Chapter 12

JAPAN

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I OVERVIEW OF THE MARKET

From the late 1990s, the Japanese market saw an increase in real estate investment, adopting more modern investment methodologies and techniques, including non-recourse loans, commercial mortgage-backed securities (CMBS), residential mortgage-backed securities (RMBS) and other securitisations and structured finance, and the participants included not only Japanese real estate companies and financial institutions, but also Wall Street-style foreign investment banks and other investment firms. Non-recourse investment in real estate and other Wall Street-oriented model investments and loans rapidly increased until the market became sluggish in the latter half of 2007 and declined sharply in 2008 due to the global financial crisis. Some years of stagnantion in the economy followed, but since the December 2012 re-election of the prime minister, Shinzo Abe, the Japanese real estate investment environment has significantly improved under a series of economic measures adopted by the Abe administration, popularly referred to as 'Abenomics'. The awarding of the 2020 Olympic Games to Tokyo in 2013 also contributed to the overall increase in real estate investment in Japan. The continued depreciation of the yen has encouraged increased investment of foreign capital in Japanese real estate. At the same time, certain types of asset class in the real estate market have also become more attractive, including healthcare facilities and hotels.

In terms of market players, major public real estate companies domiciled in Japan such as Mitsubishi Estate Co Ltd, Mitsui Fudosan Co Ltd and Nomura Real Estate Holdings Inc tend to hold large amounts of assets and possess strengths in the development, management and operation of real estate; many of them have subsidiaries that are asset management companies of Japanese real estate investment trusts (J-REITs). Separate from these companies, there is another class of public real estate company in Japan, which is characteristic in the

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Japanese market: they belong to non-government owned railway company groups, such as the Tokyu Group, Hankyu Hanshin Toho Group and Kintetsu Group – historically, the development of railways and surrounding areas has created synergies between the real estate business and the railway business, especially when the Japanese economy experienced high economic growth after World War II.

Another key driver in Japan's recent real estate investment market is J-REITs. The J-REIT market was established in September 2001, when two J-REITs publicly listed their investment units on the Tokyo Stock Exchange (the TSE) for the first time. Since then, REITs have become popular in Japan among investors as a new type of moderate-risk product with stable returns. As of the end of April 2016, a total of 54 publicly listed REITs are operating, with a total market capitalisation of approximately ¥12.1 trillion, with total assets under management of approximately ¥14.6 trillion. This is nearing the total market capitalisation of the 55 public real estate companies listed on the First Section of the TSE (¥13.4 trillion).

When established, J-REITs are generally structured on the assumption that they will be listed in the future. However, the recent trend seems to be that not all J-REITs are intended to be listed. Since the creation of Japan's first private REIT in 2010, the market for such instrument has expanded to meet the needs of investors looking for long-term, stable investments. Private real estate funds that do not take the form of J-REITs are also active in Japan.

The TSE also established an infrastructure fund market on 30 April 2015 for listing funds that invest in infrastructure assets, including renewable energy facilities, power grids, and transport and transmission networks. On 2 June 2016, Takara Leben Infrastructure Fund Inc was the first infrastructure fund to be listed on the TSE.

II RECENT MARKET ACTIVITY

i M&A transactions

In October 2015, Nomura Real Estate Master Fund Inc, one of the largest diversified J-REITs,[2] was formed through an incorporation-type merger of former Nomura Real Estate Master Fund, Nomura Real Estate Office Fund Inc and Nomura Real Estate Residential Fund Inc. This was the first merger of publicly traded REITs since April 2012, and the 10th merger of publicly traded REITs since the J-REIT market was established in September 2001. It was also the first transaction where positive goodwill was recorded in a merger of REITs.

In April 2016, Daiwa House Residential Investment Corporation (DHI) and Daiwa House REIT Investment Corporation (DHR) announced that they would implement an absorption-type merger, with DHI[3] as the surviving corporation and DHR[4] as the absorbed corporation, with the effective date being 1 September 2016.

In May 2016, Nomura Real Estate Master Fund Inc (NMF) and Top REIT Inc (TOP) announced that they would implement an absorption-type merger, with NMF[5] as the surviving corporation and TOP[6] as the absorbed corporation, with the effective date being 1 September 2016, and which would create the second-largest publicly traded REIT in Japan.

