

Japan



Yoshinori Ono



Hiroshi Mori

Nishimura & Asahi

1 Issues Arising When a Company is in Financial Difficulties

1.1 How does a creditor take security over assets in Japan?

In Japan, the following are typical securities over assets available for a creditor.

- (1) Pledges (Shichi-ken): The creation of a Pledge takes effect by physically delivering the collateral to the creditor and the creditor has the preferential right to have their own claims paid out of those things. The subject matter of Pledges may be chattels, real property, claims and other intangible property such as bonds and securities.
- (2) Mortgages (Teito-ken) and (3) Revolving Mortgages (Ne-teito-ken): A creditor holding a Mortgage has the preferential right to receive the performance of his/her claim out of the real property that the debtor or a third party has provided to secure the obligation. Mortgages may be created in order to secure future claims of a certain scope, up to the limit of a maximum amount (Revolving Mortgages).
- (4) Statutory Liens (Sakidori-tokken): A person who provides certain services for another party has the right to have his/her own claim satisfied prior to other creditors out of the other party's assets. For example, (i) an employee has a right to a General Statutory Lien over all of the employer's assets, (ii) a lessor of a house has a right to a Chattel Statutory Lien over the chattels of the lessee, and (iii) a person, who provides a service of preserving real property, construction work for immovable property, or the sale of real property, has a right to a Real Property Statutory Lien over the subject real property with regard to the compensation claim on the condition that such lien is registered in accordance with the Civil Code.
- (5) Right of Retention (Ryuchi-ken): If a business person has possession of goods or securities owned by another business person in the course of business dealings, he/she may keep such goods or securities until the debt owed by the owner to him/her is fully paid.
- (6) Security by way of assignment (Joto-tanpo): Security by way of assignment is not a security right stipulated under the Civil Code or any other act. However, as a common business practice, a debtor often assigns movables or immovable properties to the creditor as security for the debt on condition that ownership should be returned upon the repayment of the debt.
- (7) Title Retention (Shoyu-ken-ryuho): Title retention is often used by a seller of movables or immovable properties. For the purpose of securing payment of the purchase price, the seller retains ownership until its receipt of full payment from the buyer.

1.2 In what circumstances might transactions entered into whilst the company is in financial difficulties be vulnerable to attack and what remedies are available from the court?

Under the Japanese court procedures stipulated in question 2.1 below ("Court Procedures"), the trustee under Corporate Reorganization Proceedings and Bankruptcy Proceedings ("Trustee") or the supervisor under Civil Rehabilitation Proceedings ("Supervisor") may exercise the right of avoidance against certain acts as listed below. Note that there is no right of avoidance under Special Liquidation Proceedings.

- (1) Fraudulent Act
 - (a) An act conducted by the debtor that is detrimental to its creditors while the debtor has knowledge of such fact (this does not apply where the person who has benefited from such act did not know that the act was detrimental to the debtor's creditors).
 - (b) An act conducted by a debtor that is detrimental to its creditors after suspension of payments or the filing of a petition for commencement of any of the court procedures (collectively, a "Suspension of Payments") took place (this does not apply where the person who has benefited from such act did not know that a Suspension of Payments had taken place or that the act was detrimental to the debtor's creditors).
 - (c) An act to extinguish debt in exchange for giving property if the value of property exceeds the amount of the debt extinguished and such act satisfies either of the conditions (a) and (b) above. Such act may be avoided only for the portion of the property which exceeds the value of the cancelled debt.
 - (d) Any gratuitous act conducted by the debtor within six months prior to, or after, a Suspension of Payments.
- (2) Disposal of Assets with a Reasonable Consideration

An act of disposing of property in exchange for reasonable value from another party which satisfies both of the following conditions:

 - (i) The act risks that the debtor may conceal or otherwise dispose of the property in a manner which is detrimental to creditors ("Concealment") by changing real property to cash or any other manner.
 - (ii) The debtor had the intention of conducting a Concealment and the other party knew of this intention.
- (3) Preferential Act concerning Provision of Security or Extinguishment of Debt
 - (a) An act to provide security or extinguish debt after the debtor becomes unable to pay its debts, or a petition for commencement of any of the Court Procedures has been filed.

