ALLEN & OVERY

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Restructuring Across Borders

Japan: corporate restructuring and insolvency procedures

Contents

Introduction

When a corporate borrower in Japan faces financial difficulties there are a variety of restructuring and insolvency options available:

- voluntary arrangements (*nin-i seiri*), an out-of-court restructuring procedure;
- turnaround (*jigyo saisei*) ADR procedure under the Act on Special Measures for Industrial Revitalisation (Law No. 131 of 1999, as amended);
- corporate reorganisation (*kaisha kosei*) under the Corporate Reorganization Law (Law No. 154 of 2002, as amended);
- civil rehabilitation (*minji saisei*) under the Civil Rehabilitation Law (Law No. 225 of 1999, as amended);
- bankruptcy (*hasan*) under the Bankruptcy Law (Law No. 75 of 2004, as amended); and
- special liquidation (*tokubetsu seisan*) under the Companies Act (Law No. 86 of 2005, as amended).

Creditors with the benefit of security may elect to enforce their security (subject to restrictions under the relevant restructuring proceedings). Security enforcement is essentially a self-help remedy rather than a collective restructuring or insolvency procedure and, if available to a creditor, will often represent the best method of recovery.

Enforcement of security

There are three main forms of security interests under Japanese law: mortgages (*teito-ken*), pledges (*shichi-ken*) and security assignments (*joto tampo*).

Under Japanese law, there is no equivalent legal concept to a floating charge that covers different types of assets all at once. Depending on the type of asset, the security interest needs to be in a form of mortgage, pledge, security assignment and/or other form of security.

Mortgages are commonly used to take security over real estate (although it is possible, but not common, to take such security using a pledge or a security assignment). For certain type of assets such as aircraft, ship and automobile, a mortgage under the relevant special mortgage act must be used.

Pledges or security assignments are used to take security over other assets such as shares, receivables, contractual rights (claims), moveable assets, intellectual property and bank accounts (although it is not common to take security over a bank account unless the creditor is the bank with which such account is opened because:

(a) to take security over a bank account, the bank's consent is required and it is practically difficult to obtain such consent; and

(b) it is a dominant view that no effective security can be taken over a bank account with a fluctuating balance).

Security over a contract as a whole in all-asset security transactions is usually structured by way of a combination of a pledge of contractual rights (claims) and an option agreement to acquire the contractual status under that contract. This allows the creditor to have a designated transferee acquire the contractual rights

(claims) as well as the contractual status under that contract upon enforcement of the security and thereafter maintain the contract between the transferee and the contract counterparty. However, the transfer of the contractual status requires the consent of the contract counterparty.

Mortgages (*teito-ken*)

A mortgage can be created in accordance with a mortgage agreement and is perfected by registration with a district Legal Affairs Bureau. Unlike pledges, mortgages can be created without the debtor giving possession of the collateral to the mortgagee. The mortgagor remains the legal owner of the collateral.

Enforcement of a mortgage is available through public auction procedures or through administration procedures under which proceeds arising out of the collateral will be applied to the repayment of the secured debt. Both procedures are supervised by the court.

Pledges (*shichi-ken*)

A pledge over tangible assets (such as real estate and moveable assets) is created when the collateral is delivered to the pledgee. Possession of the collateral must be maintained by the pledgee for the pledge to remain valid. Accordingly, pledges are not practical where the pledgor needs possession of the collateral for its business. The pledgor retains title to the collateral.

A pledge over shares is (a) if the issuer of the shares is a company issuing share certificates, created by delivery of the share certificates to the pledgee and perfected by continuous possession by the pledgee of the share certificates, or (b) if the issuer is not a company issuing share certificates, created by an agreement to pledge the shares and perfected by registration of the pledge in the shareholders registry maintained by the issuer of the shares.

