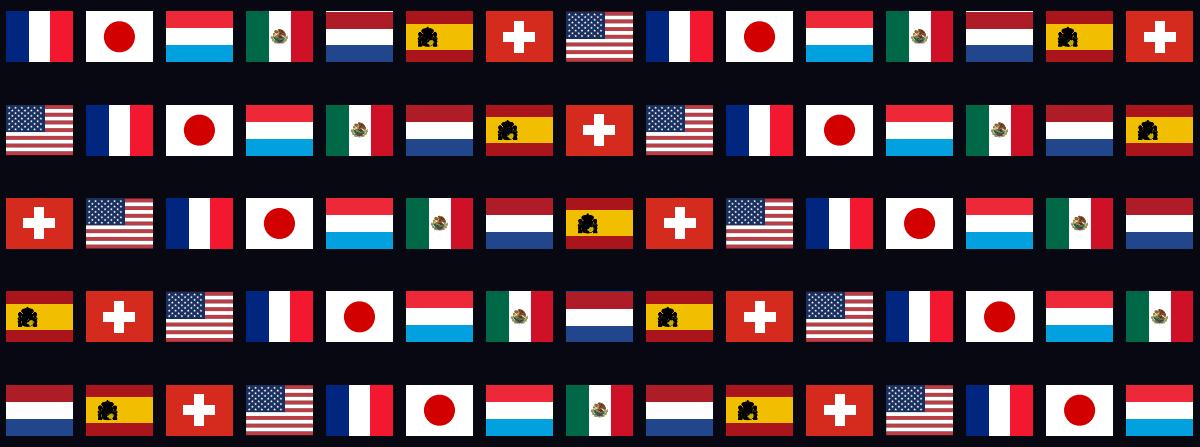
ACQUISITION FINANCE

Japan



LEXOLOGY
Getting The Deal Through

Consulting editor
Willkie Farr & Gallagher LLP

Acquisition Finance

Consulting editors

Sarah B Gelb, Charlotta Chung, Han Rhee, Viktor Okasmaa, Andres C Mena

Willkie Farr & Gallagher LLP

Quick reference guide enabling side-by-side comparison of local insights, including into general structuring of financing; guarantees and collateral; debt commitment letters and acquisition agreements; enforcement of claims and insolvency; and recent trends.

Generated 10 March 2022

Table of contents

Contributors

Japan

Kaoru Akeda
kaoru.akeda@miura-partners.com
Miura & Partners

Shumpei Ioki
shumpei.ioki@miura-partners.com
Miura & Partners

GENERAL STRUCTURING OF FINANCING

Choice of law

What territory's law typically governs the transaction agreements? Will courts in your jurisdiction recognise a choice of foreign law or a judgment from a foreign jurisdiction?

The law applying to financing agreements for cross-border transactions is determined based on private international law (Act on General Rules for Application of Laws in Japan). Its principal thought is that the governing law of a contractual relationship should be determined by agreement of the parties, taking account of several factors. As such, in the case of cross-border finance transactions involving Japan, in addition to Japanese law, English law and New York law are often designated as governing law because of English law and New York law having historically been used as the governing law in numerous cross-border transactions for many years. However, this principle applies only to laws regarding contractual relationships, such as loan agreements, and doesn't apply to other laws such as the Code of Civil Procedure or laws related to procedures of compulsory execution. In cases such as collateral agreements involving compulsory execution for a security created over assets, the law of the location or domicile of the collateral or the person establishing the security interest is usually selected as the governing law.

If a foreign company files a lawsuit against a Japanese company in a foreign court and wins the case, the foreign court's judgment can be enforced in Japan by obtaining a judgment of execution of the foreign court's judgment from a Japanese court. For the judgment of a foreign court to be enforced, it must satisfy all requirements of article 118 of the Code of Civil Procedure, including the following requirements:

- in the event that the debtor does not appear to defend the relevant suit, action, or procedure, the debtor was personally served with a summons commencing the action while within the jurisdiction of the relevant court, under Japanese concepts, or process was served on the debtor in Japan with the assistance of the judicial authorities of Japan; and
- reciprocity exists at such time as to the recognition by the courts of the foreign jurisdiction of final and conclusive judgments obtained in the courts of Japan.

