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Reforms to administrative monetary penalty on Large Shareholding Reports

Atsutoshi Maeda
Anderson Mori & Tomotsune
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It is not going too far to say that the advent of the Financial Instruments and Exchange Law (FIEL) in September 2007 constituted financial regulatory regime change in Japan. This change was the culmination of a string of several almost annual amendments to Japanese financial regulation laws over the last ten years.

One of the measures, originally imposed with the view of making markets fairer, more transparent and more reliable, was reform of the administrative monetary penalty regime, first introduced in securities regulations in 2005. Before that time the only monetary penalties under securities regulations were criminal sanctions, and as such the recent amendments to FIEL, which came into effect on April 1 2009, marked a meaningful shift in the dynamics of financial market regulation in Japan.

Reform of administrative monetary penalty

Before the amendment, regulation of conduct relating to securities by way of administrative monetary penalty was limited to the type of infringements committed by the active participants in the Japanese securities market, such as insider trading and mis-statement in continuous disclosure documents. The largest practical development to come out of the amendment was reform of the administrative monetary penalty regulations such that acts relating to Large Shareholding Reports (to which passive investors may also be subject) may now be subject to the administrative monetary penalty.

Large Shareholding Reports

Under FIEL, when an investor's shareholding in a listed company goes above 5% of that compa-

ny's shares, or subsequently increases or decreases by more than 1%, the shareholder accrues an obligation to lodge a Large Shareholding Report with the regulatory authority within five business days. The purpose of this requirement is to ensure investors are informed on a timely basis of the existence of a shareholder whose purchase or holding of a large block of shares could influence the share price.

The brief window for the submission of reports is not the only thing that is onerous about this obligation. What complicates the calculation of a shareholding ratio is that it is a measure of the aggregate holdings of not only the relevant shareholder but of any joint shareholders. An investor is recognised as a joint shareholder where it has agreed to jointly acquire, transfer or exercise voting rights, or where the investor is related to the shareholder by a capital or family relationship.

Furthermore, Large Shareholding Reports are not simple, single-page summaries but rather call for precise details of recent transactions and the reasons for certain acquisitions (for example, in a case where the purpose of holding shares is to make material proposals that influence the business of the issuer, the reasons for that purpose).

Administrative monetary penalty

Shareholders that fail to file a Large Shareholding Report within the provided period, or that submit reports that mis-state or fail to include required certain material information, are subject to an administrative monetary penalty equal to 0.001% of the total market value of the issuer company. By way of example, in the case of Toyota Motor Corporation, whose aggregate share price was ¥12,400 billion (\$130 billion) on May 26 2009, the amount of the penalty that would be levied on the shareholder would be ¥124 million (\$1.3 million).

It is generally understood that the wording of the regulations leaves little room for the authorities' discretion to be exercised in light of the reasons for the occurrence of the breach

or the amount of the penalty. Even where the filing of the report is late by a single day, irrespective of whether the delay is wilful or negligent, it is possible that the penalty is nonetheless triggered.

How to be prepared

It is imperative that investors who hold or may soon hold 5% of the shares of a listed company gain a firm grasp of the nature of the regulations. It is necessary for shareholders, whether Japanese or foreign, to check the status of any joint shareholders regularly and establish systems that allow Large Shareholding Reports to be produced speedily at short notice.

The trading of shares is something determined rapidly, often based on sudden changes in the market. As such, when the obligation to report arises it is unlikely that a shareholder will be able to afford to spend time selecting the right law firm. In light of the mere five business days allowed for the submission of reports, if instructions are given from a different time zone there is even greater reason to retain a Japanese law firm in advance and to establish structures for the work flow required for urgent submissions. Furthermore, as a matter of practical importance, the filing of a Large Shareholding Report must be made through EDINET (the electronic disclosure system). As EDINET registration takes some time, shareholders that may be affected are encouraged to register in advance.

Summing up

Securities law reform in Japan has moved forward at great speed. While the recent reforms are directed towards creating an effective and attractive market, the new regulations are not always friendly to overseas investors. Nevertheless, while the Japanese economy continues to be one of the world's leading economies, reforms that work towards greater transparency and a more informed market are reforms that we should welcome.

Capital markets – debt and equity – local law

Recommended firms	
Tier 1	
Anderson Mori & Tomotsune	
Linklaters	
Nagashima Ohno & Tsunematsu	
Tier 2	
Baker & McKenzie GJB Tokyo Aoyama	
Aoki Koma	
Mori Hamada & Matsumoto	
Morrison & Foerster	
Nishimura & Asahi	

Capital markets – debt and equity – foreign law

Recommended firms	
Tier 1	
Davis Polk & Wardwell	
Linklaters	
Morrison & Foerster	
Simpson Thacher & Bartlett	
Sullivan & Cromwell	
Tier 2	
Allen & Overy	
Clifford Chance	
Paul Weiss Rifkind Wharton & Garrison	
Shearman & Sterling	
Tier 3	
Freshfields Bruckhaus Deringer	
Milbank Tweed Hadley & McCloy	
Paul Hastings Janofsky & Walker	
Skadden Arps Slate Meagher & Flom	

“The capital markets are in bad shape,” says one market observer. Japan already saw deals drying up in the beginning of 2008, and after Lehman’s collapse the equity capital markets hit rock bottom and have not yet been resurrected. The debt capital markets however kept afloat on several samurai bonds issued by Japanese corporates. “Straight debt deals have fallen off,” notes one commentator, “but there is a demand for samurai bonds.” Lawyers are hopeful this market will keep picking up as the government stepped in last autumn to mitigate risk by guaranteeing all samurai bonds.

“There’s an insufficiency in the market and clients will be frustrated,” explains one commentator on why he looks forward to a resurgence in the capital markets. “I’m an optimist that the market will come back later this year.” Many deals started in early 2008 were stalled, but legal market practitioners have reported an increase in queries about re-starting some of these. Other trends noted were regulatory capital deals, debt restructurings and an uptake in liability management like bond buybacks.

Anderson Mori & Tomotsune

Anderson Mori & Tomotsune has begun to clearly distinguish itself from the rest of the *big four* as a pre-eminent capital markets firm. This year, commentators note its presence on a flow of samurai bond issuances and both clients and rivals are keen to sing praises for the “savvy and excellent” Akiko Kimura. “I love Akiko Kimura sensei,” says one prominent in-house counsel. “She is fantastic; a consummate professional.”

Rising star Hironori Shibata has been building up his reputation in the market as well: “I’m quite pleased to work with Shibata sensei because he has a good sense of balance and judgement. He also has good junior associates and they can handle whatever work is left to them very well,” says one client.

This year capital markets work was much quieter than before, but even so the firm secured two key mandates that cement its position at the top of the tables. Kimura and team advised the underwriters in the ¥417 billion (\$4.38 billion) global offering of Mitsubishi UFJ Financial Group, the largest in 2008 by a Japanese issuer. More recently in March 2009, the team represented issuer Nomura Holdings on its ¥300 billion global offering.

Leading lawyers

Akiko Kimura
Hironori Shibata

Davis Polk & Wardwell

“They are technically excellent,” says an approving client of Davis Polk & Wardwell. “They also have strong Japanese language capability, which is increasingly important in capital markets transactions here in Japan, and some of the best lawyers.”

Davis Polk & Wardwell is one of the Wall Street firms which dominate the international side of the Japanese capital markets. As part of one of Asia’s finest capital markets teams, the Tokyo branch of Davis Polk remains a stand-out choice for clients seeking top-notch Rule 144A and US securities law advice. Michael Dunn was appointed counsel earlier this year and the Tokyo practice welcomed the arrival of two new associates.

The firm often has a leading role in the flow of cross-border transactions in the Japanese economy, with a special focus on the technology and financial institutions sectors. Although the market has thinned this past year for capital markets deals, the team nonetheless has kept busy with significant offerings which reflect its top-tier status for choice clientele. Often found on the underwriter side, the firm also maintains a high profile with non-US issuers.

The names of top partners Eugene Gregor and Theodore Paradise are always on the tips of the tongues of admiring clients and rivals. “Ted Paradise is perhaps the most knowledgeable US capital markets partner here in Japan,” says an admiring client. “He is very forthcoming with his advice, even when not yet mandated on a transaction.” Another client adds of Paradise: “I think he is the best technical capital markets US lawyer in Japan and believe that he is finally getting some recognition as the real powerhouse he is in terms of relations in Japan.”

Gregor is also praised by a different client: “Eugene is perhaps one of the best lawyers around, not just in Tokyo but around the whole region. He’s that good.”

A huge win for the team was starring for issuer Sumitomo Mitsui Financial Group in relation to its \$9.2 billion global offering in common stock, which was split evenly into an international offering and a domestic Japanese offering.

On the IPO front, the team featured for the joint global coordinators on Japanese Reit Nippon Commercial Investment’s Rule 144A/Reg S initial public offering and Tokyo Stock Exchange listing of its investment units. Worth \$1.04 billion, this was the largest IPO by a Japanese Reit and the first formational IPO to include an international tranche.