2 With 261 properties and a total acquisition price of approximately ¥794 billion.
3 With 142 properties and a total acquisition price of approximately ¥256 billion.
4 With 41 properties and a total acquisition price of approximately ¥204 billion.
5 With 253 properties and a total acquisition price of approximately ¥795 billion.
6 With 20 properties and a total acquisition price of approximately ¥190 billion.

ii Private equity transactions

Some of the most significant real estate private equity transactions in the past few years are described below.

In November 2014, the Blackstone Group announced that funds affiliated with Blackstone Real Estate Partners Asia would make an investment in connection with an agreement to acquire GE Japan Corporation's residential real estate business consisting of approximately 200 residential properties for over ¥190 billion.

In December 2014, Advantage Partners, LLP announced that LL Holdings Inc, which belongs to a fund to which Advantage Partners LLP provides services, was acquiring Japanese real estate developer SBI Life Living Co Ltd from SBI Holdings Inc through a share tender offer (or a takeover bid (TOB)) for about ¥12.8 billion.

In March 2015, Bain Capital Private Equity announced that it would launch a take-private transaction for publicly traded Japan Wind Development Co Ltd,[7] in partnership with JWD's management. The transaction would take place in accordance with the TOB process, and the final purchase price of the TOB process was about ¥7.3 billion.

III REAL ESTATE COMPANIES AND FIRMS

i Publicly traded REITs and REOCs – structure and role in the market

Public real estate companies

Public real estate companies in Japan are formed as companies (KKs) under the Companies Act of Japan. There were 55 public real estate companies listed on the First Section of the TSE at the end of April 2016, of which Mitsubishi Estate Co Ltd has the largest market capitalisation of approximately ¥2.95 trillion. The average market capitalisation of the 55 public real estate companies is ¥240 billion.

Publicly traded REITs

As previously noted, J-REITs are a type of investment fund formed under the Act on Investment Trusts and Investment Corporations of Japan (the Investment Trust Act). A J-REIT, which invests in and manages real estate assets, uses investors' funds to purchase real estate assets, in return for which investors receive investment units. The investment units of a J-REIT can be listed and traded on stock exchanges. Under the Investment Trust Act, there are two types of legal structure for J-REITs: investment corporations and contractual investment trusts. At the time of writing, all J-REITs with investment units listed on Japanese stock exchanges have been structured as investment corporations.

There are 54 publicly traded J-REITs listed on Japanese securities exchanges, of which Nippon Building Fund Inc has the largest market capitalisation of approximately ¥970 billion and a total asset acquisition price of approximately ¥1.08 trillion. The average market price of the 54 J-REITs is ¥220 billion, with the average total asset acquisition price being ¥270 billion.

7 JWD is a leading Japanese wind farm developer and operator in Japan.

Typical structure

Since an investment corporation is statutorily designed only to be an investment vehicle, it is not permitted statutorily to hire employees and is required to outsource most of its business operations to external service providers. For example, the investment management function must be outsourced to an asset management company (AMC) registered under the Financial Instruments and Exchange Act of Japan (the FIEA). In addition, all J-REITs also have one or more sponsors, although this is not a legal requirement. A sponsor typically acts as a promoter for the establishment of the AMC, which in turn acts as a promoter for the establishment of the investment corporation, to which it provides asset management services. The sponsor also acts as a main supplier of properties to the REIT. While adopting this REIT structure under the Investment Trust Act has its benefits in attracting investors and raising funds, for example, due to it being a specifically designed structure for investment purposes that statutorily mandates certain mechanisms to protect investors' interests, there is a longstanding theoretical concern over a potential conflict of interests between those of sponsors and those of unit holders. In order to address this concern, the Investment Trust Act was amended in 2013 to require the AMC to obtain prior consent from the investment corporation (based on the approval of its board of officers) before certain significant transactions between the investment corporation and interested parties of the AMC (such as the sponsor) are carried out.

The governance structure of a J-REIT formed as an investment corporation consists of the unit holders' meeting,[8] a board of officers formed by its corporate officers and supervisory officers, and an accounting auditor. Since, in practice, all investment decisions taken by an investment corporation are meant to be taken by its AMC, as previously mentioned, the principal responsibility of the corporate officers is to supervise the AMC.

