

posite party. But, in its article 526 section 1, it prescribes that a contract between remote parties is formed at the time when the notice of acceptance is dispatched. Supposing the technical limitation that a notice takes a long time to arrive, it intended the rapid formation of a contract. But today the means of communication having highly developed, especially in electronic contracts, it has become unnecessary for the contract to be formed when the notice of acceptance is dispatched, since the notice of acceptance of a contract given by electronic means reaches the opposite party in an extremely short time. Therefore this act, in its article 4, prescribes that article 526 section 1 of the Civil Code and its article 527, concerning a notice of the revocation of an offer, are not applicable when a notice of acceptance is given by electronic means in a contract between remote parties.

## **4. Law of Civil Procedure and Bankruptcy**

### **Civil Rehabilitation Law**

Law No. 225, Dec. 14, 1999 (effective on April 1, 2000).

#### **Background:**

In the conventional Bankruptcy Law system, various procedures of a claim type for processing bankruptcies with the aim of reconstructing a corporation existed, a procedure for the reorganization of a corporation a procedure for the liquidation under the commercial law, and a procedure for composition. However, many years have passed since these laws were established, and the social and economic system has seen big changes and developments, and many problems, which cannot be dealt with under old Bankruptcy Law have arisen. It was especially difficult under the old Bankruptcy Law to respond to the increase in the personal bankruptcies because of consumer loans as well as the expansion in business bankruptcies, and the rapid internationalization of recent years. Thus to meet the needs of the present economic and social situation, the Civil Rehabilitation Law, which aims

to function rationally to create a fair and quick bankruptcy processing procedure, was enacted on December 14, 1999, and was enforced from April 1, 2000.

### **Main Provisions:**

The Main Points of the Civil Rehabilitation Law are as follows:

(1) A procedure which is easy for the obligor to use.

In the sense that the civil rehabilitation law is a law which, in principle leaves enterprise rehabilitation to the obligor himself, the rehabilitation obligor is expected to choose procedure at an early stage (Art. 21). In the civil rehabilitation law, besides the injunction of provisional seizure, provisional disposition and other measures (Art. 30), together with the enrichment of the suspension order of the auction procedure as an execution of lien (Art. 31), and extirpation (Art. 79), the system of the comprehensive restraining order (Art. 27), which had not been introduced even in the reorganization of corporation law, is specified.

① DIP (Debtor In Possession) Type of Bankruptcy Procedure

Although the Civil Rehabilitation Law is a DIP type of bankruptcy processing procedure, and the rehabilitation obligor does not lose the authority to execute business or the authority to manage property by the start of the procedure (Art. 38. 1, para.), the responsibility to use those authorities impartially, and sincerely with regard to the creditor is taken (Art. 38. 2, para.). The Civil Rehabilitation Law emphasizes the principle of treating the obligor as a third party (Art. 38), and so inevitably combined and introduced, not only the regulation of offset restrictions, but also denial, a system for the investigation of the responsibility of an officer of a corporation, etc. Consequently, Civil Rehabilitation procedure has come to resemble the contents of managed types of legal bankruptcy procedure, such as laws for bankruptcy and the reorganization of corporations law, and so the transfer to the new procedures has wanted smoothly.

② Disposal before the start of procedure

a) Injunction

As a provisional disposal before the start of the procedure in rehabilitation procedure, besides the general injunction about the obligor's

property (Art. 30), a system of a suspension order (Art. 26), a suspension order of the auction procedure by execution of lien (Art. 31), and extirpation (Art. 79), were introduced, and a system of a comprehensive restraining order was newly adopted (Art. 27). Since it may become an obstacle to the execution the rehabilitation obligor's business, a comprehensive restraining order has been devised to replace the system of automatic suspension.

b) Claims on dealings are treated as a common benefit claims.

In the case of the Composition Law, a claim produced by the loan of funds made before the start of the produce and acts such as the purchase of raw materials and other business, which are necessary to the continuation of the enterprise, were also made into composition claims (Composition Law, Art. 41). On the other hand, the Civil Rehabilitation Law allows for obtaining the permission of the court (Art. 120), and can make these a common benefit claims, making continuation of dealings easy.

(2) A procedure which the creditor can trust

① Information disclosure

The procedure for disclosure of information to the creditor was improved in the Civil Rehabilitation Law. In addition, perusal of records and a copy system (Art. 17 and 18) were introduced, and the duty on the part of the rehabilitation obligor to compose and present a repair (Art. 125) was also defined.

