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Status of Triennial Review of the Act on the Protection of Personal Information

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I. Introduction[1]

The Act on the Protection of Personal Information ("**APPI**"),[2] which was enacted in 2003, took full effect in April 2005. It is the core of Japan's data protection legislative framework. It underwent two major amendments in 2015 and 2020-2021, which took full effect in May 2017 and April 2023, respectively.

The 2020-2021 amendment required the government to conduct a triennial review of the status of enforcement of the APPI and take necessary measures as needed. To fulfill this requirement to review the law every three years, the Personal Information Protection Commission ("**PPC**"), which was established as the data protection authority of Japan, has been conducting the first triennial review of the APPI since November 2023.

As of May 2025, the PPC and the experts appointed by it have released several documents which have suggested the direction of the triennial review. First, the PPC published an interim report (the "**Interim Report**") in June 2024 summarizing its views at that time. The PPC then established a study group (the "**Study Group**") in July 2024 comprising of seven experts to mainly discuss the potential introduction of two enforcement systems, namely, the *kachokin seido* (an administrative monetary penalty system) and the *dantai ni yoru sashitome seido oyobi higaikaifuku seido* (the injunctive relief and damage recovery systems through qualified consumer organizations). The Interim Report pointed out that these systems would *"have significant impacts on both businesses and individuals, and require further work to consolidate their opinions."* The Study Group held seven meetings until December 2024 and published a report summarizing its discussions.

Further, based on the results of hearings with experts and other stakeholders, the PPC examined and reassessed the institutional issues that were identified in the Interim Report, including those not discussed in the Study Group. The PPC then began discussing such issues in January 2025, which were associated with these three main topics: (1) how to involve data subjects in the processing of their personal data;[3] (2) how to respond to risks arising out of diversifying ways to process personal data; and (3) how to ensure the effectiveness of compliance by businesses processing personal data. In March 2025, the PPC then published a document summarizing its discussions and views on the institutional issues concerning the APPI (the "**PPC's Views on Institutional Issues**").

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1. The author thanks his colleagues, Yuki Kuroda and Nanoko Sasaki, for their contribution to this article. For further information about the triennial review, *see* https://www.ohebashi.com/jp/newsletter/01_202504_Kuroda-Uehara-Sasaki.pdf (in Japanese).
2. *Kojin joho no hogo ni kansuru horitsu,* Law No. 57 of May 30, 2003.
3. One unique aspect of the APPI compared to other countries' data protection regulations is that it defines separate concepts for "personal information," "personal data" and "personal data held by a business." Since most of the data processed by businesses falls under the definition of "personal data," this article uses the term "personal data" without making strict distinctions between these terms.

The PPC is still conducting discussions regarding the issues pointed out in the documents mentioned above. No clear timeline for the implementation of the results of such discussions has been made and while specific proposed amendments to the APPI may be published as early as this year, it remains unclear whether all of the issues discussed in these documents will be reflected in such amendments. Nevertheless, some of these discussions, if implemented, would undoubtedly have a significant impact on a wide range of businesses processing personal data in Japan. This article focuses on such key issues and summarizes the current status of the PPC's discussions thereon.

II. Administrative Monetary Penalty System

If businesses processing personal data violate the APPI, they may be subject to sanctions issued by the PPC, such as administrative guidance, advice, recommendations or other orders, publication of their non-compliance,[4] or criminal penalties, including fines of up to 100 million Japanese yen.[5]

Based on the data published by the PPC, while several hundreds of notices of administrative guidance, advice and recommendations have been issued annually, including against major corporations, no orders have been issued to businesses engaged in normal business activities, and no criminal penalties have ever been imposed on companies. These facts have cast doubt on the deterrent effect of the current APPI and given the fact that many other countries have already introduced financial penalty systems, discussions over the potential introduction of an administrative monetary penalty system in Japan have been increasing in recent years.

On the occasion of the current triennial review process, the PPC and the Study Group seem to be seriously considering the introduction of an administrative monetary penalty system for the APPI. However, it has been proposed that the scope of corporate acts that would be subject to monetary penalties should be limited to some extent to avoid excessive regulation that might discourage lawful acts.

