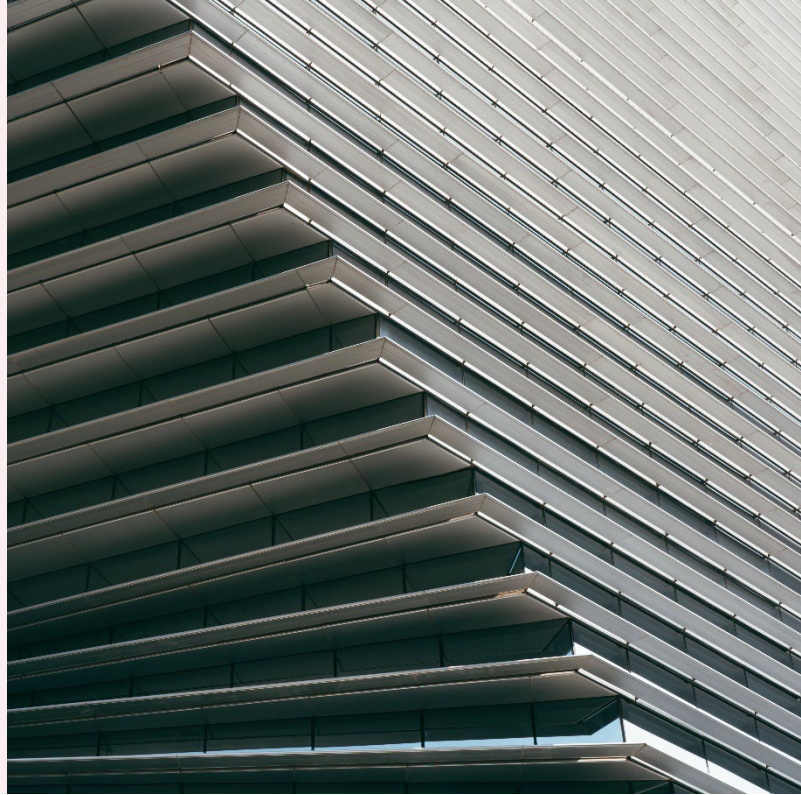


A new tool for business restructuring in Japan - Early Business Recovery Act

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Japan will soon have a new tool for out-of-court business restructuring: the Act on Financial Debt Adjustment Procedures for Enterprises to Facilitate Business Recovery (the Early Business Recovery Act or the Act).

Prior to the introduction of the Act, Japan has long had two principal routes for corporate debt restructuring: formal court-supervised insolvency proceedings such as Civil Rehabilitation Proceedings, and out-of-court workouts such as the Turnaround ADR. The latter requires the unanimous consent of all participating creditors. As a result, even where a substantial majority of creditors support a rational restructuring plan, the opposition of a single dissenting creditor can force the debtor out of the consensual workout and into formal insolvency proceedings - often diminishing corporate value in the process.

The Act was enacted to address this problem and will come into force on 11 December 2026. Under the Act, a business operator at risk of falling into financial distress may, with the involvement of a neutral third-party organisation designated by the Ministry of Economy, Trade and Industry (METI) and the court, bind dissenting financial creditors to an adjustment of financial debt by super-majority vote (in most cases, a resolution carrying at least three-quarters in value of total voting rights).

Key points

- 1 New restructuring tool - The Early Business Recovery Act comes into force on 11 December 2026
- 2 Binds dissenting creditors - With court approval, a resolution carrying at least three-quarters of total voting rights binds dissenters in most cases
- 3 No cross-class cram-down - No creditor classes; all creditors vote as a single constituency
- 4 Fixed scope of creditors and claims - Set by statute, differs from conventional workouts

Background: The European preventive restructuring framework

During the legislative process, METI conducted research on the new restructuring regimes emerging in the EU and the UK at that time, and referred to those in designing the Act. In 2019, the European Union adopted the Directive on preventive restructuring frameworks (Directive (EU) 2019/1023, the EU Directive), requiring Member States to put in place preventive frameworks enabling businesses to restructure before they become formally insolvent. By way of example, implementing this mandate, Germany and France have adopted restructuring schemes in the form of the StaRUG and the accelerated safeguard, respectively. The UK also introduced the Restructuring Plan under the Corporate Insolvency and Governance Act 2020.

