

## RESTRUCTURING & INSOLVENCY NEWSLETTER

September 2023 (Vol.6)

### Turnaround ADR (1)

~ the most common out-of-court workout process for large companies ~

- I. Outline of Turnaround ADR
- II. Overview of Turnaround ADR Procedures

Mori Hamada & Matsumoto  
Ryo Kawabata  
+81 3 6266 8945  
[ryo.kawabata@mhm-global.com](mailto:ryo.kawabata@mhm-global.com)

Against the backdrop of the excessive debts caused during the COVID-19 pandemic and the escalation of general prices, the number of debt restructuring cases is increasing in Japan,<sup>1</sup> and large companies with international businesses are no exception.<sup>2</sup> With the rise of insolvency/restructuring cases, it has become common practice for large-scale international companies in Japan to restructure their debts through an out-of-court workout process called Turnaround ADR (alternative dispute resolution). Notable examples include the cases of Marelli Holdings (leading auto parts suppliers with approximately 160 subsidiaries in more than 20 countries) and Nichi-Iko Pharmaceutical Co., Ltd. (one of the largest generic drug manufacturers in Japan and listed on the Prime Market of the Tokyo Stock Exchange).

These international Turnaround ADR cases have attracted the attention of non-Japanese stakeholders. International financial investors such as PE funds or foreign strategic buyers, through Turnaround ADR, often invest in the debtor or purchase all or part of its businesses. Many overseas suppliers/vendors/customers often keep a close eye on the process with a substantial part of the debtors' businesses being located outside of Japan.

Since the number of international restructuring cases using Turnaround ADR is expected to keep increasing, we will provide an overview of this out-of-court workout process in a series of articles.

#### I. Outline of Turnaround ADR

Out-of-court corporate workouts – in essence, the debtor reduces its excessive

<sup>1</sup> 'Japan's Business Failures during January to December 2022,' published on the Teikoku Databank's website ([https://www.tdb-en.jp/news\\_reports/backnumber/brr22nen.html](https://www.tdb-en.jp/news_reports/backnumber/brr22nen.html)).

<sup>2</sup> Bankruptcies of fund-invested companies are reported to have surged, with the fastest pace seen in the past 10 years (<https://www.tdb.co.jp/report/watching/press/p230814.html> (Japanese only)).

## RESTRUCTURING & INSOLVENCY NEWSLETTER

debts based on negotiation with major creditors (usually banks) without using in-court insolvency proceedings – have been rapidly gaining popularity in Japan, mainly because of the serious deterioration of corporate value caused by the commencement of in-court insolvency proceedings.

One of the characteristics of Japanese workout practice is that there are several forums/guidelines for workouts that set out the process and ground rules of negotiation between debtors and creditors, and Turnaround ADR is one of such forums. Since the other major forums/guidelines target small and medium-sized companies, Turnaround ADR is in effect the only workout forum for larger companies.

Turnaround ADR has certain features that give debtors and creditors incentives to use it. Among such features are:

- Transparency of the process: With a statutory basis (despite not being an insolvency proceeding), Turnaround ADR has prescribed procedures for the process (see section II below) and a certain framework for debtors' provision of information to the participating creditors. Also, the entire process is operated by an association of experienced insolvency practitioners called the Japanese Association of Turnaround Professionals (“**JATP**”) and supervised and presided over by unconflicted insolvency practitioners (the “**Mediators**”).
- Predictability of restructuring plans: Turnaround ADR has certain requirements for the debtors' restructuring plan to be submitted during the process. The Mediators examine the submitted restructuring plan according to those requirements.
- Tax benefits: Creditors and debtors can enjoy certain tax benefits in connection with debt forgiveness under restructuring plans in Turnaround ADR.
- Grace period for delisting: If the debtor in Turnaround ADR is listed on the Tokyo Stock Exchange, it continues to be listed even after two consecutive fiscal years of losses, which is usually a delisting event.

