

# Debt Capital Markets

*Contributing editors*

David Lopez, Adam E Fleisher and Daseul Kim



2017

GETTING THE  
DEAL THROUGH 

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*Contributing editors*

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# Japan

Atsushi Yamashita and Yushi Hegawa

Nagashima Ohno & Tsunematsu

## 1 What types of debt securities offerings are typical, and how active is the market?

Debt securities issued in Japan include government bonds, municipal bonds, government agency bonds including government-guaranteed bonds, bank debentures, corporate bonds, foreign bonds and special debt instruments such as convertible bonds. According to the Japan Securities Dealers Association (JSDA), the total amount raised by debt securities in 2016 was ¥197,217 billion, of which ¥168,854 billion was Japanese government bonds, ¥6,346 billion was municipal bonds, ¥3,335 billion was government-guaranteed bonds, ¥10,615 billion was corporate straight bonds issued by Japanese issuers and ¥1,167 billion was bonds issued by foreign issuers. As can be seen, the great majority of debt securities issued in Japan consist of Japanese government bonds.

Only a small number of debt securities, which mainly consists of some government bonds and convertible bonds, are listed on a securities exchange and the vast majority of trading is made through the over-the-counter market.

Secured bonds are subject to a special law named the Secured Bond Trust Act of Japan. However, secured bonds are seldom issued and the vast majority of bonds in Japan are unsecured.

Both public offering and private placement are commonly conducted for debt securities in Japan.

## 2 Describe the general regime for debt securities offerings.

The corporate law aspect of the issuance of debt securities is regulated by the Companies Act of Japan. One requirement is to appoint a commissioned company for bondholders, which has a role similar to a trustee in other jurisdictions (although it is subject to more responsibilities), unless the denomination is ¥100 million or more, or the number obtained by dividing the aggregate number of bonds by the amount of each bond is less than 50. Where commissioned companies for bondholders are not required for the offering of debt securities, usually a fiscal agent is appointed.

The Financial Instruments and Exchange Act of Japan (FIEA) regulates the securities law aspect of offering of debt securities in Japan. The Finance Services Agency of Japan (FSA) is the main government regulator that enforces the FIEA and the FSA delegates some of its power to the local finance bureaus. Public offerings of debt securities in Japan are generally subject to a registration requirement, and a Japanese prospectus is generally required (see questions 3 and 4).

The principle market is the Tokyo Stock Exchange (TSE), however, as discussed in question 1, only a small number of debt securities are listed in Japan and the vast majority of the debt securities are traded over-the-counter.

In addition, the JSDA is the industry group for securities companies and stipulates certain rules that securities companies have to comply with, including those relating to the offering and trading of debt securities.

## 3 Give details of any filing requirements for public offerings of debt securities. Outline any requirements for debt securities that are not applicable to offerings of other securities.

An issuer is generally required to file a securities registration statement (SRS) to the local finance bureau when they conduct a public offering, the total amount of which is ¥100 million or more. Public offerings in

this context generally mean offerings that do not satisfy the requirements for any of the private placement exemptions (see question 10). SRSs must be prepared in accordance with the forms prescribed under the FIEA for each type of offering. The filing of an SRS is made through an electronic filing system called EDINET, which is a system similar to EDGAR in the United States.

Shelf registration is also available for seasoned issuers who satisfy certain requirements, and is widely used in practice for offerings of debt securities. When the issuer conducts an offering of debt securities utilising shelf registration, it is required to submit a shelf registration statement first to provide ongoing disclosure about the issuer, and then a shelf registration supplement including pricing information upon the actual issuance of debt securities.

If securities registration is required, the solicitation of the relevant securities is prohibited unless and until the SRS or the shelf registration statement is filed. Binding agreements to sell and purchase the relevant securities cannot be made unless and until (where an SRS is filed) the SRS becomes effective or (where a shelf registration statement is filed) the shelf registration statement becomes effective and a shelf registration supplement is filed. In general, the SRS becomes effective on the sixteenth calendar day from the date of filing. In the case where the issuer is using shelf registration, this waiting period will generally be shortened to the eighth day from the date of filing of the shelf registration statement. In the case where the SRS or shelf registration statement is amended, the waiting period may be extended.