Law stated - 21 December 2021

Restrictions on cross-border acquisitions and lending

Does the legal and regulatory regime in your jurisdiction restrict acquisitions by foreign entities? Are there any restrictions on cross-border lending?

The Foreign Exchange and Foreign Trade Act, while maintaining the principle of freedom of foreign transactions, provides restrictions on certain acquisitions by foreign entities. In other words, it requires foreign investors to submit an ex-post facto report in principle when they engage in certain types of transactions or activities, which are referred to as inward direct investment, and requires advance notification in certain cases to ensure national security, maintain public order, protect public safety, and ensure the smooth operation of the Japanese economy. The Minister of Finance and the minister having jurisdiction over the business will conduct an examination.

In addition, a foreign investor who acquires shares or equity interests in an unlisted domestic company through an acquisition by another foreign investor may be required to submit advance notification and be examined based on such notification as well.

Law stated - 21 December 2021

Types of debt

What are the typical debt components of acquisition financing in your jurisdiction? Does acquisition financing typically include subordinated debt or just senior debt?

The basic structure of acquisition financing is as follows.

The sponsor establishes an SPC, the SPC receives equity investment in the form of common stock from the sponsor and a senior loan from the senior lender, and uses such cash to purchase the target company's stock and repay the target company's existing loan. The sponsor is typically a buyout fund, but in the case of a management buyout (MBO) by the management of the target company, it can be the buyout fund and the target company's management (pseudo-MBO) or only the target company's management (pure MBO).

In some cases, only one financial institution is the senior loan lender. However, in many cases, the amount of the acquisition is so large that one financial institution alone cannot cover the entire amount of funds required for the acquisition, and multiple financial institutions may provide senior loans from the beginning, in many cases, one financial institution acts as the lender and then transfers the loan to multiple financial institutions. It is also common for senior loans to be provided in separate facilities such as bridge loans, term loans A, term loans B and commitment lines. Mezzanine financing may be obtained from mezzanine investors when equity investment from the sponsor and senior loans are not sufficient to cover the acquisition costs.

Law stated - 21 December 2021

Certain funds

Are there rules requiring certainty of financing for acquisitions of public companies? Have 'certain funds' provisions become market practice in other transactions where not required?

There are no statutory rules requiring certainty of financing for acquisitions of public companies in Japan. Also, 'certain funds' in acquisition finance transactions have not become established market practice yet. However, there are some cases to pay attention to such as the tender offer bid (TOB).

Under the Financial Instruments and Exchange Law, the TOB is compulsory in principle for any purchase of shares of a listed company in which the shareholding ratio after the purchase exceeds one-third. Therefore, in order for an acquirer to acquire control of a listed company, by purchasing its shares, the TOB is required. In this case, the method of procuring funds for the TOB and the party to whom the funds are to be procured are subject to disclosure in the TOB registration statement and the offeror is required to attach a loan certificate to the TOB registration statement as a document sufficient to show the existence of funds required for the TOB. The loan certificate is required to ensure with a reasonable degree of certainty that it is possible to procure the funds required for the settlement of the TOB.

Law stated - 21 December 2021

Restrictions on use of proceeds

Are there any restrictions on the borrower's use of proceeds from loans or debt securities?

In Japan, there are no legislative restrictions on the borrower's use of proceeds from loans or debt securities.

Law stated - 21 December 2021

Licensing requirements for financing

What are the licensing requirements for financial institutions to provide financing to a company organised in your jurisdiction?

In Japan, only banks obtain a licence under the Banking Act and money-lending institutions registered under Money Lending Business Act are permitted to arrange or extend loans in Japan as a business. Note, it is possible for companies other than such financial institutions to acquire outstanding loan receivables per se.

Law stated - 21 December 2021

Withholding tax on debt repayments

Are principal or interest payments or other fees related to indebtedness subject to withholding tax? Is the borrower responsible for withholding tax? Must the borrower indemnify the lenders for such taxes?

Under the Japanese Income Tax Act, the scope of taxation on non-residents or foreign corporations is limited to domestic source income in Japan. A person who pays domestic source income to a non-resident or foreign corporation shall be obliged to withhold and pay income tax and special income tax for recovery at the time of payment. Even if such payment is conducted out of Japan, as long as the payer has a domicile or an office, etc, in Japan, it shall be deemed to be done in Japan and subject to withholding tax. The withholding tax is calculated by multiplying the amount of domestic source income paid by the tax rate. There are several variations of domestic source income and its tax rate. In the case of interest payments related to indebtedness, the borrower shall be responsible for the withholding tax of 20.42 per cent. Note, gross-up clauses are generally included in all transactions in Japan to ensure that the lenders receive all payments free and clear of any withholdings or deductions.

