

Business Corporation Act).

### **Editorial Note:**

By revising this procedure of special liquidation, we can say that the work of revision of the whole Japanese bankruptcy law system during these 10 years is finished. 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.

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

### **Law for the Amendment of a part of the Criminal Law — Offense of Human Trafficking —**

Law No. 66, June 22, 2005 (Effective on July 12, 2005).

### **Background:**

Some countries in the world criticize Japan’s lack of action concerning the serious growth of human trafficking. For example, the US State Department reported in their 2004 and 2005 ‘Trafficking in Persons Report,’ “Japan is a destination country for a large number of Asian, Latin American, and Eastern European women and children who are trafficked for the purpose of sexual exploitation. There have also been cases of Asian and Latin American men trafficked to Japan for criminal, labor and/or commercial sexual purposes. Japanese organized crime groups (*yakuza*) that operate internationally are involved in trafficking. The Government of Japan does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.” The present forms of trafficking in women, including

children, in particular, were already recognized by NGOs, mass media and definitely the government agencies since the late 1980's. However, the Government of Japan neither took effective measures to penalize traffickers, such as brokers, or to make efforts to protect the victims of trafficking. Instead, the victims were usually treated as 'criminals' for violating the Immigration Control and Refugee Recognition Act (overstaying) and/or the Anti-Prostitution Law (solicitation). They were deported to their own countries without being given an opportunity to seek justice and rehabilitation. Many Japanese people have come to think that such situations are contrary to humanist principle.

We should not overlook the international and professional movement to eliminate of human trafficking. The conclusion of the Protocol to Prevent, Suppress and Punish Trafficking in Persons has brought home to Japanese society the need for punishment against human trafficking.

This protocol is summarized as follows.

Articles 1 and 2 set out the basic purpose and scope of the Protocol. Essentially, the Protocol is intended to "prevent and combat" trafficking in persons and facilitate international cooperation against such trafficking. It provides for criminal offences, control and cooperation measures against traffickers. It also provides some measures to protect and assist the victims. Some issues remain open with respect to the application of the Protocol to purely domestic activities (e.g. movement of victims within a country), which support international trafficking.

"Trafficking in persons" is intended to include a range of cases where human beings are exploited by organized crime groups, where there is an element of duress involved and a transnational aspect, such as the movement of people across borders or their exploitation within a country by a transnational organized crime group.

Trafficking is the "...recruitment, transportation, transfer, harboring or receipt of persons..." by improper means, such as force, abduction, fraud or coercion, for an improper purpose, such as forced or coerced labor, servitude, slavery or sexual exploitation. Countries that ratify the Protocol are obliged to enact domestic laws making these activities criminal offences, if such laws are not already in place [Art. 3].

This has been a difficult exercise in drafting and negotiation because of the wide variety of activities that many of the countries are seeking to

control. Some states have taken the position that, since the major abuses of trafficking involve women and children who are most in need of protection, the Protocol should focus domestic efforts accordingly. Others felt that abuses against all “persons” should be included. As presently worded, the Protocol applies to all “persons,” but generally refers to “... persons, especially women and children...”

Finding language to capture the wide range of coercive means used by organized crime has also proven difficult. With the exception of children, who cannot consent, the intention is to distinguish between consensual acts or treatment and those in which abduction, force, fraud, deception or coercion are used or threatened. As with the Convention, the nature and degree of international and organized crime involvement required before the Protocol applies has also been the subject of extensive discussions. Generally, cases in which there is little or no international involvement can be dealt with by domestic officials without recourse to the Protocol or Convention. On the other hand, requiring too direct a link might make it impossible to use the Protocol provisions in cases where purely domestic offences were committed by foreign offenders or as part of a larger transnational organized crime scheme.

In addition to taking action against traffickers, the Protocol requires states that ratify it to take some steps to protect and assist trafficked persons. Trafficked persons would be entitled to confidentiality and have some protection against offenders, in general and when they provide evidence or assistance to law enforcement or appear as witnesses in prosecutions or similar proceedings. Some social benefits, such as housing, medical care and legal or other counseling are also provided for.

The legal status of trafficked persons and whether they should eventually be returned to their countries of origin has been the subject of extensive negotiations. Similar discussions have taken place with respect to the return of smuggled migrants in the Protocol dealing with them. Generally, developed countries to which persons are often trafficked have taken the position that there should not be a right to remain in their countries as this would provide an incentive both for trafficking and illegal migration. Countries whose nationals were more likely to be trafficked wanted as much protection and legal status for trafficked persons as possible. The negotiations are still ongoing, but the text presently requires

states “to consider” laws which would allow trafficked persons to remain, temporarily or permanently, “in appropriate cases” [Art. 5]. States would also agree to accept and facilitate the repatriation of their own nationals [Art. 6].

Law enforcement agencies of countries that ratify the Protocol would be required to cooperate in such areas as the identification of offenders and trafficked persons, sharing information about the methods of offenders and the training of investigators, enforcement and victim support personnel [Art. 7]. Countries would also be required to implement security and border controls to detect and prevent trafficking. These include strengthening their own border controls, imposing requirements on commercial carriers to check passports and visas [Art. 8], setting standards for the technical quality of passports and other travel documents [Art. 9] and cooperation in establishing the validity of their own documents when used abroad [Art. 6(3)].

Cooperation between states who ratify is generally mandatory. Cooperation with states who are not parties to the Protocol is not required but is encouraged [Art. 11].

Social methods of prevention, such as research, advertising and social or economic support are also provided for, both by governments and in collaboration with non-governmental organizations [Art. 10].

### **Main Provisions:**

#### Article 226-2: (Trafficking in persons)

1. A person who purchases persons shall be sentenced to imprisonment with labor for not less than three months nor more than five years.
2. A person who purchases a minor shall be sentenced to imprisonment with labor for not less than three months nor more than seven years.
3. A person who purchases persons for the purpose of profit-making, indecency, marriage, offense against a person’s life or body shall be sentenced to imprisonment with labor for not less than one year nor more than ten years.
4. A person who sells persons shall be sentenced as provided above.
5. A person who purchases persons shall be sentenced to imprisonment with labor for a definite term not less than two years.

**Editorial Note:**

Since a person who purchases persons strongly restricts the freedom of trafficked victims in order to recover his or her expenses, the act itself of buying persons is the object of punishment. Since selling persons is always the very act for the purpose of profit-making, the legal term of imprisonment for selling persons is the same as that of buying persons for the purpose of profit-making and so on.

Since the interest protected by the law of trafficking in persons is the individual interest of victims' freedom, a person who sells or buys persons with the consent of the victims cannot be punished for trafficking in persons.

## **6. Labor Law**

### **The Amendment of Child Care Leave and Family Care Leave Law**

Law No. 160, December 8, 2004 (Effective on April 1, 2005)

**Background:**

Recently, the importance of the "work life balance" has grown. For all the attempts that are made to improve the child care leave and family care leave system to promote it, a lot of women who want to keep working have to quit work because of their pregnancy and childbirth.

Workplaces in Japan still have not achieved the ideal environment where a man and woman in employment can together take care of their children. The fact that few Japanese men take child care leave indicates that.

The rapid progress of the aging society with fewer children will have a crucial impact on the social economy in Japan; it is said that the heavy load of both working and parenting partly causes the decrease in children. So it is necessary to make better working conditions that allow workers to balance their work with child care.

Therefore, the Japanese government submitted a bill that would