<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>BANKRUPTCY LAW IN JAPAN AND ITS RECENT DEVELOPMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Author(s)</strong></td>
<td>Ikeda, Tatsuo</td>
</tr>
<tr>
<td><strong>Citation</strong></td>
<td>Osaka University Law Review. 46 P.9-P.34</td>
</tr>
<tr>
<td><strong>Issue Date</strong></td>
<td>1999-02</td>
</tr>
<tr>
<td><strong>Text Version</strong></td>
<td>publisher</td>
</tr>
<tr>
<td><strong>URL</strong></td>
<td><a href="http://hdl.handle.net/11094/3656">http://hdl.handle.net/11094/3656</a></td>
</tr>
<tr>
<td><strong>DOI</strong></td>
<td></td>
</tr>
<tr>
<td><strong>rights</strong></td>
<td></td>
</tr>
</tbody>
</table>
Bankruptcy Law in Japan and its recent development

Tatsuo Ikeda*

I. Overview of Insolvency Law in Japan

II. Outline of Each Procedure
   A. Bankruptcy
   B. Corporate Reorganization
   C. Composition
   D. Corporate Arrangement
   E. Special Liquidation of a Corporation
   F. Private Arrangement

III. Recent Development

I. Overview of Insolvency Law In Japan

Figuratively speaking, any economic activity is subject to failure just as human beings are subject to disease or death. Insolvency can occur under a free market system as well as under a socialist economy. In the event of financial collapse, the debtor may be tempted to engage in activities such as claims for fraud, larceny, embezzlement, willful and malicious wrongs, or civil penalties and creditors may be tempted to fall upon the debtor, seize his goods in stock and carry them away in a truck.

The natural tendency is for the stronger to prey upon the weak and confusion will result if matters are left to run their natural course. Clearly a legal scheme is indispensable for the management of insolvency matters, and court intervention is even expected for the orderly settlement of financial affairs.

In Japan there is no such consolidated insolvency code such the U.S. Bankruptcy Code. Insolvency matters are primarily governed by the Bankruptcy Law, the

* Professor of Law, Osaka University
This article is based upon the former work, Bankruptcy Law in Japan, JAPAN BUSINESS LAW LETTER (May 1989).
Corporate Reorganization Law, the Composition Law, and the Commercial Code. As their titles imply, these laws provide procedures to be followed in bankruptcy, corporate reorganization, composition, and the arrangement or special liquidation of corporations. These procedures are collectively termed ‘legal arrangements’ (in-court proceedings, judicially controlled proceedings) schemes as the courts intervene in the proceedings. The Bankruptcy Law (promulgated in 1922) is the nucleus of the rules governing insolvency matters. The insolvency law rules are divided into two groups: proceedings for bankruptcy and special liquidation are classified as a liquidation mode; and the proceedings for corporation reorganization, composition, and arrangement of a corporation are classified as a rehabilitation (See the table (below) for the frequency of use of each procedure). It is said, however, that no small number of Insolvency cases are settled between the parties without resort to the courts, such arrangement being called a ‘private arrangement’ (out-of-court proceedings). The biggest advantage of a private arrangement is that costs are low and expeditious management is expected, however the disadvantage is that just and due settlement is not always achieved.

In 1952, the Corporate Reorganization Law was enacted after the corporate reorganization model developed in the U.S., and in order to promote a bankrupt’s “fresh start”, the scheme of bankruptcy discharge, which is granted to honest debtors, was introduced.

Arguments concerning so-called “international insolvency law” have recently become more common and reconsiderations of the territoriality principle have been contemplated in legislative proposals and interpretations of the law.

II. Outline of Each Procedure

Five types of insolvency legal proceedings and private arrangement are as follows in detail.

A. Bankruptcy

1. In General: As shown in the table, the procedure provided under the Bankruptcy Law is the most often chosen form of insolvency proceedings. A bankruptcy court controls the proceedings: a case is commenced with a bankruptcy adjudication by the court; a court appointed trustee holds, administers, and disposes of all the property of the bankrupt. A bankruptcy trustee under the Japanese system differs form that of the U.S. in that the latter is appointed by the creditors’ meeting. Profits from the sale of the bankrupt’s estate are distributed pro rata to the creditors.
whose claims have been filed with, and allowed by, the court (distribution). A corporate debtor is automatically dissolved by a bankruptcy adjudication and be vanished upon the completion of its liquidation. If the bankrupt is an individual, even if distribution of the estate in bankruptcy will not cover all his outstanding debts, he may still be relieved of the obligation to repay by being grounded a bankruptcy discharge.

2. Bankruptcy Capacity: ‘Bankruptcy capacity’ means the qualifications required by law to be designated a bankrupt. Every individual (natural person) and every private corporation (private juristic person) possesses bankruptcy capacity, as do foreign individuals and corporations (according to the prevailing scholarly view). Public corporations (public juristic persons) are generally denied this capacity. The writer’s personal opinion is, however, that a public corporation may be granted such capacity if the matter of bankruptcy capacity would be distinguished theoretically from that of corporate dissolution.

