Global Public M&A Guide - Japan

Squeeze-out of Minority Shareholders after Completion of the Takeover

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# 7. Squeeze-out of Minority Shareholders after Completion of the Takeover

[Last updated: 1 January 2025, unless otherwise noted]

**7.1 Squeeze-out by Special Controlling Shareholder**

If, following the tender offer, the bidder holds (by itself and/or through its 100% direct or indirect subsidiaries) 90% or more of the total number of voting rights (such shareholder hereinafter referred to as the "**Special Controlling Shareholder**"), the Special Controlling Shareholder can force all other holders of voting securities and securities conferring the right to voting securities to transfer their securities to it subject to the approval of the board of the target company. Any of the security holders who are dissatisfied with the price offered by the Special Controlling Shareholder are entitled to statutory appraisal rights.

**7.2 Alternative squeeze-out mechanisms**

Even if the bidder fails to obtain 90% of the voting rights, it is still possible to effect the squeeze-out by using either of the following methods if the bidder controls more than two-thirds of the total number of voting rights. The implementation of these methods requires shareholder approval and a court order, which means that this process is more time-consuming.

Share consolidation squeeze-out

A share consolidation squeeze-out can be implemented by a special resolution of the target's shareholders. A special resolution is adopted by a two-thirds majority vote of the shareholders present at a shareholders' meeting. In this squeeze-out scheme, subject to the special resolution by the shareholders, the target will conduct the stock consolidation at such a consolidation ratio that the number of shares held by each of the minority shareholders (other than the bidder) is reduced to less than one whole share, i.e., fractional shares. Thereafter, pursuant to the Companies Act, the target, on behalf of the minority shareholders, may sell all of such fractional shares to the bidder at the market price, the fairness of which must be endorsed by a court order.

Call option squeeze-out

A Call option squeeze-out can also be implemented by a special resolution of the target's shareholders. In this squeeze-out scheme, subject to the special resolution by the shareholders, the target will convert all its shares into class shares subject to a call option by amending its articles of incorporation. The target will exercise such call option and issue new shares of a different class at an exchange ratio so that the number of shares newly issued to each minority shareholder (other than the bidder) in exchange of the existing shares is reduced to less than one whole share, i.e., fractional shares. Thereafter, as with the share consolidation squeeze-out (see 7.2(a)), the target will sell all of such fractional shares to the bidder at the market price, the fairness of which must be endorsed by a court order.

As a result of (a) and (b) above, only the bidder will remain as the sole shareholder and all other minority shareholders will receive cash equivalent to their shareholding. The shareholders who are dissatisfied with the price offered by the bidder are entitled to statutory appraisal rights.

Before the amendment of the Companies Act in 2014, the share consolidation squeeze-out option above was not used because of the lack of statutory appraisal rights granted to minority shareholders. This was believed to be imperative for the protection of minority shareholders who are compelled to sell their shares. However, the amended Companies Act introduced appraisal rights for dissenting shareholders to a share consolidation. In fact, the share consolidation squeeze-out has become more popular than the call option squeeze-out option (where a squeeze-out by a Special Controlling Shareholder is not available). This is due to the simplicity and legal stability of the share consolidation squeeze-out option.

**7.3 Squeeze-out via merger or other corporate reorganization**

A squeeze-out can also be implemented via a cash-out merger, share swap or other corporate reorganization (collectively, a "**Cash-out Reorganization**") between the bidder and the target with a special resolution by the shareholders of the target (or if the bidder is already a Special Controlling Shareholder, with the resolution of the board of directors of the target). Prior to the tax reform implemented in 2017, such Cash-out Reorganization was rarely used for effecting a squeeze-out because if cash consideration was used in a Cash-out Reorganization the reorganization was automatically treated as tax-disqualified resulting in a recognition of built-in gain /loss of assets owned by the target. However, after the implementation of the 2017 tax reform, the different tax treatment of each squeeze-out method (referred to in 7.1 and 7.2 above and the Cash-out Reorganization) has been eliminated if the bidder owns at least two-thirds of the total number of voting rights in the target prior to the squeeze-out. As a result, the Cash-out Reorganization has become a practically "usable" option to squeeze-out the minority shareholders while in practice either the squeeze-out by Special Controlling Shareholder or the share consolidation squeeze-out mentioned above is still commonly used due to its simplicity and legal stability.

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