



Ushijima & Partners

ATTORNEYS-AT-LAW  
SANNO PARK TOWER 11-1, NAGATACHO 2-CHOME  
CHIYODA-KU, TOKYO 100-6114, JAPAN  
TELEPHONE:03-5511-3200 FACSIMILE:03-5511-3258 E-mail:ushilaw@japan.email.ne.jp

## **Rehabilitation Proceedings under the Civil Rehabilitation**

### **Law of Japan**

May 19, 2020



Ushijima & Partners

**Toshitake Higashiyama**

+81-3-5511-3223

toshitake.higashiyama@  
ushijima-law.gr.jp

#### **I. Introduction**

Under the impact of the new coronavirus (COVID-19), the number of failing medium- and small-sized Japanese companies has rapidly increased.

Notwithstanding that there were only two such companies by February 2020 and 23 such companies by March 2020, the number surpassed 100 cases by the end of April and is expected to further increase.

It is assumed that medium- and small-sized Japanese companies that fail due to the new coronavirus will file either for commencement of bankruptcy proceedings to settle the company or commencement of rehabilitation proceedings for business rehabilitation.

By this newsletter, we explain a summary and schedule of rehabilitation proceedings for overseas creditors of Japanese companies that have filed for commencement of rehabilitation proceedings.

#### **II. Summary of Rehabilitation Proceedings (“RP”)**

##### **1. Commencement of RP**

###### **(1) Petition for Commencement of RP**

- When “cause for commencement of RP” (as mentioned in item (4)(a), below) exists, the debtor may file a petition for commencement of RP with the court (a debtor filing a petition for commencement of RP is hereinafter referred to as the “Rehabilitation Debtor”).
- Usually, simultaneously with the filing of the petition for commencement of RP, the Rehabilitation Debtor also files a petition for issuance of a temporary restraining order prohibiting the Rehabilitation Debtor from providing security and paying debts until the issuance of the commencement order of RP.

###### **(2) Appointment of a Supervisor and Issuance of Temporary Restraining Order**

- After the petition for commencement of RP has been filed, the court will, usually on the same day that the petition is filed, (i) appoint a supervisor (“kantoku-iin”) and (ii) issue a temporary restraining order prohibiting the Rehabilitation Debtor from providing security and paying debts.

###### **(a) Appointment of a Supervisor**

- The Rehabilitation Debtor, even after RP is commenced, may carry out its business and dispose of its assets.
- However, in principle, the court appoints a supervisor in all cases when the petition for commencement of RP by the Rehabilitation Debtor is filed. Thus, the Rehabilitation Debtor is supervised by the supervisor.
- Also, simultaneously with the appointment of a supervisor, the court orders the Rehabilitation Debtor to obtain the consent of the supervisor in order to conduct the following:
  - (i) transfer, grant security, lease or any other disposition of rights regarding the assets owned or occupied by the Rehabilitation Debtor (except for trading in the ordinary course of its

- business);
- (ii) transfer, grant security or any other disposition of the Rehabilitation Debtor's claim (except for recovery by the Rehabilitation Debtor);
- (iii) receive assets (except for purchase of goods or any other receipt of assets in the ordinary course of its business);
- (iv) loan;
- (v) borrow money (including bill discount) and guaranty;
- (vi) discharge debts, assume non-compensatory debt or waive rights; or
- (vii) redeem collateral for a right of separation ("betsujyo-ken").

(b) Issuance of Temporary Restraining Order

- The court usually issues a temporary restraining order prohibiting the Rehabilitation Debtor from providing security, and paying debts accrued from a cause prior to the filing of the petition, except for:
  - (i) tax liabilities;
  - (ii) debts accrued from an employment relationship between the Rehabilitation Debtor and its employees;
  - (iii) rent, cost of utilities, and communication costs for the Rehabilitation Debtor's office;
  - (iv) lease payments for the Rehabilitation Debtor's office supplies; and
  - (v) de minimis rehabilitation claims.

**(3) Briefing Session for Rehabilitation Creditors held by the Rehabilitation Debtor**

- Most Rehabilitation Debtors voluntarily hold a briefing session for rehabilitation creditors within one week after the date of filing the petition for commencement of RP.
- In such session, the Rehabilitation Debtor usually explains to rehabilitation creditors about the status concerning the Rehabilitation Debtor's business and assets, and the progress of RP.

