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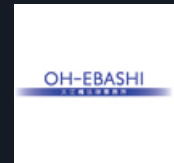
Country Comparative Guides 2025

Japan

Project Finance

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

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Japan: Project Finance

1. What are the typical ownership structures for project companies in your jurisdiction? Does this vary based on the industry sector?

In many cases, a stock company (*kabushiki kaisha*) ("KK") or a limited liability company (*godo kaisha*) ("GK") is selected as the project company. A sponsor would contribute funds in the form of an investment in shares of a KK or member's equity in a GK.

Especially with regard to the renewable energy sector, a silent partnership (*tokumei kumiai*) ("TK") is sometimes used together with a GK as the project company. In such case, the sponsor would contribute a substantial amount of funds by way of a TK investment into the GK, which will conduct the project or the business of the TK. A general incorporated association (*ippan shadan hojin*), which is independent from the sponsor, would become a member of the GK by contributing a nominal amount of funds in the form of member's equity in the GK. This is known as the GK-TK structure.

The TK investors must not engage in the management of the TK operator. As to the project company, being a special purpose vehicle, it usually entrusts the management of the project to an asset manager.

2. Are there any corporate governance laws or accounting practices that foreign investors in a project company should be aware of?

The corporate governance and accounting practices of a KK and a GK are regulated by the Companies Act.

A GK may design its governance bodies more flexibly than a KK, such as through its articles of incorporation. On the other hand, a KK must have a general meeting of shareholders and a representative director and is subject to more regulations under the Companies Act depending on the size of its capital or debt.

With regard to accounting practices, both a KK and a GK are required to prepare financial statements, but the procedures for the latter are less strict. For example, in the case of a GK, there is no obligation to prepare a business report or supplementary schedules. Further, a KK is required to give public notices of its financial statements, while a GK has no such obligation.

3. If applicable, what forms of credit support from sponsors or host governments are typically provided?

Apart from equity financing, a sponsor often provides debt financing, such as a subordinated loan. A sponsor is also often requested by a lender to enter into a sponsor support agreement that prescribes a covenant of the sponsor to provide various forms of support to the project company and reflects an adequate allocation of the risks arising out of or in connection with the project between the sponsor and the lender.

Generally, the Japanese government does not provide credit support to companies.

4. What types of security interests are available (and suitable) for a project financing in your jurisdiction?

In general, any type of asset can be taken as security, unless otherwise prohibited or restricted under the applicable law.

Specifically, (1) mortgages (*teito ken*) are available for the real estate and superficies (*chijo ken*) held by the project company, (2) pledges (*shichi ken*) or assignments by way of security (*joto tanpo ken*) are available for receivables, bank deposit claims and insurance claims held by the project company, and (3) assignments by way of security are available for the movable properties held by the project company.

In some cases, a factory foundation mortgage (*kojo zaidan teito ken*) will be available once the factory foundation (which may be composed of lands, factory buildings, machines, equipment and other eligible assets) is made and registered. Pledges are also available for shares in a KK or a member's equity interests in a GK.

In addition, the project company's contractual status under the project agreements can be the subject of a security arrangement, whereby such contractual status will be assigned upon the exercise by the lender of an option granted to it.

5. How are the above security interests perfected?

The procedures for perfecting security interests will vary depending upon the type or subject matter of the security interests.

Specifically, registration is required to perfect a mortgage (*teito ken*) over real estate or superficies (*chijo ken*). Similarly, registration is required to perfect a factory foundation mortgage (*kojo zaidan teito ken*). Registration fees will be charged for the registration of a mortgage in an amount equal to 0.4% of the secured amount of a creditor, and for a factory foundation mortgage, the registration fees will be an amount equal to 0.25% of the secured amount of a creditor.

A pledge or assignment by way of security of receivables, bank deposit claims and insurance claims will be perfected by the acknowledgment and consent by or notice to the relevant debtors, in each case, bearing the certified date thereof. An assignment of a movable property by way of security will be perfected upon possession by the owner of such property on behalf of the lender. A pledge over the share certificates representing shares in a KK is created and perfected upon the delivery of such certificates and the possession thereof by the lender, while a pledge over shares that are not covered by share certificates is perfected by recording such pledge in the register of shareholders. In practice, the acknowledgment and consent of the GK would have been obtained to perfect a pledge over a member's equity interests therein.

