

Study Group to review Minority Shareholder Protection and other Framework of Quasi-Controlled Listed Companies

TSE Explanatory Materials (2)

(Status of Protection of Minority Shareholders in Cases of Privatization, etc.)

Tokyo Stock Exchange, Inc.

January 26, 2026



Revisions to the Code of Corporate Conduct Regarding MBOs and Subsidiary Conversions

- In July 2025, TSE revised its Code of Corporate Conduct on MBOs and subsidiary conversions based on the deliberations of the Council of Experts Concerning the Follow-up of Market Restructuring.

Review of the Scope of Actions Covered by the Code

- In such cases as **when a listed company decides on an MBO or its conversion into a wholly-owned subsidiary by an entity such as its controlling shareholder or another related company**,^{1,2} TSE will require the listed company to obtain an “opinion stating that the transaction will not undermine the interests of minority shareholders” and make a “necessary and sufficient timely disclosure” as stipulated in the “Matters to Be Observed” in the Code of Corporate Conduct.

	Subsidiary Conversion by Controlling Shareholder	M B O	Subsidiary Conversion by Other Related Company
(1) Opinion stating that the transaction will not undermine the interests of minority shareholders <ul style="list-style-type: none"> ● Requirement to obtain said opinion from an entity that has no interest in the controlling shareholder <ul style="list-style-type: none"> * Due to this revision, has been changed to an opinion regarding “fairness to general shareholders” 	Already applicable	Newly applicable	
(2) Necessary and sufficient timely disclosure <ul style="list-style-type: none"> ● Requirement for necessary and sufficient timely disclosure <ul style="list-style-type: none"> * Including outline of share value calculation. Due to this revision, disclosure related to share value calculation has been expanded. 	Already applicable		Newly applicable

¹ “Other related company” refers to that set forth in Article 8, Paragraph 8 of the Financial Statements Regulation (cases where a company holds 20% or more of the voting rights, or cases where a company holds between 15% and 20% of the voting rights and can exercise significant influence)

² Includes share exchanges and share transfers conducted by a controlling shareholder or other related company acting as a party to the transaction, in addition to cash-outs conducted through share consolidation without going through a so-called two-step acquisition or a tender offer.

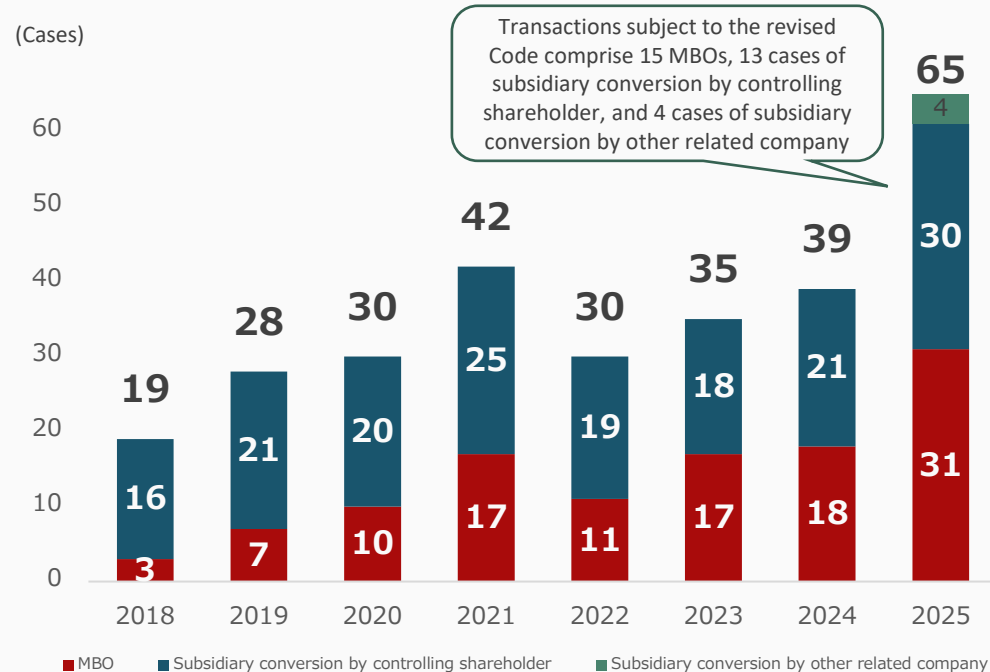
Revision of Content of the Code

- Revision of the “opinion stating that the transaction will not undermine the interests of minority shareholders” (including providers and contents)** to improve the effectiveness of the deliberations of special committees
- Revision of the contents of “necessary and sufficient disclosure of information”** (enhancing disclosure of important assumptions for the share value calculation) to ensure that general shareholders judge the fairness of a transaction on the basis of sufficient information

Number of MBOs

- The number of cases of companies going private through MBOs and similar transactions is at its **highest level in recent years**.
- Following the revision, **32** transactions fell under the revised Code (including four cases of subsidiary conversion by other related company that were newly subject to the Code).

Number of Disclosures Related to MBOs, etc.



