

The Guideline for multi-creditor out-of-court workouts

1. Multi-creditor out-of-court workout subject to the guideline

- (1) A multi-creditor out-of-court workout implemented under the guideline is that aims for reorganization of a corporation in operational difficulties through composition and/or extension of debt (mainly financial debt), etc., based on an agreement between the creditors and the debtor instead of procedures in accordance with the *Corporate Reorganization Law* or *Civil Rehabilitation Law*, etc. The guideline is designed to cover only a limited range of multi-creditor out-of-court workouts, namely those in which a number of financial institutions are involved as the Major Creditors or Relevant Creditors defined below.
- (2) The reorganization of a corporation presumed in the guideline should primarily be conducted under the *Corporate Reorganization Law* or *Civil Rehabilitation Law*, etc. However, only when such legal procedures are feared to considerably erode the enterprise value of the corporation and cause a hindrance to the reorganization of the corporation, and when a multi-creditor out-of-court workout is considered economically reasonable for both the creditors and the debtor, a multi-creditor out-of-court workout under the guideline should be implemented.
- (3) As a precondition for the debtor requesting the creditors for composition and/or extension of debt, the multi-creditor out-of-court workout under the guideline expects that the debtor independently exert the maximum efforts towards reorganization, that clarify the responsibility for management, and that the shareholders (especially the controlling shareholder, if any) fulfill all of their responsibilities to the maximum extent.

2. Rules for multi-creditor out-of-court workout

- (1) The guideline has been prepared by representatives of financial and other industries with consultation to neutral and fair advisors such as academics and sets out rules for an implementation of the multi-creditor out-of-court workout described in Article 1 above in a fair and speedy manner. Although the guideline has no legal enforceability, it is expected that financial institutions, etc. as Major or Relevant Creditors, corporations as debtors, and other interested parties voluntarily respect and observe the guideline. In a sense, the guideline represents a general consensus among the representatives of the financial and other industry regarding multi-creditor out-of-court workout for companies truly deserving to be rehabilitated.

- (2) When one of the *Major Creditors* (usually multiple financial institutions, including the banks with the largest credit exposure to the debtor) receives a sincere request from a debtor for the multi-creditor out-of-court workout under the guideline, the Major Creditors should deal with the request promptly and in good faith, and the Major Creditors and the debtor should mutually cooperate to ensure the orderly and expeditious progress of the procedures of the workout.
- (3) *Relevant Creditors* (creditors, including major creditors, whose rights should be affected if a reorganization plan is approved) should cooperate in good faith to the multi-creditor out-of-court workout in accordance with these rules.
- (4) Relevant Creditors and the debtor should be mutually obligated to keep confidentiality of the information obtained in the process of the multi-creditor out-of-court workout.
- (5) Fairness and equity should be observed as the principle of the multi-creditor out-of-court workout in accordance with the guideline, and transparency should be upheld.

3. Corporations eligible for multi-creditor out-of-court workout under the guideline

A corporation can apply for the multi-creditor out-of-court workout if all the conditions below are fulfilled.

- (1) The corporation is in operational difficulty mainly due to excessive debt, and it is difficult for the corporation to rehabilitate itself through its own efforts only.
- (2) The possibility exists that the corporation can be rehabilitated with the support of creditors as the enterprise value of the company still exists (i.e. the business is profitable and promising, with a firm business base including technological know-how, a brand name, an established trading area and highly capable personnel) and operating profits have been posted in the major business divisions, etc.
- (3) There is a concern that petition for the *Corporate Reorganization Law* or *Civil Rehabilitation Law, etc.* may deteriorate the credibility of the debtor, considerably erode the enterprise value of the corporation and cause a hindrance to the reorganization of the corporation.
- (4) Reorganization of the corporation through the multi-creditor out-of-court workout is considered more economically reasonable for creditors in recovering their credits than liquidation via bankruptcy or the procedures under the *Corporate Reorganization Law* or *Civil Rehabilitation Law, etc.*

