

# Articles

## Outline of the Guideline for Debt Consolidation of Victims of Natural Disasters and Its Characteristics

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### I. Purpose of this article

This article provides an overview of the Guidelines for Debt Consolidation of Victims of Natural Disasters (hereinafter referred to as GL)<sup>1)</sup> and explains its characteristics. GL is a rule used by individual debtors when conducting private liquidation. When an individual debtor is unable to repay past debts such as mortgages and renovation loans due to the impact of a natural disaster, they may use GL as a rule for debt consolidation based on an agreement with creditors (mainly financial institutions). Private arrangements using GL are understood as a type of so-called standard-based out-of-court workouts.

The author, as a member of Nihon University Disaster Research Society (NUDS), is engaged in disaster research, mainly from the perspective of law. Whereas Japanese disaster regulations are beneficial to the disaster legislation of other countries and is attracting attention, it is difficult for foreign researchers to access them due to the language barrier. Moreover, whereas English translations of statutes and major judicial cases have been prepared, translations of disaster related soft law are difficult to obtain.

Therefore, this article will first introduce GL, which is a type of soft law.

### II. Overview of GL

#### 1. The Nature of GL

GL is a standard for fair and prompt debt consolidation, and was formulated by financial institutions, the Japan Federation of Bar Associations, commercial and industrial organizations, and other related parties through repeated consultations with neutral and impartial academics. GL, though not legally binding, is expected to be voluntarily respected and complied with by eligible creditors, debtors, and other interested parties, such as financial institutions.

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1) The full text of the Natural Disaster Guidelines can be found below (In Japanese language only).

<https://www.dgl.or.jp/guideline/>

## 2. GL stakeholders

The stakeholders involved in GL are as follows.

### (1) Eligible creditors (ECs)

The eligible creditors (hereinafter referred to as ECs) are persons whose rights are scheduled to be changed accordingly if debt consolidation based on GL is established through a special conciliation procedure. They are for example, banks, credit unions and other financial institutions, and credit guarantee associations etc. (GL2 (2), 3 (2)). Other creditors, if necessary for debt consolidation based on GL, may be included. ECs shall be required to cooperate in good faith in debt consolidation according to GL (GL 2(2)).

### (2) Debtors

The debtor is an individual and meets all of the following requirements. The debtor may be offered debt consolidation under GL (GL 3 (1)).

①	They are unable to repay mortgages, home renovation loans, business loans, and other past debts due to the impact of a disaster on their living infrastructure such as their residence and workplace, business premises, business facilities, business partners, etc., or it is expected that they will not be able to repay its prior debts in the near future.
②	They are honest about repayment and their property status (including the situation of debts). ) to ECs.
③	Before the disaster occurred, they committed no act that constituted an acceleration clause for the debt owed to ECs, except when the ECs have given their consent.
④	If debt consolidation is carried out based on GL, it is expected to be economically rational for ECs, as there is for example a possibility of obtaining the same amount or more as the bankruptcy proceedings and civil rehabilitation proceedings.
⑤	If the debtor is a businessperson who intends to rebuild or continue their business, the business must be financially viable and it must be feasible to rebuild it with the support of ECs.
⑥	The debtor has no relationships with an anti-social force nor is there any risk of such a relationship arising.
⑦	There are no grounds for disallowance as stipulated in Article 252, Paragraph 1 of the Bankruptcy Law (excluding Item 10).

### (3) Registered Support Specialists (RSS)

A registered support specialist (hereinafter referred to as RSS) is a person who is an expert (lawyer, certified public accountant, tax accountant,

real estate appraiser) and has been registered as a support professional by the organization to which he or she belongs (namely the Japan Federation of Bar Associations, Japan Institute of Certified Public Accountants, Japan Federation of Tax Accountants Associations, or Japan Federation of Real Estate Appraisers Associations: (hereinafter referred to as the management organization)) (GL 4(1)). The RSS performs the following tasks (GL 4(2)). RSSs are defined as those who assist in proceedings under GL from a neutral and impartial standpoint, with no interest in either the debtor or the creditor (GL 4(1)). They perform the following tasks.

①	Assistance in filing debt consolidation requests.
②	Assistance in preparing and submitting documents required for debt consolidation applications.
③	Assistance in drafting conciliation clauses.
④	Support for comprehensive coordination among stakeholders in the preparation of draft conciliation clauses.
⑤	Submission of the proposed Conciliation clause to ECs Support for explanations to ECs subject to the proposed conciliation clause.
⑥	Preparation of necessary documents for special conciliation petitions Support for the implementation of procedures from the filing of a petition for special conciliation to the conclusion of the special conciliation procedure.

