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Financial Law Board

Interim Note on Legal Issues on Guaranteed Corporate Bonds

Issue 1. Legal Nature of Guaranteed Corporate Bonds

In general guaranteed corporate bonds in which an entity other than the issuing company guarantees the payment of principal and interest on the bonds are frequently issued in actual practice. There is no provision concerning guaranteed corporate bonds under the Commercial Code and other related statutes, though the Law on Bill of Exchange and Promissory Note provides for guarantees on bills of exchange and promissory notes (Article 30 through Article 32) and the Secured Bond Trust Law provides for corporate bonds secured by collateral.[1] Consequently the legal nature of guaranteed corporate bonds remains uncertain under Japanese law, and there is a practical necessity to clarify these areas in order to achieve the stability of the law.

There are apparently five possible legal interpretations concerning the legal nature of guaranteed corporate bonds, as listed below:

(1) The guarantee obligation is represented by the certificate of the bond,[2] and the guarantee itself is delivered from one person to the next together with the bond as a right represented by the certificate.
(2) The guarantee obligation is not represented by the certificate of the bond, and is accompanied from one person to the next together with the bond (i.e. the supported obligation) on the basis of the nature of the guarantee as security under the Civil Code.
(3) The guarantee obligation is created under a guarantee contract "for the benefit of a third party" agreed upon between the issuing company and the guarantee company in which the guarantee company makes a guarantee promise for the benefit of the transferees of the certificate from time to time (or owners of record

[1] The legal nature of the bonds guaranteed by the government are based on the Civil Code, while there are the provisions that constitute the grounds for the government's undertaking the guarantee obligation for the bonds (e.g. the Government Housing Loan Corporation Law, Article 27-4 and the Kansai International Airport Corporation Law, Article 9).

[2] Subsequent discussion assumes that when the certificate is issued a guarantee terms are described on the face of the certificate (or the document attached as an integral part of the certificate).

in the case of the registered bond)[3] as the beneficiaries.

(4) The guarantee company makes an offer of guarantee to (all entities that may be) the future holders of the certificate or owners of record in the future at the time of the issuance of the guaranteed corporate bond.[4] Thereafter when the guaranteed corporate bond is assigned, an acceptance of guarantee shall deem to be made by the said transferees of the certificate or owners of record and guarantee in favor of them shall be formed.

(5) The guarantee company makes a reward advertisement *(kensho-koukoku)* (the Civil Code, Article 529) to the effect that the transferees of the certificate or owners of record[5] acquire guarantee in favor of themselves.

The following is an examination of these legal interpretations, in the order stated above.

1. Regarding Interpretation (1)

Although the Commercial Code only has provisions concerning a corporate bond issued by a stock company (*kabushiki-kaisha*), and does not have any provision concerning that issued by a partnership company (*gomei-kaisha*) or a limited partnership company (*goshi-kaisha*), it is generally accepted that a partnership company and a limited partnership company may obtain financing from the public by issuing a corporate bond (Tsuneo Ôtori, SHASAI HÔ (Corporate Bond Law) (Reissued Edition) at 2).[6] Moreover there is a case precedent that allowed a claim for payment against a stock company guaranteeing the payment of principal and interest of a bearer bond issued by a private person, where the stock company made guarantee on the face of the bond (*Dai Shin In* (the former Supreme Court) Judgment of May 21, 1927 (6 DAISHIN IN MINJI HANREI SHÛ (Collection of Civil Great Court of Cassation Cases) at 395).

Professor Wagatsuma has stated that "the fact that Article 86(3) and Article 473 of the Civil Code as well as Article 282 of the Commercial Code provide for a bearer

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[3] The beneficiary is the transferee of the certificate or owner of record, rather than the bondholder, because in the case that the guaranteed corporate bond with an agreement for indemnification against damages as discussed in Issue 2 below, it is necessary for the beneficiary to have a right to indemnify against damages even if the bond is invalid. In the case that the bond itself is invalid, the person who would otherwise be the bondholder would be the beneficiary.

