

Restructuring & Insolvency Newsletter

December 2022 (Vol.1)

The first case in Japanese history where the debtor used simplified rehabilitation proceedings as a tool to “cram down” minority lenders

I. Introduction

II. Overview of the procedures used

- Turnaround ADR and simplified rehabilitation proceedings

III. Marelli case

IV. Expected future developments

Mori Hamada & Matsumoto

Dai Katagiri

+81 3 6266 8774

dai.katagiri@mhm-global.com

Wataru Ishida

+81 3 6266 8926

wataru.ishida@mhm-global.com

Ryo Kawabata

+81 3 6266 8945

ryo.kawabata@mhm-global.com

Takashi Harada

+81 3 6266 8512

takashi.harada@mhm-global.com

Haruka Kikuchi

+81 3 5293 4907

haruka.kikuchi@mhm-global.com

We are pleased to introduce our new “Restructuring & Insolvency Newsletter,” which aims to provide timely information on the latest developments in the restructuring and insolvency fields in Japan and other Asian countries, as well as on related regulatory and legal amendments and insolvency cases that may be of global interest.

In this first issue of the Restructuring & Insolvency Newsletter, we are pleased to present the Marelli HD case, one of the most important turnaround cases in the last few decades.

I. Introduction

Against the backdrop of the wide spread of COVID-19 and the prolonged conflict in Ukraine leading to signs of a recession in the U.S. and China, and soaring prices of various goods and services directly related to business activities, such as raw materials, freight, and energy, the Asian economy is still struggling to recover. With such an economic climate, the number and importance of restructuring cases is expected to increase in Japan and Asia as a whole.

Recently, Marelli Holdings Co., Ltd. (**Marelli HD**), a global auto parts company

Restructuring & Insolvency Newsletter

located in Japan, has successfully concluded a restructuring plan in a very short period of time. This case is without a doubt one of the most important turnaround cases in the last few decades, not only because of the company's size and its importance in the industry but also because it was the first case in Japanese history where the debtor used the simplified rehabilitation proceedings (which we will explain below) as a tool to cram down minority lenders who oppose the debtor's restructuring plan in an out-of-court corporate workout.

In this issue, we provide an overview of the insolvency-related procedures used by Marelli HD and its group companies, Turnaround ADR and simplified rehabilitation proceedings, and then address expected future developments.

II. Overview of the procedures used – Turnaround ADR and simplified rehabilitation proceedings

1. Turnaround ADR

In Japan, out-of-court workouts are becoming more commonly used to restructure debtors' financial debts without starting any in-court insolvency proceedings, which usually damage the company's going-concern value. Generally, such out-of-court workouts involve only financial creditors, while trade creditors such as suppliers and vendors are paid in full, thus preventing the deterioration of the debtor's business value.

Among such variety of schemes, the turnaround alternative dispute resolution process (**Turnaround ADR**) is the most popularly used in recent years, especially for large-sized companies. Turnaround ADR is a process where the debtor tries to restructure its debts owed to financial creditors based on their unanimous consent. The entire process is carried out in accordance with a prescribed manner and schedule and facilitated by impartial mediators (usually consisting of two lawyers and one accountant) appointed by the Japanese Association of Turnaround Professionals, an organization composed of insolvency practitioners, in order to ensure the fairness and reasonableness of the workout process.

Although the success rate of Turnaround ADR is generally high and debtors in many cases successfully restructure their debts without shifting to in-court insolvency proceedings, there are cases where the debtor cannot obtain

Restructuring & Insolvency Newsletter

unanimous consent to its restructuring plan. In such cases, the debtor usually needs to consider filing for in-court insolvency proceedings.

2. Simplified rehabilitation proceedings

The most common form of in-court insolvency proceedings in Japan where debtors try to restructure and continue (not liquidate and close) their businesses is civil rehabilitation proceedings (*minji-saisei*). Most companies that have failed to obtain unanimous consent in Turnaround ADR and consider switching to civil rehabilitation proceedings would want to shorten the duration of those proceedings in order to avoid damage to their businesses as much as possible.

However, under the standard schedule of the Tokyo District Court, which has handled most large-sized insolvency cases in Japan, the entire process of civil rehabilitation proceedings takes about five months. Also, Japan does not have such a "pre-packed" system as seen in some jurisdictions where entire insolvency proceedings can be completed within a remarkably short length of time if debtors have obtained consent to their plans from a certain percentage of their creditors in advance. Although there is a practice called "pre-packed" in Japan, the proceedings are only carried out slightly earlier within the framework of ordinary civil rehabilitation proceedings. Therefore, the debtor's business value may be severely damaged by the shift to civil rehabilitation proceedings.

To avoid this issue, insolvency practitioners have discussed using simplified rehabilitation proceedings (*kanni-saisei*; **SRP**) so that debtors who failed in Turnaround ADR can quickly effectuate the restructuring plan that they proposed in those cases. SRP is a shorter form of civil rehabilitation proceedings where debtors can skip the process of investigating and determining creditors' claims, which usually takes one to two months, with the consent of 60% or more of the creditors who have filed claims.

