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Insolvency

Japan – Law & Practice

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JAPAN

LAW & PRACTICE: p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

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Law & Practice

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Nagashima Ohno & Tsunematsu, having offices in Tokyo, New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi and Shanghai, is widely known as a leading law firm and one of the foremost providers of international and commercial legal services in Japan. The firm represents domestic and foreign companies and organisations involved in every major industry sector and in every legal service area in Japan. The firm comprises around 370 lawyers capable of providing its clients with practical solutions to meet their business needs.

Nagashima Ohno & Tsunematsu has been involved with numerous out-of-court workouts and in-court insolvency proceedings. In addition, the team provides comprehensive advice on corporate strategies for companies experiencing financial difficulty to assist them in revitalising their businesses without initiating insolvency proceedings, from planning to execution. Further, lawyers can handle complex restructuring deals through the assembling and co-ordinating of teams of lawyers specialising in various fields such as M&A, finance, tax, intellectual property, real estate, risk management, antitrust/competition, and labour law. Additional expertise includes legal advice on cross-border restructuring deals arising from risk management failures or economic slowdown in other countries.

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1. Market Panorama

1.1 Market Dynamics

Against the backdrop of "Abenomics," a notable economic policy introduced under Prime Minister Shinzo Abe's regime, statutory insolvency cases have steadily declined over the past several years; according to the statistics for 2014 published by the Supreme Court, the number of bankruptcy cases was 73,368 (down approximately 10% from last year); that of civil rehabilitation cases was 164 (down approximately 20% from last year); and that of corporate reorganisation cases was four (down approximately 30% from last year).

Analysis of the cases filed in 2015 shows that insolvency cases have primarily arisen from compliance violations and economic fluctuations occurring in other countries.

1.2 Market Developments

The Japanese restructuring and insolvency market has rarely seen an influx of distressed debt investors or increasing debt trading. Acquisitions of distressed companies have often been seen.

2. Debt Trading

2.1 Limitations on Non-Banks and Foreign Institutions

There is no limitation on non-banks or other foreign institutions for holding loans or bonds in Japan. It should be noted, however, that under limited circumstances, a foreign entity that is regarded as "non-resident" under the Foreign Exchange and Foreign Trade Act needs to make a report to the relevant authority before or after the execution of certain capital transactions such as issuance of bonds. As with domestic financial institutions, any foreign entity that provides loans needs to be duly registered under the Money Lending Business Act.

2.2 Debt Trading Practice

It is common in Japan to trade loans by means of assigning a loan claim to a buyer. Risk participation is sometimes seen, under which a lender sells its credit exposure to a borrower to another party whilst keeping the lender position against the borrower. The assignment can be perfected by means of either notifying a borrower of the fact that the loan claim was assigned to another party or registering the assignment in the official registry system. Upon assignment, any associated guarantee or security interest is automatically transferred with the loan claim to the assignee; however, the transfer of the security interest must be perfected to validate it against others. There are no insider trading regulations that are applicable to loan trading.

2.3 Loan Market Guidelines

To promote the standard debt trading practice in Japan, the Japan Syndication and Loan-trading Association ("JSLA"), an association similar to the Loan Market Association in Europe, provides several standard agreements and guidelines. Concerning the loan trading in the secondary market, JSLA published the standard loan-trading agreement. Large Japanese financial institutions, however, use their own forms to trade loans, although their forms are generally similar to the standard agreement published by JSLA.

The guidelines provided by JSLA do not have a legal or quasi-legal effect. They merely provide loan-trading best practices for market participants.

2.4 Transfer Prohibition

Loan agreements in Japan, particularly syndicated loan agreements, often prohibit transfers without consent.

2.5 Navigating Transfer Restrictions

Trusts or synthetic structures such as total-return-swaps are not used to navigate transfer restrictions.

3. Informal and Consensual Restructuring Framework

3.1 Consensual Restructuring

A distressed debtor commonly seeks to reach a negotiated agreement with its creditors outside the court to avoid statutory insolvency proceedings. It is generally perceived by restructuring practitioners that out-of-court restructuring or workout is preferable to statutory insolvency proceedings, in order to preserve a debtor's going-concern value and to reduce the costs for restructuring. One of the main reasons for this is that it is rare for trade creditors to be protected in statutory insolvency proceedings because the law imposes stringent requirements for their pre-commencement claims to be afforded protection in the proceedings.

3.2 Consensual Restructuring Process

By its nature, there is no specific process and timeline on out-of-court restructuring, with several institutionalised out-of-court restructuring schemes being developed. These schemes provide a guideline and some level of certainty in out-of-court workouts. Included are: (i) the Guidelines for Out-of-Court Workouts published in 2001; (ii) the turnaround alternative dispute resolution (ADR) established in 2007; (iii) the scheme of Regional Economy Vitalisation Corporation of Japan (REVIC); and (iv) the scheme of SME Business Rehabilitation Support Co-operative.

Outlined here is a voluntary arrangement (nin-i seiri) carried out without the use of any institutionalised schemes. Please see Section **9** for the details of institutionalised schemes.

In voluntary arrangements, a debtor will reach a negotiated agreement with its creditors. Voluntary arrangements typically involve its financial creditors or banks, but exclude its trade creditors, to focus on financial restructuring, without any disruption of the debtor's ongoing business, thereby protecting the going-concern value.

How a voluntary arrangement proceeds varies from case-to-case. For example, it starts with a consultation with the debtor's main bank on what financial supports would be feasible to turn around the debtor. The debtor then convenes a bank meeting to explain its current financial distress, and asks the banks to agree on a standstill. At a subsequent bank meeting, the debtor proposes a plan in which the bank is asked for financial supports, such as deferment of payments, partial discharge of the debts, and/or debt-for-equity swap. Only when all of the participating banks have agreed upon the terms and conditions provided for in the plan will the voluntary arrangement take effect.

3.3 New Money

Given that a new loan injected by a financier during the process of voluntary arrangement is not a claim subject to

amendment in accordance with voluntary arrangement, it will be paid pursuant to the loan agreement entered into between the debtor and the financier. If the debtor goes to statutory insolvency proceedings, however, the new loan is not accorded priority in the proceedings.

3.4 Duties of the Parties
In a voluntary arrangement, there are no principles of applicable law that impose duties on any of the interested parties, including a distressed company and its creditors.

3.5 Consensually Agreed Restructuring
There is no cram-down feature in a voluntary arrangement. A debtor who fails to obtain consent from all of the participating banks would need to undergo statutory insolvency proceedings.

4. Legislative Regime Applicable to Restructuring and Insolvency

4.1 General Overview
Under Japanese law, there are three major types of insolvency proceedings: bankruptcy proceedings, civil rehabilitation proceedings and corporate reorganisation proceedings. Each can be categorised into one of two general types, depending on whether the aim of the proceedings is to liquidate the company or to restructure the company as an ongoing concern.

