

# Japan

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Japan has been suffering from a distressed loan problem since the early 1990s, due to aggressive property lending in the latter half of the 1980s and the subsequent long recession. However, strong government leadership to address the problem had successfully reduced the amount of distressed loans by the end of March 2005.

Five statutory insolvency procedures are available in Japan, two of which – bankruptcy and special liquidation – involve corporate liquidation. The amended Bankruptcy Law, which came into effect on January 1 2005, reflects some of the solutions developed by legal practitioners.

The latest revisions to the Bankruptcy Law initially aimed to:

- simplify the bankruptcy process by abolishing unnecessary procedural requirements;
- afford greater flexibility by adapting procedures to match the size of the case more appropriately;
- establish a procedure for consumer bankruptcy; and
- modernise the rules on priority among claims to reflect today's commercial realities.

However, the final objective of modernising the rules of priority for employee claims has been deferred for the time being. Thus, the Bankruptcy Law currently falls short of reflecting the variety of working arrangements available in the modern Japanese workplace.

The purpose of special liquidation is to streamline the bankruptcy procedure in connection with the liquidation of corporations. The special liquidation procedure, originally set out in the Commercial Code, will continue in amended form under the new Company Law, which was promulgated on July 26 2005 and will enter into force in 2006.

The other three statutory insolvency procedures available in Japan – corporate reorganisation, civil rehabilitation and corporate arrangement – address cases of corporate rehabilitation. However, corporate arrangement is seldom availed of and will be abolished in 2006.

The statutory insolvency procedures generally begin with the filing of a petition in the relevant court by a creditor, the debtor or certain other persons with standing to do so pursuant to law. The court will examine the grounds for the petition as stated therein; if it considers these grounds appropriate, insolvency proceedings will commence and the court will appoint someone to take charge of the proceedings, such as a trustee or debtor in possession. In a bankruptcy/liquidation-type proceeding, the appointee will determine the scope and nature of the assets comprising the bankruptcy estate, and identify the creditors and the value of their respective claims. Thereafter, necessary expenses (eg, the trustee's fee) and preferred claims (eg, employee claims against the bankruptcy estate) will be paid and discharged, with the remaining profits distributed on a *pro rata* basis. In a rehabilitation-type proceeding, the appointee will identify the creditors and the value of their respective claims; a repayment plan will then be established by resolution of

the creditors and the debtor will repay its debts in accordance with this plan. If the debtor is unable to implement the plan, the rehabilitation-type proceeding may be converted into a bankruptcy/liquidation-type proceeding.

## 1. Legal framework and the effectiveness of court processes/legal remedies

### 1.1 Describe the nature and effectiveness of the following:

#### (a) Debt recovery remedies where the creditor has no security

If a debtor has defaulted in the repayment of a debt, the creditor may file a motion with the competent district court to obtain a judgment ordering payment. If a final and conclusive judgment is obtained, the creditor may execute the judgment against the debtor's property by way of public sale or, in the case of real estate, compulsory administration. The proceeds will be distributed among all unsecured creditors that have filed their claims with the relevant execution court (different from the judgment court).

A creditor may obtain provisional remedies to attach the debtor's property in order to prevent the debtor from disposing of the property before a judgment is made, where a court deems this necessary to ensure the feasibility of a subsequent execution.

#### (b) The enforcement of security

A secured creditor may sell the relevant assets through public or private sale, or take title thereto, depending on the type of security interest. In the case of real property, a creditor with a registered mortgage may launch a civil execution procedure for a public sale, while a creditor with a registered mortgage by assignment may sell the property through private sale or take title thereto. In the case of receivables and deposits, a creditor with a perfected security interest (ie, a pledge or mortgage by assignment) will usually take title to the receivables and then collect the proceeds from the original payees. In the case of other movable property, including debentures and stocks, a creditor with a perfected security interest under a pledge may sell it by way of public or private sale, or take title, while a creditor with a perfected security interest under a mortgage by assignment may foreclose on the property by way of private sale or take title.

#### (c) Corporate bankruptcy/liquidation proceedings

Bankruptcy proceedings and special liquidation proceedings are available to corporate debtors and their creditors under the current law.

Natural persons, corporations and all other entities can enter into bankruptcy proceedings. Where a debtor becomes insolvent, bankruptcy proceedings may be initiated by the debtor (and/or its directors or liquidator, as the case may be), or by a creditor. The court-appointed bankruptcy trustee has the power to dispose of all assets of the bankruptcy estate to the extent that these are unencumbered, and to distribute the proceeds equally among the unsecured creditors.