- * Aggregated using MBOs and similar transactions disclosed between 2018 and 2025. (Subsidiary conversion by other related company limited to disclosures made after July 22, 2025.)
- * Includes one unsuccessful MBO in 2019 (KOSAIDO Holdings Co.,Ltd.), one unsuccessful MBO (Japan Asia Group Limited) and one subsidiary conversion by controlling shareholder (TOA OIL COMPANY,LIMITED) in 2020, four unsuccessful MBOs in 2021 (SAKAI OVEX CO., LTD., KOYOSHA INC., PiPEDO HD,Inc., Katakura Industries Co.,Ltd.), and two unsuccessful MBOs in 2025 (ART VIVANT CO.,LTD., SOFT99corporation).

Transactions Subject to Revised Code

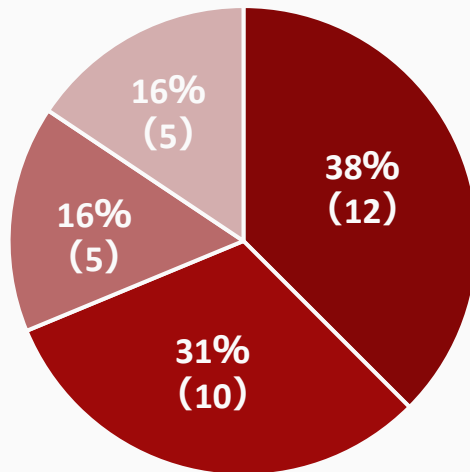
Date	Company	Type	Date	Company	Type
7/25	PACIFIC INDUSTRIAL CO.,LTD.	MBO	10/15	SUPER VALUE CO., LTD.	Controlling shareholder
7/25	ZAPPALLAS, INC.	Controlling shareholder	10/28	TANAKA CHEMICAL CORPORATION	Controlling shareholder
8/1	KROSAKI HARIMA CORPORATION	Controlling shareholder	10/29	SCSK Corporation	Controlling shareholder
8/6	TAC Co., Ltd.	MBO	10/30	Sumitomo Riko Company Limited	Controlling shareholder
8/6	SOFT99corporation	MBO	10/31	YASUHARA CHEMICAL CO.,LTD.	MBO
8/7	Ci Medical Co.,Ltd.	Other related company	11/7	SAINT-CARE HOLDING CORPORATION	MBO
8/8	ASHIMORI INDUSTRY CO.,LTD.	Other related company	11/10	EAGLE INDUSTRY CO.,LTD.	Other related company
8/8	KATSURAGAWA ELECTRIC CO.,LTD.	MBO	11/12	PARIS MIKI HOLDINGS Inc.	MBO
8/8	PACIFIC SYSTEMS CORPORATION	Controlling shareholder	11/12	OutlookConsulting Co.,Ltd.	Controlling shareholder
8/14	DRAFT Inc.	MBO	11/12	SANYU CONSTRUCTION CO.,LTD.	MBO
8/29	ART VIVANT CO.,LTD.	MBO	11/12	SUGITA ACE CO.,LTD.	MBO
9/10	MANDOM CORPORATION	MBO	11/14	RIGHT ON Co.,Ltd.	Controlling shareholder
9/11	Fuji Oil Company, Ltd.	Other related company	11/28	CANON ELECTRONICS INC.	Controlling shareholder
9/24	PARAMOUNT BED HOLDINGS CO.,LTD.	MBO	12/1	Fast Fitness Japan Incorporated	MBO
10/2	Daiseki Eco. Solution Co.Ltd.	Controlling shareholder	12/11	RAKSUL INC.	MBO
10/14	Tokyo Individualized Educational Institute, INC.	Controlling shareholder	12/25	DAIWA TSUSHIN Co.,Ltd	Controlling shareholder

- * Excludes cases where a decision to express an opinion regarding TOB notices was made before July 21, 2025.

Establishment of Special Committees

- Companies are obligated to obtain an opinion from a special committee on whether the transaction is fair to general shareholders.
 - **In all cases, the opinions have been obtained from a special committee primarily comprising outside directors.**
- Since price is also a factor in determining fairness, target companies expressed support for and recommended tendering in the TOB based on the special committee's opinion, except in cases where a competing proposal had been submitted.

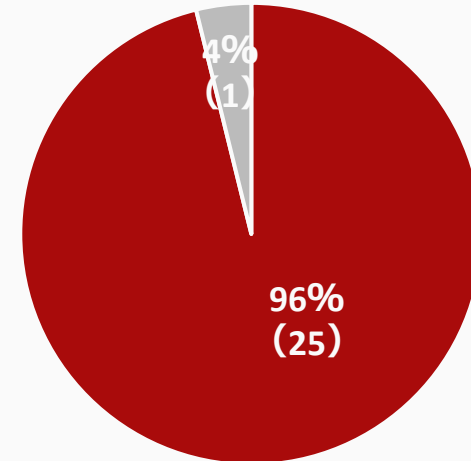
Composition of Special Committees



- Outside directors only
- Outside directors and outside auditor
- Outside directors and outside experts
- Outside directors, outside auditor, and outside experts

* Aggregated based on MBOs and similar transactions disclosed between July 22 and December 30, 2025 (excluding cases where a decision to express an opinion on TOB notices was made before July 21, 2025).

