



ASIA-PACIFIC
RESTRUCTURING REVIEW
2022

Asia-Pacific Restructuring Review 2022

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Preface

Welcome to *The Asia-Pacific Restructuring Review 2022*, one of Global Restructuring Review's special, yearbook-style reports. GRR, for the uninitiated, is the online home for professionals who specialise in high-stakes, international restructuring and insolvency, telling them all they need to know about everything that matters.

Throughout the year, GRR delivers pitch-perfect daily news, surveys and features; organises the liveliest events ('GRR Live') – covid-19 allowing; and provides our readers with innovative tools and know-how products.

In addition, assisted by external contributors, we curate a series of regional reviews – online and in print – that go deeper into local developments than the exigencies of journalism allow. *The Asia-Pacific Restructuring Review*, which you are reading, is part of that series.

This edition contains insight and thought leadership from 19 pre-eminent figures in the region.

Across seven chapters and 110 pages, they provide an invaluable retrospective on the year just gone. All contributors are vetted for their standing and knowledge before being invited to take part. Together, they capture and interpret the most substantial developments, complete with footnotes, relevant charts and statistics.

This edition covers China, Hong Kong, India, Japan, Malaysia, Singapore and South Korea.

As always with these annual reviews, a close read yields many gems. With covid, that is doubly true; this book has never been so helpful. Among the nuggets mentally filed away by this reader:

- China's highest court has clarified that arbitration clauses remain valid post-bankruptcy;
- it has been a year of innovation in Hong Kong's courts (see page 17 onwards for an analysis of the biggest rulings);

- India's new insolvency regime is viewed as a pretty huge success, despite a few teething problems;
- Japan's government cannot impose lockdowns on the public – even during a state of emergency;
- proposed reforms in Malaysia 'do not go far enough' to quote our authors; and
- South Korea has three established ways of restructuring businesses and the key differences between them are adumbrated in two helpful charts.

Plus much, much more. We hope you enjoy the review. If you have any suggestions for future editions, or want to take part in this annual project, my colleagues and I would love to hear from you. Please write to insight@globalrestructuringreview.com. My thanks to all of our authors and to GRR editorial board member Look Chan Ho, review editor, for steering us so well.

David Samuels
Publisher
August 2021

Measures Relating to Business Turnaround During and Post-Covid-19 in Japan

Hajime Ueno, Masaru Shibahara and Hiroki Nakamura
Nishimura & Asahi

IN SUMMARY

This article introduces and summarises the current economic circumstances during the covid-19 pandemic in Japan, explains measures relating to business turnaround and provides a brief outlook on anticipated post-covid-19 business restructuring.

DISCUSSION POINTS

- Overview of the current situation in Japan (2020 to 2021)
- Measures relating to business turnaround during the pandemic
- Outlook on restructuring and insolvency proceedings after the pandemic

REFERENCED IN THIS ARTICLE

- Emergency financing
- Equity-cushion subordinated loan
- Subsidies for employment adjustment, rent, business sustainment and business restructuring
- Postponement of payment of taxes and social security premiums
- SME revitalisation support councils
- Turnaround ADR

Overview of the state of the Japanese economy

It is still uncertain when the covid-19 pandemic will come to an end, and the true depth of the pandemic's impact on the global economy remains to be seen. In Japan, although vaccinations are rapidly being made available to citizens, it is still uncertain whether the supply will be sufficient to inoculate all those who elect to be vaccinated. The large numbers of people flying into and commuting within Japan for the Tokyo Olympic Games has further contributed to this uncertainty surrounding the outlook for the covid-19 situation in Japan and its impact on the Japanese economy and nation as a whole.

Pandemic response

The covid-19 pandemic first arose in Japan when the mass infection of passengers aboard a cruise ship, which had docked in Japan after cruising around the world, came to light. Since then, the national and municipal governments in Japan, like those in other nations and jurisdictions around the world, have been in constant battle against the nano-sized 'monster' responsible for the pandemic.

The Japanese government has been actively promoting measures to aid and support ailing businesses since the start of the pandemic. A primary conundrum for the government, as in other nations, has been and continues to be how to strike a proper balance between the health and safety of citizens and the continuation of economic and commercial activities; each of those priorities calls for measures to prevent the spread of infection, but the balance of those measures shifts depending on the priority placed on those vital factors.

