The Acquisition and Leveraged Finance Review

Eighth Edition

Editor

Fernando Colomina Nebreda

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PREFACE

It is fair to say that the acquisition and leveraged finance industry has shown resilience in relation to the difficult global situation arising from the covid-19 pandemic, particularly in comparison to the previous global crisis in 2008. Generally speaking, while in the first semester of 2020 the deal flow slowed as a result of covid-19 as private equity (PE) houses were forced to shift their focus onto already existing portfolios, there was a noteworthy increase in the acquisition and leveraged market activity in the second semester, predominantly in the last quarter. The following defensive industries have demonstrated their ability to withstand the covid-19 crisis: pharmceuticals; bio sanitary; food; technology, media and telecommunications; and logistics, among others.

Covid-19 vaccines are providing confidence to market players, therefore facilitating the ability to agree on valuations, and also reducing gaps between the expectations of both seller and buyer. The result is more mergers and acquisitions (M&A) activity. Besides, it is reasonable to expect that the emergency measures taken by governments worldwide to address the hardships caused by covid-19 (such as state aid measures or public restrictions regarding foreign direct investment) will gradually be removed. This should, in principle, also lead to more deal flow in the M&A sector.

We are currently witnessing fierce competition in the acquisition and leveraged finance market due to the following factors: (1) an abundance of liquidity (perhaps even more than the previous year since some PE houses now hold additional 'dry powder' that was allocated to 2020 but which they could not use because of covid-19); (2) a low-interest-rate environment, which is likely to persist for several years; and (3) the fact that US investors are increasingly entering EU markets seeking a higher yield and vice versa.

The above is, in turn, resulting in more flexible terms for sponsors. It is also helping to consolidate the trend on convergence between both high-yield structures and loan structures and US and European markets in the world's most sophisticated financial hubs. Once again, this means that careful and thoughtful monitoring of domestic circumstances is imperative.

Finally, as indicated by the European Leveraged Finance Association, it is worth remarking that 'the leveraged finance market is undergoing a seismic shift in approach to ESG [environmental, social and governance] and sustainability'. Indeed, ESG has emerged dramatically in the acquisition and leveraged finance industry as evidenced by the blossoming of loans and bonds linked to sustainability in 2021. Terms will continue to unfold as market players intend to develop broadly ESG terms that go beyond pricing considerations. To this end, transparency will be a key factor in the success of the cross-border expansion tied to this nascent trend.

Many thanks to everybody who has participated in this publication, and a special thank you to Law Business Research.

We sincerely hope that this edition of *The Acquisition and Leveraged Finance Review* will be of assistance to you in this challenging era.

Fernando Colomina Nebreda
Latham & Watkins
Madrid
November 2021

Chapter 8

JAPAN

Satoshi Inoue, Yuki Kohmaru and Hikaru Naganuma[1]

I OVERVIEW

In Japan, one of the most typical methods to finance leveraged acquisitions is by senior term loans. Senior term loans often consist of multiple tranches designed with some tranches having an amortisation feature, while others have bullet repayment. Depending on the working capital requirements of the target company, a revolving facility may be provided together with the term loans. The lenders are banks, in most cases, while certain non-bank lenders are active in providing senior term loans in the market. Foreign bank branches licensed as such in Japan (see Section II.i for licensing requirements) are also occasionally providing leveraged finance in Japan. Senior loans are usually secured by security interests over the material assets (including shares in the target company) of the borrower, as well as security interests over the material assets of, and guarantees from, the target company and its material subsidiaries.

Leveraged acquisitions also occasionally utilise mezzanine financing. Mezzanine financing is usually structured as subordinated loans or preferred shares (convertible or non-convertible to common stock), while subordinated corporate bonds are rare. In the recent market where highly leveraged buyouts are often seen, there are sponsors who seek to benefit from higher leverage at the sponsor level of the corporate structure by using mezzanine holdco loans to the parent of the borrower of senior loans.

II REGULATORY AND TAX MATTERS

i Regulatory issues

Licensing

A foreign investor who intends to engage in the money lending business in Japan must be either licensed as a foreign bank branch under the Banking Act of Japan or registered with the relevant authorities under the Money Lending Business Act of Japan (MLBA), unless the money lending in question satisfies an exemption from the MLBA (such as loans to certain affiliates). Both a licensed foreign bank branch under the Banking Act and a registered money lender under the MLBA are required to maintain a place of business in Japan.