3. Grounds for Bankruptcy: The common denominator here for every debtor is the inability to pay his debts. This is an objective condition in which a debtor is found to be generally and continually unable to pay his debts as they fall due because of a lack of the means to repay. In practice, the most important fact is a debtor’s suspension of payment. Thus, for example, if a bill drawn by a debtor is dishonored, the condition of suspension of banking privileges is fulfilled. In such case, the debtor’s inability to pay is presumed. Excess debt is another precondition for bankruptcy. This is a relative condition in which a debtor’s debts exceed his assets. It is an additional basis for corporate bankruptcy and the sole basis of a bankruptcy application for a deceased’s estate.

4. Rehabilitation of a Bankrupt: The bankruptcy procedure also takes into consideration the rehabilitation of debtors.

a. Fixed Bankrupt Estate and Exemptions (Free Property): The scope of property which constitutes a bankrupt estate is every seizable piece of property belonging to the debtor at the time of bankruptcy adjudication. Property acquired after the adjudication, (i.e., newly-acquired property) constitutes free property of which the bankrupt enjoys a free disposition. In addition, certain types of property of which seizure is forbidden (exempted property) and such property that the trustee withdraws from the bankrupt estate are included in a bankrupt’s free property. Such property is helpful in the rehabilitation of a bankrupt.

b. Compulsory Composition; In the course of bankruptcy proceedings, a bankrupt in the hope of rehabilitation may make a payment plan and apply for composition with his creditors. Composition can be effected and the proceedings
concluded without liquidation if, in the creditors meeting, the majority of the present creditors with voting rights agree to composition and the total amount of such agreeing creditors’ claims represents three quarters or more of the total allowed claims (Bankruptcy Law §306).

c. Bankruptcy Discharge: Bankruptcy discharge is significant only for individual debtors. There is no chance of discharge for corporate debtors which shall be dissolved upon a adjudication of bankruptcy. Since the second half of the 1970’s, the number of filings for voluntary bankruptcy by individual debtors has been increasing rapidly. The reason for the occurrence of this phenomenon is that bankruptcy discharge has come to be used as a vehicle for rehabilitation individual debtors who have over-stretched their credit with loan sharks. It is necessary for a bankrupt to make an application for discharge. If the court rules that the bankrupt be discharged, his debts are deemed to be come ‘natural obligations’ under prevailing scholarly opinion (i.e., creditors have no legal means of enforcement; however, if the debtor pays his debts voluntarily, such payments are valid). While rehabilitation of bankrupts is promoted by this system. Critics assert that bankruptcy discharge does not discharge the obligations of guarantors or sureties of the discharged bankrupt (Bankruptcy Law §366-13) and a debtor is therefore practically forced to pay his debts if his guarantors or sureties are relatives or friends.

5. Holders of Secured Interests: Generally, secured interests are treated as independent and reserved claims and as such are not bound by the bankruptcy proceedings (that is, holders of secured interests have preference).

6. Avoiding Power of Trustee: Payments or other disposition of property by a bankrupt executed before the bankruptcy adjudication are valid. But if a bankrupt has committed fraudulent acts which decrease the assets of the bankrupt estate available for all creditors or engages in discriminatory acts which violates the notion of equality among creditors, the trustee has the power to cancel the efficacy of such acts of the bankrupt and recover such assets. Such power of a trustee is called an “avoiding power”.

B. Corporate Reorganization

This is a rehabilitative procedure for joint stock corporations of larger scale. Under this scheme, the management of a reorganized corporation is deprived of its status and one or more reorganization trustees promote the rehabilitation of the corporation. Due to its distinctive character, the number of newly filed petitions employing this method has been very low recently.
When a corporation is unable to pay its debts without a significant hindrance to the continuation of its business, it may file for reorganization. Rehabilitation is the main objective of this scheme and no specific condition must be satisfied in order to file.

Unlike bankruptcy or composition, holders of secured interests are also bound by a reorganization plan and they are prohibited from enforcing their claims outside the plan. The framework of the proceedings is similar to that of bankruptcy proceedings, and the phase of the proceedings in which a reorganization plan must be decided upon by a majority of interested parties is similar to the composition proceedings.

C. Composition

As shown in the table, the annual number of filings for composition had remained above the 500-case level since 1980 (the frequency of insolvency cases as a whole dropped in 1987 because of an upturn in the economy) and composition is more regularly and frequently employed than corporate reorganization. This seems to show that debtors fully realize that compared with other rehabilitative corporate reorganization methods, the advantage of a composition procedure lies in the fact that the management of an insolvent corporation can commence rehabilitation without losing its managerial power (debtor in possession).

A debtor may file for composition if one of the grounds for bankruptcy under the Bankruptcy law is satisfied (Composition Law §12). The composition proceedings are similar to compulsory composition under the Bankruptcy Law in that a debtor must make a composition plan before filing and the majority of creditors may force a decision. In fact, however, once proceedings are commenced it is usually too late for rehabilitation, the scope of claims of the creditors is not defined if composition has been concluded, the holders of secured interests are not bound by the proceedings, and the debts agreed to in the proceedings are not always paid due to a lack of court control over enforcement.

D. Corporate Arrangement

In 1938, new provisions concerning corporate arrangement were inserted into the Commercial Code to cover the shortcomings of composition or private arrangement. The gist of this scheme is that private arrangement of a joint-stock corporation is conducted under 'soft control' by the court. The directors' managerial or decision-making power may be restricted or curtailed in certain cases. A corporate debtor may file for arrangement if it is believed that the debtor
will fall into insolvency. There is no trustee and the directors of the corporate
debtor may usually retain managerial control and carry out corporate rehabilitation.
One disadvantage is that unlike the composition procedure, a rehabilitation plan is
not decided upon by the majority of creditors, that is to say, unanimous consent by
the creditors is necessary for conclusion of a arrangement plan. This is covered by
the courts' control over the matter. When a court has issued an arrangement order,
it may freeze secured claims or interests.