One characteristic feature of Japan's battle against the covid-19 pandemic, which differs in comparison with other nations, is that Japan does not have the legal infrastructure required to mandate or forcibly implement lockdowns, curfews, stay-at-home orders or other measures to suspend economic activities – even when a state of emergency has been declared by the national government. Only a few exceptions exist, which permit the shutdown of certain commercial complexes and commercial establishments that refuse to comply with government requests.

Nonetheless, potentially owing to Japanese citizens' diligent compliance with government requests, their willingness to and familiarity with wearing masks, and their habit of washing hands often and thoroughly with soap and using alcohol-based sanitisers for self-protection, Japan has been one of the more fortunate nations, where the pandemic has been less severe in terms of the fatality-population ratio and other medical statistics.

Impact on industries

That said, the pandemic's effect on Japan has been far from positive. The compliance of Japanese citizens – both individual and corporate – with government requests has slowed down, and the pandemic has had a massive negative impact on the nation's economic activities, stemming from individuals and enterprises having refrained from non-urgent and unnecessary transport, travel and gatherings, which has halted or slowed down economic and commercial activities. While the true extent of the impact is still unclear, it is obvious that many industries have been severely affected.

Those that have evidently been negatively impacted by the pandemic include the food service and hotel industries, airlines and transportation, automotive and other mobility companies, manufacturers of automotive parts and non-essential products, theatres and movie complexes, clothing and other apparel, and various retail shops and franchises. Generally, the smaller the enterprise, the more susceptible it has been to the impact of the pandemic.

For example, according to Teikoku Databank, as at 2 July 2021, of 1,710 covid-19-related bankruptcy filings, only 0.3 per cent were large-scale bankruptcies involving debts of 10 billion yen or more. The top three industries in which those bankruptcies occurred were restaurants, construction, and hotels and accommodation.

Olympic Games

Contributing to the negative effect of the pandemic is the situation regarding the Tokyo Olympic Games. Although the government initially hoped that the Olympic Games would have a strong, positive economic effect on various facets of the Japanese economy, the prevailing mood at the beginning of the Games was that it will not have as large an economic impact on the economy as expected, contrary to the government's original expectations. This is because the government declared a fourth state of emergency for the Tokyo metropolitan area on 12 July 2021.

It certainly did not help that the government, at both the national and municipal levels, decided not to allow spectators to attend Olympic events. There were also reports of more than 10,000 Olympic volunteer staff members who had quit or withdrawn over covid-19 concerns, and as at the beginning of the Games sales of Olympic goods were less than one-third of what was originally expected. The hotel, restaurant, tourism and aviation industries, which were expected to benefit from the Olympic Games, have not reaped nearly as many of the anticipated benefits from economic and commercial activities surrounding the Games.

Insolvency and restructurings

With regard to insolvency – including bankruptcies – and restructurings, contrary to initial expectations, especially those formed during the first three to six months of the World Health Organization’s pandemic declaration, Japan has not seen a rapid spike in the number of insolvency and restructuring cases; rather, there has been a decrease in the number of insolvencies and restructurings.

According to Tokyo Shoko Research, 2020 had the fourth-lowest level of recorded bankruptcies for any year in the 50-year period since 1971. This is believed to be, at least in part, because of government efforts to actively promote measures to aid and support ailing businesses since the start of the pandemic. It is at least fair to say that those measures have been somewhat successful in allowing enterprises to avoid immediate bankruptcy or insolvency, and that they have prolonged the lives of impacted enterprises. This is especially notable considering that, in Japan, by contrast with other foreign countries and jurisdictions where courts were shut down for extended periods, the bankruptcy courts in Japan did not close for any significant period.

However, the existing measures mostly comprise emergency loans and guarantees, as well as extensions on taxes and other public payments, with only small amounts of grants and subsidies; hence, it is expected that an increasing number of enterprises are or will be carrying more debts than they can repay, and that those businesses are, or soon will be, facing financial difficulties, despite the little breathing room the government measures have provided. In other words, there is no guarantee that those well-intended measures will be enough to allow troubled enterprises to sustain their business endeavours or maintain manageable debt service levels. If this proves to be true, more likely than not, banks and other financial institutions will accelerate their disposition of non-performing loans, especially once the economy returns to a more normal state.

