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This issue covers the following topics:

■ Labor and Employment

Extension of Wage Claims Limitation Period under the Labor Standards Act

I. Entry into Force of the Act on Partial Amendment of the Labor Standards Act

The Act on Partial Amendment of the Labor Standards Act entered into force on April 1, 2020 (the "2020 Labor Standards Act Amendment") and included an extension to the wage claim limitation period.

II. Background to the Amendment

Prior to an amendment to the Civil Code, which also entered into force on April 1, 2020, the limitation period in respect of wage claims under the Civil Code was, in principle, 10 years from the time when the relevant right became exercisable. However, in order to limit future disputes by encouraging early resolution, the Civil Code also stipulated a short limitation period of one year in relation to claims by employees pertaining to monthly wages.

On the one hand, since the right to claim wages forms the basis of employees' livelihoods, the one year limitation period in respect of such claims represented a deficiency in the protection of employees under the law. On the other hand, a limitation period of 10 years amounts to an excessive burden on employers and would have a great effect on their ability to conduct business without fear of future claims. Therefore the Labor Standards Act stipulated, as a special provision on top of the one-year limitation period under the Civil Code, a two-year limitation period with respect to the right to claim any kind of wages.

The Civil Code was amended with the intention of unifying and simplifying the limitation period by abolishing the one-year limitation period and, while retaining the conventional period of "*10 years from the time when the right becomes exercisable*," establishing a new limitation period of "*5 years from the time when the obligee becomes aware that he/she may pursue the claim*." The amendments to the Civil Code further stipulated that the limitation period would lapse upon the passage of whichever is earlier.

In light of these amendments to the Civil Code, the limitation period under the Labor Standards Act was further examined, and the following revisions were made by the 2020 Labor Standards Act Amendment.

Authors in this Issue

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III. Content of the Amendment

(a) Extension of the Limitation Period in respect of Wage Claims

The limitation period for wage claims was in principle extended from two years to five years; however, since it is necessary to carefully examine the effect of the change, for the time being, an interim limitation period of three years was introduced to mitigate the drastic change.

(b) Extension of Period of Retention of Records

Previously, employers were required to retain important records pertaining to labor matters, such as wage ledgers, for a period of three years. This obligation has been extended in principle to five years so that employers retain records that could be relevant to a future wage claim. Notwithstanding the foregoing, the period of the duty to retain important records pertaining to labor matters has, for the time being, remained unchanged to reflect the interim limitation period currently in force.

(c) Extension of the Claim Period for Additional Monies

If an employer fails to pay extra wages or similar in violation of certain obligations under the Labor Standards Act, the court has the authority to order the employer, at the request of the employee, to make an additional payment to the employee as a sanction. The period during which the court may order the employer to make such additional payments (the "Request Period") was previously set at two years in conjunction with the limitation period for wage claims. In line with the changes to the limitation period for wage claims, the Request Period was also extended in principle to five years, provided, however, that an interim mitigation measure is in effect prescribing a period of three years to match the interim limitation period mentioned above.

IV. Transitional Measures

The new limitation period for wage claims is applicable to wages that become due on or after April 1, 2020. Additionally, an employer's obligation to retain important records pertaining to labor matters is such that necessary records must be kept until the lapse of the corresponding limitation period in respect of an employee's right to claim wages. Lastly, the new Request Period is applicable to violations of the relevant obligations under the Labor Standards Act occurring on or after April 1, 2020.

V. Conclusion

Despite the in principle amendments to the limitation period in relation to bringing a wage claim against an employer, employees will have to wait until after April 2022 to pursue wage claims occurring more than two years prior. Only after April 2023 will it be possible for an employee to pursue a claim in relation to unpaid wages occurring up to three years prior. In this sense, there is no immediate adverse effect on the part of the employer. However, any employer currently incurring a future liability of unpaid wage claims ought to take steps to improve their operations in order to prevent the possibility of an increase in the amount of unpaid wage claims after April 2022 (i.e., when an employer's liability in this regard could extend from two years to three years of unpaid wages). In addition, in transactions involving the acquisition of a Japanese company, obligations in respect of unpaid wages could affect the acquisition price as a potential liability, and it should be noted that from April 2023, the unpaid wages liability could be 1.5 times that of unpaid wages prior to March 2022.