Listing requirements

In order to be listed on a stock exchange, a REIT must meet various criteria, including: (1) the REIT's real properties must account for at least 70 per cent of all the investment assets held by the REIT, and the real properties and other assets related thereto must constitute at least 95 per cent of all investment assets, and (2) there being a provision in the REIT's articles of incorporation prohibiting the unit holders from requesting a redemption of their investment units.

Requirements for special tax treatment

An investment corporation is effectively a collective investment vehicle and is essentially a conduit for the distribution of profits. Therefore, unlike an ordinary corporation, an investment corporation is permitted to deduct distributions paid by it to its unit holders from taxable income for Japanese corporate tax purposes, subject to certain requirements under the Act on Special Measures Concerning Taxation. Such requirements are often referred to as 'conduit requirements' and include: (1) that more than 90 per cent of the distributable income under tax regulations must be distributed by the investment corporation to its unit

8 A decision-making body within an investment corporation that consists of all its unit holders, which is permitted to vote only on matters provided in the Investment Trust Act or matters specified in the REIT's articles of incorporation.

holders and (2) the investment corporation is not, as at the end of each fiscal period (normally a six-month period), a family corporation as defined in the Tax Code, meaning a corporation of which more than 50 per cent of its ownership is held by one unit holder and its affiliates.

Types of properties

The primary asset classes of REIT investments include offices, and residential and commercial facilities. In addition, the share of logistics facilities has increased recently.

Furthermore, in light of the ageing population of Japan, the Japanese government is looking to expand the number and availability of nursing services and hospitals, and issued guidelines for nursing facilities (in June 2014) and for medical facilities in (June 2015). In November 2014, the first REIT investing only in healthcare facilities and related real estate listed its investment units on the TSE. Currently, there are three healthcare REITs listed on the TSE.

Another category of investment assets that is increasing in Japan is hotel and accommodation facilities. There has been a dramatic increase in the number of foreign tourists visiting Japan in the past few years, possibly due to the government's promotion of inbound tourism to Japan, the awarding of the 2020 Olympic Games to Tokyo, and the recent depreciation of the yen. Thus, the demand for hotels and accommodation facilities has increased and is expected to continue to increase. At present, there are three REITs listed on the TSE that invest mainly in hotels.[9]

ii Real estate PE firms – footprint and structure

While it may be rather common for US-based private equity firms, such as KKR & Co LP and the Blackstone Group LP, to also engage in real estate investments, Japanese-domiciled firms' specialisations seem to be divided as real estate fund managers in Japan do not seem to cross over with private equity firms investing in various industry and company sectors.

According to the data aggregated by the Japan Investment Advisers Association, the average amount of assets under management of the top 50 real estate private funds was ¥134 billion as of the end of September 2015.

The most popular structures and investment vehicles used for real estate investments in Japan by real estate investment funds are the GK-TK structure and the TMK structure.

GK-TK structure

Typically, a limited liability company (GK) under the Companies Act acts as a special purpose company and holds an investment portfolio, and investors invest in the GK through a silent partnership (TK) agreement. Funds from the investors are pooled, and the asset manager has partial discretion to invest in unspecified real estate assets, with the real estate securities and earnings being distributed to investors. A TK arrangement qualifies for favourable tax treatment if the TK investor is a passive investor with minimal control over the management of the GK and the funds contributed under the TK arrangement. This tax-efficient combination of a GK and TK arrangement is called the GK-TK structure.

9 Japan Hotel REIT listed in June 2006, Hoshino Resorts REIT listed in July 2013 and Ichigo Hotel REIT listed in November 2015.

TMK structure

A TMK (*tokutei mokuteki kaisha*) incorporated under the Asset Liquidation Law is another type of corporate entity often used as a real estate investment vehicle. A TMK may only be used to liquidate or securitise certain assets. This type of investment platform is used to make investments in real estate, trust beneficial interests in real estate, and loans and TMK bonds that are backed by real estate. A TMK is typically funded by issuing TMK bonds and preferred shares that meet certain tax qualifications required for the TMK to receive preferential tax treatment. If a TMK, its bonds and its preferred shares are properly structured, and the TMK meets certain other requirements under the Tax Code, it is permitted to deduct all distributions to preferred shareholders from its taxable profits in addition to deducting debt payments.

