

## Current Topics of Japanese Law

### 1. Great East Japan Earthquake and Economic Revitalization of Enterprises and Individuals

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#### 1. Great East Japan Earthquake and Bankruptcy

In regard to the Great East Japan Earthquake, the so-called “double loan” problem has cast a long shadow over the affected areas. Based on the bankruptcy information<sup>2</sup> relevant to the earthquake and related disasters provided by the Tokyo Shoko Research, Ltd., there were a total of 644 bankruptcy cases related to the Great East Japan Earthquake as of March 9, 2012, at which time one year had elapsed since the earthquake.

In addition to assistance such as relief programs,<sup>3</sup> under the Act on Support for Reconstructing Livelihoods of Disaster Victims, assistance<sup>4</sup> from house reconstruction support projects conducted by local governments was provided to affected individuals. Additionally, in relation to business funds for affected enterprises, the Financial Services Agency has undertaken measures to prevent the weakening of financing under the SME Finance Facilitation Act. Moreover, the Small and Medium Enterprise Agency has undertaken a variety of measures,<sup>5</sup> including the establishment of the Great East Japan Earthquake Recovery Special Loans for small and middle-sized enterprises.

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<sup>2</sup> [http://www.tsr-net.co.jp/news/analysis/2012/1217431\\_2004.html](http://www.tsr-net.co.jp/news/analysis/2012/1217431_2004.html).

<sup>3</sup> See “Q & A *Hisaisha Seikatsu Saiken Shienho*” (“Q &A concerning the Act on Support for Reconstructing Livelihoods of Disaster Victims”) by Susumu Tsukui (Shojihomu, 2011) for details on assistance under the Act on Support for Reconstructing Livelihoods of Disaster Victims (Act No. 66 of May 22, 1998).

<sup>4</sup> For instance, see [http://www.pref.miyagi.jp/juutaku/2juuro-n\\_hojo.htm](http://www.pref.miyagi.jp/juutaku/2juuro-n_hojo.htm).

<sup>5</sup> [http://www.chusho.meti.go.jp/pamflet/hakusyo/h23/h23\\_1/110701h23\\_gaiyou.pdf](http://www.chusho.meti.go.jp/pamflet/hakusyo/h23/h23_1/110701h23_gaiyou.pdf).

## 2. Extension and Composition of Business Debts and Consumer Debts

In cases in which enterprises or individuals that are unable to endure burdens imposed by double loans go bankrupt under unavoidable circumstances, measures for the extension and partial composition of existing debts would be effective. Proceedings<sup>6</sup> related to the Insolvency Law, such as bankruptcy and civil rehabilitation involving the courts, function to serve the purposes of the proceedings mentioned above.

In regard to bankruptcy, liquidation proceedings will be implemented.

Concerning the Great East Japan Earthquake, “Measures on Special Provisions for Determination of Commencement of Bankruptcy Proceedings of Corporate Entities Due to Insolvency” were applied (Act on Special Measures concerning Specified Disasters, Article 5). Except for cases such as the inability to pay, measures that made it impossible to commence bankruptcy proceedings during a certain period were adopted for insolvent corporations.

Moreover, in the case of individual bankruptcies, an increase in the maximum limit (990,000 yen currently) that can be maintained as exempted property has been proposed.

At the same time, civil rehabilitation proceedings can be implemented as a system of economic revitalization for corporations and individuals. It is possible to transform debts based on a civil rehabilitation plan (e.g., extension and partial composition). In contrast with cases of bankruptcy, business revitalization in such cases is characterized by being implemented while the utilized properties are still in use by debtor. Civil rehabilitation proceedings play a major role in cases in which assistance from powerful sponsors and nationwide assistance are obtained, since the affected corporations have strong local creditworthiness.<sup>7</sup>

Civil rehabilitation proceedings allow rehabilitation for individuals

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<sup>6</sup> There is recent literature in which the function of the Insolvency Law is explained in relation to the earthquake; i.e., “Q & A *Shinsai to Saiken Kaishu/Tosan Taio*” (“Q & A on Earthquake and Debt Collection as well as Responses to Bankruptcy”), written and edited by the DOJIMA Law Office(2011).

<sup>7</sup> Based on the investigation released by Teikoku Databank, LTD., in January 2012, among the top 10 bankrupt companies with the highest amounts of debt in six Tohoku prefectures, three cases were involved in civil rehabilitation proceedings and seven cases were involved in special liquidation. See [http://www.tdb.co.jp/report/watching/press/pdf/s120102\\_10.pdf](http://www.tdb.co.jp/report/watching/press/pdf/s120102_10.pdf).

with small-scale debts (Article 221 of said Act here and thereafter), individuals such as salaried workers (Article 239 of said Act here and thereafter), and for individual businesses. In particular, for individual debtors with home mortgages, in addition to the changing rights based on a civil rehabilitation plan, it is also possible to change repayment conditions regarding home loan claims related to land and buildings for which mortgages are established. In this respect, there is ample room to make use of civil rehabilitation proceedings.

Furthermore, unlike cases of bankruptcy and civil rehabilitation proceedings, non-judicial work-out involves a form for negotiating repayment of debts between debtors and creditors, but does not involve the court. Regarding recent non-judicial work-out, there is an inclination for third-party institutions to be involved between debtors and creditors, and for specific work-out plans to be organized. In relation to the Great East Japan Earthquake, experts registered based on the “Guidelines on Non-judicial Work-out for Individual Debtors” are involved with creditors and undertake negotiations with these creditors.<sup>8</sup> This method is highly useful in terms of procedural flexibility, time, and cost compared with strict judicial debt adjustment.

### 3. Revitalization of Regions, Enterprises, and Individuals

Excessively burdensome loans cause serious problems for affected enterprises and individuals. In cases in which enterprises go bankrupt and fail, local industries will be irreparably damaged and many local workers will lose their jobs. Therefore, the pressure caused by the crushing burden of debts, along with damage from the earthquake, is placed on individuals. Individuals will experience failure in their livelihoods. This will result in a vicious circle that will further exhaust affected areas. Regional revitalization is impossible without the revitalization of enterprises and individuals.<sup>9</sup> This is one of the missions of the Insolvency Law.

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<sup>8</sup> See “*Daisaigai To Ho*”, written by Susumu TSUKUI, p.88 and thereafter(2012), for details.

<sup>9</sup> See pg. 24 of the October 31, 2011, issue of the *Nihon Keizai Shinbun*: “Flexible Judgment for Regional Reconstruction — Financial Awareness,” by Hideki Matsushima, for the importance of the regional economy to business revitalization.

(On 26 March 2014)