**(4) Issuance of the Commencement Order of RP**

(a) Investigation by the Supervisor and Examination by the Court

- After a petition is filed, the court will examine both whether there are "facts constituting grounds for commencement of RP," and whether "grounds exist for dismissal of the petition for commencement of RP" based on the supervisor's opinion.
- "Fact constituting grounds for commencement of RP" means the following:
  - (i) A risk constituting grounds for commencement of bankruptcy proceedings, such as the risk of "inability to pay" or "debts exceeding assets"; or
  - (ii) The debtor is unable to pay its debts that become due without causing significant hindrance to the continuation of its business.
- Also, "Grounds for dismissal of the petition for commencement of RP" means any of the following cases:
  - (i) An applicant Rehabilitation Debtor fails to prepay the expenses of RP;
  - (ii) Bankruptcy proceedings or special liquidation proceedings of the Rehabilitation Debtor have already been commenced and the continuation of such proceedings is appropriate for the common interest of the creditors;
  - (iii) It is obvious that the proposed rehabilitation plan is unlikely to be prepared or approved, or the rehabilitation plan is unlikely to be confirmed; or
  - (iv) The petition for commencement of RP is filed for an unjustifiable purpose or it is not filed in good faith.
- The supervisor will investigate the existence of the grounds for dismissal of the petition for commencement of RP through a hearing with the main rehabilitation creditors at the briefing session for rehabilitation creditors, etc.

(b) Issuance of the Commencement Order of RP

- After the first discussion meeting between the court, the supervisor, the Rehabilitation Debtor and the Rehabilitation Debtor’s counsel, the court issues a commencement order for RP if it determines that cause for the commencement of RP exists and cause for dismissal of RP does not exist.
- According to the standard schedule for RP of the Tokyo District Court (please refer to II below), the commencement order for RP is issued one week after the date on which the petition is filed.
- Simultaneously with the issuance of the commencement order for RP, the court also decides the following:
  - (i) The period for filing rehabilitation claims (“Period for Filing Claims”) by the rehabilitation creditors;
  - (ii) The period for investigating the rehabilitation claims (“Ordinary Period for Investigation”);
  - (iii) The due date for the Rehabilitation Debtor to submit a statement of approval or disapproval of the rehabilitation claims filed during the Period for Filing Claims (“Statement of Approval or Disapproval”);
  - (iv) The due date for the Rehabilitation Debtor to submit a list of assets and a balance sheet, and the report based on Article 125 of the Civil Rehabilitation Law; and
  - (v) The due date for the Rehabilitation Debtor to submit the proposed rehabilitation plan.

## 2. Rehabilitation Claims

### (1) Claims within the Scope of Rehabilitation Claims

- A “rehabilitation claim” means a claim on assets arising against the Rehabilitation Debtor from a cause that has accrued before the commencement of RP (excluding common benefit claims or claims with general priority).

### (2) Rights and Obligations of Rehabilitation Creditors

#### (a) Prohibition of Payment for Rehabilitation Claims

- After the commencement of RP, rehabilitation creditors, in principle, are prohibited from receiving payment with regard to rehabilitation claims unless it is provided for in the rehabilitation plan.

#### (b) Right of Set-Off by Rehabilitation Creditor

- Where a rehabilitation creditor owes a debt to the Rehabilitation Debtor at the time of commencement of RP, the rehabilitation creditor may effect a set-off only within the Period for Filing Claims, even if it is not provided for in the rehabilitation plan, provided that (i) its claim and debt are the same kind of claim (e.g., both are monetary claims) and (ii) its claim will become due prior to the expiration of the Period for Filing Claims.
- However, in principle, a rehabilitation creditor may not effect a set-off in the following cases:

|     | <b>The rehabilitation creditor has assumed a debt to the Rehabilitation Debtor after:</b> | <b>With respect to (2), the rehabilitation creditor has assumed a debt to the Rehabilitation Debtor by:</b>  | <b>And, with respect to (2) to (4), the rehabilitation creditor knew:</b>                              |
|-----|---|--|--|
| (1) | the commencement of RP.   |  |  |
| (2) | the Rehabilitation Debtor became unable to pay its debts <sup>1</sup> ,                   | (a) concluding a contract with the Rehabilitation Debtor for disposing of the Rehabilitation Debtor’s assets with the intent to set off any debt to be assumed | at the time of conclusion of the contract, that the Rehabilitation Debtor was unable to pay its debts. |