E. Special Liquidation of a Corporation

The special liquidation proceedings may be regarded as a summary-type
bankruptcy procedure for a corporation, in which the courts, as a kind of guardian,
will step in and direct corporate decisions if such conditions (e.g., excess debt) are
found to render ordinary voluntary liquidation difficult. This procedure is only
available for corporations which have been dissolved and are in the process of
liquidation. As shown the Chart, the number of filings under this method has
gradually increased. One reason for this is the convenience of this procedure as
compared with the bankruptcy procedure. In a special liquidation, one or more
special liquidators are authorized to manage liquidation matters (Commercial Code
§434) and they are selected from among the ex-directors of the dissolved
corporation (Id. §417(1)). It is also said that this procedure has some merit for
taxation purposes. When special liquidation has been commenced, enforcement of
secured claims may also be restricted depending on the circumstances of the case.
A liquidation commissioner shall present an liquidation plan regarding the payment
of debts at the creditors' meeting and such plan shall be decided upon by the
majority of the creditors according to the applicable provision. Up to this point, the
procedure resembles to the composition procedure.

F. Private Arrangement

Private arrangement is said to be a type of settlement outside the court. There
are no special statutory provisions and the general rules of private law, especially,
the general provisions of the Civil Code, apply. In the writer's opinion, however, a
private arrangement should be understood in connection with the "legal
arrangements" mentioned above, and therefore, with legal principles governing
fiduciary transactions. One scholarly view recently gaining acceptance adopts the
concept of a fiduciary relationship between the manager of a private arrangement
and the debtors.

Courts have no occasion to interfere in a private arrangement, although they
may certainly do so by means of a party's filing an ordinary civil action where a dispute occurs among the interested parties. If such dispute impedes the management of the private arrangement, the procedure finally shifts to a legal arrangement such as filing for bankruptcy or composition and the courts will then become involved.

A creditor with a large claim usually takes office as the chairman of the creditors' meeting and manages the private arrangement. "Professional arrangers" sometimes interfere in private arrangement cases and attempt to coerce interested parties in the arrangement; for example, by means of obtaining creditors' claims at unreasonably low prices.

III. Recent Development

Now I would like to mention the recent situations. Aside from the recession of our society (especially many bankruptcy cases of financial institutions), the process of deregulation and structural change to the economy in Japan is likely to result in many challenging bankruptcy cases. In today's rapidly and radically changing economic order, comprehensive reform has become a mandate for both the legal system, in practice as well as in its legislative development.

These circumstances and the needs of global market economy threaten to try the insolvency system's ability to fulfill its function of realizing fairness and social justice with considering each legal right. In the face of these challenges, the form of present Japanese bankruptcy law system is currently undergoing thorough legislative view. As the number of personal bankruptcy cases has risen, along with the increasing number of international bankruptcy cases, deficiencies in the present Code have become more and more apparent. Treatment of property under secured claims is also a matter of considerable importance. On the other hand we should promote international cooperation by supporting the harmonization of standards for Bankruptcy procedures, even if we couldn't introduce the universality principle instead of the territoriality principle. These and many other issues are presently under discussion and review. Such working of the legislative review in Japan will be finished within a few years, at least.

The ideal insolvency law might be one system which allows flexible case management possible, for example a system in which the court may issue an "order for relief" upon filing by the debtor, proceed with the case in a manner appropriate to the conditions of the particular case, and if necessary, change to another procedure in midstream. Such system is so-called one way with multi-tracks.
Although such a system may place a heavy burden on the courts, this problem will be solved by promoting and animating creditors’ autonomy. As a first step toward such an ideal system, legislative efforts are presently expected which will offer a wide variety of options in the management of insolvency cases. The new proceedings for the rehabilitation of small-to-medium-sized enterprises and consumer debtors is very notable in this respect, and has been considered as the law systems similar to Ch. 11 and Ch. 13 (Adjustment of Debt of an Individual with Regular Income) of the U.S. Bankruptcy Code.

As for private arrangement, its biggest weakness is a lack of fairness. It has been proposed, first, that easier access to a legal arrangement be provided for; and second, that some intermediate organs between private and legal arrangements be created for the management of insolvency cases.
[For Reference]

Cases in Bankruptcy and Composition

The process of bankruptcy, needless to say, aims at dividing equally the obligor's property among the obligees where the property is not ample enough to satisfy their claims in full. The District Court, on application of the obligee or the obligor him/herself, investigates the case, adjudicates the obligor bankrupt if it deems appropriate, and appoints a trustee. Thereafter, this trustee liquidates, under the supervision of the District Court, the bankrupt's assets, converts it into money and divides it among the obligees.

The bankrupt (may be given discharge from the rest of debts. The District Court renders the ruling of discharge upon the bankrupt's motion where it is proper.

The composition is aimed at the recovery of the obligor by adjusting the obligations when the obligor is on the verge of bankruptcy. The process of composition commences with the application of the obligor to the District Court.

