IN-DEPTH

Insolvency

JAPAN

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In-Depth: Insolvency (formerly The Insolvency Review) offers an incisive review of the most consequential features of the insolvency laws and procedures in key jurisdictions worldwide. It also examines the practical implications of recent market trends and insolvency case developments.

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Japan

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Summary

Introduction

The Japanese economy remains severe, with the ongoing impact of the commencement of full-scale repayment of ‘zero-zero loans’ (interest-free and unsecured loans formerly granted by financial institutions as a special governmental rescue package for companies affected by the covid-19 pandemic) and the escalation of raw material prices further hampering any chances of recovery. As a result of these factors, several large out-of-court corporate workouts and civil rehabilitation proceedings were filed in 2023 (see under 'Plenary insolvency proceedings' for details). Recent statistics[1] also indicate that there were 8,497 in-court insolvency cases that same year, up for the second year in a row and having increased by approximately 33 per cent from the previous year. Also, total liabilities reached a staggering ¥2,376.93 billion, with 18 major bankruptcies involving companies each holding debts exceeding ¥10 billion), marking the first time in 10 years that they have hit the ¥2 trillion level for two consecutive years.

Insolvency law, policy and procedure

Overview

Japan has two categories of in-court insolvency proceedings:

1. restructuring-type insolvency proceedings, which are processes for restructuring the debtor's business without extinguishing its juridical personality, based on a restructuring plan that includes changes to the rights of creditors; and
2. liquidation-type insolvency proceedings, where all of the debtor's assets are liquidated and, if it is a legal entity, the entity itself is extinguished upon completion of the proceedings.

Civil rehabilitation proceedings and corporate reorganisation proceedings fall within restructuring-type insolvency proceedings, whereas liquidation-type insolvency proceedings consist of bankruptcy proceedings and special liquidation. The core features of these proceedings are addressed in 'Main features of each type of in-court insolvency proceedings' .

Out-of-court workouts are becoming more commonly used to restructure the debtor's financial debts without starting the above-mentioned in-court insolvency proceedings, which usually damage the company's going concern value. Generally, such out-of-court workouts involve only financial creditors, while claims held by trade creditors are paid in full, thus preventing the deterioration of the debtor's business value. We have seen some successful out-of-court corporate workout cases where the debtors are large, worldwide companies with subsidiaries worldwide. The core features of these proceedings are addressed in 'Out-of-court corporate workouts'.

However, it has long been pointed out that out-of-court workout proceedings have a high hurdle to overcome; the unanimous consent of participating creditors is required and, if

this cannot be achieved, the debtor's business value may be severely damaged by the shift to in-court insolvency proceedings. Although unanimous consent from all participating creditors is still required, a regime where debtors can cram down opposing creditors with a certain majority of creditors may be introduced in out-of-court workouts subject to future discussions (see 'Introduction of cram-down in out-of-court workouts' for details).

Main features of each type of in-court insolvency proceedings

Civil rehabilitation proceedings

Civil rehabilitation proceedings, governed by the Civil Rehabilitation Act, are the most common form of in-court restructuring-type insolvency proceedings in Japan and these proceedings can be used for any type of company.

In general, civil rehabilitation proceedings are a debtor-in-possession (DIP) process; the debtor's management remains in control of the debtor and its assets throughout the process unless there are exceptional circumstances to take over the management's control. Having said that, this does not mean the management's control is completely unaffected by the commencement of civil rehabilitation proceedings. Courts may and usually do require the debtor to obtain their prior permission before it engages in certain types of activities, typical examples of which include disposal of property and accepting the transfer of property that is out of the ordinary course of the debtor's business, borrowing money, filing an action, settling a dispute and waiving a legal right. In addition, courts usually appoint a supervisor who monitors the debtor's activities throughout the process and gives consent to the debtor to engage in the above-mentioned permission-required activities on behalf of the court.

