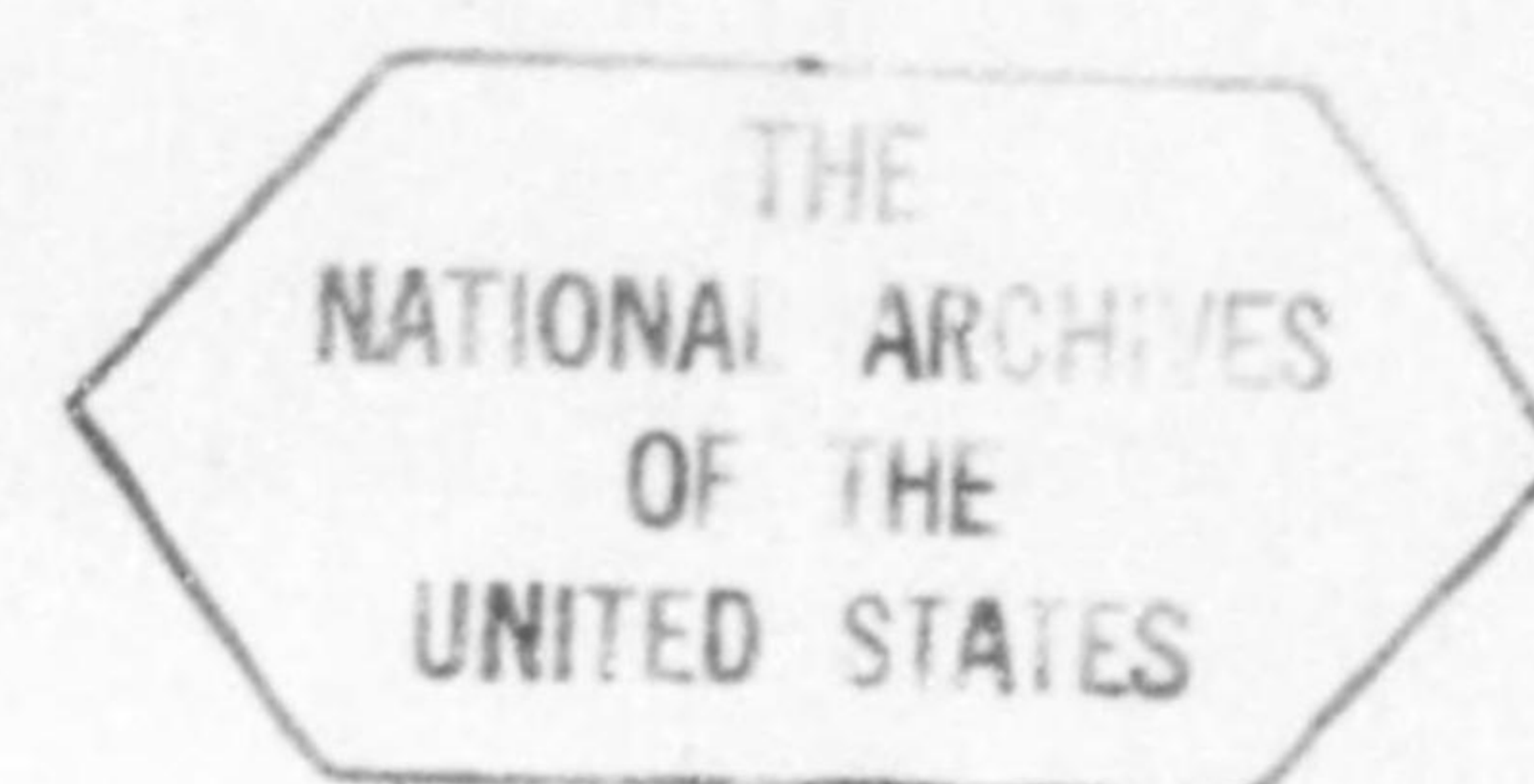


GHQ/SCAP Records(RG 331)
Description of contents



- (1) Box no. 2216
(2) Folder title/number: (5)
 No Title
(3) Date: Dec. 1951 - Feb. 1952

(4) Subject:

Classification	Type of record
324	m

(5) Item description and comment:

(6) Reproduction: Yes No

(7) Film no.