The proposal includes the introduction of a penalty that would be imposed on a business only when: (1) it has derived financial benefits by violating the provisions of Article 18 (restriction due to purpose of use), 19 (prohibition of inappropriate use), 20 (proper acquisition) or 27 (restrictions on provision of personal data to third parties) of the APPI; (2) it fails to exercise reasonable care to prevent such violation; (3) individual rights and interests have been or are likely to be infringed by such violation; and (4) the number of the data subjects involved is not less than 1,000.

Another penalty has also been proposed to be imposed on a business when: (1) personal data of not less than 1,000 data subjects have been leaked, lost or damaged; (2) the subject business has grossly neglected to exercise reasonable care to prevent a breach of its obligation to take security control measures; and (3) individual rights and interests have been or are likely to be infringed by such leakage, loss or damage of personal data.

III. Injunctive Relief and Damage Recovery Systems Through Qualified Consumer Organizations

An individual whose rights and interests have been infringed by a violation by a business of the APPI need not only rely on the supervision of the PPC and other administrative agencies, but may also directly seek redress against the business in his/her own capacity. The current APPI grants individuals the right to make a request to cease to use, delete or cease to provide a third party with personal data which has been processed in violation

4. APPI, arts. 147-148.
5. *Id.*, arts. 178-179 and 182-185.

of Articles 18 (restriction due to purpose of use), 19 (prohibition of inappropriate use), 20 (proper acquisition), 27 (restrictions on provision of personal data to third parties) or 28 (restrictions on provision of personal data to third parties in foreign countries) of the APPI.[6] An individual may also file a tort claim against a business that has intentionally or negligently infringed his/her privacy or other rights and interests through the processing of personal data.[7]

However, even if one individual were to file such request or claim, it would not be possible to prevent the same type of damage from occurring to many other individuals. In addition, such request or claim may be abandoned in many cases because of the expenses involved—courts in Japan often only award nominal compensation for mental distress in invasion of privacy cases even without proof of financial damages, e.g., only 1,000-5,000 Japanese yen (or USD 7 to USD 34) per person in cases where less sensitive data is involved, such as names, addresses or email addresses.

In the field of consumer law, there is a consumer organization complaint system in Japan which allows consumer organizations certified by the Prime Minister to file complaints against businesses on behalf of consumers, specifically: (1) complaints to seek the cessation of improper acts by businesses;[8] and (2) complaints to seek collective recovery of financial losses which numerous consumers commonly suffer due to businesses' improper acts.[9] However, the current system cannot completely resolve the problem described above because: (1) consumer organizations may only seek the cessation of the businesses' acts that violate the Consumer Contract Act, not the APPI; and (2) moral damages (i.e., damages for mental distress) may be recovered only when claimed in conjunction with the recovery of financial losses or when caused by businesses' intentional acts.

In light of the issues above, the PPC and the Study Group are considering establishing a new framework similar to the consumer organization complaint system, which would target businesses' acts that violate the APPI or otherwise infringe individual rights and interests, including privacy. Specifically, they are considering establishing: (1) a system where consumer organizations may seek injunctive relief against businesses' acts that are in violation of the APPI, in particular, Articles 18, 19, 20, 27 and 28 thereof, which are already subject to an individual's right to request a business to cease to use, delete or cease to provide a third party with personal data under the current APPI; and (2) a system where consumer organizations may seek collective recovery through the courts for moral damages caused to numerous individuals due to businesses' negligent data breaches.

IV. Other Issues Described in the PPC's Views on Institutional Issues

1. How to Involve Data Subjects with the Processing of Their Personal Data

(a) Adjustment of the Consent Requirement in the AI Age

The current APPI requires businesses to obtain the consent of data subjects when, among others, acquiring sensitive personal data, such as race, medical history or criminal record,[10] or providing personal data to a third party.[11] There have been complicated debates on how strictly the regulations should be applied in situations where training

6. APPI, art. 35.
7. *Minpo* [Civil Code], Law No. 9 of June 21, 1899, art. 709.
8. *Shohisha keiyaku ho* [Consumer Contract Act], Law No. 61 of May 12, 2000, art. 12.
9. *Shohisha no zaisantekihigaitou no shudanteki na kaifuku no tameno minji no saibantetsuzuki no tokurei ni kansuru horitsu* [Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers], Law No. 96 of December 11, 2013, chap. II.
10. APPI, art. 20.
11. *Id.*, art. 27.

data sets containing personal data are used for AI development. This is said to have been causing confusion in practice.