Certain issuers such as the Japanese government and Japanese local governments are exempt from the above-mentioned filing requirements.

The above-mentioned filing requirements generally apply to both debt securities and other types of securities.

## 4 In a public offering of debt securities, must the issuer produce a prospectus or similar documentation? What information must it contain?

In addition to the requirement to file an SRS, under the FIEA an issuer that is required to file an SRS is generally required to prepare a prospectus in accordance with the form prescribed under the FIEA (statutory prospectus) when they conduct a public offering where the total amount of the offering is ¥100 million or more. When such statutory prospectus is required, the issuer cannot sell the relevant securities unless they provide a copy of the statutory prospectus before or at the time they agree with the investor to sell and purchase the securities.

The statutory prospectus must be prepared in accordance with the form prescribed in the FIEA, and must contain information that is required under such form (generally the same as that required for the SRS). Such form differs depending on the nature or type of issuer or security; for example, the form for foreign issuers differs from that for Japanese issuers. Generally speaking, the prospectus is required to contain information relating to:

- the offering of the securities, including the terms and conditions of the securities and the schedule of the offering;
- the issuer, including information regarding the business, its group companies, its officers and employees, its capital structure, its shareholders, its financial statements and other financial information; and
- certain other information.

Foreign issuers are generally required to include an outline of the legal system and certain other information regarding its home jurisdiction in the statutory prospectus. Financial statements are also required to be included, and may be prepared under accounting principles or standards other than Japanese generally accepted accounting principles (GAAP) under certain conditions; however, an explanation of the material differences between such accounting principle or standard and Japanese GAAP must be provided.

##### **5 Describe the drafting process for the offering document.**

The key documents for public offerings of debt securities in Japan are:

- the terms and conditions (see question 6);
- the SRS or the shelf registration statement and shelf registration supplement;
- the statutory prospectus;
- the subscription agreement; and
- the agreement with commissioned company for bondholders (where there is a commissioned company for bondholders) or the fiscal agency agreement (where there is a fiscal agent).

The terms and conditions of publicly offered bonds in Japan have become standardised, and usually there are not many documentation issues. Similarly, there are usually not many documentation issues regarding the content of subscription agreements, agreements with commissioned company for bondholders and fiscal agency agreements.

As to the SRS or shelf registration statement and statutory prospectus, where the issuer is using shelf registration (a method commonly used by a seasoned issuer), reference can be made to the annual report and other continuous disclosure documents for information regarding the issuer, and thus there are usually not many documentation issues. Where an SRS is to be filed, an SRS containing information on the issuer must be prepared and there could be issues depending on the company, including those connected to the details or content of risks relating to the business. Generally speaking, there is no clear threshold as to whether certain disclosures should be made.

Documentation for private offerings is not generally regulated by law, and may differ from transaction to transaction.

##### **6 Which key documents govern the terms and conditions of the debt securities? Who are the parties to such documents? How can such documents be accessed?**

In general, the terms and conditions will be prepared as a separate document, and this will be attached to the subscription agreement and the agreement with commissioned company for bondholders or the fiscal agency agreement, as the case may be.

The parties to the subscription agreement are the issuer and the underwriters. The parties to the agreement with commissioned company for bondholders are the issuer and the commissioned company for bondholders. The parties to the fiscal agency agreement are the issuer and the fiscal agent.

In general, these documents are not publicly available. However, in cases where the SRS or shelf registration statement and shelf registration supplement are filed, the content of the terms and conditions will be described in these documents, which are publicly available. SRSs, shelf registration statements and shelf registration supplements can be accessed through the EDINET system using the internet. In addition, in the case where the issuer is a foreign entity, the relevant agreements will generally be attached to the SRS or shelf registration supplements and will be publicly available.

##### **7 Does offering documentation require approval before publication? In what forms should it be available?**

There is no legal requirement under Japanese law that requires offering documentation to be approved before publication.

