

# Civil Execution Act

(Act No. 4 of March 30, 1979)

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## Chapter I General Provisions

(Purpose)

Article 1 Compulsory execution, an auction for exercise of a security interest, an auction for the purpose of a realization under the provisions of the Civil Code (Act No. 89 of 1896), the Commercial Code (Act No. 48 of 1899) or any other Acts, and disclosure of property by obligors (hereinafter collectively referred to as "civil execution") shall be governed by the provisions of this Act in addition to the provisions of other laws and regulations.

(Executive Agency)

Article 2 Civil execution shall be carried out by a court or a court execution officer upon petition.

(Execution Court)

Article 3 For civil execution carried out by a court, the execution court shall be the court that is to make a disposition of execution pursuant to the provisions of this Act, and for a disposition of execution made by a court execution officer, the execution court shall be the district court to which the court execution officer belongs.

(Optional Oral Argument)

Article 4 A judicial decision by an execution court may be made without going through oral argument.

(Interrogation)

Article 5 An execution court may, if it finds it to be necessary when making a disposition of execution, interrogate persons having an interest or other witnesses.

(Ensuring the Performance of Duties by a Court Execution Officer)

Article 6 (1) A court execution officer may, if he/she faces resistance when performing his/her duties, use force or request police assistance in order to eliminate such resistance; provided, however, that this shall not apply to performance of duties based on the provisions of Article 64-2 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 188).

(2) A person other than a court execution officer who performs duties concerning civil execution pursuant to an order by the execution court may, if he/she faces resistance when performing his/her duties, request assistance from a court execution officer.

(Observer)

Article 7 When a court execution officer or a person who performs duties concerning civil execution pursuant to an order by the execution court (hereinafter referred to as a "court execution officer, etc."), in performing his/her duties by entering a person's residence, is unable to meet the residence owner or the residence owner's agent, or a relative, employee or any other worker living together who has reasonable discretion, he/she shall have the attendance of an official of the municipality, a police official or other person who is found to be reasonable as a witness. The same shall apply when a court

execution officer uses force or receives police assistance pursuant to the provisions of paragraph (1) of the preceding Article.

(Execution on a Holiday or at Night)

Article 8 (1) In order for a court execution officer, etc. to perform his/her duties by entering a person's residence on a Sunday or on any other general holiday or any time from seven o' clock in the evening to seven o' clock the following morning, he/she shall obtain the permission of the execution court.

(2) When executing his/her duties, a court execution officer, etc. shall present a document proving that he/she has obtained permission pursuant to the provisions of the preceding paragraph.

(Carrying an Identification Card, etc.)

Article 9 In cases of executing his/her duties, a court execution officer, etc. shall carry a document proving his/her status or qualifications and present it when so requested by any person having an interest.

(Appeal against a Disposition of Execution)

Article 10 (1) An appeal against a disposition of execution may be filed against a judicial decision relating to a civil execution procedure, only in cases where there are special provisions allowing such filings.

(2) An appeal against a disposition of execution shall be filed by submitting a petition for appeal to the court of prior instance within an unextendable period of one week from the day on which a notice of a judicial decision has been received.

(3) When the reasons for an appeal against a disposition of execution are not stated in a petition for appeal, the appellant shall submit a written statement of reasons for the appeal against a disposition of execution to the court of original instance within one week from the day on which the petition for appeal has been submitted.

(4) The reasons for an appeal against a disposition of execution shall be stated pursuant to the provisions of the Rules of the Supreme Court.

(5) When any of the following items applies, the court of original instance shall dismiss an appeal against a disposition of execution:

(i) When the appellant has failed to submit a written statement of reasons under the provisions of paragraph (3)

(ii) When the statement of reasons for the appeal against a disposition of execution is apparently in violation of the provisions of the preceding paragraph

(iii) When it is apparent that the appeal against a disposition of execution is unlawful and such defect cannot be corrected

- (iv) When the appeal against a disposition of execution has been filed for the purpose of unreasonably delaying a civil execution procedure
- (6) A court of appeal may, until the judicial decision on an appeal against a disposition of execution becomes effective, order a stay of execution of the judicial decision of prior instance or a stay of all or part of a civil execution procedure while requiring or not requiring provision of security or order continuation of such execution or procedure while requiring provision of security. While the record of the case still exists at the court of prior instance, the court of prior instance may order such dispositions.
- (7) An appellate court shall investigate only the reasons stated in the petition for appeal or the written statement of reasons for the appeal against a disposition of execution; provided however, that it may, by its own authority, investigate any violation of laws and regulations or the presence or absence of any error of fact that would affect the judicial decision of prior instance.
- (8) An appeal against a disposition of execution may be filed against an order under the provisions of paragraph (5).
- (9) No appeal may be entered against an order under the provisions of paragraph (6).
- (10) The provisions of Article 349 of the Code of Civil Procedure (Act No. 109 of 1996) shall apply mutatis mutandis to cases where a judicial decision against which an appeal against a disposition of execution may be filed has become final and binding.

(Objection to a Disposition of Execution)

- Article 11 (1) Against any disposition of execution by an execution court against which an appeal against a disposition of execution may not be filed, an objection to a disposition of execution may be filed with the execution court. The same shall apply to any disposition of execution by a court execution officer and any delay or negligence thereof.
- (2) The provisions of the first sentence of paragraph (6) of the preceding Article and paragraph (9) of said Article shall apply mutatis mutandis to cases where there is a filing under the provisions of the preceding paragraph.

(Appeal against a Disposition of Execution Filed against a Rescission Order, etc.)

- Article 12 (1) An appeal against a disposition of execution may be filed against an order to rescind a civil execution procedure. The same shall apply to a judicial decision to dismiss an objection to a disposition of execution filed against a court execution officer's disposition to rescind a civil execution procedure or to an order to the effect that a court execution officer should rescind a civil execution procedure.

(2) A judicial decision against which an appeal against a disposition of execution may be filed pursuant to the provisions of the preceding paragraph shall not be effective until it becomes final and binding.

(Agent)

Article 13 (1) A person other than one who is able to serve as counsel pursuant to the provisions of Article 54 of the Code of Civil Procedure may, with regard to procedures with an execution court excluding those relating to an action or an appeal against a disposition of execution, serve as an agent by obtaining the permission of the execution court.

(2) An execution court may rescind the permission set forth in the preceding paragraph at any time.

(Prepayment of Expenses, etc.)

Article 14 (1) When filing a petition for civil execution with an execution court, the petitioner shall prepay the amount specified by a court clerk as the expenses necessary for the civil execution procedure. The same shall apply to cases where there is a shortfall in the prepaid expenses and the court clerk has ordered prepayment of such shortfall by specifying a reasonable period of time.

(2) Against a disposition by a court clerk under the provisions of the preceding paragraph, an objection may be filed with the execution court within an unextendable period of one week from the day on which a notice thereof has been received.

(3) A disposition by a court clerk under the provisions of paragraph (1) shall not be effective until it becomes final and binding.

(4) When a petitioner fails to prepay expenses, an execution court may dismiss the petition for civil execution or rescind the civil execution procedure.

(5) An appeal against a disposition of execution may be filed against an order to dismiss a petition pursuant to the provisions of the preceding paragraph.

(Provision of Security)

Article 15 (1) Security shall be provided pursuant to the provisions of this Act by making a statutory deposit of money or securities (including book-entry transfer company bonds, etc. prescribed in Article 129 (1) of the Act on Book-Entry Transfer of Company Bonds, etc. [Act No. 75 of 2001]) that are found to be reasonable by the court that has ordered the provision of security (hereinafter referred to as the "court issuing the order" in this paragraph) to an official depository within the jurisdictional district of the district court having jurisdiction over the location of the court issuing the order, or by any other method specified by the Rules of the Supreme Court; provided, however, that if the parties concerned have made a special contract, such contract shall

prevail.

- (2) The provisions of Article 77, Article 79 and Article 80 of the Code of Civil Procedure shall apply *mutatis mutandis* to the security set forth in the preceding paragraph.

(Special Provisions on Services)

Article 16 (1) A person who has filed a petition, made an offer or given notification to an execution court or has received a service of a document from an execution court with regard to a civil execution procedure shall notify the execution court of the place where the service is to be received (limited to a place in Japan). In this case, such person may also notify the execution court of the designated service recipient.

- (2) The provisions of Article 104 (2) and (3) and Article 107 of the Code of Civil Procedure shall apply *mutatis mutandis* pursuant to the cases set forth in the first sentence of the preceding paragraph.

- (3) A service upon a person who has not given notification under the provisions of the first sentence of paragraph (1) (excluding the person prescribed in Article 104 (3) of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to the preceding paragraph) shall be made at such person's domicile, residence, business office or office that is indicated in the record of the case.

- (4) In cases where a service is to be made under the provisions of the preceding paragraph, if it is not possible to make the service pursuant to the provisions of Article 106 of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 20, a court clerk may send the document to the domicile, residence, business office or office set forth in said paragraph by registered mail or services of correspondence delivery prescribed in Article 2 (2) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) that are provided by a general correspondence delivery operator prescribed in paragraph (6) of said Article or specified correspondence delivery operator prescribed in paragraph (9) of said Article, which are specified by the Rules of the Supreme Court as services equivalent to registered mail. In this case, the provisions of Article 107 (2) and (3) of the Code of Civil Procedure shall apply *mutatis mutandis*.

(Inspection, etc. of the Record of a Case)

Article 17 With regard to civil execution carried out by an execution court, a person having an interest may make a request to a court clerk for the inspection or copying of the record of a case, issuance of an authenticated copy, transcript or extract of such record, or issuance of a certificate of matters concerning said case.

(Request to a Government Agency, etc. for Assistance, etc.)

Article 18 (1) When it is necessary for civil execution, an execution court or court execution officer may make a request to a government agency or public office for assistance.

(2) In the case prescribed in the preceding paragraph, an execution court or court execution officer may make a request to the government agency or public office with jurisdiction for issuance of a necessary certificate with regard to a tax or public charges imposed on the property that is the subject matter of civil execution (when the property is land, it shall include any building built on such land, and when the property is a building, it shall include the building site).

(3) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where a person who intends to file a petition for civil execution needs the certificate set forth in said paragraph for the purpose of filing such petition.

(Exclusive Jurisdiction)

Article 19 The court jurisdiction prescribed in this Act shall be exclusive jurisdiction.

(Application Mutatis Mutandis of the Code of Civil Procedure)

Article 20 Except as otherwise provided for, the provisions of the Code of Civil Procedure shall apply mutatis mutandis to civil execution procedures.

(Rules of the Supreme Court)

Article 21 In addition to what is provided for in this Act, necessary matters concerning civil execution procedures shall be specified by the Rules of the Supreme Court.

## **Chapter II Compulsory Execution**

### **Section 1 General Provisions**

(Title of Obligation)

Article 22 Compulsory execution shall be carried out based on any of the following (hereinafter referred to as the "title of obligation"):

(i) A final and binding judgment

(ii) A judgment with a declaration of provisional execution

(iii) A judicial decision against which an appeal may be entered only by filing an appeal against ruling (in the case of a judicial decision that is not effective until it becomes final and binding, it shall be limited to one that is already final and binding)

(iii)-2 An order of compensation of damages with a declaration of provisional

execution

- (iv) A demand for payment with a declaration of provisional execution
- (iv)-2 A disposition by a court clerk specifying court costs or the amount of the burden of costs for settlement or a disposition by a court clerk determining the execution costs and the amount of money to be returned prescribed in Article 42 (4) (in the case of the latter disposition, it shall be limited to one that is already final and binding)
- (v) A notarial deed prepared by a notary with regard to a claim for payment of a certain amount of money or any other fungible thing or a certain amount of securities, which contains a statement to the effect that the obligor will immediately accept compulsory execution (hereinafter referred to as an "execution deed")
- (vi) A judgment of a foreign court for which an execution judgment has become final and binding
- (vi)-2 An arbitral award for which an execution order has become final and binding
- (vii) A document that has the same effect as a final and binding judgment (excluding the judicial decision set forth in item (iii))

(Scope of Persons against or for Whom Compulsory Execution may be Carried Out)

Article 23 (1) Compulsory execution based on a title of obligation other than an execution deed may be carried out against or for any of the following persons:

- (i) A party concerned indicated in the title of obligation
  - (ii) In cases where a party concerned indicated in the title of obligation has become a party concerned on behalf of another person, such other person
  - (iii) A person who became the successor of either of the persons set forth in the preceding two items after the establishment of the title of obligation (in cases of the title of obligation set forth in item (i), item (ii) or item (vi) of the preceding Article, the successor after the conclusion of oral argument, and in cases of the title of obligation set forth in item (iii)-2 of said Article or the title of obligation set forth in item (vii) of said Article which relates to an order of compensation of damages, the successor after the conclusion of the proceedings)
- (2) Compulsory execution based on an execution deed may be carried out against or for a party concerned indicated in the execution deed or the successor of such party concerned after the preparation of the execution deed.
- (3) Compulsory execution based on the title of obligation prescribed in paragraph (1) may also be carried out against a person who possesses the subject matter of the claim on behalf of any of the persons listed in the items of said paragraph.

(Execution Judgment for a Judgment of a Foreign Court)

- Article 24 (1) An action seeking an execution judgment for a judgment of a foreign court shall be under the jurisdiction of the district court having jurisdiction over the location of the general venue of the obligor, and when there is no such general venue, it shall be under the jurisdiction of the district court having jurisdiction over the location of the subject matter of the claim or the seizable property of the obligor.
- (2) An execution judgment shall be made without investigating whether or not the judicial decision is appropriate.
- (3) The action set forth in paragraph (1) shall be dismissed without prejudice when it is not proved that the judgment of a foreign court has become final and binding or when such judgment fails to satisfy the requirements listed in the items of Article 118 of the Code of Civil Procedure.
- (4) An execution judgment shall declare that compulsory execution based on the judgment by a foreign court shall be permitted.

(Implementation of Compulsory Execution)

Article 25 Compulsory execution shall be implemented on the basis of an authenticated copy of the title of obligation attaching a certificate of execution; provided, however, that compulsory execution for or against an indicated party concerned based on a final and binding judgment made in an action on small claim or a judgment of an action on small claim or demand for payment with a declaration of provisional execution shall be implemented on the basis of an authenticated copy thereof.

(Grant of a Certificate of Execution)

- Article 26 (1) A certificate of execution shall be granted, upon petition, by a court clerk of the court in which the record of the case exists in the case of a title of obligation other than an execution deed, and by the notary preserving the original of the execution deed in the case of an execution deed.
- (2) A certificate of execution shall be granted in cases where the obligee may effect compulsory execution against the obligor based on the title of obligation in question, by attaching a statement to that effect at the end of an authenticated copy of the title of obligation.

- Article 27 (1) In cases where a claim relates to actualization of a fact to be proved by an obligee, a certificate of execution may be granted only when the obligee has produced a document proving that such fact has been actualized.
- (2) A certificate of execution for which the obligee or obligor is a person other than a party concerned indicated in the title of obligation may be granted only

when it is apparent to the court clerk or notary that compulsory execution may be carried out against or for such person or when the obligee has produced a document proving such fact.

- (3) In cases where any of the following grounds exist with regard to the title of obligation and there are special circumstances that make it difficult to specify, prior to carrying out compulsory execution of delivery or surrender of real property based on such title of obligation, the person who possess such real property, a certificate of execution may be granted without specifying the obligor only if the obligee has produced a document proving such facts:
- (i) The title of obligation indicates a claim for delivery or surrender of real property and, for the purpose of a suit on such claim, an order for a provisional disposition prohibiting transfer of possession (meaning the order for a provisional disposition prohibiting transfer of possession prescribed in Article 25-2 (1) of the Civil Preservation Act [Act No. 91 of 1989]) has been executed, and compulsory execution of delivery or surrender may be carried out, against a person possessing such real property, based on said title of obligation pursuant to the provisions of Article 62 (1) of said Act.
  - (ii) The title of obligation is an order under the provisions of the main clause of Article 83 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 188) issued in a compulsory auction procedure (including the procedure of an auction for exercise of a security interest; hereinafter the same shall apply in this item) (such order shall be hereinafter referred to as a "delivery order"), and the temporary restraining order and/or the temporary restraining order to give public notice (meaning the temporary restraining order to give public notice prescribed in Article 55 (1); hereinafter the same shall apply in this paragraph) set forth in any of (a) to (c) below has or have been executed against the person under duty to deliver under such delivery order in said compulsory auction procedure, and compulsory execution of delivery may be carried out, against a person possessing such real property, based on said delivery order pursuant to the provisions of Article 83-2 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 187 (5) or Article 188):
    - (a) The temporary restraining order and the temporary restraining order to give public notice set forth in Article 55 (1)(iii) (including the cases where it is applied mutatis mutandis pursuant to Article 188)
    - (b) The temporary restraining order and the temporary restraining order to give public notice set forth in Article 77 (1)(iii) (including the cases where it is applied mutatis mutandis pursuant to Article 188)
    - (c) The temporary restraining order or the temporary restraining order to give public notice set forth in Article 187 (1) (limited to that set forth in Article 55 (1)(iii))

- (4) Compulsory execution based on an authenticated copy of a title of obligation attaching the certificate of execution set forth in the preceding paragraph may only be carried out before four weeks elapse from the day on which said certificate of execution has been granted and in cases where, at the time of releasing real property from possession under said compulsory execution, the possessor can be specified.
- (5) With regard to the certificate of execution granted pursuant to the provisions of paragraph (3), when compulsory execution based on an authenticated copy of a title of obligation attaching said certificate of execution has been carried out pursuant to the provisions of the preceding paragraph, the person whose real property has been released from his/her possession by said compulsory execution shall be the obligor.

(Re-grant of a Certificate of Execution, etc.)

- Article 28 (1) A certificate of execution may be re-granted only when multiple authenticated copies of a title of obligation attaching a certificate of execution are required for receiving full performance of a claim or when such authenticated copy has been lost.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to cases of re-issuing an authenticated copy of a final and binding judgment made in an action on small claim or a judgment of an action on small claim or demand for payment with a declaration of provisional execution.

(Service of a Title of Obligation, etc.)

- Article 29 Compulsory execution may be commenced only when an authenticated copy or a transcript of a title of obligation or a judicial decision that is to be a title of obligation when it becomes final and binding has been served upon the obligor in advance or simultaneously. In cases where a certificate of execution has been granted pursuant to the provisions of Article 27, transcripts of the certificate of execution and the document produced by the obligee pursuant to the provisions of said Article shall also have been served in advance or simultaneously.

(Compulsory Execution in Cases Relating to Arrival of Fixed Due Date or Provision of Security)

- Article 30 (1) In cases where a claim relates to arrival of a fixed due date, compulsory execution may be commenced only after the arrival of such due date.
- (2) Compulsory execution based on a title of obligation, where provision of security has been set as a condition for implementation of compulsory execution, may be commenced only when the obligee produced a document

proving that he/she has provided security.

(Compulsory Execution in Cases Relating to Default of Counter-performance or Another Performance)

Article 31 (1) In cases where performance by an obligor is to be provided in exchange for counter-performance, compulsory execution may be commenced only when the obligee proved that he/she has provided the counter-performance or has made an offer thereof.

(2) When performance by an obligor is to be provided in lieu of another performance in cases where the purpose of compulsory execution is unable to be achieved with regard to such other performance, compulsory execution may be commenced only when the obligee proved that the purpose of compulsory execution was unable to be achieved with regard to such other performance.

(Filing of an Objection Concerning Grant of a Certificate of Execution, etc.)

Article 32 (1) Against a disposition concerning a petition for grant of a certificate of execution, an objection may be filed with the court to which the court clerk belongs in the case of a disposition by a court clerk, and with the district court having jurisdiction over the location of the public office of the notary in the case of a disposition by a notary.

(2) If an objection to grant of a certificate of execution has been filed, the court may, until a judicial decision on the objection is made, order a stay of compulsory execution while requiring or not requiring provision of security or order continuation of such compulsory execution while requiring provision of security. When there are pressing circumstances, the presiding judge may also order such dispositions.

(3) A judicial decision on a petition under the provisions of paragraph (1) or a judicial decision under the provisions of the preceding paragraph may be made without going through oral argument.

(4) No appeal may be entered against a judicial decision under the provisions of the preceding paragraph.

(5) The provisions of the preceding paragraphs shall apply mutatis mutandis to issuance of an authenticated copy of a final and binding judgment made in an action on small claim or a judgment of an action on small claim or demand for payment with a declaration of provisional execution under the provisions of Article 28 (2).

(Action for Grant of a Certificate of Execution)

Article 33 (1) When an obligee is unable to produce the document prescribed in Article 27 (1) or (2), he/she may file an action for grant of a certificate of execution in order to seek grant of a certificate of execution (excluding one

granted pursuant to the provisions of paragraph (3) of said Article).

- (2) The action set forth in the preceding paragraph shall be under the jurisdiction of the courts specified in the following items for the categories of the title of obligation listed respectively in those items:
- (i) Any of the titles of obligation set forth in Article 22 (i) to (iii), (vi) and (vi)-2, or the title of obligation set forth in item (vii) of said Article excluding that set forth in the following item or item (vi): The court of first instance
  - (i)-2 The title of obligation set forth in Article 22 (iii)-2 or the title of obligation set forth in item (vii) of said Article which relates to an order of compensation of damages or relates to a settlement or acknowledgment of claim in a procedure concerning a case of an order of compensation of damages: The district court before which the case of an order of compensation of damages was pending
  - (ii) The title of obligation set forth in Article 22 (iv) excluding that set forth in the following item: The summary court to which the court clerk who has issued the demand for payment with a declaration of provisional execution belongs (or, if the claim relating to the demand for payment with a declaration of provisional execution is not under the jurisdiction of the summary court, the district court having jurisdiction over the location of the summary court)
  - (iii) The title of obligation set forth in Article 22 (iv) based on a petition for a demand for payment filed under the provisions of the main clause of Article 132-10 (1) of the Code of Civil Procedure or a petition for a demand for payment filed by means of a document prepared in the form prescribed in Article 402 (1) of said Act: The court with which an action is deemed to have been filed pursuant to the provisions of Article 398 of said Act (including the cases where it is applied mutatis mutandis pursuant to Article 402 (2) of said Act) with regard to such petition for a demand for payment
  - (iv) The title of obligation set forth in Article 22 (iv)-2: The court to which the court clerk who has made the disposition set forth in said item belongs
  - (v) The title of obligation set forth in Article 22 (v): The court having jurisdiction over the location of the general venue of the obligor (or, when there is no such general venue, the court having jurisdiction over the location of the subject matter of the claim or the seizable property of the obligor)
  - (vi) The title of obligation set forth in Article 22 (vii) which relates to a settlement or a mediation (excluding a settlement or a mediation concluded at an upper instance court) or to labor tribunal judgment (excluding that set forth in item (i)-2): The summary court, district court or family court where the settlement or the mediation was concluded (or, if the claim relating to the settlement or the mediation concluded at a summary court is not under the jurisdiction of the summary court, the district court having jurisdiction

over the location of the summary court) or the district court before which the labor tribunal case was pending when the labor tribunal judgment was made

(Action to Oppose a Grant of a Certificate of Execution)

Article 34 (1) In cases where a certificate of execution has been granted pursuant to the provisions of Article 27, an obligor who opposes that a fact to be proved by an obligee has actualized or that it is possible to carry out compulsory execution against or for a person other than a party concerned indicated in the title of obligation may file an action to oppose a grant of a certificate of execution in order to seek non-permission of compulsory execution based on an authenticated copy of the title of obligation attaching such certificate of execution.