[4] *Supra*, note 3.

[5] *Supra*, note 3.

[6] The new Company Law has a separate volume concerning a corporate bond (Volume 4), and explicitly states that a *mochibun-kaisha* (a partnership company, a limited partnership company and a newly introduced limited liability company (*godou-kaisha*)) may issue a corporate bond.

bond in general terms should be interpreted as meaning that a bearer bond may be issued freely by a private person, which does not fall under any specific type of a bearer bond such as a promissory note as prescribed under the Commercial Code," and he supports the interpretation that a private person may issue securities that are not specifically prescribed by law (Sakae Wagatsuma, 59 *Jiken Hyoushaku* (Annotation of 59 Cases) in HANREI MINJI HÔ (Civil Law Case Precedents) 1927, at 289). According to this interpretation, although law (in particular the Commercial Code) does not have any provision about a guaranteed corporate bond in contrast to a guaranteed promissory note, the guaranteed corporate bond may be issued freely as securities by virtue of forming guarantee a right embodied in the certificate.

The issue is with the explanation of a registered bond. If a corporate bond is registered in accordance with the Corporate Bond Registration Law, a certificate of a corporate bond is either not issued (in the event of registration at the request of the subscriber, or initial registration) or are retrieved (in the event of a request for registration after issuance) (the Bond Registration Law, Article 4) and consequently there would be no certificate in which a guaranteed corporate bond could be embodied. This presents the issue that the principle of the transfer of securities would not be supportable with respect to a registered bond. Although one interpretation says that a potential securities does exist with the identification of a bond number with respect to the legal nature of a registered bond (Kenichi Kobayashi, SHASAITÔ TOROKU HÔ (the Bond Registration Law) at 15), potential securities only mean that the securities that are to be issued through cancellation of the registration is identified by the bond number in the bond registry. And the transfer of a registered bond is effective solely through an agreement by parties until the certificate is actually issued through cancellation of the registration (see the Bond Registration Law, Article 5), and therefore the principle of the transfer of securities, in which the delivery of the certificate is the prerequisite for the transfer of rights, could not apply to the registered bond.

2. Regarding Interpretation (2)

The guarantee obligation secures the supported obligation, and therefore is interpreted to be dependent on and transferred together with the supported obligation. Consequently even if the guarantee obligation incurred by the guarantee company is not embodied in the certificate of the bond (meaning that it is a claim payable to a specific person (*shimei saiken*)), that guarantee obligation would be transferred to the purchaser of the bond together with the corporate bond

(supported obligation). This interpretation, however, presents the issue of how to explain the transfer of the guarantee obligation in the event of acquisition by a good faith purchaser. If a corporate bond is acquired by a purchaser in good faith (under Article 519 of the Commercial Code), then this would be a primary acquisition (*genshi-syutoku*) rather than an acquisition through succession (*syoukei-syutoku*). It presents the question of whether the transfer of guarantee obligation would be cut off when the corporate guarantee bond would be acquired by a good faith purchaser.

3. Regarding Interpretation (3)

The following discusses the interpretation which regards the guarantee as a contract for the benefit of a third party (the Civil Code, Article 537) in which the guarantee company makes a guarantee promise for the benefit of the transferees of the certificate or owners of record as the beneficiaries.

In this event the guarantee obligation incurred by the guarantee company to the initial subscriber of the corporate bond is not transferred to a future bondholder as is with the same characteristics, but is rather explained as the new guarantee obligation to the beneficiaries (holders of the certificate or the owner of record in the case of a registered bond) comes into existence anew through an expression of an intent to receive the benefit thereof. This presents an issue of what happens to a contract for the benefit of a third party after an assignment of the corporate bond. However by stating a clause in the guarantee terms to the effect that the claim against the guarantee will be cancelled if the possession of the certificate is lost or if the title in the bond registry is lost (and it would appear to be fully possible for this condition of cancellation to be found to exist as a reasonable interpretation of an intention of the guarantee company even if it is not explicitly stated in the guarantee terms), then the same effect could be obtained as the transfers of the guarantee claim successively together with the delivery of the corporate bond.[7] In substance as well it may be said that there would be no reason for allowing a transferor of the corporate bond to assert a right with regard to the guarantee.

