

Outline of the Act on Financial Debt Adjustment Procedures for Enterprises to Facilitate Business Recovery (Early Business Recovery Act)

Background

- ✓ Corporate debt in Japan has **increased by over 120 trillion yen since before the COVID-19 pandemic**. With ongoing challenges such as rising raw material costs and labor shortages, the **number of bankruptcies** in 2024 **has surpassed 10,000 for the first time in 11 years**. Given the continued depreciation of the yen, inflation, labor shortages, and potential increases in borrowing interest rates due to monetary policy revisions, there is a growing concern that the **debt burden** will become a **hindrance to business activities to improve profitability**, causing companies to miss opportunities for business growth and leading to increased bankruptcies.
- ✓ In response to these economic and social circumstances, it is important **to establish a framework that enables enterprises at risk of falling into financial distress to pursue early business recovery and avoid the damage to business value and the loss of technology and human resources, and to enhance economic dynamism**.

Challenges in the current debt restructuring procedures (in-court restructuring procedures such as civil rehabilitation and out-of-court restructuring procedures such as Turnaround Alternative Dispute Resolution (ADR))

- ✓ **In-court restructuring procedures** are **publicly announced** and **all claims, including trade debts, are subject to debt adjustment, which may likely have a significant impact on the damages to business value and profitability**.
- ✓ **Out-of-court restructuring procedures, which are not publicly announced and have less impact on commercial transactions, require unanimous consent from all relevant creditors, which can hinder further business recovery**.

To facilitate an early business recovery for enterprises at risk of financial distress, it is necessary to establish a new procedure that allows for the adjustment of debt obligations, limited to financial debts*, with the involvement of a neutral third party designated by the Minister of Economy, Trade and Industry. The adjustment must be approved by a majority vote of relevant creditors, such as financial institutions (i.e., those holding more than 3/4 of the total voting rights) and is subject to court approval.

*Trade claims, labor claims, and other non-financial claims are not included.

*In European countries, there are frameworks in place that **allow for debt adjustment prior to insolvency based on majority vote of creditors and subject to court approval**, separate from formal insolvency proceedings. Japan, however, does not currently have such a framework.

Main steps of the procedure for adjusting debt obligations of enterprises for early business recovery

① Application for the procedure

The enterprise (debtor) applies for the procedure to a third-party organization (designated organization)*

* The Minister of Economy, Trade and Industry designates a neutral third-party organization to supervise the procedures. The designated organization must meet certain requirements, such as having the capacity to appoint appropriate professionals for each case who possess expert knowledge and practical experience in business recovery.

② Confirmation by a third-party organization

The third-party organization confirms, based on documents submitted by the enterprise, including written materials outlining the proposed changes to the financial claims held by financial institutions, etc. and the direction of business recovery, and a list of the relevant claims, whether the requirements are met such as the necessity of debt adjustment (the enterprise is at risk of falling into financial distress), the likelihood of a resolution being approved at the relevant creditors' meeting, and the likelihood of conformity with the general interest of the relevant creditors (satisfying the liquidation value test).

③ Resolution at the relevant creditors' meeting

At the relevant creditors' meeting, after the enterprise provides information and the creditors are given an opportunity to express their opinions, a resolution to modify the unsecured portion of the relevant claims is passed by a majority vote, specifically, consent of creditors holding at least 3/4 of the total voting rights. If a single creditor holds 3/4 or more of the voting rights, the consent of a majority in number of the voting rights creditors is also required.

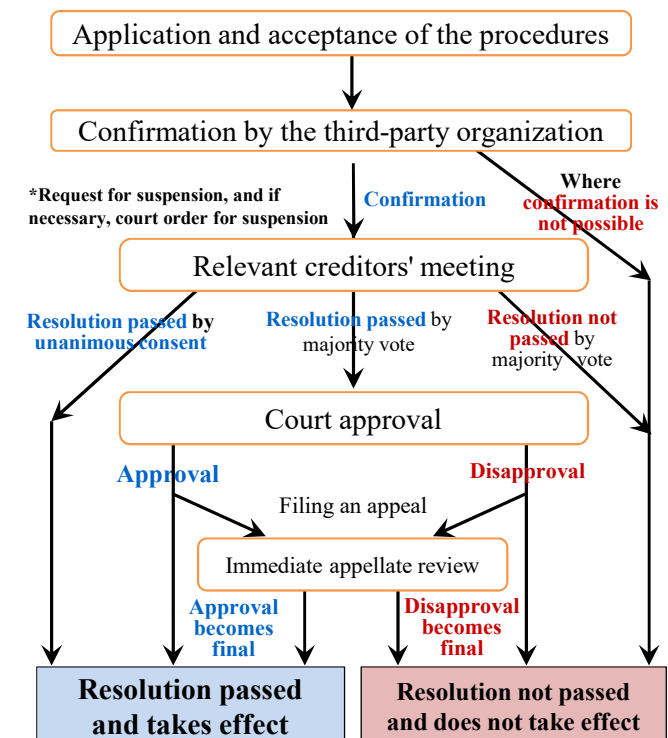
* An early business recovery plan, containing projections of the enterprise's assets, liabilities, and other relevant information, is presented to assist in deciding whether to approve or reject the proposed adjustment of rights.

