

from the view point of going on to college and ensuring an independent future, concerning a person not able to live with parents because of child abuse or for economic reasons.

3. Commercial Law

Partial Amendments to the Banking Act and other related Acts to keep up with environment changes including progress of information and communication technologies of 2016

Law No. 62, June 3, 2016 (Effective Date is To Be Announced)

Background:

This Act (hereinafter “The ACT”) aims to amend the Banking Act and other related Acts (detailed in *Editorial Note*) in order to improve governance systems of financial conglomerates and to make more sophisticated clearance and settlement businesses. In September, 2014, the Minister of State for Financial Services requested the Financial System Council (FSC) to discuss those two themes. The FSC’s Study Group published the Interim Report in April, 2015. FSC organized two working groups corresponding to these themes, and each of them published the Final Report on December 22. The Bill was submitted to the 190th ordinary session of the Diet on March 4, 2016, subsequently approved, and promulgated on June 3. The ACT was set to be effective within one year from the day of promulgation, but did not become so in 2016.

Main Provisions:

1. Improvement of governance systems of financial conglomerates and strengthening of financial intermediation function

In the age of international competition in financial businesses, more efficient governance systems for financial conglomerates are greatly needed.

(1) Integrated Management of financial conglomerates

Bank holding companies (BHCs), or banks controlling the financial conglomerates they are belonging to are required to establish management policies for the conglomerate, to manage conflicts of interests among affiliated companies, and to construct a legal compliance system for the affiliated companies by the ACT.

(2) Elimination of waste of duplication

The ACT broadens the scope of businesses permitted to BHCs, enabling them to execute operations which are common among two or more group companies (at least one must be a bank) and in which executions by BHCs will come down to a better management of the conglomerates' businesses. This aims to make financial intermediation functions (which financial conglomerates offer) more efficient by eliminating the waste of duplication, and from a similar point of view, entrustment of businesses by banks to affiliated banks are facilitated.

(3) Cash Management System

In general, banks are prohibited to make transactions with their subsidiaries, parent companies and other related parties in not arm's length conditions to prevent banks giving favorable treatment to them and hurting themselves. The ACT mitigates this restriction concerning the cash management system among banks belonging to the same financial conglomerate under certain conditions. It is expected that financial conglomerates will use resources more effectively and generate more synergy effects.

(4) Foreign bank agency or intermediary

If banks, including branches of foreign banks, want to act as an agent or an intermediary of other foreign banks, they are required to get the approval of the competent authority, i.e., the Financial Services Agency (FSA) for each consignor foreign bank. Then, for example, if a Japanese company which plans to expand its business in 10 countries asks one branch of a foreign bank, belonging to an international financial conglomerate, to explain about services its 10 affiliated banks in each of the 10 countries offer, that branch needs to get 10 approvals to explain

because it would act as the intermediary of 10 affiliated banks. The ACT introduces the blanket approval system, which permits financial conglomerates level approval; if this system is used, only one approval for the financial conglomerate is needed in the above example.

2. Sophistication of the clearance and settlement businesses with ICT

In recent years, Information and Communication Technology (ICT) has been developed rapidly and legal infrastructures are needed to utilize ICT in financial businesses, some of which are called “Fin Tech.”

(1) Subsidiary business regulations

Banks’ subsidiary companies which are allowed to do banking related activity businesses have had to earn their profits “mainly” (the word used in some Acts) from the affiliated companies of the conglomerate they belong to (more than 50%, as defined in the Notification of Financial Services Agency No. 34 of 2002, corresponding to the word “mainly”), so as to prevent a situation that their business expansions hurt not only their balance sheets but also the banks’ soundness. However, co-ordinations among financial conglomerates in regard to some ICT in financial businesses, like the ICT system management, are said to be greatly in need. The ACT somewhat mitigates that restriction by eliminating the word “mainly” (new regulations will be detailed in the Notification), allowing subsidiaries to increase contacts with non-affiliated companies.

(2) Advancement of investments to Fin Tech Companies by banks

In Japan, generally, banks are prohibited to own over 5% of other company’s stocks for the sake of the mitigation of risks to banks’ balance sheets or prevention of the domination of the national economy by banks. The ACT mitigates this restriction in regard to stocks of specified Fin Tech Companies under an approval of FSA, aiming for advancement of investments to Fin Tech Companies by banks.

(3) Transfer of Electronically Recorded Monetary Claims

There are four electronically monetary claim recording institutions in Japan, but users could not transfer their claims among institutions because of the lack of legal grounds. The ACT defines them.

(4) Prepaid settlement services regulation

Under current prepaid settlement services regulation, a card balance and other related information must be displayed on tangible things under certain conditions. It means that wearable devices such as a so-called “smart watch” or “smart ring” which synchronizes with a so-called “smartphone” in prepaid settlement function also have to display them on their own, despite the fact that users can check them on their smartphones. The ACT mitigates this restriction, and new regulations will be detailed in the Cabinet Office Ordinance on Prepaid Payment Instruments (Cabinet Office Ordinance No. 3 of 2010).

Besides this, the ACT imposes duties to take appropriate complaint processing measures on prepaid settlement service providers, and makes some technical amendments related to the going out of prepaid settlement services and so on.