The PPC is of the opinion that parameters making up a learned model of AI do not constitute personal data even if the model was trained with data sets containing personal data, as long as there is no correspondence between such parameters and a specific individual.[12] However, this does not mean that AI developers may use without limitation for AI training purposes the personal data they received from a third party, such as user companies; instead, AI developers may only use such personal data without the data subjects' consent within the scope of work outsourced by the third party. As a result, it is often discussed whether the usage of the subject training data sets falls "within the scope of work outsourced by the third party." Specifically, it is hard to determine whether the usage of training data sets falls "within the scope of work outsourced by the third party" if the AI developer has an intention to provide the learned model to users other than the third party that provided the data sets. There is also a debate as to whether it would be illegal if an AI developer created training data sets containing personal data without data subjects' consent by collecting information that was publicly available on the Internet but unintentionally contained sensitive personal data.

Under these circumstances, the PPC's Views on Institutional Issues demonstrate that it is considering the introduction of a system which would allow for the legitimate provision of personal data to a third party and acquisition of publicly available sensitive personal data without the data subjects' consent as long as it is ensured that such data would be used only for the creation of statistical information including "AI development, etc., which can be categorized as statistical creation, etc." If such system is introduced, the practical confusion surrounding AI development would likely be settled to a certain extent.

(b) Adjustment of Data Breach Notification Requirements

The current APPI requires businesses who have experienced a specific type of personal data breach to report it to the PPC and notify the data subjects involved of such breach.[13] The "personal data" in this context includes information such as user ID, which by itself cannot identify a specific individual but can be easily collated with other information, such as the name and contact information of an individual, to thereby identify a specific individual. Businesses would therefore be required to comply with the reporting and notification obligations even if only such information had been breached, which as a result imposes an excessive burden on businesses.

Under these circumstances, the PPC is considering relaxing the obligation to notify data subjects of a data breach in cases where there is little risk to individual rights and interests, including where only information such as user ID, which has no meaning by itself for those who acquire it, has been breached. This is considered an issue that would have no small impact on practice.

(c) Establishment of New Regulations on Processing Children's Personal Data

The current APPI does not have any special regulations regarding the processing of children's personal data that differ from those of adults, except

12. Q&A on Guidelines Regarding the Act on the Protection of Personal Information, the PPC, last revised on December 2, 2024 ("**APPI Q&A**"), Nos. 1-8.
13. APPI, art. 26.

that it stipulates that a legal representative, including a parent, may make a request for disclosure, etc., on a child's behalf.[14] On the other hand, the PPC makes it clear that, with respect to the processing of personal data of children under the age of 12-15, which requires the consent of data subjects, businesses should obtain the consent of their legal representatives instead of the children themselves.[15]

Under these circumstances, the PPC is considering taking further steps to establish new regulations on the processing of children's personal data, including: (1) a regulation which would obligate businesses to obtain the consent of, or notify, the legal representatives of the data subjects with respect to the processing of personal data of children under the age of 16, which requires businesses to obtain the consent of, or notify, the data subjects; and (2) a regulation which would allow children under the age of 16 or their legal representatives to, without cause, request businesses to cease to use, delete or cease to provide a third party with their personal data.

2. How to Respond to Risks Arising Out of Diversifying Ways to Process Personal Data

(a) Adjustment of Regulations on Information Other Than Personal Data

The APPI only prohibits the inappropriate use or improper acquisition of personal data, i.e., information which can, by itself or with other information which can easily be collated with it, identify a specific individual.[16] In other words, the APPI does not currently regulate the inappropriate use or improper acquisition of information with which no specific individual can be identified. However, the inappropriate use or improper acquisition of such information may also infringe individual rights and interests if the party using or acquiring it can contact the data subjects through such information. For example, a malicious party can send phishing emails to email addresses even if such email addresses do not constitute personal data, i.e., no specific individual can be identified with the email addresses themselves or with other information that can easily be collated with them. In addition, anonymous health information which is not considered personal data can be used for advertising purposes beyond the purposes known to the data subjects.

