



# Japan



Kazuhiro Yoshii, Hiroto Ando and Akira Tago  
Anderson Mōri & Tomotsune

[www.practicallaw.com/5-504-9517](http://www.practicallaw.com/5-504-9517)

## MAIN EQUITY MARKETS/EXCHANGES

### 1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

#### Main equity markets/exchanges

The main equity market in Japan is the Tokyo Stock Exchange (TSE) ([www.tse.or.jp](http://www.tse.or.jp)), one of the oldest stock exchanges in the world, established in 1878. The TSE offers three markets:

- The first section (for blue-chip companies with high liquidity) on the main board (First Section).
- The second section (for well-established medium-sized companies) on the main board (Second Section).
- Mothers (for emerging companies).

As of 1 January 2012, 11 foreign companies were listed on the TSE. As of the end of December 2011, the TSE's total market capitalisation exceeded US\$3.3 trillion, making the TSE the largest exchange in Asia and the fourth largest exchange in the world (as at 1 February 2012, US\$1 was about EURO.76).

#### Market activity and deals

There was an increase in initial public offering (IPO) activity in 2011 compared to 2010 (there were 50 issues in 2011, up from 26 issues in 2010). The largest IPO in 2011 was undertaken by NEXON, with a market capitalisation after the IPO of over JPY500 billion (as at 1 February 2012, US\$1 was about JPY76).

Listing applications to the TSE are generally not publicly disclosed by applicants until listing approval. IPO activity can be postponed during the course of the listing examination for various reasons, including the applicant's business results and economic conditions, in which case the TSE will suspend its examination at the applicant's request. The TSE does not publicly disclose the number of postponements, or the names of the applicants where the IPO activity has been postponed.

### 2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

#### Regulatory bodies

The Financial Services Agency of Japan (FSA) is the regulator responsible for Japan's equity markets. The main role is taken by the FSA's relevant local finance bureau. The TSE also regulates the equity markets and has adopted rules applicable to listed companies (see *Question 1*).

#### Legislative framework

The legislation principally governing the equity markets is the Financial Instruments and Exchange Act of Japan (FIEA) (*Act No 25 of 1948, as amended*).

## EQUITY OFFERINGS

### 3. What are the main requirements for a primary listing on the main markets/exchanges?

#### Main requirements

For a primary listing on the TSE, the applicant must satisfy:

- Quantitative criteria, including the:
  - number of shareholders;
  - number of tradable shares, that is, listed shares excluding:
    - treasury shares;
    - shares held by parties with special interests (for example, company officers); and
    - shares held by large shareholders (individually owning 10% or more).
  - market capitalisation of listed shares;
  - amount of profit (that is, the lower of ordinary income and net income before income tax on a consolidated basis).
- Qualitative criteria, including:
  - corporate continuity and profitability;
  - sound corporate management;
  - effective corporate governance and internal control systems;
  - appropriate disclosure of corporate information;
  - other items that the TSE deems necessary in the light of public interest and investor protection.

There is no major difference between the listing criteria for domestic and foreign applicants.

For listing on Mothers, there is no criterion for financial performance, such as amount of profit. The TSE, however, requires Mothers-listed companies to disclose financial performance quarterly and to hold corporate information sessions at least twice a year.

There is no working capital requirement for listing on the TSE. To be listed on the Second and First Sections, however, the



applicant's expected consolidated shareholders' equity as of the listing date must be at least JPY1 billion as of the end of the most recent financial year before application.

#### Minimum size requirements

To be listed on the TSE's markets, the minimum expected market capitalisation of the company's tradable shares as of the date of listing must be:

- Mothers: JPY0.5 billion.
- Second Section: JPY1 billion.
- First Section: JPY1 billion (effective from 9 March 2012).

For a transfer from Mothers or the Second Section to the First Section, however, the expected market capitalisation must be at least JPY2 billion.

In addition, the expected market capitalisation of listed shares as of the listing date must be at least:

- Mothers: JPY1 billion.
- Second Section: JPY2 billion.
- First Section: JPY25 billion (effective from 9 March 2012).

For a transfer from Mothers or the Second Section to the First Section, however, the expected market capitalisation must be at least JPY4 billion.

#### Trading record and accounts

Generally, an applicant company must have:

- Maintained disclosure documents with no false descriptions for the last two financial years.
- Received from its auditors unqualified opinions or qualified opinions with exceptions on the annual financial statements for its two most recent complete financial years.
- Received an unqualified opinion from its auditors on the annual financial statement and quarterly financial statements for its most recent complete financial year.

#### Shares in public hands

To be listed on the TSE, the number of tradable shares must be a minimum of:

- Mothers: 2,000 trading units.
- Second Section: 4,000 trading units.
- First Section: 20,000 trading units.

The following percentages of listed shares must be tradable:

- Mothers: 25%.
- Second Section: 30%.
- First Section: 35%.

#### 4. What are the main ways of structuring an IPO?

IPOs are typically structured as:

- Public offerings of new shares.

