

Provisional translation of the summary of the bill for the  
“Law on Recognition and Assistance of a Foreign Insolvency Proceeding”

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[Note]

The following is a tentative translation of the summary of the bill for the “Law on Recognition and Assistance of a Foreign Insolvency Proceeding (Gaikoku tosanshori tetsuzuki no Shoninenjo ni Kansuru Horitsu, Law No. 129 of 2000).” This summary was adopted by the Advisory Council for the reform of insolvency law in the summer of 2000, and the bill passed the Diet that November. This new law is expected to become effective from April 1, 2001.

The law itself consists of sixty-nine provisions, considerably more than those of the UNCITRAL Model Law on Cross-Border Insolvency, because it includes many technical provisions that are often needed in Japanese legislation. However, for foreign lawyers to understand the whole concept of the new legislation, this summary should be more effective than the text of the law itself. In this translation, some subparagraphs that are rather technical are bracketed. The text of the law is available at <http://www.moj.go.jp/HOUAN/GAIKOKU/refer02.htm> (in Japanese only).

Section 1. Definitions

(1) For the purposes of this summary of the bill:

- (i) “foreign insolvency proceeding” means a proceeding taking place in a foreign country that corresponds to a Bankruptcy Proceeding, a Civil Rehabilitation Proceeding, a Corporate Reorganization Proceeding, a Corporate Arrangement Proceeding, or a Special Liquidation Proceeding;
- (ii) “domestic insolvency proceeding” means a Bankruptcy Proceeding, a Civil Rehabilitation Proceeding, a Corporate Reorganization Proceeding, a Corporate Arrangement Proceeding, or a Special Liquidation Proceeding taking place in Japan;
- (iii) “foreign trustee” means a person or body authorized to administer and dispose of the debtor’s assets in the State where the foreign insolvency proceeding is filed, excluding the debtor itself;
- (iv) “foreign trustee/debtor” means a trustee if a trustee is appointed, and the debtor itself if no trustee is appointed, in the State where the foreign insolvency proceeding is filed;
- (v) “recognition of foreign insolvency proceeding” means recognition of a decision of a court or other authority competent to commence a foreign proceeding that corresponds to a Bankruptcy Proceeding, a Civil Rehabilitation Proceeding, a Corporate Reorganization Proceeding, a Corporate Arrangement Proceeding, or a Special Liquidation Proceeding;
- (vi) “recognition trustee” means a person or body who is authorized, pursuant to Section 11 (1), to operate the debtor’s business and administer the debtor’s assets in Japan;
- (vii) “recognition and assistance proceeding” means a proceeding where the court, pursuant to Section 3 and the following sections, makes a decision on a petition of recognition of a foreign insolvency proceeding and grants relief necessary to accomplish the purposes of the foreign insolvency proceeding in Japan;
- (viii) “foreign main proceeding” means a foreign insolvency proceeding that is filed in the State—where the debtor has the principal place of business if the debtor is engaged in business, where the debtor has his residence if the debtor is an individual who is not engaged in business, or where the debtor has a main establishment if the debtor is an entity that is not engaged in business;
- (ix) “foreign non-main proceeding” means a foreign insolvency proceeding that is not a foreign main proceeding.

(2) A claim is deemed to be located in Japan if the claim may be pursued by judicial proceeding pursuant to the Code of Civil Procedure.

Section 2. Venue and transfer of a recognition case

- (1) The Tokyo District Court has exclusive jurisdiction over cases regarding petitions for recognition of foreign insolvency proceedings.
- (2) The Tokyo District Court may transfer the case, on its own motion, to another district court having jurisdiction over a residence, domicile, office, establishment, or location of assets of the debtor when necessary in order to avoid unusual losses or delays.

Section 3. Application for recognition of a foreign insolvency proceeding

- (1) A foreign trustee/debtor may apply to the court for recognition of the foreign insolvency proceeding if the debtor has a residence, domicile, office, or establishment in the State where the petition for the proceeding is filed.
- (2) A foreign trustee/debtor shall give prima facie proof of the existence of the debtor’s residence, domicile, office, or establishment in the State where the petition for the proceeding is filed when the foreign trustee/debtor files a petition pursuant to (1).

- (3) A foreign trustee/debtor shall deposit a sum that the Court fixes as costs of the recognition and assistance proceedings.
- (4) A foreign trustee/debtor shall inform the Court of the matters designated by the Court, including how the foreign insolvency proceeding progresses, in the way the Court orders.
- (5) The Court may order the foreign trustee/debtor who made an application pursuant to (1) to appoint a representative when necessary.