Special liquidation proceedings are available for corporations only. They may be initiated by a creditor, liquidator, statutory auditor or shareholder where the corporation is likely to be insolvent. The proceedings are implemented by a special liquidator under court supervision. Under certain circumstances, the debtor's management may be appointed to serve as the special liquidator.

The special liquidator may propose a debt repayment arrangement for consideration and approval at a creditors' meeting. Provided that secured collateral is not included in the estate for liquidation purposes, the proposed arrangement may provide for debt write-offs before the repayment of existing debt. The proposed arrangement must be approved by:

- at least a majority of the creditors attending the meeting, whose aggregate claims amount to at least three-quarters of all creditor claims; and
- the competent court.

The forthcoming amendments to the Company Law are expected to relax this creditor approval requirement from three-quarters to two-thirds of all creditor claims.

Special liquidation proceedings are well suited to situations where the debtor has only a few shareholders and creditors, and disputes as to claim ownership and amounts are unlikely. In such cases, even though distribution decisions are ultimately left to the creditors and administration of the debtor's property is left to the debtor's management, the proceedings are likely to remain fair. Moreover, distributions can be optimised by allowing the distribution schedule to be determined by creditors' resolution, and by availing of the experience of the debtor's current management.

**(d) Formal corporate rescue processes**

Japanese law provides for both reorganisation and civil rehabilitation.

Corporate reorganisation, available for corporations only, is designed to reorganise large companies and is thus the most complicated and time consuming of all procedures described in this chapter. Its key features are:

- the strong powers given to the reorganisation trustee; and
- the restrictions imposed on creditor claims, including secured claims.

With respect to this latter point, secured collateral is also incorporated into the bankruptcy estate and secured claims can be repaid only in accordance with a court-approved reorganisation plan. One of the most difficult issues in attempting to rehabilitate a corporate debtor is the handling of secured collateral. The key assets in a rehabilitation proceeding are often secured; were secured creditors allowed to enforce their security interests, rehabilitation could be impeded. This is why, under corporate reorganisation, secured claims are handled within the context of the reorganisation plan.

Civil rehabilitation is available for natural persons, corporations and all other entities. It adopts a debtor-in-possession system, whereby the debtor in possession administers the estate under the direction of an attorney appointed as supervisor by the competent court. Civil rehabilitation differs from corporate reorganisation in that secured creditors may enforce their rights outside the civil rehabilitation proceedings. However, a debtor may, with the approval of the competent court, redeem or obtain a release of the security interest if:

- the debtor can establish that the secured collateral is indispensable to the continuation of its business; and
- the debtor provides the secured creditor with security equal to the current value of the secured collateral.

Achieving the proper balance between successfully rehabilitating the debtor and protecting a secured creditor's security interests is one of the most difficult issues to be dealt with in corporate rescues.

**(e) Informal corporate rescue processes**

As no general rules or ordinances govern all creditors, individual creditors often attempt to

seize the debtor's residual assets to satisfy their claims. Insolvency professionals therefore consider it ideal if the debtor and a group of creditors voluntarily enter into an arrangement according to which all creditors will recover all or a part of their claims. Some recent informal rehabilitation processes have made use of:

- the Guidelines for Private Arrangement (drafted by insolvency professionals in 2001, with the attached documents (questions and answers) amended in 2005);
- arrangements assisted by the Industrial Revitalisation Corporation of Japan (IRCJ) ([www.ircj.co.jp/english/index.html](http://www.ircj.co.jp/english/index.html));
- the Special Mediation Procedure for Promoting Reconciliation of Specific Obligations; or
- a combination of the above.

The Guidelines for Private Arrangement apply when all major creditors (usually banks) consider that specific criteria indicating a possibility of rehabilitation are fully satisfied. If the guidelines apply, the major creditors will request:

- eligible creditors (usually other financial institutions) to cease debt collection for a certain period (usually three months), during which a rehabilitation programme providing for the satisfaction of claims will be agreed between the debtor, all major creditors and eligible creditors; and
- the debtor not to pay specific eligible creditor(s) or dispose of its assets, other than in the ordinary course of business.

The debtor must take appropriate measures, such as formal rehabilitation or liquidation, if a rehabilitation programme is not agreed within the relevant period.

