

Act on Contract for Establishment of Security Interests by Use of Provisional Registration

(Act No. 78 of June 20, 1978)

(Purpose)

Article 1 This Act prescribes special provisions concerning the effect, etc. of option contract of substitute performance, contract for substitute performance subject to a condition precedent, or any other contracts concluded for the purpose of transferring, etc. the ownership or any other rights belonging to the debtor or a third party to the creditor in order to secure monetary debt upon default, under which the rights may be registered provisionally (hereinafter referred to as "contract for establishment of security interests by the use of provisional registration").

(Limitation on Effect of Transfer of Ownership)

Article 2 (1) If the purpose of a contract for establishment of security interests by the use of provisional registration is the transfer of the ownership of a land or building (hereinafter referred to as the "land, etc."), it will not be effective unless the creditor notifies the debtor or a third party, who is the other party to the contract (hereinafter referred to as the "debtor, etc.") the estimated settlement amount prescribed in the following Article (if no settlement amount is claimed, to that effect) on or after the day on which intention to complete the option contract is manifested, condition precedent is satisfied, or any other day on which the ownership is to be transferred in accordance with the contract, and two months elapse from the notice reached the debtor, etc.

(2) The notice under the preceding paragraph must clarify the estimated value of the land, etc. at the time when the period prescribed in the same paragraph (hereinafter referred to as the "settlement period") elapses, and the amount of the claim at that time and the amount of the expense to be incurred by the debtor, etc. but borne by the creditor (if there are two or more the land, etc., the claim to be extinguished by the transfer of the ownership of each of the land, etc., and the expense thereof) (hereinafter referred to as the "amount of the claim, etc.").

(Settlement Amount)

Article 3 (1) When the value of the land, etc. at the time when the settlement period elapses exceeds the amount of the claims, etc. at that time, the creditor must pay the debtor, etc. money equivalent to the excess amount (hereinafter referred to as the "settlement amount").

- (2) The provisions of Article 533 of Civil Code (Act No. 89 of 1896) apply mutatis mutandis to the performance of the obligation to pay the settlement amount, and of the obligations to register the transfer of the ownership and deliver the land, etc.
- (3) Any special provisions that run counter to the preceding two paragraphs and disadvantageous to the debtor, etc. are void; provided, however, that this does not apply to special provisions entered into after the settlement period elapses.

(Extension of Security Interest to Proceeds of Collateral)

Article 4 (1) In the cases prescribed in Article 2, paragraph (1), when provisional registration with regard to transfer of ownership of the land, etc. for the creditor is made, a person who holds a statutory lien, pledge, or mortgage registered (including provisional registration) after that provisional registration (hereinafter referred to as the "provisional registration by the use of which security interests are established") may have its security interests extend to the settlement amount to be received by the debtor, etc. (limited to the estimated amount of the settlement amount pertaining to the notice under the provision of the same paragraph) in accordance with the order of priority. In this case, the settlement amount must be attached prior to the payment.

- (2) The provision of the preceding paragraph applies mutatis mutandis to the holder of the provisional registration by the use of which security interests are established registered after the provisional registration by the use of which security interests are established (excluding provisional registration by the use of which security interests are established under Article 14; hereinafter referred to as the "subordinated provisional registration by the use of which security interests are established").
- (3) The provisions of Article 13, paragraph (2) and paragraph (3) apply mutatis mutandis to cases where the holder of the subordinated provisional registration by the use of which security interests are established exercises the rights pursuant to the provisions of the preceding paragraph.

(Notice to Right Holders of Extension of a Security Interest to the Proceeds of Collateral)

Article 5 (1) When, at the time of arrival of the notice to the debtor, etc. under the provision of Article 2, paragraph (1), there is a person who holds a statutory lien, pledge or mortgage registered (including provisional registration) after the provisional registration by the use of which security interests are established, or a holder of the provisional registration by the use of which security interests are established, the creditor must without delay notify the persons to the effect that the notice under the provision of the same paragraph is given, the day on which the notice is delivered to the debtor, etc.,

and the matters notified to the debtor, etc. pursuant to the provisions of the same Article.

- (2) If there is a third party with an interest in the registration of definitive registration based on the provisional registration by the use of which security interests are established (excluding the person who is to receive the notice under the provision of the preceding paragraph) at the time of arrival of the notice to the debtor, etc. under the provision of Article 2, paragraph (1), the creditor must notify the third party without delay to the effect that the notice under the provision of the same Article, paragraph (1) is given, and the amount of the claim, etc. notified to the debtor, etc. pursuant to the provision of the same Article.
- (3) It is sufficient to send the notice under the provisions of the preceding two paragraphs to the registered domicile or office of the person to receive the notice.