Bankruptcy proceedings are liquidation-type proceedings. A "bankruptcy trustee" (hasan kanzainin), who represents the interests of all creditors, is appointed by the court to liquidate the debtor's assets into cash and then distribute the cash to the creditors in a fair and equitable manner (in principle, on a pro rata basis).

Civil rehabilitation proceedings are restructuring-type proceedings, introduced on 1 April 2000, which apply to all types of companies, including corporations (kabushiki kaisha), partnerships and limited liability companies. The aim of civil rehabilitation proceedings is to turn around the debtor's business based on a "rehabilitation plan," which restructures the pre-commencement debts. Civil rehabilitation proceedings are often referred to as debtor-in-possession (DIP) proceedings. Generally, the management of a debtor, as a DIP, will continue to operate the debtor's business, whilst being overseen by a "supervisor" (kantoku iin) appointed by the court.

Corporate reorganisation proceedings are also restructuring-type proceedings. Unlike in civil rehabilitation proceedings, they apply only to corporations. A "reorganisation trustee" (kosei kanzainin) will be appointed by the court to operate and administer the debtor's business and property. As with civil rehabilitation proceedings, the aim of corporate reorganisation proceedings is to turn around the debtor's business as an ongoing concern based on a "reorganisation plan," which restructures the pre-commencement debts and equity. An experienced bankruptcy lawyer is customarily appointed as reorganisation trustee. Notably, however, it is sometimes seen that the management of a corporation continues to operate the business as a reorganisation trustee in corporate reorganisation proceedings.

4.2 Restructuring and Solvency Regimes
In addition to general insolvency laws, special laws apply to the insolvency of banks and insurance companies.

5. Remedies Available to Unsecured Creditors

5.1 Unsecured Creditors
An out-of-court workout generally involves trade creditors, which allows them to be paid when due and payable. Statutory insolvency proceedings involve trade creditors, under which a debtor is afforded the protection of being able to suspend payment of its debts, including trade claims. Trade creditors, however, will consider repudiating the performance of their obligations (such as the delivery of raw materials to a debtor manufacturer) out of strong negative concerns about collecting their future claims. A debtor's going-concern value will rapidly deteriorate if a significant portion of the commercial trades necessary to run the debtor's business is suspended in this manner. In civil rehabilitation proceedings or corporate reorganisation proceedings, the court may, under limited circumstances, exempt payment of small debts, including some trade claims, from prohibition of payment, taking into account the necessity to do so, the size of the debtor's business, equitable treatment of other general unsecured claims and other factors.

5.2 Rights and Remedies
General unsecured creditors may not enforce their rights outside the insolvency proceedings. In bankruptcy proceedings, they are only given a right to distribution from a bankruptcy estate. In civil rehabilitation proceedings and corporate reorganisation proceedings, they have rights to vote on a proposed rehabilitation plan or reorganisation plan and may propose their own plan. Their claims will be paid in accordance with the confirmed rehabilitation plan or reorganisation plan.

5.3 Pre-Judgment Attachments
Provisional (or pre-judgment) attachments to debtor's assets are available. Creditors, including general unsecured creditors who participate in an out-of-court workout, are asked to agree on a standstill. Any pending procedure for provisional attachments will be stayed in insolvency proceedings.

5.4 Timeline for Enforcing an Unsecured Claim

No enforcement of a general unsecured claim is permitted in insolvency proceedings. Separately from an insolvency context, it can often take more than a year to enforce unsecured claims, given that unsecured creditors need to obtain a judgment first and then follow the statutory enforcement process.

5.5 Rights and Remedies for Landlords

Landlords do not have bespoke rights or remedies in Japan.

5.6 Special Procedures for Foreign Unsecured Creditors

There are no special procedures or impediments that apply to foreign unsecured creditors.

6. Secured Creditors: Security and Enforcement

6.1 Types of Security

Generally, a claim is secured by a mortgage (teito ken), a mortgage by transfer (joto tanpo), a pledge (shichi ken), a special type of lien (sakidori tokken) or a special type of retention right (ryuchiken) on certain types of property owned by the debtor.

6.2 Enforcing Security

In bankruptcy proceedings and civil rehabilitation proceedings, a secured creditor is treated as a creditor who holds a "right to separate satisfaction" (betsujo ken). A secured creditor is entitled to foreclose on or sell the collateral outside bankruptcy proceedings or civil rehabilitation proceedings, receiving repayment from the proceeds of the collateral. In this respect, a secured creditor has the priority on repayment from the value of the collateral; however, any unpaid amount of the claim through such a foreclosure or sale will be treated as a general unsecured claim. It should be further noted that under limited circumstances, in civil rehabilitation proceedings, the court may order a stay on the enforcement of the right to separate satisfaction and, in bankruptcy proceedings and civil rehabilitation proceedings, a security interest may be extinguished with the court's prior approval.

In corporate reorganisation proceedings, a secured creditor holds a secured reorganisation claim (kosei tanpo ken). Contrary to bankruptcy proceedings and civil rehabilitation proceedings, a secured creditor in corporate reorganisation proceedings may not foreclose on the collateral outside the corporate reorganisation proceedings. Furthermore, the full amount of the claim corresponding to its security interest is not necessarily treated as a secured reorganisation claim; only the amount of the claim that is covered by the fair value of the collateral at the time of commencement of the corporate reorganisation proceedings is treated as a secured reorganisation claim, and the remaining amount that is unsecured by the collateral is treated as a reorganisation claim (general unsecured claim). The evaluation of the fair value of the collateral is of great importance and will be conducted through the claim determination process. Namely, a secured creditor files a proof of claim identifying the fair value of the collateral. If the reorganisation trustee, or any of the other creditors, objects to the amount of that fair value, the court, upon a motion of the secured creditor to determine the fair value of the collateral, will determine the fair value based on an appraisal by a court-retained appraiser. As a result, a creditor that has a claim with security interest may have two classes of claims: a secured reorganisation claim and a reorganisation claim, depending on the amount covered by the fair value of the collateral. As part of the principle of ensuring the liquidation value, a reorganisation plan may not provide for any amendment to a secured reorganisation claim whose amount in the plan becomes lower than the fair value of the collateral.

6.3 Timeline for Enforcing Security

In bankruptcy proceedings and civil rehabilitation proceedings, a right to separate satisfaction can be enforced at any time in accordance with the enforcement procedures under the relevant law. The timeline would depend on the types of collateral: a creditor may duly obtain a claim secured by pledge (shichi ken) or mortgage by transfer (joto tanpo) when the creditor sends a notice of enforcement to a debtor of its claim. Concerning real property, it would typically take nearly a year to enforce a mortgage on real property because it is necessary to follow the statutory auction process to find a buyer. Regarding stocks, it is often hard for a creditor to enforce a pledge on stocks of a private company if the creditor wants not to obtain but to sell them, whilst the creditor can easily sell or obtain collateralised stocks of a publicly listed company.