If a tax treaty has been concluded between Japan and the country of residence of the non-resident, the withholding tax rate may be exempted or reduced in accordance with the provisions of the tax treaty. If the non-resident wishes to receive such exemption or reduction, the non-resident needs to submit a notification of tax convention, etc, to the director of the tax office of the payer's tax payment district via the payer of the domestic source income by the day before the payment date. This is not an obligation for the payer.

Law stated - 21 December 2021

Restrictions on interest

Are there usury laws or other rules limiting the amount of interest that can be charged?

The maximum interest that can be charged is mainly stipulated in two laws: (1) the Interest Rate Restriction Act and (1) the Act Regulating the Receipt of Contributions in Japan. Under (1), the following rate ceilings are set:

- where the amount of the principal is less than ¥100,000: 20 per cent per annum;
- where the amount of the principal is ¥100,000 or more but less than 1 million yen: 18 per cent per annum; or
- where the amount of the principal is ¥1 million or more: 15 per cent per annum.

Any interest exceeding such ceilings shall be void. And under (2), the maximum interest rate when lending money as a business is set at 20 per cent per year, and if a lender contracts interest at a rate exceeding that, the lender will be

punished by imprisonment for not more than five years or a fine of not more than 10 million yen, or both.

Furthermore, with respect to the calculation of the maximum interest rate, the relevant laws and regulations contain provisions on 'deemed interest', which means that, in principle, any money other than the principal received by the lender in connection with a loan, regardless of whether it is a discount fee, commission, research fee or any other name, is deemed to be interest. With respect to the arrangement fees and agent fees that are often paid in acquisition finance, it is generally understood that they are not considered to fall under the category of interest or deemed interest because they are not a consideration for the use of the principal, but for arrangement services or agent services provided independently of the loan. In addition, with respect to the commitment fees that are often paid in acquisition finance as well, the Act on Specified Commitment Line Contract stipulates that commitment fees are exempted from the regulation of deemed interest if certain requirements are met.

Law stated - 21 December 2021

Indemnities

What kind of indemnities would customarily be provided by the borrower to lenders in connection with a financing?

A breach of representations and warranties, covenants, increased cost, taxes and currency conversions. would customarily be provided by the borrower to lenders in connection with financing as indemnities.

Law stated - 21 December 2021

Assigning debt interests among lenders

Can interests in debt be freely assigned among lenders?

Lenders can assign their interests to each other unless they are still obliged to lend additional amounts to borrower. In light of the Civil Code, for an assignee to assert against a borrower or third party, it is sufficient that the assignor gives notice to the borrower, or the borrower acknowledges assignment. But in case of a syndicated loan, considering an administration being provided by the agent, notifying the agent would be needed as well. With respect to how to satisfy the requirements for assertion of assignment of interests against borrower or third party, it was common practice to obtain an acknowledgement without objection from the borrower until the Civil Code came into force in 2020. But this method was abolished under the amended Civil Code and it is now possible for the borrower to assert the assignee with respect to all grounds that can be asserted to the assigner that have arisen before the borrower received notice of the assignment. As such, as the assignee, it is necessary to have the borrower waive any right of setoff against the assigner in advance.

Law stated - 21 December 2021

Requirements to act as agent or trustee

Do rules in your jurisdiction govern whether an entity can act as an administrative agent, trustee or collateral agent?

In Japan, there is no rule governing whether an entity can act as an administrative or collateral agent. However, as trust businesses are regulated under the Trust Business Act and the Act on Provision of Trust Business by Financial Institutions, it is necessary to comply with these laws.

Law stated - 21 December 2021

Debt buy-backs

May a borrower or financial sponsor conduct a debt buy-back?

In Japan, a debt buy-back by a borrower or a financial sponsor is not prohibited. However, it is generally understood that many loan agreements executed in Japan prohibit lenders from transferring or assigning their loans to a borrower.

