



EUROPEAN BUSINESS COUNCIL
May 31, 2005
Position on Article 821 of the Corporation Law

1. **The economic impact of introducing article 821 into the corporation law is immense.** Not only European Financial Services firms (especially securities and asset management firms), but also some law firms, project management firms, pharmaceutical companies, trading companies and a wide range of companies owning property in Japan are established in Japan as branches of special purpose offshore companies and, thereby, are potentially affected by Article 821. **In the two days since member companies of the European Business Council (EBC) were advised of this issue, more than 50 European companies, which constitute 30% of respondents** (with only half of our members having responded) have informed the EBC that they might have to reincorporate and **suffer financial losses** as a consequence of the new law. It is safe to assume that the actual number is substantially larger.

2. The Article 821 amendments were discovered by many firms long after the legislation was passed by the House of Representatives of the Diet, and only days before it will submitted to a vote in the House of Councillors. **The lack of notice and understanding of the law has put foreign firms in the difficult position of regulatory uncertainty.**

3. **Changes in corporate form would be difficult and costly.** Moreover, it could not be completed within less than 18 months for many large investors in Japan. Existing tax losses carried forward would be lost and irrecoverable. Consumption tax would be required on the transfer of real estate and other assets. Valuation losses would crystallize and require funding. All staff contracts would have to be renewed and pension schemes would have to be revised. All customer contracts would require renewal.

A typical cost for re-incorporating a mid-sized company would be 5-10 million euro for administrative costs alone, such as multiple re-registration fees, registration taxes on assets, public announcements and stationery. The total costs of carry forward tax losses, consumption tax on transfer of real estates and other assets, loss of good-will, personnel costs and so on will vary among companies, but are likely to be anywhere between ten to several hundreds of million Euro per company. **It is safe to assume that the minimum total figure for our 50 respondents alone would be several billions of Euro. All these costs imposed on affected Europeans companies would be passed on to the Japanese consumers in one way or another.** Several companies have indicated they may have to withdraw if faced with these financial consequences.

4. It is critically important to note that the form of **incorporation of many of these companies has been tailored to meet the demands of the Japanese regulatory environment in the first place.** In Europe, for instance, most financial firms conduct their business as a single company under the universal banking system. When doing business in Japan, separate entities must be set up as **Article 65 of the Securities and Exchange Law prohibits banks from conducting securities business and vice-versa.** Given the difficulty of registering two branches of one head office, a special head office is usually set up in Europe for the purpose of heading the Japan branch of the security operations. This setup has been chosen with the **full knowledge and consent of the MOF and then FSA.**



5. It is challenging to identify the reasons for the inclusion of this article with the current wording as most of the foreign firms affected are highly regulated and treated in the same manner as their domestic counterparts from a regulatory standpoint. **Article 482 of the Corporate Code served well and we can see no rational explanation for replacing it with article 821.**

6. **We are also concerned about whether Article 821 would be in conformity with the General Agreement on Services (GATS) as specified in Article XVI:2(e) as in fact, it is a restriction on the type of legal entity.** We understand that in the Financial Services area, Japan might have the right to impose a limitation of judicial form of commercial presence, but only if it could be justified by prudential reasons, which we believe do not exist. **The financial services companies are operating under the full supervisory control of the FSA with strict capital adequacy requirements**

7. **To reintroduce article 482 to the Corporation Law is the best solution to this problem as the current rules permit European Companies to continue their business in Japan without reincorporating.**

A speedy resolution of this issue can avoid a considerable loss of investor confidence in Japan, particularly at a time when the Japanese Government is promoting foreign direct investment into Japan. It could also avoid the embarrassment of engaging in an **unwanted and bitter WTO dispute**, as well as costly reorganizations, and in some cases, withdrawal from Japan of important foreign companies.