This idea, however, had never been implemented until the Marelli case, which has proved that, by using SRP, the debtor can cram down minority lenders who oppose the debtor's restructuring plan in Turnaround ADR.

Restructuring & Insolvency Newsletter

III. Marelli case

1. Overview of Marelli and its Turnaround ADR process

The Marelli group, whose ultimate parent company is the holding company Marelli HD, is one of the world's leading suppliers to the automotive industry with approximately 160 subsidiaries in more than 20 countries around the world. With approximately 50,000 employees worldwide, the group has approximately 170 facilities and R&D centers in Asia, the Americas, Europe, and Africa, with sales of about 1.38 trillion yen (approximately 10.6 billion euros) in 2021. KKR, an existing shareholder of Marelli HD, is one of the world's leading investment firms with operations in 20 cities on four continents and \$252 billion in funds under management.

The Marelli group had fallen on hard times due to a decline in automobile production caused by the spread of COVID-19 and a shortage of semiconductors.

In order to drastically improve its financial position and reconstruct its capital, Marelli HD decided to request financial support from its financial creditors through the Turnaround ADR process, while also making self-help efforts such as restructuring its business and reducing expenses.

Marelli HD submitted a restructuring plan including debt forgiveness by financial debtors in Turnaround ADR. At the final creditors' meeting held on June 24, 2022, although Marelli HD obtained consent for the plan from approximately 95% of the financial institutions, it failed to obtain consent from the others and thus Marelli's Turnaround ADR was not successfully concluded.

2. Completion of restructuring in SRP

On June 24, 2022, the same day as the final creditors' meeting in Turnaround ADR, Marelli HD immediately filed for civil rehabilitation proceedings¹ with the Tokyo District Court once Turnaround ADR was not approved, and ultimately obtained creditors' approval and the court's confirmation of the restructuring

¹ In order to use SRP, debtors need to file for civil rehabilitation proceedings first, and then switch to SRP.

Restructuring & Insolvency Newsletter

plan that Marelli HD proposed in Turnaround ADR within 25 days after the filing, which is a historically short duration for civil rehabilitation proceedings (and SRP).

The actual timeline of Marelli's SRP is as follows:

| Number of days after filing | Events |
|-----------------------------|--|
| 0 days | <u>June 24</u> <ul style="list-style-type: none"> • Filed for civil rehabilitation proceedings • Submitted the rehabilitation plan and other necessary documents • Court order to commence civil rehabilitation proceedings |
| 12 days | <u>July 6</u> <ul style="list-style-type: none"> • Deadline for filing proof of claims |
| 13 days | <u>July 7</u> <ul style="list-style-type: none"> • Filed for SRP • Court order to commence SRP |
| 25 days | <u>July 19</u> <ul style="list-style-type: none"> • Creditors' meeting (rehabilitation plan approved) • Court order to confirm the rehabilitation plan |
| 1 month + 15 days | <u>August 9</u> <ul style="list-style-type: none"> • Confirmation of the rehabilitation plan effectuated • Court order to conclude the rehabilitation proceedings |
| 1 month + 16 days | <u>August 10</u> <ul style="list-style-type: none"> • Closing (new capital investment by KKR) |

As stated in section II, shortening the duration of Marelli HD's in-court proceedings was essential to prevent damage to the group's business value. The following are among many practical measures we took as Marelli's counsel to that end.

First, not only did Marelli HD file for civil rehabilitation proceedings with the Tokyo District Court immediately after (on the same day) the Turnaround ADR process was not successfully concluded, we successfully obtained a commencement order on the same date as a result of our coordination with the relevant parties including the court.

When filing for commencement of the civil rehabilitation proceedings, Marelli

Restructuring & Insolvency Newsletter

HD submitted nearly all of the documents required to complete the process. KKR, which was selected as a sponsor in Turnaround ADR, had agreed to invest in Marelli HD on the same terms as the proposed restructuring plan submitted in the proceedings, which enabled the early submission of the proposed rehabilitation plan.

Also, we consulted with the court to shorten the time for each step of SRP. For instance, the period for filing proof of claims, which should generally be between two weeks and four months after the date of order of commencement, was set to only 12 days after the order. The creditors' meeting was held two weeks after switching to SRP, which is much earlier than the statutory deadline of two months after commencing the proceedings.