However, as discussed in question 3, in the case where securities registration is required, the solicitation of the relevant securities is prohibited unless and until the SRS or the shelf registration statement is filed and binding agreements to sell and purchase the relevant securities cannot be made unless and until (in the case where a SRS is filed) the SRS becomes effective or (in the case where a shelf registration statement is filed) the shelf registration statement becomes effective and a shelf registration supplement is filed. In this case, the regulator has the authority to order the issuer to file an amendment report or prevent the

SRS or the shelf registration statement from becoming effective when there is a misstatement or omission of a material fact in the SRS, the shelf registration statement or shelf registration supplement. Further, the regulator has the authority to extend the waiting period when there is a misstatement of a material fact and such extension is necessary for the public interest or protection of investors. In practice, when an SRS is to be filed, to make sure that the local finance bureau has enough time to review the SRS, the issuer usually consults the content of the SRS with the local finance bureau in advance (usually around two to four weeks prior to the filing).

##### **8 Are public offerings of debt securities subject to review and authorisation? What is the time frame for approval? What are the restrictions imposed, if any, on the issuer and the underwriters during the review process?**

In general, public offerings of debt securities are not subject to review and authorisation under Japanese law.

However, as discussed in questions 3 and 7, where securities registration is required, the local finance bureau will review the SRS and has the authority to prevent the SRS from becoming ineffective when there is a misstatement or omission of a material fact in the SRS, the shelf registration statement or shelf registration supplement, or to extend the waiting period when there is a misstatement of a material fact and such extension is necessary for public interests or protection of investors.

In addition to the above, as a practical matter, the underwriters usually conduct due diligence upon each issuance and (especially for seasoned issuers who use shelf registration) when new financial statements or financial information become available. There might be a period during which the issuer has to wait for such review before it can offer the relevant debt securities.

##### **9 On what grounds may the regulators refuse to approve a public offering of securities?**

As discussed in question 8, in general, public offerings of securities are not subject to the approval of the regulators under Japanese law and thus, there is no ground upon which the regulators can refuse to approve a public offering of debt securities.

However, as discussed in questions 3, 7 and 8, where securities registration is required, the local finance bureau will review the SRS and has the authority to prevent the SRS from becoming ineffective when there is a misstatement or omission of a material fact in the SRS, the shelf registration statement or shelf registration supplement or to extend the waiting period when there is a misstatement of a material fact and such extension is necessary for the public interest or protection of investors.

##### **10 How do the rules differ for public and private offerings of debt securities? What types of exemptions from registration are available?**

The disclosure requirement under the FIEA, in other words, the requirement to file an SRS or a shelf registration statement and to prepare and deliver a statutory prospectus, which is discussed in questions 3 and 4, applies only to public offerings and does not apply to private placements.

There are three types of private placements for primary offerings of debt securities and these are:

- small-number private placements;
- qualified institutional investors' private placements; and
- specified investors' private placements (or the Japan professional securities market offerings).

##### **Small-number private placements**

A small-number private placement is a private placement that can be used when the solicitation of an offer to acquire a certain type of debt securities is made to less than 50 persons. The following requirements need to be satisfied for a small-number private placement of debt securities (assuming that the securities are straight bonds):

- the number of persons to whom solicitation of an offer to acquire the debt securities was made in Japan is 49 or less; to be more specific, the aggregate number of persons to whom such solicitation to acquire the same kind of issued securities was made within the past six months, excluding securities that were offered by way of a qualified institutional investors' private placement or with respect

to which an SRS or a shelf registration supplement has been filed, is 49 or less;

- securities of the same kind are not listed on a stock exchange in Japan and an SRS has not been filed, and was not required to be filed, for the same kind of securities;
- securities of the same kind are not 'securities for specified investors', which includes securities listed on the Tokyo Pro-Bond Market;
- either of the following transfer restrictions must be imposed and such transfer restriction must be (i) written on the bond certificates and such bond certificate must be handed to the investor, (ii) written on the offering documents that are to be handed to the investor or (iii) disclosed to the investor through the book-entry system of Japan Securities Depository Center Inc (JASDEC):
- a transfer is only allowed en bloc; or
- the total number of investment units (eg, the number of bond certificates) must be less than 50 and the investment units cannot be divided into smaller units; and
- a notification letter, describing the fact that no securities registration statement has been filed in connection with the private placement, and the content of the transfer restriction, is provided to the investors in Japan at the same time as or prior to the private placement.

