Legal 500
Country Comparative Guides 2024

Japan
Restructuring & Insolvency

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Japan.

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Japan: Restructuring & Insolvency

1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Under most statutes in Japan, land and any fixtures on it comprise real estate (immovable property). Buildings are the most common type of fixture and are subject to a property registration system separate from that of land.

1. Forms of security interests over real estate are: Security interests under statutes, such as: mortgages (*teito-ken*); umbrella mortgages (which function like a revolving mortgage (*ne-teito-ken*)); pledges (*shichi-ken*) over immovable property; statutory liens (*sakidori-tokken*) on immovable property which is granted to a claimant who has a claim arising from the preservation of the immovable property, construction work on the immovable property or the sale of the immovable property; repurchase arrangements (*kaimodoshi*); and provisionally registered ownership transfers (*kari-touki-tanpo*).
2. Security interests recognised by court precedents (without any statutes providing for these security interests), such as: security interests by way of assignment (*joto-tanpo*) (security assignments); pre-agreed resale transactions (*saibaibai-no-yoyaku*); and retentions of title (*shoyuuken-ryuuho*).

The most common forms of security are statutory mortgages and revolving mortgages. Mortgages and revolving mortgages are created by agreement (not necessarily in writing) between the creditor and the owner of the immovable property, and are perfected by registration in the relevant property registry. However, the agreement creating a revolving mortgage must specify: the scope or type of claims to be secured (usually specified by identifying the transaction type, for example, “lending money transaction”) and the maximum amount to which the revolving lender has preferential rights (that is, open revolving mortgages are not allowed). Unless perfected, mortgages and revolving mortgages would not be effective vis-à-vis third parties.

Any tangible thing or item (*butsu*), which is not real estate, comprises movable property. Mortgages cannot be created over typical movable property. However, construction machinery, as well as aircraft and registered ships, can be subject to mortgages under certain specific statutes that provide exceptions to the Civil Code. A pool of movable properties is not recognised as a single movable property. This is because the concept of a thing or item under the Civil Code is based on tangibility. Further, a single right cannot be established over a pool of movable properties under the legal doctrine that only grants a single right over a single property (subject to limited exceptions). However, particularly in relation to trading stock (inventory), the Supreme Court has recognised that a pool of movable properties can be subject to a single security interest, if the scope of the subject matter is specified in some way (such as by designating the type, location and quantity of the movable properties in the pool).

Common forms of security interests over movable property are as below, with pledges and security assignments being the more common forms:

1. Security interests under the Civil Code, such as: pledges over movables; statutory liens on movables; and repurchase arrangements.
2. Security interests recognised by court precedents, such as: security assignments; pre-agreed re-sale transactions; and retentions of title.

Pledges over movable property are created and granted by: i. an agreement (not necessarily in writing) between the creditor and the owner of the movable property; and ii. delivery (which includes actual delivery, summary delivery and transfer of possession by instruction, but excludes constructive delivery) of the subject matter to the creditor.

Pledges over movable property are perfected by continuous possession of the subject matter of the pledge.

Security assignments for movables are created and granted by a granting contract (not necessarily in writing). They are normally perfected by delivery, but can also be perfected by registration, if the assignor (grantor of the security assignment) is a corporation according to a certain statute specifically addressing additional measures for perfections. In contrast with pledges,

delivery of the subject matter can take the form of constructive delivery, as confirmed by the Supreme Court. The Supreme Court has also decided that a creditor can perfect its security assignment over a pool of movable properties as soon as the assignor (usually the debtor) acquires possession of new or additional movable properties that are specified as part of the pool. This is possible if the assignor and the assignee (that is, the creditor) agree that the creditor is deemed to have acquired possession of the new or additional movable properties, by constructive delivery from the assignor to the creditor, when the assignor acquires possession of the movable properties.

2. What practical issues do secured creditors face in enforcing their security package (e.g. timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

Out-of-Court One of the practical issues secured creditors would face is the requirement for court involvement with respect to most of the security interests. Pledges and security assignments, however, are enforceable/foreclosable without court involvement, which is one of the reasons behind them being commonly used forms of security. Court involvement can be viewed as problematic for several reasons; most notable issues are: (i) timing issue, as it would take longer time to conclude the enforcement/foreclosure, and (ii) pricing issue, as it is believed that court-run auction results in lesser proceeds compared to privately run auctions.

