

## Late claims not recognised under Corporate Rehabilitation Proceedings

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### Speedread

On 4 June 2010, the Supreme Court affirmed that borrowers' claims against non-bank lenders will forfeit after a court has approved a rehabilitation plan pursuant to corporate rehabilitation proceedings, if a proof of claim is not filed by the specified deadline. This article briefly compares corporate rehabilitation proceedings with the same position under civil rehabilitation proceedings

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On 4 June 2010, the Supreme Court affirmed that borrowers' claims against non-bank lenders (NBLs), (for example, for restitution of interest exceeding that, to be imposed by law, (*kabara*)) will forfeit after a court has approved a rehabilitation plan pursuant to corporate rehabilitation proceedings if a proof of claim is not filed by the specified deadline. This applies even if:

The NBL knows that the claim has not been filed.

It is not practicable for the borrower to file its claim.

The NBL took no steps to promote awareness of borrowers' need to file. Further, it is neither abuse of power nor breach of the good faith principle for the reorganisation trustee to forfeit the relevant claims.

The position under corporate rehabilitation proceedings can be contrasted with the position under civil rehabilitation proceedings in which a valid claim filed after the relevant deadline will not be forfeited if the NBL had actual knowledge of the claim or potential claim (Article 181 of the Civil Reorganisation Law). This difference arises from the fact that under civil reorganisation proceedings, the NBL must provide the court with a list of valid claims against it so it would be unfair to forfeit a claim that was known but omitted from such a list. A list is not required by the laws relating to corporate rehabilitation proceedings, as these are designed to create a quick and uniform procedure for dealing with claims against the insolvent company.

Recent pro-borrower revisions to the Money Lending Business Law and the Interest Rate Restriction Law in June 2010 make it likely that many NBLs in financial distress will use corporate rehabilitation proceedings as a means of fixing the amount of repayment claims.

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