



The “Special Act on Revitalizing Companies” (the so-called “One-Shot Act”), aimed at enhancing the competitiveness of industries and vitality of companies, to take effect in August 2016

1. Overview

On February 4, 2016, the National Assembly of the Republic of Korea passed the “Special Act on Revitalizing Companies,” which is commonly referred to as the “One-Shot Act” (hereinafter, the “One-Shot Act”), aimed at enhancing the competitiveness of industries as well as companies and facilitating voluntary and initiative corporate restructuring. Under the One-Shot Act, companies approved by the competent authorities will benefit from special rules such as simplified procedures for corporate restructuring under the Commercial Code and the Financial Investment Services and Capital Markets Act, extended grace periods for holding company regulations, and establishment of exempted periods for affiliate loan guarantee restrictions under the Monopoly Regulation and Fair Trade Act. In addition, the One-Shot Act provides tax, financial and R&D support for innovative activities by companies and aids small and mid-sized companies with their business innovation and employment stability. The One-Shot Act is scheduled to take effect in August 2016, six months after its promulgation, and will remain effective for a limited period of three years thereafter.

2. Key Points of the One-Shot Act

A. Establishing a Regime to Promote Corporate Restructuring

In order for a company intending to carry out corporate restructuring to benefit from the One-Shot Act, the company must prepare a corporate restructuring plan, including (i) its needs for corporate restructuring, (ii) its enhancement goals in terms of productivity and

financial soundness to be achieved through corporate restructuring during the restructuring period, (iii) the amount of funds needed for corporate restructuring and its method of procuring such funds, (iv) materials demonstrating that the industry is suffering from over-supplies, and (v) a business combination report (if the corporate restructuring meets the business combination requirements), and obtain an approval from the competent authorities (Article 9 of the One-Shot Act). In particular, since over-supplies mean circumstances to be prescribed by the Enforcement Decree of the One-Shot Act where the business environment is expected to continue to deteriorate given the market situation of the relevant industry, including significant decreases in revenues and operating income margins or slowdowns in price change rates compared against costs (Article 2(4) of the One-Shot Act), it would be necessary to monitor the progress of such Enforcement Decree's adoption in order to determine which specific industry will benefit from the One-Shot Act. The One-Shot Act explicitly provides that the competent authorities are obligated to reject a corporate restructuring plan if it is determined that the purpose of such plan is to, rather than enhancing productivities, transfer ownership stakes of owner families to their next generations, strengthen controlling governance structures of specially related parties, or provide unfair profits to affiliates of large business groups subject to cross-shareholding limitations (Article 10(6) of the One-Shot Act).

Upon obtaining approval of its corporate restructuring plan, a company must regularly file reports and submit materials regarding its implementation of the plan and results thereof to the competent authorities, which will be entitled to request rectifications. In addition, once the company's corporate restructuring is completed, the competent authorities must make public disclosures including whether the company has achieved its productivity and financial soundness goals (Article 11 of the One-Shot Act).

B. Special rules relating to the Commercial Code and the Financial Investment Services and Capital Markets Act

The One-Shot Act facilitates prompt and smooth corporate restructuring procedures by relaxing the requirements of a small-scale merger, spin-off/merger and simplified merger, for which an approval of the general shareholders meeting may be substituted by an approval of the board of directors, and allowing such substitution even in case of small-scale spin-offs (Articles 15, 16 and 17 of the One-Shot Act). According to the One-Shot Act, however, a company may engage in a small-scale spin-off only once during the approved corporate restructuring period. Also, the final version of the One-Shot Act does not contain provisions for reverse triangular mergers and triangular mergers, which were included in the original bill, because they were allowed by the amendment to the Commercial Code passed on November 12, 2015.

In case of a merger, a spinoff/merger, a comprehensive stock swap or transfer or a business transfer, the One-Shot Act shortens the periods for each of the followings from

2 weeks to 7 days (excluding Holidays, Saturdays and Labor Day) and thus promotes prompt corporate restructurings: the notice period for convening a general shareholders meeting, the starting date of the period during which the relevant documentation such as a merger agreement needs to be displayed at the headquarters, and the closing date/record date of closing the shareholders registry (Article 18 of the One-Shot Act).

Moreover, the One-Shot Act also shortens the creditor objection period from one month or more to ten days or more (excluding Holidays, Saturdays and Labor Day) and adopts a special exception for an approved company to skip creditor protection procedures if it submits a bank guarantee or insurance policy covering its liabilities (Article 19 of the One-Shot Act). This reduces the risks of failure of a corporate restructuring, which may be caused when a company with sufficient assets to repay its liabilities is required to spend time to conduct creditor protection procedures or provide objecting creditors with repayments or collaterals.

In addition, the period during which dissenting shareholders may exercise their appraisal rights is shortened from 20 days to 10 days after the date of the shareholders' resolution while the period during which an approved company must purchase the relevant shares is increased from two months to six months (or from one month to three months for listed companies) (Article 20 of the One-Shot Act). Such reduction of the dissenting shareholders' appraisal right period and increase of the company's share purchase period would provide the company with more funding opportunities, facilitating smooth corporate restructurings.

