Japan's New Corporate Reorganization Law

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I. Introduction

In recent years, legislators have introduced several changes to Japanese insolvency laws in order to address the financial difficulty facing many individuals and to facilitate the liquidation or restructuring of insolvent companies. Overall, the amendments to the Corporate Reorganization Law (*kaisya kosei ho*), which were enacted in December 2002 and came into effect in April 2003, are expected to facilitate the restructuring of large insolvent corporations.[1]This article examines corporate restructurings under Japanese insolvency proceedings by explaining and analyzing the amendments to the Corporate Reorganization Law.

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1. Since October 1996, the Ministry of Justice has discussed revising the entire insolvency regime, including the Corporate Reorganization Law. As a result, the Civil Rehabilitation Law (formerly the Composition Law (*wagi ho*)); the Rehabilitation Proceedings for Individual Debtors (*kojin minji saisei tetsuduki*), which was enacted as an amendment to the Civil Rehabilitation Law; and the Law on Recognition and Assistance of a Foreign Proceeding (*gaikoku tosan syonin enjo ho*), which is modeled on UNCITRAL's Model Law on Cross-Border Insolvency, have been enacted. As for the Law on Recognition and Assistance of a Foreign Proceeding, see Hideo Horikoshi, *Guide to Japanese Cross-Border Insolvency Law*, LAW & BUS. REV. AM. 725–739 (2003). The Bankruptcy Law was amended overall on May 25, 2004. This amendment to the Bankruptcy Law was issued on June 2, 2004 (Law No. 75 of 2004) and will become effective within one year from June 2, 2004.

Pursuant to the Industrial Revitalization Corporation Law, enacted in April 2, 2003 and effective April 10, 2003, the Industrial Revitalization Corporation of Japan (IRCJ) was created on April 16, 2003. The role of this public organization is to facilitate restructuring by purchasing bank's bad loans and coordinating creditors. The IRCJ decided to work on twenty-three companies until April 16, 2003. Debt purchase by the IRCJ will be terminated at the end of March 2005. *See* http://www.ircj.jp (last visited August 31, 2004).

Since the enactment of the Civil Rehabilitation Law, the number of corporations utilizing reorganization proceedings and foreign business enterprises, such as U.S. funds, to invest their debts, assets or shares have increased.

II. Corporate Reorganization Law

There are five insolvency proceedings in Japan: (1) bankruptcy (*hasan*) under the Bankruptcy Law (*hasan ho*); (2) special liquidation (*tokubetsu seisan*) under the Commercial Code (*shou ho*); (3) corporate reorganization (*kaisha kosei*) under the Corporate Reorganization Law (*kaisha kosei ho*); (4) civil rehabilitation (*minji saisei*) under the Civil Rehabilitation Law (*minji saisei ho*); and (5) corporate arrangement (*kaisha seiri*) under the Commercial Code. Bankruptcy and special liquidation are liquidation proceedings (*seisan gata tetsuduki*). Civil rehabilitation, corporate arrangement, and corporate reorganization are reorganization proceedings (*kosei gata tetsuduki*). The corporate reorganization proceeding, under the Corporate Reorganization Law, is intended to provide for the restructuring of an insolvent corporation (*kabushiki gaisya*) by formulating a reorganization plan. This plan involves all parties in interest, including secured creditors, unsecured creditors, and shareholders. Under a reorganization plan, various aspects of an insolvent corporation can be changed dramatically, including its directors and officers, business scale and strategy, and capital structure. Additionally, the claims and interests of creditors may be impaired.

The Corporate Reorganization Law, enacted in 1952, was greatly influenced by chapter 10 of the U.S. Bankruptcy Act of 1938 and has not been revised, except for the partial amendment in 1967 to curb filing abuses. Former corporate reorganization procedures, however, were so strictly regulated that it was difficult to reorganize an insolvent corporation promptly and flexibly under the Corporate Reorganization Law. The proceeding was also very costly.

