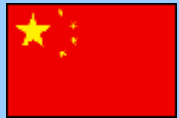


China Law and Practice – China Outbound Investment Summit

# 日益增加的中国企业对日投资 Increasing Investment to Japan



Chinese Companies are Welcomed!



2009年9月23日

日本安德森·毛利·友常律师事务所  
**Anderson Mori & Tomotsune, Japan**

中川 裕茂 / 北京代表处 首席代表律师  
(Hiroshige Nakagawa, Chief Representative)

李 加弟 / 北京代表处 顾问  
(Jiadi Li, Counsel)

ANDERSON MŌRI & TOMOTSUNE



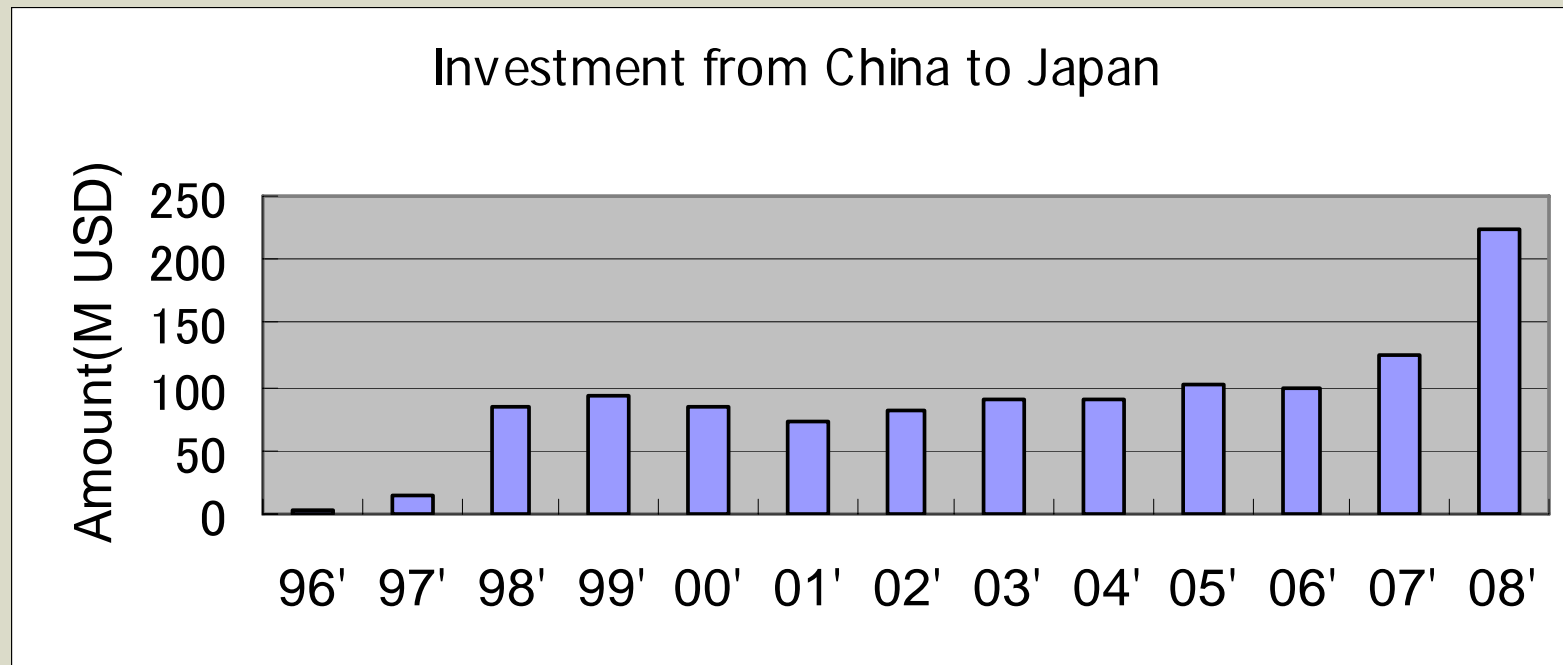
## 安德森·毛利·友常律师事务所是？

### Who are we? - Anderson Mori and Tomotsune

- 日本最大规模的律师事务所
- 约有超过300名有律师资格的人员
- 综合性律师事务所
- 在Chambers, Legal 500等众多领域中获得日本律师事务所No. 1的评价。在东京及北京有办公室。
- 北京代表处于1998年设立
- 中国业务的历史在日本律师事务所中也是最长的
- 经常代理众多外国企业
- **Leading Japanese Law Firm**
- **More than 290 Japanese Lawyers, with more than 10 foreign attorneys (admitted in United States, China and Europe etc.)**
- **Provide full range of legal services ranging from large M&A's and financial transactions to litigation and intellectual property matters**
- **Ranked as No1. in various fields in Chambers and Legal 500**
- **Beijing Office since 1998**
- **Longest history of China practice among Japanese firms**
- **Wide range of experience representing non-Japanese clients (Chinese, U.S., Europe and other Asian companies)**



## 对日投资统计 / Statistics of Investment to Japan



这2年呈猛增趋势！ Rapid Increase in this two years!



## 怎样的企业会对日投资？ / What companies have come to Japan?

- 中国主要的大公司基本上都在日进行了投资。/ **Major PRC companies have already invested to Japan.**
- 但从整体上讲，不仅仅是设立大型的子公司或者设立据点，预计今后对日投资将在各方面持续增长。/ **However, currently, not companies merely establishes small entity. We will see larger investment within a few years.**

中国交通银行	中国中化集团
中国银行	中国石油国际事业
中国工商银行	中国石油化工
中国建设银行	中国国际航空
中国农业银行	中国中信集团
中国银联	中国太平保险集团
中国海运	中国联合通信
中国远洋运输	中国通用技术
东风汽车	中国五矿集团
中国交通银行	中国中化集团
中国银行	中国石油国际事业



备受关注的外国企业收购日本企业的案件

**Notable Japanese M&A cases by Foreign  
Companies**



## Citigroup – 日兴Cordial集团 Citigroup - Nikko Cordial Securities

- 花旗集团对”日兴Cordial集团 (Nikko)”的收购/Acquisition of Nikko Cordial Securities by Citigroup
  1. 美国花旗集团通过要约收购方式收购日兴证券的股权 / Acquisition by Tender Offer
  2. 2007年4月 / April, 2007
  3. 花旗集团持股比率为61% / 61% shares acquired by Citigroup
  4. 由于日兴Cordial集团在2006年12月、2004年度和2005年度进行了不当的会计处理，故金融厅责令其缴纳有史以来最高金额的罚款5亿日元，该原因导致了其被收购。 / The improper accounting by Nikko resulting in 500 million JPY penalty led to acquisition.



