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Proposed amendments to the money lending regulations which may facilitate inter-company cash management

On January 27, 2014, the Financial Services Agency of Japan (the "FSA") announced proposed amendments to the Order for Enforcement of the Money Lending Act and the relevant ministerial ordinance (the "Proposed Amendments"). The Proposed Amendments are likely to have a significant impact on the practice of "cash management" systems by a group of companies and arrangements for financing joint ventures or lending between group companies.

This newsletter outlines the Proposed Amendments.

1. Background

The Money Lending Act of Japan (the "Act"), together with its subordinate regulations, regulates money lending business in Japan. The Act requires any person who conducts lending business to obtain a registration from the relevant authorities and to comply with certain codes of conduct. Though the Act provides certain exemptions from these requirements, these exceptions are quite limited and do not explicitly include lending activities within a group of companies.

On several occasions in the past, the FSA has published its interpretations of the Act to partly relax the enforcement of the Act, through "no action letters" and other means in response to inquiries raised by affected parties. Based on such interpretations, it has been understood that lending and borrowing activities carried out between a parent and majority-owned subsidiary, and between wholly-owned subsidiaries under a common parent, would not be subject to the Act. However, it has been commented that this is not sufficient for most large groups of companies, both domestic and foreign, which are operating in Japan, to implement a "cash management plan" or similar system. Also, it has been difficult to adequately finance a newly created joint venture by JV partners.

The Proposed Amendments have recently been discussed and published to address these concerns.

2. Outline of Proposed Amendments

The major amendments are as follows:

(1) Lending among entities which belong to a "group of entities" (as defined in the Proposed Amendments) is exempt from the registration and other requirements under the Act. A "group of entities" means, in essence, a group of companies led by a company (parent company) and its majority owned or otherwise "controlled" (in light of the financial or business

relationship), direct and indirect, subsidiaries. Loans from the parent company to the subsidiaries (or vise versa) and lending and borrowing among "sister" companies will be exempt, provided that the lending is conducted within the "group of entities"; and

(2) Lending to a company established and operated by more than one shareholder (i.e., joint venture company; "JV") by any of its shareholders holding 20% or more of the JV's voting rights is also exempt from the application of the Act. This exemption is, however, subject to the consent of all shareholders of the JV.

3. Schedule for Implementation

The Proposed Amendments are now under consideration, and public comments are sought on the draft amendments to the relevant regulations by February 26, 2014. It is expected that the FSA will publish the final version of the amendments in March, and will come into effect as of April 1, 2014.

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