Details of Directors' Opinions



- Support & recommend tendering
- Support but neutral on tendering

The one case where the directors expressed support but remained neutral on tendering was the MBO of SOFT99corporation.

- ✓ An activist investor launched a competing TOB at a price exceeding the MBO price, claiming the MBO price was significantly undervalued.
- ✓ The special committee recommended opposing the competing TOB, stating that it does not contribute to enhancing corporate value, is not fair to general shareholders, and raises doubts about feasibility. Based on this recommendation, support for the MBO was maintained, while the stance on tendering was changed to neutral.

* Excluding cases where a share consolidation had been conducted without a tender offer, or where the transaction involved a share exchange or share transfer.

Opinions From Special Committees

- To enhance the effectiveness of deliberations by special committees, the committees are obligated to **clearly specify the perspectives they consider** and to provide **sufficient explanations and disclosures within their opinions regarding the specific matters examined** under each perspective and the **basis for the final judgment**.

Appropriateness of the transaction	<ul style="list-style-type: none"> ● Whether it will contribute to increases in the target company's corporate value
Fairness of the terms of the transaction	<ul style="list-style-type: none"> ● Based on the following perspectives, whether the level of acquisition consideration, method of acquisition, type of acquisition consideration, and other terms are fair <ul style="list-style-type: none"> ✓ The process of consultation and negotiation with the acquirer <ul style="list-style-type: none"> * The progress of the discussions (including the details of the special committee's involvement), the policy for the discussions and negotiations, the details of any major points of contention, and the reasons for any changes from the original policy (including the details of any consideration of the risk of the talks breaking down, etc.) ✓ Share value calculation details and the rationale behind the financial forecasts and assumptions used as the basis for the calculation <ul style="list-style-type: none"> * If the assumptions for financial forecasts have changed significantly or there are special preconditions, the rationale behind these ✓ Reasonableness of the premium compared with past market prices and similar cases <ul style="list-style-type: none"> * If negative information has been disclosed around the time that acquisition is being considered, the assessment of appropriateness should also take into account the rationality of such information and the background and reasons for choosing to carry out the transaction at that time. ✓ Other (the price at which the shares were acquired in the past by the acquirer, etc.)
Fairness of the procedure	<ul style="list-style-type: none"> ● Whether sufficient procedures have been implemented to ensure the fairness of the transaction terms <ul style="list-style-type: none"> ✓ Specific status of implementation of Fairness Ensuring Measures, and, if any of the measures are not implemented, the reasons for this and whether, overall, the fairness of the transaction terms is procedurally ensured <ul style="list-style-type: none"> ○ Establishment of a special committee ○ Expert advice from external advisors (selection of legal and financial advisors, acquisition of share value reports and fairness opinions from third-party valuation advisors) ○ Market checks (active market checks, indirect market checks) ○ Majority-of-Minority Condition ○ Elimination of coerciveness ○ Disclosure of information

Disclosure Examples (Relating to Special Committee Opinions)

Disclosure Example – Process of Negotiation and Discussion with the Acquirer

<SCSK Corporation> “Notice Concerning the Expression of an Opinion in Favor of and Recommendation to Tender for the Tender Offer for the Company’s Shares, etc. by SC Investments Management Inc., a Subsidiary of Sumitomo Corporation, the Company’s Parent Company” (Oct. 29, 2025)

(vii) Seventh Proposal

.... At the request of Sumitomo, the Company and the Special Committee had a meeting with Sumitomo, who explained the premises and other matters concerning the price in the Seventh proposal, and the Special Committee addressed the opinions and points of concern regarding such explanation. At the meeting, while Sumitomo explained that it considers the proposed price to be reasonable and sufficient based on its calculations including the DCF method, the Special Committee **communicated to Sumitomo its position that the following must be taken into consideration: that the Company announced the postponement of the merger with Net One Systems on Sep. 19, 2025 (hereinafter referred to as the “Merger Postponement Announcement”), that the Company’s stock price has fallen to a certain extent thereafter, and that, in relation to our stock price before the Merger Postponement Announcement, the premium level is low compared to past precedents.**

Furthermore, on the same day, the Company and the Special Committee requested that Sumitomo consider raising the price, stating that the price in the seventh proposal is still difficult to regard as a price reflecting the intrinsic value of the Company, and that it was divergent from a level at which the Company and the Special Committee could approve the Transactions and recommend tendering.