IV TRANSACTIONS

i Legal frameworks and deal structures

Since M&A transactions of real estate companies are essentially the same as those of ordinary companies with the same applicable laws and regulations,[10] this section will focus on the legal framework and deal structure of M&A transactions concerning J-REITs.

M&A transactions concerning J-REITs are conducted primarily as a growth strategy for an existing REIT or as a means of entering into the J-REIT market by a prospective sponsor. There are few methods available for REIT M&A as not all of the schemes available for the M&A of ordinary corporations under the Companies Act are stipulated in the Investment Trust Act and are therefore not permitted in the context of J-REIT M&A. For example, with respect to investment corporations, the Investment Trust Act does not provide for the transfer of all or a substantial part of the business of a company, company split, share exchange or share transfer – all of which are available to ordinary stock companies.

The following schemes are, however, thought to be feasible for the purpose of J-REIT M&As: (1) acquisition of the shares of the AMC (sometimes combined with acquisition of units of the investment corporation) and (2) merger of two or more investment corporations.

Acquiring shares of an AMC

If an acquirer wishes to obtain control of a REIT's investment management function, acquiring the shares of the existing AMC managing that REIT's assets is the simplest and – in most cases – most efficient way of doing this, since it is not easy for the REIT's unit holders to replace the existing AMC with another AMC. The shares of the AMC are acquired or transferred for the purpose of replacing a sponsor or having a new sponsor participate in addition to the existing sponsors.

The acquisition of an AMC's shares is sometimes accompanied by the acquisition of the units of an investment corporation. An investor may acquire units either by subscribing for new units to be issued or by acquiring existing units through market transactions or takeover bids; all or most of the units would be acquired by subscribing for new units if the investment corporation needs additional funds. It is common for the new sponsor and its

10 Although special care must be taken in real estate M&A transactions to ensure that the entity continuing to conduct real estate trading business or investment advisory or investment management business post-acquisition holds the necessary licences.

group companies to acquire, in total, less than 50 per cent of the aggregate outstanding units of the investment corporation to comply with the tax conduit requirements. The acquisition of units of the investment corporation must comply with the FIEA regulations, including the takeover bid regulations. As such, in the event that an acquirer wishes to gain control over one-third of the units of a REIT without trading on the securities exchanges, it must utilise the takeover bid procedures prescribed in the FIEA. In light of the fiduciary duties owed by each officer to the investment corporation, it is understood that the board of officers must take into consideration not only the price offered but also other critical factors, including continued listing on the market, compliance with the tax conduit requirements, and sufficient protection of the interests of minority unit holders. There has to date been only one example of takeover bid procedures taken in relation to units of an investment corporation.

If the officers of the investment corporation are to be changed in conjunction with the acquisition of shares of the AMC, such change must be approved at a unit holders' meeting by a majority vote. In addition, various transactions often take place to establish the new sponsor's control, which include changes in the directors of the AMC, the execution of a sponsor support agreement, and amendments to the investment policy and other basic structures of the REIT or the AMC (or both). At the same time, the new sponsor often sells properties owned by it to the REIT.

In the event that shares of the AMC are acquired for the participation of a new sponsor in addition to the existing sponsors, the additional sponsor often acquires a minority interest in the AMC without acquiring units of the investment corporation. When the additional sponsor becomes a shareholder of the AMC, it is common practice for the current sponsors and the additional sponsor to enter into a shareholders' agreement for the purpose of coordinating their interests.

Incidentally, as most if not all AMCs of existing J-REITs are non-public unlisted companies, the hostile takeover of an AMC is virtually impossible; and as an AMC's articles of incorporation ordinarily contain a provision requiring that transfers of any of its shares be approved by the board of directors, the shares of an AMC cannot be acquired without the agreement of the AMC's current shareholders and the approval of its board of directors.

REIT mergers

There are two types of merger for REITs: (1) an absorption-type merger, in which all rights and liabilities of the dissolving REIT are transferred to the surviving REIT after the merger and the unit holders of the REIT to be absorbed receive units of the surviving REIT; and (2) an incorporation-type merger (consolidation), in which all rights and liabilities of two or more REITs are transferred to an entirely new REIT established upon consolidation. The consideration for the merger is basically limited to the units of the surviving REIT under the Investment Trust Act. However, cash payments upon mergers for certain purposes such as adjustment of fractions are allowed under the Investment Trust Act.