1 Satoshi Inoue, Yuki Kohmaru and Hikaru Naganuma are partners at Anderson Mōri & Tomotsune.

Interest regulation

The interest rate for a loan with the principal amount of more than ¥1 million is capped at 15 per cent per annum (on a simple interest basis) under the Interest Rate Restriction Act of Japan (IRRA). There are arguments on the interpretation of a 'deemed interest' concept[2] provided in the IRRA, especially on whether certain fees (such as agent fees, arrangement fees and commitment fees) payable to lenders constitute deemed interest. It is generally interpreted that arrangement fees and agent fees do not constitute deemed interest based on the reason that the arranger and the agent provide equivalent underlying services, but in practice, many lenders tend to cap the overall costs (including interest rate and fees payable) at 15 per cent per annum. Commitment fees for a credit line (such as a revolving facility) are expressly exempt from constituting deemed interest if the borrower satisfies certain requirements[3] stipulated under the Act on Specified Commitment Line Contract of Japan.

While the 15 per cent cap generally does not cause a problem for senior lenders under the current market conditions of low interest rates, the cap could be a more sensitive issue for mezzanine lenders because the interest rate of the mezzanine loan, which often contains payment-in-kind interest, is usually calculated on a compounded basis and, when aggregated with upfront fees (on a per annum basis), would be relatively high.

ii Tax issues

Withholding tax

Any interest on a loan payable to a non-Japanese-resident lender is subject to a withholding tax of 20 per cent. This withholding tax may be exempted or reduced to a lower rate pursuant to an applicable tax treaty between Japan and the country in which the lender receiving interest is resident. A loan agreement utilised in the Japanese loan market usually contains a tax gross-up provision to compensate the lender for any loss because of deduction of the withholding tax. In the Japanese leveraged finance market, however, the major issues that are subject to negotiation at the stage of structuring the financing often include whether to permit an offshore lender to be part of the syndication or to be eligible for other permitted assignments under the loan agreement.

Stamp duty

Each original copy of a loan agreement executed in Japan is subject to stamp duty under the Stamp Duty Act of Japan. The amount of stamp duty is determined by the facility amount of the loan agreement, and the maximum amount of stamp duty for a loan agreement is ¥600,000 per original copy. Although nominal, stamp duty in the amount of ¥200 per original copy also arises when executing guarantee agreements in Japan.

2 Under the IRRA, any money other than the principal, however described, received by a lender with regard to a loan shall be deemed to constitute interest, except for expenses in connection with the execution of the contract or performance of the obligations.

3 The typical requirements are, among others, that at the time of entry into the loan agreement, the borrower shall be a joint-stock company satisfying any of the following: (1) its stated capital being more than ¥300 million; (2) its net assets (on an unconsolidated basis) being more than ¥1 billion at the end of the latest financial year; and (3) the debt reported on its balance sheet being ¥20 billion or more at the end of the latest financial year. Because a leveraged buyout (LBO) borrower is in most cases a newly established company, the stated capital of more than ¥300 million is typically required at the time of entry into the loan agreement.

III SECURITY AND GUARANTEES

i Guarantee – upstream guarantee

To avoid structural subordination, lenders typically require upstream guarantees from the target company (and its material subsidiaries) to secure the debts of the acquirer owed to the lenders. Under Japanese law, there are no explicit statutory restrictions on providing upstream financial assistance or corporate benefits that would apply to the upstream guarantee. There is no statutory limitation on the amount of a guarantee, and the usual practice is not to limit the guaranteed amount. If, however, there is any minority shareholder of the target, it is commonly understood that the target providing the upstream guarantee may constitute a breach by the directors of the target of their fiduciary duties. A solution commonly adopted in practice is to obtain consent from all minority shareholders for the upstream guarantee. In a transaction where it is difficult to obtain such consent from all minority shareholders (e.g., if the target is a listed company), it is common practice to withhold providing an upstream guarantee until a squeeze-out of minority shareholders is completed.

ii Security interests

Scope of collateral

As collateral in leveraged financing, it is typical for lenders to require: (1) a pledge over shares in the borrower and the target (as well as its material subsidiaries); (2) a pledge over receivables of bank accounts held with lenders; and (3) security interests over other material assets that include, among others, intra-group loans, trade receivables, real estate, movable fixed assets and inventory, intellectual property rights, investment securities, insurance receivables and lease deposit receivables. Under Japanese law, there is no concept of a blanket security interest over all assets of a person or entity such as a floating charge. Accordingly, a security interest needs to be created individually over each type of asset. The scope of the security package is in principle 'all assets', but the security package is usually negotiated between the parties based on a cost-benefit analysis.