<sup>1</sup> This “unable to pay its debts” means the condition in which the Rehabilitation Debtor, due to the lack of ability to pay, is generally and continuously unable to pay its debts as they become due.

|     |   |   |  |
|-----|---|---|--|
|     |   | by the rehabilitation creditor under the contract exclusively against rehabilitation claims; or<br>(b) concluding a contract for assuming any debt owed by another person to the Rehabilitation Debtor, |  |
| (3) | the Rehabilitation Debtor suspended payments, |   | at the time of assumption of the debt, the fact that the Rehabilitation Debtor had suspended payments <sup>2</sup> . |
| (4) | a petition for commencement of RP was filed,  |   | at the time of assumption of the debt, the fact that a petition for commencement of RP had been filed.               |

### (3) Filing of Rehabilitation Claims by Rehabilitation Creditors

- Any rehabilitation creditor intending to participate in RP is required to file with the court the content and cause of each rehabilitation claim, the amount of voting rights, etc., within the Period for Filing Claims.
- If the rehabilitation creditor fails to file its rehabilitation claim within the Period for Filing Claims, such rehabilitation creditor cannot exercise its voting rights at the creditors meeting in principle.
- Moreover, such rehabilitation creditor would lose its rehabilitation claim when the order of confirmation of the rehabilitation plan by the court becomes final and binding unless the Rehabilitation Debtor acknowledges the existence of such claim and states it in the Statement of Approval or Disapproval.

### (4) Investigation and Determination of Rehabilitation Claims

#### (a) Preparation and Submission of the Statement of Approval or Disapproval

- The Rehabilitation Debtor must prepare the Statement of Approval or Disapproval stating, with regard to each rehabilitation claim filed during the Period for Filing Claims, its approval or disapproval of the content of such claim and the voting rights.
- Also, the Rehabilitation Debtor, if it acknowledges the existence of a rehabilitation claim that has not been filed, must state the content of such claim, etc., in the Statement of Approval or Disapproval.
- The Rehabilitation Debtor must submit the Statement of Approval or Disapproval to the court by the time limit designated by the court prior to the Ordinary Period for Investigation.

#### (b) Investigation during the Ordinary Period for Investigation

- A rehabilitation creditor who has filed its claim ("Creditor of a filed Rehabilitation Claim") may make an objection in writing to the court, within the Ordinary Period for Investigation, with regard to the content of a rehabilitation claim or the voting rights stated in the Statement of Approval or Disapproval.

#### (c) Results of Investigation of Rehabilitation Claims

- The content of a rehabilitation claim and the number of voting rights (in the case a rehabilitation claim stated in the Statement of Approval or Disapproval has not been filed by the rehabilitation creditor, the content as stated therein) shall be determined if, in the investigation of rehabilitation claims, (i) the Rehabilitation Debtor approves them, and (ii) no objection is made by any Creditor of a filed Rehabilitation Claim during the period of investigation.

<sup>2</sup> However, this shall not apply if the Rehabilitation Debtor was not unable to pay its debts at the time when the Rehabilitation Debtor suspended payments.

(d) **Assessment Decision on Rehabilitation Claim**

- If, in the investigation of rehabilitation claims, (i) the Rehabilitation Debtor disapproves the content of a rehabilitation claim, or (ii) an objection has been made by any Creditor of a filed Rehabilitation Claim with regard to such content, the rehabilitation creditor who holds such disapproved/objected rehabilitation claim, in order to determine the content of the claim, may file a petition for assessment with the court within one month from the last day of the period of investigation.
- In its assessment decision, the court specifies the existence or nonexistence of the rehabilitation claim in question and the content thereof.

(e) **Action to Oppose Assessment Decision**

- Further, if a person disagrees with the assessment decision, he or she may file an action to oppose within one month after the day on which the person receives service of the assessment decision.

**3. Investigation of the Status of the Rehabilitation Debtor's Assets**

- After the commencement of RP, the Rehabilitation Debtor is required, without delay, to evaluate its assets on the date of commencement of RP. After completion of such evaluation, the Rehabilitation Debtor must then prepare a list of assets and a balance sheet on the date of commencement of RP and submit them to the court.
- Also, the Rehabilitation Debtor is required, without delay, to submit a written report to the court stating the following matters as set forth in Article 125 of the Civil Rehabilitation Law:
  - (i) The circumstances that have resulted in the commencement of RP;
  - (ii) The progress and the present status with respect to the Rehabilitation Debtor's business and assets;
  - (iii) Whether or not there are circumstances that require a temporary restraining order or assessment decision with respect to a claim for damages based on the liability of the Rehabilitation Debtor's director(s), auditor(s), etc.; and
  - (iv) Other necessary matters concerning RP.