In terms of how voting for the restructuring plan works, there is only one class that can vote consisting of holders of rehabilitation claims, which are, roughly speaking, claims that existed before the commencement of the proceedings. The rehabilitation plan must be approved by:

1. a majority in number of rehabilitation claims holders voting at the meeting (or in writing); and
2. a majority by value of all rehabilitation claims, the holders of which have voting rights.

Under the standard schedule of the Tokyo District Court, the entire process of civil rehabilitation proceedings takes approximately five months; however, the actual length may vary depending on the complexity and circumstances of each case.

A shorter form of civil rehabilitation proceedings known as simplified rehabilitation proceedings (SRP), wherein debtors can skip the process of examining and determining creditors' claims, can usually be concluded within one to two months with the consent of 60 per cent or more of the creditors who have filed claims. Despite a long discussion among insolvency practitioners about using SRP as a tool for debtors who failed to obtain unanimous consent in turnaround alternative dispute resolution (turnaround ADR) to quickly effectuate the restructuring plan that they proposed in the preceding turnaround

ADR, we had never seen this idea be implemented until recently. The *Marelli* case, however, proved that by using SRP, the debtor can cram down minority lenders who oppose its restructuring plan in the preceding turnaround ADR (see under section 'Marelli' for details).

Corporate reorganisation proceedings

Corporate reorganisation proceedings, another form of in-court restructuring-type insolvency proceedings governed by the Corporate Reorganization Act, have a similar process to civil rehabilitation proceedings, although there are some key differences, such as:

1. corporate reorganisation proceedings are available only for stock corporations – various other corporate forms, such as unlimited partnerships, limited partnerships and LLCs cannot use these proceedings;
2. a trustee takes over possession and control of the debtor's business and assets; and
3. secured creditors cannot exercise their security interests outside the proceedings.

Corporate reorganisation proceedings are mainly used in complex cases with large debts. Although the trustee, who is appointed by the court with the exclusive right and authority to manage the debtor's business and to administer and dispose of the debtor's assets throughout the process, is usually an attorney who has expertise in insolvency cases (administrative corporate reorganisation), there have been some cases in which the court appoints trustees from the current management (DIP-type corporate reorganisation).

As for voting, unlike civil rehabilitation proceedings, classes are separated in corporate reorganisation proceedings for each type of creditor, such as secured claims, general unsecured claims and shares. Plans need to be approved by each class (with different thresholds) and cram down is available only in limited cases.

In the Tokyo District Court's standard schedule, administrative corporate reorganisation takes approximately eight to 11 months, whereas DIP-type corporate reorganisation typically takes around five months.

Bankruptcy proceedings

Bankruptcy proceedings, governed by the Bankruptcy Act, are the most commonly used form of liquidation for insolvent companies. Broadly speaking, the main purpose of bankruptcy proceedings is to liquidate the debtor's assets (including sales of its businesses) into cash to be distributed equitably to creditors.

Upon commencement of bankruptcy proceedings, a trustee is appointed by the court and takes over control and possession of the debtor's property, unless the debtor does not have enough assets to fund the expenses of the process (in which case, the bankruptcy procedure is closed immediately with the juridical personality of the corporate debtor being diminished). In light of the above-mentioned main purpose of bankruptcy proceedings, the primary task of the trustee is to convert the debtor's assets into as much cash as possible

and distribute it equitably to creditors, and the trustee may operate the debtor's businesses to the extent necessary and appropriate to sell its assets at maximum value.

Special liquidation

Special liquidation, governed by the Companies Act, is a form of liquidation that is only available to stock corporations that have been placed into a voluntary liquidation process by their shareholders. It is a simpler, less onerous and more expeditious form of liquidation than bankruptcy, which is frequently used by parent companies to liquidate loss-making subsidiaries.

