

Internal Ex-Post Evaluation for Technical Cooperation Project

conducted by China Office December, 2013

Country Name	Economic Legal Infrastructure Development Project
People's Republic of China	

I. Project Outline

Background	<p>In China, along with the promotion of development towards a market economy and the globalization of economy, its domestic institutional framework and policies with consciousness of harmonization of international rules were being developed at a rapid pace. Meanwhile, activity of corporate enterprises, a key agent of the market economy, was affected by the application of different laws by form of capital. The legislative system was being improved for development of economic laws, and drafting of the revised Company Law and the Anti-monopoly Law as well as comparative studies on laws of other countries were ongoing. However, there were challenges in legislation based on researching and understanding of the real situations of foreign laws and in ensuring consistency with related laws, partly due to insufficient interpretation of foreign laws in the context of the economic and social background of concerned countries. Furthermore, With a large number of personnel to be involved, fair and right law administration and execution was also an issue.</p>				
Objectives of the Project	<ol style="list-style-type: none"> Overall Goal: Companies, an important player in Chinese economy, enjoy opportunities of starting and developing their business in a sound economic order; fair and free competition of companies is promoted; and thereby, consumers' interests are protected and national economy's sound and sustainable development is realized. Besides, exchange and mutual understanding are promoted between experts and practitioners of economic law and company law in Japan and China. Project Purpose: The capacities of officers in legislative organizations and law execution organizations in China are developed and the establishment of transparent economic law and company law systems is promoted, which utilize knowledge of Japan and advance harmonization with international rules. Assumed steps for achieving the project goals¹: This project supports legislation, application and execution of laws in the three sub projects (Company Law, Anti-monopoly Law and laws on market and distribution) mainly through workshops, seminars and training in Japan. As a result, it aims to realize enactment and enforcement and right execution of the revised Company Law, the Anti-monopoly Law and laws on market and distribution that incorporate knowledge from the project, thereby to contribute to protection of benefits of consumers and a healthy and sustainable development of the national economy. 				
Activities of the project	<ol style="list-style-type: none"> Project site: China (mostly in the City of Beijing) Main activities: Introduction of Japanese law, research/analysis of the implementation statuses of relevant laws in China, recommendations on the issues, etc. through workshops, seminars, training in Japan and provision of information. Inputs (to carry out above activities) <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> Japanese Side 1) Experts: total 141 persons (Chinese instructors to whom JICA paid honoraria: 49 persons) 2) Trainees received: 247 persons 3) Cost for seminars and consultants, etc. </td> <td style="width: 50%; vertical-align: top;"> Chinese Side 1. Staff allocated: total 247 participants in training in Japan and total 716 participants in workshops and seminars 2. Land and facilities: rooms for workshops 3. Local cost: necessary operation cost for the project </td> </tr> </table> 			Japanese Side 1) Experts: total 141 persons (Chinese instructors to whom JICA paid honoraria: 49 persons) 2) Trainees received: 247 persons 3) Cost for seminars and consultants, etc.	Chinese Side 1. Staff allocated: total 247 participants in training in Japan and total 716 participants in workshops and seminars 2. Land and facilities: rooms for workshops 3. Local cost: necessary operation cost for the project
Japanese Side 1) Experts: total 141 persons (Chinese instructors to whom JICA paid honoraria: 49 persons) 2) Trainees received: 247 persons 3) Cost for seminars and consultants, etc.	Chinese Side 1. Staff allocated: total 247 participants in training in Japan and total 716 participants in workshops and seminars 2. Land and facilities: rooms for workshops 3. Local cost: necessary operation cost for the project				
Project Period	November 2004 to November 2009	Project Cost	479 million yen		
Implementing Agency	Ministry of Commerce (MOFCOM); Legislative Affairs Office of the State Council The following organizations were involved as participant organizations (organizations in charge of drafting bills and execution): Legislative Affairs Commission of the National People's Congress (NPC) Standing Committee; NPC Financial and Economic Affairs Committee; Legislative Affairs Office of the State Council; Supreme People's Court (SPC); State-owned Assets Supervision and Administration Commission of the State Council; State Administration for Industry and Commerce (SAIC); China Securities Regulatory Commission; legal consultative group for each of the relevant law.				
Cooperation Agency in Japan	Japan Fair Trade Commission; Ministry of Economy, Trade and Industry; Ministry of the Environment; Ministry of Justice.				
Related Projects (if any)	Japan's cooperation: Anti-monopoly Law 独占禁止法 (Country-focused Training, 1998-2004); Capital Market Law Development Project 資本市場法整備プロジェクト (Country-focused Training, 2009-2012); Improvement of Civil Procedure Law and Arbitration Law Project (Technical Cooperation, 2007-2010); Project for Legislation and Implementation of the Anti-monopoly Law and Guidelines (Technical Cooperation, 2012-2015). Other donors' cooperation: Germany (human resource development in the fields of the Enterprise				

¹ Reviewed at the time of the ex-post evaluation.