✓ Explanation of the major points in the negotiation and discussion process

✓ Explanation of the reasonableness of the downward revision to earnings forecasts, made prior to the publication of the expression of opinion, based on the factors behind the revision and the timing of the revision relative to the commencement of the transaction review

Disclosure Example – Reasonableness of Financial Forecasts and Other Assumptions Used in Share Value Calculation

<Fuji Oil Company, Ltd. > “Notice Concerning Expression of Opinion in Support of Tender Offer for Company Shares by Idemitsu Kosan, an Other Associated Company, and Recommendation to Tender Shares” (Sep. 11, 2025)

As the Company stated in its “Notice Concerning Revision of Projected Earnings” dated Aug. 9, 2024 (the “Downward Revision Disclosure (1)”), the Company made a downward revision of its forecast of consolidated performance for the cumulative second quarter and the full year of the fiscal year ending Mar. 2025. According to the Company, **this downward revision was precipitated by factors including the temporary shutdown of equipment due to a lightning strike in late July 2024, a review of production plans, and losses from the sale of all shares of Tokyo Sekiyu Kogyo K.K., which was a consolidated subsidiary of the Company at the time; and the Company has not formulated and announced this downward revision for the purpose of deliberately lowering the share price of Company Shares.**

Also, as the Company stated in its “Notice Concerning Revision of Projected Earnings” dated Nov. 8, 2024 (“Downward Revision Disclosure (2)”), the Company again made a downward revision of its forecast of full-year consolidated performance for the fiscal year ending Mar. 2025. According to the Company, **this downward revision was precipitated by factors including the recording of inventory valuation losses at the end of the first half of the fiscal year ending Mar. 2025, as well as lower Dubai crude oil prices and revisions to exchange rate forecasts toward yen appreciation based on market trends at that time; and the Company has not formulated and announced this downward revision for the purpose of deliberately lowering the share price of the Company Shares.**

According to Tender Offeror, as part of the preparation of its next medium-term management plan, **beginning in late Mar. 2025, Tender Offeror began examining** the expected environmental conditions for petroleum products and supply systems based on those conditions, and **Downward Revision Disclosure (1) and Downward Revision Disclosure (2) were made before Tender Offeror began considering the Tender Offer.**

Based on the above, Downward Revision Disclosure (1) and Downward Revision Disclosure (2) can reasonably be considered to have not been made for the purpose of intentionally lowering the price of the Company Shares, and it can be considered unproblematic to take into account the prices of the Company Shares after Downward Revision Disclosure (1) and Downward Revision Disclosure (2) in the calculations using the market price method by Mizuho Securities discussed above in (1), the calculations using the market price method by Plutus discussed above in (2), and the determination of the premium levels discussed in (3) above.

Enhancement of Disclosure of Share Value Calculation Assumptions

- So that general shareholders can judge the fairness of a transaction on the basis of sufficient information, TSE will **enhance disclosure of the assumptions for share value calculation (the thinking behind the financial forecasts on which the calculation is based)**.

Overview of share valuation calculation	Financial forecasts	Specific figures of financial forecasts (including sales, operating income, EBITDA, free cash flow (FCF))
		Sources of the financial forecasts, <u>background to their preparation, and their purpose</u>
		<u>Thinking behind setting of financial forecast period</u>
		<u>Assumptions used in financial forecasts (what assumptions are there in the business's content and its environment, etc.)</u> <ul style="list-style-type: none"> If a significant increase or decrease in profit/<u>FCF</u> is forecast, the reasons for this If using financial forecasts that differ substantially from those announced before the M&A, the reasons for this
		Whether the forecasts assume that the M&A will be carried out
	Discount rate	Specific figures (range acceptable) for <u>and type of</u> discount rate <ul style="list-style-type: none"> If there is consideration of additional risk premiums, such as a size risk premium, the details of and basis for these
	Terminal Value	<u>Specific figures (range acceptable) and calculation methodology for the terminal value</u>
		Specific figures (range acceptable) of parameters used in calculation of the terminal value <u>and thinking behind the setting of said parameters</u> <ul style="list-style-type: none"> If there are preconditions such as adjustments to disregard one-off expenses in the final business year, the details (only applies if material to the calculation)
	Non-business assets	<u>Treatment of individual assets (cash and cash equivalents, investment securities, real estate such as leases, etc.) in the calculation (thinking behind the categorization of business and non-business assets, etc.) (only applies if material to the calculation)</u>
	Other	Details of other special preconditions, if any
Relationship with calculation agent		<p>If there is a material interest relationship with the calculation agent, the details and why the company requested the calculation from an agent with which it has a material interest relationship</p> <p>* (E.g., a) when the agent falls under the definition of a related party, b) when the request was given to an agent recommended or introduced by the offeror, c) when the agent receives requests from both the listed company and the offeror, d) when the company was receiving financing from the agent or any of its related companies)</p> <p><u>Fee structure of third-party valuation advisor (whether the fee is a contingency fee paid on factors such as the completion of the M&A or a fixed fee paid regardless of the M&A's success, etc.)</u></p>

Disclosure Examples (Relating to Share Value Calculation)

Disclosure Example – Underlying Assumptions Used in Preparing Financial Forecasts

<SUPER VALUE CO., LTD. > “Notice Concerning Expression of Opinion in Support of Tender Offer for Company Shares, etc. by OIC Group Co., Ltd., the Company’s Controlling Shareholder, and Recommendation to Tender Shares” (Oct. 15, 2025)