# 日本的不动产投资信托 – Lone Star J-REIT - Lone Star

- **New City Residence投资法人 / New City Residence Investment Corporation**
  1. **日本国内的不动产投资信托首次因经营失败而申请适用民事再生法 / The first J-REIT filed for protection of civil rehabilitation**
- **美国的投资基金“Lone Star”于2009年4月进行了收购 / Lone Star Funds (US fund) acquired in April, 2007.**
- **包含承担负债在内收购金额为1200亿日元 / 120 billion JPY deal**
- **重整计划于2009年9月的债权人会议被否决 / The plan of rehabilitation was rejected in creditor’s meeting in September 2009.**
- **预计有新的投资者出现。 / New financial sponsors may step in.**



# 尚德电力 – 日本MSK

## Suntech Power - MSK

- 尚德电力 / Suntech Power Holdings Co
  1. 世界上最大的太阳能制造商之一 / One of the world's largest solar-power companies
- 日本MSK公司
  1. 日本最大的太阳能组件生产企业 / largest Japan's dedicated solar module manufacturer



# 尚德电力 – 日本MSK

## Suntec Power - MSK

### ■ 收购方式 / Acquisition method

1. 第一阶段，尚德以1.07亿美元注资并收购一部分老股以获得MSK近67%的股权。 / In the first step of the acquisition, Suntech acquired a two-thirds equity interest in MSK for \$107 million through a combination of subscription to new shares and purchase of existing shares.
2. 在第二阶段，尚德将收购MSK剩余的股份，根据MSK当时的财务表现，尚德将支付0.53亿至1.93亿美元作为对价。 / The balance of payment was calculated based on MSK's financial performance at the time of second closing. Payment was expected between 53 million USD and 193 million USD.
3. 其后，在第二阶段，尚德于2008年6月通过与自身的131.03万股进行交换，收购了日本企业MSK剩余的47.66万股。 / Later, Suntech completed its acquisition in June 2008 by exchanging its 1.3 million shares with the remaining 0.47 million MSK shares.



# 苏宁电器 - 日本Laox

## Suning Electric Appliance - Laox

### ■ 日本Laox 公司

1. 日本大型家电连锁企业 / **Japanese electronics retailer**
2. 主营业务为家电数码产品、动漫产品、乐器零售，在日本全国五个地区拥有14家门店，经营规模在日本的家电零售业排名大约在第十位 / **Retail sale of home electronics, animation electric product, electric music instrument etc, and owns 14 shops, 10<sup>th</sup> largest electric retailer.**

- ### ■ 中国公司收购日本上市公司的第一案 / **The first time a mainland firm had purchased a stake in a listed Japanese company.**



## 苏宁电器 - 日本Laox

### Suning Electric Appliance - Laox

- 苏宁电器通过在香港设立的全资子公司认购 / Suning subscribed, through its HK subsidiary,
  1. LAOX发行的66,666,700万股 / 66,666,700 Laox shares
  2. 认购价格为12日元/股（折合人民币0.86元/股） / Subscription price was 12 JPY/share (equivalent to 0.86 RMB/share)
  3. 投资总金额约为人民币57,2952,000万元 / Total investment amount was 57,2952,000 RMB
  4. 苏宁电器持有LAOX公司27.36%的股份，成为第一大股东 / Suning became the biggest shareholder by holding 27.36% shares.
- 日本观光免税株式会社位居其次，持有23.94%的股份 / Nihon Menzei Kanko holds 23.94% shares, becoming the second biggest shareholders.



## 苏宁电器 - 日本Laox

### Suning Electric Appliance - Laox

- 此外，苏宁电器还将获得10,660,000万股新股预约权 / Additionally, Suning are granted share option right for 10,660,000 shares.
  1. 可于2010年1月15日至2013年1月14日期间行权/ Exercisable from Jan 15, 2010 to Jan 14, 2013.
  2. 以20日元/股（折合人民币1.44元/股）的价格认购这批股份 / at 20 JPY/share (equivalent to 1.44 RMB/shares)
  3. 这批股份需花费2.13亿日元，折合1526.92万元人民币 / 213 million JPY (equivalent to 15,2692,00 RMB) will be paid if exercised.
  4. 若全部行权，苏宁电器将持有LAOX29.33%的股份。 / If all subscription rights are exercised, Suning will hold 29.3% shares
- LAOX公司山下严社长表示“LAOX公司在日本免税商品的销售上拥有一定的优势，依托苏宁电器在中国拥有的完善的店面和售后服务网络，为在LAOX购买免税3C家电商品的中国顾客提供长期的售后服务，将提升“日本自由行”中国游客在LAOX购买的意愿和信任度 / Mr. Sun of Suning said “we will purchase more Japanese products through the network of LAOX, to encourage more consumption of Chinese tourists in LAOX in Japan, and to set up after-sales services centers for Japanese products in China”



## 绿城中国控股 - 日本Pacific Holdings (Japan) Greentown Group – Pacific Holdings (Japan)

- 日本大型房地产基金公司 **Pacific Holdings Corporation**
  1. 主要目标为不动产投资事业 / **Real estate business**
- 拟由绿城中国控股公司等**10**家房地产公司参与经营重建中的**Pacific Holdings**达**474**亿日元的向第三方定向增发增资方案。 / **Several Chinese real estate companies (more than 10) planed to acquire by 47 billion JPY**
- 其后， **Pacific Holdings**于**2009**年**3**月**10**日申请公司重整，出资计划受挫。 / **However, the investment failed, which led to filing of corporate reorganization by Pacific Holding.**



## 为何在日本外国企业进行收购的案件呈增长趋势? Why is M&A increasing in Japan?

- 受到金融危机的影响日本企业的股价有所下跌 /  
Ongoing restructuring and large Japanese companies  
willing to sell their subsidiaries
- 对M&A认识的变化 / Attitudes toward M&A activities  
are changing
- 规制持续缓和 / Continuous deregulations



## 对中日间M&A造成影响的因素

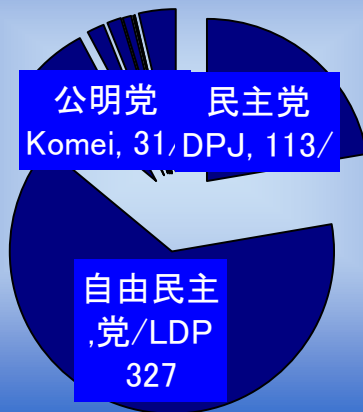
### Factor impacting China-Japan M&A

- 中日关系的改善 / Improvement of China-Japan relationship
- 民主党政权 / Democratic Party controls Japan
  1. 民主党在2009年8月的选举中以压倒性优势打败自民党 / The largest opposition Democratic Party of Japan (DPJ) scored a landslide victory over Liberal Democratic Party (LDP) in general election late August
  2. 在众议院480个席位中获得300个席位 / DPJ captured more than 300 of the 480 seats in the House of Representatives

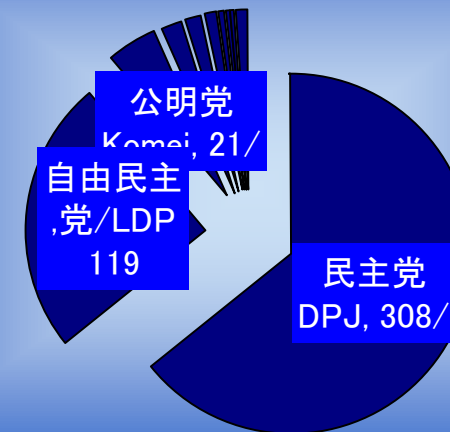


## 对中日间M&A造成影响的因素 Factor impacting China-Japan M&A

众议院席位(2005年选举)  
Seats in Lower House in 2005 Election



众议院席位(2009年选举)  
Seats in Lower House in 2009 Election





## 对中日间M&A造成影响的因素

### Factor impacting China-Japan M&A

#### ■ 民主党政权 / Democratic Party controls Japan

1. 自民党的支配在实质上终结/ Ending of LDP's control over 50 years.
2. 有见解认为日本今后将很有可能实施亲近中国，而与美国保持一定距离的“亲中疏美”的外交政策 / DPJ leaders are advocating improved ties with former adversaries, notably China.
3. 民主党表明对美国和中国的关系都很重视 / The DPJ wants to have good relations with China and they want to have very good relations with the United States