- Public offerings of existing shares (typically by large shareholders).
- A combination of both.

These offerings are typically effected through allocation of shares to institutional investors as well as retail investors, especially in the case of larger offerings.

#### 5. What are the main ways of structuring a subsequent equity offering?

Subsequent equity offerings are also structured as public offerings of new shares, public offerings of existing shares (typically by large shareholders) or a combination of both. However, third-party allotment (that is, the issue of new shares to a limited number of specified investors) is also common. The regulations that apply to public offerings and third-party allotments are basically the same, but the regulations for third-party allotments require more detailed information regarding investors.

Historically, rights offerings have not been common in Japan, in part because they have required longer preparation periods and more cumbersome procedures than other mechanisms. However, an amendment to the FIEA in May 2011 and a proposed amendment to the related regulations published in November 2011 (Amendments) are intended to facilitate use of rights offerings. The Amendments are scheduled to become effective on 1 April 2012.

Under the Amendments, under certain conditions companies will be released from the obligation to deliver prospectuses to existing shareholders and certain existing issues will be clarified. In addition, the Amendments facilitate commitment type rights offerings (a type of rights offering involving firm commitment by an underwriter securities company) to acquire all unexercised stock acquisition rights. The underwriter then exercises the stock acquisition rights and sells the acquired shares in the secondary market. More specifically, persons who acquire equity securities of a listed company (such as shares and stock acquisition rights) exceeding a certain shareholding ratio are subject to Japan's takeover bid regulations and must file large shareholding reports. However, underwriters in commitment type rights offerings generally acquire and hold a considerable number of unexercised stock acquisition rights and may therefore become subject to these takeover bid regulations and large shareholding reporting requirements. Once the Amendments become effective, however, underwriters will be allowed to exclude these stock acquisition rights when calculating their shareholding ratios under Japan's takeover bid regulations and the large shareholding reporting requirement, if certain conditions are met.

#### 6. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

The main steps in applying for a primary listing include:

- The applicant obtains a board resolution authorising the listing application.



- The applicant submits the listing application and company documents to the TSE.
- The TSE conducts a listing examination.
- The applicant and advisers involved conduct a due diligence procedure for public offering.
- The applicant finalises the offering documents such as the:
  - prospectus;
  - securities registration statement; and
  - underwriting agreement.
- The TSE approves the listing.
- The applicant files the securities registration statement.
- The applicant, with the advice of investment banks, engages in marketing the IPO and bookbuilding.
- The applicant, with the advice of investment banks, prices and allocates the shares.
- Admission to listing and closing.

The procedure is the same for foreign companies.

## ADVISERS: EQUITY OFFERING

### 7. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

#### Key advisers

The following are key advisers commonly used in an equity offering and in an IPO:

- **Investment bank.** The issuer appoints a lead investment bank which is a TSE participant. The bank provides advice to the issuer, manages the offering procedure and co-ordinates the applicant's other advisers. Generally, the bank assumes various roles, including:
  - **Financial adviser.** The bank provides advice on the timing of the equity offering, offering structure, valuation, pricing and marketing strategy. In addition, especially in the case of IPOs, it often provides advice on the issuer's corporate governance, compliance issues and future capital structure, including the relationship with large shareholders. The bank must in the case of an IPO submit a listing recommendation letter to the TSE;
  - **Underwriter.** The bank underwrites (alone or together with other syndicate members) the securities to be offered;
  - **Bookrunner.** The bank maintains the book of demand for the offered securities;
  - **Global co-ordinator.** The bank provides advice on the equity offering in general and co-ordinates on a global basis where there are offerings in other markets;
  - **Stabilising manager.** Stabilisation is generally prohibited. However, certain stabilisation activities are permitted to facilitate a smooth offering, and the bank often acts as a stabilising manager (*see Question 17*).

- **Lawyers.** The issuer, underwriters and selling shareholders often appoint lawyers to advise them on legal matters arising in connection with the equity offering and listing, including conduct of due diligence and preparation of prospectus and other offering documents. After listing, the issuer's lawyer often undertakes the issuer's post-listing activities, such as ongoing corporate disclosure.
- **Audit corporation.** An audit corporation is appointed to:
  - analyse the issuer's financial statements and description in the securities registration statement and prospectus;
  - provide comfort letters;
  - provide a report for the securities registration statement and prospectus.
- **Trust bank.** The trust bank acts as the issuer's transfer agent and, among others:
  - handles the settlement and transfer of shares;
  - is responsible for issuing Japanese depository receipts.
- **Receiving bank.** A receiving bank is, generally, necessary for settlement.

#### Main documents

The following are the main documents produced in an equity offering and in an IPO:

- The securities registration statement and prospectus (*see Question 8*).
- Press releases.
- Various agreements, including the underwriting agreement and the agreement between managers.
- The listing application to be submitted to the TSE and other related documents, including, in the case of an IPO, the recommendation letter from an investment bank (*see above*).