Orix Corporation turned to Davis Polk for counsel on its establishment of an automatic shelf registration statement and an immediate notes takedown valued at \$1 billion. The team was also instrumental to Nippon Life Insurance on its Rule 144A/Reg S notes offering by Nissan. This \$450 million cross-border offering was the first involving foundation funds of a Japanese insurer.

Leading lawyers

Eugene Gregor
Theodore Paradise

Linklaters

Linklaters suffered a blow with the loss of top debt expert Reiko Sakimura this past year to Clifford Chance, which followed on the heels of the departures of leading lawyers Mitsuhiro Yasuda to Nishimura & Asahi and Tony Grundy to Morrison & Foerster a year earlier. While some commentators point to the changes as having a negative effect on the firm, peers are still quick to praise Linklaters’ capital markets practice in Japan. “They have a strong brand, quality players and Andrew Carmichael has really re-energised the practice,” says one peer.

The shifting landscape has altered the dynamic of the team slightly and may have loosened its foothold at the top rung just a bit, but the Linklaters capital markets team con-

tinues to steam ahead with talented practitioners keeping a tight rein on the practice.

Andrew Carmichael and Peter Frost consistently win recognition from the market and clients. “Andrew is one of the most outstanding lawyers I know and Peter is one of the best here for bank regulatory work,” comments one peer. A financial client adds: “I work with Peter quite regularly and find him very consistent and very dedicated.”

“Peter is one of the most experienced UK lawyers in Japan and is one of the most experienced Japanese bank capital lawyers in Japan as well,” says one banker. “He is very modest and I very much appreciate his insight and experience.”

Kozo Sasaki heads the well-regarded *bengoshi* side of the practice. “I think Kozo is very good, he gives sensible advice,” says one client. “Along with him they’ve got some good Japanese *bengoshi* lawyers.” One of these is Yasunori Minamikawa: “In addition to being a technically strong Japanese lawyer, he is one of the more imaginative and open-minded Japanese lawyers that I have worked with.”

The firm regularly counsels all major Japanese banks and is particularly strong with samurai bonds, especially on the issuer side. Linklaters is also credited by clients for having a unique strength in securities, MTN programme work and liability management.

Reflecting its ability to command big-ticket and precedent-setting deals, the team acted for the joint lead managers and joint bookrunner in the first Tier I securities to be issued by a Japanese bank on the overseas market after the onset of the credit crunch. Valued at \$1.8 billion, the team managed to successfully execute the Sumitomo Mitsui Financial Group transaction in extremely tough markets around the world.

Another transaction saw Sasaki lead a team that represented the joint lead managers on Rabobank Nederland’s issue of ¥27.5 billion (\$289 million) floating-rate samurai bonds. This was the first samurai bond public offering by a non-sovereign issuer without a governmental guarantee since Lehman collapsed.

“Linklaters is the best at bringing Euromarket practices to Japan, whatever is the latest product, bringing it over here and tailoring it to the Tokyo market. They’ve also got good Japanese law capability internally which isn’t common with the international firms. They have some good Japanese *bengoshi* like Kozo Sasaki; we like him and he gives good advice.”

Leading lawyers

Andrew Carmichael
Peter Frost
Kozo Sasaki
Akihiro Wani

Morrison & Foerster

“In the case of global offerings, Morrison & Foerster has excellent capabilities in both Japanese and foreign law which is very helpful,” says a financial client of Morrison & Foerster. With over 120 lawyers in its Tokyo office, “Mofo” has always been a commanding presence in the capital markets space. It has the capacity to handle a large volume of transactions and offers an integrated Japan and US service which clients appreciate: “I find its one-stop shop model to be efficient for my business,” says one.

Bengoshi practitioners Fuyuo Mitomi and Saori Nakamura are routinely praised for their side of the practice. “Mitomi is one of the best,” says a rival. Clients also have kind words for Mitomi: “He understands both business aspects and legal aspects based on his long experience; his advice is very helpful,” says one client.

The firm’s international side had gained a higher profile with the arrival of leading capital markets expert Tony Grundy from Linklaters last year, and his pairing with the “stellar” Andrew Winden forms a top-tier tripartite offering of UK, US and Japanese law. “I have to give a shoutout to Mofo as they have done a lot to make themselves credible,” says a client. “They are able to cover the most space with excellent partners in both capital markets and M&A.”

One client has praise for Grundy: “Tony is one of the most prominent capital markets lawyers here and he brings a lot of weight to the firm. He is a leading securities expert and if I need help restructuring any existing ones, I’ll go to him.”

The firm climbs into the top tier on rave reviews from clients and competitors, and a strong showing of its participation in several of the market’s most prominent capital-raising deals. “It’s about time the market recognised Mofo as a tier one firm, they’re really very good,” said one rival.

Examples of the firm’s fine work include Grundy and his team’s participation for a Japanese company on the redemption of ¥13.2 billion (\$139 million) zero-coupon convertible bonds.

The firm also advised Mitsubishi UFJ as the initial purchaser in relation with the ¥300 billion global share offering by Nomura Holdings. Big guns Mitomi and Nakamura, Grundy and Winden offered advice on Japanese, UK and US law respectively.

Leading lawyers

Tony Grundy
Fuyuo Mitomi
Saori Nakamura
Andrew Winden

Nagashima Ohno & Tsunematsu

The team at Nagashima Ohno & Tsunematsu is consistently lauded by the market as being a step ahead of its domestic competitors. “I would choose them to be the top Japanese firm for capital markets,” says a pleased client. “They have so many of the strongest and most talented lawyers.” Fumihide Sugimoto is highlighted as a securities luminary by the market: “Definitely one of the best lawyers out there, period,” says one client.

Fitting for perhaps the top domestic capital markets practice in Tokyo, the team acted on a number of debt and equity transactions when other firms have struggled to find work.

At the end of 2008, the firm scored a role representing issuer Mitsubishi UFJ Financial Group on its three-tranche US-registered, Japanese-registered and European offering of common stock that was valued at \$46.3 billion. This offering was made simultaneously in three jurisdictions and signaled the bank’s rebound into health.

Another highlight for the team was advising issuer GE Capital on its ¥153 billion (\$1.6 billion) issuance of samurai bonds. Showcasing its strength in sophisticated debt products, the team worked for Atrium Co on its ¥23 billion issuance of hybrid capital bonds due 2058 and hybrid capital subordinated loans.

Leading lawyers

Miyuki Ishiguro
Hiroyuki Ishizuka
Hidetaka Mihara
Fumihide Sugimoto

Simpson Thacher & Bartlett

Winning unanimous praise from peers and clients for its leading status, Simpson Thacher & Bartlett remains anchored in the first tier. “They have a firm grip on the majority of the market and are so confident in their position that they have no problem pairing up with another top capital markets firm for non-US advice,” says one competitor.

Though 144A deals dried up this year, a testament to its quality was that the Simpson Thacher team remained active on no less than four important capital-raising transactions. The firm regularly advises both underwriters and Japanese issuers in the Tokyo market, where it is a go-to choice for IPOs and bank capital work. “They have a lot of global public offering experience and so I trust their advice; it’s very reliable,” says one financial client.

Alan Cannon and David Sneider are both considered luminaries in the market. “They’re in a star tier of their own,” says one rival. Both constantly garner praise from clients and com-

petitors alike. “David is everything people say he is; he’s very experienced and he gets deals done efficiently,” says one banking client. Another client praises Cannon: “Alan is technically expert and someone whom you can call with lots of technical questions because he knows it all.”

Some market commentators noted Sneider’s transition to take on greater regional management responsibilities; others predict that the recent promotion of Takahiro Saito to the partnership will balance out the leadership. Saito’s move up is notable in that now Simpson Thacher is the only of the top-tier Wall Street firms with three partners. Not just buoyant on the power of its partners, “they have the deepest associate bench of all the leading players” according to one client.

This year, Cannon led a team which featured for the underwriters in a ¥417 billion (\$4.34 billion) global offering of common stock by Mitsubishi UFJ Financial Group. In another large mandate, the underwriters sought out Simpson Thacher’s counsel in a simultaneous offering of \$1.35 billion and £250 million (\$414 million) preferred securities offerings by Sumitomo Mitsui Financial Group. Sneider and Cannon also led for Chuo Mitsui Trust Holdings on a significant global secondary offering of shares by the government of Japan.

“My top choice for capital markets work is Simpson Thacher & Bartlett,” remarks a financial client. “In the Tokyo market they are one of the leaders. They are professional; David is an outstanding lawyer, Alan is very capable and the whole team, they just have tons of experience.”

Leading lawyers

Alan Cannon
David Sneider

Sullivan & Cromwell

Led by dual-qualified star partner Izumi Akai, the capital markets team at Sullivan & Cromwell receives plaudits from the market: “They are truly top quality,” says a financial client. Despite a reduced headcount this year after Bradley Edmister left for Milbank Tweed Hadley & McCloy in 2007 and the loss of some associates, the firm retains a strong foothold as a leading presence in the top tier. With a smaller outfit, the team concentrates on securing prominent mandates to highlight its forte for challenging and innovative deals. The firm has solid underwriter relationships, for example last year acting for JPMorgan, Morgan Stanley, Citigroup Global Markets and Deutsche Bank among others on several bond issuances.

“Izumi is ten times the partner any other firm’s partners are,” says one banking client. “I

love working with him and try to get him on our side whenever possible.”