# 典型的日本企业的收购方法

**Typical way of acquiring Japanese company**



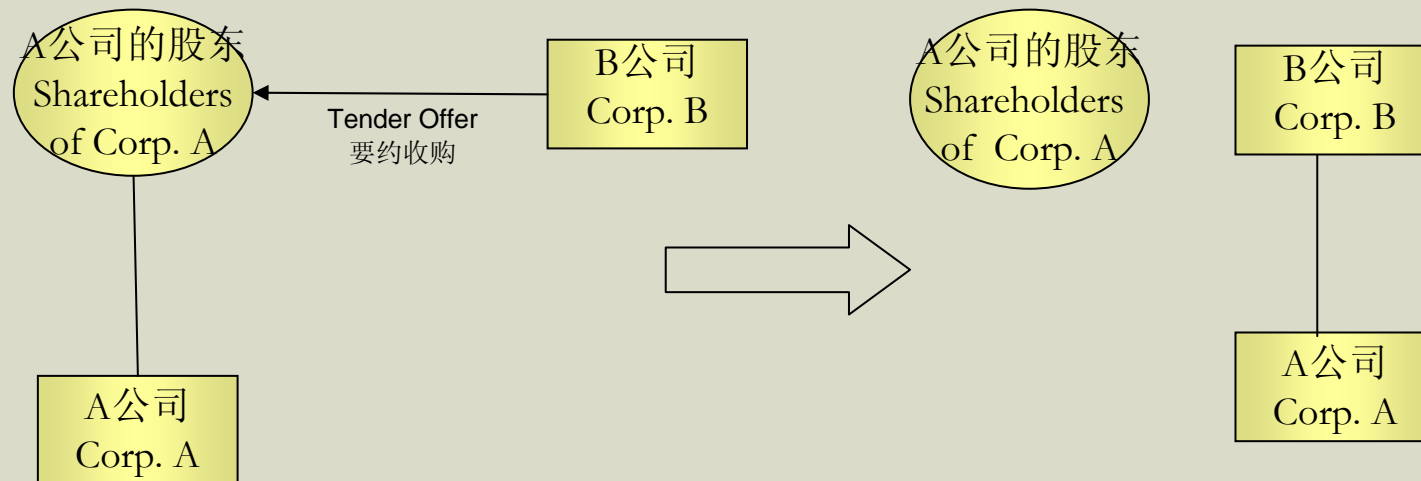
# 股权收购 Share Acquisition

## ■ 股权收购

1. 对上市公司也有需要约收购的情况
2. 为了获取100%的股份可以排挤少数派股东。

## ■ Share Acquisition

1. Tender offer may be necessary for acquiring listed companies
2. Squeeze-out process is possible in Japan for the purpose of acquiring 100% shares.





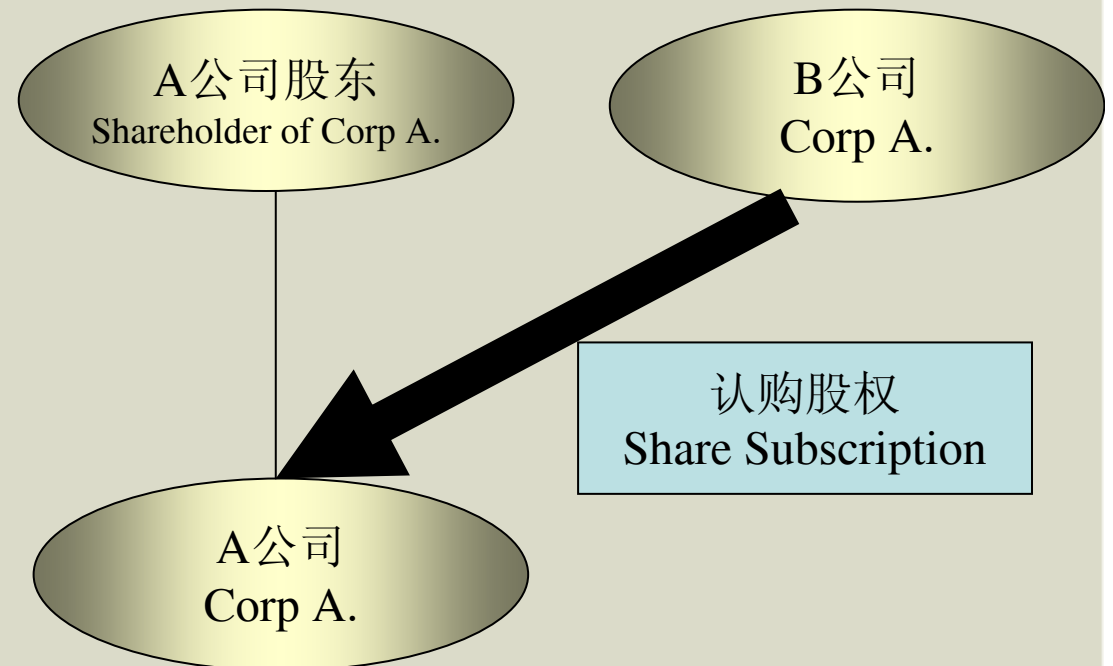
## 新股认购 / 新股预约权

## Share Subscription / Share Subscription Right

- 采取认购股份方式的收购
  1. 根据章程也有仅以董事会决议就可进行收购的情况。
  2. 也有需股东大会决议的情况。

- Share Subscription

1. Board resolution might be enough according to the Articles of Association
2. Shareholder's meeting's resolution might be necessary





## 苏宁电器—日本Laox相关的新股预约权案例 Suning Electric Appliance – Laox / Share Subscription Right

- 下述新股预约权发行给了苏宁电器的子公司等。
- **Share Subscription Rights were issued to subsidiary of Suning as follows..**