(2) When there are several grounds for opposition, an obligor shall allege such grounds simultaneously.

(3) The provisions of paragraph (2) of the preceding Article shall apply *mutatis mutandis* to the action set forth in paragraph (1).

(Action to Oppose Execution)

Article 35 (1) An obligor who opposes the presence or contents of the claim pertaining to a title of obligation (excluding a title of obligation set forth in Article 22 (ii), (iii)-2 or (iv) which has yet to become final and binding; hereinafter the same shall apply in this paragraph) may file an action to oppose execution in order to seek non-permission of compulsory execution based on such title of obligation. The same shall apply to an obligor who opposes establishment of a title of obligation other than a judicial decision.

(2) Grounds for opposition to a final and binding judgment shall be limited to those that arose after the conclusion of oral argument.

(3) The provisions of Article 33 (2) and paragraph (2) of the preceding Article shall apply *mutatis mutandis* to the action set forth in paragraph (1).

(Judicial Decision to Stay Execution pertaining to an Action to Oppose a Grant of a Certificate of Execution, etc.)

Article 36 (1) In cases where an action to oppose a grant of a certificate of execution or an action to oppose execution has been filed, if the circumstances alleged for opposition appear to be legally well-grounded and a *prima facie* showing is made on factual matters, the court in charge of the case may, upon petition, order a stay of compulsory execution while requiring or not requiring provision of security until the judicial decision set forth in paragraph (1) of the following Article is made in the final judgment, or, in addition to such order, order continuation of compulsory execution while requiring provision of security or order revocation of a disposition of execution already made while

requiring provision of security. When there are pressing circumstances, the presiding judge may also order such dispositions.

- (2) A judicial decision on the petition set forth in the preceding paragraph may be made without going through oral argument.
- (3) In cases where the grounds prescribed in paragraph (1) exist, if there are pressing circumstances, the execution court may, upon petition, order the dispositions prescribed in said paragraph, while specifying a period for submitting an authenticated copy of a judicial decision under the provisions of said paragraph. This judicial decision may also be made prior to the filing of an action to oppose a grant of a certificate of execution or an action to oppose execution.
- (4) When the period specified pursuant to the provisions of the preceding paragraph has expired or when a judicial decision under the provisions of paragraph (1) has been submitted to the execution court or court execution officer within such period, the judicial decision set forth in the preceding paragraph shall cease to be effective.
- (5) No appeal may be entered against a judicial decision on the petition set forth in paragraph (1) or paragraph (3).

(Judicial Decision to Stay Execution in the Final Judgment, etc.)

- Article 37 (1) The court in charge of the case may, in the final judgment on an action to oppose a grant of a certificate of execution or an action to oppose execution, order the dispositions prescribed in paragraph (1) of the preceding Article or revoke, change or approve a judicial decision under the provisions of said paragraph that has already been made. The court shall make a declaration of provisional execution for this judicial decision.
- (2) No appeal may be entered against a judicial decision under the provisions of the preceding paragraph.

(Third Party Action against Execution)

- Article 38 (1) A third party who has ownership of the subject matter of compulsory execution or any other right that obstructs assignment or delivery of the subject matter may file, against the obligee, a third party action against execution in order to seek non-permission of such compulsory execution.
- (2) The third party prescribed in the preceding paragraph may file an action against the obligor with regard to the subject matter of compulsory execution, in consolidation with the action set forth in said paragraph.
  - (3) The action set forth in paragraph (1) shall be under the jurisdiction of the execution court.
  - (4) The provisions of the preceding two paragraphs shall apply mutatis mutandis pursuant to a judicial decision to stay execution pertaining to the action set

forth in paragraph (1).

(Stay of Compulsory Execution)

Article 39 (1) Compulsory execution shall be stayed if any of the following documents has been submitted:

- (i) An enforceable authenticated copy of a judicial decision containing a statement to the effect that a title of obligation (excluding an execution deed) or a declaration of provisional execution shall be revoked or a statement to the effect that compulsory execution shall not be permitted
  - (ii) An authenticated copy of a final and binding judgment declaring invalidity of a settlement, acknowledgment, mediation or labor tribunal judgment pertaining to a title of obligation
  - (iii) An authenticated copy of a record or any other document prepared by a court clerk which proves that any of the titles of obligation set forth in Article 22 (ii) to (iv)-2 has ceased to be effective due to withdrawal of the action or any other grounds
  - (iv) An authenticated copy of a record of a judicial settlement or mediation containing a statement to the effect that compulsory execution shall not be carried out or that a petition for such compulsory execution shall be withdrawn, or an authenticated copy of a judgment document of a labor tribunal judgment that has the same effect as a judicial settlement pursuant to the provisions of Article 21 (4) of the Labor Tribunal Act (Act No. 45 of 2004) or an authenticated copy of the record set forth in Article 20 (7) of said Act
  - (v) A document proving that security for avoiding compulsory execution has been provided
  - (vi) An authenticated copy of a judicial decision containing a statement to the effect that a stay of compulsory execution and revocation of a disposition of execution shall be ordered
  - (vii) An authenticated copy of a judicial decision containing a statement to the effect that a temporary stay of compulsory execution shall be ordered
  - (viii) A document containing a statement to the effect that an obligee received performance or consented to granting grace of performance after establishment of a title of obligation
- (2) A stay of compulsory execution based on submission of a document set forth in item (viii) of the preceding paragraph which contains a statement to the effect that an obligee received performance shall be limited to a period of four weeks.
- (3) A stay of compulsory execution based on submission of a document set forth in paragraph (1)(viii) which contains a statement to the effect that an obligee consented to granting grace of performance may only be effected twice and the total period shall not exceed six months.

(Revocation of a Disposition of Execution)

Article 40 (1) When any of the documents set forth in paragraph (1)(i) to (vi) of the preceding Article has been submitted, the execution court or court execution officer shall revoke even a disposition of execution that has already been made.

(2) The provisions of Article 12 shall not apply in the case of revoking a disposition of execution pursuant to the provisions of the preceding paragraph.

(Continuation of Compulsory Execution in Cases where the Obligor Has Died)

Article 41 (1) Compulsory execution may be continued even in cases where the obligor died after its commencement.

(2) In the cases set forth in the preceding paragraph, if existence of an heir of the obligor or the whereabouts of such person is unknown, the execution court may, upon petition, appoint a special agent for the inherited property or heir.

(3) The provisions of Article 35 (2) and (3) of the Code of Civil Procedure shall apply mutatis mutandis to the special agent set forth in the preceding paragraph.

(Burdening of Execution Costs)

Article 42 (1) The costs of compulsory execution that are necessary (hereinafter referred to as "execution costs") shall be borne by the obligor.

(2) In cases of compulsory execution for a claim for payment of money, the execution costs may be collected simultaneously in the course of the execution procedure without requiring a title of obligation.

(3) When a judicial decision revoking a title of obligation (excluding an execution deed) on which compulsory execution is based, or a judgment declaring invalidity of a settlement, acknowledgment, mediation or labor tribunal judgment pertaining to a title of obligation has become final and binding, the obligee shall return, to the obligor, money equivalent to the execution costs that have been paid to the obligee.

(4) The portion of the execution costs to be borne by an obligor pursuant to the provisions of paragraph (1) other than what has been collected pursuant to the provisions of paragraph (2) and the amount of money to be returned by an obligee pursuant to the provisions of the preceding paragraph shall be specified, upon petition, by a court clerk of the execution court.

(5) Against a disposition by a court clerk on the petition set forth in the preceding paragraph, an objection may be filed with the execution court within an unextendable period of one week from the day on which a notice thereof has been received.

(6) The execution court shall, in cases where it finds that a filing of an objection

to a disposition by a court clerk under the provisions of paragraph (4) is well-grounded, and it should determine the execution costs and the amount of money to be returned prescribed in said paragraph, determine such amount itself.

- (7) An appeal against a disposition of execution may be filed against an order issued with regard to the objection under the provisions of paragraph (5).
- (8) A disposition by a court clerk under the provisions of paragraph (4) shall not be effective until it becomes final and binding.
- (9) The provisions of Article 74 (1) of the Code of Civil Procedure shall apply mutatis mutandis to a disposition by a court clerk under the provisions of paragraph (4). In this case, the provisions of paragraph (5), paragraph (7), the preceding paragraph and Article 74 (3) shall apply mutatis mutandis.

**Section 2 Compulsory Execution for a Claim for Payment of Money**  
**Subsection 1 Compulsory Execution against Real Property**  
**Division 1 General Rules**

(Method of Execution against Real Property)

Article 43 (1) Compulsory execution against real property (excluding any fixtures on land that are not registrable; hereinafter the same shall apply in this Section) (such compulsory execution shall hereinafter be referred to as "execution against real property") shall be carried out by the method of a compulsory auction or compulsory administration. These methods may be used jointly.

- (2) With regard to compulsory execution for a claim for payment of money, co-ownership interests in real property, registered superficies and farming rights and co-ownership interests in such rights shall be deemed to be real property.

(Execution Court)

Article 44 (1) The district court having jurisdiction over the relevant location (or, for what is regarded to be real property pursuant to the provisions of paragraph (2) of the preceding Article, the place where it is to be registered) shall have jurisdiction over execution against real property as the execution court.

- (2) In cases where a building exists over multiple jurisdictional districts of district courts, either or any of the district courts having jurisdiction over the location of the land on which such building exists shall have jurisdiction over compulsory execution against such building as the execution court, and the district court having jurisdiction over the location of the relevant land or the district court that has received a petition for compulsory execution against the building shall have jurisdiction over compulsory execution against the land on

which such building exists as the execution court.

- (3) In the cases set forth in the preceding paragraph, the execution court may, when it finds it to be necessary, transfer the case to another court with jurisdiction.
- (4) No appeal may be entered against an order under the provisions of the preceding paragraph.

## **Division 2 Compulsory Auction**

(Commencement Order, etc.)

Article 45 (1) An execution court shall, in order to commence a compulsory auction procedure, issue a commencement order for a compulsory auction, and, in such commencement order, declare that real property shall be seized for the obligee.

- (2) The commencement order set forth in the preceding paragraph shall be served upon the obligor.
- (3) An appeal against a disposition of execution may be filed against a judicial decision to dismiss a petition for compulsory auction.

(Effects of a Seizure)

Article 46 (1) A seizure shall become effective when a commencement order for a compulsory auction was served upon the obligor; provided, however, that if the seizure was registered prior to the service of the commencement order, the seizure shall become effective at the time of the registration.

- (2) A seizure shall not preclude the obligor from using or making profits from the real property in an ordinary way.

(Overlapped Commencement Order)

Article 47 (1) When a petition for a compulsory auction was filed for real property for which a commencement order for a compulsory auction or an auction for exercise of a security interest (hereinafter referred to as an "auction" in this Section) has been issued, the execution court shall issue another commencement order for a compulsory auction.

- (2) When a petition for a compulsory auction or an auction pertaining to an earlier commencement order has been withdrawn or when the procedure of a compulsory auction or an auction pertaining to an earlier commencement order has been rescinded, the execution court shall continue the procedure based on a later commencement order for a compulsory auction.
- (3) In the cases set forth in the preceding paragraph, if a later commencement order for a compulsory auction pertains to a petition filed after the time limit for a demand for liquidating distribution, the court clerk shall set a new time

limit for a demand for liquidating distribution. In this case, it is not required to give a notice under the provisions of Article 49 (2) to any person who has already filed a proof as set forth in Article 50 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 188).

- (4) Against a disposition by a court clerk under the provisions of the preceding paragraph, an objection may be filed with the execution court.
- (5) The provisions of the first sentence of Article 10 (6) and Article 10 (9) shall apply mutatis mutandis to cases where an objection under the provisions of the preceding paragraph has been filed.
- (6) When the procedure of a compulsory auction or an auction pertaining to an earlier commencement order has been stayed, the execution court may, upon petition, make a judicial decision to continue the procedure based on a later commencement order for a compulsory auction (limited to one pertaining to a petition filed no later than the time limit for a demand for liquidating distribution); provided, however, that this shall not apply if rescission of the procedure of a compulsory auction or an auction pertaining to the earlier commencement order shall cause a change to the matter set forth in Article 62 (1)(ii).
- (7) An appeal against a disposition of execution may be filed against an order to dismiss the petition set forth in the preceding paragraph.

(Commission of Registration of a Seizure, etc.)

Article 48 (1) When a commencement order for a compulsory auction has been issued, a court clerk shall immediately commission registration of the seizure pertaining to such commencement order.

- (2) A registrar shall, when having made registration of a seizure based on a commission under the provisions of the preceding paragraph, send a certificate of the registered matters to the execution court.

(Public Notice of a Commencement Order and the Time Limit for a Demand for Liquidating Distribution, etc.)

Article 49 (1) In cases where a seizure pertaining to a commencement order for a compulsory auction has become effective (excluding cases where another commencement order for a compulsory auction or an auction has been issued prior to said commencement order), a court clerk shall set the time limit for a demand for liquidating distribution by taking into consideration the period required for the procedure for preparation of the description of property.

- (2) A court clerk shall, when having set the time limit for a demand for liquidating distribution, give public notice of the fact that a commencement order has been issued and the time limit for a demand for liquidating distribution, and give a notice to the following persons or entities that they are

to notify the execution court of the presence or absence of claims (including interests and any other incidental claims) and the basis and amounts of such claims by the time limit for a demand for liquidating distribution:

- (i) Obligees set forth in Article 87 (1)(iii)
  - (ii) Obligees set forth in Article 87 (1)(iv) (in cases of holders of mortgage securities, limited to known holders)
  - (iii) Government agencies or public offices that have jurisdiction over tax and any other public charges
- (3) A court clerk may, when he/she finds it to be particularly necessary, extend the time limit for a demand for liquidating distribution.
- (4) A court clerk shall, when he/she has extended the time limit for a demand for liquidating distribution pursuant to the provisions of the preceding paragraph, give public notice of the extended time limit.
- (5) Against a disposition by a court clerk under the provisions of paragraph (1) or paragraph (3), an objection may be filed with the execution court.
- (6) The provisions of the first sentence of Article 10 (6) and Article 10 (9) shall apply mutatis mutandis to cases where an objection under the provisions of the preceding paragraph has been filed.

(Obligation of the Persons who Received a Notice to File Proofs of Their Claims)

- Article 50 (1) The person set forth in paragraph (2)(i) or (ii) of the preceding Article who has received a notice under the provisions of said paragraph shall file a proof of the matters pertaining to such notice by the time limit for a demand for liquidating distribution.
- (2) A person who has filed a proof as set forth in the preceding paragraph shall, when there was a change in the amount of the principal of the filed claim, make a filing to that effect.
- (3) A person who is to make a filing pursuant to the provisions of the preceding two paragraphs shall, when he/she has failed to make such filing or has made a false filing intentionally or negligently, be liable to compensate for any damages resulting therefrom.

(Demand for Liquidating Distribution)

- Article 51 (1) An obligee having an authenticated copy of a title of obligation based on which compulsory execution may be implemented pursuant to the provisions of Article 25 (hereinafter referred to as an "enforceable authenticated copy of a title of obligation"), an obligee effecting a provisional seizure who has been registered after the registration of the seizure pertaining to a commencement order for a compulsory auction, and an obligee who has proved that he/she has a general statutory lien based on any of the documents

listed in the items of Article 181 (1) may make a demand for liquidating distribution.

(2) An appeal against a disposition of execution may be filed against a judicial decision to dismiss a demand for liquidating distribution.

(Change of the Time Limit for a Demand for Liquidating Distribution)

Article 52 When an order of permission of sale is not issued within three months from the time limit for a demand for liquidating distribution or when an order of permission of sale that was issued within such three months has been revoked or ceased to be effective, the time limit for a demand for liquidating distribution shall be deemed to have been changed to the day on which three months have elapsed from such time limit; provided, however, that this shall not apply in cases where an order of permission of sale that was issued within three months from the time limit for a demand for liquidating distribution has ceased to be effective and an order of permission of sale has been issued for the next-highest purchase offer under the provisions of Article 67 (excluding cases where such order has been revoked or has ceased to be effective).

(Rescission of the Procedure of a Compulsory Auction Due to a Loss of Real Property, etc.)

Article 53 When a loss of real property or any other circumstance that hinders transfer of real property has become clear, the execution court shall rescind the procedure of a compulsory auction.

(Commission of Cancellation of Registration of a Seizure)

Article 54 (1) When a petition for a compulsory auction has been withdrawn or when an order to rescind the procedure of a compulsory auction has become effective, a court clerk shall commission cancellation of registration of the seizure pertaining to the commencement order for such compulsory auction.

(2) The registration and license tax and any other expenses required for a commission under the provisions of the preceding paragraph shall be borne by the obligee effecting a seizure pertaining to such withdrawal or rescission order.

(Temporary Restraining Order for Sale, etc.)

Article 55 (1) When an obligor or a possessor of real property has committed a price reducing act (meaning an act that reduces or is likely to reduce the price of real property; hereinafter the same shall apply in this paragraph), an execution court may, upon petition by an obligee effecting a seizure (excluding an obligee effecting a seizure who filed a petition for a compulsory auction or an auction after the time limit for a demand for liquidating distribution), issue

the temporary restraining order and/or the temporary restraining order to give public notice (meaning a temporary restraining order to have a court execution officer give public notice of the contents of the relevant temporary restraining order by posting a written public notice or any other sign at the place where the real property is located; the same shall apply hereinafter) set forth in any of the following items, until the purchaser pays the price; provided, however, that this shall not apply when the reduction in the price caused by such price reducing act or the extent of such likelihood is slight:

- (i) A temporary restraining order prohibiting the person who commits the price reducing act from committing such price reducing act or ordering such person to conduct a certain act (including a temporary restraining order to give public notice, if the execution court finds it to be necessary)
  - (ii) A temporary restraining order containing the following matters (including a temporary restraining order to give public notice, if the execution court finds it to be necessary):
    - (a) Ordering the person who commits the price reducing act to release real property from his/her possession and deliver it to the court execution officer
    - (b) Having the court execution officer retain the real property
  - (iii) A temporary restraining order containing the following matters and a temporary restraining order to give public notice:
    - (a) The matters set forth in (a) and (b) of the preceding item
    - (b) Prohibiting the person prescribed in (a) of the preceding item from transferring the possession of real property and permitting such person to use the real property
- (2) The temporary restraining order set forth in item (ii) or item (iii) of the preceding paragraph may not be issued unless either of the following cases applies:
- (i) Cases where the obligor set forth in the preceding paragraph possesses the real property
  - (ii) Cases where the title to possession held by the possessor of the real property set forth in the preceding paragraph may not be duly asserted against the obligee effecting a seizure, the obligee effecting a provisional seizure or the person whose right shall be extinguished pursuant to the provisions of Article 59 (1)
- (3) In the case of issuing an order under the provisions of paragraph (1) against a possessor other than the obligor, if it finds it to be necessary, the execution court shall interrogate such person.
- (4) When an execution court issues an order under the provisions of paragraph (1), it may have the petitioner provide security; provided, however, that the temporary restraining order set forth in item (ii) of said paragraph may not be

issued under the provisions of said paragraph without having the petitioner provide security.

- (5) When there has been a change in circumstances, an execution court may, upon petition, revoke or change an order under the provisions of paragraph (1).
- (6) An appeal against a disposition of execution may be filed against the judicial decision set forth in paragraph (1) or the preceding paragraph.
- (7) An order under the provisions of paragraph (5) shall not be effective until it becomes final and binding.
- (8) An order granting the temporary restraining order or the temporary restraining order to give public notice set forth in paragraph (1)(ii) or (iii) shall not be executed when two weeks have elapsed from the day on which the petitioner was notified of the order.
- (9) The order prescribed in the preceding paragraph may be executed even before the order is served upon the opposite party.
- (10) The expenses required for the petition set forth in paragraph (1) or the execution of an order under the provisions of said paragraph (excluding item (i)) (including the expenses required for retention of real property) shall be treated as administrative expenses in the compulsory auction procedure against such real property.

(Temporary Restraining Order for Sale Issued without Specifying the Opposite Party, etc.)

Article 55-2 (1) An execution court may issue an order granting the temporary restraining order or the temporary restraining order to give public notice set forth in paragraph (1)(ii) or (iii) of the preceding Article without specifying the opposite party when there are special circumstances that make it difficult to specify the opposite party prior to execution of such order.

- (2) An order may not be executed under the provisions of the preceding paragraph in cases where it is unable to specify the possessor of real property at the time of releasing such real property from possession.
- (3) When an order has been executed under the provisions of paragraph (1), the person whose real property has been released from his/her possession by such execution shall be the opposite party of such order.
- (4) An order under the provisions of paragraph (1) is not required to be served upon the opposite party if such order was not executed within the period set forth in paragraph (8) of the preceding Article. In this case, an order of rescission of security under the provisions of Article 79 (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 15 (2), which pertains to the security that was caused to be provided under the provisions of paragraph (4) of the preceding Article, shall become effective by notifying the petitioner by a method found to be reasonable by the execution court.

(Permission to Pay a Land Rent, etc. in Place of the Obligor)

Article 56 (1) In cases where a commencement order for a compulsory auction has been issued against a building, if the obligor fails to pay a rent for the superficies or right of lease for owning such building, the execution court may, upon petition, permit the obligee effecting a seizure (excluding an obligee effecting a seizure who filed a petition for a compulsory auction or an auction after the time limit for a demand for liquidating distribution) to perform such unpaid rent in place of the obligor.

(2) The provisions of Article 55 (10) shall apply mutatis mutandis to the expenses required for the petition set forth in the preceding paragraph and the rent paid by obtaining the permission set forth in said paragraph.

(Investigation of the Current Conditions)

Article 57 (1) An execution court shall order a court execution officer to investigate the shape, possession status and any other current conditions of real property.

(2) When carrying out the investigation set forth in the preceding paragraph, a court execution officer may enter real property, ask questions to the obligor or a third person possessing such real property or request such person to present documents.

(3) In cases of entering real property pursuant to the provisions of the preceding paragraph, if it is necessary, a court execution officer may take a necessary measure to open a closed door.

(4) In cases where it is necessary for the investigation set forth in paragraph (1), a court execution officer may request the municipality (or, for an area where there are special wards, the metropolitan government) to deliver copies of drawings or any other materials it possesses with regard to the fixed property tax imposed on the real property (when the real property is land, it shall include any building built on such land, and when the real property is a building, it shall include the building site).

(5) A court execution officer may, in the cases prescribed in the preceding paragraph, request juridical persons engaged in public welfare undertakings, which provide supply of electricity, gas or tap water or make any other continuous performance equivalent thereto, to report necessary matters.

(Appraisal)

Article 58 (1) An execution court shall appoint an appraiser and order him/her to appraise real property.

(2) An appraiser shall make an appraisal without delay by appropriately taking into consideration the transaction prices of the same kind of real property in

the neighborhood, profits that are to arise from the real property, the cost of the real property and any other circumstances affecting the price formation of the real property. In this case, the appraiser shall take into account that it is an appraisal for implementing the sale of real property in a compulsory auction procedure.

