NOERR

AMT / ANDERSON MORI & TOMOTSUNE

Japanese and German Obligors in Cross-Border Acquisition Finance

A Comparative Legal Analysis

May 2025

Japanese and German Obligors in Cross-Border Acquisition Finance: A Comparative Legal Analysis

This article was authored by Ryo Sakamoto, international secondee at Noerr Partnerschaftsgesellschaft mbB and senior associate at Anderson Mori & Tomotsune, in collaboration with his colleague Hikaru Naganuma, banking & finance partner at Anderson Mori & Tomotsune. Both have extensive experience in advising lenders and borrowers on domestic and cross-border acquisition financings. The notes on the similarities and differences to German law were contributed by Noerr's banking & finance partner Michael Schuhmacher LL.M., who also specialises in acquisition financings.

I. Introduction

As major exporting nations, Japan and Germany are among the countries most affected by the new U.S. tariffs. It is no surprise that Europe and Asia are rediscovering free trade in light of these policies, with discussions currently taking place across Asia to enhance trade agreements with the EU due to the uncertainty surrounding U.S. trade relations.

Recent years have witnessed notable acquisition activities between Japan and Germany, highlighting the importance of understanding cross-border dynamics. In 2024, Japan Pulp & Paper Group acquired the insolvent Inapa Group, a leading European paper and packaging service provider with 16 sites in Germany. More recently, JTEKT Corporation, a Japan-based global automotive supplier, reached a definitive agreement with German special situation investor AEQUITA to divest its needle roller bearings business in Europe, including shares in the German subsidiary.

These transactions highlight the ongoing economic integration between Japan and Germany. In this international context, cross-border acquisitions frequently involve complex acquisition finance arrangements that present unique legal considerations across jurisdictions. Navigating these complexities requires a thorough understanding of the legal frameworks and market practices specific to each jurisdiction. This article outlines the key legal aspects relating to Japanese and German obligors in cross-border acquisition finance transactions, focusing on their similarities and differences.

II. Key Characteristics of Obligors

1. Obligor Entities/Corporate Forms

Japanese Law:

In Japan, the stock corporation (*kabushiki kaisha*, abbreviated as *KK*) and the limited liability company (*godo kaisha*, abbreviated as *GK*) are the two most common corporate forms. The *KK* represents Japan's predominant corporate entity and accordingly appears most frequently in acquisition finance transactions. On the other hand, the *GK* is a less commonly utilised corporate form and consequently has limited presence in the acquisition finance landscape.

German Law:

In German acquisition finance transactions, a company with limited liability, the limited liability company (*Gesellschaft mit beschränkter Haftung*, abbreviated *GmbH*) is the predominant corporate form. In contrast, the German stock corporation (*Aktiengesellschaft*, abbreviated *AG*) is less frequently the subject of acquisitions and acquisition financings, which is on the one hand related to its generally lower prevalence in Germany and on the other hand on the stricter capital maintenance rules applicable to German stock corporations, which somewhat complicates the financing.

2. Conditions Precedent/Corporate Documents

Japanese Law:

In Japanese acquisition finance transactions, the following corporate documents of a Japanese obligor are typically required as conditions precedent:

- Commercial register extracts (*rireki jiko zenbu shomeisho*);
- Articles of association (*teikan*);
- Rules of the board of directors (*torishimariyaku-kai kisoku*) (for a *KK* with the board of directors);
- Shareholders' register (*kabunushi meibo*) for a *KK* or equity holders' list (*shain meibo*) for a *GK*;
- Certificate of corporate seal (*inkan shomei sho*) or certificate of signature (*sign shomei sho*) (depending on the execution method of relevant documents); and
- Corporate resolutions.

German Law:

This is very similar to German law. The typical corporate documents of a *GmbH* to be delivered as conditions precedent are electronic commercial register extracts (*elektronische Handelsregisterauszüge*), rules of the board of directors or an advisory board (*Geschäftsordnungen*), articles of association (*Gesellschaftsvertrag*), shareholder list (*Gesellschafterliste*), a director or formalities certificate (*Geschäftsführerbestätigung*), and shareholder resolution (*Gesellschafterbeschluss*). Resolutions from the board of directors, or a supervisory board, are rather the exception.