(Prohibition on Disposition regarding Payment of the Settlement Amount)

Article 6 (1) Any claims for payment of the settlement amount may not be transferred or otherwise disposed of until the settlement period elapses.

- (2) When an obligation to pay the settlement amount is performed before the settlement period elapses, the payment may not be duly asserted against a person who holds statutory lien, pledge, or mortgage under Article 4, paragraph (1), or the holder of a subordinated provisional registration by the use of which security interests are established. The same applies when the obligation to pay the settlement amount is performed without the notice under the provision of the preceding Article, paragraph (1).

(Deposit of the Settlement Amount with an Official Depository)

Article 7 (1) When the execution of a seizure or provisional seizure of the claim for payment of the settlement amount has been carried out, the creditor may, after the settlement period elapses, be relieved from the obligation by making a deposit of the settlement amount to an official depository at the place of performance of the obligation up to the extent of the amount deposited.

- (2) When the deposit with an official depository has been made pursuant to the provision of the preceding paragraph, the execution of a seizure or provisional seizure prescribed in the same paragraph regarding the right of the debtor, etc. to claim a refund of the deposit money is deemed to have been carried out.
- (3) Except in the case prescribed in the provision of Article 15, paragraph (1), the creditor may not recover the deposit money.
- (4) The creditor must give notice of deposit to attaching creditors or provisional attaching creditors in addition to the debtor, etc. without delay.

(Binding Effect of the Notice)

Article 8 (1) The creditor may not assert that the settlement amount does not reach the estimated amount of the settlement amount notified pursuant to the provision of Article 2, paragraph (1).

(2) A person who holds statutory lien, pledge, or mortgage under Article 4, paragraph (1), or a holder of the subordinated provisional registration by the use of which security interests are established may not assert that the settlement amount exceeds the estimated amount referred to in the preceding paragraph.

(Partial Extinction of Claims)

Article 9 If the value of the land, etc. at the time the settlement period elapses does not reach the amount of the claims, etc. at that time, the claim is extinguished up to the amount of that value unless opposite special provisions exist.

(Statutory Land Leasehold Right)

Article 10 When the land and any building built on it belong to the same owner and the provisional registration by the use of which security interests are established is registered with regard to the land, and definitive registration based on the provisional registration is made, the land lease for the purpose of the building ownership is deemed to have been made. In this case, the court prescribes the duration and the rent upon the demand by the party.

(Redemption Right)

Article 11 Until the obligations of payment of the settlement amount are performed, the debtor, etc. may demand the redemption of the ownership of the land, etc. by providing to the creditor money equivalent to the amount of the claims, etc. (meaning the amount of the claims, etc. to be paid by the debtor, etc. if the claim has not been extinguished); provided, however, that this does not apply when five years have elapsed after the settlement period elapsed, or a third party acquires the ownership.

(Demand for the Auction)

Article 12 During the settlement period, a person who holds a statutory lien, pledge or mortgage prescribed in Article 4, paragraph (1) may make a request for auction of the land, etc. even when the claims secured by the security interests have not yet become due.

(Right to Claim Preferential Payment)

Article 13 (1) In the compulsory auction, the auction for exercise of a security

interest, or the procedure for exercise of an enterprise mortgage against the land, etc. over which the provisional registration by the use of which security interests are established is registered (hereinafter referred to as the "compulsory auction, etc."), the holder of the provisional registration by the use of which security interests are established may receive payment of the claim in preference over other creditors. With regard to the order in this case, the right with regard to provisional registration by the use of which security interests are established is deemed to be mortgage, and establishment of the mortgage is deemed to have been registered at the time when the provisional registration by the use of which security interests are established is made.

- (2) In the case referred to in the preceding paragraph, if the holder of the provisional registration by the use of which security interests are established has the right to demand periodic payments including interest, the holder may exercise the right under the provision of that paragraph only with respect to payments that have fallen due in the most recent two years.
- (3) In cases where the holder of the provisional registration by the use of which security interests are established has the right to demand the compensation for damages resulting from defaults in obligations, the provision of the preceding paragraph applies to the damages of the most recent two years; provided, however, that the aggregate of the period pertaining to the damages and the periodic payments including interest may not exceed two years.

(Revolving Provisional Registration by the use of which Security Interests are Established)

Article 14 Provisional registration by the use of which security interests are established based on contract for establishment of security interests by the use of provisional registration in which the monetary debt to be extinguished is not specified at the time of conclusion thereof has no effect in the compulsory auction, etc.

(Provisional Registration by the use of which Security Interests are Established in cases of Compulsory Auction, etc.)