This business plan was prepared for the purpose of examining the appropriateness of the terms and conditions of the Transaction, in accordance with the Company’s Medium-Term Management Plan, by a team consisting of the Company’s directors and employees who do not have any material conflicts of interest with the Tender Offeror (the “Project Team”). The plan was subsequently reviewed and approved by the Special Committee. The business plan covers the period from the fiscal year ending Feb. 2026 through the fiscal year ending Feb. 2029, in order to appropriately reflect the future revenues and profits expected to be generated through the management improvement initiatives undertaken by the Company from the fiscal year ended Feb. 2023 onward. In preparing the business plan, the Company assumed the effects of initiatives already underway prior to the commencement of the review of the Transaction, including the development of remodeled SM model stores jointly developed with the Tender Offeror, the closure of unprofitable stores and unprofitable in-store sections, and the renovation of remaining stores. At the same time, the Company did not assume any significant changes in the overall business environment.

- ✓ Explanation of the entity responsible for preparing the financial forecasts, the purpose of the forecasts, and the assumptions regarding the business environment underlying the financial forecasts

<DRAFT Inc. > “Notice Concerning Implementation of MBO and Recommendation to Tender” (Aug. 14, 2025)

The financial forecast for the fiscal year ending Dec. 2026 in this business plan falls short of the target figures for the same period that were presented in our Medium-Term Management Plan announced on Feb. 13, 2024. This is because the current business plan was newly prepared for the execution of this transaction as an objective and reasonable financial forecast that reflects the current business environment and our present operational structure. Specifically, while our revenue scale is expanding rapidly, the development of the personnel structure required to support such growth has not progressed sufficiently. Accordingly, instead of assuming the growth rate used previously, this plan is based on a more reasonable level of growth that takes into account our current operational structure. Although this business plan factors in an increase in the number of employees, it will take a certain amount of time before the enhancement of personnel resources contributes to business expansion. Therefore, this plan does not assume a rapid increase in revenue scale.

Disclosure Example – Treatment of Individual Assets in Valuation

<TAC Co., Ltd.> “Notice Concerning Implementation of MBO and Recommendation to Tender” (Aug. 6, 2025)

With respect to the cash and cash equivalents held by the Company, the portion exceeding the minimum required working capital (calculated by determining the ratio of the maximum monthly funding requirement to the total amount of cost of sales as well as selling, general and administrative expenses for each fiscal year from the fiscal year ended Mar. 2023 to the fiscal year ended Mar. 2025, and multiplying the average of such ratios over the past three fiscal years by the total amount of cost of sales and selling, general and administrative expenses for the fiscal year ending Mar. 2026) is treated as non-operating assets. Regarding the investment securities held by the Company, investments in equity-method affiliates are excluded, and the remaining securities are treated as non-operating assets by taking into account the tax effects that would arise assuming their disposal at fair market value for pure investment purposes. Furthermore, with respect to the insurance reserve assets held by the Company, the surrender value (refund amount) upon cancellation, adjusted for the associated tax effects, is treated as non-operating assets. These non-operating assets are then added to the value of the Company’s business.

<SANYU CONSTRUCTION CO.,LTD. > “Notice Concerning Implementation of MBO and Recommendation to Tender” (Nov. 12, 2025)

With respect to the rental and other real estate held by the Company, such properties are retained for the purpose of the real estate leasing business, which constitutes a part of our real estate operations. As there is no plan to dispose of these properties, they are regarded as operating assets. In addition, surplus cash and cash equivalents remaining after deducting the required working capital are recorded as non-operating assets, as they have a material impact on the valuation of the Company’s equity.

- ✓ Explanation of the evaluation methods and classification approach for cash and cash equivalents, investment securities, and real estate such as leases
- ✓ Explanation of the reasons for the significant differences between the figures in the financial forecast and the published medium-term management plan

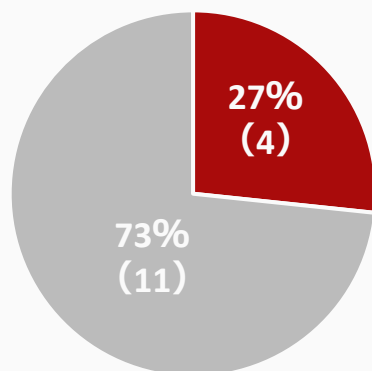
(Note) English translations of each company’s Japanese disclosure documents provided by TSE

Status of Implementation of Fairness Ensuring Measures

- Although **disclosure of the reasons for not implementing certain measures has been made mandatory** to implement appropriate Fairness Ensuring Measures based on specific circumstances, **there has not been a significant change in the implementation status of Fairness Ensuring Measures**, such as the establishment of majority-of-minority conditions or implementation of active market checks.