It is common practice in bankruptcy proceedings for the bankruptcy trustee to sell the collateral (typically real estate) with the consent of the creditor whose claim is secured by that collateral, which is called "voluntary sale" (ninni baikyaku).

6.4 Foreign Secured Creditors

There are no special procedures or impediments that apply to foreign secured creditors.

7. The Importance of Valuations in the Restructuring and Insolvency Process

7.1 Purpose and Importance of Valuations

Valuations play an essential role in restructuring. In an out-of-court workout, a distressed debtor is required by the creditors to present not only its going-concern value but also the projected recovery rates in legal insolvency proceedings.

Similarly, in civil rehabilitation proceedings and corporate reorganisation proceedings, a DIP and a reorganisation trustee are required, under the principle of ensuring the liquidation value (or the "best interests" test), to ensure that the recovery rates in these proceedings will be higher than those in bankruptcy proceedings, which is demonstrated by the liquidation analysis. Further, a reorganisation trustee in corporate reorganisation proceedings is required, by the statute, to present the going-concern value of the reorganised company in a reorganisation plan.

7.2 Initiating the Valuation
As discussed above, the distressed debtor in an out-of-court workout, the DIP in civil rehabilitation proceedings and the reorganisation trustee in corporate reorganisation proceedings initiates a valuation.

7.3 Jurisprudence Related to Valuations
The principle of ensuring the liquidation value (or the "best interests" test) requires the liquidation analysis. This analysis shows the estimated amount that the creditors would receive if the debtor filed for a bankruptcy case. The estimation assumes a hypothetical liquidation scenario in which "fire-sales" are forced as a result of limited time to market and disposal of the assets. The recovery rates in the liquidation analysis are thus typically much lower than those in an ordinary sales scenario.

Multiple methods are utilised in combination to carry out valuations of a debtor's going-concern value. As with M&A deals, the debtor's going-concern value is evaluated with the methods of DCF analysis, EBITDA multiples and/or comparable peer company analysis.

8. Directors' Duties and Personal Liability

8.1 Duties of Directors in a Distressed Company
Under Japanese law, directors breach their fiduciary duty owed to the company if they take a risk of opportunistic behaviour where the company is insolvent or in the vicinity of insolvency. The rationale is that it is likely to increase the risk of the creditors being paid less, to the benefit of the shareholders.

The directors of a company that filed for civil rehabilitation proceedings, as a DIP, have a duty to act in a fair and sincere manner.

8.2 Chief Restructuring Officer
Rarely does a distressed company in Japan appoint a chief restructuring officer. Instead, financial advisers and outside counsel advise the distressed company.

8.3 Shadow Directorship
There is no concept of shadow directorship in Japan.

9. Solvent Restructuring/Reorganisation and Rescue Procedures

9.1 Statutory Mechanisms
As discussed above, there are several institutionalised out-of-court restructuring schemes being developed in Japan.

One of the recent schemes is REVIC. REVIC was established in 2013 as a limited-term organisation to succeed the role of the Enterprise Turnaround Initiative Corporation of Japan ("ETIC") which was established in 2009 to help the turnaround of SMEs in financial distress. The ETIC also succeeded the role of the Industrial Revitalisation Corporation of Japan, which was established in 2003 and was modelled on Securum in Sweden. The REVIC is a restructuring advisory firm with the function of debt and equity investment, owned by the Japanese government and private financial institutions. The purpose of the REVIC is to support vitalisation of SMEs with excessive debts even though they have their worthwhile management resources. The REVIC provides many measures with qualifying debtors, including, amongst other things, purchasing the debts from financial institutions other than its "main bank" and making a new equity investment in the debtor. If it purchases the debts or invests in the debtor, the REVIC is expected to sell them within five years. Furthermore, the REVIC supports developing a turnaround plan and sends restructuring professionals to the debtor to help turn around the debtor's situation.

The scheme that has often been utilised recently is the Turnaround ADR. Turnaround Alternative Dispute Resolution (ADR) was created through an amendment to the Act on Special Measures for Industrial Revitalisation and Innovation in 2007 to support debtor turnaround outside the court at an earlier stage. Turnaround ADR is designed to help facilitate negotiations between a distressed debtor and its financial creditors under independent, disinterested mediators licensed by the Ministry of Economy, Trade and Industry and the Ministry of Justice. The Japan Association of Turnaround Professionals ("JATP") is the only licensed organisation that can mediate Turnaround ADR cases, thus far. Two or three mediators recommended by the JATP who have long been seen as restructuring professionals preside over Turnaround ADR cases. Medium- or large-sized companies are supposed to employ Turnaround ADR. The creditors who are expected to participate in Turnaround ADR proceedings are generally financial institutions, whilst trade creditors generally do not. The proceedings are not disclosed to the public.

An outline of Turnaround ADR is set out in **9.2**.

9.2 Position of Company During Procedure
A distressed debtor is first required to consult with the JATP before making a formal application to initiate a Turnaround ADR case. During this consultation process, the debtor needs to carry out the due diligence and then devise a turnaround plan that includes evaluation of the debtor's assets, future profit projection, payment schedule, and liquidation analysis. In the meantime, the JATP selects two or three candidate mediators (typically two lawyers and one accountant) who do not have any conflict of interest with the debtor nor the creditors, subject to the official approval of the creditors. The debtor presents a turnaround plan based on the due diligence, and the mediators review it to see if the qualifying requirements are fulfilled. The debtor qualifies for Turnaround ADR under certain requirements, including where financial restructuring can allow the debtor to survive, given that the debtor's business has a going-concern value or generates operating profits and where the proposed plan can be seen as fair and economically reasonable. In this way, the debtor spends a certain amount of time and costs during this consultation process, but these efforts will be utilised in Turnaround ADR proceedings following the debtor's formal application.

After the debtor has made a formal application and the JATP has accepted it, the debtor and JATP send a "standstill" notice in their joint names to the creditors that the debtor wants to involve in Turnaround ADR. The standstill notice calls upon the creditors not to exercise set-off, require collateral or guarantee, receive payment, enforce their security interest, and not to file a petition for compulsory execution, provisional attachment or any insolvency proceedings. The standstill notice expires at the time of the first creditors' meeting, as explained in **9.3**, but with the creditors' consent, it is usually extended until the third creditors' meeting. The standstill notice is not generally deemed to be default.