Sheet no.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET

(Do not remove from attached sheets)

File No-:

Subject: Corporation Reorganization Bill

Note
No.
4.

From: Govt Sec

To: C/S

Date: 6 February 1952

1. Attention is invited to the inclosed documents as follows:

a. Inclosure 1. "Corporation Reorganization Bill", introduced by the Cabinet in the 10th Diet Session in April 1951, passed by the House of Representatives in November and now pending in the House of Councillors.

b. Inclosure 2. "Bill for Partial Amendment to Corporation Reorganization Bill", proposed by a member of the House of Councillors on 17 December and now awaiting GHQ clearance for introduction in that House.

c. Inclosure 3. Check note #2, LS to GS, dated 26 Dec 51, subject: Bill for Partial Amendment to Corporation Reorganization Bill, which objects to certain provisions of the proposed amendment listed in paragraph 1b above.

d. Inclosure 4. Check note #3, ESS to GS, dated 31 Dec 51, subject: Draft Legislation, which also objects to several provisions of the proposed amendment.

2. Neither ESS nor LS objects to the proposed amendment to the Government bill on the ground that it contravenes any JCS directive to the SCAP or any SCAP directive to the Japanese Government. The objections in the opinion of GS are not such as to warrant denial of the Diet's deliberative function under normal legislative procedures.

3. Request authorization to clear the proposed amendment for immediate introduction in the Diet.

4 encls

JK
F. R.

CHIEF OF STAFF APPROVED INITIALS _____

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2 6/12

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet)

Subject: Draft Legislation

No.:

OPM
Maj Norris

6715

26-6076

From: Govt Sec

To: ESS

Date: 20 December 1951

1. Immediate introduction of the attached draft ^{amendment} ~~bill~~ in the Diet is proposed by House of Councillors.

2. Your prompt comment is requested.

1 Incl

Bill for Partial Amend to
Corporation Reorganization
Bill

[Signature]
F. R.

23
From: ESS

To: Govt Sec

L. N. Salwin, 26-6671

Date: 31 DEC 1951

1. Reference is C/N 1 above transmitting for comment bill for partial amendment of the Corporation Reorganization Bill.

2. Reference legislation proposes a number of amendments to the pending Corporation Reorganization Bill which was presented to the Diet, without Headquarters objection, in April 1951. The latter bill, which was carefully prepared by the Attorney General's Office, was the subject of thorough analysis and discussion involving more than 70 conferences with SCAP representatives held between July 1949 and March 1951. The final bill, prior to Diet presentation, was submitted for review by an advisory group attached to the Attorney General's Office, consisting of practicing lawyers, professors, judges and other experts on corporate matters. Preparation of the bill was undertaken by the JG with SCAP assistance and encouragement in accordance with the SCAP-approved 28 August 1948 recommendation of the Deconcentration Review Board urging "the early adoption of * * * an appropriate Reorganization Law as essential to the success of the deconcentration program and to the over-all economic program in Japan."

3. Reference legislation proposes numerous amendments to the bill in question. Particular attention is directed to only three amendments; namely, those dealing with Articles 213, 37, and 94 because they are considered of a major character in weakening the bill to the point where its practicable administration would be seriously imperiled. They would require unanimous consent of all secured creditors, instead of a three-fourths majority vote of such creditors, before a reorganization plan could scale down or otherwise

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET

(Do not remove from attached sheets) L. N. Salwin, 26-6671

File No.:

