

Outline of the Amendment to the Industrial Competitiveness Enhancement Law

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The "Act for Partial Revision of the Industrial Competitiveness Enhancement Act, etc." (hereinafter referred to as the "Revised Industrial Competitiveness Enhancement Act") was promulgated on June 16, 2021. On June 16, 2021, the "Act for Partial Revision of the Industrial Competitiveness Enhancement Act, etc." (hereinafter referred to as the "Revised Industrial Competitiveness Enhancement Act") was promulgated, and on the same day, a part of the systems under the Act came into effect.

1 Background of Amendment

Japan's economy showed a significant decline in the January-March 2021 period, with a 3.9% real annualized decline in gross domestic product (GDP) (Cabinet Office, Government of Japan, Preliminary Quarterly GDP Report for the January-March 2021 Period (Second Preliminary Report)), mainly due to the impact of the new coronavirus infection. The purpose of the revised Industrial Competitiveness Enhancement Law is to break out of such economic stagnation and to make structural changes toward a "new normal" so that the economy can respond to new challenges such as decarbonization and digitalization.

The following are some of the key points in this revision

- ① Shift to a "green society"
- ② Responding to "digitization"
- ③ Restructuring of business for "new daily life"
- ④ Establishment of a system for virtual-only shareholders meetings
- ⑤ Support for the growth of venture companies
- ⑥ Facilitation of business restructuring
- ⑦ Make the regulatory sandbox permanent

In this newsletter, we will explain ④ Establishment of a system for virtual-only shareholders meetings and ⑦ Make the regulatory sandbox permanent.

2 Establishment of a system for virtual-only shareholder meetings

Under the current Companies Act, when a general meeting of shareholders is to be convened, the "place" must be specified (Article 298, Paragraph 1, Item 1 of the Companies Act), and it has been difficult to hold a general meeting of shareholders in a virtual space without an actual place for the meeting. It has been difficult to hold a virtual-only shareholders' meeting. Therefore, as a special exception to the Companies Act, the revised Industrial Competitiveness Enhancement Act established a system for "general meetings of shareholders without a fixed location" and made it possible to hold virtual-only general meetings of shareholders (Article 66, Paragraphs 1 and 2 of the revised Industrial Competitiveness Enhancement Act).

In order to hold a virtual-only shareholders' meeting, the following requirements must be met.

- ① The company must be a listed company
- ② The requirements specified in the Ministerial Ordinance (hereinafter referred to as "Ministerial Requirements") The Company must be obtained confirmation from the Minister of Economy, Trade and Industry and the Minister of Justice that the requirements stipulated in the Ministerial Ordinance (hereinafter referred to as "Ministerial Requirements") are met
- ③ The Articles of Incorporation shall provide that the general meeting of shareholders may be a "general meeting of shareholders without a fixed place
- ④ The ministerial requirements are met at the time of the decision to convene the meeting

The following requirements are set forth in the Ministerial Ordinance on General Meetings of Shareholders without a Fixed Place (Ministry of Justice Ordinance No. 1 of the Ministry of Economy, Trade and Industry) based on the revised Industrial Competitiveness Enhancement Law.

- (1) Establish a person in charge of the work related to the communication methods used to send and receive information in the proceedings



- (2) Formulation of a policy on measures to deal with obstacles related to the communication method used to send and receive information during the proceedings
- (3) Formulation of a policy for ensuring the interests of shareholders who have difficulties in using the Internet as a communication method for sending and receiving information in proceedings
- (4) The number of shareholders recorded in the shareholders' register must be 100 or more

With respect to ③, in light of the impact of the spread of the new coronavirus infection, for two years after the enforcement of the law (June 16, 2021), listed companies that have received confirmation from the Minister of Economy, Trade and Industry and the Minister of Justice may be deemed to have the above provisions in their articles of incorporation without a resolution at a general meeting of shareholders to amend their articles of incorporation (Article 3, Paragraph 1 of the Supplementary Provisions of the Amended Law for Enhancing Industrial Competitiveness).

Virtual-only shareholders' meetings make it easier for many shareholders, including those in remote areas, to attend, reduce operating costs by eliminating the need to secure a physical venue, and reduce the risk of infectious diseases and other problems by eliminating the need for all shareholders, directors, etc. to be in one place. As it leads to more active, efficient, and smoother shareholder meetings, virtual-only shareholder meetings are expected to become more popular in the future, especially among companies with a high ratio of overseas shareholders and companies that want to reduce costs.

3 Make the regulatory sandbox system (New Technology Demonstration Plan) permanent

The regulatory sandbox system refers to a system that enables the practical application and commercialization of new technologies and business models, including IoT, AI, big data, and blockchain, in cases where it is difficult to do so due to existing regulations, by creating an environment in which demonstrations can be conducted, and the information and data obtained from the demonstrations can be used to review regulations.

Previously, the Law on Special Measures for Productivity Enhancement (enacted in June 2018) established and stipulated a regulatory sandbox system (Article 4 and

Article 20 of the Law on Special Measures for Productivity Enhancement). However, as the Act on Special Measures for Productivity Enhancement will be abolished in June 2021, it was decided to transfer the system to the revised Industrial Competitiveness Enhancement Act and make it permanent.

The main flow of the regulatory sandbox system is as follows.

- ① Consult with the centralized contact point at the Cabinet Secretariat and work with Cabinet Secretariat staff to finalize the details of the demonstration plan.
- ② Apply for the demonstration plan to the competent minister.
- ③ The competent minister will check whether the demonstration plan does not violate existing regulatory laws and regulations, and if not, will approve it. The competent minister's opinion will also be discussed by the Committee for Evaluation of the Effectiveness of New Technologies.
- ④ If approved, the demonstration experiment will begin.
- ⑤ After the demonstration, the ministry or agency with regulatory jurisdiction shall take legislative and other measures to eliminate or relax the necessary regulations based on the demonstration report.

Since its implementation in June 2018, projects have been certified in diverse fields such as Fintech, healthcare, mobility, and IoT. The time from application to certification is about one to two months, and the demonstration period is less than two years. Because of the possibility of shortening the time for regulatory review and realization, there is a growing need for the system, especially among startups that do not have a lot of financial or time to spare.

In addition, businesses that use the regulatory sandbox system cite as an advantage the branding effect and credit enhancement effect of the system, as they can obtain the government's endorsement by using the system. On the other hand, the lack of recognition of the regulatory sandbox system and the complexity of the procedures were cited as issues, and it is considered necessary to improve recognition and simplify the procedures in the future. (See Nomura Research



Institute, Ltd., "FY2036 Survey on New Business Creation through Regulatory Reform," p. 13-14).

When starting a business based on a new technology, there are many cases where the existing regulations do not anticipate the new technology and it takes time to revise the laws, which sometimes prevents smooth practical application and commercialization. By utilizing the regulatory sandbox system, it is expected that the technology can be implemented in society at an early stage, and now that it has been made permanent, the number of companies utilizing it is expected to increase further.