#### Qualified institutional investors' private placements

The qualified institutional investors' private placement is a private placement that can be used when the solicitation of an offer to acquire a certain type of debt securities is made only to qualified institutional investors (QIIs) as defined under the FIEA. The following requirements need to be satisfied for a small-number private placement of debt securities (assuming that the securities are straight bonds):

- the solicitation of debt securities is made only to QIIs;
- securities of the same kind are not listed on a stock exchange in Japan and a SRS has not been filed, and was not required to be filed, for the same kind of securities;
- securities of the same kind are not 'securities for specified investors', which includes securities listed on the Tokyo Pro-Bond market;
- a transfer restriction that the securities may not be transferred to investors other than QIIs (QII transfer restriction) must be imposed and such transfer restriction must be (i) written on the bond certificates and such bond certificate must be handed to the investor, (ii) written on the offering documents that are to be handed to the investor or (iii) disclosed to the investor through the book-entry system of JASDEC;
- a notification letter describing the QII transfer restriction and the fact that no SRS has been filed in connection with the private placement is provided to the investors in Japan at the same time as or prior to the private placement; and
- in the case where the issuer is a foreign company, the issuer must appoint an agent who is a resident of Japan and has the authority to represent such issuer in connection with acts concerning the transfer of such securities.

#### Specified investors' private placements

The specified investors' private placement (or the Japan professional securities market offering) is a private placement that was introduced in 2008 to introduce a new professional securities market. The following requirements need to be satisfied for a specified investors' private placement of debt securities (assuming that the securities are straight bonds):

- the solicitation of debt securities must be made only to specified investors;
- except for solicitation to certain investors, the solicitation is made by securities companies or other financial institutions authorised to conduct securities business;
- securities of the same kind are not listed on a stock exchange in Japan; and
- solicitation is made on the condition that a purchase agreement that provides, among other things, that the person who has purchased the securities shall not transfer them otherwise than to specified investors or certain non-residents of Japan is executed.

To utilise the specified investors' private placement, the issuer of the securities must provide specific security information in accordance with the FIEA and the rules of the relevant securities exchange.

The TSE created a new market named the Tokyo Pro-Bond Market for trading of bonds, using this specified investors private placement.

#### 11 Describe the public offering process for debt securities. How does the private offering process differ?

The offering process for a public offering of bonds will start with the issuer passing a resolution to issue bonds at a meeting of its board of directors. Usually, the issuer will also resolve that the bonds will be subject to the Act on Book-Entry Transfer of Company Bonds, Shares, etc, of Japan (Book-Entry Transfer Act) and will submit a consent form to JASDEC. Where the issuer is using shelf registration, the issuer will file a shelf registration statement.

On the launch date, the terms and conditions will be determined, usually by the director of the company based on the authority delegated by the board of directors. Where the issuer is using shelf registration, the issuer will file a supplement to the shelf registration statement. Where the issuer is not using shelf registration, an SRS will be filed on the launch date. Agreements relating to the offering will also be executed on this date.

On the closing date, the investors will pay the price for the bonds to the underwriters and usually the bonds will be recorded in the account of the investor via the book-entry system. Usually the closing date must be a date that is four business days or more after the launch date, to allow time to prepare for settlement through the book-entry system.

The main transaction documents for public offerings of debt securities in Japan are the terms and conditions, SRS or shelf registration statement or shelf registration supplement and statutory prospectus, subscription agreement and (where there is a commissioned company for bondholders), agreement with commissioned company for bondholders and (where there is a fiscal agent) the fiscal agency agreement.

The process for private offerings can differ from transaction to transaction and is difficult to generalise.

#### 12 What are the usual closing documents that the underwriters or the initial purchasers require in public and private offerings of debt securities from the issuer or third parties?

