

# CIVIL EXECUTION ACT

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## PART I GENERAL PROVISIONS

### Article 1 (Purpose)

The purpose of this Act is to prescribe the procedures for compulsory execution, the auction to execute a security right, and the auction under the Civil Act, the Commercial Act and other Acts (hereinafter referred to as the “civil execution”), and those for the preservative measures.

### Article 2 (Enforcer of Execution)

Civil execution shall be enforced by an execution officer unless otherwise prescribed in this Act.

### Article 3 (Court of Execution)

(1) A court of execution having jurisdiction over the dispositions of a court concerning the executing acts as stipulated in this Act, or over the cooperating matters of a court concerning such acts, shall be the district court having jurisdiction over the place to conduct the execution procedures, or over that to have conducted them, unless otherwise designated in Acts.

(2) A judgment of the court of execution may be rendered without holding any pleadings.

### Article 4 (Method of Application for Execution)

An application for a civil execution shall be filed in writing.

### Article 5 (Use of Compulsory Power by Execution Officer)

(1) An execution officer may, if deemed necessary for enforcing the execution, take adequate measures, such as searching the residence, warehouse and other places of a debtor, and opening the locked doors or utensils, etc.

(2) In the case of paragraph (1), an execution officer may request an assistance from the police or military forces if he meets with any resistance.

(3) Any assistance from the military forces under paragraph (2) shall

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be applied to a court, and the procedures for a court to request an assistance from the military forces shall be prescribed by the Supreme Court Regulations.

### Article 6 (Participants)

When an execution officer meets with any resistance during his execution, or fails to meet the debtor or his relatives or employees who are men of sense, while intending to conduct an execution at the debtor's residence, he shall call in as witnesses either two adults or one person from among the officials of *Gu/Dong* in the Special Metropolitan City or the Metropolitan City, those of *Si/Eup/Myeon* (in the case of *Si* in the urban and rural complex form, those of *Si* in the *Dong* area, and those of *Eup/Myeon* in the *Eup/Myeon* area) or among the police officers.

### Article 7 (Request to Execution Officer for Assistance)

(1) Any person other than an execution officer, who performs the duties for civil execution under the order of a court, shall carry a document attesting his identity or qualification, and show it when the interested parties request so.

(2) If the person under paragraph (1) meets with any resistance in performing his duties, he may request an execution officer to render an assistance.

(3) An execution officer may, upon receipt of a request for assistance under paragraph (2), exercise the authorities as stipulated in Articles 5 and 6.

### Article 8 (Execution on Legal Holiday or at Night)

(1) On the legal holidays or at nights, the executing acts may be performed only under a permit of the court.

(2) An order for a permit under paragraph (1) shall be shown when a civil execution is conducted.

### Article 9 (Perusal of Record, or Delivery of Certified Copy)

An execution officer shall, if requested by the interested parties, permit them to make a perusal of execution records, and deliver a certified copy of the document listed in the records.

### Article 10 (Protocol of Execution)

(1) An execution officer shall prepare a protocol of execution.

(2) Matters falling under each of the following subparagraphs shall be clarified in the protocol under paragraph (1):

1. Date and place of the execution;
2. Objects of the execution, and a summary of important situations thereof;
3. Indication of the participants in the execution;
4. Signatures and seals of the participants in the execution;
5. Facts that the protocol has been read or shown to the participants in the execution, and that they have approved thereof and affixed their signatures and seals thereon; and
6. Affixing name and seal, or signing, by the execution officer.

(3) In case where being unable to affix signature and seal under the provisions of paragraph (2) 4 and 5, the reasons therefor shall be entered.

Article 11 (Peremptory Notice and Other Notifications pertaining to Executing Acts)

(1) Peremptory notices and other notifications pertaining to executing acts shall be made orally by an execution officer, and be entered in the protocol.

(2) In case where any peremptory notice or notification may not be effected orally, a certified copy of such protocol shall be served by applying *mutatis mutandis* the provisions of Articles 181, 182, and 187 of the Civil Procedure Act. In this case, if a certificate of service has not been prepared, the reason for service shall be entered in the protocol.

(3) In case where the service under paragraph (2) may not be effected at the place of execution and within the jurisdiction of a court, a certified copy of the protocol shall be sent to the person who is to receive a peremptory notice or notification by the method stipulated in the Supreme Court Regulations, and the reasons therefor shall be entered in the protocol.

Article 12 (Omitting Services or Notifications)

If a debtor stays abroad or his whereabouts is unknown, any services or notifications pertaining to the executing acts may be dispensed with.

Article 13 (Special Case of Overseas Service)

(1) In case where a service or notification is made to a foreign state during the execution procedures, an order may be issued, concurrently with a service or notification, to designate the place and recipient for receiving a service or notification within the Republic of Korea, and to report thereon within a reasonable period.

(2) In case where no report has been filed within the period under paragraph (1), any subsequent service or notification thereto may be dispensed with.

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### Article 14 (Obligation to Report Where Address, etc. was Changed)

- (1) If the person who filed an application or a report to the court in respect of an execution, or the person who received a service of documents from the court, has changed the place for receiving a service, he shall promptly file a report on such purports with the court.
- (2) Any service on the person who has failed to file a report under paragraph (1) may, in case where other places to be served are unknown, be forwarded to the place reported to the court or that where the previous service has been received, by the method as stipulated by the Supreme Court Regulations.
- (3) In case where any document is forwarded under paragraph (2), it shall be deemed to be served at the time when it is forwarded.

### Article 15 (Immediate Appeal)

- (1) An immediate appeal may be raised against the judgment by the court of execution on the execution procedures, only when there exist any special provisions relating thereto.
- (2) An appellant shall submit a petition of appeal to the court of original judgment within the peremptory period of one week from the date of receiving a notice of such judgment.
- (3) If a reason for appeal has not been stated in a petition of appeal, the appellant shall submit to the court of original judgment a written reason for appeal within 10 days from the date of filing the petition of appeal.
- (4) A reason for appeal shall be stated under the conditions as stipulated by the Supreme Court Regulations.
- (5) When an appellant has failed to submit a written reason for appeal under paragraph (3), or when the reason for appeal has violated the provisions of paragraph (4), or when the appeal is unlawful and it is evident that such appeal may not be revised, the court of original judgment shall dismiss it by its ruling.
- (6) The immediate appeal under paragraph (1) shall not have an effect of suspending execution: *Provided*, That an appellate court (the court of original judgment, if the trial record remains in it) may order to suspend an execution of original judgment or the whole or part of execution procedures until the time when a ruling on the immediate appeal is rendered, with or without having the security furnished, or to continue such execution with

having the security furnished.

(7) An appellate court shall examine only the reasons stated in a petition of appeal or a written reason for appeal: *Provided*, That it may examine *ex officio* whether or not there exists any violation of Acts and subordinate statutes which may affect the original judgment, or any mistake of fact.

(8) An immediate appeal may be made against the ruling under paragraph (5).

(9) The ruling under the proviso of paragraph (6) shall be subject to no appeal.

(10) The provisions of Part III, Chapter III of the Civil Procedure Act concerning an immediate appeal shall apply *mutatis mutandis* to an immediate appeal under paragraph (1), except as otherwise prescribed in this Act.

Article 16 (Objection against Execution)

(1) An objection may be raised before the court against the judgment on the execution procedures of a court of execution against which no immediate appeal may be raised, against the execution disposition by an execution officer, and against other execution procedures to be observed by the execution officer.

(2) The court may make a provisional disposition prior to the judgment on the objection under paragraph (1), such as an order on the debtor for temporarily suspending the execution with or without furnishing the security, or an order on the creditor for continuing such execution with furnishing the security.

(3) An objection may be raised before the court against the case where an execution officer refuses to be entrusted with an execution or delays the executing acts, or where there exists any dispute on the fees as calculated by an execution officer.

Article 17 (Effect of Ruling on Cancellation)

(1) An immediate appeal may be raised against a ruling on cancellation of the execution procedures, against that on dismissing or rejecting an objection against an execution officer's disposition to cancel the execution procedures, or against that on ordering an execution officer to cancel the execution procedures.

(2) The ruling under paragraph (1) shall be effective only after it has become final and conclusive.

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### Article 18 (Prepayment, etc. of Execution Expenses)

- (1) If a creditor applies for a civil execution, he shall pay in advance the amount determined by the court for the expenses necessary for the civil execution. The same shall also apply when the court issues an order to make a prepayment of insufficient expenses.
- (2) If the creditor fails to pay in advance the expenses under paragraph (1), the court may, by its ruling, either dismiss the application or cancel the execution procedures.
- (3) An immediate appeal may be raised against a ruling under paragraph (2).

### Article 19 (Court for Offer or Deposit of Security)

- (1) An offer or deposit of the security under the provisions of this Act may be made either at the district court where a creditor or a debtor has his general forum or at the court of execution.
- (2) If a party has offered or deposited the security, the court shall deliver a certificate upon his request.
- (3) The provisions of Articles 122, 123, 125 and 126 of the Civil Procedure Act shall apply *mutatis mutandis* to the security stipulated in this Act, except as otherwise prescribed.

### Article 20 (Assistance of Public Agency)

A court may, if deemed necessary for the execution, request the public agency to provide assistances.

### Article 21 (Forum)

The forums as prescribed in this Act shall be exclusive forums.

### Article 22 (Special Case of Jurisdiction of *Si/Gun* Court)

The following cases shall be under the jurisdiction of a district court or a branch court of district court having jurisdiction over the place where a *Si/Gun* court is located:

1. Cases, for which the rights approved in relevant executive titles are not subject to an application of the Trial of Small Claims Act, of a lawsuit for granting an execution clause to the compromise or mediation (including the ruling with same effects as a judicial compromise under Article 34 (4) of the Judicial Conciliation of Civil Disputes Act; hereinafter the same shall apply) or to the payment order, which is constituted or finalized in a *Si/Gun* court, or of a lawsuit of an objection against a claim, or of a lawsuit of objection against granting an execution clause;

2. Lawsuit of demurrer by a third party about the execution of preservative measures rendered at a *Si/Gun* court;
3. Substitute execution or indirect compulsion on the basis of the compromise or mediation constituted at a *Si/Gun* court; and
4. Preservative measures making a case, which is not subject to an application of the Trial of Small Claims Act, as the merits thereof.

