

Escaping your Debts in Japan:

HIROYUKI YAGI / MASAKAZU KAJI,

Karita kane wa kaesuna

[Don't Repay that Money you Borrowed] *, **

Tokyo: Ascom 2003 (ISBN4-7762-0018-X)

The title of this book is a play on the phrase “*Kashita kane kaese yo*” (“Return the money I/we lent you”). That phrase is itself a refrain in the chorus of the pop tune *Shakkin daiô* (“The King of Debt”), the theme song of the television dramatization of the immensely popular comic book by Yuji Aoki, “*Naniwa kin'yû-dô [The Osaka Way of Money]*”, which is about an up and coming *machikin* money lending firm in Osaka.¹ The firm and its employees are often the lender of last resort to henpecked husbands with expensive mistresses and shaky local companies with embezzling employees alike. When the loans go bad, the protagonists seize homes, force women into prostitution and jockey for position with even shadier lenders for the remaining crumbs of their debtors' lives. Yakuza-like money lenders are as much staple icons of modern Japanese popular culture as Samurai and Geisha are of the traditional.

The real-life villainy of money lenders is a continuing problem in modern Japan, as evidenced by the infamous recent case of the Nichei company whose debt collectors were recorded yelling at a delinquent borrower to “sell an eyeball, sell a kidney”². Nichei continues in business under another name,³ and usury and unlawful debt collection remains a serious social problem, though there are signs that regulators are be-

* The book reviewed here is a non-academic work intended for the general Japanese reader. The review is intended as a series which will hopefully provide some insights into the way the legal system in Japan is explained to and understood by the general public in that country. Prior works in this series by the reviewer include *Saiban-in seido: Prospects for Citizen Participation in Criminal Trials in Japan*, in: *Pacific Rim Law & Policy Journal* 15 (Feb. 2006) 363, Kaoru Inoue's *Shihô no shaberi-sugi* [Blabbermouth Judiciary]: Moral Relief, Legal Reasoning and Judicial Activism in Japan, in: *Emory International Law Review* 19 (2005) 1563.

The book title is hereinafter referred to as “Money”.

All translations from Japanese are by the reviewer unless noted otherwise.

** This review is dedicated to the memory of my dear friend Juliana F. Kehl, who would surely have been amused.

1 YUJI AOKI, *Naniwa kin'yû-dô* (v.1-10) (1999).

2 See, e.g. *id.* at 20.

3 LOPRO K.K. (see <www.lopro.co.jp>).

coming increasingly intolerant of such activities. Recently, Japan's Financial Services Agency ordered Aiful Corp., one of Japan's largest consumer loan providers, to temporarily suspend operations at its 1,700 outlets nationwide, citing aggressive debt-collection activities and failure to provide borrowers with mandated documents.⁴ Nonetheless, bad loans (both corporate and individual) have been at the core of Japan's prolonged recession for many years. Thousands of suicides every year are attributed to the crushing and seemingly inescapable burden of personal debt.⁵

Although Yuji Aoki, the author and illustrator of *Naniwa kin'yû-dô* has lent his name to the promotion of Yagi and Kaji's book, they are writing about the real world and how to deal with it. Having gone through 15 printings and sold over 340,000 copies, "Don't Repay that Money you Borrowed" (and well-researched comic books such as Aoki's) has probably done more to inform the consciousness of the average person regarding debtor-creditor law in Japan than any textbook on the subject. Written in 2003 at a time when Japan's recession probably still seemed endless, it also provides some insights into at least some of the mechanisms by which enormous quantities of bad loans (both personal and corporate) have gradually been eliminated, setting the stage for the economic recovery which has become apparent in recent times.

Neither author is a lawyer (Kaji is a writer and real estate investor, and Yagi is a *kigyô saisei-ya*, a corporate restructuring consultant). That such people are able to write books and consult on the subject of debt restructuring itself illustrates the fractured nature of Japan's market for legal services.⁶ Because they are not lawyers, however, their approach to the law is highly utilitarian – sometimes it is useful, other times it is not. While they recommend lawyers for some types of cases, they are openly critical of