Subject: Draft Legislation

Note
No. 23
contd

From: ESS

To: GS

Date: 31 DEC 1951

alter the amount of their claims; the court's power to stay pending court proceedings (especially by secured creditors), wherever the court deems it necessary to do so upon receipt of an application to institute reorganization proceedings, would be restricted to cases where creditor's interest in the pending litigation will not suffer "unreasonable losses" by the stay action; and the provision limiting the appointment of trustees to "disinterested persons" would be eliminated. Such changes which, in practical effect, condition reorganization proceedings on the unanimous consent of secured creditors, thwart the central purpose of a reorganization act vesting in courts general authority to consummate an equitable adjustment of all creditors' rights upon a two-thirds or three-quarters majority approval of each class of creditors involved. The crippling amendments place a premium on the activities of small minority dissidents who would have it in their power to defeat a reorganization plan approved by the overwhelming majority of the stockholders, creditors, debenture holders, and even the court itself.

4. The provisions of the pending bill, which are designed to afford corporate reorganization proceedings a reasonable prospect of practicable operation, appear sound and indispensable to the objectives intended by such legislation. They are similar to the reorganization provisions found in Title X of the U.S. Bankruptcy Act. Japan has never had a modern corporate reorganization law, and this fact was considered incongruous not only with economic democratization but with the objective of facilitating investment on the part of foreign entrepreneurs interested in doing business in Japan. (Under the primitive bankruptcy and insolvency laws of Japan, which have been rarely used for thirty years, voluntary proceedings or discharge of the debtor are not recognized. Only action by and with the unanimous consent of creditors is contemplated.) The proposed amendments are incompatible with the primary purpose of developing a modern workable type of reorganization statute as recommended by the DRB.

5. Objection is also made to the proposed revision of Articles 67 and 122, which are of a somewhat different character from the changes discussed above. They would not only extend the period of postponement of accrued taxes pending reorganization proceedings, but permit court approval of a reorganization plan deferring the collection of taxes in arrears for two years, without the consent of the tax authorities. The proposal would interfere with and endanger effective tax collection and allow reorganizations at the expense of proper tax administration. In the United States the federal courts do not have power to direct the execution of a plan which postpones tax collections without the consent of tax authorities. As an alternative to the objectionable proposal, it is suggested that a feasible method would be to provide, as in Title X of the U.S. Bankruptcy Act, for notification to the tax authorities ^{that} the plan

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET

(Do not remove from attached sheets) L. N. Salwin

File No:

Subject: Draft Legislation

Note
No. *23*
contd

From: ESS

To: GS

Date: 31 DEC 1951

postpones or otherwise affects taxes in arrears, and that it will be approved unless such authorities object within a stipulated period of time; for example, 60 days from date of notification.

6. In view of the foregoing, there is no objection to reference bill except for the proposed revision of Articles 37, 67, 94, 122 and 213, discussed above.

1 Incl

n/c

W.F.M.
W.F.M.

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

C H E C K S H E E T

(Do not remove from attached sheet)

Subject: Draft Legislation

No.:

2197
Maj Norris *6716*
26-6076

From: Govt Sec

To: LS/L&J

Date: 20 December 1951

1. Immediate introduction of the attached draft bill in the Diet is proposed by House of Councillors.

2. Your prompt comment is requested.

1 Incl

Bill for Partial Amend to
Corporation Reorganization Bill

F. R.

From: LS

To: GS

A. C. Oppler 57-8417
26 December 1951

2

1. Subject bill proposes to amend the Corporation Reorganization Bill, which was the result of conferences over a period of approximately one year and a half between this Headquarters (ESS and LS) and the Japanese Attorney General's Office. Legal experts assisted in the preparation of this legislation, and full agreement was finally reached with the Japanese government. In substance the bill provides for reorganization of corporations in lieu of composition or bankruptcy proceedings under specified circumstances; a feature hitherto unknown to Japanese bankruptcy law. Since the idea of adopting such innovation originated in a Memorandum of the Deconcentration Review Board of 28 August 1948 which was approved by SCAP, it may be said that the Reorganization Bill is designed to implement Occupation policies.