Under these circumstances, the PPC is considering broadening the coverage of the prohibitions mentioned above by making it prohibited to use inappropriately, or acquire improperly, information with which no specific individual can be identified but the party using or acquiring it can contact the data subjects.

(b) Establishment of New Regulations on the Processing of Biological Data

The APPI does not have any special regulations regarding the processing of biological data that differ from those applicable to other personal data unless it involves sensitive personal data. However, biological data that can be easily obtained without the data subjects' knowledge and that can be used to track their behavior over time due to its uniqueness and immutability, such as facial feature data, is prone to invade the privacy of data subjects even if it is not sensitive personal data.

The PPC is therefore considering establishing new regulations on the processing of such biological data, including: (i) a regulation which would obligate businesses who are processing such biological data to disclose certain items regarding

14. *Id.*, art. 37.
15. APPI Q&A, Nos. 1-62.
16. APPI, arts. 19-20.

the processing, and (ii) a regulation which would allow data subjects to request businesses to, without cause, cease to use, delete or cease to provide a third party with such biological data.

3. How to Ensure the Effectiveness of Compliance by the Businesses Processing Personal Data

In addition to the potential introduction of an administrative monetary penalty system as well as injunctive relief and damage recovery systems through qualified consumer organizations, the PPC is considering introducing measures to ensure the effectiveness of existing penalties, such as expanding the recommendations and orders issued by the PPC as well as criminal penalties.

Specifically, the PPC is considering allowing the issuance of orders, which under the current APPI may be issued only when a business has violated the PPC's recommendations or individual rights and interests have been actually infringed, even when no recommendation has been issued, and individual rights and interests have not yet been infringed but are in imminent danger of being infringed. The PPC is also considering allowing the issuance of recommendations or orders which recommend or require that a business take measures necessary to protect data subjects' rights and interests, including notifying the data subjects of or publishing the fact that the business had violated the APPI.

V. Conclusion

As mentioned earlier, the PPC is still discussing the issues described in the Interim Report, the report of the Study Group, the PPC's Views on Institutional Issues and other documents, and it is uncertain when and how such discussions will conclude and be implemented concretely. Businesses processing personal data in Japan should continue to pay close attention to the developments of this ongoing triennial review process.

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Out-of-Court Workout Procedures under the SME Business Revitalization Guidelines

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I. Introduction

Out-of-court workout procedures are methods by which a company can restructure its debts or revive its business through voluntary negotiations with creditors, without involving the courts. Such private workouts are characterized by greater flexibility, speed, and confidentiality compared to formal insolvency proceedings like bankruptcy or civil rehabilitation proceedings, thereby minimizing damage to the company's credit and limiting the impact on its business counterparties.

In Japan, prior rule-based out-of-court workout procedures (conducted according to rules set by certain associations or organizations) included the turnaround alternative dispute resolution process provided by the Japanese Association of Turnaround Professionals ("**JATP**"), and the restructuring assistance provided by organizations like the Small and Medium-sized Enterprise Revitalization Support Council, the Regional Economy Vitalization Corporation, the Resolution and Collection Corporation, etc. However, as briefly featured in a past article,[1] in April 2022, the new "Guidelines for Business Revitalization, etc. of Small and Medium-Sized Enterprises" (the "**SME Guidelines**")[2] began being implemented. The out-of-court workout procedures set out in the SME Guidelines were at that time a relatively new private restructuring framework that was created to support small and medium-sized enterprises ("**SMEs**") that were severely affected by the COVID-19 pandemic by reducing the burden of their debts and facilitating their business restructuring or closures. Since the introduction of the SME Guidelines, an increasing number of workout cases have been conducted thereunder. This article will describe the two main out-of-court workout procedures in detail to provide a better understanding of these remedial options.

