

AKTUELLE RECHTSENTWICKLUNG

Forthcoming Legislation

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I. THE REFORM OF THE INSOLVENCY LAW

The plenary session of the Legislative Advisory Council, which is an advisory body to the Minister of Justice, endorsed the outline of the draft law on civil rehabilitation (*Minji-saisei-hô*) on August the 26th. This Law replaces the current Composition Law which was enacted in 1922 on the model of Austrian law. The reform is intended to facilitate rehabilitation of troubled medium and small-sized companies.

The current procedure for rehabilitation of companies in financial difficulties is either composition, corporate composition under the Commercial Code, or corporate reorganisation. Corporate reorganisation procedure came from the United States, and is suitable for large corporations with assets. Because of the high cost involved, it is not used by medium or small-sized companies. The composition procedure is not always helpful, since the current Law requires that the debtor be either insolvent or the debt is in excess of assets in order to apply for composition. This can be too late to rehabilitate the company. It was not easy for the composition plan to be approved by creditors, and the effectiveness of its implementation was questionable. The new Law is to introduce a system in which the debtor may apply for composition at an earlier stage, i.e. when the repayment of debts considerably inhibits the continuation of business. This is the same arrangement as the current Corporate Reorganisation Law. The requirement of the consent of creditors representing three quarters of the debt has been reduced to 60%. On the other hand, a new institution, the creditors' committee was introduced in order to protect the interest of creditors. The implementation of the composition plan has also been strengthened. While the current Law on Corporate Reorganisation and Composition Law are applicable to joint-stock companies only, the new law is to be applied to other types of juridical persons including mutual companies and school and medical organisations as well as to individual entrepreneurs.

It should be added that the procedure to reduce capital which enables debt-equity swaps was introduced.

The current reform has reportedly been influenced by the US NBRC report of 1997 and is partly modelled on Chapter 11 of the US Bankruptcy Code.

The draft law will be submitted to the Diet later this year and is expected to take effect from April 2000.

II. THE INTERIM PROPOSAL FOR THE AMENDMENT OF THE COMMERCIAL CODE AND OTHER LAWS

The Committee on Commercial Law of the Legislative Advisory Council published an interim proposal for the amendments to the Commercial Code and other laws and invited comments. This is part of the reform of the system of corporate restructuring which started with the streamlining and facilitating of mergers. The interim proposal deals with the splitting of companies. The final bill will be prepared and is expected to become law in the year 2000.

III. THE ABORTIVE BILL ON THE AMENDMENTS TO THE CIVIL CODE

The bill for the amendment of the Civil Code which was submitted during the last session of the Diet has failed to reach the final stage of parliamentary debate due to the crowded agenda. The bill contains significant changes of the General Part of the Civil Code concerning the current system of 'incompetents' and 'quasi-incompetents'. A new institution which will allow a totally competent person to appoint a guardian in anticipation of ageing was also included.

IV. THE REFORM OF THE JUDICIAL SYSTEM

The Council for the Reform of the Judicial System attached to the Cabinet was established by law in June and the first meeting was held in July. Members include law professors but a majority of the 13 members are non-lawyers. The primary goal of this body is to prepare proposals aimed at making the judicial system more easily accessible to the people. Topics which are to be discussed at this forum include lay participation in justice such as law assessors or jury system, increase in the recruitment of judges from among attorneys, and raising the quality and increasing the number of lawyers. The reform of the system of legal education, including the introduction of a 'law school system' is also being contemplated. The Council is expected to come up with specific proposals within two years.