- (3) In order for an appraiser to request assistance from a court execution officer pursuant to the provisions of Article 6 (2), he/she shall obtain the permission of the execution court.
- (4) The provisions of Article 18 (2) and paragraphs (2), (4) and (5) of the preceding Article shall apply mutatis mutandis to cases where an appraiser makes an appraisal.

(Extinguishment of Rights upon Sales, etc.)

Article 59 (1) Any statutory lien, any pledge with provisions not to use or make profits from real property and any mortgage existing on real property shall be extinguished upon sales.

- (2) Any acquisition of rights on real property that may not be duly asserted against a person whose right shall be extinguished pursuant to the provisions of the preceding paragraph, an obligee effecting a seizure or an obligee effecting a provisional seizure shall cease to be effective upon sales.
- (3) Any execution of a seizure or provisional seizure of real property and any execution of a provisional disposition that may not be duly asserted against a person whose right shall be extinguished pursuant to the provisions of paragraph (1), an obligee effecting a seizure or an obligee effecting a provisional seizure shall cease to be effective upon sales.
- (4) With regard to any right of retention and any pledge without provisions not to use or make profits from real property existing on real property, to which the provisions of paragraph (2) do not apply, the purchaser shall be liable to perform claims secured by such right or pledge.
- (5) When a person having an interest has given notification that he/she has concluded an agreement that differs from the provisions of paragraph (1), paragraph (2) or the preceding paragraph by the time when the standard sales price under the provisions of paragraph (1) of the following Article is determined, the changes in rights on real property through the sale shall be in accordance with such agreement.

(Order on the Standard Sales Price, etc.)

Article 60 (1) An execution court shall determine the price that is to serve as the standard for the sales price of real property (hereinafter referred to as the "standard sales price"), based on an appraisal by an appraiser.

- (2) An execution court may, if it finds it to be necessary, change the standard

sales price.

- (3) A purchase offer price shall be not less than the price obtained by deducting from the standard sales price an amount equivalent to two-tenths of said price (such obtained price shall hereinafter be referred to as the "minimum purchase price").

(Package Sale)

Article 61 An execution court may, when it finds it to be reasonable to have the same purchaser purchase a piece of real property and another piece(s) of real property (including those pertaining to a different obligee effecting a seizure or a different obligor) considering the relationship in the use of the respective pieces of property, determine to sell such pieces of property in a package; provided, however, that this shall be limited to cases where the consent of the obligor(s) has been obtained, if it is expected to be possible to fully perform the claims and execution costs of the respective obligees with the minimum purchase price of part of the several pieces of property for which a commencement order for a compulsory auction has been issued based on a single petition.

(Description of Property)

- Article 62 (1) A court clerk shall prepare a description of property stating the following matters:
- (i) Indication of the real property
  - (ii) Any acquisition of rights pertaining to the real property or any execution of provisional dispositions that shall not cease to be effective upon sales
  - (iii) The outline of the superficies that shall be deemed to have been established upon sales
- (2) A court clerk shall keep a copy of the description of property set forth in the preceding paragraph at the execution court and make it available for public inspection or take the measure specified by the Rules of the Supreme Court for enabling many and unspecified persons to access the contents of said description of property.
- (3) Against a disposition by a court clerk under the provisions of the preceding two paragraphs, an objection may be filed with the execution court.
- (4) The provisions of the first sentence of Article 10 (6) and Article 10 (9) shall apply mutatis mutandis to cases where an objection under the provisions of the preceding paragraph has been filed.

(Measures Taken in Cases where Surplus Is not Expected, etc.)

Article 63 (1) An execution court shall, if it finds that any of the following items apply, notify the obligee effecting a seizure (meaning the obligee effecting a

seizure pertaining to the first commencement order for a compulsory auction, or, if a judicial decision to continue the procedure under the provisions of Article 47 (6) has been issued, the obligee effecting a seizure who received such judicial decision; hereinafter the same shall apply in this Article) to that effect:

(i) In cases where there is no claim that takes preference over the claim of the obligee effecting a seizure (hereinafter referred to as a "preferential claim" in this Article), if the minimum purchase price of the real property does not exceed the estimated amount of the part of the execution costs that constitutes administrative expenses (hereinafter referred to as "procedural expenses")

(ii) In cases where there is a preferential claim, the minimum purchase price of the real property is below the total of the estimated amount of the procedural expenses and that of the preferential claim

(2) When the obligee effecting a seizure fails to make an offer or to provide a guarantee, as provided in each of the following items for the cases set forth respectively therein, within one week from the day of receipt of a notice under the provisions of the preceding paragraph, by deciding, where there is no preferential claim, a price that exceeds the estimated amount of procedural expenses, or where there is a preferential claim, a price that is not less than the total of the estimated amount of procedural expenses and that of the preferential claim (such a price shall hereinafter be referred to as the "obligee's offered price" in this paragraph), the execution court shall rescind the procedure of a compulsory auction pertaining to the petition filed by the obligee effecting a seizure; provided, however, that this shall not apply when the obligee effecting a seizure has proved, within said period, that none of the items of the preceding paragraph apply, or that in the case set forth in item (ii) of said paragraph, the minimum purchase price of the real property exceeds the estimated amount of procedural expenses and that the consent has been obtained from the persons who have the preferential claim (excluding a person who is expected to be able to receive full performance of his/her preferential claim at the minimum purchase price) for the sale of the real property:

(i) Cases where the obligee effecting a seizure is able to purchase the real property: Making of an offer to the effect that the obligee effecting a seizure shall purchase the real property at the obligee's offered price if there is no purchase offer that reaches the obligee's offered price, and provision of a guarantee equivalent to the obligee's offered price

(ii) Cases where the obligee effecting a seizure is unable to purchase the real property: Making of an offer to the effect that the obligee effecting a seizure shall pay any difference between the obligee's offered price and the purchase offer price if the purchase offer price fails to reach the obligee's offered price, and provision of a guarantee equivalent to the difference between the

obligee's offered price and the minimum purchase price

- (3) In cases where an offer has been made and a guarantee has been provided under item (ii) of the preceding paragraph, if there is no purchase offer at or beyond the minimum purchase price, the execution court shall rescind the procedure of a compulsory auction pertaining to the petition filed by the obligee effecting a seizure.
- (4) The provision of a guarantee set forth in paragraph (2) shall be made to the execution court by the method specified by the Rules of the Supreme Court.

(Method of Sale and Public Notice)

Article 64 (1) Real property shall be sold by the method of sale specified by a court clerk.

- (2) The method of sale of real property shall be bidding, an auction or any other method specified by the Rules of the Supreme Court.
- (3) A court clerk shall, when carrying out a sale by the method of bidding or an auction, decide on the date and place of the sale and have a court execution officer implement the sale.
- (4) In the cases set forth in the preceding paragraph, notwithstanding the provisions of Article 93 (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 20, the date for ordering a sale shall be designated by the court clerk simultaneously with a disposition to have a sale implemented.
- (5) In the cases set forth in paragraph (3), a court clerk shall give public notice of the indication of the real property to be sold, the standard sales price and the date and place of the sale.
- (6) Against a disposition by a court clerk under the provisions of paragraph (1), paragraph (3) or paragraph (4), an objection may be filed with the execution court.
- (7) The provisions of the first sentence of Article 10 (6) and Article 10 (9) shall apply mutatis mutandis to cases where an objection under the provisions of the preceding paragraph has been filed.

(Preliminary Inspection)

Article 64-2 (1) An execution court shall, upon petition by the obligee effecting a seizure (excluding an obligee effecting a seizure who filed a petition for a compulsory auction or an auction after the time limit for a demand for liquidating distribution), order a court execution officer to implement a preliminary inspection (meaning an occasion of having persons wishing to purchase the real property enter and inspect the real property; hereinafter the same shall apply in this Article); provided, however, that this shall not apply when the title to possession held by the possessor of such real property may be

duly asserted against the obligee effecting a seizure, the obligee effecting a provisional seizure or the person whose right shall be extinguished pursuant to the provisions of Article 59 (1), and such possessor does not give his/her consent.

- (2) The petition set forth in the preceding paragraph shall be filed, pursuant to the provisions of the Rules of the Supreme Court, by the time when the court clerk makes a disposition to have a sale implemented.
- (3) The court execution officer who has received the order set forth in paragraph (1) shall, by the time of implementation of the sale, implement a preliminary inspection for persons who have requested to participate in the preliminary inspection pursuant to the provisions of the Rules of the Supreme Court (excluding those who lack the qualification or capacity to purchase the real property or those for whom any of the grounds specified by the Rules of the Supreme Court exist; referred to as "preliminary inspection participants" in paragraph (5) and paragraph (6)).
- (4) An execution court may, when it is clear that smooth implementation of a preliminary inspection is difficult, revoke the order set forth in paragraph (1).
- (5) A court execution officer may, when implementing a preliminary inspection, enter the real property himself/herself and have preliminary inspection participants enter the real property.
- (6) When any preliminary inspection participant commits an act that obstructs smooth implementation of the preliminary inspection, a court execution officer may restrict such person's entry into the real property or have such person leave the real property.

(Maintenance of Order at the Place of Sale)

Article 65 A court execution officer may restrict entry of any of the following persons into the place of sale, have such persons leave such place or disallow such persons to make a purchase offer:

- (i) A person who has committed or caused another person to commit an act to obstruct other persons from making purchase offers or obstruct fair implementation of a sale, such as uniting for the purpose of unjustly lowering the price
- (ii) A person who has been recognized to be a person falling under the preceding item in an order of non-permission of sale that has been issued in another civil execution procedure, where two years have yet to elapse from the day on which such order of non-permission of sale became final and binding
- (iii) A person who, in relation to a sale in a civil execution procedure, has been sentenced to a punishment pursuant to the provisions of Articles 95 to 96-3, Article 197 to 197-4 or Article 198 of the Penal Code (Act No. 45 of 1907) or

Article 1 (1), Article 2 (1) or Article 4 of the Act on Punishment of Persons Holding Public Office who Acquires Benefits by Exerting Influence (Act No. 130 of 2000), where two years have yet to elapse from the day on which the judicial decision thereof became final and binding

(Purchase Offer Guarantee)

Article 66 A person who intends to make a purchase offer for real property shall provide a guarantee in the amount and by the method specified by the execution court pursuant to the provisions of the Rules of the Supreme Court.

(Next-Highest Purchase Offer)

Article 67 A person who has made a purchase offer next highest to the highest purchase offeror may, provided that his/her purchase offer price is not less than the minimum purchase price and not less than the price obtained by deducting the amount of the purchase offer guarantee from the price offered by the highest purchase offeror, make an offer seeking permission of sale for his/her purchase offer in the event that the order of permission of sale pertaining to the highest purchase offeror ceases to be effective pursuant to the provisions of Article 80 (1) (such offer shall hereinafter be referred to as the "next-highest purchase offer") to a court execution officer, by the time of the termination of implementation of the sale.

(Prohibition of a Purchase Offer by an Obligor)

Article 68 An obligor may not make a purchase offer.

(Temporary Restraining Order for an Obligee Effecting a Seizure who Has Made a Purchase Offer, etc.)

Article 68-2 (1) In cases where no purchase offer was made when the court clerk had a sale implemented by the method of bidding or an auction, if the obligor or the possessor of the real property has committed or is likely to commit an act that makes the sale of the real property difficult, the execution court may, upon petition by an obligee effecting a seizure (excluding an obligee effecting a seizure who filed a petition for a compulsory auction or an auction after the time limit for a demand for liquidating distribution; the same shall apply in the following paragraph), issue a temporary restraining order containing the following matters (including a temporary restraining order to give public notice, if the execution court finds it to be necessary), while requiring provision of security, until a purchaser pays the price:

(i) Ordering the obligor or the possessor of the real property to release the real property from his/her possession and deliver it to the court execution officer or the petitioner

- (ii) Having the court execution officer or the petitioner retain the real property
- (2) An obligee effecting a seizure shall, in order to file the petition set forth in the preceding paragraph, decide on a price not less than the minimum purchase price (hereinafter referred to as the "obligee's offered price" in this paragraph), make an offer to the effect that he/she shall purchase the real property at the obligee's offered price if there is no purchase offer that reaches the obligee's offered price upon the next implementation of a sale by bidding or an auction, and provide a guarantee equivalent to the obligee's offered price.
- (3) When there has been a change in circumstances, an execution court may, upon petition or by its own authority, revoke or change an order under the provisions of paragraph (1).
- (4) The provisions of Article 55 (2) shall apply mutatis mutandis to a temporary restraining order under the provisions of paragraph (1), the provisions of paragraph (3) of said Article shall apply mutatis mutandis to an order under the provisions of paragraph (1), the provisions of paragraph (6) of said Article shall apply mutatis mutandis to a judicial decision on the petition set forth in paragraph (1), a judicial decision under the provisions of the preceding paragraph or a judicial decision to dismiss the petition set forth in said paragraph, the provisions of paragraph (7) of said Article shall apply mutatis mutandis to an order under the provisions of the preceding paragraph, the provisions of paragraph (8) and paragraph (9) of said Article and Article 55-2 shall apply mutatis mutandis to an order granting the temporary restraining order prescribed in paragraph (1), the provisions of Article 55 (10) shall apply mutatis mutandis to expenses required for the petition set forth in paragraph (1) or execution of an order under the provisions of said paragraph, and the provisions of Article 63 (4) shall apply mutatis mutandis to the provision of a guarantee set forth in paragraph (2).

(Measures in Cases where Real Property Is Unlikely to be Sold)

- Article 68-3 (1) In cases where no purchase offer was made when the court clerk had a sale implemented three times by bidding or an auction, if an execution court, taking into consideration the shape, usage, regulations on use under laws and regulations, and any other circumstances of the real property, finds that the real property is unlikely to be sold even if the court clerk had a sale implemented any further, the execution court may stay the compulsory auction procedure. In this case, the execution court shall notify the obligee effecting a seizure to that effect.
- (2) If, within three months from the day of receipt of notice under the provisions of the preceding paragraph, an obligee effecting a seizure has made an offer to the execution court seeking to have a sale implemented on the basis that there is a person intending to make a purchase offer, a court clerk shall have a sale

implemented pursuant to the provisions of Article 64.

- (3) If an obligee effecting a seizure does not make an offer seeking to have a sale implemented under the provisions of the preceding paragraph within the period set forth in said paragraph, the execution court may rescind the compulsory auction procedure. The same shall apply if no purchase offer was made when a court clerk had a sale implemented pursuant to the provisions of said paragraph.

(Date for Ordering a Sale)

Article 69 An execution court shall hold court on the date for ordering a sale and render permission or non-permission of sale.

(Statement of Opinions concerning Permission or Non-permission of Sale)

Article 70 A person who has interest in permission or non-permission of sale of real property may state his/her opinion with regard to any of the grounds listed in the items of the following Article that affect his/her rights, on the date for ordering a sale.

(Grounds for Non-permission of Sale)

Article 71 An execution court shall, when it finds that any of the following grounds exist, issue an order of non-permission of sale:

- (i) The compulsory auction should not be commenced or continued.
- (ii) The highest purchase offeror lacks the qualification or capacity to purchase the real property or his/her agent lacks the authority of representation.
- (iii) The highest purchase offeror is a person who has made a purchase offer on the account of a person who lacks the qualification to purchase the real property.
- (iv) The highest purchase offeror, his/her agent or the person who, on his/her own account, had the highest purchase offeror make a purchase offer falls under any of the following categories:
  - (a) A person who has committed the act prescribed in Article 65 (i) in the relevant compulsory auction procedure
  - (b) A person who has failed to pay the price or a person who has, on his/her own account, had said person make a purchase offer in the relevant compulsory auction procedure
  - (c) The person set forth in Article 65 (ii) or (iii)
- (v) A proposal of non-permission of sale has been made under the provisions of Article 75 (1).
- (vi) There is a serious error in an order of the standard sales price, an order of package sale, preparation of a description of property, or the procedure of such order or preparation.

(vii) There is a serious error in the procedure of sale.

(Measures in Cases where a Judicial Decision to Stay Execution, etc. Has Been Submitted after the Termination of Implementation of a Sale)

Article 72 (1) In cases where the document set forth in Article 39 (1)(vii) has been submitted during the period from the termination of implementation of a sale until the end of the date for ordering a sale, the execution court may not hold court on the date for ordering a sale, except in the case of issuing an order of non-permission of sale based on different grounds. In this case, the highest purchase offeror or the next-highest purchase offeror may rescind his/her purchase offer to the execution court.

(2) In cases where the document prescribed in the preceding paragraph has been submitted after the end of the date for ordering a sale, the provisions of Article 39 shall apply only if an order of permission of sale issued on said date was revoked or ceased to be effective or an order of non-permission of sale issued on said date became final and binding.

(3) In cases where the document set forth in Article 39 (1)(viii) has been submitted after the termination of implementation of a sale, the provisions of said Article shall apply only if an order of permission of sale pertaining to said sale was revoked or ceased to be effective or an order of non-permission of sale pertaining to said sale became final and binding.

(Measures in Cases of Becoming an Excess Sale)

Article 73 (1) In cases of selling several pieces of real property, if it is expected to be possible to fully perform the claims and execution costs of the respective obligees with the purchase offer price of part of such pieces of property, the execution court shall withhold the order of permission of sale for the remaining pieces of property.

(2) In the cases set forth in the preceding paragraph, if it is expected to be possible to fully perform the claims and execution costs of the respective obligees with the purchase offer price of any of several pieces of property, the execution court shall hear the opinion of the obligor in advance with regard to the pieces of real property for which a sale should be permitted.

(3) The highest purchase offeror or the next-highest purchase offeror for whom an order of permission of sale has been withheld pursuant to the provisions of paragraph (1) may rescind his/her purchase offer to the execution court.

(4) When the price has been paid for the real property for which an order of permission of sale has been issued, the execution court shall rescind the compulsory auction procedure pertaining to the real property set forth in the preceding paragraph.

(Appeal against a Disposition of Execution Filed against an Order of Permission or Non-permission of Sale)

Article 74 (1) An appeal against a disposition of execution may be filed against an order of permission or non-permission of sale, only if the appellant asserts that his/her rights shall be prejudiced by such order.

(2) An appeal against a disposition of execution may be filed against an order of permission of sale only on the basis that any of the grounds listed in the items of Article 71 exist or that there is a serious error in the procedure of the order of permission of sale.

(3) Notwithstanding the provisions of the preceding two paragraphs, the grounds listed in the items of Article 338 (1) of the Code of Civil Procedure may serve as the basis for an appeal against a disposition of execution filed against an order of permission or non-permission of sale.

(4) A court of appeal may, if it finds it to be necessary, specify the opposite party of the appellant.

(5) An order of permission or non-permission of sale shall not be effective until it becomes final and binding.

(Proposal of Non-permission of Sale in Cases where Real Property Was Damaged, etc.)

Article 75 (1) In cases where the real property has been damaged after making the purchase offer due to a natural disaster or other grounds not attributable to him/her, the highest purchase offeror or the purchaser may, if it is prior to the issuance of an order of permission of sale, make a proposal of non-permission of sale to the execution court, and if it is after the issuance of an order of permission of sale, file a petition for revocation of such order by the time of paying the price; provided, however, that this shall not apply when the damage to the real property is slight.

(2) An appeal against a disposition of execution may be filed against an order issued with regard to the petition for revocation of an order of permission of sale under the provisions of the preceding paragraph.

(3) An order to revoke an order of permission of sale based on the petition prescribed in the preceding paragraph shall not be effective until it becomes final and binding.

(Withdrawal of a Petition for a Compulsory Auction after a Purchase Offer Has Been Made, etc.)

Article 76 (1) In order to withdraw a petition for a compulsory auction after a purchase offer has been made, the consent of the highest purchase offeror or the purchaser and the next-highest purchase offeror shall be obtained; provided, however, that this shall not apply when there is any other obligee(s)

effecting a seizure (excluding an obligee effecting a seizure who filed a petition for a compulsory auction or an auction after the time limit for a demand for liquidating distribution) and the withdrawal does not cause any change to the matter set forth in Article 62 (1)(ii).

- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to the case of submitting the document set forth in Article 39 (1)(iv) or (v) after a purchase offer has been made.

(Temporary Restraining Order for the Highest Purchase Offeror or the Purchaser, etc.)

Article 77 (1) When an obligor or a possessor of real property has committed or is likely to commit a price reducing act, etc. (meaning an act that reduces the price of real property or makes the delivery of real property difficult; hereinafter the same shall apply in this paragraph), an execution court may, upon petition by the highest purchase offeror or the purchaser, issue the temporary restraining order and/or the temporary restraining order to give public notice set forth in any of the following items, until the execution of a delivery order, while requiring payment of money equivalent to his/her purchase offer price (or, in cases where the guarantee set forth in Article 66 has been provided in the form of money, a price deducting the amount of said guarantee) or payment of the price:

- (i) A temporary restraining order prohibiting the obligor or the possessor of the real property from committing such price reducing act or ordering such person to conduct a certain act (including a temporary restraining order to give public notice, if the execution court finds it to be necessary)
  - (ii) A temporary restraining order containing the following matters (including a temporary restraining order to give public notice, if the execution court finds it to be necessary):
    - (a) Ordering the person who has committed or is likely to commit the price reducing act to release real property from his/her possession and deliver it to the court execution officer
    - (b) Having the court execution officer retain the real property
  - (iii) A temporary restraining order containing the following matters and a temporary restraining order to give public notice:
    - (a) The matters set forth in (a) and (b) of the preceding item
    - (b) Prohibiting the person prescribed in (a) of the preceding item from transferring the possession of real property and permitting such person to use the real property
- (2) The provisions of Article 55 (2) (limited to the portion pertaining to item (i)) shall apply mutatis mutandis to the temporary restraining order set forth in item (ii) or item (iii) of the preceding paragraph, the provisions of paragraph

(2) of said Article (limited to the portion pertaining to item (ii)) shall apply mutatis mutandis to the temporary restraining order set forth in the preceding paragraph, the provisions of paragraph (3), the main clause of paragraph (4) and paragraph (5) of said Article shall apply mutatis mutandis to an order under the provisions of the preceding paragraph, the provisions of paragraph (6) of said Article shall apply mutatis mutandis pursuant to a judicial decision on the petition set forth in the preceding paragraph or the petition set forth in paragraph (5) of said Article as applied mutatis mutandis pursuant to this paragraph, the provisions of paragraph (7) of said Article shall apply mutatis mutandis to an order under the provisions of paragraph (5) of said Article as applied mutatis mutandis pursuant to this paragraph, and the provisions of paragraph (8) and paragraph (9) of said Article and Article 55-2 shall apply mutatis mutandis to an order granting the temporary restraining order set forth in item (ii) or item (iii) of the preceding paragraph.

(Payment of the Price)

Article 78 (1) When an order of permission of sale has become final and binding, the purchaser shall pay the price to the court clerk by the time limit specified by the court clerk.

(2) The money provided by the purchaser as a purchase offer guarantee and the money paid by him/her pursuant to the provisions of paragraph (1) of the preceding Article shall be allotted to the payment of the price.

(3) If the purchaser has provided the guarantee set forth in Article 63 (2)(i) or Article 68-2 (2) by a method other than payment of money, the execution court shall conduct realization of what has been provided as the guarantee pursuant to the provisions of the Rules of the Supreme Court, and allot the amount obtained by deducting the expenses required for the realization from the realization value to the payment of the price. In this case, the expenses required for the realization shall be borne by the purchaser.