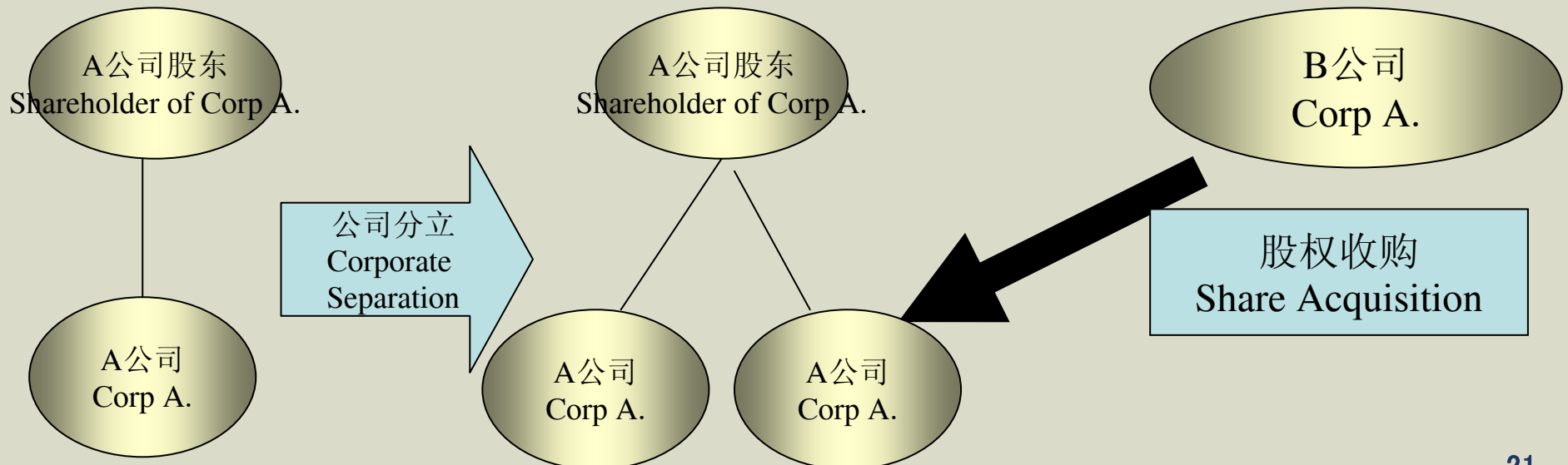
发行日期 / <b>Issue Date</b>	2009年8月3日 / <b>August 3, 2009</b>
需资金总额 / <b>Total Amount</b>	400,000,000JPY
发行价格 / <b>Issue Price</b>	0
行使价格 / <b>Exercise</b>	20日元/股（固定价格） 20 JPY / share (Fixed Price)
新股预约权数量 / <b>Numbers of issued rights</b>	20,000,000
一个新股预约权的交付股份数	1 股 / 1 share
行权价格 / <b>Exercise Price</b>	20日元/股          20 JPY / share
若新股预约权全部行权发行股权数量 <b>Shares to be issued by exercise</b>	普通股20,000,000股 <b>Ordinary shares 20,000,000 shares</b>



## 利用公司分立和新股认购的一整套收购 A set of share acquisition and corporate separation

- 在日本经常利用公司分立
  1. 以收购分立后的公司为基础，计划整体的M&A
  2. 对于外资企业来讲，也是容易利用的。

- Corporate Separation is frequently used.
  1. A set of share acquisition and corporate separation.
  2. Also easy for foreign company.





## 根据外汇法（1949）的事前申报 / Prior Governmental Approval Foreign Exchange and Foreign Trade Act in 1949 etc.

- 外汇法（1949） / Foreign Exchange and Foreign Trade Act (FEFTA) in 1949
  1. 规制在日本的对内投资的主要法令 / Primary Law regulating foreign direct investment in Japan
- 日本政府有权禁止对国家安全保障、公共安全、公众安全的保护造成障碍的行业等的投资。 / Japanese government may prohibit or restrict a proposed foreign investment when it think the investment may harm national security, public order, public safety, or the smooth management of the economy.
- 原则上为事后申报，但视情况有时也需事前申报 / In principle, a post-fact report suffices but in a certain case a prior notification to minister is required.



## 根据外汇法（1949）的事前申报 / Prior Governmental Approval Foreign Exchange and Foreign Trade Act in 1949 etc.

- 怎样的情况属于“对内直接投资” / What investment will fall under the “FDI” definition?
    1. 取得日本上市公司10%以上股份 / Acquiring 10% or more shares in a listed Japanese company
    2. 从日本国内投资者取得日本非上市公司股份/ Acquiring shares of unlisted domestic company from non-foreign investor
    3. 持有日本公司三分之一股份，同意对该日本公司的经营目的进行实质性变更 / Consent to a substantial change in corporate objective of Japanese company which the investor holds one-third or more shares
    4. 2亿日元1年以上的金钱贷款（贷款期限5年以下的） / Lending money to Japanese company for JPY 200 million fore than 1 lending year.
- 等 / etc.



## 根据外汇法（1949）的事前申报 / Prior Governmental Approval Foreign Exchange and Foreign Trade Act in 1949 etc.

- 需事前申报的行业 / Industries in which prior notification is required
  1. 特定的农业、林业(畜牧业、林业等)/ Certain agriculture and forestry (Stockbreeding, Forestry etc.)
  2. 供电、煤气、供热、供水等 / Electricity, Gas, Heat supply, Water supply
  3. 信息电信业 / Information and Telecommunication
    - 固定·移动电话 / Fixed and Mobile telecommunications
    - 广播 / Broadcasting
  4. 运输业 / Transport
    - 铁道、内陆水运、船舶租赁、石油储备等/ Railway, Inland water transport, vessel leasing, oil warehousing



## 根据外汇法（1949）的事前申报 / Prior Governmental Approval Foreign Exchange and Foreign Trade Act in 1949 etc.

### ■ 需事前申报的行业 / Industries in which prior notification is required

#### 4. 特定的制造业 / Certain Manufacturing

- 石油精炼业 / Petroleum refineries
- 橡胶、塑料制品等的鞋类等 / Rubber and plastic footwear
- 皮制手套 / Leather glove
- 电子零部件、设备制造业（飞机、武器、核能、太空探索等） /  
Electronic parts and devices (only aircraft, arms, nuclear power, and  
space development)
- 通信机器等 / Communication equipment
- 特定的有色金属制造业 / Miscellaneous nonferrous metal

等 / etc.

※ 还有其他众多行业需留意 / There is many other industry under regulation.



## 根据外汇法（1949）的事前申报 / Prior Governmental Approval Foreign Exchange and Foreign Trade Act in 1949 etc.

### ■ 审查及报告程序 / Review and Reporting Process

1. 进行申报的，外国投资者原则上自申报起30日以内禁止投资。 / **The ministries are given 30 days to complete the reviewing process of a proposed foreign investment after a foreign investor has notified the ministries of the proposed investment**
2. 主管大臣在30日以内没有回答时，视为批准。 / **If the investor has not received a response from the ministries within the 30 days, the transaction is automatically approved.**
3. 在禁止投资期间，事业主管大臣等认为必要时，可以延长至4个月。而且，关税、外汇等审议会提出时，从申报起可以延长至5个月。 / **The review period may be extended up to 4 months in case they believe further inquiry is needed. Additionally, it can be extended for one month more if “Council on Customs, Tariff, Foreign Exchange and other Transactions” requires.**



## The Children's Investment Funds – J-Power (日本电源开发)

- 日本电源开发为电力供应商，拥有67家发电所和2400公里的供电网。  
/ **J-Power: Japanese sole electric wholesaler holding 67 power plants and a transmission network of about 2,400 kilometers of power lines**
  1. 在日本北部计划修建核电站 / **It planed to start building a nuclear power plant in northern Japan.**
- **The Children's Investment Funds : 英国的基金 / UK-based activist fund**
- **TCI拟将其持有的股份从9.9%增加至20% (2008年) / TCI wishes to raise its stake in J-Power to 20% from 9.9% in 2008.**



## The Children's Investment Funds – J-Power (日本电源开发)

- 进行外汇法下的审查 / The plan was reviewed for 5 months under FEFTA.
- 政府担心对供电网的投资以及核电站的建设、运营造成恶劣影响，从而判断认为“有可能妨碍维持公共秩序”，故于2008年4月下达了中止劝告 / A Finance Ministry etc. rejected TCI's application to increase its stake, arguing that it could adversely affect the nation's nuclear power operations.
- 该案是1992年外汇法对取得上市公司10%以上股份课以事前申报义务起的第一个案例 / The first rejection since the current rules came into force in 1992
- 该案从日本将来拟增加对内直接投资的观点等出发，对于是否承认对这些敏感行业的投资而引起了较大的议论。 / This cause huge argument whether to allow foreign investors investment in sensitive sector, from the view of future increase of FDI which should be welcomed.