Procedures for creating security interests

For a pledge over shares, other than book-entry shares (such as shares in a listed company), a commonly used method for creating and perfecting the pledge is by delivery of the share certificates to the pledgee. Because this method is only applicable to a company that is classified as a company issuing share certificates under the Companies Act of Japan, if the issuer of the pledged shares is not a company that issues share certificates, lenders often require the issuer to amend its articles of incorporation to become a company that issues share certificates.

For a pledge over or security assignment of monetary claims, the security interest that has been created is perfected by either obtaining the consent of debtors of the pledged or assigned claims or registration with the competent authorities. Registration of the pledge or security assignment requires a nominal registration tax. It is legally possible to create a security interest over collective receivables, including current and future claims that are identifiable by type of claims, timing (or a period of time) of occurrence and underlying contracts.

For a security transfer of movable assets that has been created, the security transfer is perfected by the transfer of possession or registration with the competent authorities. Registration requires a nominal registration tax. It is also legally possible to create a security interest over collective movable assets that are identifiable by location and type of assets.

For a mortgage over real estate that has been created, the mortgage is perfected by registration with the competent authorities. Registration requires a registration tax in the amount of 0.4 per cent of the registered secured obligations. A provisional registration (for which the registration tax is a nominal amount) is also available for a real estate mortgage to ensure the ranking of the security interest, provided that subsequent registration is necessary for perfection.

For a pledge over intellectual property rights, the pledge over registered patent rights or trademarks is created and perfected by registration with the competent authorities. Registration requires a registration tax in the amount of 0.4 per cent of the registered secured obligations.

iii Security trust

Under Japanese law, it has been a commonly accepted doctrine that the holder of the security interest must be the same as the creditor of the claims that are secured by the security interest. Accordingly, the practice is for each lender to be a secured party in syndicated loan transactions in Japan because a security agent is not permitted to hold a security interest securing claims owed to these lenders on their behalf.[4] This has been an obstacle to general syndication as an assignment of secured loans requires changes to be made to the security interest already created.

As one possible solution for this inconvenience, an amendment to the Trust Act of Japan was implemented in 2007 introducing the concept of a security trust. This amendment provides for an exception to the above-mentioned doctrine, allowing a trust company licensed under the Trust Business Act of Japan to act as a security trustee that can hold a security interest securing claims owed to lenders. By using the security trust, no individual transfer and perfection procedures for a security interest are necessary when a secured creditor assigns its secured claims because the security holder will continue to be the security trustee despite the change in the holder of the secured claims. In practice, however, security trusts have not been frequently used for syndicated loan transactions in Japan. This situation is presumably, to some extent, because of the lack of conformity of the security trust system with respect to other relevant laws and actual practices, including the registration procedures required for real estate mortgages. Further, the fact that a large part of syndicated loans are 'club deals' rather than 'general syndications' may also be one of the factors for the less frequent use of security trusts.

iv Parallel debt structure

Another possible option is to use a parallel debt structure, whereby a security agent holds a security interest securing a debt owed by the borrower to the security agent that is created in parallel with the actual debts owed by the borrower to the lenders. While we understand that this is a typical structure used in some jurisdictions, especially where a security trustee structure is not available, we do not see this structure used in the Japanese market except for parallel debt structures governed by non-Japanese law (such as English law or New York law) involving a Japanese-law governed security interest.

4 An agent under the common practice in Japanese syndicated loan transactions has the role of administrative work only, such as delivery of documents and notices, confirmation and communication of majority lenders' instructions, paying agency work, and other ministerial work relating to the enforcement of lenders' rights, including in connection with security interests.

One positive move towards utilising the parallel debt structure in Japan is the amendment of the Civil Code of Japan, which came into effect in April 2020. By this amendment, the Civil Code explicitly provides for the concept of joint and several claims among multiple creditors created by a contract that has the features of a parallel debt structure. While it has been understood, even under the Civil Code before this amendment, that these joint and several claims could be validly created, the feasibility of a parallel debt structure governed by Japanese law has been actively discussed and urged by practitioners. It is anticipated that this amendment to the Civil Code will become an explicit provision that can be relied on to adopt a parallel debt structure in future transactions.

IV PRIORITY OF CLAIMS

i Priority of claims upon insolvency

Senior lenders seek to protect the priority of their loan claims in an insolvency scenario of the borrower, typically by use of security interests (against unsecured creditors generally) and subordination arrangements (against subordinated lenders), as further discussed below.

