



Summary of Bankruptcy Law IV

2013.09.06

1. Review of the Previous Summary

Last time, we saw the brief overview of the liquidation-type proceedings: insolvency proceedings and special liquidation proceedings. While both procedures aim at liquidation, they have some different points such as causes for commencement of procedures and who can file for the procedures etc.

2. Brief Overview of Rehabilitation-type Proceedings

This time we are going to examine the procedures which aim at rehabilitation.

(1) Rehabilitation-type Proceedings

There are two types of rehabilitation-type proceedings in Japan: civil rehabilitation proceedings and corporate reorganization proceedings. Although both procedures are classified as rehabilitation-type proceedings, corporate reorganization proceedings is only available to “stock corporations” and civil rehabilitation proceedings, on the other hand, is available to both any companies and individuals. That is, it can be considered that civil rehabilitation procedures plays a general part of rehabilitation-type proceedings and corporate reorganization proceedings plays a special procedures of it.

In both of these rehabilitation proceedings, unlike normal bankruptcy procedures, secured parties are restricted to exercise their security rights at the beginning of the procedures so that the debtor can keep the current value of his/her assets and business. In addition, both procedures requires that debtors or administrators must show that they have a high chance of succeeding to rehabilitate themselves, and that immediately after the commencement of the procedures, they are required to draft a rehabilitation plan or organization plan based on the value of their assets and going concern value. The plan must include a repayment schedule, its source and method, and treatment of other interested parties should be explained in the plan.

(2) Similarities and Differences Between Civil Rehabilitation Proceedings and Corporate Reorganization Proceedings

a. Scope of the Proceedings

As mentioned above, civil rehabilitation proceedings is available to both any



companies and individuals, but corporate reorganization proceedings is only available to “stock corporations”.

b. Corporate Authority

In civil rehabilitation proceedings, a debtor continues to manage the company having the right of control/disposal of its assets (DIP-type: Article 38-1 of the Civil Rehabilitation Act). On the other hand, an administrator is appointed by the court in corporate reorganization proceedings and all the power to operate and manage the company is transferred to the administrator (Controlled-type: Article 72-1 of the Corporate Reorganization Act).

c. Treatment of Interested Parties

Only general creditors are basically required to enter into the civil rehabilitation procedures as rehabilitation creditors and satisfy their rights (Articles 84 and 85-1 of the Civil Rehabilitation Act). Secured parties and a person who has a claim for general priority exists may exercise their rights regardless of the procedures as secured parties are deemed to have a right of separate satisfaction over the property and a person who has a claim for general priority exists is deemed to have a claim with general priority. In contrast, all the parties including a person who holds security interests over the assets of the debtor may only exercise their rights through corporate reorganization proceedings (Articles 47-1, 50-1 and 135-1 of the Corporate Reorganization Act).

d. Treatment of Security Interests

In civil rehabilitation proceedings, a holder of a security interest may exercise their security rights outside of the procedures (Article 53-1 of the Civil Rehabilitation Act) and if the rehabilitation debtor wishes to put some restrictions on their enforcement of the security rights, the debtor and security holders in general make an agreement called an agreement of a separate satisfaction right. However, there is the exception of procedures for extinguishment of security interest (Article 148 - 153 of the Civil Rehabilitation Act).

In case of corporate reorganization proceedings, security rights may not be exercised through the procedures and holders are required to join the resolution with respect to distribution of going value concern (Article 196 of the Corporate Reorganization Act). In



some cases, the rights would be changed or the security rights would be extinguished (Articles 168, 203 and 204-1 of the Corporate Reorganization Act).

(Over)