4 See, e.g. FSA Suspends Aiful Operations, The Asahi Shimbun (April 15, 2006), available at <www.asahi.com/English/Herald-asahi/ky200604150126.html>. A release by the Kinki Finance Bureau announcing the temporary suspension of Aiful's license under the Money Lending Business Law reports a number of violations including aggressive debt-collection activities that are prohibited by the Law. KINKI FINANCE BUREAU, *Aifuru kabushiki kaisha (kashikin-gyô tôroku-sha) no gyômu teishi ni tsuite* [Regarding the suspension of operations of Aiful K.K. (a licensed moneylender)] (April 14, 2006). One of the most fragrant examples cited in press accounts is that of an Aiful employee bursting into a hospital room to take the customary gifts of cash that are given to the sick (the patient died of cancer three days later). HIROSHI MATSUBARA, Till debt do them part, The Asahi Shimbun (May 17, 2006) 25. Money-lending businesses are regulated by the Money Lending Business Law, *Kashikin-gyô no kisei-tô ni kansuru hôritsu*, Law No. 32/1983.

5 *Id.*

6 It is common to compare the number of lawyers (*bengo-shi*) in Japan with the numbers of attorneys in the United States. However, this is a completely misleading comparison which fails to take into account a very large number of persons in Japan doing law-related jobs in Japan either under different licensing regimes (e.g. tax lawyers (*zeiri-shi*) or conveyancing lawyers (*shihô shoshi*)) or without any license whatsoever (as is the case for personnel in most corporate legal departments in Japan). See RICHARD MILLER, Apples v. Persimmons: The Legal Profession in Japan and the United States, in: *Journal of Legal Education* 39 (1989) 27.

them in others. For example, they complain that most Japanese lawyers will reflexively recommend personal bankruptcy (*jiko hasan*) to burdened debtors because it is what they know, and it generates the best fees.⁷ Yet they attempt to show that most personal bankruptcies would be unnecessary if debtors used the authors' techniques or went to consultants like them instead of lawyers.

For Kaji and Yagi, debt restructuring needs to be addressed as much as an emotional issue as as a legal or financial one. "When money troubles arise, Japanese people tend to think in the dimension of good or bad. But whether or not you can repay, is a business problem, not a matter of right or wrong."⁸ Emotional factors (likely missed by a lawyer) are one of the reasons why they recommend that borrowers protect their homes from creditors at all costs (even if it means putting it in someone else's name well in advance, or making just the right number of properly timed, sporadic payments on your mortgage to avoid foreclosure); those who preserve their homes retain the emotional strength necessary to deal with financial difficulties head-on.⁹ Similarly, it is for emotional reasons that it is important to contact your banker before you miss a loan repayment, since the shock he would experience otherwise will make it much more unlikely he will entertain discussions about rescheduling your debts.¹⁰

A great deal of law is also discussed, of course. The authors are quite blunt about pros and cons of the various legal regimes available to debtors. For example, a properly implemented corporate spin-off (*kaisha bunkatsu*) will enable you to foist off all your debts on an empty shell, while the real business carries on in a new corporate form.¹¹ Just be sure to use a different name for the new corporation, have a spin-off agreement that does not provide for the transfer of debts associated with the business, and make sure that the new company does not have exactly the same employees as the old one.¹² Other than that, it's just like finding a few rotting oranges in a box – you move the good oranges to a new box!¹³

Court-sponsored special mediation under a special debt mediation law (*Tokutei chôtei-hô*) is available to both corporate and individual debtors.¹⁴ Its merits are that the procedures are simple and inexpensive, that once they are commenced, any further

7 Money, *supra* note 1 at 35-36, 38-39.

8 *Id.* at 22.

9 *Id.* at 44, 136-151. Loss of one's home is one of the reasons why the authors oppose personal bankruptcy as an option. In addition, a person who has been bankrupt becomes ineligible for certain types of employment (he or she cannot become lawyer or public servant, among other things). *Id.* at 36-37.

10 *Id.* at 51.

11 *Id.* at 28, 210-212.

12 *Id.* at 211-212.

