

3. Law of Civil Procedure and Bankruptcy

Civil Execution Act 1979.

(Promulgated on March 30, 1979 and put into force on Oct. 1, 1980.)

Ch. 4, 1979. Consisting of 198 articles and four supplementary provisions.

The outline of the Act is as follows:

Chapter 1. General Provisions

Chapter 2. Execution

Section 1. General Provisions

Section 2. Execution on Claims (*Forderungen*) for Payment of Money

Subsection 1. Execution on Real Property

Item 1. General Provisions

Item 2. Compulsory sale by auction

Item 3. Compulsory receivership

Subsection 2. Execution against ships

Subsection 3. Execution against personal property

Subsection 4. Execution against claims (*Forderungen*) and other rights to own or hold property

Section 3. Execution in respect of claims (*Ansprüche*) other than those concerning the payment of money

Chapter 3. Execution of Provisional Attachment and Provisional Disposition

Chapter 4. Auction and Others for Enforcement of Security Interests

Chapter 5. Penal Regulations

Supplementary Provisions

[Comment]

Japan's civil execution system depends on the provisions in Book VI of the Civil Procedure Code entitled "Execution," which provides for the procedures of execution of various judgments including those based on the so-called "title of debt" and the

Auction Act providing for the proceedings of enforcement of the hypothetical right and other security interests.

Since these Acts were enacted a long time ago (the former in 1890 and the latter in 1898), they have, in many cases, failed to adapt themselves to modern society. Moreover, due to the insufficient adjustment between the two procedures, there appeared varied interpretations of such procedures and different theories in the course of actual application of the provisions, thus giving rise to many difficulties in practice.¹

In order to overcome the existing inconvenience surrounding the Japanese system of execution, the present Civil Execution Act is designed to modernize and rationalize the procedures of execution. In other words, the present Act is aimed at improving the execution system as a whole by reforming and integrating the part relating to execution in the Civil Procedures Code and the Auction Act, while attempting to realize the speed-up and fairness of execution.

The present Act aimed at reforming the existing system is featured by the following four points:

- 1) Provisions have been improved and rearranged to expedite the procedures of execution. Especially important has been the improvement of the methods of filing complaints. In place of the existing plea of immediate complaints, new procedures for filing a complaint against execution or objection to execution have been established. In addition, efforts have been made to prevent delays in the procedure of execution resulting from an abuse of filing complaints through an improvement of the system which calls for suspension of execution.

- 2) Various institutions have been improved to ensure the practical effects of the performance of the rights enjoyed by obligees. The method of demanding dividends and proceedings for converting into money have been improved in this instance.

- 3) Reform has been made to stabilize and strengthen the position of bidder in an auction. In this regard, orders for delivery of immovables for the benefit of bidder have been strengthened

while procedures aimed at executing the security interests on immovables have also been improved.

4) Reform has been made for the purpose of protecting the obliger who has been subjected to execution. Provisions forbidding attachment have been rationalized to maintain the livelihood of the obliger, and a system designed to protect the obliger in the course of compulsory receivership has been created.

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4. Criminal Law and Procedure

[Trends of Legislation]

The outcome of the proposed revision of the Prison Act 1908 (as subsequently amended) is worthy of special attention in the recent trends of criminal legislation.

The committee of the Legal Council of the Justice Ministry in charge of the revision of the Prison Act, which had been studying the revision at the request of the Justice Minister since 1976, completed its "Outline Draft of the Gist of the Revision of the Prison Act" and submitted it to the general meeting of the Legal Council on December 7, 1979.

The outline draft is made up of six sections, namely, introduction, treatment of prisoners under sentence, treatment of convicted persons sentenced to penal detention, treatment of convicted persons sentenced to death and other inmates, criminal jails and punishment.

As is clear by such titles, the basic concept of the draft outline is projected to define the relations between inmates and the state in connection with rights and obligations, by classifying the regulations on their treatment in accordance with the type