Insolvency Proceedings When in Corp Reorg (see 3 below), secured creditors will not be able to enforce their security package or foreclose on their collateral as the commencement of the proceeding will stay actions taken or to be taken by secured creditors. In contrast, when the debtor is subjected to either a Bankruptcy (see 8 below), Special Liquidation (see 8 below) or a Civil Rehab (see 3 below) none of which binds secured creditors automatically (see 9 below).

3. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

There are two restructuring-type in-court insolvency proceedings (similar to US Chapter 11), namely the civil rehabilitation proceeding (*minji saisei tetsuduk*i, "Civil Rehab") and corporate reorganisation proceeding (*kaisha kosei tetsuduki*, "Corp Reorg"). With respect to out-of-court restructuring processes, there are a variety of processes, from pure consensual, negotiation-based workouts among mostly financial creditors, to more formal, rule-based out-of-court workouts, the most popular in recent days (especially for larger-sized debtors) being the Turnaround Alternative Dispute Resolution process sponsored by The Japanese Association of Turnaround Professionals. Despite the title being an alternative dispute resolution, it is a process through which debtors may adjust or restructure debts owed to participating creditors with the consensus of those participating creditors (which typically would be limited to financial creditors). Formal, rule-based out-of-court restructuring processes are, in most cases, based on a statute allowing specific entities to set a rule for a process offered to debtors through which a debt adjustment or restructuring can be achieved on a consensus basis with the participating creditors. They do not, however, involve any court supervision or approval of the resultant workout plan, thus they are pure out-of-court processes.

For Civil Rehab and Corp Reorg, both of which are restructuring-type insolvency proceeding: facts establishing that there is a "threat" of Bankruptcy are the required grounds to commence the proceedings. In Civil Rehab, the norm is that the debtor, even after a proceeding is commenced, will continue to have the rights to carry out its business or administer or dispose of its property (the statute provides for an exception where the competent court could appoint a trustee to takeover those rights), in which case the debtor's incumbent managers generally continue its operation; provided, that the court and the supervisor (*kantoku-iin*) appointed by the court will supervise the debtor. By way of example, the debtor will have the power and authority to borrow money even after the commencement of the proceedings, but the approval of the court or the supervisor may be required (depending on the court's ruling upon its appointment of the supervisor). The debtor will be under an obligation, vis-a-vis creditors, to exercise the above rights and conduct rehabilitation proceedings in a manner "fair and sincere" to all creditors. In contrast, once Corp Reorg is commenced, the rights and authority to manage the debtor's business and to administer and dispose of the debtor's assets will be vested exclusively in a trustee or trustees (*kanzai-nin*) who is/are appointed by the court. Prior to the appointment of the trustee (i.e., prior to the commencement), the court and a Provisional Administrator (*hozen kanri-nin*) or the examiner (*chosa-iin*) appointed by the court will supervise the debtor.

Normally, the Provisional Administrator will be appointed as a trustee. The trustee will be overseen by the court, and will need to obtain approvals from the court to conduct corporate actions and transactions, other than those that fall within the debtor's ordinary course of business. A trustee owes a duty of care and duty to provide information, and is restricted from transacting with the debtor on their own behalf and owes non-compete obligation.

4. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

DIP financing is a common practice in Japan's local restructuring process; DIP financing claims (arising after a proceeding commences and with approval from the supervisor/court) are treated as common benefit claims. It is also possible to secure them by the assets of the debtor (with the court approval). It is not possible to have priority over pre-existing secured creditors' liens (without their consent), meaning that in Japan, super priority/priming liens in US Chapter 11 are not available.

5. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

A statutory proceeding does not release non-debtor parties from liabilities. A Plan will not affect any rights held by creditors against the debtor's guarantor or any other person who owes debts jointly with the debtor, and any security provided by persons other than the debtor in the interests of creditors.

6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?

In Civil Rehab and Corp Reorg, we do have statutory provisions allowing a formation of creditors committee(s); however, in practice, creditors committees are rarely formed. A part of the reasons of lack of more use, generally believed, arises from the fact that advisory fees incurred by committee(s) will not automatically be covered by the debtor (or the estate). As a result, each creditor will be handling its own matters separately and individually.

7. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency proceedings upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

The current law does not require a company or its directors/officers to file for an insolvency proceeding (neither with respect to restructuring-type insolvency proceeding nor liquidating-type insolvency proceeding), even when the grounds to commence any of the insolvency proceedings are met/satisfied. With respect to requirements to commence liquidating-type insolvency proceedings, for Bankruptcy (see 8 below): facts showing that the debtor is unable to pay its debts or is insolvent (liabilities being more than the assets) are the grounds, and for Special Liquidation (see 8 below): facts showing a suspicion of insolvency is required as grounds to commence the proceeding.

