

## Article 17 of the Secured Bond Trust Law (summary)

**Takaki TOKUOKA**

Attorney-at-law

Article 17 of the Secured Bond Trust Law provides that, when a Company issues secured bonds outside Japan, the owner of the relevant assets placed for such security may enter into a trust agreement with a foreign bond trustee with the approval of the Prime Minister.

Some public officials personally construe that such provisions (as well as provisions under the Corporation Law with respect to bond trustee for unsecured bonds) are private law provisions and thus are applicable when the governing law of such bonds is Japanese law. However, such construction is not supported by academics because it does not present any satisfactory reason why Article 17 should not be applicable to a case where the governing law is a foreign law.

On the other hand, it is commonly construed among academics, in accordance with the legislative purpose, that (i) such provisions are public law provisions (as opposed to private law provisions), requiring the approval of the Prime Minister for issuance of secured bonds outside Japan with a foreign bond trustee, and (ii) the purpose of such provisions is to maintain the confidence of investors outside Japan in the bonds issued by Japanese corporations in general.

However, such legislative purpose is outdated, and Article 17 is now a hindrance in practice and as a result Japanese corporations are not able to issue secured bonds outside Japan as a matter of practice.

In order to avoid such hindrance, this paper proposes a construction that, despite its legislative purpose, this Article be read and construed narrowly by limiting its application to a case where (i) relevant assets are located in Japan and (ii) the trust agreement is governed by Japanese law. Such reading is not contradictory to the text of the provisions, and its purpose might be explained to the effect that since the collateral system and the trust laws are closely related, the approval of the Prime Minister is required to confirm that a foreign bond trustee may work well as the bond trustee with respect to the assets (located in Japan and placed for security) to which the Japanese law as the governing law of the trust agreement is closely related.