② Creditor committee

The Civil Rehabilitation law introduced system of admitting the fixed participation (Art. 11 articles, Art. 42.2, para., Art. 154.2, para.) in the procedure of the Creditor committee (Art. 118 articles) which consists of a predetermined number of members, when it gains the support of a majority of the rehabilitation creditor, and represents the interests of the rehabilitation creditors as a which appropriately a substitute committee system (Art. 90) to represent a specific creditor's interest was also introduced.

③ The rehabilitation creditor's right of application

Compared with the Composition Law, the right of application permitted to every creditor is considerably substantial. There are the right of application to start the rehabilitation procedure (Art. 21.2, para.),

the rights of applications order (Art. 54.1, para., Art. 62.1, para., Art. 64.1, para., Art. 79.1, para.), the right of application to call a creditor's committee (Art. 114), the right of application to avoid power (Art. 56.1, para.), the right to a reparations assessment application based on the officer's responsibility (Art. 143.2, para.), the making of a rehabilitation plan, and the right of presentation (Art. 163.2, para.).

④ Fulfillment reservation of the rehabilitation plan

a) Conclusion of the procedure

When neither a supervisor committee nor a trustee is assigned, rehabilitation procedure, the conclusion determination of procedure is made after the decision of the approving the determination of a rehabilitation plan (Art. 188.1, para.). On the other hand, when a supervisor committee is assigned, the rehabilitation procedure continues for three years (Art. 188.2, para.), and when a trustee is assigned, the rehabilitation procedure continues until it becomes certain that it will be carried out, or will the rehabilitation plan is carried out (Art. 188.3, para.).

b) Sanctions the case of rehabilitation plan failure

With the decision, approving the planned rehabilitation if the provisions of a rehabilitation plan are indicated in a rehabilitation creditor table, it can also be executed compulsorily, which has the same effect as an irrevocable judgment (Art. 180). Although a cancellation application for the reason of a delay in the fulfillment of the rehabilitation plan needs to be 1/10 or more rehabilitation creditors total claim amount, which is evaluated by the court (Art. 189.3, para.). The requirements for the composition cancellation, which requires a majority of members and a claim frame of 3/4 (Composition Law, Art. 64.1, para.), are eased sharply.

⑤ Participation of the labor union

The Civil Rehabilitation Law does not only treat the labor claim as a general priority claim (Art. 122), but also defines a regulation in which the representatives of the labor union or the labor union which is organized by the majority of the workers of the user and others of a rehabilitation obligor can participate in the rehabilitation procedure (Art. 42.3, para., Art. 115.3, para., Art. 126.3, para., Art. 168, Art. 174.3, para., Art. 174.5, para., 200-article the 2, para.,

Art. 206.4, para.).

(3) A quick and functional procedure

The Civil Rehabilitation Law has been made a functional procedure in which bankruptcy processing can be carried out quickly.

① Improvement of the stripped procedure

In order to change the stripped procedure to a rational procedure, the Civil Rehabilitation Law introduced arbitrariness of the creditor's committee (Art. 114), a claim investigation period system (Art. 102 and 103), and a document resolution system (Art. 172), in order to improve the stripped procedure for a rational procedure.

② Regulations concerning about the right of exclusive preference Although lien on the rehabilitation creditor's property can also be treated as a right of exclusive preference (Art. 53), in order to promote deliberations between the rehabilitation obligor and creditor who has the right of exclusive preference, in the civil rehabilitation law, the system of a lien execution suspension order (Art. 31) and a restriction regulation of the use of the right by a secured party's rehabilitation plan, were defined (Art. 182). This was in order to avoid a lien concerning a property which is indispensable to the enterprise being performed, furthermore, besides the system of the right of exclusive preference (Art. 41.1, para. No. 9), a lien disappearance claim system was also provided (148 or less articles).

③ Procedure concerning organizational change

Even aiming at rehabilitation by the rehabilitation obligor himself, if he is an incorporated company, the Civil Rehabilitation Law defines changing the controlling stockholder by capital reduction or capital increase (161 articles). A change in the substantial controlling person becomes possible by this regulation.