## RESTRUCTURING & INSOLVENCY NEWSLETTER

- Special insolvency protections following Turnaround ADR: There are special measures for cases where the debtor switches from Turnaround ADR to in-court insolvency proceedings, such as protection of rescue financing provided in Turnaround ADR<sup>3</sup> and protection of commercial claims.

The following table lists the major Turnaround ADR cases in the last 15 years:

Debtor	Industry	Period	Major outcomes
COSMOS INITIA Co.,Ltd.	Real estate	Apr-Sep 2009	· Reschedule
Japan Asia Investment Co., Limited	Securities and commodity futures trading	May-Jun 2009	· Reschedule · DES · Debt forgiveness
ES-CON JAPAN Ltd.	Real estate	Jun-Oct 2009	· Reschedule
RADIA HOLDINGS,INC.	Temporary staffing	Jun-Oct 2009	· Reschedule · DES · Debt forgiveness
Saikaya Department Store Co.,Ltd.	Retail	Aug 2009-Feb 2010	· Reschedule · DES · Debt forgiveness
AIFUL Corporation	Consumer credit	Sep-Dec 2009	· Reschedule
ARDEPRO Co., Ltd.	Real estate reutilization	Mar-Jun 2010	· Reschedule · DES
Nihon Inter Electronics Corporation	Electrical machinery and equipment manufacturing	Apr-Jun 2010	· Reschedule · DES
Daiwa System Co., Ltd.	Real estate	Jun-Oct 2010	· Switched to insolvency proceeding
Maruwa Co., Ltd.	Supermarkets	Jun-Oct 2010	· Reschedule · DES
SHIN-NIHON TATEMONO CO.,LTD.	Real estate sales	Sep-Nov 2010	· Reschedule · DES · Debt forgiveness
Marumae Co., Ltd.	Precision parts processing	Mar-Jul 2011	· DES/DDS · Debt forgiveness
Meiho Enterprise Co.,Ltd.	Real estate sales	Sep 2011-Jan 2012	· DES · Debt forgiveness
Misonoza Theatrical Corporation	Entertainment	Feb-Apr 2013	· Reschedule
Tabuchi Electric Co., Ltd.	Electronic components manufacturing	Jun-Dec 2018	· Reschedule · Debt forgiveness
Akebono Brake Industry Co., Ltd.	Automotive parts manufacturing	Jan-Sep 2019	· Reschedule · Debt forgiveness

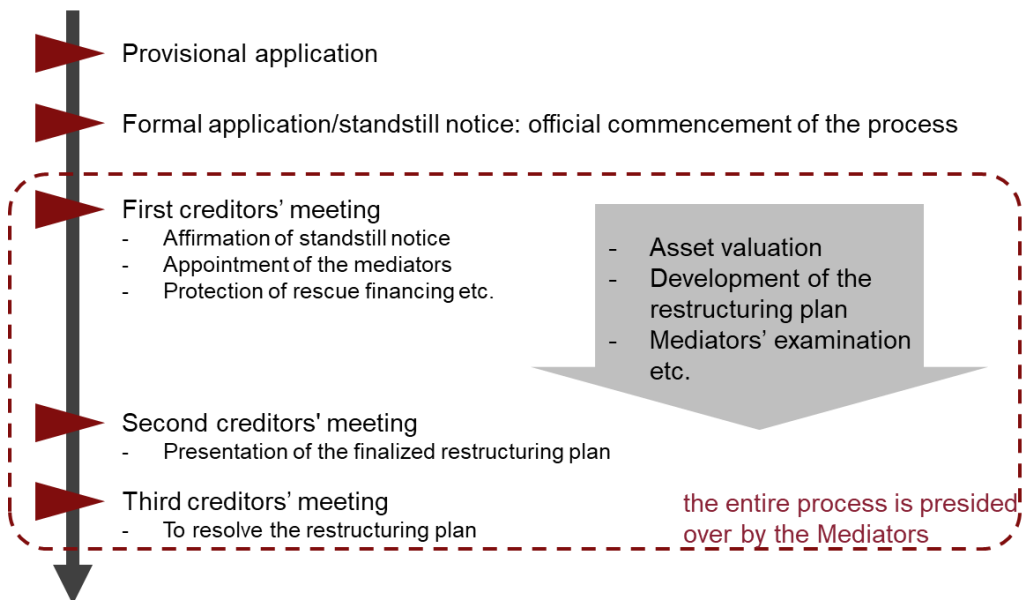
<sup>3</sup> See our [Restructuring & Insolvency Newsletter \(Vol.5\)](#).

