Reforms in Japanese Business Rules

Submitted by: Japan
Reforms in Japanese Business Rules

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Overview: Reforms relating to Japanese Business Entities

- Business related rule reform history:
  - Lifted ban on holding companies – 1997
  - Stock swap/transfer system introduced – 1999
  - Company spin-off system introduced – 2001
  - Tax deferral for reorganization – 2001
  - Tax treatment for consolidated entities – 2002
  - Corporation with committees introduced – 2003
  - New corporate law, “Companies Act”, enacted – 2005
  - Guidelines for takeover defense measures – 2005 and 2008

- Requests in general:
  - Flexibility of corporate activity: mergers & acquisitions, reorganization
  - More effective trade rules
  - Relaxation of requirement for establishing new companies
Overview: Reforms relating to Japanese Business Entities

- Ongoing reform project:
  - Companies Act – since Nov. 2009
  - Civil Law: part II. Claims, including contracts – since Feb. 2010

- The role of the Japanese government, and particularly the Ministry of Economy, Trade & Industry, is to:
  - Communicate with the business community to understand their wishes;
  - Find the right balance when there are diverse interests, opinions, and assertions;
  - Propose amendments to current rules in order to enhance business activities;
  - Garner support from the business community, law makers, and the public; and
  - Implement the reform

Companies Act Reform

- Purpose of the reform
  - To gain more confidence in companies from stakeholders of companies, e.g., shareholders, creditors, and employees

- Business Community
  - Facilitate Corporate Reorganization by removing bottlenecks
  - Increase the variety of management structures

- Issues:
  - How to reform corporate governance structures
  - How to regulate relationships between parent company and subsidiaries

- Schedule
  - Deliberations began in Feb. 2010.
  - From 2010 to 2011, all related issues are to be discussed
  - In 2011 (or later), a draft of the amendment is to be published
Civil Code Reform:
( > Claims > Contracts)

Civil law (Act No. 89 of April 27, 1896. Effectuated in 1898)

- Purpose
  - Make more understandable for laymen
  - Modernize and update rules to reflect economic growth and modernization

- Progress and Schedule
  - Enacted in 1898. Several minor revisions since.
  - Deliberation on overall amendment began in November 2009.
  - 2010: all related issues are to be discussed
  - 2011 (or later): draft amendment to be published

Issues/currently discussed amendment proposals:
- Rules relating to “Damages due to default”, Scope of Damages
- Time of Formation of Contract between Persons at a Distance
- Requirement for Assertion of Assignment of Claim against Third Parties
- Creation of New Types of Contracts, e.g., finance lease, service contract,
- Regulation on Stipulations, Business to Consumer contracts, to prevent disputes

Business community input:
- Clear wording to avoid disputes in making a contract
- Coherent to contract practice, business practice
- Less requirements for validating contracts
Corporate Taxation

- Corporate groups, M&A, Reorganization
  - FY2010 (beginning April 1st, 2010), Corporate tax law was reformed to introduce a new “group entities tax system”, which relates group reorganization, M&A, etc. Background
  - Prevailing “Group management”, utilizing newly introduced corporate rules
  - Adjust corporate taxation to account for “group management”

Key Points:
- No taxation in the event asset transfers or dividend distributions within corporate groups
- Improved consolidated taxation system

Business community input:
- Remove tax barriers to corporate reorganization.

Conclusion

- Business infrastructure
  - Business rules are widely and repeatedly used by all business entities and are essential business infrastructure.
  - Reforming rules has a very significant impact on business performance in the long run.

- METI's goals:
  - Tackle these business rule reforms, with a view to realizing effective, fair trade rules;
  - Strengthen business competitiveness; and
  - Promote economic growth