II. Main Parties and Participants

Under the SME Guidelines, the following are the key parties and participants of out-of-court workout procedures:

1. SME Debtor. The SME (the debtor company) who is undertaking the private workout under the SME Guidelines to rehabilitate or wind down its business.
2. Target Creditors. The creditors whose rights are expected to be modified (for example, via payment deferrals or debt forgiveness) if a business revitalization plan or repayment plan is agreed to. These are typically financial institutions or credit guarantee corporations but can include other creditors (such as trade creditors) as necessary. In a liquidation-type proceeding, lease creditors can also be included as creditors.

1. *See* Yuta Shozaki, *Overview of Revitalization Support for SMEs in Japan,* Oh-Ebashi Newsletter (Autumn 2023) at https://www.ohebashi.com/jp/newsletter/NL_en_2023autumn_Shozaki.pdf.
2. *See* https://www.zenginkyo.or.jp/fileadmin/res/news/news340304.pdf (in Japanese).

3. Main Creditors. From among the Target Creditors, the creditors who hold a major share of the claims against the SME Debtor.
4. External Expert. A professional, such as an attorney or a certified public accountant, who supports the SME Debtor from the consultation stage of the workout process until the end of the out-of-court workout process.
5. Third-Party Support Expert. An independent specialist, such as an attorney or a certified public accountant, who is neutral and not related to either the SME Debtor or the creditors. This expert will verify and investigate the SME Debtor's proposed business revitalization plan or repayment plan and provide a report on the viability thereof. The Third-Party Support Expert is appointed by the SME Debtor with the consent of the Main Creditors.

III. Key Features of the SME Guidelines

1. Two Types of Procedures: Reorganization-Type and Liquidation-Type

The SME Guidelines provide for two distinct private workout procedures: a reorganization-type out-of-court workout (aimed at business continuity) and a liquidation-type out-of-court workout (aimed at an orderly wind-up of the business). Each has its own specific procedures and requirements. Traditionally, rule-based out-of-court workout procedures in Japan were predominantly reorganization-oriented, premised on the company's business continuing after the process. The introduction of the new liquidation-type workout procedure under the SME Guidelines was significant in that it began offering an additional option for a "soft landing" business closure without resorting to formal insolvency proceedings like bankruptcy proceedings.

2. Coordination with the Guidelines on Management Guarantee

The Guidelines on Management Guarantee[3] set forth an out-of-court workout process for situations where a company's debts are personally guaranteed by its owner or manager, thereby allowing the settlement of debts without the owner or manager undergoing bankruptcy if the company files for bankruptcy or other related procedures. In either a reorganization-type or liquidation-type workout, the SME Guidelines explicitly encourage parties to actively utilize the Guidelines on Management Guarantee when dealing with debts guaranteed by the business owner or manager, so that their guarantee obligations are resolved in tandem with the SME Debtor's debts. The expectation is to leverage the Guidelines on Management Guarantee to avoid the business owner or manager undergoing personal bankruptcy and facilitate the prompt business rehabilitation or orderly liquidation of the company.

3. Involvement of a Third-Party Support Expert

The SME Guidelines adopt a three-party framework whereby a neutral Third-Party Support Expert would review the draft business revitalization plan or repayment plan prepared by the SME Debtor and provide an independent investigation report. On the basis of this report, and with the unanimous consent of all the Target Creditors, the plan is approved and implemented. The SME Guidelines define a Third-Party Support Expert as *"a professional (such as an attorney or CPA) qualified to carry out reorganization-type and liquidation-type private workouts, and who has been certified as such."*[4] In practice, lists of qualified candidate Third-Party Support Experts are published by bodies like the SME Revitalization Nationwide Headquarters (within the Organization for Small & Medium Enterprises and Regional Innovation) and the JATP. Accordingly, in most cases, the Third-Party Support Expert is selected from these published candidate lists.

Another notable feature is the method of appointment.

3. The Guidelines on Management Guarantee are available at https://www.zenginkyo.or.jp/fileadmin/res/abstract/adr/sme/guideline.pdf (in Japanese).
4. *See* the SME Guidelines, Part III, Section IV, Subsection (1).