Article 23 (Application *Mutatis Mutandis*, etc. of Civil Procedure Act)

- (1) The provisions of the Civil Procedure Act shall apply *mutatis mutandis* to the procedure for civil executions and preservative measures, except as otherwise prescribed in this Act.
- (2) Matters necessary for the procedure for civil executions and preservative measures other than what are prescribed in this Act shall be prescribed by the Supreme Court Regulations.

## PART II COMPULSORY EXECUTION

### CHAPTER I GENERAL PROVISIONS

Article 24 (Compulsory Execution and Final Judgment)

Compulsory execution shall be based on the final judgment which has become final and conclusive, or on the final judgment with declaration of a provisional execution.

Article 25 (Subjective Scope of Executive Force)

- (1) If a judgment affects other person than the parties indicated in such judgment, it may be executed against or for such person: *Provided*, That the same shall not apply to the participants pursuant to Article 71 of the Civil Procedure Act.
- (2) The provisions of Articles 31 through 33 shall apply *mutatis mutandis* to a grant of execution clause for the purpose of an execution under paragraph (1).

Article 26 (Compulsory Execution by Foreign Judgment)

- (1) A compulsory execution based upon the judgment of a foreign court may be conducted only if a court of the Republic of Korea has made a declaration of its legality by means of a judgment of execution.
- (2) A lawsuit seeking a judgment of execution shall be under the jurisdiction of the district court located at the debtor's general forum, and

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if there exists no general forum, it shall be under the jurisdiction of the court having jurisdiction over a lawsuit against the debtor under the provisions of Article 11 of the Civil Procedure Act.

### Article 27 (Judgment of Execution)

- (1) A judgment of execution shall be made without making any examination as to whether the judgment is right or wrong.
- (2) A lawsuit seeking a judgment of execution shall be dismissed if it falls under any of the following subparagraphs:
  1. When it has not been proved that the judgment of a foreign court has become final and conclusive; and
  2. When the foreign judgment fails to fulfill the conditions under Article 217 of the Civil Procedure Act.

### Article 28 (Executory Exemplification)

- (1) Any compulsory execution may be made by an exemplification of the judgment with an execution clause (hereinafter referred to as the “executory exemplification”).
- (2) Execution clause shall, upon request, be delivered by the senior administrative officer, junior administrative officer, chief clerk or senior clerk of the court of first instance (hereinafter referred to as the “junior administrative officer, etc. of the court”), and if the trial record is kept by a superior court, the junior administrative officer, etc. of such court shall deliver it.
- (3) An application for the delivery of execution clause may be made orally.

### Article 29 (Execution Clause)

- (1) Execution clause shall be additionally entered at the bottom of an exemplification of the judgment.
- (2) Execution clause shall contain the statement that “this exemplification shall be delivered to a plaintiff so-and-so or a defendant so-and-so in order to execute the compulsory execution against a defendant so-and-so or a plaintiff so-and-so”, and the junior administrative officer, etc. of the court shall affix his name and seal thereon.

### Article 30 (Granting Execution Clause)

- (1) Execution clause shall be delivered only when the judgment has become final and conclusive, or when there exists a declaration of a provisional execution.
- (2) When there exists a condition imposed on the execution of judgment



and the creditor has to attest that such a condition has been fulfilled, an execution clause shall be delivered only when the document attesting thereto is submitted: *Provided*, That the same shall not apply where the execution of judgment is dependent upon furnishing the security.

Article 31 (Succeeded Execution Clause)

(1) Execution clause may be delivered for the successor to the creditor indicated in the judgment, or for the execution against the successor to the debtor indicated in the judgment: *Provided*, That it shall be limited to the case where such a succession is the fact evident to the court, or the succession has been attested by a certificate.

(2) If the succession under paragraph (1) is the fact evident to the court, it shall be entered in the execution clause.

Article 32 (Order by Presiding Judge)

(1) In case where there exists a condition imposed on the execution of judgment, and in the case of Article 31, the execution clause shall be delivered only when there exists an order from the presiding judge (referring to the presiding judge of the collegiate panel or the single judge; hereinafter the same shall apply).

(2) The presiding judge may examine the debtor orally or in writing, prior to issuing an order.

(3) The order under paragraph (1) shall be entered in the execution clause.

Article 33 (Lawsuit for Grant of Execution Clause)

If the verification required under the provisions of Articles 30 (2) and 31 is impossible to be made, the creditor may file a lawsuit requesting a grant of the execution clause with the court of first instance.

Article 34 (Objection against Grant, etc. of Execution Clause)

(1) In case where there exists an objection against the disposition of the junior administrative officer, etc. of a court with regard to an application for a grant of execution clause, its judgment shall be made by the court whereto belongs the junior administrative officer, etc. of the court, by its ruling.

(2) In case where there exists an objection against a grant of execution clause, the court may render a ruling corresponding to the disposition under Article 16 (2).

Article 35 (Grant of Many Copies of Execution Clause)

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(1) If a creditor applies for many copies of execution clause, or applies again for the execution clause without returning the execution clause granted earlier, they shall be granted only when the presiding judge issues an order therefor.

(2) The presiding judge may examine the debtor orally or in writing prior to issuing an order, and when many copies of the execution clause have been granted or another execution clause is again granted without making an examination of the debtor, he shall notify the debtor of the reasons therefor.

(3) When many copies of the execution clause have been granted or another execution clause is again granted, the reasons therefor shall be entered in the original copy and the execution clause.

### Article 36 (Entry into Original Copy of Judgment)

In case where an execution clause is granted, the purport that it is granted to a plaintiff or a defendant and the date thereof shall be entered in the original copy of a judgment or in the exemplification of a judgment of the appellate instance.

### Article 37 (Effect of Executory Exemplification)

Effects of an executory exemplification shall extend to all jurisdictions of the courts in Korea.

### Article 38 (Concurrent Execution by Several Copies of Executory Exemplification)

If a creditor is unable to obtain a complete repayment with the compulsory execution at one area or by one means, he may make a simultaneous compulsory execution with several copies of executory exemplification, at many areas or by many means.

### Article 39 (Requirements for Commencing Execution)

(1) Compulsory execution may be commenced only when the names of an applicant therefor, and of the person subject to such execution, have been indicated in the judgment or in an execution clause attached thereto, and when the judgment has already been served or is served simultaneously therewith.

(2) If any execution of the judgment is bound to the facts to be attested by the creditor according to the purports thereof, or is to be made for the sake of the successor to the creditor indicated in the judgment, or for the sake of the successor to the debtor indicated in the judgment,

not only the judgment to be executed, but also the execution clause additionally entered therein, shall be served on the successor to the debtor prior to commencing the compulsory execution.

(3) If an execution clause has been granted on the basis of a certificate, a certified copy of such certificate shall be served on the debtor prior to commencing the compulsory execution or simultaneously with the compulsory execution.

Article 40 (Requirements for Commencing Execution)

(1) If the person subject to an execution is slated to perform his obligation when it comes to a specific date, the compulsory execution may be commenced subsequently to the elapse of such date.

(2) If the execution is bound to an offer of a security by the creditor, such creditor shall submit the documentary evidence attesting that the security has been offered. The execution in such case may be commenced only when a certified copy of such documentary evidence has already been served on the debtor or is served simultaneously therewith.

Article 41 (Requirements for Commencing Execution)

(1) An execution of the executive titles with the contents that it may be executed simultaneously with the performance of an opposite obligation, may be commenced only when the creditor attests that he has performed such an opposite obligation or offered such performance.

(2) An execution of the executive titles with the contents that it may be executed in lieu of the case where a performance of other obligation is impossible, may be commenced only when the creditor attests that such performance is impossible.

Article 42 (Preparation and Delivery of Receipt by Execution Officer)

(1) When a creditor has delivered an executory exemplification to an execution officer and entrusted him with a compulsory execution, the said officer may, even if he has failed to obtain any special authority, receive the payment or any other performances, and prepare and deliver a receipt therefor. When the debtor has fully performed his obligation, the execution officer shall deliver to him an executory exemplification.

(2) When a debtor has partially performed his obligation, the execution officer shall note the fact in the executory exemplification, and deliver a receipt to the debtor.

(3) The right of the debtor to demand a receipt from the creditor shall

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not be affected by the provisions of paragraph (2).

### Article 43 (Authority of Execution Officer)

(1) An execution officer is authorized, by virtue of possession of an executory exemplification, to proceed with a compulsory execution and the acts as stipulated in Article 42 against a debtor and a third party, and a creditor shall not make any allegation of the defects or limitations in such authority against the execution officer.

(2) An execution officer shall carry an executory exemplification, and show it to the interested parties upon their request, in order to verify his qualification.

### Article 44 (Lawsuit of Demurrer against Claims)

(1) If a debtor intends to raise any objection against the claims which has become final and conclusive by a judgment, he shall file a lawsuit of demurrer against the claims before the court of first instance which rendered such judgment.

(2) For the demurrer under paragraph (1), any grounds therefor shall be those which have arisen subsequently to a closure of pleadings (in the case of a judgment without holding any pleadings, it shall be subsequent to a declaration of judgment).

(3) If there exist many kinds of grounds for a demurrer, they shall be alleged simultaneously.

### Article 45 (Lawsuit of Demurrer against Grant of Execution Clause)

In the case of Articles 30 (2) and 31, the provisions of Article 44 shall apply *mutatis mutandis* to the case where a debtor contests an executive force of judgment based upon the fact attested in regard to a grant of execution clause, or contests an executive force of judgment based upon a recognized succession: *Provided*, That even in this case, the right of a debtor to raise an objection against a grant of execution clause under Article 34 shall not be affected.

### Article 46 (Lawsuit of Demurrer and Provisional Disposition)

(1) A lawsuit of demurrer under Articles 44 and 45 shall not affect the continuation of a compulsory execution.

(2) When it is deemed that any grounds for alleging a demurrer under paragraph (1) are legally well-founded, and minimal showing therefor is presented as to the facts, the court of the lawsuit may, upon a motion of a party, order to suspend a compulsory execution with or without

having the security furnished, not later than the time when a judgment is rendered, or order to continue such execution with having the security furnished, or order to revoke the effected execution dispositions.

(3) A judgment under paragraph (2) shall be rendered without holding any pleadings, and in the case of urgency, it may be rendered by the presiding judge.

(4) In the case of urgency, a court of execution may exercise the authority under paragraph (2). In this case, the court of execution shall order to submit the written decision of the court of the lawsuit under paragraph (2) within a reasonable period.

