

(5) the applicant has a genitalia which has a similar appearance to the opposite sex; this requirement is placed under the decision that without such an appearance, there might be a disturbance in public or social lives.

4. If the Family Register of the applicant given approval contains any other individual(s), a new family register for the applicant shall be made.

5. As noted above, GID law goes no further than regarding the biological sex of an individual with GID as having been changed in the application of the Civil Code or relevant laws. In this sense, some criticize that GID law does not give full protection to individuals with GID. Of course this kind of criticism includes the social attitude toward GID with prejudice as well as legal measures, and in fact, it is impossible for a single law to cut this Gordian knot. However, it is true that the GID law hews a path for individuals with GID to join society. Furthermore, it is reported that a prisoner who had undertaken SRS male to female prior to conviction made an application pursuant to GID law to Osaka Family Court, the Court gave approval, and the prison moved the prisoner to a female cell.

The provisions of GID law shall be reviewed three years after the law takes effect in consideration of the circumstances of the implementation of the law, and the social environment surrounding individuals with GID, and if necessary, suitable measures shall be taken.

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

### **Bankruptcy Act**

Law No.75, June 2, 2004 (effective on January 1, 2005), including 277 articles.

### **Background:**

The previous Bankruptcy Act, which was first enacted in 1922 and partially amended to introduce a system of discharge in 1952, had not been revised as a whole. For this reason, it was criticized that its proceedings as a whole were not speedy and that its rules for the adjustment

of the relationship between stakeholders did not conform to contemporary economic society. It had also been pointed out that we need a more efficient means to secure an opportunity for a personal bankrupt to rehabilitate his economic life. Therefore, this act has reviewed and modified the whole previous act.

### **Main Provisions:**

The purposes of this act with regard to the bankruptcy proceeding, which aims to divide properly and equitably the obligor's property among the obligees, are: (1) to make the proceedings speedier, more reasonable, and more efficient, (2) to ensure the efficiency and equity of the proceedings, and (3) to make the rules about the adjustment of the relationship between stakeholders conform to contemporary economic society and to make them more functional.

This article introduces the main provisions of this act from the viewpoints of (1) the speedier and more reasonable proceedings, (2) ensuring the efficiency and equity of the proceedings, (3) the review of the personal bankruptcy and discharge proceedings, and then (4) the review of the substantive law in the bankruptcy proceedings.

#### **1. The Speedier and More Reasonable Proceedings.**

- (1) The expansion of the courts of proper jurisdiction (Art. 5).
- (2) The simplification and rationalization of the proceedings for the investigation and valuation of bankruptcy claims (Arts. 111–114, 116, 125 and 126, etc.).
- (3) Making the meetings of creditors (*Saikensha-shukai*) optional (Art. 31 [4]) and introducing a written-instrument voting system (Arts. 89, 138, 139 [2.2] and 217 [2]).
- (4) Establishing a system of permission to repay for labor claims (Art. 101).
- (5) Establishing a system of a lapse of security interest by the trustee in bankruptcy voluntarily selling the collateral (Arts. 186–191).

#### **2. Ensuring the Efficiency and Equity of the Proceeding.**

- (1) The expansion of the orders for preservation, such as the order for a comprehensive-stay (*Houkatsukinshi-meirei*) or the order

- for administrative preservation (*Hozenkanri-meirei*), and so on (Arts. 24–28).
- (2) The maintenance of the process for reading or copying the documents relating to the proceedings (Arts. 11 and 12).
- (3) The foundation of a system of committees of creditors (*Saikensha-iinkai*) (Arts. 144–147).
- (4) Obliging the bankrupt to disclose important properties (Arts. 40 and 41).
- (5) Introducing a system to decide the assessment of the responsibilities of the officers in the bankrupt company (Arts. 178–180).
- 3. The Review of the Personal Bankruptcy and Discharge Proceedings.
  - (1) Expansion of the range of exemptions (*Jiyuzaisan*) (Art. 34 [4]).
  - (2) The unification of the bankruptcy proceedings and the discharge proceedings (Art. 248 [4]).
  - (3) The prohibition of execution during the discharge proceedings (Art. 249).
  - (4) The expansion of non-dischargeable claims (Art. 253).
  - (5) The establishment of the duty for the bankrupt to cooperate in the investigation about his discharge (Art. 250 [2]).
- 4. The Review of the Substantive Law in the Bankruptcy Process.
  - (1) Upgrading part of labor claims to administrative expenses (*Zaidan-saiken*) (Art. 149).
  - (2) Demoting part of tax claims from administrative expenses to the status of ordinary claims (cf. Art. 148 [1.3]).
  - (3) The reinforcement of the protection of the lessee when his lessor has gone bankrupt (Art. 56, etc.).
  - (4) The maintenance of the system of preferences (*Hininken*) (Arts. 160–176).

### Editorial Note:

This renewed Bankruptcy Act, revised for the first time in about 80 years, has tried not only to reflect the development of precedents and theories during these 80 years, but also to cope with modern problems.

We can say that the work of revision of the whole Japanese bankruptcy law system has been almost finished by the establishment of the Civil Rehabilitation Act, the revision of the Corporate Reorganization

Act, and finally this revision of the Bankruptcy Act. In the future, attention will be paid to how bankruptcy practice will be managed under this new bankruptcy law system.

However, we can hardly expect the present bankruptcy law system to be maintained without any revision. As an extension of this work of revision of the bankruptcy law system, we can expect the conception of a “United Bankruptcy Act” to emerge. Therefore, from now on, we should discuss the relationship between these proceedings.

Anyway, needless to say, the revision of this Bankruptcy Act, the fundamental law among the liquidation proceedings, is very significant for the Japanese bankruptcy law system.

## **6. Criminal Law and Procedure**

### **Law for the Amendment of a part of the Criminal Law and so forth — Sexual Offenses —**

Law No.156, December 8, 2004 (Effective on January 1, 2005).

#### **Background:**

As of 2002, the number of penal offenses noticed by the authorities had been on the increase for nine years. In 2003, it decreased by 1.3% as a whole, but that of murder increased by 4% and that of robbery by 9.7%. Moreover, the sexual offenses noticed by the authorities in 2004 were also increasing in number; compared with ten years ago, rape saw an increase of approximately 50%, forcible indecency one of approximately 180%. In such a situation of the occurrence of atrocious crimes, a public-opinion poll showed that 55% of the Japanese felt unease at public security.

It was then a very sensational sexual offense was reported by the media. The fact revealed by the reports was that members of a group called “Super-Free,” which consisted of university students and whose usual activity was the planning of parties, had raped many female participants of their parties and had been arrested for quasi-rape (June 19,