### 3. The Procedures of GL

#### (1) Preparatory procedures for debt consolidation based on GL

If the debtor intends to file a request for debt consolidation, he or she shall request the largest creditor (the principal creditor) to initiate proceedings under the GL (GL5 (1)). However, the claims of the principal creditor are limited to those that are intended to be subject to debt consolidation based on GL.

The principal creditor who receives the request shall provide a written expression of consent or disagreement to commence proceedings under the GL within 10 business days (GL 5(1)). In such cases, the principal creditor shall not express disagreement unless it is clear that the debtor does not meet any of the prescribed requirements (GL 3 (1)) (GL 5(1)). In addition, if the main creditor expresses their disagreement, they must specify the reason in the relevant document (GL 5(1)).

The debtor, when receiving a written consent from an EC, requests the management organization to commission an RSS who belongs to the organization (GL 5(2)).

The organization selects a suitable person who has no interest in either the debtor or ECs from among the RSSs which it belongs to, and recommends them to the management body (the Debt Consolidation Guidelines for Victims of the Great East Japan Earthquake and Natural Disasters) (GL 5(2)). The management body that receives the recommendation will promptly commission an RSS based on the recommendation (GL 5(2)).

The commissioned RSS shall notify the debtor of the commission within three working days from the date of receipt of the commission by attaching a document certifying the fact of the commission (GL 5(3)).

### **(2) Start of debt consolidation**

The debtor shall submit a written request to all ECs for debt consolidation under the GL on the same day (GL 6(1)).

ECs may object to debt consolidation under the GL only if any of the following apply, after consulting with the RSS in advance (GL 6(4)):

①.	If it is found that the debtor clearly does not meet the requirements of GL 3(1).
②.	If the debtor is found to have violated GL 7(1) ① or ②.
③.	If there are obvious deficiencies in the required documents but they are not corrected within a reasonable period of time.

The objection shall be made by simultaneously sending a written statement stating the reason for the objection to the debtor, the RSS, and all ECs other than the EC. Even if the EC does not raise an objection, the EC is not obliged to agree to the proposed conciliation clause.

In addition, the debtor shall submit the necessary documents (property inventory, creditor list, etc.) to all ECs (GL 6(2)). The debtor may carry out the procedures under GL 6(1) and GL 6(2) through RSS (GL 6(3)).

From the time the request (GL 6(1)) is made, the period of suspension (GL 7) begins (GL 6(3)).

### **(3) Termination of debt consolidation**

Debt consolidation under the GL shall be terminated on the earliest of the following dates (GL 6(5)):

①	The date on which six months have elapsed since the date of the application for GL 6(1). In addition, after the petition for special conciliation is filed, the date on which the special conciliation procedure is completed.
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②	The date on which the debtor sends a written statement to all ECs stating that it will withdraw the debt consolidation based on the GL.
③	The date on which the objection written by the EC reaches the debtor, the RSS and all other ECs.
④	The date on which the debtor sends a written statement about the failure of debt consolidation to all ECs.

#### (4) Suspension

As mentioned above, the period of suspension (GL7) begins from the time of the request (GL 6 (1)) (GL 6 (3)). The period of suspension is until the date on which the debt consolidation under the GL is completed (GL 7 (2)).

During the period of suspension, all ECs and the debtor shall refrain from the following acts (GL 7 (1)):

①	The debtor shall not dispose of their assets and shall not bear new debts, except in the ordinary course of life or business, except in the case of the consent of all ECs. However, ECs cannot disagree without reasonable grounds.
②	The debtor shall not repay any ECs (including repayment in kind), or conduct any offsetting, acts related to debt extinction, or provision of physical security.
③	<p>ECs must maintain a “credit balance” on the date the suspension begins. No EC shall improve its relative position to the debtor in relation to other ECs.</p> <p>ECs are forbidden from doing any of the following:</p> <ul style="list-style-type: none"> <li>• Acts related to debt extinction (receiving repayment, offsetting, etc.)</li> <li>• Seeking additional physical and personal security</li> <li>• Executing a security interest</li> <li>• Petitioning for compulsory execution, provisional seizure, provisional injunction, and commencement of legal bankruptcy proceedings</li> </ul>

In addition, the suspension is not treated as a default event specified in the bank transaction agreement, etc. (GL 7 (1)).

Additional loans during the period of suspension shall be made as necessary within the amount determined by the consent of all ECs and in the manner prescribed thereof. Receivables from additional loans are repaid from time to time in priority over claims held by the ECs (GL 7 (3)).

### (5) Draft Conciliation Clause

The debtor shall prepare a draft conciliation clause within three months of the application and submit it to all ECs via an RSS (GL 8 (1)). However, if necessary, the debtor may extend the deadline for submitting the proposed conciliation clause to a range not exceeding three months by notifying all ECs of the reasons for the extension of the deadline for submitting the proposed conciliation clause (GL8(1)).