III. Guarantees

Japanese Law:

Under Japanese law, there are two main types of guarantees that a Japanese obligor can provide: an (ordinary) guarantee (*hosho*) and a joint and several guarantee (*rentai hosho*). An ordinary guarantee functions as a secondary obligation that provides a guarantor with two statutory protections, where the guarantor may require the creditor to:

- first demand performance from the primary obligor before making such demand against the guarantor (*saikoku no koben*); and
- first enforce against the primary obligor's assets before seeking recourse against the guarantor (*kensaku no koben*), provided the guarantor proves that the primary obligor has sufficient assets to satisfy its obligation and that enforcement would be feasible.

In addition to the ordinary guarantees, Japanese law recognises joint and several guarantees. Unlike the ordinary guarantee, the joint and several guarantees offer none of these statutory protections to the guarantor. Under this type of guarantee, a creditor can demand payment from the guarantor without first demanding payment from the primary obligor. In Japanese acquisition finance transactions, market practice consistently requires Japanese obligors to provide joint and several guarantees.

German Law:

This is somewhat different under German law. German law also recognises a so-called guarantee (*Garantie*) or surety (*Bürgschaft*) on first demand. However, it is still not definitively clarified who can effectively assume a payment obligation on first demand as a surety or guarantor. Given the risks for the surety or guarantor, the German Federal Court of Justice (*Bundesgerichtshof*) has long reserved the use of a standard form surety or guarantee on first demand primarily for credit institutions and insurance companies. Whether larger companies with their own legal and financial departments, or a company advised externally by law firms that is not engaged in the credit business, can take on a guarantee obligation on first demand in contracts formulated by the creditor is disputed. Only after assessing each individual case has the German Federal Court of Justice (*Bundesgerichtshof*) permitted guarantees or sureties on first demand for companies that are not active in the financial sector. For this reason, the standard facilities agreements governed by German law from the Loan Market Association explicitly exclude guarantees on first demand, which often leads to inquiries in cross-border acquisition finance transactions.

IV. Security

1. Key Considerations for Security

Japanese Law:

Traditional Japanese legal doctrine requires that the same party hold both the security interests and the underlying secured claim. Consequently, a security agent cannot hold security interests on behalf of lenders. Each lender is required to become a party to security agreements. Exceptions to this traditional notion are security trust and parallel debt structures. However, neither structure is commonly utilised in Japanese law-governed transactions due to the limitations outlined below.

- **Security Trust:** Japanese law recognises the concept of a security trust. A licensed trust company can be appointed as a security trustee. However, a security trust has not been widely utilised due to its structural complexity and high costs associated with a licensed trustee.
- **Parallel Debt:** The feasibility of a parallel debt structure has been discussed among market participants. While it is considered theoretically possible, there are no reported Japanese law-governed transactions that utilise the parallel debt structure due to a lack of certainty. However, recent amendments to the Civil Code (Act No. 89 of 1896, as amended) now recognise joint and several claims created by agreement among parties. This amendment is expected to facilitate the adoption of the parallel debt structure in future transactions.

Separately, in foreign law-governed acquisition finance transactions involving Japanese obligors, parallel debt structures are commonly utilised to address the limitations of traditional Japanese security doctrines (see **VI. Loan Transfer** below).

Moreover, it is worth noting that, unlike German law, Japanese law recognises neither the concept of 'accessory security' (*akzessorische Sicherheiten*) nor 'non-accessory security' (*nicht akzessorische Sicherheiten*). This distinction is therefore irrelevant when structuring security arrangements for Japanese obligors.

German Law:

In German law governed acquisition finance transactions, lenders do have three different structuring options for creating security interests: (1) the security interest can be established for each lender in the amount of its respective share of the total loan amount, with management transferred to a security trustee, (2) for a security pool, or (3) for a security trustee of the lenders.

In practice, security interest is typically established according to these different structuring options and depending on the type of security interest to be created.