- (b) An act to provide security or extinguish debt within 30 days prior to the date when the debtor becomes unable to pay its debts if such act is not based upon the debtor's legal obligation.

(These do not apply where the creditor did not know the relevant fact as mentioned above.)

(4) Perfection

An act of perfection to assert the establishment, transfer or modification of a right against a third party (including a provisional registration) may be avoided if (a) the perfection action occurs after a Suspension of Payments, (b) the perfection action occurs 15 or more days after the date of establishment, transfer or modification of the right, and (c) the perfection action was attempted with a knowledge of the Suspension of Payments.

Trustee and Supervisor may exercise the right of avoidance in the court. Depending upon the type of voidable actions (as described above), the right of avoidance would allow them to petition the court for a court judgment for restoration of the estate of the debtor (e.g. return of property or payment or cancellation of mortgage which may be avoided under the applicable law).

1.3 What are the liabilities of directors (in particular civil, criminal or disqualification) for continuing to trade whilst a company is in financial difficulties in Japan?

Directors who continue to trade while a company has financial difficulties should note the following issues concerning their potential liability:

- (1) if a director, neglects his/her duties, he/she will be liable to such company for damages arising as a result thereof. If a director acts with wilful intent or with gross negligence in neglecting such duties, such director is liable to third parties for damages arising as a result of its action;
- (2) if a director commits an act of malfeasance, there is a possibility that such director will be criminally liable for breach of trust stipulated in the Criminal Code or aggravated breach of trust stipulated in the Companies Act; and
- (3) there are specific procedures for pursuing director's liability in an expedited process in the Court Procedures. A petition for assessment of director's liability who caused damages to the company by an illegal act can be filed in the Court Procedures.

2 Formal Procedures

2.1 What are the main types of formal procedures available for companies in financial difficulties in Japan and can any of these procedures be used in a restructuring?

The court procedures in Japan for companies facing financial difficulties are categorised into: (I) rehabilitation, consisting of (a) Civil Rehabilitation Proceedings, and (b) Corporate Reorganisation Proceedings; and (II) liquidation, consisting of (c) Bankruptcy Proceedings, and (d) Special Liquidation Proceedings. Categories (a) and (b) are used for restructuring of a company's debts. A petitioner may select the applicable procedure available for the company.

The main characteristics of these procedures are as follows.

- (1) Civil Rehabilitation Proceedings ("Civil RP"): These are debtor-in-possession proceedings with the purpose of reducing creditor's claims through a rehabilitation plan that is approved by the creditors' meeting and confirmed

by the court in order to rehabilitate the debtors' business. (See question 6.1 as to the conditions for the approval by a creditors' meeting.)

- (2) Corporate Reorganisation Proceedings ("Corporate RP"): Rehabilitation proceedings for stock companies, which is mainly conducted by a trustee appointed by the court, with the same purpose described in (a) above.
- (3) Bankruptcy Proceedings ("BP"): Liquidation proceedings conducted by a bankruptcy trustee appointed by the court.
- (4) Special Liquidation Proceedings ("SLP"): This procedure is a debtor-in-possession type of liquidation proceedings conducted by a liquidator who may be a director of the company. This procedure is aimed for the distribution of the liquidation company's assets by agreement among the debtor's creditors according to the rules under the Companies Act.

2.2 What are the tests for insolvency in Japan?

The test for insolvency of a company is whether a company is (1) unable to pay its debts, or (2) insolvent:

- (1) "unable to pay debts" means the company, due to its lack of ability to pay, is generally and regularly unable to pay its debts as they become due; and
- (2) "insolvent" means the assets of the company are not sufficient to fully discharge its debts.