IV. Expected future developments

The Marelli case proves that SRP can be a useful framework to cram down minority lenders who oppose the debtor's restructuring plan in Turnaround ADR. However, there are several caveats to note in using SRP:

- (1) Even in SRP, the commencement order and certain other court decisions are publicly announced on the official gazette, which may lead to damage to the debtor's business value.
- (2) In order to have a rehabilitation plan approved as soon as possible after the failure of out-of-court corporate workouts, the debtor needs to prepare for such failure while the workouts are in progress.
- (3) Under SRP, in principle, trade claims are subject to debt forgiveness.²
- (4) Security interests are untouchable in SRP: enforcement of security interests are not prohibited even during the proceedings; and security interests cannot be altered or canceled by a rehabilitation plan (even if it is approved by creditors and confirmed by the court).³

With the aim of addressing some of these issues, the Japanese government is currently examining the introduction of a new restructuring regime that allows alteration of certain rights of creditors including debt forgiveness without

² The Marelli group was able to pay all the trade claims of Marelli HD in full with the court's approval because it is merely a holding company with an insignificant number and value of trade claims.

³ In the Marelli case, we were able to solve this issue by utilizing clauses in the syndicated loan agreements to which all of the financial creditors were parties.

Restructuring & Insolvency Newsletter

requiring the consent of all lenders. We will continue to provide important updates on this new regime in this newsletter.

PUBLICATIONS

- Article "International Comparative Legal Guides to: Restructuring & Insolvency 2022 - Japan Chapter"
Publication International Comparative Legal Guides to: Restructuring & Insolvency 2022
Author Wataru Ishida
- Article "The Restructuring Review 15th Edition - Japan Chapter"
Publication The Restructuring Review 15th Edition
Author Dai Katagiri, Ryo Kawabata and Takashi Harada
- Book "Business of DES · DDS [4th edition] "
Publication KINZAI
Author [Editor and Author] Soichiro Fujiwara
[Author] Ryota Yamasaki and Takahiro Inou
- Article "The Insolvency Review 10th Edition - Japan Chapter"
Publication The Insolvency Review 10th Edition
Author Dai Katagiri, Ryo Kawabata and Takashi Harada

NEWS

- [Top Rankings received from asialaw 2023, the definitive guide to Asia's leading law firms and lawyers](#)

Mori Hamada & Matsumoto has achieved top ranking in asialaw 2023, the definitive guide to Asia's leading law firms and lawyers, as one of the "Outstanding" firms in Japan due to its impressive reputation in all of the practice areas and industry sectors. The firm's lawyers have received prestigious rankings in practice areas in Japan.

Our offices in Thailand (Chandler MHM Limited), Myanmar (Myanmar Legal MHM Limited), and Vietnam and their lawyers have also received prestigious rankings in their respective jurisdictions.

Restructuring & Insolvency Newsletter

Restructuring & Insolvency

Elite practitioner: Soichiro Fujiwara

Notable practitioner: Takahiro Inou

- **Special Korean-language website pages and special Traditional Chinese-language website pages established on the firm's website**

We have established special Korean-language website pages and special Traditional Chinese-language website pages on the firm's website

- **Mori Hamada Matsumoto to start strategic business alliance with ATD Law in Jakarta from January 2023**

Mori Hamada & Matsumoto is pleased to announce a business alliance with ATD Law in Jakarta, a newly established Indonesian firm, starting from January 2023. ATD Law begins its operations today as an independent Indonesian law firm.

Indonesia is the country with the largest population among ASEAN countries, and interest among foreign companies and investors, including Japanese companies, continues to be high. In addition to its importance as an overseas manufacturing base, in recent years there has been a diversification of investment targets, such as investments in the industries of financial, technology, medical care, logistics, and transportation services. Going forward, the diversification and deepening of various industries are expected to be underpinned by the large consumer market.

Previously, the Firm had been involved in various pioneering projects related to Indonesia. Recently, cross-border visits have been revived, and investment projects in Indonesia are expected to increase further. At this time, we decided to open an office in Jakarta through a business alliance with ATD Law in order to strengthen our organization for providing legal services in Indonesia.

ATD Law is an Indonesian local law firm represented by Abadi Abi Tisnadisastra, an Indonesia qualified lawyer. Abi is a lawyer with over 20 years of experience and has a very strong reputation in the local legal market in Indonesia. He has a substantial experience in M&A, Corporate, Finance, Telecommunications and Technology for local and international clients including Japanese corporate clients.

In addition, Tetsu Takeuchi, a Singapore office partner who handles many corporate and M&A projects in Indonesia, and a Japanese law qualified associate will be based in Jakarta.

Restructuring & Insolvency Newsletter

➤ Notice of Nagoya Office Relocation

With effect from December 12, 2022, we will relocate our Nagoya Office from the 23rd Floor to the 29th Floor of the Dai Nagoya Building.

Address / Contact

29th Floor, Dai Nagoya Building

3-28-12 Meieki, Nakamura-ku

Nagoya, Aichi 450-0002, Japan

TEL: +81-52-446-8660 / FAX: +81-52-446-8661

*Telephone and fax numbers will remain the same.

(Contacts)
Public Relations
mhm_info@mhm-global.com
+81-3-6212-8330
www.mhmjapan.com