COVID-19: JAPANESE ECONOMIC STIMULUS PACKAGE IS UNVEILED

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By: Tsuguhito Omagari, Nobuki Wada, Yuki Sako

BACKGROUND

On April 7, 2020, the Cabinet of Japan approved a supplementary appropriation bill (the "Bill"), which included a JPY 108 trillion (US$997 billion) economic stimulus package in light of the COVID-19 outbreak (the "Stimulus Package"). The Bill is under consideration by the National Diet, and the ruling party indicated that it hopes to pass it by April 24, 2020. Below we set forth a high-level summary of the programs included in the Stimulus Package; however, all of these programs are subject to the passage of the Bill. In addition, as the details of the programs are still being worked out, we expect further details will be made available in the coming days.

EXPANSION OF EMPLOYMENT ADJUSTMENT SUBSIDIES (GRANT) (*KOYOU CHOSEI ZYOSEIKIN*):

To help employers maintain employment, the Bill would expand the eligibility and increase the applicable ratios for subsidies ("Employment Adjustment Subsidies") paid to companies to continue to pay "leave allowance" ("Leave Allowance") from April 1 through June 30, 2020 (the "Special Response Period").

By way of background, under Japan's Employment Standards Law, Leave Allowance is a payment of 60 percent or more of normal salary an employer is required to pay its employees during the period in which the business is closed and employees are furloughed for reasons attributable to the employer. However, companies are not required to pay Leave Allowance if the business closure is for reasons not attributable to the employer (e.g., force majeure). Following the declaration by the Japanese national government on April 7, 2020 of an official state of emergency in seven designated prefectures[1], the governors of certain affected prefectures issued a general "request" to businesses to implement "tele-work" or work-from-home protocols and that certain businesses close, to prevent the spread of COVID-19. These official requests raised the question of whether or not closure at the mere "request" of the government triggers the Leave Allowance requirement payable by employers and the government has issued some guidance in this regard.[2]

With respect to the expanded Employment Adjustment Subsidies, the government announced that, regardless of whether or not an employer is legally required to pay Leave Allowance, the expanded subsidies as part of the Stimulus Package would be available for all businesses that are affected by the COVID-19 outbreak broadly and decide to pay Leave Allowances, provided that the business satisfies all of the other expanded eligibility

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requirements. In other words, closure of business at the mere request of the affected prefectural governments would be generally covered under the Stimulus Package.

As of the date of this alert, under the Bill, during the three-month Special Response Period, the government will pay to employers a percentage[3] of the Leave Allowance an eligible employer pays to its employees, up to JPY 8,330 per employee per day. Key eligibility requirements are shown in the table below. Eligible businesses must submit a closure plan by the end of June 2020, and complete the application no later than two months after the end of the period in respect of which they want to apply for the subsidies. The Employment Adjustment Subsidies would be paid through the Special Response Period under the expanded eligibility requirements plus 100 days under the general eligibility requirements.

For businesses that expect a partial closure of business operations in Japan, the Employment Adjustment Subsidies may be helpful; however, the actual payment may be delayed due to the program's high demand. In the past, the government similarly expanded eligibility requirements for Employment Adjustment Subsidies after the 2008 financial crisis; at such time, it was reported that it took six months for the subsidies to be paid.

KEY ELIGIBILITY REQUIREMENTS FOR EMPLOYMENT ADJUSTMENT SUBSIDIES

	General Eligibility Requirements (up to 100 days in a year; 150 days in three years)	**Expanded Eligibility Requirements during the Special Response Period** (April 1–June 30, 2020)
Applicability	Employer who needs to close its business partially due to economic circumstances.	All employers affected by COVID-19 outbreak.
Ratio of Subsidies	66 percent (small and medium companies); 50 percent (large companies).	80 percent (small and medium companies); 66 percent (large companies). If the employer does not terminate any employees from January 24, 2020, 90 percent and 75 percent, respectively.
Certain Skill Training Program Assistance Grant (Added to the Subsidies)	Same ratios as the subsidies, but up to JPY 1,200.	Same ratios as the subsidies, but up to JPY 2,400 (small and medium companies) and JPY 1,800 (large companies) per day per full-time employee.
Decrease in	10 percent or more of decrease in	Five percent or more of decrease in production or

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Production or Sales	production or sales in a quarter compared to previous year.	sales on a monthly basis compared to previous year.
Applicable Employees	Full-time employees with employment insurance coverage.	Part-time employees will be covered.
Business Closure	Reduction of working hours on a business-wide basis, which amounts to 1/20 (one-twentieth) in the case of small and medium companies and 1/15 (one-fifteenth) in the case of large companies of total working hours of the employee.	Partial closure is also covered, provided that the closure is applied on a department-wide, function-wide, or office-wide basis. Closure amounts to 1/40 (one-fortieth) in the case of small and medium companies and 1/30 (one-thirtieth) in the case of large companies of total working hours of the employee.
Closure Plan	A closure plan must be submitted two weeks before the closure is scheduled.	A closure plan must be submitted by June 30, 2020.
Employee Consent for Closure	Consent by an employee representative representing more than half of employees or a representative of a labor union in which more than half of employees are members.	Consent by an employee representative representing more than half of employees or a representative of a labor union in which more than half of employees are members.
Processing Time	Two months, generally.	Delay is expected given the high demand.