8. What insolvency proceedings are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

For liquidating-type insolvency proceedings in Japan, there are two types of proceedings: the bankruptcy proceeding (*hasan tetsuduki*, "Bankruptcy") which is similar to US Chapter 7; and special liquidation proceeding (*tokubetsu seisan tetsuduki*, "Special Liquidation"), with the latter being available only to limited liability corporations incorporated under the Corporations Act. In Bankruptcy, the relevant court will appoint a trustee (*kanzainin*), who will take over the authority to dispose of and handle the estate of the bankrupt. In contrast, in Special Liquidation, the norm is that the management (namely the directors) will be appointed as liquidators (*seisannin*) and in such capacity maintain the authority to dispose of and handle the assets and liabilities of the relevant corporation. In both Bankruptcy and Special Liquidation, because they are liquidating-type (entailing a discontinuance of the business), unless the competent court grants a special order to the otherwise, the debtor will no longer continue to operate the business in order to liquidate the debtor. Length of the process vary from case to case, but the shortest would take three to four months where the longest could take more than a year.

9. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Pre-commencement following the filing, the court may issue a temporary restraining order that prohibits the disposition by the debtor of its property. By this order, the debtor is prohibited from making payments or disposing of collateral. To prohibit a compulsory execution, or to stay a foreclosure on a security interest, the debtor needs to obtain a separate "precommencement stay order". Post-commencement, any payment of a pre-petition obligation is prohibited in general. However, secured creditors would still enjoy legal rights to enforce and foreclose on collateral in Bankruptcy, Special Liquidation and Civil Rehab; whereas in Corp Reorg, secured creditors, too, will be bound by the proceedings and therefore will not be able to enforce or foreclose outside of the proceeding. However, even where secured creditors are allowed to enforce/foreclose outside of the proceedings, they may separately be subjected to a court's discretionary stay order under certain circumstances. Another practical caveat is: when secured creditors are allowed to enforce/foreclose outside of the insolvency proceedings, they would remain subject to contractual intercreditor covenants. In Corp Reorg where secured creditors are bound by the proceedings, secured creditors would be in a class separate from unsecured creditors, and therefore, will be able to veto the approval of the plan, and thus effectively block the proceedings from concluding, and such ability would practically mean that they have practical rights to disrupt the proceedings in the process up to the creditors' vote, as well. As for Bankruptcy, Special Liquidation and Civil Rehab, secured creditors would only have indirect powers to influence the proceedings in its decision whether or not to enforce/foreclose its rights. While there is no automatic stay in Japan, secured creditors would be stayed from enforcement and foreclosure actions in Corp Reorg, as a result of a discretionary but comprehensive day-one stay order by a court, but in other insolvency proceedings, they typically would not be (until and unless, a separate discretionary stay order is granted by the court).

10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorganisation plan (if any)?

In Bankruptcy, because creditors and other affected parties do not get to vote on a plan and do not have any statutory right to officially demand the trustee to do anything, basically, creditors and other parties would have to wait until the actions are taken and distributions are made by the Trustee. However, in practice, there almost always will be informal communications and demands made against the Trustee in the hopes to influence the Trustee to take certain actions and/or measures. Also, in Bankruptcy, secured creditors will be able to enforce its security package despite the proceeding being commenced.

In the case of Special Liquidation, although this rarely happens as debtors would not elect to utilize Special Liquidation unless the debtor can foresee to the reasonable degree that creditors will be agreeing with the debtor, in theory, creditors can block the Special Liquidation proceeding to go forward by not agreeing to the debtor's distribution arrangement or by voting against the plan. If Special Liquidation fails, then the proceeding converts to Bankruptcy, assuming that the entry requirement is met.

In cases of Civil Rehab and Corp Reorg, dissenting creditors (and affected parties) will have to wait until the result of the creditors vote at the creditors meeting(s) come back. If the proposed rehabilitation plan or reorganization plan did not obtain the required approval threshold votes, in the case of civil rehabilitation, the debtor may re-file for Corp Reorg and try to come up with a reorganization plan, and in contrast, in case of Corp Reorg, the court will usually convert the proceeding into Bankruptcy, in which case the secured creditors will regain the right to foreclose on collateral despite the liquidation proceeding, but unsecured creditors will have to wait until distributions are made by the trustee.

11. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities, DIP financing)? Could the claims of any class of creditor be subordinated (e.g. recognition of subordination agreement)?