- **Security Trust:** In Germany, the concept of a security trust is recognised and security trust or security pooling arrangements are common in practice. The legal relationships in a security trust are uniformly governed by a security trust agreement, which consolidates various legal relationships in a single document, or directly in the facilities agreement.
- **Parallel Debt:** Also, parallel debt structures are market standard in Germany and are commonly used. However, from a legal point of view, it (still) cannot be ruled out that the creation of a parallel debt as a basis for accessory security rights under German law may be deemed a circumvention of the principle of the accessoriness (*Akzessorietätsprinzip*) and, to the extent applicable, of the principles for the creation of a trust (*Treuhand*) under German law which may lead to a German court denying the validity or enforceability of the security interest created by the accessory security agreements. This argument has – as far as we are aware – not yet been tested by a German court. Thus, it is best practice for such accessory security agreements that each lender becomes a party, not only the security agent.

As already mentioned before, German law differentiates between 'accessory security' (*akzessorische Sicherheiten*) and 'non-accessory security' (*nicht akzessorische Sicherheiten*). Security interests over certain assets (e.g., real estate) may be created in either form. Security over other assets may only be created in accessory or a non-accessory form. For example, security over shares can only be created in accessory form. Very similar to the traditional Japanese legal doctrine, an accessory security interest under German law is a security or right that attaches to a certain debt and exists only to the extent such debt exists and is therefore subject to all defences against that debt. It also means that such security interest is discharged if the underlying debt claim is discharged. This means that, as under Japanese law (see **VI. Loan Transfer** below), care must be taken when transferring loans secured by accessory security under German law. If an English law novation is used (in which the original loan to the old lender is replaced with a new loan to the new (transferee) lender) then the security may be lost in the process.

2. All Assets Security

Japanese Law:

Unlike other jurisdictions that permit floating charges or blanket liens, Japan has no concept of 'all assets' security that can collateralise all assets of an obligor. Consequently, security must be taken on an asset-by-asset basis. This asset-by-asset approach often creates significant financial and administrative burdens for all parties.

A notable legislative initiative in this area is the Act on the Promotion of Cash Flow-Based Lending, enacted on 7 June 2024. This act introduces a new type of security interest called 'Enterprise Value Charge' (*kigyo kachi tanpo ken*), which will essentially function as an 'all assets' security. This act will come into effect within two years and six months from the date of enactment. Currently, the Government intends to implement this act by spring 2026.[1] While this legislative development is significant, its practical impact on acquisition finance remains to be seen.

German Law:

In Germany it is also necessary to take security over each type of assets. The concept of a universal business charge or floating charge over all the assets of a company does not exist.

[1] The Financial Services Agency, *FSA Strategic Priorities July 2024 - June 2025* (August 2024) 22-23 <www.fsa.go.jp/en/news/2024/20240913/strategicpriorities_jul24-jun25.pdf> accessed 2 May 2025.

3. Security Package

Japanese Law:

Lenders in Japanese acquisition finance typically aim to collateralise all assets of the borrower, the target company and its material subsidiaries. However, as security must be taken on an asset-by-asset basis, parties are required to negotiate the security package based on asset values and the practical burden of granting security. As a result, security packages are tailored to each specific transaction.

A typical security package includes, besides guarantees, security over various assets of the borrower, the target and its material subsidiaries: shares, bank deposits,[2] intercompany loans, and other material assets such as real estate, insurance proceeds, movable assets and intellectual property.

The following section outlines the key security interests commonly utilised in acquisition finance transactions involving Japanese obligors:

- **Shares:** Security over shares can be granted by a pledge (*shichi ken*). The method for creating and perfecting a pledge over shares depends on the form of shares in a *KK*:
  - If a *KK* issues share certificates: A pledge over this type of shares (i.e., shares in a 'share certificate-issuing company'; *kabuken hakko kaisha*) is created by agreement between parties and physical delivery of share certificates to the pledgee. A pledge is perfected through the pledgee's subsequent continuous possession of share certificates.
  - If a *KK* does not issue share certificates: A pledge over this type of shares (i.e., shares in a 'non share certificate-issuing company'; *kabuken fuhakko kaisha*) is created by agreement between parties and perfected through registration in the company's shareholders' register (*kabunushi meibo*).
  - If a *KK* issues dematerialised shares (i.e., shares in a listed company): Transfers of this type of shares are recorded in a book-entry system administered by the Japan Securities Depository Center, Incorporated (JASDEC). A pledge over dematerialised shares is created by agreement between parties and a record of the transfer of shares to the pledgee's pledge sub-account managed by the account management institution under the JASDEC system.
- **Membership Interests:** Similarly, security over membership interests in a *GK* can be granted by a pledge. Creation and perfection methods are the same as for security over receivables (see below). The market practice is to obtain consent with a certified date (*kakutei hizuke*)[3] from equity-holders.
- **Receivables:** Security over receivables (e.g., bank deposits, intercompany loans, insurance proceeds and trade receivables) can be taken by a pledge or a security assignment (*joto tanpo*). A pledge over or a security assignment of receivables is granted by agreement between parties. Perfection requires one of the following:
  - Send a notice with a certified date (*kakutei hizuke*) to the third-party obligor;
  - Obtain a consent with a certified date (*kakutei hizuke*) from the third-party obligor; or