Bankruptcy Law, Government Procurement Law, Foreign Exchange Control Laws, Securities Law, Property Law; etc. 1986-); United States (human resource development in intellectual property right, customs valuation, etc. for implementation of WTO and FTA); ADB (support to revision of foreign capital-related laws); cooperation in execution of the Anti-monopoly Law with competition authorities in Europe, Russia and Korea; many others.

II. Result of the Evaluation

1 Relevance

This project has been highly relevant with China's development policy such as the legislative plan for the 10th NPC Standing Committee (2003), which classified the revised Company Law and the Anti-monopoly Law as the Category I (with most urgent priority) of the legislation list on economic law, and the 11th Five-year Plan on Foreign Capital Utilization (2006), which aimed a smooth enforcement of the revised Company Law, development of regulations and guidelines on the Anti-monopoly Law and drafting of laws on market and distribution, development needs "the revision of the Company Law, legislation of the Anti-monopoly Law, support in legislation and execution of laws on market and distribution", as well as Japan's ODA policy, the China Economic Cooperation Plan (2001), at the time of both ex-ante evaluation and project completion. Therefore, relevance of this project is high.

2 Effectiveness/Impact

This project achieved its project purpose, "promotion of the establishment of transparent economic law and company law systems, which utilize knowledge of Japan and advance harmonization with international rules": legislation and execution officers deepened their understanding of Japanese law and used the learned knowledge as reference in drafting, enforcement and execution of the revised Company Law, the Anti-monopoly Law and laws on market and distribution. First, on the revision of the Company Law (enforced in 2006), the learned knowledge was referred to for solving the issues that the Chinese side had had before the project (i.e. express provision of (i) incorporation procedures and the capital system, (ii) structure of corporate governance, and (iii) corporate personality denial system). Since the bill was enacted in 2005, the early stage of the implementation of this project, the support related to this law was shifted to that for establishing the execution system. For example, outputs of the training and seminars were used as reference in drafting the judicial interpretation of the SPC on the Company Law². Second, on the Anti-monopoly Law (enforced in 2008), although the Law itself is similar to the EU's company law system, the knowledge from this project was reflected in a series of regulations and guidelines that the MOFCOM issued for implementation, such as the Guidelines for Defining the Relevant Market (enforced in 2009), the Measures for the Undertaking Concentration Examination (enforced in January 2010), and the Interim Measures for Investigating and Handling Concentration of Undertakings not Declared Legally (enforced in 2012). Third, as for laws on market and distribution, several laws were drafted after the commencement of this project. According to the implementing agency, for example, drafting of the Administrative Measures for Fair Transactions Between Retailers and Suppliers and the Administrative Measures for the Sales Promotion Acts of Retailers (both enforced in 2006) were carried out in reference to the Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to Trade with Suppliers and the Act against Unjustifiable Premiums and Misleading Representations of Japan. Also, the draft regulation on administration of urban commercial network 都市商業網管理条例 and part of the draft administrative measures for non-store sales 無店鋪販売管理弁法 that are currently under consideration, were developed in reference to Japan's Large-scale Retail Store Act and the Act on Specified Commercial Transactions, respectively.

With respect to the overall goal, the revised Company Law, the Anti-monopoly law and the laws on market and distribution, the laws targeted for support under this project, are increasingly contributing to the protection consumers' interests and the sound development of the economy. For example, the MOFCOM mentioned the increase in the number of company registration due to the eased conditions for incorporation under the new Company Law, and the strengthening of mutual restriction between corporate organizations and legal responsibility of company managers through the development of provision on corporate governance. As to the Anti-monopoly law, the increasing numbers of declarations and cases examined on concentration of business operators, as well as actions against undeclared companies and abuse of cartels and dominant positions, indicate the increasing recognition among companies and the proper execution of the Law. In addition, the Chinese counterpart personnel have not only used the knowledge on Japanese law in law implementation but also acted as training instructors for regional organizations under the MORFCOM: between 2008 and 2012, nearly 1,500 persons were trained in a total of 16 training courses. It was observed that the relationship cultivated under this project have continued and further developed.