The GL stipulates in detail the contents to be included in the conciliation clause, including ① Cases where the debtor is a non-business entity (mortgage debtor) or sole proprietor, and ② When the debtor is a sole proprietor and intends to rebuild or continue the business by repaying future revenues generated from it. Here we will introduce only the overview (GL 8 (2)).

In ①, the draft conciliation clause must include, in principle, the following:

a.	The reason why the debt could not be repaid (including the content of the impact of the disaster).
b.	Property status (the appraisal of property is carried out as a disposal of property in principle for property by self-declaration of the debtor.)
c.	Debt repayment plan (within five years in principle).
d.	Asset conversion and disposal policy.
e.	The content of the request if a request is made to the EC for debt reduction, deferral of deadlines, or other changes in rights.

If a debtor who is expected to earn income continuously or repeatedly in the future requests the EC to reduce or exempt the debt along with a grace period by means of installment payment, the total amount of repayment to the EC based on the conciliation clause shall be determined according to repayment ability based on the actual living conditions of the debtor, and taking into account the income and assets of the debtor (GL8 (2)).

In addition, the content must be expected to be financially rational from the point of view of the EC by, for example, including the prospect of the debtor achieving a recovery equal to or greater than the expected recovery through bankruptcy proceedings (GL 8 (2)).

In ②, in addition to the above, the following must be included (GL 8 (2)).

a.	Business Outlook (Sales, Costs, Expenses)
b.	Income and Expenditure Planning

c.	Even before the disaster occurred, if business profits were already in the red the cause of the deficit and the measures to eliminate it should be described, and the content should aim to achieve a surplus within approximately five years from the year following the year of the establishment of the special conciliation. However, it does not prevent the content from making a reasonable period beyond this.
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In this case, too, the content must be expected to be financially rational from the point of view of the EC by, for example, including the prospect of achieving a recovery equal to or greater than the expected recovery through bankruptcy proceedings (GL8(2)).

In the case of requesting a reduction or exemption of debts from the EC, the content of the proposed conciliation clause shall include an agreement by the debtor to the EC regarding the matters specified in (i) and (ii) as follows (GL8(3)).

(i)	As of the date of drafting the conciliation clause, the debtor pledges that they have no assets with a market value of 200,000 yen or more or liabilities not listed in the creditor list other than the property listed in the property inventory.
(ii)	If the debtor is found to have failed to meet the requirements or is found to be in breach of the pledge, the debtor agrees in advance to pay the full amount of the debt immediately, regardless of the agreement to forgive the debt or postpone the deadline, unless there are reasons that cannot be attributed to the debtor.

The adjustment of rights relations in the proposed conciliation clause must be equal among ECs. However, this does not apply if there is a difference between ECs that does not harm equity (GL 8 (4)).

#### **(6) Submission and explanation of the proposed conciliation clause**

The debtor, with the assistance of an RSS, shall conduct prior consultations with the ECs before submitting the proposed conciliation clause and strive to obtain the understanding of the proposed conciliation clause among the ECs (GL 8 (6)).

After submitting the proposed conciliation clause, the debtor shall explain the proposed conciliation clause to all ECs, answer questions and exchange opinions (GL 8 (7)). The explanation of the proposed conciliation clause can also be made by issuing a written statement with the consent of the EC (GL 8 (7)). The debtor may also seek assistance from an RSS if necessary, such as an explanation of the proposed conciliation clause (GL 8 (7)).

The EC shall respond in writing to the debtor and the RSS within one month after the above explanation of their agreement or prospect of agreement or disagreement with respect to the proposed conciliation clause (GL 8(8)). The RSS shall compile the results and promptly notify all ECs (GL 8 (8)).

Unless complete consent or prospect of consent from the EC is not obtained for the proposed conciliation clause, and unless consent or prospect of consent cannot be obtained within a reasonable period of time even after discussing appropriate measures such as changes to the proposed conciliation clause, debt consolidation based on the GL will not be established (GL 8(9)).

### **(7) Petition for Special Conciliation**

The debtor, who has obtained consent or prospective consent from all ECs, shall file a petition for special conciliation in the summary court (GL 9 (1)).

In the event that the special conciliation procedure is terminated, the debtor shall obtain from the court a statement of the conclusion of the conciliation and other documents certifying the termination of the special conciliation procedure, and promptly notify the RSS of the result with a copy of the document certifying the completion of the special conciliation procedure (GL 9 (2)).

## **III. Features of GL**

The features of GL are as follows.