2.3 On what grounds can the company be placed into each procedure?

The grounds for commencement of BP are either (a) a debtor is unable to pay its debts, or (b) a debtor is insolvent. In addition, when a debtor has suspended payments, the debtor is presumed to be unable to pay its debts.

In the Civil RP and the Corporate RP, the grounds for commencement of these procedures are (c) when there is a risk that grounds for commencement of BP will occur to a debtor, (d) when it is extremely difficult for a debtor to continue its business if the debtor pays its debts that are due.

In the SLP, the grounds for commencement of the procedures are (e) implementation of ordinary liquidation procedures would be extremely difficult due to some circumstances which apply to the company, or (f) the company is suspected of being insolvent.

2.4 Please describe briefly how the company is placed into each procedure.

A creditor or debtor may file a petition for commencement of BP, in either item (a) or (b) of question 2.3.

A debtor may file a petition for commencement of Civil RP, in cases where a debtor has fallen under any of the circumstances stipulated in items (a) to (d) in question 2.3. In the case of question 2.3 (c) above, creditors also may file a petition.

A debtor may file a petition for the commencement of Corporate RP, in cases where a debtor has fallen under any of the circumstances stipulated in items (a) to (d) in question 2.3. In the case of question 2.3 (c) above, (i) a creditor who holds claims that account for one-tenth or more of the amount of the stated capital of the stock company, and (ii) a shareholder who holds one-tenth or more of the voting rights of all shareholders of the stock company may also file a petition.

Creditors, liquidators, company auditors or shareholders may file a petition for the commencement of SLP.

2.5 What notifications, meetings and publications are required after the company has been placed into each procedure?

If a court decides on the commencement of any of the Court Procedures in accordance with the respective laws, the fact of such decision, the name of the trustee, the period for filing proofs of claims, and so on would be published by the court in Government Official Gazettes.

2.6 Are “pre-packaged” sales possible?

In Japan, a “pre-packaged sale” would refer to a type of procedure where a debtor selects its potential sponsor before the commencement of Court Proceedings. By such arrangement, it is possible to avoid impairment of the debtor’s business due to the announcement of an insolvency procedure by publication of the existence of the sponsor after Court Proceedings have commenced.

Under the Civil Rehabilitation Act and Corporate Reorganisation Act, in principle, a business transfer shall be carried out according to a rehabilitation plan approved within such procedures. In such case, approval of the creditors and authorisation of the court for the plans are required for the completion of the business transfer. However, a business transfer after the commencement of the procedure without a rehabilitation plan can be permitted as an exception with the court’s authorisation.

Generally, pre-packaged sales are arranged using the Civil RP and DIP type of the Corporate RP (see question 4.1) where the former management may continue to manage the debtor company after the commencement of such procedures. However, there is a possibility that a creditor or other potential sponsors would raise objections to the sponsor and the debtor after the commencement of such procedures and announcement of the business transfer. In such case, the management of the debtor is required to consider the reasonability or fairness of the process of selecting the sponsor etc., and respond appropriately including the consideration of choosing a new sponsor.

3 Creditors

3.1 Are unsecured creditors free to enforce their rights in each procedure?

No. All unsecured creditors are required to submit a proof of claim with the pertinent court (Civil RP, Corporate RP and BP) or the debtor company (SLP) which handles the procedure. They will receive the distribution to their respective claims according to the procedure.

However, as an exception to the above, in Civil RP and Corporate RP, common benefits claims (e.g. procedural expenses, business expenses after the commencement of the procedure) and general priority claim (e.g. wages and tax) may be enforced outside of the court procedure. Namely, these creditors are not subject to the restrictions under Civil RP and Corporate RP and the debtor has to pay the debt when it is due. Also, similar priorities are given to such claims in BP and SLP. (See question 5.2.)

