

Overview of the Act on the Promotion of Cash Flow-Based Lending

To promote business operators to receive financing based on the actual business conditions and future cash flow, in lieu of financing based on real estate collateral or personal guarantees, the Bill establish : “Basic Principles concerning the Promotion of Cash Flow-Based Lending,” “Responsibilities of the National Government,” “Cash Flow-Based Lending Promotion Headquarters,” “Enterprise Value Charge (EVC),” and “Certified Support Agencies for Cash Flow-Based Lending,” and other related measures.

Basic Principles and Responsibilities of the National Government

- Basic principles concerning the promotion of cash flow-based lending

The promotion of cash flow-based lending aims to facilitate the financing necessary for the continuation and development of business under the close coordination between business operators and financial institutions.

- The national government is responsible for formulating and implementing measures for the promotion of cash flow-based lending in accordance with the basic principles.

Establishment of the Cash Flow-Based Lending Promotion Headquarters

- To promote cash flow-based lending in a comprehensively and intensively, a Cash Flow-Based Lending Promotion Headquarters (Chief of the Headquarter: the Minister of State for Financial Services) is established in the Financial Services Agency.
- The members of the headquarters are the Minister of State for Financial Services, the Minister of Economy, Trade and Industry, the Minister of Finance, the Minister of Agriculture, Forestry and Fisheries, and the Minister of Justice etc.
- Establishing the basic policy concerning the promotion of cash flow-based lending.

Creation of Enterprise Value Charge (EVC)

- To facilitate financing for startups with limited tangible assets, or for business operators hesitant to undertake business succession or business expansion due to personal guarantees, a collateral system covering the entirety of the businesses’ assets, including intangible assets (Enterprise Value Charge (EVC)) is created.
- When using the Enterprise Value Charge (EVC), the execution of personal guarantee is restricted, unless the borrower commits accounting fraud etc.
- In order to ensure the appropriate use of Enterprise Value Charge (EVC), ensuring borrowers to properly understand of rights and obligations related to the Enterprise Value Charge (EVC) and general creditors’, such as trading partners, protection, the security interest holder of the EVC is limited to a company that has received a new license for trust businesses.
- To ensure that the corporate value is not impaired when the security interests are exercised, payment essential for the ongoing of business (such as commercial transaction receivables and labor claims) are paid on a priority basis, and the price of business transfer is used to repay loans.

Introduction of Certified Support Agencies for Cash Flow-Based Lending Systems

- To support the utilization of corporate value collateral rights and similar measures, a certification system is introduced for institutions that possess advanced and professional expertise on cash flow-based lending and provide advice and guidance to business operators and financial institutions.

事業性融資の推進等に関する法律の概要

事業者が、不動産担保や経営者保証等によらず、事業の実態や将来性に着目した融資を受けやすくなるよう、事業性融資の推進に関し、「基本理念」、「国の責務」、「事業性融資推進本部」、「企業価値担保権」、「認定事業性融資推進支援機関」等について定める。

基本理念・国の責務

■ 事業性融資の推進に関する基本理念

事業者と金融機関等の緊密な連携の下、事業の継続及び発展に必要な資金の調達等の円滑化を図る。

- 国は、その基本理念にのっとり、事業性融資の推進に関する施策を策定・実施する責務を有する。

事業性融資推進本部の設置

- 事業性融資の推進に総合的かつ集中的に取り組むため、金融庁に事業性融資推進本部(本部長:金融担当大臣)を設置する。
- 本部の構成員は、金融担当大臣、経済産業大臣、財務大臣、農林水産大臣及び法務大臣等とする。
- 事業性融資の推進に関する基本方針を定める。

企業価値担保権の創設

- 有形資産に乏しいスタートアップや、経営者保証により事業承継や思い切った事業展開を躊躇している事業者等の資金調達を円滑化するため、無形資産を含む事業全体を担保とする制度(企業価値担保権)を創設する。
- 企業価値担保権を活用する場合、債務者の粉飾等の例外を除き、経営者保証の利用を制限する。
- 企業価値担保権の設定に伴う権利義務に関する適切な理解や取引先等の一般債権者保護等、担保権の適切な活用を確保するため、新たに創設する信託業の免許を受けた者を担保権者とする。
- 担保権実行時には、企業価値を損うことがないよう、事業継続に不可欠な費用(商取引債権・労働債権等)について優先的に弁済し、事業譲渡の対価を融資の返済に充てる。

認定事業性融資推進支援機関制度の導入

- 企業価値担保権の活用等を支援するため、事業性融資について高度な専門的知見を有し、事業者や金融機関等に対して助言・指導を行う機関の認定制度を導入する。