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BRIEFING

Highest price, not always the best offer: METI clarifies Japan's Guidelines for Corporate Takeovers

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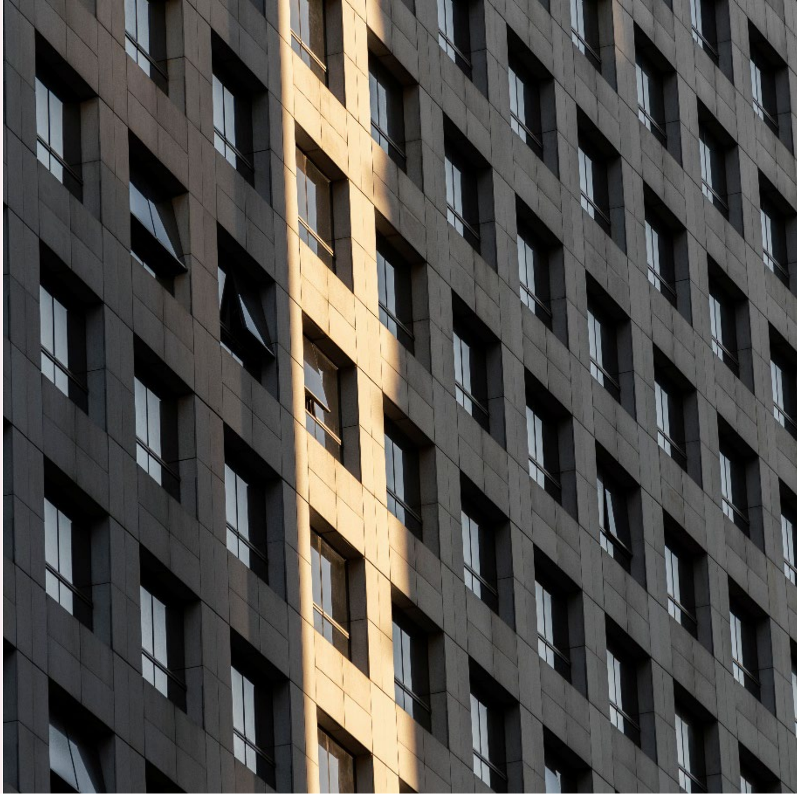

On 30 July 2026, Japan's Ministry of Economy, Trade and Industry (METI) published three new documents on the Guidelines for Corporate Takeovers: (i) the Interpretation of the Guidelines for Corporate Takeovers (the Interpretation[1]); (ii) the Key Points of the Guidelines for Corporate Takeovers (the Key Points[2]); and (iii) the Q&A on the Guidelines for Corporate Takeovers (the Q&A)[3]. These documents do not amend the 2023 Guidelines for Corporate Takeovers (the Guidelines)[4], which remain in force unchanged. Instead, they close a gap between METI's original intent and how directors, boards and market participants have understood and applied the Guidelines since 2023. If you are a listed company, prospective acquirer, financial adviser or legal counsel relying on the Guidelines, the new materials clarify certain concepts that have been at the centre of recent public M&A disputes in Japan. These include the meaning of a "bona fide offer", how to assess "corporate value", and how boards should proceed when the proposal that best enhances corporate value differs from the proposal offering the highest price.

Background

METI formulated the Guidelines for Corporate Takeovers on 31 August 2023, following deliberations of the Fair Acquisition Study Group. The Guidelines set out fundamental principles and best practice for parties involved in acquiring control of listed companies. The number and value of M&A transactions involving Japanese companies rose for two consecutive years in 2024 and 2025, and references to the Guidelines in transactions and related disputes rose correspondingly. METI observed, including through hearings with market participants, that stakeholders had not always understood the Guidelines' intent. In response, METI reconvened

