

Liability for Damages of Directors in Japanese Hostile Takeovers

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This study considers about the standard of the director's act in takeovers from the viewpoint of liability for damages of directors. At first, in Chapter 2 and Chapter 3, this study analyzes whether directors can adopt defense measures against takeovers and, if possible, whether it is desirable for them to be what kind of condition and contents. This study checks the trend about cases and the measures of business practices to defend takeovers, and clarifies the reaching points and problems in the present condition.

Second, in Chapter 4, from the viewpoint of liability for damages of directors, this study examines how remedy for the shareholders who receives disadvantageous damage caused by unreasonable defense measures should be achieved. Because shareholders damaged by defense measures can appear. Therefore the study considers in United States cases whether shareholders suffered by disadvantage can claim on directors directly. Cases about takeovers in U.S. have been considerably accumulated, and it seems that they strongly affect Japanese argument in recent times.

Third, in Chapter 5, the Study considers the remedy in the same situation in the EU method, especially the German method. Although the measure for making a rule about company buyout is also seen in EU, a different argument from a U.S. situation is being developed there. Under German situation, the study clarified that the case where direct claim by damaged shareholders to directors is admitted is very similar to Japanese situation where directors issue new shares grossly unfair in being a struggle in control of a company. In Chapter 6, the study demonstrates the theoretical structure of the liability for damages of directors in our country.

Finally, in Chapter 7, based on past consideration, the study concludes that directors should be imposed to prove that adopted defense measures are rational and considerable to protect the whole company's value. However, when directors succeed in proof about the rationality of their judgement, even if shareholders are damaged by adopted defense measures, illegality of directors' act can be removed. Furthermore, the study examines how the amount of the damages which can claim on directors should be caught, and clarified that the judicial decision is also playing the important role in the certain range.