

UNCITRAL RCAP Incheon Law & Business Forum

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Simplified Rehabilitation Proceedings for MSEs in the Republic of Korea

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Contents

I. Court-Supervised Insolvency Proceedings in Korea

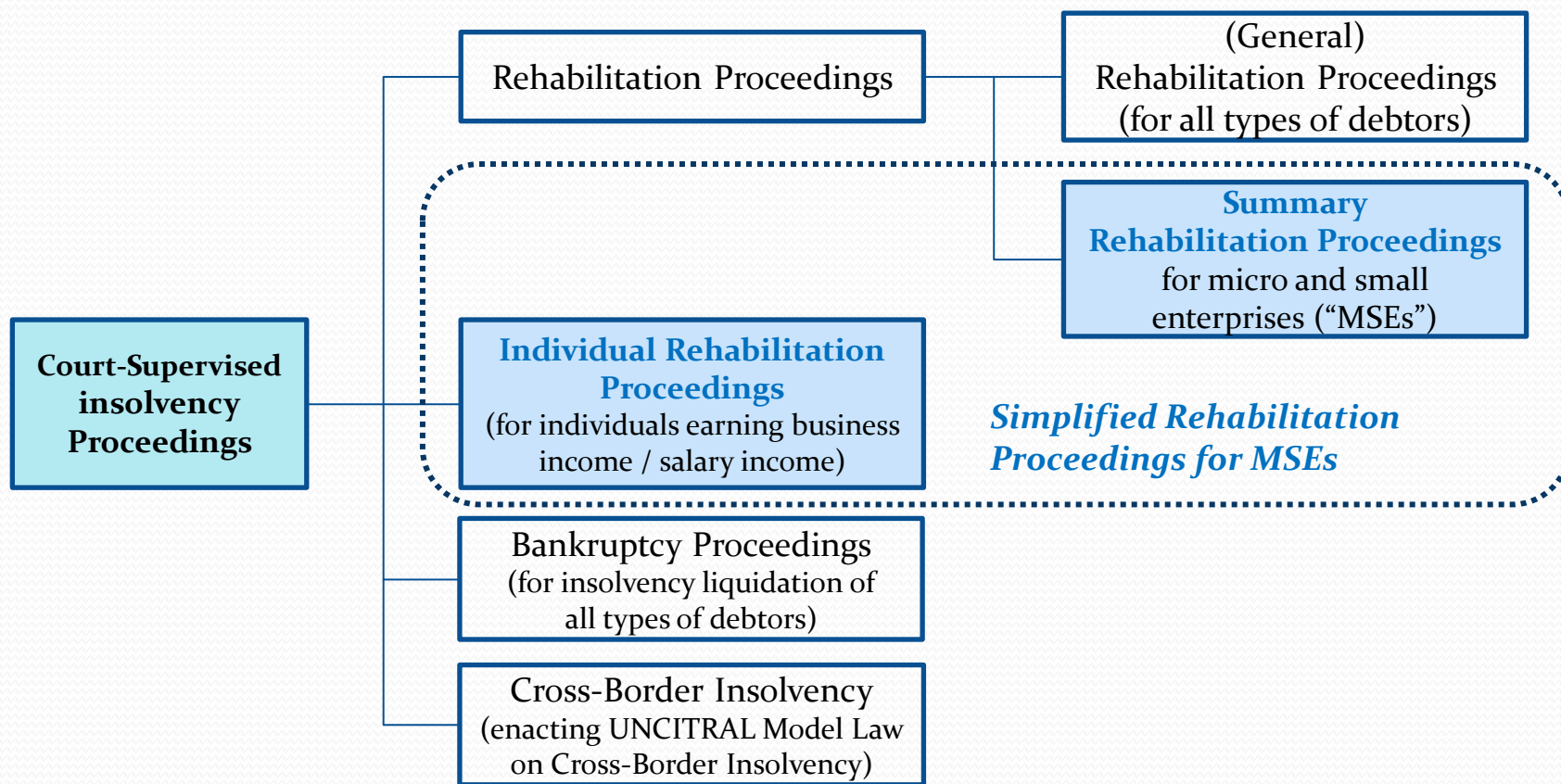
II. Individual Rehabilitation Proceedings

III. Summary Rehabilitation Proceedings for MSEs

IV. Efforts for Improvement

I. Court-Supervised Insolvency Proceedings in Korea

- **Types of Insolvency Proceedings**




I. Court-Supervised Insolvency Proceedings in Korea

• Comparison of the Basic Structures

Proceedings	Eligible Debtors		Subject Claims/ Interests	Payment Period under the Plan	Voting on the Plan	Discharge
	Types	Maximum Debt				
(General) Rehabilitation Proceedings	all types of debtors (mainly for corporations)	N/A	secured claims / unsecured claims/ (if applicable) equity interests	up to 10 years (in principle)	Yes	effective upon court's approval of the plan
Summary Rehabilitation Proceedings for MSEs	small business debtors (corporations/ individuals/other legal entities)	KRW 5 billion (US\$ 4.3 M) <i>(increased from KRW 3 billion in 2020)</i>	same as above			
Individual Rehabilitation Proceedings	individuals earning business income/salary income	<ul style="list-style-type: none"> ▪ secured debt: KRW 1.5 billion (US\$ 1.3 M)* ▪ unsecured debt: KRW 1 billion (US\$ 0.86 M)* <i>(*increased in 2021)</i>	unsecured claims	up to 3 years <i>(reduced from '5 years' in 2018)</i>	No	effective upon court's discharge order, in principle, after completion of payment under the plan
Bankruptcy Proceedings (insolvent liquidation)	all types of debtors	N/A	unsecured claims	N/A	N/A	(for individuals) effective upon court's discharge order