The IRCJ was established in April 2003 and is a national restructuring company that assists banks in revitalising their borrowers' businesses, where these are still viable. The IRCJ has committed to restructure more than 40 distressed accounts and is to complete its work by March 2008. The IRCJ arrangement procedure commences with the submission of an application to the IRCJ, enclosing the rehabilitation programme and requesting the IRCJ to take steps to assist the rehabilitation. The IRCJ will provide assistance if its eligibility criteria are satisfied. Upon the commencement of the procedure, the IRCJ may request all creditors to cease debt collection for a certain period (maximum three months) and asking them to choose from the following two options:

- Apply to the IRCJ to purchase the notified creditor's loan to the debtor; or
- Consent to a rehabilitation programme – although the IRCJ may revoke such consent if the aggregate sum of the applied loans falls short of the amount required to rehabilitate the debtor.

When the aggregate sum of the applied loans reaches the required amount, the IRCJ will purchase the applied loans and then provide a loan or guaranty to the debtor, acquire the debtor's shares by way of debt-for-equity swaps and/or take such measures as it considers appropriate for the debtor to execute the rehabilitation programme.

The special mediation procedure commences with the debtor filing a motion with the competent court. A key feature of the procedure is that the court may suspend a pending enforcement procedure launched by the counterparty to the special mediation; it is expected that this will be used as a countermeasure against creditors that:

- reject an agreement reached between the other creditors and the debtor; or
- ignore a suspension notice issued by major creditors in informal processes.

### **1.2 What are the formal processes to effect a liquidation of the company's assets?**

A court decision to commence bankruptcy or special liquidation will give effect to a liquidation of the debtor's assets. However, a conservation order is often granted prior to the decision to commence bankruptcy or special liquidation, in response to a request by an interested party, to preserve the debtor's assets.

### **1.3 What is the effect on debt collection and the enforcement of security of:**

#### **(a) The commencement of corporate bankruptcy/liquidation?**

Debt collection is not permitted, and pending debt collection procedures cease to be effective in case of bankruptcy and are suspended in case of special liquidation. As a general rule, the commencement of bankruptcy or special liquidation has no effect on the enforcement of security.

In addition, a bankruptcy trustee has the power to void certain fraudulent transactions.

#### **(b) The commencement of a formal corporate rescue process?**

Debt collection is not permitted and pending debt collection procedures are suspended. Procedures for the enforcement of security are also suspended in a corporate reorganisation and may be suspended in a civil rehabilitation. In case of corporate reorganisation or civil rehabilitation, the trustee has the power to void certain fraudulent transactions.

#### **(c) The initiation of an informal corporate rescue process?**

Informal rescue processes have no effect on debt collection and the enforcement of security, unless the creditors have agreed otherwise. However, in a special mediation the competent court may order the suspension of debt collection and enforcement proceedings.

In addition, under the Civil Code a creditor may request the competent court to declare void a transaction between the debtor and another creditor on grounds of fraud.

#### **(d) The initiation of an insolvency or insolvency-related process under any special legislation?**

The Special Law on Reorganisation of Financial Institutions (1996, as amended) provides a special regime for the corporate reorganisation of financial institutions (eg, banks, insurance companies and cooperative banks). However, it contains no special provisions affecting debt collection or the enforcement of security.

### **1.4 Are insolvency procedures involving a corporation incorporated in your jurisdiction recognised if they are started in another jurisdiction?**

Under the Law on the Recognition and Assistance of Foreign Insolvency Procedures, enacted in 2000, where a competent Japanese court recognises that a foreign insolvency procedure has been initiated, it may order that:

- pending debt collection proceedings by non-secured creditors and/or public sale proceedings by secured creditors be suspended;
- the debtor be prohibited from disposing of its assets and/or discharging its obligations; and
- a trustee be appointed to manage and dispose of the debtor's assets in Japan.

**1.5 In what circumstances would the directors or officers of a company in financial difficulties face potential personal liability for continuing to trade? In practice, are any such provisions actually enforced?**

In a number of cases directors and officers have been held criminally liable for fraud where the company was insolvent and they nonetheless continued to trade with third parties in the knowledge that the company could not discharge its obligations. Directors and officers may also incur civil liability where a breach of their fiduciary duties causes damage to the company.

**2. What are the advantages and disadvantages of triggering a formal procedure?**

The advantages of triggering a formal procedure are as follows:

- Interested parties can avail of conservation measures, which are effective for all creditors, either prior to or contemporaneously with the commencement of a formal procedure.
- Clear-cut rules facilitate a fair distribution among the creditors.
- The debtor's management is often replaced and its responsibilities will likely be tested.
- All creditors must participate and it is relatively easy to reach agreement between the different parties involved.
- Some formal procedures involve favourable tax measures.