13 *Id.*

14 *Tokutei saimu-tô no chôtei no sokushin no tame no tokutei chôtei ni kansuru hôritsu* [Law relating to special mediation for the encouragement of the resolution of specific debts etc.], Law No. 158/1999.

collection activities are forbidden to debtors, that it enables the consolidation of multiple debts, and that since it does not involve actual bankruptcy, there is little stigma associated with it.¹⁵ However, creditors must cooperate by participating in the process, so the procedures are of limited use against aggressive lenders. Similarly, if a settlement is mediated, it is binding on and enforceable against you, which may restrict your freedom to seek further debt relief in the future.¹⁶

Debt restructuring is also available through the Civil Rehabilitation Law (*Minji saisei-hô*), which, after being amended in 2001 to allow individuals to use its procedures, has become (according to the authors) a wonderful law for the common people.¹⁷ While describing the procedures and benefits involved in using the law, they note that relying on it may involve assuming the Japanese stigma of bankruptcy, even though it will allow you to retain control of your business.

To Kaji and Yagi, one of the great developments in Japanese debtor-creditor law was the Servicer Law of 1999, which provided for the establishment of special debt servicers to whom lenders could dispose of bad loans at market value without incurring tax liability. If you are a borrower, it is a happy thing to discover that your overdue bank debt has been acquired by a servicer, since you can assume that it paid about 3-5% of the loan amount. This means you do not have to repay very much of the original loan to render the transaction profitable for the servicer.¹⁸ Everyone ends up doing well except for the original lender (they deserve it, say the authors – the major banks lost money for years and ended up having to get government money to stay afloat, but you never hear about bank presidents losing *their* houses, do you?).¹⁹

While laws such as the Servicer Law have had a tremendous impact in eliminating bad debts, the authors sound a note of caution. It is unclear how well established institutions such as servicers will become, and if the government decides that Japan's economic crisis is over, it may do away with these escape hatches for borrowers. If you are going to do something about your debts – do it now!²⁰

Also discussed is the “grey zone” created by conflicting Japanese usury statutes.²¹ While one statute (the Financing Law) makes it a crime to charge an annual interest of 29.2% (until recently, 40.4%) or greater, another (the Interest Limitation Law) restricts

15 *Id.* at 62-64.

16 *Id.* at 64-65.

17 *Minji saisei-hô*, Law No. 225/1999.

18 *Saiken kanri kaishû-gyô ni kansuru tokubetsu sochihô* [Special Law relating to the business of administering and recovering debts], Law No. 19/1999 (the “Servicer Law”). According to Kaji and Yagi, prior to the Servicer Law, if a bank were to sell a bad loan at a fraction of its face value, it would incur gift tax liability for the excess amount. Money, *supra* note 1 at 31-33.

19 *Id.* at 25.

20 *Id.* at 27.

21 *Id.* at 66-72.

the interest rate on consumer loans to 20%.²² The gap between these two statutory maximums is the grey zone, and consumer finance companies routinely charge in excess of the latter, helped by jurisprudence which has allowed interest payments in excess of 20% to be deemed as having been made “voluntarily.” The good news is that if you are willing to fight, you can probably get this excess interest refunded (or, more likely, applied towards your outstanding loan balance).²³

The book generally deals with the law simply as a tool for restructuring or eliminating debt. Being successful in the endeavor, however, also depends upon knowing your lender and what their institutional issues are likely to be. The authors provide a wonderful (and humorous) guide to financial institutions and what their attitudes are likely to be towards your request to reschedule or forgive some of your loans. Some of this guidance is reproduced below, though one wonders how long they will remain valid insights into the state of Japanese finance.

Major Banks (toshi ginkô). Depending upon the bank (refreshingly for Japanese authors, Yagi and Kaji actually give names), results may differ, but most are likely to have clear criteria, and if you meet them, they will likely negotiate. Some of the major banks that are in less good financial health may not be amenable, however, and you may have to ascertain which institution the particular branch you are dealing with was a part of before the recent wave of bank mergers in order to guess the approach they will take. A key part of negotiating with the banks, though, will be to miss a payment (after notifying them in advance of course). This will get their attention and bring them to the table, thereby sparing you having to go out and borrow expensive money from a shady outfit to pay off a cheaper bank loan. Most banks will be happy to get interest payments plus a small amount of principal back.²⁴

Regional Banks (chihô ginkô). Good first tier regional banks will probably respond similarly to major banks. Second tier banks are hopeless, and you should look at their financial condition. The worse shape a bank is in, the more likely it is to proceed immediately with legal action if you default.²⁵

Cooperative Banks and Credit Unions (shin'yô ginkô, shin'yô kumi'ai). If your only lender is a credit union, you should be happy. It takes them a long time to take legal action, and they will probably be amenable to restructuring. But they are most likely to demand additional security or a guarantor as part of the deal. But with these institutions, the individual branch manager has a lot more authority than with banks. Put on a good show: make an impassioned speech about how you are going to turn your business

22 *Shusshi no uke'ire, azukari-kin oyobi kinri-tô no torishimari ni kansuru hôritsu* [Finance Law], Law No. 195/1954; *Risoku seigen-hô* [Interest Limitation Law], Law No. 100/1954.