Since the collapse of the so-called "bubble economy" in the early 1990s, the Japanese economy has been in a prolonged stagnation known as the "lost decade." As a result, many financially distressed corporations desire a chance at a "fresh start." The outdated reorganization proceeding, under the former Corporate Reorganization Law (former law), could not meet this demand. Thus, a complete revision of the Corporate Reorganization Law was undertaken in order to allow insolvent corporations to reorganize more promptly and smoothly. The amendments to the Corporate Reorganization Law (amended law) were enacted on December 6, 2002, and issued on December 13, 2002 (Law No. 154 of 2002). The amended law became effective April 1, 2003.[2]

III. Corporate Reorganization Law and Civil Rehabilitation Law

As noted above, corporate reorganization and civil rehabilitation are two different insolvency proceedings for reorganization. The Corporate Reorganization Law's purpose is to restructure large corporations, such as listed corporations, while the Civil Rehabilitation Law is designed to restructure small and medium-sized businesses.[3] Unlike the Civil Rehabilitation Law, the Corporate Reorganization Law, does not adopt the debtor in possession (DIP) system, in which a debtor continues to operate its business as a trustee for the

2. The Supreme Court of Japan enacted the Rule of the Corporate Reorganization in order to implement the amended law. The rule has been effective since April 1, 2003.

3. Even a natural person may use the civil rehabilitation in order to enjoy a fresh start, while only a corporation (*kabushiki gaisha*) may be eligible for the corporate reorganization.

creditors.[4] It is generally said that corporate reorganization proceedings are more effective than civil rehabilitation proceedings in cases where: (1) the scale of operations of the insolvent corporation is so large that it cannot proceed with its restructuring using the DIP system; and (2) the insolvent corporation needs to substantially restructure by merger, spin-off, or share exchange in the reorganization proceeding.[5]

The civil rehabilitation proceeding, however, has been utilized in many insolvency cases, including those for large corporations, since the Civil Rehabilitation Law was designed to restructure an insolvent company promptly and smoothly. Consequently, the number of corporations using the corporate reorganization proceeding is decreasing, as it is more expensive and time-consuming than the civil rehabilitation proceeding. This situation motivated the revision of the Corporate Reorganization Law.

IV. Executive Summary of the Amendments to the Corporate Reorganization Law

Amendments to the Corporate Reorganization Law are wide-ranging. Some important features are as follows:

A. Filing a Petition for a Corporate Reorganization Proceeding

- **Jurisdiction:** Tokyo District Court and the Osaka District Court always have concurrent jurisdiction over a corporate reorganization proceeding.
- **Disclosure:** The parties in interest, such as creditors, can inspect and copy relevant court documents of a corporate reorganization proceeding.
- **Comprehensive Prohibition Order:** An insolvent corporation may seek a Comprehensive Prohibition Order (*houkatsuteki kinshi meirei*). This Order prohibits all executions by creditors on its assets subsequent to filing the application initiating the proceeding but prior to the actual commencement of a corporate reorganization proceeding.[6]

4. In the United States, before the adoption of the Bankruptcy Code in 1978, there were two kinds of business reorganization procedures, Chapter 10 and Chapter 11 of the U.S. Bankruptcy Act. While Chapter 11 was designed to relieve small businesses, Chapter 10 contained a number of complex procedures. Among the most important requirements of Chapter 10 was the appointment of an independent trustee to reorganize the debtor company. *See* Elizabeth Warren & Jay Westbrook, The Law of Debtors and Creditors 163–65 (2d ed. 1991). Differences between corporate reorganization and civil rehabilitation are analogous to those between Chapter 10 and Chapter 11.

5. Under the DIP system in Japan, such as civil rehabilitation proceeding, current management members continue to operate businesses of the debtor companies. Generally speaking, however, in case of large companies where there are many creditors, including public held corporations, their lenders or other creditors have not permitted current management members of debtor companies declared insolvent to continue to operate their businesses. Since the total damages to society arising out of the insolvency are usually enormous and an excellent turnaround manager, who can satisfy the creditors' expectation, is anticipated, the creditors is likely to pursue responsibilities of the management. Thus, when the debtor company is a large company, a corporate reorganization proceeding that absolves the directors' authority to do businesses for the debtor corporation is more appropriate than DIP system.