The Third-Party Support Expert is chosen by the SME Debtor (subject to the Main Creditors' consent), with no outside institution directly assigning or appointing that expert. This contrasts with certain other schemes (e.g., ADR procedures) and underscores the flexible, debtor-initiated nature of the SME Guidelines-based process.

4. Subsidies for Professional Fees and Tax Incentives

When utilizing an out-of-court workout procedure under the SME Guidelines, certain financial support is available for the fees of both the External Expert and Third-Party Support Expert. Subject to meeting specified conditions, the SME Debtor can receive a subsidy to cover these professional fees. This reduces the burden of costs on the SME Debtor and helps ensure the economic feasibility of the proposed business rehabilitation plan or repayment plan, thereby encouraging a more effective business turnaround or closure.

From the creditors' perspective, the SME Guidelines also offer a tax advantage. Under specified conditions, a creditor can write off, for tax purposes, the debt forgiven pursuant to an out-of-court workout procedure under the SME Guidelines without incurring tax on the forgiveness of such debt (a tax-free write-off). This makes the scheme more attractive for participating creditors.

IV. Process Flow under the SME Guidelines

1. Outline of the Procedure

Below is an outline of the procedure under the SME Guidelines (common to both reorganization-type and liquidation-type workouts):

(a) Application for an Out-of-Court Workout. The SME Debtor consults an External Expert (e.g., a lawyer or accountant) and with the assistance thereof, notifies its Main Creditors that it wishes to consider a private workout under the SME Guidelines. In a reorganization-type case, at the time of this application, the SME Debtor—with the unanimous agreement of its creditors—must select the Third-Party Support Expert.

(b) Commencement of Expert Support. In a liquidation-type case, the External Expert, and in a reorganization-type case, the Third-Party Support Expert, begins to assist the SME Debtor in conducting surveys of its assets, liabilities, and profits and losses, formulating a draft business rehabilitation plan or repayment plan, and doing other necessary preparatory work, taking into account the intentions of the Main Creditors.

(c) Request for Standstill. Once the above steps are underway, the SME Debtor may request that all Target Creditors temporarily suspend any debt collection or enforcement actions (a "standstill"), in case such pause is necessary to stabilize the company's cash flow. Then, if certain conditions are met—for example, the standstill request is made in writing to all Target Creditors simultaneously, and the SME Debtor has been acting in good faith and maintaining a constructive relationship with its creditors—then the creditors are expected to respond in good faith to the standstill request and refrain from their collection efforts during the agreed period.

(d) Formulation of the Plan. The SME Debtor, with support from the External Expert (and the Third-Party Support Expert, as applicable), proceeds to draw up a business revitalization plan (for a reorganization-type case) or a repayment plan (for a liquidation-type case). Throughout this process, the SME Debtor, the External Expert, the Third-Party Support Expert, and the Main Creditors hold discussions and consultations as needed, in

line with the progress of the financial analysis and preparation of the relevant plan.

(e) Investigation Report by the Third-Party Support Expert. The Third-Party Support Expert examines the details of the proposed plan—by assessing the plan's appropriateness, fairness and feasibility—and prepares an independent investigation report. This report is then provided to all the Target Creditors for their review and consideration.

(f) Creditors' Meeting and Plan Approval. Once the proposed plan is ready, the SME Debtor and the Third-Party Support Expert work together to convene a creditors' meeting with the attendance of all the Target Creditors. At this meeting, the SME Debtor explains the plan and the Third-Party Support Expert presents the findings of the investigation report, followed by a session for questions and answers, and an exchange of opinions.

Any Target Creditor who wishes to oppose the plan must promptly explain the reasons for its opposition to the Third-Party Support Expert in good faith. If all of the Target Creditors agree to the proposed plan, then the business revitalization plan or repayment plan is formally approved (established). Upon approval, the SME Debtor is obligated to execute the plan and the rights of the Target Creditors are modified in accordance with the plan's terms (e.g., deferred repayment schedules or debt write-downs will take effect as set out in the plan).