3.2 Can secured creditors enforce their security in each procedure?

In Civil RP, BP and SLP, secured creditors can enforce their security outside of the proceedings. In Civil RP, the court may cancel the

security in exchange for the payment of the fair value of the subject property even if the amount of the creditor’s claim is exceeding such fair value of the subject property. It is a common practice for the debtor in Civil RP to negotiate and enter into an agreement with its key creditor who has security over the core property of the debtor’s business (e.g. its factory) whereby the creditor shall refrain from enforcing the security in exchange for instalment payments of the fair value of the property agreed to between the parties.

In Corporate RP, secured creditors cannot enforce their security outside of the proceedings. Their claims may be paid pursuant to the reorganisation plan with priority. However, if the subject property is clearly unnecessary for the reorganisation of the debtor’s business, a secured creditor can enforce its security outside of the proceedings after obtaining the approval of the court.

3.3 Can creditors set off sums owed by them to the company against amounts owed by the company to them in each procedure?

In BP, creditors can exercise the right of set off subject to the exceptions under related law. Under the Japanese law, it is necessary for the debts of two parties to become due in order to be eligible for set off. However, upon the commencement of a BP, the creditor may implement the set off even if the debt of the debtor is not yet due under the Bankruptcy Act. The exceptions for set off are (i) where the person has acquired another person’s claim after the commencement of such proceedings, (ii) where the person has acquired a claim after the company became unable to pay debts, suspended payments or a petition for commencement of BP was filed, and the person knew, at the time of acquisition of the claim, the fact that the company was in such situations.

In Civil RP, Corporate RP and SLP, the exceptions for set off as described above are also applicable. In addition to such exceptions, creditors cannot set off obligations owed by the debtor until the due date of such obligations. Further, in Civil RP and Corporate RP, creditors can only exercise the right of set off within the period for the filing of their claims specified by the court.

4 Continuing the Business

4.1 Who controls the company in each procedure? In particular, please describe briefly the effect of the procedures on directors and shareholders.

- (1) Civil RP: The directors of the company continue to control the company and have the authority to operate the business and to manage its assets. The practice of the Tokyo District Court (“TDC”) in almost all Civil RP cases is to appoint one supervisor who supervises the debtor. The debtor needs to obtain approval of the supervisor for certain important actions in the course of the operation of the company.
- (2) Corporate RP: A trustee is appointed by the court at the commencement of the proceedings and the directors of the company lose the authority to operate the business and to manage its assets. However, recently the TDC has allowed DIP-style Corporate RP if (a) the company management did not commit any illegal acts, (b) the major creditors agree with such DIP style procedures and other conditions are met. In DIP style Corporate RP, the directors stay and continue to manage the company under the supervision of a court appointed supervisor.
- (3) BP: A trustee is appointed by the court at the commencement of the proceedings and he/she manages the proceedings. During the proceedings, the trustee has the authority to control the business and manage the assets of the debtor.

- (4) SLP: Liquidators (usually former directors of the company) manage the proceedings under the supervision of the court.

4.2 How does the company finance these procedures?

- (1) Civil RP and Corporate RP: Court approval (or the consent of the supervisor) is required in order for the company to borrow funds to finance the proceedings.
- (2) BP and SLP: Funds within the bankruptcy estate (BP) or within the company (SLP) are used to finance the proceedings. The company is not expected to seek loan financing.

4.3 What is the effect of each procedure on employees?

In rehabilitation procedures, such as Civil RP and Corporate RP, employment relationships will not be directly affected by the commencement of the procedures. However, employees are often dismissed according to a restructuring plan approved within the procedures. In liquidation procedures such as BP and SLP, all employees will be dismissed eventually because the company will continue to exist only for a short time for the purposes of the liquidation proceedings.

In each procedure, employees will be reimbursed for their rights to wages with priority. (See question 5.2.)

4.4 What effect does the commencement of any procedure have on contracts with the company and can the company terminate contracts during each procedure?