* Before a resolution is passed, the third-party organization investigates the matters provided by laws and regulations, such as the calculation of the business operator's assets and liabilities, regarding the modification of the relevant claims and the early business recovery plan, and then report the results.

④ Court approval of the resolution adopted at the relevant creditors' meeting

The court, acting in a supervisory capacity, determines whether to approve or disapprove the resolution after examining whether there are any defects such as procedural violations of laws and regulations or any elements that undermine the fairness of the resolution, and whether the liquidation value test is satisfied, while hearing the opinions of the third-party organization and the creditors.

* Immediate appeal against court approval is possible (ensuring an opportunity to file an objection).



円滑な事業再生を図るための事業者の金融機関等に対する債務の調整の手続等に関する法律 【早期事業再生法】の概要

背景

- ✓ 日本企業の債務残高は、**コロナ禍前に比べて120兆円以上増加**。また、原材料高・人手不足等を受け、2024年の**倒産件数は11年ぶりに1万件を超えた**状況。今後の円安・物価高、人手不足、金融政策の見直しによる借入金利の引上げ等を踏まえると、**債務負担が収益性向上の事業活動の足かせ**となって事業再生の機会を逃し、倒産に至る企業が更に増加するおそれがある。
- ✓ こうした経済社会情勢の動向を受け、経済的に窮境に陥るおそれがある事業者が**早期での事業再生に取り組み、事業価値の毀損や技術・人材の散逸を回避できる制度基盤を整備し、経済の新陳代謝機能を強化**しておくことが重要。

現行の債務整理手続（民事再生等の法的整理及び事業再生ADR等の私的整理）の課題

- ✓ **法的整理**は、その利用の**公告**がなされ、**商取引債権も含めた全債権が債務整理の対象**となるため、**事業価値や収益性への毀損の影響が大きくなりやすい**。
- ✓ **公告がなされず商取引への影響を抑制しやすい私的整理**においても、**全対象債権者の同意が必要**とされることは**事業再生の更なる円滑化に向けた課題**。

経済的に窮境に陥るおそれのある事業者の早期での事業再生の円滑化を図るため、経済産業大臣の指定を受けた公正な第三者の関与の下で、金融機関等である債権者の多数決（議決権の総額の3/4以上の同意等）及び裁判所の認可により、金融債務に限定※して、当該事業者の債務の権利関係の調整を行うことができる手続を整備。

※金融債権以外の商取引債権や労働債権等は入らない。

※欧州各国では、倒産手続とは別に、倒産状態前において裁判所の認可の下で債権者の多数決により債務整理を行う制度が存在するが、日本には存在しない。

早期での事業再生のために事業者の債務の権利関係の調整を可能とする手続の主な流れ

① 手続申請

事業者（債務者）が第三者機関（指定法人）※に手続を申請。

※ 手続の監督等を行う公正な第三者機関として、事業再生の専門的知識・実務経験を有する者を事案ごとに選任できる等の要件を満たす者を経済産業大臣が指定

② 第三者機関による確認

第三者機関は、事業者から提出された、書面（対象債権（金融機関等有する金融債権）の権利変更の方向性や事業再生の方向性等を記載）、対象債権の一覧等から、債務調整の必要性（経済的に窮境に陥るおそれ）、対象債権者集会の決議成立の見込み、対象債権者一般の利益（清算価値保障）に適合する見込み等を確認。

③ 対象債権者集会における決議

対象債権者集会において、事業者による情報提供及び債権者への意見陳述の機会の付与の後、対象債権者の多数決（議決権の総額の3/4以上の同意。単一の債権者が議決権の総額の3/4以上を有する場合には、議決権者の過半数の同意も必要。）により、対象債権のうち担保で保全されていない部分の権利変更を可決。

※ 権利変更に係る賛否の判断に資する内容として、早期事業再生計画（事業者の資産や負債等の見込み等を記載）を提示

※ 第三者機関は、決議前に、対象債権の権利変更に関する内容及び早期事業再生計画について、法令に定める調査事項（事業者の資産や負債の算定等）を調査し、その結果を報告

④ 裁判所による対象債権者集会の決議の認可

裁判所は、第三者機関及び債権者の意見の陳述を聴取しつつ、後見的に、決議の瑕疵（手続の法令違反、決議の公正性を損ねる点がないか）や清算価値保障等を審査して、認可又は不認可を決定。

※裁判所の認可に関する即時抗告が可能（異議申立ての機会の確保）