## RESTRUCTURING & INSOLVENCY NEWSLETTER

Bunkyodo Group Holdings Co., Ltd.	Retail	Jun-Sep 2019	<ul style="list-style-type: none"> <li>Reschedule</li> <li>DES</li> </ul>
KURAMOTO CO., Ltd.	Glass manufacturing	Dec 2019-Mar 2020	<ul style="list-style-type: none"> <li>Reschedule</li> <li>Debt forgiveness</li> </ul>
Kodama Chemical Industry Co.,LTD	Resin product manufacturing	Jan-Apr 2020	<ul style="list-style-type: none"> <li>Reschedule</li> <li>Debt assignment</li> </ul>
SANDEN HOLDINGS CORPORATION	Automotive parts manufacturing	Jun 2020-May 2021	<ul style="list-style-type: none"> <li>Reschedule</li> </ul>
UMC ELECTRONICS CO., LTD.	Electrical equipment manufacturing	Nov 2020-Jan 2021	<ul style="list-style-type: none"> <li>DES</li> </ul>
VIA Holdings, Inc.	Restaurants	Dec 2020-Apr 2021	<ul style="list-style-type: none"> <li>DES</li> </ul>
WATABE WEDDING CORPORATION	Services	Mar-May 2021	<ul style="list-style-type: none"> <li>Debt forgiveness</li> </ul>
Marelli Holdings.	Auto parts	Mar-Jun 2022	<ul style="list-style-type: none"> <li>Reschedule</li> <li>DES</li> <li>Debt forgiveness<sup>4</sup></li> </ul>
Nichi-Iko Pharmaceutical Co., Ltd.	Pharmaceutical	May-Dec 2022	<ul style="list-style-type: none"> <li>Reschedule</li> <li>Debt forgiveness</li> </ul>

### II. Overview of Turnaround ADR Procedures

The flow of major events of Turnaround ADR is as follows:



<sup>4</sup> These outcomes were achieved in the subsequent insolvency proceeding where the same restructuring plan as in Turnaround ADR was approved.

## RESTRUCTURING & INSOLVENCY NEWSLETTER

### 1. Provisional application

Debtors first need to submit a provisional application to JATP before the official commencement of the process. If JATP determines that the case is suitable for restructuring through Turnaround ADR, then the application is provisionally accepted, and candidates for the Mediators are appointed.

Usually, debtors need to discuss with major banks and obtain their understanding of the usage of Turnaround ADR.

### 2. Formal application/standstill notice

If JATP determines that the debtor's formal application meets the statutory requirements, Turnaround ADR is officially commenced. Simultaneously with the formal application, a notice of standstill is sent to the participating creditors who the debtor request to join Turnaround ADR, jointly under the names of the debtor and JATP. This standstill notice does not take any legal effect automatically, but becomes effective only after all of the participating creditors agree to the proposed standstill at the first creditors' meeting (see the next section).

Although there is no statutory requirement as to the contents of the standstill notice, it usually covers the prohibition of any debt collection, creation of security interests, involuntary filing for insolvency proceedings, and the like. Other adjustments of the scope of the standstill are made on a case-by-case basis.