(5) When the period under the latter part of paragraph (4) has passed, a compulsory execution shall continuously progress upon a motion of the creditor.

Article 47 (Judgment on Objection and Provisional Disposition)

(1) The court of a lawsuit may issue an order under Article 46 in its judgment on a lawsuit of demurrer, and revoke, alter or authorize the already issued order.

(2) On the matters of judgment as stipulated in paragraph (1), a provisional execution shall be declared *ex officio*.

(3) The judgment under paragraph (2) shall be subject to no appeal.

Article 48 (Lawsuit of Demurrer by Third Party)

(1) When any third party alleges that he has ownership on the objects of compulsory execution, or that he has a right entitled to prevent a transfer or delivery of the objects, he may file a lawsuit of demurrer against the creditor about such compulsory execution: *Provided*, That when the debtor contests such demurrer, he may make the debtor a co-defendant.

(2) The lawsuit under paragraph (1) shall be under the jurisdiction of the court of execution: *Provided*, That when the subject-matter of a lawsuit does not fall under the jurisdiction of a single judge, a collegiate panel of the district court having jurisdiction over the location of the court of execution shall have such jurisdiction.

(3) The provisions of Articles 46 and 47 shall apply *mutatis mutandis* to the suspension of a compulsory execution and to the revocation of already-effected execution dispositions: *Provided*, That the furnishing of a security may be dispensed with in the revocation of an execution disposition.

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### Article 49 (Mandatory Suspension or Restriction of Execution)

In case where a document falling under any of the following subparagraphs has been submitted, a compulsory execution shall be suspended or restricted:

1. An exemplification of a judgment with executive force stating the purport of revoking a judgment to be executed or its provisional execution, or that of refusing a permit for compulsory execution or of ordering a suspension thereof, or that of ordering a revocation of the execution disposition;
2. An exemplification of a judgment stating the purport of ordering a temporary suspension of compulsory execution;
3. A document attesting that a security has been furnished in order to avert an execution;
4. A deed stating the purport that the creditor has been paid a reimbursement subsequently to the rendering of a judgment to be executed, or that a consent has been given to a deferment of a performance of obligations;
5. A certified copy of protocol or a certificate prepared by the junior administrative officer, etc. of a court attesting that a judgment to be executed and other trial have become null and void due to a withdrawal of a lawsuit, etc.; and
6. An exemplification of a compromise protocol or of a notarial deed stating the purport that a compulsory execution is not to be effected, or a request for, or an entrustment of, a compulsory execution is withdrawn.

### Article 50 (Revocation or Temporary Injunction of Execution Disposition)

(1) In the case of subparagraphs 1, 3, 5 and 6 of Article 49, the alreadyeffected execution disposition shall be revoked, and in the case of subparagraphs 2 and 4 of the same Article, the already-effected execution disposition shall be subjected to a temporary injunction.

(2) In case where an execution disposition is revoked pursuant to paragraph (1), the provisions of Article 17 shall not be applicable.

### Article 51 (Restriction on Suspension of Execution by Submission of Deed of Performance, etc.)

(1) In case where any compulsory execution is suspended by submitting a deed stating the purport that the reimbursement has been received from

among the deeds under subparagraph 4 of Article 49, the period of such suspension shall be two months.

(2) In case where any compulsory execution is suspended by submitting a deed stating the purport that a consent has been given to a deferment of the performance of obligations from among the deeds under subparagraph 4 of Article 49, such a suspension shall be limited to twice only, and the aggregate period thereof shall not exceed six months.

Article 52 (Case of Debtor's Death Subsequent to Commencing Execution)

(1) Where a debtor has died after the commencement of a compulsory execution, such compulsory execution shall continuously progress on the inherited property.

(2) Where an executing act, which is to be notified to the debtor, is conducted, if there exists no heir or his whereabouts is obscure, the court of execution shall, upon a motion of the creditor, appoint a special representative for the inherited property or for the heir.

(3) The provisions of Article 62 (3) through (6) of the Civil Procedure Act shall apply *mutatis mutandis* to the special representative under paragraph (2).

Article 53 (Bearing Costs of Execution)

(1) Costs required for a compulsory execution shall be borne by a debtor, and shall be indemnified preferentially by such execution.

(2) When a judgment constituting the basis for compulsory execution has been reversed, the creditor shall reimburse the costs under paragraph (1) to the debtor.

Article 54 (Compulsory Execution against Military Personnel or Military Service Officials)

(1) In case where a compulsory execution is enforced against military personnel or military service officials at the barracks, military buildings or military vessels, the court shall, upon a motion of the creditor, entrust the military judge, unit commander or ship's captain to enforce the execution.

(2) Any articles seized by an entrustment shall be delivered to the execution officer entrusted by the creditor.

Article 55 (Execution to be Enforced in Foreign State)

(1) In case where a compulsory execution is enforced in a foreign state, if any statutory cooperation is to be available from the public agency of

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such foreign state, the court of first instance shall, upon a motion of the creditor, entrust it to the foreign public agency.

(2) When a compulsory execution is enforceable by a consul of the Republic of Korea stationed in a foreign state, the court of first instance shall entrust such a consul with it.

### Article 56 (Other Executive Titles)

A compulsory execution may also be enforced by resorting to any one of the following:

1. Judgment to be demurrable only by an appeal;
2. Judgment which contains a declaration of provisional execution;
3. Payment order which has become final and conclusive;
4. Notarial deed prepared by a notary public in respect of the claims aiming at the payment of specific amount, or at the payment of a specific quantity of substitute goods or securities, and which states the purport of giving a consent of the debtor to the compulsory execution; and
5. Settlement in court, recognition and acceptance of the claims, etc., and others having the effects identical with a final and conclusive judgment.

### Article 57 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Articles 28 through 55 shall apply *mutatis mutandis* to the compulsory execution based upon the executive titles under Article 56, except as otherwise provided in Articles 58 and 59.

### Article 58 (Payment Order and Its Execution)

(1) Any compulsory execution based on a payment order which has become final and conclusive shall be enforced by an exemplification of the payment order, needless to obtain any grant of execution clause: *Provided*, That the same shall not apply to the case falling under any one of the following subparagraphs:

1. Where a condition is imposed on the execution of payment order;
2. Where a compulsory execution is enforced for the sake of a successor to the party; and
3. Where a compulsory execution is enforced against a successor to the party.

(2) When a creditor has requested many copies of the exemplification of payment order, or requested again an exemplification of payment order without returning the exemplification of payment order delivered earlier,



the junior administrative officer, etc. of a court shall deliver it. In this case, the grounds therefor shall be entered in an original copy and an exemplification thereof.

(3) The provisions of Article 44 (2) shall not apply to the allegation of demurrer against the claims.

(4) Lawsuit for granting an execution clause, lawsuit of demurrer against claims, or lawsuit of demurrer against granting an execution clause, shall be under the jurisdiction of a district court issuing a payment order.

(5) In the case of paragraph (4), when such claims are the cases under collegiate decision, they shall be judged by a collegiate panel of the district court having jurisdiction over the location of such court.

Article 59 (Notarial Deed and Its Execution)

(1) An execution clause of the deed prepared by a notary public shall be granted by the notary public who keeps such deed.

(2) When there exists any demurrer against a disposition of a notary public in respect of a request for a grant of execution clause, a single judge of the district court having jurisdiction over the location of such notary public's office, shall render a judgement by his ruling.

(3) The provisions of Article 44 (2) shall not apply to the allegation of demurrer against the claims.

(4) Lawsuit for granting an execution clause, lawsuit of demurrer against claims, or lawsuit of demurrer against granting an execution clause shall be subject to the jurisdiction of the court in the location of debtor's general forum: *Provided*, That when there does not exist such a court, it shall be subject to the jurisdiction of the court with which a lawsuit may be filed against the debtor pursuant to Article 11 of the Civil Procedure Act.

Article 60 (Execution of Fine for Negligence)

(1) Judgment imposing a fine for negligence shall be effected by an order of a public prosecutor.

(2) The order under paragraph (1) shall have the same effect as the executive titles with executive force.

## CHAPTER II COMPULSORY EXECUTION BASED UPON MONETARY CLAIM

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SECTION 1 Procedure, etc. for Specification of Property

Article 61 (Request for Specification of Property)

(1) A creditor, who is entitled to commence a compulsory execution based upon the executive titles aiming at paying the money, may file a request for specification of the debtor's property with the court in the location of the debtor's general forum: *Provided*, That the same shall not apply to the case of a judgment with a declaration of a provisional execution under Article 213 of the Civil Procedure Act, or that of the executive titles with executive force by virtue of a declaration of provisional execution attached thereto under a *mutatis mutandis* application of the same Article.

(2) The request under paragraph (1) shall be accompanied by an executory exemplification and the documents required for commencing a compulsory execution.

Article 62 (Trial on Request for Specification of Property)

(1) When the request for a specification of property is justifiably well-grounded, a court may order a debtor to submit a property catalog which specifies his status of property.

(2) When the request for a specification of property is not justifiably well-grounded, or if deemed that the property of the debtor may be easily detected, the court shall reject it by its ruling.

(3) The trial under paragraphs (1) and (2) shall proceed without hearing the debtor.

(4) The ruling under paragraph (1) shall be served on the creditor who made such request and on the debtor, and in extending a service on the debtor, it shall be concurrently notified that, if he fails to comply with the ruling, he may be subjected to a sanction as stipulated in Article 68.

(5) A service on the debtor pursuant to paragraph (4) shall not be effected by means as stipulated in Articles 187 and 194 of the Civil Procedure Act.

(6) When the ruling under paragraph (1) is not served on the debtor, the court shall order the creditor, with fixing a proper period, to revise the debtor's address within such period.

(7) When the creditor has failed to comply with the order under paragraph (6) in spite of having received it, the court shall revoke the ruling under paragraph (1), and dismiss the request for a specification of property.

(8) An immediate appeal may be raised against the ruling under paragraphs (2) and (7).

(9) The debtor shall, when he has altered the place to receive a service after receipt of the service of a ruling under paragraph (1), promptly file a report on such purport with the court, and in case where he fails to file such report, the provisions of Articles 185 (2) and 189 of the Civil Procedure Act shall apply *mutatis mutandis*.

Article 63 (Demurrer against Order to Specify Property)

(1) A debtor may file a demurrer within one week from the date of receiving a service of the order to specify the property.