In June 2009, the team served as underwriters’ counsel for Deutsche Bank, Morgan Stanley and Barclays Capital on a \$2.5 billion global bond issuance. This followed on from a role in March 2009 advising issuer Nomura Holdings on its follow-on common share issues valued at \$2.93 billion.

Leading lawyers

Izumi Akai

For analysis of other leading law firms in the Japanese debt and equity capital markets visit the website at www.iflr1000.com

Capital markets – structured finance and securitisation

Recommended firms	
Tier 1	Atsumi & Partners Mori Hamada & Matsumoto Nagashima Ohno & Tsunematsu Nishimura & Asahi
Tier 2	Allen & Overy Anderson Mori & Tomotsune Clifford Chance Linklaters
Tier 3	Lovells Morrison & Foerster Orrick Herrington & Sutcliffe Skadden Arps Slate Meagher & Flom
Tier 4	Baker & McKenzie GJB Tokyo Aoyama Aoki Koma Freshfields Bruckaus Deringer

Japan’s structured finance and securitisation scene is glum. Although domestic securitisations have not completely tailed off and remain relatively active for local players, there has been a notable drop in cross-border work volume since the credit crunch. “It’s an extremely tough market,” says a commentator. “There are no new issues with the market turning on its head.” The international securitisation market is still licking its wounds from the effects of the subprime crisis in 2007 and few commentators are optimistic for a return to health this year globally, including Japan.

The painful market situation has forced an increase in advisory work for law firms. This includes general advisory work along with special derivatives advice as counterparties have focused on preserving their rights.

Innovative counterparty risk structure development, mitigation of collateral structures and restructuring work have also made appearances on the radar. An additional source of advisory work was the mid-2008 amendment to the country’s Financial Instruments and Exchanges Act. “The changes have clients approaching us for help to ensure their structures and products are compliant,” says one practitioner.

Atsumi & Partners

“Their length and depth of experience in the Japanese market on structured finance and securitisation matters is second to none, and their response times always meet the deadlines,” says a financial client of Atsumi & Partners. “They are dedicated partners to any transaction you work with them on.”

This relatively small firm has gained a strong following of clients for its long-standing specialised securitisation and structured finance practice. “Atsumi & Partners give precise and speedy advice and the firm itself is very trustworthy because it has a conservative past,” says one Japanese banker client.

Another client comments: “Their experience and knowledge to quickly sort out potential legal issues involving new types of transactions is very helpful to us.” The client adds: “They provide us with the appropriate legal standpoint and take real business into account.”

Domestic securitisation work has remained steady and the team’s expertise in this arena kept it busy over the course of the year. It has been so busy in fact, the firm recently expanded its real-estate securitisation team, and overall the firm’s finance group hired a total of 16 new practitioners in 2008, including partner Katsuhiko Kuwayama from Orrick’s Tokyo office and counsel Masayoshi Takashina from Linklaters.

“I will only use Atsumi & Partners as Japanese counsel for my work because they are very committed to the market and have some of the most talented partners,” says one client. “I believe that’s also why our competitors and the mega-banks are using them these days.”

“They crop up on almost every securitisation deal,” says one competitor, “so it’s safe to say they are a top choice.” The firm is led by the well-regarded Hiroo Atsumi and it concentrates on high-end and sophisticated transactions – its role advising on the country’s first covered bond is an example. This past year, Atsumi & Partners played a crucial role in no less than eight significant deals.

This client has high praise for the firm’s practitioners: “Atsumi sensei and Daniel

Hounslow know capital markets issues, the documentation, market standards and have a business perspective as well as the necessary core legal perspective on the market.”

“Mr Atsumi is one of the best lawyers I have met in my entire career and all the partners I know at the firm, such as [Setsuko] Yufu sensei and [Takuji] Nozaka sensei are very hard workers and committed,” says another client. “They always exceed my expectations with their timely service and thorough analysis and advice.” The client adds: “For example, some other lawyers may check a draft documentation very artificially, but their lawyers give us more insight and provide us with suggestions that may preempt future trouble.”

“We usually ask for [Kazuya] Yamamoto because he has good acquaintances with overseas law firms and is very helpful,” says one client of the practitioner. “He’s a partner and still very hands-on; we ask him anything and he could just answer on the spot.”

An illustration of the firm’s dominance was its representation of a Japanese underwriter in a public offering of TMK bonds which were backed by residential loan receivables originated by a Japanese bank. Another key transaction was advising a Japanese bank in a CLO transaction where Irish special purpose corporations issued multiple tranches of euro notes valued at several billion dollars, which were backed by commercial loan receivables originated by a Japanese bank.

“Atsumi & Partners is a top tier law firm in structured finance due to their accumulated legal knowledge, ability to handle over the weekend requests and their continued proof of exhibiting high quality legal professionalism,” says another loyal client. “Therefore we continue to use the law firm with the expectation of receiving high quality legal advice and service.”

Leading lawyers

Hiroo Atsumi
Bonnie Dixon

Mori Hamada & Matsumoto

With a stellar roster of leading clients and one of the top practitioners in the field, Masanori Sato, it’s no surprise Mori Hamada & Matsumoto remains in the top tier.

One client appreciates the skills of Akiko Sueoka: “She gave appropriate advice, does quick and precise work, and is very good at coordinating her skills with other international lawyers.”

The firm won a role in the securitisation of Orix’s golf course management business. In this transaction, Sato led a team that advised Mizuho Securities, Mizuho Corporate Bank

and Orix Golf Management on the whole business securitisation worth \$260 million of Orix’s golf management business as part of its restructuring plan.

Leading lawyers

Masanori Sato

Nagashima Ohno & Tsunematsu

Nagashima Ohno & Tsunematsu leads the pack with its pioneering expertise in securitisations and quality high-volume practice. With a solid core of dedicated structured finance and securitisation practitioners, the team has won the loyalty of many appreciative clients: “Their lawyers are very expert and capable with an assortment of products.” Leading lawyers Satoshi Inoue and Fumihide Sugimoto are well-regarded by the market.

Recent highlights for the team include its role in a ¥50 billion (\$525 million) RMBS securitisation deal for a major Japanese bank and the securitisation of installment automobile sale receivables for the subsidiary of a leading Japanese auto company valued at ¥30 billion.

One top domestic bank sought the firm’s expertise in the arrangement of a new financial product, which involves complex structuring and the repackaging of securitisation products.

Leading lawyers

Satoshi Inoue
Fumihide Sugimoto

Nishimura & Asahi

Nishimura & Asahi stands tall among its competition in the structured finance and securitisation field. Armed with strong banking client relationships and an all-star cast of practitioners, the firm has kept active this year on several interesting and complex transactions.

Although senior partner Akira Kosugi has been noted by the market to have adopted greater managing responsibilities, his ability is still highly-regarded. “As far as I’m concerned, he is the best lawyer in structured financing in both negotiations and documentation,” says a financial client.

In one highlight, the team advised a Japanese golf course operator on its business restructuring and the securitisation of the golf courses owned by the operator. It was innovative because the share options were utilised to keep the borrowing entity’s bankruptcy remote.

Another noteworthy transaction saw prominent partner Hajime Ueno taking the

reins for Deutsche Bank Tokyo on a CMBS deal, with Shinsei Bank’s headquarters as the underlying property.

Leading lawyers

Masaru Ono
Yoshinori Ono
Hajime Ueno
Mitsuhiro Yasuda

Allen & Overy

“Allen & Overy is overwhelmingly, extremely, positively my first choice for structured finance and derivatives work. All the lawyers there are technically competent, very prompt and user-friendly,” says a financial client. “Overall they’re high-quality; I don’t think there are better lawyers in Tokyo, they really are the best firm in this market. We can actually leave work to them and it’ll get done to a high standard.”

The team at Allen & Overy Tokyo has a very specialised and deep knowledge of sophisticated derivatives and structured finance products. “Their expertise in complex instruments surpasses that of the local firms,” says another client. A stellar roster of accomplished partners guides the finance team, which was recently doubled by the hiring of five new *bengoshi* lawyers. Early last year the firm gained finance star Norifusa Hashimoto from Paul Hastings, raising Allen & Overy’s profile in the market.

One client already feels the firm has achieved this status: “We use them as our first port of call. Their service is good, they’re nice people to work with, they have a great level of service and provide lots of attention to detail.” The client adds: “They’re the experts on derivatives, structured credit products, notes swaps, loans – just about everything and anything in the capital markets.”

A highlight of the team’s strength was being involved in the Japanese market for closing out the derivatives contracts with Lehman Brothers during its insolvency. General derivatives advisory work has increased since the downturn as the firm keeps busy on the mitigation of collateral structures and developing innovative counterparty risk structures.

Clients lavish praise on partners Jason Humphreys, Hashimoto and counsel Aaron Comerford. “Between all three, they cover everything and in my view, if I want to rely on a team to give absolutely correct advice on something very complicated, I would give it to them,” says one client.

Of Humphreys, a client says: “Jason is very good, a nice guy, very responsive and very attuned to answers we want. He’s great at tailoring advice really well and he can do everything across the spectrum of work really well.”