2. The numerous amendments proposed by subject bill are, generally speaking, aimed at strengthening the position of the creditors, particularly the security creditors. Changes are of a technical nature and may simplify or otherwise improve the procedure.

3. Legal Section feels, however, that the following provisions are in conflict with the objectives of this thoroughly prepared legislation and apt to defeat its very purpose:

a. According to Article 37, para 1 of the original bill the court may, when the application for reorganization has been made, order the suspension of any other procedure, such as bankruptcy, composition, or individual compulsory

DC / S
APPROVAL

DC / S
APPROVAL

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Q C/N #1

Q C/N #2

10

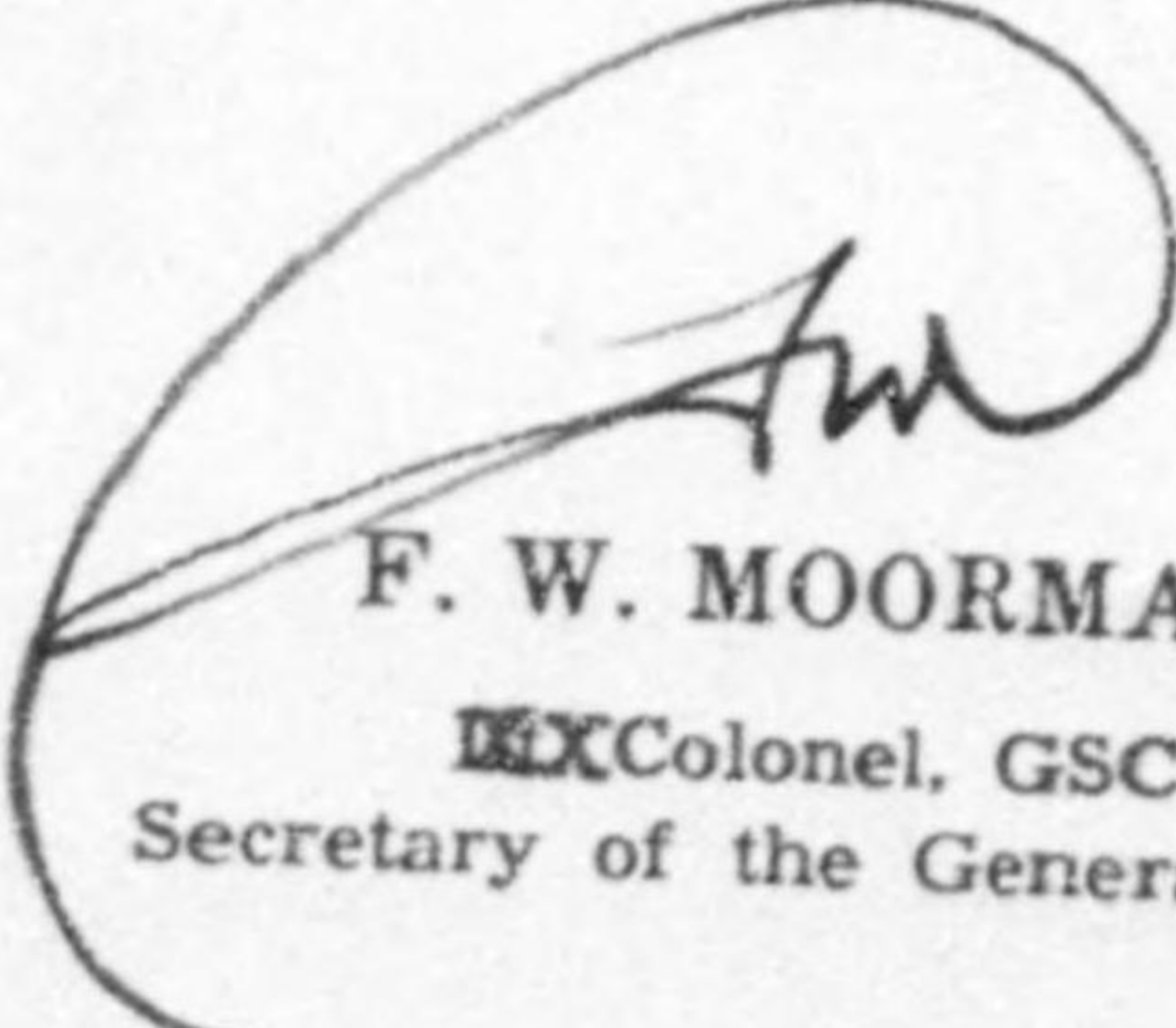
GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
AND
FAR EAST COMMAND
Office of the Chief of Staff