(2) When the debtor has filed a demurrer under paragraph (1), the court shall fix the date to examine the grounds for filing such demurrer, and notify the creditor and the debtor thereof.

(3) When any filing of a demurrer is justifiably well-grounded, the court shall revoke the order to specify the property, by its ruling.

(4) When the filing of a demurrer is not justifiably well-grounded, or the debtor has failed to appear on the designated date without any justifiable reason, the court shall reject such demurrer by its ruling.

(5) An immediate appeal may be raised against the ruling under paragraphs (3) and (4).

Article 64 (Designation of Date for Specification of Property)

(1) When there exists no filing of a demurrer by the debtor against an order to specify the property, or it has been rejected, the court shall fix the date for specifying the property, and ask the debtor to appear. Such date shall be notified also to the creditor.

(2) The debtor shall submit on the date under paragraph (1) the property catalog clarifying the properties subject to a compulsory execution and the following matters:

1. Onerous transfer of the immovables performed by the debtor within one year before a service of the order to specify the property;
2. Onerous transfer of properties other than the immovables performed by the debtor to the spouse, lineal blood relatives, collateral blood relatives within a cousinship and their spouses, lineal blood relatives

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and brothers and sisters of the latter spouses within one year before a service of the order to specify the property; and

3. Gratuitous disposition in respect of property performed by the debtor within two years before a service of the order to specify the property: *Provided*, That the same shall not apply to the gifts offered as a token of courtesy.

(3) Matters to be entered into the property catalog and the scope thereof shall be determined by the Supreme Court Regulations.

(4) When the debtor appearing on the date under paragraph (1) has vindicated that he is able to reimburse within three months, the court may put off such date within the limit of three months, and when the debtor has submitted a document attesting that he has reimbursed not less than two-thirds of his debts on the new date, the court may put off the date again within the limit of one month.

### Article 65 (Oath)

(1) A debtor shall take an oath on the date of specifying property that the property catalog is truthful.

(2) The provisions of Articles 320 and 321 of the Civil Procedure Act shall apply *mutatis mutandis* to the oath under paragraph (1). In this case, the written oath shall contain the following words: "I have prepared and submitted, according to conscience, the property catalog as it is, and I swear that I will accept punishment if there exists anything concealed or falsely prepared".

### Article 66 (Revision of Property Catalog)

(1) When there exist any formal defects or obscure points in the property catalog which has been submitted on the date of specification, the debtor may revise the already-submitted property catalog by obtaining a permit from the court, even after having taken an oath under Article 65.

(2) An immediate appeal may be made against the ruling as to the permit under paragraph (1).

### Article 67 (Perusal and Reproduction of Property Catalog)

Any creditor entitled to commence a compulsory execution against a debtor may file a request for a perusal or reproduction of the property catalog.

### Article 68 (Detention of Debtor and Penal Provisions)

(1) In case where a debtor has committed an act falling under any one

of the following subparagraphs, without any justifiable reasons, a court shall, by its ruling, punish him by a detention for not more than 20 days:

1. Non-appearance on the date of specification;
  2. Refusal to submit the property catalog; and
  3. Refusal to take an oath.
- (2) When the debtor is a juristic person or an association or foundation under Article 52 of the Civil Procedure Act, its representative or administrator shall be punished by a detention.
- (3) The court shall examine the offenses falling under each subparagraph of paragraph (1) on whether or not they have a justifiable reason, by summoning the debtor on the date of judgment on detention.
- (4) An immediate appeal may be made against the ruling under paragraph (1).
- (5) When the debtor requests that he comply with an order to specify the property during the execution of detention, the court shall promptly designate the date for specification.
- (6) When the debtor has submitted the property catalog and taken an oath by appearing on the date for specification under paragraph (5), or has reimbursed his debts to the requesting creditor and submitted the document attesting such fact, the court shall promptly revoke the ruling of detention, and order to release such debtor.
- (7) The date for specification under paragraph (5) may be effected even without notifying the requesting creditor thereof. In this case, the fact under paragraph (6) shall be notified to the creditor.
- (8) Procedures for judgments under paragraphs (1) through (7) and their execution, and other necessary matters, shall be prescribed by the Supreme Court Regulations.
- (9) When the debtor has submitted a false property catalog, he shall be punished by imprisonment for not more than 3 years or by a fine not exceeding 5 million won.
- (10) When the debtor is a juristic person or an association or foundation under Article 52 of the Civil Procedure Act, its representative or administrator shall be punished pursuant to the provisions of paragraph (9), and the debtor shall be punished by the fine under paragraph (9).

Article 69 (Second Request for Specification)

In case where a request for the property specification has been dismissed

or rejected, the creditor who has made such request for specification shall not again file, with the same executive titles, the request for the property specification unless he supplements the grounds for such dismissal or rejection.

Article 70 (Request for Entry in Defaulters' List)

(1) If a debtor falls under any one of the following subparagraphs, a creditor may apply for an entry of such debtor in the defaulters' list:

1. When the debts are not reimbursed within 6 months after the executive titles ordering a payment of money have become final and conclusive or after such executive titles are drawn up: *Provided*, That the case of executive titles as stipulated in the proviso of Article 61 (1) shall be excluded; and
2. When falling under any one from among the grounds listed in each subparagraph of Article 68 (1) or those listed in paragraph (9) of the same Article.

(2) In filing the request under paragraph (1), the reason therefor shall be vindicated.

(3) Judgment on the request under paragraph (1) shall be subject to the jurisdiction of the court in the location of the debtor's general forum in the case of paragraph (1) 1, and to that of the court effecting the procedures for property specification in the case of paragraph (1) 2.

Article 71 (Decision on Request for Entry)

(1) When the request under Article 70 is justifiably well-grounded, the court shall render the ruling of entering the debtor in the defaulters' list.

(2) When the request for entry is justifiably well-grounded, or there exists such obvious reason as recognizable that a compulsory execution would be easily effected, the court shall reject such request by its ruling.

(3) An immediate appeal may be raised against a judgment under paragraphs (1) and (2). In this case, the provisions of Article 447 of the Civil Procedure Act shall not apply *mutatis mutandis*.

Article 72 (Keeping of List)

(1) The defaulters' list shall be kept in the court which has made the ruling of entry.

(2) The court shall forward a duplicate of the defaulters' list to the head of *Si*/(referring to a *Si* in which no *Gu* is established; hereinafter the

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same shall apply) *Gu/Eup/Myeon* (in the case of a city in urban and rural complex form, it shall be the head of *Si/Gu* in the *Dong* area, and the head of *Eup/Myeon* in the *Eup/Myeon* area; hereinafter the same shall apply) where the debtor's address is registered (if the debtor is a juristic person, where its principal office is located).

(3) The court may, under the conditions as determined by the Supreme Court Regulations, forward a duplicate of the defaulters' list to the head of a specific financial institution or the head of an organization related to financial institution so as to have it utilized as a credit information on the debtors.

(4) Any person may file a request for a perusal or reproduction of the defaulters' list or its duplicate.

(5) The defaulters' list shall not be published by means of printed matter, etc.

### Article 73 (Cancellation of Entry in List)

(1) When it has been attested that an obligation is extinguished by a reimbursement or other reasons, the court shall, upon a motion of the debtor, render a ruling to cancel his name out of the defaulters' list.

(2) The creditor may raise an immediate appeal against the ruling under paragraph (1). In this case, the provisions of Article 447 of the Civil Procedure Act shall not apply *mutatis mutandis*.

(3) When ten years have elapsed from the year next to that in which an entry in the defaulters' list was made, the court shall render *ex officio* a ruling to cancel the name entered in such list.

(4) When the ruling under paragraphs (1) and (3) has been rendered, such purport shall be notified to the head of *Si/Gu/Eup/Myeon* where the debtor's address is registered (if the debtor is a juristic person, where its principal office is located), and to the head of financial institution, etc. to whom a duplicate of the defaulters' list has been forwarded under Article 72 (3).

(5) The head of *Si/Gu/Eup/Myeon* and the head of financial institution, etc., who are in receipt of the notification under paragraph (4), shall cancel the names entered in the duplicate of such list.

### Article 74 (Inquiry about Property)

(1) Where it falls under any of the following subparagraphs, the court that exercises jurisdiction over the formalities of property specification may, according to the application of the creditor who has applied for such property specification, inquire about the property under debtor's title of the public agencies, financial institutions, organizations, etc., which control the computer networks on the property and credit of individuals:

<Amended by Act No. 7358, Jan. 27, 2005>

1. Where it is acknowledged that the creditor, concerning the formalities of property specification, has failed to comply due to a cause pursuant to the provisions of Article 194 (1) of the Civil Procedures Act even though he received an order to correct his address pursuant to the provisions of Article 62 (6);
  2. Where the properties on the property list presented by the debtor fall short of the satisfaction of execution claims concerning the formalities of property specification; or
  3. Where there are causes that fall under subparagraphs of Article 68 (1) or paragraph (9) of the same Article concerning the formalities of property specification.
- (2) The creditor shall, where he files an application under paragraph (1), specify the agency or organization to be inquired of, and pay in advance the costs for such inquiry.
- (3) In case where the court makes an inquiry under paragraph (1), it may, by means of a document stating the debtor's personal matters, ask the head of the relevant agency or organization to gather altogether, and to submit, the data on the debtor's property and credit that are retained by such agency or organization.
- (4) The public agency, financial institution, organization, etc. shall not refuse, without any justifiable grounds, the inquiry under paragraphs (1) and (3).

Article 75 (Results, etc. of Inquiry about Property)

- (1) A court shall manage the results of inquiries made under Article 74 (1) and (3), correspondingly to the debtor's property catalog.
- (2) When the head of an agency or organization in receipt of the inquiry under Article 74 (1) and (3) has submitted the false data, or refused to submit the data, without any justifiable grounds, he shall be punished by a fine for negligence not exceeding 5 million won, by a ruling.
- (3) An immediate appeal may be made against the ruling under paragraph (2).

Article 76 (Penal Provisions)

- (1) No one shall use the results of inquiry about the property for other purposes than a compulsory execution.
- (2) A person who violates the provisions of paragraph (1) shall be punished by imprisonment for not more than 2 years or by a fine not exceeding 5 million won.

Article 77 (Supreme Court Regulations)



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The Supreme Court Regulations shall prescribe the scope of a public agency, financial institution, organization, etc. to be inquired of under Article 74 (1) and (3) and the procedure for such inquiry, the costs to be paid by the creditor under Article 74 (2), matters regarding the management of the results of inquiry under Article 75 (1), and the procedure for imposing a fine for negligence under Article 75 (2), etc.