A REIT can only merge with another REIT – it cannot merge with a joint-stock company or any other corporation or entity other than a REIT. Incorporation-type mergers are less common than absorption-type mergers for various reasons, including the more complicated procedures involved in incorporation-type mergers. For this reason, the rest of this section will only cover matters related to absorption-type mergers.

The procedures for mergers of investment corporations are essentially the same as those for companies under the Companies Act. Under the Investment Trust Act, parties must enter into a written merger agreement on the fundamental terms and conditions of

the contemplated merger. The merger must generally be approved by the board of officers at the board meeting and by the unit holders at the unit holders' meeting of both merging REITs. At the unit holders' meeting, a two-thirds or more vote of the investment units present at the meeting is required, and the quorum for the meeting must be a majority of the total number of issued and outstanding units. In the case of an absorption-type merger, however, unit holder approval is not required from the surviving REIT if the total number of investment units delivered from the surviving REIT to the dissolving REIT's unit holders as consideration for the merger does not exceed one-fifth of the total number of investment units of the surviving REIT (a 'short-form merger').

Moreover, certain disclosure procedures and creditor protection procedures stipulated in the Investment Trust Act must be adhered to. A dissenting unit holder may demand that the investment corporation purchase its units at a fair value. However, in the case of a short-form merger, dissenting unit holders of the surviving investment corporation may not demand that their units be purchased, unlike in the mergers of companies.

In addition, external service providers to which the surviving REIT will outsource its functions following the merger (such as the AMC) must be selected. For this purpose, the asset management agreement with the AMC not selected as the AMC of the surviving REIT following the merger must be cancelled with approval by a majority vote at the unit holders' meeting. Alternatively, the AMCs of the REITs to be merged may also merge concurrently with the merger of the REITs.

ii Acquisition agreement terms

Since M&A transactions of real estate companies are essentially the same as those of ordinary companies, with the same applicable laws and regulations as mentioned above, this section will focus on the typical terms of acquisition agreements concerning REITs.

The Investment Trust Act provides the minimum matters to be addressed in a merger agreement for investment corporations, which include:

a the trade names and addresses of the surviving corporation and the dissolving corporation;

b the number of units of the surviving corporation to be delivered upon the merger to the unit holders of the dissolving corporation *in lieu* of the investment units thereof, or the method for calculating the number of units, and matters concerning the total amount of investment of the surviving corporation;

c matters concerning the allotment of investment units to the unit holders of the dissolving corporation; and

d the effective date of the merger.

In practice, in addition to these matters, the merger agreement may also provide for certain conditions precedent such as obtaining consent to the merger from lenders to each investment corporation involved and obtaining approval of the unit holders' meeting of the surviving corporation with respect to amendment of its articles of incorporation or termination of the asset management agreement.

On the other hand, in a transfer of shares of the AMC, the share transfer agreement typically contains the following clauses:

a specification of the shares to be transferred and the transfer price;

b closing of the transaction;

c representations and warranties;

d covenants;
e conditions precedent;
f damages and indemnification; and
g termination.

The terms to be included in a definitive M&A agreement for REITs are negotiated between the parties and may depend on the purpose of the transaction, the attributes of the parties, the size of the target company and other factors.

Representations and warranties

In the representations and warranties clauses, the parties to the agreement represent and warrant the existence or non-existence of specific facts and rights or obligations, usually as at the signing date of the agreement and the closing date, including in transactions where a private equity firm is a selling party. The representations and warranties requested by the buyer usually cover various aspects of the target company's business and, in a case where the target company is an AMC, this would typically include the validity of permits or licences held by the AMC and its power and authority to manage the investments of the REIT. Representations and warranties are generally not provided in a merger agreement since there will be no party to claim damages against after the merger for breach of the representations and warranties.

Break fees and other deal protections

In recent years, the number of transactions armoured with deal protection clauses (e.g., break-fee clauses and exclusive negotiation clauses) has increased. However, because there are few court precedents regarding deal protection clauses – whether in the context of REIT M&As or M&As in general – it is unclear whether a court would uphold their validity, particularly when they might conflict with the fiduciary duties of a target's directors. With respect to break-fee clauses, if the break fee is unreasonably high, there is a possibility that a court might hold that the arrangement is against the public interest and declare it null and void.

