

association when it is incorporated (article 16). And there are also other rules concerning the contents of the certificate of incorporation and plan, the subjects to do with the administration, such as the executive and assembly, the subject to do with dissolution, etc.

In addition, it is also provided that the owner or one who is given consent by the owner can execute the reconstruction alone or jointly, as a personal executor (article 5 section 2). In that case, the reconstruction is executed through the convention by interests, not through decision-making by a group like an association.

Secondly, this Act regulates the conversion of rights in third chapter.

The conversion is to convert the rights concerning the condominium, such as the unit ownership, the usufruct of the area, hypothec and lease to the reconstructed condominium without their extinction, when the condominium is reconstructed. According to this Act, these rights are converted as follows. First, the registration for starting the procedure of conversion (article 55); second, the making of the plan for conversion; third, permission by the governor for it (article 57); fourth, the conversion of rights in compliance with the plan.

Finally, this Act makes rules concerning the action for the promotion of reconstruction of a condominium which is in a dangerous or harmful condition in chapter 5.

And in this chapter, it is provided that the executive power advises the reconstruction of a rundown condominium which is in a dangerous or harmful condition (article 102) and takes certain measures based on the law such as the promotion of reconstruction.

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

### **The Corporate Reorganization Law**

Law No.154, December 13, 2002 (Effective on April 1, 2003).

#### **Background:**

The Corporate Reorganization Law was enacted in 1952 to provide a reconstruction type bankruptcy procedure equally as effective as

the U.S. federal Bankruptcy Law procedure of Chapter 10 (Corporate Reorganization). The Corporate Reorganization Law has not been given a radical revision since its establishment. However, the following two reasons required its revision. First, the demand for a reconstruction type bankruptcy procedure to work with the Civil Rehabilitation Law (which was enacted as an organic act of reconstruction type bankruptcy procedure on April 1, 2000) systematically. Second, the request to make the reorganization procedure quicker and stronger due to the increase in the bankruptcies of large corporations due to the protected stagnation. In this way, the Corporate Reorganization Law, aiming at the realization of a fair and quick bankruptcy procedure, was revised in December, 2002.

### **Main Provisions:**

The main provisions of the current Corporate Reorganization Law can be summarized as the following three points, (1) the speeding up of the reorganization procedure, (2) the rationalization of the reorganization procedure, and (3) the strengthening of the claim techniques.

#### **(1) Speeding up of the reorganization procedure**

a) Relief of the requirements for the start of the procedure (Art. 41. para. 1. no.3).

The current Corporate Reorganization Law is planned to start and to proceed to a determination quickly. However, there is no difference in terms of its function as compared to the Civil Rehabilitation Law. It means that the current Corporate Reorganization Law will carry out the rejection reason with the following statement in a similar way to the Civil Rehabilitation. The statement says that “In the following case, a statement is rejected, the time when there is not possibility of creation, passage or approval of reorganization scheme plan”.

b) The establishment of a simple determination procedure for arguments concerning the price of the property which is the purpose of lien (Arts. 153~155).

The current Corporate Reorganization Law newly provides a system in which the price of the purpose property of lien will be made by a simple procedure. Even if arguments concerning the price of the purpose property of the lien would usually require much time to reach a definite

procedure, such as a reorganization claim, the new system will take less time to run the required procedure.

c) Limitation of the presentation time of a reorganization plan proposal (Art. 184. para. 3).

The current Corporate Reorganization Law must take less than one year to determine for a reorganization following the determined day which a court has defined. In the previous Corporate Reorganization Law, however, restrictions were not prepared at all for the presentation time for a plan proposal to reorganize.

(2) Rationalization of the reorganization procedure

a) Foundation of competition jurisdiction of the Tokyo District Court and the Osaka District Court (Art. 5. para. 2. no.6).