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■ Capital Markets

Revision of Delisting Examination Procedures for Organizational Restructuring or Changes in Parent Company of Asset Managers of a Listed Investment Corporation (J-REIT and Infrastructure Fund)

I. Introduction

In the past, the Tokyo Stock Exchange (the "TSE") has taken a flexible and practical approach when considering whether the organizational restructuring of an asset manager of a listed investment corporation (J-REIT and Infrastructure Fund) or a change in the parent company of an asset manager falls under the criteria for delisting of an investment corporation under the TSE listing rules. In those cases, the TSE would consult with the relevant asset manager to determine the extent of any change to the management structure. Nevertheless, such examination procedures were not clear or transparent. For this reason, the TSE has clarified its practical approach and improved its listing system by revising the TSE listing rules. This article will outline the key amendments to the TSE listing rules in this regard which became effective on March 15, 2021.

II. Purpose and Remarks

The purpose of the revision of the TSE listing rules is to prevent an asset manager that has not undergone listing examinations by the TSE from managing a listed investment corporation. Companies who aim to be listed on the TSE's REIT market or infrastructure fund market either through the organizational restructuring of an asset manager of a listed investment corporation or the acquisition of shares in such asset manager will be prevented from becoming an asset manager for a listed investment corporation without going through the TSE's listing examinations. This means that backdoor listing in this way will be no longer possible.

In addition to acquisitions where the direct sponsor shareholder of an asset manager is replaced, acquisitions where the direct or indirect parent company of such direct sponsor shareholder is replaced are also subject to examination. For this reason, it should be noted that this revision of the TSE listing rules will have a practical impact on acquisitions of companies with a group subsidiary that is an asset manager of a listed investment corporation on the TSE.

III. Overview of Revisions to the TSE Listing Rules

(a) Delisting Criteria for Asset Managers

If an asset manager of a listed investment corporation (J-REIT and Infrastructure Fund) loses the substantial viability of its management structure and systems over the management of the assets of the investment corporation as a result of organizational restructuring or a change in its parent company, the investment units will be delisted unless the asset manager complies with certain criteria, which are equivalent to the new listing examination criteria stipulated in the TSE listing rules (the "Asset Manager Listing Criteria"), within a certain period of time. This new rule is applicable to organizational restructuring and changes in parent company that are disclosed after March 15, 2021.

In accordance with the new rule, the substantial viability of the management structure and systems is examined as the first step. If any issues arise in the first step examination, the TSE will then examine whether the asset manager is in compliance with the Asset Manager Listing Criteria.

In principle, the examination of the substantial viability of the management structure and systems ought to be conducted when an asset manager consults with the TSE before undertaking the applicable organizational restructuring or change in parent company. Whether or not the management structure and systems is substantially viable is determined by taking into account, among other things:

- personnel, including officers and key employees;
- organizational structure;
- rules related to management, such as the asset management agreement, the internal rules and regulations and similar;
- the status of the sponsorship;
- the status of the establishment of a conflict of interest system; and

- other matters that are deemed to have a major impact on the management of the listed investment corporation after the organizational restructuring or change in the parent company.

It should be noted that if an organizational restructuring is conducted between two asset managers, both of whom are managing listed investment corporations on the TSE, neither will be subject to delisting.

(b) Examination of Compliance with the Asset Manager Listing Criteria

Examination of an asset manager's compliance with the Asset Manager Listing Criteria will only be required if, after the first step examination, it has been determined that there is no substantial viability of the asset manager's management structure and systems.

The TSE's examination of the asset manager's compliance with the Asset Manager Listing Criteria will commence upon receiving an application from the asset manager. The asset manager must demonstrate compliance with the Asset Manager Listing Criteria within a grace period of one year after the organizational restructuring or change in the parent company takes effect.

A fee of four million yen must be paid by the asset manager to the TSE prior to the examination of compliance with the Asset Manager Listing Criteria.

(c) Submission of Report on the Management Structure and Systems of Listed Investment Corporations

As a result of the revisions to the TSE listing rules, a listed investment corporation is now obligated to submit a revised report on its management structure and systems to the TSE without delay after the occurrence of any organizational restructuring or change in parent company. Previously investment corporations normally only submitted such a report to the TSE once every six months in conjunction with the fiscal period.

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