Law stated - 21 December 2021

Exit consents

Is it permissible in a buy-back to solicit a majority of lenders to agree to amend covenants in the outstanding debt agreements?

It is permissible in a buy-back to solicit a majority of lenders to agree to amend covenants in the outstanding debt agreements, but it is not seen very often in Japan.

Law stated - 21 December 2021

GUARANTEES AND COLLATERAL

Related company guarantees

Are there restrictions on the provision of related company guarantees? Are there any limitations on the ability of foreign-registered related companies to provide guarantees?

There are no restrictions on the provision of related company guarantees. However, on the assumption that directors must comply with duty of care and are not permitted to take any actions that harm the interests of the shareholders, they should make sure to carefully analyse whether the terms and conditions of company guarantees, including the amount of guarantees, the term and the interest rate, are reasonable. Note, this is more required in cases where there are minority shareholders.

There are no limitations on the ability of foreign-registered related companies to provide guarantees.

Law stated - 21 December 2021

Assistance by the target

Are there specific restrictions on the target's provision of guarantees or collateral or financial assistance in an acquisition of its shares? What steps may be taken to permit such actions?

In Japan, there is no statutory restriction regarding the provision of guarantees or collateral or financial assistance in association with the acquisition of shares per se. However, in the light of obligations of directors including duty of care under the Companies Act, provisions of guarantees, that harm the interests of the shareholders are not admitted.

Law stated - 21 December 2021

Types of security

What kinds of security are available? Are floating and fixed charges permitted? Can a blanket lien be granted on all assets of a company? What are the typical exceptions to an all-assets grant?

In Japanese law, a general form of security interest in all assets similar to a floating charge or blanket lien is not available. With certain limited exceptions, collateral in Japan must be granted on an asset-by-asset basis. In the case of an acquisition finance transaction in Japan, since this is a high-risk and high-return finance compared to ordinary corporate loans, and has a strong cash flow finance character, the security package typically covers all assets including shares, claims, real estate and intellectual property rights, of the target company and target company group unless the creation of a security interest is prohibited by another agreement that the target company executed with other companies.

Law stated - 21 December 2021

Requirements for perfecting a security interest

Are there specific bodies of law governing the perfection of certain types of collateral? What kinds of notification or other steps must be taken to perfect a security interest against collateral?

Shares

Since creating security interest in shares is possible to acquire control of entire target group companies, it can be said that shares are the assets that should be taken as collateral with the highest priority among all types of assets.

To create a pledge on listed shares, it must be transferred to the pledge column in the book-entry account held by the person who will be the security interest holder under the Act on Book-Entry Transfer of Corporate Bonds and Shares.

In the case of shares other than listed companies and shares of a company issuing stock certificates, the agreement between the pledger and the pledgee on the establishment of the pledge as well as the delivery of the stock certificate are needed, and possession of the stock certificate is a requirement for opposition to the issuing company and third parties. Meanwhile, in the case of shares of a company not issuing stock certificates, the agreement on the establishment of a pledge is needed, and the shares must be registered in the shareholders' register to oppose the issuing company and third parties.

Receivables

Receivables is one of the most common types of collateral in Japan and will be subject to the security interest by a pledge or a security assignment. To have a perfect security assignment, there are the following three ways:

- date-certified notice to the underlying obligor (generally delivered by certified mail);
- obtaining the date-certified consent of the underlying obligor (date certification is done by a notary public); or
- registration of the pledge or assignment at the Legal Affairs Bureau.

Among these options, date-certified consent is generally used.

Real estate

A mortgage is usually established on real estate. A mortgage is established by agreement between the mortgagor and

the mortgagee, and the requirement for opposition to third parties is registration.

Movables

In the case of movables, it is important to be able to provide security without physically moving them due to its nature. For this reason, the creation of a movables security is done by way of a security interest in transfer rather than a pledge. A security interest in the transfer of movables is established by agreement between the security interest provider and the security interest holder. A security interest in the transfer of movables can also be asserted against a third party by delivery under the Civil Code (usually by revision of possession) or by registration of the transfer of movables.

Intellectual property rights

Intellectual property rights are usually subject to pledge. For patents, utility models, designs and trademarks, the agreement between the pledger and the pledgee and the registration are the requirements to take effect. For copyrights, on the other hand, the agreement between pledger and pledgee is the requirement to take effect, and registration is the requirement to oppose third parties.