On the other hand, reverse break-fee arrangements have yet to gain traction in Japan, including in transactions where a private equity firm is the purchasing party.

iii Hostile transactions

An example of a hostile takeover transaction with regard to public real estate-related companies is the unsuccessful hostile bid by PGM Holdings KK (Japan's second-largest golf course operator) to take over Accordia Golf Co Ltd (Japan's largest golf course operator) in 2013. Hostile takeover bids remain far rarer in Japan than in the US and certain European capital markets, and, due to cross-shareholdings, management-friendly investor blocs, and a variety of other defence mechanisms, no hostile bidder has succeeded in securing more than a majority stake in a major Japanese target.

The hostile buyout of a J-REIT has yet to occur. Assuming that the AMC of the target REIT is not a publicly traded corporation, the acquirer must:

a purchase units of the target REIT through market transactions or takeover bids and
b call a unit holders' meeting to resolve, *inter alia*:
   1 the cancellation of the asset management agreement between the target REIT and the existing AMC; and
   2 the approval of a new asset management agreement with the new AMC controlled by the acquirer.

However, the target REIT would lose its tax conduit status if a majority voting interest is held by one unit holder and its affiliates at the end of the fiscal period so (a) above is usually not practically feasible. In connection with (b), the articles of incorporation of an investment corporation often have a 'deemed consent' provision;[11] while this provision's application can be blocked by forcing the target REIT to have conflicting proposals be submitted to the unit holders' meeting, unless the hostile party forces such situation, this provision can make it easier for the incumbent management to retain the status quo in fending off the hostile takeover; on the other hand, from the perspective of the hostile party, coupled with the tax conduit requirement, it is going to be difficult for the hostile party to own 49.9 per cent of the outstanding units but still try to secure resolutions on (1) and (2) above, as the incumbent can block the application of this provision by simply having a proposal opposing the proposal by the hostile acquirer submitted to the unitholders meeting. Also, (b) above is not practically easy to achieve due partially to the fact that a hostile acquirer would need to solicit proxies from unit holders at its own cost.

iv Financing considerations

Where the acquirer is a stock company under the Companies Act, the acquisition may be (1) internally funded by the acquirer or (2) externally funded by the acquirer through equity financing or debt financing. Where the acquirer is a private equity fund, the acquirer itself usually does not become a debtor for the acquisition financing – a special purpose company incorporated by the private equity fund for the purpose of the acquisition usually becomes the debtor.

In the case of a merger between REITs, capital usually does not need to be raised for the merger since the consideration for the merger is basically limited to the units of the surviving REIT under the Investment Trust Act.

v Tax considerations

Tax considerations for M&A transactions of public real estate companies are essentially the same as those for M&A transactions of ordinary companies, with the same applicable laws and regulations.

With respect to REITs, the acquisition of shares of an AMC is a taxable transaction, and the seller will be subject to income tax on any gains. If the seller company is not a resident of Japan, it could be subject to Japanese capital gains tax; however, an exemption may be available depending on the percentage of its ownership of the shares or the applicable tax treaty. A merger of an investment corporation can be implemented without income taxation at the time of the transaction (in substance, tax deferral) if such transaction satisfies the requirements for tax-qualified restructuring.

In addition, the 2009 tax reform made it possible for a surviving REIT that obtains negative goodwill (i.e., unrealised gain of the dissolving REIT) by conducting a statutory merger to deduct the negative goodwill from its distributable income for the fiscal year as

11 A provision to the effect that if any unit holder does not attend the unit holders' meeting to vote and does not exercise their voting rights in writing, that unit holder shall be deemed to have voted in favour of the proposal submitted at that respective unit holders' meeting.

long as the gains are not realised, making it easier for the surviving REIT to satisfy the conduit requirements. Further, the 2015 tax reform enabled the inclusion in expenses of the distribution in excess of net income equivalent to the amortisation costs of the goodwill.

vi Cross-border complications and solutions

There are no direct restrictions on the acquisition, either directly or through a vehicle, of commercial or residential real estate in Japan by foreign investors. Similarly, the establishment of a corporation by foreign investors to invest in commercial or residential real estate is not restricted.