Auditor's comfort letters will usually be required, but legal opinions issued by a law firm will usually not be required as closing documents for a domestic public offering in Japan (ie, an offering in Japan by a Japanese issuer).

In the case of offerings of debt securities by foreign issuers, legal opinions issued by a law firm will be usually required in addition to auditor's comfort letters.

#### 13 What are the typical fees for listing debt securities on the principal exchanges?

The listing fee for listing bonds on the Tokyo Stock Exchange, which is the main market in Japan, is ¥1 million. As discussed in question 1, however, only a small number of debt securities are listed in Japan and the vast majority of the debt securities are traded over the counter.

#### 14 How active is the market for special debt instruments, such as equity-linked notes, exchangeable or convertible debt, or other derivative products?

According to the JSDA, the total amount raised by convertible bonds in 2016 was ¥72 billion, and some of them are listed on the TSE. The issuance of other special debt instruments by Japanese companies in Japan is relatively uncommon.

#### 15 What rules apply to the offering of such special debt securities? Are there any accounting implications that the issuer should be aware of?

The rules that apply to the offering of special debt securities are basically the same as the rules that apply to other debt securities. However, the issuance of convertible bonds by Japanese companies will be subject to certain rules relating to equity securities under the Companies Act, such as a requirement to leave at least two weeks from the date of filing of an SRS, or the date of public notice containing certain information relating to the offering, until the closing date.

### Update and trends

Effective in April 2012, the FIEA was amended and the English-language disclosure rules under which foreign companies may file English language versions of certain securities filing documents including the SRS in Japan by substantially utilising their English-language disclosure documents from their home country or any other foreign country was expanded. Before this amendment, English-language disclosure was available under certain conditions for continuous disclosure documents, however, was not allowed for the SRS.

Effective in 2008, the FIEA was amended to establish the legal framework for a market for professional investors. More specifically, a new private placement, namely the specified investors private placement, was introduced together with certain requirements to provide information relating to the issuer and the security. The TSE created a new market named the Tokyo Pro-Bond Market for trading of bonds using this legal framework. As of February 2017, there are approximately 20 issuers listed on the Tokyo Pro-Bond Market.

### 16 What determines whether securities are classed as debt or equity? What are the implications for instruments categorised as equity and not debt?

In general, whether securities are classed as debt or equity will be determined by their legal formality. For example, preferred shares that contain features similar to bonds are, nevertheless, considered as equity securities, and bonds that contain features similar to shares are, nevertheless, considered as debt securities. As discussed in question 15, convertible bonds are subject to rules relating to equity securities under the Companies Act and are usually regarded as equity securities.

### 17 Are there any transfer restrictions or other limitations imposed on privately offered debt securities? What are the typical contractual arrangements or regulatory safe harbours that allow the investors to transfer privately offered debt securities?

The content of the transfer restrictions for each type of private placement is described in question 10. For debt securities offerings by Japanese companies in Japan, transfer restrictions are usually implemented by being disclosed through the book-entry system of JASDEC.

### 18 Are there special rules applicable to offering of debt securities by foreign issuers in your jurisdiction? Are there special rules for domestic issuers offering debt securities only outside your jurisdiction?

In general, the same rules that apply to Japanese companies for offering of debt securities apply to foreign companies offering debt securities in Japan. There are, however, certain rules that only apply to foreign companies. For example, foreign companies are allowed to prepare offering documents such as the SRS in English if they satisfy certain conditions, while this is not allowed for Japanese companies.

Where domestic issuers offer debt securities only outside Japan, such offering will usually be subject to the law of the jurisdiction where the offering is made, and the law and regulation that regulates an offering under the FIEA, such as the requirement to file an SRS or to prepare and deliver a statutory prospectus, does not apply. Listed companies will generally be required to file an extraordinary report in the case where domestic issuers offer debt securities only outside Japan.

### 19 Are there any arrangements with other jurisdictions to help foreign issuers access debt capital markets in your jurisdiction?

At present, there are no special legal arrangements with other jurisdictions to help foreign issuers access debt capital markets in Japan.

### 20 What is the typical underwriting arrangement for public offerings of debt securities? How do the arrangements for private offerings of debt securities differ?