### SECTION 2 Compulsory Execution against Immovables

#### Sub-Section 1 Common Provisions

##### Article 78 (Method of Execution)

- (1) Compulsory execution against immovables shall be effected by a court upon a motion of a creditor.
- (2) Compulsory execution shall be effected by the following means:
  1. Compulsory auction; and
  2. Compulsory administration.
- (3) A creditor may, at his option, have the execution effected by any one means as provided in each subparagraph of paragraph (2), or effected by concurrently exercising the two means.
- (4) Compulsory administration may be effected also for the execution of a provisional seizure.

##### Article 79 (Court of Execution)

- (1) Compulsory execution against immovables shall be subject to the jurisdiction of the district court in the location of such immovables.
- (2) When the immovables are located in the district under jurisdiction of several district courts, the jurisdiction rests on each such district court. In this case, such a court may, if necessary, transfer the case to another competent district court.

#### Sub-Section 2 Compulsory Auction

##### Article 80 (Written Application for Compulsory Auction)

Matters falling under each of the following subparagraphs shall be entered in a written application for a compulsory auction:

1. Indication of the creditor, the debtor, and the court;
2. Indication of the immovables; and

3. A specific claim causing the auction, and a specific executive title which may be effected.

Article 81 (Documents to be Attached)

(1) Documents falling under any one of the following subparagraphs shall be attached to a written application for a compulsory auction in addition to the executory exemplification:

1. For immovables registered as owned by the debtor, a certified copy of the register; and
2. For immovables unregistered as owned by the debtor, a document attesting that they may be immediately registered in the debtor's name: *Provided*, That in case where such immovables are unregistered buildings, a document attesting that such buildings are owned by the debtor, a document attesting the parcel number, structure and size of such buildings, and a document attesting a construction permit or a construction report in respect of such buildings.

(2) The creditor may request the public agency in charge of official books to attest matters under the proviso of paragraph (1) 2.

(3) In the case of the proviso of paragraph (1) 2, when the creditor fails to attest the parcel number, structure and size of the buildings, he may request the court of execution to investigate it, concurrently with filing an application for auction.

(4) The court shall, in the case of paragraph (3), have an execution officer investigate such case.

(5) In case where the immovables have already been seized for the purpose of a compulsory administration, if the documents falling under any subparagraph of paragraph (1) are attached to the execution record thereof, a second attachment of such documents may be dispensed with.

Article 82 (Authority of Execution Officer)

(1) An execution officer may gain access to a building for an investigation under Article 81 (4), and interrogate the debtor or the third party occupying the building, or request him to submit the documents.

(2) An execution officer may, if deemed necessary for gaining access to the building under paragraph (1), take an adequate measure, such as opening a locked door, etc.

Article 83 (Ruling on Commencing Auction, etc.)

(1) In rendering a ruling to commence an auction procedure, the seizure

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of the immovables shall be simultaneously ordered.

(2) The seizure shall not affect the management and use of immovables by the debtor.

(3) After a ruling to commence the auction procedure has been rendered, the court may, either *ex officio* or upon request of an interested party, take measures necessary for preventing any act of infringing on the immovables.

(4) The seizure shall become effective when a ruling therefor has been served on the debtor or a registration pursuant to Article 94 has been made.

(5) An immediate appeal may be raised against a judgment to dismiss or reject an application for compulsory auction.

### Article 84 (Decision on Completion Period of Demand for Distribution and Public Notification Thereof)

(1) When a seizure following the decision on commencement of auction has become effective (excluding the case where there has existed another decision on commencement of auction prior to the said decision on commencement of auction), the court of execution shall fix the completion period to demand a distribution as being prior to the first sale date, by taking account of the period required for the procedures.

(2) When the completion period to demand a distribution has been fixed, the court shall publicly notify the purport of a ruling on commencement of auction and the completion period to demand a distribution, and notify thereof to the person with a right to lease on a deposit basis under the proviso of Article 91 (4) and to the creditor under Article 88 (1) who has been known to the court.

(3) A decision on the completion period to demand a distribution under paragraph (1), and the public notification under paragraph (2), shall be made within one week from the time when a seizure following the decision on commencement of auction has become effective.

(4) The junior administrative officer, etc. of a court shall give a peremptory notice to the creditor under subparagraphs 3 and 4 of Article 148 and the public agency in charge of taxes and other public imposts, to file a report with the court on the existence of the claims, and their causes and amounts (including the principal, interests, costs and other incidental claims), not later than the completion period to demand a distribution.

(5) When the creditor under subparagraphs 3 and 4 of Article 148 has failed to file a report with respect to the peremptory notice under paragraph (4), the amount of claims by such creditor shall be calculated pursuant to the document and evidence stated in the execution records, such as a certified copy of register, etc. In this case, the amount of claims shall not be added once again.

(6) The court may, if deemed specially necessary, extend the completion period to demand a distribution.

(7) The provisions of paragraphs (2) and (4) shall apply *mutatis mutandis* to the case of paragraph (6): *Provided*, That a notification or a peremptory notice under paragraphs (2) and (4) shall not be made to the person who has already made a demand for distribution or a report on claims.

Article 85 (Investigation of Current Status)

(1) A court shall, after having rendered a ruling to commence the auction, promptly order an execution officer to investigate the current status of immovables, occupational relations, amount of rent or deposit money, and other present situations.

(2) The execution officer may, when he investigates the immovables under paragraph (1), take such measures as stipulated in Article 82 on the said immovables.

Article 86 (Demurrer against Ruling on Commencement of Auction)

(1) Any interested parties may put in a demurrer against a ruling to commence an auction to the court, not later than the time when the price of sale is paid in full.

(2) The court in receipt of a demurrer under paragraph (1) may render the ruling corresponding to Article 16 (2).

(3) The interested parties may raise an immediate appeal against a judgment on the demurrer under paragraph (1).

Article 87 (Concurrence of Seizures)

(1) When there exists another request for a compulsory auction in respect of the immovables, for which a ruling to commence the compulsory auction procedure or to commence the auction procedure for effecting a security right has been rendered, the court shall again render a ruling to commence the auction, and effect the auction pursuant to the execution procedure, for which a ruling to commence the auction has been rendered earlier.

(2) When a request for auction, for which a ruling to commence the auction

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was rendered earlier, has been withdrawn or the procedure thereof has been revoked, the court shall proceed with the procedure pursuant to the subsequent ruling to commence the auction, within the limit not violating the provisions of Article 91 (1).

(3) In the case of paragraph (2), if the subsequent ruling to commence the auction is based upon the request subsequent to the completion period for a demand for distribution, the court of execution shall newly fix the completion period to demand a distribution. In this case, a notification or a peremptory notice under Article 84 (2) or (4) shall not be made to the person who has already made a demand for distribution or a report on claims pursuant to Article 84 (2) or (4).

(4) When the auction procedure, for which a ruling to commence the auction was rendered earlier, has been suspended, the court may, upon request and by its ruling, continuously proceed with the procedures on the basis of the subsequent ruling to commence the auction (limited to that based upon the request filed not later than the completion period for a demand for distribution): *Provided*, That the same shall not apply to the case where the auction procedure, for which a ruling to commence the auction was rendered earlier, is revoked and the entered matters under Article 105 (1) 3 is altered.

(5) An immediate appeal may be made against a judgment on the request under paragraph (4).

### Article 88 (Demand for Distribution)

(1) Any creditor, who has an executory exemplification, who has effected a provisional seizure subsequent to the registration of a ruling to commence the auction, or who has the right to claim a preferential reimbursement under the Civil Act, the Commercial Act and other Acts, may demand a distribution.

(2) In case where the shares are altered, which are to be taken over by the successful bidder pursuant to a demand for distribution, the creditor who has made the demand for distribution shall not withdraw it, after the completion period for the demand for distribution has been expired.

### Article 89 (Notice of Request for Double Auction, etc.)

When the request under Articles 87 (1) and 88 (1) is filed, the court shall notify the interested parties of the grounds therefor.

### Article 90 (Interested Parties to Auction Procedure)

Interested parties to the auction procedures shall be persons falling under

each of the following subparagraphs:

1. An execution creditor and other creditors demanding a distribution by virtue of an executory exemplification;
2. A debtor and an owner;
3. A holder of a right on the immovables entered in the register; and
4. A person who holds a right on the immovables and has attested such right.

Article 91 (Choice, etc. between Principle of Takeover and Principle of Surplus)

(1) Unless one has made a successful bidder take over an encumbrance as to the claim preceding that of an execution creditor, or unless it is the case where the proceeds of sale are deemed to be sufficient to clear such encumbrance, the relevant immovables shall not be sold.

(2) All mortgages on the sold immovables shall be extinguished by such sale.

(3) Superficies, servitude, lease on a deposit basis, and registered right of lease shall be extinguished by the sale, in case where they are ineligible to oppose the mortgage, garnished claim, and provisional seizure claim.

(4) Superficies, servitude, lease on a deposit basis, and registered right of lease other than the case of paragraph (3) shall be taken over by the successful bidder: *Provided*, That in the case of a right of lease on a deposit basis from among them, it shall be extinguished by the sale, if the holder of the right of lease on a deposit basis makes a demand for distribution pursuant to Article 88.

(5) A successful bidder shall be responsible for reimbursing to the lien holder the claims that are secured by the lien.

Article 92 (Third Party and Effect of Seizure)

(1) A third party shall not be eligible to oppose the seizure, in case where he has become aware of the existence of a request for auction or of the seizure, when he acquired the right.

(2) In case where immovables have been encumbered with the garnished claim, their auction procedure shall be continuously progressed, even if a third party, who acquired the ownership subsequent to a seizure, was not aware of the existence of a request for auction or of the seizure, when he acquired the ownership.

Article 93 (Withdrawal of Request for Auction)

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(1) Effect of seizure shall be extinguished if a request for auction is withdrawn.

(2) In case where a request for auction is withdrawn after a report has been filed on the purchase, it shall become effective only by obtaining the consent of a person reporting the highest purchase price, or of the purchaser, and of a person reporting the next-ranking price under Article 114.

(3) The provisions of paragraphs (1) and (2) shall apply *mutatis mutandis* to the case where documents under subparagraph 3 or 6 of Article 49 are submitted, and the provisions of paragraph (2) shall do so to the case where documents under subparagraph 4 of Article 49 are submitted.