An assignment of a party's contractual status, which will be made upon the exercise of an option, is usually perfected upon the acknowledgment and consent by the other party to the contract subject of the assignment bearing the certified date thereof.

6. Please identify how security is enforced (notably the enforcement options available for secured parties) both pre and post insolvency/bankruptcy of the project company?

(1) Before the bankruptcy of a project company

In principle, pledges and mortgages can be enforced through the procedures provided in the Civil Execution Act and other relevant regulations, provided that assignments by way of security are enforceable outside of such statutory procedures as set out below. The method of enforcing a security interest under the Civil Execution Act differs depending upon the type of security or collateral

asset.

In general, enforcement of a security through the above-mentioned statutory procedures requires more time, effort and cost than voluntary enforcement. Therefore, in most cases, it is agreed and provided in security agreements for project financing that, regardless of the type of security interest, in addition to statutory procedures, secured creditors have the right to enforce their security outside of statutory procedures by selling or disposing of the collateral or acquiring it at its appraised value. This is known as a method of voluntary enforcement.

(2) After the bankruptcy of a project company

In the event of the bankruptcy or civil rehabilitation of a project company, it is possible for each secured creditor to exercise its perfected security interests and receive preferred payments outside of such proceedings as a holder of a right of separate satisfaction (*betsujokensha*). Nevertheless, in some cases, secured creditors' rights are subject to and restricted in bankruptcy or civil rehabilitation proceedings. In practice, debtors and secured creditors may agree, with the approval of the court or court-appointed supervisor, on the release of security interests and payment of certain amounts to creditors.

In contrast to bankruptcy or civil rehabilitation, in the case of corporate reorganization, secured creditors are prohibited from enforcing their security interests, and generally, may only receive payments of their claims subject to a reorganization plan. The corporate reorganization procedures are not applicable to a GK, which is one of the reasons this entity is commonly selected as the project entity.

7. What are other important considerations in relation to the security regime in the jurisdiction that secured parties should be aware of?

In project financing, although all or most assets are subject to security, it may be difficult in practice to create security over assets held by local government entities. If a private distribution line or underground cable is installed over or under public lands, such as roads or rivers in renewable energy projects, it is not possible to acquire a legal right to use such lands. Instead, it may be necessary for a project entity to obtain a license to occupy the subject lands (*senyo kyoka*) from the relevant authorities, but such license or permit cannot be subject to security.

Also, as mentioned in No. 20 below, it is important to note that liability insurance claims cannot be pledged (Article 22, Paragraph 3 of the Insurance Act).

Moreover, in Japan, no security interest can be created based on an entity's business value, and it is necessary to use extremely complicated or cumbersome methods to create a security interest on each asset. This has caused significant inefficiencies. To address this, the Act on the Promotion of Cash Flow-Based Lending was enacted in June 2024 and will take effect within two (2) years and a half. A newly introduced form of security interest will be able to cover all of the assets of a business, including intangible assets, but it will require the involvement of a security trustee that is duly licensed under the said Act.

8. What key project risks should lenders be aware of in project financings in your jurisdiction? This may include, but may not be limited to, the following risks: force majeure, political risk, currency convertibility risk, regulating or permitting risk, construction/completion risk, supply or feed stock risk or legal and regulatory risk).

Basically, as in other countries, there are (1) risks related to the land, risks related to permits and approvals, environmental risks, political risks throughout the entire project period, (2) risks concerning completion and performance during the construction period, and (3) risks related to maintenance and management as well as off-take risks during the operation period.

While the risks of earthquakes, tsunamis and volcanic eruptions are not unique to Japan, they are higher than in other countries, and as mentioned in No. 20 below, they are not necessarily covered by ordinary insurance policies, so measures must be taken to mitigate such risks, such as availing of special provisions, derivatives or cash reserves.

9. Are any governmental / regulatory consents required and are any financing or project documents requirement to be filed with any authority in order to be admissible in evidence in a court of law, valid or enforceable?

In general, there is no law in Japan that requires any governmental/regulatory consent or the filing of any financing or project documents with the authorities for such documents to be admissible in evidence in a court of law, or valid or enforceable, except that a stamp duty

may be imposed depending on the type or contents of such documents.

As to PFI projects, a private entity will enter into project documents with a public entity, and thus, the latter's consent would have to be obtained in relation to any transfer to be made by the lender's option of the former's contractual status under the project documents, the pledge of its shares in the project company as well as exercise of such option and pledge, as commonly required in the project documents. In addition, the public entity's consent is required for any transfer of the concession interests created pursuant to the PFI Act (as defined later below) over the course of enforcing any mortgage established on such concession interests.