The liquidator who has been appointed by the debtor continues to have control and possession of the debtor's property. The liquidator's activities are subject to the court's supervision and it must obtain the court's permission if it plans to, *inter alia*, dispose of any assets, borrow money, file an action, enter into a settlement or an arbitration agreement, or waive the rights of the corporation.

Out-of-court corporate workouts

Unlike in-court insolvency proceedings, out-of-court workouts involve only financial creditors, while claims held by trade creditors are paid in full, thus preventing the deterioration of the debtor's business value. In Japan, for this reason, out-of-court workouts are becoming more commonly used to restructure the debtor's business. Against a backdrop of the increasing popularity of out-of-court corporate workouts in this country, there are a variety of out-of-court corporate workout schemes ranging from purely consensual, ad hoc negotiations with financial creditors to more standardised processes with prescribed procedures to ensure the fairness and reasonableness of each process.

Among the variety of schemes, the turnaround ADR process, one of the standardised forms of corporate workout, is the most popularly used in recent years, especially for large companies. Turnaround ADR is a process in which the debtor tries to restructure its debts owed to financial creditors based on their unanimous consent. The entire process is carried out in accordance with a prescribed manner and schedule and facilitated by impartial mediators (usually consisting of two lawyers and one accountant) appointed by the Japanese Association of Turnaround Professionals (JATP) to ensure the fairness and reasonableness of the workout process.

The turnaround ADR process starts when the debtor files an application with JATP and sends a notice of standstill to the financial creditors. A notice of standstill is merely a request for the financial creditors to refrain from exercising their rights on the debts, and is not legally binding. After the commencement of the turnaround ADR process, three types of creditors' meetings are held:

1. first creditors' meeting (usually within two weeks of issuance of the notice of standstill), at which generally:

- the standstill requested in the notice is approved by unanimous consent of the participating creditors;
- the mediators are appointed by a majority vote of the participating creditors; and

- an outline of the debtor's restructuring plan is explained to the participating creditors;

2. second creditors' meeting (usually two to three months after the first meeting), at which the debtor's restructuring plan is formally proposed to the participating creditors, and the appointed mediators' report on the fairness, economic rationality and legal compliance of the debtor's restructuring plan at this meeting; and
3. third creditors' meeting (usually one month after the second meeting), at which the proposed restructuring is to be approved by all of the participating creditors at this meeting, and the debtor will execute it accordingly.

There are also cases where rescue financing (pre-DIP financing) is necessary to secure the debtor's cash flow during the turnaround ADR process. In such cases, the debtor may request the participating creditors to consent to the prioritisation of rescue financing at the creditors' meetings. Under the Industrial Competitiveness Enhancement Act (ICEA), turnaround ADR provides the mechanism for the mediators to confirm:

1. the necessity of the pre-DIP financing; and
2. that the participating creditors have consented to the prioritisation of such financing.

Thereafter, even if the turnaround ADR fails and in-court insolvency proceedings are subsequently started, the court would likely accept a proposed rehabilitation plan prioritising a pre-DIP financing over other debts based on the mediators' confirmation at the turnaround ADR stage.

Transition to in-court insolvency proceedings from turnaround ADR

Although the success rate of turnaround ADR is generally high and debtors in many cases successfully restructure their debts without shifting to in-court insolvency proceedings, there are cases where the debtor cannot obtain unanimous consent to its restructuring plan. In such cases, the debtor must consider initiating in-court insolvency proceedings.

The ICEA, which has been amended multiple times recently in response to such situations, has several provisions for debtors to smoothly shift from turnaround ADR to in-court insolvency proceedings.

Protection of commercial claims in in-court insolvency proceedings

Under the ICEA, the debtor may request the mediators of turnaround ADR to confirm that the commercial claims arising up to the conclusion of the procedure conform to the following requirements: the claim is small in amount and the debtor's business will be significantly hindered if the claim is not repaid promptly. If a shift from turnaround ADR to in-court insolvency proceedings occurs with respect to a debtor who has obtained such a confirmation, the court, by taking into consideration the fact that these two requirements have been met in respect of trade claims, will decide whether to allow priority repayment in rehabilitation or reorganisation proceedings.