## EQUITY PROSPECTUS/MAIN OFFERING DOCUMENT

### 8. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

A securities registration statement must be filed with the local finance bureau for public inspection through the Electronic Disclosure for Investors' NETwork (EDINET) (an electronic disclosure system operated by the FSA) before the start of a public offering of securities in Japan. In addition, a prospectus (the content of which is almost identical to the securities registration statement) is generally required for any offering of securities to the public in Japan and must be delivered to investors on or before the sale of the securities.

Under the current FIEA and related regulations, securities registration statements must be prepared in Japanese. Once the Amendments (*see Question 5*) become effective, however, foreign companies will be permitted to file securities registration statements in English (foreign company statements), although these will be required to be accompanied by certain supplementary documents in Japanese. (For continuous disclosure requirements in English, see *Question 19*.)




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### 9. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

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A prospectus is not required:

- Where a securities registration statement is not required because the offering does not constitute a public offering of new shares or a public offering of existing shares. Any offering of listed equity securities, even to a single person, will generally constitute a public offering.
- The offering is addressed to:
  - a qualified institutional investor;
  - a person who already owns the same securities or has or is likely to have a prospectus and who agrees that the prospectus need not be delivered.

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### 10. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

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The content requirements for a prospectus vary according to the nature and circumstances of the issuer and securities. Generally, the requirements are almost identical to those imposed for the securities registration statement.

The form of the securities registration statement is prescribed by regulation passed under the FIEA. The primary information required in the form is as follows.

#### Information concerning securities

Information required for public offering of new shares or existing shares includes the:

- Type of shares (for example, common or preferred shares).
- Number of shares offered.
- Offer price and issue price (that is, selling price).
- Offering structure (for example, public offering and third-party allotment) and total issue price for each component.
- Name and address of selling shareholders.
- Subscription period and place of subscription.
- Date of payment and place of payment.
- Name and address of underwriters and number of shares to be underwritten.
- Total amount and use of proceeds.

Additional information required for third-party allotment includes:

- Purchaser information, for example:
  - name and address;
  - relationship with issuer;
  - method and reasons for selection;
  - number of shares to be purchased;

- shareholding policy; and
- confirmation by the issuer of the existence of assets to be used in payment.
- Transfer restrictions to be imposed on the purchaser (if any).
- Pricing information (for example, basis and justification of pricing).
- Information concerning any extensive third-party allotment (for example, if a purchaser will acquire a substantial majority voting interest through the offering, the issuer's justification for that offering).
- List of large shareholders following the offering.
- Possibility of future squeeze-out.

#### Information concerning the issuer and its corporate group

The following information is provided:

- An overview of the issuer and its corporate group, including:
  - trends in major business indices concerning the issuer and its corporate group;
  - their history;
  - the nature of their business;
  - their affiliated companies;
  - their employees.
- The issuer and its corporate group's business, including:
  - an outline of the results of their operations;
  - the state of their production, orders accepted and sales;
  - problems to be resolved;
  - risks;
  - material contracts;
  - research and development activities;
  - an analysis of their financial condition, operating results and cash flows.
- The facilities of the issuer and its corporate group, including:
  - an outline of capital investment;
  - a description of the state of major facilities;
  - any plans for installation and retirement of facilities.
- Information concerning the applicant's:
  - state of shares, including:
    - the number of authorised and issued shares;
    - the list of the large shareholders.
  - dividend policy;
  - trends in stock prices;
  - directors and officers;
  - corporate governance.
- The issuer and its corporate group's financial condition, including:
  - financial statements;
  - events subsequent to the financial statements;



- differences in accounting principles and practices between the issuer's home country and Japan (if the issuer is a foreign company).
- A summary of the filing company's share-handling services in Japan.
- Other reference information.

An issuer which has complied with continuous disclosure requirements under the FIEA for one year can use a simplified form of securities registration statement and prospectus. Under this form the issuer only needs to physically include the following documents:

- Its latest annual securities report.
- A quarterly securities report and extraordinary reports filed after the filing of the latest annual securities report.
- Any amendments to the reports.

In addition, issuers that satisfy certain additional requirements can also use a simplified form in which they can incorporate the above reports by reference. Examples of such issuers are listed companies which, in addition to having complied with continuous disclosure requirements under the FIEA for one year, have:

- A trading volume and market capitalisation which are both JPY10 billion or more.
- Market capitalisation which is JPY25 billion or more.

#### 11. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The securities registration statement and prospectus are prepared by the issuer with input from other advisers (*see Question 7*). In particular, the business section (especially the description as to the issuer's business strategy) is often prepared in consultation with issuer's legal counsel and participating investment bank(s). Typically, a draft securities registration statement and prospectus are subject to review and comment by the advisers, and documentation meetings are held for discussion.

The local finance bureau also reviews the content of the securities registration statement in the course of preparation for filing, and its comments (if any) must be reflected in the statement and the prospectus. In the case of an IPO, comments from the TSE on the listing materials (a part of which consists of the same information as contained in the prospectus) must also be reflected.

The following persons have statutory liability for the securities registration statement:

- Issuer.
- Senior management of the issuer (for example, directors and executive officers).
- Selling shareholders.
- Auditors.
- Underwriters.