The disadvantages are as follows:

- Formal procedures are generally complicated.
- It often takes many years to complete a rehabilitation plan or liquidation procedure.
- Business value deteriorates during the course of this period.
- A stigma generally attaches to the debtor, impairing its credibility.

**3. What are the practical options for out-of-court restructuring?**

Historically, the leading bank (usually the largest creditor) typically took the initiative to draw up a rescue arrangement and persuaded other creditors to enter into the arrangement by demonstrating that it would agree to the largest portion of write-offs. However, this option is no longer availed of today.

Thus far, little use has been made of the

Guidelines for Private Arrangement, for the following reasons:

- They challenge the conventional methods of banks, which are reluctant to countenance a radical change of their practices.
- Debtors are wary of the strict provisions on management responsibility and shareholder responsibility.

However, while rescues driven by the leading bank are still common, the procedures set out in the guidelines are here to stay. These procedures, together with arrangements assisted by the IRCJ, will afford the most viable options for out-of-court restructuring in the future.

**4. What is the effect on the management of a company of:**

**4.1 An adjudication of corporate bankruptcy/liquidation?**

The management is replaced by a trustee in case of bankruptcy and by a liquidator in a special liquidation; in the latter instance the competent court may appoint the debtor's existing management as the special liquidator.

**4.2 The commencement of a formal corporate rescue process?**

In a corporate reorganisation, the management is replaced by a trustee. A member of the debtor's existing management may be appointed as the trustee, unless he is responsible for the financial crisis. In a civil rehabilitation, management may be retained unless a trustee is appointed by the competent court, although this is rare in practice.

**4.3 The initiation of an informal corporate rescue process?**

Unless otherwise agreed between the creditors and the debtor, members of the debtor's existing management retain their positions. However, the Guidelines for Private Arrangement require that the existing management be replaced, unless the members were appointed by a new sponsor or the leading bank and are not responsible for the financial crisis. Where the guidelines apply, company presidents and representative directors often resign and a new representative director is chosen from among the former management members by a new sponsor. In arrangements

assisted by the IRCJ, a similar policy applies; but the special mediation procedure is silent about the effect on management.

#### **4.4 The initiation of an insolvency or insolvency-related process under any special legislation?**

The Special Law on Reorganisation of Financial Institutions has no effect on the debtor's management.

### **5. Roles of key players involved in the restructuring and insolvency process**

#### **5.1 Who is responsible for the 'case management' control and administration of a corporate bankruptcy/ liquidation, a formal rescue or an informal rescue?**

In a corporate bankruptcy/liquidation, the trustee/liquidator is responsible for 'case management' control and administration.

In a corporate reorganisation, the trustee is responsible for case management control and administration. In a civil rehabilitation, this responsibility rests with the debtor's management, unless a trustee has been appointed.

In an informal rescue, the debtor's management has responsibility for case management control and administration, subject to negotiations with the creditors – in particular, the lead bank. The lead bank can exercise control over the debtor by acquiring a shareholding in the company, appointing representatives to the management board and taking care of various financial problems.

#### **5.2 Who is responsible for the 'case management' control and administration of a case of corporate insolvency under any special legislation?**

The Special Law on Reorganisation of Financial Institutions provides for the appointment of a trustee, who is responsible for case management control and administration.

#### **5.3 Who is responsible for preparing the restructuring plan in a formal or informal rescue?**

In a corporate reorganisation, the trustee will generally prepare the restructuring plan, although the plan may also be drawn up by the debtor, the creditors, the shareholders or a foreign trustee. In a civil rehabilitation, the debtor's management will

prepare the restructuring plan unless a trustee has been appointed, in which case he will generally prepare the plan – although again, the debtor, the creditors, the shareholders or a foreign trustee may alternatively draw up the plan.

In informal rescues, the debtor's management will prepare the restructuring plan, subject to negotiations with the creditors – in particular, the lead bank.

#### **5.3 Who is responsible for preparing the restructuring plan in a case of corporate insolvency under any special legislation?**

Under the Special Law on Reorganisation of Financial Institutions, the trustee is responsible for preparing the restructuring plan.

