

# Large Shareholding Reporting Periods Substantially Reduced from January 2007

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## Summary

- Two government ordinances and a cabinet order clarifying details of revisions made to the TOB and large shareholding reporting systems were announced on 8 December and 12 December respectively.
- They include details of the base dates applicable in the case of special large shareholding reports.
- More specifically, investors can choose between (1) the second and fourth Monday of each month (and fifth if there is one), and (2) the 15th day and last day of each month, as their base dates. Thereafter, reports must be submitted within five business days of their chosen dates.
- Revisions to the special large shareholding report base dates came into effect as of 1 January 2007..

**IMPORTANT DISCLOSURES, INCLUDING ANY REQUIRED RESEARCH CERTIFICATIONS,  
ARE PROVIDED ON THE LAST TWO PAGES OF THIS REPORT.**

## Introduction (revisions to the TOB and large shareholding reporting systems)

Government ordinances concerning revisions to the TOB and large shareholding reporting systems, included in the Law for Partial Revision of the Securities and Exchange Law of June 2006 (hereafter, "revised law"), have been announced as follows.

- (1) 8 December 2006: Government ordinance for partial enforcement of the Law for Partial Revision of the Securities and Exchange Law (Government Ordinance No.376)
- (2) 8 December 2006: Government ordinance for partial revision of the Securities and Exchange Law Enforcement Ordinance (Government Ordinance No.377)
- (3) 12 December 2006: Cabinet order for partial revision of the cabinet order concerning TOBs for shares by parties other than the issuer (Cabinet Order No.86)

(1) is a government ordinance specifying the enforcement dates for revisions to the TOB and large shareholding reporting systems, details of which are provided in (2) and (3).

We focus in this report on those parts of (2) and (3) that pertain to base dates for the submission of special large shareholding reports.

### 1. The large Shareholding Reporting System, and "General" and "Special" Reports

Under the large shareholding reporting system, any person with a holding of more than 5% (large shareholder) in a listed company is required to submit a "large shareholding report" disclosing details such as the size and purpose of the holding along with a breakdown of the shares that comprise the holding and the funds used to acquire those shares (First Cabinet Order concerning Securities and Exchange Law, Article 27-23: Disclosure of Information on Holding of Large Amount of Share Certificates, etc; Form 1).

The large shareholding reporting system provides for the submission, in principle, of a "general report" or, in the case of institutional and other professional investors, of a simplified "special report." For a general report, a shareholding ratio of more than 5% must be fully explained, whereas, in principle, a special report need only be submitted if a shareholding ratio exceeds 5% on the base date.

Under the revised law, base dates for special reports, or, in other words, the frequency with which they must be submitted, have been substantially revised. General reports, special reports (before revision), and special reports (after revision) are compared in the following chart.

| Large Shareholding Reporting System |  |                        |   |   |   |                                     |
|-------------------------------------|--|------------------------|---|---|---|-------------------------------------|
|                                     | General report   |                        | Special report (before revision) <sup>1</sup>   |   | Special report (after revision) <sup>1</sup>  |                                     |
|                                     | Shareholding ratio <sup>2</sup>                                      | Submission deadline    | Shareholding ratio <sup>2</sup>   | Submission deadline                                       | Shareholding ratio <sup>2</sup>   | Submission deadline                 |
| Large shareholding report           | More than 5%   | Within 5 business days | More than 5% as at base date (every third month-end)  | By 15th of month following month in which base date falls | More than 5% as at base date (two or more per month)  | Within 5 business days of base date |
| Amended shareholding report         | Increase/decrease of 1% or more since previous report <sup>3/4</sup> | Within 5 business days | Increase/decrease of 1% or more over previous report as at base date (every third month-end) <sup>4</sup> | As above  | Increase/decrease of 1% or more over previous report as at base date (two or more per month) <sup>4</sup> | As above                            |
|                                     | —  | —                      | Increase/decrease of 2.5% or more over previous report as at end of month other than base date month      | 15th of month following month-end in question             | —   | —                                   |