This interpretation has one issue that it would be possible for the guarantee contract to be withdrawn (or for the guarantee terms to be changed) on the

[7] Since this condition of cancellation would also be satisfied in the event of acquisition through succession, the existing guarantee obligation would be extinguished, and would not be transferred with the supported obligation even in the event of an acquisition by succession, not just in the event of a good faith acquisition.

agreement between the issuing company and the guarantee company at any time prior to the beneficiary's expressing its intent to receive the benefit thereof. In this regard, however, it would be possible to prevent withdrawal of the guarantee contract to a certain extent by adding a clause such as "the issuing company would not consent to amend or withdraw the guarantee attached to the corporate bond" as the covenants of the issuing company in the guarantee terms.[8]

It would be also possible to prevent the withdrawal of the guarantee agreement through the collusion of the issuing company and the guarantee company by adding a person to represent the interests of the bondholders (such as an underwriter or a bond management company), as a party to the guarantee agreement for the benefit of a third party between the issuing company and the guarantee company.

4. Regarding Interpretation (4)

This interpretation holds that the guarantee company has made an offer of guarantee to (all entities that may be) the holders of the certificate or owners of record in the future at the time of the issuance of the guaranteed corporate bond, thereafter when the guaranteed corporate bond is assigned, an acceptance of guarantee shall deem to be made by the said transferees of the certificate or owners of record and guarantee in favor of them shall be formed.

A case precedent does exist which found that when language with regard to jurisdiction is stated on the face of a promissory note to the effect that "it shall be agreed that the court jurisdiction within this case shall rest entirely with the court of law having jurisdiction over the place of residence of the creditor," then an offer to agree on jurisdiction would have been made to future holders of the note and not just the immediate holder, and when a holder of a note makes an expression of intent of consent thereto by stating its consent on the note certificate, then an agreement on jurisdiction will have validly come into existence (Judgment of the Great Court of Cassation of March 15, 1998, 27 DAISHIN IN MINJI HANREI SHÛ at 434). According to this precedent, it would appear that as long as an language with regard to guarantee is stated on the face of a certificate of a corporate bond, it will be found that an expression of intent of offering guarantee has been made to future holders of the certificate, and a contract of guarantee with

[8] However, it is not unforeseeable that if a parent company has guaranteed the bonds issued by a subsidiary, the subsidiary might agree to the withdrawal of the guarantee agreement in an effort to save the parent company, even with the knowledge that this would constitute a violation of the covenants.

the holder of the certificate will come into existence by virtue of an expression of acceptance by a person who acquires the certificate in the future. As with the case of Interpretation (3) above, a guarantee which initially comes into existence between the guarantee company and the initial subscriber of the bond is not transferred to a future bondholder as is with the same characteristics, but is rather explained as coming into existence anew with each holder of the certificate, and if it is stipulated that the loss of possession of the certificate of the bond is the ground for the termination of the guarantee, the structure to have the same effect as if the same guarantee were to be transferred successively together with the bond would be possible.

A further issue is that an offer of guarantee may be withdrawn after a reasonable period of time, in the case that the offer is made without stipulating a time period for its acceptance (the Civil Code, Article 524). Nevertheless since withdrawal is not permitted for an offer that does stipulate a time period for its acceptance (the Civil Code, Article 521), it would be possible to avoid the problem discussed in connection with Interpretation (3) by adding a clause to the guarantee terms which for example stipulate that the period for acceptance of the guarantee would be the period of time through the maturity date plus the period of time required for the claim to lapse because of expiration of the statute of limitations.