The court, after instructing the composition commissioner to investigate the case, renders the ruling of commencement of composition proceedings where the application is proper. If the conditions of composition are agreed upon at the meeting of the obligees and are confirmed by the court, the composition is successful and the proceedings come to an end. However, on the other hand, if the composition is canceled for the reason that the obligor defaulted to perform the conditions agreed upon, the bankruptcy procedure may then be commenced.

Corporation Reorganization Cases

The purpose of the Corporation Reorganization is to maintain and reorganize the business of a joint stock company when it finds itself in an extreme difficulty in paying its debts and yet has some possibility of reconstruction.

This procedure is inherent in a joint stock company. The District Court, on application of the company, the obligee or the shareholder, renders a ruling for the commencement of corporation reorganization procedure and appoints a trustee or trustees if the application is appropriate. The trustee takes control over the business and assets of the company under the supervision of the court and makes a draft plan of reorganization within the period designated by the court, that includes a large degree of Discharge from liability and payment in installments. The reorganization plan comes into force if it is adopted at the meeting of interested persons and approved by the court. And the claims and interests of obligees and shareholders are modified in accordance with the plan.

When the plan is carried out, the procedure of reorganization comes to an end.

:the homepage presented by the Japan Supreme Court
(http://www.courts.go.jp/english/procedure/minji2-2_e.html)
Numerical Chart of Bankruptcy Cases (based on the "Annual Report of Judicial Statistics" (Civil and Administrative Law Version) of the Supreme Court)

<table>
<thead>
<tr>
<th>Year</th>
<th>Bankruptcy</th>
<th>Composition</th>
<th>Corporate Arrangement</th>
<th>Special Liquidation of Corporation</th>
<th>Corporate Reorganization</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of new cases accepted</td>
<td>Number of new cases adjudicated</td>
<td>Number of new cases commenced</td>
<td>Number of new cases accepted</td>
<td>Number of new cases commenced</td>
</tr>
<tr>
<td>1952</td>
<td>1,531</td>
<td>211</td>
<td>54</td>
<td>79</td>
<td>88</td>
</tr>
<tr>
<td>1953</td>
<td>2,010</td>
<td>287</td>
<td>70</td>
<td>52</td>
<td>36</td>
</tr>
<tr>
<td>1954</td>
<td>2,599</td>
<td>465</td>
<td>76</td>
<td>99</td>
<td>35</td>
</tr>
<tr>
<td>1955</td>
<td>1,949</td>
<td>406</td>
<td>79</td>
<td>29</td>
<td>21</td>
</tr>
<tr>
<td>1956</td>
<td>1,732</td>
<td>258</td>
<td>64</td>
<td>35</td>
<td>19</td>
</tr>
<tr>
<td>1957</td>
<td>2,099</td>
<td>374</td>
<td>58</td>
<td>28</td>
<td>17</td>
</tr>
<tr>
<td>1958</td>
<td>1,798</td>
<td>368</td>
<td>57</td>
<td>19</td>
<td>17</td>
</tr>
<tr>
<td>1959</td>
<td>1,789</td>
<td>417</td>
<td>45</td>
<td>14</td>
<td>15</td>
</tr>
<tr>
<td>1960</td>
<td>1,672</td>
<td>381</td>
<td>38</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>1961</td>
<td>1,403</td>
<td>334</td>
<td>38</td>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>1962</td>
<td>1,564</td>
<td>387</td>
<td>48</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>1963</td>
<td>1,643</td>
<td>341</td>
<td>50</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>1964</td>
<td>2,301</td>
<td>456</td>
<td>80</td>
<td>19</td>
<td>29</td>
</tr>
<tr>
<td>1965</td>
<td>2,514</td>
<td>606</td>
<td>84</td>
<td>21</td>
<td>22</td>
</tr>
<tr>
<td>1966</td>
<td>2,098</td>
<td>463</td>
<td>67</td>
<td>28</td>
<td>28</td>
</tr>
<tr>
<td>1967</td>
<td>2,322</td>
<td>507</td>
<td>91</td>
<td>29</td>
<td>19</td>
</tr>
<tr>
<td>1968</td>
<td>2,370</td>
<td>511</td>
<td>135</td>
<td>47</td>
<td>31</td>
</tr>
<tr>
<td>1969</td>
<td>1,794</td>
<td>457</td>
<td>91</td>
<td>33</td>
<td>30</td>
</tr>
<tr>
<td>1970</td>
<td>1,680</td>
<td>479</td>
<td>117</td>
<td>53</td>
<td>52</td>
</tr>
<tr>
<td>1971</td>
<td>1,730</td>
<td>573</td>
<td>131</td>
<td>42</td>
<td>43</td>
</tr>
<tr>
<td>1972</td>
<td>1,278</td>
<td>448</td>
<td>72</td>
<td>48</td>
<td>20</td>
</tr>
<tr>
<td>1973</td>
<td>1,243</td>
<td>468</td>
<td>79</td>
<td>44</td>
<td>30</td>
</tr>
<tr>
<td>1974</td>
<td>1,343</td>
<td>429</td>
<td>156</td>
<td>39</td>
<td>104</td>
</tr>
<tr>
<td>1975</td>
<td>1,408</td>
<td>575</td>
<td>191</td>
<td>63</td>
<td>139</td>
</tr>
<tr>
<td>1976</td>
<td>1,515</td>
<td>627</td>
<td>320</td>
<td>111</td>
<td>130</td>
</tr>
<tr>
<td>1977</td>
<td>1,984</td>
<td>912</td>
<td>493</td>
<td>206</td>
<td>182</td>
</tr>
<tr>
<td>1978</td>
<td>2,070</td>
<td>1,301</td>
<td>382</td>
<td>178</td>
<td>116</td>
</tr>
<tr>
<td>1979</td>
<td>2,321</td>
<td>1,561</td>
<td>401</td>
<td>165</td>
<td>74</td>
</tr>
<tr>
<td>1980</td>
<td>2,877</td>
<td>1,976</td>
<td>514</td>
<td>213</td>
<td>93</td>
</tr>
<tr>
<td>1981</td>
<td>3,221</td>
<td>2,411</td>
<td>517</td>
<td>265</td>
<td>74</td>
</tr>
<tr>
<td>1982</td>
<td>5,031</td>
<td>3,618</td>
<td>521</td>
<td>232</td>
<td>60</td>
</tr>
<tr>
<td>1983</td>
<td>17,878</td>
<td>11,572</td>
<td>557</td>
<td>272</td>
<td>65</td>
</tr>
<tr>
<td>1984</td>
<td>26,384</td>
<td>22,116</td>
<td>574</td>
<td>256</td>
<td>53</td>
</tr>
<tr>
<td>1985</td>
<td>16,922</td>
<td>17,833</td>
<td>575</td>
<td>287</td>
<td>64</td>
</tr>
<tr>
<td>1986</td>
<td>13,876</td>
<td>13,098</td>
<td>541</td>
<td>313</td>
<td>42</td>
</tr>
<tr>
<td>1987</td>
<td>11,584</td>
<td>11,379</td>
<td>320</td>
<td>211</td>
<td>28</td>
</tr>
<tr>
<td>1988</td>
<td>10,940</td>
<td>10,448</td>
<td>191</td>
<td>105</td>
<td>15</td>
</tr>
<tr>
<td>1989</td>
<td>10,319</td>
<td>9,995</td>
<td>88</td>
<td>67</td>
<td>4</td>
</tr>
<tr>
<td>1990</td>
<td>12,478</td>
<td>10,656</td>
<td>77</td>
<td>32</td>
<td>16</td>
</tr>
<tr>
<td>1991</td>
<td>25,091</td>
<td>19,289</td>
<td>203</td>
<td>45</td>
<td>27</td>
</tr>
<tr>
<td>1993</td>
<td>46,216</td>
<td>43,370</td>
<td>323</td>
<td>140</td>
<td>30</td>
</tr>
<tr>
<td>1994</td>
<td>43,156</td>
<td>40,842</td>
<td>250</td>
<td>154</td>
<td>35</td>
</tr>
<tr>
<td>1995</td>
<td>46,487</td>
<td>41,731</td>
<td>225</td>
<td>129</td>
<td>33</td>
</tr>
<tr>
<td>1996</td>
<td>60,291</td>
<td>52,107</td>
<td>244</td>
<td>112</td>
<td>20</td>
</tr>
<tr>
<td>1997</td>
<td>76,032</td>
<td>68,718</td>
<td>279</td>
<td>119</td>
<td>18</td>
</tr>
</tbody>
</table>

