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Contributing editor

Phillip Fletcher
Milbank, Tweed, Hadley & McCloy LLP

Publisher

Gideon Robertson

Business development managers

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Account manager

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Robin Synnot

Marketing manager (subscriptions)

Rachel Nurse
subscriptions@gettingthedealthrough.com

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Adam Myers

Production coordinator

Lydia Geroges

Senior production editor

Jonathan Cowie

Subeditor

Caroline Rawson

Director

Callum Campbell

Managing director

Richard Davey

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Japan

Naoaki Eguchi, Gavin Raftery and Yasuhisa Takatori

Baker & McKenzie (Gaikokuho Joint Enterprise)

1 Collateral

What types of collateral are available?

Japanese law does not provide a general, overall form of security analogous to the security granted under an English-style floating charge or US-style general security agreement pursuant to which the grantor can grant a security interest over all, or substantially all, of its assets. Security in Japan in principle must be granted on an asset-by-asset basis.

Japanese law has, however, created several special forms of security. The first of these is a form of mortgage known as a foundation mortgage, which may be established over certain types of groups of facilities such as factory, or sight seeing facilities. For example, a factory foundation mortgage groups together certain moveable and immovable assets, and can cover land, buildings, machinery, tools, patents and other assets connected with the facility; however, it does not include inventory. The second is a form of security known as revolving security. For revolving security, the assets that are provided generally remain the same but the secured obligations themselves may vary or be replaced (eg, revolving loans). In addition, it is possible under Japanese law to create security interest over certain groups of movable assets located within certain specific storage areas (typically, inventories in warehouses).

The security package for project finance transactions in Japan generally includes all assets owned by the project company and all shares issued by the project company. The basic security package commonly includes:

- security assignments of moveable assets, present and future receivables and other contractual rights (eg, under EPC agreement, O&M agreement, power purchase agreement, concession agreement, and fuel supply agreements);
- pledges of bank accounts, shares and insurance proceeds; and
- mortgages of real property or foundation mortgages over certain types of facilities.

2 Perfection and priority

How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

The priority of persons with security interests in the same asset is determined by the order in which the persons' interests were perfected. The method for perfection of security interests differs in relation to the type of security and the type of asset provided as security.

Security assignments over receivables and pledges over bank accounts and insurance proceeds are perfected by:

- obtaining a date-certified notice to the underlying obligor;
- obtaining the date-certified consent of the underlying obligor; or
- registering the assignment or pledge at the relevant legal affairs bureau.

Security assignments over moveable assets are perfected either by delivery of the assets to the secured party or registration of the security assignment at the relevant legal affairs bureau. Registration requires a nominal fee and only perfects the relevant security interest against third parties (notice must be given in order to enforce against the underlying obligors).

The method of perfection for share pledges depends on the nature of the shares. If physical share certificates are issued, the share pledge is perfected by the pledgee's continuous possession of such certificates. If physical share certificates are not issued, the pledge is perfected by registration on the shareholders' register maintained by the issuer. A different regime exists for dematerialised shares of listed companies, although dematerialised shares are not generally seen in project finance transactions because the borrowers are usually special purpose companies which are not normally listed.

Mortgages (including foundation mortgages) must be perfected by registration at the relevant legal affairs bureau. The registration tax for fixed mortgages is 0.4 per cent of the amount secured by the mortgage. Mortgages are therefore sometimes only registered on a provisional basis as provisional registration involves only nominal costs and secures the priority of the mortgage. Payment of the full registration fee is required prior to enforcement and provisional registration may therefore shift additional risk to the secured party.

Under the new Trust Law, which came into force in 2007, security packages can be made in favour of a security trustee. In return, the secured creditors will receive a beneficial interest in the secured claims. The entrusted collateral is excluded from the estate of the security trustee in the event of its insolvency. Nonetheless, due to a lack of judicial precedent involving security trustees and the high costs involved with putting a security trustee in place, security trust structures are uncommon in the market.