A pledge over receivables or contractual rights (claims) except for those that are represented by a certificate (such as a bill of lading) is created by an agreement to pledge and perfected by way of:

- as against the debtor, a notice to or acknowledgment by the debtor; and
- as against third parties, (i) a notice to or acknowledgment by the debtor attached with a certified date or (ii) in the case of a pledge over receivables and other monetary claims, registration of the pledge in the electronic registry of the assignment of claims maintained by the designated Legal Affairs Bureau.

A pledge over intellectual property rights is created by an agreement or registration and perfected by registration.

A pledge can be enforced outside the court process by private sale to the extent permitted by the terms of the pledge agreement. In the case of receivables, direct collection from the debtor is also permitted.

Security assignments (*joto tampo*)

A security assignment is made pursuant to a security assignment agreement (*joto tampo keiyaku*). A security assignment may be made by an agreement. Even in the case of tangible assets, delivery of possession of the collateral from the security assignor to the security assignee is not required to effect a security assignment. The ownership of the collateral is transferred to the security assignee, but the security assignor is permitted to use (or in the case of security assignment of inventories, dispose in the ordinary course of business) the collateral.

A security assignment in respect of moveable assets is perfected by (a) delivery of possession of the asset to the security assignee or (b) registration of the assignment in the electronic registry of the assignment of movables maintained by the designated Legal Affairs Bureau.

For receivables, perfection requires:

- as against the debtor, a notice to or acknowledgment by the debtor; and
- as against third parties, (i) a notice to or acknowledgment by the debtor attached with a certified date or (ii) registration of the assignment in the electronic registry of the assignment of claims maintained by the designated Legal Affairs Bureau.

Because a security assignment operates to transfer ownership in the assigned assets to the assignee, enforcement may be made by way of cancelling the

security assignor's entitlement to use (or dispose of) the collateral and definitely acquiring the title of the collateral or disposing the collateral or by way of private sale.

The security assignee must account to the debtor for acquisition value (in the case of definite acquisition) or sale proceeds (in the case of disposal at private sale) in excess of the value of the secured liabilities.

Voluntary arrangements

A debtor company and its creditors may enter into a negotiated settlement (*nin-i seiri*) with a view to achieving a consensual restructuring of the company or to arrange for its liquidation.

It is usually the case that a voluntary arrangement only involves financial institution creditors and not commercial creditors, because the purpose of a voluntary arrangement is to make the debtor company alive and continue its operation.

Where a company is to be liquidated under a voluntary arrangement, the company's assets will be disposed of and the proceeds will be distributed among the creditors in accordance with the terms of the voluntary arrangement.

Where the arrangement seeks to rehabilitate the company, it is usually the case that a debtor company establishes a business plan in detail (including a profit plan, restructuring plan and repayment plan).

Voluntary arrangements amongst debtors and creditors in Japan mainly have the following advantages and disadvantages:

Advantages:

- they provide a more flexible way to restructure the company compared to the statutory insolvency procedures; and
- the debtor company can continue its operation so that the value of the business would not decrease, and thus creditors under voluntary arrangements can generally be expected to receive larger distributions.

Disadvantages:

- unanimous consent from the participating creditors is required.

Japanese guidelines for voluntary arrangements

Having faced a series of failures of major financial institutions in the late 1990's, the Japanese government recognised the excessive non-performing loans and corporate debt as an urgent issue to be resolved and the need for rules for rehabilitating a financially distressed company through a voluntary arrangement and debt write-off by financial institutions as a result thereof. In reaction to this, a private group, consisting of representatives from finance, industry and scholars, was organised at the initiative of the Japanese government to discuss the rules, and on 19 September 2001, it published the "Guideline for Voluntary Arrangement"

(the **Guideline**). Although the Guideline has no legally binding effect, it was intended that the Guideline would work as general consensus between finance and industry and be voluntarily followed by the creditors that are financial institutions and the debtors in industry. .