6. In order to initiate a corporate reorganization proceeding, it is necessary to file a petition with the court. If the requirements to initiate the proceeding are satisfied, the court orders the initiation of the corporate reorganization proceeding. Creditors' actions against the debtor's estates are stayed when the proceeding is initiated. In other words, creditors can execute the debtor's assets subsequent to filing the application up to the actual commencement of a corporate reorganization proceeding (gap period). In contrast, creditors' actions

B. Commencement of a Corporate Reorganization Proceeding

- **Requirements to Commence a Corporate Reorganization Proceeding:** The requirements for commencement of a corporate reorganization proceeding are relaxed. A commencement order can be made if procedural requirements are satisfied.
- **Creditors' Committee:** Creditors can express their opinions concerning a proceeding through the operation of the Creditors' Committee, after the commencement of a corporate reorganization proceeding.
- **Sale of Business:** The amended law clearly stipulates that, when a reorganizing corporation gets approval from a court and other requirements are met, it can sell its businesses before creditors accept a proposed plan.

C. Resolution of a Proposed Reorganization Plan

- **Deadline to Submit a Proposed Reorganization Plan:** A proposed reorganization plan should be submitted within one year of the commencement of a corporate reorganization proceeding.
- **Voting by Ballot:** It is possible for parties in interest to vote by ballot on a proposed plan.
- **Majority Requirements:** Voting requirements for parties in interest to accept a proposed plan are relaxed.

D. Implementation of a Reorganization Plan

- **Term of Payment for a Reorganization Plan:** The maximum term of payment to creditors set by a reorganization plan is shortened from twenty years to fifteen years.
- **Closing of a Corporate Reorganization Proceeding:** The court shall close a corporate reorganization proceeding when more than two-thirds of the total amount of debts under a reorganization plan are paid, as long as the reorganizing corporation has not defaulted on its debt payments.
- **Term of Redemption of Corporate Debentures:** The restriction on the term of redemption of corporate debentures issued under a reorganization plan is abolished.

Discussion of the above provisions, together with other key provisions for corporate reorganization practice, is set forth below.

V. Overview of the Amendments to the Corporate Reorganization Law

A. Filing a Petition for a Corporate Reorganization Proceeding

1. *Jurisdiction*

Under the former law, the district courts of the principal office had exclusive jurisdiction over a proceeding.[7] As described above, corporate reorganization, however, is designed for

against the debtor's estates, are automatically stayed when the application is filed to the Bankruptcy Court under the U.S. Bankruptcy Code. 11 U.S.C. § 362 (West 2004). Therefore, it is usual for debtors to seek a prohibition order (*chushi meirei*) from the court to stop certain execution by a creditor on the debtor's assets during the gap period.

7. *Kaisya kosei ho* [Corporate Reorganization Law], Law No. 172 of 1952, art. 6 [hereinafter Former Law].

large corporations. As a result, consolidated or non-consolidated parent or subsidiary companies are frequently involved. It is convenient and beneficial for these parties in interest to have more freedom in choosing jurisdiction.

Therefore, under the amended law, the following courts have jurisdiction: (1) the district courts that have jurisdiction over the location of a principal place of business; (2) the district courts that have jurisdiction over the principal office; (3) the court presiding over a pending corporate reorganization proceeding of the parent company or the subsidiary company of a debtor; (4) the court presiding over a pending corporate reorganization proceeding of such consolidated parent company or consolidated subsidiary company of a debtor; and (5) the Tokyo District Court and the Osaka District Court.[8] The legitimacy for jurisdiction for the Tokyo District Court and the Osaka District Court is that these courts have vast experience and knowledge regarding various corporate reorganization cases, as well as skilled staff able to deal with large corporate reorganization proceedings.

2. *Disclosure*

Under the former law, whether parties in interest, such as creditors, could access information regarding a corporate reorganization proceeding was unclear. According to the amended law, they can inspect and copy relevant court documents of a corporate reorganization proceeding, enabling them to take proper action based on such information.[9]

3. *Comprehensive Prohibition Order*

A debtor may seek a prohibition order (*chushi meirei*) from the court. This order stops certain executions by a creditor on the debtor's assets prior to the commencement of a corporate reorganization proceeding. The former law had no provision for a Comprehensive Prohibition Order (*houkatsuteki kinshi meirei*), which can prohibit all executions by creditors on the debtor's assets subsequent to filing the petition initiating the proceeding but prior to the actual commencement of a corporate reorganization proceeding. Without the Comprehensive Prohibition Order, it was difficult for a debtor to suspend all executions and operate its business before the commencement of a corporate reorganization proceeding.