Registered bonds, however, present the problem that as there is no certificate it is not possible to make the above offer of guarantee through the certificate. Nevertheless the terms to be stated on the certificate are required to be stated on the reverse side of the cover page of the bond registry (the Bond Registration Law Enforcement Regulations, Article 8),[9] and consequently it is possible to make the interpretation that an offer of guarantee has been made to the acquirer of registered bonds, through the guarantee terms that is stated in the bond registry. With respect to this issue, a case precedent does exist holding that if a guarantor with regard to a promissory note has delivered a deed stating to the effect that the note will be guaranteed, without being addressed to a particular creditor, then a statement of intent will have been made to provide a guarantee to all persons who have acquired the rights to the note after the deed has been delivered, and this guarantee agreement shall come into existence immediately (without any notice of acceptance being required) at the same time as the acceptance by the person who

[9] For practical purposes the terms of the bond and guarantee stated on the certificate of the bond are not listed on the reverse side of the cover sheet of the bond registry, but are rather handled by filing another sheet within the bond registry separately from the cover sheet stating this terms.

has become the holder of the rights under the note (Judgment of the Great Court of Cassation of July 3, 1914, 20 DAISHIN IN MINJI HANREI SHÛ at 576). This case precedent can be interpreted as admitting the formation of a guarantee agreement without a notice of acceptance of the offer of guarantee, in the form of acquiring the note being an act of realizing an intention under common customary practice (the Civil Code, Article 526(2)) for transactions in notes (Sakae Wagatsuma, SHINPAN CHÛSHAKU MINPÔ (Newly Annotated Civil Code) (13) at 405; and Tôru Ariizumi, SAIKEN HÔ (Credit Law) at 242). Consequently it is therefore possible to interpret that when a guarantee company has made an offer of guarantee in the terms of the subscription agreement that is executed with the bond subscriber that is the initial holder of the bond, and this subscription agreement is delivered to the bond subscriber, then an offer of guarantee to all subsequent holders of the certificate or all owner of record listed in the bond registry will be found to have been made, and a guarantee agreement will exist between subsequent acquirers of the registered bonds and the guarantee company in the form of the acquisition of the registered bonds by means of a title transfer constituting a realization of an intention on the part of all persons who thereafter acquire the registered bonds after confirming the guarantee terms by, inter alia, the bond registry or the subscription agreement, even if the subsequent acquirers do not provide the guarantee company with an acceptance of the guarantee offer.

5. Regarding Interpretation (5)

The guarantee company makes a reward advertisement *(kensho-koukoku)* (the Civil Code, Article 529) to the effect that the transferees of the certificate or owners of record acquire guarantee in favor of themselves.

It is possible for the offer of guarantee in the event of (4) above to come into existence in the form of a reward advertisement (the Civil Code, Article 529). Thus the guarantee company would make an advertisement to many unspecified persons, stating that the guarantee company will incur the guarantee obligation to those persons who have completed certain designated acts in the form of acquiring a certificate or registering their own names in the bond registry. Since there is no restriction concerning the form or method of the advertisement, this could be in the form of, inter alia, a newspaper advertisement, delivery of a certificate stating the language of the guarantee, or distributing a prospectus or make a notification available for the public at the local finance bureau or the head office of the issuing company. Moreover, a company may waive its right to withdraw a reward advertisement (proviso of Article 530(1) of the Civil Code) and consequently the concern about a withdrawal of guarantee may thereby be avoided.

Nevertheless this interpretation does present an issue that a party issuing bonds

would not normally have the intention of the guarantee being formed through a reward advertisement, and thus this interpretation would be an artificial legal interpretation that deviates from the general intention of the parties.

Review of Interpretations (1) Through (5) Above

As a result of the above discussion, it would seem that if there is a bond with a certificate then the simplest and most appropriate legal interpretation would be Interpretation (1) above. In the case of a registered bond, however, Interpretation (1) would present the problems discussed above and consequently a different interpretation would have to be used. Given that the parties would usually understand that the guarantee obligation would be assigned successively accompanying the bond, then for practical purposes the most easily accepted legal interpretation would appear to be to rely on Interpretation (2) in the event of a normal acquisition through succession, and to use Interpretations (3) through (5) as a supplement to address the issue of good faith acquisition.