In the Corporate Reorganization Law, only the District Court where the head office of the corporation was located was permitted to carry out the jurisdiction of the reorganization procedure (the previous Article 6 of the commercial registration book). However, in the current Corporate Reorganization Law, the jurisdiction court for a reorganization incident is sharply expanded so that parties could choose a suitable court for them. Moreover, it is permitted for Tokyo District Court and the Osaka District Court, where special processing organizations are ready, to have a wider range of competitive jurisdiction.

b) The establishment of systems, such as the reorganization creditor committee (Arts. 117~121).

The current Corporate Reorganization Law can expand the way in which it makes a reorganization creditor's intention reflected in the reorganization procedure as well as the Civil Rehabilitation Law. The authorities on various kinds of procedure of the following three committees, the reorganization creditor committee, the composition secured party committee and the stockholder committee, are accepted by the authority. The point above is something that the previous corporate reorganization law did not have in terms of the system and process of the creditor committee.

c) Clarification of the standard of property and lien evaluation (Art. 2. para. 10 and Art. 83. para. 2).

In the current Corporate Reorganization Law, this has been changed

to the current price at the time of reorganization procedure start determination in order to make the standard of these evaluations clearer. On the other hand, in the previous Corporate Reorganization Law, Art. 124. para. 2 and Art. 177. para. 2, were based on the going concern value at the time of a reorganization procedure start with regard to the standard of property and reorganization lien evaluation (which made it difficult to calculate the price of each property by the going concern value, and gave rise various problems).

(3) Strengthening of the claim techniques

a) Establishment of the system of a comprehensive restraining order (Arts. 25~27).

The current corporate reorganization law introduces the system of a comprehensive restraining order, which forbids uniformly, and the compulsory execution to a corporation's property in need of reorganization, like the Civil Rehabilitation Law. In the previous corporate reorganization law, however, it was pointed out that the smooth advance of procedure could not be performed when a certain procedure (i.e. compulsory execution) occurred.

b) Establishment of the transfer of the business system before planned approval of reorganization (Art. 46).

In the latest bankruptcy procedure, the early transfer of business is increasing. However, in the previous Corporate Reorganization Law, it was not clear whether a corporation in need of reorganization could transfer business before the planned approval of reorganization. Moreover, academic views also differed. For all these reasons, in the current Corporate Reorganization Law, by contrast, opinions can be informed by the creditor before the planned approval of reorganization. Also, a system of accepting the transfer of business is provided by obtaining the permission of a court.

c) Establishment of a system of extinguishing lien (Arts. 104~112).

In the previous Corporate Reorganization Law, the system of extinguishing lien for reorganization lien did not exist, unless it was based on a reorganization plan after a reorganization procedure start, except for the disappearance claim system of the commercial lien specified in Art. 161.

para. 2. However, in the current Corporate Reorganization Law, the system where lien can be extinguished is provided by paying money equivalent to the price of a collateralized object to a court, as well as a Civil Rehabilitation Law in order to enable the early sale of them.

### **Editorial Note:**

As mentioned above, the current Corporate Reorganization Law has been corrected taking into account the institutional defects of the previous Corporate Reorganization Law, and has introduced many current systems. With the enactment of a Civil Rehabilitation Law and the current Corporate Reorganization Law, quick and flexible employment of a reconstruction type of bankruptcy procedure is possible, and maintenance of the Bankruptcy Law system which can respond to the socioeconomic situation an increase in business bankruptcy and the progress of internationalization from now on. Reconstruction type bankruptcy procedure is performed quickly and flexibly by the enactment of a Civil Rehabilitation Law and the current Corporate Reorganization Law. And also, the maintenance of the Bankruptcy Law system, which can respond to the socioeconomic situation of an increase in business bankruptcy and internationalization is made.

## **5. Criminal Law and Procedure**

### **Law for the Punishment of the Financing of a Criminal Act Intended to Threaten the Public, etc.**

Law No.67, June 12, 2002 (Effective on July 2, 2002, in part, on July 11, 2002).

### **Background:**

Terrorism has become a major problem in the international community. Originally, since the time of the Cold War, the world had striven to build up a framework for punishing crimes that required international cooperation in order to fight against them — in particular, hi-jack crimes