Measures relating to business turnarounds during the pandemic

Emergency financing

To assist business operators affected by the covid-19 pandemic, the national government has implemented several emergency financing programmes. Of those financing measures, provisions of credit, in the form of both loans and guarantees, are intended to be fine-tuned depending on the size of the affected enterprises –specifically, both loan programmes provided by government-affiliated financial institutions and guarantee programmes provided by public credit guarantee associations, which guarantee loans extended to affected enterprises by private financial institutions, classify the

amount of available credit by the size of the affected enterprise, as determined by the number of employees and the amount of registered capital, as well as the degree of impact suffered, as determined by the rate of decreased sales.

The available types of emergency loans include de facto interest-free loans (de facto in that the interest payments will be covered by support granted by public institutions), significantly low-interest loans, subsidies for guarantee fees, deferment periods before principal repayments, long-term loan periods and lump-sum repayment options. Clearly, the main targets of those emergency loan programmes are small and medium-sized enterprises (SMEs), which have weaker financial and credit conditions than large companies. According to publicly available information, from April 2020 to March 2021, the credit guarantee performance for SMEs in Japan increased by 20 trillion yen, and as at March 2021 the amount of emergency response financing granted to SMEs in Japan by government-affiliated financial institutions was 15 trillion yen.

'Equity-cushion' subordinated loans and preferred stock

For larger enterprises, the Development Bank of Japan (DBJ), a government-affiliated financial institution, has been acting on behalf of the government as the designated financial institution to respond to emergency financing needs arising from the covid-19 pandemic. According to a press release dated 9 June 2021, the total amount of loans extended by DBJ to covid-19-affected recipients as at March 2021 was 2.2 trillion yen. Of those loans, 99 per cent were extended to large and medium-sized enterprises.

More significantly, in addition to emergency response loans (which rank as senior loans), equity-cushion subordinated loans are also being provided by DBJ on a wider-than-usual basis in the wake of the pandemic. Equity-cushion subordinated loans are a type of mezzanine financing with an intermediate debt and equity nature. They have the advantage of improving the affected enterprises' financial stability through an improved capital structure without diluting shareholdings and advancing their capital adequacy ratios as, if correctly structured, rating agencies will count subordinated loans as equity when calculating capital adequacy.

The DBJ's loan periods for equity-cushion subordinated loans to battle financial difficulties arising from the pandemic are more than five years, with interest rates starting at 1 per cent for the initial three years, under the interest replenishment programme, and rising to 3 per cent thereafter (but remaining at 1 per cent for medium-sized companies in deficit).

Furthermore, the DBJ has been utilising a particular fund sourced by the government and specifically provided to the DBJ in accordance with a financial framework called the Novel Corona Revival Growth Foundation Enhancement Fund. The fund

was established to let the DBJ support the rapid and steady recovery and growth of enterprises that are developing new businesses and collaborating with businesses in other industries, but that are being affected by the pandemic. With the fund, the DBJ has been subscribing preferred stock issued by affected enterprises, rather than merely extending credit through debt instruments.

In March 2021, the DBJ also set up a fund to underwrite preferred stock specifically aimed at providing capital to the food and beverage industries, mainly to restaurants but also to hotels and other accommodation, in response to a request from the government. As a general rule, the fund's preferred stock is set up as redeemable, non-voting preferred stock, with a preferred dividend ratio of 4 per cent and an investment period of one year (extendable for up to two years).

The use of proceeds received through those emergency loans and preferred stock offerings is limited to funds required for the recipient enterprises to battle the impacts of the pandemic; naturally, the funds cannot be used to repay existing loans or to pay for the costs of lay-offs or worker furlough. With regard to mezzanine financing, the key point is whether a business plan can be drawn up in a way that includes a restructuring plan that explains the outlook for repayment, such as whether an accounting surplus is available for dividends on preferred stock when it reaches the redemption due date or whether the financial position of subordinated loans is such that they can be refinanced through regular loans.

