



## Summary of Bankruptcy Law V

2013.09.17

In the previous summaries, we have seen two types of bankruptcy procedures. One is liquidation-type proceedings (insolvency proceedings and special liquidation proceedings) and the other is rehabilitation-type proceedings (civil rehabilitation proceedings and corporate reorganization proceedings). In the next few summaries, we are going to more closely examine the insolvency proceedings that makes up the core part of the whole legal bankruptcy procedures.

### 1. Review of Insolvency Proceedings

Let's go over insolvency proceedings as we have seen in the third chapter.

Insolvency proceedings is a procedures classified into liquidation/controlled type. It begins with filing of a petition and recognition of the assets, conversion and proceeds distribution follow after. In case of a debtor is an individual, the debtor may apply for discharge through the procedure.

### 2. Legal Capacity of the Insolvent

What kind of person or entity is deemed to be an insolvent debtor?

There is no provision concerning the insolvent capacity under the Insolvency Act, but it is the general understanding that a natural person, legal entity and non-judicial organizations or foundations are deemed to have the capacity of the insolvent pursuant to the provision relating to legal capacity under the Civil Procedure Code (Article 13 of the Insolvency Act (“IA”) and Articles 28 and 29 of the Civil Procedure Code)<sup>1</sup>.

### 3. Petitioner

Insolvency proceedings is, as a general rule, commenced by a petition being filed<sup>2</sup>.

A person who is entitled to file for the procedures is a creditor and a debtor (Article 18-1 of IA). In case when the person is a legal entity, an representative director, a board of

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<sup>1</sup> The Insolvency Act grants the capacity of the insolvent to inheritance property (Articles after 222 of IA) and trust assets (Article after 244-2 of IA).

<sup>2</sup> There is the following exceptions: where the procedures is commenced by the court authority and where the procedures is commenced following the revocation of other bankruptcy procedures and the company had to move straight to the insolvency proceedings (Article 250 of the Civil Rehabilitation Proceedings and Article 252 of the Corporate Reorganization Proceedings).



director, an executive officer or a liquidator may become a petitioner for filing for the procedures (Articles 19-1,2 of IA). If the debtor files for insolvency on his/her own, it is called **voluntary insolvency**. If the board director of the company or the equivalent files for insolvency, it is called **semi-self insolvency**.

#### 4. Payment into Court

When a debtor files for insolvency proceedings, he/she cannot do that for free of charge. He/she must pay the court for the fee amount for filing (Article 3-1 of the Act on Costs of Civil Procedure (“**ACCP**”).

The fee amount is 20,000 yen (Appended Table 1-12 of ACCP) when a debtor files on his/her own. In addition to this fee, other various fees will cost to carry forward the procedures, and although these fees are treated as a claim on the estate<sup>3</sup> in the end (Article 148-1-1, 2 of IA), the court needs to receive some money to cover all those fee costs. Therefore, a petitioner must prepay an amount designated by the court as expense for insolvency proceedings when filing for commencement of the proceedings (Article 22-1 of IA). Regardless of the fact that the court orders the petitioner to prepay the amount but he/she does not, the petition for commencement of insolvency proceedings is **dismissed** (Article 30-1-1 of IA). The amount may change depending on the cases and it is calculated based on the debtor’s assets, the number of creditors and complexity of the cases etc. (Article 18 of Insolvency Rule).

Excluding postage fee for the notice to creditors as well as fee for publication, the amount is allotted to an administrator’s fee. Therefore, in case where no administrator is appointed, for example, in case of “Doji Haishi Ziken<sup>4</sup>”, the amount is calculated lower.

It may not make good sense that a debtor filed for insolvency because he/she does not have money but he/she is still required to pay to go through the procedures. However, the actual practice like Izi Haishi Ziken<sup>5</sup> is that the debtor borrows the filing costs from his/her family or makes temporary payment of expense for insolvency proceedings from the national treasury (Article 23-1 of IA).

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<sup>3</sup> The term “claim on the estate” means a claim which may be paid from the insolvency estate at any time without going through insolvency proceedings (Article 2-7 of IA).

<sup>4</sup> The case where the court made an order of discontinuance of insolvency proceedings upon making an order of commencement of insolvency proceedings (Article 216 of IA).

<sup>5</sup> The case where the court finds, after making an order of commencement of insolvency proceedings, that the insolvency estate is insufficient for paying expenses for insolvency proceedings (Article 217-1 of IA).