### 3. First creditors' meeting - to provide an outline of the restructuring plan

The first creditors' meeting in principle needs to be held within two weeks after the standstill notice is sent. At the meeting, a resolution is made to approve the standstill notice in addition to other procedural matters (such as the appointment of the Mediators and scheduling of upcoming creditors' meetings). If necessary, provision and protection of rescue financing can also be resolved at this meeting.

## RESTRUCTURING & INSOLVENCY NEWSLETTER

### 4. Things to be done between the first and second creditors' meetings

The major tasks to be completed by the second creditors' meeting are as follows:

#### (i) Asset valuation

When the proposed restructuring plan includes debt forgiveness, the debtor is required to conduct an asset valuation (the "**Statutory Valuation**") based on the asset valuation standards – at market value, in principle – and prepare a balance sheet based on such valuation. The Mediators examine the Statutory Valuation to ensure that it is carried out appropriately.

Even in cases where the debtor does not request debt forgiveness and therefore a Statutory Valuation is not legally required, debtors may carry out the Statutory Valuation in order to enjoy the tax benefits available only based on the valuation itself, such as recognition of valuation gains and losses as a result of the valuation and usage of expired carried-forward losses.

#### (ii) Development of the restructuring plan

The debtor must develop its restructuring so that it can submit it at the second creditors' meeting and discuss it with the participating creditors.

If the debtor looks for and selects a sponsor who wants to invest in or purchase its businesses after the commencement of Turnaround ADR, the process of selecting such sponsors is carried out concurrently with the development of the restructuring plan. In such cases, the participating creditors would have a strong interest in the selection process because the restructuring plan itself heavily depends on the selected sponsor's intentions.

#### (iii) Mediators' examination

The Mediators examine the debtor's restructuring plan from business, financial and legal perspectives, and prepare a report on whether the plan is fair, reasonable and feasible. Matters to be examined include the cause of the financial distress, reasonableness and fairness of financial support requested

## RESTRUCTURING & INSOLVENCY NEWSLETTER

in the plan, reasonableness of the sponsor selection process, and directors' and shareholders' responsibilities.

### 5. Second creditors' meeting - to explain and discuss the proposed restructuring plan

The following must be accomplished at the second creditors' meeting, among other requirements:

- (i) the debtor explains the proposed restructuring plan;
- (ii) the debtor reports on rescue financing, if provided during Turnaround ADR;
- (iii) the Mediators report the results of their examination and state their opinions on the legality, fairness, economic reasonableness, and feasibility of the proposed restructuring plan;
- (iv) if the plan involves debt forgiveness, the Mediators' state the results of the required examination; and
- (v) the participating creditors ask questions and state their opinions.

Although the second creditors' meeting is positioned as a meeting for discussing the proposed plan, in reality the plan must be final (or close to being final) after reflecting the participating creditors' opinions provided before the second creditors' meeting so that they (banks) can start their internal process of approving the plan after the meeting.

### 6. Third creditors' meeting - to resolve the restructuring plan

The third (final) creditors' meeting is held to resolve the restructuring plan presented at the second creditors' meeting. If the plan is agreed to by all participating creditors in writing, it immediately becomes effective, and Turnaround ADR is successfully concluded.

If some creditors do not submit written agreements to the plan, Turnaround ADR will fail. However, with the consent of all participating creditors, the meeting can be adjourned for the plan to be given another opportunity, and amended if necessary, to be agreed to by all participating creditors.