(4) When the purchaser is an obligee who is to receive liquidating distribution or performance from the proceeds of the sale, he/she may pay, on the distribution date or the day of delivery of the payment money, the price that has had deducted the amount of liquidating distribution or performance to be received, by making such proposal to the execution court by the time when the order of permission of sale becomes final and binding; provided, however, that, if an objection is filed on the distribution date with regard to the amount of liquidating distribution to be received by the purchaser, the purchaser shall pay money equivalent to the portion pertaining to the objection within one week from said distribution date.

(5) A court clerk may, if he/she finds it to be particularly necessary, change the time limit set forth in paragraph (1).

(6) Against a disposition by a court clerk under the provisions of paragraph (1) or the preceding paragraph, an objection may be filed with the execution court.

(7) The provisions of the first sentence of Article 10 (6) and Article 10 (9) shall apply mutatis mutandis to cases where an objection under the provisions of the preceding paragraph has been filed.

(Time of Acquisition of the Real Property)

Article 79 A purchaser shall acquire real property at the time of payment of the price.

(Effects of Non-payment of the Price)

Article 80 (1) When a purchaser fails to pay the price, an order of permission of sale shall cease to be effective. In this case, the purchaser may not claim return of the guarantee provided pursuant to the provisions of Article 66.

(2) In the cases set forth in the first sentence of the preceding paragraph, if a next-highest purchase offer exists, the execution court shall issue an order of permission or non-permission of sale with regard to such offer.

(Statutory Superficies)

Article 81 In cases where land and any building built on it are under the ownership of an obligor, if such land or building has been seized and the owner of either the land or building has changed to a person other than said obligor through a sale thereof, a superficies shall be deemed to have been established for such building. In this case, the rent shall be specified by the court, upon request by a party concerned.

(Commission of Registration upon Payment of the Price)

Article 82 (1) When a purchaser has paid the price, a court clerk shall commission the following registration or cancellation of registration:

(i) Registration of transfer of the rights acquired by the purchaser

(ii) Cancellation of registration pertaining to any rights that were extinguished through the sale or acquisition of rights or provisional dispositions that ceased to be effective through the sale

(iii) Cancellation of registration of any seizure or provisional seizure

(2) If the purchaser or a person who intends to receive establishment of a mortgage on real property from the purchaser has made a proposal by the time of payment of the price, pursuant to the provisions of the Rules of the Supreme Court, the commission under the provisions of the preceding paragraph shall be made by providing commission information to a person who is capable of providing an agency service of application for registration as a business and who has been designated by the proposer, and having such person provide the

commission information to the registry. In this case, the person designated by the proposer shall provide such commission information to the registry without delay.

- (3) In order to make a commission under the provisions of paragraph (1), information proving that an order of permission of sale has been issued shall be provided along with the commission information.
- (4) The registration and license tax and any other costs required for a commission under the provisions of paragraph (1) shall be borne by the purchaser.

(Delivery Order)

Article 83 (1) An execution court may, upon petition by a purchaser who has paid the price, order an obligor or a possessor of real property to deliver the real property to the purchaser; provided, however, that this shall not apply to a person who is recognized, under the record of the case, to possess the real property based on a title that may be duly asserted against the purchaser.

- (2) A purchaser may not file the petition set forth in the preceding paragraph when six months (or, for a purchaser of a building that had been possessed by the mortgaged building user prescribed in Article 395 (1) of the Civil Code at the time of the purchase, nine months) have elapsed from the day of payment of the price.
- (3) An execution court shall, in the case of issuing an order under the provisions of paragraph (1) to a possessor other than the obligor, interrogate such person; provided, however, that this shall not apply when it is clear, under the record of the case, that such person does not possess the real property based on a title that may be duly asserted against the purchaser or if the execution court has already interrogated such person.
- (4) An appeal against a disposition of execution may be filed against a judicial decision on the petition set forth in paragraph (1).
- (5) An order under the provisions of paragraph (1) shall not be effective until it becomes final and binding.

(Effects of a Temporary Restraining Order Prohibiting Transfer of Possession, etc.)

Article 83-2 (1) In a compulsory auction procedure, if an order granting the temporary restraining order and the temporary restraining order to give public notice set forth in Article 55 (1)(iii) or Article 77 (1)(iii) has been executed and a delivery order has been issued against the respondent of said order upon petition by the purchaser, the purchaser may effect compulsory execution of delivery of the real property against either of the following persons based on said delivery order:

- (i) A person who possessed said real property, knowing that said order has been executed
  - (ii) A person who succeeded to the possession by the respondent of said order after the execution of said order, without knowing that said order has been executed
- (2) A person who took possession of the real property set forth in the preceding paragraph after the execution of the order set forth in said paragraph shall be presumed to have taken possession of the real property, knowing that said order has been executed.
- (3) When an execution certificate against a person other than the respondent of the order set forth in paragraph (1) has been granted with regard to the delivery order set forth in said paragraph, such person may file an objection to the grant of the execution certificate on the basis that he/she possesses the real property based on a title that may be duly asserted against the purchaser or that he/she does not fall under any of the items of said paragraph.

(Implementation of Liquidating Distribution of the Proceeds of the Sale, etc.)

Article 84 (1) In cases where the price has been paid, an execution court shall implement liquidating distribution based on a distribution list except in the cases prescribed in the following paragraph.

- (2) In cases where there is only one obligee or in cases where there are two or more obligees and it is possible to fully perform the claims and execution costs of the respective obligees with the proceeds of the sale, the execution court shall prepare a statement of delivery of the proceeds of the sale, and deliver payment money to the obligee(s) and deliver any surplus to the obligor.
- (3) In cases where any of the documents listed in Article 39 (1)(i) to (vi) have been submitted after the payment of the price, if there is any other obligee(s) who is to receive liquidating distribution of the proceeds of the sale or delivery of payment money (hereinafter referred to as "liquidating distribution, etc."), the execution court shall implement liquidating distribution, etc. for such obligee(s).
- (4) The execution court shall also implement liquidating distribution, etc. in cases where the document set forth in Article 39 (1)(vii) or (viii) has been submitted after the payment of the price.

(Preparation of a Distribution List)

Article 85 (1) On the distribution date, an execution court shall determine the amounts of the principal of the claim, interest, and any other incidental claims, the amount of execution costs, and the order and amount of liquidating distribution with regard to each of the obligees set forth in the items of Article 87 (1); provided, however, that this shall not apply to the order and amount of

liquidating distribution in cases where an agreement has been reached among all of the obligees on the distribution date.

- (2) In the case of determining the order and amount of liquidating distribution pursuant to the provisions of the main clause of the preceding paragraph, the execution court shall make the determination in accordance with the provisions of the Civil Code, Commercial Code and any other Acts.
- (3) On the distribution date, the obligees prescribed in paragraph (1) and the obligor shall be summoned.
- (4) On the distribution date, if the execution court finds it to be necessary for determining the matters prescribed in the main clause of paragraph (1), it may interrogate the obligees and the obligor who appeared and examine any documentary evidence that may be examined immediately.
- (5) When the matters prescribed in the main clause of paragraph (1) (in the case prescribed in the proviso to said paragraph, they shall exclude the order and amount of liquidating distribution) have been determined pursuant to the provisions of paragraph (1), a court clerk shall prepare a distribution list on the distribution date.
- (6) A distribution list shall contain a statement of the amount of the proceeds of the sale and the contents of the determination of the execution court with regard to the matters prescribed in the main clause of paragraph (1) (in the case prescribed in the proviso to said paragraph, such contents with regard to the order and amount of liquidating distribution shall be the contents of the relevant agreement).
- (7) The provisions of Article 16 (3) and (4) shall apply mutatis mutandis to the service of a writ of summons upon the obligees prescribed in paragraph (1) (excluding those prescribed in the first sentence of paragraph (1) of said Article)

(Proceeds of the Sale)

Article 86 (1) Proceeds of the sale shall consist of the following:

- (i) The price of the real property
  - (ii) The portion of the guarantee that has been provided pursuant to the provisions of Article 63 (2)(ii) that is equivalent to the amount that remains after deducting the price from the obligee's offered price
  - (iii) The guarantee of which return may not be claimed by the purchaser pursuant to the provisions of Article 80 (1)
- (2) In cases where real property has been sold in a package pursuant to the provisions of Article 61, if it is necessary to determine the amount of the proceeds of the sale for each piece of real property, such amount shall be the amount obtained by dividing the total amount of the proceeds of the sale proportionately according to the standard sales price of each piece of property.

The same shall apply to the burden of execution costs for each piece of property.  
(3) The provisions of Article 78 (3) shall apply mutatis mutandis to a realization in cases where the guarantee prescribed in paragraph (1)(ii) or (iii) has been provided by a method other than payment of money.

(Scope of Obligees who Are to Receive Liquidating Distribution, etc.)

Article 87 (1) Obligees who are to receive liquidating distribution, etc. of the proceeds of the sale shall be the following:

- (i) The obligee(s) effecting a seizure (limited to an obligee effecting a seizure who filed a petition for a compulsory auction or an auction for exercise of a general statutory lien by the time limit for a demand for liquidating distribution)
  - (ii) Obligees who made a demand for liquidating distribution by time limit for a demand for liquidating distribution
  - (iii) The obligee in any provisional seizure that was registered prior to registration of the seizure (meaning the seizure pertaining to the first commencement order for a compulsory auction; the same shall apply in the following item)
  - (iv) Obligees holding any statutory lien (excluding general statutory liens held by the obligees set forth in item (i) or item (ii)), pledge or mortgage which was registered (including provisional registration based on the provisional disposition prescribed in Article 53 (2) of the Civil Preservation Act) prior to registration of the seizure and which shall be extinguished through the sale (including the holder of mortgage securities pertaining to such mortgage)
- (2) In cases where the right of the obligee set forth in item (iv) of the preceding paragraph has been registered after registration of a provisional seizure, such obligee may receive liquidating distribution, etc. only when the obligee effecting a provisional seizure has been defeated in the suit on the merits or the provisional seizure has ceased to be effective.
- (3) In cases where the compulsory auction procedure pertaining to the seizure has been stayed and a judicial decision to continue the procedure has been issued under the provisions of Article 47 (6), if the obligee effecting a seizure subject to such stay of execution was defeated in a suit, etc. pertaining to such stay, obligees holding any right prescribed in paragraph (1)(iv) which was registered after registration of the seizure and prior to registration of a seizure pertaining to the judicial decision of continuation may receive liquidating distribution, etc.

(Liquidating Distribution, etc. for a Claim with a Due Date)

Article 88 (1) A claim for which the fixed due date has yet to arrive shall be deemed to have become due with regard to liquidating distribution, etc.

- (2) When the claim set forth in the preceding paragraph bears no interest, the amount of liquidating distribution, etc. shall be calculated by deeming the amount of principal, which together with the interest for the period from the day of liquidating distribution, etc. until the due date calculated based on the statutory interest rate constitute the amount of the claim, to be the amount of such claim.

(Filing of an Opposition to Liquidating Distribution)

Article 89 (1) An obligee or obligor who is dissatisfied with any of the amounts of claim or liquidating distribution of the respective obligees stated in the distribution list may file an opposition (hereinafter referred to as the "filing of an opposition to liquidating distribution") on the distribution date.

- (2) An execution court shall implement liquidating distribution of only the portion for which there was no filing of an opposition to liquidating distribution.

(Action to Oppose Liquidating Distribution, etc.)

Article 90 (1) An obligee who has filed an opposition to liquidating distribution or an obligor who has filed an opposition to liquidating distribution against an obligee who does not have an enforceable authenticated copy of a title of obligation shall file an action to oppose liquidating distribution.

- (2) The action set forth in the preceding paragraph shall be under the jurisdiction of the execution court.
- (3) The action set forth in paragraph (1) shall be dismissed without prejudice in cases where the plaintiff fails to appear on the first date of oral argument, except when the plaintiff fails to appear based on grounds not attributable to him/her.
- (4) In a judgment on the action set forth in paragraph (1), the distribution list shall be changed or the distribution list shall be rescinded in order to prepare a new distribution list.
- (5) An obligor who has filed an opposition to liquidating distribution against an obligee who has an enforceable authenticated copy of a title of obligation shall file an action to oppose execution or the action set forth in Article 117 (1) of the Code of Civil Procedure.
- (6) The filing of an opposition to liquidating distribution shall be deemed to have been withdrawn if the obligee or the obligor who has filed an opposition to liquidating distribution fails to prove to the execution court that he/she has filed the action set forth in paragraph (1) or fails to prove that he/she has filed the action set forth in the preceding paragraph and submit an authenticated copy of a judicial decision to stay execution pertaining to such action to the execution court within one week (or, in cases where the purchaser is to pay

money pursuant to the provisions of the proviso to Article 78 (4), within two weeks) from the distribution date (or, for the filing of an opposition to liquidating distribution against an unknown holder of mortgage securities, the day on which such holder became known).

(Statutory Deposit of the Amount of Liquidating Distribution, etc.)

Article 91 (1) When any of the following grounds exist for the claim of an obligee who is to receive liquidating distribution, etc., a court clerk shall make a statutory deposit of money equivalent to the amount of such liquidating distribution, etc.:

- (i) When the claim is one subject to a condition precedent or one with an uncertain due date
  - (ii) When the claim is one held by the obligee effecting a provisional seizure
  - (iii) When the document set forth in Article 39 (1)(vii) or Article 183 (1)(vi) has been submitted
  - (iv) When an authenticated copy of a judicial decision to temporarily prohibit exercise of a statutory lien, pledge or mortgage (hereinafter referred to as a "statutory lien, etc.") pertaining to the claim has been submitted
  - (v) When provisional registration or provisional registration based on a provisional disposition under the provisions of Article 53 (2) of the Civil Preservation Act has been made for a statutory lien, etc. pertaining to the claim
  - (vi) When the amount of liquidating distribution is not fixed due to the existence of a statutory lien, etc. that was registered after the registration of a provisional seizure or a seizure pertaining to a stay of execution
  - (vii) When an action to oppose liquidating distribution has been filed
- (2) A court clerk shall make a statutory deposit of money equivalent to the amount of liquidating distribution, etc. for any obligee who failed to appear to the execution court to receive liquidating distribution, etc. (including any unknown holder of mortgage securities).

(Implementation of Liquidating Distribution, etc. when the Right Becomes Final and Binding, etc.)

Article 92 (1) In cases where a statutory deposit has been made under the provisions of paragraph (1) of the preceding Article, if the grounds for such statutory deposit have been extinguished, the execution court shall implement liquidating distribution, etc. of the deposit money.

(2) In cases where liquidating distribution is to be implemented pursuant to the provisions of the preceding paragraph, if it is no longer possible to implement liquidating distribution to any obligee pertaining to a statutory deposit based on the grounds set forth in paragraph (1)(i) to (v) of the preceding Article or

any obligee effecting a provisional seizure or any obligee effecting a seizure subject to a stay of execution pertaining to a statutory deposit based on the grounds set forth in item (vi) of said paragraph, or where an obligee pertaining to a statutory deposit based on the grounds set forth in item (vii) of said paragraph has been defeated in an action to oppose liquidating distribution filed by the obligor, the execution court shall change the distribution list even for obligees who did not file an opposition to liquidating distribution.

### **Division 3 Compulsory Administration**

(Commencement Order, etc.)

- Article 93 (1) An execution court shall, in order to commence a compulsory administration procedure, issue a commencement order for compulsory administration, and, in such commencement order, declare that real property shall be seized for the obligee and prohibit the obligor from disposing earnings and, if the obligor has a claim for a rent or any other right to seek delivery pertaining to earnings from the real property (hereinafter referred to as a "delivery claim"), order the person(s) who has the obligation to make said delivery to the obligor (hereinafter referred to as the "person obligated to deliver") to deliver the subject matter of such delivery to the administrator.
- (2) The earnings set forth in the preceding paragraph shall be natural fruits to be harvested on a later date and civil fruits that are already due and to be due on a later date.
- (3) The commencement order set forth in paragraph (1) shall be served upon the obligor and any person(s) obligated to deliver.
- (4) The commencement order set forth in paragraph (1) shall become effective against a person obligated to deliver when the commencement order was served upon said person obligated to deliver.
- (5) An appeal against a disposition of execution may be filed against a judicial decision on a petition for compulsory administration.

(Overlapped Commencement Order)

Article 93-2 If a commencement order for a compulsory administration has already been issued, or if a petition for a compulsory administration was filed for real property for which a commencement order for execution against earnings from secured real property has been issued under the provisions of Article 180 (ii), the execution court shall issue another commencement order for compulsory administration.

(Demand for the Person Obligated to Deliver to State the Presence of any Conflicting Order, etc. of Seizure of Claims)

Article 93-3 A court clerk shall, upon servicing a commencement order for compulsory administration upon a person obligated to deliver, make a demand to the person obligated to deliver to state the presence or absence of any order of seizure or disposition of seizure against the delivery claim and any other matters specified by the Rules of the Supreme Court within two weeks from the day of service of the commencement order. In this case, the provisions of Article 147 (2) shall apply mutatis mutandis.

(Suspension of the Effects of a Conflicting Order, etc. of Seizure of Claims on the Delivery Claim, etc.)

Article 93-4 (1) When a commencement order for compulsory administration has become effective against a person obligated to deliver pursuant to the provisions of Article 93 (4), the effects of any order of seizure or disposition of seizure against the delivery claim, which was already effective, shall be suspended; provided, however, that this shall not apply to cases where the commencement order for compulsory administration becomes effective against the person obligated to deliver after the times listed in the items of Article 165 (including the cases where the provisions of the items of Article 165 [excluding item (iii) and item (iv)] are applied mutatis mutandis pursuant to Article 167-14 and the cases where they are applied mutatis mutandis pursuant to Article 193 (2)).

(2) When a commencement order for compulsory administration has become effective against a person obligated to deliver pursuant to the provisions of Article 93 (4), the effects of any order of provisional seizure against the delivery claim, which was already effective, shall be suspended.

(3) The obligee in the order of seizure or disposition of seizure set forth in paragraph (1), an obligee who made a demand for liquidating distribution in the procedure of execution against a claim (meaning the execution against a claim prescribed in Article 143) or execution against a claim relating to an action on small claim (meaning the execution against a claim relating to an action on small claim prescribed in Article 167-2 (2)) by the time of suspension of the effects of the order of seizure or disposition of seizure set forth in paragraph (1), and the obligee in the order of provisional seizure set forth in the preceding paragraph may receive liquidating distribution, etc. in the compulsory administration procedure set forth in the preceding two paragraphs, notwithstanding the provisions of Article 107 (4).

(Appointment of an Administrator)

Article 94 (1) An execution court shall appoint an administrator simultaneously with the issuance of a commencement order for compulsory administration.

(2) A trust company (meaning a person who obtained the license set forth in

Article 3 or Article 53 (1) of the Trust Business Act (Act No. 154 of 2004)), a bank, or any other juridical person may become an administrator.

(Authority of an Administrator)

- Article 95 (1) An administrator may conduct administration, collect earnings and conduct a realization with regard to the real property for which a commencement order for compulsory administration has been issued.
- (2) An administrator shall, in order to lease real property beyond the period specified in Article 602 of the Civil Code, obtain the consent of the obligor.
- (3) When there are several administrators, they perform their duties jointly; provided, however, that they may divide the duties among them by obtaining the permission of the execution court.
- (4) When there are several administrators, it shall be sufficient for a third party to manifest his/her intention to any one of them.

(Possession of Real Property for a Compulsory Administration, etc.)

- Article 96 (1) An administrator may release real property from the obligor's possession and take possession of such real property.
- (2) In the case set forth in the preceding paragraph, if he/she finds it to be necessary to open a closed door, an administrator may request assistance from a court execution officer.
- (3) The provisions of Article 57 (3) shall apply mutatis mutandis to a court execution officer who has been requested to provide assistance pursuant to the provisions of the preceding paragraph.

(Permission to Use a Building)

- Article 97 (1) In cases where a commencement order for compulsory administration has been issued for a building in which the obligor resides, if the obligor is unable to find another place to reside, the execution court may, upon petition, permit use of such building to the extent necessary for residence of the obligor and any relatives living together who share the same livelihood with the obligor (including a person who is in a de facto husband and wife relationship or foster parent and child relationship with the obligor with no notification of marriage or adoption having been given; hereinafter referred to as the "obligor, etc.") for a period it has specified.
- (2) When the obligor has obstructed the administration by the administrator or when there was any change in circumstances, the execution court may, upon petition, revoke or change an order under the provisions of the preceding paragraph.
- (3) An appeal against a disposition of execution may be filed against an order on the petition set forth in the preceding two paragraphs.

(Giving a Portion of the Earnings, etc.)

- Article 98 (1) If the obligor is to fall into extreme poverty through compulsory administration, the execution court may, upon petition, order the administrator to give the obligor the necessary money or earnings, depending on the extent of his/her poverty, from the earnings or the realization price.
- (2) The provisions of paragraph (2) of the preceding Article shall apply mutatis mutandis to an order under the provisions of the preceding paragraph, and the provisions of paragraph (3) of said Article shall apply mutatis mutandis to an order based on the petition set forth in the preceding paragraph or the petition set forth in paragraph (2) of the preceding Article as applied mutatis mutandis pursuant to this paragraph.

(Supervision of an Administrator)

Article 99 An administrator shall be supervised by the execution court.

(Duty of Care of an Administrator)

- Article 100 (1) An administrator shall perform his/her duties with due care of a prudent manager.
- (2) If an administrator(s) fails to have the due care set forth in the preceding paragraph, the administrator(s) shall be jointly and severally liable to compensate for damage to any person having an interest.

(Remuneration for an Administrator, etc.)

- Article 101 (1) An administrator may receive advance payments of expenses necessary for compulsory administration as well as a remuneration determined by the execution court.
- (2) An appeal against a disposition of execution may be filed against an order under the provisions of the preceding paragraph.

(Dismissal of an Administrator)

Article 102 The execution court may, upon petition by a person having an interest or by its own authority, dismiss an administrator if there are material grounds to do so. In this case, the execution court shall interrogate the administrator.

(Duty to Make a Report of Account)

Article 103 An administrator shall, upon the termination of his/her office, make a report of account to the execution court without delay.

(Stay of Compulsory Administration)

Article 104 (1) In cases where the document set forth in Article 39 (1)(vii) or (viii) has been submitted, compulsory administration may be continued with the same conditions as at the time of such submission, except for the procedure of liquidating distribution, etc. In this case, the administrator shall make a statutory deposit of the money to be allotted to the liquidating distribution, etc. and notify the execution court of such circumstances.

(2) When it is possible to fully perform the claims and execution costs of the respective obligees with the amount of money deposited pursuant to the provisions of the preceding paragraph, the execution court shall rescind the compulsory administration procedure, except for the procedure of liquidating distribution, etc.

(Demand for Liquidating Distribution)

Article 105 (1) An obligee having an enforceable authenticated copy of a title of obligation and an obligee who has proved that he/she has a general statutory lien based on any of the documents listed in the items of Article 181 (1) may make a demand for liquidating distribution to the execution court.

(2) An appeal against a disposition of execution may be filed against a judicial decision to dismiss a demand for liquidating distribution.