[2] For deposit security, it is standard practice to take security over accounts held with lender institutions only, as deposit agreements typically prohibit the creation of security interests over deposits.

[3] A certified date (*kakutei hizuke*) is a date stamp obtained from a notary office certifying the existence of a document on the stamped date. The cost of obtaining this date-certification is JPY 700 per document.

- Register the pledge or security assignment at the Legal Affairs Bureau.

Under Japanese law, security interests may be created over future receivables provided that they are sufficiently identifiable.

- **Real Estate:** Security over real estate can be granted by a mortgage (*teito ken*). A mortgage is created by agreement between parties and perfected through registration at the Legal Affairs Bureau. A qualified judicial scrivener (*shiho shoshi*) usually handles this registration.

  Registration of a mortgage incurs a registration tax at 0.4% of a registered secured obligation. In practice, to reduce this tax burden, parties sometimes register an amount lower than the actual secured obligation. Alternatively, parties may opt for a provisional registration (*kari toki*), which requires only a nominal registration tax and reserves priority over subsequently registered mortgages. However, to fully perfect a mortgage, a provisional registration must eventually be converted to a definitive registration (*hon toki*), which will trigger the full registration tax payment.

  Real estate is a common security asset in Japanese acquisition finance due to its high value and liquidity, whereas it is used infrequently as security in German acquisition finance transactions.

- **Movable Assets:** Security over movable assets is typically created through a security assignment. A security assignment is established by agreement between parties and can be perfected by either transferring possession of assets or by registration at the Legal Affairs Bureau. For perfection by possession, parties typically use constructive delivery rather than physical transfer of the assets.

- **Intellectual Property:** Security over intellectual property is typically granted by a pledge. The creation and perfection method varies by the type of intellectual property:

  - **Trademarks and Patents:** A pledge is created and perfected by agreement between parties and registration at the Patent Office.
  - **Copyrights:** A pledge is created by agreement between parties and perfected by registration at the Agency for Cultural Affairs.

  Similar to real estate mortgages, registration of a pledge over intellectual property incurs a registration tax at 0.4% of a registered secured obligation, and parties sometimes register the secured obligation at a lower amount to reduce the tax burden. In contrast to German practice where intellectual property is commonly taken as collateral, such assets are not frequently included in security packages for Japanese acquisition finance transactions.

German Law:

The Japanese market practice aligns with the approach and procedure in acquisition finance transactions involving German obligors. In Germany, security must be taken over each type of asset, and the security packages vary from transaction to transaction based on the specific circumstances and asset values involved.

- **Shares:** In Germany, security over shares depends on the type of company and is created by way of a pledge agreement which constitutes an accessory security interest.
  - Security over shares in a *GmbH* may be taken in the form of a share pledge agreement. Shares in a *GmbH* are not embodied in share certificates. The pledge over shares in a *GmbH* will, as a matter of German law, need to be notarised before a German public notary, thus incurring quite significant notarial fees. The cost of the notarisation will follow the value of the transfer, most likely being the nominal value of the shares. Generally, the pledge agreement will provide that the pledgor is authorised to exercise all membership

rights and collect all profit payments. Following, in particular, an event of default, the pledgees will be entitled to receive profit payments. The membership rights, however, should remain with the pledgor at all times.