Issue 2. Agreement for Indemnification Against Damages and Subordinate Nature of Guarantee Obligation

In some cases in a guaranteed corporate bond a clause is added that the guarantee company will have "an obligation of the same nature as the bond regardless of the validity of the bond that is the supported obligation" (hereinafter "agreement for indemnification against damages").[10] Normally a guarantee agreement and an agreement for indemnification against damages are classified separately according to whether they have a subordinate or accompanying nature (Wagatsuma, *supra*, at 453; 5 KINYÛ TORIHIKIHÔ TAIKEI (Compendium of Financial Transaction Law) at 292). Consequently the following discusses whether problems would occur from the perspective of the nature of the guarantee by adding an agreement for indemnification against damages to a guarantee contract.

Article 449 of the Civil Code sets forth the liability of a guarantor in the event that the supported obligation is invalid. According to this clause, the guarantor is presumed to have an independent obligation with the same purpose as the supported obligation in the event that the supported obligation is cancelled based on the incapacity of a debtor. The interpretation of "the legal nature of an independent obligation with the same purpose" can be divided into: (A) the interpretation that a certain type of an agreement for indemnification against damages has been executed, and (B) the interpretation that an independent obligation of the same content would be retroactively incurred when the supported obligation is cancelled, while a guarantee obligation would be incurred when the supported obligation still exists (11 CHÛSHAKU MINPÔ (Annotated Civil Code) at 237). It would also be possible to apply these two interpretations of Article 449 of the Civil Code by analogy to the legal nature of a guaranteed corporate bond with an agreement for indemnification against damages to the effect of the interpretations of (A) that the guarantor will incur a certain obligation to indemnify against damages rather than incurring a guarantee obligation, thereby denying the subordinate nature of the guarantor's obligation by means of the agreement for indemnification against damages, and (B) that the agreement for indemnification against damages will function only in the event of the invalidity of the bond that is the supported obligation, and the guarantee obligation will retroactively become an obligation to indemnify against damages that is incurred only when the bond is rendered invalid. Under this interpretation the subordinate nature of the guarantor's obligation is denied only when the bond is

[10] Corporate bonds that are issued under Anglo-American Law is not just a simple guarantee (surety), but have an agreement for indemnification against damages, and therefore demand to issue the same type of the corporate bond under Japanese Law does exist.

rendered invalid.

According to Interpretation (B) above, the aforementioned agreement for indemnification against damages will not operate until the supported obligation is rendered invalid and would have no impact on the nature as guarantee. This therefore allows the conception that the obligation incurred by the guarantee company is a liability for a joint and several guarantee. In the case of Interpretation (A) above, however, as the subordinate nature of the guarantee company's obligation is denied under the agreement for indemnification against damages, the independence of this obligation would be enhanced, so that it is very close to being a joint and several obligation rather than a guarantee obligation.

The Commercial Code contains particular provisions to apply in the event that two or more companies jointly issue corporate bonds (i.e., a joint issuance. The Commercial Code, Article 301(2)(ix), Article 304, Article 306(2) and Article 317(1)(iii)). The definition of a jointly issued corporate bond is not entirely explicit under the text of the law, but each obligation under a joint and several obligation has a distinct individual status, while a joint and several guarantee has a subordinate nature for the purpose of securing the supported obligation. Consequently the difference between a joint and several obligation and a joint and several guarantee can be considered to be the existence or absence of this subordinate nature (Sakae Wagatsuma, SHINTEI SAIKEN SÔRON (Newly Revised Comprehensive Discussion on Claims) at 449), so that a jointly issued corporate bond and a guaranteed corporate bond can be classified according to the difference in that under a jointly issued corporate bond two or more companies each have a joint and several obligation as independent debtors (in other words, there is no subordinate nature between the obligations among these two or more entities), while under a guaranteed corporate bond there is the subordinate nature, in which the issuer has the supported obligation while the guarantee company has the guarantee obligation (in other words, the guarantee obligation does have subordinate nature). Consequently under Interpretation (A), as long as the issuing company and the guarantee company each have their own independent obligations in which there is no subordinate nature, it would be possible to find that the corporate bonds in question fall within the definition of a joint issuance, which presents the problem that in this event the bonds would have to be issued in accordance with the provisions concerning jointly issued corporate bonds as set forth in the Commercial Code.