These frameworks share a common structure: they operate outside formal insolvency proceedings, enable early-stage restructuring, and allow a majority of creditors, with court sanction, to bind dissenting creditors to a restructuring of their claims. The Act was conceived against the same policy background.

Overview of the procedure

The procedure under the Act (the Procedure) broadly follows the steps set out below.

1. Application by the business operator to a third-party organisation designated by METI (a Designated Organisation) for confirmation of eligibility to use the Procedure.
2. Confirmation of eligibility by the Designated Organisation, and a request for suspension addressed to the relevant creditors.
3. Preparation and submission to the Designated Organisation by the business operator of a proposed adjustment of debts (typically, extension of maturity and/or debt write-off) and an early business recovery plan.
4. Review and issuance of a report by the Designated Organisation on the plan.
5. Resolution of the proposed adjustment of debts at the relevant creditors' meeting (requiring, among other things, the consent of creditors holding at least three-quarters in value of total voting rights).
6. Except if the resolution is passed unanimously, application to the court for approval, and the court's approval decision.

If all relevant creditors consent, the resolution can take effect without the need for court approval. If one or more creditors dissent, obtaining the court's approval binds every relevant creditor, including dissenters, to the adjustment of debts. The resolution applies only to the unsecured portion of loan claims and similar financial debts held by financial institutions;

trade claims, labour claims and other non-financial claims are not included. Secured loan claims, and the security interests themselves, are unaffected and therefore, voting rights are not attached to the secured portions of claims. Secured claims must be dealt with by separate agreement with the secured creditor.

Key features compared with the EU and UK frameworks

1. Early-stage eligibility

A business operator may use the Procedure once it is at risk of falling into financial distress, a stage earlier than the "financial distress" threshold required to commence formal proceedings under the Civil Rehabilitation Act of Japan. This is broadly consistent with the UK Restructuring Plan, which may be used where the company has encountered, or is likely to encounter, financial difficulties, again before the thresholds for formal insolvency are met. Likewise for France's accelerated safeguard and Germany's StaRUG, the entry threshold is that the entity is not already insolvent.

2. No cross-class cram-down

The UK Restructuring Plan divides creditors into classes according to criteria such as their priority ranking and whether their claims are secured, and, subject to conditions (including the court exercising its discretion to approve the plan), can bind an entire dissenting class to the plan through cross-class cram-down. This prevents a single dissenting class from blocking an otherwise reasonable restructuring plan. Similarly in France and Germany, cross-class cram-down is available, subject to conditions, for example, that one assenting class must comprise secured or senior ranking creditors.

The Procedure does not adopt the concept of creditor classes at all, and therefore has no equivalent cross-class cram-down mechanism. All relevant creditors vote together as a single constituency, and the resolution passes with the consent of creditors holding at least three-quarters of the total voting rights (with an additional headcount majority of creditors present where a single creditor holds three-quarters or more of the voting rights). During the legislative process, treating the secured and unsecured portions of claims as separate constituencies was considered, but this approach was not adopted because it would complicate the Procedure and undermine the speed the Procedure is designed to achieve.

3. Suspension and preservation measures

The Procedure provides for a suspension at the request of the Designated Organisation, during which the relevant creditors are asked to refrain from (i) collecting on relevant claims, (ii) taking new security, and (iii) filing for the business operator's insolvency proceedings. This is supplemented by potential court orders suspending enforcement action and suspending the exercise of security interests. Together, these measures are designed to make the

suspension effective and to preserve the going-concern value of the business operator while the Procedure is pending.