A debtor company that is eligible to apply for a voluntary arrangement under the Guideline is a company having difficulties in conducting business due to excessive debts and it is difficult to rehabilitate itself on its own, but there is a reasonable prospect of it being able to be rehabilitated if the support of creditors is obtained on the grounds that the debtor company has a good going-concern value (such as profitability or future growth based on the business infrastructure in light of technology, brand, market and human resources) or good operating profits are being achieved from important business divisions. Creditors to be involved in the voluntary arrangement under the Guideline are financial institutions and are expected to be required to support the debtor company by way of debt write-off or postponement of debt repayment. Trade creditors are not expected to be involved in or affected by the voluntary arrangement under the Guideline, and payments to them are expected to be made as per the originally agreed terms.

The Guideline provides guidance as to, among others:

(i) who may apply for the voluntary arrangements under the Guideline;

(ii) how to commence the process;

(iii) how to convene a creditors' committee;

(iv) terms of the standstill agreement and suspension of claims;

(v) how the rehabilitation plan should look; and

(vi) how the rehabilitation plan should be approved.

Turnaround ADR

One of the voluntary arrangements available is the turnaround ADR procedure (**TAP**), which is an alternative method of restructuring debt between a debtor and its creditors. The TAP was first established in 2007 under the Act on Special Measures for Industrial Revitalisation (Law No. 131 of 1999) and now exists under the Industrial Competitiveness Enhancement Act (Law No. 98 of 2013) as a non-judicial procedure under which an approved ADR organisation (the Japan Association of Turnaround Professionals (**JATP**)) coordinates the interests of a debtor and certain creditors of the debtor (usually banks and other financial institutions) (the **Specified Creditor**) in respect of whose debt the debtor requests restructuring (such as a postponement of payment dates and/or a reduction of debt amounts) in trying to implement a turnaround plan (the **Turnaround Plan**) acceptable to all the Specified Creditors. Given its nature, the courts do not supervise a TAP and it has no mandatory effect on any other creditors that are not a Specified Creditor. If a Turnaround Plan is rejected by any Specified Creditor, a petition for court proceedings (eg special conciliation (*tokutei choutei*) against such objecting Specified Creditor) or insolvency procedures (eg corporate reorganisation (*kaisha kosei*) or civil rehabilitation (*minji saisei*)) would be filed. Any debtor-in-possession financing made during a TAP would be given priority even where judicial insolvency procedures are subsequently commenced.

A TAP is a three-step process:

1. Prior consultation, application and acceptance by the JATP

The procedure is commenced by the debtor making, after prior consultation with JATP, an initial application to JATP.

A debtor must satisfy all the conditions set out below prior to JATP accepting its application to commence a TAP:

(1) the business must have excessive debts and turnaround without participation in the TAP would be difficult (eg this does not necessarily mean the business is insolvent);

(2) turnaround with the support of creditors is possible in light of the fact that, amongst other things, the core business is still profitable;

(3) judicial insolvency proceedings would severely reduce the value of the company;

(4) the aggregate amount of repayment under the TAP is expected to be greater than amounts available under bankruptcy; and

(5) the debtor must prepare a draft Turnaround Plan which is legal, fair and commercially reasonable.

If the initial application for commencement of a TAP is successful, a coordinator (*tetsuzuki-jisshisha*) is nominated. The coordinator conducts an investigation into the debtor's affairs including business, financial and legal due diligence. The debtor uses the findings of the coordinator to draw up a proposed Turnaround Plan and make a formal application to JATP. Unlike administrators in bankruptcy proceedings, the coordinator has little legal authority.

2. Suspension notice to creditors

Once a formal application is accepted, a suspension notice will be sent to the Specified Creditors. In the suspension notice, each Specified Creditor will be requested to agree not to enforce any of their rights against the debtor; however, it is not legally binding nor does it create a moratorium.

The TAP will not affect the rights of any other creditors who are not a Specified Creditor and such creditors can enforce their rights against the debtor without restrictions.