3 Existing liens

How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

To the extent a security interest must be registered, a register search at the relevant legal affairs bureau should reveal the existence of such security interests. However, as many forms of security are not registered, third-party confirmation of the absence or existence of such liens is not possible to be complete.

Creditors in Japan therefore rely heavily on the representations and warranties of the debtor or security provider.

4 Enforcement of collateral

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

Security interests may be enforced outside bankruptcy proceedings either in accordance with the Civil Execution Act or, if the parties have agreed on an alternative method of enforcement, in accordance with that alternative method. The Civil Execution Act requires a public auction of the collateral assets that may be time-consuming and may not generate an appropriate return. Public auctions are therefore not a popular method for enforcement of security interests.

As such, mortgages or pledges in project finance transactions in Japan generally provide that the mortgagee or pledgee may sell the collateral assets by private means (either via private sale or private auction). In a private sale or private auction, the mortgagee or pledgee may itself purchase the collateral assets. Public-private partnerships also generally provide step-in rights of the lenders under direct agreements between the relevant public entities and lenders.

Public auctions under the Civil Execution Act are in Japanese yen. Private sales can be made in foreign currencies.

5 Bankruptcy proceeding

How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

There are several types of insolvency proceedings in Japan, such as:

- terminal proceedings: bankruptcy proceedings and special liquidation;
- rehabilitation proceedings: civil rehabilitation and corporate reorganisation; and
- voluntary insolvency proceedings: business restructuring ADR (which is an out-of-court restructuring procedure that all parties must agree to).

Almost all legal entities are subject to the above proceedings, however, special liquidation and corporate reorganisation proceedings only apply to stock companies.

Secured creditors may generally enforce their security outside of bankruptcy, civil rehabilitation and special liquidation proceedings; however, the courts usually restrict the enforcement of security in corporate reorganisation proceedings and may, in very limited circumstances, restrict or bar the enforcement of security in other court proceedings. To minimise this risk, a Japanese LLC may be used as the SPV in project finance transactions since a Japanese LLC is not subject to corporate reorganisation.

Transactions may be declared void (and amounts in relation thereto clawed back) by an insolvency administrator if the transaction is deemed to be a preference transaction. The preference period under Japanese law begins, in principle, from the first date on which the creditor had knowledge of the debtor's actual or impending insolvency. Regardless of whether the creditor has such knowledge, fraudulent conveyances (eg, where the consideration received by the insolvent entity is clearly inappropriate) are also subject to mandatory preference periods of six months prior to the date on which the debtor became unable to pay its debts as they became due or insolvency proceedings commenced.

The claims of foreign creditors are treated the same as the claims of local creditors.

6 Foreign exchange

What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

In principle, there are no taxes or significant restrictions imposed on foreign currency exchange in Japan, other than an after-the-fact report to be filed with the relevant minister. An entity or individual may be exempt from this filing requirement if the sum of the remittance is relatively small.

Prior notice or approval, however, is required for certain transactions with national security or national interest implications.

7 Remittances

What are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

There are no general controls on remittances or investment returns or loan or bond payments to parties in other jurisdictions. However, when a payment is remitted or wired to or from another country, a report of the content thereof must be filed with the relevant minister if the remittance exceeds ¥30 million.

Withholding taxes may apply on cross-border payments such as dividends and interest. The domestic tax rate on such payments is 20 per cent, but may be reduced or exempted depending on the applicable tax treaty. Japanese transfer pricing rules and thin capitalisation tax rules may also apply.

8 Repatriation

Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

Project companies are not required to repatriate foreign earnings.

9 Offshore and foreign currency accounts

May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Japan does not prohibit offshore accounts, but a report must be filed with the relevant minister in relation to each offshore account holding more than ¥100 million (or its equivalent). There are typically no restrictions on the establishment of onshore foreign currency accounts.

