Japan's Experience and My Proposal

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The Industrial Revitalization Corporation of Japan (IRCJ)

The IRCJ was created in May, 2003 by the Japanese Government to dispose of non- and poorly-performing loans as well as to revitalize ailing companies with excessive debts to overcome prolonged recession that lasted over ten years. The IRCJ rescued 41 enterprise groups consisted of nearly 200 companies by March, 2005 and dissolved itself in March, 2007, one year earlier than was scheduled. Upon receiving an application made by a company and its main bank holding the biggest exposure to the debtor company, the IRCJ conducted due diligence and developed operational and financial restructuring plans. Then, the IRCJ proposed to buy debts owed to financial institutions or requested to accept the debt restructuring plan by means of partial debts forgiveness and/or debts equity swaps as stipulated by the proposed plan. After the solicitation made by the IRCJ, most of financial creditors either sold their debts to the IRCJ or accepted the plan. Outstanding stocks were wiped out or diluted in most cases and the IRCJ infused new equity into the company. The IRCJ sent hands-on turnaround managers replacing incumbent managers and operated the debtors' business. Within one or two years since the opening of each case, the IRCJ sold the purchased debts and/or equities to new owners by means of M&A. The IRCJ was financed by the government guarantee and successfully closed its business with profit.

Newly started Business Reorganization ADR (Alternative Dispute Resolution)(BRADR)

The Guidelines of the Out-of-Court Workout were established in 2001 in Japan referring to London Approach and INSOL 8 Principles by the Committee, organized by the National Bankers' Association and others, for which I served as a chair. More than 40 large corporations were reorganized using the Guidelines. The Business Reorganization ADR was created by Japanese Association of Turnaround Professionals (JATP) last November with the approvals of Minister of Economy, Industry and Trade and Ministry of Justice based on the new law which was enacted in 2007. Turnaround experts, who were appointed in each case by the selection committee of JATP that is chaired by me, preside workout using fair rules which are similar to the Guidelines. The BRADR started its business this March and has been handling several big
reorganization cases, including public companies. The government-owned organizations may guarantee substantial part of debts owed by a debtor during the workout process as DIP financing. In cases where unanimous consents could not be reached, the debtor may file a court-administered mediation proceeding and the Court may issue an order which recommend the holdout creditors to accept the proposed plan with possible amendments. If the creditors do not object to the order within two weeks, the order becomes effective to bind the relevant parties. If the creditors object to the order, the debtor should convert the case to a statutory reorganization proceeding in which the proposed plan may be treated as a pre-negotiated plan.

Expected Creation of Enterprises Revitalization Corporation (ERC) in Japan

It is expected that the draft law to establish a new quasi-governmental corporation to assist revitalization of ailing companies will become a law by the end of this June. The new law is similar to the IRCJ law with minor amendments. Main targeted companies are midsized corporations whose failure may have adverse impact on local economies. I am rather cautious about the effectiveness of the new project for the following reasons. Expected target local corporations, many of which are owned and operated by the owner-managers, may have fallen into difficulties because of delayed restructuring initiatives, not by the recent economical crisis. Most small- and mid-sized enterprises were rescued by political emergency measures such as liquidity provisions into financial institutions, government guaranteed financing and other means, including financial subsidy supplied for work-sharing. For revitalization of local mid-sized corporations, replacement of owner-managers is indispensable to achieve operation turnaround, otherwise purchased debts may not be refinanced and obtained equities may not be salable. But owner-managers of the target corporations may be reluctant to apply for rescue with the ERC fearing that they may lose their position and ownership in the corporations, then the ERC may not be able to handle many cases. SMEs that were saved in emergency situations by the government policies could be reorganized assisted by SMEs Turnaround Associations which were created in 47 prefectures in 2003, a year in which the IRCJ was created. Larger corporations could be reorganized by expedited workout without the purchase of debts by the public sector, possibly assisted by the aforementioned BRADR. I am worried about the possibility that the ERC which is expected to be established before the end of August, might become a redundant organization.
Proposal to create Quasi-Governmental Organization to Revitalize Ailing Corporations

In order to save ailing business corporations that are socially useful, providing liquidity and assisting their restructuring effort is essential to restore the health of the national economy in each country. To serve that purpose, it could be effective to establish a government-backed special purpose corporation operated by private sector professionals who possess rich experience and specialized expertise of reorganizing troubled companies in each country. The corporation administers following workout processes. Solution process is consisted of the following stages:

1. Selecting target ailing companies which are useful for the national economy
2. Notice of standstill or stay to financial creditors (i.e., moratorium)
3. Facilitating provision of finance by financial institutions under the guarantee of Governmental agencies
4. Financial and business due diligence conducted by professional experts
5. Developing business and financial restructuring plans for the companies assisted by professional experts
6. Soliciting and persuading creditors and other affected parties to accept the proposed restructuring plans
7. Execution of the accepted plans
8. In some cases purchasing debts and infusion of capital may be useful.

Japan up to now is not in a situation where my proposed solution above is in critical need. But some countries which are struggling with severe economic downturn need a scheme for expedited workout solution assisted by international organizations. We need to pay attention to the point that CDS (credit default swaps) may be an obstacle for successful workout. In addition, obtaining unanimous consent would be very difficult in those countries where out-of-court workout solution is not usually used. The majority rule involving the courts or other appropriate authorities may be helpful in these situations.