**4. The Rehabilitation Plan**

**(1) Preparation of the Proposed Rehabilitation Plan by the Rehabilitation Debtor**

- Taking into consideration the progress in evaluating the Rehabilitation Debtor's assets and investigating the rehabilitation claims, the Rehabilitation Debtor prepares a proposed rehabilitation plan and submits it to the court within a certain period designated by the court<sup>3</sup>.
- In the rehabilitation plan, a modification of the rehabilitation claims and/or capital reduction, etc., is specified. The modification of the rehabilitation claims includes a reduction and exemption of the Rehabilitation Debtor's debts, and/or extension of the terms for debts, etc.
- The proposed rehabilitation plan is sent to all rehabilitation creditors prior to the creditors meeting.

**(2) Preparation of the Written Opinion by the Supervisor**

- For the rehabilitation creditors' decision-making at the creditors meeting, the supervisor prepares a written opinion, and submits it to the court about one week after the proposed rehabilitation plan is submitted.
- Such written opinion states the following:
  - (i) The grounds leading to the commencement of RP and a summary of changes in management;
  - (ii) The assets on the day of commencement of RP;
  - (iii) The accuracy of the accounting records;
  - (iv) Whether or not illegal acts existed prior to the filing of the petition (including an act subject to avoidance);
  - (v) Whether or not directors, auditors, etc., are liable for damages of the Rehabilitation Debtor

---

<sup>3</sup> A rehabilitation creditor also may prepare a proposed rehabilitation plan and provide it to the court.

company;

(vi) Whether or not illegal acts existed subsequent to the filing of the petition; and

(vii) An examination of the proposed rehabilitation plan.

- This written opinion is sent to all rehabilitation creditors before the creditors meeting together with the proposed rehabilitation plan.

### (3) Approval or Disapproval of the Proposed Rehabilitation Plan at the Creditors Meeting

- After the supervisor submits its written opinion, the court (i) makes an order to refer the proposed rehabilitation plan to a resolution at the creditors meeting, except in the cases that the proposed rehabilitation plan is unlikely to be executed, etc., and (ii) designates the date of the creditors meeting.
- In order to approve a proposed rehabilitation plan, both of the following consents are required:
  - consent of the majority of voting right holders attending the creditors meeting, and
  - consent of persons who hold voting rights that account for not less than half of the total number of voting rights.
- Rehabilitation creditors have voting rights in proportion to the amounts of rehabilitation claims in accordance with the classifications in the following chart.

|     | <b>Classification of Claims</b>   | <b>Amount of Voting Rights</b>  |
|-----|---|---|
| (A) | Claim with a fixed due date that becomes due subsequent to the commencement of RP and that bears no interest.       | Amount after deducting, from the amount of the claim, the amount of legal interest (5% or 6%) accruing on the claim during the period of the number of years (if such period includes a fraction less than one year, such fraction is ignored) from the date of commencement of RP to the due date.                 |
| (B) | Claim for periodic payments, the amount and duration of which are fixed.  | The total amount calculated with respect to the respective periodic payments in accordance with item (A) above (in case where such total exceeds the amount of principal, which would accrue interest equivalent to the periodic payments when calculating at a statutory interest rate, such amount of principal). |
| (C) | (a) Claim with an uncertain due date, that becomes due subsequent to commencement of RP and that bears no interest. | The amount of the claim estimated as of the time of commencement of RP.   |
|     | (b) Claim for periodic payments, the amount and duration of which are not fixed.                                    |   |
|     | (c) Claim not intended for payment of money.  |   |
|     | (d) Monetary claim the amount of which is not fixed or the amount of which is fixed in a foreign currency.          |   |
|     | (e) Claim with condition.   |   |
|     | (f) Claim that may arise in the future and be enforced against the Rehabilitation Debtor.                           |   |
| (D) | Claims other than those described in items (A) through (C) above.   | The claim amount.   |

- Please note that a creditor who has a security interest, *i.e.*, (i) special statutory lien (“tokubetsu-no-sakidori-tokken”), (ii) pledge (“shichi-ken”), (iii) mortgage (“teito-ken”) or (iv) a right of retention under the provisions of the Commercial Code or the Companies Act (“shoji-ryuchi-ken”) may exercise its security interest without limitation by RP. In RP, secured creditors have voting rights only with respect to the

amount of their unsecured rehabilitation claims.