Subsidies

The government has implemented various subsidy programmes to support SMEs that have been significantly affected by the pandemic. For example:

- subsidies made available to SMEs affected by the government's quarantine measures, such as state of emergency declarations, as well as initiative programmes incentivising the development of new industries or business models, business transformations, or business and industry conversions;
- subsidies to support new challenges that SMEs face in their business restructuring efforts; and
- subsidies to support capital investments in SMEs' efforts to combat manufacturing challenges, disruptions in supply chains, business-sustaining challenges that call for widening of sales channels and challenges involving reinforcement and strengthening of IT to permit remote working and other digital transformations.

There were also grants aimed at providing affected SMEs with assistance with rent payments; however, the application periods for those grants have closed.

Subsidies made available to larger corporations also include employment adjustment grants. In Japan, a provision in the Labour Standards Act requires employers to pay workers leave allowances equivalent to at least 60 per cent of their average wages if the workers are absent from work based on 'reasons attributable to the employer'. The employment adjustment grants are intended to assist enterprises with payment of this leave allowance to their employees and other eligible workers.

In particular, in respect of companies affected by the pandemic, a system has been implemented to provide full compensation to companies that retain their employees as opposed to engaging in lay-offs and terminations. According to publicly available information, as at 8 July 2021, 3.9 million grant decisions have been made in connection with this programme, and the aggregate amount of grants made through the programme has reached 3.8 trillion yen.

There is some delay between the application for these subsidies and the time the payments are actually provided; as a practical matter, this means impacted enterprises must come up with other sources of available cash to sustain their businesses while waiting on disbursement of the subsidies.

Postponement of taxes and social security premiums

The government has established a grace period system that allows companies, regardless of size, to delay and postpone taxes and social security premiums. First, in light of the fact that the revenues of many businesses decreased dramatically owing to government measures aimed at preventing the spread of the pandemic (eg, the government's requests for people to stay at home) and for the closure of certain commercial complexes and establishments (eg, restaurants and theatres), a special exemption has been established that permits business operators that have seen a substantial decrease in revenue to suspend tax payments for one year without being required to provide collateral or pay penalties, such as those assessed on delinquent taxes.

As at the time of writing, those special exemptions have been terminated, but the government continues to engage in flexible handling of enterprises experiencing significant losses owing to decreased profits, etc; for example, in principle, if an enterprise cannot make a lump sum payment for taxes or social security premiums, the business can postpone the relevant payments by an amount up to the amount of the losses suffered, with a reduced or waived delinquency tax, for one year (or for two years, depending on the circumstances).

In other words, as a general rule, the grace period for taxes and public payments is only up to a single year, and enterprises that made use of the grace period system in 2020 may not be granted any further deferments; however, in practice, long-term

instalment payments on deferred payments are permitted, and it appears that the system has been designed so that insolvency of those enterprises can be avoided to the extent possible.

Considering that it is always difficult to waive or reduce taxes and other public duties – even through the use of in-court insolvency procedures – when an enterprise aims or purports to restructure its business operations, finances or capital structure via restructuring efforts, it remains true that the payment of taxes and other public duties will have to be factored into restructuring plans.

Outlook: once the dust settles?

One interesting aspect of the pandemic's impact on economies worldwide is that the financial markets, and equity markets in particular, have not stagnated. Rather, with most – if not all – central governments taking proactive measures to support their economies, and central banks lowering interest rates to allow more funds to flow through to the economy, stock exchanges and private equity markets are booming in many countries.

This can also be said of the Japanese market. With investors pouring more funds into the market, money has currently become more available to many enterprises, regardless of their fundamental situation. As a result, concerns have been raised that the number of 'zombie' companies is increasing, on top of the already high number of zombie companies that resulted from the prolonged, extremely low-interest rate market and deflation that existed in Japan for more than two decades prior to the onset of the covid-19 pandemic.

It is expected and desired that government-affiliated financial institutions, private financial institutions and private equity funds will play a significant role in supporting business operators' financial situation and that enterprises in Japan will experience business transformations and other developments, while simultaneously providing a much-needed boost to industry.