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[1] Interpretation of the Guidelines for Corporate Takeovers (in Japanese) / (Reference translation) Interpretation of the Guidelines for Corporate Takeovers (in English)
[2] Key Points of the Guidelines for Corporate Takeovers (in Japanese) / (Reference translation) Key Points of the Guidelines for Corporate Takeovers (in English)
[3] Q&A on the Guidelines for Corporate Takeovers (in Japanese) / (Reference translation) Q&A on the Guidelines for Corporate Takeovers (in English)
[4] Guidelines for Corporate Takeovers (in Japanese) / (Reference Translation) Guidelines for Corporate Takeovers

the Fair Acquisition Study Group in February 2026. On the firm premise that it would not revise the Guidelines themselves, METI prepared the Interpretation, the Key Points and the Q&A to promote a clearer, more consistent understanding among stakeholders. METI released drafts of these three documents for public comment between 18 June and 17 July 2026 and received comments from 59 individuals and associations in Japan and abroad. A separate appendix summarises the comments received and METI's responses.[5]

Overview of the new materials

The Interpretation explains why the Fair Acquisition Study Group was reconvened, the progress of its deliberations, and the rationale for producing the Key Points and the Q&A. The Key Points is the more substantive document for legal practitioners. It sets out, chapter by chapter, the aspects of the Guidelines that METI considers need clearer articulation, cross-referenced to the relevant provisions of the Guidelines and the Q&A. The Q&A addresses specific points of concern for directors and boards of target companies when they receive, consider and choose between acquisition proposals.

The publications constitute a step in an ongoing clarification process, not a change in the underlying rules. Even so, they give a clearer picture of how METI intends the Guidelines to be applied: continued emphasis on corporate value over headline price, more explicit criteria for assessing whether an offer is bona fide, and confirmation that price and corporate value will not always point to the same proposal. This assessment reflects the content of the Key Points and the Q&A as published for comment, and the final materials carry through the same substantive premise.

Current status

METI released the Interpretation, the Key Points and the Q&A in final form on 30 July 2026, following a 30-day public comment process that ran from 18 June to 17 July 2026. METI has stated that these materials proceed on the firm premise that the Guidelines themselves remain unrevised. They are explanatory and interpretive, not new binding or soft-law rules in their own right. Like the Guidelines, the new materials do not have the force of law. However, they explain how METI expects the Guidelines to be read, and boards, financial and legal advisers, and potentially courts, are likely to refer to them when assessing directors' conduct in response to acquisition proposals.

Points to watch

A central theme of the Key Points is that a high purchase price alone does not make an acquisition proposal the most "desirable". The premise for a desirable acquisition proposal remains the enhancement of corporate value: a quantitative concept focused on the present value of discounted future cash flows the company has the potential to generate. The Key Points also narrow the scope for dispute over a related point: where the board concludes that the proposal which most enhances corporate value

[5] Results of the Public Comment Process (in Japanese)

differs from the proposal that best serves shareholder interests (i.e., usually the proposal offering the highest purchase price), the board may support the former, provided the board holds itself sufficiently accountable to the shareholders. Shareholders nonetheless retain the final say on whether the acquisition proceeds. Boards and their advisers should also note the more detailed treatment of what constitutes a "bona fide offer", including new guidance on when specificity, legitimacy of purpose or feasibility may reasonably be doubted, and of the circumstances in which establishing a special committee is desirable or necessary.

There is however continued uncertainty as to how these interpretive concepts will be tested in future disputes and court proceedings, given that the Guidelines and their interpretive materials remain soft law. How and to what extent the Key Points and the Q&A will influence judicial reasoning, and the practical conduct of contested and unsolicited acquisitions, remains to be seen.

