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Japanese Law Explained

Mergers & Acquisitions in Japan

In recent years, the number of M&A deals in Japan has been increasing. One of the major reasons fueling this trend are aging owners passing their businesses to others. This trend is expected to continue in the future.
When considering M&A for a business, it is necessary to select the appropriate method and consider the risks involved for each case.
This article provides an overview of M&A in Japan.

1. Three Main Schemes (Stock Transfer, Business Transfer and Company Split)

☑Stock Transfer

The most common way businesses acquire other businesses in Japan is via stock transfer. This procedure is simple because it only transfers management rights and there is little impact on the business' transactions, licenses, employees, etc. The disadvantage of a stock transfer is that liabilities are also transferred to the new business which may include assuming off-balance-sheet liabilities such as unpaid overtime wages and social insurance premiums, the risk of being sued by another entity, etc.

☑Business Transfer

A business transfer occurs when a company transfers parts of its business to another business entity. The advantage of a business transfer is that it allows a company to selectively transfer specific parts of its business, assets, liabilities, and various contracts rather than transferring the entire company. The disadvantage of a business transfer is that it requires transfer procedures such as requiring consent from any contracted entities for each contract, making lists of transferred assets, and application for license changes .

☑Company Split

Like a business transfer, a company split transfers a part of a business; however, the rest of the business is also transferred to another entity.
The advantage of a company split is that the rights and obligations of the target business are entirely transferred resulting in less impact and disruption to the business compared to when a business transfer occurs. For example, depending on the type of license involved, it may be possible to continue its use without needing to re-register thereby continuing business as the reformed entity. The disadvantage of a

company split is that liabilities of the target business, including off-balance-sheet liabilities, are also transferred.

2. Other Points to Note

As with any merger or acquisition, competition law issues may arise in certain cases.
Japan's Antimonopoly Act empowers the governmental agency in charge, the Japan Fair Trade Commission (JFTC), to reviews whether a business combination plan would substantially restrict competition in any particular market. For example, prior notification to the JFTC is required when a company with domestic sales exceeding ¥20 billion acquires shares in a company with domestic sales exceeding ¥5 billion that results with the acquiring company exceeding 20% or 50% of the total voting shares. In addition, from the date the notification of the share acquisition is accepted, 30 days must pass before any company can acquiring another company's shares. It is common practice to consult with the JFTC prior to filing for any M&A, so the parties can discuss what the business is required to notify the JFTC about and any other matters of concern.

Lastly, depending on the industry, the government may require businesses provide prior notification or submit to review if non-resident individuals or foreign corporations (including Japanese companies where non-residents or foreign corporations hold a majority of voting rights) acquire the target business.

3. Why Miyake & Partners

When conducting M&A transactions involving Japanese companies, businesses need legal experts that can advise them on all, relevant Japanese business laws and regulations while also ensuring that the business can continue to operate as usual after the transaction. It is essential to have a thorough understanding of Japanese laws and business practices like our experts at Miyake & Partners. Our firm handles numerous M&A transactions in Japan, with a focus on Small and Medium-sized Enterprises.
For more information, please find our contact information below.

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