4. Commencement of the multi-creditor out-of-court workout

- (1) A debtor fulfilling the necessary conditions indicated in Article 3 above beseeches its Major Creditors for a multi-creditor out-of-court workout under the guideline. Upon request, the debtor should provide the Major Creditors with relevant information which sufficiently explain the current and past state of assets, liabilities and profit/loss, the reason for the lapse into operational difficulties and a proposed reorganization plan of the corporation, etc.
- (2) Major Creditors should examine the information mentioned in (1) above provided by the debtor, have the debtor explain in detail, and make an examination on the points indicated below to decide whether it is reasonable to issue a “Standstill Notice”. When multiple Major Creditors exist, the decision to issue such a notice should be made by unanimous consent of all Major Creditors.
Items to be examined are as follows:
 - A) Whether the conditions of Article 3 are fulfilled.
 - B) Whether the Relevant Creditors are expected to agree to the proposed reorganization plan.
 - C) Whether the proposed reorganization plan is feasible.
- (3) When the Major Creditors decide that it is reasonable to issue a Standstill Notice based on (2) above, the Major Creditors and the debtor should issue the Notice in their joint names to all the Relevant Creditors.
- (4) The range of Relevant Creditors is usually limited to financial institutions, but can include other creditors with large amount of credit exposure when deemed appropriate.
- (5) The Standstill Notice should be issued in writing and include a notice calling the first meeting of creditors (indicating date, time and place of the meeting). In addition, explanatory documents (debtor’s financial information stating the state of assets, liabilities, profit/loss and a proposed reorganization plan etc.) for such meeting should also be attached to the Notice.
- (6) The decision on whether a Standstill Notice is to be issued should be made promptly. When Major Creditors have determined that the issuance of such a Notice is not appropriate, they should inform the debtor of such fact forthwith. When it is necessary for Major Creditors to obtain additional information for determining whether to issue a Standstill Notice, they have the right to request additional documents or further explanation from the debtor. The decision not to issue a Standstill Notice means the decision that the multi-creditor out-of-court workout under the guideline will not be implemented.

5. The first meeting of creditors and the creditors' committee

- (1) The debtor and Major Creditors should convene the first meeting of creditors within two weeks from the date when the Standstill Notice was issued to the Relevant Creditors.
- (2) The debtor and Major Creditors should convene the first meeting of creditors in their joint names. In principle, a chairperson of the meeting should be elected from among the Major Creditors at the beginning of the meeting. The chairperson presides over the meetings of creditors (including the second and subsequent meetings) and should make efforts toward the orderly progress of the meetings.
- (3) The items below should be implemented at the first meeting.
 - A) An explanation by the debtor regarding the current and past state of assets, liabilities and profit/loss in addition to the details of the proposed reorganization plan. Furthermore, questions and answers regarding the explanation as well as an exchange of opinions among the Relevant Creditors present should also be conducted.
 - B) Discussion of whether it is necessary to assign professional advisors such as a certified public accountant, licensed tax accountant, legal attorney, real estate appraiser or other professional advisor in order to examine the state of assets, liabilities and profit/loss and assess the accuracy, adequacy and feasibility of the proposed reorganization plan. When such is necessary, appropriate professional advisors should be appointed.
 - C) Determination of the duration of the Standstill (“Standstill Period”).
 - D) Determination of the date/time and place for the second meeting of creditors.
 - E) Determination of whether a creditors’ committee is to be established, and if such has been determined, the selection of committee members.
 - F) Determination of other necessary matters.
- (4) The creditors’ committee should select the chairperson from among its members by mutual vote. The chairperson should preside over the committee.
- (5) The creditors’ committee should examine the appropriateness and feasibility of the proposed reorganization plan, report the results of such examination to the Relevant Creditors, carry out matters referred to the committee by the meeting of creditors, and matters necessary to facilitate the orderly processing of the multi-creditor out-of-court workout under the guideline.
- (6) When a creditors’ committee is established by the meeting of creditors, determination on matters stipulated in Article 5 (3) B or D, or Article 6 (1) A or (3) may be referred to the committee.

- (7) Resolutions of the meeting of creditors should be made by unanimous consent of all Relevant Creditors in attendance. However, procedural matters that are related to neither rights nor obligations of the Relevant Creditors may be determined by the approval of a majority of the Relevant Creditors.

6. Standstills

- (1) All Relevant Creditors and the debtor should refrain from taking the following acts during a Standstill Period. The mere receipt or issuance of a Standstill Notice should not constitute a cause for acceleration of payment set forth in Agreement on Bank Transactions, etc.
- A) The debtor should not dispose of its assets or assume new liabilities except for the disposal or assumption of such that takes place in the ordinary course of business, or except for the case in which a meeting of creditors or a creditors' committee to whom decision-making power has been entrusted by the meeting of creditors permits the debtor to dispose of its assets or assume new liabilities.
 - B) The debtor should not, for the sole benefit of a limited number of Relevant Creditors, perform any act of extinguishing its debts such as the repayment of debts (including repayment in kind, hereinafter the same), or set-off, nor provide any credit enhancement such as collateral and guarantee.
 - C) Each Relevant Creditor should maintain the outstanding credit exposure (including the credit balance of loans on notes, overdrafts, and loans on deeds) as of the date when the Standstill Notice is issued, and should not improve its position against the debtor relative to other Relevant creditors. The Relevant creditor also should not perform any act of extinguishing debts of the debtor, such as the receipt of debt repayment or the exercise of its right of set-off, request the debtor to provide additional collateral or guarantee, exercise its security right, or file a request for compulsory execution, provisional attachment, provisional injunction, or statutory bankruptcy and reorganization procedures.
- (2) The Standstill Period should commence from the date when the Standstill Notice is dispatched and end on the date when the first meeting of creditors closed. If, at the first meeting of creditors, the Standstill Period is decided to be extended to a date not exceeding three months from the date of the meeting of creditors, the Standstill period should be extended to such date. However, if a further extension is considered necessary, a revised extension of the Standstill Period may be determined at the second meeting of creditors or the continued meeting of

creditors held at the date specified in Article 8 (5).