### Article 94 (Registration of Ruling to Commence Auction)

(1) If a court renders a ruling to commence the auction, the junior administrative officer, etc. of the court shall promptly entrust a registrar with an entry of the grounds therefor in the register.

(2) The registrar shall, in compliance with an entrustment under paragraph (1), make an entry of the grounds for a ruling to commence the auction.

### Article 95 (Forwarding of Certified Copy of Register)

A registrar shall, after making an entry of the grounds for a ruling to commence the auction pursuant to Article 94, forward a certified copy of such register to the court.

### Article 96 (Revocation of Auction due to Destruction, etc. of Immovables)

(1) When the circumstances have become evident, under which any transfer of right is impossible due to the destruction or sale, etc. of immovables, the court shall revoke the procedure for a compulsory auction.

(2) An immediate appeal may be raised against a ruling on revocation under paragraph (1).

### Article 97 (Appraisal of Immovables and Determination of Minimum Sale Price)

(1) A court shall have an appraiser appraise immovables, and determine the minimum sale price by taking account of such appraised price.

(2) An appraiser may, if deemed necessary for an appraisal under paragraph (1), take the measures as stipulated in Article 82 (1).

(3) An appraiser shall, when he requests an execution officer to render an assistance under Article 7, obtain a permit from the competent court.

### Article 98 (Ruling on Blanket Auction)

(1) In case where it is deemed to be adequate to put several immovables

up for a blanket auction by taking account of their location, shape, relation of utilization, etc., a court may render a ruling to put them up for a blanket auction, either *ex officio* or upon request of the interested parties.

(2) In the case of a sale of immovables, if it is deemed to be adequate to put them up for a blanket auction together with other sorts of assets (excluding the monetary claims) by taking account of their location, shape, relation of utilization, etc., a court may render a ruling to put them up for a blanket auction either *ex officio* or upon request of the interested parties.

(3) The ruling under paragraphs (1) and (2) shall be rendered prior to the fixed date of sale for such objects.

Article 99 (Consolidation of Cases of Blanket Auction)

(1) A court may render a ruling under Article 98 (1) or (2) on several assets for which respective requests for auction have been filed, or on the objects of auction cases pending to another court or to an execution officer.

(2) In the case of the objects of auction cases pending to another court or an execution officer, the said another court or execution officer shall transfer the auction cases as to such objects to the court that has rendered a ruling under paragraph (1).

(3) In the cases of paragraphs (1) and (2), the court shall consolidate the said auction cases.

Article 100 (Jurisdiction over Blanket Auction Cases)

In the cases of Articles 98 and 99, the provisions of Article 25 of the Civil Procedure Act shall apply *mutatis mutandis*, notwithstanding Article 31 of the same Act: *Provided*, That the same shall not apply to the auction case of a vessel registerable.

Article 101 (Procedures for Blanket Auction)

(1) Procedures for auction in compliance with a ruling on a blanket auction under Articles 98 and 99 shall be taken under the provisions of this Subsection: *Provided*, That a seizure of other assets than immovables shall be effected by the means as stipulated in corresponding provisions in accordance with the sort of such assets, and a seizure of assets from among them pursuant to a seizure by an execution officer shall be effected by the means of an order of the court of execution to make an execution officer seize them.



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(2) In case where it is necessary to specify the price of each property in the sale procedure under paragraph (1), the ratio of the minimum auction price for each property shall be fixed, and the price of each property shall be the amount obtained by dividing the gross prices of properties by the ratio of the minimum auction price for each property. The same shall also apply to the case where it is necessary to specify the costs for execution to be shared by each property.

(3) In case where several properties are put up for a blanket auction, if the proceeds of a part of them are sufficient to reimburse the amount of claims of all creditors and the costs for a compulsory execution, the sale of other properties shall not be permitted: *Provided*, That the same shall not apply to the cases where the land and buildings appurtenant thereto are put up for a blanket auction, or where the economic virtue is remarkably dropped if the properties are sold separately, or where there exists a consent of the debtor.

(4) In the case of the text of paragraph (3), the debtor may designate what are to be sold from among such properties.

(5) Except as otherwise prescribed in this Act, the Supreme Court Regulations shall determine as to the procedures for a blanket auction.

### Article 102 (Revocation of Auction When Surplus is Not Expected)

(1) When a court deems that there shall remain no surplus if all encumbrances preceding the claim of execution creditors and the costs of procedures are reimbursed with the minimum auction price, it shall notify the execution creditor thereof.

(2) If the execution creditor fails to furnish a sufficient guaranty while he fixes, within one week from the date of receiving the notification under paragraph (1), the price likely to yield a surplus after reimbursing the encumbrances and the costs under paragraph (1), and requests that he purchase at such price if there is no offer of purchase commensurate with such price, the court shall revoke the auction procedure.

(3) An immediate appeal may be raised against a ruling on revocation under paragraph (2).

### Article 103 (Method of Sale for Compulsory Auction)

(1) Sale of immovables shall follow the method of sale fixed by the court of execution.

(2) Sale of immovables shall be effected by such 3 methods, as the quoted

auction to be made on the date of sale, or as the date auction to be tendered and opened on the date of sale, or as the term auction to be tendered within the bidding period and to be opened on the date of sale.

(3) Matters necessary for the sale procedures for immovables shall be prescribed by the Supreme Court Regulations.

Article 104 (Fixing Date of Bidding and Date of Decision on Successful Bidding, etc.)

(1) When a court deems that there shall remain a surplus if the encumbrances and the costs under Article 102 (1) are reimbursed with the minimum auction price, or when an execution creditor has made the request under Article 102 (2) and furnished a sufficient guaranty, the court shall fix *ex officio* the date of bidding and that of the decision of successful bidding, and make public notification thereof by the method as determined by the Supreme Court Regulations.

(2) The court shall notify the interested parties of the date of bidding and that of the decision on successful bidding.

(3) The notification under paragraph (2) may be forwarded to the addresses of the interested parties indicated in the execution record by the method as determined by the Supreme Court Regulations.

(4) In case where the sale is made by the method of term auction, the provisions of paragraphs (1) through (3) shall also apply to the period of bidding.

Article 105 (Specifications, etc. of Articles for Sale by Auction)

(1) A court shall prepare specifications of articles for sale in which matters falling under each of the following subparagraphs are contained:

1. Indication of the immovables;
2. Possessor of the immovables and titles of such possession, period to enable such possession, and the statement of interested parties as to the rent or deposit money;
3. Right or provisional disposition regarding the registered immovables, whose effect is not extinguishable by a successful bidding; and
4. Outline of the superficies deemed to have been established by a successful bidding.

(2) The court shall keep in it the copies of the specifications of articles for sale, of the report on investigation of current status, and of the written appraisal, and make them available for anyone's perusal.

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### Article 106 (Matters to be Publicly Notified for Bidding Date)

The public notification of the bidding date shall contain matters falling under each of the following subparagraphs:

1. Indication of the immovables;
2. Purport that they shall be sold by a compulsory execution, and the method of such sale;
3. Possessor of the immovables, titles of such possession, period to enable such possession and use, agreement of the rent or deposit money and amount thereof;
4. Date and place of auction, and the name of an execution officer who is to progress the auction, and in the case of sale by a method of term auction, the period and place of such auction;
5. The minimum sale price;
6. Date and place of a decision on successful bidding;
7. Purport that the copies of the specifications of articles for sale, of the report on investigation of current status, and of the written appraisal shall be kept in the court prior to the date of sale, and that they are made available for anyone's perusal;
8. Purport that any claim shall be reported by a person who has any right to the immovables not in need of an entry in the registry; and
9. Purport that the interested parties may attend on the date of auction.

### Article 107 (Place of Sale)

The date of sale shall be progressed within a court: *Provided*, That an execution officer may progress the date of sale at another place subject to a permit of the court.

### Article 108 (Maintenance of Order at Place of Sale)

An execution officer may have a person deemed to fall under any one of the following subparagraphs forbidden to enter the place of sale, or ousted from such place, or prevented from requesting any purchase:

1. A person who has hindered others in requesting a purchase;
2. A person who has unjustly colluded with others, or otherwise hindered the proper execution of sale;
3. A person who has instigated the acts under subparagraph 1 or 2; or
4. A person who has been convicted of the crimes as to the sale in civil execution procedures as stipulated in Articles 136, 137, 140, 140-2, 142, 315, and 323 through 327 of the Criminal Act, and for whom

2 years have not elapsed since the date when the said judgment became final and conclusive.

Article 109 (Date of Decision on Successful Bidding)

- (1) Date of decision on successful bidding shall be fixed within one week from the date of auction.
- (2) Procedures for a decision on successful bidding shall be progressed within a court.

Article 110 (Alteration of Sale Conditions under Agreement)

- (1) Conditions of sale other than the minimum sale price may be altered by a court under an agreement between the interested parties.
- (2) Any interested party may make an agreement under paragraph (1) not later than the completion period for demanding distribution.

Article 111 (*Ex Officio* Alteration of Sale Conditions)

- (1) In case where it is necessary to reflect the actual status of transactions or to efficiently progress auction procedures, a court may either alter conditions of sale or set forth a new condition for sale, not later than the completion period for demanding distribution.
- (2) Any interested party may raise an immediate appeal against the judgment under paragraph (1).
- (3) In the case of paragraph (1), the court may have an execution officer make a necessary investigation on the immovables.

Article 112 (Progress of Date of Sale)

An execution officer shall make the copies of the specifications of articles for sale, the report on investigation of current status, and the written appraisal available for a perusal on the date of sale under the method of date auction or quoted auction, and if there exist any special sale conditions, he shall make public notification thereof, and shall give a peremptory notice to report on the purchase price pursuant to the method of sale as fixed by the court.

Article 113 (Guaranty of Bid)

Any bidder shall furnish an execution officer a guaranty satisfying the amount and method set forth by the court of execution under the conditions as prescribed by the Supreme Court Regulations.

Article 114 (Declaration on Next Highest Bid)

- (1) Any bidder other than the highest bidder may, not later than the termination of auction period, make to the execution officer a declaration

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of the purport that his bid should be permitted to obtain the successful bidding if the highest bidder fails to fulfill his obligations not later than the payment deadline of the price (hereinafter referred to as the “next highest bid declaration”).

(2) A next highest bid declaration may be made only when such declared amount exceeds the amount obtained by deducting the guaranty amount from the highest bidding price.

