



INSOL
INTERNATIONAL

GLOBAL INSOLVENCY
PRACTICE COURSE

Class of 2023/24

Module B, Session 12

Important Asian Jurisdictions: Japan

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May 19, 2024



Today's Speaker

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Historical Background and Current Trends

- Unique history and structure - initially influenced by European laws but strongly affected by US law
 - Bankruptcy Act (1922) modeled from German law
 - Composition Act (1922) modeled from Austrian law (abolished in 1999)
 - Corporate Reorganization Act (1952) modeled from US law
 - Civil Rehabilitation Act (1999) modeled from US law
- Current trends - use out-of-court workouts rather than legal insolvency proceedings where possible
- Law reforms underway
 - Introduction of majority vote out-of-court workouts
 - Secured transaction law (including introduction of Enterprise Value Security Interest)

Introduction of Majority Vote Out-of-Court Workouts



Unanimous Consent

- Out-of-court workouts currently require **unanimous consent** of all financial creditors to a restructuring plan



Majority Vote Workouts

- On October 4, 2022, the Japanese government announced that it is considering introducing new out-of-court workout rules.
- A restructuring plan will be binding if a **majority vote** of creditors is obtained and the plan is confirmed by the court.
- The Japanese government is planning to submit a bill for the new legislation shortly.

Restructuring Options



Legal proceedings

Restructuring type:

- Civil Rehabilitation
- Corporate Reorganization

Liquidation type:

- Bankruptcy
- Special Liquidation



Out-of-court workouts

"Rule-based" out-of-court workouts

- Turnaround ADR
- SME Vitalization Councils Scheme
- SME Restructuring Guidelines
- Others

"Pure" out-of-court workouts

Restructuring Options



Civil Rehabilitation

- Court-supervised proceedings to reorganize a debtor pursuant to a **rehabilitation plan**.
- The **debtor's existing management** continues to operate the debtor's business under the supervision of the court and the supervisor appointed by the court.
- A rehabilitation plan needs to be accepted by creditors and confirmed by the court.



Corporate Reorganization

- Court-supervised proceeding to reorganize a debtor's business pursuant to a **reorganization plan**. It is available only for stock corporations.
- The **trustee** is appointed by the court and administers the case under the court's supervision.
- A reorganization plan needs to be accepted by creditors (and in certain situations, shareholders) and confirmed by the court.



Bankruptcy

- Court-supervised proceedings to **liquidate** an insolvent debtor and make distributions (if any) to creditors to satisfy existing debts.
- The bankruptcy **trustee** is appointed by the court and administers the case under the court's supervision.



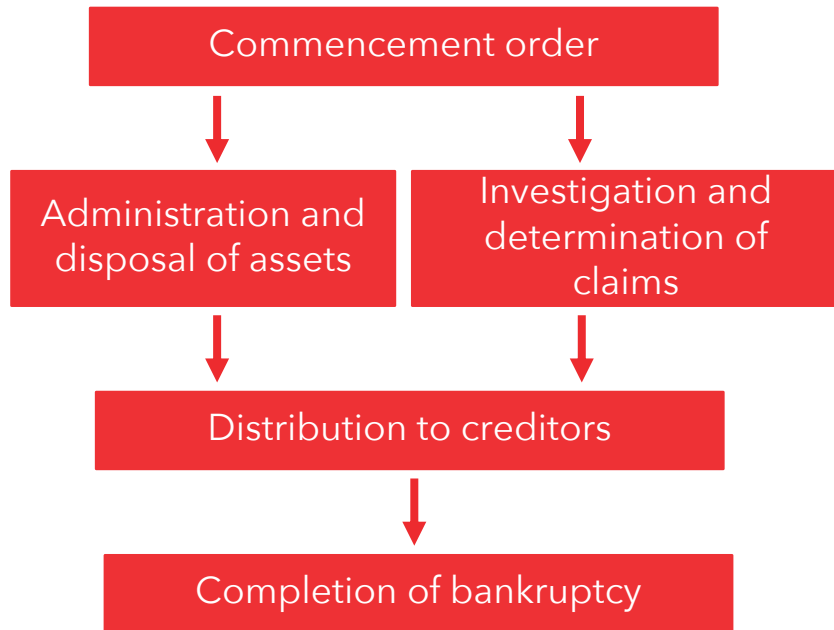
Special Liquidation

- **Liquidation** proceeding under the Companies Act designed for special cases where a debtor is insolvency.
- The **liquidator** is appointed by the shareholders meeting and administers the case under the court's supervision.
- The liquidator liquidates the debtor pursuant to a **repayment agreement** approved by creditors and confirmed by the court.

Bankruptcy vs Civil Rehabilitation



Bankruptcy



Civil Rehabilitation



Recognition & Assistance of Foreign Insolvency Proceedings

- Japanese insolvency laws purport to apply globally.
- Japan adopted the Model Law in 2000 by enacting “Act on Recognition of and Assistance for Foreign Insolvency Proceedings”
- However, as of April 2024, there have been only 21 recognition and assistance cases over 20 years (for Korea, Hong Kong, the US, Australia, Italia, South Africa, Thailand)
- Foreign creditors are allowed to file proofs of claim and treated equally with Japanese creditors.