– In principle, security over German *AG*s follows the same rules. However, shares in a German stock corporation may be in certificated form meaning that the perfection of a pledge requires physical delivery of the share certificate to the pledgee, similar to a *KK*.

- **Receivables:** Under German law, security over receivables can be taken by way of an assignment of receivables (*Sicherungsabtretung von Forderungen*). Such agreement does not require notarial form and is a non-accessory security interest. Such assignment for security purposes is created by way of a private agreement between the assignor and the beneficiary. The security assignment of receivables is, in the majority of cases, constituted in a global form, i.e., all sorts of receivables of the assignor, including future receivables, are assigned to the beneficiary. Care must be taken to ensure that the receivables are clearly identified, as it is a legal requirement that the receivables must be identifiable. Notification of the third-party debtors is not a prerequisite for the validity and effectiveness of the security assignment.
- **Real Estate:** German law provides for two basic types of security interest over real estate which allow the beneficiary to use the proceeds generated and/or the value represented by the real estate to discharge the secured liability. One is the mortgage (*Hypothek*) which constitutes an accessory security, and the other is the abstract land charge (*Grundschuld*) which constitutes a non-accessory security. Both the mortgage and the land charge need to be registered in the local land register (*Grundbuch*) to become valid. Mortgages and land charges can both be created in a global form to encumber several plots of land (*Gesamthypothek, Gesamtgrundschuld*). Additional property cannot automatically be included under an existing encumbrance. In practice, being a non-accessory security interest, the land charge is the preferred and more common security instrument for the lenders due to its flexibility and practicability with regard to administration by the security agent.

  The connection between the real estate and the secured claim is made by way of a security purpose agreement which determines and defines the secured claims in detail. The land charge instrument may be created by way of a unilateral declaration by the owner or by way of a bilateral agreement between the owner and the beneficiary. The declaration or agreement for the creation of the land charge as such will need to be certified or notarised before a German public notary. Notarial fees will be incurred on the notarisation. The amount of notarial fees is assessed on a sliding scale based. In principle, the fees for the notarisation of land charges are assessed on the basis of the nominal amount of the land charge. In order to save, in particular, the substantial notary fees for land charges, borrowers' counsel often negotiate that two land charges are executed, one with submission to immediate enforcement (*Unterwerfung unter die sofortige Zwangsvollstreckung*), this being the expensive part, and another without submission to immediate enforcement. The split between the amount of the land charges may be approximately 15:85. The related security purpose agreement is a private bilateral agreement between the owner and the beneficiary; notarisation is not necessary.
- **Movable Assets:** Under German law such security may be taken in the form of a transfer of title for security purposes (*Sicherungsübereignung*) by which the borrower transfers his title in the relevant asset to the security agent. Such transfer of title for security purposes is created by way of a private agreement between the transferor and the beneficiary and constitutes a non-accessory security interest which does not require notarial form or any registration. The security transfer enables the transferor to retain possession of the respective assets and to trade as usual. Care must be taken to ensure that the assets are clearly identified.

The security interest is only defined with the necessary certainty if an unrelated third party is able to identify the security interest and charged assets by merely consulting the security agreement without having to resort to circumstances outside the agreement. This can be quite burdensome in practice.

- **Intellectual Property:** Security over intellectual property was in the past usually created by a German law security assignment (*Sicherungsabtretung gewerblicher Schutzrechte*) which has the effect of actually transferring title to the intellectual property rights to the security beneficiary and is a non-accessory security interest. There is now a tendency, however, that parties rather opt for a pledge (being an accessory security interest) of intellectual property rights although such a pledge would be, due to its accessory nature, more cumbersome for the lenders and less flexible in an enforcement scenario. A security assignment and in particular the enforcement of such security assignment would bear the risk, that the beneficiary (if registered owner as a result of the enforcement) would have to pay the fees for the preservation of the intellectual property right and would face litigation risks. Security assignments and pledges over intellectual property rights do not require notarial form.

4. Revolving Security and Non-Revolving Security

Japanese Law:

Apart from the classification by the asset type, Japanese law further differentiates security interests based on the types of secured obligations: 'revolving security interests' and 'non-revolving security interests'. Revolving security interests secure fluctuating, unspecified obligations (e.g., revolving mortgages securing revolving credit facilities); whereas non-revolving security interests secure specific, fixed obligations (e.g., non-revolving mortgages securing term loan facilities).