#### Section 4. Grounds for dismissal of an application for recognition of a foreign insolvency proceeding

The Court shall dismiss the application for recognition of a foreign insolvency proceeding if:

- (i) the foreign trustee/debtor did not make the required deposit;
- (ii) it is apparent that the foreign proceeding has no effect with respect to the debtor's assets located in Japan;
- (iii) recognition of the foreign insolvency proceeding is contrary to the public order or standards of decency;
- (iv) any relief to be granted under Sections 7, 8, or 11 is manifestly unnecessary;
- (v) the foreign trustee/debtor is in violation of Section 3 (4), except when the violation is slight; or
- (vi) it is apparent that the purpose of the application is undue or the application is not in good faith.

#### Section 5. Decision to recognize a foreign insolvency proceeding

- (1) When the foreign trustee files a petition for the recognition of a foreign insolvency proceeding that satisfies the requirements specified in Section 3 (1) and the foreign insolvency proceeding has commenced, the Court shall make a decision of recognition of the foreign insolvency proceeding, except when the petition is dismissed pursuant to Sections 4, 16(1), or 17(1).
- (2) Public notification of the decision of recognition of the foreign insolvency proceeding shall be made.
- (3) The Court shall give notice of the decision provided for in (1) to the tax authorities and anyone who represents the debtor's employees, including a labor union, except when notice is already sent pursuant to Articles 7(8), 14(2), 16(8), or 17(5).

#### Section 6. Appeal

- (1) The interested parties may appeal a decision on the application for recognition of a foreign insolvency proceeding.
- (2) The decision becomes effective from the time it is rendered.

#### Section 7. Stay on individual proceedings

- (1) The Court may, at the request of parties in interest or on its own motion, with a decision provided for in Section 5 (1) or after the decision, order a stay on the following proceedings when necessary to accomplish the purpose of the recognition and assistance proceeding:
  - (a) executions, attachments, or other provisional measures that have already commenced against the debtor's assets;
  - (b) judicial proceedings concerning the debtor's assets;
  - (c) administrative proceedings concerning the debtor's assets.
- (2) The Court may, at the request of parties in interest or on its own motion, with a decision provided for in Section 5 (1) or after the decision, order measures against the debtor's business and assets necessary to accomplish the purpose of the recognition and assistance proceeding, including prohibition of disposition of the assets or payments of the debts.
- (3) The Court may, at the request of parties in interest or on its own motion, with a decision provided for in Section 5 (1) or after the decision, after notice and hearing of the secured creditor, order a stay on enforcement of the security interests or foreclosure of the floating charge for a period the Court designates as appropriate, when the Court is satisfied that the stay is not against the general interest of unsecured creditors and that the stay will not cause unreasonable loss to the secured creditor or the creditor having the floating charge.
- (4) The Court may order a stay or measures provided for in (1), (2), or (3), even before the Court makes a decision of recognition.
- (5) A stay or measures provided for in (4) shall become ineffective when the Court dismisses the petition for recognition.
- (6) The Court may order a stay or measures provided for in (1), (2), or (3), when an appeal is filed against dismissal of the petition for recognition.
- (7) [Service to parties in interest concerning (1) to (6)]
- (8) The Court shall give notice of the stay provided for in (4), or (6) to the tax authorities and one who represents the debtor's employees, including a labor union.

#### Section 8. Comprehensive Stay on Individual Executions

- (1) The Court, at the request of parties in interest or on its own motion, with a decision provided for in Section 5 (1) or after the decision, may order to all creditors a comprehensive stay on every individual execution against the debtor's assets located in Japan when necessary to accomplish the purpose of the recognition and assistance proceeding.
- (2) When the Court has rendered the order provided for in (1), the creditor shall not lose the claim because of prescription until

two months after the order becomes ineffective.

- (3) [Public notice of the order provided for in (1), service to the foreign trustee and the person who filed for a petition for the order provided for in (1), and notice in a reasonable way to foreign creditors.]
- (4) The Court may lift the stay provided for in (1) if the stay is detrimental to the creditors.

#### Section 9. Annulment of stayed individual executions

- (1) The Court may, upon recognition of the foreign insolvency proceeding, at the request of the debtor itself, if a foreign trustee is not appointed, or the recognition trustee or on its own motion, order annulment of the individual executions stayed by the order provided for in Section 7(1) or Section 8(1), especially when necessary to accomplish the purpose of the recognition and assistance proceeding. The Court then may order that security be provided.
- (2) [Service in case of the order provided for in (1)]

#### Section 10. Acts subject to the Court's permission

- (1) The Court may provide that the debtor shall obtain permission of the Court to do what the Court designates, including disposing of the debtor's assets and turning over the debtor's assets to foreign States, if the Court orders a stay pursuant to Sections 7 or 8, and if necessary to accomplish the purpose of the recognition and assistance proceeding, except when the Court renders an administration order as provided for in Section 11(1) or Section 14(1).
- (2) The Court may grant the permission provided for in (1) only when the Court is satisfied that there is no likelihood it will be detrimental to the interests of creditors in Japan.
- (3) Any act performed without the permission specified in (1) shall be void, except against a bona fide third party.