For the purposes of Employment Adjustment Subsidies, small and medium companies are as follows:

- Retail (including restaurants): companies with paid-in capital up to JPY 50 million or up to 50 employees;
- Services: companies with paid-in capital up to JPY 50 million or up to 100 employees;
- Wholesale: companies with paid-in capital up to JPY 100 million or up to 100 employees; and
- Other business sectors: companies with paid-in capital up to JPY 300 million or up to 300 employees.

A “large” company would be any company exceeding the above limits applicable to its industry.

Japanese affiliates of international companies would be eligible for Employment Adjustment Subsidies, generally.

Childcare Subsidies

The government will pay a grant to companies that allow employees that are parents to take additional paid annual leave to care for their children while schools are closed and/or while their children need to take sick leave

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in relation to COVID-19 infection. The amount of grant is equivalent to the employee's salary during April 1–June 30, 2020 at a rate up to JPY 8,330 per day.

Key eligibilities requirements include:

- Employees have pre-middle school children whose schools are closed due to applicable government guidance and/or who need to take sick leaves in relation to COVID-19 infection, and took paid leaves to care for their children.
- Part-time employees will be covered as well as full-time employees.

The government is currently accepting applications from eligible employers by mail at designated processing centers, and as of the date of this alert, the applications must be accepted by September 30, 2020.

Interest Rate Subsidized, No Collateral Loans

The Stimulus Package includes various loan and loan guarantee programs that would make interest rate subsidized (partial forgiveness of interests), no-collateral loans available to impacted businesses. While the details of these programs are still being worked out, interest rate subsidized, no-collateral loans would be provided to small and medium companies by various government-related institutions such as the Japan Finance Corporation and private financial institutions.

For example, the Japan Finance Corporation or other governmental agencies would provide COVID-19 special loans up to JPY 300 million (approximately US$2.8 million) per company with no collateral requirement and with a 15-year term, in the case of loan proceeds being used for operational costs, or a 20-year term, in the case of loan proceeds being used for facilities investments (collectively “COVID-19 Special Loans”).

The primary eligibility requirements for COVID-19 Special Loans are (a) a 5 percent or more decrease in sales in a recent one month period as compared with the same period last year or the year before (with certain exceptions); and (b) recovery and development can be expected in the mid to long term. An eligible company will need will need to apply at a branch at Japan Finance Corporation. Required documents include:

- application form;
- commercial registry;
- seal certificate;
- tax payment certificate;
- financial documents for the last three quarters; and
- documents showing recent sales.

Terms of the loans would include the following.

- Loan proceeds could be used to cover operational costs and expenses for facilities incurred by the business broadly as a result of the COVID-19 outbreak.
- No repayment may be required for the first five years and interest for the first three years corresponding to loan principal of up to JPY 100 million may be forgiven if the business experiences a decrease in

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recent sales of 15 percent or more, in the case of small-scale businesses, and 20 percent or more, in the case of other small or medium businesses. Small-scale businesses in this regard are businesses with five full-time employees in the case of services businesses or wholesale or retail businesses, and 20 full-time employees in the case of other businesses.

Other programs include refinancing of existing loans by government-related institutions into interest rate subsidized, no collateral loans.

The Stimulus Package also includes a program for interest rate subsidized, no collateral loans to be provided by private financial institutions; however, the details are not available. In addition, for medium and large companies, the Development Bank of Japan and Shoko Chukin Bank are expected to provide certain crisis response loans.

One-Year Tax Moratorium

The Stimulus Package includes some tax relief programs, more specifically, (a) a one-year moratorium for certain national and local taxes, and social insurance premiums that become due by January 31, 2021, for companies which have seen, as a result of the COVID-19 outbreak, their monthly revenues since February 2020 fall by 20 percent or more from the previous year; (b) expansion of permitted carry forwarding of operating loss to companies with paid-in capitals of JPY 1 billion or less; and (c) expansion of the scope of capital investments subject to favorable tax deductibility against corporate tax to include certain “tele-work” support facilities.

Cash Payments to Small and Medium Companies up to JPY 2 million (approximately US$18,500)

While the details are still being worked out, it appears that the eligibility requirements would include a decrease of sales by 50 percent or more from the previous year.

We will continue to monitor developments related to the Stimulus Package as further details become available. Should you have any questions in relation to the information provided in this alert, please do not hesitate to contact us.

FOOTNOTES

[1] The April 7 state of emergency declaration designated Tokyo, Osaka, Saitama, Chiba, Kanagawa, Hyogo and Fukuoka as the areas of state of emergency. As of April 16, the government added the rest of the prefectures to the designation, resulting in a nationwide state of emergency declaration.

[2] See further employment law discussion in our recent alert.

[3] 80–90 percent in the case of “small” and “medium” companies and 66–75 percent in the case of “large” companies.

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KEY CONTACTS



TSUGUHITO OMAGARI
PARTNER

TOKYO
+81.3.6205.3623
TSUGUHITO.OMAGARI@KLGATES.COM



NOBUKI WADA
PARTNER

TOKYO
+81.3.6205.3632
NOBUKI.WADA@KLGATES.COM



YUKI SAKO
OF COUNSEL

WASHINGTON, DC, TOKYO
+1.202.778.9061
YUKI.SAKO@KLGATES.COM



J. RYAN DWYER, III
MANAGING PARTNER, ASIA AND TOKYO OFFICES

TOKYO
+81.3.6205.3601
RYAN.DWYER@KLGATES.COM

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