Appointment of supervisors in in-court insolvency proceedings

The most recently amended ICEA establishes a provision that, when transferring a case from turnaround ADR to in-court insolvency proceedings, the court shall appoint a supervisor by taking into consideration the fact that the mediators of the turnaround ADR have already mediated a settlement. This provision makes it more likely that mediators who understand the circumstances surrounding the debtor will be appointed as supervisors in the subsequent in-court insolvency proceedings, thereby facilitating a smooth transition.

Confirmation of indispensability of debt forgiveness and petitioning for simplified civil rehabilitation proceedings

Under the amended ICEA:

1. the debtor may, in cases in which creditors who hold three-fifths or more of the total amount of claims in turnaround ADR agree to a business rehabilitation plan, file a petition for confirmation that the debt forgiveness to be conducted based on the plan conforms to the criterion of being indispensable for business rehabilitation (confirmation of conformity); and
2. if the debtor files a petition to transfer from turnaround ADR to SRP, the court shall determine whether the proposed rehabilitation plan submitted by the debtor is contrary to the general interests of rehabilitation creditors, taking into consideration the existence of the confirmation of conformity.

The amended ICEA will increase the possibility that the court, by obtaining confirmation of conformity in turnaround ADR, will consider it at that stage and make a smooth rehabilitation decision based on the same (or similar) plan submitted by the debtor in subsequent SRP, even if turnaround ADR is not successful and the debtor has to go into in-court insolvency proceedings.

There has been a recent case where the debtor used the above provisions to smoothly shift from turnaround ADR to SRP (see under section 'Marelli' for details).

Insolvency metrics

Market overview

In Japan, the number of in-court insolvency cases and large out-of-court workouts is increasing due to various global factors such as the repayment of zero-zero loans commencing in full force and the significant rise in the cost of raw materials as mentioned in the 'Introduction'. This includes a dramatic increase in the number of bankruptcies in the construction and manufacturing sectors due to rising prices. Another potential factor that may have led to an increase in the number of insolvency or restructuring cases is

a problem known as the '2024 issue', which refers to a severe shortage of drivers in the logistics industry that is expected to have been caused by new legislation effectuated on 1 April 2024 restricting vehicle driving operations to 960 hours in annual overtime.

Considering these circumstances, the Financial Services Agency published a revised draft of the Comprehensive Guidelines for Supervision of Small- and Medium-Sized Enterprises and Regional Financial Institutions on 27 November 2023, which came into effect on 1 April 2024. Additionally, the Ministry of Economy, Trade and Industry; the Financial Services Agency; and the Ministry of Finance established the Comprehensive Measures for Rehabilitation Support on 8 March 2024. Both are aimed at urging financial institutions to provide fully fledged support for business improvement and rehabilitation beyond merely providing loans or extending repayment periods for companies in financial distress, in light of the expected upward trend in insolvencies.

The year 2024 can indeed be seen as a turning point for financial institutions, with the phase of support provided by them shifting from only maintaining debtors' cash flow to being involved in overall restructuring of their debts and businesses.

In-court insolvency procedures entered into or exited in 2023

Of the aforementioned 8,497 in-court insolvency cases during the period from January to December 2023, 7,986 were for bankruptcy proceedings, 230 for civil rehabilitation proceedings, two for corporate reorganisation proceedings, and 279 for special liquidation.

Plenary insolvency proceedings

Marelli

The Marelli group, which we represented in 2022, is one of the world's leading independent suppliers to the automotive industry with around 150 subsidiaries in more than 20 countries. While the group's performance is declining as a result of a combination of various external factors – such as a decline in automobile production due to the covid-19 pandemic, the severe shortage of semiconductors, and soaring prices of aluminium and other raw materials – the highly leveraged capital structure of Marelli has been putting pressure on its cash flow.

