

This paper aims to organize and analyze German law to examine the future direction of supervision and enforcement of takeover regulations in Japan, based on the report of the Financial System Council's "Working Group on Takeover Bids and Large Shareholding Reporting Systems." Unlike the UK system, where self-regulation by market participants forms the core, Germany's takeover regulations share many similarities with those of Japan, in that they are based on legislation and state supervision.

In Germany, BaFin holds comprehensive supervisory authority over takeover regulations, with statutory powers to make various discretionary judgments and conduct investigations. Furthermore, in areas where supervisory oversight may be less effective, legislation or case law grants target company shareholders private law monetary claims against the acquirer. Concurrently, legal interpretations have evolved to prevent BaFin from facing civil claims based on facts revealed after its decisions were made. Furthermore, while enforcement by the supervisory authority may be difficult regarding the obligation to conduct a mandatory bid, private enforcement mechanisms exist that indirectly encourage timely implementation, such as the suspension of shareholder rights and the obligation to pay interest, which take effect retrospectively.

The division of functions between supervisory authorities and civil enforcement in Germany provides valuable insights when designing regulatory frameworks in Japan.

However, while EU member states, including Germany, have mandatory bid rules requiring those acquiring control of a target company to conduct a full purchase at an equitable price, Japan lacks a corresponding legal framework. Even after the 2024 revision of the Financial Instruments and Exchange Act, Japan's tender offer regulations continue to require that acquisitions of shares or other securities exceeding the threshold for control of the target company be conducted via a tender offer. Therefore, under the current regulatory framework, it is difficult to directly adopt Germany's approach to civil discipline.