Date: 10 Feb 1952

MEMORANDUM TO: Govt. Section
SUBJ: Corporation Reorganization Bill

1. With reference to the attached action, the Chief of Staff has approved the proposed Bill for introduction to the Diet at the discretion of the Japanese Government.
2. The Chief of Staff desires that the opinions of Legal Section and ESS, indicated by C/N's 2 and 3, be extended to the appropriate JG officials in the form of guidance reference the pending amendment legislation.

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F. W. MOORMAN
Colonel, GSC
Secretary of the General Staff
68

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET

(Do not remove from attached sheets)

File No.:

Subject: Draft Legislation

Note
No.

From: LS

To: GS

Date: 26 Dec 1951

2
(Contd)

execution. Subject bill proposes to restrict this discretion of the court by the clause:

"However, in respect to compulsory execution, provisional attachment, provisional disposition or official auction, this shall not apply, if it is liable to cause any unreasonable damage to creditors or applicants for auction."

It is obvious that such modification would have a paralyzing or at least delaying effect on the functions of the court since it gives a single creditor the right to continue compulsory execution in spite of the imminent reorganization proceedings. } //

b. According to Article 54 of the original bill the trustee needs for certain important acts, such as disposal of property of the corporation, borrowing money, and abandonment of a right, the permission of the court. Subject bill proposes to delete this general requirement and leave it to the discretion of the court to provide individually that the trustee shall obtain such permission. This change would, for all practical purposes, amount to an abolition of the original requirement, as the court will usually be reluctant to show lack of confidence in the trustee by imposing specific conditions on his activities. The strengthening of the power of the trustee regarding the functions listed in Article 54 and the weakening of the supervisory position of the court appear to be highly undesirable in the interest of an effective reorganization procedure. }

c. Article 94, para 1, of the original bill provides that the trustee shall be appointed from among disinterested persons who are fit to perform the duties. However, in cases where two or more trustees are to be appointed, one of them may be appointed from among interested persons. Subject bill wants to delete the exclusion of interested persons completely so that a creditor could be the only trustee. Needless to emphasize that such arrangement would be very prejudicial to an impartial realization of the reorganization procedure. }

d. The original bill provides in Article 213, with regard to groups of secured reorganization creditors, for a majority of three-fourths for the adoption of a reorganization plan. Subject bill proposes to require unanimity of all security creditors who have the right to vote for the adoption of any reorganization plan "which has the provisions affecting the rights for security in the reorganization by the reduction or exemption of such rights." Such

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

CHECK SHEET

(Do not remove from attached sheets)

File No.:

Subject: Draft Legislation

Note
No.
2
(contd)

From: LS

To: GS

Date: 26 Dec 1951

change would open the door to all kinds of pressure by even a single security creditor and would in many instances have a harmful and frustrating effect on the interests of the overwhelming majority of the other security creditors. It is felt that a change of this nature would essentially weaken the main purpose behind the reorganization legislation. }

4. Conclusions. For the reasons pointed out in the preceding paragraph, Legal Section suggests that the Japanese government be advised to reconsider the amendments proposed in Article 37, para 1; Article 54; Article 94, para 1; and Article 213 of subject bill. There are no objections to the remaining part of the revision.

Incl
w/d

acc
A. C. C.