23 Money, *supra* note 1 at 70-72.

24 *Id.* at 90-100, 183-184.

25 *Id.* at 100-102.

around. “We will definitely go public within three years. Then Mr. Branch Manager, you can be our managing director, ga-hahaha!” Maybe that speech works; corny is fine with these institutions, say Kaji and Yagi, as long as the supplicant has a positive attitude.²⁶

Lease/Sales Finance Companies (shinpan kaisha). Poor lease financiers. If you financed your copy machine through a lease company, all they can do if you stop lease payments is threaten to take it back. “Dozo” you say, and many won’t bother. If they call your bluff, hide the copy machine and say something along the lines of “Other creditors came and took it. There was a bit of a scuffle, so I don’t remember their names.” Otherwise, simply repeat this mantra: “All I can pay is 3,000 yen [less than \$ 30].” If you can get them to settle for any amount less than 10,000 yen, they will probably write you off in a year because payments that low won’t even cover their invoicing costs. Just be sure to make the payments on your company car or other assets that are truly vital to doing business.²⁷

Consumer Lenders (Shôhi-sha Kin’yû). When you first miss a payment, you will get a phone call. Then a letter, then someone will visit you, and the tone of these communications will quickly get nasty. The trick with these guys is to pay 10,000-20,000 yen a month even if it does not cover all of the interest due. If you persist in asserting this is all you can pay then they will likely put up with this situation for months, after which you can try to negotiate a restructuring. If you have borrowed from more than three of these institutions, be sure to involve a lawyer in the restructuring discussions. Ladies who have borrowed on credit without telling their husbands should discuss the situation with them immediately to avoid the threat of “your husband finding out” from being used as a threat.²⁸

Local Money-Lenders, Shôkô Loan (machikin). These are the corporate equivalent of consumer finance companies – high interest lenders of last-resort. If you are dealing with one of the two major national corporate money-lenders, SFCG (formerly, *Shôkô* Fund) or LOPRO (formerly *Nichi’ei* of “sell an eyeball”-fame), you have a problem, as they are not counterparties that you can talk to. Go straight to court before they go after your guarantors. Be sure to get a lawyer, not just any lawyer, but one who is part of the network of lawyers who deal with these institutions. These two companies (also known as “*shôkô* loan” providers, *shôkô* meaning “trade and industry”) should not be confused with well-established local money-lenders (*machikin*), many of whom are very reliable lenders with longstanding relationships in the local business community. Such lenders

26 *Id.* at 102-105.

27 *Id.* at 106-108.

28 *Id.* at 117-123.

have no interest in wiping out local businesses (though the employees of Aoki's comic book *machikin* operation do not seem to have any such compunctions).²⁹

"Shadow" Lenders (yamikin). If you have borrowed from a "shadow" lender, one who advertises on photocopied flyers posted to utility poles, one who can be contacted only through a cell phone, you may have some problems. The only part of the legal system they fear is the police, so getting judicial relief is no help. Get a lawyer, preferably one who is part of a national association dedicated to dealing with these unlicensed, illegal moneylenders.³⁰

And what if despite your best efforts at restructuring, it looks like your business (or you personally) are going to fail? Well, there are a number of things you can do, though many should be done well in advance.

First, if your bank doesn't want to lend you any more money, move all of your accounts (before they are frozen) to one that will. Redirect accounts receivables to new accounts. When things start to get bad, move whatever you have to the postal savings network; it takes longer for creditors to find accounts there.³¹ Or move some to Switzerland or the Caymans; big corporate bosses and corrupt bureaucrats are doing it – why shouldn't you?³² Just make sure not to tell your lover – if the relationship goes sour, she will turn you in. The important thing, though, is to hide things *before* the situation gets too bad.