(Note) The number of new cases accepted means the number of cases accepted in the applicable year (January 1 - December 31). The number of cases commenced (the number of cases adjudicated) means the number of cases for which there was a decision to commence proceedings (bankruptcy adjudication) in the applicable year out of the total number of cases accepted (including both new cases a accepted and old cases a accepted that are repeated from the prior year). Prior to 1956, it is unclear how many cases were commenced for each proceeding excluding bankruptcy.
A Corporation and Corporate Reorganization Proceedings

Transition of the Number of New Cases in Composition, Corporate Arrangement, Special Liquidation of
Details of New Bankruptcy Case Accepted Nationwide

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Natural Persons</th>
<th>Legal Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Total</td>
<td>Voluntary</td>
</tr>
<tr>
<td>1985</td>
<td>16,922</td>
<td>14,896</td>
<td>14,625</td>
</tr>
<tr>
<td>1986</td>
<td>13,876</td>
<td>11,709</td>
<td>11,432</td>
</tr>
<tr>
<td>1987</td>
<td>11,576</td>
<td>9,969</td>
<td>9,774</td>
</tr>
<tr>
<td>1988</td>
<td>10,840</td>
<td>9,610</td>
<td>9,415</td>
</tr>
<tr>
<td>1989</td>
<td>10,319</td>
<td>9,433</td>
<td>9,190</td>
</tr>
<tr>
<td>1990</td>
<td>12,478</td>
<td>11,480</td>
<td>11,273</td>
</tr>
<tr>
<td>1991</td>
<td>25,091</td>
<td>23,491</td>
<td>23,288</td>
</tr>
<tr>
<td>1992</td>
<td>45,658</td>
<td>43,394</td>
<td>43,144</td>
</tr>
</tbody>
</table>