- (3) During the Standstill Period, additional loans may be granted as necessary within an amount and by a method determined by a meeting of creditors or creditors' committee to which decision-making power has been entrusted by the meeting of creditors. Such additional loans will be repaid at any time senior to other credits held by Relevant Creditors.

7. Contents of a proposed reorganization plan

A proposed reorganization plan should include the following:

- (1) Business plan

A business plan should reflect adequate self-help efforts by the debtor and include the following items in principal:

- A) Causes of operational difficulties
- B) A detailed business restructuring plan (including solutions to causes of operational difficulties)
- C) Measures to strengthen its capital, including support through the injection of new capital and debt-equity swaps
- D) A projection of the debtor's assets, liabilities, and profits/losses (for approximately the next ten years)
- E) A fund raising plan
- F) A debt repayment plan, etc.

- (2) When the debtor's net worth is virtually negative, its proposed reorganization plan should indicate that such negative net worth will be eliminated and become positive within approximately three years from the starting date of the first fiscal year after approval of the proposed reorganization plan.
- (3) When the debtor has incurred net loss, its proposed reorganization plan should indicate that such loss will turn to profit within approximately three years from the starting date of the first fiscal year after approval of the proposed reorganization plan.
- (4) When the debtor should be granted composition by the Relevant Creditors, the interests of the controlling shareholder of the debtor should, in principle, be divested, and the proportional interest of existing shareholders should be reduced or terminated through a capital reduction and a subsequent capital increase.
- (5) When the debtor should be granted composition by the Relevant Creditors, the management of the debtor should, in principle, retire.
- (6) The adjustments of rights under a proposed reorganization plan should be

aimed at equal treatment among creditors, and the share borne by each creditor should be examined individually, taking equitable treatment into consideration.

- (7) Relevant Creditors should be able to expect that the proposed reorganization plan be economically reasonable, such as including the certainty that a larger amount of credit will be recovered than in the case of liquidation via bankruptcy, or procedures in accordance with the *Corporate Reorganization Law* or *Civil Rehabilitation Law, etc.*

8. Approval of a proposed reorganization plan

- (1) Major Creditors (a creditors' committee if such is established) should report the results of an examination and evaluation concerning the appropriateness and feasibility of a proposed reorganization plan to all Relevant Creditors prior to the second meeting of creditors.
- (2) The report mentioned in (1) above of this Article as well as questions and answers between creditors and the debtor, and exchanges of views among attendant Relevant Creditors regarding a proposed reorganization plan should be conducted at the second meeting of creditors.
- (3) The deadline for expressing in writing whether Relevant Creditors consent to a proposed reorganization plan or not should be determined at the second meeting of creditors.
- (4) When all Relevant Creditors submit written consent to a proposed reorganization plan, the plan will come into force. In that case, the debtor should assume the obligation to implement the approved reorganization plan, while Relevant Creditors' rights should be adjusted in accordance with the plan, and those creditors should treat relevant credits in accordance with the stipulations of the approved reorganization plan, such as composition and/or extension of debt.
- (5) In the case where the second meeting of creditors needs to be continued in order to amend a part of a proposed reorganization plan or for other purposes, a date (including the time and place) for the continued meeting may be determined. Proceedings in (2) and (3) of this Article should also be carried out when the continued meeting is held.
- (6) In the case where all Relevant Creditor's consent to a proposed reorganization plan (including an amended proposed reorganization plan according to (5) above of this Article) cannot be obtained by a deadline determined according to the provisions specified in (3) and (5) of this Article, the multi-creditor out-of-court workout in accordance with the guideline should terminate, and the debtor should

take appropriate measures such as the filing petition for statutory bankruptcy and reorganization procedures.

9. Others

- (1) When a reorganization plan is approved, the debtor should disclose an outline of the plan to public in an appropriate manner. However, the debtor may be exempted from such disclosure requirement if there is a possibility that the disclosure will cause a material adverse effect to successful reorganization of the debtor.
- (2) After the approval of a reorganization plan, the debtor should report on progress in implementation of the plan to Relevant Creditors at regular meetings of creditors or other occasions in accordance with the provisions of the approved reorganization plan.
- (3) In the case where the debtor cannot fulfill its debt repayment obligation to Relevant Creditors in accordance with the approved reorganization plan, the debtor must take appropriate measures such as the filing petition for statutory bankruptcy and reorganization procedures. The debtor must not leave such non-performance of the obligation unsettled. However, the debtor may be exempted from taking those measures if all Relevant Creditors give consent to amend the reorganization plan.
- (4) The debtor should bear all fees and expenses incurred in connection with multi-creditor out-of-court workout under the guideline, including those for professional advisors, those in connection with holding of meetings of creditors and the creditor's committee.