

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

our legislature. The remedies for victims of spousal violence have been far from satisfactory. In order to change these conditions and to reach the goals of respecting individuals and equal treatment regardless of gender, a legal scheme for preventing spousal violence and protecting victims of such violence has been needed. The international movement against these so-called “domestic violence (hereinafter ‘DV’)” had already arisen after the adoption of the UN “Statement on the Abolition of Violence against Women” in 1993. In the light of this international movement, the “Research Committee on Society of Cooperative Way of Life” was established in the House of Councillors in 1998, and, in April, 2000, “The Project Team on Violence against Women” was also established therein. Finally, in April, 2001, the Diet enacted a “Law for the Prevention of Spousal Violence and the Protection of Victims”.

### **Main Provisions:**

The purpose of the law is to prevent spousal violence and to protect victims thereof. “Spouse” in this law includes “persons who are in a *de facto* state of marriage even if it has not been legally registered” (art. 1, para. 1). Since “DV” has been used in a broader sense, the law is interpreted to have confined the range of protection in that respect. According to this interpretation, protection from violence between former spouses (except for those provided in art. 1, para. 2), lovers, or ex-lovers are not included in this provision. Such types of violence are to be treated no differently than violence between strangers.

In this law, “violence” is defined as “illegal attacks that threaten the spouse’s life or physical conditions” (art. 1, para. 1). Since violation of the “protection order” (art. 10) would lead to criminal punishment (art. 29), strict standards must be applied to the finding of “violence”. The so-called “violence through language”, would also constitute “violence”, when it is repeated to the extent to cause post-traumatic stress disorder (PTSD). On the other hand, the violation of advice or arbitration given by an agency for human rights protection does not entail criminal punishment. Therefore, in those cases, a more flexible interpretation of “violence” should be employed to prevent harm caused by DV from going undetected.

A “victim”, according to art. 1, para. 1, is “a person... who has

been subjected to spousal violence”, including “a person who has been divorced from a spouse subsequent to spousal violence and continues to be threatened with harm to life or physical health from the former spouse”.

The law provides that a Women’s Consulting Office or other appropriate facilities established by prefectural governments should function as a “Spousal Violence Counseling and Support Center”, which provide counseling (or give information on where to receive such counseling); medical, psychological and other guidance; temporary protection; and information for encouraging the victim to become self-sufficient, and so on (art. 3).

The law also provides that those who detect spousal violence should notify (or at least try to notify) the Spousal Violence Counseling and Support Center or the police of such deeds. In this respect, according to art. 6, the notification from doctors (physicians) or other medical personnel would not violate art. 134 of the Penal Code (Disclosure of Secrets). When a Spousal Violence Counseling and Support Center is notified of such spousal violence, it is the duty of the center to explain and to give advice to the victim, and to recommend that he/she receive adequate protection (art. 7). In addition, the police should take certain measures to prevent spousal violence when they find a case of spousal violence through such notification. (art. 8).

Moreover, according to art. 10, when there is a great danger of repeated spousal violence that could cause significant harm to the life or the physical condition of the victim, the district court of jurisdiction, upon the request (petition) of the victim, should issue a protection order against the spouse to prevent further violence against the victim. The protection order prohibits the spouse from approaching the victim for a period of six months, and/or orders the spouse to leave the domicile for a period of two weeks. A violation of the protection order shall result in a punishment of imprisonment with labor of up to one year or a fine of not more than one million yen (art. 29).

### **Editorial Note:**

Formerly in Japan, the executive branch, especially the police, did not dare to cope with family matters, in light of the old maxim “the

law does not interfere with family business (affairs) ". However, this law expects the administration, the police, and the courts to perform a certain role to prevent spousal violence. The personnel of the Spousal Violence Counseling and Support Center and the police officer who directly has contact with victims of spousal violence should recognize that DV is a serious problem, concerning some of the most important human rights.

In coping with the problem of DV, the law chooses to focus on the protection of victims. However, in order for the protection of victims to be long-lasting, effective rehabilitation of persons who have committed violence should also be created. As the law does not provide measures to solve this problem, the problems of measures to rehabilitate these persons and how to incorporate such measures in the law need to be solved in the near future.

The causes of DV going undetected and becoming increasingly serious are related to the structure of Japanese society. Women in Japan are, still today, prevented from becoming self-sufficient, owing to specific social conditions. These include differentials in employment (or pay), the distribution of the roles to be performed by men and women, and thus, the difficulties in securing both a job and a household. The problem should be solved essentially by rethinking the contemporary meaning of (and changing) the system of marriage — the system of notifying the state of a specific relationship between a man and a woman to receive a certain guarantee from the state (or society) —. However, such a radical reform is not yet a practical solution. What is more practical, at least at the moment, is to ask for the construction of a system of social security, where individuals could enjoy diverse lifestyles of their own choice.

## **6. Commercial Law**

### **A Partial Amendment to the Commercial Law**

Law No. 79, June 29, 2001 (Effective on October 1, 2001).