Moreover, it would appear to be difficult to apply Interpretation (2) (the interpretation that relies on the subordinate nature of a guarantee obligation as the legal nature of a guaranteed corporate bond) as discussed in Issue 1 above in the event of normal acquisition through succession, as well as a good faith acquisition, since the

interpretation discussed in (A) above denies the subordinate nature of an obligation that is imposed on a guarantee company, while the accompanying nature of the guarantee obligation is in general understood to be derived from its subordinate nature (11 Annotated Civil Code at 205; and GENDAI HÔRITSU GAKU ZENSHÛ – SAIKEN SÔRON (Compendium of Modern Legal Scholarship – Comprehensive Discussion on Claims) (3rd ed.) at 429). Consequently, in the case of a guaranteed corporate bonds with an agreement for indemnification against damages, as long as the obligation of the guarantee company is not subordinate to the corporate bond, it would appear that they would not have the nature of accompanying the corporate bond, and would not be automatically transferred with the corporate bond even if the bond is transferred. Moreover even based on Interpretation discussed in (B) above, while the subordinate nature of the guarantee company's obligation is denied and retroactively turns into a liability to indemnify against damages in the event that the supported obligation consisting of the corporate bond becomes invalid, the agreement for indemnification against damages is the agreement that is furnished to address the case in which the corporate bond has become invalid, and if the bond has actually become invalid then the agreement for indemnification against damages would not function effectively if this obligation as accompanying the supported obligation has been denied.

With respect to this issue Professor Wagatsuma has commented that the nature of a guarantee obligation accompanying the supported obligation is derived from its nature as collateral (Wagatsuma, *supra*, at 451). If we consider that the agreement for indemnification against damages has the nature as collateral as well, then it would not be impossible to interpret that the obligation to indemnify against damages would also be found to accompany the corporate bond, the supported obligation. However, even if the guarantee obligation were to be found to accompany the supported obligation notwithstanding the agreement for indemnification against damages, then although this agreement for indemnification against damages would have significance if the corporate bonds were to become invalid, it would be inconceivable for the invalid corporate bonds to be transferred to one owner after another the whole time, and consequently it would be unforeseeable for the guarantee obligation that accompanies the invalid corporate bond to be transferred to the holder of the certificate of the bond, and ultimately if the bonds were to be invalid, the agreement for indemnification against damages would not function effectively to protect the holders of the certificates of the bond.

In conclusion, guaranteed corporate bonds with an agreement for indemnification against damages present a problem of the extent to which they would accompany the corporate bond for which the guarantee company incurs the obligation, and as a result it is not possible to use Interpretation (2) as discussed in Issue 1 to cover the situation of

normal acquisition through succession as well as good faith acquisition, while in the case of registered bonds the only alternative would appear to rely on Interpretation (3) through Interpretation (5).

Issue 3. Legal Nature of Guaranteed Book-entry Corporate Bonds

Article 66 of the Law concerning Book-entry of Corporate Bonds etc. states that the vesting of the rights to the book-entry corporate bonds shall be determined by the records in the book-entry transfer account. Since the Law concerning Book-entry of Corporate Bonds etc. does not contain any direct statement of whether the guarantee obligation is included within the definition of book-entry corporate bonds, the interpretation is not so clear. For this reason it is necessary to study the legal structure to enable the holders of rights to book-entry corporate bonds to validly acquire the claim of guarantee, in order to address the situation in which it is found that the Law concerning Book-entry Corporate Bonds does not apply to a guarantee obligation.