Marelli chose to use turnaround ADR in Japan to drastically improve and reorganise its financial structure with the support of banks while avoiding a serious deterioration of its corporate value by involving suppliers and customers in the in-court insolvency proceedings. At the final creditors' meeting held in late June 2022, although approximately 95 per cent (in value) of the banks, including non-Japanese banks, agreed to the plan, Marelli's turnaround ADR, which requires unanimous consent, was not successfully concluded as a few non-Japanese banks ultimately did not consent.

Upon the failure of the turnaround ADR, Marelli immediately switched to SRP because they are a quick version of civil rehabilitation proceedings with some of the proceedings being omitted and requiring only 60 per cent approval to commence the process and only 50 per cent approval to pass the plan. Given the approval rate in the turnaround ADR, it was certain

that Marelli would effectively cram down the opposing non-Japanese banks by using SRP. Its restructuring plan was approved by the banks and the court as early as 25 days after the filing for the proceedings, which is considerably faster than the five months it takes for ordinary civil rehabilitation proceedings to pass a plan. Clearly, the shorter duration of in-court insolvency proceedings causes less damage to corporate value. The introduction of such special arrangements for SRP was envisaged in the recent amendments to the ICEA, with Marelli's SRP being the first practical example.

UNIZO Holdings

The UNIZO group, of which UNIZO Holdings (UNIZO) is the ultimate parent company, is engaged in the real estate business, which includes owning, leasing, and managing office buildings and other properties and real estate brokerage, and the hotel business, which includes owning and operating business hotels. Group subsidiaries in the United States, including UNIZO Holdings US, LLC, own six office buildings in that country, and leased, managed and otherwise operated them.

UNIZO had been delisted in June 2020 after receiving support from Lone Star, a US investment fund, becoming the first listed company to be acquired by its employees (EBO). However, due to the deteriorating performance of the hotel business during the covid-19 pandemic and other factors, it became impossible to secure funds to redeem about the ¥10 billion bonds that were to mature on 26 May 2023. Therefore, on 26 April 2023, the company filed for civil rehabilitation proceedings with the Tokyo District Court with debts of approximately ¥126.2 billion yen.

UNIZO had concluded a sponsor support agreement with Nippon Sangyo Suishin Kiko Ltd group, but creditors demanded that the company redo the selection process for a sponsor, and several parties expressed interest in sponsor support after the commencement of civil rehabilitation proceedings. That is why the company's sponsor selection will be conducted again.

Subsequently, UNIZO resumed its search for a sponsor and finally concluded a sponsorship support agreement with Kohlberg Kravis Roberts & Co., solely for its hotel business, and also concluded the same type of agreement with 3D Investment Partners Pte. Ltd., a Singaporean investment fund, to transfer its treasury shares. At the creditors' meeting held on 6 March 2024, the rehabilitation plan was approved, and a rehabilitation plan approval order was issued by the Tokyo District Court on the same day.

WeWork Japan GK

WeWork Inc., the global flexible space provider, and certain of its entities filed for Chapter 11 under the US Bankruptcy Code on 6 November 2023 to strengthen its capital structure and financial performance. This filing concerned the United States and Canada and did not include Japan, so it had no impact on WeWork Japan GK (WeWork Japan), a Japanese subsidiary.

WeWork Japan entered into a sponsorship agreement with SoftBank Corp. on 1 February 2024 to transfer all of WeWork Japan's operations to WWJ Corp, a newly established 100 per cent subsidiary of SoftBank Corp. On the same day, separately from the aforementioned Chapter 11 filing, WeWork Japan filed for civil rehabilitation with the Tokyo

District Court. After WWJ Corp succeeded all operations, it began operating as WeWork from 1 April 2024, with the civil rehabilitation proceedings ending the following day.

This case followed a unique course in which civil rehabilitation proceedings were commenced and concluded while the parent company's rehabilitation proceedings were ongoing in the United States.