3. Resolution to enter into a TAP

Within two weeks after the suspension notice is sent, a meeting between the debtor and the Specified Creditors will take place where the debtor explains to the Specified Creditors an outline of the proposed Turnaround Plan. Thereafter, there will be one or more meetings between the debtor and the Specified Creditors where the parties will discuss the proposed Turnaround Plan, and then finally a meeting to agree to the Turnaround Plan (including a restructuring of the debt of the Specified Creditors (such as a postponement of payment dates and/or a reduction of debt amounts)) will be held. Such restructuring will only be effective by the unanimous written resolution of all the Specified Creditors. This resolution would only be binding on the Specified Creditors.

If any of the Specified Creditors do not agree to the Turnaround Plan, the case would be referred to judicial proceedings as mentioned above.

In general, the Turnaround Plan must provide concrete and specific measures for the restructuring of the debtor's business. In addition, the aggregate amount of repayment to the Specified Creditors under a TAP must be greater than the amounts expected to be available for the Specified Creditors under bankruptcy proceedings. There are additional requirements to be satisfied where a Turnaround Plan contemplates a reduction in the amount of the debt, such as extinguishment of the whole or part of the rights of shareholders, and resignation of executives and officers of the debtor (save where such resignation would have a significant impact on the continuation of its business).

Corporate reorganisation

The Corporate Reorganisation Law was reformed in 2003 to provide a court implemented and maintained reorganisation procedure. The purpose of corporate reorganisation is to manage and reorganise the debtor's business to enable the business to continue as a going concern. This may involve changing the company's structure by a recapitalisation and the introduction of new investors. Often the key to the success of a corporate reorganisation depends on whether a new sponsor with appropriate expertise and financial resources can be found to manage the company. It only applies to joint-stock companies (*kabushiki kaisha*) and has been used (with some success) by several large companies in Japan.

The debtor company, any of its creditors holding claims in the amount of at least 10% of the capital of the company or any of its shareholders holding at least 10% of the voting rights of all of the shareholders of the company may file an application to commence a corporate reorganisation in circumstances where a risk of bankruptcy exists. The debtor company may also commence the procedure if the payment of the company's debts when due is likely to obstruct the continuation of the company's business. The court may order various preservative measures to prevent any loss to the company's assets during the period from the filing of an application until the commencement of the corporate reorganisation.

Upon the commencement of the corporate reorganisation, the power to administer and dispose of the company's assets and to carry on its business is exclusively vested in the reorganisation trustee (*kanzainin*) appointed by the court. Secured creditors are prohibited from enforcing their security outside of the corporate reorganisation. Both secured and unsecured creditors must file their claims with the court.

The reorganisation trustee must propose a corporate reorganisation plan and seek court approval for the plan. The plan should set out, among other things, proposals for restructuring rights and/or claims of secured and unsecured creditors, and shareholders, the payment schedule of any preferred claims, how the company proposes to fund the payment of its debts and other relevant matters. The proposed reorganisation plan must be adopted at a meeting of the interested parties (creditors (secured and non-secured) and shareholders) pursuant to relevant majority voting requirements stipulated under the Corporate Reorganisation Law and must be approved by the court.

Once the reorganisation plan is approved, the company is exempt from further creditor claims, except for those prescribed in the reorganisation plan. Any shareholders' rights and the security created over the company's assets will be extinguished unless otherwise restructured in accordance with the reorganisation plan.

Important features of the corporate reorganisation procedure include:

- the procedure may block or suspend the rights of secured creditors. Once an application for corporate reorganisation has been filed, a court may order the suspension of security enforcement and any security enforcement that had already started before the filing of an application will be cancelled upon the commencement of the procedure unless the court determines otherwise. Secured creditors may receive payments only in accordance with the approved reorganisation plan.
- once the reorganisation plan is adopted by the interested parties in accordance with the relevant voting majorities, it is binding on all creditors, including any dissenting creditor.
- although secured creditors are subject to the reorganisation proceedings and plan, certain preferential claims (eg expenses relating to the reorganisation proceedings, trustee's fees, salaries not paid in the period of six months before proceedings commenced) can be paid outside the

reorganisation and have priority over all other claims. Unlike other insolvency options, most taxation claims are not preferred and are treated as unsecured claims being subject to the terms of the approved reorganisation plan.

