



Summary of Bankruptcy Law III

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1. Review of the Previous Summary

Last time, we learned that there does not exist a law called “Bankruptcy Law” in Japan, and the word of “Bankruptcy Law” is just an academic concept and the procedures for dealing with bankruptcy are set forth in several code. Now, before we move on to the next step, let’s go over the previous summary.

(1) Classification in Terms of Purposes

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

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 Proceedings	Corporate Reorganization Act

(2) Classification in Terms of Right of Control/Disposal

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



2. Brief Overview of Liquidation-type Proceedings

(1) Insolvency Proceedings

Insolvency proceedings is carried forward in accordance with the Insolvency Law. The broad procedure is as follows: filing for insolvency proceedings → Commencement of the Proceedings → Realizing all debtor's assets → Converting the assets into cash → Distribution of the proceeds to the creditors → Completion. At the same time with this whole procedure, the debtor may apply for discharge.

(2) Special Liquidation Proceedings

The special liquidation is a procedure whereby insolvent stock companies can liquidate and this liquidation is moved from ordinary liquidation proceedings.

This proceedings is easier, a little more costless and going forward more smoothly compared to bankruptcy proceedings, and was established for liquidation stock companies which are going through liquidation process but seem to have the facts constituting insolvency.

(3) Similarities and Differences Between Insolvency Proceedings and Special Liquidation Proceedings

a. Scope of the Proceedings

While there is no limitation on who can file for the procedures and any individuals and legal entities can use the procedures in the insolvency proceedings (Article 2-4 of the Insolvency Act, the special liquidation proceedings basically¹ only applies to insolvent stock companies which is under liquidation process (Articles 471, 475 and 510 of the Companies Act).

b. Causes for Commencement of Proceedings

In the insolvency proceedings, the court commences the proceedings when a debtor is "unable to pay debts" or "insolvent" if the debtor is a legal entity (Articles 15-1 and 16-1 of the Insolvency Act).

On the other hand, the court commences the special liquidation proceedings when it finds that circumstances prejudicial to the implementation of the liquidation exists

¹ In addition to liquidation stock companies, there are other entities applicable to special liquidation proceedings pursuant to Article 184 of the Insurance Business Act, Article 180-4 of the Act on Securitization of Assets, and Article 164-4 of the Investment Trust and Investment Corporation Act.



(Article 510-1 of the Companies Act) or when it suspects that the liquidation stock company is insolvent (Article 2 of the said act).

c. Trustee/Liquidator

In the bankruptcy proceedings, the competent court appoints a trustee to a debtor (Article 31 of the Insolvency Act) and the debtor continues to have the power to dispose of its assets (Article 78-1 of the said act). In the special liquidation proceedings, on the other hand, liquidator such as a board director (Article 478-1 of the Companies Act) assume the duty to perform the liquidation administration in fairness and good (Article 523 of the Companies Act).

d. Distribution to Creditors

The insolvency procedures requires all the liquidating creditors who intend to exercise their right to enter into the procedures and the proceeds of the debtor is, in principal, equally distributed to such creditors (Article 194 of the Insolvency Act).

Likewise, the special liquidation procedures requires all the creditors to enter into the procedures and the creditors must attend the creditors' meeting regarding the adoption of an agreement to receive the distributions of the liquidation stock companies. The distribution to the creditors is made based on the special majority rule at the creditors' meeting with respect to an agreement the liquidator prepares in addition to the approval from the court (Articles 567 and 569 of the Companies Act).

e. Status of Security Interest Holder

A security interest holder in insolvency proceedings may exercise his/her right regardless of the insolvency proceedings (Article 65 of the Insolvency Act)².

A security interest holder in special insolvency proceedings may also exercise his/her right freely, but the court may order the suspension of procedures to enforce a security interest (Article 516 of the Companies Act).

f. Discharge Proceedings

An individual debtor under insolvency proceedings may file a petition to the court for grant of discharge but he/she may not under special liquidation proceedings.

(Over)

² There is the exception of procedures for extinguishment of security interest (Article 186 – 192 of the Insolvency Act).