A further theme running through the Interpretation, the Key Points and the Q&A is METI's concern to prevent corporate management from using these concepts to protect and entrench their own positions. Among other points, METI notes the following:

- Feasibility should not be judged too early: because engagement with a controlling shareholder may increase a proposal's feasibility, it may be inappropriate to conclude, at the initial stage of an acquisition proposal and before due diligence, that the proposal lacks feasibility (Q&A Q2, n.8).
- Questioning should not be used as a tactic: excessively detailed questions to an acquirer must not, in substance, be used as a measure to obstruct an acquisition that would result in a change of control (Q&A Q3, n.17).
- Where an acquisition could reasonably be expected to impact future cash flows or the discount rate, that effect should preferably be quantified; similarly, the board should quantitatively compare the acquirer's proposed corporate value enhancement measures against standalone measures, taking into account both synergies and dis-synergies, to assess which would better enhance corporate value over the medium to long term (Key Points 2(2) and 4(2); Q&A Q3, Q4 n.26).
- Management should not use the concept of corporate value, or hard-to-measure qualitative factors, as a device for self-preservation; where a quantitative explanation to shareholders is genuinely difficult, management is nonetheless expected to provide a persuasive explanation (Key Points 2(2); Q&A Q3, Q4).
- The discount rate reflects investors' required rate of return, and the target company's board should not, when valuing its shares, manipulate the discount rate arbitrarily so as to over- or under-state corporate value (Key Points 2(2), n.3; Q&A Q4, n.26).
- Although the Guidelines do not directly adopt a Revlon-type duty as recognised in the U.S., once a board decides to support an acquisition it must make reasonable efforts to secure transaction terms that protect the benefits shareholders should enjoy (Key Points 5(1); Q&A Q6).

Action points for investors and listed companies

Investors, prospective acquirers, listed companies, and their advisers may wish to consider the following now:

1. Revisit board protocols for receiving acquisition proposals

   Companies should confirm that internal protocols ensure that any acquisition proposal is promptly submitted or reported to the board, and that the board's assessment of whether a proposal is specific, legitimate in purpose and feasible follows the more detailed factors now set out in the Key Points and Q&A.

2. Reassess how "sincere consideration" is documented

   Boards should ensure that their sincere consideration of a bona fide offer is demonstrably grounded in a quantitative, medium to long-term comparison of the acquirer's proposal against standalone corporate value enhancement measures, with qualitative factors used to supplement, not replace, that analysis.

3. Prepare for scenarios where price and corporate value diverge

   Given the Key Points' continued emphasis that the proposal most enhancing corporate value and the proposal offering the highest price will not always coincide, boards, financial advisers and legal counsel should prepare robust, persuasive explanations capable of being disclosed to shareholders in cases where the board supports a lower-priced proposal on corporate value grounds.

4. Review special committee practice

   Companies should reassess, on a case-by-case basis, whether a special committee should be established in light of the degree of conflict of interest, information asymmetry, board independence and the extent of accountability expected by the market, taking into account the refined guidance on when a special committee is desirable as opposed to necessary.

5. Strengthen acquirer due diligence and disclosure practices

   Target boards should be prepared to assess an acquirer's post-acquisition strategy, financial resources, track record, compliance frameworks and the feasibility and timing of any required regulatory approvals, including antitrust and foreign direct investment approvals, consistently with the more granular factors identified in the Key Points.

6. Monitor engagement expectations in normal-phase dialogue

   Because the Key Points link normal-phase corporate value enhancement and capital market dialogue directly to the quality of the board's response once an acquisition proposal is received, companies should continue to develop their governance structures, and engage in business portfolio review and investor dialogue, well before any acquisition proposal is made.

Outlook

The publication of the Interpretation, the Key Points and the Q&A on 30 July 2026 confirms that METI regards the substantive content of the 2023 Guidelines as settled for now, while acknowledging that practical understanding of the Guidelines needed reinforcement. For companies and investors active in the Japanese public M&A market, the new materials narrow the scope for diverging interpretations on several previously contested points, in particular the primacy of corporate value over price and the criteria for a bona fide offer, without altering the underlying legal framework. Given the continued rise in unsolicited and contested acquisition activity involving Japanese listed companies, boards and their advisers should act proactively by testing their existing acquisition-response protocols and special committee practices against the Key Points and Q&A now.

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