#### Section 11. Administration Order

- (1) The Court may, at the request of parties in interest or on its own motion, with a decision provided for in Section 5 (1) or after the decision, order the recognition trustee to operate the debtor's business and to administer the debtor's assets located in Japan (hereinafter "administration order"), when necessary to accomplish the purpose of the recognition and assistance proceeding.
- (2) The recognition trustee shall be appointed from among persons, including the foreign trustee, who are competent to perform the duties of recognition trustee.
- (3) When an administration order is rendered, the recognition trustee has exclusive rights to operate the debtor's business and to administer and dispose of the debtor's assets.
- (4) The Court may designate the way the recognition trustee should maintain the debtor's assets and pay and receive money.
- (5) When an administration order is rendered, the recognition trustee shall report to the Court items the Court designates, including the debtor's business and administration of the debtor's assets, in the way the Court provides.
- (6) When the Court has rendered the administration order, the recognition trustee shall obtain permission of the Court to conduct acts that the Court designates, including disposing of the debtor's assets and turning over the debtor's assets to foreign States,
- (7) The Court may grant permission provided for in (6) only when the Court is satisfied that there is no likelihood it would be detrimental to the interests of creditors in Japan.
- (8) Any act undertaken without obtaining the permission provided for in (1) shall be void, except against a bona fide third party.
- (9) When an administration order is rendered, the Court shall supervise the recognition trustee.
- (10) When an administration order is rendered, the recognition trustee may require the debtor (if an individual) or his legal representative or directors, auditors, or liquidators of the debtor (if a legal person) to report about the debtor's business and administration of the debtor's assets, and may investigate account books, documents, and other materials.
- (11) [Duty of care of recognition trustee, performance of duties of two or more recognition trustees, representative of recognition trustee, and fee for recognition trustee]
- (12) [Public notice and service of administration order]

#### Section 12. Lawsuit of the debtor when an administration order is rendered

- (1) When an administration order is rendered, the recognition trustee shall be the plaintiff or the defendant, as the case may be.
- (2) [Interruption and taking over of pending lawsuits to which the debtor is party, when an administration order is rendered.]

#### Section 13. Acts of the debtor performed after an administration order is rendered

- (1) Acts performed by the debtor after the administration order is rendered with respect to the assets subject to the exclusive rights of the recognition trustee to administer and dispose of shall be void, as far as the recognition and assistance proceeding is concerned, except when the counterpart party did not know of the administration order when the act was performed.
- (2) Repayment to the debtor of the debt located in Japan that was made in Japan without knowing of the administration order

may be valid, as far as the recognition and assistance proceeding is concerned.

- (3) Repayment to the debtor of the debt located in Japan that was made in Japan with knowledge of the administration order may be valid, to the extent that the assets subject to the right of the recognition to administer and dispose of the assets have thereby benefited, as far as the recognition and assistance proceeding is concerned.
- (4) In (1), (2), and (3), it shall be presumed that the administration order was not known before the public notice of the administration order, and that the administration order was known after the public notice of the administration order.

#### Section 14. Interim Administration Order

- (1) The Court may, at the request of parties in interest or on its own motion, order the interim trustee to operate the debtor's business and to administer the debtor's assets located in Japan (hereinafter an "interim administration order"), before the Court makes a decision of recognition, especially when necessary to accomplish the purpose of the recognition and assistance proceeding.
- (2) Section 5(3) shall apply in case of an interim administration order.
- (3) [Necessary provisions like those for an administration order]

#### Section 15. Revocation of Recognition

- (1) The Court shall, at the request of parties in interest or on its own motion, revoke the recognition of the foreign insolvency proceeding, if
  - (i) the petition for the recognition of the foreign insolvency proceeding does not meet the requirements provided in Section 3(1);
  - (ii) it turns out that any section from Section 4(ii) to (v) is applicable;
  - (iii) the foreign insolvency proceeding ends with the purposes of the proceeding accomplished in the State where it commenced; or
  - (vi) the foreign insolvency proceeding is terminated with a reason not provided for in (iii) in the State where it was commenced.
- (2) The Court may revoke the recognition of the foreign insolvency proceeding, if
  - (i) the debtor has failed to perform the duties specified in Section 10(1);
  - (ii) the foreign trustee who was appointed as a recognition trustee has failed to perform the duties specified in Section 11 (5) or (6).
- (3) [Public notice of revocation of a foreign insolvency proceedings]
- (4) A stay pursuant to Section 7 (1) to (3) (including a stay pursuant to (4) to (6)), a stay pursuant to Section 8 (1), and an Administration Order shall become ineffective when revocation is made pursuant to (1) to (2).

