, due to its cultural background, the seller often strongly desires to maintain all current employees in the target company after the sale. In the SPA, it is common for the seller to require buyer's post-closing covenants that, for several years after the closing, the target company's workers will continue to be employed and that their working conditions in the company will remain unchanged. Thus, when a foreign PE fund conducts an exit, it also makes such a request to the buyer in line with this practice.

As protection for the PE fund itself, it would usually present various conditions to the buyer side during the negotiation of the SPA, mainly because the life of the fund is limited. Specifically, it is common for the seller to suggest remedial measures that can be used customarily in Japanese M&A transactions, such as (1) rejecting any representations and warranties regarding the target company; (2) even if the seller accepts the representations and warranties, limiting the items and their scope (including by providing knowledge and materiality qualifiers); and (3) limiting the period and scope of indemnity obligations, including the use of *de minimis* and basket clauses.

In Europe and the United States, representations and warranties insurance is widely used, including for exits by PE sponsors. Japanese insurance companies have recently started to offer representations and warranties insurance, and it is gradually being used in Japan now. Buyer's insurance is also available, but when a global-based PE fund conducts a buyout using a Japanese-registered purchase vehicle, Japanese regulations do not allow the purchase vehicle to conclude an insurance contract with a non-Japanese insurance company that does not have a branch in Japan.

III YEAR IN REVIEW

i Recent deal activity

As mentioned in Section I, most of the recent large-scale buyout deals have been carve-outs in which foreign PE sponsors were buyers. Notable recent buyout deals include the acquisition of Hitachi Metals led by Bain Capital, which was announced in April 2021 and completed in October 2022 (total purchase price of approximately ¥800 billion); the buyout of Hitachi Transport System led by KKR, which was announced in April 2022 and completed in November 2022 (total purchase price of approximately ¥450 billion); and the acquisition of the science business of Olympus by Bain Capital, which was announced in August 2022 and is

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scheduled to take place in January 2023 (total purchase price of approximately ¥430 billion). The first two were carve-outs from the Hitachi, Ltd group, and both were going-private deals. Similarly, Olympus had spun off its core scientific business to create a wholly owned subsidiary and will sell its entire stake in the subsidiary to complete the carve-out.

Other notable unlisted acquisitions include Fortress Investment's purchase of department store Sogo & Seibu, a subsidiary of Seven & i Holdings, for over ¥200 billion, and Bain Capital's purchase of indoor clothing brand Gelato Pique for approximately ¥200 billion, both of which were reported in November 2022.

ii Financing

Purchase vehicles raise funds for acquisitions by issuing equity and through borrowings. Bonds are rarely used as acquisition financing in Japan. Lenders extend term loans for the purchase price and others, revolving loans for working capital and other types of loans, which include capex loans for target companies whose business operations require capital expenditures, and bridge loans for target companies that hold excess cash or other excess assets.

Mezzanine financing, such as subordinated loans and preferred stocks, is considered to fill the gap between the acquisition price and the sum of the sponsor's equity and senior loans. Also, stock options may be issued as an equity kicker to mezzanine financiers.

Financers providing senior LBO loans include major banks, regional banks, insurance companies and others. Mezzanine finance is provided by mezzanine funds managed by independent firms or other asset managers, lease companies, insurance companies and others. In rare cases, sellers take part in financing, which is called vendor financing. Financial institutions, which have become limited partners of sponsor PE funds, may also have a chance to participate in senior or mezzanine financing for buyout transactions led by such PE funds.

The financial terms provided in typical senior LBO loan agreements are 'debt service coverage ratio', 'leverage ratio', 'pricing grid' and 'cash sweep ratio', among others. In addition, the balance sheet test and profit-and-loss account test are commonly used in domestic LBO loan transactions.

Lenders commonly require an extensive range of conditions precedent, representations and warranties, covenants and events of default. The general notion on security packages is that, in addition to the shares in the purchase vehicles held by the sponsor PE funds, all the substantial assets owned by the target companies and purchase vehicles are subject to security for the lenders, and that the target companies guarantee to the lenders the payment by the borrowers. The actual range of assets subject to security varies for each transaction. Lastly, although certain funds clauses and clean-up periods may have been seen in senior loan agreements for buyout transactions led by global-based PE funds, these provisions are rarely found in purely domestic LBO loan agreements.

iii Key terms of recent control transactions

Buyouts of private companies

As discussed in Section II.i, above, an SPA is executed for an acquisition of a privately held company. It mainly covers price adjustments, representations and warranties (in respect of the seller and the target company), conditions precedent, pre-closing covenants, post-closing covenants, indemnification and termination.

In conventional Japanese M&A practice, in respect of price adjustments, it has been common to adopt a locked-box mechanism whereby the reference date is the last day of the target company's most recent fiscal year prior to the signing. However, it has become more

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common recently to agree on a post-closing price adjustment based on a comparison of the balance sheet at the time of the closing with the balance sheet used as the basis for the pricing at the time of the signing.