10 Foreign investment and ownership restrictions

What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

If a foreign investor has acquired shares or equity in a Japanese corporation that exceed certain thresholds, they must report such holdings to the relevant minister. If the Japanese corporation is engaged in certain restricted industries or industry sectors, a foreign investor intending to make a direct investment in such a corporation must provide advanced notice pursuant to the relevant cabinet order to the relevant minister setting out the details of the proposed investment. Depending on the industry sector (eg, telecommunications, airlines or broadcasting), certain maximum foreign ownership restrictions may also apply.

No specific taxes or fees apply to foreign ownership of project companies, but transfer pricing rules and thin capitalisation tax rules may apply to related-party transactions.

Japan has entered into bilateral investment treaties with several countries (principally in Asia); however, these bilateral investment treaties typically do not provide exemptions to the foreign ownership restrictions.

11 Documentation formalities

Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Financing or project documents do not need to be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable. However, the payment of stamp duty may be required depending on the nature of financing or project documents unless they are executed outside Japan.

12 Government approvals

What government approvals are required for typical project finance transactions? What fees and other charges apply?

There are no general government approvals or any related fees or charges that would be required across all typical project finance transactions. However, depending on the type of project being contemplated, certain licences may be required to carry out the project in question (for example, permits under the Electricity Business Act or Construction Industry Act). In addition, with respect to certain types of investments, loans, operations and remittances by foreign parties, reporting to the finance minister or the relevant competent authorities, or both, may be required under the Foreign Exchange and Foreign Trade Control Law.

13 Foreign insurance

What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Although a licence and a local presence are required for any company (including any foreign insurance company) to carry out insurance business activities in Japan, there are no other restrictions or fees on insurance policies over project assets provided by foreign insurance companies. However, payments above a certain threshold amount by a foreign insurance company to a Japanese company need to be reported to the finance minister under the Foreign Exchange and Foreign Trade Control Law.

Proceeds from insurance policies over project assets located in Japan may be categorised as Japanese-source income even if the relevant recipient is located offshore and has no permanent establishment in Japan, and therefore may be subject to tax in Japan. Exemptions may apply depending on the applicable tax treaty.

Insurance policies over project assets provided by foreign insurance companies may be payable to foreign secured creditors.

14 Foreign employee restrictions

What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

Foreign workers, technicians, or executives will require an appropriate visa in order to work in Japan. The visa requirements vary depending on a number of factors, including the type of work to be carried out by the relevant foreign employee.

Executives are required to have at least three years' experience in the operation or management of a business, or both (including any period of graduate studies majoring in business operations or management, or both) and must be paid a salary at least equivalent to that of a Japanese national performing equivalent or comparable work.

Technicians are required to have graduated from or completed a college or university level programme or otherwise acquired the equivalent education (for example, majoring in a subject relevant to the skills or knowledge, or both, necessary for performing the job concerned) or have at least 10 years' experience relevant to the job to be performed (including the period of time spent studying the relevant skills or knowledge, or both in college or university, upper secondary school, or a specialised course of study at an advanced vocational school), and must be paid a salary at least equivalent to that of a Japanese national performing equivalent or comparable work.

Requirements in relation to foreign workers vary considerably depending on their job description.

15 Equipment import restrictions

What restrictions exist on the importation of project equipment?

Importation of project equipment is subject to general import and export restrictions under Japanese law, and as such, certain items may be subject to import restrictions pursuant to the Foreign Exchange and Foreign Trade Control Law. There are otherwise no overall restrictions or limitations on the importation of typical project equipment, provided that import duties may apply to the importation of certain equipment from specified countries.

16 Nationalisation and expropriation

What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The Japanese Constitution provides that private property cannot be nationalised or expropriated without just compensation. Accordingly, the Compulsory Purchase of Land Act (Act No. 219 of 1951) provides that a person who has ownership of or rights in land that is nationalised or expropriated is entitled to compensation. Such compensation may include compensation for business losses and other damages in addition to the value of the property nationalised or expropriated.