4. Degree of court involvement and role of Designated Organisation

The degree of court involvement differs from that under the UK regime referenced during the legislative process. Under the UK Restructuring Plan, the process is initiated by an application to the court: the court holds a convening hearing and makes a convening order, creditor classes then vote at class meetings, and the court subsequently holds a sanction hearing and considers whether to exercise its discretion and make a sanction order. By contrast, under the Procedure the Designated Organisation, rather than the court, confirms eligibility and reviews the proposed adjustment of debts, and the court's role is confined to enforcement-suspension orders and the approval or disapproval of the resolution - a materially lighter-touch role than under the UK Restructuring Plan.

Since the Procedure is not able to affect secured creditors and allows creditors to vote in a single class, it is more comparable to a UK Company Voluntary Arrangement, which absent a challenge on very limited grounds (unfair prejudice or material irregularity) allows a 75% majority of unsecured creditors to bind a minority without any court involvement at all. By way of further analogy, the role of the Designated Organisation under the Procedure is similar to that of a judicial administrator in France, who likewise assists and monitors the debtor during the process, or a restructuring officer in Germany.

Practical considerations for creditors and businesses

The scope of eligible relevant creditors and relevant claims is fixed by statute: it covers loan claims and similar debt held by banks, *shinkin* banks and credit cooperatives, insurance companies, moneylenders, credit guarantee associations and other financial institutions. There is no scope to select or exclude particular creditors on a discretionary basis.

The scope of relevant claims may differ from that typically seen in conventional out-of-court workouts such as the Turnaround ADR. For example, claims arising from finance leases meeting certain requirements are treated as relevant claims. Exchange-traded derivatives (ETDs) are excluded, but for over-the-counter (OTC) derivatives, a claim for a termination amount arising from early termination of the transaction before the restructuring plan is submitted can constitute a relevant claim. Whether a given creditor qualifies as a relevant creditor under the Procedure, as compared with the Turnaround ADR, should be reviewed when entering into a new transaction.

A request for suspension is not, in principle, treated as a "suspension of payments" (a statutory indicator of insolvency under Japanese law), or as triggering an acceleration event under standard bank transaction agreements, and a request for suspension alone does not require banks to freeze deposit accounts. This treatment is broadly consistent with established practice under the Turnaround ADR and similar workouts.

Whether commencement of the Procedure, or a request for suspension, should itself be added as an acceleration event or termination event is a drafting and negotiation point for financing documentation.

Interim financing extended during the Procedure (so-called pre-debtor-in-possession (DIP) financing) that meets certain requirements benefits from arrangements designed to give it priority consideration if the Procedure is later followed by civil rehabilitation or corporate reorganisation proceedings. Separately, pre-DIP financing extended during a preceding Turnaround ADR process may also be exempted from the Procedure's repayment prohibition, but only where all creditors in that prior workout had agreed to its priority treatment.

Final notes

The Procedure is available to business operators of any size or industry; there is no eligibility threshold based on scale of business. This is in contrast to, for example, France where the accelerated safeguard is only available to debtors with a turnover of at least €40m or at least 250 employees and a turnover of at least €20m. It occupies a middle ground between a conventional workout, which requires unanimous consent, and formal insolvency proceedings, which entail public disclosure. By enabling restructuring to proceed, and going-concern value to be preserved, even where some financial creditors withhold consent, it should be seen as a positive addition to the restructuring toolkit available to Japanese businesses.

While its design draws on preventive restructuring frameworks in other jurisdictions, particularly those of the UK and the EU, the Procedure departs from them in material respects, most notably its rejection of cross-class cram-down, reflecting the accumulated experience of Japanese out-of-court workout practice. Given that the scope of eligible creditors and claims under the Procedure differs from that of conventional workouts, financial institutions and businesses alike should consider, when negotiating financing documentation and transaction structures, how the Procedure may apply to their existing and future arrangements and take steps to ensure that their interests are protected.



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