



Japan



Lending Overview:

Conducting loan origination activities to borrowers in Japan is likely to trigger a requirement to register as a money lender (which requires a presence in Japan). Exemptions are limited but activities may be possible where using an alternative structure. Conducting loan purchase activities or loan sub-participation or risk participation activities is generally permitted without triggering licensing/registration requirements

Security & Enforcement Overview:

Cross-border lenders of any type can directly hold security granted by an entity in Japan – no third-party is required. There is no universal corporate security interest or debenture covering all present and future assets but most common assets can be the subject of separate security. Registration is required for specific asset types. In addition, certain notification and reporting requirements may apply. The enforcement regime is generally considered to be creditor-friendly and a range of enforcement options are available

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Points to note



Scope of activities

- Where lending is conducted in conjunction with deposit-taking activities, this amounts to banking business and a separate banking business regime is triggered
- Conducting loan purchase activities may trigger restrictions where the activities include providing new credit or factoring transactions that are considered economically similar to lending. Additional considerations apply where purchasing non-performing loans



What types of cross-border lender can conduct the following activities?

	Loan Origination Activities	Loan Purchase Activities	Loan Sub-Participation or Risk Participation Activities
Fund	<p>❌ Challenging but may be workable depending on how activity structured</p>	<p>✅ Generally permitted without a licence/registration provided the activities do not include providing new credit or factoring transactions that are considered economically similar to lending.</p> <p>Additional considerations apply to non-performing loans and obligations may apply to transferee. In practice, the transferor will typically be a Japanese bank</p>	<p>✅ Generally permitted without a licence/registration. In practice, the initiator of the loan will typically be a Japanese bank</p>
Holding Company/ SPV	<p>❌ Challenging but may be workable depending on how activity structured</p>	<p>✅ Generally permitted without a licence/registration provided the activities do not include providing new credit or factoring transactions that are considered economically similar to lending.</p> <p>Additional considerations apply to non-performing loans and obligations may apply to transferee. In practice, the transferor will typically be a Japanese bank</p>	<p>✅ Generally permitted without a licence/registration. In practice, the initiator of the loan will typically be a Japanese bank</p>
Bank/Credit Institution	<p>❌ Challenging but may be workable depending on how activity structured</p>	<p>✅ Generally permitted without a licence/registration provided the activities do not include providing new credit or factoring transactions that are considered economically similar to lending. Where lending is conducted in conjunction with deposit-taking activities, this amounts to banking business and a separate banking business regime is triggered.</p> <p>Additional considerations apply to non-performing loans and obligations may apply to transferee. In practice, the transferor will typically be a Japanese bank</p>	<p>✅ Generally permitted without a licence/registration although where lending is conducted in conjunction with deposit-taking activities, this amounts to banking business and a separate banking business regime is triggered. In practice, the initiator of the loan will typically be a Japanese bank</p>
Other	<p>❌ Challenging but may be workable depending on how activity structured</p>	<p>✅ Generally permitted without a licence/registration provided the activities do not include providing new credit or factoring transactions that are considered economically similar to lending.</p> <p>Additional considerations apply to non-performing loans and obligations may apply to transferee. In practice, the transferor will typically be a Japanese bank</p>	<p>✅ Generally permitted without a licence/registration. In practice, the initiator of the loan will typically be a Japanese bank</p>

Alternative Structures



Where not permitted, are there any alternative structuring options for loan origination?

Lending to affiliate of borrower in another jurisdiction		Permitted in principle. Caution is advised against risk of being determined to be circumventing the Japanese rules
Structuring lending instrument as a note or bond		Acquisition of/subscription to notes or bonds is generally not subject to licensing or regulatory restrictions. Additional obligations may apply with respect to the entity that issues the notes/bonds and to firms that are involved in handling/intermediating the securities
Using a securitisation structure/vehicle		The process of securitisation up to the transfer of the receivables of a Japanese company to an SPV is not subject to licensing or regulatory requirements under Japanese regulations. However, the issuance of the SPV's notes can be subject to Japanese securities regulation
Other		Where a cross-border lender is not able to participate in a particular lending activity (or in a primary syndication), it could participate by means of an assignment/transfer of the loan by a Japanese bank. Also possible to acquire non-securitised loan receivables without triggering restrictions

Reverse Enquiry & Marketing Activities



Will the following activities with borrowers trigger licensing/registration/authorisation requirements?