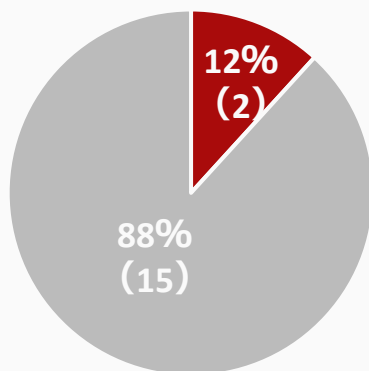
Establishment of Majority-of-Minority Condition

MBO



■ Established ■ Not established

Subsidiary conversion by controlling shareholder or other related company



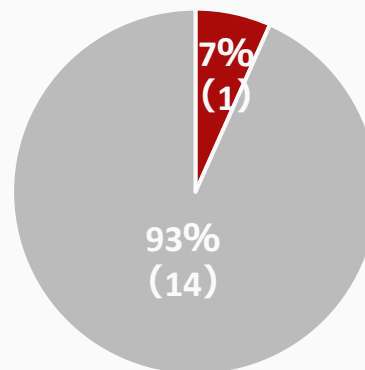
■ Established ■ Not established

- ✓ In MBOs or subsidiary conversion by other related company where the acquirer holds a low percentage of the target company's shares, setting a threshold of two-thirds has resulted in the threshold exceeding the MoM condition (no effective implementation has been established).

- ✓ It was often stated that an MoM condition had not been established due to concerns that a high shareholding ratio by the acquirer could make the completion of the M&A transaction unstable.

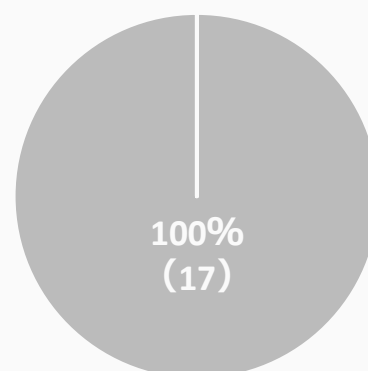
Implementation of Active Market Checks

MBO



■ Implemented ■ Not implemented

Subsidiary conversion by controlling shareholder or other related company



■ Implemented ■ Not implemented

- ✓ It was often stated that **extending the TOB period from the statutory 20 business days to 30 business days reflected consideration for market checks.**

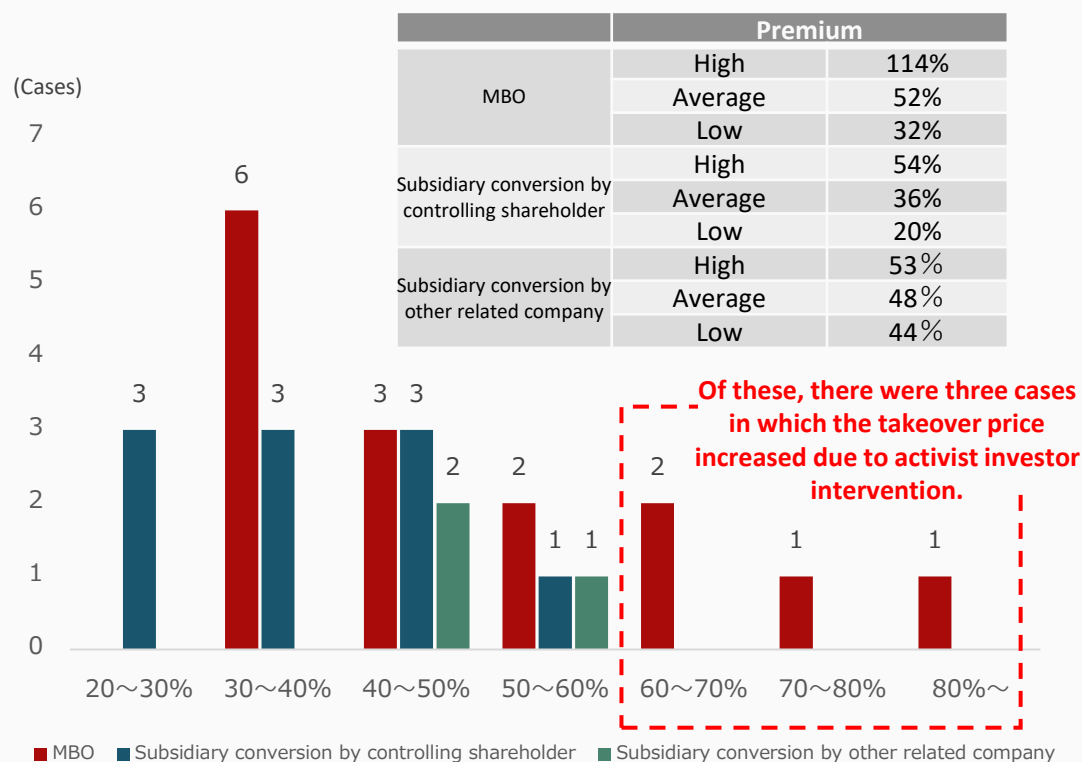
* Aggregated based on MBOs and similar transactions disclosed between July 22 and December 30, 2025 (excluding cases where a decision to express an opinion on TOB notices was made before July 21, 2025).

Ref.: Distribution of Takeover Premiums

- Takeover premiums are on **average around 40%** of the average market share price prior to the announcement, similar to levels seen before the revision of the Code.