Secured claims, which have priority over unsecured claims in insolvency proceedings, are handled differently depending on the type of insolvency proceeding taking place. In bankruptcy or civil rehabilitation proceedings, secured creditors may enforce security interests outside of the insolvency proceedings without court approval. In corporate reorganisation proceedings, secured creditors are prohibited from enforcing security interests outside of the court proceedings, but will be given priority over unsecured creditors to the extent of the valuation of the collateral.[5]

Subordination arrangements are put in place by contract. There are two possible ways for establishing subordination of claims that are acknowledged in practice. The first approach, which can be typically seen in a case where there exists a shareholder loan along with the senior loan, is by the subordinated lender (the shareholder in this case) agreeing in the subordinated loan agreement between the borrower and the subordinated lender that the subordinated lender will not be entitled to equitable distribution among the creditors in insolvency proceedings until all other unsubordinated claims (including, but not limited to, the senior loan) have been repaid in full. The other approach often used when a mezzanine subordinated loan is utilised, is by the mezzanine lender entering into an intercreditor agreement with the senior lender (typically the borrower is also a party to the intercreditor agreement), stipulating that the mezzanine lender will be subordinated to the senior lender in the order of application of any recovered proceeds among creditors. It is commonly understood that the first method of subordination is recognised by the courts in insolvency proceedings, while the second method would not be binding in insolvency proceedings. Accordingly, when using mezzanine subordinated loans, it is common for the intercreditor agreement to further provide for a turnover provision by which the mezzanine lender is required to turn over any recovered proceeds, including distributions received in insolvency proceedings, to the senior lender so that the priority of the senior lender is subsequently achieved contractually.

5 Unsecured claims are usually treated as general claims in insolvency proceedings that will receive pro rata distribution only after the aforementioned treatment of the secured creditors.

ii Key features of intercreditor agreements

In addition to the turnover provision mentioned above, there are certain other provisions seen in intercreditor agreements that protect the seniority of loans. Intercreditor agreements typically contain provisions for permitted payments to subordinated lenders (the payments for which will be suspended under certain conditions, such as breach of financial covenants) and restrictions on enforcement of certain creditors' rights by subordinated lenders. In terms of the enforcement of creditors' rights, inclusion of enforcement standstill provisions is sometimes negotiated, but not yet commonly used in the Japanese market. One of the major provisions that is often negotiated regarding creditors' rights is the 'deemed consent' provision (and the scope of its exceptions) by which the subordinated lender is deemed to have given consent to certain matters requiring consent by the subordinated lender under the relevant agreement between the subordinated lender and the borrower if the senior lender gives consent to these matters.

In recent years, it has become popular to grant drag-along rights to senior lenders that will, upon enforcement of the pledge over shares in the borrower, entitle the senior lenders to require subordinated lenders to mandatorily sell their subordinated loans to whomever the senior lender designates, including the new purchaser of the shares through the enforcement, which can result in facilitating the sale of the shares in the borrower. The consideration that the subordinated lenders will receive for the sale of their loans will be the remainder of the proceeds generated from the enforcement (if any) after full recovery of the senior loans. In this respect, it is also becoming popular to negotiate the inclusion of the concept of certain competitive sales processes upon a distressed sale, which is often seen in Loan Market Association (LMA)-based financing documentation.

V JURISDICTION

Japanese courts generally recognise the validity and enforceability of a choice-of-law provision or jurisdiction that is agreed upon by the parties in a loan agreement. In cross-border transactions where non-Japanese lenders or non-Japanese borrowers are involved, the loan agreement is often governed by a law other than Japanese law (such as English law or New York law). The governing law of security documents is generally determined by the jurisdiction in which the collateral assets are located.

Japanese courts also generally recognise a final and conclusive judgment for monetary claims rendered by a foreign court as valid and enforceable, provided that:

a the foreign court is considered to have valid jurisdiction over the case pursuant to the relevant laws of Japan and treaties;

b the unsuccessful defendant duly received service of process necessary for the commencement of the court proceedings, other than by public notice or notice comparable thereto, and in a manner that is not contrary to the provisions of the relevant bilateral or international conventions concerning service of process or, in the absence of receipt, has appeared before the court;

c the contents and court proceedings of the judgment rendered by the foreign court are not considered to be contrary to the public order or good morals of Japan; and

d there exists reciprocity as to recognition of foreign judgments between the jurisdiction of the relevant foreign court and Japan.