- the assets of the company, including those assets provided as security to creditors, are revalued on a market-value basis rather than a going-concern basis.
- the procedure can be complex, time-consuming and expensive.

Civil rehabilitation

The Civil Rehabilitation Law introduced a debtor-in-possession type reorganisation similar to U.S. Chapter 11 proceedings. The civil rehabilitation procedure was initially intended to apply to small or medium sized companies. However, large sized companies have been using the procedure as it is less formal than other insolvency procedures and provides a flexible debtor-in-possession type reorganisation option. All types of companies (including foreign companies with a place of business in Japan) may utilise this procedure, as can individuals.

The debtor company may file an application to commence a civil rehabilitation where a cause of bankruptcy is likely to arise or the payment of the company's debts when due will obstruct the continuation of its business. Any creditor of the debtor company may also file an application where a cause of bankruptcy is likely to arise. The court may order various preservative measures to prevent any loss to the company's assets during the period from the filing of an application until the commencement of the civil rehabilitation.

If civil rehabilitation is commenced, the directors do not generally lose their authority to conduct the business or administer and dispose of the company's assets. In general, they are responsible for implementing the civil rehabilitation under the supervision of the court.

The company generally prepares a proposal of the civil rehabilitation plan and submits it to the court. The rehabilitation plan must set out, among other things, proposed changes in the rights and/or claims of the creditors, the payment schedule of common and preferred claims and the details of all known claims incurred after the commencement of the civil rehabilitation. In order for the rehabilitation plan to be effective, it must be adopted at a creditors' meeting by:

(1) a majority of creditors having exercisable voting rights in attendance at the meeting; and

(2) creditors who have at least 50% of the total amount of claims held by creditors whose voting rights are exercisable, and approved by the court.

Once the rehabilitation plan is approved, any unsecured claims against the company are discharged, except to the extent agreed in the rehabilitation plan or specified in the Civil Rehabilitation Law. An important difference between the civil rehabilitation procedure and the corporate reorganisation procedure is that secured creditors may exercise their rights outside the civil rehabilitation. However, if security interests have been created over assets of the company and the assets are necessary for the continuance of the company's business, the court may extinguish such security interests on condition that the company pays into court an amount equal to the value of such secured assets (being an amount agreed by the security holder or fixed by the court).

Summary procedures are available to shorten the rehabilitation period. If creditors holding at least three-fifths of the total amount of all reported claims agree, the rehabilitation plan may be adopted at a

creditors' meeting without the court's involvement in determining the validity and quantum of claims. Moreover, if all of the creditors agree, the rehabilitation plan can be finalised without going through the court for the purpose of determining creditors' claims or holding a creditors' meeting. In these cases, creditors who fail to report claims do not lose their rights and/or claims and no court-approved claim list is made pursuant to which the claims would be enforceable.

Important features of the civil rehabilitation procedure include:

- security holders are excluded from the civil rehabilitation procedure, which means it is easier for the company to attract new money (although the procedure may extinguish security interests).
- the directors generally continue to have authority to conduct the business and administer and dispose of the company's assets.
- although the court may appoint a trustee as part of the rehabilitation procedure, this is rare (unlike the corporate reorganisation procedure where a trustee is always appointed).
- many companies are increasingly using this procedure as it offers a more flexible debtor-in-possession type restructuring mechanism compared to corporate reorganisation.

Bankruptcy

The purpose of the bankruptcy procedure is to liquidate the debtor company by realising the company's assets and distributing the proceeds to creditors on a pro rata basis. The bankruptcy procedure is usually one of the last resorts, used only when the debtor company has no other available insolvency options.

