such incentive for negotiation is not clear.

Consequently, the reasons for the judgment are convincing. If banks may retain the funds collected as the exercise of the right of separate satisfaction, such funds are usually not considered as government funds for payment regarding the rehabilitation plan nor are they considered funds for the business of a rehabilitation debtor. Even if the retention of the funds collected is permitted and if it is still not adequate as an opportunity to resolve a dispute by negotiation, the *banking contract* shall be deemed an "agreement accompanying the exercise of the right of separate satisfaction" . However, it should be determined very carefully whether it is against the purpose and objective of the Civil Rehabilitation Act (§ 1 of the Civil Rehabilitation Act) permit appropriation of the funds collected for payment of a debt (*Cf.* the judgment of the Supreme Court 3rd P.B., December 16, 2008, 2561 Minshu 62-10).

(on 2 August 2012)

2. Supreme Court Judgment on the Treatment of Subrogation Rights by Performance under the Bankruptcy Proceedings

Judgment of Third Petty Bench of the Supreme Court of November 22, 2011 (Minshu (Collection of Civil Precedents) vol. 65 No. 8, p. 3165)

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Article 501 of the Civil Code provides that a person who is subrogated to the claim of the obligee may exercise any and all rights possessed by the ex obligee to the extent the subrogee may seek reimbursement under its own right to take such action. Therefore, in the event a person is subrogated to the claims for which the priorities of proceedings are recognized (claim on the estate in bankruptcy proceedings and a common benefit claim in civil rehabilitation proceedings) in reference to the bankruptcy proceedings, it will become a problem whether the subrogee

may exercise the right of subrogation to the claim on the estate and the common benefit claim (hereinafter referred to as "Original Claims"), without bankruptcy proceedings even though the subrogee possesses only the right to reimbursement of a bankruptcy claim or a rehabilitation claim to which only the exercise of the right in accordance with the bankruptcy proceedings is recognized as valid. In other words, since Article 501 of the Civil Code allow the subrogee to exercise the right "to the extent the subrogee may seek reimbursement" with regard to Original Claims acquired by a subrogation by effecting performance, it will become a problem whether this restriction applies to the exercise of Original Claims acquired by a subrogation in the event only the exercise of the right to reimbursement in accordance with bankruptcy proceedings is permitted.

With regard to this problem, both lower court judicial precedents and theories divided into supporting opinions and opposing opinions, and the judgment of the Supreme Court was awaited. Then, in a case where a third party performed a bankrupt's obligation for unpaid salaries that were treated as a claim on the estate in bankruptcy proceedings, the judgment of the Supreme Court of November 22, 2011, indicated the opinion first as the Supreme Court that a person acquired a claim on the estate by subrogation by effecting performance may exercise the claim acquired by subrogation without bankruptcy proceedings as the claim on the estate even though the right to reimbursement is a mere bankruptcy claim, and clearly indicated that it would stand on the supporting opinion.

This judgment is the opinion in a case pertaining to the subrogation payment for unpaid salaries, but the judgment indicates that the system of subrogation by performance intends to have Original Claims function as a kind of security to secure the right to reimbursement, and in view of the purpose of the system, even though the exercise of the right to reimbursement is restricted by bankruptcy proceedings, the exercise of the Original Claim shall not be restricted in the same manner as the right to reimbursement unless the exercise of the Original Claims in the said proceedings is restricted, and the range is considered to extend to general problems with regard to the exercise of Original Claims by the subrogees in bankruptcy proceedings. Subsequent to this judgment, a similar opinion was stated with regard to a case where the execution by subrogation had been effected for a common benefit claim in the rehabilitation proceedings

(judgment of the Supreme Court of November 24, 2011/Minshu vol. 65, No. 8, p. 3213) so that the stance of the precedents may be deemed to be secured, and this judgment as a herald thereof may be considered very important theoretically and practically.

(on 11 August 2012)

3. Condominium Legal System in Japan and Current Movement

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1. Outline

As of the end of the year 2011, 5,790,000 condominium units existed in Japan, and about 14 million people (one out of eight Japanese people) lived in one. The basic act with regard to the buildings of unit ownership, including condominiums, is the Act on Building Unit Ownership, etc., and it was established with reference to legislation in Germany (WEG) in 1962 when condominiums were becoming common (there were about 10,000 condominium units at that time). After that, major revisions were made in 1983 and in 2002. The parts and particulars of the same Act (total number of provisions are 72 Articles) are as follows. In Section 1 to Section 3 of Chapter I, the rights and interests pertaining to buildings and grounds thereof owned or co-owned by the unit owners are stipulated, and in Sections 4 to 6 of the same chapter, the system and method of management of the buildings of unit ownership and the grounds are stipulated. In Sections 7 and 8 of the same chapter, the measures in case any special reasons arise with regard to management or building (a decision by majority resolution at a meeting) are stipulated (Chapter 2 to be described later).

Chapter I Building Unit Ownership
  Section 1 General Provisions
  Section 2 Common Elements, etc.