Bankruptcy, Composition, and Discharge Cases Nationwide

<table>
<thead>
<tr>
<th>Year</th>
<th>New Bankruptcy Cases</th>
<th>Adjudications</th>
<th>New Composition Cases</th>
<th>Composition Authorizations</th>
<th>Discharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973</td>
<td>1,243</td>
<td>468</td>
<td>79</td>
<td>41</td>
<td>43</td>
</tr>
<tr>
<td>1974</td>
<td>1,343</td>
<td>439</td>
<td>156</td>
<td>34</td>
<td>54</td>
</tr>
<tr>
<td>1975</td>
<td>1,408</td>
<td>575</td>
<td>191</td>
<td>63</td>
<td>46</td>
</tr>
<tr>
<td>1976</td>
<td>1,515</td>
<td>627</td>
<td>330</td>
<td>104</td>
<td>78</td>
</tr>
<tr>
<td>1977</td>
<td>1,984</td>
<td>912</td>
<td>493</td>
<td>164</td>
<td>116</td>
</tr>
<tr>
<td>1978</td>
<td>2,070</td>
<td>1,301</td>
<td>382</td>
<td>187</td>
<td>258</td>
</tr>
<tr>
<td>1979</td>
<td>2,221</td>
<td>1,561</td>
<td>401</td>
<td>159</td>
<td>478</td>
</tr>
<tr>
<td>1980</td>
<td>2,877</td>
<td>1,876</td>
<td>514</td>
<td>194</td>
<td>543</td>
</tr>
<tr>
<td>1981</td>
<td>3,221</td>
<td>2,411</td>
<td>517</td>
<td>242</td>
<td>880</td>
</tr>
<tr>
<td>1982</td>
<td>3,001</td>
<td>3,618</td>
<td>521</td>
<td>213</td>
<td>1,010</td>
</tr>
<tr>
<td>1983</td>
<td>17,878</td>
<td>11,572</td>
<td>557</td>
<td>261</td>
<td>6,767</td>
</tr>
<tr>
<td>1984</td>
<td>26,384</td>
<td>22,116</td>
<td>574</td>
<td>224</td>
<td>16,144</td>
</tr>
<tr>
<td>1985</td>
<td>16,992</td>
<td>17,833</td>
<td>570</td>
<td>268</td>
<td>13,771</td>
</tr>
<tr>
<td>1986</td>
<td>13,876</td>
<td>18,098</td>
<td>541</td>
<td>299</td>
<td>10,464</td>
</tr>
<tr>
<td>1987</td>
<td>11,584</td>
<td>11,379</td>
<td>320</td>
<td>221</td>
<td>9,445</td>
</tr>
<tr>
<td>1988</td>
<td>10,940</td>
<td>10,448</td>
<td>191</td>
<td>133</td>
<td>9,175</td>
</tr>
<tr>
<td>1989</td>
<td>10,219</td>
<td>9,995</td>
<td>88</td>
<td>65</td>
<td>9,355</td>
</tr>
<tr>
<td>1990</td>
<td>12,478</td>
<td>10,656</td>
<td>77</td>
<td>33</td>
<td>9,569</td>
</tr>
<tr>
<td>1991</td>
<td>25,091</td>
<td>19,289</td>
<td>203</td>
<td>35</td>
<td>15,895</td>
</tr>
<tr>
<td>1992</td>
<td>45,658</td>
<td>35,771</td>
<td>292</td>
<td>77</td>
<td>30,287</td>
</tr>
</tbody>
</table>

Details of Bankruptcy Cases Settled Nationwide

<table>
<thead>
<tr>
<th>Year</th>
<th>Total cases</th>
<th>Before bankruptcy adjudication</th>
<th>After bankruptcy adjudication</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total cases</td>
<td>Dismissals</td>
<td>Withdrawals</td>
</tr>
<tr>
<td>1952</td>
<td>944</td>
<td>859</td>
<td>38</td>
</tr>
<tr>
<td>1955</td>
<td>1,987</td>
<td>1,755</td>
<td>111</td>
</tr>
<tr>
<td>1960</td>
<td>1,791</td>
<td>1,564</td>
<td>67</td>
</tr>
<tr>
<td>1965</td>
<td>2,075</td>
<td>1,627</td>
<td>86</td>
</tr>
<tr>
<td>1970</td>
<td>1,660</td>
<td>1,218</td>
<td>52</td>
</tr>
<tr>
<td>1975</td>
<td>1,317</td>
<td>819</td>
<td>37</td>
</tr>
<tr>
<td>1980</td>
<td>2,072</td>
<td>816</td>
<td>52</td>
</tr>
<tr>
<td>1985</td>
<td>17,003</td>
<td>1,455</td>
<td>106</td>
</tr>
<tr>
<td>1986</td>
<td>13,321</td>
<td>1,182</td>
<td>114</td>
</tr>
<tr>
<td>1987</td>
<td>12,612</td>
<td>1,407</td>
<td>289</td>
</tr>
<tr>
<td>1988</td>
<td>12,276</td>
<td>1,124</td>
<td>129</td>
</tr>
<tr>
<td>1989</td>
<td>12,454</td>
<td>979</td>
<td>121</td>
</tr>
<tr>
<td>1990</td>
<td>13,619</td>
<td>987</td>
<td>84</td>
</tr>
<tr>
<td>1991</td>
<td>19,379</td>
<td>1,017</td>
<td>93</td>
</tr>
<tr>
<td>1992</td>
<td>33,908</td>
<td>1,712</td>
<td>145</td>
</tr>
</tbody>
</table>

* The “Dismissals” column in the “Before bankruptcy adjudication” category includes dismissals for a lack of legal basis in addition to dismissals for a lack of legal compliance. The “Other” column in the “After bankruptcy adjudication” category includes revocations of adjudicated bankruptcy and the recognition of plans for reorganization.