9.3 Position of Creditors During Procedure
Participating creditors attend three types of meeting during Turnaround ADR. No creditors' committee is formed. The first creditors' meeting is held within two weeks from the day the standstill notice is sent. At the first creditors' meeting, the candidate mediators selected by the JATP are officially appointed upon unanimous consent of the creditors, and the debtor presents the outline of the turnaround plan to the creditors. Responding to the way in which the creditors reacted, the debtor revises the plan between the first and second creditors' meetings. The second creditors' meeting is usually held six weeks to two months after the first creditors' meeting. At the second creditors' meeting, the debtor presents the detailed turnaround plan and the mediators provide their opinions on the feasibility and fairness of the plan presented by the debtor. At the third creditors' meeting, usually held about one month after the second creditors' meeting and by which time each creditor will have decided whether or not to accept the turnaround plan, the turnaround plan will take effect if all of the participating creditors consent to it. If any of the creditors objects to the plan, the debtor has two alternatives. The first is to utilise the in-court "special mediation" proceeding presided over by a judge to reach a consensus with respect to the objecting creditor, but the objecting creditor is not compelled to accept the plan. The second is to file for statutory insolvency proceedings – civil rehabilitation proceedings or corporate reorganisation proceedings.

9.4 Claims of a Dissenting Class of Creditors
There is no cram-down feature in Turnaround ADR. For the proposed plan to take effect, all of the participating creditors need to accept the plan. Notably, an amendment to the relevant law was recently made to make it clear that the principle of corporate bonds can be reduced in Turnaround ADR with the passing of a resolution at the bondholders' meeting, subject to the court's approval of that resolution.

9.5 Trading Claims of Dissenting Creditors
Claims can be traded in Turnaround ADR. The transfer of such claims is recognised at the time when the transfer is made.

9.6 Re-organising a Corporate Group
A corporate group may apply for Turnaround ADR. The procedures are expected to be performed on a combined basis.

9.7 Conditions Applied to Use or Sale of Assets
Generally, no condition is applied to the debtor's use or sale of its assets during Turnaround ADR. A debtor must obtain consent from each of the participating creditors if the sale of a specific asset is part of the proposed turnaround plan.

9.8 Distressed Disposals
As previously discussed, the debtor disposes of its assets with consent from all the participating creditors if such disposal is part of the proposed turnaround plan.

9.9 Release of Security and Other Claims
Security and other claims will be released if the proposed turnaround plan that provides for such treatment is accepted by all of the creditors.

9.10 Priority
Any bridge loan (called "pre-DIP financing") that is necessary during Turnaround ADR proceedings, if unanimously approved by the creditors, would be taken into consideration by the court to receive preferential payment in statutory insolvency proceedings if Turnaround ADR fails and consequently the debtor moves to file for statutory insolvency proceedings. Pre-DIP financing can be secured on the debtor's assets.

9.11 Determining the Value of Claims
Unlike statutory insolvency proceedings, there is no procedure to determine the value of claims in Turnaround ADR.

9.12 The Agreement Amongst Creditors
The mediators assess whether the plan proposed by the debtor can be seen as fair and economically reasonable and then submit an evaluation report to the participating creditors and the JATP by the second creditors' meeting.

9.13 Rejecting or Dismissing Claims
The debtor is not entitled to reject or disclaim any contract in Turnaround ADR.

9.14 Releasing Non-Debtor Parties from Liability
Non-debtors that are not subject to Turnaround ADR will not be released from their liabilities in Turnaround ADR.

9.15 Rights of Set-Off or Netting in a Proceeding
As previously discussed, a "standstill" notice sent by the debtor and JATP asks the creditors that the debtor wants to be involved in Turnaround ADR not to exercise set-off or netting. This notice is usually extended until the third creditors' meeting, with the participating creditors' consent.

9.16 Implications of Failure to Observe Agreed Plan
A debtor who fails to observe the agreed turnaround plan would first make efforts to amend the agreed plan or to apply for another Turnaround ADR case with consent from the creditors who participated in Turnaround ADR. If those efforts fail, the debtor would need to file for statutory insolvency proceedings.

10. Mandatory Commencement of Insolvency Proceedings

10.1 Obligation to File Within Specific Timeline
Generally, no one, including a debtor or any of its creditors, is obliged to file a petition to commence insolvency proceedings under Japanese law.

11. Insolvency Proceedings

11.1 Types of Voluntary and Involuntary Insolvency Proceedings
Filing of Proceedings

All three insolvency proceedings can be filed either voluntarily or involuntarily. Insolvency proceedings in Japan do not automatically commence with the filing of the motion. The court, instead, issues an order to commence the proceedings, if it confirms that there exists a basis for the proceedings to commence and there is no cause for which it may dismiss the motion (eg a motion filed in bad faith).

Bankruptcy proceedings: a debtor, any of its directors or any creditor may file a motion to commence bankruptcy proceedings where: (i) the debtor is generally and continuously unable to pay its debts when due and payable; or (ii) the debtor's debts exceed its assets.

Civil rehabilitation proceedings: (i) a debtor or any creditor may file a motion to commence civil rehabilitation proceedings where there is the risk that a fact constituting the grounds for commencement of bankruptcy proceedings (as previously mentioned) would occur to a debtor; (ii) only a debtor may file a motion where the debtor is unable to pay all of its due and payable debts without causing significant hindrance to the continuation of the debtor's business.

Corporate reorganisation proceedings: (i) a debtor, any creditor holding claims equal to at least one tenth of the debtor's capital, or any shareholder holding at least one tenth of the voting rights, may file a motion to commence corporate reorganisation proceedings where there is the risk that a fact constituting the grounds for commencement of bankruptcy proceedings (as mentioned above) would occur to a debtor; (ii) only a debtor may file a motion where the debtor is unable to pay all of its due and payable debts without causing significant hindrance to the continuation of the debtor's business.

Temporary Restraining Order

In Japan, there is no automatic stay granted by the court following the filing of a petition. A stay is granted only upon the debtor filing another petition for temporary preservation of the debtor's assets. Generally, in civil rehabilitation proceedings and corporate reorganisation proceedings, the court, in response to a debtor's petition for the temporary preservation of its assets, would issue a temporary restraining order, which restricts (i) the debtor's right to dispose of its assets, including payments; and (ii) the creditors' rights, such as the rights to attach, foreclose, take a lien, pledge, obtain a mortgage on the debtor's assets or any other method of debt collection.

Commencement

Bankruptcy proceedings: upon commencement of bankruptcy proceedings, the debtor company that is subject to the bankruptcy proceedings (the "bankrupt company") loses the power to administer and dispose of its assets. The assets of the bankrupt company, as of commencement of bankruptcy proceedings, constitute the "bankruptcy estate," and the power to administer and dispose of the bankruptcy estate is vested exclusively in a court-appointed bankruptcy trustee. The bankruptcy trustee is required to endeavour to maintain or increase the size of the bankruptcy estate, converting the bankruptcy estate into cash.

