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# **Assets Recovery under Japanese Insolvency Mechanism**

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## Introduction

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The actual cases to recover ill-gotten gains in foreign jurisdictions under the Japanese insolvency proceedings are still rare.

This is because the Japanese insolvency proceedings traditionally have been utilized domestically. However, the business globalization has changed such situations.

Therefore, we need to know more about the existing mechanism for extraterritorial assets recovery in the Japanese insolvency proceedings.

## Key Differences Between Three In-court Insolvency Proceedings in Japan

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	<b>Bankruptcy Proceedings</b>	<b>Civil Rehabilitation</b>	<b>Corporate Reorganization</b>
Type	Liquidation-type	Restructuring-type	Restructuring-type
DIP or NOT	Trustee type proceedings are the norm.	DIP type proceedings are the norm.	Trustee type proceedings are the norm.
Features	Trustee disposes of the debtor's assets, and makes distributions to creditors according to the priority orders by the law.	Existing management continues to run the business, and make payments under the rehabilitation plan approved by the majority of creditors.	Trustee has the power to manage the debtor's business, and make payments under the reorganization plan approved by the majority of creditors.

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## Extraterritorial Effects to Have Influence over Japanese Proceedings

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### <Foreign Effects expand to Japan>

- Japanese insolvency laws changed traditional “territorialism” approach to “moderate universalism” in and around 2000.
- Recognition proceedings was established in Japan by adopting UNCITRAL model law.
- Foreign trustee/DIP may file a petition for recognition to enhance effects of foreign proceedings in Japan.

### <Domestic Effects expand to Abroad>

- Japanese insolvency laws allow for extraterritorial effects over the debtor’s assets outside of Japan.
- Japanese trustee/DIP may seek foreign recognition proceedings (ex. Japan Airlines, Takata, and Daiichi Chuo Kisen, etc.)

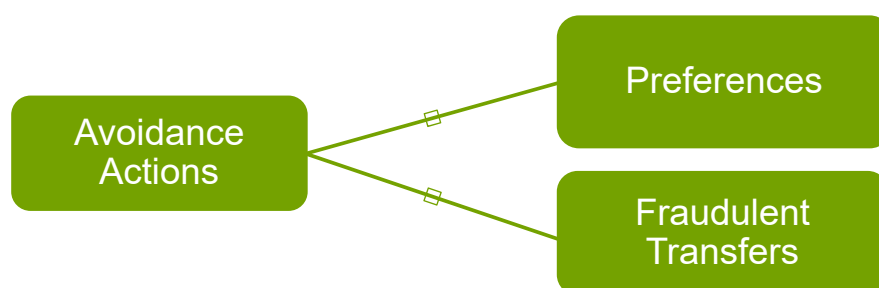
## **Systems to Realize Recovery of Assets Abroad**

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- Avoidance actions
- Arbitration, mediation, litigation, with recognition proceedings outside of Japan
  - Taisei Fire & Marine Insurance
  - Daiichi Chuo Kisen Kaisha

## Outlines of Japan's Avoidance System

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### Preferences

- Transactions which disrupt fair distributions among creditors.
- Debtor's actions are limited to;
  - Providing securities,
  - Extinguishing debts,
- Examples include;
  - Undue payments
  - Additional securitizations, etc.

### Fraudulent Transfers

- Transactions intended to hinder, delay or defraud creditors.
- Examples include;
  - Under-valued transfers
  - Over-valued purchases
  - Gifts, etc.

## Conclusion

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The systems in Japan for recovery of ill-gotten gains in foreign jurisdictions are still in their infancy.

In order to meet demands to deal with more Japanese debtors' foreign assets, as a result of rapid growth of the business globalization, precedents in the U.S. are valuable for Japanese professionals.