## RESTRUCTURING & INSOLVENCY NEWSLETTER

### PUBLICATIONS

- Article "Mycal Supermarkets Securitization – True Sale Character Protected despite Attack by Receiver under Corporate Reorganization"  
Publication SFJ Journal Vol.26  
Author Masanori Sato
  
- Article "Treatment of Existing Shareholders in Private Liquidation - Based on the Most Recent Case"  
Publication NBL No.1241  
Author Takahiro Inou, Dai Katagiri, Wataru Ishida (Co-Author)
  
- Article "Risks for Transactions and Directors in Financially Distressed Businesses (Japan)"  
Publication Practical Law  
Author Soichiro Fujiwara, Dai Katagiri, Ryo Kawabata (Co-Author)
  
- Article "International Comparative Legal Guide to: Aviation Finance & Leasing 2023 - Japan chapter"  
Publication International Comparative Legal Guide to: Aviation Finance & Leasing 2023  
Author Taro Omoto, Makoto Sakai, Masaki Yukawa (Co-Author)
  
- Article "The Restructuring Review 16th Edition - Japan Chapter"  
Publication The Restructuring Review 16th Edition  
Author Ryo Kawabata, Takashi Harada (Co-Author)

### NEWS

- **The Best Lawyers in Japan™ and Best Lawyers: Ones to Watch in Japan™ (2024 edition)**

In the 2024 edition of The Best Lawyers in Japan™ by Best Lawyers®, MHM received the "Law Firm of the Year" award in the categories of Banking and Finance Law and Insolvency and Reorganization Law.

In addition, four lawyers have been selected as "Lawyer of the Year" in the following areas.

- Masanori Sato - Structured Finance Law
- Akira Ehira - Derivatives
- Kazuo Yoshida - Insurance Law



## RESTRUCTURING & INSOLVENCY NEWSLETTER

· Noboru Kitayama - Privacy and Data Security Law

Furthermore, 152 lawyers from our firm have been included in The Best Lawyers in Japan™, and 55 lawyers from our firm have been included in Best Lawyers: Ones to Watch in Japan™.

➤ **Firm receives award at FT Innovative Lawyers Asia-Pacific Awards 2023 for “Innovative Lawyers in Restructuring” and highly commended in other categories**

Mori Hamada & Matsumoto received an award for “Innovative Lawyers in Restructuring” at the FT Innovative Lawyers Asia-Pacific Awards 2023 hosted by the Financial Times on May 4, 2023. The award was given in recognition of the innovativeness of the restructuring matter of Marelli Holdings, Inc. where, for the first time in Japanese history, a debtor used one type of in-court insolvency proceeding (simplified rehabilitation proceeding) as a tool to “cram down” opposing lenders in a preceding out-of-court corporate workout.

Our firm and lawyers were also evaluated highly in the following categories:

**Innovation in Digital Legal practice: Standout**

‘NOEL’ – using legal tech to generate new revenues and enhance our reputation for public M&A expertise

FT Report: [Business of law: best practice in legal work | Financial Times \(ft.com\)](#)

**Innovative Lawyers in Deal Making: Standout**

Take-private transaction innovation for the successful acquisition by KKR of Hitachi Transport System (Japan’s largest M&A deal in 2022)

FT Report: [Practice of law: best practice in legal work | Financial Times \(ft.com\)](#)

**Innovative Practitioner: Commended**

Ryo Kawabata

FT Report: [Boldness pays off for top legal practitioners | Financial Times \(ft.com\)](#)

➤ **Firm receives awards at ALB Japan Law Awards 2023**

Mori Hamada & Matsumoto earned the prestigious awards listed below at the ALB Japan Law Awards 2023 organized by Asian Legal Business (ALB), an internationally-recognized legal journal and a part of the Thomson Reuters Group.

**LAW FIRM CATEGORIES**

Japan Law Firm of the Year

## RESTRUCTURING & INSOLVENCY NEWSLETTER

Japan Deal Firm of the Year  
Banking and Financial Services Law Firm of the Year  
Capital Markets Law Firm of the Year  
Investment Fund Law Firm of the Year  
Regulatory and Compliance Law Firm of the Year  
Restructuring and Insolvency Law Firm of the Year  
Technology, Media and Telecommunications Law Firm of the Year

### DEAL CATEGORIES

- Debt Market Deal of the Year
- Bain Capital's Tender Offer for Hitachi Metals
- Equity Market Deal of the Year
- SBI Sumishin Net Bank's Global IPO
- M&A Deal of the Year (Premium)
- KKR Acquisition of Mitsubishi Corp UBS Realty
- Technology, Media and Telecommunications Deal of the Year
- Hitachi Disposition of Hitachi Metals

For a full list, please see the link below to the ALB website.