Among the creditors, first, a distinction will be made between secured creditors and unsecured creditors. Within secured creditors, there will further be a distinction between secured creditors who have a security interest in individual assets and those who only have a general

priority over the debtor's assets. The former has priority in insolvency and restructuring proceedings with respect to the value of the relevant collateral, and in Bankruptcy and Civil Rehab (see below) the secured creditors can exercise the security interest outside the proceedings to collect their claims, whereas in Corp Reorg (see below), individual foreclosure on security interests is prohibited and, in principle, the secured creditors may receive repayments only based on an approved plan. The latter is categorised as claims with general priorities. If the asset value of a security interest is less than the amount of the claim, the secured creditors may participate in the proceedings as an unsecured creditor in respect of the deficient amount. With respect to unsecured creditors, the hierarchy of payment priorities differs from proceeding to proceeding. In Bankruptcy, the hierarchy is as follows (in descending order of priority): common benefit claims (*zaidan-saiken*); bankruptcy claims with general priorities; general bankruptcy claims; subordinated bankruptcy claims; and consensually subordinated bankruptcy claims. Common benefit claims are paid outside Bankruptcy at any time by the bankruptcy estate. Bankruptcy claims with general priorities, typically some labour and tax claims that arose prior to the commencement of Bankruptcy, have priority over other general claims to receive distribution. General bankruptcy claims are paid by distribution on a pro-rata basis. Subordinated bankruptcy claims, typically interests and damages for default after commencement of the proceedings, are subordinated to general bankruptcy claims in terms of distribution. Consensually subordinated bankruptcy claims are subordinated to Subordinated bankruptcy claims, as agreed between the debtor and a creditor before the commencement. Under Civil Rehab and Corp Reorg, the hierarchy of payment priorities is as follows (in descending order of priority): common benefit claims (*kyoueki-saiken*); claims with general priorities; general claims; and consensually subordinated claims. Common benefit claims are paid outside the proceeding for the Civil Rehab and Corp Reorg at any time. Claims with general priorities have payment priority over other general claims, similarly with Bankruptcy; however, while all labor wages are prioritized as claims with general priorities in Civil Rehab, in Corp Reorg, a portion would be treated as common benefit claims ranking senior to secured claims with remainder being treated as claims with general priorities. Furthermore, while in Corp Reorg, claims with general priorities are paid pursuant to the plan; but these claims are repaid outside the proceedings at any time in Civil Rehab. General claims are paid pursuant to the plan in both proceedings. Consensually subordinated claims are fairly and equitably differentiated from other claims in the plan, taking into account the agreed-upon subordination.

There is no Japanese equivalent of a critical vendor regime, and in general, unsecured creditors' claims can only be repaid on a pro-rata basis, regardless of whether or not they are trade claims. However, in Civil Rehab and Corp Reorg, unsecured pre-petition claims that are required to be repaid for the continuation of the debtor's business are allowed to be repaid with the court's permission. And, in none of these proceedings, we have a legal concept of equitable subordination; provided, that, in practice for restructuring-type proceedings, there are cases where creditors would threaten to not approve of the proposed plan unless there is a subordination of a certain creditor, such as controlling parent entity who also was a creditor to the debtor.

12. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

Only the trustee (in Bankruptcy and Corp Reorg) or the supervisor (in Civil Rehab) has the power to avoid acts taken by the debtor before these proceedings commence which are deemed to impair equality among the creditors and/or which are against the concept of the proceedings ("Right of Avoidance"). The following explanation is based on an example of Bankruptcy which is common among other proceedings.

Avoidance of Acts Prejudicial to Creditors The acts subject to this Right of Avoidance are acts reducing the liable assets. In order to avoid such acts, it must be done intentionally by a party to the transaction, or the act must be done after the debtor's suspension of payments, etc. The main examples of such acts are as follows: selling real estate at a very low price, guaranteeing the debt of someone without any guarantee charge; and gifts, waivers of claims, etc, made by the debtor during the six months prior to the debtors' suspension of payments or after such suspension.

Avoidance of an Act of Disposing of the Debtor's Property with Reasonable Value from the Counterparty Even if the debtor received reasonable consideration from the buyer of the property, such disposition is subject to the Right of Avoidance if the following conditions are met: such disposition creates an actual threat that the debtor will conceal the property more easily; the debtor had the intention to conceal or dispose of the consideration at the time of such disposition; and the buyer knew the debtor's intention at the time of such disposition.