Civil rehabilitation proceedings: even upon commencement of civil rehabilitation proceedings, in general, the pre-commencement management of a debtor does not lose its power to operate the debtor's business or to administer and dispose of the debtor's assets. The pre-commencement directors are responsible for turning around the debtor's business under the supervision of a court-appointed supervisor.

Corporate reorganisation proceedings: upon commencement of corporate reorganisation proceedings, the power to administer and dispose of the debtor's assets, and to operate the debtor's business is exclusively vested in a court-appointed reorganisation trustee. The provisional administrator, appointed by the court upon the filing motion, usually becomes a reorganisation trustee upon commencement of corporate reorganisation proceedings.

Procedures after Commencement

Bankruptcy Proceedings

Filing Proof of Claims

In order to receive a distribution from the bankruptcy estate, any general unsecured creditor holding claims other than those classified as estate claims is required to file with the court a proof of claim identifying the cause for, and the amount of, the claim within the "filing period" as determined by the court. The amount of the claim, including a contingent amount, is calculated and recognised at the time of commencement of bankruptcy proceedings. In general, a creditor who fails to file a proof of claim within the filing period may lose its right to distribution from the bankruptcy estate. Secured creditors whose claims are not fully covered by their security interest are also required to file the expected amount of claims to be unsecured by the fair value of the collateral.

A creditor may assign its claim to another party at any time during bankruptcy proceedings. The change in creditor needs to be filed if a creditor assigns its claim after filing a proof of claim. This also applies to civil rehabilitation proceedings and corporate reorganisation proceedings.

Determination of Claims

Any proof of claim duly filed will be assessed by the bankruptcy trustee during the investigation period as designated by the court. The bankruptcy trustee, upon assessment, will decide whether to admit or not to admit each proof of claim. A creditor is also entitled to object to a specific proof of claim during the investigation period. A claim that is admitted by the bankruptcy trustee and not objected to by any creditor is determined as set forth in the filed proof of claim. If the bankruptcy trustee or any creditor objects to the validity or the amount of a specific proof of claim, that claim will be determined by the court upon the filing of a petition for the court's determination by the creditor against whose claim an objection is made. A party can appeal to the bankruptcy court's order to determine the amount of the claim.

Distribution

The bankruptcy trustee sells and disposes of all property belonging to the bankruptcy estate and distributes the cash to the creditors. This distribution of funds is pro-rated to the amount of the claims determined through the claim determination process, as described above. After the final distribution of proceeds from the bankruptcy estate, the court will order the conclusion of bankruptcy proceedings.

Civil Rehabilitation Proceedings and Corporate Reorganisation Proceedings

Filing Proof of Claims

The procedures for filing a proof of claim in civil rehabilitation proceedings and corporate reorganisation proceedings are almost the same as those in bankruptcy proceedings. Any creditor who has claims other than those classified as common benefit claims is required to file with the court a proof of claim, within the filing period determined by the court, in order to be entitled to the voting right over a rehabilitation plan or reorganisation plan and other rights including the right to repayment or refund under the plan.

In civil rehabilitation proceedings, similar to bankruptcy proceedings, secured creditors whose claims are not fully covered by their security interests also need to file a proof of claim identifying the expected amount of the claims to be unsecured by the fair value of the collateral in order that the amount will be treated as a general unsecured claim under a rehabilitation plan.

In corporate reorganisation proceedings, contrary to the other two proceedings, secured creditors need to file both the amount of the secured claim that is covered by the fair value of the collateral and any remaining balance of the unsecured claim, because, as is mentioned below, secured creditors are prohibited from exercising their security interest under corporate reorganisation proceedings.

Determination of Claims

Investigation and determination of claims in civil rehabilitation proceedings and corporate reorganisation proceedings are almost the same as those in bankruptcy proceedings; please see above.

Plan Formation

Based on the amount of the pre-commencement claims determined through the process mentioned above, the DIP or reorganisation trustee is obliged to propose a rehabilitation plan in civil rehabilitation proceedings, or a reorganisation plan in corporate reorganisation proceedings, and file it with the court within the period prescribed by the court. Any creditor that has filed a proof of claim (and any shareholder

in corporate reorganisation proceedings) is entitled to do so within the period designated by the court.

Both a rehabilitation plan and a reorganisation plan may provide for the amendment of the pre-commencement claims and other items that are allowed under the relevant law to restructure the debtor's business. As for the amendment to the pre-commencement claims, a rehabilitation or reorganisation plan needs to provide a general standard that is applicable to all claims in the same class, including the recovery rate, the payment schedule and a debt-for-equity swap. Under the principle of equal treatment, any amendment to the pre-commencement claims is required, in principle, to be equally made to all of the claims in the same class. The narrow exception to this principle is the fair and equitable exception under which the pre-commencement claims in the same class do not need to be treated equally to the extent that equity will not be undermined. Further, any amendment to the pre-commencement claims needs to meet the principle of ensuring the liquidation value, which is referred to as the "best interests test" in the USA. This principle requires that the recovery rates in civil rehabilitation proceedings or corporate reorganisation proceedings be higher than those in bankruptcy proceedings.

After the filing of a rehabilitation plan or a reorganisation plan, the court will issue an order to hold a creditors' meeting for civil rehabilitation proceedings or an interested persons' meeting (which is so called because it involves shareholders) for corporate reorganisation proceedings to put the proposed plan to a vote. It is quite significant to note that the voting requirements differ in civil rehabilitation proceedings and corporate reorganisation proceedings, which is one of the deciding factors in a debtor's strategic selection.

In civil rehabilitation proceedings, a proposed rehabilitation plan is approved at the creditors' meeting with: (i) an affirmative vote by a majority of the creditors and (ii) an affirmative vote by holders of at least half of the total amount of the claims held by those creditors.

In corporate reorganisation proceedings, a proposed reorganisation plan is approved at an interested persons' meeting by each class of interested persons. The requirements for approval are stipulated by the law differently for each class of interested persons. If there is a class that rejects the proposed reorganisation plan, the statute of corporate reorganisation proceedings allows the court to cram down the plan on the dissenting class, by fulfilling the statutory requirements. A cram-down is not permitted, however, in civil rehabilitation proceedings.

When the proposed rehabilitation or reorganisation plan is approved by all classes or, if not, crammed down on a dissenting class, the court issues an order to confirm the plan, unless it finds, amongst other things, that the plan is unlikely to be completed or that the plan is contrary to law, including the principle of equal treatment and best interests test. The approved and confirmed plan becomes effective upon the confirmation order becoming final and binding, and the debtor will be released from the pre-commencement debts as provided for in the plan. The creditors may exercise their rights pursuant to the provisions of the plan.

Standard Timeline of the Tokyo District Court

The Tokyo District Court published a standard timeline for civil rehabilitation proceedings and corporate reorganisation proceedings as described here.