There are, however, no rights of ownership or any other property rights that would preclude the nationalisation or expropriation of project companies or assets, and no forms of investment are specially protected from nationalisation or expropriation.

17 Fiscal treatment of foreign investment

What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

There are no Japanese tax incentives provided specifically to foreign investors or creditors. Foreign investors should generally be treated in a similar manner to domestic investors for Japanese tax purposes. Stamp duty is payable on loan agreements and certain other documents executed in Japan and registration taxes apply to mortgages; however, there is no separate registration tax or stamp duty regime applicable only to foreign investors in connection with the effectiveness or registration of investments, loans or other security documents.

18 Government authorities

What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

A wide variety of governmental agencies and departments have authority over typical project finance transactions. Such agencies typically govern and monitor environmental, health and safety issues. The authority granted to such agencies varies; however, they generally enjoy fairly broad discretion in their monitoring and enforcement activities.

The Ministry of the Environment has authority over matters in relation to various environmental laws and standards.

The Ministry of Economy, Trade and Industry regulates safety standards for businesses involved in power generation pursuant to the Electricity Business Act.

The Ministry of Land, Infrastructure, Transportation and Tourism is the principal supervisory authority in relation to construction projects, and sets the minimum standards for construction designs pursuant to the Building Standards Act.

Prefectural and municipal governments also monitor the legality of building structures in accordance with the Building Standards Act.

Water facilities are owned by local government entities. Roads, ports and airports are also owned by various government-related entities. Otherwise, the Japanese government has not, over the past 20 years, maintained significant levels of ownership in typical project finance industry sectors.

19 International arbitration

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

Under the Arbitration Act (Act No. 138 of 2003), arbitral awards, including arbitral awards where the seat of arbitration is not in Japan, are deemed to be final and binding by the courts. In order to enforce an arbitral award, an individual must prepare a copy of the award along with a Japanese translation, and present these to the courts. There are no types of commercial disputes common to project finance transactions that cannot, by agreement, be made subject to arbitration.

Japan is a member of both the ICSID Convention and the New York Convention.

20 Applicable law

Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Project agreements and financing agreements are typically governed by the laws of Japan. Project agreements may also be subject to certain prefectural or municipal ordinances.

Japanese law does not have exclusive jurisdiction over any matter other than security over assets located in Japan or receivables governed by Japanese law, and parties are otherwise free to agree on the governing law of any agreement. That being said, any enforcement in Japan will be required to conform to Japanese civil procedure and any decisions of a foreign court that violate Japanese doctrines of public policy or good morals will not be enforceable in Japan. In addition, matters of insolvency, consumer protection and employment will be subject to mandatory provisions of Japanese law.

21 Jurisdiction and waiver of immunity

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Pursuant to the Act on the Civil Jurisdiction of Japan with Respect to a Foreign State, etc (Law No. 24 of 2009), which came into force on 1 April 2010, a foreign government shall be subject to the jurisdiction of the Japanese courts provided that such foreign government has expressly submitted thereto. Even without the express submission to jurisdiction on the part of a foreign government, it is possible to commence civil proceedings against foreign governments in the context of certain commercial transactions (eg, a sale and purchase under civil or commercial law, commercial loans, etc), labour contracts, physical injuries or property damages.

Where a foreign government expressly consents or where it has provided collateral as part of a project finance transaction, a temporary injunction or civil enforcement procedure may be carried out against the assets of such foreign government. Even if no explicit consent has been given, the commercial assets of a foreign government that are located in Japan may be subject to civil enforcement procedures.

There are limited court precedents in relation to waiver of immunity clauses, but the Supreme Court has previously held that waiver of immunity clauses were effective in relation to acts of foreign governments other than any sovereign acts or functions of government.

Japanese companies and government entities may validly submit to a foreign jurisdiction. While sovereign immunity in relation to certain matters may not be waived under the Japanese Constitution, a waiver of immunity by a Japanese government entity in relation to commercial transactions should generally be effective under Japanese law.