“Mr Hashimoto is flexible, quick and experienced,” comments one client of the *bengoshi*

partner. Another client praises Hashimoto for his communication and technical legal skills: “One of the borrowers in our structured finance transaction nearly went bankrupt, but thanks to the quick and good advice of the Allen & Overy team led by Mr Norifusa Hashimoto, we could avoid turmoil, and it was greatly appreciated by the borrower and us.”

Aaron Comerford has a strong fan base as well: “I would recommend Allen & Overy Tokyo for this reason – Aaron Comerford. He is bright, creative, client-minded and one of the few structured products lawyers in Tokyo you can trust to know the answer to complex questions,” says one client. “He is always very generous with his time and I would not trust our work with anyone else but him.”

Recent examples of the team’s work include Hashimoto leading a team that advised Resona Bank on a P-notes securitisation valued at ¥20 billion (\$210 million). The firm is also acting for Barclays Capital Japan on a consumer loan receivable securitisation worth ¥60 billion.

At the end of last year, Humphreys and Comerford featured for the majority of the large Japanese lending houses and a few Japanese foreign institutions in connection with the close-out of their derivatives positions with Lehman Brothers. This was the first large default of an investment bank in modern times under Isda (International Swaps and Derivatives Association) documentation.

Leading lawyers

Aaron Comerford
Norifusa Hashimoto
Jason Humphreys

Anderson Mori & Tomotsune

“Anderson Mori & Tomotsune are our main lawyers for regulatory work in Japan,” says one financial client. “They give us valuable advice, are very good with pure legal questions and have some of the best Japanese lawyers.”

With a sizeable structured finance & securitisation practice brimming with talented partners, Anderson Mori & Tomotsune retains its comfortable position in the top tier. One rival reserves praise for Tatsu Katayama: “He is absolutely excellent.”

Although this past year wasn’t the firm’s most prolific, it did advise on a significant securitisation transaction for Deutsche Bank. Here, Minoru Kobayashi and Naoyuki Kabata headed a team in the securitisation of Shinsei Bank’s headquarters office building via TMK, valued at ¥118 billion (\$1.24 billion).

Leading lawyers

Tatsu Katayama
Isao Shindo

Clifford Chance

“I use only Clifford Chance for international law as they are most committed to the structured financing area and provide the best service in quality, in time and in costs,” says one client of the firm.

The team at Clifford Chance has proven its excellence in the real work of structured finance and securitisation, and climbs up a tier this year. With noted capital markets specialist Reiko Sakimura joining structured finance experts Peter Kilner, Eiichi Kanda and Leng Fong Lai, the team is poised to further expand its market share.

Along with Sakimura’s high-profile move from Linklaters, the team hired two more *ben-goshis* and had two of counsel promotions. Peers commend the firm’s rise through the ranks, with one crediting its securitisation work: “I’m seeing them a lot more on securitisation deals. They definitely are increasing their presence. “The UK firm’s team advises on a wide spectrum of securitisation products and markets, including repackaging, synthetic transactions and advisory matters. The dearth of securitisation work of late has led to a greater activity for the team on repackagings, structural notes, synthetic CDOs and restructuring issues arising from various insolvencies, including Lehman Brothers.

An example of the firm’s work saw Kilner leading a team that represented a US investment bank on the regular issuance of structured notes under its global structured notes issuance programme. Key clients include UBS, JPMorgan and Merrill Lynch, among others.

One competitor sums up the rise of the firm’s structured finance and securitisation practice: “They’ve really got a story to tell.”

Leading lawyers

Eiichi Kanda
Peter Kilner

Linklaters

The strength of the firm’s integrated international and Japanese practices combined with its deep and broad expertise in both structured finance and securitisation make Linklaters an unrivalled top-tier choice for many clients: “They simply are unbeatable. They have cream-of-the-crop lawyers across the board and are always at the forefront of market developments,” says one client. One rival also notes: “Linklaters appears on so many of the big deals.”

The firm has won the *International Financial Law Review’s* Asia Securitisation Team of the Year award for the past four years, and stands tall among its competitors with perhaps the strongest international team assembled in the Japanese market. The team additionally is renowned for its derivatives practice, specialis-

ing in innovative and cutting-edge solutions in cross-border and domestic transactions.

Commentators remarked on the relocation of structured finance and derivatives specialist Toby Gray to Hong Kong last year. Despite his departure, the team remained cohesive under the leadership of two of Tokyo’s leading legal figures – Paul Kruger and Akihiro Wani.

Counsel Victor Wan wins praise from one client: “I can’t see myself going to anyone else but him for derivatives work. He thinks out-of-the-box and has a deep knowledge of the complexities of products.”

Another client agrees: “I use him for all of our repack trades in Japan and find him very knowledgeable.” The client adds: “His prompt and on-point responses are very helpful, he’s commercial and able to dispense practical advice which is indeed very useful for clients.”

Many of the firm’s groundbreaking Korean securitisation deals originate in Tokyo. For example, the firm advised Citi as the manager and lead arranger for the cross-border RMBS issuance of \$228 million secured floating rate notes due 2038 issued by Korea Ace Mortgage Company. This was one of the first public RMBS issuances since the downturn of the credit markets beginning in 2007 and the first deal by a US bank with a presence in Korea.

Another similar deal saw the team acting for the joint arrangers on a cross-border securitisation of credit card receivables originated by Hyundai Card valued at €200 million (\$283 million).

Leading lawyers

Paul Kruger
Victor Wan
Akihiro Wani

For analysis of other leading law firms in the Japanese structured finance and securitisation market visit the website at www.iflr1000.com

Banking

Recommended firms	
Tier 1	
Anderson Mori & Tomotsune	
Mori Hamada & Matsumoto	
Nagashima Ohno & Tsunematsu	
Nishimura & Asahi	
Tier 2	
Allen & Overy	
Atsumi & Partners	
Clifford Chance	
Linklaters	
Tier 3	
Baker & McKenzie GJB Tokyo Aoyama Aoki Koma	
Milbank Tweed Hadley & McCloy	
Morrison & Foerster	
Paul Hastings Janofsky & Walker	
Tier 4	
Freshfields Bruckhaus Deringer	
Jones Day	
Latham & Watkins	
O'Melveny & Myers	
Orrick Herrington & Sutcliffe	
Skadden Arps Slate Meagher & Flom	
TMI Associates	

Even though the country had a reduced exposure to the credit crunch and the lending market was robust for the earlier part of 2008, even the sturdy Japanese banks could not hold back the tide of the global financial crisis that spawned from Lehman's collapse.

After September 2008, in "a year of two halves", the final nail was hammered into the coffin of leveraged financing, which had already sputtered to a near-end in the summer. That domestic market has remained largely lifeless with interest beginning to percolate again this summer. Additionally, the real-estate finance market has been sluggish and few commentators are optimistic about a recovery soon.

Domestic banks are still very cautious about making new loans, but market commentators have pointed out that they will soon need to issue additional stocks to meet the capital requirements the government has outlined to offer a boost to the sagging economy. Stimulus packages have been injected and the lending market is beginning to slowly stir. Japanese banks are beginning to make loans again, albeit in small doses, and one lawyer predicts that by the last quarter of this year "they will be bullish".

Interestingly, acquisition financing did not entirely fade away, with some transactions still going through as corporates required capital to do distressed M&A. The syndicated loan market, which was primed for success at the begin-

ning of 2008 but took a hit post-Lehman, is gaining momentum once again. Many of Japan's top legal players in the banking and finance sector have found themselves busy with refinancing and advisory work. The latter is due in part to the amendment in the Financial Instruments and Exchange Act in June 2008.

Anderson Mori & Tomotsune

The team at Anderson Mori & Tomotsune is known in the market for its standout banking regulatory advice, as well as its restructuring and insolvency capability. A rival credits the firm for its strength in advising foreign banking institutions. With syndicated loans still in fashion in the Japanese market, though less prominent this year, the firm kept active on several key transactions of this type.

Leveraged finance had reared its head earlier on in 2008 with banks keeping a tighter rein on their spending and the team at Anderson Mori had been busy on this front as well. Tatsu Katayama, a leading derivatives specialist, wins praise from peers, with one noting that "he has a great practice and client following." Takaharu Totsuka receives special mention from a client: "Totsuka sensei has much experience in the finance markets so we are very pleased to work with him."

A highlight for the team was its role as counsel to a Japanese bank on its \$1.5 billion syndicated global credit facility for a Japanese electronic company and its foreign subsidiaries. In another notable transaction, Hirohito Akagami led a team that featured for a leading Japanese bank as arranger of a ¥110 billion (\$1.15 billion) facility for a foreign car manufacturer.

Leading lawyers

Koji Fujita
Tatsu Katayama
Takaharu Totsuka

Mori Hamada & Matsumoto

Though commentators have mentioned Mori Hamada & Matsumoto has a slightly less prolific banking practice than its domestic peers, its quality is never compromised. "I can always trust them to produce the best results," says one client.

In particular leading practitioner Satoko Kuwabara is praised by one client: "She is a very excellent lawyer with technical acumen." Akira Marumo too receives appreciative words from clients: "He gives academic advice and is very well-experienced on syndicated loan transactions."

