

Separation of JBIC from JFC under new JBIC Law offers more effective support to Japanese corporations for overseas investment

Japan Bank of International Cooperation (JBIC) was formally a government-affiliated bank incorporated and registered pursuant to the Japan Bank for International Cooperation Law. Beginning 1 October 2008, it is currently the international finance sector of Japan Finance Corporation (*Nihon Seisaku Kin'yuu Kouko*) (JFC) which was established by merging the National Life Finance Corporation (NLFC), the Agriculture, Forestry and Fisheries Finance Corporation (AFC), the Japan Finance Corporation for Small and Medium Enterprise (JASME) together with the International Finance Operations (IFOs) of the former JBIC.

The "Joint Stock Company Japan Bank for International Cooperation Law (the New JBIC Law)" was enacted on 28 April 2011 and came into effect on 2 May 2011. Based on the New JBIC Law, JBIC will be separated from JFC and will be established as an independent judicial person (*hojin*) on 1 April 2012. The new name for JBIC will be the Joint Stock Company Japan Bank for International Cooperation (New JBIC).

Purpose of Separation from JFC

One purpose for the separation of New JBIC from JFC is to (i) better assist Japanese private companies intending to export infrastructure goods/services to emerging countries; and (ii) provide strategic financing to Japanese private companies intending to advance loans to offshore entities. Such assistance offers Japanese private companies support when carrying out overseas transactions. In order to fulfill this purpose, New JBIC will become more strategic following its separation from JFC and will be able to undertake more functions than its existing form.

Structure, Management and Government's Involvement with New JBIC

The New JBIC Law provides the statutory basis and legal authority for New JBIC and supersedes the JBIC-related provisions of the Japan Finance Corporation Law (the JFC Law). Some provisions of the New JBIC Law are as follows:

Key issues

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New Operations

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(a) Ownership

The total number of issued shares of New JBIC shall be held by the Government at all times. This requirement is the same as that for the issued shares of JFC and is to ensure that New JBIC carries out its operations in line with national policy.

(b) Management

As a joint stock company and depending on the structure of New JBIC, either a representative director or representative executive officer will represent New JBIC. The New JBIC Law also provides guidelines for corporate governance, such as rules in relation to and obligations of New JBIC's directors, auditors and officers. These guidelines are similar to those in the JFC Law and are necessary in order to ensure effective management of New JBIC's business and to achieve alignment of its operations with national policy. Examples of these guidelines are (i) the appointment and/or removal of directors or auditors (including the selection and displacement of representative directors) shall not take effect unless consent by the Minister of Finance has been granted; (ii) the officers of the Government and local government cannot be appointed as the directors or auditors of New JBIC; and (iii) the directors, auditors and officers of New JBIC owe confidentiality obligations in respect of confidential information obtained during the performance of their duties.

(c) Loan/Guarantee by the Government

In order to maintain the credibility of New JBIC and to streamline the financing process, the Government may provide monetary loans to New JBIC and/or guarantees for the obligations of New JBIC under any bonds New JBIC may issue for fund raising.

(d) Payment to National Treasury

As New JBIC is wholly owned by the Government, it shall remit all of its profits (excluding the accumulation of any necessary reserves) to the National Treasury.

(e) Government's Involvement

New JBIC shall operate under supervision of the Minister of Finance in order to ensure that the operations of New JBIC are aligned with national policy. The New JBIC Law also sets out several measures for the Government to control and/or supervise New JBIC. Such measures include (i) the approval of New JBIC's budget by the Diet; (ii) the submission by New JBIC to the Diet of its disbursement records; (iii) the ability of the Minister of Finance to request for reports and to perform inspections; and (iv) the requirement for the Minister of Finance approve any amendments of New JBIC's articles of incorporation.

New Operations

In order to support the strategic overseas investment and financing by Japanese companies, the range of operations of New JBIC will be expanded from that of the current JBIC. New areas of business include the provision of (i) financing for the export of equipment to developed countries; (ii) short-term bridge financing; (iii) acquisition financing to Japanese companies seeking to acquire / obtain control over foreign companies; (iv) two-step loans to Japanese companies looking to expand their overseas business; (v) guarantees in relation to currency swap transactions, (vi) support for the factoring or securitization of account receivables, and (vii) back-up guarantee for multinational buyers' credit.. The new operations outlined in (v), (vi) and (vii) above are new area of business which are not permitted under JBIC's current operations.

Implementation Period

As described above, the New JBIC Law was came into effect on 2 May 2011 and New JBIC will be established on 1 April 2012. However, some of the new business areas outlined above (i.e., (i) to (iv) under the heading "New Operations") may be carried out by JBIC starting 2 May 2011 in order to ensure the smooth implementation of the New JBIC Law and to provide assistance to Japanese companies from an earlier date.

It has also been recently announced that the Government will provide up to US\$100 billion from its foreign exchange reserves to support Japanese overseas investments. Such support will be in the form of loans by JBIC to Japanese companies at competitive rates in order to encourage overseas mergers and acquisitions, and investment in natural resources.

Conclusion

The establishment of New JBIC Law with its functional enhancements will provide more effective support to private Japanese corporations for their overseas investments. Such support comes at an appropriate time as the Japanese currency's strength is undermining the competitiveness of Japanese companies overseas. Although it is yet to be seen, it is also anticipated that New JBIC will contribute to improved competitiveness of the Japanese economy as a whole.

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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