(Money, etc. to be Allotted to Liquidating Distribution, etc.)

Article 106 (1) Money to be allotted to liquidating distribution, etc. shall be the amount obtained by deducting the tax or public charges imposed on the real property, the remuneration for the administrator and any other necessary expenses from the earnings or the realization price remaining after giving any portion thereof under the provisions of Article 98 (1).

(2) If it is unlikely that any money to be allotted to liquidating distribution, etc. shall arise, the execution court shall rescind the compulsory administration procedure.

(Implementation of Liquidating Distribution, etc. by an Administrator)

Article 107 (1) An administrator shall pay expenses under the provisions of paragraph (1) of the preceding Article, calculate the amount of money to be allotted to liquidating distribution, etc. for each period specified by the execution court, and implement the liquidating distribution, etc.

(2) In cases where there is only one obligee or in cases where there are two or more obligees and it is possible to fully perform the claims and execution costs of the respective obligees with the money to be allotted to liquidating distribution, etc., the administrator shall deliver payment money to the obligee(s) and deliver any surplus to the obligor.

(3) Except in the cases prescribed in the preceding paragraph, if an agreement

was reached among the obligees with regard to liquidating distribution of the money to be allotted to liquidating distribution, etc., the administrator shall implement liquidating distribution in accordance with such agreement.

- (4) The obligees who are to receive liquidating distribution, etc. shall be the following:
- (i) The obligee(s) effecting a seizure who falls under any of (a) to (c) below:
    - (a) An obligee who has filed a petition for compulsory administration by the time of expiration of the period set forth in paragraph (1)
    - (b) An obligee who has filed a petition for the execution against earnings from secured real property prescribed in Article 180 (ii) for exercise of a general statutory lien by the time of expiration of the period set forth in paragraph (1)
    - (c) An obligee who has filed a petition for the execution against earnings from secured real property prescribed in Article 180 (ii) by the time of expiration of the period set forth in paragraph (1) (excluding the obligee set forth in (b) above) where such petition is based on a security interest that has been registered (including provisional registration for preservation prescribed in Article 53 (2) of the Civil Preservation Act) prior to registration of the seizure pertaining to the first commencement order for compulsory administration
  - (ii) The obligee(s) effecting a provisional seizure (limited to an obligee who has filed a petition for execution of a provisional seizure through compulsory administration by the time of expiration of the period set forth in paragraph (1))
  - (iii) Obligees who made a demand for liquidating distribution by the time of expiration of the period set forth in paragraph (1)
- (5) If the agreement set forth in paragraph (3) is not reached, the administrator shall notify the execution court of such circumstances.

(Statutory Deposit of the Amount of Liquidating Distribution, etc. by an Administrator)

Article 108 When any of the grounds set forth in the items of Article 91 (1) (excluding item (vii)) exist for the claim of an obligee who is to receive liquidating distribution, etc., the administrator shall make a statutory deposit of the money equivalent to the amount of such liquidating distribution, etc. and notify the execution court of such circumstances. The same shall apply when an obligee has failed to appear to the execution court to receive liquidating distribution, etc.

(Implementation of Liquidating Distribution, etc. by an Execution Court)

Article 109 An execution court shall implement the procedure of liquidating

distribution, etc., immediately in cases where notification has been given under the provisions of Article 107 (5) and at the time when the grounds for statutory deposit were extinguished in cases where notification has been given under the provisions of Article 104 (1) or the preceding Article.

(Rescission of a Compulsory Administration Procedure through Performance)

Article 110 When the respective obligees have received full performance of their claims and execution costs through liquidating distribution, etc., the execution court shall rescind the compulsory administration procedure.

(Application Mutatis Mutandis of the Provisions on Compulsory Auctions)

Article 111 The provisions of Article 46 (1), Article 47 (2), the main clause of Article 47 (6), Article 47 (7), Article 48, Article 53, Article 54, Article 84 (3) and (4), Article 87 (2) and (3) and Article 88 shall apply mutatis mutandis to compulsory administration, and the provisions of Article 84 (1) and (2), Article 85 and Articles 89 to 92 shall apply mutatis mutandis to the procedure of liquidating distribution, etc. implemented by the execution court pursuant to the provisions of Article 109. In this case, the phrase "after the payment of the price" in Article 84 (3) and (4) shall be deemed to be replaced with "after the passage of the period set forth in Article 107 (1)."

## **Subsection 2 Compulsory Execution against a Vessel**

(Method of Execution against a Vessel)

Article 112 Compulsory execution against a vessel of not less than twenty tons gross (excluding a tender boat or any other boat that uses solely or mainly oars or paddles for propulsion; hereinafter referred to as a "vessel" in this Section and the following Chapter) (hereinafter referred to as "execution against a vessel") shall be carried out by the method of a compulsory auction.

(Execution Court)

Article 113 The district court having jurisdiction over the location of the vessel at the time of issuance of a commencement order for a compulsory auction shall have jurisdiction over execution against a vessel as the execution court.

(Commencement Order, etc.)

Article 114 (1) An execution court shall, in order to commence a compulsory auction procedure, issue a commencement order for a compulsory auction, and order a court execution officer to confiscate the document proving the nationality of the vessel and any other documents necessary for the navigation of the vessel (hereinafter referred to as the "certificate of the vessel's

nationality, etc.") and to submit them to the execution court; provided, however, that the order to a court execution officer is not necessary if the certificate of the vessel's nationality, etc. have already been confiscated based on a commencement order issued prior to said commencement order.

- (2) In a commencement order for a compulsory auction, the execution court shall declare that a vessel shall be seized for the obligee and prohibit the obligor from making the vessel depart.
- (3) When a court execution officer has confiscated the certificate of the vessel's nationality, etc. prior to the service of a commencement order for a compulsory auction or registration of a seizure, the seizure shall become effective at the time of such confiscation.

(Order to Deliver the Certificate of the Vessel's Nationality, etc. Prior to the Filing of a Petition for Execution against a Vessel)

Article 115 (1) When there is a likelihood that execution against a vessel shall become extremely difficult unless the certificate of the vessel's nationality, etc. are confiscated prior to the filing of a petition for execution against a vessel, the district court having jurisdiction over the location of the vessel's registry (or, for a vessel without registry, the place designated by the Supreme Court) may, upon petition, order the obligor to deliver the certificate of the vessel's nationality, etc. to a court execution officer. When there are pressing circumstances, the district court having jurisdiction over the location of the vessel may also issue such order.

- (2) A judicial decision under the provisions of the preceding paragraph may be made without going through oral argument.
- (3) The petition set forth in paragraph (1) shall be made by presenting an enforceable authenticated copy of a title of obligation and making a prima facie showing of the grounds prescribed in said paragraph.
- (4) A court execution officer shall, when the obligee fails to submit a document proving that he/she has filed a petition for execution against a vessel within five days from the day on which the court execution officer received delivery of the certificate of the vessel's nationality, etc., return the certificate of the vessel's nationality, etc. to the obligor.
- (5) An immediate appeal may be filed against an order under the provisions of paragraph (1).
- (6) The immediate appeal set forth in the preceding paragraph shall not have the effect of staying execution.
- (7) The provisions of Article 55 (8) to (10) shall apply mutatis mutandis to an order under the provisions of paragraph (1).

(Appointment of a Custodian)

- Article 116 (1) Upon petition by the obligee effecting a seizure, an execution court may, if he/she finds it to be necessary, appoint a custodian for the vessel for which a commencement order for a compulsory auction has been issued.
- (2) The expenses required by the custodian set forth in the preceding paragraph for retaining the vessel (including the remuneration set forth in Article 101 (1) as applied mutatis mutandis pursuant to paragraph (4)) shall be procedural expenses.
- (3) An appeal against a disposition of execution may be filed against an order issued with regard to the petition set forth in paragraph (1).
- (4) The provisions of Article 94 (2), Article 96 and Articles 99 to 103 shall apply mutatis mutandis to the custodian set forth in paragraph (1).

(Rescission of a Compulsory Auction Procedure Based on Provision of a Guarantee)

- Article 117 (1) In cases where the document set forth in Article 39 (1)(vii) or (viii) has been submitted with regard to the claim of an obligee effecting a seizure, if the obligor provides, prior to any purchase offer, a guarantee equivalent to the total amount of the claims and execution costs of the obligee effecting a seizure and obligees who made a demand for liquidating distribution by the time of provision of the guarantee (or, if it is after the time limit for a demand for liquidating distribution, by such time limit), the execution court shall, upon petition, rescind the compulsory auction procedure, except for the procedure of liquidating distribution, etc.
- (2) When a stay of execution based on submission of the document prescribed in the preceding paragraph has ceased to be effective, the execution court shall implement liquidating distribution, etc. of the guarantee, which has been provided pursuant to the provisions of said paragraph, for the obligees set forth in said paragraph. In this case, the execution court may reclaim any securities that have been deposited as provision of a guarantee.
- (3) An appeal against a disposition of execution may be filed against a judicial decision to dismiss the petition set forth in paragraph (1).
- (4) The provisions of Article 12 shall not apply to an order under the provisions of paragraph (1).
- (5) The provisions of Article 15 shall apply mutatis mutandis to the provision of the guarantee set forth in paragraph (1) and the provisions of Article 78 (3) shall apply mutatis mutandis to a realization in cases where the guarantee set forth in paragraph (1) has been provided by a method other than a statutory deposit of money.

(Permission for Navigation)

- Article 118 (1) In cases where an execution court finds that there is a necessity

in terms of business or there are other reasonable grounds, if there is the consent of the respective obligees and the highest purchase offeror or the purchaser and the next-highest purchase offeror, the execution court may permit navigation of the vessel on petition by the obligor.

- (2) An appeal against a disposition of execution may be filed against a judicial decision on the petition set forth in the preceding paragraph.
- (3) An order under the provisions of paragraph (1) shall not be effective until it becomes final and binding.

(Transfer of a Case)

Article 119 (1) An execution court may, in cases where the vessel for which a commencement order for a compulsory auction has been issued is relocated to a place outside its jurisdictional district, transfer the case to the district court having jurisdiction over the location of the vessel.

- (2) No appeal may be entered against an order under the provisions of the preceding paragraph.

(Rescission of a Compulsory Auction Procedure in Cases where Confiscation of the Certificate of the Vessel's Nationality, etc. Is Not Possible)

Article 120 If a court execution officer is unable to confiscate the certificate of the vessel's nationality, etc. within two weeks from the day on which a commencement order for a compulsory auction has been issued, the execution court shall rescind the compulsory auction procedure.

(Application Mutatis Mutandis of the Provisions for a Compulsory Auction against Real Property)

Article 121 The provisions of Division 2 of the preceding Subsection (excluding Article 45 (1), Article 46 (2), Article 48, Article 54, Article 55 (1) [limited to the portion pertaining to item (ii)], Article 56, Article 64-2, Article 81 and Article 82) shall apply mutatis mutandis to execution against a vessel, and the provisions of Article 48, Article 54 and Article 82 shall apply mutatis mutandis to compulsory execution against the Japanese vessel prescribed in Article 1 of the Ships Act (Act No. 46 of 1899).

### **Subsection 3 Compulsory Execution against Movables**

(Commencement of Execution against Movables, etc.)

Article 122 (1) Compulsory execution against movables (including any fixtures on land that are not registrable, natural fruits prior to being separated from land which are to be harvested within one month for certain, and securities other than those forbidden to be endorsed; hereinafter the same shall apply in

this Section, the following Chapter and Chapter IV) (hereinafter referred to as "execution against movables") shall be commenced through a seizure of the subject matter by a court execution officer.

- (2) In execution against movables, a court execution officer may accept the performance of the claims and execution costs for the obligee effecting a seizure.

(Seizure of Movables Possessed by the Obligor)

Article 123 (1) Movable property possessed by the obligor shall be seized by way of a court execution officer taking possession of such movables.

- (2) When carrying out the seizure set forth in the preceding paragraph, a court execution officer may enter the residence of the obligor or any other place possessed by the obligor, and search the subject matter at such place or in a safe or any other containers possessed by the obligor. In this case, if it is necessary, a court execution officer may take a necessary measure to open a closed door, safe and any other containers.
- (3) A court execution officer may, if he/she finds it to be reasonable, have the obligor retain the seized movables (hereinafter referred to as the "seized property"). In this case, the seizure shall be effective only when an indication of the seizure is made with regard to the seized property through sealing or any other method.
- (4) In cases where a court execution officer has the obligor retain the seized property pursuant to the provisions of the preceding paragraph, if he/she finds it to be reasonable, the court execution officer may permit the obligor to use said seized property.
- (5) A court execution officer may, if he/she finds it to be necessary, retain the seized property which he/she had the obligor retain pursuant to the provisions of paragraph (3) or rescind the permission under the provisions of the preceding paragraph.

(Seizure of Movables Possessed by a Person Other than the Obligor)

Article 124 The provisions of paragraph (1) and paragraphs (3) to (5) of the preceding Article shall apply mutatis mutandis to a seizure of movables possessed by an obligee or a third party who does not refuse to submit it.

(Prohibition of an Overlapped Seizure and Consolidation of Cases)

- Article 125 (1) A court execution officer may not carry out another seizure of seized property or movables for which a provisional seizure has been executed.
- (2) In cases where another petition for execution against movables has been filed against an obligor who has been subjected to a seizure for the place of such seizure, a court execution officer shall seize any movables that has yet to be seized if there is any, and if there is no movables to be seized, he/she shall, by

clarifying such fact, consolidate such case of execution against movables with the earlier case of execution against movables. The same shall apply when another petition for execution against movables has been filed against an obligor who has been subjected to execution of a provisional seizure for the place of such execution.

- (3) When two cases of execution against movables have been consolidated pursuant to the provisions of the first sentence of the preceding paragraph, the movables that was seized in the later case shall be deemed to have been seized in the earlier case at the time of the consolidation, and the petition for the later case shall become effective as a demand for liquidating distribution. If the earlier obligee effecting a seizure has withdrawn the petition for execution against movables or the procedure pertaining to such petition has been stayed or rescinded, the movables seized in the earlier case shall be deemed to have been seized for the later case at the time of the consolidation.
- (4) When a case of execution of a provisional seizure and a case of execution against movables have been consolidated pursuant to the provisions of the second sentence of paragraph (2), the movables for which the provisional seizure was executed shall be deemed to have been seized in the case of execution against movables at the time of the consolidation, and the petition for the case of execution of a provisional seizure shall become effective as a demand for liquidating distribution. If the obligee effecting a seizure has withdrawn the petition for execution against movables or the procedure pertaining to such petition has been rescinded, the movables seized in the case of execution against movables shall be deemed to have been subjected to execution of a provisional seizure in the case of execution of a provisional seizure at the time of the consolidation.

#### (Scope of Effects of a Seizure)

Article 126 Effects of a seizure shall extend to natural products arising from the seized property.

#### (Order to Deliver the Seized Property)

Article 127 (1) When a third party has taken possession of seized property, the execution court shall, upon petition by the obligee effecting a seizure, order such third party to deliver the seized property to a court execution officer.

- (2) The petition set forth in the preceding paragraph shall be filed within one week from the day on which the obligee effecting a seizure became aware that the third party is in possession of the seized property.
- (3) An appeal against a disposition of execution may be filed against a judicial decision on the petition set forth in paragraph (1).
- (4) The provisions of Article 55 (8) to (10) shall apply mutatis mutandis to an

order under the provisions of paragraph (1).

(Prohibition of an Excessive Seizure, etc.)

Article 128 (1) Movable property shall not be seized beyond the extent necessary for the performance of the claim and execution costs of the obligee effecting a seizure.

(2) When it has become clear after a seizure that such seizure goes beyond the extent set forth in the preceding paragraph, a court execution officer shall rescind such excessive portion of the seizure.

(Prohibition of a Seizure in Cases where Surplus Is not Expected, etc.)

Article 129 (1) When the amount of proceeds from the movables to be seized is not expected to exceed the amount of the procedural expenses, a court execution officer shall not carry out the seizure.

(2) When the amount of proceeds from the seized property is not expected to reach the total amount of the procedural expenses and the amount of any claims that take precedence over the claim of the obligee effecting a seizure, a court execution officer shall rescind the seizure.

(Rescission of a Seizure of Seized Property that Is Unlikely to be Sold)

Article 130 If seized property is not expected to be sold even after implementing a sale by a reasonable method, a court execution officer may rescind the seizure of such seized property.

(Seizure-Prohibited Movables)

Article 131 The following movables shall not be seized:

- (i) Clothes, bedclothes, furniture, kitchen utensils, tatami mats and fittings that are indispensable for the living of the obligor, etc.
- (ii) Food and fuel necessary for one month's living of the obligor, etc.
- (iii) Money in the amount specified by a Cabinet Order by taking into account an average household's necessary living expenses for two months
- (iv) Equipment, fertilizers, work animals and their feeds that are indispensable for agriculture as well as seeds and any similar agricultural products that are indispensable for continuing agriculture until the next harvest of a person who engages in agriculture mainly through his/her own labor
- (v) Fish nets and any other fishing equipment, baits, juvenile fish and any similar fishery products that are indispensable for capturing or farming fishery products of a person who engages in fisheries mainly through his/her own labor
- (vi) Equipment or any other objects (excluding products) that are indispensable for the work of a technician, an artisan, a laborer or any other person who

- engages in an occupation or business mainly through his/her own intellectual or physical labor (excluding those prescribed in the preceding two items)
- (vii) A registered seal or any other seal that is indispensable for an occupation or living
  - (viii) A Buddha statue, an ancestral memorial table or other object that is indispensable for direct use in a religious service or worship
  - (ix) A family tree, a diary, commercial books and any similar documents that are necessary for the obligor
  - (x) A medal or any other object representing honor received by the obligor or his/her relative
  - (xi) Documents and equipment necessary for the obligor, etc. in learning at school or any other educational institution
  - (xii) Any object pertaining to an invention or a copyright work that has yet to be made public
  - (xiii) A prosthetic arm or hand, a prosthetic leg or foot or any other object used for supplementing body that is necessary for the obligor, etc.
  - (xiv) Fire-fighting machinery or equipment, fire escape equipment and any other supplies that are required to be put in place in a building or any other structure pursuant to the provisions of laws and regulations for the purpose of preventing disasters or for security

(Change in the Scope of Seizure-Prohibited Movables)

- Article 132 (1) An execution court may, upon petition, order rescission of all or part of a seizure or permit seizure of any of the movables listed in the items of the preceding Article, taking into consideration the living conditions of the obligor and the obligee(s) and any other circumstances.
- (2) When there has been a change in circumstances, an execution court may, upon petition, permit a seizure of movables of which seizure had been rescinded pursuant to the provisions of the preceding paragraph or order rescission of all or part of a seizure under the provisions of said paragraph.
  - (3) When a petition has been filed seeking an order to rescind a seizure pursuant to the provisions of the preceding two paragraphs, an execution court may, until a judicial decision on such petition becomes effective, order a stay of the compulsory execution, while requiring or not requiring provision of security.
  - (4) An appeal against a disposition of execution may be filed against an order to dismiss the petition set forth in paragraph (1) or paragraph (2) and an order to permit a seizure pursuant to these provisions.
  - (5) No appeal may be entered against an order under the provisions of paragraph (3).

(Demand for Liquidating Distribution by a Statutory Lien Holder, etc.)

Article 133 A statutory lien holder or a person who has a pledge may make a demand for liquidating distribution by submitting a document that proves his/her right.

(Method of Sale)

Article 134 A court execution officer shall sell seized property by bidding, an auction or any other method specified by the Rules of the Supreme Court.

(Application Mutatis Mutandis of the Provisions Concerning Maintenance of Order at the Place of Sale, etc.)

Article 135 The provisions of Article 65 and Article 68 shall apply mutatis mutandis to cases of selling seized property.

(Obligation to Present a Negotiable Instrument)

Article 136 In cases where a court execution officer has seized a bill or note, check or any other securities for payment of money, which requires presentation for underwriting or payment or requires a demand for payment (hereinafter referred to as "presentation, etc.") within a period specified for exercise of the right (such securities shall hereinafter be referred to as a "negotiable instrument"), if the time of commencement of such period has arrived, the court execution officer shall carry out the presentation, etc. of the negotiable instrument in place of the obligor.

(Sale during a Stay of Execution)

Article 137 (1) In cases where the document set forth in Article 39 (1)(vii) or (viii) has been submitted, if there is a likelihood of a considerable decline in the price of the seized property or if an inappropriate amount of costs are to be required for retention of such seized property, a court execution officer may sell such seized property.

(2) A court execution officer shall, when he/she has sold seized property pursuant to the provisions of the preceding paragraph, make a statutory deposit of the proceeds of such sale.

(Endorsement, etc. of Securities)

Article 138 A court execution officer may, when he/she has sold securities, carry out, in place of the obligor, acts necessary for endorsement or entry of a name change for the purchaser.

(Implementation of Liquidating Distribution, etc. by a Court Execution Officer)

Article 139 (1) In cases where there is only one obligee or in cases where there are two or more obligees and it is possible to fully perform the claims and

execution costs of the respective obligees with the proceeds, the seized money or the amount payable on a negotiable instrument (hereinafter referred to as the "proceeds, etc."), a court execution officer shall deliver payment money to the obligee(s) and deliver any surplus to the obligor.

- (2) Except in the cases prescribed in the preceding paragraph, if an agreement was reached among the obligees with regard to liquidating distribution of the proceeds, etc., a court execution officer shall implement liquidating distribution in accordance with such agreement.
- (3) If the agreement set forth in the preceding paragraph is not reached, a court execution officer shall notify the execution court of such circumstances.
- (4) The provisions of Article 84 (3) and (4) and Article 88 shall apply mutatis mutandis to the case of implementing liquidating distribution, etc. pursuant to the provisions of paragraph (1) or paragraph (2).

(Scope of Obligees who Are to Receive Liquidating Distribution, etc.)

Article 140 Obligees who are to receive liquidating distribution, etc. shall be the obligee(s) effecting a seizure as well as obligees who made a demand for liquidating distribution, in the case of proceeds, by the time a court execution officer receives delivery of proceeds (or, in the case of proceeds that were deposited pursuant to the provisions of Article 137 or Article 49 (3) of the Civil Preservation Act, by the time when the execution against movables is decided to be continued), or in the case of seized money, by the time when a court execution officer seizes such money, or in the case of the amount payable on a negotiable instrument, by the time when a court execution officer receives payment thereof.

(Statutory Deposit by a Court Execution Officer)

Article 141 (1) In the case of implementing liquidating distribution, etc. pursuant to the provisions of Article 139 (1) or (2), if any of the following grounds exist for the claim of an obligee who is to receive liquidating distribution, etc., a court execution officer shall make a statutory deposit of money equivalent to the amount of such liquidating distribution, etc. and notify the execution court of such circumstances:

- (i) When the claim is one subject to a condition precedent or one with an uncertain due date
- (ii) When the claim is one held by the obligee effecting a provisional seizure
- (iii) When the document set forth in Article 39 (1)(vii) or Article 183 (1)(vi) as applied mutatis mutandis pursuant to Article 192 has been submitted
- (iv) When an authenticated copy of a judicial decision to temporarily prohibit exercise of a statutory lien or pledge pertaining to the claim has been submitted

(2) A court execution officer shall make a statutory deposit of money equivalent to the amount of liquidating distribution, etc. for any obligee who failed to appear to receive liquidating distribution, etc.