Therefore, the amended law, like the Civil Rehabilitation Law, allows competent courts to issue Comprehensive Prohibition Orders. Under the amended law, when requirements are satisfied, the court can issue the Comprehensive Prohibition Order prior to the commencement of a corporate reorganization proceeding.[10] It is necessary for a debtor to file an application with the court to obtain the order, in contrast to the automatic stay under the U.S. Bankruptcy Code, which is an injunction that automatically suspends all collection activities against the debtor the moment a bankruptcy petition is filed.

4. *Removing a Commercial Lien Prior to the Commencement of a Corporate Reorganization Proceeding*

Under the former law, prior to the commencement of a corporate reorganization proceeding, a debtor could not remove a commercial lien (*syoji ryuchiken*) on properties, enti-

8. *Kaisya kosei ho* [Corporate Reorganization Law], Law No. 154 of 2002, art. 5 [hereinafter Amended Law].

9. The parties in interest have rights to inspect and copy the documents submitted with the Court or issued by the Court with regard to the corporate reorganization proceeding. *Id.* art. 14. These rights, however, can be restricted when inspection and copying of the documents may damage the debtor's assets or reorganization significantly. *Id.* art. 15. Therefore, the confidential information of the debtor's businesses, like know-how, can be protected.

10. *Id.* art. 25.

tling a creditor to possess such properties, until the debtor made full payment to the creditor. After commencement of the proceeding, a debtor might remove such liens when the requirements were satisfied; however, even before the commencement of the proceeding, it was often necessary for a debtor to use the property, which was in the possession of a creditor, in order to continue to operate and reorganize its business.

Therefore, under the amended law, when the collateral is essential for a debtor to reorganize its business, a debtor may discharge a commercial lien against a creditor possessing it, even prior to the commencement of a corporate organization proceeding. To do so, a debtor must receive approval from a court and pay an amount equivalent to the value of the collateral.[11]

5. Finance Prior to the Commencement of a Corporate Reorganization Proceeding

After a debtor files a petition for a corporate reorganization proceeding, financial institutions sometimes finance a debtor, even prior to the commencement of a corporate reorganization proceeding. In this case, after commencement of a corporate reorganization proceeding, a financial institution is entitled to priority on the loan under the proceeding. If the court, however, dismissed the petition to commence a corporate reorganization proceeding by a debtor and declared the debtor bankrupt under the Bankruptcy Law, the former law was not clear as to whether or not the financial institution was entitled to a priority on the loan under the bankruptcy proceeding. It is necessary to protect such priority for a financial institution because such financing is often critical to the success of a corporate reorganization.

Therefore, the amended law clearly specifies that a financial institution making DIP financing, subsequent to filing a petition initiating the proceeding but prior to the actual commencement of a corporate reorganization proceeding, is granted a priority on the bankruptcy estate (*zaidan saiken*).[12] The priority gives the DIP lender a right to receive payment from the bankruptcy estate prior to general creditors under the Bankruptcy Law.[13]

B. Commencement of a Corporate Reorganization Proceeding

1. Requirements to Commence a Corporate Reorganization Proceeding

Under the former law, filing of the petition was dismissed when there was no probability of an insolvent corporation reorganizing.[14] However, it was difficult for a court to judge whether or not there was "a probability of reorganization" at the time of the petition since such a determination is a business judgment. These types of indecision caused substantial delays in a proceeding.

Therefore, the amended law relaxes the requirements to commence a corporate reorganization proceeding. Under the amended law, filing of petition can be dismissed only when there is clearly no probability that: (1) a proposed reorganization plan will be made or accepted by the resolution of creditors; or (2) a proposed reorganization plan to continue to operate a debtor's business will be approved by the court.[15] In essence, the amended law permits a court to commence proceedings when procedural requirements are satisfied.

11. *Id.* art. 29.
12. *Id.* art. 11(4).
13. *Hasan Ho* [Bankruptcy Law of Japan]. Law No. 71 of 1922, art. 49.
14. Former Law, *supra* note 7, art. 38.
15. Amended Law, *supra* note 8, art. 41.

