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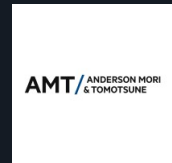
Country Comparative Guides 2025

Japan

Lending & Secured Finance

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This country-specific Q&A provides an overview of lending & secured finance laws and regulations applicable in Japan.

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Japan: Lending & Secured Finance

1. Do foreign lenders (including non-bank foreign lenders) require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

To engage in a lending business in Japan, foreign lenders must acquire a licence as a foreign bank branch office residing in Japan under the Banking Act (Act No. 59 of 1981, as amended) or register as a money lender under the Money Lending Business Act (Act No. 32 of 1983, as amended).

2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

Japan has usury laws which consist of, among others, the Interest Rate Restriction Act (Act No. 100 of 1954, as amended) and the Act Regulating the Receipt of Contributions, Receipt of Deposits and Interest Rates (Act No. 195 of 1954, as amended). Of particular note, the prescribed maximum interest rates per annum are (i) 15% for loans of one million yen or more, (ii) 18% for loans of 100,000 yen or more but less than 1 million yen, and (iii) 20% for loans of less than 100,000 yen.

In the context of restriction on interest, Japanese usury laws provide that fees or other monies paid to lenders in respect of loans are deemed to be interest. However, the Act on Specified Commitment Line Act (Act No. 4 of 1999, as amended) provides for certain exemptions, whereby if a borrower fulfills certain prescribed conditions, such as being a stock company (*kabushiki kaisha*) with stated capital of more than 300 million yen, commitment fees are excluded from being regarded as interest.

3. Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

Disbursement of loan in foreign currency into, and repayment of loan in foreign currency from, Japan is possible. If the amount of payment from, or to, an overseas entity exceeds the amount corresponding to 30

million yen, *post facto* reporting under the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949, as amended; 'FEFTA') is required.

4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?

A typical security interest upon real property is a mortgage (*teito-ken*). For a revolving facility with a maximum receivable amount (*kyokudo-gaku*), a mortgage can be created in the form of a revolving mortgage (*ne-teito-ken*). A mortgage over real property is created by an agreement between a mortgagor and a mortgagee. In order to perfect the mortgage against a third party, the mortgage must be registered with the Legal Affairs Bureau ('LAB') having jurisdiction over the property.

Under Japanese law, land and buildings thereon are treated as separate real properties. It is, therefore, necessary to separately create and perfect mortgages upon both the land and the building. In Japan, to perfect ownership rights of land and a building, they must be registered with the competent LAB, and ownership rights of almost all land and buildings have already been registered with the competent LAB. The registration of mortgages is made as an addition to such existing registration. Therefore, it is necessary to investigate the title and confirm whether the property is already encumbered by an existing mortgage. A mortgage registration generally includes (i) the name and address of the debtor and the mortgagor, (ii) the cause and the date of the mortgage, (iii) the priority, and (iv) the receivable amount (in the case of a revolving mortgage, the maximum receivable amount). The full mortgage agreement is not recorded in the registration, and only the registrable items including those enumerated above appears in the registration.

A typical plant consists of land, building, machinery and equipment. As mentioned above, security interests upon the land and building can be created in a form of a

mortgage. Machinery and equipment are classified as movables, and security interests in these can be created by way of security assignment (*joto-tanpo*).

Japanese law also provides for two forms of comprehensive security interests over property located in a factory. One is a factory mortgage (*kojo-teito-ken*), and the other is a factory foundation mortgage (*kojozaidan-teito-ken*). A factory mortgage over the land covers all machinery and equipment located in the factory. A factory foundation mortgage is a very strong security interest that can actually supersede pre-existing security interests over movables in the factory foundation. When creating a factory foundation, a notice regarding the factory foundation is published in the Japanese official gazette, and if an existing security interest holder fails to object within a specified period (ranging from one to three months), the existing security interest is extinguished. Both a factory mortgage and a factory foundation mortgage require the identification of each component of machinery and equipment, and therefore require more burdensome procedures and costs than normal types of mortgages. Due to such requirements, factory mortgages and factory foundation mortgages are not very common and are used mostly for large factories.

Machinery, equipment and inventory are classified as movables. Movables can be collateralised by way of security assignment. This security interest can be created by an agreement between an assignor and an assignee. In order to perfect this security interest, delivery of the collateral from the assignor to the assignee is necessary. Delivery can be made by (i) physical delivery, (ii) constructive delivery, or (iii) (where the assignor is a legal entity (including a company)) registration of the movable assignment (*dosan-joto-toki*) with the LAB, in which case the registration itself is deemed as delivery from the assignor to the assignee. The LAB located in the Nakano Ward of Tokyo is the exclusive designated LAB for any movable assignment registration.

