

Introduction to the Industrial Competitiveness Enhancement Act - Support for Corporate Activities to Promote New Business and Business Restructuring

On 4 December 2013, the Industrial Competitiveness Enhancement Act (the "**Act**") was enacted to enhance Japan's industrial competitiveness. The Act is set to become effective on 20 January 2014. It gives specific form to the third arrow of Abenomics, being the implementation of a growth strategy to stimulate private investment. The Act includes a System of Special Arrangements for Corporate Field Tests and a System to Remove Gray Zone Areas, with the aim of advancing regulatory reforms. Furthermore, the Act includes measures to promote new businesses and business restructurings, aimed at facilitating the renovation of industries.

Introduction

On 14 June 2013, the Cabinet approved the "Japan Revitalisation Strategy" as a growth strategy to stimulate private investment, otherwise known as "the third arrow of Abenomics" (the economic policy of the Abe Cabinet)¹.

In order to enhance Japan's industrial competitiveness, the correction of the following three distortions in the Japanese economy was deemed essential: (i) insufficient investment; (ii) excessive regulation; and (iii) excessive competition. The Japan Revitalisation Strategy has therefore stipulated the following three goals: (i) the expansion of private investment; (ii) the reform of excessive regulation; and (iii) the resolution of excessive competition.

On 4 December 2013, the Act was passed in order to introduce specific measures to achieve the goals mentioned above.

Overview

The next five years until FY 2017 have been set out by the Act as the time in which to intensively implement the following major measures:

Measures to advance regulatory reforms

System of Special Arrangements for Corporate Field Tests

This is a system where a corporation proposes special regulatory arrangements to the competent minister and relevant ministers work together to establish such arrangements if appropriate. The special regulatory arrangements then apply only to the business to be carried out under a business plan (which will include measures to secure public safety, as approved by the competent minister). The idea is that this procedure will enable regulations to be relaxed whilst still maintaining safety.

¹ The "first arrow" was an aggressive monetary policy and the "second arrow" a flexible fiscal policy.

System to Remove Gray Zone Areas

This system allows relevant ministers to confirm the legality of a business plan upon receipt of a confirmation request from a corporation in relation to a field where the current regulatory scope is unclear. This system is expected to enable corporations to engage in business with confidence and avoid risks that may arise in relation to regulatory authorities or related parties after the commencement of that business.

Measures to promote renovation of industries

Support of Venture Business Growth

In order to further the growth of venture businesses, this programme supports corporations which invest in venture funds (limited partnerships for investment).

Businesses which invest in venture businesses through venture funds and which are expected with some degree of certainty to be actively managing or providing technical support to venture companies will be categorised as "investment businesses which develop specific new business" ("**Specified Investment Businesses**") as prescribed in the ministerial ordinance of the Ministry of Economy, Trade and Industry ("**METI**"). Investments in Specified Investment Businesses which are implemented in accordance with a business plan approved by the relevant authorities can receive financial support such as debt guarantees provided by the Organisation for Small & Medium Enterprises and Regional Innovation, Japan, Independent Administrative Agency (the "**SMRJ**").

Further, the "Tax Reform Outline for Stimulation of Private Investment, etc." (the "**Tax Reform Outline**") drafted by the ruling coalition (the Liberal Democratic Party and *Komeito*) on 1 October 2013 sets out corporate tax incentives for those corporations engaging in Specified Investment Businesses approved by the relevant authorities as stipulated above, so those corporations can count up to 80% of their investment amount as loss reserves and treat those amounts as deductible expenses.

Promotion of Business Restructuring

This programme supports corporations by providing preferential measures to those promoting business restructurings and mergers of business divisions which are unlikely to develop sufficiently through their own means and those taking risks by entering new markets.

Corporations can enjoy special treatment under the Companies Act (e.g. facilitation of the procedures required in order to acquire 100% ownership of a company or exemptions from investigation by inspectors) and financial support (e.g. debt guarantees provided by the SMRJ) with the approval of the competent minister when undertaking business restructurings or specified business restructurings (e.g. carving out or consolidation of management resources).

Further, the Tax Reform Outline sets out corporate tax incentives for those corporations engaging in those specified business restructurings approved by the relevant authorities as indicated above, so those corporations can include up to 70% of their investment or financing amount as deductible expenses and obtain tax relief on registration tax.

Promotion of Investment in Cutting-Edge Equipment

This programme supports corporations investing in cutting-edge equipment such as advanced medical devices or 3D printers, which require high initial costs and where the success of initial operations is difficult to predict.

METI can designate corporations conducting businesses promoting the introduction of cutting-edge equipment as "Corporations Promoting the Introduction of Equipment", after which those corporations can (i) underwrite insurance for the lease of cutting-edge equipment and (ii) provide information, advice and instructions for those companies which lease out cutting-edge equipment.

Furthermore, the Tax Reform Outline establishes corporate tax incentives for investments made in relation to the introduction of cutting-edge equipment, allowing immediate depreciation or tax deduction for these investments.

Measures to revitalise small and medium-sized enterprises ("SMEs")

Promotion of Local Business Start-ups

This programme provides a one-stop support system for local business start-ups by utilising private sector know-how in their regions.

If business plans to support start-ups prepared by municipalities are approved by the competent ministers and considered to provide particular contributions to the promotion of business start-ups, the founder of a start-up supported by such business plans can receive support such as a preferential credit guarantee and tax relief on registration tax.

Support for Revitalisation of Business

The revitalisation support system is further strengthened by the enhancement of the functions of the National Headquarters for SME Revitalisation Support established within the SMRJ.

Other measures

In addition to the measures set out above, the following have also been adopted:

- (i) Exceptional treatment for investments in venture funds by national university corporations;
- (ii) Exceptional treatment for the reduction of or exemption from payment of patent fees for SMEs and venture companies;
- (iii) Acceleration measures for venture investments by the Innovation Network Corporation of Japan; and
- (iv) Promotion measures for early revitalisation of business (facilitation of voluntary liquidation).

Upcoming updates

The Act will come into effect on 20 January 2014.

Where Japanese legal concepts have been expressed in the English language, the concepts concerned may not be identical to the concepts described by the equivalent English terminology as they may be interpreted under the laws of other jurisdictions.

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