2. *Appointing a Former Director as Trustee*

With regard to the qualifications of the trustee of a reorganizing corporation, under the former law, there were no specific restrictions.[16] Therefore, it was theoretically possible for a former director to be a trustee.[17] Under the former law, however, former directors were not practically appointed as trustees by the court since the corporate reorganization proceeding does not adopt the DIP system, unlike the Civil Rehabilitation Law or chapter 11 of the U.S. Bankruptcy Code. Still, to reorganize an insolvent corporation effectively, before the commencement of a proceeding, it is often useful to appoint as trustee a former director transferred from the supporting company to the debtor corporation.[18] Therefore, the amended law confirms that a former director may be appointed as a trustee by clearly specifying special disqualifications for trustees, as well as anticipating the court appointing a former director as trustee, if necessary.[19]

Some experts assert that the Corporate Reorganization Law should adopt the DIP system. The amended law, however, does not adopt the DIP system. The reasons stated for not adopting the DIP system are as follows: (1) shareholders are often changed by 100 percent capital reduction under a corporate reorganization proceeding; (2) a corporate reorganization is a proceeding for a large-sized corporation and, unlike smaller businesses, is not always dependent on its current directors or executives; and (3) creditors are generally opposed to DIP systems for a corporate reorganization proceeding, as corporate reorganization proceedings significantly impair their rights.[20]

3. *Creditors' Committee*

The former law had no provision for committees organized by parties in interest of a proceeding. The amended law allows for the Unsecured Creditors' Committee, Secured Creditors Committee, and Shareholders' Committee, each of which have some rights in a

16. Former Law, *supra* note 7, art. 94.

17. Under the Commercial Law in Japan, a board of directors has the authority to make business decisions of a corporation, while a representative director has absolute power to execute these business decisions. Under the Corporate Reorganization Law, a trustee shall be legally independent from the debtor company. In addition, the directors' authority to conduct the business of the debtor corporation is lost. The directors, however, can be appointed as trustees since they are deemed legally independent from the debtor corporation.

18. Under the Corporate Reorganization Law, directors' authority to do the businesses of the debtor corporation is lost and the trustee has the responsibility of continuing the businesses of the debtor corporation as its representative. Thus, in order to succeed in reorganization, it is important for the trustee to be well acquainted with the businesses of the debtor corporation and to search for companies that will support to the debtor corporation. It is general practice in Japan that two trustees are appointed by the court during a corporate reorganization proceeding. One is an attorney in charge of legal matters, while the other is a business expert in charge of business matters. In order to succeed in reorganizing the debtor corporation, the court often appoints an executive of the sponsor company supporting the debtor corporation as trustee in charge of business matters. Therefore, before the commencement of a proceeding, it is often useful to appoint a former director who has been transferred to the sponsor company supporting to the insolvent corporation. He or she is well acquainted with the businesses of the debtor corporation and can communicate with the sponsor company. Of course, in this case, the court shall consider whether this appointment is fair and beneficial to all creditors.

19. Amended Law, *supra* note 8, art. 67.

20. Unlike the civil rehabilitation proceeding, under the corporate reorganization proceeding, creditors' rights, including execution by secured creditors to debtor's assets, are restricted. Basically, the secured creditors can be paid only in the course of performance of the reorganization plan. *Id.* arts. 47, 50.

proceeding.[21] As a result, after the commencement of a corporate reorganizing proceeding, parties in interest, including creditors and shareholders, are able to express their opinions concerning a proceeding through these committees.

4. *Assessment of Assets of a Reorganizing Corporation Based on Actual Value*

According to the former law, assets of a reorganizing corporation were valued by a trustee based on a going concern value at the time of commencement of the corporate reorganization proceeding.[22] It was often difficult, however, to determine a going concern value. Thus, disputes about the valuation occurred, which delayed the proceeding. Under the amended law, valuation is based on the clearer standard of the market value of assets at the time of commencement of the corporate reorganization proceeding.[23]

5. *Examination of Claims under a Corporate Reorganization Proceeding*

Under the former law, creditors, who filed proofs of claim, and a trustee attended a meeting to examine proofs of claim.[24] In this examination, the creditors or the trustee might state an objection to any proof of claim. When a dispute concerning a proof of claim was not settled at the meeting, a creditor, who filed the proof of claim, had to file a lawsuit in order to determine an existence and amount of the claim (*saiken kakutei sosyo*). It was difficult, however, for creditors to attend the meeting. Furthermore, because litigation in Japan is generally quite time-consuming, a lawsuit was not an appropriate means to settle promptly a proof of claim dispute, especially when the argument concerned an amount of collateral.