One of the factors that enabled such outcomes could be an important role of the project coordinator in steadily performing the complicated tasks while collecting specialized information on all aspects of the context around legal development, including legislative policies of China and Japan and actual situation of governance and staff allocation at law executing organizations, and providing the academics and experts who assisted in individual law with appropriate information. In particular, assistance in legal development in China is characterized by mutual understanding and exchanges between the Chinese and Japanese sides rather than receiving one-way assistance. Accordingly, it is important for enhancing the project outcomes to understand actual social situations and issues on law execution as background factors behind law amendment. Therefore, effectiveness/impact of the project is high.

² The project planned to provide support on the company registration system and its implementation, but it was not realized due to insufficient response from the SAIC, the responsible organization. Nevertheless, the Regulations for Controlling the Registration of Enterprises as Legal Persons was largely revised at around the same time as the revision of the Company Law, which brought forward development of this field.

Achievement of project purpose and overall goal

Aim	Indicators	Results															
(Project Purpose) The capacities of officers in legislative organizations and law execution organizations in China are developed and the establishment of transparent economic law and company law systems is promoted, which utilize knowledge of Japan and advance harmonization with international rules.	Procedures to enforce the Company Law are stipulated ^(Note 1)	(Project completion) Revised Company Law was enacted in October 2005 and put into effect in January 2006. Knowledge from this project was incorporated in the text and the judicial interpretation of SPC. (Ex-post evaluation) Same as above.															
	Procedures to enforce the Anti-monopoly Law are stipulated.	(Project completion) Anti-monopoly law was enacted in August 2007 and put into effect in August 2008. Related regulations and guidelines were legislated as well. Knowledge from this project was incorporated to those provisions. (Ex-post evaluation) More regulations and guidelines were legislated.															
	Policies to draft laws on market and distribution is clearly identified	(Project completion) Regulation on the Administration of Commercial Franchises was put into effect in May 2007. Administrative Measures for Fair Transactions Between Retailers and Suppliers was issued in May 2007. (Ex-post evaluation) 6 laws including the above were enforced, and 4 more draft laws were being discussed.															
(Overall goal) Companies enjoy opportunities of starting and developing their business in a sound economic order; fair and free competition of companies is promoted; and thereby, consumers' interests are protected and national economy's sound and sustainable development is realized.	Numbers of company establishment and registrations increase	(Ex-post evaluation) Number of companies: 13,748,800 as of March 2013, showing 7.62% increase from the same period in 2012. Number of new company registrations: 393,100 during 1 st quarter of 2013.															
	Number of cases handled in accordance with the Anti-monopoly law increases ^(Note 2)	(Ex-post evaluation) Number of declarations of concentration of business operators (corporate combination) that were filed by law enforcement organizations increased from approx. 20 in 2008 to more than 100 in 2010 and to more than 200 in 2011 and 2012. There was no case of decision to prohibit the declared concentration as a result of examination in 2011 and 2012 (there was a case in 2008-2010). <table style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Declaration filed</th> <th style="text-align: center;">Examined</th> <th style="text-align: center;">Examination finished</th> <th style="text-align: center;">Accepted without condition</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">2011</td> <td style="text-align: center;">203</td> <td style="text-align: center;">185</td> <td style="text-align: center;">160</td> <td style="text-align: center;">151</td> </tr> <tr> <td style="text-align: center;">2012</td> <td style="text-align: center;">201</td> <td style="text-align: center;">186</td> <td style="text-align: center;">154</td> <td style="text-align: center;">142</td> </tr> </tbody> </table>		Declaration filed	Examined	Examination finished	Accepted without condition	2011	203	185	160	151	2012	201	186	154	142
		Declaration filed	Examined	Examination finished	Accepted without condition												
2011	203	185	160	151													
2012	201	186	154	142													
Undermining of general consumers' interests decreases	(Ex-post evaluation) Observed changes: (i) disclosure of examination results of concentration of business operators on MOFCOM website enhanced understanding of Anti-monopoly Law among private and state-owned enterprises; (ii) corporate activity in powder milk market was normalized by crackdown of cartel by National Development and Reform Commission.																