(Implementation of Liquidating Distribution, etc. by an Execution Court)

Article 142 (1) An execution court shall implement the procedure of liquidating distribution, etc., immediately in cases where notification has been given under the provisions of Article 139 (3) and at the time when the grounds for statutory deposit were extinguished in cases where notification has been given under the provisions of paragraph (1) of the preceding Article.

(2) The provisions of Article 84, Article 85 and Articles 88 to 92 shall apply mutatis mutandis to the procedure of liquidating distribution, etc. implemented by an execution court pursuant to the provisions of the preceding paragraph.

**Subsection 4 Compulsory Execution against a Claim and any Other  
Property Right  
Division 1 Execution against a Claim, etc.**

(Commencement of Execution against a Claim)

Article 143 Compulsory execution against a claim for payment of money or delivery of a vessel or movables (excluding a claim for which securities subject to execution against movables have been issued; hereinafter referred to as a "claim" in this Section) (such compulsory execution shall exclude the execution against a claim relating to an action on small claim prescribed in Article 167-2 (2); hereinafter referred to as "execution against a claim" in this Section) shall be commenced through an order of seizure by an execution court.

(Execution Court)

Article 144 (1) The district court having jurisdiction over the location of the general venue of the obligor shall have jurisdiction over execution against a claim as the execution court, and when there is no such general venue, the district court having jurisdiction over the location of the claim to be seized shall have jurisdiction over such execution as the execution court.

(2) A claim to be seized shall be deemed to exist at the location of the general venue of the obligor of such claim (hereinafter referred to as the "third party obligor"); provided, however, that a claim for delivery of a vessel or movables and a claim secured by a security interest in property shall be deemed to exist at the location of such property.

(3) In cases where another order of seizure has been issued for a claim pertaining to a seizure (limited to a claim that has been seized based on an order of

seizure; hereinafter the same shall apply in this Division), if the execution court that has issued such order of seizure is different from the earlier execution court, either execution court may transfer its case to the other execution court.

- (4) No appeal may be entered against an order under the provisions of the preceding paragraph.

(Order of Seizure)

Article 145 (1) An execution court shall, in an order of seizure, prohibit the obligor from collecting or otherwise disposing the claim and prohibit the third party obligor from providing performance to the obligor.

- (2) An order of seizure shall be issued without interrogating the obligor and the third party obligor.

(3) An order of seizure shall be served upon the obligor and the third party obligor.

(4) A seizure shall become effective when an order of seizure was served upon the third party obligor.

(5) An appeal against a disposition of execution may be filed against a judicial decision on a petition for an order of seizure.

(Scope of Seizure)

Article 146 (1) An execution court may issue an order of seizure for the entirety of a claim to be seized.

- (2) When the price of the seized claim exceeds the amount of the claim and execution costs of the obligee effecting a seizure, an execution court shall not seize any other claims.

(Demand for the Third Party Obligor to Make a Statement)

Article 147 (1) When a petition has been filed by the obligee effecting a seizure, a court clerk shall, upon servicing an order of seizure, make a demand to the third party obligor to state the presence or absence of any claim pertaining to a seizure and any other matters specified by the Rules of the Supreme Court within two weeks from the day of service of the order of seizure.

- (2) A third party obligor shall, when he/she has failed to make a statement or has made a false statement intentionally or negligently in response to a demand under the provisions of the preceding paragraph, be liable to compensate for any damages resulting therefrom.

(Delivery of a Claim Deed)

Article 148 (1) When a deed exists for a claim pertaining to a seizure, the obligor shall deliver such deed to the obligee effecting a seizure.

(2) The obligee effecting a seizure may receive delivery of the deed set forth in the preceding paragraph by the method of compulsory execution of delivery of movables under the provisions of Article 169, based on an order of seizure.

(Effects in Cases where Seizures Conflict in Part)

Article 149 In cases where part of a claim has been seized or has been subjected to execution of a provisional seizure, and an order of seizure is issued beyond the remaining portion of such claim, the effects of each seizure or execution of a provisional seizure shall extend to the entirety of such claim. The same shall apply to the effects of a seizure when an order of seizure has been issued for part of a claim after the entirety of such claim has been seized or has been subjected to execution of a provisional seizure.

(Commission of Registration of a Seizure of a Claim Secured by a Statutory Lien, etc.)

Article 150 When an order of seizure against a claim secured by a registered statutory lien, pledge or mortgage has become effective, a court clerk shall, upon petition, commission registration to the effect that such claim has been seized.

(Seizure of Continuous Performance)

Article 151 The effects of a seizure against a claim pertaining to a compensation or any other continuous performance shall extend to the performance to be received after the seizure, not exceeding the amount of the claim and execution costs of the obligee effecting a seizure.

(Special Provisions on Cases of Enforcing a Claim for Periodic Payments pertaining to Duty to Support, etc.)

Article 151-2 (1) In cases where the obligor has a claim for periodic payments with provisions on fixed due dates pertaining to any of the following duties, if any part of such claim is in default, execution against a claim may be commenced even for the portion of said claim for periodic payments for which the fixed due date has yet to arrive, notwithstanding the provisions of Article 30 (1):

- (i) The duty of cooperation and mutual assistance between a husband and wife under the provisions of Article 752 of the Civil Code
- (ii) Duty of sharing the expenses arising from marriage under the provisions of Article 760 of the Civil Code
- (iii) The duty concerning custody of a child under the provisions of Article 766 of the Civil Code (including the cases where it is applied *mutatis mutandis* pursuant to Article 749, Article 771 and Article 788 of the Civil Code)

(iv) The duty to support under the provisions of Article 877 to Article 880 of the Civil Code

(2) In execution against a claim that has been commenced pursuant to the provisions of the preceding paragraph, it is possible to seize only the claim pertaining to a compensation or any other continuous performance that becomes due after the arrival of the fixed due date of each claim for the periodic payments.

(Seizure-Prohibited Claim)

Article 152 (1) In the case of either of the following claims, the portion equivalent to three-quarters of the performance to be received when such claim is due (or, if such amount exceeds the amount specified by a Cabinet Order by taking into account an average household's necessary living expenses, the portion equivalent to the amount specified by a Cabinet Order) shall not be seized:

(i) A claim pertaining to continuous performance that the obligor receives from a person other than the State or local public entity for the purpose of maintaining his/her living

(ii) A claim pertaining to a compensation, wage, salary, retirement pension, bonus or any remuneration similar in nature

(2) In the case of a claim pertaining to a retirement allowance or any remuneration similar in nature, the portion equivalent to three-quarters of the performance thereof shall not be seized.

(3) With regard to application of the provisions of the preceding two paragraphs in the case of enforcing a monetary claim (meaning a claim for payment of money; the same shall apply hereinafter) pertaining to any of the duties listed in the items of paragraph (1) of the preceding Article, the term "three-quarters" in the preceding two paragraphs shall be deemed to be replaced with "a half."

(Change in the Scope of Seizure-Prohibited Claims)

Article 153 (1) An execution court may, upon petition, order revocation of all or part of an order of seizure or issue an order of seizure for the portion of a claim of which seizure is prohibited pursuant to the provisions of the preceding Article, taking into consideration the living conditions of the obligor and the obligee(s) and any other circumstances.

(2) When there has been a change in circumstances, an execution court may, upon petition, seize a claim for which an order of seizure had been revoked pursuant to the provisions of the preceding paragraph or revoke all or part of an order of seizure under the provisions of said paragraph.

(3) When the petition set forth in either of the preceding two paragraphs has been filed, an execution court may, until a judicial decision on such petition

becomes effective, issue an order against the third party obligor prohibiting payment or any other performance, while requiring or not requiring provision of security.

- (4) An appeal against a disposition of execution may be filed against an order to dismiss a petition for revocation of an order of seizure under the provisions of paragraph (1) or paragraph (2).
- (5) No appeal may be entered against an order under the provisions of paragraph (3).

#### (Demand for Liquidating Distribution)

Article 154 (1) An obligee having an enforceable authenticated copy of a title of obligation and an obligee who has proved that he/she has a statutory lien based on a document may make a demand for liquidating distribution.

- (2) When the demand for liquidating distribution set forth in the preceding paragraph has been made, a document containing a statement to that effect shall be served upon the third party obligor.
- (3) An appeal against a disposition of execution may be filed against a judicial decision to dismiss a demand for liquidating distribution.

#### (Collection of a Monetary Claim of an Obligee Effecting a Seizure)

Article 155 (1) An obligee who has seized a monetary claim may collect the claim when one week has elapsed from the day on which an order of seizure was served upon the obligor; provided, however, that he/she may not receive payment beyond the amount of the claim and execution costs of the obligee effecting a seizure.

- (2) When an obligee effecting a seizure has received payment from a third party obligor, his/her claim and execution costs shall be deemed to have been performed to the extent of the amount that has been received.
- (3) An obligee effecting a seizure shall, when he/she has received the payment set forth in the preceding paragraph, immediately notify the execution court to that effect.

#### (Statutory Deposit by a Third Party Obligor)

Article 156 (1) A third party obligor may make a statutory deposit of money equivalent to the total amount of the monetary claim pertaining to a seizure (limited to a monetary claim seized based on an order of seizure; the same shall apply in the following paragraph) to an official depository at the place of performance of the obligation.

- (2) A third party obligor shall, by the time he/she receives a service of a complaint for the action prescribed in paragraph (1) of the following Article, make a statutory deposit of money equivalent to the total amount of the claim

in the case where he/she has received a service of an order of seizure, a disposition of seizure or an order of provisional seizure that has been issued beyond the unseized portion of a monetary claim pertaining to a seizure, or money equivalent to the seized portion in the case where he/she has received a service of a document stating that a demand for liquidating distribution was made, to an official depository at the place of performance of the obligation.

(3) A third party obligor shall, when he/she has made a statutory deposit under the provisions of the preceding two paragraphs, notify the execution court of such circumstances.

(Suit for Collection)

Article 157 (1) When an obligee effecting a seizure has filed an action seeking performance of a seized claim (hereinafter referred to as a "suit for collection") against a third party obligor, the court in charge of the case may, upon petition by the third party obligor, order any other obligee who has seized such claim by the time of the service of the complaint to intervene on the plaintiff's side as a coparty.

(2) The judicial decision set forth in the preceding paragraph may be made without going through oral argument.

(3) Effects of a judgment in a suit for collection shall extend even to any obligee effecting a seizure who had been ordered to intervene pursuant to the provisions of paragraph (1) but has failed to intervene.

(4) When upholding the plaintiff's claim in a suit for collection against a third party obligor who is obligated to make a statutory deposit pursuant to the provisions of paragraph (2) of the preceding Article, the court in charge of the case shall include a statement to the effect that the payment of money pertaining to the claim shall be made by the method of a statutory deposit in the main text of the judgment.

(5) When the plaintiff of the judgment prescribed in the preceding paragraph is to receive liquidating distribution, etc. in compulsory execution or an auction, a statutory deposit of money equivalent to the amount of such liquidating distribution, etc. shall be made.

(Compensation of Damages to an Obligor)

Article 158 An obligee effecting a seizure shall be liable to compensate an obligor for any damages resulting from a failure to enforce a seized claim.

(Assignment Order)

Article 159 (1) An execution court may, upon petition by the obligee effecting a seizure, issue an order to assign the seized monetary claim to the obligee effecting a seizure at the face value in lieu of payment (hereinafter referred to

as an "assignment order").

- (2) An assignment order shall be served upon the obligor and the third party obligor.
- (3) If, by the time an assignment order is served upon the third party obligor, another obligee carries out a seizure or execution of a provisional seizure or makes a demand for liquidating distribution with regard to the monetary claim pertaining to the assignment order, the assignment order shall not become effective.
- (4) An appeal against a disposition of execution may be filed against an order on the petition set forth in paragraph (1).
- (5) An assignment order shall not be effective until it becomes final and binding.
- (6) If an appeal against a disposition of execution has been filed on the basis that the document set forth in Article 39 (1)(vii) or (viii) was submitted after the issuance of an assignment order, the court of appeal shall withhold the judicial decision on the appeal against a disposition of execution, except in the case of revoking the assignment order based on another reason.

#### (Effects of an Assignment Order)

Article 160 In cases where an order of seizure and an assignment order has become final and binding, as long as the monetary claim pertaining to the assignment order exists, the claim and execution costs of the obligee effecting a seizure shall be deemed to have been performed, in the amount of the face value of such claim, at the time of the service of the assignment order upon the third party obligor.

#### (Transfer Order, etc.)

- Article 161 (1) When a seized claim is one subject to a condition or one with a due date, or when it is difficult to collect such claim since it relates to counter-performance or due to any other grounds, the execution court may, upon petition by the obligee effecting a seizure, issue an order to transfer such claim to the obligee effecting a seizure at the price specified by the execution court in lieu of payment (hereinafter referred to as a "transfer order"), issue an order that orders a court execution officer to sell such claim by the method specified by the execution court in lieu of collection (hereinafter referred to as a "sale order"), issue an order to appoint an administrator and order the administrator to conduct administration of such claim (hereinafter referred to as an "administration order"), or issue any other order that orders a realization through a reasonable method.
- (2) An execution court shall, in the case of issuing an order under the provisions of the preceding paragraph, interrogate the obligor; provided, however, that this shall not apply when the obligor is in a foreign state or the domicile of the

obligor is unknown.

- (3) An appeal against a disposition of execution may be filed against an order on the petition set forth in paragraph (1).
- (4) An order under the provisions of paragraph (1) shall not be effective until it becomes final and binding.
- (5) When a court execution officer has sold a seized claim, he/she shall, in lieu of the obligor, notify the third party obligor of the transfer of the claim by delivering an instrument bearing a certified date.
- (6) The provisions of Article 159 (2) and (3) and the preceding Article shall apply mutatis mutandis to a transfer order, the provisions of Article 159 (6) shall apply mutatis mutandis to an appeal against a disposition of execution filed against a transfer order, the provisions of Article 65 and Article 68 shall apply mutatis mutandis to a sale by a court execution officer based on a sale order, the provisions of Article 159 (2) shall apply mutatis mutandis to an administration order, and the provisions of Article 84 (3) and (4), Article 88, Article 94 (2), Article 95 (1), (3) and (4), Articles 98 to 104, and Articles 106 to 110 shall apply to administration based on an administration order. In this case, the phrase "after the payment of the price" in Article 84 (3) and (4) shall be deemed to be replaced with "after the passage of the period set forth in Article 107 (1) as applied mutatis mutandis pursuant to Article 161."

(Execution of an Order of Seizure of a Claim for Delivery of a Vessel)

- Article 162 (1) An obligee who has seized a claim for delivery of a vessel may, when one week has elapsed from the day on which an order of seizure was served upon the obligor, demand the third party obligor to deliver the vessel to the custodian appointed by the district court having jurisdiction over the location of the vessel.
- (2) Compulsory execution against a vessel delivered to a custodian pursuant to the provisions of the preceding paragraph shall be carried out by the method of execution against a vessel.
  - (3) In cases where the custodian prescribed in paragraph (1) has received delivery of a vessel, if a commencement order for a compulsory auction is issued for such vessel, such custodian shall be deemed to be a custodian appointed pursuant to the provisions of Article 116 (1).

(Execution of an Order of Seizure of a Claim for Delivery of Movables)

- Article 163 (1) An obligee who has seized a claim for delivery of movables may, when one week has elapsed from the day on which an order of seizure was served upon the obligor, demand the third party obligor to deliver the movables to the court execution officer who has received a petition by the obligee effecting a seizure.

- (2) When a court execution officer has received delivery of movables, he/she shall sell such property through the procedure of sale in execution against movables, and submit the proceeds of such sale to the execution court.

(Commission of Registration of Transfer)

Article 164 (1) When an assignment order or a transfer order has become final and binding for the claim prescribed in Article 150, or when a sale based on a sale order has been terminated, a court clerk shall, upon petition, commission registration of transfer of the statutory lien, pledge or mortgage for the obligee effecting a seizure or the purchaser who acquired such claim, and commission cancellation of registration under the provisions of said Article.

- (2) In the case of making a commission under the provisions of the preceding paragraph (excluding the case prescribed in the following paragraph), the commission document shall have attached an authenticated copy of an assignment order or a transfer order or a transcript of a document prepared by a court execution officer with regard to a sale based on a sale order.
- (3) In the case of making a commission under the provisions of paragraph (1), when making a commission under the provisions of Article 18 of the Real Property Registration Act (Act No. 123 of 2004) as applied mutatis mutandis pursuant to Article 16 (2) of said Act (including the cases where it is applied mutatis mutandis pursuant to other laws and regulations), information proving the fact that an assignment order or a transfer order has been issued or information proving the contents of a document prepared by a court execution officer with regard to a sale based on a sale order shall be submitted along with the commission information.
- (4) The registration and license tax and any other costs required for a commission under the provisions of paragraph (1) shall be borne by the obligee effecting a seizure or the purchaser prescribed in said paragraph.
- (5) In cases where registration has been made pursuant to the provisions of Article 150, when a document proving that a payment or a statutory deposit was made for the seized claim has been submitted, a court clerk shall, upon petition, commission cancellation of said registration. The same shall apply when the petition for execution against a claim has been withdrawn or when an order to revoke an order of seizure has become final and binding.
- (6) The registration and license tax and any other costs required for a commission under the provisions of the preceding paragraph shall be borne by the obligor in the case set forth in the first sentence of said paragraph, and by the obligee effecting a seizure in the case set forth in the second sentence of said paragraph.

(Scope of Obligees who Are to Receive Liquidating Distribution, etc.)

Article 165 Obligees who are to receive liquidating distribution, etc. shall be obligees who have carried out a seizure or execution of a provisional seizure or have made a demand for liquidating distribution by any of the following times:

- (i) The time when the third party obligor made a statutory deposit under the provisions of Article 156 (1) or (2)
- (ii) The time when a complaint for a suit for collection was served upon the third party obligor
- (iii) The time when a court execution officer received delivery of proceeds based on a sale order
- (iv) In the case of a seizure of a claim for delivery of movables, the time when a court execution officer received delivery of such movables

(Implementation of Liquidating Distribution, etc.)

Article 166 (1) An execution court shall implement liquidating distribution, etc. in any of the following cases, in addition to the cases prescribed in Article 109 as applied *mutatis mutandis* pursuant to Article 161 (6):

- (i) Cases where a statutory deposit was made under the provisions of Article 156 (1) or (2) or Article 157 (5)
- (ii) Cases where a sale was carried out based on a sale order
- (iii) Cases where proceeds were submitted pursuant to the provisions of Article 163 (2)

(2) The provisions of Article 84, Article 85 and Articles 88 to 92 shall apply *mutatis mutandis* to the procedure of liquidating distribution, etc. to be implemented by an execution court pursuant to the provisions of the preceding paragraph.

(Compulsory Execution against any Other Property Right)

Article 167 (1) Compulsory execution against a property right other than real property, a vessel, movables or a claim (hereinafter referred to as "any other property right" in this Article) shall be governed by the rules of execution against a claim, except as otherwise provided.

- (2) With regard to the jurisdiction for compulsory execution, any other property right for which registration is required in the case of transfer of the right shall be deemed to exist at the place of such registration.
- (3) A seizure shall become effective against any other property right for which no third party obligor nor person equivalent thereto exists, at the time when the order of seizure was served upon the obligor.
- (4) In cases where, prior to the service of an order of seizure, registration of a seizure was made for any other property right for which registration is required in the case of transfer of the right, the seizure shall become effective at the time when the registration of the seizure was made; provided, however,

that against any other property for which restriction of disposition of the right shall not be effective without making registration thereof, a seizure shall become effective at the time when registration of the seizure was made, even if registration of the seizure was made after the service of an order of seizure.

- (5) The provisions of Article 48, Article 54 and Article 82 shall apply mutatis mutandis to registration concerning compulsory execution against any other right for which registration is required in the case of transfer of the right.

### **Division 2 Execution against a Claim Relating to an Action on Small Claim**

(Commencement of Execution against a Claim Relating to an Action on Small Claim, etc.)

Article 167-2 (1) Compulsory execution against a monetary claim based on the title of obligation pertaining to an action on small claim set forth in any of the following items shall be carried out by a court pursuant to the provisions of the preceding Division and, notwithstanding the provisions of Article 2, be carried out by a court clerk pursuant to the provisions of this Division, upon petition:

- (i) A final and binding judgment made in an action on small claim
- (ii) A judgment of an action on small claim with a declaration of provisional execution
- (iii) A disposition by a court clerk determining court costs or the amount of the burden of costs for settlement in an action on small claim
- (iv) A record of a settlement or acknowledgment in an action on small claim
- (v) An order in lieu of settlement under the provisions of Article 275-2 (1) of the Code of Civil Procedure in an action on small claim

(2) The compulsory execution carried out by a court clerk pursuant to the provisions of the preceding paragraph (hereinafter referred to as "execution against a claim relating to an action on small claim" in this Division) shall be commenced through a disposition of seizure by a court clerk.

(3) A petition for execution against a claim relating to an action on small claim shall be filed with a court clerk of the summary courts specified in the following items for the categories of the title of obligation set forth respectively in those items:

- (i) The title of obligation set forth in paragraph (1)(i): The summary court that has made the judgment set forth in said item
- (ii) The title of obligation set forth in paragraph (1)(ii): The summary court that has made the judgment set forth in said item
- (iii) The title of obligation set forth in paragraph (1)(iii): The summary court to which the court clerk who has made the disposition set forth in said item belongs

- (iv) The title of obligation set forth in paragraph (1)(iv): The summary court in which the settlement set forth in said item was concluded or the acknowledgment set forth in said item was made
- (v) The title of obligation set forth in paragraph (1)(v): The summary court that has issued the order in lieu of settlement set forth in said item
- (4) The provisions of Article 144 (3) and (4) shall apply mutatis mutandis to the case where another disposition of seizure has been made for the monetary claim pertaining to a seizure (limited to a monetary claim seized based on a disposition of seizure; hereinafter the same shall apply in this Division). In this case, the phrase "the execution court that has issued such order of seizure" in paragraph (3) of said Article shall be deemed to be replaced with "the summary court to which the court clerk who has made such disposition of seizure belongs," the phrase "the earlier execution court may" in said paragraph shall be deemed to be replaced with "the earlier court clerk may," the phrase "the other execution court" in said paragraph shall be deemed to be replaced with "a court clerk of the other summary court," and the term "order" in paragraph (4) of said Article shall be deemed to be replaced with "disposition by a court clerk."

(Execution Court)

Article 167-3 For a disposition of execution made by a court clerk in the procedure of execution against a claim relating to an action on small claim, the execution court shall be the summary court to which said court clerk belongs.

(Effects of a Disposition of Execution by a Court Clerk, etc.)

- Article 167-4 (1) A disposition of execution made by a court clerk in the procedure of execution against a claim relating to an action on small claim shall become effective by giving a notice thereof by a method found to be reasonable, except as otherwise provided for.
- (2) Against a disposition of execution made by a court clerk under the provisions of the preceding paragraph, an objection to a disposition of execution may be filed with the execution court.
- (3) The provisions of the first sentence of Article 10 (6) and Article 10 (9) shall apply mutatis mutandis to cases where an objection to a disposition of execution under the provisions of the preceding paragraph has been filed.