Under the amended law, a trustee prepares a document stating whether each proof of claim is approved or disapproved (*ninipi syo*).[25] Creditors may object in writing to the trustee's statement. Therefore, it is not necessary for creditors to attend the meeting. If a trustee does not approve their objections, the creditor, who submitted an objection, may file an application to evaluate claims with the court (*saiken satei no moshitate*).[26] In this procedure, the court will make a decision promptly. If the creditor is still not satisfied with this decision, it is permitted to file an appeal with the court.[27]

6. *Sale of Business*

Under the former law, the ability of a reorganizing corporation to sell its business (*eigyo joto*), before a proposed plan was accepted by creditors, was not readily apparent. It was often necessary, however, for a reorganizing corporation to sell its business at an early stage of a proceeding because its value might decline drastically after the commencement of a corporate reorganization proceeding. The amended law clearly specifies that, if it gets approval from the court and other requirements are satisfied, a reorganization corporation can sell its business before a proposed plan is accepted by creditors.[28]

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21. These committees are authorized to: (1) submit their opinions with the trustees and the court; and (2) reimburse from the estate of the debtor corporation reasonable amount of expenses incurred for their activities contributing to the reorganization. *Id.* art. 117.

22. Former Law, *supra* note 7, art. 177.

23. Amended Law, *supra* note 8, art. 83.

24. Former Law, *supra* note 7, arts. 125, 126, 135, 136, & 137.

25. Amended Law, *supra* note 8, art. 145.

26. *Id.* art. 151.

27. The court in charge of a corporate reorganization proceeding has jurisdiction over this lawsuit. *Id.* art. 152.

28. *Id.* art. 46.

7. *Releasing a Security Interest and Terminating a Prohibition of Enforcement of a Security Interest*

With a few exceptions, the former law did not include methods to release a security interest in collateral. Consequently, it was difficult to sell a secured property if the secured creditor did not consent to do so, thereby preventing a reorganizing corporation from disposing of its idle property or selling its business before a proposed plan was adopted by creditors. This caused delay in a proceeding.

Under the amended law, a court may make a decision to release a security interest on collateral, when: (1) it is necessary in order to reorganize a debtor's business; and (2) a trustee paid the amount of money equivalent to the value of the collateral to a secured creditor.[29] If the secured creditor is not satisfied with this amount of money, it may file an application with the court to determine the amount.[30] In this case, a court-appointed appraiser evaluates the value of the collateral.[31] In addition, the amended law permits a court to terminate a prohibition of enforcement of a security interest that was ordered by a court.[32] In such a case, a secured creditor can proceed with a foreclosure, promoting the disposal of secured idle property of a reorganizing corporation.

C. Resolution of a Proposed Reorganization Plan

1. *Deadline to Submit a Proposed Reorganization Plan*

The former law did not set a deadline for submitting a reorganization plan to a court. Under the amended law, however, the due date is within one year of the date of commencement of a corporate reorganization proceeding.[33] This amendment encourages trustees to prepare a plan at an earlier stage.

2. *Voting by Ballot on a Proposed Reorganization Plan*

Under the former law, it was necessary for parties in interest to attend a meeting in order to vote for a proposed reorganization plan.[34] In a corporate reorganization proceeding, it was sometimes difficult for a trustee to hold such a meeting because of the large number of parties in interest. Also, it was difficult for some parties to attend a meeting. The amended law permits them to vote by ballot, thereby making it easier for parties in interest to join in the resolution of a proposed plan.[35]

3. *Majority Requirements to Adopt a Proposed Reorganization Plan*

Under the Former Law, the voting requirements to adopt a proposed plan by creditors were as follows:[36]

29. *Id.* art. 104.
30. *Id.* art. 105.
31. *Id.* art. 106.
32. *Id.* art. 50(7).
33. *Id.* art. 184(3).
34. Former Law, *supra* note 7, arts. 200, 204.
35. Amended Law, *supra* note 8, art. 189(2).
36. Former Law, *supra* note 7, art. 205. There are three classes to resolve the proposed plan: (1) unsecured creditors class; (2) secured creditors class; and (3) shareholders class. Each class resolves the proposed plan separately. Each voting requirement differs depending on kinds of classes. The voting requirement for shareholders is the majority of the number of shareholders who are entitled to vote.