(5) Cryptocurrency

The ACT aims to build preventive measures against wrongdoings with cryptocurrencies, in particular money laundering and the financing of terrorism, generally called “AML” (Anti Money Laundering) and “CFT” (Counter- Financing of Terrorism, or Combating the Financing of Terrorism), noting that the latter is also known as “CTF” (Counter-Terrorism Financing). The ACT also has an eye on cryptocurrency investor protections, since an exchange of one type of cryptocurrency, which was the largest “cryptocurrency exchange” all over the world at that time, based in Tokyo, went bankrupt in 2014.

The ACT introduces a licensing system for cryptocurrency exchanges. For the purpose of investor protection, registered contractors, which are subject to capital regulation, are required to manage separately their customers’ assets from their own assets, and have to explain to their customers about commissions or risks arising from investments to cryptocurrencies etc. They also have to take AML/CFT(CTF) measures, namely, identification of their customers, reporting suspicious trading to the competent authority, and so forth.

Editorial Note:

The Acts to be amended (in ascending order of corresponding article

numbers of the ACT) and their amendment contents are as follows, noting that the latter are represented as the title number in the *Main Provision* (e.g., 2 (5), if it regards cryptocurrency), otherwise they are only miscellaneous minor or technical amendments (described as “MTA”).

- (1) Banking Act (Act No. 59 of June 1, 1981); 1 (1)-(4), 2 (1), 2 (2)
- (2) Agricultural Co-operatives Act (Act No. 132 of November 19, 1947); 2 (1)
- (3) Fishery Cooperative Act (Act No. 242 of December 15, 1948); 2 (1)
- (4) Act on Financial Businesses by Cooperative (Act No. 183 of June 1, 1949); 1 (1), 2 (1), 2 (2)
- (5) Shinkin Bank Act (Act No. 238 of June 15, 1951); 1 (1), 2 (1), 2 (2)
- (6) Long Term Credit Bank Act (Act No. 187 of June 12, 1952); 1 (4), 2 (1), 2 (2)
- (7) Labor Bank Act (Act No. 227 of August 17, 1953); 1 (1), 2 (1), 2 (2)
- (8) Norinchukin Bank Act (Act No. 93 of June 29, 2001); 1 (1), 2 (1), 2 (2)
- (9) Trust Business Act (Act No. 65 of December 3, 2008); *MTA*
- (10) Electronically Recorded Monetary Claims Act (Act No. 102 of June 27, 2007); 2 (3)
- (11) Payment Services Act (Act No. 59 of June 24, 2009); 2 (4), 2 (5)
- (12) Registration and License Tax Act (Act No. 35 of June 12, 1967); 2 (5)
- (13) Residential Basic Book Act (Act No. 81 of July 25, 1967); 2 (5)
- (14) Act on Enhancement and Restructuring of Credit Business Conducted by Norinchukin Bank and Specified Agricultural and Fishery Cooperatives Savings Insurance Cooperation, etc. (Act No. 118 of December 26, 1996); *MTA*
- (15) Companies Act (Act No. 86 of July 26, 2005); *MTA*
- (16) Postal Service Privatization Act (Act No. 97 of October 21, 2005); 2 (5)
- (17) Act on Prevention of Transfer of Criminal Proceeds (Act No. 22 of March 31, 2007); 2 (5)
- (18) Act on Development Bank of Japan Inc. (Act No. 85 of June 13, 2007); *MTA*
- (19) Act on Special Measures Concerning Asset Freezes against International Terrorists by Japan Based on United Nations Security

Council Resolution 1267 (Act No. 124 of November 27, 2014); *MTA*
(20) Act for Establishment of the Financial Services Agency (Act No. 130
of October 16, 1998); 2 (5)

4. Labor/Social Security Law

An Act of the Partial Revision of the Defined Contribution Pension Act and other Private Pension Acts

Law No. 66, June 3, 2016 (Effective on January 1, 2017)

Background:

(1) Income Security Schemes among the elderly in Japan consist mainly of two-tiered Public Pension Schemes composed of the Basic Pension and Employees pension. Private Pension Schemes complement Public Pension Schemes as being the “third tier.”

(2) The Defined Benefit Corporate Pension Act (Law No. 50, 2001) and the Defined Contribution Pension Act (Law No. 88, 2001) have regulated Private Pension schemes.

1) The Defined Benefit Corporate Pension Act (DBA) deals with defined benefit-type pension plans in which the benefit rate (ie. calculating formula) is preliminarily defined. Two types of governing system for the defined-benefit corporate pension are provided in the DBA: Bylaws-type Defined Benefit pension plan (BDB) and Fund-type Defined Benefit pension plan (FDB). The BDB shall be governed by an employer based on the bylaws, which have been drawn up between an employer and a labor union organized by a majority of the workers at the workplace - in cases where such a union does not exist, a person representing a majority of the workers - and recognized by the Minister of Health, Labour and Welfare. The FDB shall be governed by the board of directors set up in the Approval Fund (approved by the Minister of Health, Labour and Welfare), in which directors should be elected from representatives directed by both employer and employees respectively.

2) The Defined Contribution Pension Act (DCA) prepares only the pension plans defined the contribution rate but not the benefit rate.