22 Title to natural resources

Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The general position in Japan is that the state has the title to natural resources, and as such, the extraction of natural resources is regulated by various acts depending on the resource in question (for example, the Mining Act or the Quarrying Rights Act). Any private party who wishes to extract natural resources must first obtain approval or apply for registration, or both, as required under the relevant act.

A licence under the Mining Act must be obtained prior to the extraction of minerals and other geological materials (including oil and gas). Licences are only granted to Japanese persons (whether natural or legal). The application process usually takes several years and environmental impact assessments would also need to be made.

Any quarrying activity would require registration under the Quarrying Rights Act. Foreign entities can be registered; however, as the registration requirements may be subject to municipal regulations, the relevant municipal government should be consulted in advance.

A separate licence is required prior to the extraction of underground or above-ground water. Restrictions on water extraction vary depending on the region, purpose of extraction and category of river or body of water. Municipal regulations may also apply. Although foreign entities can obtain this licence, a condition to granting the licence is that the extraction of water would contribute towards the advancement of the Japanese economy or the lives of Japanese citizens.

There are very few indigenous peoples in Japan and the extraction of natural resources is generally not affected by their rights.

23 Royalties on the extraction of natural resources

What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

The Japanese government does not charge royalties on the extraction of natural resources; however, certain licencing fees and taxes will apply. Domestic and foreign entities extracting resources in Japan are generally subject to prefectural and municipal mining taxes in addition to the generally applicable taxes (such as corporate income tax and consumption tax, if applicable). The rates for these taxes may vary depending on the location and the resource. Taxes include a mining allotment tax (a prefectural tax) levied on mining right holders (the standard annual rate is ¥200 to ¥400 per hectare of mining allotment area) and a mining product tax (a municipal tax) levied on mining operators, which is generally equivalent to 1 per cent of the revenues generated by the relevant mineral resource.

If a domestic or foreign party extracts natural resources from land belonging to a third party, the domestic or foreign party would also need to enter into a lease agreement with such third party for the purposes of the extraction. It is common for certain fees akin to royalties to be paid under such an agreement. If the extraction of resources from land belonging to a third party falls under the Quarrying Rights Act, the payment of compensation in relation thereto is required by law. Such compensation is generally calculated based on the revenues generated by the sale of the relevant resources, but the amount payable can usually be determined by the parties and may incorporate ratchet mechanisms depending on the value or volume of minerals extracted.

24 Export of natural resources

What restrictions, fees or taxes exist on the export of natural resources?

There are no general restrictions on fees related to the export of natural resources. However, permission to export is required in relation to any natural resources that may be used for military purposes or any mineral fuels or minerals listed in the Foreign Exchange and Foreign Trade Control Law, the Export Trade Control Ordinance or the Customs Tariff Act.

No tax (including Japanese consumption tax) is imposed on the export of natural resources.

25 Environmental, health and safety laws

What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

A wide variety of laws govern environmental, health and safety issues. Occupational health and safety is generally administered by the Ministry of Health, Labour and Welfare pursuant to the Labour Standards Act and the Industrial Safety and Health Act. Other key laws applicable to typical project sectors include the following:

- The Soil Contamination Prevention Law creates an obligation on the occupant and manager of a property to conduct investigations for contamination and implement remedial measures if necessary, and the Waste Management and Public Cleansing Act aims to improve public health through controlling disposal of industrial waste. These environmental laws are administered primarily by the Ministry of the Environment.
- The Electricity Business Act, administered mainly by the Ministry of Economy, Trade and Industry, regulates safety standards for electricity, including power generation.
- The Building Standards Act sets the minimum standards of construction, design and use etc., for most facilities and is relevant to all sectors in terms of construction safety. The Ministry of Land, Infrastructure, Transport and Tourism is the principal supervisory authority in this area.