When creating a security assignment, the collateral must be identified with sufficient specificity by any adequate means to distinguish it, such as in terms of its kind, location and number. This identification rule also applies to perfection of a security assignment by way of physical or constructive delivery. In perfection by movable assignment registration, there are two statutory ways to identify the object: (i) by kind and in a definitive way to specify the object (e.g., a serial number); and (ii) by kind and location. The former is usually used for a fixed asset, and the latter is usually used for inventory (collective movables).

It should be noted that a movable assignment

registration is listed by assignor (not by object). Therefore, unlike a real property registration which can be searched by the property, a movable assignment registration cannot be searched by the object, and priority cannot be registered because there is no statutory registration system to reflect the priority in respect of movable assignment registration. For expected amendments to the regime for security assignment, see the answers to question 21.

Anyone can search whether an assignor has already filed a movable assignment registration and obtain an outline certificate of the registration for a fee of 500 yen. If no movable assignment registration is recorded in the LAB, a certificate certifying the non-existence of movable assignment registration will be available. This does not, however, mean non-occurrence of physical or constructive delivery. Therefore, it is necessary to conduct due diligence with respect to possible physical or constructive delivery by an assignor. While an outline certificate shows (i) the existence of movable assignment registration, (ii) the timing of the assignment, and (iii) the name and address of the assignee, it does not provide detailed information regarding the object. A comprehensive certificate certifying registered matters is accessible only to limited persons, and a lender will usually request that the debtor obtain the latest comprehensive certificate.

A security interest in receivables may be taken by a pledge (*shichi-ken*) or by way of security assignment. These security interests are created by an agreement between the pledgor/assignor and pledgee/assignee.

When creating these security interests, it is necessary to specify the receivables to be collateralised in a manner sufficient to identify them (such as by kind, date of origination and other criteria, to the extent applicable). If they are receivables to be generated in the future, the period during which the receivables will be generated must be specified in the agreement and in connection with perfection. Subject to certain exceptions, even if there is a contractual transfer restriction upon the receivables, a security interest can be created over such receivables. If, however, security interests are created in breach of such contractual transfer restrictions, the obligor of the collateralised receivables may in certain situations refuse to repay to the security holder.

In order to perfect the security interest against the obligor of collateralised receivables, either a notice to the obligor from the pledgor/assignor or an acknowledgment by the obligor is necessary. In order to perfect the security interests against a third party, these notices and acknowledgments must bear a certified date (*kakutei-*

hiduke). Where the pledgor/assignor is a legal entity (including a company), a receivable pledge/assignment registration with the LAB located in Nakano Ward of Tokyo is available for the perfection. This registration can be made with the LAB upon creation of the security interest without notice to the obligor of the receivable, provided that the perfection against the obligor of the receivable is not accomplished until a notice accompanied by a registration certificate is made to the obligor. A receivable pledge/assignment registration is listed by pledgor/assignor (not by receivable). It should also be noted that priority cannot be registered.

Shares in stock companies incorporated in Japan are provided as security typically by way of pledge (while security assignment can also be available). Articles of incorporation of a stock company specify whether or not the company issues physical share certificates. In cases where physical share certificates are issued, in order to create a pledge, physical delivery of the share certificates to the pledgee is necessary. The pledgee's continuous possession of the share certificates is necessary for perfection of the pledge against a third party, including the issuing company. In cases where physical share certificates are not issued, in order to create a pledge, registration of the pledge in the issuing company's shareholders registry is necessary. With this registration, the pledge is also perfected against a third party including the issuing company.

In Japan, shares in listed stock companies must be registered in the book-entry system managed by the Japan Securities Depository Center, Inc. Pledges over listed shares are created and perfected by registering the pledges with the pledgor's account established at applicable institutions under the book-entry system.

Under Japanese conflict of laws principles, the creation and perfection of security interests will be governed by the *lex situs*. Therefore, it is not recommended to elect any law other than Japanese law as the governing law of the security agreement.

5. Can a company that is incorporated in your jurisdiction grant security over its future assets or for future obligations?

As discussed in the answers to question 4, movables and receivables can be collateralised by a company incorporated in Japan if such movables and receivables are sufficiently identified, even where they are future ones. A security interest can be created for securing future obligations. See also the answer to question 6.

6. Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?