Avoidance of Provision of Security, etc, to Specific Creditors The acts subject to this Right of Avoidance are granting a security interest or repayment of an existing debt made with respect to an existing debt after insolvency or a petition to commence Bankruptcy. The main examples of such acts are as follows: after the petition to commence Bankruptcy, upon the request of a creditor knowing the petition, the debtor grants the creditor a security interest on the debtor's property to secure the creditor's claim; and after the debtor becomes insolvent, a creditor knowing the debtor's insolvency demands that the debtor repay the creditor's claim and the debtor does so.

As a general rule, the Right of Avoidance is exercisable for two years after the insolvency proceedings commence or twenty years after the act to be avoided was done. However, the Right of Avoidance requiring an act was conducted after payments were suspended or while knowing that payments were suspended is exercisable only when the act was conducted within one year before the petition for commencement.

13. How existing contracts are treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

If an existing contract is an "Executory Contract", a bilateral contract under which the main obligations have not been completely performed by both the debtor and a creditor at the time the court procedures for insolvency commence, in the said proceedings (excluding Special Liquidation), a trustee/debtor may terminate such Executory Contract. When the trustee/debtor determines that continuing the Executory Contract is advantageous or necessary even after the procedure commences, they may continue the contract. In such case, they may request that the counter-party perform its obligation, and the trustee/debtor shall perform their counterobligation as administrative expenses. By contrast, the counter-party may not terminate the Executory Contract and is bound by it; in other words, an Executory Contract may not be terminated by the counter-party. However, the counter-party may specify a reasonable period and make a demand that the debtor/trustee provide a definite answer within a set period with regard to whether the debtor/trustee will terminate the Executory Contract or not. In addition, even if a contract contains a clause which gives the counterparty the right to terminate the contract when the debtor files a petition to commence court procedures for insolvency/restructuring (hereinafter referred to as the "Ipso Facto Clause"), such clause is generally considered to be invalid in Japan in accordance with a Supreme Court ruling. However, an acceleration clause forfeiting the debtor's benefit of time if the debtor files a petition to commence court procedure for insolvency is considered to be valid. In terms of set-off, whether or not there being a set-off clause in the relevant contract, a creditor can set off its pre-petition obligation with a pre-petition claim against the debtor. However, in restructuring proceedings, a creditor can setoff only until the expiration of the claims filing period, and when the time when the obligations of both parties become due and suitable for set-off has arrived before the expiration of the claim filing period. As long as these conditions are met, set-off will not be suspended or stayed absent a consensual agreement to that effect.

14. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

Directors (as a DIP in typical Civil Rehab) or a trustee (in Corp Reorg and Bankruptcy) execute(s) the sale of assets. However, approval from the supervisor/examiner or the court is required to sell its assets (there are some exceptions, for example, if the sale is within the ordinary course of business, such approval is not required). To transfer its business to a third party not based on a Plan, the debtor/trustee needs to obtain the court's approval. The court may grant approval only when it finds it necessary for the restructuring of the debtor's business. The approval itself does not clear claims or liens, and an agreement with a claim holder/security interest holder will be separately required for such purpose. There is no credit bid system in Japan. The creditor may be a stalking horse, but it is treated the same as other candidates. It is possible to effectuate pre-negotiated sales, etc. during a formal proceeding, but approval from the supervisor/examiner or the court will be required.

15. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other

parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor and if so can they be covered by insurances?

In general, officers and directors owe a duty of care and a duty of loyalty to the company under the Companies Act, and if a breach of these duties is the cause of the company's financial predicament, they may be personally liable to the company for damages. Once Bankruptcy or Corp Reorg is commenced, the incumbent officers and directors lose their rights to carry out the debtor's business and such rights are vested in the trustee. Hence, the trustee owes a duty of care towards all creditors and officers and directors (including those who have already resigned) do not owe any obligation directly to the creditors but owe a duty to provide information to the trustee. On the other hand, in Civil Rehab, the debtor, as debtor in possession, is obliged to carry out rehabilitation proceedings in a manner “fair and sincere" towards all creditors, and the officers and directors of the debtor are required to take into account such duty in the course of fulfilling their duty of care to the debtor. There are no specific rules related to directors' personal liabilities for the debtor's pre-insolvency obligations, unless they do not personally guarantee such obligations. Also, there are no specific penalties for the directors of the debtor for filing insolvency proceedings itself in Japan.

16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

Filing of the proceedings in and of themselves do no have the effect of releasing directors and other stakeholders from liability, but once filing is made, there is a special procedure initiated by the trustee/supervisor, under which directors' liabilities arising from previous actions and decisions would be determined on an expedited basis by the competent court.

17. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

Japan has adopted a recognition regime as a domestication of the UNCITRAL's Model Law. As a result, a trustee, etc. who has a right to administer and dispose of a debtor's property in a foreign insolvency proceeding may file a petition with a Tokyo District Court for recognition of such foreign insolvency proceeding. If the requirements are met (e.g., the debtor has a business office, etc, in the country where such foreign insolvency proceeding is petitioned) and a decision to commence such foreign insolvency proceeding is made, the court shall issue an order of recognition. Nevertheless, the statute's language itself does not require “COMI” of the debtor (nor the governing law of the debt to be compromised); however, the Tokyo High Court has indicated that in interpreting the language of the statute, the court would take into consideration the “COMI” of the debtor in determining whether recognition is warranted. Separately, the court will dismiss with prejudice on the merits a petition in cases where: it is obvious that the effect of the foreign insolvency proceeding does not extend to the debtor's property in Japan; or it is contrary to public policy in Japan to issue a disposition of assistance for the foreign insolvency proceeding, etc. Lastly, but not least, the important caveat is that, when Japan adopted the Model Law, it did not allow recognition of restructuring plans, rather requires each specific “effect” to be sought separately.

18. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.

N/A.

19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?

Yes, with respect to Bankruptcy and Civil Rehab with no particular eligibility requirement (although, unless the debtor has asset(s) in Japan, practically not worthwhile

to pursue); and also yes, but only to a certain extent, with respect to Corp Reorg; the eligibility requirement is that the debtor has to be a corporation that is similar to or has the characteristics similar to a *kabushi kaisha* which is a stock company incorporated under Japan's Corporations Act. While we do not have any official record counting with which country we have the most cross-border problems, from our experience, China and the U.S.A are the most common jurisdiction we would have some cross-border aspects; however, recent times have brought more cases that involve Southeast Asian countries, possibly more than the U.S.A.

20. How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?

As a general rule, a restructuring proceeding is conducted for each entity as a different case, even in the case of group companies. However, in practice, there are administrative consolidations of those cases, so when several entities that constitute a "group" file petitions, they are usually treated as if it is a "single" debtor in many administrative aspects, such as the appointment of the same trustee, a unified plan, etc, all within and according to the courts' discretion.

21. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

To our knowledge, no.

22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

The bill introducing a new security package that allows a creditor or creditors to grasp the entire business value of a debtor has passed the Congress on June 7th, and the bill is scheduled to come into effect as a statute within two-and-a-half years. Since such security package will significantly affect how business restructuring could be made possible, once the bill is introduced into law, and if lenders widely adopts the security package, restructuring practices will most likely be affected.

Also, the national government published the outline of a new workout regime that incorporates a cram-down to out-of-court workout (technically an "in-class" cram-down) with an aim to facilitate earlier and swifter business reorganizations. However, the proposed outline only shows high-level ideas regarding the new workout procedure and the details of the proposed regime are yet to be made clear. Under the proposed outline, restructuring plans would be approved by a special majority vote of creditors (e.g., more than two thirds, but the threshold is still under discussion) followed by the court's consideration, and with the court's sanction, restructuring plans would be binding even the dissenting creditors and it appears that no classification of creditors is envisioned (i.e., both secured and unsecured creditors will seem to fall into one class) with approval of restructuring plans requiring a special majority of all involved creditors as a single class. The point that is providing less clarity is the scope of creditors that would be bound: under the proposal, the claims subject to the procedure are defined as "claims other than those required to pay for the debtor's business restructuring", and therefore, it appears commercial/trade claims may be excluded under the procedure but the description is yet unclear.

23. Is your jurisdiction debtor or creditor friendly and was it always the case?

Generally speaking, it's probably more fair to say it's debtor-friendly than creditor-friendly. One aspect that often frustrates overseas creditors in particular is the fact that there are a lot of *ex parte* hearings and meetings between the debtor and the court, with no representation of a creditor. Also, the fact that creditors committee is difficult to practical formulate, would be another reason. Factors noted above have been the case basically from the introduction of the statutes, so yes, it is probably fair to say that it has always been the case.

24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the State play in relation to a distressed business (e.g. availability of state support)?

Other than in a highly political cases, no. There are highly political cases in which the government would step in and lead a quasi-government owned investment funds to become a new sponsor of the debtor, but that is hardly

the norm.

25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

Nothing in particular, but handling of bondholders often create practical issues especially when there is a numerous number of overseas bondholders.

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