Ancillary insolvency proceedings

Japan adopted a territoriality principle in the past, under which the validity of domestic insolvency proceedings was denied outside the country and, correspondingly, the validity of foreign insolvency proceedings was also denied inside the country. However, in 1997, the United Nations Commission on International Trade Law (UNCITRAL) enacted the UNCITRAL Model Law on International Insolvency. Then, in 2001, Japan enacted the Act on Recognition of and Assistance for Foreign Insolvency Proceedings (ARAFP), which adopts the extra-territoriality principle under which the country has since established a legal system to address international bankruptcy.

The purpose of the ARAFP is as follows:

1. to ensure that foreign insolvency proceedings are properly effected in Japan with respect to any corporations, whether domestic or foreign, that have insolvency proceedings pending in foreign countries; and
2. to achieve internationally harmonised liquidation of assets or economic turnaround.

The law provides procedures for the recognition of foreign insolvency proceedings and for making dispositions for various types of assistance.

Under the ARAFP, since the decision to recognise insolvency proceedings pending in foreign countries has no specific effect, the court shall, upon petition by the foreign trustee or on its own authority, make the necessary dispositions on a case-by-case basis. Specific dispositions include:

1. suspension or revocation of compulsory execution of court proceedings already conducted with respect to a debtor's property in Japan;
2. suspension of execution of security interests or other such proceedings already conducted with respect to a debtor's property;
3. prohibition of disposition and payment with respect to a debtor's businesses and property in Japan;
4. general prohibition of compulsory execution or other such proceedings with respect to a debtor's property; and
5. issuance of administration orders exclusively conferring the right to dispose of businesses and property in Japan on to the recognised trustee (note that court permission is additionally required for the appointed trustee to dispose of property or take it out of Japan).

Year in review

Japanese laws have not had any type of security interests that cover the entire businesses of debtors comprehensively. Without any measures to securitise certain types of intangible assets such as know-how and customer base, tangible assets such as real estate, inventory and equipment have been most commonly used as collateral. Traditionally, it has been common for the debtor company's management to provide personal guarantees for lenders. However, such lending practices have been criticised for leading to results such as:

1. not actively financing companies, including start-ups, that do not have valuable tangible assets; and
2. discouraging corporate management from turning around the fundamental business because they are reluctant to use their own assets to repay company debts.

On 7 June 2024, the House of Councillors passed a bill that includes the introduction of a brand-new type of security interest called 'corporate value security interest', which allows lenders to secure any and all properties of a debtor – existing or future, tangible or intangible, registrable or not – as a security interest. Also, in response to the criticism against a traditional lending practice based on personal guarantees provided by management for debtors, the law includes a provision that prohibits creditors that have corporate value security interests for their debts with debtors from enforcing personal guarantees provided by members of management for the debtors, except in limited cases, such as when management is engaged in fraudulent activities.

With such mechanisms, in the context of insolvency or restructuring, this new regime is expected to prompt, among other things, the management of financially distressed companies to make early decisions on drastic business turnarounds including debt restructuring even in the presence of personal guarantees.

The execution of corporate value security interests begins with a petition to the court, which appoints a trustee at the start of the execution proceedings. The trustee holds the right to manage the debtor's business and the right to dispose of the secured property. This means that it is the trustee that assumes the continuation of the debtor's business. When the trustee liquidates the secured property, other than in exceptional cases, it does not liquidate individual properties belonging to the secured property. Instead, in principle, the liquidation is carried out by transferring the business as a whole. In this sense, the execution of corporate value security interests goes beyond the meaning of enforcing security interests on individual properties to include business succession and rehabilitation procedures by the trustee.

In addition, in any in-court insolvency proceedings (see 'Main features of each type of in-court insolvency proceedings' for details), the corporate value security interests are treated as if they are *teito-ken*, a type of security interest over real estate under Japanese

law that is similar to a mortgage right and protected in accordance with the rules of each type of in-court insolvency proceeding.