The firm is strong across a broad spectrum of banking products. This year has been quieter than in the past, but in one notable trans-

action the firm advised the lenders to a private-equity group which required financing for its buyout of a target.

The Mori Hamada team also advised Bank of Tokyo-Mitsubishi UFJ and Mizuho Corporate Bank, two institutions which the Carlyle Group borrowed from to fund its majority stake acquisition in NH Techno Glass from Hoya Corporation and Nippon Sheet Glass.

Leading lawyers

Satoko Kuwabara
Masanori Sato

Nagashima Ohno & Tsunematsu

The market dares not challenge the prominence of Nagashima Ohno & Tsunematsu's banking and finance practice. With a well-established track record of quality work on a wide spectrum of banking deals and finance products, the team is a steady foe to its top-tier peers.

Star partner Satoshi Inoue is heralded by clients for his depth of experience and knowledge: "Overall I am happy working with Satoshi sensei as he is very careful, clear and concise with his advice and has worked on many similar finance deals," says one client.

As the trend of rescheduling loans increases, the team advised Goldman Sachs on amendments to the syndicated loan agreement and commitment line agreement of Usen Corporation. In another highlight for the firm, Satoshi Moriguchi led a team that represented Sumitomo Mitsui Banking Corporation in a ¥10 billion debtor-in-possession financing to Cosmos Initia. The team also advised Bank of Tokyo Mitsubishi UFJ in relation to a term loan facility agreement to Bunge.

Leading lawyers

Satoshi Inoue

Nishimura & Asahi

The banking practice at Nishimura & Asahi has thrived as a result of the merger between Nishimura & Partners and Asahi Koma Law Offices two years earlier, boasting one of the largest teams of the domestic firms. Accordingly, the firm handles a strong volume of large-sized deals across a wide spectrum of banking services.

With a well-regarded regulatory team and a set of bankruptcy and reorganisation specialists, the team is a reliable choice for clients. Most of the firm's work is domestic, however it is keen to devote more resources to cross-border deals as future financings increasingly bear foreign elements. The team has seen a

rise in regulatory advisory work, bankruptcies and refinancings as a result of the financial crisis – all core strengths of the firm.

Masahiro Ueno led a team that advised MBK Partners on the refinancing of the existing loan obligations of Tasaki Shinju Company, valued at ¥14 billion (\$147 million). In a loan highlight, a team advised the Carlyle Group on a loan provided by financial institutions for the management buyout of NH Techno Glass, now known as AvanStrate. The loan was large and complex, as the assets of the target's subsidiaries outside Japan were provided to the lenders as collateral before the closing of the acquisition of the shares.

Leading lawyers

Takashi Ejiri
Kei Ito
Masaru Ono
Katsu Sengoku
Masahiro Ueno

Allen & Overy

This magic circle firm possesses some of the finest talent in its “mature” banking and finance group. Both rivals and clients offer praise for the team, led by the well-regarded Aled Davies and Adam Moncrieff. “I find Allen & Overy very professional for asset finance work, and believe they do a very good job when advising the borrower or lessee,” says one client.

With a sizable team purely dedicated to banking work, the firm is favoured by both sponsors and lenders such as Japan Bank for International Cooperation (JBIC), Marubeni, Sumitomo Mitsui Banking Corporation (SMBC) and Mizuho Corporate Bank. This past year the team brought on board three senior associates and one, Ashley Young, was recently promoted to the partnership, furthering its commitment to this market.

Much of A&O's banking work is tied into its project finance capability, where it has a top-tier standing in Japan. Different from the domestic firms, this international outfit has played a major role in many big-ticket and complex transactions around the region that originate from Tokyo. Its deals span across Asia, the CIS (Commonwealth of Independent States), Latin America and, increasingly, the Middle East.

An example of the banking team's connection to energy and resources projects saw A&O advise a syndicate of ten commercial banks on the S\$2.9 billion (\$2 billion) bridge loan facility for the acquisition of Senoko Power and refinancing of its indebtedness.

A separate team represented another syndicate of two commercial lenders on a S\$895 million repowering loan facility. This was the largest power-asset financing on a limited

recourse basis in Asia and it utilised a unique stand-alone repowering facility supported by the sponsor group.

Leading lawyers

Aled Davies
Adam Moncrieff

Atsumi & Partners

Talented local firm Atsumi & Partners remains hot on the heels of the *big four* with reputable practices in financing, structured finance and securitisation. “It's rather small by comparison to the other major Japanese players, but the work is very high quality,” says a client. Rivals note its “experienced lawyers” and strength in asset finance. The firm's finance practice group was bolstered last year by at least 16 new hires.

“It was a very fine experience to work with Atsumi & Partners,” says one client. “They worked hard for us, almost 24 hours continuously at times. They supported us without any breaks, and their advice and attitude was very professional.”

The client has complimentary words for Yuri Suzuki: “Her professional knowledge was helpful and she was able to organise her team efficiently.”

In the syndicate loan sector, a team that included well-regarded partner Hiroo Atsumi acted for the Japanese subsidiaries of a German manufacturing company group as borrowers of syndicated loans. This deal was valued at several hundred million euros.

Leading lawyers

Hiroo Atsumi

Clifford Chance

The UK firm's banking and finance group in Tokyo suffered two key departures this past year, which had commentators speculating on the health of the practice. Partner Tim Jeffares relocated to the Frankfurt office in late 2008, while the firm announced the retirement of David Wilson at the end of June 2009.

Despite this upheaval, top *bengoshi* Masayuki Okamoto remains at the helm and the practice shuttled in four lawyers to boost the practice: one counsel, an associate and two new *bengoshis*. The addition of *bengoshis* signals the firm's strategy to focus on domestic transactions. “They receive a lot of support from Japanese *bengoshi* and have a high credibility from the local banking community,” says a client.

Clifford Chance Tokyo is highly regarded in the market for its leveraged finance expertise. “They have enormous experience in the

leveraged finance area, with covenant packages, inter-creditor agreements, commitment letters and the sort,” says a financial client. “They have a good Japan law and Japan language team which makes them competitive. Peter Kilner and Masayuki Okamoto always give professional and commercial advice.” A peer comments: “They have a very strong, very serious banking practice.”

The team has kept busy this year advising on a number of existing financings, new investment grade financings, and several of the year's most high-profile transactions. Key clients include Citigroup, UBS, JPMorgan Chase and Merrill Lynch.

An illustration of Clifford Chance's dominance in the market was its role representing mandated lead arrangers Morgan Stanley and others in relation to the \$1 billion senior, senior mezzanine and junior mezzanine financing of the acquisition of D&M Holdings by funds advised by Bain Capital. The multi-jurisdictional deal was large, complex and included a novel precedent-setting Japanese security trust agreement.

Another highlight was when Wilson, among others, advised borrower Benkan KK in connection to the \$125 million financing of its acquisition of Benex Corporation. Showcasing the firm's refinancing work was the team's role acting for the mandated lead arrangers on the refinancing of a \$1.8 billion multi-currency revolving and swingline facilities for Sony Corporation.

Acquisition and leveraged finance specialist Yemi Tépé is praised by one client for her communication and technical skills: “She is a good communicator with a deep understanding of the latest banking legal practices.”

Leading lawyers

Peter Kilner
Masayuki Okamoto

Linklaters

The firm's seamlessly integrated banking practice of international advisers and *bengoshis* has won rave reviews from many clients. “In Japan we choose Linklaters because it has a global network and local capability,” says one. “They have experienced a larger number of transactions than others, therefore, their knowledge is up-to-date and they are trusted by the local banking community.”

Its robust team has strong capabilities across key areas of the finance practice, from pure banking to derivatives and regulatory advice. Peers unanimously praise Linklaters' team of “strong and excellent” *bengoshi*

lawyers, with many singling out top regulatory expert Akihiro Wani.

Notwithstanding his relatively recent arrival to Tokyo from Hong Kong in 2007, department head Chris Bradley has also gained admiration from rivals: "He's doing a commendable job; he's a very astute lawyer," says one.

The team has had a successful past 12 months, appearing on several novel and important transactions. The Tokyo team worked on the Japanese elements of the firm's global role acting for a prominent real-estate group on a liquidity financing, and provided regulatory advice for a leading investment bank.

Domestically, Bradley led a team that advised a Japanese arranger on a substantial leveraged financing. Another strong transaction had the team representing the arranger of a ¥13.3 billion (\$140 million) leveraged financing facility to support a private-equity acquisition.