## 各企业类型的企业数

## Type of Companies, Number of incorporation

企业类型 Type of Company		企业数/Number of Corporation	趋势 Trend
股份公司(“株式会社”) Stock Company		2,498,330家	增加趋势 Increasing
合伙公司 Partnership Company	合名公司 General Partnership Company	5,681家	减少趋势 Decreasing
	合资公司 Limited Partnership Company	25,548家	减少趋势 Decreasing
	合同公司 Limited Liability Company	3,990家	急剧增加 Rapidly Increasing
其他(共同公司、医疗法人等) Medical Corporation etc.		53,850家	增加趋势 Increasing

## □ 股份公司/ Stock Company

- 股份公司 / Stock Company
  - 有限责任 / Investors assume limited liability only
  - 原则上，作为组织机构，设置股东大会、董事(会)、监事(会)等 / In many cases, shareholders meeting, board of directors, corporate auditors exist.
  - 组织机构的组成方式相当自由，可以有多种组合。 / After a major amendment of Corporation Law in 2006, many types of internal corporation bodies can be used.



## 合同公司/Limited Liability Company (LLC)

- 合同公司/Limited Liability Company (LLC)
  - 公司内部规范采用合伙性质的规范 / **Internal regulation is similar to partnership.**
  - 出资者全部为有限责任 / **All investors enjoy limited liability.**
  - 有登记制度 / **Registered at company registration bureau.**
  - 不同于股份公司，没有公告决算的义务。 / **Differently from Stock Company, LLC does not need to publish financial statements.**
  - 出资者不得自由转让股份，转让须取得其他出资者的同意。 / **Equity can not be transferred with out consent of other equity-holder.**
  - 自制度开始实施起1年间约有5000家公司设立，呈急剧增加趋势（合资公司年约1600家，合名公司年约100家。）。截止2009年3月末，约有18,000家。 / **Within one year after the commencement of this type of company, as much as 5000 company were established. As of March 2009, there exist 18,000 LLC.**
  - 该制度也被大规模的公司所利用 / **Big firm also uses.**
    - **Amway, Universal Music, Cisco systems, Seiyu (西友)**



## 匿名组合 &amp; 任意合伙

## TK (Tokumei Kumiai) &amp; Voluntary Partnership

	匿名组合 TK	任意合伙 Voluntary Partnership
投资主体 Investment Entity	通常为株式会社 / Usually, Stock Company	民法上的合伙 / Partnership without legal entity
准据法 /Governing Law	公司 / Company law	民法 / Civil Law
最低资本/Minimum Capital	无 / No	无 / No
特点 Characteristics	与投资者为1对1的合同。 Individual contacts with each investors 投资对象的名义为发行公司。 Investment under name of TK	投资者共同签订进行出资的合同。 Partnership agreement. 投资对象的名义为共有(合有)。 Investment under names of investors.
投资者的税务 Investor's taxation	单层征税 Pass-Through Taxation	单层征税 Pass-Through Taxation



## 投资业务有限责任组合(合伙) / Limited Partnership

	投资业务有限责任组合
组合成员 <b>Partners</b>	无限责任组合成员/ <b>General Partner</b> 有限责任组合成员/ <b>Limited Partner</b>
投资对象财产 <b>Assets to be invested</b>	有一定的限制 <b>Limitation on assets to be invested.</b>
登记 <b>Registration</b>	有义务登记无限责任组合成员 <b>General Partner to be registered</b> 无需登记有限责任组合成员故为匿名 <b>Limited Partner not to be registered</b>
财产的归属 <b>Assets Ownership</b>	最终由组合成员共同持有（共有） <b>Co-ownership by partners</b>
投资者的税务 <b>Investor's taxation</b>	单层征税 <b>Pass-Through Taxation</b>
金融交易商品法 <b>Financial Instrument and Exchange Act</b>	需准备并提交有价证券申报书等 <b>Annual Report shall be prepared and filed</b>



# 收购经营窘困的公司

## Acquisition of Financially Distressed Company



## 收购经营窘困的公司

## Acquisition of Financially Distressed Company

- 在日本泡沫经济崩溃后呈增长趋势 / **Big trend after bubble**
- 民事再生法（2000年实施）的渗透 / **Impact of convenient Civil Rehabilitation Law**

### <收购公司的好处/Benefit of Acquirer>

- 可以低廉的价格进行收购 / **Low price**

### <对象公司的好处/Benefit of Company to file for protection under civil rehabilitation law>

- 可以继续经营 / **Continuing operation by existing management.**

⇒众多中国企业也有此意向！ / **Many Chinese company wishes to use!**



上海电气 — 秋山印刷  
Shanghai Electric – Akiyama Printing

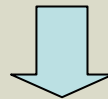
秋山印刷/Akiyama Printing

- 拥有双面彩色印刷等高技术 / **Akiyama holds high-technology in duplex color print**
  - 日本、海外的客户 / **Domestic and oversea customers**
  - 但，为处理英美专利诉讼等支出了巨额的费用 / **Huge costs in defending US patent litigation**
  - 2001年破产，申请民事再生 / **Filed for protection under civil rehabilitation law in 2001.**
- ⇒ 上海电气表示出了兴趣 / **Drew attention of Shanghai Electric**



上海电气 — 秋山印刷  
Shanghai Electric – Akiyama Printing

- 秋山印刷的关注事项 / **Concerns of Akiyama Printing**
- ⇒ 业务的持续·雇用的维持 / **Layoff**
  
- 上海电气的反应 / **Reaction of Shanghai Electric**
- ⇒ 第一兴趣是确保高技术/ **First priority on keeping engineers with high technology**
- ⇒ 但是，上海电气认为要维持现有客户，除拥有高技术的技术人员外，持续秋山印刷的经营也是不可或缺的。/ **Maintenance of full operation was necessary to maintain customers.**



达成业务转让的协议 / **Reached Agreement**



上海电气 — 秋山印刷  
Shanghai Electric – Akiyama Printing

- “作为秋山International”继续经营 / Continued as “秋山International”, a new company.
- ⇒ 秋山品牌存续 / Brand name was continuously used.
- 在新公司进行职员的再雇用 / Employment of most existing employee by the new company
- 日本的工厂也存续下来 / Factory was continuously operated.
- 2年内业绩回升 / Performance was improved in two years



