



Summary of Bankruptcy Law II

2013.07.08

1. Review of the Previous Summary

Last time, we discussed what “bankruptcy” is in the first place and why the bankruptcy system is necessary. Now, before we move on to the next step, let’s go over the previous summary.

(1) What Bankruptcy is

The word of “Bankruptcy” was usually used for the situation where a company’s promissory note is dishonored and the transaction with a bank is suspended. However, since less number of companies has been using a promissory note for a payment these days, the word is currently understood to be in the financial situation where the debtor is unable to repay his/her debt by himself/herself.

(2) Necessity of Bankruptcy System

Then, why is it necessary to require a bankrupt debtor to go through the bankruptcy proceedings, not just to leave him/her alone without the bankruptcy proceedings?

From the creditor’s viewpoint, leaving a bankrupt debtor without bankruptcy proceedings means that he/she is unlikely to collect the full amount of the debts from the debtor, as the debtor’s assets is usually deteriorated without bankruptcy proceedings. From the debtor’s viewpoint, on the other hand, it is unreasonable that a debtor (especially as is the case for natural person) who is incapable of repaying the debt would have to bare the debt burden without limitation because he/she needs to continue living like any others. In order to rescue those individuals, the system of bankruptcy is essential.

2. There is No Law Called “Bankruptcy Law”

To change the topic of conversation a little, there is no law called “Bankruptcy Law” in Japan although this series of summary is titled “Summary of Bankruptcy”. This may surprise you, but you cannot find the law called “Bankruptcy Law” even on the Book of Six Major Laws.

It is the general understanding that the “Bankruptcy Law” is just an academic concept and is more like “the broad accumulation of laws such as the Insolvency Act, Civil Rehabilitation Act, Corporate Reorganization Act and other relevant laws that



rule the proceedings of the special liquidation proceedings”.

This time, we are going to examine the various types of bankruptcy proceedings below.

3. Types of Bankruptcy Proceeding

The bankruptcy proceedings is usually classified in terms of its purpose or whether the debtor still holds the right to control/dispose his/her assets and to manage the business after commencement of the proceedings.

(1) Liquidation-type and Rehabilitation-type

There are two types of bankruptcy proceedings in Japan, in terms of the purposes; liquidation-type proceedings and rehabilitation-type proceedings.

In the liquidation-type proceedings, the aim of the proceedings is to realize and liquidate all assets of the debtor by selling and disposing it and to distribute the proceeds of such liquidation to creditors in their order of priority. The following proceedings are classified into this liquidation-type of proceedings; insolvency proceedings ruled by the Insolvency Act, and special liquidation proceedings ruled by the Companies Act.

In contrast, the aim of the rehabilitation-type proceedings is to allow the debtor continue its business or economic life (keeping gaining steady income) after the conclusion of the proceedings. Once the debtor gains income after restarting the business, he/she repays the debt to creditors using such income. The following proceedings are classified into this rehabilitation-type of proceedings; civil rehabilitation proceedings ruled by the Civil Rehabilitation Act, and corporate reorganization proceedings ruled by the Corporate Reorganization Act.

Liquidation-type Proceedings	Insolvency Proceedings	Insolvency Act
	Special Liquidation Proceedings	Companies Act, Articles of 510 -574, and 879 - 902
Rehabilitation-type Proceedings	Civil Rehabilitation Proceedings	Civil Rehabilitation Act
	Corporate Reorganization	Corporate Reorganization Act



	Proceedings	
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(2) Controlled-type and DIP-type

In addition, there are another two types of bankruptcy proceedings in Japan; controlled-type proceedings and DIP (debtor-in-possession)-type proceedings, which is basically classified in terms of whether the debtor still holds the right to control/dispose his/her asset and to manage the business.

In the controlled-type proceedings, a trustee is appointed by the court to liquidate the assets and to manage the business. The following proceedings are classified into this controlled-type of proceedings; insolvency proceedings ruled by the Insolvency Act, and corporate reorganization proceedings ruled by the Corporate Organization Act.

On the other hand, in DIP-type proceedings, management of the debtor remains in place after commencement of the proceedings as a general rule. The following proceedings are classified into this DIP-type proceedings; civil rehabilitation proceedings ruled by the Civil Rehabilitation Act, and special liquidation proceedings ruled by the Companies Act.

Controlled-type Proceedings	Insolvency Proceedings	Insolvency Act
	Corporate Reorganization Proceedings	Corporate Reorganization Act
DIP-type Proceedings	Civil Rehabilitation Proceedings	Civil Rehabilitation Act
	Special Liquidation Proceedings	Companies Act, Articles of 510 -574, and 879 - 902

(Over)