#### Section 16. Treatment in case a petition for a domestic insolvency proceeding is filed

- (1) When a petition for recognition of the foreign insolvency proceeding is filed and a domestic insolvency proceeding has already commenced concerning the same debtor, the Court shall dismiss the petition for the recognition, except when
  - (i) the foreign insolvency proceeding is a foreign main proceeding;
  - (ii) there is no likelihood it would be detrimental to the interests of creditors in Japan; and
  - (iii) the Court is satisfied that recognition of the foreign insolvency proceeding meets the general interests of creditors.
- (2) The Court with which a petition for recognition of a foreign main proceeding is filed shall stay the domestic insolvency proceeding that has already commenced with respect to the same debtor if the Court recognizes the foreign insolvency proceeding, except in case of (3).
- (3) When a petition for recognition of a foreign insolvency proceeding is filed and the requirements (i) to (iii) in (1) exist, the Court where the recognition and assistance proceeding is pending may, at the request of parties in interest or on its own motion, stay the domestic insolvency proceeding with respect to the same debtor.
- (4) When a foreign insolvency proceeding is recognized and a petition for a domestic insolvency proceeding is filed with respect to the same debtor, the Court where the recognition and assistance proceeding is pending may, at the request of parties in interest or on its own motion, if necessary, stay the recognition and assistance proceeding.
- (5) When a foreign insolvency proceeding is recognized and a domestic insolvency proceeding has commenced with respect to the same debtor, the Court where the recognition and assistance proceeding is pending shall stay the domestic insolvency proceeding, if the requirements (i) to (iii) in (1) exist.
- (6) When a foreign insolvency proceeding is recognized and a domestic insolvency proceeding has commenced with respect to the same debtor, the Court where the recognition and assistance proceeding is pending shall stay the recognition and assistance proceeding, except when the Court stays the domestic insolvency proceeding pursuant to (5).
- (7) [Service concerning a stay pursuant to (2), (3), and (5)]
- (8) Section 5 (3) shall be applicable when the Court orders a stay pursuant to (3).

Section 17. Treatment in case another foreign insolvency proceeding is already recognized

- (1) When a petition for recognition of a foreign insolvency proceeding is filed and another foreign insolvency proceeding is already recognized with respect to the same debtor, the Court with which the petition is filed shall dismiss the petition not only if the grounds specified in Section 4 exist, but also if
  - (i) the foreign insolvency proceeding that is already recognized is a foreign main proceeding; or
  - (ii) the petition is filed for recognition of a foreign non-main insolvency proceeding and the Court finds that recognition of the foreign non-main insolvency proceeding filed does not meet the general interests of creditors.
- (2) When a foreign insolvency proceeding is recognized and another foreign non-main insolvency proceeding is already recognized with respect to the same debtor, the recognition and assistance proceeding of the foreign non-main proceeding shall be stayed.
- (3) When a petition for recognition of a foreign insolvency proceeding is filed and another foreign non-main insolvency proceeding is already recognized with respect to the same debtor, the Court with which the petition is filed may, at the request of parties in interest or on its own motion, stay the recognition and assistance proceeding of the foreign non-main proceeding, when necessary.
- (4) (service of the order of stay pursuant to (3))
- (5) Section 5 (3) shall be applicable when the Court order stay pursuant to (3).

Section 18. Suspended recognition and assistance proceedings and domestic insolvency proceeding becoming ineffective

- (1) When a recognition and assistance proceeding is stayed pursuant to Section 16 (4) or (6) or Section 17 (2) or (3), the recognition and assistance proceeding shall become ineffective if
  - (i) a domestic insolvency proceeding with respect to the same debtor ends with the purposes of the proceeding accomplished; or
  - (ii) the revocation of the recognition of the other foreign insolvency proceeding with respect to the same debtor pursuant to Section 15 (1) (iii) becomes conclusive and unappealable.
- (2) When a domestic insolvency proceeding is stayed and the revocation of the recognition of the foreign insolvency proceeding with respect to the same debtor becomes conclusive and unappealable, the domestic insolvency proceeding shall become ineffective.

Section 19. Relevant provisions

[Relevant provisions that are necessary shall be specified. Details are omitted.]