In addition, the issuer and persons using the prospectus for offering have statutory liability for the prospectus in an equity offering. Auditors and underwriters may also be liable for the contents of the prospectus.

## MARKETING EQUITY OFFERINGS

### 12. How are offered equity securities marketed?

After the filing of the securities registration statement, the issuer and advisers (mainly the participating investment bank(s)) start marketing through:

- **Road shows.** These are normal marketing presentations that the issuer's senior management makes to selected audiences (usually institutional investors) with assistance from the participating investment bank(s).
- **Meetings.** These are one-on-one meetings with key institutional investors to promote better understanding of the issuer.
- **Other advertisement.** Advertisement methods vary depending on the target. Typical examples include:
  - newspaper advertising; and
  - term sheet mailings.

Advertising materials can be deemed to constitute offering materials to prospective purchasers and can be subject to statutory liability. The legal counsel of both the issuer and the underwriters generally carefully review the contents of advertising materials.

Since there is no safe harbour rule with respect to gun-jumping (that is, no regulation permitting issuers and/or underwriters to solicit purchase of shares before the filing of a securities registration statement), pre-marketing generally does not take place in Japan.

### 13. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Liability can arise for a broker or dealer as a result of the following:

- **Market manipulation.** Market manipulation rules prohibit any person from providing false or misleading information for the purpose of inducing purchase of securities (*Article 159, paragraph 2(3), FIEA*).
- **Use of misleading information in public offerings.** This rule prohibits any person from providing false or misleading information in any document (or electronic media) used in connection with a public offering of securities. Research reports published by participating securities entities in proximity to the offering can be deemed to constitute offering materials and can be subject to this restriction (*Article 13, paragraph 5, FIEA*).
- **Insider trading.** Any person who has received undisclosed material information from a corporate insider is prohibited from selling or purchasing listed shares before that material information is publicised (*Article 166, paragraph 3, FIEA*).



Methods of minimising potential liability include:

- **Disclosure and disclaimer.** Under the internal rules of the Japan Securities Dealers Association (JSDA), brokers or dealers must disclose conflicts of interest in any research reports published in respect of a particular issuer. In addition, any securities firm which acts as a lead underwriter for an offering of a particular issuer must disclose its role in all research reports concerning the shares of that issuer published within one year following the offering.
- **Information barriers.** Research analysts are prohibited from participating in pitches to potential issuers by underwriting or investment banking departments.
- **Research blackout period.** There is no specific legal requirement for a blackout period (that is, a period during which no research information will be distributed by investment banks participating in the underwriting) preceding the start of offerings of securities. However, investment banks generally have internal blackout guidelines. A typical period is approximately two weeks. Any offering of listed equity securities, even to a single person, will generally constitute a public offering for this purpose.

## BOOKBUILDING

### 14. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

Bookbuilding is used in almost all public offerings of equity securities. The offering price is fixed once an indication of demand has been received from potential investors (mainly institutional investors) following presentation of price range and circulation of a prospectus. The price range is determined taking into consideration the:

- Issuer's business.
- Operating results and financial condition.
- Comparison with competitors.
- Opinions of institutional investors which have established high reputations for valuation of shares.

When shares are offered to retail investors, solicitation of the retail investors takes place concurrently with institutional investors after the securities registration statement is filed.

Investors' orders are placed and confirmed in the subscription period following the pricing. Investors can withdraw or change indications of demand provided during the bookbuilding period, but once orders are placed and confirmed during the subscription period they cannot be withdrawn or changed. Investors are generally required to pay application money (equivalent to the aggregate purchase price) when placing an order, and this is applied to the purchase at closing.

## UNDERWRITING: EQUITY OFFERING

### 15. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee?

Equity offerings in Japan are typically fully underwritten, with the underwriters contracting with the issuer or selling shareholder(s) to purchase all shares to be offered, even if not all of the shares can be sold on to investors.

The terms of the underwriting are set out in an underwriting agreement, which often includes an over-allotment option for underwriters. Lock-up arrangements between the issuer and selling shareholder(s) are also often included, and underwriters also often request other large shareholders to execute separate lock-up letters. The underwriters' obligations are subject to a number of conditions, such as:

- Listing of the shares.
- Receipt of appropriate legal opinions.
- Observance of selling restrictions.

The issuer must provide a number of representations and warranties to the underwriters, breach of which will entitle the underwriters to terminate the underwriting agreement. Underwriting agreements also typically contain broad indemnity provisions in favour of the underwriters.

The underwriting fees are also set out in the underwriting agreement, and are typically spread between the offer price and issue price (or selling price in the case of a secondary distribution). The amount of the underwriting fees will vary, depending on the issuer and overall market conditions, but in recent cases they typically range from 3% to 8% of the offer price.

## TIMETABLE: EQUITY OFFERINGS

### 16. What is the timetable for a typical equity offering? Does it differ for an IPO?

The following is a summary timetable for a typical equity offering and a typical IPO in Japan where "X" is the date of pricing.