(g) Monitoring. After the plan has been approved and implemented, the External Expert and the Main Creditors will monitor the SME Debtor's performance of its repayment and other obligations under the plan. This ongoing monitoring is meant to ensure that the SME Debtor adheres to the plan and addresses any issues in its execution.

2. Key Differences between Reorganization-Type and Liquidation-Type Proceedings

While the overall procedure is broadly similar for reorganization-type and liquidation-type workouts, there are several important differences in their requirements and mechanics, as outlined below.

(a) Timing of the Third-Party Expert Selection

In a reorganization-type workout, the SME Debtor must appoint the Third-Party Support Expert at the time of making the initial workout application to its Main Creditors (i.e., the first step, item (a) above). In a liquidation-type workout, by contrast, it is sufficient to appoint the Third-Party Support Expert at the stage when the investigation of the proposed plan is about to commence (i.e., around the fifth step, item (e) above), although an earlier appointment is also permitted if deemed necessary.

This difference arises because the liquidation-type process is relatively simpler, and a thorough review of the plan can still be conducted even if the Third-Party Support Expert becomes involved from the fifth step. Delaying the appointment in liquidation-type cases can help keep the procedural costs lower.

(b) Contents of the Plan

Both reorganization-type and liquidation-type plans must include certain common elements, but a reorganization-type plan—being a longer-term plan premised on continued business operations—tends to require more extensive terms than a liquidation-type plan.

In particular, a liquidation-type plan is expected to include the following points:

(i) A detailed plan. An overview of the SME Debtor's business and the transition of its financial position, etc., with evidence that the plan incorporates sufficient self-help efforts by

the company.

(ii) Equality of creditors. Equal treatment of the Target Creditors in the adjustments of their rights under the repayment plan.

(iii) Feasibility. A demonstration of economic feasibility for the Target Creditors—for example, the anticipated recovery for creditors under the plan should exceed what they would likely receive through bankruptcy liquidation (i.e., the plan offers a better outcome than the liquidation value of the company).

(iv) Impact analysis. Consideration of the broader impact, such as avoiding chain-reaction bankruptcies of the SME Debtor's business partners and mitigating negative effects on the regional economy.

A reorganization-type plan, in addition to meeting the above requirements, must satisfy certain financial benchmarks. Specifically, the SME Guidelines provide that a reorganization plan should aim to achieve:

(i) Resolution of insolvency. Eliminating the SME Debtor's excess liabilities (substantive negative net worth) within approximately five years after the plan's approval.

(ii) Return to profitability. Restoring the SME Debtor to profitability (on an ordinary profit basis) within roughly three years after the plan's approval.

(iii) Decreased debt to cash flow ratio. Reducing the SME Debtor's ratio of interest-bearing debt to cash flow to about 10:1 or lower by the final year of the plan.

3. Transition from Reorganization to Liquidation

The SME Guidelines also allow for a transition from a reorganization-type process to a liquidation-type process if warranted by the circumstances. During the course of a reorganization-type workout, if the Third-Party Support Expert or the Main Creditors conclude that continuation of the business is not feasible, and the SME Debtor itself requests that its business be wound down, the procedure can be switched to a liquidation-type workout. In such a case, the SME may, if necessary, continue to receive assistance from the same Third-Party Support Expert who was involved in the reorganization-type process. The SME Guidelines also permit the liquidation-type process to commence from an appropriate intermediate stage, rather than starting over from the very beginning, to smoothly facilitate the transition toward an orderly liquidation.

V. Concluding Remarks

In conclusion, the SME Guidelines offer a practical and accessible framework for SMEs seeking to either rehabilitate or responsibly exit their businesses without resorting to court-supervised insolvency proceedings. Their emphasis on consensus-based creditor coordination, neutrality through the use of Third-Party Support Experts, and the integration with the Guidelines on Management Guarantee help promote fair and efficient outcomes for all the stakeholders involved.

As post-pandemic challenges continue to affect SMEs' financial health, early engagement with legal and financial professionals under this framework can significantly enhance the chances of a constructive turnaround or an orderly wind-down. Companies facing financial difficulty are therefore encouraged to explore these procedures as a strategic option aligned with their long-term goals and responsibilities to their creditors, employees, and communities.

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