

Amendments to money lending regulations

On April 1, 2014, the amendments to the subordinate regulations¹ of the Money Lending Act of Japan (“Act”) became effective (“Amendments”). The Amendments are likely to have a significant impact on the practice of inter-company cash management (including lending) by a group of companies and arrangements for financing joint ventures.

The key points of the Amendments are as follows:

- ✓ Lending among entities which belong to a “group of entities” is exempt from regulations under the Act.
- ✓ Lending to an entity jointly controlled by more than one other entity (“Shareholder Entity”; collectively, the “Shareholder Entities”), by any of its Shareholder Entities holding 20% or more of said entity’s voting rights, is also exempt from the application of the Act.

1. Background

Previously, the Act required any person conducting a lending business to obtain a registration from the relevant authorities and to comply with certain codes of conduct. Although the Act provided for limited exemptions from these requirements, these exemptions were not sufficient for the majority of large groups of companies operating in Japan, both domestic and foreign, to implement a “cash management plan” or other similar systems. Furthermore, under the Act previously it had been difficult to adequately finance a newly created joint venture through the relevant Shareholder Entities. In order to address these problems, the Amendments were executed.

2. Outline of the Amendments

2.1 Lending among a group of entities

Lending among a group of entities is now exempt from the registration and other requirements under the Act. The key points in relation to this change are set out as follows:

(1) A “group of entities” consists of the following:

- ✓ an entity
- ✓ the entity’s subsidiary entities
- ✓ the entity’s sub-subsidiary entities

¹ The Order for Enforcement of the Money Lending Act and the Enforcement Regulations of the Money Lending Act.

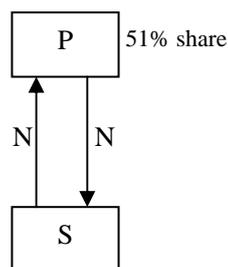
(2) An “entity” is defined as any of following institutions (the same shall apply hereafter):

- ✓ company
- ✓ partnership
- ✓ other organizations, including foreign organizations, which are equivalent to companies or partnerships

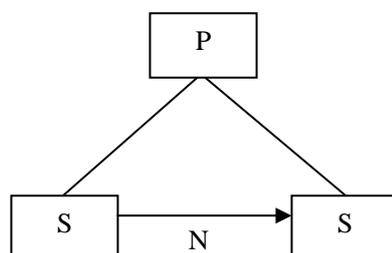
(3) A subsidiary entity is defined as an entity controlled, in the light of relevant financial or business relationships, by another entity or entities, such as an entity that has more than 50% of its voting rights held by another entity or entities.

(4) Chart Summary: Lending among a group of entities²

(i) Lending between a parent entity and a subsidiary entity is exempt from the registration and the other requirements under the Act.

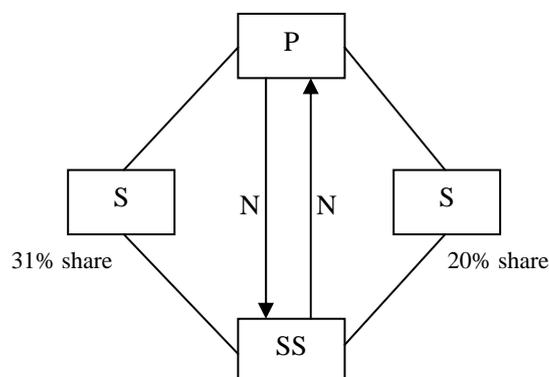


(ii) Lending between sister companies is exempt from the registration and other requirements under the Act.



² In the below charts, “P” indicates a parent entity, “S” indicates a subsidiary entity, “SS” indicates a sub-sub-subsidiary entity, “A” indicates that the registration and other requirements under the Act are applicable and “N” indicates these requirements are non-applicable. The arrows indicate the direction of lending.

- (iii) Lending between a parent entity and a sub-sub entity is exempt from the registration and other requirements under the Act³.



The Financial Services Agency (“FSA”) further clarified, in its answers to Public Comments in respect of the Amendments (“FSA Answers”), the following points:

- (1) “Lending” for the purpose of the expanded exemptions under the Amendments also includes intermediary services pertaining to the lending and borrowing of money.
- (2) Lending among a group of entities by any entity registered under the Act to conduct a money lending business is not exempt from the other requirements under the Act, such as the delivery of written documents at the time of a loan, even in connection with lending among its group of entities.

2.2 Lending to a joint venture by one of its Shareholder Entities

A loan from Shareholder Entities holding 20% or more of the entity’s voting rights under an agreement (i.e. a so-called “joint venture agreement”) to an entity jointly controlled by Shareholder Entities is also exempt from the application of the Act. The key points of this change are as set out below:

- (1) According to the FSA Answers, “jointly control” indicates, in essence, the case where the cooperative Shareholder Entities of a joint venture are independent and where they agree to joint control of the joint venture.
- (2) The exemption is subject to the consent of all Shareholder Entities.

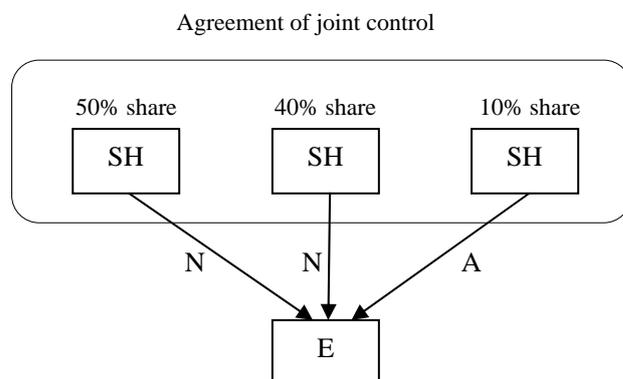
All the Shareholder Entities are required to consent to the execution of the lending transaction. The FSA Answers clarified, however, that the consent does not necessarily cover the details relating to the lending transaction.

³ The below chart indicates the case where two subsidiary entities combined hold more than 50% of the voting rights of a sub-sub entity.

(3) It is clarified in the FSA Answers that the consent of all Shareholder Entities may be given and recorded in writing in advance by an agreement among the Shareholder Entities.

(4) Chart Summary: Lending to Joint Ventures

Shareholder Entities (“SH” below), each holding 20% or more of the entity’s voting rights and under an agreement of joint control, are able to lend money to the entity (“E” below) without being subject to the regulations under the Act if all Shareholder Entities agree in writing in advance to consent to the lending itself.



3. Benefit of the Amendments for companies

The Amendments exempt entities from the registration and other requirements pursuant to the provisions of the Act under the circumstances outlined above. Costs related to compliance with the regulations of the Act, such as the appointment of chiefs of money lending operations and the delivery of written documents at the time of a loan, may thus be saved. Viewed from a larger perspective, the Amendments go a long way to facilitating inter-company cash management systems for group entities and financing joint ventures.

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