#### Typical equity offering

The timetable is as follows:

- **X minus 3 months.** The advisers are appointed.
- **X minus 2 months.** The applicant and advisers begin preparation of key offering documents.
- **X minus 10 days.** The launch date, that is, the filing of the securities registration statement and commencement of offering.
- **X.** The pricing date.
- **X plus 1 week.** Closing.



## Typical IPO

The timetable is as follows:

- **X minus 1 year to 6 months.** The working parties are appointed.
- **X minus 5 months.** Begin preparation of key documents.
- **X minus 4 months.** File listing application with TSE.
- **X minus 1 month.** Launch date, that is, approval for TSE listing; filing of securities registration statement and commencement of offering.
- **X minus 1 week.** The start of bookbuilding.
- **X.** The pricing date.
- **X plus 1 week.** Listing on the TSE and closing.

## STABILISATION

### 17. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

Stabilisation is generally prohibited as it breaches rules on market manipulation under the FIEA. Stabilisation to facilitate equity offerings, however, is permitted under certain conditions, because those offerings can cause drastic changes in the market price of the relevant securities due to temporary imbalance of supply and demand.

Common requirements for stabilisation under the FIEA are as follows:

- **Stabilising manager.** In general, the underwriter can conduct stabilisation.
- **Persons that can request stabilisation.** These persons are limited to certain parties, such as issuer's senior management and selling shareholders.
- **Disclosure.** The possibility of stabilisation and the market in which stabilisation is expected to take place must be disclosed in the prospectus. In addition, a filing with the local finance bureau is required on the commencement of stabilisation and the results of this must be reported to the local finance bureau. Copies of the filings and reports must also be sent to the TSE.
- **Stabilisation period.** The stabilisation period, if any, generally starts on the day following the pricing date and continues through to the last day of the application period for investors.
- **Stabilisation price.** The maximum price permitted for stabilisation purchases is the lower of the closing prices on the days immediately preceding the commencement of:
  - the stabilisation period; and
  - actual stabilisation purchases.

## TAX: EQUITY ISSUES

### 18. What are the main tax issues when issuing and listing equity securities?

A number of tax issues can apply. Capital gains derived from the sale of equity securities outside Japan by a non-resident holder are not, generally, subject to Japanese income tax or corporation tax. Capital gains derived from the sale of equity securities within Japan, however, are generally subject to Japanese income tax or corporation tax. Therefore, large shareholders who are planning to sell shares in an IPO in Japan should seek specialist tax advice to minimise tax liability.

## CONTINUING OBLIGATIONS

### 19. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

#### Disclosure requirements under the FIEA

A company listed on the TSE must file with the local finance bureau (through EDINET):

- **Annual securities reports.** The company must file annual securities reports within three months (six months in the case of foreign companies) after the end of each financial year disclosing the business and financial results of the company and its corporate group.
- **Quarterly securities reports.** A company which is required to file annual securities reports and which has a financial year of more than three months in length will also be required to file quarterly securities reports within 45 days after the end of each quarter disclosing business and financial results of the company and its corporate group.
- **Extraordinary reports.** A company which is required to file annual securities reports will also be required to file extraordinary reports without delay to disclose important decisions and events that may significantly affect business and financial results.

These documents must be prepared in Japanese in compliance with the forms prescribed under the FIEA. A foreign issuer can file a foreign issuer report prepared in English rather than filing an annual securities report and a quarterly securities report. However, filing of foreign issuer reports is not currently common among foreign issuers because preparation of the foreign issuer report is onerous, as the:

- Summary and other explanatory materials must be prepared in Japanese.
- Deadline for filing the annual securities report is shortened to four months.

The current FIEA and related regulations do not permit filing of extraordinary reports in English. One of the main aims of the Amendments, however, is to facilitate use of English language disclosure for foreign companies. Once the Amendments come into force, foreign issuers will be permitted to file extraordinary reports in English. The required standards for the preparation of



the Japanese summary of the foreign issuer report are uncertain, with the result that foreign companies may be subject to uncertain liability if they choose to use English language disclosure. Although the standards for the preparation of such summaries are still unclear under the amended FIEA and related regulations, TSE and JSDA are due to release guidelines for preparation of the supplementary documents. However, the details of such guidelines are yet to be announced. (For the newly introduced English language disclosure system for offerings, see *Question 8*.)

#### Disclosure requirements under the TSE rules

In addition to the disclosure requirements under the FIEA, companies listed on the TSE must issue press releases through Timely Disclosure Network (TDnet), the TSE's online disclosure system, concerning important decisions and events of the company and its corporate group. These include:

- Information concerning decisions, such as:
  - issues of new shares;
  - dividend payments;
  - stock splits or reverse stock splits;
  - mergers;
  - commencement of tender offers by the company in respect of another company.
- Information concerning events, such as:
  - changes in major shareholders;
  - changes in auditors;
  - commencement of tender offer by another company in respect of the company's shares;
  - lawsuits and court rulings;
  - damage caused by disasters.
- Information concerning financial results and forecasts, such as:
  - publication of financial results and related adjustments;
  - business and dividend forecasts.
- Other information, such as information regarding subsidiaries.