Those that have a corporate value security interest over a debtor's assets can enforce the security interest regardless of the debtor's bankruptcy or civil rehabilitation proceedings. If the execution of the corporate value security interest and a bankruptcy proceeding are running concurrently for the same debtor, the former is prioritised by imposing certain restrictions on the authority of the bankruptcy trustee, while the bankruptcy proceeding carries on in parallel. When the execution of the corporate value security interest and a civil rehabilitation proceeding are running concurrently for the same debtor, the latter is suspended.

For corporate reorganisation proceedings, in line with the general rule under such proceedings that secured creditors cannot exercise their security interests once a corporate reorganisation proceeding is commenced and that they need to participate in the proceeding as a secured creditor, the reorganisation proceedings take precedence over the execution of corporate value security interests. The existing execution process for corporate value security interests is suspended when a corporate reorganisation proceeding is commenced for the same debt.

This law will come into effect within a period not exceeding two years and six months after the date of promulgation. Within this period, the system for registering this corporate value security interest will be upgraded, and discussions among practitioners are expected to be held to determine which clauses should be included in corporate value security interest agreements or the standards for covenants that trigger the execution of those interests. This new security interest may be utilised in providing DIP financing, as it will allow for the creation of security interests in assets that were previously unavailable for such purposes. Furthermore, corporate value security interests can significantly influence existing in-court insolvency proceedings, in the sense that the execution proceedings of corporate value security interests may take precedence when they coexist with in-court insolvency proceedings. Given this potential impact, it is also expected to influence out-of-court workouts, meaning that it is crucial to closely monitor its implications for future practices.

Outlook and conclusions

Introduction of cram-down in out-of-court workouts

As mentioned in 'Out-of-court corporate workouts', the unanimous consent of creditors is required for amending the rights of creditors. The Headquarters for the Realisation of New Capitalism established by the government on 15 October 2021 indicates that although European countries have certain systems (e.g., the scheme of arrangement in the United Kingdom and StaRUG in Germany) to restructure businesses by amending certain rights of creditors, including debt forgiveness by a majority vote with court approval and without requiring the consent of all lenders, there is no such system in Japan.

To further deliberate on the possibility of implementing such a system in Japan, the government established the Subcommittee to Study Legislation for Out-of-Court Workouts for New Business Restructuring on 27 October 2022.

The subcommittee is discussing the possibility of introducing a procedure whereby any business that is at risk of falling into economic distress can establish a restructuring plan (that sets forth provisions for business restructuring) with the consent of a majority of eligible creditors and court approval for the restructuring of debts necessary for business activities to improve profitability, with the involvement of a third-party organisation designated by the competent minister.

Digitisation of in-court insolvency proceedings

The Subcommittee on Procedures for Civil Execution, Civil Provisional Remedies, Insolvency, and Domestic Relations Cases (IT-related) was established in 2022, with the objective of adapting to changes in socioeconomic conditions, including recent advancements in information and communications technology and making court procedures, including in-court insolvency proceedings more suitable, prompt and accessible for the public.

On 20 January 2023, the Subcommittee released the 'Draft Outline of Review of Procedures for Civil Execution, Civil Provisional Remedies, Insolvency, and Domestic Relations Cases', which proposes a legal framework allowing for petitions for in-court insolvency proceedings to be filed online, the digitisation of court documents in these proceedings, and the option for telephone or online participation in court hearings.

On 6 June 2023, a bill based on the above Draft was passed and enacted by the House of Representatives, and it will be fully enforced for five years from 14 June 2023, the date of its promulgation.

Endnotes

1 For more information, please refer to ‘Japan’s Business Failures during January to December 2023’, published on the Teikoku Databank’s website (https://www.tdb-en.jp/news_reports/backnumber/brr23nen.html). ^ Back to section

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