26 Project companies

What are the principal business structures of project companies?

What are the principal sources of financing available to project companies?

Project finance transactions are typically structured with a single special purpose vehicle acting as the project company in order to provide bankruptcy remoteness from the sponsors and a single point of liability for the creditors. In practice, joint-stock companies are the most common choice of vehicle used due to the relative ease in establishing security over its shares, although other types of limited liability vehicles (a *godo kaisha* or *tokutei mokuteki kaisha*) are occasionally, although not commonly, used to mitigate certain insolvency-related risks.

The funding structure usually comprises equity and subordinated loans provided by sponsors and senior and mezzanine finance provided by commercial banks. The Development Bank of Japan, sponsored by the Japanese government, is also a key player in terms of both equity investment and the provision of senior or subordinated finance, or both. The issuance of bonds to raise funding, however, is not often seen in Japanese project finance transactions due to large initial costs and relatively strict legal restrictions on the structure of bonds secured by project assets.

27 Public-private partnership legislation

Has PPP enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

The Japanese PFI Law was enacted by the national government in 1999, with the goal of contributing to the sound development of the national economy by enabling the effective and efficient building of infrastructure and other public facilities through the use of private sector capital, management skills and technical competencies, thereby ensuring a supply of relatively inexpensive and high-quality services to the Japanese people. Public-private finance in Japan has generally followed the PFI structure to date.

The PFI Law is a general law covering a wide range of public facilities including roads, railways, airports, parks and sewage facilities, government facilities, medical facilities and information technology and communication facilities. There are no industry-specific PFI or PPP laws in Japan.

The PFI Law was amended in August 2005, due to certain issues that began arising in the course of PFI projects under the law. The scope of the amendments included:

- expanding the scope of transactions subject to the PFI Law to include operation-intensive projects;
- specifying that one of the purposes of the PFI Law was to ensure the efficient operation of the government and use of government land;
- allowing third parties to sell or assign projects developed through PFI transactions to mitigate the risk that critical services or project developments would be interrupted;
- increasing the importance of providing quality services (rather than merely price) to evaluate the operators of facilities for outsourcing; and
- revising the bidding process and documentation to lower documentation and bid costs and thereby incentivise the use of PFI transactions.

The PFI Law was further amended on 30 November 2011, introducing a concession system. Under this new system, private operators are now granted a right to manage public facilities in Japan (as opposed to merely operating them under the direction of the government) and are now able to set fees within a certain range and collect fees directly from users as their own income. This right can be mortgaged and amortised over the contract period, adding to the ease in which such operators will be able to obtain financial

accommodations from lenders. Further, private operators benefit from exemptions of municipal taxes on real estate through ownership of such rights.

In addition to the introduction of the concession system, the amendment in 2011 also:

- increased the range of facilities in relation to which PFI projects may be carried out (including rental housing and transportation such as ships, aircraft and satellites);
- introduced a system whereby private businesses are encouraged to develop and submit their own PFI proposals;
- publicised the government's plan of action and decision-making process in relation to PFI projects;
- introduced a system for the secondment of government officials to the private sector in order to share public sector know-how; and
- introduced a specialised department to encourage projects using private funds.

Recently, PFI projects have been used in a wide range of areas (for example, cultural facilities including university buildings and civic centres, nursing and personal care facilities and waste disposal and treatment facilities) and continue to be encouraged at all levels of the Japanese government.

28 PPP – limitations

What, if any, are the practical and legal limitations on PPP transactions?

PFI transactions in Japan have typically been limited to the construction of buildings and similar facilities. For example, there has yet to be a PFI transaction in Japan in relation to the construction and operation and maintenance of roads. PFI transactions currently account for less than 11 per cent of the infrastructure projects in Japan.

There is a clear need in Japan to expand the scope of infrastructure projects that utilise the PFI structure, particularly in relation to sewage and water purification, roads and transportation. As mentioned above, the PFI Law was amended in 2011 to extend the scope of PFI facilities by including ships, aircraft, satellites and rental homes.