In relation to renewable energy projects, the revised Act on Special Measures Concerning Procurement of Renewable Electric Energy by Operators of Electric Utilities, which took effect on April 1, 2024, requires that for renewable energy power generation projects above a certain size, a briefing session must be held for the local residents near the projects as stipulated to apply for approval of the competent authorities for any transfer of the projects or a change of ownership of the equity interests in the project company, such as the member's equity interests in a GK or majority of the shares of a KK, triggered by the exercise of a security interest or a voluntary sale.

Further, governmental or regulatory consent may be required for the creation or enforcement of security interests over, or the transfer of, properties obtained by utilizing subsidies under the Act on Regulation of Execution of Budget Pertaining to Subsidies, etc., or other local regulations.

10. Are there are any specific foreign exchange, royalties, export restrictions, subsidies, foreign investment, that are relevant for project financings (particularly in the natural resources sectors)?

The Foreign Exchange and Foreign Trade Act regulates foreign investments in Japan and other foreign transactions. For example, prior notification is required for a foreigner to acquire from a non-foreigner shares in an unlisted company that conducts business in certain designated industries (including an electric power generating business producing a certain minimum threshold amount of electricity, and other businesses for which project finance may be provided). Such designated industries are listed in the related regulations from

national security and other regulatory perspectives. On the other hand, a comprehensive exemption from the prior notification requirement may be applicable to adequately regulated financial institutions, such as securities firms, investment managers, banks and insurance companies.

11. Please set out any specific environmental, social and governance issues that are relevant. For example, are project companies subject to certain ESG laws, reporting requirements or regulations?

For listed companies, the disclosure of human capital-related information has been made mandatory in securities reports since March 2023, but generally, there are no rules that require the disclosure and reporting of ESG information for project companies.

12. Has any public-private partnership models or laws been enacted in the jurisdiction, and if so, are they specific to certain industry sectors?

The Act on Promotion of Private Finance Initiative ("PFI Act"), which was enacted in 1999, introduced methods and procedures for the promotion and implementation of private finance initiative ("PFI") projects in which the private sector may design, construct, maintain and operate public facilities. The types of public facilities covered by the PFI Act have increased since its enactment. Thus, PFI projects are now available for various types of facilities, including roads, railways, airports, parks, water services, sewage systems, government buildings, educational and cultural facilities, and medical facilities.

An amendment to the PFI Act in 2015 introduced a concession system granting the private sector the right to operate public facilities and receive fees from users thereof. The concession scheme has been used for airports, MICE facilities and other purposes.

13. Will foreign judgments, arbitration awards and contractual agreements to arbitrate be upheld?

A final and binding judgment rendered by a foreign court is valid only if it meets all of the following requirements (Article 118 of the Code of Civil Procedure):

- The foreign court's jurisdiction is recognized by laws and regulations, conventions or treaties.

- The defendant who lost the case has received the summons or order necessary for the commencement of the legal action (excluding service by public notice or another similar service), or has not yet received it but still responded thereto.
- The content of the judgment and the legal action do not violate any public policy in Japan.
- There is a guarantee of reciprocity.

In addition, based on the New York Convention, foreign arbitral awards can be recognized and enforced in Japan.

Arbitration clauses in agreements are valid.

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

Submission to a foreign jurisdiction and waiver of immunity are effective and enforceable.

15. Please identify what you consider to be (a) the key current issues for project financing in your jurisdiction; and (b) any emerging trends or topics which should be considered or focused on by project financing stakeholders.

(a) Key current issues for project financing in Japan

Project finance in Japan has recently tended to focus on the energy and infrastructure sectors. Historically, project finance was not common in Japan. However, after the introduction of the Feed-in Tariff ("FIT") system for renewable energy electricity in 2012, renewable energy projects have become more popular and the number of project finance transactions has increased. From 2022 onwards, the Feed-in Premium ("FIP") system was introduced to promote the independence of renewable energy power sources. Although project companies may receive a premium under the FIP system, they have no guarantee to sell the electricity generated at a fixed price for a long term. As they need to sell electricity through the market or through bilateral transactions, it may be important to secure buyers to ensure a stable income.