(Hanrei-times, No. 830 p.20)
Overview of Bankruptcy Proceedings

Official authority
Civil Code 70
Commercial Code 402,455
Composition Act 9
Stock Company Reorganization and Rehabilitation Act 23,26

Bankruptcy petition 132-136

Formal examination
Order to correct a claim for examination that lacks legal compliance
Correction
Prepayment decision 139
Prepayment
Dis dismissal for lack of legal compliance, transfer
Dis dismissal for lack of legal basis

Preservation measures 155

Substantive inquiry (documentary examination, hearings, witness examination) 108,110

Bankruptcy adjudication

Simultaneous annulment 145
Election of bankruptcy trustee
Period for registration of claims
Appointed date for the first meeting of creditors
Appointed date for credit examination

Publication, service 145,111
Dis dismissal for lack of legal basis

Publication, service 143,111
Entrustment of registration and recording 119,120,124
Management of mail items 190
Public Prosecutors Office
Competent authorities Notification 144,125

First meeting of creditors
Report on bankruptcy proceedings 193
Resolutions for statutory items 194
Election of ordit commissioner 170

Disposition of the assests (bankruptcy estate)
Management of estate possession 185
Sealing of estate 186
Closure of account books 187
Evaluation of prices 188
Index of assets
Drafting 189
Balance sheet
Succession of abatement actions 69
Diagram of Corporate Reorganization Proceedings

Initial consultation

Petition to commence reorganization proceedings  Sec.30-33 — Petitioner — company, creditors, stockholders

Jurisdiction — district court with jurisdiction over the location of corporate headquarters  Sec.6  — Transfer

Notification to supervising administrative authorities  Sec.35

Order to suspend other proceedings  Sec.37

Preservation measures — Prohibition of settlement, Prohibition on borrowing money, Prohibition on
the disposal of real property  Sec. 39 I, foregoing part

Management by the administrator for preservation, supervision by the supervisors  Sec.39 I, latter part

Withdrawal of petition (Restrictions on withdrawal  Sec.44)

Dismissal of petition  Sec.38  — Limited term of appeal  Sec.50-11  — Transition to bankruptcy proceedings based on official authority  Sec.23 I

Decision to commence corporate reorganization proceedings  Sec.2

Election of receiver  Sec.45-46 — Validity of commencement decision

Registration period for reorganization credit, appointed date for credit examination  Sec.46 ①, ③

Appointed date for first meeting of concerned persons  Sec.46 ②

Period for the submission of the draft plan for reorganization  Sec.189-190

Publication  Sec.47 I  — Service to each known reorganization creditor, reorganization mortgagee, and stockholder  Sec.47 II

Notification to supervising administrative authorities, Minister of Justice, Minister of Finance  Sec.48

Registration, recording  Sec.17I-18I-22

Disposition measures with respect to directors before assessment of claims for compensatory damages  Sec.72 I ②, II, II

Right of denial  Sec.78-81-91 — Actions based on denial  Sec.82 I

Claims based on denial  Sec.82-84  — Actions based on objection  Sec.85

Registration of reorganization credit rights  Sec.125-127-2-157 — (Loss of rights without registration  Sec.24 I)

First meeting of concerned persons

Report of receiver  Sec.187-179-180

Election of receiver, hearing of opinions in regard to the management of assets and the company business  Sec.188

Appraisal of company assets  Sec.177

Drafting of a balance sheet and index of assets  Sec.178-182 (arrangement of documents  Sec.183)
Corroborative materials Sec.33 (arrangement of documents Sec.49)
Prepayment of expenses Sec.34 I dismissal of petition Sec.38 (1)
district court with jurisdiction over the location the sales office or assets Sec.7

Limited term of appeal Sec.39 III 11

Entrustment of registration (statutory registration Sec. 18-2 I
Publication Sec.39 V
Standing of the parties Sec.43 I 96 I suspension of litigation proceedings, succession Sec.43 II 68 69 I
(application of other receivership provisions Sec.43)

(Transition to composition proceedings Sec.27)

Transition to bankruptcy proceedings based on official authority Sec.23 I
Consequences of shared credit Sec.24 25

Company
Organizational aspects Sec.52
Management aspects Sec.53 (Sec.53 proviso, grant of rights to directors) 56
Suspension of other proceedings Sec.67, suspension, succession Sec.68 69, standing of the parties Sec.96
Legal relationships with third parties Sec.62-66 Sec.103-107
Shelving of old credit Sec.112 162 163 123 III

Approval to settle reorganization credit Sec.112-2
Claim to extinguish lien rights Sec.161-2
Settlement of shared credit Sec.209 208 119 112-2 119-3 67VII 69 I 155 104 II

Assessment quasi-trial Sec.82 I 73 74 76 77 Actions based on objection Sec.75

Drafting list of creditors Sec.132 (arrangement of documents Sec.134)
Appointed date for credit examination (Sec.135–138) → Reorganization credit Sec.102
Reorganization credit subject to priority rights Sec.157 I · 159 I 2
(appeals with respect to tax credit Sec.158 I · II)
Subordinate reorganization credit Sec.121
Reorganization security rights Sec.123 I