From	Until	Period	Period
		Civil Rehabilitation Proceedings	Corporate Reorganisation Proceedings
the filing of a motion	the commencement	one week	one month
the commencement	the end of the filing period	three or four weeks	two months
the end of the filing period	the deadline for assessment of filed proof of claim	four or five weeks	three months
the deadline for assessment of filed proof of claim	the deadline for proposal of a plan	one month	four months
the deadline for proposal of a plan	the court's order to confirm the plan	two months	two months

Bilateral Executory Contract

Upon commencement of insolvency proceedings, a debtor or trustee is authorised to choose to terminate or to continue the debtor's "bilateral executory contracts" (soho miriko somu keiyaku). Bilateral executory contracts are those in which: (i) the debtor and the counterparty have reciprocal obligations, so that the obligations of the debtor are correlative to the obligations of the counterparty; and (ii) all or part of the obligations of both the debtor and the counterparty have yet to be performed at the time of the commencement of insolvency proceedings. As an example, if a debtor has a sales contract with a counterparty, pursuant to which the counterparty is to deliver certain goods and the debtor is to pay JPY1 million in exchange for the goods, and neither the obligation to deliver nor the obligation to pay has been fulfilled at the time of the commencement of insolvency proceedings, the trustee/debtor may choose either to terminate the agreement or to cause it to remain in effect.

Restriction on Set-off Right

In each of the three insolvency proceedings, a creditor is prohibited from setting off its claim under several circumstances, given that there exist no "reasonable expectations of set-off." These circumstances include: (i) where the creditor acquired a claim after the debtor became unable to pay its debts (in other words, after the debtor became insolvent) knowing the debtor's insolvency; (ii) where the creditor assumes a debt after the debtor's insolvency by entering into a contract with the debtor to dispose of the debtor's property, with the intention of setting off against the claim any debt to be assumed by the creditor under the contract; (iii) where the creditor acquired a claim after the debtor's suspension of payments with the knowledge of that suspension. To avoid potentially chilling effects on ordinary financial transactions, these restrictions listed are not applicable under certain circumstances, including where the acquisition of the claim or the assumption of the debt arose from a cause which occurred before the creditor knew of either the debtor's insolvency or the suspension of payments.

11.2 Distressed Disposals

In bankruptcy proceedings, the bankruptcy trustee, who has the power to administer and dispose of the bankruptcy estate, disposes of the debtor's assets. In civil rehabilitation proceedings and corporate reorganisation proceedings, the DIP and the reorganisation trustee, who have power to administer and dispose of them, dispose of the debtor's assets prior to the plan confirmation, with the court's approval, under certain circumstances or in accordance with the confirmed plan.

11.3 Failure to Observe Agreed Rescue Plan

A DIP can emerge from civil rehabilitation proceedings, amongst other things, when the plan has been successfully implemented or when three years have passed since the court's confirmation of the plan. Conversely, the court will issue an order to discontinue civil rehabilitation proceedings, with or without a motion from the DIP or court-appointed supervisor, if it becomes obvious that the plan is unlikely to be completed. Any creditor holding claims of at least one tenth of the total amount of all unpaid claims provided for in the plan may move to revoke the plan if all or part of its claims are or are not paid, as the case may be. Once civil rehabilitation proceedings are discontinued or the plan is revoked, the proceedings will be converted into bankruptcy proceedings.

A reorganised company can emerge from corporate reorganisation proceedings when: (i) the plan has been successfully implemented; (ii) the plan has thus far been, and is likely to continue to be, performed without default, and at least two thirds of the claims under the plan have been paid; or (iii) it is certain that the plan will be implemented even if all the requirements of (ii) above have not been met. Conversely, the court may issue an order to discontinue corporate reorganisation proceedings, with or without a motion from the reorganisation trustee, if it becomes obvious that the plan is unlikely to be completed. In which case, the court will convert corporate reorganisation proceedings to bankruptcy proceedings.

11.4 Priority New Money

New money provided after the commencement of statutory insolvency proceedings (called "DIP financing") is granted priority. DIP financing is classified as an administrative expense – a "common benefit claim" in civil rehabilitation proceedings and corporate reorganisation proceedings. DIP financing can be secured on the debtor's assets.

11.5 Liquidation on a Combined Basis/Under Related Proceedings

A corporate group can file for statutory insolvency proceedings. Insolvency proceedings of a corporate group are practically handled on a combined and concurrent basis for administrative efficiency. There would be various possible measures, including appointing another trustee for an entity with conflicting interests, if a substantial conflict between the entities under the corporate group were to exist.

11.6 Organisation of Creditors

No creditors' committee is mandatorily formed in Japan. The statutes of civil rehabilitation proceedings and corporate reorganisation proceedings, however, entitle the court to approve the participation of the creditors' committee in the proceedings under limited circumstances, if any creditors have formed a creditors' committee. The court-approved creditors' committee is entitled to actively engage in the restructuring of a debtor's business. For example, the creditors' committee may request a debtor or reorganisation trustee to report on the restructuring of the debtor's business, and

may present its own opinion. The expense for the creditors' committee is reimbursed if the court finds that the committee contributed to ensuring the turnaround of the debtor. Nonetheless, it is still rare for a creditors' committee to be formed. This is partly because the court actively oversees the whole proceedings, and thus, a DIP or reorganisation trustee is required to lead the proceedings reflecting the fair interests of the creditors.

11.7 Use or Sale of Assets During Insolvency Proceedings
Similar to Section 363 Sales of the US Bankruptcy Code, an increasing trend in civil rehabilitation proceedings is for substantially all the debtor's assets to be sold to a buyer prior to the proposal of a rehabilitation plan. With the court's approval, the DIP may execute that sale. A buyer will obtain the debtor's assets sold, if any, but with liens on them. Under Japanese law, creditors may not credit-bid for the debtor's assets.

In civil rehabilitation proceedings, it has sometimes been seen that a debtor files a motion to commence the proceedings along with some arrangement with a buyer under which the debtor will sell its business to the buyer prior to the proposal of a rehabilitation plan. This process is called "pre-arranged" or "pre-negotiated" civil rehabilitation proceedings.

12. Transactions That May Be Set Aside

12.1 Grounds to Set Aside/Annul Transactions
Japanese law grants a bankruptcy trustee, a reorganisation trustee and a supervisor powers to exercise the right of avoidance (hinin ken) should an act be found to have been conducted that was prejudicial to creditors or granted a preference to a specific creditor.

The avoidance under Japanese insolvency proceedings is categorised into two major types: (i) avoidance of acts prejudicial to creditors (sagaikoui hinin); and (ii) avoidance of acts that grant a preference to a specific creditor(s) (henpakoui hinin).

