

Japan's Surging Outbound M&A Shows No Sign Of Slowing

By **Chelsea Naso**

Law360 (May 24, 2019, 10:02 AM EDT) -- Robust outbound deal-making by Japanese buyers is poised to hit new heights, as cheap financing abounds and companies look overseas for growth amid growing pressure from shareholder activists, according to a team of new partners in Latham's Tokyo office.

The push for cross-border deals is not likely to slow, especially since buyers have access to financing at extremely low rates, noted Noah Carr, one of three new Latham & Watkins LLP partners to join the firm in Tokyo from Morrison & Foerster LLP.

"There's a few factors coming together to make Japanese M&A and particularly outbound M&A at the moment. The simplest one, which I think gets overlooked sometimes, is that the cost of capital in Japan is extremely low," Carr said. "There's a lot of dry powder in that sense."

Carr joined Latham's Tokyo office May 16 alongside Ivan Smallwood, who also focuses on outbound M&A, and Stuart Beraha, who advises companies on matters like technology, intellectual property development, licensing and partner transactions.

All three were formerly at MoFo's Tokyo hub and are registered foreign lawyers in Japan. Carr and Beraha are also members of the New York bar, while Smallwood is a member of the California bar.

Japanese outbound M&A, unlike domestic deal-making, continued to gain momentum in the first quarter of 2019. Outbound deal value hit \$22.5 billion in announced transactions during the first three months of the year, a 79.4% increase over the \$12.5 billion recorded in the same stretch of 2018, according to Mergermarket.

The busy first quarter is building off of an overall strong 2018. Japanese outbound activity last year reached \$171.8 billion for the full year, marking the highest deal value on Mergermarket record, the M&A data firm reported at the time.



Noah Carr



Ivan Smallwood



Stuart Beraha

Aside from cheap capital, Japanese companies are also grappling with slowing domestic growth, a factor that encourages companies to look outside the country for new opportunities. Japanese acquirers spent the most on transactions in Europe during the first quarter of the year, but inked the most deals in the U.S., Mergermarket found.

Outbound bids are also finding a leg up on some of their would-be competitors when it comes to inking deals in areas where national security scrutiny of deals has heightened.

"As national security concerns erupt around the world, in the U.S. and Europe and even India, Japanese acquirers can get deals done with less friction," Carr said.

And overall, Japanese buyers are less susceptible to the ebb and flow of uncertainty spurred by global geopolitical tensions, currency shifts or stock market volatility.

"I think it's fair to say with Japanese companies, once they are sort of on a certain course, the ship doesn't turn that quickly. That's particularly true on the M&A front. If there's something Japanese companies want to do, they are not going to be deterred by some adverse changes in currency rates or even some market fluctuations. They are not going to stop on a dime even if something happens," Smallwood said.

Deal-making is also being fanned by shareholder activists, who are starting to hit their stride in Japan.

"The foreign activists are back and they seem to be getting more traction and there seems to be more receptiveness to the suggestions they are making. Some of those will drive more M&A," Smallwood said.

According to Activist Insight, 55 Japan-based companies have been subject to public demands from an activist investor as of May 17. That marks a 34% increase from the 41 companies that faced public pushback from activists during the same period of 2018. Campaigns have targeted a variety of companies, including Toshiba Corp., which earlier this month announced plans to overhaul its board.

With so much activity in the world of Japanese outbound M&A, Carr said he felt Latham's commitment to the region drew him in.

"The Latham platform is so powerful now and, of the top-tier firms, it's really the only one that is growing by expanding globally in its different practice areas rather than retreating into its core practices in New York," Carr said.

"We thought there was just a great opportunity here for us and for Latham," Smallwood added.

Latham partner Michael Dillard, who co-chairs the firm's global M&A practice, said the addition of the three-partner team will better position the firm's Tokyo office to advise clients on transactions, particularly in conjunction with the firm's West Coast operations.

"We're just thrilled that the whole team has joined and we, like they, believe that there is significant opportunity as part of our global platform. We feel like that was one of the areas where there were opportunities where we didn't have a team in place to take advantage of it," he said.

"We envision tremendous opportunities, especially on the tech side with our significant West Coast presence in the tech space, for there to be many opportunities for those offices to hand transactions

jointly," Dillard added.

Latham's Tokyo office opened in 1995 and is currently home to 15 attorneys.

News of Carr, Smallwood and Beraha joining Latham comes as the firm also welcomes Robert Katz, a former Shearman & Sterling LLP attorney, as a corporate partner. Latham announced on May 20 that Katz is expected to bring to the firm his M&A expertise in a variety of industries, like telecommunications, life sciences, technology and health care.

--Editing by Katherine Rautenberg.

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