Firm commitment underwriting, where the underwriters agree to jointly and severally purchase the securities from the issuer, is usually used for a public offering. Arrangements for private offerings can differ from transaction to transaction and are difficult to generalise.

### 21 How are underwriters regulated? Is approval required with respect to underwriting arrangements?

Underwriters are regulated by the FSA under the FIEA, as securities companies (which are called 'type 1 financial instruments business operators' under the FIEA). Registration as a type 1 financial instruments business operator is required to conduct securities business in Japan, including underwriting, and once a company is registered, such company will be subject to various rules and regulations under the FIEA including those relating to the business they conduct and their financial status. Under the FIEA, underwriters as securities companies are subject to inspections by the Securities and Exchange Surveillance Commission, and the FSA is empowered to require reports from securities companies and may issue business improvement orders or orders to suspend the whole or part of their business when they violate securities regulations.

Individual approvals are not required for each underwriting arrangement.

### 22 What are the key transaction execution issues in a public debt offering? How is the transaction settled?

Where the bonds are subject to the Book-Entry Transfer Act, which is typical for public debt offerings, delivery versus payment settlement is available. In this case, at least four business days are required from the pricing date until the closing date. There are no global or individual notes under this system.

### 23 How are public debt securities typically held and traded after an offering?

Public debt securities are typically held under a book-entry system.

### 24 Describe how issuers manage their outstanding debt securities.

Issuers usually manage their outstanding debt securities through market purchases. Debt securities are not subject to the mandatory tender offer rule under the FIEA in Japan, and tender and exchange offers are not made very often.

### 25 Are there any reporting obligations that are imposed after offering of debt securities? What information would be included in such reporting?

Once an issuer conducts a public offering of debt securities and submits an SRS, such issuer will be subject to certain continuous disclosure requirements and will be required to submit an annual report and, in general, a semi-annual report. Such issuer will also be required to submit an extraordinary report upon the occurrence of certain events that are prescribed in the FIEA. These reports are submitted electronically through the EDNET system.

The annual report must be prepared in accordance with the form prescribed in the FIEA, and its content is generally the same as that of the SRS and the statutory prospectus, except that there is no information relating to any offering. The form of the annual report differs depending on the nature or type of issuer or security; for example, the form for foreign issuers differs from that for Japanese issuers. Generally speaking, the annual report will contain information relating to the issuer, including information regarding the business, its group companies, its officers and employees, its capital structure, its shareholders, its financial statements and other financial information, plus certain other information. As described in question 4 in relation to the statutory prospectus, foreign issuers are required to include an outline of the legal system and certain other information regarding their home jurisdiction, and financial statements prepared under accounting principles or standards other than Japanese GAAP may be permitted under certain conditions. However, an explanation of the material differences between such accounting principle or standard and Japanese GAAP must be provided.

### 26 Describe the liability regime related to debt securities offerings. What transaction participants, in addition to the issuer, are subject to liability? Is the liability analysis different for debt securities compared with securities of other types?

Under the FIEA, in addition to the issuer, the directors, officers and corporate auditors of the issuer, the chartered public accountants, the

underwriters and the selling security holder (if any) will be liable for compensation to any person who purchased any relevant securities in the case where there is a misstatement or an omission of a material fact in the SRS, shelf registration statement or statutory prospectus. While the issuer will be liable even if it can prove that there was no fault on its part, the other parties will not be liable if they can prove that they were not aware of the said misstatement or omission, having exercised due care.

A similar liability will be imposed on any person who has used the statutory prospectus to offer any relevant securities.

#### **27 What types of remedies are available to the investors in debt securities?**

Under the FIEA, where there is a misstatement or an omission of a material fact in the SRS, shelf registration statement or statutory prospectus, the issuer and its directors, officers and corporate auditors, CPAs, underwriters, and the selling security holder (if any) will be liable for damage to any person who purchased the relevant security. As such, investors who purchased such securities can seek damage from the above-mentioned parties

#### **28 What sanctioning powers do the regulators have and on what grounds? What are the typical results of regulatory inquiry or investigation?**

An issuer who filed an SRS with a misstatement or an omission of a material fact may be subject to criminal proceedings (and, on conviction, imprisonment for up to 10 years or a fine of up to ¥10 million, or both, together with a fine of up to ¥700 million in the case of a company) and an administrative surcharge. Violations of other regulations under the FIEA, such as failing to file the SRS when required, failing to deliver a registered prospectus and regulation on fraudulent market transactions, may also be subject to criminal proceedings and administrative surcharges.