- Unsecured Creditors:
  - Consent by two-thirds (2/3) of the total amount of their voting rights is required.[37]
- Secured Creditors:
  - When debts to secured creditors are rescheduled by a proposed plan, consent by three-fourths (3/4) of the total amount of their voting rights is required;
  - When debts to secured creditors are reduced or discharged by a proposed plan, consent by four-fifths (4/5) of the total amount of voting rights is required.
  - When a reorganizing corporation is liquidated by a proposed plan, unanimous consent is required.[38]

These requirements proved to be so strict that the proceeding was drawn out by the time required for a trustee to obtain consent from the parties in interest. The amended law reduces such requirements as follows:[39]

- Unsecured Creditors:
  - Consent by a majority of the total amount of their voting rights is required.
- Secured Creditors:
  - When debts to secured creditors are rescheduled by a proposed plan, consent by two-thirds (2/3) of the total amount of their voting rights is required.
  - When debts to secured creditors are reduced or discharged by a proposed plan, consent by three-fourths (3/4) of the total amount of their voting rights is required.
  - When a reorganizing corporation is liquidated by a proposed plan, consent by four-fifths (4/5) of the total amount of their voting rights is required.

D. Implementation of a Reorganization Plan

1. *Term of Payment in a Reorganization Plan*

Under the former law, a term of payment to creditors set by a reorganization plan could last up to twenty years.[40] Considering the current changing business situation in Japan, twenty years is an inordinate amount of time. The amended law shortens the term of payment to fifteen years, in order to encourage a debtor to implement payments to creditors and to close a proceeding earlier.[41]

2. *Closing of a Corporate Reorganization Proceeding*

Under the former law, a court could close a corporate reorganizing procedure only when a reorganization plan was completely implemented or a court judged that it could be completely implemented in the near future.[42] However, difficulty in the court deciding "whether

37. "Voting rights" refers to the claims held by creditors who are entitled to vote. There are some claims held by creditors who are not entitled to vote, such as claims that are not impaired by the proposed plan.

38. Though the purpose of corporate reorganization proceeding is to reorganize the debtor corporation, in some cases, after the commencement of the proceeding, it is determined that corporate reorganization is impossible to carry out. In this case, to make good use of an existing proceeding, it is admitted to make a proposed plan to liquidate assets of the debtor corporation and to pay money to creditors. If the proposed plan is denied by the parties in interest, the corporate reorganization proceeding is terminated. In this case, a bankruptcy proceeding can be commenced to liquidate assets of the debtor company.

39. Amended Law, *supra* note 8, art. 196(5).

40. Former Law, *supra* note 7, art. 213.

41. Amended Law, *supra* note 8, art. 168(5).

42. Former Law, *supra* note 7, art. 272.

or not a plan can be completely implemented" protracted the closing of a proceeding. In addition, a reorganizing corporation usually desired a proceeding to be closed as soon as possible, in order to get its business back on track.

The amended law sets a clearer standard for closing proceedings. Under the amended law, a court is required to close a corporate reorganizing proceeding once more than two-thirds (2/3) of the total amount of debts under a reorganization plan are paid and the reorganizing corporation has not defaulted on its debt payments.[43]

3. *Term of Redemption of Corporate Debentures Issued under a Reorganization Plan*

Under the former law, a maximum term of redemption for corporate debentures (*shasai*) issued under a reorganization plan was twenty years.[44] Under the Amended Law, however, this restriction is abolished and a term is determined by the reorganization plan. Therefore, in the future, corporate debentures are expected to be used more frequently under reorganization proceedings.

VI. Conclusion

The amended law focuses on procedural law (*tetsuduki ho*) and does not change substantive law (*jitai ho*) such as set-off, right of avoidance, retrieval, and duties and rights for lease or other agreements made before the commencement of a corporate reorganization proceeding. Furthermore, as described above, the amended law does not adopt the DIP system.

It is expected, however, that under the amended law it will be possible to reorganize large corporations more smoothly and promptly than in the past, and that both the corporate reorganization proceeding and the civil rehabilitation proceeding will be utilized effectively to achieve corporate restructurings in the future.

43. Amended Law, *supra* note 8, art. 239.

44. Former Law, *supra* note 7, art. 213.