④ Simple rehabilitation

Since the size of an enterprise and the circumstances of procedure selection are various, the Civil Rehabilitation Law has defined a simple procedure, such as a simple rehabilitation (Art. 200 and Art. 205) and consent rehabilitation (Art. 206 and Art. 209). Simple rehabilitation is a procedure which approximates to the old composition procedure, and the consent rehabilitation is a procedure which simplifies further the arrangement which complements a private arrangement.

## (4) Establishment of international bankruptcy regulations

Since the conventional bankruptcy prescription adopted an extreme *Teritorialprinzip* and had been criticized by many foreign countries, the Civil Rehabilitation Law defined some international bankruptcy regulations.

## ① International effect of the civil-affairs rehabilitation procedure

The Civil Rehabilitation Law defined regulation about the management disposal authority (Art. 89) and the dividend adjustment to the overseas assets of an obligor or a trustee (Art. 38.1, para.), and admits the international effect of procedure.

## ② Internal-affairs-effect of a foreign bankruptcy processing procedure

The Civil Rehabilitation Law defined a regulation which opens the way to the recognize a foreign bankruptcy processing procedure (Art. 4.1, para.). Detailed recognition assistance is left to “the law about recognition assistance of a foreign bankruptcy processing procedure.”

## ③ Parallel bankruptcy procedure

The Civil Rehabilitation Law was equipped with parallel bankruptcy, and defines regulations about the regulation (Art. 196) of mutual aid with an obligor in the case of a foreign bankruptcy processing procedure, the presumed regulation (Art. 197) of the cause of a start of rehabilitation procedure, the attendance of a foreign trustee’s right to an application to begin a rehabilitation procedure or a creditor meeting, the right of opinion application, rehabilitation planned creation, presentation authority (Art. 198), and the mutual procedure participation.

**Editorial Note:**

As mentioned above, the Civil Rehabilitation Law corrected the institutional defects of the Composition Law, and it has introduced many new systems in order to offer a legal framework which make it easy to rebuild small and medium-sized enterprises. Moreover, the Civil Rehabilitation Law serves as a flexible procedure which allows the choice of various procedures according to the contents of a case. In the future, it will be necessary to advance maintenance of the Bankruptcy Law system which can respond to socioeconomic situations, such as

the rapid increase in personal bankruptcies by consumer loans, the enlargement of business bankruptcy, and internationalization, centering on the Civil Rehabilitation Law.

### **The Law Concerning the Recognition to Assistance of Foreign Bankruptcy Procedure**

Law No. 129, November 19, 2000 (Effective on April 1, 2001).

#### **Background:**

With the progress in economic globalization and the increasing case in moving of property outside the country in recent years, it has become very common that a company has a branch and an office overseas, or an individual owns property, such as real estate, abroad. Therefore, the number of companies which perform the economic activities on an international scale failing economically, and the tendency for the international bankruptcy incidents which result in legal bankruptcy procedures is also increasing. However, the bankruptcy law and the corporate reorganization law defined the effect of bankruptcy proceedings and reorganization proceedings which were started in Japan, and did not concern to the property abroad, and the effect of the bankruptcy proceedings and the reorganization proceedings which were started in foreign countries did not concern to the property in Japan (Bankruptcy law, old Art. 3 and Reorganization-of-corporation law, Art 4.). That is, a strict “*Teritorialprinzip*”, which has not allow any exception in both the international effects of domestic bankruptcy processing procedures and the internal-affairs-effects of foreign bankruptcy processing procedures at present, when economic globalization is progressing, the situation where not only business bankruptcies, but individual bankruptcies cannot be coped with, occurred. In order to cope with such a situation, the recognition assistance law was enacted and enforced.

#### **Main Provisions:**

General rules were provided in Chapter 1 of the recognition assistance law, and from Chapters 2 to 4, the application of recognition, determination of recognition, the order of disposal for assistance, and

regulations concerning the cancellation of recognition were defined, and the regulation about handling when a bankruptcy processing procedure is competed, was set in Chapter 5, and penal regulations were prepared in Chapter 6.

① The application for recognition

The first phase of the recognition assistance procedure starts when the foreign trustee, who has the right of disposal of obligor property in a foreign bankruptcy procedure, states recognition of the foreign bankruptcy procedure concerned to the Tokyo District Court, which is an under-exclusive-contract jurisdiction court of a recognition assistance incident (Art. 21, para. No. 8, Art. 4, Art. 17.1, para.). The application of this recognition can be carried out even if it is at the provisional stage, where judgment of the procedure starting has been not been made about a foreign bankruptcy processing procedure.