The pandemic has caused immense changes to people's way of life; however, it is also possible that it merely accelerated some much-needed changes, which enterprises could not push themselves to undertake before facing this unprecedented level of difficulty.

We are already starting to see large and medium-sized enterprises responding to these long-awaited changes through withdrawing from unprofitable businesses, returning their focuses to core businesses via selection and concentration, and funding these efforts through the use of preferred stock and subordinated loans from DBJ. Financing to companies in industries affected by the pandemic, such as the ANA

Group (aviation), the Kintetsu Group (public transport and travel), the Marui Group (department stores), the Royal Group (restaurants and food chains) and the Watami Group (restaurants and food chains), has been catching the eye of market participants; these companies have been able to avoid in-court insolvency or restructuring procedures through tapping early-stage out-of-court workouts.

The enterprises struggling most in the face of the pandemic are SMEs. According to 2016 statistics, 3.57 million SMEs were operating in Japan – a number higher than most other countries in the world. When looking at SMEs that have received funding support for the pandemic, given that the grace periods for taxes and social security premiums that began being offered in 2020 have lapsed as a general rule, SMEs for which funding is tight will need to begin workouts in the not-too-distant future, owing to the need to resume payment of taxes and public duties.

However, difficulties associated with making those payments continue to arise because the business base is still being affected by the pandemic; the sales, cash and revenue flows of SMEs have fallen, and it will continue to be difficult for those enterprises to come up with the funds required to restructure and to establish the workout plan required to come up with the funds to finance restructuring. It may be necessary to adopt more drastic revitalisation measures – as opposed to earlier stage workouts – to assist enterprises that cannot gain access to extended grace periods, other rescheduling or other sources of financing before the economy returns to its normal state. The measures may include severe options, such as liquidation of the corporation, transfer of a company's business to a sponsor, the offloading of any remaining debt and the closure of businesses. It could well be that the use of rule-based workout initiatives will be a 'last ditch' effort to avoid the final option of liquidation.

In Japan, the low-interest rate environment and the prevalence of deflation markets resulted in the adoption of a number of rule-based workout initiatives. Among them are two rule-based out-of-court workout initiatives that are often used by SMEs: the turnaround programmes for SME revitalisation support councils and turnaround alternative dispute resolution (ADR). These workouts are designed to be easy to use and provide a moratorium (or stay), and both call for financial institutions to sit at the bargaining table (and government agencies have been asking that financial institutions do so). From the perspective of financial institutions, in addition to the predictability of those procedures, they are easier to accept because they contain explicit statutory grounds for non-taxed write-offs being permitted when financial debts are waived through those procedures.

Turnaround programmes for SME revitalisation support councils

SME enterprise revitalisation support councils are fair and neutral public institutions that have been established in each prefecture under the Industrial Competitiveness Enhancement Act for the purposes of supporting efforts to regenerate SMEs. Through the councils, experts (lawyers, certified public accountants, tax accountants, SME consultants, financial institution alumni, etc) with knowledge and experience in corporate revitalisation provide support to individual companies, from consultation and advice on revitalisation to the formulation of revitalisation plans – all tailored to match the characteristics of each SME. Since the councils' workout programmes are sponsored by the councils, which are public institutions for SMEs, the procedural costs are lower than the costs for turnaround ADR.

In May 2020, the councils launched new support proceedings (covid-19 special rescheduling programmes) for SMEs whose sales have decreased by 5 per cent or more compared with the previous year or two. The councils collectively request the deferral of principal repayments to financial creditors on behalf of the debtor, assist the debtor with drafting a special one-year restructuring plan, encourage consensus-building among financial creditors to consent to the plans and help the debtor obtain new loans from banks, if necessary. After the plan is approved, the councils continue to check in with the debtor enterprise and advise on its cash flow.

In addition, if an SME meets the following four requirements, a revitalisation support scheme will be adopted to support the drafting of a concrete and achievable revitalisation plan that clearly states the details of the financial assistance request (rescheduling, additional loans, debt waivers, etc):

- the SME is in a difficult management situation, mainly owing to excessive debt, and it would be difficult for the SME to regenerate its profits on its own;
- the business that is subject to revitalisation has business value, such as profitability and future potential, and there is a possibility of revitalisation with the support of the relevant parties;
- there is a risk that the debtor's creditworthiness will be negatively affected by applying for in-court proceedings, and its business value may be severely damaged thereby, which may hamper revitalisation; and
- the plan is economically reasonable for creditors, for example, owing to the prospect of recovering more than could be recovered through in-court procedures.