Article 15 (1) When an order to commence compulsory auction, etc. with respect to the land, etc. over which the provisional registration by the use of which security interests are established is registered is made and the order is based on the petition filed prior to the performance of obligations to pay the settlement amount (if there is no settlement amount, prior to the elapse of the settlement period), the holder of the provisional registration by the use of which security interests are established may not claim the definitive registration based on the provisional registration.

- (2) When the order to commence the compulsory auction, etc. referred to in the

preceding paragraph is made and the order is based on the petition filed subsequent to the performance of obligation to pay the settlement amount (if there is no settlement amount, subsequent to the elapse of the settlement period), the holder of the provisional registration by the use of which security interests are established may duly assert against the attaching creditor that the ownership of the land, etc. is obtained.

Article 16 (1) When the compulsory auction, etc. for the land, etc. over which the provisional registration by the use of which security interests are established is registered by the use of provisional registration is carried out, the right with regard to the provisional registration by the use of which security interests are established is extinguished through the sale of the land, etc. except in the case prescribed in the preceding Article, paragraph (2).

(2) Provisions of Article 59, paragraph (2) and (3) of Civil Execution Act (Act No. 4 of 1979) apply mutatis mutandis to acquisition of the right and execution of provisional disposition pertaining to the land, etc. which may not be duly asserted against the person who holds the right pertaining to the provisional registration by the use of which security interests are established to be extinguished pursuant to the provisions of the preceding paragraph, and the provision of paragraph (5) of the same Article applies mutatis mutandis to notification of agreement, given by a person who has an interest, that differs from the provision of the preceding paragraph or the provision of paragraph (2) of the same Article as applied mutatis mutandis pursuant to this paragraph.

(Special Provisions on Compulsory Auction, etc.)

Article 17 (1) When having set the time limit for a demand for liquidating distribution in compulsory auction or auction for exercise of a security interest against the land, etc. over which provisional registration pertaining to the transfer of ownership has been made, the court clerk must give a notice to the holder of the provisional registration that the holder is to notify the execution court by the time limit for a demand for liquidating distribution: if the provisional registration is provisional registration by the use of which security interests are established, to that effect and existence or nonexistence, the basis, and amounts of the claim (including interest and any other incidental claims); if it is not provisional registration by the use of which security interests are established, to that effect.

(2) Creditors who hold the right with regard to the provisional registration by the use of which security interests are established which is registered prior to the registration of the seizure, and to be extinguished through the sale may be distributed the proceeds of the sale or be delivered payment monies only if the notice of claim under the provision of the preceding paragraph are made.

- (3) When an order to commence the exercise of an enterprise mortgage is made against the land, etc. over which provisional registration pertaining to the transfer of ownership has been made, the trustee must give a notice to the holder of the provisional registration to the effect that the holder is to notify the matters prescribed in paragraph (1) within the period prescribed in Article 22, paragraph (1), item (v) of the Floating Charge Act (Act No. 106 of 1958).
- (4) Provisions of Article 50 of the Civil Execution Act apply mutatis mutandis to holders of the provisional registration who have received a notice under the provisions of paragraph (1) or the preceding paragraph, provisions of Article 87, paragraph (2) of the same Act applies mutatis mutandis to cases where provisional registration by the use of which security interests are established for an creditor prescribed in paragraph (2) is made after the registration of provisional seizure; and the provision of paragraph (3) of the same Article applies mutatis mutandis to cases where provisional registration by the use of which security interests are established for a creditor prescribed in paragraph (2) is made after the registration of seizure pertaining to a stay of execution.

(Special Provisions on Real Property Registration)

Article 18 When the holder of the provisional registration by the use of which security interests are established files an application for definitive registration prescribed in Article 109, paragraph (1) of the Real Property Registration Act (Act No.123 of 2004) in one month after the day on which the settlement amount is deposited, notwithstanding the provision of the same paragraph, the fact that a person who holds statutory lien, pledge, or mortgage or a holder of a subordinated provisional registration by the use of which security interests are established has effected an attachment prescribed in Article 4, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (2) of the same Article), and that the settlement amounts have been deposited may substitute for the consent of those persons; provided, however, that this does not apply if the petition for an auction for exercise of a security interest pertaining to the land, etc. to which the application of the definitive registration pertains is registered for those persons.

(Provisional Registration by the use of which Security Interests are Established in Bankruptcy Proceedings)

Article 19 (1) The provisions in the Bankruptcy Act (Act No. 75 of 2004) regarding a person who holds a mortgage against property that belongs to the bankruptcy estate apply to the holder of the provisional registration by the use of which security interests are established (excluding provisional registration by the use of which security interests are established under Article 14. The same applies to paragraph (3) and (4).) with regard to the land, etc. which

belongs to the bankruptcy estate.