Law stated - 21 December 2021

Renewing a security interest

Once a security interest is perfected, are there renewal procedures to keep the lien valid and recorded?

In Japan, once a security interest is perfected, renewal procedures to keep the lien valid and recorded are not needed except for the registration of a security assignment of receivables and movables. In this case, the duration of registration is determined (movables: 10 years from the date of application for registration and receivables: either 10 years or 50 years from the date of application for registration). Although such registration is not often used in practice, it is important to note that when the term expires, the registration will be forcibly cancelled and the requirements for opposition to third parties will be extinguished.

Law stated - 21 December 2021

Stakeholder consent for guarantees

Are there ‘works council’ or other similar consents required to approve the provision of guarantees or security by a company?

There are no such requirements under Japanese law.

Law stated - 21 December 2021

Granting collateral through an agent

Can security be granted to an agent for the benefit of all lenders or must collateral be granted to lenders individually and then amendments executed upon any assignment?

In Japanese law, a security interest is created for each individual creditor, and a person who would act as an agent for

such creditor may not hold such security interest on behalf of all creditors. In addition, if a creditor assigns a secured claim to a third party, the security interest in such secured claim will incidentally be assigned to the third party.

Law stated - 21 December 2021

Creditor protection before collateral release

What protection is typically afforded to creditors before collateral can be released? Are there ways to structure around such protection?

In Japan, there are no statutory protections afforded to creditors before collateral can be released.

Law stated - 21 December 2021

Fraudulent transfer

Describe the fraudulent transfer laws in your jurisdiction.

The Civil Code provides the right to rescind an act of a debtor that harms the creditor (fraudulent act) through an action, and to restore to the debtor the property or rights that have been lost from the debtor's property (right of rescission of fraudulent act). The amendment of the Civil Code in 2020, in addition to the act of diminishing property, which is a typical fraudulent act, clearly stipulated as fraudulent acts: the debtor's intention to conceal, the act of harming the creditor due to the bad faith of the beneficiary, the act of partiality and excessive payment in kind.

Law stated - 21 December 2021

DEBT COMMITMENT LETTERS AND ACQUISITION AGREEMENTS

Types of documentation

What documentation is typically used in your jurisdiction for acquisition financing? Are short-form or long-form debt commitment letters used and when is full documentation required?

In acquisition financing (a senior loan), the first document that will be drafted is a commitment letter. The commitment letter consists of three main parts. The first part is the main part of the commitment letter, in which the prospective lender expresses its commitment to execute the financing. The second part is the term sheet, which sets forth the main terms and conditions of the financing and is attached as an exhibit to the commitment letter. The third is the potential lender who has promised to provide the financing needs to be appointed by the borrower as the financing provider, and this appointment is evidenced by the mandate letter, which is often attached as an exhibit to the commitment letter as well.

After the commitment letter is submitted and the potential lender receives the mandate letter from the borrower, the acquisition financer proceeds to draft the final agreement based on the term sheet (this process is generally referred to 'documentation'). The documentation is the process of solemnly incorporating the items agreed to in the term sheet into the agreement, and there are not many new problems that arise during the documentation. However, with regard to collateral, at the time the term sheet is prepared, it is often limited to the type and scope of assets to be collateralised ('security package'), and the details of the terms and conditions of the collateral agreement are mainly discussed through the documentation. The documentation may also be affected if there are matters that were not settled at the term sheet stage and were carried over to the documentation stage, or if there are changes in the business, assets or management of the target company group companies after the term sheet was fixed.

If the acquisition financing includes mezzanine investment, a mezzanine commitment letter (including a mezzanine

term sheet and a mezzanine mandate letter) is also prepared as in the case of a senior loan.

Law stated - 21 December 2021

Level of commitment

What levels of commitment are given by parties in debt commitment letters and acquisition agreements in your jurisdiction? Fully underwritten, best efforts or other types of commitments?

In current practice, virtually all of the terms and conditions applicable to acquisition finance transactions are often set forth in the term sheet, which are comparable to final contracts in terms of quality and quantity. As such, a fully underwritten commitment letter is typically prepared for the acquisition financing.

Law stated - 21 December 2021

Conditions precedent for funding

What are the typical conditions precedent to funding contained in the commitment letter in your jurisdiction?