(b) Emerging trends or topics that should be considered or focused on by project financing stakeholders

There were many issues to be resolved regarding offshore wind power projects, such as the lack of general regulations for the use of ocean areas, the lack of a forum for reconciling the interests of fishermen and other prior users of ocean areas, and the lack of infrastructure, such as the base ports necessary for offshore construction.

However, these issues are being resolved and the number of wind power projects has been gradually increasing in Japan in recent years.

Specifically, as part of the development of rules for the use of ocean areas, the Act on Promoting the Utilization of Sea Areas for the Development of Marine Renewable Energy Power Generation Facilities was enacted in 2019. It introduced a public tender system for the use of general ocean areas. The said Act also introduced the council system as a forum for reaching an agreement with prior users. In March 2024, a cabinet decision was made regarding a bill to amend the said Act to permit operators to install offshore wind power generation facilities within Japan's exclusive economic zone ("EEZ"). Under the bill, the government will designate a broad sea area which is appropriate for marine renewable energy power projects after prior investigation of the subject areas, and an operator may apply to the government to obtain a provisional permit and a final permit in turn for the installation of power generation facilities in a certain area within the designated sea area. The final permit will be granted if certain criteria are satisfied, including an agreement of a council consisting of the operator and the stakeholders. If this bill is passed, it may improve the environment for conducting an offshore wind power business within the EEZ of Japan.

Moreover, the Port and Harbor Act was amended in 2020 to introduce a system of handling harbors for the marine renewable energy power business and enabling the government to designate base ports and lease them to applicable business operators for long periods of time.

Furthermore, in recent years, related laws have also begun to be developed for storage battery and CCS businesses. The storage battery business was covered by the Long-Term Decarbonization Auction ("LTDA") of 2023 and 2024, which, if awarded, allows storage battery operators to earn a stable income over a long period of time. Although the CCS business is not yet covered by the LTDA, the Act on Carbon Dioxide Storage Business was enacted in May 2024 and will take effect in phases within two (2) years. As the Act creates a right to store CO₂ and allows the creation of a mortgage (*teito ken*) on such right to store CO₂, the CCS business and project finance thereof may further develop in the future.

16. Please identify in your jurisdiction what key legislation or regulations have been implemented (or will / plan to be) for projects in connection with the energy transition?

See the comments in No. 15 above.

17. Please identify if there are any material tax considerations which need to be taken into account for a project financing in your jurisdiction, and if so, how such tax issues can be mitigated.

One of the material concerns of sponsors and investors is the way to improve and enhance after-tax profits they may receive from projects. As mentioned in No. 1 above, a GK project company may enter into a TK agreement with one or more investors, under which the project company receives contributions from investors and conducts the business of the TK as the operator. The project company is subject to corporate tax. However, an allocation rule of profit and loss arising from the TK business may be provided in the TK agreement and the profit to be paid to the investors pursuant to such rule will be treated as a loss of the TK business at the project company level. Thus, the TK investors may enjoy a tax benefit in a properly structured GK-TK scheme.

18. What types of funding structures (e.g. debt, equity or alternative financing) are typical for project financing in your jurisdiction. For example, are project bond issuances, Islamic finance and – in the context of mining deals – streams or royalties, seen as attractive (and common) options for stakeholders?

The typical funding structure for project companies in Japan is debt finance in the form of senior loans from lenders or subordinated loans from sponsors as well as equity finance in the form of shares or a TK investment from sponsors or investors. Project bonds are rarely used in Japan.

19. Please explain if there are any regional development banks or export credit agencies, and if so, what is their role in project financing in your jurisdiction and beyond.

The Development Bank of Japan is a regional development bank. The bank provides loans and investments to support projects with a high degree of policy-relatedness.

The Export Credit Agencies are Japan Bank for International Cooperation ("JBIC") and Nippon Export and Investment Insurance ("NEXI"). JBIC is involved in financing projects that promote the development and acquisition of resources important to Japan overseas.

NEXI provides trade insurance that covers the risks associated with foreign transactions such as import and export and overseas investment and loans.

20. Please explain if there are any important insurance law principles or considerations in connection with any project financing in your

jurisdiction.

Some risks, such as earthquakes, tsunamis and volcanic eruptions, are not covered by ordinary insurance policies, so special clauses, the use of derivatives, and cash reserves are important. In addition, it is necessary to take into account that liability insurance claims cannot be pledged (Article 22, Paragraph 3 of the Insurance Law).

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