Acts prejudicial to creditors: two types of acts, in principle, may be avoided as an act prejudicial to creditors: (i) an act that is conducted by a debtor knowing that such an act would prejudice its creditors; and (ii) an act that prejudices creditors and that is conducted by a debtor after a suspension of payments is made or after filing for insolvency proceedings. Any act that causes the debtor's debts to exceed its assets, or that worsens such excess of its debts over its assets, is interpreted as an act prejudicial to creditors. However, when a debtor disposes of property and then receives "reasonable value" in consideration for that disposal, the disposal may only be avoided under limited circumstances.

Preference: any preference, including a repayment or a creation of security interest for a specific creditor, may be avoided where: (i) it was conducted by a debtor after the debtor became "unable to pay its debts" or after the debtor filed a petition for insolvency proceedings with the court; (ii) the creditor, at the time of this act of preference, was aware that the debtor was unable to pay its debts or the debtor was subject to a payment suspension (where the act was conducted after the debtor became unable to pay debts) or the petition had been filed (where the act was conducted following a petition for insolvency proceedings). In addition, any preference for which the debtor was under no obligation in terms of the act itself, or at the time of the act, may also be avoided if that act was conducted within 30 days before the debtor became unable to pay debts and if the creditor knew, at the time of the act, the fact that it would prejudice other creditors.

12.2 Look-Back Period
The statute of limitation for avoidance action is 20 years. As previously discussed, what is of practical significance is to determine when the debtor's debts exceeded its assets or when the debtor became unable to pay its debts.

12.3 Identity of Claimant
A bankruptcy trustee in bankruptcy proceedings, a reorganisation trustee in corporate reorganisation proceedings and a court-appointed supervisor in civil rehabilitation proceedings may exercise the right of avoidance. A creditors' committee, an individual creditor or a shareholder has no standing (not even a derivative standing) to bring a motion before the court to exercise the right of avoidance. Having said that, as a practical matter, a creditor requiring to avoid a particular transaction often calls upon a bankruptcy trustee, a reorganisation trustee or a supervisor through the DIP to do so.

12.4 Claims in Insolvency and Restructuring Proceedings
Avoidance action can be brought into bankruptcy proceedings, civil rehabilitation proceedings and corporate reorganisation proceedings.

13. Priorities and Waterfalls

13.1 Priority Claims
Administrative expense: as with administrative expenses under the US Bankruptcy Code, certain types of claims incurred to preserve a debtor's going-concern value or bankruptcy estate are classified as a "common benefit claim" (kyoeki saiken) in civil rehabilitation proceedings and corporate reorganisation proceedings or an "estate claim" (zaidan saiken) in bankruptcy proceedings. These types of claims are not subject to restrictions under insolvency proceedings, such as prohibition from post-commencement payment or

discharge. All amounts of these claims are paid from the debtor's property, or the bankruptcy estate on occasion, when they are due and payable. Consequently, a creditor who has a common benefit claim or estate claim is accorded priority over any other type of claim. A common benefit claim or estate claim typically includes: (i) expenses or remuneration for the reorganisation trustee, the supervisor and the bankruptcy trustee; (ii) counterparty claims in the event that a trustee/DIP elects to continue a bilateral executory contract; (iii) costs and expenses, charges, debts, etc incurred as a result of a debtor's business after commencement of civil rehabilitation proceedings or corporate reorganisation proceedings (eg DIP financing); and (iv) costs and expenses to maintain, administer and dispose of the bankruptcy estate in bankruptcy proceedings.

Preferred unsecured claims: a claim that resulted from grounds or causes that existed before the commencement of insolvency proceedings and that is accorded priority (ippan no yusen ken) under the relevant law, or is secured by a general statutory lien (ippan no sakidori tokken), is treated as a preferred unsecured claim in insolvency proceedings. A typical example of this claim is wages of employees and certain tax claims because the relevant law accords priority on these claims.

In bankruptcy proceedings and corporate reorganisation proceedings, a creditor with preferred unsecured claims (yusenteki hasan saiken or yuseneki kosei saiken) may not exercise its rights outside the proceedings. Such a creditor has a right to distribution from the bankruptcy estate in bankruptcy proceedings or a right in accordance with the reorganisation plan in corporate reorganisation proceedings, with priority over general unsecured claims. In contrast, a preferred general claim in civil rehabilitation proceedings (ippan yusen saiken) is generally not subject to restriction on its enforcement under civil rehabilitation proceedings. A creditor with such a claim may collect from the debtor, on occasion when debts are due, outside the proceedings, unless the court orders otherwise.

13.2 Priority Over Secured Creditor Claims

As discussed above, in bankruptcy proceedings and civil rehabilitation proceedings, secured claims are treated as a "right to separate satisfaction" (betsujo ken), which allows secured creditors to enforce their security interests outside the proceedings (unless the court orders to stay such enforcement or approves to extinguish them). In this respect, there is no order of priority between common benefit claims/estate claims and secured claims. In corporate reorganisation proceedings, however, secured claims are treated as secured reorganisation claims (kosei tanpo ken), which prohibits secured creditors from enforcing their security interests outside the proceedings and pays them in accordance with the confirmed reorganisation plan. Thus, in corporate reorganisation proceedings, common benefit claims have priority over secured reorganisation claims in the sense that common benefit claims will be paid when due and payable during the proceedings, whilst secured reorganisation claims will be paid in accordance with the confirmed reorganisation plan.

Further, in civil rehabilitation proceedings, preferred unsecured claims are treated similarly to secured claims, in the sense that a creditor with claims of this kind may collect from the debtor outside the proceedings unless the court orders otherwise. Conversely, in corporate reorganisation proceedings, secured reorganisation claims have priority over preferred unsecured claims (ippanteki kosei saiken). In bankruptcy proceedings, secured claims, which are classified as a right to separate satisfaction, have priority over preferred unsecured claims, in the sense that this right may be enforced outside bankruptcy proceedings.

13.3 Statutory Waterfall of Claims

The statutory waterfall of claims that are incorporated into insolvency proceedings (ie claims other than common benefit claims in civil rehabilitation proceedings and corporate reorganisation proceedings, estate claims in bankruptcy proceedings, the right to separate satisfaction in bankruptcy proceedings and civil rehabilitation proceedings and preferred unsecured claims in civil rehabilitation proceedings) are generally as follows:

Bankruptcy Proceedings:

- preferred unsecured claim (yusenteki hasan saiken)
- general unsecured claim (hasan saiken)
- subordinated unsecured claim (retsugo teki hasan saiken)
- contractually subordinated unsecured claim (yakujo retsugo hasan saiken)

Civil Rehabilitation Proceedings:

- general unsecured claim (saisei saiken)
- subordinated unsecured claim
- contractually subordinated unsecured claim (yakujo retsugo saisei saiken)

Corporate Reorganisation Proceedings:

- secured reorganisation claim (kosei tanpo ken)
- preferred unsecured claim (ippanteki kosei saiken)
- general unsecured claim (koesi saiken)
- subordinated unsecured claim
- contractually subordinated unsecured claim (yakujou retsugo kosei saiken)

A claim resulting from grounds or causes that existed before the commencement of insolvency proceedings, and which does not fall within any other class of claim, is classified as a "general unsecured claim." A creditor with general unsecured claims of this kind may not exercise its rights outside

the insolvency proceedings, and will have only a right to distribution from a bankruptcy estate or a right in accordance with a rehabilitation or reorganisation plan.