The following items are understood as typical conditions precedent:

- obtaining all required internal approvals;
- the execution of definitive documentation;
- the accuracy of the borrower's representations with no change of acquisition or equity structure; and
- business material adverse change.

Law stated - 21 December 2021

Flex provisions

Are flex provisions used in commitment letters in your jurisdiction? Which provisions are usually subject to such flex?

In Japan, flex provisions are not commonly included in commitment letters. In large transactions requiring broad syndications pricing flex is sometimes seen, but this is still quite rare. Structural flex is not typically requested or granted.

Law stated - 21 December 2021

Securities demands

Are securities demands a key feature in acquisition financing in your jurisdiction? Give details of the notable features of securities demands in your jurisdiction.

In Japan, securities demands are not a key feature.

Law stated - 21 December 2021

Key terms for lenders

What are the key elements in the acquisition agreement that are relevant to the lenders in your jurisdiction? What liability protections are typically afforded to lenders in the acquisition agreement?

Conditions precedent, representations and warranties, covenants, and reason for loss of profit on maturity, etc.

Law stated - 21 December 2021

Public filing of commitment papers

Are commitment letters and acquisition agreements publicly filed in your jurisdiction? At what point in the process are the commitment papers made public?

In Japanese law, commitment letters and acquisition agreements are not obliged to be publicly filed. However, in the case of the tender offer bid, the potential lender will issue a loan certificate based on the commitment in the commitment letter, which must be attached to the tender offer statement, which is publicly filed.

Law stated - 21 December 2021

ENFORCEMENT OF CLAIMS AND INSOLVENCY

Restrictions on lenders' enforcement

What restrictions are there on the ability of lenders to enforce against collateral?

Lenders freely enforce against collateral and will be entitled to receive payment in priority to other general creditors by exercising their security interests. This basically applies to bankruptcy proceedings, civil rehabilitation proceedings or special liquidation proceedings as well. In such proceedings, a security interest is considered a right of separate satisfaction and, in principle, the security interest can be enforced (eg, by filing a petition for auction) regardless of whether such proceedings have been commenced. However, under the Corporate Reorganisation Act, in corporate reorganisation proceedings, security interests may not be enforced outside of the reorganisation proceedings.

Law stated - 21 December 2021

Debtor-in-possession financing

Does your jurisdiction allow for debtor-in-possession (DIP) financing?

In Japan, DIP financing is allowed as loans provided during the period between the filing of a petition for proceedings under the Civil Rehabilitation Law or the Corporate Reorganisation Law and the conclusion of the proceedings.

Law stated - 21 December 2021

Stays and adequate protection against creditors

During an insolvency proceeding is there a general stay enforceable against creditors? Is there a concept of adequate protection for existing lien holders who become subject to superior claims?

To prevent the dissipation of the debtor's property due to debt collection actions by creditors during the period between the filing of a petition for commencement of bankruptcy proceedings and the order of commencement of bankruptcy proceedings, the court, if it finds it necessary, upon the petition of an interested person or by its own authority, may order the discontinuance of any proceedings other than bankruptcy proceedings during such period. Meanwhile, an automatic stay does not arise upon the filing of a petition for insolvency.

There is no concept of adequate protection under Japanese law.

Law stated - 21 December 2021

Clawbacks

In the course of an insolvency, describe preference periods or other reasons for which a court or other authority could claw back previous payments to lenders. What are the rules for such clawbacks and what period is covered?

If a borrower is unable to pay all lenders in full, but makes payments that favour only certain lenders, the payment may be denied by the bankruptcy trustee and the lender who received the payment may be required to return the money received. In addition, if the payment is malicious, there is a risk that it will be considered as grounds for considering the debt non-dischargeable, and the bankruptcy proceedings may result in the loss of discharge.

Law stated - 21 December 2021

Ranking of creditors and voting on reorganisation

In an insolvency, are creditors ranked? What votes are required to approve a plan of reorganisation?

Priority relationships are established among bankruptcy claims, and the following four types of bankruptcy claims are distinguished with respect to the order of distribution in accordance with article 194(1) of the Bankruptcy Law: (1) priority bankruptcy claims (eg, tax claims), (2) general bankruptcy claims, (3) subordinated bankruptcy claims (eg, interest claims after commencement of bankruptcy proceedings), and (4) consensually subordinated bankruptcy claims (eg, subordinated loan claims). Unless all first-priority bankruptcy claims have been satisfied, no distribution will be made to the next-priority bankruptcy claims.

