

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

and the destruction of aircrafts, etc. The main focus of those efforts was on the criminalization of acts performed as acts of terrorism. However, since the 1990s, the common understanding among countries has shifted towards banning acts of providing financial aid for acts of terrorism. In 1998, in a G8 meeting of specialists on terrorism, France emphasized the need for an international treaty prohibiting conduct that provides financial support for terrorists, and, in the Sixth Committee of the United Nations, further proposed its version of the draft of such a treaty. Accordingly, the draft was thoroughly examined and discussed in the UN, and on December 9th, 1999, the “International Convention for the Suppression of the Financing of Terrorism” (hereinafter “ICSFT”) was adopted in the UN General Assembly.

Furthermore, the impact of the terrorist attack that took place in New York, U.S.A. on the 11th of September, 2001, led to G8 leaders’ statements and the Agreement No.1373 of the UN Security Council that demanded a swift conclusion of the ICSFT. The Agreement No.1373, section 1 (b) specifically required criminalization of acts that provide financial support for terrorist activities performed within the realm of a particular country or by citizens thereof.

Main Provisions:

In light of the international movement toward the conclusion of the ICSFT and the introduction of other measures for the prevention of acts providing financial support for terrorists, the “Law for the Punishment of the Financing of a Criminal Act Intended to Threaten the Public, etc.” (hereinafter “the law”) provides ① punishments for acts of financing — including acts of providing financial support for, and acts of persons planning to engage in such crimes in the future, of inducing, requesting, etc. to collect financial support for the commission of — criminal acts intended to threaten the public, etc. ② punishments for such financing acts performed outside Japan, and ③ other necessary measures.

The law consists of six articles (and four annexes). Article 1 contains a definition of a “criminal act intended to threaten the public, etc.”. According to this provision, an act constitutes a “criminal act intended to threaten the public, etc.” if it is performed in order to threaten the public, or the state/local government of a particular/foreign country, etc.,

and at the same time, falls into one of the following three crime categories. Namely, ① crimes causing injury or death to people or crimes of kidnapping; ② crimes aimed at airplanes in the air or ships sailing on the water; or ③ crimes of destroying public means of transportation or public/private facilities by bombing. These crimes cover substantially the crimes that the ICSFT intended to cover in its article 2. The words “intended to threaten the public, etc.” function to limit the range of punishable acts provided in articles 2 and 3. Therefore, the “intent” of such threatening is necessary, and a mere recognition of such threatening does not suffice. In addition, according to this article, the threatening act should be a “criminal” act, which means that the particular act should be the one that is punishable under Japanese law as well.

Article 2 of the law provides punishments for knowingly providing financial support in order to facilitate the commission of a criminal act intended to threaten the public. And article 3 provides punishments for acts of persons that plan to engage in such criminal acts, of inducing, requesting, or using other methods to collect financial support, with intent to use it for the commission of such criminal acts. The punishment authorized for these acts is imprisonment with forced labor for not more than 10 years or a fine of not more than 10 million yen. The attempt thereof is also punishable (art. 2, para. 2; art. 3, para. 2).

According to article 4 of this law, the sentence (punishment) will be reduced or remitted, when an individual that committed the financing crime surrenders himself to authorities before the commencement of the criminal act intended to threaten the public, etc. The law also provides the punishment of financing acts performed outside the realm of Japan in article 5. And article 6 renders the punishment of a corporation or an individual possible, when a representative of a corporation or an agent or an employee of a corporation or an individual, acting within the scope of his/her employment, performs an act provided in article 2 or 3. In such cases, the corporation or the individual represented would be punished in addition to the actual wrongdoer.

On passing the law, the House of Representatives and the House of Councilors also delivered supplementary resolutions which stated that, since the law was enacted in order to accomplish the goals set by the ICSFT, the law should not be interpreted so as to go beyond the scope of

the ICSFT, enabling the abuse of investigative power.

Editorial Note:

The biggest issue here is whether it is appropriate to define as a separate crime, and provide punishment for, an act of financing (providing or collecting financial support for) a certain crime intended to threaten the public, etc. The act itself is considered to be a mere preparation, which means it does not reach the level of an attempt to carry out such a crime. Since this legislation is a part of the international fight against terrorism, it seems that the question should be answered in the affirmative. As a matter of fact, the basic aspects provided in this legislation were what the ICSFT had provided. There was little or no room for legislative discretion. No attempt was made to submit this issue to the Legislative Council of the Ministry of Justice for deliberation. The draft was proposed and swiftly agreed upon in the Diet.

This legislation renders the act of financing certain crimes punishable, whether it is performed by the principal or by his/her accomplice. Therefore, the act of facilitating the financing of such crimes is also punishable. However, as the supplementary resolution delivered by both Houses posed concerns for the unbridled application of this law, it goes without saying that the law should be applied with due diligence.

Another problem is that, although this legislation was occasioned by the international movement against terrorism, the law only provides a definition of the “criminal act intended to threaten the public, etc.” in article 1, and it contains no definition as to “terrorism” or “terrorist crime”. However, this could be explained by saying that, since the ICSFT merely demanded the criminalization of acts providing financial support for the commission of the particular crimes provided in article 2, paragraph 1 thereof, as long as the law fulfilled these demands by criminalizing acts financing those particular crimes, there was no further need for defining “terrorism” or “terrorist crime”. It should be mentioned that, also reflecting the international movement against terrorism, “The Law for the Requirement of Identification of Customers, etc. by Financial Agencies, etc.” (Law No.32, 2002) and “The Law Reforming a Part of the Foreign Exchange and Foreign Trade Control Act” (Law No.34, 2002) have been enacted as well.