Leading lawyers

Christopher Bradley
Akihiro Wani

For analysis of other leading firms in the Japanese banking market visit the website at www.iflr1000.com

Mergers and acquisitions – local law

Recommended firms

Tier 1

Anderson Mori & Tomotsune
Linklaters
Mori Hamada & Matsumoto
Nagashima Ohno & Tsunematsu
Nishimura & Asahi

Tier 2

Baker & McKenzie GJBJ Tokyo Aoyama
Aoki Koma
Freshfields Bruckhaus Deringer
Morrison & Foerster
White & Case

Tier 3

City-Yuwa Partners
Clifford Chance
Hibiya Park Law
Jones Day
Oh-Ebashi LPC & Partners
O'Melveny & Myers
Paul Hastings Janofsky & Walker
TMI Associates

Mergers and acquisitions – foreign law

Recommended firms

Tier 1

Freshfields Bruckhaus Deringer
Morrison & Foerster
Skadden Arps Slate Meagher & Flom

Tier 2

Allen & Overy
Clifford Chance
Davis Polk & Wardwell
Herbert Smith
Linklaters
Paul Weiss Rifkind Wharton & Garrison
Shearman & Sterling
Simpson Thacher & Bartlett
Sullivan & Cromwell

Tier 3

Ashurst
Jones Day
Lovells
O'Melveny & Myers
Orrick Herrington & Sutcliffe
White & Case

Tier 4

Latham & Watkins
Paul Hastings Janofsky & Walker

It has been a shaky year on Japan's M&A front, which saw fewer transactions being completed in the wake of the financial crisis. Despite the reduction in volume, the market remained robust relative to other economies in the region, and there was a rise in outbound work, with the country's strongest financial corporates regaining an appetite for cheap overseas targets. An example of this saw Asahi buying Australian beverage manufacturer Cadbury-Schweppes.

The strength of the yen turned on Japanese exporters during the economy's decline into recession in the latter half of 2008. "Exporters are suffering big time," says one partner. This has resulted in some domestic market upheaval, with companies merging to fend off losses. The local market witnessed more integrations within sectors such as insurance in light of the economic downturn.

Management buyouts and takeover bids for take-private transactions remain the flavour of the moment, with more predicted to occur in the second half of 2009. Leveraged buyouts on the other hand were on the slide, with plenty taking flight pre-Lehman but then crashing to a halt after the investment bank collapsed.

A promising sign amid the economy's general doom and gloom is that Japanese firms with strong domestic shares and shielded from

exposure to the export industry are actually very cash rich. These clients, for example telecoms giant NTT Docomo, are looking for targets overseas with greater confidence and taking larger listed stakes in foreign investments.

Active domestic companies that are flourishing include those in the technology, electronics and pharmaceuticals sectors. It has not been a banner year for inbound work, but it remains active, especially in the real-estate sector.

Anderson Mori & Tomotsune

The corporate team at Anderson Mori & Tomotsune has enjoyed a successful year of high-profile work, capitalising on the steady flow of domestic and cross-border M&A transactions. Its deep bench of experienced practitioners includes many bilingual *bengoshi* and client favourites such as Kenichi Masuda and Tsutomu Miyano. Historically the firm has had a strong relationship with international firm Herbert Smith, and teams up frequently with the UK firm on cross-border transactions.

This year the firm featured for JPMorgan Securities Japan in relation to JPMorgan's complex \$2.1 billion business transfer and asset transfers in relation to its acquisition of Bear Stearns.

Locally, a team advised Koei Corporation on its merger with Tecmo to form one holding company under the Companies Act of Japan. Another big-ticket mandate for Anderson Mori was representing Shinsei Bank on its purchase of shares of GE Consumer Finance and debt owed by the target company from GE-related companies, all worth ¥580 billion (\$6.1 billion).

Leading lawyers

Osamu Hirakawa
Masaakira Kitazawa
Hiroki Kodate
Kenichi Masuda
Tsutomu Miyano

Freshfields Bruckhaus Deringer

Under the guidance of corporate head James Wood, Freshfields Bruckhaus Deringer has retained its leading position. Wood and Junzaburo Kiuchi are prominent members of a team that clients continue to turn to for quality advice on corporate matters. "James Wood is incredibly helpful," says one client. "He's very client-friendly, commercial and works hard to find a solution."

M&A activity fell off in the latter part of 2008, but the firm kept afloat by securing roles on several prominent deals. Wood and

Kiuchi took the reins for Alibaba.com on its \$20 million joint venture with Softbank Corporation to create a new company that will operate Alibaba.com's Japanese language site.

Following this, the team advised Robert Bosch on its ¥101 billion (\$1.1 billion) tender offer for Bosch Corporation, its Japanese subsidiary and has recently picked up a mandate to advise Goldman Sachs on a ¥114 billion tender offer for Universal Studio. Corporate D&M Holdings sought the firm's expertise in its auction process, which raised \$434 million.

Leading lawyers

James Wood

Linklaters

"The Linklaters team was very responsive and diligent under some very short deadlines," says a financial client. "I also found them to be very thorough and detailed regarding the many different documents, agreements and consents that were required as part of our transaction."

Linklaters' domestic M&A capability is regarded by the market as one of the strongest of the international firms, even though it lost finance specialist Mitsuhiro Yasuda, who left for Nishimura & Asahi in 2008. On the international side, M&A head Paul McNicholl and acquisition finance specialist Christopher Bradley have settled in nicely since arriving in 2007 from Shanghai and Hong Kong respectively, and the team furthered its growth by promoting Jiro Toyokawa to the partnership recently.

"Historically, Paul is one of my go-to guys for any M&A-related questions with financial sponsors," says a banking client of McNicholl's. "He's a consummate professional, answers all my questions without hesitation and I really can't say enough about him. He's absolutely fantastic."

Commentators note that the team had shrunk in size in the lower ranks and some questioned the health of the practice. However Linklaters proved to detractors that it has staying power due to the quality of its players and unique combinations of expertise.

The team's standout mandate this past year was advising Lehman Brothers on its \$225 million sale of Lehman Brothers' Asian business to Nomura. Following this, Toyokawa headed a team that represented TDK Corporation and TDK Germany on its public takeover of Epcos. This was the largest public takeover by a Japanese company in Germany, valued at €1.4 billion.

More recently, McNicholl and counsel Stephen Webb acted for PwC Advisory, the

Japanese affiliate of PricewaterhouseCoopers, in its \$45 million sale to a subsidiary of BearingPoint.

Leading lawyers

Paul McNicholl

Mori Hamada & Matsumoto

Mori Hamada & Matsumoto's star-studded cast of corporate practitioners is a favourite of Japanese clients. The market has high praise for its M&A practice, with many commentators pegging it to be one of the top two, if not the best, of the *big four* domestic firms.

The "excellent and young" Gaku Ishiwata, "experienced pioneer" Yuto Matsumura and "talented" Satoko Kuwabara receive rave reviews from the market. One client says: "I am a huge, huge fan of Ms Kuwabara." Top-end clients such as the Bank of Mitsubishi UFJ and Asahi Breweries relied on the firm this year for sophisticated advice on milestone transactions.

Mori Hamada led the charge for Mitsubishi UFJ Financial Group on its \$7.8 billion acquisition of preferred shares in Morgan Stanley, and advised Credit Saison on its \$3 billion purchase of Atrium, a publicly-listed and Japanese real-estate company.

Mori Hamada also acted for Asahi Breweries on its \$668 million purchase of a 19.9% stake in Tsingtao Brewery from Anheuser-Busch InBev.

Leading lawyers

Gaku Ishiwata
Satoshi Kawai
Satoko Kuwabara
Yuto Matsumura

Nagashima Ohno & Tsunematsu

"Nagashima Ohno & Tsunematsu is the king of M&A," declares one client.

The large and dedicated M&A team at Nagashima Ohno & Tsunematsu was active this year on several of the market's most prominent transactions. Competitors praise its active presence, with some suggesting that the firm is perhaps the leading M&A practice of the *big four*. "They are so strong, I would rate them higher than the others," says one competitor.

Kenichi Fujinawa is consistently singled out as one of the star practitioners, while Hiroto Inoue and Shintaro Takai are praised by clients and rivals. "Mr Inoue is just fabulous, I can't say enough, and Mr Takai is very good too," says a client.

Pfizer and Pfizer Japan called on the firm to advise it on the employee buyout of Pfizer's Nagoya Laboratories, which was then

relaunched as RaQualia Pharma. This was a significant deal for Nagashima Ohno because it was the first sophisticated and sizable transaction of this type in Japan, involving complex and prolonged negotiations.

Another landmark transaction involved representing GE Japan Holdings in relation to the ¥580 billion (\$6.1 billion) acquisition of GE Consumer Finance by Shinsei Bank. The firm then featured for Acom Co on its purchase by Mitsubishi UFJ Financial Group, valued at ¥152 billion.

Leading lawyers

Kenichi Fujinawa
Hiroto Inoue

Nishimura & Asahi

"Nishimura & Asahi is the best law firm in Japan," remarks a financial client. "They are one of the few who can bridge western principles with Japanese culture. They are very unique in their ability to advise foreign clients and their Japanese practice is very good. We use them exclusively as all the *ben-goshi* understand US law, which is extremely helpful and forward-thinking for a Japanese firm."

Two years after the merger of Nishimura & Partners and Asahi Koma Law Offices created Nishimura & Asahi, the largest of the *big four* Japanese firms, it has managed to seamlessly integrate a practice that is studded with top M&A specialists and a broad network of resources, which clients love. "We have used Nishimura & Asahi for the past few years and we always choose them first because it is one of the biggest and most influential firms in Japan," says one. "We have found they have high abilities."

One partner in particular gains rave reviews from one client: "I think the best lawyer is [Yoshinobu] Fujimoto sensei. I think he is absolutely fantastic, he's aggressive, but not too aggressive as in he doesn't offend anyone." The client adds: "If we're trying to do something that won't work, he'll tell us no. He's very thoughtful, creative, thinks about solutions and is extremely commercial. He understands our business and always has an opinion, where he's almost always right."