- Notes: 1) Special reports may be submitted by securities companies, banks, trust companies, insurance companies, investment trust management companies, investment advisory companies (discretionary only), the Central Cooperative Bank for Agriculture and Forestry, the Central Co-operative Bank for Commerce and Industry, persons managing securities, banking, trust, insurance, investment trust, and investment advisory (discretionary only) businesses overseas in conformity with overseas laws, the Banks' Shareholdings Purchase Corporation, and the Deposit Insurance Corporation of Japan (hereafter, "securities companies, etc"). Special reports may also be submitted by persons who hold shares jointly with securities companies, etc). Special reports may not be submitted by securities companies, etc under the following circumstances.
- Shareholding exceeds 10%
  - Report not submitted on base date
  - There is a joint shareholder, with a holding of more than 1%, that is not a securities company, etc
- 2) Shareholdings are calculated by totaling residual shares, in the shape, for example, of new share acquisition rights, in addition to actual shares.
- 3) In the case of large short-term transfers, information such as the counterparty's name and agreed price must be disclosed. Large short-term transfers fall into the following categories:
- Reductions to less than 50% of the maximum shareholding ratio in 60 days or less, and
  - Reductions of more than 5 percentage points from the maximum shareholding ratio in 60 days or less.
- 4) An amended shareholding report must be submitted whenever any other material change occurs.

The revised law will greatly increase the frequency with which special reports need to be submitted.

In short, before the law was revised, the base dates on which decisions were made as to the need to submit a special report (in other words, when a shareholding ratio exceeded 5%) came round, in principle, every three months.

In contrast, now that the law has been revised, base dates come round at least twice a month (Securities and Exchange Law, Article 27-26-(3)). In simple terms, the frequency with which special reports need to be submitted has increased 6-fold (from once every 3 months to twice a month).

Report submission deadlines have also been brought substantially forward.

Before the law was revised, special reports had to be submitted by the 15th of the month following the month in which the base date fell. As base dates were set to the end of every third month before the law was revised, investors had 15 days from the base date to submit their reports.

Following revision, however, investors are now obliged to submit their reports within five business days of the base date (Securities and Exchange Law, Articles 27-23-(1), 27-26-(1), etc). Under normal circumstances (when public holidays are not involved), five business days generally implies a total of seven days. In simple terms, the number of days allowed after a base date for submission of a special report has been roughly halved (from 15 days to 5 business days, or approximately 7 days in total).

## 2. Base Dates Under the New Rules

### 1) Summary

The revised law provides for the determination of base dates for the submission of special reports as follows (Securities and Exchange Law, Article 27-26-(3)).

The days, chosen from permutations of two or more days a month determined on the basis of the relevant government ordinance, that are notified to the prime minister by a shareholder authorized to use the special reporting system, as provided for in the relevant cabinet order

This refers to the selection (notification) of base dates from a predetermined list of options (permutations of dates) by institutional and other professional investors authorized to use the special reporting system.

### 2) Base Date Selection Options (permutations of dates)

Under the new government ordinances, base date options (permutations of dates) are to be determined as follows (Securities and Exchange Law Enforcement Order No.14-8-2-(2)).

- (1) The second and fourth Monday of each month (second, fourth, and fifth Monday in cases in which there is a fifth Monday in the month)
- (2) The 15th and last day of each month\*

\*In the event that either of these falls on a Saturday or Sunday, the preceding Friday will be chosen.

Under method (1), in principle, the Monday of every second week is chosen as a base date. As the time limit for submission of a report is given as five business days from the base date, this means that reports will normally have to be submitted by the Monday of the following week. Under method (1), three reports must be prepared in months in which there is a fifth Monday.

Under method (2), base dates fall on the middle (15th) day and last day of each month. As reports must be submitted within five business days of each base date, this will normally mean submitting one report by the 22nd (base date: 15th) of each month and another by the 7th (base date: previous month-end) of the following month. In the event the 15th or last day of a given month falls on either a Saturday or a Sunday, the latest government ordinance provides for the preceding Friday to be treated as the base date instead. This contrasts with the original bill in which each following Monday was treated as the base date.

### 3) Base Date Notification

Securities companies, institutional investors, and other professional investors authorized to use the special reporting system are required to complete the specified documentation (Form 4) to indicate which of methods (1) and (2), outlined above, they would prefer to use, and submit it to the head of their Regional Finance Bureau (Large Shareholding Government Ordinance No.18, Form 4).

The same procedure applies when changing base dates (as above).

## 3. Enforcement Date

The above government ordinances and cabinet orders came into force on 1 January 2007.