In principle, even if a procedure is commenced, contracts between the company and others will not be terminated merely because of the commencement. However, the Civil Code provides for automatic termination of (a) an agent's authority in case of bankruptcy of the agent, and (b) a delegation contract in case of bankruptcy of the mandatory or the mandator.

If a debtor is a party to an executory contract at the commencement of Civil RP, Corporate RP, or BP, the debtor may choose (i) to reject the contract in which case it is terminated and the counterparty may seek damages as a priority creditor, or (ii) to assume the contract in which case the company must perform its obligations and may demand performance by the other party. When a debtor chooses to assume a contract, further claims by the counterparty shall take priority over other creditors.

In SLP, there are no such rules which enable the company to assume or reject the contracts.

5 Claims

5.1 Broadly, how do creditors claim amounts owed to them in each procedure?

- (1) Except as otherwise provided by law, creditors may not execute their claims unless they do so using the procedure. In order to execute the claims in the procedure, creditors shall file a proof of claim to report the content and amount of each claim to the court (in the case of SLP, to the liquidating stock company) within a certain period provided in each procedure. The content and amount of the claim as reported will be determined through a procedure for the investigation of claims.
- (2) With respect to claims which may be executed outside of the procedure, a creditor may demand payment by the debtor when it becomes due.

5.2 What is the ranking of claims in each procedure? In particular, do any specific types of claim have preferential status?

(1) Civil RP

- (a) The following types of claims are paid with priority outside of the Civil RP. Namely, these creditors are not subject to the restrictions under the Civil RP and the debtor has to pay the debt when it is due.
- (x) Common benefit claims:
- (i) Expenses for court proceedings performed for the common interest of creditors.
 - (ii) Expenses for the administration and disposition of the debtor's business and assets after the commencement of proceedings.
 - (iii) Expenses for the implementation of a rehabilitation plan.
- (y) Claims with general priority:
Claims with priority under other laws. For example, a tax claim or a claim to wages.
- (b) Creditors may execute claims secured by security rights outside of the procedure.
- (c) Claims other than those above will be paid on a *pro rata* basis. However, in practice, courts often raise the percentage of performance for creditors with small claims.

(2) Corporate RP

- (a) The following claims are paid with priority outside of the Corporate RP.
- Common benefit claims
- (i) Expenses for court proceedings performed for the common interest of creditors and shareholders.
 - (ii) Expenses for the management of the debtor's business and the administration and disposal of the debtor's assets after the commencement of proceedings.
 - (iii) Expenses for the implementation of a Corporate RP plan.
 - (iv) Tax claims and claims to wages to the extent priority is given under the Corporate Reorganisation Act (e.g. withholding tax, wages for the six months prior to the commencement of the procedure).
- (b) The following claims are given priority in the payment according to the rehabilitation plan.
- (x) Secured reorganisation claims (claims secured by a security interest on the property of the company at the time of commencement of the proceedings).
 - (y) Priority reorganisation claims (claims with priority under other laws such as a tax claim or a claim for wages which are not included in (a)(iv) above). (See question 5.3.)
- (c) Claims other than those above will be paid on a *pro rata* basis. However, in practice, courts often raise the percentage of performance for creditors with small claims.

(3) BP

- (a) Claims as stated in 1.(a)(x) and claims with general priority stated in 1.(a)(y) above (to the extent priority is given by BP) are performed on a priority basis outside of the procedure.
- (b) Creditors may execute claims secured by security rights outside of the procedure.
- (c) Claims with general priority other than those stated in 3(a) above have preferential status within the procedure for dividend distribution.
- (d) Claims other than those above will be paid on a *pro rata* basis.

(4) SLP

- (a) Claims as stated in 1.(a) are paid with priority outside of the procedure.

- (b) Creditors may execute claims secured by security rights outside of the procedure.
- (c) Claims other than those above will be paid on a *pro rata* basis.