## 民事再生程序 / Procedure of Civil Rehabilitation

申请 / Filing of Petition



财产保全处分・监督委员的选任  
Provisional protective order/Appointment of Supervisor



决定开始民事再生程序 / Order of Commencement



债权申报程序 / Filing of Claims



债权人债权的承认否决 / Investigation of Claims



提交再生计划方案 / Submission of Proposed Rehabilitation Plan



债权人会议决议 / Resolution at Creditors' meeting



法院对再生计划的批准 / Confirmation of Rehabilitation Plan by court



## 根据民事再生的收购在实务上的留意事项 Practice of M&A under Civil Rehabilitation Law

- 再生计划 ⇒ 债权人会议决议 + 法院的批准  
**Need to be (i) resolved at creditor's meeting, and (ii) confirmed by court.**
  
- 基本上是投标案件 / **Usually, bidding procedure required.**
  - ⇒ 中国国内对外投资的审批程序的时机是很重要的  
**Timing of completion of Outbound investment procedure in PRC.**
  - ⇒ 需要日本律师和中国律师一起组成专家小组  
**Japanese lawyers and PRC lawyers shall coordinate for successful acquisition.**



收购上市公司

**Acquisition of  
Listed Company**



## 收购上市公司 Acquisition of Listed Company

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- **主要问题/Main Regulatory Issues**
  - 1 **大量持股报告 / Large Shareholding Report**
  - 2 **要约收购规制 / Tender Offer Regulation**



## 大量持股报告相关的公开制度 Large Shareholding Report

1. 要件 / When need to file “Large Shareholding Report”
    - a. 上市公司 / listed company
    - b. 持有股份数占已发行股份总数的比例超过5%的 / hold 5% or more shares in total issued shares.
  2. 提交时期 / When to file  
5日以内 / Within 5 days after becoming a major shareholder
  3. 报告事项 / What to be reported
    - 最近60日以内所有交易的状况 / Transaction in prior 60 days
    - 重要合同（股票的租赁、担保等） / Important contract with the company
    - 取得资金, etc. / Funding resource
      - 也须 写明“持有目的” / Need to describe “purpose” of holding shares.
- \* 制作方法有技巧 / Be careful in description



## 大量持股报告相关的公开制度 Large Shareholding Report

### 4. 变更报告书 / Amendment Report

- 1%以上的增加或减少 / Increase or Decrease for 1% or more shareholding
- 短期大量转让 / Transfer of massive shares

### 5. 制裁 / Penalty

不提交报告书或虚假记载 / Non-filing or False description

⇒ 5年以下徒刑、500万日元以下的罚款 / Imprisonment, fines

\* 此外，上述只是记载了大概的内容，并未记载所有的要件等。

\* Please note that there is other detailed regulation.

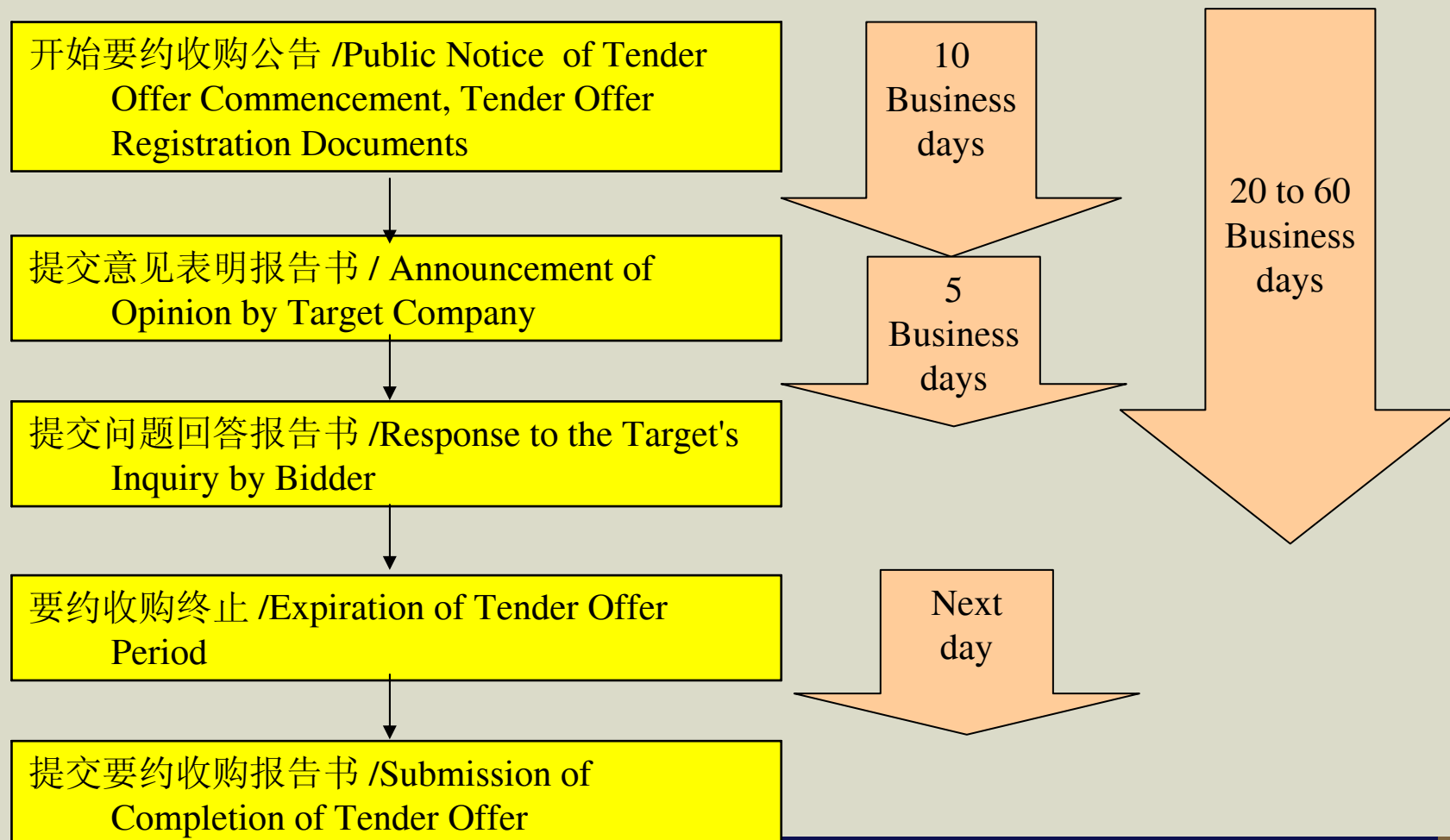


## 要约收购 Tender Offer

- 怎样的情况下，须要约收购 /When tender offer is mandatory?
  1. 在交易所市场外收购，收购后、超过5%的（但，60日内10名以下的收购不包含在内。） / Acquisition of 5% or more shares off-exchange, except acquisition from 10 or less sellers within 60 days.
  2. 在交易所市场外60日内10名以下的收购，收购后超过三分之一的 / Acquisition of one-third or more shares off-exchange within 60 days from 10 or less sellers
  
- ※ 请注意还有其他更多的渠道。 / Please note that there is more detailed rules.



## 要约收购/Tender Offer





## 要约收购 Tender Offer

### ■ 友好的Takeover/ Friendly Takeover

1. 收购后，管理层保留的情况居多 / Management usually remains
2. 对收购价格，股东容易存有不满意 / Shareholders often feel takeover price should be higher than offered.