#### 20. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

The continuing disclosure requirements apply to foreign companies if their shares or depositary receipts are listed. However, the forms for disclosure documents for domestic and foreign companies differ slightly. For example, a foreign company must disclose in its annual securities report summary information regarding the corporate laws and regulations of its home jurisdiction.

#### 21. What are the penalties for breaching the continuing obligations?

The following penalties can be imposed for breach of the continuing disclosure obligations under the FIEA:

- Criminal penalties (imprisonment and fines).

- Surcharges (surcharges are imposed by the Financial Services Agency Commissioner as an administrative sanction, as opposed to fines which are levied by a court as a punishment).
- Civil liabilities (for example, a company which includes incorrect or misleading information in an annual securities report can be liable for damages to investors who incur losses arising from purchase of that company's shares).

The following penalties can be imposed for breach of the TSE's rules:

- Verbal cautions.
- Orders to submit reports to the TSE detailing the history of breach and planned remediating action.
- Publication by the TSE of the fact that the company has been designated as a company cautioned regarding disclosure.
- Penalty charges.
- De-listing (see *Question 22*).

### DE-LISTING

#### 22. When can a company be de-listed?

##### Voluntary de-listing

In 2011, one foreign company voluntarily de-listed from the TSE. To voluntarily de-list, a listed company must submit an application for de-listing to the TSE accompanied by documents certifying that appropriate internal procedures to determine the de-listing have been completed within the company. Before submitting the application, a de-listing company will generally consult the TSE to confirm descriptions in the application and attachments.

##### Compulsory de-listing

The TSE can compulsorily de-list shares in a listed company if certain criteria for de-listing are met, including:

- Bankruptcy.
- Decrease in the level of market capitalisation, tradable shares, and shareholders to below the minimum levels.

In 2011, a total of 32 companies were compulsorily de-listed from the First Section. Most de-listings, however, resulted from reorganisation, including companies becoming wholly owned subsidiaries of other companies.

### MAIN DEBT CAPITAL MARKETS/EXCHANGES

#### 23. What are the main debt securities markets/exchanges in your jurisdiction (including any exchange-regulated market or multi-lateral trading facility (MTF))? Outline the main market activity and deals in the past year.

##### Main debt markets/exchanges

Japanese debt transactions are mainly conducted in the over-the-counter market, rather than in markets regulated by securities exchanges. This reflects, historically, the high reliance on bank



loan financing in Japan, which has resulted in relatively little development of public debt capital markets compared to public equity capital markets.

Outside of the over-the-counter market, the TSE is the principal debt securities exchange in Japan (*see Question 1*). The number of debt securities listed on the TSE, however, is small compared to that of equity securities. No straight bonds are listed on the TSE except for certain Japanese government bonds (as of 30 November 2011, the number of issuers was one (that is, the Japanese government) and the total amount was JPY681,163 billion). Some convertible bonds are also currently listed (as of 30 November 2011, the number of issuers was 21, the number of listed securities was 24 and the total amount was JPY1,053 billion).

### Market activity and deals

According to the JSDA, the aggregate amounts raised through debt issuance in Japan in 2010 were JPY9,559 billion through straight bonds and JPY123 billion through convertible bonds.

One of the most notable deals of 2011 in the Japanese debt market was a refinancing by eAccess carried out using high-yield senior notes and a syndicated loan. This refinancing combined a high-yield bond offering in global markets with a domestic syndicated loan, and represented a landmark deal in several respects:

- The Japanese market had never before witnessed the combination of a high-yield bond issue and a syndicated loan.
- This offering was the first high-yield bond offering from Japan in four to five years and the first ever to be offered on a global basis under Rule 144A and Regulation S.
- The offering was the largest ever offering of high-yield bonds by a Japanese company.

### 24. What are the main regulators and legislation that applies to the debt securities markets/exchanges in your jurisdiction?

#### Regulatory bodies

The FSA is the regulator responsible for Japan's debt securities markets. The main role is taken by the FSA's relevant local finance bureau. The TSE regulates the debt securities markets in relation to listed securities (*see Question 2*).

#### Legislative framework

The legislation principally governing debt securities markets is the FIEA. The TSE has adopted rules governing listed securities (*see Question 2*).

### LISTING DEBT SECURITIES

#### 25. What are the main listing requirements for debt securities?

A Japanese company must be listed on the TSE before it can list debt securities on the TSE. In addition:

- The principal amount of debt securities must be at least JPY1 billion.

- The number of initial purchasers must generally be at least 1,000.
- The denomination of the securities must be:
  - JPY100,000;
  - JPY1 million; or
  - JPY10 million.
- The securities must be handled within the book-entry system of the Japan Securities Depository Center Inc (JASDEC).

Foreign companies must be either listed on the TSE or have a status, including financial condition, equivalent to that of listed companies on the TSE.