5.3 Are tax liabilities incurred during each procedure?

After the commencement of each procedure, a debtor will incur tax liability for corporate income tax and consumption tax regarding the acts conducted by the company. It should be noted that if a debtor is released of his debt to a creditor, the debtor will be subject to tax liability for deemed income equal to the amount of forgiven debt. Therefore, if the debtor has no deductible expenses applicable to such income, the debtor may be subject to additional corporate income tax.

Tax claims which arise after the commencement of each procedure are recognised as follows:

- (1) Civil RP, Corporate RP, and SLP: Claims with general priority.
- (2) BP: Subordinate claim which is paid only after full payment of ordinary claims which exist at the time of the commencement of proceedings. The creditor usually may not receive any dividends for such subordinate claim. However, tax claims which fall within the scope of expenses regarding management, realisation and distribution of a bankruptcy estate are regarded as priority claims and are paid outside the procedure.

6 Ending the Formal Procedure

6.1 What happens at the end of each procedure?

In Civil RP or Corporate RP, if the proposed rehabilitation plan is approved at a creditors' meeting, the court will examine the pertinent conditions required by law and approve the rehabilitation plan. Upon the approval of the rehabilitation plan, the reduction of debts will become effective and the debtor shall make payments of the debts according to the plan.

The requirements for approval of a proposed reorganisation plan by the creditors meeting are as follows:

(1) Civil RP

- (a) Consent of the majority (by number of creditors who exercise a vote); and (b) consent of creditors who hold claims in the amount which is not less than a half (1/2) of the total amount of claims owed by the debtor.

(2) Corporate PR

Approval of both (a) the unsecured claim creditors' group, and (b) the secured claim creditors' group are necessary as per the conditions below.

- (a) unsecured claims: consent of the persons who hold more than half of the total amount of unsecured claims; and
- (b) secured claims: conditions for approval varies according to the content of the proposal as set forth below.
 - (i) Proposed reorganisation plan which provides for the extension of the terms of secured claims: consent of the secured creditors who hold secured claims that are not less than two-thirds (2/3) of the total amount of the secured claims.
 - (ii) Proposed reorganisation plan which provides for the reduction and release of debts for secured claims or provides for measures that may affect the rights of secured creditors other than the extension of terms: consent of secured creditors who hold secured claims that are not less than three-fourths (3/4) of the total amount of the secured claims.

- (iii) Proposed reorganisation plan which aims for the discontinuation of the entire business of the reorganisation company: consent of secured creditors who hold secured claims that are not less than nine-tenths (9/10) of the total amount of the secured claims.

(Note: in exceptional cases where Corporate PR is used for a company which is not insolvent, consent of the shareholders who hold the majority of shares is also required.)

In SLP, a liquidation agreement may be proposed to a creditors' meeting. The requirements for approval of liquidation agreement by the creditors' meeting is: (i) consent of the majority of creditors (by the number of creditors who exercise a vote); and (ii) consent of the creditors who hold claims that are not less than two-thirds (2/3) of the total amount of claims owed by the debtor. If the liquidation agreement is approved at the creditors' meeting, the court will examine the pertinent conditions required by law and approve the agreement. According to the approved liquidation agreement, the reduction of debts, payment of debts and liquidation of the company will be implemented. In SLP, it is also possible and common for a company to enter into separate settlement agreements with each of the creditors with court approval instead of holding a creditors' meeting.

In BP, the trustee will distribute the remaining cash to the creditors on a *pro rata* basis after the liquidation of the assets of the debtor and payment of the claims with priorities.

7 Restructuring

7.1 Is a formal statutory procedure available to achieve a restructuring of the company's debts in Japan and, if so, to what extent is it supervised by the court?

For the purpose of restructuring the company's debts, it is possible to reduce the amount of debts with the individual consent of all creditors under Japanese law. In addition, there are formal procedures for obtaining the individual consents established by law. Such procedures include, among others, the procedures conducted by the Small and Medium-sized Turnaround Support Committee and the procedures under the Turnaround Alternative Dispute Resolution. These procedures are available to achieve a restructuring of a company's debts and conducted without court supervision.