Certain types of claims, such as an interest accrued after commencement of insolvency proceedings and damages, or penalties for default after commencement of insolvency proceedings, are classified as a "subordinated unsecured claim." Subordinated unsecured claims are treated as having less priority than general unsecured claims in each insolvency proceeding. In addition, the claim that is agreed upon, before commencement of insolvency proceedings, by and between a debtor and a creditor as subordinated to subordinated unsecured claims, will be treated in insolvency proceedings as being junior to all other claims.

14. Courts and Arbitration

14.1 Courts
Unlike some other jurisdictions, such as the USA, there is no statutory bankruptcy court in Japan that specialises in insolvency cases. Nonetheless, the Tokyo District Court and Osaka District Court have a civil division specifically in charge of insolvency cases.

14.2 Specialist Judges
There are no specialist judges in Japan.

14.3 Limitations on Matters that Can be Heard
There are no limitations in relation to the matters that can be heard by the court.

14.4 Arbitration
No arbitration proceedings are utilised in Japanese insolvency proceedings.

15. International Issues and Recognition

15.1 Recognition/Relief in Connection with Overseas Proceedings
Following the ratification by the Japanese government of the UNCITRAL Model Law on Cross-Border Insolvency, the Act on Recognition of and Assistance for Foreign Insolvency Proceedings was enacted as of 1 April 2001, to coordinate the liquidation or rehabilitation of debtors engaged in international business activities and subject to insolvency proceedings commenced in jurisdictions other than Japan.

Under the Act, where a debtor has an address, domicile, place of business or office in a foreign jurisdiction and an insolvency proceeding, similar to bankruptcy proceedings, civil rehabilitation proceedings or corporate reorganisation proceedings in Japan, has been commenced against the debtor in that foreign jurisdiction, the trustee (or the debtor, where no trustee has been appointed) who is authorised in the foreign insolvency proceeding to administer or dispose of the debtor's assets may file with the Tokyo District Court an application to recognise the foreign insolvency proceeding. The Act prescribes the circumstances where the court is required to dismiss such an application, such as where recognition of the foreign insolvency proceedings would be against the public policy of Japan or where Japanese statutory insolvency proceedings have already been commenced in Japan against the debtor.

Where the court has ordered recognition of the foreign insolvency proceeding, upon application by an interested person, or at the court's own discretion, the court may also render a disposition of assistance on the basis of that recognition. The purpose of the assistance order is to create circumstances similar to those under which the effect of the recognised foreign insolvency proceeding is properly realised in Japan. An order of assistance includes:

Stay and revocation: the court may order a stay on: (i) a procedure for compulsory execution, provisional seizure or provisional disposition (collectively, "compulsory execution") that has already been initiated against the debtor's property, which is limited to property that exists in Japan; (ii) court proceedings related to the debtor's property; and (iii) administrative proceedings related to the debtor's property. The court may also order a revocation of the above procedures. For example, an order to revoke the seizure of a bank account in Japan allows a foreign debtor to use cash deposited in the bank account.

Comprehensive prohibition order: the court may also issue a comprehensive order to prohibit any compulsory execution against the debtor's property. However, the court may, upon a motion of the creditor who has initiated compulsory execution, cancel the prohibition with respect to that creditor if it finds the prohibition is likely to cause undue damage to that creditor.

Prohibition of disposition of property: to preserve the debtor's property, the court may issue an order to prohibit the debtor from disposing of any of the debtor's business and property that exists in Japan and making payments to its creditors.

Stay on the enforcement of security interest: under limited circumstances, the court may order a stay on the enforcement of any security interest in the debtor's property that exists in Japan, specifying a reasonable period during which the stay is in effect.

Court's approval for the debtor to dispose of its property: the court may also require that the debtor obtain the court's

approval to dispose of any of the debtor's assets which exist in Japan, to transfer its assets to a foreign jurisdiction, or to perform or engage in any other acts designated by the court. Any act by the debtor in violation of a court's orders will be null and void and subject the debtor to criminal sanctions.

Appointment of a recognised trustee: the court may recognise and appoint a recognised trustee to vest exclusively in the recognised trustee the power to administer and dispose of the debtor's business and property that exists in Japan.

15.2 Protocols in Cross-Border Cases

In response to the enactment of the Act, an amendment to Japanese insolvency law was also made to incorporate the following concepts:

First, under the principle of national treatment, a foreign entity incorporated under the laws of a foreign jurisdiction is granted the same status as a Japanese entity in the Japanese insolvency proceedings.

Second, if an insolvency proceeding is commenced in a foreign jurisdiction with respect to a debtor, the presumption will be that a valid cause exists for commencement of Japanese insolvency proceedings.

Third, if there are insolvency proceedings concurrently pending in more than two jurisdictions, the Japanese trustee may ask a trustee in the foreign insolvency proceeding to co-operate and provide such information as is required properly to carry out the Japanese insolvency proceeding, and vice versa.

Fourth, the trustee in the foreign insolvency proceeding may file a motion to commence the Japanese insolvency proceeding corresponding to the foreign insolvency proceeding. The foreign trustee is entitled to present its own opinion at the creditors' meeting and to file a rehabilitation or reorganisation plan with the court. Furthermore, the foreign trustee may, in its capacity as a representative representing those creditors who have filed proof of claims in their foreign insolvency proceeding but who have not done so in the Japanese insolvency proceeding, participate in the Japanese insolvency proceeding, and this applies to the Japanese trustee in the foreign jurisdiction in the same manner.

15.3 Foreign Creditors

In principle, foreign creditors and domestic creditors are treated equally. It should be noted, however, that the "hotchpot" rule, designed to ensure all creditors in the same class are treated equally, applies to a foreign creditor who is paid in a foreign jurisdiction. Under the rule, a foreign creditor, by claiming in a foreign proceeding, will not receive more than the proportion of payment that is received by other domestic creditors of the same class.

The tax claims held by a foreign governmental authority that are granted priority in the foreign jurisdiction are treated as general unsecured claims in Japanese insolvency proceedings, given that such priority is premised on the sovereignty that is recognised only in such foreign jurisdiction.

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