➤ **There have also been cases** in which activist investor intervention has led to **increases in takeover prices**.

**Distribution of Takeover Premiums
(After Revisions to the Code)**



* Aggregated based on MBOs and similar transactions disclosed between July 22 and December 30, 2025 (excluding cases involving share exchanges or share transfers, as well as cases where a decision to express an opinion on TOB notices was made before July 21, 2025).

* The premium is calculated based on the average market share price for the one-month period starting from the business day prior to the disclosure date.

Cases Where Takeover Price Increased

Company	Timeline
PACIFIC INDUSTRIAL CO.,LTD.	<ul style="list-style-type: none"> On July 25, announced an MBO at JPY 2,050 per share (49.96% premium) Subsequently, Effissimo increased its holdings, and the share price surpassed the TOB price → TOB price increased to JPY 3,036 (122.09% premium)
SOFT99corporation	<ul style="list-style-type: none"> On August 6, announced an MBO at JPY 2,465 per share (54.74% premium) Subsequently, Effissimo announced a competing TOB at JPY 4,100 per share → TOB price increased to JPY 2,680 (68.24% premium) * MBO unsuccessful
MANDOM CORPORATION	<ul style="list-style-type: none"> On September 10, announced an MBO at JPY 1,960 per share (36.49% premium) Subsequently, City Index Eleventh and other investors increased their holdings, and the share price surpassed the TOB price → TOB price increased to JPY 2,520 (75.49% premium) * Announced receipt of competing proposal from KKR at JPY 3,100 per share

* The premium is calculated based on the average market share price for the one-month period starting from the business day prior to the disclosure date.

Feedback From Institutional Investors

- From both domestic and overseas institutional investors, there has been **recognition that discussions by a special committee and information disclosure have made a certain degree of progress**. However, as there are still **cases where fairness remains a concern**, expectations are high for measures such as the implementation of a majority-of-minority condition and active market checks.

(Ref.) Comments from Institutional Investors

[Enhanced Information Disclosure]

- Although there are still some cases that give cause for concern over price fairness, **disclosures of such materials as the discussions and written opinions of special committees have been enhanced to a certain extent**. (Domestic Institutional Investor, Overseas Investor)

[Expectations Concerning Progress of MoM and Market Checks]

- Even after the revision of the Code of Corporate Conduct last July, **there has not been a significant change in the implementation status of Fairness Ensuring Measures, such as the establishment of premium levels or majority-of-minority conditions**. (Domestic Institutional Investor)
- **While I do not consider a PBR of 1x to be an absolute benchmark**, at the very least, a proactive market check **should be performed to see whether there are other buyers who might pay a higher price**. (Overseas Investor)
- Investors **demand that, when parent companies consider whether converting the subsidiary into a wholly-owned subsidiary is the optimal choice, a plan for further management improvements while maintaining the subsidiary's listing or a plan for selling it to another company be considered alongside this**. (Domestic Institutional Investor)
- **In many cases, "instability" is the only reason given as** the explanation for not establishing a majority-of-minority condition. There have been cases where the establishment of such a condition was requested by a special committee but ultimately never occurred and cases where the lower limit was lowered as a result of subsequent changes to the purchasing conditions. **We expect clear explanations of the circumstances behind such cases**. (Domestic Institutional Investor)
- Isn't there also some room for improvement regarding **the best approach to defining what minority shareholders** are included in the majority-of-minority condition? There have been some **cases that give cause for concern over fairness (e.g., the inclusion of a capital and business alliance partner that had agreed to subscribe beforehand as a minority shareholder)**. (Overseas Investor)

[Development of Independent Directors]

The effectiveness of special committees **largely depends on the independent directors** who serve as their members. From the perspective of improving the quality of independent directors, the Exchange **should consider promoting their development, both in normal times and in emergency situations**, by requiring them to participate in training programs that provide the necessary knowledge and skills. (Overseas Investor)

Future Initiatives

- As a result of the revisions carried out last July, the content of disclosures related to special committees' written opinions and share value calculation have been enhanced to a certain extent.
- Meanwhile, to ensure fairness, investors are calling for companies to ensure the effectiveness of special committees and promote Fairness Ensuring Measures, such as majority-of-minority conditions and active market checks.