C. Special rules relating to the Monopoly Regulation and Fair Trade Act

The following restrictions under the Monopoly Regulation and Fair Trade Act may be exempted from application for three years in accordance with an approved corporate restructuring plan: (i) if the approved company is a holding company, the 200% debt ratio limitation and the shareholding ratio limitation on its shareholding in its subsidiaries or non-affiliate companies; (ii) if the approved company is a subsidiary of a holding company, the shareholding ratio limitations on its shareholding in its subsidiaries or the shareholding limitations on holding shares in other affiliate companies; and (iii) if the approved company is a subsidiary of a holding company's subsidiary, the shareholding limitations on holding shares in affiliate companies (Articles 21, 22 and 23 of the One-Shot Act). The foregoing extends the grace periods regarding holding company regulations such as restrictions on holding shares in affiliates. In other words, the One-Shot Act extends the grace periods that were originally granted on a case by case basis for one to two years only at the time of establishing or converting into a holding company, and it also has the effect of granting a new three year grace period in accordance with its corporate restructuring plan even after the holding company was established or converted. Notably, however, these exceptions apply to companies that are holding companies (or their subsidiaries, as

applicable) when they submit their corporate restructuring plans to the competent authorities.

Also, the requirement for a company falling under a large business group subject to cross-shareholding limitations to dispose any shares it holds in its affiliates (acquired through, for example, a merger) within six months has been extended to one year following the date of acquisition or possession of the applicable shares (Article 24 of the One-Shot Act), and according to the One-Shot Act, the prohibition under Articles 10-2 and 14(3)(iii) of the Monopoly Regulation and Fair Trade Act barring companies falling under a large business group subject to loan guarantee limitations from receiving guarantees from an affiliate has been lifted for a period of three years if an approved company receives such guarantee from another approved company in accordance with an approved corporate restructuring plan (Article 25 of the One-Shot Act).

D. Tax and financial aids

The One-Shot Act explicitly provides that the central and local governments may provide tax aids to an approved company and support, lend or contribute funds needed for corporate restructuring (Articles 27 and 28 of the One-Shot Act).

The tax aids are provided in the Special Taxation Restriction Act and the Special Local Taxation Restriction Act. Specifically, Articles 121-26 through 121-31 of the Special Taxation Restriction Act were newly adopted to incorporate the following provisions: (i) deferred taxation on capital gains from stock swaps between companies, (ii) special taxation rules for capital gains from transfer of duplicate assets in a merger, (iii) special taxation rules regarding the assumption/repayment of a subsidiary's financial debts, (iv) special taxation rules regarding the sale of assets for repayment of financial debts, (v) special taxation rules regarding a shareholder's provision of assets without consideration, and (vi) special taxation rules regarding gains from exemption of debts (Chapter 5-10 of the Special Taxation Restriction Act). These provisions mainly reduce a company's corporate income tax by granting the benefit of taxation deferrals for a certain period on gains that it may receive from asset transfers or debt exemptions in accordance with its restructuring plan.

In addition, the central and local governments may provide financial aid to an approved company, if necessary. Such aids, however, are not applicable if the approved company falls under a large business group subject to cross-shareholding limitations when it submits its corporate restructuring plan or amended corporate restructuring plan to the competent authorities (Article 28(3) of the One-Shot Act). Furthermore, the central and local governments may (i) provide R&D aids necessary for an approved company's business innovation (Article 29 of the One-Shot Act), (ii) support small or mid-sized approved companies in marketing domestic and foreign sales channels, obtaining information, developing skilled manpower and receiving business, technology and

accounting advisory services (Article 30 of the One-Shot Act), and (iii) implement measures to support an approved company's employment adjustment and its employees' job stability and vocational development (Article 31(2) of the One-Shot Act).

E. Support in Removing Regulatory Obstacles

A company that plans to apply for, has already applied for, or has been approved for a corporate restructuring may (i) ask the competent authorities for an interpretation of laws and regulations, municipal codes and administrative rules applicable to the relevant corporate restructuring activities (including confirmation of their applicability) and (ii) request regulatory improvements in relation to the relevant business activities, which are intended to remove regulatory precariousness (Articles 32 and 33 of the One-Shot Act).

3. Major Implications

As the One-Shot Act has finally been passed by the National Assembly after a lengthy stall caused by struggles between the ruling and opposition parties, companies will be able to carry out voluntary corporate restructurings and the government will be able to promptly and efficiently support corporate restructuring initiatives of such companies. The One-Shot Act is especially meaningful in that companies will be able to receive various benefits under the One-Shot Act if they engage in corporate restructuring initiatives before suffering any symptoms of unsoundness.

The One-Shot Act passed by the National Assembly, unlike the original bill, includes a number of exceptions to restrict certain benefits of large-sized corporations, including the obligation for the competent authorities to reject a corporate restructuring plan if it is determined that the purpose of such plan is, for example, ownership succession, strengthening of controlling governance structures or providing unfair profits to affiliates. Furthermore, harsher sanctions intended to prevent any abuse of the One-Shot Act have been incorporated such as the government's right to require companies to repay any monetary benefits they received (including tax benefits) if an approved corporate restructuring plan is later cancelled and impose a triple amount of the benefits to be prescribed by the Enforcement Decree as penalty (although the original bill was limited to the return of provided benefits). Therefore, it would be advisable for any company planning to carry out corporate restructuring by using the procedures under the One-Shot Act to prepare its plan after sufficient review of the applicable laws and regulations.

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