### Article 115 (Closing of Auction Date)

(1) An execution officer shall, if there exists a lawful next highest bid declaration, subsequent to pronouncing the name of the highest bidder and his bid price and to urging the next highest bid price, make notification of the closing of auction date subsequent to making a decision on the next highest bidder and to pronouncing his name and bid price.

(2) When there are two or more persons declaring the next highest bid prices, the person whose declared bid price is higher shall be decided to be the next highest bidder. When the declared bid prices are equal, the next highest bidder shall be decided by lot.

(3) Any other bidders except the highest bidder and the next highest bidder shall be exempted from the liability for his bid pursuant to the notification under paragraph (1), and may demand immediately a return of the guaranty of his bid.

(4) When there exists, during the date of sale under the method of date auction or quoted auction, no declaration of bid price subject to a permit not later than the termination of the date of sale, the execution officer may promptly revoke the termination of the date of sale, and give a peremptory notice to declare a bid price under the same method.

(5) When the date of sale is terminated because there has been no declaration of a bid price in compliance with the peremptory notice under paragraph (4), no revocation shall be made again on the termination of the date of sale.

### Article 116 (Protocol of Auction Date)

(1) Protocol of auction shall contain matters falling under each of the following subparagraphs:

1. Indication of the immovables;
2. Indication of the execution creditor;
3. Fact that the copies of the specifications of articles for sale, the report

on investigation of current status, and the written appraisal have been made available for a perusal;

4. Fact that, when there exist any special sale conditions, the notification thereof has been made;
5. Fact that a declaration of a bid price has been urged;
6. All declared bid prices, and the names and addresses of such bidders, or the fact of nonexistence of declarations of bid price subject to a permit;
7. Fact that a termination of the date of sale has been revoked because there has been no declaration of a bid price subject to a permit not later than the said termination, and that a declaration of bid price has been again urged;
8. Date when notification of the closing of the date of sale has been finally made;
9. Fact that a guaranty has been furnished for a bidding, or that such bidding has not been permitted due to a non-furnishing of guaranty; and
10. Fact that the names and bid prices of the highest bidder and the next highest bidder have been pronounced.

(2) The highest bidder, the next highest bidder and the interested parties present shall affix their signatures and seals on the protocol. When they are unable to affix their signatures and seals, the execution officer shall enter the reason therefor in the protocol.

(3) When the execution officer has returned a guaranty of declaration of bid, he shall obtain a receipt therefor and attach it to the protocol.

Article 117 (Transfer of Protocol and Money)

An execution officer shall transfer the protocol of date of sale and what has been received as a guaranty for bidding and not returned as yet, to the junior administrative officer, etc. of the court, within three days from the date of sale.

Article 118 (Report by Highest Bidder, etc. on Recipient of Service)

(1) The highest bidder and the next highest bidder shall, when they do not have any address, residence and office within the Republic of Korea, decide on the place and recipient to accept a service or notice within the Republic of Korea, and report to the court thereon.

(2) When the highest bidder or the next highest bidder has failed to file

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a report under paragraph (1), the court may refrain from making any service or notice on him.

(3) The report under paragraph (1) may be made orally to an execution officer. In this case, the execution officer shall enter it in the protocol.

### Article 119 (New Auction Date)

When the auction date has been finally terminated without any declaration of bid price subject to a permit, the court shall reasonably lower the minimum sale price within the limit not violating the provisions of Article 91 (1), and fix a new auction date. The same shall also apply when there exists, on such date, no declaration of bid price subject to a permit.

### Article 120 (Statement on Date of Decision on Successful Bidding)

(1) A court shall allow the interested parties, who have attended on the date of decision on the successful bidding, to state their opinions on the permit for sale.

(2) An objection against the permit for sale shall be raised not later than the time of a permit for sale. The same shall also apply to the statement on the objection which has already been raised.

### Article 121 (Grounds for Raising Objection against Permit for Sale)

Any objection against the permit for sale may be raised only when there exists any ground falling under any one of the following subparagraphs:

1. When it is impossible to approve a compulsory execution, or to continuously proceed with such execution;
2. When the highest bidder has no ability or qualification to purchase the immovables;
3. When a person who is not entitled to purchase the immovables has declared a bid by making the highest bidder represent him;
4. When the highest bidder or his representative, or the person who has declared a bid by making the highest bidder represent him, falls under any one of subparagraphs of Article 108;
5. When a grave defect exists in a decision on the minimum sale price, that on the blanket auction, or a preparation of the specifications of articles for auction;
6. When any such fact has been discovered during the progress of auction procedures, as that of remarkable damages on the immovables due to a natural disaster and other causes not attributable to oneself, or as that of alterations in the relations of important rights as to the

immovables; and

7. When there exist any other grave errors in the auction procedures.

Article 122 (Restriction on Raising Objection)

No objection shall be raised on the grounds as to the rights of other interested parties.

Article 123 (Non-permission of Sale)

(1) A court shall not permit the sale, if it deems that a raising of an objection thereagainst is justifiable.

(2) A court shall not permit *ex officio* any sale, when there exist the grounds specified in Article 121: *Provided*, That in the case of subparagraph 2 or 3 of the same Article, the same shall be limited to the time when the defects in the ability or qualification have not been removed.

Article 124 (Non-permission of Sale in Case of Excessive Auction)

(1) In case where several immovables have been put up for auction, if the proceeds from a sale of one immovable property suffice to reimburse the amount of claims of all creditors and the costs of compulsory execution, the court shall not permit the sale of other immovables: *Provided*, That the same shall not apply to the case of a blanket auction under the proviso of Article 101 (3).

(2) In the case of the text of paragraph (1), the debtor may designate what are to be sold from among his immovables.

Article 125 (New Auction Date in Case of Non-permission of Sale)

(1) When a new auction has been ordered without permitting the sale pursuant to the provisions of Articles 121 and 123, a new auction date shall be fixed *ex officio* by the court.

(2) The provisions of Articles 97 through 105 shall apply *mutatis mutandis* to the time when a new date of auction under paragraph (1) has come to be opened due to the cause as specified in subparagraph 6 of Article 121.

Article 126 (Pronouncement of Decision on Whether to Permit Sale)

(1) A decision on whether or not a sale is to be permitted shall be pronounced.

(2) The provisions of Articles 152 through 154, 156 through 158, and 164 of the Civil Procedure Act shall apply *mutatis mutandis* to a protocol of a date of decision on the successful bidding.

(3) The decision under paragraph (1) shall take effect only when it becomes final and conclusive.



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### Article 127 (Request for Revocation of Decision on Permit for Sale)

(1) In case where the fact as specified in subparagraph 6 of Article 121 has been discovered after a decision on permit for sale became final and conclusive, the successful bidder may file a request for revocation of a decision on permit for sale, not later than the time when the price is paid.

(2) An immediate appeal may be made against the decision on a request under paragraph (1).

### Article 128 (Decision on Permit for Sale)

(1) The decision on a permit for sale shall specify the immovables put up for auction, the successful bidder, and the amount of sale, and when they have been sold under special sale conditions, it shall also specify such conditions.

(2) The decision under paragraph (1) shall be publicly notified under the conditions as prescribed by the Supreme Court Regulations, in addition to being pronounced.

### Article 129 (Immediate Appeal by Interested Parties, etc.)

(1) An interested party may, only when he sustains any damages as a result of the decision on whether to permit a sale, file an immediate appeal against such decision.

(2) An immediate appeal may also be filed by the successful bidder who alleges that there exists no justifiable ground for permitting a sale, or that it shall be permitted under other conditions than what are entered in the decision, or by a bidder who alleges a permit for sale.

(3) In the cases under paragraphs (1) and (2), the bidder who alleges a permit for sale shall remain bound by the price of his bid.

### Article 130 (Appeal against Whether to Permit Sale)

(1) An appeal against a decision on permit for sale may be raised only when stating, as the grounds, that there exists a reason for filing an objection against the decision on permit for sale under this Act, or that there exists a grave error in the procedures of such decision.

(2) The grounds listed in each subparagraph of Article 451 (1) of the Civil Procedure Act may, notwithstanding the provisions of paragraph (1), be regarded as the reasons for an appeal against the decision on permit or non-permit for sale.

(3) Any person who intends to file an appeal against the decision on permit for sale shall deposit as the guarantee the money equivalent to one tenth

of the successful bid price or the securities recognized by the court.

(4) When a petition of appeal is not accompanied, while filing an appeal, by a document attesting that the guarantee under paragraph (3) has been furnished, the court of original judgment shall dismiss it by its decision within one week from the date of receiving the petition of appeal.

(5) An immediate appeal may be filed against the decision under paragraph (4).

(6) When the appeal under paragraph (3) filed by a debtor and owner has been rejected, the appellant shall not request a return of the money or securities furnished as the guarantee.

(7) When the appeal under paragraph (3) filed by other persons than a debtor and owner has been rejected, the appellant shall not request a return of the amount under the interest rates as determined by the Supreme Court Regulations, from the date of filing the appeal to the date on which a decision on rejecting the appeal has become final and conclusive, on the proceeds, from among the money furnished as the guarantee or the amount of the securities cashed (limited to the money furnished as the guarantee or the amount of the securities cashed): *Provided*, That when the appellant has paid the said amount prior to the encashment of the securities furnished as the guarantee, he may request a return of such securities.

(8) In case where an appellant has withdrawn his appeal, the provisions of paragraph (6) or (7) shall apply *mutatis mutandis*.

Article 131 (Procedure for Appellate Trial)

(1) An appellate court may, if deemed necessary, designate other party of the appellant in order to have him make a dissenting statement.

(2) Several appeals against one decision shall be combined.

(3) The provisions of Article 122 shall apply *mutatis mutandis* to the appellate trial.

Article 132 (Judgment by Appellate Court and Decision on Whether to Permit Sale)

In case where an appellate court revokes a ruling of the court of execution, the decision on whether to permit such sale shall be rendered by the court of execution.

Article 133 (Effect of Decision on Non-Permit for Sale)

When a decision on non-permit for sale has become final and conclusive,

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the successful bidder and the bidder who alleged a permit for sale shall be exempted from the responsibility for their bids.

Article 134 (Cases of Newly Beginning with Decision on Minimum Sale Price)

In case where the decision on permit for sale has been revoked under Article 127, the provisions of Articles 97 through 105 shall apply *mutatis mutandis*.