### STRUCTURING A DEBT SECURITIES ISSUE

#### 26. What are the main types of debt securities issued in your jurisdiction?

The main types of debt securities issued and offered in Japan are:

- Government bonds.
- Straight bonds (including those issued under bond programmes setting the maximum amount of outstanding bonds in a shelf registration under the FIEA) and convertible bonds issued by Japanese and foreign companies.

#### 27. Are different structures used for debt securities issues to the public (retail issues) and issues to professional investors (wholesale issues)?

When securities are issued to retail investors the issuance is through a public offering. When securities are issued to professional investors, a public offering is possible but a private placement can also be used, subject to certain requirements. Shelf registrations are commonly used for public offerings of corporate bonds. If so, the issuer files a shelf registration statement in advance with the local finance bureau and provides ongoing disclosure of information concerning the issuer and its corporate group. At the time of issue, the issuer then files a supplement to the shelf registration statement. In the case of private placements, by contrast, debt securities are offered to a limited number of investors (fewer than 50) or only to qualified institutional investors (subject to certain conditions under the FIEA) (*see Question 31*). In this case, a securities registration statement or shelf registration is not required.

#### 28. Are trust structures used for issues of debt securities in your jurisdiction? If not, what are the main ways of structuring issues of debt securities in the debt capital markets/exchanges?

Issuance of straight bonds is the most prevalent mode of issuance, and trust structures are rarely used. Collateralised bond obligations (CBOs) constitute an example of such a rare case, in which the CBOs are trust beneficiary rights, which are backed by a pool of several types of bonds, which may include junk bonds.



## ADVISERS: DEBT SECURITIES ISSUE

### 29. Outline the role of advisers used and main documents produced when issuing and listing debt securities.

#### Key advisers

The following are key advisers for an issue and listing of debt securities:

- **Investment bank.** The issuer appoints a lead investment bank, which provides advice to the issuer, manages the offering procedure and co-ordinates other advisers. Generally, the lead investment bank assumes the following roles:
  - financial adviser, providing advice as to timing of the offering, offering structure, valuation, pricing and marketing strategy;
  - underwriter, underwriting, alone or together with other syndicate members, the securities to be offered;
  - bookrunner, maintaining the book of demand for the offered securities.
- **Lawyers.** The issuer and underwriters often appoint lawyers to advise them on legal matters arising in connection with the debt offering and listing, including preparation of prospectus and other offering documents. After issuing the debt securities, the issuer's lawyer often undertakes the issuer's post-listing activities, such as ongoing corporate disclosure.
- **Agents.** The issuer appoints agents for administrative matters relating to the bonds, such as payment of principal and interest to bond holders.
- **Audit corporations.** An audit corporation is appointed to:
  - analyse the issuer's financial statements and description in the securities registration statement (or other disclosure document required under the FIEA) and prospectus (*see below, Main documents*);
  - provide a report for the securities registration statement (or other disclosure document required under the FIEA) and prospectus.
- **Receiving bank.** A receiving bank is generally necessary for settlement.

#### Main documents

The following are the primary documents to be produced for issuance and listing of debt securities:

- Terms and conditions of the debt securities.
- Securities registration statement or other disclosure document required under the FIEA (such as a shelf registration statement and a supplement).
- Prospectus.
- Press releases.
- Various agreements, including an underwriting agreement, an agreement between managers and an agency agreement.
- Listing application to be submitted to the TSE and other related documents, such as a recommendation letter from an investment bank which is a TSE participant, if applicable.

## DEBT PROSPECTUS/MAIN OFFERING DOCUMENT

### 30. When is a prospectus (or other main offering document) required? What are the main publication/delivery requirements?

The same requirements that apply to equity securities generally apply to debt securities (*see Question 8*).

### 31. Are there any exemptions from the requirements for publication/delivery of a prospectus (or other main offering document)?

The same requirements that apply to equity securities generally apply to debt securities (*see Question 9*).

For offerings of listed debt securities, even an offering to one person constitutes a public offering. However, in the case of unlisted debt securities (which is the most common offering in the current Japanese debt market), the issuer may be exempt from the requirement to file a securities registration statement and publish or deliver a prospectus in the case of offering to a limited number of investors or offering to qualified institutional investors only (*see Question 27*).

### 32. What are the main content/disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

For offerings where an issuer files a securities registration statement with the local finance bureau, the same requirements that apply to equity securities also generally apply to debt securities (*see Question 10*).

For offerings where an issuer files a shelf registration statement and related supplement, the issuer can use a simplified form of prospectus. Into that simplified form the issuer can incorporate by reference its latest annual securities report and any quarterly securities reports and extraordinary reports filed after the filing of the latest annual securities report (and any amendments to the report).

### 33. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The lead manager, the issuer itself, or sometimes the issuer's legal counsel generally prepares the prospectus and other disclosure documents. In relation to liability, the same regulations that apply to equity securities also generally apply to debt securities (*see Question 11*).