(Disposition of Seizure)

- Article 167-5 (1) A court clerk shall, in a disposition of seizure, prohibit the obligor from collecting or otherwise disposing the monetary claim and prohibit the third party obligor from providing performance to the obligor.
- (2) The provisions of Article 145 (2) to (4) shall apply mutatis mutandis to a

disposition of seizure.

- (3) Any objection to a disposition of execution filed against a disposition made by a court clerk on a petition for a disposition of seizure shall be filed within an unextendable period of one week from the day on which the notice of such disposition has been received.
- (4) An appeal against a disposition of execution may be filed against a judicial decision on the objection to a disposition of execution set forth in the preceding paragraph.
- (5) The provisions of Article 74 (1) of the Code of Civil Procedure shall apply mutatis mutandis to a disposition made by a court clerk on a petition for a disposition on seizure. In this case, the provisions of paragraph (3), the preceding paragraph, and paragraph (3) of said Article shall apply mutatis mutandis.

(Prepayment of Expenses, etc.)

Article 167-6 (1) With regard to application of the provisions of Article 14 (1) and (4) to execution against a claim relating to an action on small claim, the term "execution court" in these provisions shall be deemed to be replaced with "court clerk."

- (2) The provisions of Article 14 (2) and (3) shall not apply to a disposition by a court clerk under the provisions of paragraph (1) of said Article as applied pursuant to the provisions of the preceding paragraph by replacing the terms.
- (3) Any objection to a disposition of execution filed against a disposition made by a court clerk under the provisions of Article 14 (4) as applied pursuant to the provisions of paragraph (1) by replacing the terms shall be filed within an unextendable period of one week from the day on which the notice of such disposition has been received.
- (4) An appeal against a disposition of execution may be filed against a judicial decision to dismiss the objection to a disposition of execution set forth in the preceding paragraph.
- (5) A disposition by a court clerk to rescind the procedure of execution against a claim relating to an action on small claim pursuant to the provisions of Article 14 (4) as applied mutatis mutandis pursuant to the provisions of paragraph (1) by replacing the terms shall not be effective until it becomes final and binding.

(Court with Jurisdiction over a Third Party Action against Execution)

Article 167-7 Notwithstanding the provisions of Article 38 (3), a third party action against execution seeking non-permission of execution against a claim relating to an action on small claim shall be under the jurisdiction of the district court having jurisdiction over the location of the execution court.

(Change in the Scope of Seizure-Prohibited Claims)

- Article 167-8 (1) An execution court may, upon petition, order revocation of all or part of a disposition of seizure or order that a disposition of seizure be made for the portion of a monetary claim of which seizure is prohibited pursuant to the provisions of Article 152 as applied mutatis mutandis pursuant to Article 167-14, taking into consideration the living conditions of the obligor and the obligee(s) and any other circumstances.
- (2) When there has been a change in circumstances, an execution court may, upon petition, order that a disposition of seizure be made for a monetary claim for which a disposition of seizure had been revoked pursuant to the provisions of the preceding paragraph or revoke all or part of a disposition of seizure that has been made under the provisions of said paragraph.
- (3) The provisions of Article 153 (3) to (5) shall apply mutatis mutandis to cases where the petition set forth in the preceding two paragraphs has been filed. In this case, the term "an order of seizure" in paragraph (4) of said Article shall be deemed to be replaced with "a disposition of seizure."

(Demand for Liquidating Distribution)

- Article 167-9 (1) An obligee having an enforceable authenticated copy of a title of obligation and an obligee who has proved that he/she has a statutory lien based on a document may make a demand for liquidating distribution to a court clerk.
- (2) The provisions of Article 154 (2) shall apply mutatis mutandis to cases where the demand for liquidating distribution set forth in the preceding paragraph has been made.
- (3) Any objection to a disposition of execution filed against a disposition made by a court clerk to dismiss the demand for liquidating distribution set forth in paragraph (1) shall be filed within an unextendable period of one week from the day on which the notice of such disposition has been received.
- (4) An appeal against a disposition of execution may be filed against a judicial decision to dismiss the objection to a disposition of execution set forth in the preceding paragraph.

(Transfer for Seeking an Assignment Order, etc.)

- Article 167-10 (1) When an obligee effecting a seizure intends to seek any one of an assignment order, transfer order, sale order, administration order, or any other order that orders a realization through a reasonable method (hereinafter referred to as an "assignment order, etc." in this Article) for the monetary claim pertaining to a seizure, he/she shall, by clarifying which one of the assignment order, etc. he/she seeks, file a petition with the execution court seeking transfer of the case to the procedure of execution against a claim.
- (2) When the petition set forth in the preceding paragraph has been filed by

clarifying the type of order prescribed in said paragraph, the execution court shall transfer the case to the procedure of execution against a claim at the district court having jurisdiction over the location of the execution court.

- (3) When an objection to a disposition of execution or an appeal against a disposition of execution was filed against a disposition of execution already made, prior to the time when an order under the provisions of the preceding paragraph became effective, said order shall not be effective until a judicial decision on such objection to a disposition of execution or appeal against a disposition of execution becomes final and binding.
- (4) No appeal may be entered against an order under the provisions of paragraph (2).
- (5) An appeal against a disposition of execution may be filed against an order to dismiss the petition set forth in paragraph (1).
- (6) When an order under the provisions of paragraph (2) has become effective, the petition for an order of seizure or the petition for an assignment order, etc. shall be deemed to have been filed with the district court prescribed in paragraph (2) at the time when the petition for a disposition of seizure or the petition set forth in paragraph (1) was filed, and any disposition of execution already made or any other act already conducted shall be deemed to be a disposition of execution made or any other act conducted in the procedure of execution against a claim.

(Transfer for Seeking Liquidating Distribution, etc.)

- Article 167-11 (1) In cases where a statutory deposit has been made pursuant to the provisions of Article 156 (1) or (2) or Article 157 (5) as applied mutatis mutandis pursuant to Article 167-14, if liquidating distribution is to be implemented since there are two or more obligees and it is not possible to fully perform the claims and execution costs of the respective obligees with the deposit money, the execution court shall transfer its case to the procedure of execution against a claim at the district court having jurisdiction over the location of the execution court.
- (2) In the cases prescribed in the preceding paragraph, if another order of seizure or disposition of seizure has been made for the monetary claim pertaining to a seizure, the execution court may transfer its case to the procedure of execution against a claim at the execution court that has issued said order of seizure or at the district court having jurisdiction over the location of the summary court to which the court clerk who has made said disposition of seizure belongs, in addition to the procedure of execution against a claim at the district court prescribed in said paragraph.
  - (3) In cases where a statutory deposit has been made under the provisions of paragraph (1), if there is only one obligee or in cases where there are two or

more obligees and it is possible to fully perform the claims and execution costs of the respective obligees with the deposit money, a court clerk shall prepare a statement of delivery of the deposit money, and deliver payment money to the obligee(s) and deliver any surplus to the obligor.

- (4) In the cases prescribed in the preceding paragraph, if another order of seizure has been issued for the monetary claim pertaining to a seizure, the execution court may transfer its case to the procedure of execution against a claim at the district court having jurisdiction over the location of the execution court or at the execution court that has issued said order of seizure.
- (5) In cases where another order of seizure has been issued for the monetary claim pertaining to a seizure, if the execution court that has issued said order of seizure is to implement liquidating distribution, etc. pursuant to the provisions of Article 109 as applied mutatis mutandis pursuant to Article 161 (6) or pursuant to the provisions of Article 166 (1)(ii), the earlier execution court shall transfer its case to the procedure of execution against a claim at the execution court that has issued said order of seizure.
- (6) No appeal may be entered against an order under the provisions of paragraph (1), paragraph (2), paragraph (4) or the preceding paragraph.
- (7) The provisions of Article 84 (3) and (4), Article 88, Article 91 (excluding paragraph (1)(vi) and (vii)) and Article 92 (1) shall apply mutatis mutandis to the procedure of delivery of payment money implemented by a court clerk pursuant to the provisions of paragraph (3), the provisions of paragraph (3) of the preceding Article shall apply mutatis mutandis to an order under the provisions of paragraph (1), paragraph (2), paragraph (4) or paragraph (5), and the provisions of paragraph (6) of said Article shall apply mutatis mutandis to cases where an order under the provisions of paragraph (1), paragraph (2), paragraph (4) or paragraph (5) has become effective.

(Discretionary Transfer)

Article 167-12 (1) An execution court may, when it finds it to be reasonable by taking into consideration the contents of the monetary claim to be seized and any other circumstances, transfer its case to the procedure of execution against a claim at the district court having jurisdiction over the location of the execution court.

- (2) No appeal may be entered against an order under the provisions of the preceding paragraph.
- (3) The provisions of Article 167-10 (3) shall apply mutatis mutandis to an order under the provisions of paragraph (1), and the provisions of paragraph (6) of said Article shall apply mutatis mutandis to cases where an order under the provisions of paragraph (1) has become effective. In this case, the phrase "the petition for a disposition of seizure or the petition set forth in paragraph (1)" in

paragraph (6) of said Article shall be deemed to be replaced with "the petition for a disposition of seizure," and the phrase "the petition for an order of seizure or the petition for an assignment order, etc." in said paragraph shall be deemed to be replaced with "the petition for an order of seizure."

(Application of the General Provisions)

Article 167-13 With regard to application of the provisions of Chapter I and Chapter II, Section 1 to execution against a claim relating to an action on small claim, the phrase "procedures with an execution court" in Article 13 (1) shall be deemed to be replaced with "procedures of the execution against a claim relating to an action on small claim prescribed in Article 167-2 (2)," the term "execution court" in Article 16 (1) shall be deemed to be replaced with "court clerk," the phrase "civil execution carried out by an execution court" in Article 17 shall be deemed to be replaced with "the execution against a claim relating to an action on small claim prescribed in Article 167-2 (2)," the phrase "the execution court or court execution officer" in Article 40 (1) shall be deemed to be replaced with "the court clerk," and the phrase "a court clerk of the execution court" in Article 42 (4) shall be deemed to be replaced with "a court clerk."

(Application Mutatis Mutandis of the Provisions on Execution against a Claim)

Article 167-14 The provisions of Articles 146 to 152, Articles 155 to 158, Article 164 (5) and (6), and Article 165 (excluding item (iii) and item (iv)) shall apply mutatis mutandis to execution against a claim relating to an action on small claim. In this case, the term "execution court" in Article 146, Article 155 (3) and Article 156 (3) shall be deemed to be replaced with "court clerk," the phrase "issue an order of seizure" in Article 146 (1) shall be deemed to be replaced with "make a disposition of seizure," the term "order of seizure" in Article 147 (1), Article 148 (2), Article 150 and Article 155 (1) shall be deemed to be replaced with "disposition of seizure," the phrase "claim pertaining to a seizure" in Article 147 (1) and Article 148 (1) shall be deemed to be replaced with "monetary claim pertaining to a seizure," the phrase "an order of seizure is issued" in Article 149 shall be deemed to be replaced with "a disposition of seizure is made," the phrase "an order to revoke an order of seizure" in Article 164 (5) shall be deemed to be replaced with "an order to revoke an order of seizure or a disposition by a court clerk to revoke a disposition of seizure," and the term "liquidating distribution, etc." in Article 165 (including the title of the Article) shall be deemed to be replaced with "delivery of payment money."

**Subsection 5 Special Provisions on Compulsory Execution for a  
Monetary Claim pertaining to Duty to Support, etc.**

(Indirect Compulsory Execution for a Monetary Claim pertaining to Duty to Support, etc.)

Article 167-15 (1) Compulsory execution for a monetary claim pertaining to any of the duties listed in the items of Article 151-2 (1) shall be carried out pursuant to the provisions of the preceding Subsections as well as, when a petition has been filed by the obligee, be carried out by the execution court by the method prescribed in Article 172 (1); provided, however, that this shall not apply when the obligor is unable to perform the obligation pertaining to such monetary claim due to a lack of the ability to pay or when the obligor is to fall into extreme poverty through performance of the obligation.

(2) In the case of carrying out compulsory execution for the monetary claim prescribed in the preceding paragraph pursuant to the provisions of said paragraph by the method prescribed in Article 172 (1), the execution court shall, when determining the amount of money to be paid by the obligor to the obligee, particularly take into account the disadvantages to be incurred by the obligee through default of the obligation and the financial resources of the obligor and the mode of his/her performance of the obligation in the past.

(3) When there has been a change in circumstances, an execution court may, upon petition by the obligor, revoke an order under the provisions of paragraph (1) retroactively as of the time when such petition was filed (or, if there was a change in circumstances after such petition was filed, the time of such change in circumstances).

(4) When the petition set forth in the preceding paragraph has been filed, an execution court may, until a judicial decision on such petition becomes effective, order a stay of execution of an order under the provisions of paragraph (1), while requiring or not requiring provision of security.

(5) No appeal may be entered against an order under the provisions of the preceding paragraph.

(6) The provisions of Article 172 (2) to (5) shall apply mutatis mutandis to the case set forth in paragraph (1), the provisions of paragraph (3) and paragraph (5) of said Article shall apply mutatis mutandis to the case set forth in paragraph (3), and the provisions of Article 173 (2) shall apply mutatis mutandis to the execution court set forth in paragraph (1).

(Special Provisions on Cases of Enforcing a Claim for Periodic Payments pertaining to Duty to Support, etc.)

Article 167-16 In cases where the obligee has a claim for periodic payments with provisions on fixed due dates pertaining to any of the duties listed in the items of Article 151-2 (1), if any part of such claim is in default, compulsory execution by the method prescribed in paragraph (1) of the preceding Article

may be commenced even for the portion of said claim for periodic payments for which the fixed due date is to arrive within six months, notwithstanding the provisions of Article 30 (1).

### **Section 3 Compulsory Execution for a Claim not Intended for Payment of Money**

(Compulsory Execution of Delivery, etc. of Real Property)

- Article 168 (1) Compulsory execution of delivery or surrender of real property, etc. (meaning real property or a vessel, etc. in which a person resides; hereinafter the same shall apply in this Article and in the following Article) shall be carried out by the method in which a court execution officer releases the real property, etc. from the obligor's possession and has the obligee acquire the possession of such real property, etc.
- (2) A court execution officer may, when it is particularly necessary for identifying the possessor of the real property, etc. set forth in the preceding paragraph in order to carry out the compulsory execution set forth in said paragraph, ask questions to a person present at said real property, etc. or request such person to present documents at the place of said real property, etc. or a place adjacent thereto.
- (3) The compulsory execution set forth in paragraph (1) may be carried out only when the obligee or his/her agent appeared at the place of execution.
- (4) When carrying out the compulsory execution set forth in paragraph (1), a court execution officer may enter the real property, etc. possessed by the obligor, and if it is necessary, take a necessary measure to open a closed door.
- (5) In the compulsory execution set forth in paragraph (1), a court execution officer shall remove any movables that is not the subject matter of such compulsory execution, and deliver such movables to the obligor, the obligor's agent, or a relative, employee or any other worker living together who has reasonable discretion. In this case, if it is not possible to deliver such movables to any of such persons, the court execution officer may sell such movables pursuant to the provisions of the Rules of the Supreme Court.
- (6) If any part of the movables set forth in the preceding paragraph has not been delivered or sold under the provisions of said paragraph, a court execution officer shall retain such part of the movables. In this case, the provisions of the second sentence of the preceding paragraph shall apply mutatis mutandis.
- (7) The expenses for retention under the provisions of the preceding paragraph shall be execution costs.
- (8) When a court execution officer has sold movables pursuant to the provisions of paragraph (5) (including the cases where it is applied mutatis mutandis pursuant to the second sentence of paragraph (6)), he/she shall deduct the

expenses required for the sale and retention from the proceeds of such sale and make a statutory deposit of the remainder.

(9) The provisions of Article 57 (5) shall apply mutatis mutandis to the compulsory execution set forth in paragraph (1).

(Demand for Surrender)

Article 168-2 (1) In cases where a petition for compulsory execution of delivery or surrender of real property, etc. has been filed, if it is possible to commence said compulsory execution, a court execution officer may make a demand for surrender (meaning a demand for delivery or surrender of real property, etc.; hereinafter the same shall apply in this Article) by specifying the time limit for delivery prescribed in the following paragraph; provided, however, that this shall not apply when the obligor is not in possession of said real property, etc.

(2) The time limit for delivery (meaning the time limit for carrying out compulsory execution under the provisions of paragraph (6) based on a demand for surrender; hereinafter the same shall apply in this Article) shall be the day on which one month has elapsed from the day on which the demand for surrender was made; provided, however, that a court execution officer may designate another date as the time limit for delivery by obtaining the permission of the execution court.

(3) A court execution officer shall, when he/she has made a demand for surrender, give public notice of such fact, the time limit for delivery, and the fact that the obligor is prohibited from transferring the possession of the real property, etc. pursuant to the provisions of paragraph (5) by the method of posting a written public notice or any other sign at the place where said real property, etc. is located.

(4) Until the time limit for delivery has been reached, a court execution officer may extend the time limit for delivery by obtaining the permission of the execution court. In this case, the court execution officer shall give public notice of the fact that the time limit for delivery has changed and the changed time limit for delivery by the method of posting a written public notice or any other sign at the place where said real property, etc. is located.

(5) When a demand for surrender is made, the obligor shall not transfer the possession of the real property, etc.; provided, however, that this shall not apply to the case of delivering or surrendering the real property, etc. to the obligee.

(6) If possession of real property, etc. was transferred after a demand for surrender was made, until the time limit for delivery has been reached, compulsory execution based on the petition set forth in paragraph (1) may be carried out against the possessor (meaning a person possessing the real property, etc. set forth in paragraph (1) who is not the obligor; hereinafter the

same shall apply in this Article). In this case, said possessor shall be deemed to be the obligor with regard to application of the provisions of Article 42 and the preceding Article.

- (7) If possession of real property, etc. was transferred after a demand for surrender was made, the possessor may file an action seeking non-permission of compulsory execution against the obligee on the basis that he/she had no knowledge of a demand for surrender having been made and he/she is not a successor to the obligor's possession. In this case, the provisions of Article 36, Article 37 and Article 38 (3) shall apply *mutatis mutandis*.
- (8) A possessor who took possession of the real property, etc. after a demand for surrender was made shall be presumed to have taken possession of the real property, etc. knowing that said demand for surrender has been made.
- (9) When compulsory execution has been carried out against a possessor pursuant to the provisions of paragraph (6), said possessor may assert, as the basis for filing an objection to a disposition of execution, that he/she possesses the subject matter based on a title which may be duly asserted against the obligee or that he/she had no knowledge of a demand for surrender having been made and he/she is not a successor to the obligor's possession.
- (10) The expenses required for a demand for surrender shall be execution costs.

(Compulsory Execution of Delivery of Movables)

- Article 169 (1) Compulsory execution of delivery of movables (including securities) other than the movables prescribed in Article 168 (1) shall be carried out by the method in which a court execution officer confiscates such movables from the obligor and delivers it to the obligee.
- (2) The provisions of Article 122 (2), Article 123 (2) and Article 168 (5) to (8) shall apply *mutatis mutandis* to the compulsory execution set forth in the preceding paragraph.

(Compulsory Execution of Delivery in Cases where a Third Party Possesses the Subject Matter)

- Article 170 (1) In cases where a third party possesses the subject matter of compulsory execution, if such third person is liable to deliver said object to the obligor, compulsory execution of delivery of the object shall be carried out by the method in which the execution court seizes the obligor's claim for delivery against the third party and issues an order permitting the obligee to exercise such claim.
- (2) The provisions of Article 144, Article 145, Article 147, Article 148, Article 155 (1) and (2) and Article 158 shall apply *mutatis mutandis* to the compulsory execution set forth in the preceding paragraph.

(Execution by Substitute)

Article 171 (1) Compulsory execution pertaining to the request prescribed in the main clause of Article 414 (2) or Article 414 (3) of the Civil Code shall be carried out by the method in which the execution court issues an order in accordance with the provisions of the Civil Code.

- (2) The execution court set forth in the preceding paragraph shall be the courts specified in Article 33 (2)(i) and (vi) for the categories of the title of obligation set forth respectively in those items.
- (3) An execution court shall interrogate the obligor in cases of issuing the order set forth in paragraph (1).
- (4) In cases of issuing the order set forth in paragraph (1), an execution court may, upon petition, order the obligor to pay to the obligee, in advance, the expenses necessary for conducting the act set forth in such order.
- (5) An appeal against a disposition of execution may be filed against a judicial decision on the petition for the compulsory execution set forth in paragraph (1) or on the petition set forth in the preceding paragraph.
- (6) The provisions of Article 6 (2) shall apply mutatis mutandis to the case of executing the order set forth in paragraph (1).

(Indirect Compulsory Execution)

Article 172 (1) Compulsory execution for an obligation of action or inaction for which it is not possible to carry out the compulsory execution set forth in paragraph (1) of the preceding Article shall be carried out by the method in which the execution court orders the obligor to pay to the obligee money of a certain amount that is found to be reasonable for securing performance of the obligation, according to the period of the delay or immediately if the obligor fails to perform the obligation within a certain period that is found to be reasonable.

- (2) When there has been a change in circumstances, an execution court may, upon petition, change an order under the provisions of the preceding paragraph.
- (3) An execution court shall interrogate the opposite party of the petition in cases of issuing an order under the provisions of the preceding two paragraphs.
- (4) In cases where there has been payment of money that was ordered pursuant to the provisions of paragraph (1), if the amount of damages that resulted from default of the obligation exceeds the amount of payment, the obligee shall not be precluded from claiming compensation for damages for such amount in excess.
- (5) An appeal against a disposition of execution may be filed against a judicial decision on the petition for the compulsory execution set forth in paragraph (1) or on the petition set forth in paragraph (2).
- (6) The provisions of paragraph (2) of the preceding Article shall apply mutatis

mutandis to the execution court set forth in paragraph (1).

Article 173 (1) The compulsory execution prescribed in Article 168 (1), Article 169 (1), Article 170 (1) and Article 171 (1) shall be carried out pursuant to the provisions of Articles 168 to 171 respectively as well as, when a petition has been filed by the obligee, be carried out by the execution court by the method prescribed in paragraph (1) of the preceding Article. In this case, the provisions of paragraphs (2) to (5) of said Article shall apply mutatis mutandis.

(2) The execution court set forth in the preceding paragraph shall be, for the categories of the title of obligation set forth in the items of Article 33 (2) (excluding item (i)-2 and item (iv)), the court with jurisdiction over an action for grant of a certificate of execution with regard to the respective titles of obligation.

(Constructive Manifestation of Intention)

Article 174 (1) When a judgment or any other judicial decision ordering the obligor to manifest his/her intention has become final and binding, or when a title of obligation pertaining to a settlement, acknowledgment, mediation or labor tribunal judgment has been established, the obligor shall be deemed to have manifested his/her intention at the time when such judicial decision became final and binding or such title of obligation was established; provided, however, that if the manifestation of intention by the obligor relates to actualization of a fact to be proved by an obligee, the obligor shall be deemed to have manifested his/her intention at the time when a certificate of execution was granted pursuant to the provisions of Article 27 (1), and if it relates to an exchange with counter-performance or relates to absence of a fact to be proved by the obligor such as performance of an obligation, the obligor shall be deemed to have manifested his/her intention at the time when a certificate of execution was granted pursuant to the provisions of the following paragraph or paragraph (3).