German Law:

German law has a somewhat different understanding of revolving and non-revolving security. Under German law, the term revolving security refers to security interest involving a collection of items, such as the security transfer of inventories with fluctuating stock levels or the security assignment of all customer receivables of a company (so-called global assignment), meaning security interest where the extent of the collateral is constantly changing. Both, revolving and non-revolving security can secure fluctuating, unspecified obligations as well as specific, fixed obligations.

V. Restrictions on Guarantees/Security

Japanese Law:

Unlike some jurisdictions, Japanese law does not impose specific statutory prohibitions on upstream, downstream, or cross-stream guarantees/security, nor does it explicitly restrict financial assistance. Nevertheless, directors must comply with their fiduciary duties to their company. The application of these fiduciary duties differs according to the ownership structure:

- In wholly owned subsidiaries, fiduciary duty concerns do not arise in connection with upstream guarantees/security, as the interests of the subsidiary and its parent are aligned.
- In partially owned subsidiaries, in contrast, the interests of the subsidiary and its parent are not always aligned, and fiduciary duty concerns may arise when providing upstream guarantees/security. Consequently, the market practice for partially owned subsidiaries requires obtaining consent from all minority shareholders prior to providing upstream guarantees/security.

Apart from these fiduciary duty considerations, Japanese law does not impose additional restrictions that would necessitate limitation language in finance documents.

German Law:

Germany has rather strict capital maintenance rules. Therefore, subsidiaries and sister subsidiaries of borrowers in the form of a *GmbH* or an *AG* may only guarantee or provide security for obligations of holding companies or sister subsidiaries to the extent there is no conflict with applicable German capital maintenance rules (limiting recoveries to the amount by which its net asset value exceeds its stated share capital at the time the guarantee is called). It is therefore market practice that these security interests contain a so-called limitation language which has an impact on the value of the security interest.

Under the German Act on Limited Liability Companies (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*), payments to shareholders of a *GmbH* are prohibited if the net assets (as determined in accordance with generally accepted accounting principles in Germany) of such *GmbH* fall, or would as a result of such payments fall, below the amount of its registered share capital. The term 'payments' is construed to comprise not only monetary payments but also the granting of any other benefit to or in favour of a shareholder or a person related to such shareholder (e.g., a sister or other affiliated company), which include the granting of a guarantee, security interest or other benefit to or in favour of a shareholder or other related person and the enforcement thereof. Such grant may, therefore, not cause the net assets of a *GmbH* to fall below the amount of its registered share capital so that only the net assets (being, in principle, the aggregate of total assets less liabilities) which are in excess of the *GmbH*'s stated share capital and whose withdrawal would not endanger the continued existence of the *GmbH* are available to the relevant creditor or other beneficiary as security or otherwise. Payments in violation of this restriction may lead to the liability of the managing directors of the *GmbH*. To reduce and/or avoid the risk of personal liability of the management of the relevant security provider, borrowers' legal counsel regularly insists on the insertion of limitation language in the loan agreement or security documents. This so-called section 30 limitation language is market practice in Germany.

VI. Loan Transfer

Japanese Law:

The standard loan transfer mechanism under Japanese law is an assignment of loan receivables. Unless the finance documents provide otherwise, a lender can transfer its loan receivables, in whole or in part, to a new lender without the borrower's consent. To perfect a loan assignment, a lender must either send a notice to the borrower or obtain the borrower's consent, with a certified date (*kakutei hizuke*) in either case.

Following assignment, guarantees and non-revolving security automatically transfer to the new lender, though each security may require its own separate perfection procedure. In contrast, transferring revolving security requires the obligor's consent, unless the security has already crystallised. Additionally, transferring a lender's contractual status associated with the transferring loan receivables requires consent from other parties.

Consequently, while loan receivables can technically be transferred without the borrower's consent, market practice in loan trading is to obtain consents from all relevant parties to ensure the legally valid transfer of all associated rights and obligations.

These procedural requirements create additional complexity in cross-border transactions. However, such complexity can be effectively addressed through appropriate structuring in cross-border acquisition finance.

