



Summary of Bankruptcy Law

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1. Introduction

In newspapers or TV news, we often hear “a company filed for bankruptcy” or “a heavy debtor was drove into bankruptcy.” This paper aims to clarify the meaning of “bankruptcy” used in our daily life.

2. What Bankruptcy is

Commercial transactions are often paid by a promissory note. In case where a company’s promissory note is dishonored twice and transaction with banks is suspended, the company is deemed to have gone bankrupt. However, less number of companies has been using a promissory note for a payment in recent years, and some companies have been able to continue its business even after its transaction with banks is suspended.

Although suspension of transaction with banks used to mean bankruptcy, the meaning of bankruptcy seems to be being changed. Now, bankruptcy is understood to be in the financial situation where the debtor is unable to repay his /her debt by himself/herself.

3. Necessity of Bankruptcy System

(1) From Creditor’s Viewpoint

Leaving a bankrupt debtor without bankruptcy proceedings, the debtor may hide or divide its assets. If the company loses its whole value (going concern value or goodwill), that means the debtor’s asset value is deteriorated.

In case where a debtor is a company, the creditor has more chance to collect the debts by rebuilding the debtor’s business instead of liquidating the debtor’s asset. However, leaving a bankrupt company may lead the creditor to miss out on an opportunity to rebuild the debtor’s business and receive profits from the rebuilt business.

In addition, if other creditors who are familiar with the debtor’s inside information or who can afford a quick action exercise its rights quickly, the creditor may no longer be able to collect anything what is left. If one creditor acts individually, the other creditor may face inequality.



Such situation is not desirable for the creditor. Insolvency proceedings are necessary to prevent the debtor from continuing unsound business activities and encourage them to restart its business, and to equally distribute the losses incurred from the bankruptcy to each creditor.

(2) From Debtor's Viewpoint

The above explanation is made from the creditor's viewpoint. For the bankruptcy proceedings of individual debtor, explanation from the debtor's viewpoint is also required.

While a company loses its corporate status as a result of bankruptcy, an individual debtor (physical person) needs to continue living. Without bankruptcy proceedings, a debtor who is incapable of repaying the debts will always bare the debt burden. As soon as the debtor gains income, the income will be seized and provided for retirement of the debt. In order to rescue those individuals, bankruptcy proceedings are necessary.