The Turnaround Alternative Dispute Resolution was established to solve the problem of companies in financial difficulty with creditors who are financial institutions. The debtor and the creditors conduct negotiations for debt restructuring with guidance from neutral special advisors. This procedure is not open to the public and serves as a kind of private restructuring process for financial institutions as creditors. A financial support plan (e.g. amendment of the conditions of repayment, release of debt and debt for equity swap) is decided with the unanimous acceptance of financial institution creditors.

7.2 If such a procedure is available, is a debt for equity swap possible and how are existing shareholders dealt with?

A debt for equity swap ("Debt-Equity Swap" or "DES") is permitted as one of the restructuring schemes in proceedings for the Turnaround Alternative Dispute Resolution. DES is commonly used when creditors of a company are opposed to a release of their debts. DES reduces debt and provides debtors with an opportunity to obtain capital gains and income from the equity after the rehabilitation of

the company. Treatment of existing shareholders of the company is decided, apart from DES, by whether such existing shareholders are responsible for the situation which caused the company to need to request financial support. Rules of the Turnaround Alternative Dispute Resolution require that a business rehabilitation plan with release of debt shall be accompanied by an extinguishment of all or part of the rights of the shareholders of the debtor company. Consequently, it is required that the shares of existing shareholders be extinguished or diluted by reduction of the capital if the debtor needs to request for release of debt.

7.3 Is a moratorium available as part of the restructuring process?

In the process conducted by the Small and Medium-sized Turnaround Support Committee, there is no moratorium available except for voluntary suspension of debt collection actions by each creditor upon the request from the debtor. In the process of the Turnaround Alternative Dispute Resolution, the Japanese Association of Turnaround Specialists and debtor jointly issue a request for temporary suspension of debt collection to the financial institutions. It is a common practice for financial institutions to voluntarily suspend debt collection during the process.

7.4 Can dissenting creditors be crammed down?

With the Turnaround Alternative Dispute Resolution, a cram down cannot occur because the unanimous acceptance by financial institutions as creditors of the company is required for approval of the business rehabilitation plan.

7.5 Is consent needed from other stakeholders for a restructuring?

The unanimous approval of financial institutions as creditors of a company is the only requirement for the approval of a business rehabilitation plan in the Turnaround Alternative Dispute Resolution. However, if a reorganisation of a company such as a merger or corporate split or if an increase or reduction of the company's capital is stipulated in the plan, the approval by a shareholders' meeting of the company is necessary in accordance with the Companies Act.

8 International

8.1 What would be the approach in Japan to recognising a procedure started in another jurisdiction?

According to the Act on Recognition of and Assistance for Foreign Insolvency Proceedings, the power and authority of a foreign trustee in foreign insolvency proceedings may be recognised in Japan through the recognition process in the TDC.

If a debtor has a domicile, residence, business office or other office in the country where the foreign insolvency proceedings are petitioned against the debtor, a foreign trustee or the debtor (only if there is no trustee) may file a petition with the TDC for recognition of the foreign insolvency proceedings.

If such a petition meets the requirements prescribed in the law, the court will issue an order for the recognition of foreign insolvency proceedings. The court may dismiss the petition if there are grounds for dismissal which include, among others, the following: (a) it is obvious that the effect of the foreign insolvency proceedings does not extend to the debtor's property in Japan; (b) it is contrary to public policy in Japan to render a disposition of assistance for the foreign insolvency proceedings pursuant to the Act on Recognition of and Assistance for Foreign Insolvency Proceedings; or (c) it is obviously unnecessary to render a disposition of assistance for the foreign insolvency proceedings.

