Golden Opportunities for Acquiring Japanese Businesses?

EXECUTIVES of foreign companies may soon have golden opportunities to acquire Japanese businesses. The Ministry of Justice is making preparations to revise the Commercial Code. Specifically, it plans to remove the factors that have hindered M&A activities by non-Japanese firms so that foreign firms will be able to acquire Japanese businesses more easily starting as early as 2006.

When a company tries to acquire another company, it often employs an equity-swap system. Under the current Commercial Code, however, foreign companies are effectively barred from using this method. The revision of the Commercial Code will lead to the total lifting of a ban on foreign firms using the equity-swap method.

The method will have a significant role to play in M&As. This is obvious in view of the wide gap of aggregate market values between Japanese and foreign companies. The market capitalization of major supermarket operator Ito-Yokado is only about 10% of that of Wal-Mart Stores of the United States. Reports on the integration of Mitsubishi Tokyo Financial Group and UFJ Holdings drew strong public interest. The merged bank would become the world's largest banking group in terms of overall assets. The market capitalization of the new bank, however, is only about the 10th largest in the world. "Should Citigroup embark on acquiring a Japanese megabank group on the strength of its huge market value, we can find no ways to prevent it," says one executive of a Japanese bank. The question of how to apply the tax system to stock swaps has yet to be resolved. But the lifting of a ban on equity swaps may spur foreign firms to acquire Japanese businesses at a stroke in view of the wide gap in market capitalization between Japanese and foreign firms.

Some executives of Japanese companies are concerned about hostile takeover bids (TOBs) by foreign businesses. US companies have a number of countermeasures against hostile TOBs such as "poison pills"– a strategy used by corporations to discourage a hostile takeover by another corporation – and a "white knight," a company that makes a friendly takeover offer for the control of a target company faced with a hostile takeover from a separate party. These countermeasures are unfamiliar to Japanese businesses. Therefore, Japanese firms – and the Japanese government as well – are considering how to make these measures take root in Japan.

But this does not mean that Japanese firms are adopting a defensive stance. Both the number and value of M&As by Japanese businesses in 2004 are estimated to have hit all-time highs. In addition, a greater number of Japanese firms are seeking to acquire overseas corporations on the strength of their healthier financial bases due to the economic recovery. The planned revision of the Commercial Code may remind Japanese corporate executives of the importance of cross-border business strategies.