### ■ 敌意的Takeover / Hostile Takeover

1. 未获得管理层的同意而进行Takeover / Takeover without consensus of management of target company.
2. 管理层有可能采取对抗收购的策略 / Management often executes countermeasures
3. 也有要求收购对象企业的经营者不采取对抗策略而保持中立（中立义务）的考虑。 / How neutral the management in the target company should be?
4. 近几年依赖法院判断的情况相当多。 / Judicial precedents were accumulated in these years.



# M&A与反垄断法

## M&A and Anti-Monopoly Law



## M&A与反垄断法 Anti-Monopoly Law implication

- 经营者集中申报制 / M&A Filing requirement
  1. 日本公正交易委员会 / Japanese Fair Trade Commission
  
- 日本反垄断法近日进行了大幅修改 / Amended Anti-Monopoly Law in Japan will become effective next year.
  1. 2009年6月10日发布 / Promulgated in June, 2009.
  2. 2010年1月实施(拟定) / Effective from January, 2009
  
- 经营者集中申报标准也重新考量 / Threshold for filing requirement will be radically changed.



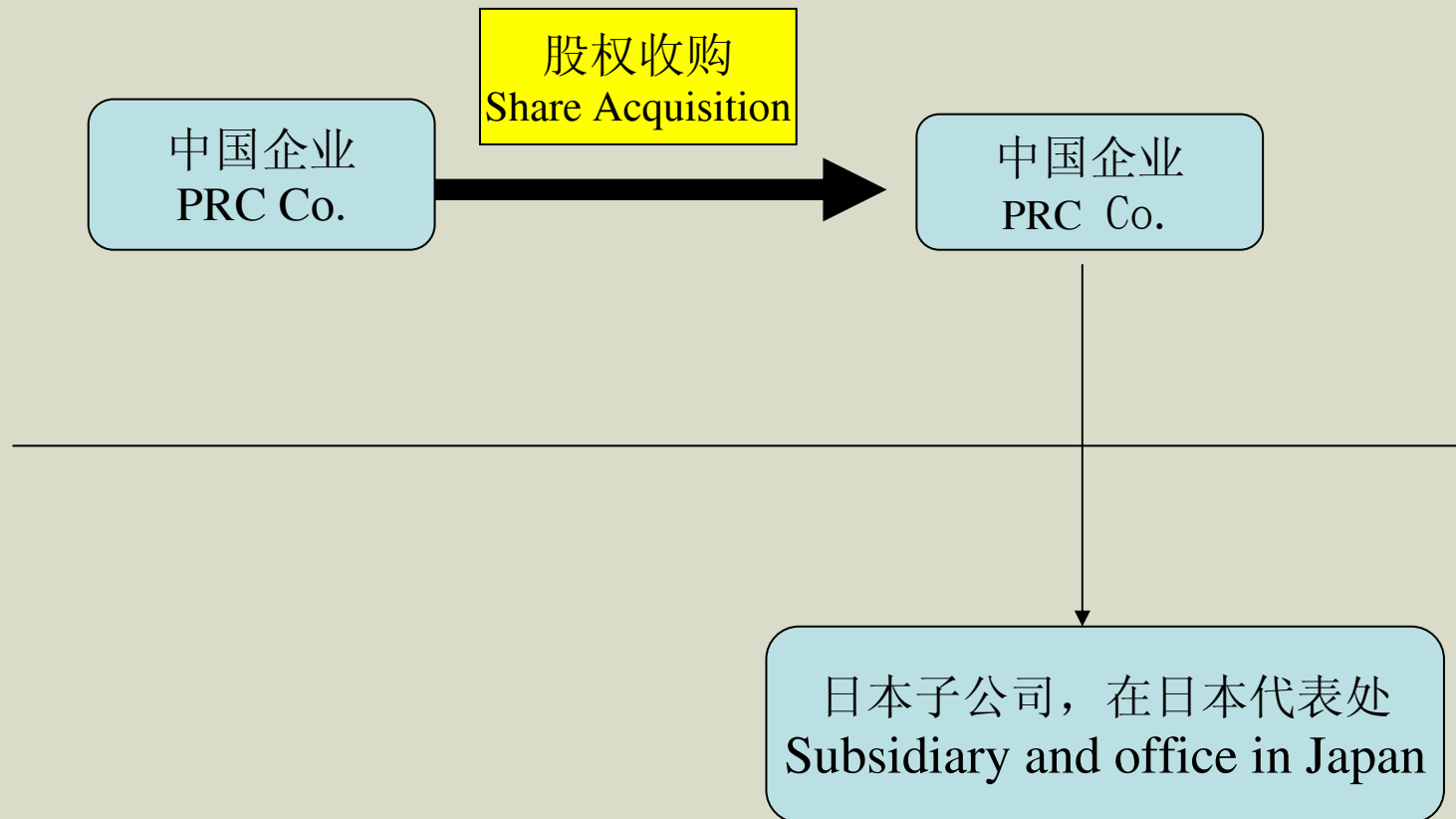
## 日本反垄断法修改的要点 How Japanese Anti-Monopoly Law will be changed

- 引进取得股份的事先申报制度等 / Pre-merger notification will be required in M&A by share transfer
  1. 按现行法律-事后备案 / Currently, only Post-merger notification is required for share transfer.
  2. 与需要事先申报的其他经营者集中(资产受让、合并)统一 / Consistent with other merger method (amalgamation, business transfer)
  3. 缓冲期限30天 / Waiting period to be 30 days.
  4. 与中国及其他主要国家反垄断法(竞争法)一致 / Consistent with other major country, including China.
- 申报标准 / Threshold
  - 总资产金额为标准(原则) ⇒ 销售额为标准 / Asset value to Sales Amount.
  - 国外并购与国内并购适用同一标准 / Threshold for Merger between foreign companies will be the same with domestic merger.



# 中国企业间取得股份时的事后备案标准

## M&A Filing requirement for share transaction between PRC Companies





## 中国企业间取得股份时的申报标准（现行）

### Current Threshold for merger between Chinese companies

#### ■ 现行的事后备案标准 / Current Threshold for Post-Merger report.

##### 1. 收购企业 / Acquiring company

- 资产超过20亿日元的公司且母公司和子公司的总资产合计额超过100亿日元的。 / **a company with total assets of more than 2 billion JPY, which has a sum of total assets more than 10 billion yen including the company's parent and subsidiary companies acquires or holds**

##### 2. 被收购企业 / Target company

- 日本国内的营业所、子公司的销售额超过10亿日元的 / **a foreign company with sales in the Japanese business offices more than 1 billion yen**

##### 3. 需申报的情况 / Percentage of acquired voting rights for notification

- 新持有被收购企业10%的表决权，持有超过25%或50%表决权时（以企业单体计算） / **voting rights ratio of the acquiring company exceeds 10 percent, 25 percent or 50 percent.**



## 2010年以后的申报标准 Thresholds to be effective after 2010

### ■ 2010年以后的申报标准 /Threshold for Pre-Merger report after 2010

#### 1. 收购企业 / Acquiring company

- 企业集团的日本国内销售额合计金额超过200亿日元 / The sales of “group companies” in Japan exceeds 20 billion yen
- 为外国企业的，在日本国内的销售额也包含向日本的出口额。 / Sales includes “export sales to Japan” by non-Japanese acquiring company

#### 2. 被收购企业 / Target company

- 公司及其子公司的日本国内销售额合计金额超过50亿日元 / Total domestic sale in Japan of the company and subsidiaries exceed 5 billion yen.
- 为外国企业的，日本国内的销售额也包含向日本的出口额 / Sales includes “export sales to Japan” by non-Japanese company to be acquired.