- To further enhance the effectiveness of the revisions:
 - It may be worth considering initiatives such as **providing independent directors** who serve on special committees **with investors' opinions as they relate to the implementation of Fairness Ensuring Measures, as well as information concerning issues that tend to attract particular concern**. Possible approaches could include distributing seminar videos featuring investors as speakers.
 - Please also inform TSE of any additional matters that should be examined and disseminated.
- * It is also important to engage in discussions on corporate value during normal times and to appoint independent directors who can fully meet expectations as special committee members. **Accordingly, initiatives during normal times are also expected (for example, in the case of listed subsidiaries, advancing disclosures on group management and further developing listing rules to protect minority shareholders).**

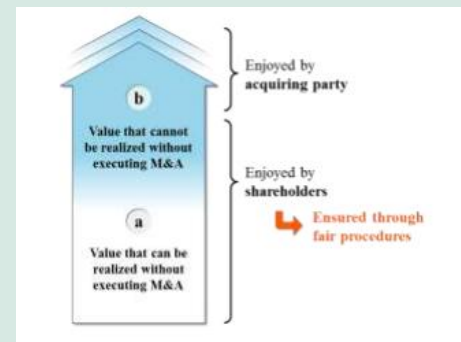
Ref.: Basic Issues Regarding Acquisition Consideration in the Fair M&A Guidelines

2.2 Basic Issues Regarding Acquisition Consideration

2.2.1 Concepts Regarding the Value Realized in M&A

Theoretically, the value realized in an M&A transaction can be separated into two types: (a) value that can be realized without executing the M&A transaction, and (b) value that cannot be realized without executing the M&A transaction.¹⁴

The values of (a) and (b) above should be enjoyed by all shareholders in accordance with the number of shares held by each shareholder. In cases where an M&A transaction is conducted through a squeeze out of general shareholders, theoretically and conceptually, **value that can be realized without executing the transaction (case (a) above) should be enjoyed by all shareholders, including general shareholders in accordance with the number of shares held by such shareholders.**¹⁵ On the other hand, **with respect to value that cannot be realized without executing the transaction (case (b) above), although general shareholders will be squeezed out by the transaction, it is fair that general shareholders should also enjoy an appropriate portion of such value.**¹⁶



2.2.2 Discussion of Actual Cases

As described above, although value realized in M&A transactions can be conceptualized, it is difficult in actual cases to strictly and objectively distinguish and determine the values of (a) and (b) above, as well as to determine to what extent the value of (a) is reflected in the market price before an M&A transaction is announced.¹⁷ In addition, with respect to the value of (b), there is a certain range in the value that general shareholders should enjoy, and it is difficult to create a singular and objective standard for determining what portion should be allocated to general shareholders. Therefore, it is difficult to establish directly a methodology for determining reasonable acquisition consideration in actual cases based on the theoretical concept described above, or to establish any singular or objective criteria such as, “the premium is fair if over x%” compared with the market price of the shares. Therefore, it is not appropriate to establish any singular or objective criteria for transaction terms, including the acquisition consideration; instead, **guidance should be provided with respect to procedures to ensure the fairness of transaction terms (such procedures are hereinafter referred to as “fair procedures”) and, by executing M&A transactions in accordance with such procedures, that general shareholders secure the fair return that they deserve (such returns are hereinafter referred to as the “returns deserved by general shareholders” or the “interests of general shareholders”).** (Omitted)

- 14 In MBOs, theoretically, synergies such as those that occur in business combinations do not occur just as the result of the MBO, but cost reduction effects resulting from the removal of general shareholders (i.e., the elimination of costs related to mediating the interests of general shareholders and disclosure costs), and value created through the efforts of management who contribute human capital in MBOs as a result of changes in incentive structures, are considered to be included in the value of (b), which cannot be realized without executing the M&A transaction. In addition, in the case of MBOs in which management jointly conduct transactions with investment funds, management efficiencies generated through the support of the investment funds and synergies generated with other operating companies under the control of the investment funds may also be included in the value of (b).
- 15 For example, **profits from the sale of idle assets with large unrealized gains can be achieved without executing an M&A transaction, and should be enjoyed by all shareholders rather than monopolized by acquiring parties.** In addition, **value expected to be realized through business alliances with other companies after the M&A transaction can be distinguished in terms of whether such business alliance could be realized through an M&A transaction or could be formed without the M&A transaction theoretically (although it is difficult to determine in practice).** In the latter case, value should not be monopolized by acquiring parties, and should be enjoyed by all shareholders.
- 16 Under the Companies Act, the purchase price of shares in appraisal litigation (i.e., litigation with respect to the rights of dissenting shareholders to demand that a target company purchase their shares at a fair price) in connection with a corporate reorganization is determined to be a “fair price” (such as Article 785 Paragraph 1 of the Companies Act). Such price is interpreted as: (i) the price of the shares held on the record date where the corporate reorganization resulted in an increase in corporate value and, assuming the corporate reorganization was conducted under fair transaction terms, where that increase will be fairly distributed to the shareholders of the respective companies on the record date, and (ii) if the corporate reorganization did not result in an increase in corporate value, the price of shares that would have been held on the record date if there had been no resolution at the general meeting of shareholders approving the corporate reorganization. The prices to be determined by the courts in the case of a cash-out of shareholders by methods other than corporate reorganization are also similarly interpreted.
- 17 **Value that can be realized through the application of existing management resources held prior to the M&A transaction is included in the value of (a), which can be realized without executing the M&A transaction, even if the value is not actually realized.** In this respect, it has been observed that although the value of (a) is expected to be fully realized prior to the delisting of a target company through an MBO or an acquisition of a controlled company by the controlling shareholder, it is often not fully realized during the period in which the company continues as a listed company, and this situation is the basis for price formation in the stock market.