The contents of the proposed revitalisation plan must:

- resolve substantial excess debt within five years of the date of the start of the first new business year after establishment of the plan, and

- if ordinary income is in the red, ensure ordinary income will be converted into a surplus within approximately three years of the date of the start of the first new business year after establishment of the plan.

However, if an emergency loan is provided before the introduction of the revitalisation support plan, adjustment of the interest on existing loans and emergency loans will not be easy to calculate, and there have been discussions relating to whether, in the case of an unsecured emergency loan, a creditor will be able to receive certain priority payment in an out-of-court workout or an in-court procedure if the workout fails; by contrast, emergency loans received during turnaround ADR are protected even in the event of a transition to in-court procedures.

Turnaround ADR

Turnaround ADR is another popular rule-based out-of-court workout procedure in which third-party experts coordinate communications between creditors, such as financial institutions, and debtors for purposes of supporting debtor companies' earlier stage business revitalisation.

The Japanese Association of Turnaround Professionals, as a specific certified dispute resolution business operator, is responsible for conducting the ADR procedures. There is no limit on the size or industry of debtor companies that can apply for the use of turnaround ADR. The system can be used by SMEs and larger companies, and as it does not involve any court oversight or supervision, no cramdown is available, either in class or cross-class, and unanimous consent of the relevant creditors is required.

From the pre-consultation stage, a debtor contemplating use of the procedure is called upon to conduct its own due diligence and develop an outline of its business revitalisation plan. The debtor's efforts are surveyed and overseen by a third-party expert, who is also scheduled to be retained by the Association to serve as the over-seeing expert.

If the proposed plan has a possibility of being approved, an official application will then be made, a suspension notice will be sent to target creditors, mainly financial institutions, and a creditors' meeting will be convened to appoint the third-party expert as a procedural implementer who will explain an outline of the debtor's proposed business revitalisation plan to the creditors.

If any creditors disagree with the plan, it is assumed that special conciliation, as described below, will be used or a transition to in-court insolvency procedures will occur. In the case of a transition to in-court procedures, to allow smooth transit (which,

in turn, incentivises relevant parties to do as much as possible within the ADR procedure), the following support measures, which respect the results and actions taken during the course of the turnaround ADR, have been institutionalised and codified:

- facilitation of priority payment of commercial claims in in-court procedures;
- facilitation of priority payment of bridging loans (pre-DIP finance); and
- simplified procedures relating to the expedition of special conciliation procedures, etc.

The three concepts listed above have been introduced statutorily, rather than just in the Association rules, and under the amended Act on Strengthening Industrial Competitiveness, which came into effect in June 2021.

Further, a transition to simplified civil rehabilitation procedures will also be facilitated if more than three-fifths of the creditors whose total claims are covered agree to the plan, even if there are also opposing creditors.

Special conciliation

Special conciliation is a conciliation, the process for which is governed by the Act on Special Conciliation Proceedings for Expediting Arrangement of Specified Debts, that pertains to an adjustment or arrangement of debts to contribute to the economic rehabilitation of debtors who are likely to become unable to pay debts. It thereby aims to expedite the arrangement of interests pertaining to monetary debts of the debtors.

From April 2020, the Tokyo District Court has launched a programme to expedite a special conciliation process, within the court divisions that handle civil rehabilitation cases and corporate reorganisations, when only a certain creditor or set of creditors oppose a plan presented in a prior out-of-court workout. The target companies are those whose proceedings have converted from formal, rule-based out-of-court workouts or who already have held creditors meetings for their financial creditors and have had property assessment reports evaluated by certified public accountants or rehabilitation plans based on those assessments.

According to article 17 of the Civil Conciliation Act, if an agreement among the parties is unlikely to be reached, the court may issue a necessary order to resolve the case. The order has the same effect as a successful conciliation if no parties object within a certain period, and the court announces positive use of the order as necessary.