Law stated - 21 December 2021

Intercreditor agreements on liens

Will courts recognise contractual agreements between creditors providing for lien subordination or otherwise addressing lien priorities?

In acquisition financings where mezzanine financing is conducted, an intercreditor agreement is executed among the senior lender, mezzanine investor, borrower and the agent for the senior loan and mezzanine financing, which often stipulates the superiority, inferiority and other relationships of the senior lender and mezzanine investor. There are two methods for subordinating mezzanine loan to senior loan: (1) the relative subordination method and (2) the absolute subordination method. The relative subordination method is one in which the senior lender, mezzanine lender and borrower agree on the terms of subordination of the mezzanine lender to the senior lender. Therefore, the said agreement is merely a contractual agreement between the senior lender, mezzanine lender and the borrower, and no preferential subordination relationship arises with general creditors or third parties such as the bankruptcy trustee. On

the other hand, the absolute subordination method means that the mezzanine lender and the borrower agree that mezzanine loan shall be subordinated to the subordinate bankruptcy claims as defined in each item of article 99(1) of the Bankruptcy Code in the event of the commencement of bankruptcy proceeding. In the case of the absolute subordination method, it is possible to assert a preferential-subordinated relationship to the bankruptcy trustee. However, the mezzanine lender will be subordinated not only to the senior lender but also to all general creditors of the same rank. For this reason, if the mezzanine lender is an investor independent of the sponsor, it is unlikely that the mezzanine lender will accept the absolute subordination terms and the relative subordination method will usually be adopted.

Law stated - 21 December 2021

Discounted securities in insolvencies

How is the claim of an original issue discount (OID) or discount debt instrument treated in an insolvency proceeding in your jurisdiction?

In Japan, shares and bonds, etc, are basically issued at face value and discount is considered in the process to determine the face value.

Law stated - 21 December 2021

Liability of secured creditors after enforcement

Discuss potential liabilities for a secured creditor that enforces against collateral.

A secured creditor is not normally exposed to the risk regarding potential liabilities such as environmental liabilities in Japan.

Law stated - 21 December 2021

UPDATE AND TRENDS

Proposals and developments

Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? If so, please give a reference to any written material, whether official or press reports. Are there any other current developments or trends that should be noted?

'Shareholders' Meeting without a Designated Location' – Under the Companies Act, as a resolution for a 'place' is required when convening a shareholders' meeting, it is generally understood that the existence of a physical location is essential to hold a shareholders' meeting, and that a virtual-only shareholders meeting that does not need the existence of a venue cannot be held. However, a virtual-only shareholders' meeting facilitates shareholders including those in remote areas to attend, reduces operating costs without the need to prepare a physical venue, and reduces risks of infectious diseases and other health risks by eliminating the need for shareholders, directors and other members to gather in person. Thus, by amending the Industrial Competitiveness Enhancement Act (which came into force on 16 June 2021), rules concerning a 'shareholders' meeting without a designated location' were established as exceptions to current provisions of the Companies Act, enabling a virtual-only shareholders meeting to be held.

Under this rule, a listed company may provide in its articles of incorporation to the effect that a shareholders' meeting may be held as a shareholders' meeting without a designated location, as long as the company obtains the confirmation of both the Minister of Economy, Trade and Industry and the Minister of Justice. A listed company that

has such provisions in its articles of incorporation may hold a virtual-only shareholders' meeting. But in light of the impact of the spread of covid-19, a listed company that has obtained such confirmation will be deemed to have such provisions in its articles of incorporation for a period of two years after the enforcement of the rules (on 16 June 2021). Based on this rule, some listed companies held their shareholders' meeting in a virtual-only manner in September 2021.

Law stated - 21 December 2021

Jurisdictions

France	Stephenson Harwood LLP
Japan	Miura & Partners
Luxembourg	Vandenbulke
Mexico	Von Wobeser y Sierra, SC
Netherlands	CMS Netherlands
Spain	King & Wood Mallesons
Switzerland	Lenz & Staehelin
USA	Willkie Farr & Gallagher LLP