The debtor company or any of its creditors may present a bankruptcy petition to commence bankruptcy if the company is unable to pay its due and payable debts or the company's total liabilities exceed its total assets. The court may order preservative measures to prevent any loss to the debtor company's assets during the period from the time of filing the petition until the commencement of the bankruptcy.

The assets of the debtor company as of the commencement of the bankruptcy constitute the bankruptcy estate and the power to administer and dispose of the bankruptcy estate is vested exclusively in the bankruptcy trustee (*hasan kanzainin*) appointed by the court. The bankruptcy trustee must realise the bankruptcy estate and endeavour to maintain and (if possible) increase the size of the bankruptcy estate. In common with other jurisdictions, the bankruptcy trustee has the power to set aside certain transactions disposing of assets or payments made by the insolvent debtor before or after the commencement of the bankruptcy proceedings (called *hinin-ken*; the "Right of Avoidance") and to terminate existing contracts to which the bankrupt company is a party to the extent that both parties to the contract have outstanding obligations.

A secured creditor may exercise its rights outside the bankruptcy (called *betsujo-ken*; the "Right of Separation"), provided that the security interest has been perfected as against third parties. A secured creditor whose claim is not satisfied by proceeds recovered or recoverable from secured assets is treated as an unsecured creditor to the extent of the shortfall. If a creditor owes a liability to the debtor company as of the commencement of the bankruptcy, the creditor may set off such liability outside of the bankruptcy, subject to certain restrictions. Unsecured creditors are only entitled to receive distributions out of the bankruptcy estate. All creditors must submit proof of their claims to the court in order to participate in the procedure. The bankruptcy trustee shall inspect the validity and amounts of all submitted claims with the court. The claims are

then entered on a list of claims, and distributions to creditors are made in accordance with the list, which is referred to as the "Determination of Claims" (*saiken no kakutei*).

Important features of bankruptcy include:

- fairness of distributions to creditors, supported by the determination of claims procedure, limitations on the rights of set-off, the right of avoidance, and certain criminal sanctions against the bankrupt company and its officers.
- strict administration and supervision of the bankruptcy by the court in order to achieve a complete liquidation of the debtor company. The procedure is sometimes regarded as being inflexible, time-consuming and expensive, and creditors may have to wait a prolonged period of time to receive a distribution.

Special liquidation

The purpose of special liquidation is to provide a simplified process for companies which are likely to be bankrupt but which have relatively few creditors and assets. The special liquidation procedure is akin to voluntary liquidation, but can only be used for joint-stock companies (*kabushiki-kaisha*). The procedure is suitable for companies where the majority of creditors will cooperate to adopt a settlement agreement and implement an ordinary (and possibly voluntary) winding-up of the company.

Special liquidation can be commenced only after an ordinary liquidation procedure has been initiated by resolution at a general shareholders' meeting by a super-majority vote.[1] Any of the liquidators, creditors, statutory auditors or shareholders of the company may present a petition for the special liquidation where circumstances are likely to obstruct the liquidation of the company or evidence shows that the total liabilities of the company may exceed its total assets.

Upon receipt of the petition, the court may order a commencement order if it determines that the creditors are likely to agree on a settlement agreement, and may also order various preservative measures. Any liquidator of the company appointed under the ordinary liquidation procedure automatically becomes the liquidator under the special liquidation. The directors of the company will become its liquidators (unless otherwise designated in the articles of incorporation of the company or by the shareholders) if the company's shareholders resolve to wind it up. The liquidator must prepare a proposed settlement agreement and submit it to a creditors' meeting. The settlement agreement is deemed to be effective and binding on all creditors if it is adopted by:

(1) a majority of creditors having exercisable voting rights in attendance at the meeting; and

(2) creditors who have voting rights representing at least two-thirds of the total voting rights held by the creditors having exercisable voting rights and if it is approved by the court.