- (2) The provisions of Article 108, paragraph (2) of the Bankruptcy Act regarding a person who holds mortgage apply mutatis mutandis to a holder of the provisional registration by the use of which security interests are established with regard to the land, etc. which does not belong to the bankruptcy estate.
- (3) The provisions of Civil Rehabilitation Act (Act No. 225 of 1999) regarding a person who holds a mortgage apply to a holder of the provisional registration by the use of which security interests are established with regard to the land, etc. of a rehabilitation debtor.
- (4) With regard to the application of Corporate Reorganization Act (Act No. 154 of 2002) and Act on Special Measures for the Reorganization Proceedings of Financial Institutions (Act No. 95 of 1996), the rights with regard to provisional registration by the use of which security interests are established are deemed to be mortgage.
- (5) Any provisional registration by the use of which security interests are established under Article 14 has no effect in bankruptcy proceedings, rehabilitation proceedings, and reorganization proceedings.

(Application Mutatis Mutandis to Contract for Acquisition of Rights Other Than Ownership for Land, etc.)

Article 20 The provisions of Article 2 through the preceding Article apply mutatis mutandis to contract for establishment of security interests by the use of provisional registration for acquisition of rights other than ownership for the land, etc. (excluding statutory lien, pledge, mortgage, and enterprise mortgage).

Supplementary Provisions [Extract]

(Effective Date)

Article 1 This Act comes into effect as from the day prescribed by Cabinet Order within a period not exceeding one year from the day of promulgation; provided, however, that the provision of Article 3 of the Supplementary Provisions comes into effect as from the day of promulgation.

(Transitional Measures)

Article 2 The provisions of this Act apply to contract for establishment of security interests by the use of provisional registration concluded before the enforcement of this Act in which an ownership or any rights other than ownership of the land, etc. is to be acquired on the day after the enforcement of this Act.

Article 3 With regard to any provisional registration by the use of which security

interests are established under Article 14 in existence at the time of promulgation of this Act, when obligations to be extinguished based on the contract for establishment of security interests by the use of provisional registration are specified by the day specified by Cabinet Order, it is deemed that the obligations are prescribed to be extinguished at the time of conclusion of the contract.

Supplementary Provisions [Act No. 5 of March 30, 1979 Extract] [Extract]

(Effective Date)

- (1) This Act comes into effect as from the day of enforcement of the Civil Execution Act (Act No. 4 of 1979) (October 1, 1980).

(Transitional Measures)

- (2) With regard to the cases of civil execution, execution of enterprise mortgage and bankruptcy filed before the enforcement of this Act, the provisions then in effect remains applicable.
- (3) Notwithstanding the provisions of the preceding paragraph, the amount of fees received by and expenses paid or reimbursed to court execution officers in connection with the cases referred to in the preceding paragraph is as prescribed by the Rules of the Supreme Court.

Supplementary Provisions [Act No.95 of June 21, 1996 Extract] [Extract]

(Effective Date)

Article 1 This Act comes into effect as from April 1, 1997.

Supplementary Provisions [Act No.107 of June 15, 1998 Extract] [Extract]

(Effective Date)

Article 1 This Act comes into effect as of December 1, 1998.

**Supplementary Provisions [Act No.225 of December 22, 1999 Extract]
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as from the day prescribed by Cabinet Order within a period not exceeding six months from the day of promulgation.

**Supplementary Provisions [Act No.155 of December 13, 2002 Extract]
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as from the day of enforcement of the Corporate Reorganization Act (Act No. 154 of 2002).

Supplementary Provisions [Act No. 76 of June 2, 2004 Extract] [Extract]

(Effective Date)

Article 1 This Act comes into effect as from the date of enforcement of the Bankruptcy Act (Act No. 75 of 2004; referred to as the "New Bankruptcy Act" in the next Article, paragraph (8) and the Supplemental Provisions, Article 3, paragraph (8); Article 5, paragraph (8), paragraph (16), and paragraph (21); Article 8, paragraph (3); and Article 13).

(Delegation to Cabinet Orders)

Article 14 Beyond what is prescribed in Article 2 through the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act are prescribed by Cabinet Order.

**Supplementary Provisions [Act No. 124 of June 18, 2004 Extract]
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as from the date of enforcement of the New Real Estate Registration Act.

**Supplementary Provisions [Act No. 152 of December 3, 2004 Extract]
[Extract]**

(Effective Date)

Article 1 This Act comes into effect as from the day prescribed by Cabinet Order within a period not exceeding one year from the day of promulgation.