Yo Ota is also well-regarded by clients: "He is excellent in interpreting the company law, especially its new aspects," says one, adding: "He is extremely proficient."

Another client has praise for the entire team: "[Koichi] Kusano sensei is excellent with making legal and business judgements, [Kazuhiro] Takei sensei is great with interpreting company law details, and Ms [Asa] Shinkawa is strong in forming various factors of M&A cases into agreements."

The firm boasts a wide international network and is allied with a number of top law firms in other jurisdictions. Now that the team has made its impression on the local market, it is developing its cross-border capabilities by hiring foreign lawyers and those with international experience or qualifications.

The firm has been exceptionally busy this year on the M&A front, active on no less than 35 prominent transactions where rivals have struggled to land work. A landmark deal for the team was handling client Nomura Holdings' acquisition of Lehman Brothers' Asia operations, worth \$225 million in total. Ota and Hajime Ueno also advised Osaka Securities Exchange in its ¥5.3 billion (\$55.8 million) purchase of a 76.1% stake in Jasdac. This was the first time in Japan where a stock exchange company took control of another.

"The big difference between Nishimura & Asahi and the other firms is they provide solutions rather than just legal advice," says one approving client. "They proactively provide advice, are very experienced with foreign clients and their senior lawyers, who are international and knowledgeable, and provide forward-thinking leadership. They do all this while still operating in a traditional way."

Leading lawyers

Masakazu Iwakura
Koichi Kusano
Yo Ota
Kazuhiro Takei

Skadden Arps Slate Meagher & Flom

Skadden Arps Slate Meagher & Flom's tight grip on the top of the Tokyo M&A table is owed to its highly-praised practitioners and integrated practice of quality international and Japanese advice. Commentators have wavered on which side is strongest, some saying its US lawyers outshine its Japanese, while others say "Skadden probably has the top Japanese M&A team in the market".

However you look at it, the market consensus is clear: Skadden's combined practice is a clear first tier practice. Mitsuhiro Kamiya and Nobuhisa Ishizuka are the two highly-favoured partners that lead the practice, which was recently boosted by the promotion of corporate specialist Michael Mies to partner.

The firm had a strong year, acting on a spate of complex, high-value deals. For example, Ishizuka led a team that advised NTT Docomo on its acquisition of a 26% stake in Tata Teleservices through a \$2.7 billion strategic investment. In a strong domestic acquisition, Kamiya featured for Goldman Sachs as financial advisor to Millennium

Pharmaceuticals on its \$8.8 billion acquisition by Takeda Pharmaceutical Company by tender offer.

In the private-equity sector, where regionally the firm has been building up its profile, Kamiya and Mies teamed up for MBK Partners as part of a consortium that made a \$1.2 billion MBO of an additional 23% stake of Japan-based theme park operator USJ Co.

Leading lawyers

Nobuhisa Ishizuka
Mitsuhiro Kamiya

For analysis of other leading law firms in the Japanese M&A market visit the website at www.iflr1000.com

Project finance

Recommended firms

Tier 1

Allen & Overy
Herbert Smith
Milbank Tweed Hadley & McCloy
Nishimura & Asahi

Tier 2

Anderson Mori & Tomotsune
Ashurst
Baker & McKenzie GJBJ Tokyo Aoyama Aoki
Koma
Morrison & Foerster
Nagashima Ohno & Tsunematsu
White & Case

Tier 3

Atsumi & Partners
Clifford Chance
Latham & Watkins
Lovells
Oh-Ebashi LPC & Partners
Paul Hastings Janofsky & Walker
Shearman & Sterling

The strongest market in this jurisdiction, many commentators would argue, is the energy, natural resources and project finance sphere. Japan is the world's largest importer of liquefied natural gas (LNG) and a huge consumer of energy resources due to its lack of natural onshore supplies. Its need is enormous, so despite the recession and a slight increase in caution from lenders and sponsors, activity has kept buoyant.

The government's desire to keep investing in resources was showcased in the broadening of Jbic's (Japan Bank for International Co-operation) mandate to lend more. This quasi-government entity has been very active, pouring money into projects spanning the globe and is a much-sought after client for the domestic firms. Most top-tier international

project finance firms maintain solid relationships with Jbic.

Japanese financial entities like Jbic are not shy about getting involved in overseas projects. Spotting Japan's growing confidence, they have been taking out larger listed stakes, and in many cases are now the majority shareholders. Notable regions of investment include south east Asia, Australia, Russia, the Middle East and South America.

However the sector isn't without its problems – banks are reluctant to make loans for long-term projects offshore. "Lenders aren't sure what will happen after 25 years, so they're much more cautious about giving out a 25-year loan," explains one practitioner.

Domestic projects have never made headlines really and this year marks no difference. "The domestic market is dead," says one commentator, but others with a more rosy view remark that the local PFI (private-finance initiative) and IPP (independent power producer) sectors are still busy, though numbers are decreasing and pure domestic projects are non-existent. Some market observers are hopeful that toll road projects will start up soon as infrastructure is bolstered around the country.

Allen & Overy

"Allen & Overy Tokyo is well-organised and reliable as a firm, so all verbal or written communications with them is always very comfortable for us," says a client. "Also they have excellent lawyers."

The popularity of Allen & Overy's project finance team remains at a peak among clients and peers. "Aled Davies is an all-round superb finance lawyer and they work well with Jbic [Japan Bank for International Co-operation] and other major sponsors on international projects," says one rival.

Davies leads a well-rounded practice that has an established track record of successfully advising on numerous groundbreaking projects around the region and globally. This past year three senior associates with specialties in energy, acquisition finance and structured finance joined the team including projects expert Sam Pyun, who came from an in-house role at Sumitomo Corporation.

Adam Moncrieff is another leading lawyer whom clients favour. "He is capable of covering various types of contracts. His advice is always professional and backed up by his profound experience in the field." The client adds: "At the negotiation stage of the deal we worked on, he also advised us on tactics."

The firm is advising Mitsui & Co, Korea Gas Corporation and Samsung Corporation on the development of a liquefied natural gas receiving terminal in Mexico. The firm is advising Japanese sponsors on projects across

the globe, especially in South America, the Middle East, China and south east Asia. A&O is also advising a consortium of sponsors for the financing and development of a utilities project to service a refinery in Brazil.

"I find they always appreciate their responsibility and obligation to us, and they always act fairly and in a professional way," says one client. "I also like that they can use A&O's global network and resources efficiently, which can bring us valuable information and advice."

Leading lawyers

Aled Davies
Adam Moncrieff

Herbert Smith

"I find Herbert Smith to have one of the leading practices in the energy and natural resources sector," says one financial client. "Their work is of a very high standard and they are also responsive. In particular, they are very strong in upstream oil and gas."

Boasting one of the leading and most developed energy and projects practices in the market, Herbert Smith makes a valiant leap into the first tier this year on the back of client praise, peer acknowledgment and an enviable list of project finance transactions.

The firm has focused solely on offering international advice on outbound work instead of building up a *bengoshi* practice. Having sector expertise, particularly in oil, gas and mining, in Tokyo lends the team huge credibility among developer and sponsor clients, who use the firm for not just financing, but also on acquisitions, disposals, joint ventures and construction.

Experienced partners David Clinch and James Watson lead the charge on the Tokyo market's largest specialist team of dedicated energy sector lawyers. "James and David are both excellent in dealing with clients. They are very attentive, responsive and their advice tends to be commercial and not unnecessarily legalistic," says a client of the duo.

Demonstrating its commitment to the market, the practice expanded with six new members last year. The firm also has a number of secondees at leading Japanese corporates such as Marubeni, Japan Petroleum Exploration Co (Japex) and Japan Oil, Gas and Metals National Corporation (Jogmec).

The team regularly advises developers although it is found often on the lenders' side as well. This year a highlight for the team saw it advising Mitsubishi and Mitsui in relation to their potential participation in and development of a liquefied natural gas (LNG) project in Venezuela, an important deal as Japan and Venezuela aim to become energy allies.

Another key role for the team was acting for Mitsubishi in relation to the Donggi-Senoro LNG project in Indonesia, where the firm advised on joint venture, regulatory, financing and structuring issues. An illustration of the firm's strength and capability to execute deals in frontier jurisdictions, it is working for Sumitomo in relation to its investment in the Ambatovy mining project in Madagascar, which involves complex financing and guarantee arrangements worth \$3.8 billion with multiple shareholders.

"We have a great long-standing relationship with Herbert Smith and they provide a good service to us with a very sizable and experienced energy and projects group in Tokyo," says a client.

Leading lawyers

David Clinch
James Watson

Milbank Tweed Hadley & McCloy

Milbank Tweed Hadley & McCloy maintains its dominance in this space as a go-to firm for project development and limited recourse financing. It has built up an enviable reputation in the Tokyo market for over two decades, with key sponsor clients vouching for the firm's excellence: "We found them not to only be excellent in the personal quality of their lawyers, but also well organised for supporting their clients," says one client. "They always show their excellent capabilities in our strategic investments."