When the prevailing party enforces the foreign judgment, the party must file a lawsuit in a competent court in Japan to obtain a separate judgment that approves the enforcement of the foreign judgment in Japan. In this lawsuit, however, the merits of the case found in the foreign judgment are not re-examined by the Japanese court.

A foreign investor should note that, in relation to item (b) above, the concept of a 'process agent', which is commonly used in cross-border transactions, is not recognised as valid service of process in court proceedings in Japan. Accordingly, it is possible that a foreign judgment obtained in a lawsuit where service of process is made via a process agent may be considered not to satisfy the requirement of item (b) above and may, therefore, not be enforced in Japan.

Japan is also a contracting country to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), and, accordingly, a foreign arbitral award can be enforced in Japan in accordance with the provisions of the New York Convention.

VI ACQUISITIONS OF PUBLIC COMPANIES

i Structure of acquisitions of public companies

Outline

A typical structure in Japan for acquisitions of public companies involving acquisition financing is a two-step acquisition comprising a first-step tender offer and a subsequent minority squeeze-out procedure. The acquirer consummates a tender offer to acquire a majority of the issued and outstanding shares in the target company, and thereafter implements a procedure to squeeze out minority shareholders (as explained in detail below). To ensure that the minority squeeze-out can be successfully concluded, in many cases the floor of the number of shares to be acquired in the tender offer is set at two-thirds of the outstanding shares, allowing a special resolution at a shareholders' meeting to be passed.

Reform of squeeze-out structure

Historically, procedures for a squeeze-out of minority shareholders had not been explicitly stipulated in the Companies Act of Japan until an amendment to the Companies Act of Japan was enacted in 2015 (the 2015 Amendment). Prior to the 2015 Amendment, practitioners used a complex and time-consuming method for squeezing out minority shareholders by using 'callable shares' combined with a special resolution at a shareholders meeting, which took around three months until the squeeze-out became effective.

The 2015 Amendment offers a more simplified and shortened method for squeezing out minority shareholders compared to the traditional method, namely a cash-out by using a 'conditional call option' exercisable by a Special Controlling Shareholder (as defined below). A person or entity that holds 90 per cent or more of the total voting rights in the target company (the Special Controlling Shareholder), either by itself or together with its wholly owned subsidiaries, may exercise a conditional call option and thereby demand other shareholders and holders of share options to sell all of their outstanding shares and share options in the target company (other than any treasury shares) to the Special Controlling Shareholder, subject to approval of the board of directors of the target company. After the 2015 Amendment, an acquirer who has acquired 90 per cent or more of the total voting rights in the target company as a result of the tender offer is granted this straightforward method of squeeze-out with just board approval of the target company being required (i.e., without obtaining shareholder approval). This squeeze-out may be concluded within approximately one or two months of the settlement of the tender offer.

Even in cases where the conditional call option is not available (i.e., the shares acquired by the acquirer did not reach 90 per cent), the acquirer who has become a holder of two-thirds or more of the outstanding shares in the target company after the tender offer can now choose an alternative squeeze-out method that has become a recognisable method owing to reforms to the rights of minority shareholders under the 2015 Amendment. This squeeze-out method is conducted by way of consolidating shares by using a ratio that would result in all minority shareholders (which means shareholders other than the acquirer) becoming entitled to receive only fractional shares (which will be subsequently cashed out with court approval).

ii Acquisition financing for tender offers

Under the current regulations applicable to tender offers, a 'financing out' condition is not allowed for the acquirer. Given that the acquirer is not permitted to withdraw a tender offer because of its financing failure, the acquirer usually obtains a financing commitment letter from the lender prior to the tender offer launch (or, in some cases, enters into a definitive loan agreement).

While the regulations do not explicitly require strict 'certain funds', the competent authorities practically require certainty of the financing. In this regard, under the tender offer regulations, the acquirer is required to disclose a document evidencing the certainty of funds necessary for the settlement of the tender offer via the internet disclosure system of the Financial Services Agency of Japan (the FSA) named the Electronic Disclosure for Investors' NETwork (EDINET). For an acquisition financing, it is typical to disclose a summary commitment letter issued by the lender to the acquirer.[6] The terms of the letter are usually based on the major terms and conditions agreed in the long-form commitment letter (or, if available, the definitive loan agreement), but it is not practically required to disclose the economic conditions such as margins and fees.

If a fund formed as a partnership is to provide debt or equity financing to the acquirer, the authorities may in practice seek verification regarding the availability of a capital call, including the required funding by limited partners upon this call.