Under Japanese law, where parties have explicitly designated a governing law, such law determines the validity and effect of contractual obligations. Accordingly, when transaction documentation designates German law, English law, or another foreign legal system that recognises parallel debt structures, and when such arrangements are properly established, Japanese courts generally respect their validity. Under a parallel debt structure, a security agent holds the security on behalf of finance parties. Consequently, under that arrangement, loan transfers do not trigger the security transfer procedures required under Japanese law. By establishing a parallel debt structure under an appropriate foreign governing law, parties can effectively bypass the security transfer requirements otherwise triggered by loan assignments. In practice, parallel debt structures are widely utilised under English or New York law documentation in cross-border acquisition finance transactions involving Japanese obligors.

German Law:

Standard loan transfer mechanism under German law is an assignment or an assumption of contract (*Vertragsübernahme*). The subject of the assignment consists only of the rights and claims of the respective lender, but not of any obligations. The assignment itself is a bilateral contract between the existing lender as assignor and the new lender as assignee; the cooperation or consent of the borrower is not required. Since only rights and claims can be transferred through the assignment, in practice, the transfer typically occurs through assumption of contract, where either a bilateral agreement is made between the transferring and assuming creditor with the consent of the borrower, or a tripartite agreement is concluded, whereby all rights and obligations of the transferor under the loan agreement pass to the recipient. Under German law, accessory security interests follow the underlying claims if claims are being transferred by a mechanism comparable to a German law assignment (*Abtretung*) of claims.

VII. Enforcement

1. Choice of Law

Japanese Law:

Japanese courts generally recognise and give effect to the parties' choice of foreign law. The recognition and effect of a choice of law provision will be, *inter alia*, subject to public policy in Japan. Regardless of the parties' choice of governing law, Japanese courts apply the law of the place where the property is located (*lex situs*) to the matters concerning rights *in rem* over both movable and immovable property, including those relating to security interests that constitute rights *in rem*.

German Law:

German courts follow similar principles to Japanese courts. They also subject foreign law to German public policy (*ordre public*) considerations and apply the law of the location of the charged assets (*lex situs*) for proprietary law aspects of security interests and assignments, regardless of the governing law clause chosen by the parties.

2. Choice of Jurisdiction

Japanese and German Law:

Japanese and German courts generally recognise and enforce the choice of jurisdiction clauses agreed between parties, provided the designated court can exercise its jurisdiction.

3. Foreign Court Judgement

Japan and Germany are both parties to the Hague Convention on Civil Procedure of 1 March 1954, which primarily concerns the service of judicial and extrajudicial documents but also allows the enforcement of court orders for costs and expenses (*Kostentiteln*) against the losing party without a court hearing.

Japanese Law:

Outside the scope of international treaties, the enforcement of foreign judgements in Japan is governed by the Code of Civil Procedure (Act No. 109 of 1996, as amended).

Under Article 118 of the Code of Civil Procedure, a final and binding foreign judgement will be recognised and enforced in Japan if it satisfies, essentially, all of the following conditions:

- the jurisdiction of the foreign court is recognised under Japanese law or applicable treaties;
- the defendant received proper service of process or appeared in the proceedings;
- the judgement and the court proceedings are not contrary to public policy in Japan; and
- reciprocity exists between Japan and the country where the judgement was rendered.

German Law:

German law follows in principle the same approach. Outside the scope of European law and international treaties, foreign judgements are generally recognised and enforced by German courts pursuant to Sections 328, 722, 723 of the German Code of Civil Procedure. Insofar reciprocity is guaranteed between Germany and the respective foreign jurisdiction, German courts will only deny the enforcement of a foreign judgement based on one of the (other) grounds stated in Section 328 of the German Code of Civil Procedure, i.e., if:

- the court lacked jurisdiction pursuant to German law governing international jurisdiction;
- there was no proper and timely service of the complaint upon the defendant and the judgement was issued in default of appearance;
- the foreign judgement is incompatible with an earlier German or other recognisable foreign judgement or if the proceeding on which the foreign judgement is based was incompatible with a pending German proceeding that was initiated earlier; or
- the recognition of the foreign judgement would lead to a result that would be incompatible with German public policy.