After a foreign investor acquires real estate or a right related to real estate, a post-transaction report to the relevant governmental authority is generally required pursuant to the Foreign Exchange and Foreign Trade Law (the FEFTL). In addition, after a foreign investor acquires shares or equity in a corporation, a post-transaction report to the relevant governmental authority may be required pursuant to the FEFTL.

V CORPORATE REAL ESTATE

In recent years, there has been a trend for Japanese companies that have corporate real estate to manage and operate such real estate strategically. The strategic management and operation of corporate real estate often takes the following forms: (1) outsourcing of asset management functions and property management functions; (2) separating the real estate assets from the company through a company split or business transfer under the Companies Act; or (3) securitisation using the GK-TK structure or TMK structure described above, or by utilising a REIT.

VI OUTLOOK

The market size of Japanese real estate investment is the second-largest in the world,[12] but considering the size of Japan's GDP, it is believed that there is still room for further expansion of the market.

In March 2016, the Ministry of Land, Infrastructure, Transport and Tourism's advisory panel of experts published a growth strategy for expanding the real estate investment market. The published growth strategy aims to increase the amount of assets under management by J-REITs to up to ¥30 trillion by 2020, which is approximately twice the current amount. The growth strategy points out that measures should be taken to encourage expansion by J-REITs into assets in growing sectors such as the tourism, logistics, and healthcare industries. It is expected that the implementation of such measures in the near future would further promote the growth of the J-REIT market in the mid to long term, and to increase the number of real estate M&A transactions as a means of new entry into the REIT market or of achieving external growth by existing REITs.

12 'Japanese Real Estate Market, Today' (2015), published by the Land Economy & Construction Industries Bureau, the Ministry of Land, Infrastructure, Transport and Tourism of Japan.

Appendix 1

ABOUT THE AUTHORS

MASAKAZU IWAKURA

Nishimura & Asahi

Masakazu Iwakura is a senior partner at Nishimura & Asahi. He is qualified to practise in Japan and the state of New York.

His areas of practice include mergers and acquisitions, tax, insurance, intellectual property, and litigations. He handled, *inter alia*, JAPAN POST's acquisition of Toll Holdings, Idemitsu Kosan's acquisition of Showa Shell Sekiyu shares from Royal Dutch Shell, the integration of UFJ Bank Group and Mitsubishi Tokyo Financial Group (MUFG), Prudential Financial's acquisition of AIG Edison Life and AIG Star Life, the demutualization and GPO of the Dai-ichi Mutual Life Insurance Company, the integration of Mitsubishi UFJ Securities (and MUFG) and Morgan Stanley Japan Securities and the lawsuit regarding the banking tax against the Tokyo and Osaka Metropolitan governments.

Mr Iwakura has lectured on corporate law, mergers and acquisitions law, intellectual property law, and tax law at various law schools and universities for more than 20 years. He was a visiting professor of law at Harvard Law School in 2007 and 2013 and a lecturer at Kyoto University Law School from 2005 to 2007; furthermore, he has been a professor of law at Hitotsubashi University, Graduate School of International Corporate Strategy since 2006.

HAJIME UENO

Nishimura & Asahi

Hajime Ueno is a partner at Nishimura & Asahi has an integral role in the restructuring and corporate finance practice group, and has been recognised in a number of individual publications, including *Best Lawyers Japan*, *IFLR 1000* and *Asialaw Leading Lawyers*. He predominantly focuses on corporate finance and restructuring transactions – both international and domestic, including structured finance and banking – and regulatory matters.

Among recent transactions, Mr Ueno was involved as a core team member in the corporate reorganisation of Japan Airlines Co Ltd, the integration of Mitsubishi UFJ Securities (and Mitsubishi Tokyo Financial Group) and Morgan Stanley Japan Securities, the capital restructuring and subsequent reorganisation of Tokyo Electric Power Company,

Limited, and the privatisation of New Kansai International Airport and Osaka International Airport, while at the same time being involved in REIT transactions and structured finance transactions with novel structure or asset types.

He was previously seconded to a top-tier US international law firm for one year following his graduation from Harvard Law School. Having spent part of his childhood in the United States, he is fluent in English, and has written and spoken on various areas of corporate and banking law in Japan.

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