Sources: Project Completion Report; responses to the questionnaire from the MOFCOM; MOFCOM website and operation progress report 2012; SAIC statistics.

Notes: 1) Although there was no clear information on whether "procedures of enforcement (legislation) were stipulated" as the indicators say, the fact that the enforcement (legislation) completed smoothly shows the existence of common understanding of the procedure among the concerned parties, and therefore no problem was found in this respect. 2) The original indicator was "anticompetitive behavior decreases". However, considering that the Anti-monopoly Law had not existed before, an alternative indicator was used to first check whether the Law has been implemented. According to the Law, when a concentration (corporate combination) such as merger meets certain criteria, declaration of concentration should be made in advance by the concerned business operator to the law enforcement organization (Anti-monopoly Bureau of the MOFCOM). The declared operator can implement the concentration if a decision not to further examine is made as a result of the preliminary examination or if the declaration is accepted as a result of the examination.

3 Efficiency

While the inputs were mostly appropriate for producing the outputs of the project, the project period was longer than the plan (ratio against the plan: 167%) due to the extension of the cooperation period following the postponement of the legislation of the Anti-monopoly Law based on the legislation schedule of the Chinese side. Accordingly, the project cost was significantly higher than the plan (ratio against the plan: 171%) due to the additional input during the extension period. Therefore, efficiency of the project is low.

4 Sustainability

In the policy aspect, sufficient back-ups are established such as the 12th Five-year Plan the National Economic and Social Development and the 12th Five-year Plan of the MOFCOM (both 2011-2015) articulating the acceleration of legislation on market and distribution and development of competitive environment of domestic market. Institutionally, there is no change in the division of responsibility between legislation and law execution. As the number of posts of civil servants is strictly limited nowadays, the number of law execution officers has not much increased despite the large increase in the cases to be handled, e.g. examination of concentration of business operators, which has greatly raised the number of cases handled by an officer. Basically however, this has not negatively affected law execution as the capacity and efficiency of executing officers have been improved accordingly. In the technical aspect, no problem has been observed as the ex-counterpart personnel are still engaged in jobs related to economic and corporate law, and the Anti-monopoly Law execution organization has provided its own training to regional execution officers every year, besides on-site seminars for central and regional execution officers under the Project for Legislation and Implementation of the Anti-monopoly Law and Guidelines that is currently being implemented. In the financial aspect, the amount of budget was not disclosed and thus not confirmed. However, based on the progress of legislation and the large increase in the number of law execution cases, it is considered that the budget for law amendment and execution has been ensured.

Therefore, the project has no problem in the policy background and institutional, technical and financial aspects of the implementing agency, and sustainability of effects of the project is high.

5 Summary of the Evaluation

For the project purpose, “promotion of the establishment of transparent economic law and company law systems, which utilize knowledge of Japan and advance harmonization with international rules”, officers of legislation and law execution organizations deepened their understanding of Japanese law and used it as reference for the drafting and enforcement of the revised Company Law, the Anti-monopoly Law and laws on market and distribution and for development of the execution system of such laws. For the overall goal as well, these laws are being contributing to protection of consumers’ interests and a sound development of the economy, which are indicated in changes such as the increase in declarations of concentration of business operators (corporate combination) and actions against cartels. As for sustainability, this project has received good policy back-ups and no problem has been found in the institutional, technical and financial aspects. For efficiency, however, both project cost and project period significantly exceeded the plan.

In the light of above, this project is evaluated to be satisfactory.

III. Recommendations & Lessons Learned

Recommendations for Implementing agency:

Given the increasing number of cases of law execution while the number of execution officers is strictly limited, it is critical to further enhance capacity of officers and to introduce simplified procedures. For this purpose, the implementing agency is expected to absorb more knowledge from the Japanese side using the ongoing Project for Legislation and Implementation of the Anti-monopoly Law and Guidelines. Also, it is expected to maintain the trust relationship and exchange (communication) channels between concerned organizations of the Chinese and Japanese sides developed under this project.

Lessons learned for JICA:

The role of project coordinator affects success or failure of a project. Although the coordinator may not be required to have deep understanding of individual laws targeted by the project, it is utmost important that the coordinator steadily perform the complicated tasks while collecting specialized information on all aspects of the context around legal development, including legislative policies of China and Japan and actual situation of governance and staff allocation at law executing organizations, and providing the academics and experts who assisted in individual law with appropriate information.



Seminar in China



Training in Japan