The interplay between the public facility management laws (the law governing the management of public facilities belonging to the national, prefectural and municipal governments as well as those of the Japanese Self Defence Forces) and the PFI Law suggests that, while the ultimate authority and responsibility for the operation of critical infrastructure facilities must remain with the relevant public agency charged with the administration of such infrastructure (for

Update and trends

The Airport Concession Law was enacted on 19 June 2013 in Japan. The Law identifies a road map that enables private companies to bid on 30- to 50-year management rights for 28 nationally managed airports and 67 locally managed airports. There are no restrictions on foreign ownership – a foreign airport operator's overseas experience and track record will be recognised in the bid evaluation process. In addition to this new law, Kansai International Airport and Osaka International Airport will undergo a privatisation process, and an international auction to bid for these management rights will commence in 2014.

example, the Ministry of Transport in relation to roads), the day-to-day operation of such facilities can be outsourced to third-party providers such as the project company in a PFI structure.

As such, there should be no significant legal obstacles to the expansion of PFI transactions into critical infrastructure projects, and it would appear to be only a matter of time before such transactions are introduced in Japan.

29 PPP – transactions

What have been the most significant PPP transactions completed to date in your jurisdiction?

As previously mentioned, 14 years have passed since the PFI Law was enacted.

According to the PFI Promotion Department of the Office of the Cabinet, there have been 418 project policies announced as of 28 February 2013. This includes 66 national government PFI projects (including the Haneda International Airport passenger terminal, cargo terminal and apron PFI and the PFI project for the construction of new buildings for the House of Representatives and the House of Council), and 352 local government and government-related organisation PFIs.

A relatively new trend in Japanese PFI transactions has been a series of hospital PFIs. Kochi Hospital, Ohmi Hachiman Hospital and Yao Hospital were funded through PFIs during the early stages of this trend. As hospital PFIs are gaining popularity, the Tama and Komagome Hospitals, followed closely by the Matsuzawa, Ehime, Fukuoka and Tsukuba University Hospitals, will all be funded through PFI structures. Other PFI projects include museums, libraries, aquariums, government office buildings, university buildings, schools, water treatment facilities, school lunch preparation facilities, prisons and real estate developments. In addition, under the new PFI law which include concession system, it is expected that

BAKER & MCKENZIE

Naoaki Eguchi
Gavin Raftery
Yasuhisa Takatori

naoaki.eguchi@bakermckenzie.com
gavin.raftery@bakermckenzie.com
yasuhisa.takatori@bakermckenzie.com

Ark Hills Sengokuyama Mori Tower 28F
1-9-10 Roppongi, Minato-ku
Tokyo 106-0032
Japan

Tel: +81 3 6271 9400
Fax: +81 3 5549 7724
www.bakermckenzie.com/japan

PFI will be used for several new areas such as transportation as mentioned in question 27 above. In light of the increase in the number of PFI projects in recent years, it is reasonable to assume that the demand for PFI transactions will continue to increase in the future.

The PFI Promotion Department of the Office of the Cabinet has stated that it aims to double the volume of PFI projects between now and 2020. If this occurs, PFI projects in Japan would, by 2020, account for more than US\$100 billion.

The PPP model is not yet prevalent in Japan. The Nakano Sun Plaza reconstruction project in 2004 became the first project finance transaction in Japan to follow the PPP model. Another project in

Japan that uses the PPP model is the Osaka City University PPP project.

The Qatar Friendship Fund (QFF), a special fund established by the Qatar government to support Japanese people who suffered from the earthquake in 2011, announced the funding of two mega projects in Tohoku, a region in the north-east part of Japan. The first is in Miyagi Prefecture, and the fund is in the process of selecting another mega project in an area similarly affected by the earthquake. Both projects will focus on reviving the local industry by rehabilitating the fishery sector.

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