If out-of-court workouts using the rule-based procedures outlined above or special conciliation do not work (eg, owing to an inability to obtain the unanimous consent of the creditors) or if the transition from turnaround ADR to simplified civil rehabilitation

does not meet the relevant requirements, conventional civil rehabilitation procedures and corporate reorganisation procedures must be used to restructure a business, as those in-court restructuring processes are usually the only remaining choices.

Closing remarks

At the earlier stages of the covid-19 pandemic, people in Japan anticipated that the number of insolvencies, especially bankruptcies, would increase rapidly; however, the number of insolvencies and restructuring cases did not spike dramatically. For example, bankruptcies triggered by the pandemic have not reached neither the number arising from the global financial crisis stemming from the Lehman shock, nor those triggered by the Tōhoku earthquake and tsunami. This is owing to quantitative easing and the cooperation of financial institutions.

However, attempts at solutions have been provided only in the context of postponements and tentative rescheduling, which merely prolongs the life of struggling enterprises by delaying the problems rather than offering real resolutions; this causes a lot of groping in the dark, with no exit clearly visible.

In Japan, as in other parts of the world, the path to economic recovery will gradually become clearer as mass vaccination progresses. Moreover, there is probably no way around the fact that a clear divide will grow between enterprises that adapt to the new way of life, often referred to as the ‘new normal’, and those that are less successful in adapting to the new normal. For example, even in industries where overall sales recover to pre-pandemic levels, there will be enterprises that are unable to return to pre-pandemic sales levels owing to their failure to adapt to the changing times; on the other hand, there also will be enterprises that will have gained more momentum than they had pre-pandemic.

Some economists and market participants are calling this phenomenon a ‘K-shaped economic recovery’, where there will be a mix of companies that return to successful performance and those that do not return to pre-pandemic sales levels. Importantly, in terms of insolvencies and restructuring, as we move towards this anticipated K-shaped economic recovery, we anticipate a wave of accelerated restructuring, both in terms of operational restructuring and financial restructuring (to finance operational restructuring) as, more likely than not, there will be an abundance of enterprises that unfortunately will be left behind in adapting to the new normal.

In addition to responding to post-pandemic ways of life and changes in how our societies function, changes in the business environment, such as digital transformations and responses to sustainable development goals, will be constant and will continue to grow in importance. In that respect, we expect that insolvencies and restructuring will

place more importance on facilitation and acceleration of each enterprise's business metabolism, as well as that of the industries and the economy overall, as we move into an ever-and-faster-changing business and commercial landscape.



HAJIME UENO

Nishimura & Asahi

Hajime Ueno is a partner at Nishimura & Asahi. He has an integral role in our restructuring and insolvency practice group and is also instrumental in our corporate finance practice group, predominantly focusing on restructuring and insolvency matters and structured finance transactions, with emphasis on cross-border cases and transactions. He has been recognised and awarded as a distinguished practitioner both in the areas of restructuring and insolvency and corporate finance practice.

Among the notable restructuring cases, he was involved as a core member in the reorganisation of Japan Airlines; the financial and operational restructuring, as well as the subsequent reorganisation, of Tokyo Electric Power Company; the financial restructuring and sale of Sharp Co, Ltd; the global restructuring of Takata group; and various restructuring cases involving low-cost carrier airlines in Japan.

Having spent part of his childhood in the United States and graduated from Harvard Law School (2004), he is fluent in English.

**MASARU SHIBAHARA**

Nishimura & Asahi

Masaru Shibahara is a partner at Nishimura & Asahi. He has been involved in resolving corporate legal issues and disputes. In the area of corporate finance, he handles everything from corporate acquisitions (M&A) and debt collections to general banking and finance, representing both debtors and financiers.

He is currently dealing with covid-19-related cases and matters, specifically in the food and beverage industries, and rural transportation infrastructure that is severely damaged. He is also involved in cases and matters relating to debt and equity transactions.

He has been involved in various litigation matters ranging from commercial disputes, financial disputes and IP disputes to corporate disputes, including managerial disputes over corporate control. In business revitalisation cases, he has dealt with not only in-court liquidation (both civil rehabilitation and corporate reorganisation) but also out-of-court workouts.



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