Among the five interpretations of guaranteed corporate bonds discussed in Issue 1, it would be difficult to explain that the "guarantee is also embodied in the certificate of the bond" as stated in Interpretation (1), since the certificate does not exist for book-entry corporate bonds. It would therefore appear to be impossible to use Interpretation (1) as a legal structure for guaranteed book-entry corporate bonds.

Consequently as with registered bonds, the reasonable structure would appear to rely on Interpretation (2) in the event of normal acquisition through succession, and to use Interpretations (3) through (5) as a supplement to address the issues of good faith acquisition as well as when an agreement for indemnification against damages has been attached.

Interpretations (4) and (5) present problems regarding the means of making the expression of intent to offer the guarantee or the reward advertisement, but there are already cases of the short term corporate bond under the Law concerning Book-entry Corporate Bonds etc. (i.e., electronic commercial paper (CP)) being issued with a guarantee, and in this case the problem is addressed from a practical perspective by stating "guaranteed by company XX" in the description for the issue of the corporate bond in the public notice information as set forth in Article 87 of the Law concerning Book-entry Corporate Bonds etc. By making this statement it would appear that the expression of intent to offer the guarantee or the reward advertisement will have been made to the acquirers of the book-entry corporate bonds. Since, however, the guarantee terms itself are not stated in the public notice information, this does not mean that there is no room to doubt whether a simple statement of "guaranteed by company XX" would in fact be sufficient as the statement of intent to offer a guarantee.[11][12]

[11] In order to deal with this problem, practical steps have been taken such as (a) stating that "the contents of the guarantee shall be as set forth in the explanatory pamphlet in connection with the information of the issuer, etc." in addition to the wording "guaranteed by company XX"

The above is a study concerning the legal structure of guaranteed book-entry corporate bonds, but as of the present time a firmly established interpretation does not exist. Consequently it can only be said that we have some legal instability concerning the validity thereof. It would therefore be desirable to clarify under law that the vesting of the rights in connection with the guarantee obligation as well are determined by records in the book-entry transfer account, and at the same time to make a system that enables the terms of the corporate bond and guarantee publicly available.

With respect to the commercial paper which has the traditional form of promissory notes, even though the guarantee on the promissory note can be used, for practical purposes a "keep well agreement" is more executed between the issuing company and the guarantee company, which states that if the issuing company falls into cash flow difficulty and is unable to redeem the commercial paper on the maturity date, the guarantee company will provide the issuing company with the funds that are necessary to redeem the commercial paper, and the copy of the keep well agreement is attached to the sales circular for the commercial paper. Under the keep well agreement the holder of the commercial paper cannot directly demand that the guarantee company make payment, and moreover, it is possible that the keep well agreement will be amended or terminated by the agreement between the issuing company and guarantee company. In these respects this structure is lacking in protection of the holder of the promissory note. However, this type of keep well agreement is widely accepted in the market, and the form of the guarantee on the promissory note is seldom used in actual practice. It would be possible to continue to use this form of credit support without alteration even in the case of the electronic commercial paper, i.e. book-entry corporate bond.

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in the description for the issue of the corporate bond, (b) stating a form of the letter of guarantee in the explanatory pamphlet in connection with the information of the issuer, etc. (the sales circular), and (c) keeping the original of the document for the guarantee at the head office of the program arranger, and allowing investors to inspect and copy that on request.

[12] The Japan Securities Depository Center is scheduled to change its book-entry transfer system in connection with short term corporate bonds on January 10, 2006, to create a new column for guarantees (the indication of guarantee in this column will be made under the involvement of the issuer and the guarantor). However, only two types of statements will be permitted in this column consisting of "joint and several guarantee in entirety" and "guarantee other than joint and several guarantee in entirety" and both of these will be limited to the guarantee under Japanese law. The only alternative for the guarantee governed by the law of the country of a foreign parent company will be to state "none" in the column for guarantee, and then to make the statement in the entry for the description for the issue of the corporate bonds, in the same manner as is presently the case (moreover, statement in the description for the issue is limited to 35 characters in Roman letters).