- If the proposed rehabilitation plan is disapproved at the creditors meeting, the court, by its own authority, makes an order of (i) discontinuance of the RP and (ii) commencement of bankruptcy proceedings.
- As shown in item (C) of the above chart, foreign currency converts into Japanese Yen at an exchange rate, calculated as of the time of commencement of RP for calculation of the voting rights based on the amount(s) of the claim(s).

#### **(4) Order of Confirmation of the Rehabilitation Plan by the Court**

- After the proposed rehabilitation plan is approved at the creditors meeting, the court, usually on the same day as the creditors meeting, makes an order of confirmation of the rehabilitation plan except if any of the following applies:
  - (i) RP or the rehabilitation plan contravenes a provision of law and such defect cannot be corrected; provided, however, that this shall not apply where RP contravenes a provision of law but such contravention is a minor one;
  - (ii) The rehabilitation plan is unlikely to be executed;
  - (iii) The rehabilitation plan has been approved by unlawful means; or
  - (iv) The approval of the rehabilitation plan is contrary to the common interest of the rehabilitation creditors.

#### **(5) Discharge of Rehabilitation Claims and Modification of Rehabilitation Claims**

- The rehabilitation plan becomes effective when the order of confirmation becomes final and binding.
- If the order of confirmation of the rehabilitation plan becomes final and binding, the Rehabilitation Debtor is discharged from its liabilities for all rehabilitation claims except for the liabilities pursuant to the provisions of the rehabilitation plan or the provisions of the Civil Rehabilitation Act.
- Also, the rehabilitation claims provided in the rehabilitation plan are modified as provided for in the rehabilitation plan.

### **5. Procedures after Confirmation of the Rehabilitation Plan**

#### **(1) Execution of the Rehabilitation Plan**

- When the order of confirmation of the rehabilitation plan becomes final and binding, the Rehabilitation Debtor should promptly execute the rehabilitation plan.
- Where a supervisor has been appointed, RP continues for three (3) years from the date on which the order of confirmation of the rehabilitation plan becomes final and binding, unless rehabilitation is executed within such period.

#### **(2) Termination of RP**

- Where a supervisor is appointed, the court makes an order of termination of RP when the rehabilitation plan has been executed or three (3) years have elapsed since the order of confirmation of the rehabilitation plan became final and binding.

### III. Standard Schedule for RP of the Tokyo District Court

- The following chart is the standard schedule for RP of the Tokyo District Court when a petition for commencement of RP by the Rehabilitation Debtor is filed.

| Proceeding  | The number of days from the date of filing the petition |
|---|---|
| <b>Filing of the petition and prepaying the expenses for RP.</b>  | 0   |
| Appointment of the supervisor and issuance of temporary restraining order.  | 0   |
| (Briefing session for rehabilitation creditors held by the Rehabilitation Debtor.)  | (0 to 6 days)   |
| <b>First discussion meeting.</b>  | 1 week  |
| Commencement order of RP.   | 1 week  |
| Due date for rehabilitation creditors to file rehabilitation claims.  | 1 month plus 1 week                                     |
| Due date for the Rehabilitation Debtor to submit the list of assets and balance sheet, and the report based on Article 125 of the Civil Rehabilitation Law. | 2 months  |
| Due date for the Rehabilitation Debtor to provide the rehabilitation plan (draft).  | 2 months  |
| <b>Second discussion meeting.</b>   | 2 months  |
| Due date for the Rehabilitation Debtor to submit the Statement of Approval or Disapproval.  | 2 months plus 1 week                                    |
| Ordinary Period for Investigation.  | 10 to 11 weeks  |
| Due date for the Rehabilitation Debtor to submit the rehabilitation plan.   | 3 months  |
| <b>Third discussion meeting.</b>  | 3 months  |
| Due date for submitting the written opinion of the supervisor.  | 3 months plus 1 week                                    |
| Decision to convene the creditors meeting.  | 3 months plus 1 week                                    |
| Period for voting by written consent.   | 8 days prior to the creditors meeting                   |
| <b>Creditors meeting/ Issuance of order of confirmation or disconfirmation of rehabilitation plan.</b>  | 5 months  |