Responding to reverse enquiries		Permitted where lending activities are not regulated. Otherwise, there is no specific reverse enquiry exception/exemption in Japan and only very limited activities in response to a reverse enquiry are permitted without triggering restrictions
General marketing of brand/services		General marketing activities (such as brand awareness, general awareness-raising of product/service lines, attending/speaking at events) will not typically trigger restrictions
Active marketing activities		The framework for conducting lending/trade finance activities also applies to marketing of such activities

Lender-to-Lender Activities



Will the following activities with other lenders trigger licensing/registration/authorisation requirements?

Lender-to-lender discussions and/or participation in loan syndication roadshows		There is no clear criteria on whether lender-to-lender discussions are permitted in Japan. However, even if a cross-border lender is able to conduct lender-to-lender discussions, it will not be able to participate in a syndicate without needing to consider the restrictions/options set out in Lending Activities. While the cross-border lender may not be able to participate in primary syndications, it could participate by means of an assignment/transfer of the loan by a Japanese bank
Organising/participating in discussions with arranging bank, facility agent and/or security agent/trustee		See above
Participating in a syndicate following an invitation from an arranging bank		In this scenario, even if a cross-border lender is able to respond to the invitation from the arranging bank, it will not be able to participate in the syndicate without needing to consider the restrictions/options set out in Lending Activities. The fact that the invitation is deemed a reverse enquiry would not make a difference to the analysis. While the cross-border lender may not be able to participate in primary syndications, it could participate by means of an assignment/transfer of the loan by a Japanese bank
Acting as facility agent		Permissible without requiring a licence where activities limited to administrative matters. Restrictions may apply where acting as an agent or intermediary for the finalising of a loan agreement on behalf of participants

Trade Finance Activities



There is a separate regime applicable to trade finance activities in Japan. A cross-border lender would need to determine if the transaction in question would be deemed as a “true sale”, which would fall outside the scope of restrictions, or as a collateralised loan structure in the form of a sale of receivables or goods/services, which would trigger the restrictions, as well as a prohibition of usurious interest rates

Security/Collateral



Cross-border lenders of any type can directly hold security granted by an entity in Japan – no third-party is required. There is no universal corporate security interest or debenture covering all present and future assets but most common assets can be the subject of separate security. Registration is required for specific asset types. In addition, certain notification and reporting requirements may apply

Can Security be taken over the following assets?

Shares		Yes, by way of pledge or assignment. Method will depend on if share certificates have been issued
Bank Accounts		Yes, by way of pledge over a time deposit or borrower establishing account with agent bank. There are some concerns over whether a pledge over liquid deposits is effective
Real Estate		Yes, by way of mortgage
Moveables		Yes, by way of pledge or security assignment

Related issues

Can a cross-border lender receive the benefit of guarantees without restriction?		Generally, yes. In certain circumstances it may be unlawful for certain entities to give financial assistance. It can be more difficult to establish corporate benefit in relation to upstream guarantees
Can a security agent/trustee be appointed?		Yes, although security trust/agent structures uncommon
Are there registration requirements?		Yes, depending on type of security (e.g. for moveables, real estate, receivables and intellectual property). In addition, certain notification and reporting requirements may apply, depending on the nature and size of the security taken

Enforcement Regime



Key Risks and Considerations

Are there pre-requisites to enforcement?		Right to enforce generally arises after the occurrence of the due date of the secured loans. In addition, a cross-border lender can accelerate if any event of default stipulated in the security agreement/loan agreement happens with or without notice to the borrower. Note that there is a ‘good faith’ doctrine which may prevent acceleration and enforcement for a minor default, such as failure with respect to operational matters
Any particular legal or practical difficulties when enforcing?		Generally, no. The enforcement regime is generally considered to be creditor-friendly
How is security usually enforced?		<p>Range of enforcement remedies available. Under standard security documentation in Japan, a lender has a discretion on how to enforce the security and parties may agree in advance in the security agreements to enforce security by private sale. A lender usually chooses any of the following processes:</p> <ul style="list-style-type: none"> • acquiring and holding the object of the security on its own account; • disposing of the object of the security by non-judicial (out-of-court) process; and • enforcement of a security interest by a judicial (in-court) process (less frequently used)