The court may, when it finds it necessary in order to achieve the purpose of recognition and assistance, give an order such as (i) stay order on other court procedures, (ii) prohibition of disposition of property, prohibition of payment and other dispositions, (iii) stay order on procedures for exercising security interests, (iv) prohibition order on compulsory execution, (v) permission for disposition of property by the debtor, and (vi) administration order to appoint a "recognised trustee" who has an exclusive power to administer the business and assets of the debtor within Japan. A recognised trustee may move the assets of the debtor out of Japan after obtaining court approval. Such approval may be given by the court if the court recognises that there is no risk that the interests of creditors in Japan would be harmed.

**Yoshinori Ono**

Nishimura & Asahi
Ark Mori Building, 1-12-32 Akasaka
Minato-ku, Tokyo 107-6029
Japan

Tel: +81 3 5562 8500
Fax: +81 3 5561 9711
Email: y_ono@jurists.co.jp
URL: www.jurists.co.jp

Yoshinori Ono is a partner of Nishimura & Asahi. Since he started practising law in 1986, he has been advising foreign clients on various aspects of corporate restructuring cases and insolvency cases under Japanese law. He has deep experience and knowledge as a bankruptcy trustee in bankruptcy cases and as a supervisor in civil rehabilitation cases appointed by the Tokyo District Court. His practice focuses on cross-border matters including corporate restructuring/insolvency, business crime, antitrust/antimonopoly, cross-border investment/licensing, joint ventures, mergers and acquisitions, labour issues, real estate investment and cross-border dispute resolution. Mr. Ono is a graduate of the University of Tokyo (LL.B., 1981) and was admitted to practise law in Japan in 1986.

**Hiroshi Mori**

Nishimura & Asahi
Ark Mori Building, 1-12-32 Akasaka
Minato-ku, Tokyo 107-6029
Japan

Tel: +81 3 5562 8500
Fax: +81 3 5561 9711
Email: h_mori@jurists.co.jp
URL: www.jurists.co.jp

Hiroshi Mori is a partner of Nishimura & Asahi. He has been practising in an extensive range of corporate reorganisation cases and finance matters. Mr. Mori has acted as a court appointed trustee in many corporate liquidation proceedings. He frequently advises clients with respect to private corporate rehabilitation and civil rehabilitation issues. He was involved in the first case in Japan in which a company in civil rehabilitation proceedings had its listing stayed on the stock market. His background as a practitioner is unique in that, prior to entering private practice, he worked for a Japanese government bank for 16 years and for a Japanese government agency for two years.

Mr. Mori graduated from the University of Tokyo (LL.B.) and Duke University School of Law (LL.M.).

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Key areas of practice: Corporate: General Corporate; M&A; Compliance; Start-up Businesses; Labour Law; and Real Estate/Environmental. Finance: Banking; Capital Markets; Asset Management; Structured Finance/Securitisation; Asset Finance; Acquisition Finance; Insurance; and PFI/Project Finance. Restructuring/Insolvency: Restructuring/Insolvency. Cross-Border Practice: International Transactions; International Trade; International Disputes; and International Taxation. Dispute Resolution: Civil & Commercial Disputes; Administrative Disputes; and Specialised Disputes. IT/IP: IP Disputes; IP Transactions; Venture Capital/Entrepreneurial Services; and Telecommunications/Media. Corporate Crisis Management: Corporate Crisis Management. Antitrust: Antitrust. Tax: Tax Counselling; and Tax Controversy and Litigation. Trusts & Estates: Trusts & Estates. Natural Resources and Energy: Natural Resources and Energy. Asia: China; Hong Kong; India; Indonesia; Korea; Malaysia; Myanmar; Singapore; Taiwan; Thailand; Vietnam; and Rest of Asia. Middle East/Latin America/Africa: Middle East; Latin America; Africa. Public Interest Activities: Assistance to Administrative Organisations; and Education and Professional Activities.

Managing Partner: Mr. Masaki Hosaka. **Languages:** Japanese, English, Chinese (Mandarin) and French.

Total number of lawyers: 526. **Email:** info@jurists.co.jp

*Associate office