Under Japanese law, a general security agreement, such as a blanket mortgage or floating charge, is not available. Security interests in different types of assets must be perfected separately. In this connection, in June 2024, the Act on the Promotion of Cash Flow-Based Lending (Act No. 52 of 2024; 'APCFBL') was enacted to introduce a new form of security interest known as an enterprise value charge (*kigyo-kachi-tanpo-ken*), and the APCFBL is scheduled to come into effect by December 2026. While an enterprise value charge captures the entire set of assets of a business, including intangible assets, it should be noted that the involvement of a trust company licensed under the APCFBL is necessary.

7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

In general, there is no particular documentary or execution requirement for security documents.

8. Are there any security registration requirements in your jurisdiction?

Certain security interests will not be perfected unless the registration is made (see the answers to question 4).

9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches lenders typically take in respect of such costs (e.g. upstamping)?

A stamp tax is imposed based on the amount of indebtedness evidenced by a loan agreement and can range from 200 yen to 600,000 yen. A fixed stamp tax of 200 yen is required for a guarantee. In general, security agreements such as mortgage and pledge agreements are not subject to additional stamp tax. However, certain types of security agreements collateralising receivables (such as trade receivables) by way of security assignment may be subject to a fixed stamp duty of 200

yen applicable to receivable assignment agreements.

Registration taxes are imposed on (i) mortgage registration (0.4% of the receivable amount (as for revolving mortgage, 0.4% of the maximum receivable amount)), (ii) movable assignment registration (7,500 yen per filing (up to 1,000 movables)), and (iii) receivable pledge/assignment registration (7,500 yen per filing (up to 5,000 receivables) and 15,000 yen per filing (exceeding 5,000 receivables)).

Stamp tax and registration tax will be paid at the time of execution of the relevant agreements.

10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?

Guaranteeing or securing the obligations of corporate group members is permitted.

11. Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?

There is no prohibition or restriction on the ability of a company to provide financial assistance for each of (i) through (iii) above. It should be noted, however, that directors of a company may be deemed in breach of their duty of care if the company provides a guarantee or security to secure the borrowings of its shareholder without gaining any benefit in return.

12. Can lenders in a syndicate (or, with respect to private credit deals, lenders in a club) appoint a trustee or agent to (i) hold security on the lenders's behalf, (ii) enforce the lenders' rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

In practice, an agent is usually appointed in Japanese syndicated loan transactions. However, even if one of the syndicated secured lenders serves as such an agent, it cannot enforce the security interest held by other

creditors. In addition, enforcement on behalf of other creditors may be prohibited by the Attorney Act (Act No. 205 of 1949, as amended).

Under Japanese law, it is generally understood that a secured creditor and a security holder must be the same person/entity ('Same Person/Entity Principle'). As an exception to such principle, separation between a secured creditor and a security holder can be achieved with a security trust structure. Under the security trust system, if a trust is created with a security interest as the trust property and the terms of the trust provide that the beneficiary is the creditor whose receivables are secured, the trustee can be a security trustee. As the holder of the security interest, the security trustee may, within the scope of affairs of the security trust (subject to instructions by the beneficiaries in many cases), file petitions for enforcement and take other necessary actions, including distribution of proceeds. A security trust structure is, however, used in limited circumstances such as a large-scale financing transaction. As conducting a trust business requires a licence, lenders must appoint a licensed trust company or a licensed trust bank as a security trustee.

13. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

In Japanese practice, where a security trust structure is not used, secured creditors (such as syndicated loan lenders) appoint a security agent for administrative purposes only ('security administrative agent'). The basic difference between a security trustee and a security administrative agent is that the security administrative agent is not a holder of all collateral security for all secured creditors. As a result, in the case of a structure with a security administrative agent, perfection must be obtained individually for each secured creditor (i) when a secured creditor assigns its secured receivables and its collateral security, in which case, individual perfection procedures to transfer the collateral security are required, and (ii) when each secured creditor has to take enforcement actions under its own name notwithstanding that syndicated secured creditors typically act in concert (subject to the majority approval of the syndicated group).

Under Japanese law, when several secured creditors share the single/same collateral in the same ranking, there are two possible legal structures (where applicable):

(i) independent and in the same ranking security where each secured creditor owns independent security of the same ranking; and (ii) joint share security where all secured creditors share one security. The basic difference is that each secured creditor may separately enforce its security in the former, while unanimous consent of all secured creditors is required to enforce security in the latter. However, secured creditors taking the same ranking security normally enter into an agreement prohibiting individual secured creditors from enforcing the collateral security without majority consent.

14. Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

Generally, Japanese courts will recognise governing law provisions in a contract. Under the Act on General Rules for Application of Laws (Act No. 78 of 2006, as amended), a 'party autonomy rule' is adopted, whereby the formation and effect of a juridical act will be governed by the law of the place chosen by the parties at the time of the act.

15. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

Generally, Japanese courts will enforce judgments of courts in England or certain US states (including New York and California) without re-examination of the merits, to the extent that the following requirements are satisfied:

- i. the foreign judgment must be final and non-appealable;
- ii. the jurisdiction of the foreign court must be recognised under Japanese laws and regulations, conventions or treaties;
- iii. the defendant must have received adequate service of process;
- iv. the foreign judgment must not violate a public policy rule of Japan (particular types of awards, such as punitive damages, may violate this requirement); and
- v. reciprocity of enforcement is assured.

Japanese courts will examine the case to confirm

whether these requirements are satisfied.

Japan is a member of the New York Convention.

16. What (briefly) is the insolvency process in your jurisdiction?

In Japan, there are two types of restructuring proceedings (corporate reorganisation and civil rehabilitation) and two types of liquidation proceedings (bankruptcy and special liquidation).

In corporate reorganisation proceedings, unsecured and secured creditors are stayed from exercising their rights (security interests) outside of the proceedings.

In civil rehabilitation proceedings, while unsecured creditors are stayed from exercising their rights outside of the proceedings, secured creditors are not stayed from exercising their security interests (although secured creditors may become subject to a suspension order by the court having the effect of a temporary stay).

In bankruptcy and special liquidation proceedings, while unsecured creditors are stayed from exercising their rights outside of the proceedings, secured creditors are not stayed from exercising their security interests (although secured creditors may become subject to a suspension order by the court in special liquidation proceedings).

17. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

In corporate reorganisation proceedings, secured creditors are stayed from enforcing their security interests. The claims of secured creditors will be treated as secured claims up to the value of the collateral as of the date of the commencement of corporate reorganisation proceedings. Secured creditors will receive repayment in accordance with the reorganisation plan approved by the borrower's creditors and confirmed by the court. In proceedings other than corporate reorganisation, secured creditors may enforce their security interests outside of the relevant proceedings. In practice, however, secured creditors sometimes refrain from exercising their security interests in exchange for settlements where the value of the relevant collaterals is agreed upon and repaid.

18. Please comment on transactions voidable upon insolvency.

In corporate reorganisation or bankruptcy proceedings, the trustee (*kanzainin*) exercises rights of avoidance. In the case of civil rehabilitation proceedings, the supervisor (*kantokuiin*) (or where applicable, the trustee) exercises rights of avoidance.

If secured creditors obtain security for an existing debt knowing that the debtor has become 'unable to pay debts', the security can be avoided. If the provision of security for an existing debt was carried out within 30 days prior to the debtor becoming 'unable to pay debts' in the event where the debtor did not owe any duty to provide such security, it can also be avoided.

19. Is set off recognised on insolvency?

If a creditor owes a debt to the debtor at the commencement of insolvency proceedings, that creditor may set off its claims against the debtor's claims under certain circumstances. However, it should be noted that set off may be prohibited under certain conditions even if the creditor incurred a debt prior to the commencement of insolvency proceedings.

20. Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

In corporate reorganisation proceedings, while secured creditors are stayed from exercising their security interests outside of the proceedings (see the answers to question 18), common-benefit claims (*kyoueki saiken*) can be repaid outside of the proceedings and in preference to secured reorganisation claims (*kousei tanpoken*) and reorganisation claims (*kousei saiken*). Common-benefit claims include those for expenses for court proceedings performed for common interest of reorganisation creditors and shareholders, for the implementation of a reorganisation plan, and for employees' compensation for the 6-month period preceding the commencement of the proceedings.

21. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

One notable reform is that in March 2025, the Cabinet of Japan decided to submit a bill which will create legislation regarding security assignment agreement and title retention (*shoyuken-ryuho*) agreement. The legislation will address a wide range of issues, including the creation of multiple security interests by way of security assignment, the perfection of such security interests, and the assignment of priority among them.

22. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

It seems that the proportion of lending by alternative credit providers, including credit funds, in Japan is quite small compared to that in US or Europe, and that traditional bank debt will continue to constitute a large proportion of overall lending in the short term.

23. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

One notable change will be the introduction of an enterprise value charge. As mentioned in the answers to question 6, it is a new form of security interest and will therefore impact the drafting of relevant security documents.

Another notable change will be that once the new legislation regarding security assignment agreement and title retention agreement is enacted, different ranking security interests can be created by way of security assignment (see the answers to question 21). This will also affect the drafting of relevant security documents.

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