Under the FIEA, the regulators also have sanction powers over securities companies, which enable them to require reporting, and may issue business improvement orders or suspend the whole or part of their business where securities regulations have been violated.

#### **29 What are the main tax issues for issuers and bondholders?**

The main tax issues for investors concern the withholding tax and the regular income or corporate tax (on a net basis), which are imposed on the interest payable on the bonds. Taxation on investors substantially differs depending upon the classification of the issuers and the investors for tax purposes (ie, being a Japanese resident or not).

If the issuer of the bonds is a Japanese corporation, and the investor is an individual non-resident of Japan or a non-Japanese corporation having no permanent establishment in Japan for Japanese tax purposes (foreign investor), as a general rule, a foreign investor will be subject to Japanese withholding tax at the rate of 15.315 per cent on the interest payable on the bonds. However, in the case of bonds issued within Japan

using the Japanese book-entry system, interest payable on such bonds to a foreign investor is exempt from withholding tax as special taxation measures (commonly referred to as the J-BIEM or the New Japanese Bond Income Tax Exemption Scheme), subject to compliance with certain procedural requirements. This exemption, however, does not apply if the foreign investor is a 'specially-related person of the issuer' (ie, in general terms, a person who directly or indirectly controls or is directly or indirectly controlled by, or is under direct or indirect common control with, the issuer) or the bonds are 'taxable linked bonds' (ie, bonds of which the amount of interest is to be calculated by reference to certain indexes (eg, the amount of profits, revenues and dividends) relating to the issuer or a specially related person of the issuer).

If the issuer of the bonds is a non-Japanese corporation and the issue is made within Japan, as a general rule, a foreign investor will not be subject to any Japanese withholding tax. However, if such bonds are attributed to any permanent establishment in Japan of the issuer, the interest will be subject to withholding tax in substantially the same manner as bonds issued by a Japanese corporation described above.

Even if a foreign investor is subject to withholding tax under domestic tax law, tax treaties entered into between Japan and the country of tax residence of the foreign investor may provide for exemption or a reduced rate with respect to such withholding tax. At present, Japan has income tax treaties whereby the 15.315 per cent withholding tax rate is reduced, generally to 10 per cent, with, inter alia, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Hong Kong, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Switzerland and the United States. Under the tax treaties between Japan and Sweden/the United Kingdom/Germany, interest paid to qualified Swedish/United Kingdom/German residents is generally exempt from Japanese withholding tax. Japan and the United States/Austria have signed an amendment to or renewal of the existing tax treaties generally exempting interest from Japanese withholding tax; however, this amendment or renewal has not yet entered into force. Certain filings with the Japanese local tax office are necessary to enjoy benefits under the applicable tax treaty.

Japanese taxation upon foreign investors is, as a general rule, finalised by the withholding tax and there is no need to file a Japanese tax return for regular income tax or corporate tax. No transfer or transaction taxes are imposed in general with respect to bonds issued within Japan. A foreign investor will in general not be subject to Japanese taxation on capital gains arising from the sale of bonds.

The main tax issues for issuers are deduction of interest on the bonds for their Japanese corporate tax purposes. As a general rule, interest payable by an issuer who is a Japanese corporation or a non-Japanese corporation (where the bonds are attributed to a permanent establishment of the issuer in Japan) will be deductible as expenses for its Japanese corporate tax purposes. However, with respect to interest payable to certain foreign affiliates of the issuer, interest deduction may be limited due to special taxation measures such as thin capitalisation rules, transfer pricing rules and earnings stripping rules.

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## Getting the Deal Through

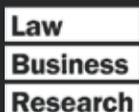
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