## TIMETABLE: DEBT SECURITIES ISSUE

### 34. What is a typical timetable for issuing and listing debt securities?

Since listing of debt securities is uncommon in Japan, there is no typical timetable for issuing and listing debt securities. An issuer must consult in advance with the TSE to develop a timetable in connection with a contemplated listing of debt securities.

## TAX: DEBT SECURITIES ISSUE

### 35. What are the main tax issues when issuing and listing debt securities?

Interest or receipts of premium on redemption of debt securities paid to Japanese investors are subject to Japanese income tax, including corporate income tax. The issuer may be required to withhold this before paying the interest or premium. An issuer should ask for specialist tax advice to discuss any tax issues specific to its offering.

## CLEARING AND SETTLEMENT OF DEBT SECURITIES

### 36. How are debt securities cleared and settled and what currency are debt securities typically issued in? Are there special considerations for holding, clearing and settling debt securities issued in foreign currencies?

The Japanese yen is by far the most common currency for issuances of debt securities in the Japanese market, but foreign currency debt securities (including the US dollar and euro, among others) are also issued in Japan. Generally, when debt securities are issued in Japan, the securities are cleared and settled through the Japan Securities Depository Center, which is the clearance and settlement management institution in Japan. To participate in this system, the issuer must apply for participation beforehand. There are no special considerations for holding, clearing and settling debt securities issued in foreign currencies.

## CONTINUING OBLIGATIONS: DEBT SECURITIES

### 37. What are the main areas of continuing obligations applicable to companies with listed debt securities and the legislation that applies?

Under the FIEA, the same requirements that apply to equity securities also generally apply to debt securities listed on the TSE (see *Question 19*).

However, under the TSE rules, no particular requirements are imposed on listing of debt securities. The issuer of debt securities is usually subject to continuing disclosure obligations (see *Question 19*) under the TSE rules, since the listing of debt securities on the TSE generally requires that the shares of the issuer be listed on the TSE.

### 38. Do the continuing obligations apply to foreign companies with listed debt securities?

The same continuing obligations apply to foreign companies with listed debt securities (see *Question 37*).

### 39. What are the penalties for breaching the continuing obligations?

The same penalties for breach of continuing obligations that apply in relation to equity securities also generally apply to debt securities (see *Question 21*).

## REFORM

### 40. Are there any proposals for reform of both equity and debt capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

The TSE and the London Stock Exchange recently established a joint venture entitled Tokyo AIM, a new Tokyo-based equity market for growing companies that is open only to professional investors. Tokyo AIM was established under the FIEA and is intended to provide a new funding option for growing companies throughout Japan and Asia and to create new opportunities for professional investors. Listing application procedures and continuous disclosure obligations are simplified due to the fact that a Japanese-Nominated Advisor (which will be a major investment bank) must provide advice to the issuer from listing and throughout the issuer's presence in Tokyo AIM. Tokyo AIM has established a debt securities market for professional investors only, entitled the TOKYO PRO-BOND Market. According to the Tokyo AIM, the TOKYO PRO-BOND Market will enable issuers to benefit from a speed and flexibility of issuance equivalent to euro medium-term note programmes, through greatly simplified disclosure documents and issuance procedures. Tokyo AIM has been working to commence operations of the TOKYO PRO BOND Market, and operating regulations were approved by the FSA in May 2011.

In November, 2011 Tokyo Stock Exchange Group (TSEG), the holding company of the TSE, and Osaka Securities Exchange, the second largest securities market in Japan, announced that they had agreed to merge their operations by January 2013, with the principal goals of:

- Establishing an unchallenged position among domestic equity and derivatives trading markets.
- Enhancing global competitiveness through scale expansion, product diversification and cost reduction.
- Improving convenience for market participants and investors through a unified exchange platform and integrated technology.



## CONTRIBUTOR DETAILS

**KAZUHIRO YOSHII***Anderson Mōri & Tomotsune***T** +81 3 6888 1186**F** +81 3 6888 3186**E** [kazuhiro.yoshii@amt-law.com](mailto:kazuhiro.yoshii@amt-law.com)**W** [www.amt-law.com](http://www.amt-law.com)**Qualified.** Japan, 1999; New York, US, 2006**Areas of practice.** International financial and securities transactions; mergers and acquisitions; general corporate matters.**HIROTO ANDO***Anderson Mōri & Tomotsune***T** +81 3 6888 1189**F** +81 3 6888 3189**E** [hiroto.ando@amt-law.com](mailto:hiroto.ando@amt-law.com)**W** [www.amt-law.com](http://www.amt-law.com)**Qualified.** Japan, 2002; New York, US, 2009**Areas of practice.** Capital markets; mergers and acquisitions; corporate restructuring; general corporate matters.**AKIRA TAGO***Anderson Mōri & Tomotsune***T** +81 3 6888 4710**F** +81 3 6888 6710**E** [akira.tago@amt-law.com](mailto:akira.tago@amt-law.com)**W** [www.amt-law.com](http://www.amt-law.com)**Qualified.** Japan, 2009**Areas of practice.** Capital markets; mergers and acquisitions.