### **6. What financial information is available to creditors in a corporate bankruptcy/liquidation, a formal rescue and an informal rescue?**

In a bankruptcy/liquidation, the debtor's balance sheet and a list of assets as of the filing date are available.

In a corporate reorganisation or civil rehabilitation, the debtor's balance sheet and a list of assets as of the filing date are available; detailed financial information, including financial projections, is also set forth in the proposed restructuring plan so that the creditors can assess whether the plan is acceptable.

In an informal rescue, the lead bank usually has detailed information on the debtor's market strengths, finances, human resources and other aspects. However, this will not necessarily be shared with the other creditors. Typically, the lead bank monopolises this information, leaving the other banks to rely on its assessment of the debtor's creditworthiness. This puts the lead bank in a strong position to secure its exposure; in exchange, the lead bank must offer support when the debtor is in financial straits.

## 7. Financial issues

### 7.1 What are the main areas from which funding is generally utilised by companies undertaking either formal or informal restructuring?

Although the Japanese banking system has been substantially overhauled, formal and informal restructuring is still commonly funded by the lead bank. Subject to court approval, credit extended after the filing of a petition is protected as a 'claim for common benefits' (equivalent to 'administrative expenses' under the US Bankruptcy Code). Higher priority is given to general unsecured claims under the condition that the court decides to commence corporate reorganisation at a later date.

Under the Japanese insolvency system, there is a gap between the filing of the petition and the court decision to commence the case (equivalent to an 'order for relief' under the US Bankruptcy Code).

If the court decided not to commence restructuring and the case was converted into liquidation under the Bankruptcy Law, such post-petition claims under the Corporate Reorganisation Law were previously regarded as general unsecured claims under the Bankruptcy Law. Although the court usually gave guidance to the debtor so that such claims were paid in advance, this used to be a problem of post-petition financing under the Corporate Reorganisation Law.

The Civil Rehabilitation Law and the amended Corporate Reorganisation Law have solved this problem by stating that, even in the case of conversion to liquidation, such claims are protected with priority over other general unsecured claims under the Bankruptcy Law. Since super-priority (admitted in Section 364(c)(d) of the US Bankruptcy Code) is not granted to post-petition creditors, even under these new laws, their claims rank *pari passu* with other claims for common benefits unless security interests are attached to unencumbered assets. This is a significant difference from the debtor-in-possession financing mechanism under the US Bankruptcy Code. Thus, only lead banks still reluctantly provide post-petition financing to debtors and third-party debtor-in-possession financing is rare, although several banks – including governmental financial institutions such as the Development Bank of Japan and Shoko Chukin Bank – are aggressive providers of debtor-in-possession financing.

### 7.2 In what order are creditors paid in a corporate bankruptcy/liquidation?

The order of payment is as follows:

- secured claims;
- administrative expenses, including court expenses for the benefit of related parties, taxes, the trustee's expenses and remuneration, claims from cancelling executory contracts or avoiding executed transactions, and other administrative expenses under the Corporate Reorganisation Law or the Civil Rehabilitation Law;
- preferential claims, including employee claims, wages and salaries, funeral expenses and claims from supplying commodities;
- general unsecured claims; and
- subordinated claims, including interest expenses after the commencement of bankruptcy proceedings, expenses of participating in the proceedings and penalties.

### 7.3 Are there any legal provisions that might operate to invalidate the creation of security, the disposal of an asset or the payment of a creditor by a company in financial difficulties?

The Bankruptcy Law, the Corporate Reorganisation Law and the Civil Rehabilitation Law contain similar provisions, as set out in the table overleaf.

### 7.4 What is the position of both unsecured and secured creditors that vote against, do not agree with or do not consent to either a formal or an informal rescue plan?

**Formal rescue:** All creditors must accept the plan where the following conditions are satisfied:

- Corporate reorganisation – where the plan is approved by unsecured creditors holding at least one-half of total unsecured claims and secured creditors holding at least two-thirds (three-quarters if the plan proposes to cut off the secured claims; nine-tenths if the plan proposes liquidation) of total secured claims.
- Civil rehabilitation – where the plan is approved by simple majority (more than half) of unsecured creditors holding at least half of the total unsecured claims. (Secured creditors are not bound by the Civil Rehabilitation Law and are allowed to enforce their security interests during the proceedings. In practice, however, they are usually asked to cooperate in the proceedings and usually agree not to