II. Individual Rehabilitation Proceedings

- Similar to U.S. Chapter 13 proceedings

Procedures		Statutory Timeline (* may be extended by the court with cause)
<i>Debtor's petition for commencement</i> <i>(including submission of the list of claims, among others)</i>		
<i>Appointment of the rehabilitation commissioner (court-appointed supervisor)</i>		
<i>Court's preservation/stay orders</i>		
<i>Debtor's filing of draft plan</i>		<i>within 14 days from petition*</i>
<i>Court's commencement order</i>		<i>within 1 month from petition</i>
<i>Objection to the list of claims by the creditors</i>		<i>between 2 weeks ~ 2 months from commencement*</i>
<i>Creditors' meeting for briefing on, and objections to the plan</i> <i>(voting on the plan not required)</i>		<i>between 2 weeks ~ 1 month thereafter (no later than 3 months from commencement)*</i>
<i>Court's approval of the plan</i>		
<i>Payment under the plan</i> <i>(monitored by the rehabilitation commissioner)</i>		<i>no longer than 3 years from the first payment under the plan</i> <i>(*reduced from "5 years" in 2018)</i>
<i>Discharge of pre-commencement debts</i> <i>(except for certain specified categories of debts)</i>		<i>in principle, after completion of payment under the plan</i>

III. Summary Rehabilitation Proceedings for MSEs

- **Amendment of the Debtor Rehabilitation and Bankruptcy Law in 2014 (Effective from July 1, 2015)**
 - **Pre-existing Challenges for MSEs pursuing rehabilitation**
 - limited availability of the Individual Rehabilitation Proceedings
 - burdens in using the general Rehabilitation Proceedings (heavier procedures and costs)
 - **Legislative Purposes**
 - Simplified, low-costs and expeditious procedures for MSEs
 - Increase availability: encompassing all types MSEs (individuals/corporations/other legal entities) and increasing the maximum debt amount for eligibility


III. Summary Rehabilitation Proceedings for MSEs

- **Special Features of Summary Rehabilitation Proceedings**
 - ***Eligible debtors***
 - **MSEs** = debtors earning business income and owing small amount of debt: less than KRW 5 billion (approximately US\$ 4.3 million; **increased in 2020**)
 - No record of having obtained discharge within the past 5 years
 - Only the debtor is entitled to file a petition.
 - A case filed by an ineligible debtor may be converted to a general rehabilitation proceeding.
 - ***No appointment of a Trustee***
 - ***No creditors' committee***
 - ***Simplified examination procedures: reduction of time and costs***
 - Examination of the debtor's business and property by the court-appointed Examiner and the Examiner's Report: in simplified form and substance.
 - ***Relaxed requirement for creditors' approval of the plan***

III. Summary Rehabilitation Proceedings for MSEs

- Fast-track procedures and timeline

Procedures	Timeline	
	Statutory <i>(* may be extended by the court with cause)</i>	Practice
Petition for commencement of Summary Rehabilitation Proceedings		D
Preservation/stay orders	<i>no later than 7 days from petition</i>	D ~ D+3
Commencement order (including the appointment of the examiner)	<i>within 1 month from petition</i>	~D+14
Filing of schedules (lists of claims and equity interests)	<i>2 weeks ~ 2 months from commencement*</i>	~D+28
Reporting of claims by creditors (if necessary)	<i>1 week ~ 1 month from the last day for filing of schedules*</i>	~D+35
Verification of claims	<i>1 week ~ 1 month from the last day for reporting of claims*</i>	~D+42
Submission of examination report by the Examiner		~D+56
Notification of material information to the interested parties		~D+63
Submission of draft plan	<i>no later than 4 months (or 2 months if the debtor is an individual) commencing from the last day for verification of claims*</i>	~D+70
Interested parties' meetings for deliberations and voting on the plan	<i>the plan must be approved within 1 year from commencement* (extendable by up to 6 months)</i>	~D+ 98
Court's confirmation of the plan (discharge being effective)	<i>appealable within 14 days</i>	~D+98
Commencement of payment under the plan		
Court's conclusion order (successful exit from the proceeding)		



IV. Efforts for Improvement

- **Seoul Bankruptcy Court's Practice**
 - **Parallel conduct of individual rehabilitation cases**
 - Individual rehabilitation cases for owners/managers of a corporate MSE are assigned to the responsible judge of the panel in charge of the Summary Rehabilitation Proceeding for such MSE.
 - **Simplified examination of debtor's business and property**
 - introduced a **standard form of the Examiner's Report**
 - encourages **streamlined examination methods** for summary rehabilitation proceedings.
 - **Conduct of virtual hearings**
 - In response to the COVID-19 pandemic, since March 2020, Seoul Bankruptcy Court has been conducting **virtual court hearings using video calls**, in particular, for summary rehabilitation proceedings.

IV. Efforts for Improvement

- **Evaluation of past 6 years**
 - Summary Rehabilitation Proceedings are streamlined, fast and low-cost procedures and are functioning well for reorganization of MSEs in financial distress and are being used extensively in practice.
- **Further improvement by legislation required**
 - Various improvements to Korean insolvency law have been under deliberation by a special committee organized by the Ministry of Justice of Korea.
 - Need to accommodate the recommendations in [UNCITRAL Legislative Guide on Insolvency Law for Micro and Small Enterprises](#), including, among others:
 - adoption of ['deemed approval'](#) in order to address creditor disengagement
 - legislative support for joint administration of a Summary Rehabilitation Proceeding for a corporate MSE and a [rehabilitation proceeding for owner/manager/personal guarantor](#) of such MSE