(2) In cases where manifestation of intention by the obligor relates to an exchange with counter-performance, a certificate of execution may be granted only when the obligee has submitted a document proving that the counter-performance has been provided or an offer thereof has been made.

(3) In cases where manifestation of intention by the obligor relates to absence of a fact to be proved by the obligor, if a petition for grant of a certificate of execution has been filed, a court clerk shall demand the obligor to submit a document proving such absence by specifying a certain period and may grant a certificate of execution only when the obligor fails to submit such document within such period.

Article 175 Deleted

Article 176 Deleted

Article 177 Deleted

Article 178 Deleted

Article 179 Deleted

### **Chapter III Auction, etc. for Exercise of a Security Interest**

(Method of Exercise of a Real Property Security Interest)

Article 180 Exercise of a security interest in real property (excluding any fixtures on land that are not registrable, and including what are deemed to be real property pursuant to the provisions of Article 43 (2); hereinafter the same shall apply in this Chapter) (hereinafter referred to as a "real property security interest" in this Chapter) shall be carried out by either of the following methods that has been chosen by the obligee:

- (i) The method of a secured real property auction (meaning exercise of a real property security interest through an auction; hereinafter the same shall apply in this Chapter)
- (ii) The method of execution against earnings from secured real property (meaning exercise of a real property security interest by the method of allotting the earnings from real property to performance of the secured claim; hereinafter the same shall apply in this Chapter)

(Commencement of Exercise of a Real Property Security Interest)

Article 181 (1) Exercise of a real property security interest shall be commenced only when any of the following documents has been submitted:

- (i) A transcript of a final and binding judgment, an adjudication under Article 15 of the Domestic Affairs Adjustment Act (Act No. 152 of 1947), or a document that has the same effect as such judgment or adjudication, proving the existence of the security interest
  - (ii) A transcript of a notarial deed prepared by a notary, proving the existence of the security interest
  - (iii) A certificate of the registered matters concerning registration (excluding provisional registration) of the security interest
  - (iv) In the case of a general statutory lien, a document proving its existence
- (2) In order for a holder of mortgage securities to file a petition for exercise of a real property security interest, he/she shall submit the mortgage securities.

- (3) In the case of filing a petition for exercise of a real property security interest after the security interest has been succeeded, a document proving such succession shall be submitted if such succession is inheritance or any other general succession, and a transcript of a judicial decision or any other official document proving such succession shall be submitted if such succession is that other than general succession.
- (4) When a commencement order for exercise of a real property security interest has been issued, a court clerk shall, at the time of servicing the commencement order, send to the opposite party a list of the documents prescribed in the preceding three paragraphs that have been submitted upon the filing of a petition for exercise of a real property security interest and a copy of the document set forth in paragraph (1)(iv) if any.

(Appeal against a Disposition of Execution, etc. Filed against a Commencement Order)

Article 182 The obligor or the owner of real property (or, for what is deemed to be real property, its right holder; the same shall apply hereinafter) may assert absence or extinguishment of the security interest as the basis for filing an appeal against a disposition of execution or an objection to a disposition of execution against a commencement order for exercise of a real property security interest.

(Stay of the Procedure of Exercise of a Real Property Security Interest)

Article 183 (1) The procedure of exercise of a real property security interest shall be stayed when any of the following documents has been submitted:

- (i) A transcript of a final and binding judgment (including a document that has the same effect as a final and binding judgment; the same shall apply in the following item) proving absence of the security interest
- (ii) A transcript of a final and binding judgment, which revokes or declares invalidity of the judicial decision set forth in Article 181 (1)(i) or a document that has the same effect as such judicial decision or which orders cancellation of the registration set forth in item (iii) of said paragraph
- (iii) A transcript of a record of a judicial settlement or any other official document containing a statement to the effect that the security interest shall not be exercised or that the petition for exercise of the security interest shall be withdrawn or that the obligee has received performance of the claim secured by the security interest or has granted grace of performance of such claim
- (iv) A certificate of the registered matters concerning cancellation of registration of the security interest
- (v) A transcript of a judicial decision ordering a stay of the procedure of

exercise of a real property security interest and revocation of a disposition of execution

(vi) A transcript of a judicial decision ordering a temporary stay of the procedure of exercise of a real property security interest

(vii) A transcript of a judicial decision temporarily prohibiting exercise of the security interest

(2) When any of the documents listed in items (i) to (v) of the preceding paragraph has been submitted, the execution court shall revoke even a disposition of execution that has already been made.

(3) The provisions of Article 12 shall not apply to an order under the provisions of the preceding paragraph.

(Effects of Acquisition of Real Property Through Payment of the Price)

Article 184 Acquisition of real property by the purchaser through payment of the price in a secured real property auction shall not be obstructed by absence or extinguishment of the security interest.

Article 185 Deleted

Article 186 Deleted

(Temporary Restraining Order prior to a Commencement Order for a Secured Real Property Auction, etc.)

Article 187 (1) Even prior to a commencement order for a secured real property auction, if it is particularly necessary in cases where the obligor or the owner or possessor of real property has committed a price reducing act (meaning the price reducing act prescribed in Article 55 (1); hereinafter the same shall apply in this paragraph), the execution court may, upon petition by a person who intends to file a petition for a secured real property auction of said real property, issue the temporary restraining order and/or the temporary restraining order to give public notice set forth in any of the items of paragraph (1) of said Article, until the purchaser pays the price; provided, however, that this shall not apply when the reduction in the price caused by such price reducing act or the extent of such likelihood is slight.

(2) The temporary restraining order set forth in Article 55 (1)(ii) or (iii) may not be issued unless either of the following cases applies:

(i) Cases where the obligor set forth in the preceding paragraph or the owner of the real property set forth in said paragraph possesses the real property

(ii) Cases where the title to possession held by the possessor of the real property set forth in the preceding paragraph may not be duly asserted against a person who has filed a petition under the provisions of said

paragraph

- (3) In order to file a petition under the provisions of paragraph (1), the documents to be submitted pursuant to the provisions of Article 181 (1) to (3) in cases of filing a petition for a secured real property auction shall be presented.
- (4) When a petitioner fails to submit a document proving that he/she has filed a petition for the secured real property auction set forth in paragraph (1) within three months from the day of receipt of the notice of an order granting the temporary restraining order set forth in said paragraph, the execution court shall revoke such order, upon petition by the respondent or the owner of the real property set forth in said paragraph.
- (5) The provisions of Article 55 (3) to (5) shall apply mutatis mutandis to an order under the provisions of paragraph (1), the provisions of paragraph (6) of said Article shall apply mutatis mutandis to a judicial decision on the petition set forth in paragraph (1) or in paragraph (5) of said Article as applied mutatis mutandis pursuant to this paragraph, the provisions of paragraph (7) of said Article shall apply mutatis mutandis to an order under the provisions of paragraph (5) of said Article as applied mutatis mutandis pursuant to this paragraph, the provisions of paragraph (8) and paragraph (9) of said Article and Article 55-2 shall apply mutatis mutandis to an order under the provisions of paragraph (1) (excluding an order granting the temporary restraining order or the temporary restraining order to give public notice set forth in Article 55 (1)(i)), the provisions of Article 55 (10) shall apply mutatis mutandis to expenses required for the petition set forth in paragraph (1) or execution of an order under the provisions of said paragraph (excluding an order granting the temporary restraining order or the temporary restraining order to give public notice set forth in paragraph (1)(i) of said Article), the provisions of Article 83-2 shall apply mutatis mutandis to the case where an order under the provisions of paragraph (1) (limited to an order granting the temporary restraining order and the temporary restraining order to give public notice set forth in Article 55 (1)(iii)) has been executed. In this case, the phrase "possessor other than the obligor" in Article 55 (3) shall be deemed to be replaced with "possessor who is neither the obligor nor the owner of real property."

(Application Mutatis Mutandis of the Provisions on Execution against Real Property)

Article 188 The provisions of Article 44 shall apply mutatis mutandis to exercise of a real property security interest, the provisions of Section 2, Subsection 1, Division 2 of the preceding Chapter (excluding Article 81) shall apply mutatis mutandis to a secured real property auction, and the provisions of Division 3 of said Subsection shall apply mutatis mutandis to execution against earnings

from secured real property.

(Auction of a Vessel)

Article 189 The provisions of Section 2, Subsection 2 of the preceding Chapter and Articles 181 to 184 shall apply mutatis mutandis to an auction for exercise of a security interest in a vessel. In this case, the phrase "an enforceable authenticated copy of a title of obligation" in Article 115 (3) shall be deemed to be replaced with "any of the documents prescribed in Article 181 (1) to (3) as applied mutatis mutandis pursuant to Article 189," and the term "a general statutory lien" in Article 181 (1)(iv) shall be deemed to be replaced with "a general statutory lien or the lien specified in Article 842 of the Commercial Code."

(Requirements for an Auction of Movables)

Article 190 (1) An auction for exercise of a security interest in movables (hereinafter referred to as an "auction of movables") shall be commenced only in any of the following cases:

- (i) Cases where the obligee has submitted said movables to a court execution officer
  - (ii) Cases where the obligee has submitted to a court execution officer a document proving that the possessor of said movables has consented to a seizure
  - (iii) Cases where the obligee has submitted a transcript of a written order of the permission set forth in the following paragraph to a court execution officer, and the order of said permission has been served upon the obligor prior to or simultaneously with a search under the provisions of Article 123 (2) as applied mutatis mutandis pursuant to Article 192
- (2) An execution court may, upon petition by an obligee who has submitted a document proving the existence of a security interest, permit commencement of an auction of movables with regard to said security interest; provided, however, that this shall not apply to cases where said movables does not exist at the place or in the container prescribed in Article 123 (2).
- (3) An order of the permission set forth in the preceding paragraph shall be served upon the obligor.
- (4) An appeal against a disposition of execution may be filed against a judicial decision on the petition set forth in paragraph (2).

(Objection to a Disposition of Execution Filed against a Seizure of Movables)

Article 191 The obligor or the owner of movables may assert absence or extinguishment of the security interest or extinguishment of part of the claim secured by the security interest as the basis for filing an objection to a

disposition of execution against a seizure pertaining to an auction of movables.

(Application Mutatis Mutandis of the Provisions on Execution against  
Movables)

Article 192 The provisions of Section 2, Subsection 3 of the preceding Chapter (excluding Article 123 (2), Article 128, Article 131 and Article 132) and Article 183 shall apply mutatis mutandis to an auction of movables, the provisions of Article 128, Article 131 and Article 132 shall apply mutatis mutandis to the auction of movables for exercise of a general statutory lien, and the provisions of Article 123 (2) shall apply mutatis mutandis to an auction of movables in the case set forth in Article 190 (1)(iii).

(Requirements for Exercise of a Security Interest in a Claim or any Other  
Property Right, etc.)

Article 193 (1) Exercise of a security interest in the claim prescribed in Article 143 or the property right prescribed in Article 167 (1) (hereinafter referred to as "any other property right" in this paragraph) shall be commenced only when a document proving the existence of the security interest (or, for a security interest in any other property right for which registration is required in the case of transfer of the right and which is not a general statutory lien, any of the documents prescribed in Article 181 (1)(i) to (iii) or Article 181 (2) or (3)) has been submitted. The same shall apply to extended exercise of a security interest by a person having a security interest, conducted pursuant to the provisions of the Civil Code or any other Act against money or any other property to be received by the obligor as a result of a sale, lease or loss of or damage to the subject matter, establishment of a real right on the subject matter, or expropriation under the Land Expropriation Act (Act No. 219 of 1951) or any other administrative disposition.

(2) The provisions of Section 2, Subsection 4, Division 1 of the preceding Chapter (excluding Article 146 (2), Article 152 and Article 153) and Articles 182 to 184 shall apply mutatis mutandis to the exercise or extended exercise of a security interest prescribed in the preceding paragraph, and the provisions of Article 146 (2), Article 152 and Article 153 shall apply mutatis mutandis to the exercise or extended exercise of a general statutory lien prescribed in the preceding paragraph.

(Application Mutatis Mutandis of the General Provisions on Compulsory  
Execution to Exercise of a Security Interest)

Article 194 The provisions of Article 38, Article 41 and Article 42 shall apply mutatis mutandis to an auction for exercise of a security interest, execution against earnings from secured real property and the exercise and extended

exercise of a security interest prescribed in paragraph (1) of the preceding Article.

(Auction Based on a Right of Retention and Auction for a Realization under the Provisions of the Civil Code, the Commercial Code or any Other Act)

Article 195 An auction based on a right of retention and an auction for a realization under the provisions of the Civil Code, the Commercial Code or any Other Act shall be governed by the rules of an auction for exercise of a security interest.

#### **Chapter IV Property Disclosure Procedure**

(Jurisdiction)

Article 196 The district court having jurisdiction over the location of the general venue of the obligor shall have jurisdiction over the procedure concerning disclosure of property of an obligor under the provisions of this Chapter (hereinafter referred to as the "property disclosure procedure") as the execution court.

(Order of Implementation)

Article 197 (1) An execution court shall, when either of the following items applies, order implementation of a property disclosure procedure against an obligor, upon petition by an obligee of a monetary claim who has an enforceable authenticated copy of a title of obligation (excluding that of which the title of obligation is the one set forth in Article 22 (ii), (iii)-2, (iv) or (v) or a demand for payment that has the same effect as a final and binding judgment); provided, however, that this shall not apply when it is not possible to commence compulsory execution based on said enforceable authenticated copy of a title of obligation:

(i) When the petitioner was unable to obtain full performance of said monetary claim in the procedure of liquidating distribution, etc. (excluding a procedure that was terminated by at least six months prior to the day of filing the petition) in compulsory execution or exercise of a security interest

(ii) When a prima facie showing was made that the petitioner is unable to obtain full performance of said monetary claim even by implementing compulsory execution against known property

(2) An execution court shall, when either of the following items applies, order implementation of a property disclosure procedure against an obligor, upon petition by an obligee who has submitted a document proving that he/she has a general statutory lien in the property of the obligor:

(i) When the petitioner was unable to obtain full performance of the secured

claim pertaining to said statutory lien in the procedure of liquidating distribution, etc. (excluding a procedure that was terminated by at least six months prior to the day of filing the petition) in compulsory execution or exercise of a security interest

- (ii) When a prima facie showing was made that the petitioner is unable to obtain full performance of the secured claim set forth in the preceding item even by implementing exercise of a security interest against known property
- (3) Notwithstanding the provisions of the preceding two paragraphs, when the obligor (or, if the obligor has a statutory agent, said statutory agent, and if the obligor is a juridical person, its representative person; the same shall apply in item (i)) has made a statement on his/her property on the property disclosure date (the date on which property is to be disclosed; the same shall apply hereinafter) within three years prior to the day of filing the petition set forth in the preceding two paragraphs, an order to implement a property disclosure procedure may not be issued; provided, however, that this shall not apply in cases where any of the following grounds exist:
  - (i) If the obligor failed to disclose part of his/her property on said property disclosure date
  - (ii) If the obligor acquired new property after said property disclosure date
  - (iii) If the employment relationship between the obligor and his/her employer was terminated after said property disclosure date
- (4) When the order set forth in paragraph (1) or paragraph (2) has been issued, said order (or, for the order set forth in paragraph (2), said order and a copy of the document set forth in said paragraph) shall be served upon the obligor.
- (5) An appeal against a disposition of execution may be filed against a judicial decision on the petition set forth in paragraph (1) or paragraph (2).
- (6) The order set forth in paragraph (1) or paragraph (2) shall not be effective until it becomes final and binding.

(Designation of the Date and Summons for the Date)

Article 198 (1) An execution court shall designate the property disclosure date when the order set forth in paragraph (1) and paragraph (2) of the preceding Article has become final and conclusive.

- (2) The following persons shall be summoned for the property disclosure date:
  - (i) The petitioner
  - (ii) The obligor (or, if the obligor has a statutory agent, said statutory agent, and if the obligor is a juridical person, its representative person

(Property Disclosure Date)

Article 199 (1) A person obliged to disclose (meaning the person set forth in paragraph (2)(ii) of the preceding Article; the same shall apply hereinafter)

shall appear on the property disclosure date and make a statement on the property (excluding the movables set forth in Article 131 (i) or (ii)) of the obligor.

- (2) The statement set forth in the preceding paragraph shall clearly indicate the matters necessary for filing a petition for compulsory execution under the provisions of Chapter II, Section 2 or exercise of a security interest under the provisions of the preceding Chapter and other matters specified by the Rules of the Supreme Court as those required to be disclosed to the petitioner, with regard to the property subject to the statement.
- (3) An execution court may ask questions to the person obliged to disclose on the property disclosure date.
- (4) A petitioner may appear on the property disclosure and, in order to clarify the status of the property of the obligor, ask questions to the person obliged to disclose, by obtaining the permission of the execution court.
- (5) An execution court may implement the procedure on the property disclosure date even if the petitioner does not appear.
- (6) The procedure on the property disclosure date shall not be made public.
- (7) The provisions of Article 195 and Article 206 of the Code of Civil Procedure shall apply mutatis mutandis to the provisions of the preceding paragraphs, and the provisions of Article 201 (1) and (2) of said Act shall apply mutatis mutandis to a person obliged to disclose.

(Partial Exemption from the Obligation of Statement)

- Article 200 (1) Notwithstanding the provisions of paragraph (1) of the preceding Article, a person obliged to disclose who has disclosed part of the property of the obligor on the property disclosure date shall not be required to make a statement on the remaining property, if the permission of the execution court has been obtained, in cases where the consent of the petitioner has been obtained or in cases where it is obvious that the hindrance to full performance of the monetary claim set forth in Article 197 (1) or the secured claim set forth in the items of paragraph (2) of said Article has been eliminated through said disclosure.
- (2) An appeal against a disposition of execution may be filed against a judicial decision on the petition for the permission set forth in the preceding paragraph.

(Restriction on Inspection, etc. of the Record of a Property Disclosure Case)

Article 201 Only the following persons may make a request under the provisions of Article 17 for the portion of the record of a property disclosure case that relates to the property disclosure date:

- (i) The petitioner
- (ii) An obligee who has an enforceable authenticated copy of a title of obligation

- (excluding that of which the title of obligation is the one set forth in Article 22 (ii), (iii)-2, (iv) or (v) or a demand for payment that has the same effect as a final and binding judgment) for a monetary claim against the obligor
- (iii) An obligee who has submitted a document proving that he/she has a general statutory lien in the property of the obligor
  - (iv) The obligor or the person obliged to disclose

(Restriction on Use of Information on a Property Disclosure Case for an Unintended Purpose)

Article 202 (1) A petitioner shall not use or provide information on the property or obligation of the obligor, which has been obtained in a property disclosure procedure, for a purpose other than for exercising the claim against said obligor according to its main objective.

(2) The person set forth in item (ii) or item (iii) of the preceding Article, who has obtained information on the portion of the record of a property disclosure case that relates to the property disclosure date, shall not use or provide said information for a purpose other than for exercising the claim against the obligor of said property disclosure case according to its main objective.

(Application Mutatis Mutandis of the Provisions on Compulsory Execution and Exercise of a Security Interest)

Article 203 The provisions of Article 39 and Article 40 shall apply mutatis mutandis to a property disclosure procedure based on an enforceable authenticated copy of a title of obligation, the provisions of Article 42 (excluding paragraph (2)) shall apply mutatis mutandis to a property disclosure procedure, and the provisions of Article 182 and Article 183 shall apply mutatis mutandis to a property disclosure procedure based on a general statutory lien.

## **Chapter V Penal Provisions**

(Crime of Damaging a Written Public Notice, etc.)

Article 204 A person who falls under either of the following items shall be punished by imprisonment with work for not more than one year or a fine of not more than one million yen:

- (i) A person who has damaged a written public notice or any other sign (excluding the seal or the mark of seizure prescribed in Article 96 of the Penal Code) posted by a court execution officer for the purpose of giving public notice based on an order under the provisions of Article 55 (1) (limited to the portion pertaining to item (i)), Article 68-2 (1) or Article 77 (1) (limited to the portion pertaining to item (i)) (including the cases where these

provisions are applied mutatis mutandis pursuant to Article 121 [including the cases where it is applied mutatis mutandis pursuant to Article 189 (including the cases that are to be governed by such rules pursuant to the provisions of Article 195)] and Article 188 [including the cases that are to be governed by such rules pursuant to the provisions of Article 195]) or Article 187 (1) (including the cases that are to be governed by such rules pursuant to the provisions of Article 195)

- (ii) A person who has damaged a written public notice or any other sign posted by a court execution officer for the purpose of giving public notice pursuant to the provisions of Article 168-2 (3) or (4)

(Crime of Refusing to Make a Statement, etc.)

Article 205 (1) A person who falls under either of the following items shall be punished by imprisonment with work for not more than six months or a fine of not more than five hundred thousand yen:

- (i) A person who has failed to appear or refused to make a statement or has made a false statement, without justifiable grounds, on the date of interrogation on which he/she was summoned by the execution court with regard to an order on the standard sales price
  - (ii) A person who has failed to make a statement or refused to present a document or has made a false statement or presented a document containing a false statement, without justifiable grounds, in response to a question asked by or a request for submission of a document made by a court execution officer under the provisions of Article 57 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 121 [including the cases where it is applied mutatis mutandis pursuant to Article 189 (including the cases that are to be governed by such rules pursuant to the provisions of Article 195)] and Article 188 [including the cases that are to be governed by such rules pursuant to the provisions of Article 195])
  - (iii) An obligor or a third party possessing the real property, etc. prescribed in Article 168 (2) who has failed to make a statement or refused to present a document or has made a false statement or presented a document containing a false statement, without justifiable grounds, in response to a question asked by or a request for submission of a document made by a court execution officer under the provisions of said paragraph
- (2) A possessor of real property (excluding any fixtures on land that are not registrable; hereinafter the same shall apply in this paragraph) whose title to possession may not be duly asserted against the obligee effecting a seizure, the obligee effecting a provisional seizure or the person whose right shall be extinguished pursuant to the provisions of Article 59 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 188 [including the

cases that are to be governed by such rules pursuant to the provisions of Article 195]) has, without justifiable grounds, refused or obstructed entry to real property under the provisions of Article 64-2 (5) (including the cases where it is applied mutatis mutandis pursuant to Article 188 [including the cases that are to be governed by such rules pursuant to the provisions of Article 195]), he/she shall be punished by a fine of not more than three hundred thousand yen.

(Cases Subject to Punishment by a Non-Penal Fine)

Article 206 (1) The cases listed in the following items shall be subject to punishment by a non-penal fine of not more than three hundred thousand yen:

(i) When a person obliged to disclose has, without justifiable grounds, failed to appear on the property disclosure date on which he/she was summoned by the execution court or refused to swear under oath on said property disclosure date

(ii) When a person obliged to disclose who has sworn under oath on the property disclosure date has, without justifiable grounds, failed to make a statement or made a false statement with regard to the matters to be stated pursuant to the provisions of Article 199 (1) to (4)

(2) A person who has, in violation of the provisions of Article 202, used or provided the information set forth in said Article for a purpose other than the purpose prescribed in said Article shall be punished by a non-penal fine of not more than three hundred thousand yen.

(Jurisdiction, etc.)

Article 207 A case on the non-penal fine prescribed in the preceding Article shall be under the jurisdiction of the execution court.