In PE deals, it is common for the buyer to request certain finance-out clauses as closing conditions. In contrast, the seller may require the buyer to provide certain pre-closing covenants, such as the obligation to exert efforts to secure acquisition financing or to provide a copy of the commitment letter from the potential lender.

Buyouts of public companies

As described in Section II.i, above, when there is a major shareholder in the acquisition of a listed company, a tender offer agreement may be entered into between the tender offeror and the major shareholder.

It generally includes the obligation to commence a tender offer and the conditions precedent for such commencement, the obligation of the major shareholder to tender its shares and not to withdraw the tender, representations and warranties, and covenants. However, in the cases of Hitachi Metals and Hitachi Transport System, the parties agreed to certain terms, such as (1) Hitachi, a major shareholder, will not tender any shares in the tender offer; (2) Hitachi will not enter into any agreement with a third party for a transaction that would be an obstacle to such a tender offer; and (3) fiduciary-out clauses for when a competing tender offer is effected (e.g., if the counter offer price exceeds the offer price of the tender offeror, Hitachi may discuss the matter with the tender offeror, and if the discussions are not successful, Hitachi will be able to tender its shares under the counter-offer).

Since a price adjustment after the commencement of a tender offer would permit price changes only for major shareholders and could violate tender offer regulations that require the tender offer price to be the same for all shareholders, the tender offer agreement does not provide for such price adjustments.

The tender offer regulations allow a tender offeror to withdraw a tender offer only in very limited circumstances to protect the public shareholders. As such, unlike the acquisition of an unlisted company, the range of closing conditions that can be agreed in a tender offer agreement is quite limited. A finance-out clause may not be used as a closing condition; instead, in recent large buyouts, the tender offerors have apparently made representations and warranties on the certainty of financing.

In recent years, large buyout deals (especially those led by foreign PE funds) have been increasingly required to obtain clearances before closing under various regulations, such as merger control regulations, regulations relating to the Committee on Foreign Investment in the United States and other investment regulations in several jurisdictions. However, it may take several months to around a year to obtain such clearances after the parties have reached an agreement for the buyout and filings are made with the relevant authorities. In these cases, to protect the public shareholders of the target company, the Japanese financial authorities usually request the buyer to commence the tender offer only after the clearance is expected to be obtained. To address this concern, there is the practice of making a timely disclosure where the target company 'makes a pre-announcement' that the parties have already agreed on the buyout and that the tender offer will commence once the necessary clearances are expected to be obtained and other conditions are met. These pre-announcements were issued in the cases of Hitachi Metals and Hitachi Transport System. In these cases, each of the tender offerors apparently provided a representation and warranty that the necessary clearances shall have been obtained prior to the commencement of the tender offer.

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iv Exits

As notable trade sales in 2022, Advantage Partners exited water production company CosmoLife to trade buyer TEPCO Group, which transaction was apparently completed in January 2022. In addition, Japan Industrial Partners' sale of a 20 per cent shareholding in Narumiya International was announced in January 2022, via a tender offer by World Co, Ltd, for an estimated sales price of approximately ¥2.49 billion.

As for secondary buyouts, the sale of Platia by J-STAR to Nichii Gakkan, a portfolio company of Bain Capital, announced in March 2022, was noteworthy.

IV REGULATORY DEVELOPMENTS

As mentioned above, in the case of acquisitions of listed companies, tender offer regulations under the FIEA must be observed. The Kanto Local Finance Bureau strictly supervises this aspect. Compliance with merger control regulations is supervised by the Fair Trade Commission, and compliance with foreign exchange regulations is supervised by the Ministry of Finance and related ministries. See Section II.i, above, for recent amendments to the foreign exchange regulations, and Section III.iii, above, for the impact of foreign regulations on recent large-scale buyout deals.

V OUTLOOK

Looking ahead, there are factors that may lead one to expect a decline in PE deals in Japan. The discussions and decisions being made at the monetary policy meetings of the Bank of Japan may have an effect on the interest rates of yen-denominated loans. In addition, the series of carve-out activities by Hitachi in Japan has almost been completed.

In contrast, there are also various factors that anticipate an increase in buyouts led by non-Japanese PE firms. There could still be a demand for carve-outs in other major companies. In the case of Toshiba, as at the end of 2022, there were reports that a takeover proposal had been made by a PE sponsor. The lack of successors for blue-chip companies is an intrinsic problem for the Japanese industry, and the need to sell a business for the purpose of succession is expected to continue in the future. Since 2021, after the brunt of the pandemic had passed, the number of inbound projects led by offshore sponsors has been expanding in terms of both number and value scale. Part of the reason for this is that, in 2022, the yen depreciated sharply, triggered by Russia's invasion of Ukraine and other factors.

Taking all of the above into consideration, large inbound acquisitions led by global-based PE firms are still expected to continue in the coming years.

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Appendix 1

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