② Determination of recognition

The court which received the application for recognition examines whether or not the foreign bankruptcy processing procedure has the eligibility to for assistance in Japan, and, when this is accepted, recognition is determined (Art. 22.1, para.). In order to be able to say that it has the eligibility, it is required to provide application requirements of recognition (Art. 17.1, para.) and the requirements for the determination of recognition (Art. 22.1, para.) and for there to be no reasons to rejection of a application of recognition (Art. 21, No. 1–6). The court determines recognition after examining these requirements (Art. 22.1, para.). The effect of the determination of recognition is produced from the time of the determination (Art. 22.2, para.). However, even if it is decided that this effect has the eligibility for the foreign bankruptcy processing procedure concerned to issue disposal of assistance, it will not pass to any legal effect to the right and law relation of the person concerned, such as an obligor and a creditor.

③ The order of disposal for assistance

A court can, if needed, when the decision of recognition has been made about a foreign bankruptcy processing procedure, carry out the assistance disposal of restraining orders (Art. 28.1, para.), such as a suspension order of the compulsory execution procedure (Art. 25.1, para.), a cancellation command of the compulsory execu-

tion procedure (Art. 25.5, para.), a suspension order of the procedure of auction as a lien execution (Art. 27.1, para.), and restraining orders, such as compulsory execution (Art. 28.1, para.), a ban on disposal, and a liquidation restraining order (Art. 26.1, para.). Furthermore, the court can insist that taking the property outside the country, and disposing domestic property to an obligor, the permission of a court must be obtained (Art. 31), and if the recognition trustee does not get the permission of a court, he cannot perform disposal or move property in Japan outside the country (Art. 35).

④ Cancellation of recognition

A court can cancel recognition, when it becomes clear that the requirements for the determination of recognition were lacking (Art. 56.1, para no. 1 and 2), or when a foreign bankruptcy procedure is completed (Art. 56.1, para. No. 3 or 4), or when the obligor is unauthorized and carrying property out of Japan, or the foreign trustee has committed a serious breach of duty concerning procedure (Art. 56.2, para.).

⑤ Management in the case of competition with other bankruptcy processing procedure

When both a recognition assistance procedure and a domestic bankruptcy procedure are being carried out, priority shall be given to the domestic bankruptcy procedure in principle. Exceptions may be when the recognized foreign bankruptcy procedure is the main foreign procedure (Art. 2.1, para. No. 2), or the disposing of assistance to the foreign bankruptcy processing procedure concerned suits a creditor's general profits, or the foreign bankruptcy processing concerned gives priority to the recognition assistance procedure (Art. 57–60). Priority is given to the recognition assistance procedure of the main foreign procedure over the recognition assistance procedure, and priority shall be given to the procedure which is accepted as suitable for the creditor's general profits whether the foreign subordinate procedure (Art. 2.1, para. No. 3) or the recognition assistance procedure (Articles 62, 63).

**Editorial Note:**

As mentioned above, the law concerning recognition assistance of

foreign bankruptcy procedure has introduced many new systems, in order to make it possible to carry out bankruptcy processing of a corporation or individual who owns property in two or more countries which and who comes an international economic activities, including Japan, impartially and properly. I hope that it is fully demonstrate the function expected of an the international Bankruptcy Law system in Japan by economic society by carrying out business employment based on this law appropriately.

## 5. Criminal Law and Procedure

### **Law for the Prevention of Spousal Violence and the Protection of Victims**

Law No. 31, 2001, Apr. 6, 2001. (Effective as of Oct. 13, 2001 (in part, Apr. 1, 2002)).

#### **Background:**

In Japan, the Constitution provides that we respect individuals and enjoy equal protection under the law. Accordingly, we have striven for the protection of human rights and equal treatment regardless of gender. Violence between spouses, in itself, is punishable as a crime. Nonetheless, spousal violence has tended to be seen as mere “quarrels between spouses”. It has also been difficult for non-members of a family (including the police) to detect such violence because it is usually strictly a family affair. Consequently, harm caused by spousal violence has tended to go undetected and, on the other hand, become more and more serious. Moreover, most of the victims of spousal violence have been women. In our country, even today, it is considered difficult for women to become economically independent. Violence or any other act or speech of a male against his spouse that mentally or physically harms her, violates the requirement of respect for the individual and prevents the equal treatment regardless of gender.

Nevertheless, spousal violence has not been properly treated by