Subsequent completion of registration Sec.127

Confirmation without objection Sec.143
Objection Sec.146 · 147 · 136 II

Annulment before approval of the reorganization plan Sec.273–2 · 274
Approval to create a draft plan of the contents for settlement Sec.191

Submission of draft plan for reorganization Sec.189 · 190 → Failure of submission
Amendment of draft plan Sec.196 · 197 → Exclusion of draft plan Sec.199
Hearing the opinions of the company labor union, supervisory administrative authorities Sec.194 · 195

Second meeting of concerned persons Sec.192 · 193 (inquiry concerning draft plan)
Summons Sec.164 I, notification Sec.165, publication Sec.167 I

Third meeting of concerned persons Sec.200 (resolution concerning draft plan) → Rejection
Approval Sec.205 → denial of reorganization plan Sec.232 · 233 · 235

Approval of reorganization plan Sec.232–236 (provisions to protect rights Sec.234)
Publication Sec.235 I, notification to supervising administrative authorities Sec.235 II · 35 I,
registration, recording Sec.19 · 17 I · 18 I · 22
Limited term of appeal Sec.237 I → cancellation of approval
Grant of authority to directors Sec.211 III · 248-2 I · 18-3 I
Validity of authorization decision Sec.236
Alterations in the rights of concerned persons, exemption of company from responsibility Sec.240–245
Loss of validity of suspended proceedings Sec.246

Execution of plan Sec.247 · 248
Alterations in the reorganization plan Sec.271
No prospect for execution → Annulment of reorganization proceedings Sec.277

Final decision concerning reorganization proceedings Sec.272
Publication Sec.272 I, notification to supervising administrative authorities Sec.272 II · 35 I,
Registration, recording Sec.19 · 17 I · 18 I · 22
Closing report based on the duties of the receiver Sec.99
Dismissal of registration

Objections to the examination for the appointed date for general examination

Sec. 138 I

Appointed date for special examination

Sec. 138 II - 141

Listing the results of the list of creditors

Sec. 144 - 145

Final action

Sec. 147 - 152 - 154

(Listing the results of legal action

Sec. 153)

Limited term of appeal

Sec. 281 I

Annulment of reorganization proceedings

Sec. 273 ①

Limited term of appeal

Sec. 281 I

Transition to bankruptcy proceedings

Sec. 23 ①

(Transition to composition proceedings

Sec. 27)

Annulment of reorganization proceedings

Sec. 273 ②

Limited term of appeal

Sec. 237 I

denial of reorganization plan

Limited term of appeal

Sec. 281 I

Transition to bankruptcy proceedings

Sec. 23

(Transition to composition proceedings

Sec. 27)

Bankruptcy that supercedes other issues

Sec. 26
Diagram of Composition Proceedings

- Petition for composition
- Examination of documents
- Hearings of debtors
- Decision concerning preservation measures
- Petition for preservation measures
- Prepayment order
- Absence of prepayment
- Dismissal of petition
- Decision to commence composition
- Publication, notification
- Registration, recording
- Notification to competent authorities
- Ademption of conditions for composition
- Credit registration
- Drafting of credit list
- Submission of investigation report
- Meeting of creditors
- Approval
- Rejection
- Bankruptcy
Submission of monthly reports, application for each type of approval (approximately 6 months)

Supervision of courts

- Creation of arrangement plan and execution order
- Submission of draft plan for consultation
- Bankruptcy application (Commercial Code 402)
- Transition to composition (Commercial Code 397)
- Election of management committee
- Order to draft an arrangement plan
- Measures of the court (Commercial Code 386)
- Restriction on business, asset preservation measures (1)

Prohibition on transfer of the life of stockholders (2)

Failure of identity of directors (3)

Dissolution of directors (4)

Management order (1) 2.9% ~ 13.5%

Restrictions on business, asset preservation measures (1)
BANKRUPTCY LAW IN JAPAN AND ITS RECENT DEVELOPMENT

1999

[Hearings]

<Handling of the Tokyo district court headquarters>

Detected of authority, examination of evidence

(*11)

Supervisory order or inspection order
(Commercial Code 386 I ③ - II, 397, *135-53)
(Commercial Code 386 I ③ - II, *135-41)

(a) Detection of authority, examination of evidence

(b) Supervisory order or inspection order

([Hearings])

(Commercial Code 386 I ③ - II, 397, *135-53)
(Commercial Code 386 I ③ - II, *135-41)

(approximately 3 months)

(Commercial Code 381 I)

Petition to commence corporate arrangement

(Commercial Code 381 I)

Window consultation date for petition or closing date for payment of a note at the Tokyo district court.

Suspension of corporate arrangements
(Commercial Code 381 I)

Suspension of trade, etc.
(Commercial Code 381 I)

Sponsors or date of petition or the following day.

[Prohibition of bankruptcy proceedings, compensation proceedings, etc.]

[Protection of bankruptcy proceedings, compensation proceedings, etc.]

Announcement by supervisory authorities
(Commercial Code 381 I)


Preparation of expenses (Commercial Code 381 I)

Inquiry of primary creditors, trade partners, and others on the possibility of adopting a corporate arrangement plan.

(measures other than preservation measures)


Petition for corporate arrangement
(Commercial Code 381 I)