### **1. Standard-based Out-of-Court Workout**

Standard-based out-of-court workout refers to cases in which private arrangements are based on a certain framework. In the case of standard-based out-of-court workout, a fair and neutral third party (expert) is generally involved. The characteristics of GL as standard-based out-of-court workout are summarized as follows.

#### **(1) Involvement of a fair and neutral third party (expert)**

An RSS, as an expert (GL 4 (1)), shall participate in GL and perform GL-related work (GL 4 (2)). The fairness and neutrality of RSSs is guaranteed by registration (GL 4 (1)).

#### **(2) Debt consolidation based on standard**

In GL, it is assumed that the EC shall cooperate in good faith with the debt consolidation by the GL (GL 2 (2)). Reflecting this, the main creditor who received the request is required to express their consent or disagreement in writing (GL 5 (1)). The main creditor must not express disagreement unless it is clear that the request does not meet any of the prescribed requirements (GL3 (1)) (GL5 (1)), and if even then, they express their dis-

agreement, it must be clearly stated in the document (GL 5 (1)).

After the debt consolidation has begun, there are only a limited number of cases where the EC can raise an objection, in which case it is required that they consult with an RSS in advance (GL6 (4)).

The period of suspension begins from the request, and during the period of suspension, ECs refrain from taking prescribed actions related to collection, and once the suspension begins, it is not treated as a reason for an acceleration clause in the bank agreement, etc. (GL7(1)).

## **2. ECs and Debtors**

### **(1) Limitation of ECs to financial creditors**

In GL, the ECs are limited to financial creditors such as financial institutions. They are required to cooperate in good faith with the GL's debt consolidation (GL 2(2)). Formally, it is possible to bind financial institutions to the GL rule, and in effect, it is intended to free individual debtors from bank loans.

### **(2) Limitation of debtor to individuals**

In GL, the debtor is limited to individuals (GL 3(1)). This is because GL aims to free personal debtors from bank loans. Debt consolidation of corporations is entrusted to the normal standard debt consolidation procedure. There are no rules specifically for debt consolidation of corporations affected by natural disasters.

## **3. Use of Special Conciliation procedures**

After debt consolidation based on GL, a petition for special conciliation is finally filed (GL9 (1)). Special conciliation is a procedure that aims to adjust the interests related to the financial debts owed by the specified debtor in order to promote the economic revitalization of the debtor who is at risk of being unable to repay the debt, and is based on the "Act on Special Conciliation for Expediting Arrangement of Specified Debts" (Special Conciliation Act, (hereinafter referred to as "the Act"))).

When an agreement is reached between the parties in a special conciliation and it is stated in the record, the special conciliation is deemed to have been established, and the description has the same effect as a judicial settlement (Article 22 of the Act, Article 16 of the Civil Mediation Act). In other words, the statement in the settlement agreement has the same effect as the

final judgment (Article 267 of the Civil Procedure Code)<sup>2)</sup> and becomes a Title of Obligation (Article 22, Item 1 of the Civil Execution Act)<sup>3)</sup>. This ensures the effectiveness of out-of-court workouts based on GL.

In addition, in special conciliation, Article 17 of the Civil Mediation Act applies *mutatis mutandis* to Article 20 of the Act. Article 17 of the Civil Mediation Act allows the court to make flexible decisions based on guardianship and discretionary judgment (Article 17 Decision)<sup>4)</sup>. It can be said that GL uses special conciliation because it has the potential to take advantage of the Article 17 decision.

#### IV. Conclusion

This paper explains the outline and characteristics of GL from the perspective of introducing Japan's disaster legislation. I hope that this paper will be of some help to foreign researchers and practitioners who are interested in Japan's disaster legislation.

\* This work was supported by the research grant of Nihon University, "Development of a Cyber-Physical System Aimed at Establishing a Resilient and Resident-Friendly Regional Collaboration Hub for Disaster Preparedness."

2) Article 267 of the Civil Procedure Code stipulates as follows:

Article 267

When a settlement or a waiver or an acknowledgement of a claim is entered in the record, that entry has the same effect as a final and binding judgment.

3) Article 22, Item 1 of the Civil Execution Act stipulates as follows:

Article 22

Compulsory execution shall be carried out based on any of the following (hereinafter referred to as the "title of obligation")

Item 1: A final and binding judgment

4) Article 17 of the Civil Mediation Act stipulates as follows:

Article 17

If mediation carried out by a mediation committee is unlikely to be successful, and the court finds it appropriate, it may, by its own authority and to an extent that does not contradict the objectives of the parties' petitions, issue a necessary order to resolve the case after hearing the opinions of the civil mediation commissioners composing the mediation committee, giving consideration to equitable treatment of the interests of both parties, and taking into account all relevant circumstances. Through this order, the court may order the payment of money, delivery of an object, or any other provision of economic benefit.