As with secured creditors in a civil rehabilitation or bankruptcy proceedings, secured creditors in special liquidation proceedings may generally exercise their rights outside of the proceedings (except where necessary, the court may demand a secured creditor to participate in the settlement agreement or stay security enforcement when deemed appropriate). Any debt repayment to unsecured creditors will be governed by the settlement agreement.

[1] An affirmative vote by at least two-thirds of the shareholders with voting rights present at the meeting where shareholders holding more than one-half of all of the voting rights are present at such meeting.

Cross-border issues

The Law Concerning Recognition and Assistance for Foreign Insolvency Proceedings (Law No. 129 of 2000, as amended) (the **Foreign Insolvency Recognition Law**) was enacted on 1 April 2001 in light of UNCITRAL Model Law on Cross-Border Insolvency for the purposes of coordinating proceedings commenced in countries outside of Japan where a company involved in international business is the subject of a cross-border insolvency or work-out. Under the Foreign Insolvency Recognition Law, where a debtor company has an address, domicile, place of business or office in any foreign jurisdiction and an insolvency or rehabilitation proceeding has been commenced against the debtor company in that foreign jurisdiction and such proceeding is similar to the statutory insolvency procedures of Japan, the trustee who is authorised by the foreign insolvency proceeding to administer or dispose of the debtor's assets (the **Foreign Trustee**) may file with the Tokyo District Court an application to recognise such foreign insolvency proceeding.

Where the Tokyo District Court has recognised the foreign insolvency proceeding, the court may order the general prohibition of proceedings for compulsory execution against any of the debtor company's assets in Japan, or a preservative measure, such as the prohibition of the debtor company's right to dispose of any of its business or assets in Japan. The court may also require that the debtor company obtain the court's prior approval to dispose of any of its assets in Japan or to transfer its assets to a foreign jurisdiction. Any action by the debtor company in breach of a court order will be void and the debtor company will be subject to criminal sanction.

In response to the enactment of the Foreign Insolvency Recognition Law, the following concepts have been incorporated in the bankruptcy procedure, the corporate reorganisation procedure and the civil rehabilitation procedure (the **Japanese Procedures**):

(1) any foreign citizen or company incorporated under the laws of a foreign jurisdiction has the same status as a Japanese citizen or Japanese company.

(2) if a proceeding similar to any of the Japanese Procedures is commenced with respect to a debtor in any foreign jurisdiction, there is a presumption that there was a valid cause for the commencement of the relevant Japanese Procedure.

(3) if any creditor enforces its claim against any of the debtor's assets located outside Japan and receives a partial payment of its claim after the commencement of a Japanese Procedure, the creditor may still participate in that Japanese Procedure in the amount of its claim prior to such partial payment, provided that the creditor may not: (a) exercise voting rights during the Japanese Procedure for any partial payments received under its claim; or (b) receive any further distributions from the debtor until all of the other creditors of the same rank have received the same pro rata recovery on their claims as the creditor.

(4) a trustee in any Japanese Procedure may:

   (a) request the Foreign Trustee to cooperate and provide such information as is required for the proper implementation of the Japanese Procedure in Japan; and

   (b) where reasonable, cooperate with and provide such necessary information to the Foreign Trustee for the proper implementation of the similar foreign proceeding.

(5) a Foreign Trustee may file a petition for the commencement of any similar Japanese Procedure with the Tokyo District Court and participate in that Japanese Procedure in its capacity as a representative of the creditors who have filed claims in the foreign proceeding but who have not participated in the Japanese Procedure. Similarly, a trustee in a Japanese Procedure may participate in

any similar foreign proceeding in its capacity as a representative of the creditors who have filed claims in a Japanese Procedure but who have not participated in the foreign proceeding.

Key contacts

This factsheet has been prepared with the assistance of Allen & Overy Gaikokuho Kyodo Jigyo Horitsu Jimusho.

If you require advice on any of the matters raised in this document, please call any of our partners or your usual contact at Allen & Overy.

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