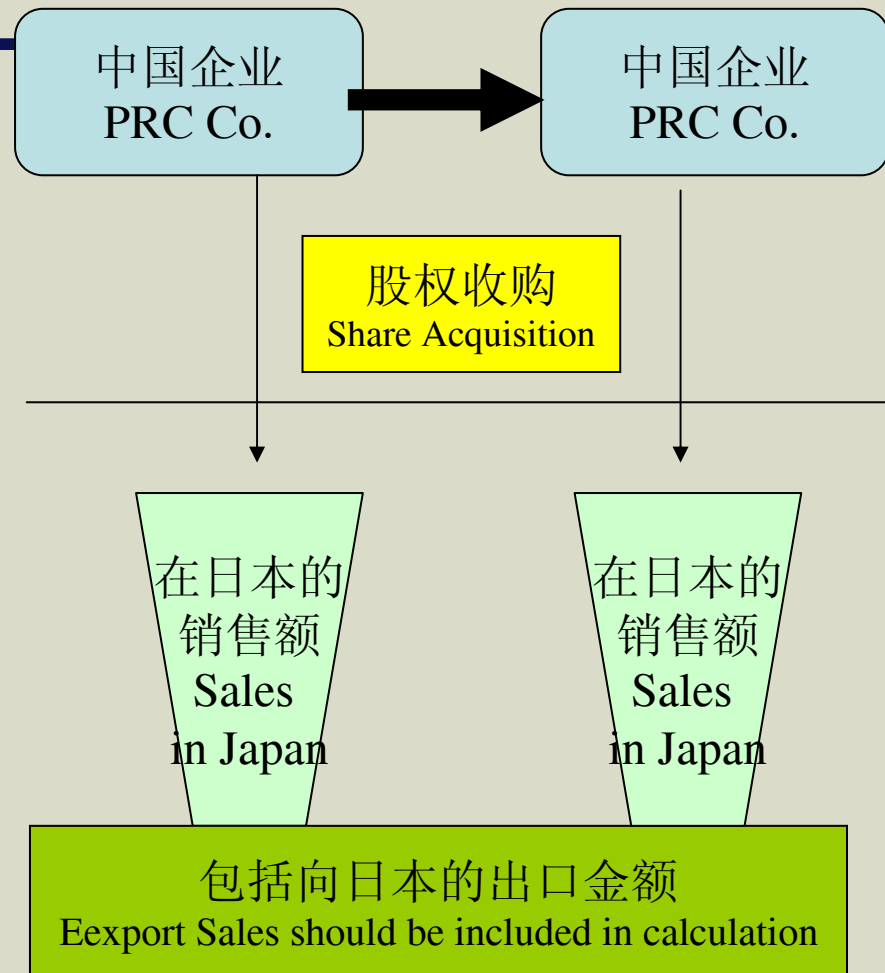
#### 3. 需申报的情况 / Percentage of acquired voting rights for notification

- 超过20%及50%的（企业集团） / voting rights ratio of the acquiring company exceeds 20 percent or 50 percent.



## 2010年以后的申报标准 Thresholds to be effective after 2010

- 在日本没有子公司或分支机构也会符合申报标准 /  
Even there are no Japanese subsidiaries on both sides, the filing in Japan will be required.
- 事后备案改为事先申报 /  
Pre-merger filing is required.





## 并购后的整合/Post Merger Integration

- **法律方面 / Legal issues**
  1. **企业名称的变更 / Change of company name**
  2. **董事的变更 / Change of board members and other officers.**
  3. **股东大会、董事会的召集、召开 / Shareholders meeting and board meeting**
  4. **公司登记等的变更 / Change of company registration**
  5. **账户等资金管理（银行印章的变更） / Transaction of banks**
  6. **各种申请 / Miscellaneous procedures**



## 并购后的整合/Post Merger Integration

- **现场处理 / Operational Issue**
  1. **在信件抬头、网站等各种工具中变更公司名称等的时机 / Timing of company name changes on various tools (letter head, website, etc.)**
  2. **现场相关事项的交接 / Smooth transition**
    - i. **管理层与日本雇员的相互沟通 / How to communicate between management and Japanese employees?**
    - ii. **过快的公司内部改革需慎重 / Is it “best” to force a sharp change in operation?**
    - iii. **在日本，有许多职员并不习惯经营者是外国人 / Need to care “feeling” of Japanese employees against foreign managers.**



## 如何选定律师? / How to choose appropriate lawyers

- 对日本法律及日本M&A精通、熟练 / Experienced in M&A transaction
- 一流人才 / Top class firm
- 对中国境外投资管制也有一定的了解 / Need to understand Outbound Investment Regulation in PRC for scheduling
- 语言能力 / Language capacity
- 拥有驻华常驻代表机构 / Office in PRC



## 讲师简历 / Speaker Introduction

合伙人律师 · 北京代表处首席代表

**Partner · Chief Representative of Beijing Office**

日本 · 美国纽约州律师 / **Attorney at law qualified in**

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### 简历

1998年4月 日本律师注册

2002年9月-2002年12月 新加坡Tan Peng Chin律师事务所研修

2002年1月-2003年4月 中国金杜律师事务所研修

2003年5月 美国纽约州律师协会注册

2007年12月-至今 北京代表处首席代表

### 业务领域

公司法、M&A、反垄断法、反倾销案件、纠纷、对日投资及在日融资等有关中国的案件。

### 著作

- 《怎样理解新公司法-从条文看新公司制度的要点-》(社团法人金融财政事情研究会 2005年)(合著)
- 《日本商务法律实务》(中国法律出版社 2009年)(合著)

### 所属律协及社会组织

- 第二东京律师协会
- 美国纽约州律师协会
- 环太平洋律师协会 (Inter Pacific Bar Association)
- 国际律师协会 (International Bar Association)

### 工作语言

- 日语、英语、中文



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2000年3月 取得中国律师资格  
2000年7月 中国人民大学法学硕士  
2001年3月 日本同志社大学研究生院法学研究科研修  
2004年3月 日本庆应义塾大学研究生院法学研究科  
(商法专业硕士)  
2004年4月 加入本所

### 业务领域

公司法、知识产权法、外商投资法、国际贸易法、  
M&A、纠纷、对日投资及在日融资等有关中国的案件。

### 论文

- “中国企业以红筹方式在境外上市及股份交换-境外SPV股权融资的新潮流” (2006年11月, Lexis企业法务)
- “中国企业的破产及重整 (上、下)” (2007年7月及8月, Lexis企业法务)
- “中国商事法务Q&A 北京奥运会知识产权(上、下)” (2008年8月、9月, 商事法务月刊)
- 《日本商务法律实务》(中国法律出版社 2009年)(合著)

### 工作语言

- 中文、日语、英语