VII THE YEAR IN REVIEW

According to a recent research report,[7] the total number of reported leveraged buyouts and the aggregate amount of leveraged financing in Japan were approximately 47 transactions and ¥240 billion in 2015, 61 transactions and ¥390 billion in 2016, 66 transactions and ¥1,140 billion in 2017, 66 transactions and ¥980 billion in 2018, 80 transactions and ¥750 billion in 2019, and ¥845 billion in 2020. Among them, the total number of reported leveraged buyouts utilising mezzanine financing and the aggregate amount of mezzanine financing in those buyouts were nine transactions and ¥17.5 billion in 2015, eight transactions and ¥14.1

6 According to guidance issued by the FSA, the FSA requires that a summary of conditions precedent to the financing be described in such letter, and that the acquirer or the lender engage in a prior consultation with the competent authorities delegated by the FSA to verify the certainty of the financing.

7 See Japan Buy-out Research Institution, *Yearbook of the Japan Buy-out Market – [Second half, 2020]*, pp. 174–185 (2021).

billion in 2016, 13 transactions and ¥48.5 billion in 2017, 15 transactions and ¥1,192.9 billion in 2018, 26 transactions and ¥163.7 billion in 2019, and 16 transactions and ¥367.3 billion in 2020. After the acquisitions are closed using leveraged finance, refinancing or recapitalisation transactions sometimes take place. These numbers indicate that there is a general increase in the number of leveraged buyouts and growth in deal amounts. When examined closely, the data shows three trends: (1) the number of mega-size deals remains relatively high, which brings up the total deal amount in 2017 to 2020 compared to the preceding years; (2) a disproportionate increase in small-size deals with a decrease in mid-size deals, which accounts for the slight decrease in the total deal amount in 2018 to 2020 compared to 2017; and (3) a notable increase in both the number and the amount of mezzanine financing in 2018 to 2020 compared to the preceding years.

VIII OUTLOOK

More than a decade of time has passed during which buyouts driven by private equity funds have become popular in Japan, and the market practice of leveraged finance has become well established. In the course of the development of the market, financing needs in leveraged acquisitions are becoming diversified leading to a variety of LBO or leveraged finance structures being utilised, such as mezzanine holdco loans, subscription facilities and recapitalisation by way of a trade sale or dividends.

In recent years, major global private equity funds have been actively investing in Japan with their operations being localised to some extent. Along with their expanded presence, there has been the need for transactions to adopt features of global leveraged finance, such as a 'certain funds' concept (especially in bid transactions) that was rarely seen under the traditional banking practice in Japan.

Other notable recent trends of M&A in Japan include the increasing number of carve-out transactions in traditional manufacturing and service industries, and horizontal integration including through roll-up acquisitions. Joint investment by private equity funds and strategic enterprises are also becoming popular. This diversification in acquisition structures impacts financing structures for these acquisitions and is driving acquisition financing to continue being a vibrant and fast-growing practice area in Japan.

Since 2020, the global covid-19 pandemic has had a significant impact on existing leveraged financing where many portfolio companies faced financial crisis and required financial covenant waivers or emergency credit facilities from bank lenders. After a temporary downturn in M&A transactions across Japan during the first half of 2020, private equity funds have re-started engaging in leveraged buyout transactions, both private and public. Having said that, financial terms including financial covenants offered by lenders remain stringent due to ongoing economic uncertainty. The impact of the pandemic on leveraged financing in 2021 remains to be seen, with significant factors being any resurgences of covid-19 and the successful development of vaccines and their impact on the global economy.

Appendix 1

ABOUT THE AUTHORS

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Satoshi Inoue is a partner at Anderson Mōri & Tomotsune and leads its acquisition finance team. He has been involved primarily in, and has extensive experience of, the field of leveraged finance, private equity and structured finance. He has also been involved in turnaround transactions and debt restructuring for insolvent enterprises. He was seconded to a government financial institution (2001–2008). He is a member of the Dai-ni Tokyo Bar Association in Japan (since 2000).

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Yuki Kohmaru is a partner at Anderson Mōri & Tomotsune, and is well versed in acquisition finance, debt and equity mezzanine finance and other corporate finance transactions. He also has extensive experience in corporate transactions including M&A transactions. He regularly advises banks and financial institutions, private equity funds, mezzanine funds and other institutional investors and business corporations on a broad range of domestic and cross-border transactional matters. He is a member of the Dai-ni Tokyo Bar Association in Japan (since 2005).

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