Offering top-notch US and UK law advice, the practice expanded with two new project finance specialists Sarah Glenn and Masamichi Yamamoto joining the roster from Milbank's New York office. They join market luminaries Gary Wigmore and Mark Plenderleith to further bolster a team that was already tough to beat. "Gary's reputation precedes him and Mark is one to watch," says one client. "I find them nothing short of excellent."

The team's growth reflects the firm's prospering from the flight-to-quality that clients have made in light of the market downturn since the Lehman collapse. One project finance competitor confesses: "If I had to join any other firm, I would pick Milbank."

A landmark transaction for the team was its role advising the financial lender, government financial institution lenders and political risk insurance guarantors in the \$2.5 billion Tanjung Jati B Expansion Project in Indonesia. This transaction won the *International Financial Law Review's* 2009 Asian project finance deal of the year.

Elsewhere, Gary Wigmore is heading a team advising a developer and owner of a

coal-fired power plant in the Philippines – the first greenfield power project in the Philippines in a decade. The firm is also advising Jbic (Japan Bank for International Co-operation), Kexim and the mandated lead arrangers in relation to the development, construction and financing of an independent coal-fired power project in Cirebon, Indonesia.

Leading lawyers

Mark Plenderleith
Gary Wigmore

Nishimura & Asahi

The project finance practice of Nishimura & Asahi is the most established and respected of the domestic firms. It has a particular expertise in PFI (private finance initiative) projects and tends to work for top lenders in the market.

Practice head Hiroshi Maeda is a leading figure who wins accolades from clients. He is a member of a special government committee, but when his tenure ends in November 2009 he will be able to raise his profile on the sponsor side for government institutions such as Jbic (Japan Bank for International Co-operation).

The team has been active in the market since the early 1990s, and this depth of experience gives clients confidence in the quality of advice the firm dispenses.

This year, Nagahide Sato acted for lender Mizuho Corporate Bank in relation to the project financing of the Haneda Ryokaku Terminal Building. Another key mandate saw Masahiro Ueno taking the reins for a leading Japanese bank on the restructuring of loan obligations for several wind power generating projects.

Leading lawyers

Hiroshi Maeda
Nagahide Sato

Anderson Mori & Tomotsune

The two project finance partners at Anderson Mori & Tomotsune have built up a solid reputation in the market acting for public sector clients in PFI (private finance initiative) deals. "Takashi Akahane devotes himself wholly to the project and his advice to clients is always well thought-out and sound," says one financial client.

This year Akahane acted in two important projects. He led a team that served as borrower's counsel for the financing of the Haneda Air Terminal building, and represented the Ministry of Justice of Japan in the country's first ever PFI prison project.

Leading lawyers

Takashi Akahane
Reiji Takahashi

Ashurst

Ashurst is best known in the market for its strong project finance practice that boasts excellent relationships with leading Japanese lenders and sponsors. "They've been in the market for a long time and have established a good reputation," notes a competitor.

Commentators have mentioned the relative youth of the team on an associate level, but the market maintains high praise for leading practitioner and department head John McClenahan. "I like working with John as he is well-balanced and can make comments from various angles," says one client. Another praises McClenahan and fellow projects specialist Rupert Burrows for their understanding of trading company businesses.

"I had a very positive experience with them, mainly due to the specific experience in a particular sector which was helpful to us – PTP (public to private) deals," says one client. "They were always very helpful, very competent and demonstrated good experience."

A favourite of Jbic (Japan Bank for International Co-operation), the McClenahan-led team advised the lender on at least four multi-billion dollar transactions this year. Ashurst was involved in the \$20 billion Sakhalin II liquefied natural gas project in Russia and in the \$3.17 billion Ras Laffan C IWPP (independent water and power project) in Qatar.

This year the team is also representing Jbic and the commercial lenders on the \$6.6 billion financing of the Raz Az Zawr IWPP in Saudi Arabia and in the \$2 billion Shuweiha S3 IWPP in the UAE. In addition, the firm was instrumental in two other projects that closed in Vietnam and Brazil for Japanese sponsors.

"They drive the transaction, make ground quickly and see the solution for points rather than simply repeating one position and then the other," says one financial client. "They steered us through and navigated a document, and were able to close it up in good time."

Leading lawyers

Rupert Burrows
John McClenahan

Baker & McKenzie

Market observers have commended the US law capability of Baker & McKenzie's project finance team. Offering a combined law practice, the group is a formidable player in this space which is showcased by its appearance on

a number of PFI (private finance initiative) projects this past year.

Department heads Paul Davis, Anne Hung and Naoaki Eguchi are widely praised by clients: "They are so experienced and very commercial with their advice," says one. "They get right to the point which saves me time."

While the firm lost partner Thomas Dreves at the end of March, who left to start his own practice, Baker & McKenzie was still very active this year. One highlight saw a prominent Japanese bank instruct the firm on a project financing for a public industrial waste disposal plant project in Osaka.

In the cross-border market, the team advised a Japanese investor and limited recourse lender in the refinancing of an open-cut coal mining project in Australia, and acted for the lenders in the financing of a petrochemical plant in Thailand and an aluminium project in Australia.

Leading lawyers

Paul Davis
Naoaki Eguchi

Morrison & Foerster

Finance specialist Dale Caldwell heads up Morrison & Foerster's respectable project finance and development practice. "I choose them due to their vast knowledge and expertise about financing, the speed of their work and their deep understanding of the business customs and culture of Japan," says one financial client of the firm's project finance group.

The team climbs into the second tier as it raises its profile on greentech deals and continues to develop its existing relationships with Toshiba, Mitsui, Tokyo Gas and Woodside Petroleum. Caldwell is a leader in his field and brings a wealth of sophisticated financing experience to the table, which clients appreciate.

"Not only is he [Caldwell] good at coordinating, but he is also very good in negotiations, with a deep knowledge of project finance," says a recent client of the partner. "He speaks very fluent Japanese and has quite a bit of experience in international projects." Another client notes: "Dale is very reliable and articulate on documentation work and negotiations against counterparties."

One highlight for the team this year was advising Toshiba in its role as Engineering, Procurement and Construction (EPC) contractor in its US nuclear projects. Another deal had Caldwell leading a team for Mitsui on its joint ventures with Brazilian state-owned oil company Petrobras in relation to the production of bioethanol.

Leading lawyers

Dale Caldwell

Nagashima Ohno & Tsunematsu

The project finance practice at Nagashima Ohno & Tsunematsu retains a respectable standing in the second tier. Although not as established as its peers in the *big four*, the practice still wields considerable power with a strong cast of practitioners and increasing roles for Japanese lenders such as Jbic (Japan Bank for International Co-operation), the Bank of Tokyo Mitsubishi UFJ, Mitsui, Development Bank of China and Sumitomo.

The firm boasts considerable experience in the thermal and wind power generation project space. The team's biggest hallmark this year was its role on the Tanjung Jati B Project in Indonesia, which won the *International Financial Law Review's* 2009 Asian project finance deal of the year.

Nagashima Ohno & Tsunematsu provided local advice on the groundbreaking \$2 billion transaction, which was innovative in its combination of two separate limited-recourse project financings by two separate lender groups with a single project company as borrower.

Another highlight this year was acting on behalf of sponsor Mitsui in relation to the Haneda Air Cargo project.

Leading lawyers

Takao Higuchi

White & Case

"White & Case Tokyo has more than enough experience in IPP [independent power projects] and LNG [liquefied natural gas] projects," says a corporate client. "They recently increased their non-Japanese legal counsel and I feel their Tokyo team is now among the best in Asia."

The robust project finance and energy team at White & Case secured a number of important mandates this year, furthering its claim as a prominent player in the Japanese market. The firm boasts a dedicated projects group, and is recognised by the market as providing UK, US and Japanese law advice on high-end transactions. "Their US side is especially strong," says a competitor.

Leading oil and gas and LNG expert Hendrik Gordenker heads the team which includes well-regarded practitioners Toshio Dokei, Robert Grondine, up-and-coming star Mark Goodrich and former Asian Development Bank general counsel Arthur Mitchell.

"Hendrik Gordenker is a well-known lawyer in the global LNG market and I have been working with him for nearly ten years," comments a client. "He understands the details of real business and has been involved in most of the major LNG projects in this market so he is able to provide appropriate

advice on our LNG procurement and investment strategies.”

The LNG sector experienced a surge of work this year, which played to White & Case’s strength. A hallmark transaction had Gordenker and Dokei advising Jbic (Japan Bank for International Co-operation) and the commercial lenders on the Phase II financing of the \$20 billion Sakhalin 2 LNG project in Russia. This was the world’s largest oil and gas project to have limited recourse financing. The firm also represented Egegaz, a Turkish LNG owner, in Turkey’s first private natural gas importation.

The team’s enviable list of clients contains nearly every important player in the Tokyo market, from lenders to sponsors. They include Sojitz Corporation, Tokyo Gas, Bank of Tokyo-Mitsubishi UFJ, Asian Development Bank, Jbic, Inpex Corporation and Tokyo Electric Power Co.

Leading lawyers

Toshio Dokei
Hendrik Gordenker
Robert Grondine

For analysis of other leading law firms in the Japanese project finance market visit the website at www.iflr1000.com