Make sure that your financial statements do not accurately reflect the names and addresses of your customers (this will frustrate efforts to collect your debts directly from accounts receivables).³³ If you can, move accounts receivables to new banks that you do not owe money to.³⁴ Similarly, if you own a rental property, never give your lenders a copy of your tenant leases (if the tenants are identifiable, rents can be garnished).³⁵ And also consider transferring the management of your rental properties to a management company, a special one like the subsidiary of the authors' consulting company...

It will take at least four months of defaults before most banks will start enforcement proceedings.³⁶ The authors provide schedules for making just the right number of sporadic payments over the right period of time to delay this even longer.³⁷ If you are at negative equity in your home (as many Japanese people are), great: since even the

29 *Id.* at 124-128.

30 *Id.* at 131-134.

31 *Id.* at 168-169.

32 *Id.* at 187-188, 190.

33 *Id.* at 193.

34 *Id.* at 175-176.

35 *Id.* at 164-165.

36 *Id.* at 182, 186-187.

37 *Id.* at 156.

holder of the first mortgage will lose money if they foreclose, you can blow off other secured lenders without fear that they will start a foreclosure (be sure to keep your first mortgagee happy, though).³⁸ If you have enough to pay off what the home is worth, you can even wipe out the excess portion with the cooperation of a trustworthy third party.³⁹

If you are personally liable for a debt, some creditors may threaten to impound and sell the furnishings in your house or your office supplies. This is an empty threat; even if it happens, you can buy the stuff back at a pittance.⁴⁰ And if things start to get really bad for your business, you can get away with paying only 1/5 of your social insurance premiums for quite some time.⁴¹ The important thing is to be clear in your mind and not feel shame or hesitation once you decide to stiff your lenders or ask for more money from them. In this respect, you need to look at the way indebted developing countries make demands of the ODA!⁴²

The creditor is threatening to garnish your wages to satisfy a loan? Enter into a fictional loan agreement for a much larger amount with a friend. How will someone know if it is real or not? Then tell the creditor that if he garnishes, your other “creditor” will, too, meaning the amount the real creditor can expect will be only a proportion of the garnished amount. Then offer a voluntary repayment schedule slightly higher than what that proportion would be.⁴³ Or, if you work for a small company and get on well with your boss, ask him to put you on as a part-timer. Part-timers have variable salaries, so a formal determination of the garnishable amount will have to be made each pay period. This is far too much work for many creditors.⁴⁴

In the absolute worst case scenario you can change your name, get a new social insurance number and hide out while the five year statute of limitations on debts runs. Joining a cult may help, too. And everyone knows you can buy a new family registry on the black market.⁴⁵ Some of Kaji and Yagi’s recommendations are playfully blanked out, “on advice of counsel.”⁴⁶

Kaji and Yagi’s final chapter is a discussion of Japan’s infamous system of joint and several guarantors (*rentai hoshô-nin*), a system which the authors believe should be eliminated: “It is amazing that such an evil and destructive system remains in a modern, democratic country.”⁴⁷ Most lenders will require you to find a joint guarantor to co-execute your loan agreement. If you miss a payment, they can go after the guarantor for

38 *Id.* at 170-172.

39 *Id.* at 140-142.

40 *Id.* at 158-160, 191.

41 *Id.* at 174.

42 *Id.* at 181.

43 *Id.* at 161-163.

44 *Id.* at 230-231.

45 *Id.* at 237-239.

46 *Id.* at 223.

47 *Id.* at 224, 239.

the entire amount of the loan. If you have guaranteed a revolving credit arrangement, the lenders can go after your guarantor for the amount of the entire facility, not just what was borrowed at the time the agreement was executed. Needless to say, many suffer greatly by becoming a guarantor to a friend or relative on the assumption it is a casual favor.

But getting a friend or family member to be your guarantor may leave you with nowhere to turn to for support when you really need it. “The ranks of the people living homeless in Ueno Park, in the passages under Shinjuku Station, and in shanties along the Sumida River include many who have subjected their families to serious burdens.” Needless to say, you should also at all costs avoid becoming a guarantor for someone else. If you have to lie to do so – “it’s against my religion” – so be it. Most people won’t push very hard when it comes to religious beliefs.

Whether Kaji and Yagi’s book will stand the test of time remains to be seen. Doubtlessly, it is read by lenders as well as borrowers, lenders who may modify their own policies and behavior accordingly. And if Japan’s apparent economic recovery continues, bankruptcy and debt relief may again revert to something shameful that is only supposed to happen to other people.

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