	Objective requirements		Timing	Debtor's malice	Counterparty's malice
<b>Prejudicial acts</b>	Intentional actions harming creditors, other than actions to establish security and/or to extinguish obligations		Before suspension of payment	Not required	Required
			After suspension of payment of filing for bankruptcy	Not required	Required
	Actions without compensation		After suspension of payment of filing for bankruptcy, or in the six months prior to suspension of payment of filing for bankruptcy	Not required	Required
	Disposition of real estate etc at a reasonable price, but giving rise to a realistic risk of concealment etc		At any time	Required	Required
	In-kind transactions at improper price		At any time	Not required	Required
<b>Preferential acts</b>	Actions to establish security for existing obligations or to extinguish obligations	Preferential actions pursuant to obligation	After becoming insolvent or filing for bankruptcy	Not required	Required
		Preferential actions without obligation	At any time, but limited to cases where the debtor becomes insolvent within 90 days of the relevant action	Not required	Required

enforce their security interests and to extend the maturity of their claims.)

**Informal rescue:** Even a single creditor can frustrate the deal, as it depends on the unanimous consent of the creditors.

**7.5 What actions can creditors take if they are not satisfied with the conduct of either a formal rescue procedure or a corporate bankruptcy/liquidation?**

In a corporate reorganisation, after the filing of the petition but before the case has commenced, the creditors may file a petition for civil rehabilitation or bankruptcy proceedings, although the court may issue a suspension order against either filing. After the court decision to commence the case has been issued, creditors can no longer file petitions and

any petitions that have already been filed will be suspended. Once the court has confirmed the restructuring plan, all suspended procedures will be terminated.

In a civil rehabilitation, after the filing of the petition but before the case has commenced, the creditors may file a petition for corporate reorganisation or bankruptcy proceedings, although the court may issue a suspension order against either filing. After the court decision to commence the case has been issued, creditors can still file a petition for corporate reorganisation but cannot file a bankruptcy petition. Bankruptcy petitions that have already been filed will be suspended. After the court has confirmed the restructuring plan, creditors are not prohibited from filing a petition for corporate reorganisation, but in practice the petition will be dismissed. Suspended bankruptcy

proceedings will be terminated.

In a bankruptcy/liquidation, even after the debtor has filed a bankruptcy petition or the court has issued a declaration of bankruptcy, creditors may still file a petition for corporate reorganisation or civil rehabilitation.

## **8. General**

### **8.1 Can the insolvency regime be described as systematic and efficient for:**

**(a) The liquidation of businesses incapable of being restructured?**

**(b) The restructuring of debt?**

Yes, now that the insolvency laws have been completely reformed as explained.

### **8.2 What are the biggest legal and non-legal impediments to the systematic and efficient liquidation of businesses and restructuring of debt?**

Both debtors and creditors are often still reluctant to recognise the debtor's troubles at an early stage. In addition, out-of-court workouts among creditors are often conducted inefficiently.

### **8.3 Has the insolvency regime been reformed in the last two years? If so:**

**(a) What are the reforms?**

**(b) Are the reforms being implemented so as to facilitate the systematic and efficient handling of corporate insolvency cases?**

The Composition Law to the Civil Rehabilitation law was amended in 1999, the Corporate Reorganisation Law in 2002 and the Bankruptcy law in 2004. Both the Civil Rehabilitation Law and the Corporate Reorganisation Law are systematically and efficiently utilised as expected. The amended Bankruptcy Law is being tested in the market and is expected to work well.

### **8.4 Are there any other legal or non-legal changes in the last two years that have impacted on the operation of the insolvency law regime?**

Financial Services Agency bank examinations have been strengthened and accounting rules, including the mark-to-market and audit standard requirements, have been tightened. The establishment of the IRCJ in 2003 has also enhanced the Japanese insolvency regime.

### **8.5 Is statistical information on insolvency cases and corporate insolvency published? If so, how? Is it easily and freely accessible?**

Two major data research companies, Teikoku Databank and Tokyo Shoko Research, publish such information periodically, with free access available through their websites.

### **8.6 What is the most urgent reform required to facilitate the systematic and efficient handling of corporate insolvency cases (formal and informal)?**

Even after the recent legislative reforms, there is still a stigma attached to insolvency, and out-of-court workouts are thus usually preferred in the market. However, as unanimous consent is required in order for these to succeed, minority stakeholders often try to exploit their nuisance value. Thus, the introduction of a negotiation mechanism which does not require unanimous consent and which is not regarded as an insolvency procedure would result in considerable improvements. The UK Enterprise Act 2002 may serve as a model in this respect.