#### ➤ Top Rankings Received from IFLR1000 2023

Mori Hamada & Matsumoto has been ranked in the top tier of recommended law firms in following categories in Japan by IFLR1000 2023. The firm's lawyers have received prestigious rankings in practice areas and industry sectors as shown below. Our Singapore office, Bangkok office (Chandler MHM Limited), Yangon office (Myanmar Legal MHM) and Vietnam offices and their lawyers have also received prestigious rankings.

For more information, please refer to the IFLR1000 website.

#### ➤ Opening of New York Office

Mori Hamada & Matsumoto ("MHM") is pleased to announce the opening of New York office (official name: Mori Hamada & Matsumoto NY LLP) on September 6, 2023.

Our New York office will be headed by Yuto Matsumura, a managing partner of MHM with a wide global contact network. Joining him will be Aruto Kagami and Nobuhiko Suzuki, partners with high levels of expertise, rich experience, and proven results in

## RESTRUCTURING & INSOLVENCY NEWSLETTER

cross-border matters, as well as senior associate Fumiya Sunose and Ken Kawamoto. Aruto Kagami has specialties in cross-border competition law matters, white collar investigations, crisis management, and disputes, and Nobuhiko Suzuki specializes in cross-border M&A and corporate matters.

After many years of advising on cross-border deals and disputes between Asia and the Americas while maintaining close associations with major law firms in the region, MHM has now chosen New York — the center of global commerce and an important bridge between the Americas and Asia — as the firm's first location outside Asia. The US and the rest of the region will continue to be an important market for our clients, and an especially large market from legal point of view as well. Through the New York office, MHM intends to further bolster relationships with such law firms and clients, while also enhancing our ability to serve the many and varied needs for cross-border legal services spanning the two regions.

Our New York office started operation at a temporary office and is scheduled to relocate to a permanent office by the end of 2023 which will be announced separately.

### ➤ Opening of Sapporo Office

Mori Hamada & Matsumoto is pleased to announce the planned opening of an office in Sapporo, Japan.

To date the firm has been providing legal support for matters in Hokkaido through its offices in Tokyo and other locations in Japan. However, clients have expressed their desire for support closer to where they do business, particularly in the field of corporate law. By opening an office in Sapporo, Hokkaido, the firm hopes to respond to such needs and expectations, and provide services specifically tailored to the needs of clients in that region.

The Sapporo Office will be staffed by Mitsuhiro Tateishi, who is a partner of the firm and has extensive experience in areas including M&A, corporate law-related services, and startups, and other associates of the firm. The Sapporo Office will endeavor to contribute to the economic development of Hokkaido by providing cutting-edge legal support in a wide range of areas including M&A, startups, business succession, crisis management, finance, litigation, restructuring, and cross-border transactions while working in close coordination with the firm's lawyers not only within Japan (Tokyo, Osaka, Nagoya, Fukuoka, and Takamatsu), but also at our overseas offices (those in Beijing, Shanghai, Singapore, Bangkok, Yangon,

## RESTRUCTURING & INSOLVENCY NEWSLETTER

HCMC, Hanoi, and Jakarta, and an office in New York that is schedule to commence operations in the autumn of 2023) as well as with other overseas law firms, etc. we have alliances with.

The Sapporo Office is scheduled to open in September or October 2023, after the necessary procedures have been completed. Further details about the office, including the date of opening and the location, will be announced at a later date.

\* The Sapporo Office will be established as a branch office of Mori Hamada & Matsumoto LPC.