Article 135 (Time of Acquisition of Ownership)

The successful bidder shall acquire the right, which is the object of an auction, when he pays the successful bid price in full.

Article 136 (Order, etc. for Delivering Immovables)

(1) Upon a request of the successful bidder made within six months after paying the successful bid price, the court may order the debtor, owner or occupant of the immovables to deliver them to the successful bidder: *Provided*, That the same shall not apply to the case where it is deemed that the occupant occupies them by the title enabling him to oppose the successful bidder.

(2) The court may, upon a request of the successful bidder or creditor, order to have an administrator manage the immovables until their delivery subsequent to a decision on permit for sale.

(3) In the case of paragraph (2), the court may issue an order corresponding to paragraph (1), upon a request of the successful bidder or creditor, with or without having the security furnished, if deemed necessary for managing the immovables.

(4) If the court intends to issue an order for the delivery under paragraph (1) or (3) to other occupant than the debtor and owner, it shall examine such occupant: *Provided*, That the same shall not apply where it is evident that such occupant does not occupy the immovables by the title enabling him to oppose the successful bidder, or where such occupant has already been examined.

(5) An immediate appeal may be raised against the decision on a request under paragraphs (1) through (3).

(6) When the debtor, owner or occupant fails to comply with the order for delivery under paragraphs (1) and (3), the successful bidder or creditor may entrust an execution officer with such execution.

Article 137 (Decision on Whether to Permit Sale to Next Highest Bidder)

(1) In case where there exists a next highest bidder, if the successful bidder has failed to fulfill his liability not later than the time limit for price payment, it shall be decided whether or not the successful bid is to be awarded to the next highest bidder: *Provided*, That the same shall not apply to the case of Article 142 (4).

(2) When the successful bid is awarded to the next highest bidder, the successful bidder shall not file a request for a return of the guarantee for bidding.

Article 138 (Resale)

(1) When the successful bidder has failed to completely perform his obligations not later than the time limit for price payment or the re-fixed time limit under Article 142 (4), and when there exists no next highest bidder, the court shall order *ex officio* a resale of the immovables.

(2) The minimum sale price determined previously and other sale conditions shall also be applicable to the procedures for resale.

(3) When the successful bidder has paid, not later than three days before the date of resale, the price, and the overdue interests under the rate as determined by the Supreme Court Regulations on the price from the expiration of such payment deadline to the date of payment as well as the costs for procedures, the court shall revoke the procedure for resale. In this case, when the next highest bidder has obtained a decision on permit for sale, any successful bidder who has paid the said amount ahead of others shall acquire the right to the object of auction.

(4) In the procedures for resale, any previous successful bidder shall neither be entitled to make a bid, nor file a request for a return of the guarantee for bidding.

Article 139 (Auction of Shares in Co-Owned Property)

(1) In case where any shares in the co-owned property are put up for the auction, an entry shall be made in the registry that there exists a decision on commencing an auction for the debtor's shares for the sake of the creditor's claims, and other co-owners shall be notified of the fact that there exists a decision on commencing such auction: *Provided*, That when there exists a reasonable ground, such notification may be dispensed with.

(2) The minimum sale price shall be fixed on the debtor's share based

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upon the assessed values of the whole co-owned property: *Provided*, That the same shall not apply to the case where there exist any special situations, such as that it is difficult to assess correct values by such methods, or that such assessment requires the unreasonably larger expenses.

### Article 140 (Co-owner's Preferential Purchase Right)

(1) Any co-owner may declare a preferential bid for the debtor's share at the same price as the highest bid price by furnishing the guarantee under Article 113 not later than the date of auction.

(2) In the case of paragraph (1), the court shall grant a permit for sale to the relevant co-owner, in spite of the existence of a declaration of the highest bid price.

(3) When several co-owners have declared their preferential bids and completed the procedures under paragraph (2), the court shall, if there exists no special consultation, allow them to purchase the debtor's shares in proportion to the ratio of co-owned shares.

(4) In case where any co-owner has declared a preferential bid pursuant to paragraph (1), the highest bidder shall be deemed to be the next highest bidder under Article 114.

### Article 141 (Cancellation of Registration of Decision on Commencing Auction)

When a request for auction has been completed without granting a permit for sale, the junior administrative officer, etc. of a court shall entrust the registrar with a cancellation of the entries under Articles 94 and 139 (1).

### Article 142 (Payment of Price)

(1) If a decision on granting a permit for sale has become final and conclusive, the court shall fix the time limit for payment of the price, and notify the successful bidder and the next highest bidder thereof.

(2) The successful bidder shall pay the price of successful bid not later than the time limit for payment of the price under paragraph (1).

(3) In case where money has been furnished as the guarantee for a request for bid, such money shall be incorporated in the proceeds of sale.

(4) In case where other articles than money have been furnished as the guarantee for a request for bid, if the successful bidder has paid only the remaining amount after deducting the guarantee amount from the sale

price, the court shall encash the guarantee and appropriate the amount obtained by deducting the costs for such encashment into the proceeds of sale equivalent to the guarantee amount and into the overdue interests thereon, and if there exists any insufficient amount, the court shall again fix the time limit for payment of price, and have the successful bidder pay the price.

(5) The provisions of Article 138 (3) shall apply *mutatis mutandis* to the overdue interests under paragraph (4).

(6) The next highest bidder shall be exempted from his responsibility for bid when the successful bidder has paid the price in full, and may promptly request a return of the guarantee for a request for bid.

Article 143 (Special Method for Payment)

(1) In addition to taking over the encumbrances pursuant to the sale conditions, if there exists a consent of the related creditor to the execution of the distribution schedule within the limit of the proceeds of sale, the successful bidder may take over the liability in lieu of the payment of price.

(2) In case where the creditor is the successful bidder, he shall report thereon to the court not later than the expiration of the date of decision on successful bidding, and may pay, on the date of distribution, the price less the amount to be received by him as a dividend.

(3) In the cases of paragraphs (1) and (2), when any demurrer has been raised against the liability taken over by the successful bidder or against the amount to be received by him as a dividend, the successful bidder shall pay the price equivalent thereto not later than the expiration of the date of distribution.

Article 144 (Measures after Payment of Sale Price)

(1) If the sale price has been paid, the junior administrative officer, etc. of a court shall entrust the registration falling under each of the following subparagraphs, by attaching the certified copy of the decision on a permit for sale:

1. Registration of the transfer of ownership to the successful bidder;
2. Registration of the cancellation of entries as to the encumbrances which the successful bidder did not take over; and
3. Registration of the cancellation of a registration of the decision on commencing auction pursuant to the provisions of Articles 94 and 139

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(1).

(2) Costs required for the registrations under paragraph (1) shall be borne by the successful bidder.

Article 145 (Distribution of Proceeds of Sale)

(1) If the sale price is paid, the court shall take the steps for distribution.

(2) When the proceeds of sale are unable to satisfy all creditors taking part in the distribution, the court shall make a distribution pursuant to the priority order under the Civil Act, the Commercial Act, and other Acts.

Article 146 (Date of Distribution)

If the successful bidder pays the price of sale, the court shall fix the date for making the statement on distribution and for executing the distribution, and notify the interested parties and the creditors demanding the distribution thereof: *Provided*, That if the debtor stays in a foreign state or his whereabouts is unknown, such notification may be dispensed with.

Article 147 (Amount, etc. to be Distributed)

(1) The amount to be distributed shall be as follows:

1. Proceeds of sale;
2. Overdue interests from the expiration of a deadline for payment of price to the payment or appropriation of the price, in the case of Articles 138 (3) and 142 (4);
3. Guarantee under Article 130 (6) (including the case to be applied *mutatis mutandis* pursuant to Article 130 (8));
4. Amount for which an appellant is not entitled to request a return from among the guarantee under the text of Article 130 (7), or the amount paid by an appellant pursuant to the proviso of Article 130 (7) (including respectively the case to be applied *mutatis mutandis* pursuant to Article 130 (8)); and
5. Guarantee for which the successful bidder is not entitled to request a return under Article 138 (4) (when a guarantee has been furnished in other manner than money, the amount obtained by deducting the costs required for the encashment of the guarantee from the proceeds thereof).

(2) If there remains any amount, out of the amount under paragraph (1), after making distributions to the creditors, it shall be returned to the persons who have furnished the guarantee, etc. under paragraph (1) 4, within the limit of the amount under the said provisions.

(3) In case where the amount, out of the amount under paragraph (1), remaining after distributions to the creditors, does not suffice to return the guarantee, etc. under paragraph (1) 4, when there exist many persons who have furnished such guarantee, etc., it shall be paid in proportion to the ratio of the guarantee, etc. under paragraph (1) 4.

Article 148 (Scope of Creditors Entitled to Receive Distribution)

Creditors entitled to receive a distribution of amounts stipulated in Article 147 (1) shall be those listed in each of the following subparagraphs:

1. Execution creditors who have declared a bid not later than the completion period for demanding a distribution;
2. Creditors who have demanded a distribution not later than the completion period for demanding a distribution;
3. Provisional seizure obligees who have been registered prior to the registration of a decision on commencing the first auction; and
4. Creditors who have what has been registered prior to the registration of a decision on commencing the first auction and what is to be extinguished by the auction, which are the mortgage, right to lease on a deposit basis, and other claims for preferential payment.

Article 149 (Confirmation of Distribution Schedule)

(1) A court shall prepare a draft of the distribution schedule 3 days prior to the date of distribution, and keep it in the court, in order to show it to the creditors and debtors.

(2) The court shall confirm a distribution schedule by examining the interested parties present and creditors demanding distribution.

Article 150 (Entries, etc. in Distribution Schedule)

(1) A distribution schedule shall contain the proceeds of sale, the principal and interests of the creditor's claims, the expenses and the order and ratio of distribution.

(2) When the interested parties present and the creditors demanding distribution have reached an agreement, the distribution schedule shall be prepared pursuant thereto.

Article 151 (Objection against Distribution Schedule)

(1) A debtor present on the date may raise an objection against the creditor's claims or the precedence of such claims.

(2) The debtor may, notwithstanding the provisions of paragraph (1), raise



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in writing an objection against the creditor's claims or the precedence of such claims, since the draft of distribution schedule was kept in the court pursuant to Article 149 (1) to the expiration of a period of distribution.

(3) Any creditor present on the date may, within the scope relating to his interests, raise an objection against other creditors upon his claims or the precedence of such claims.

### Article 152 (Conclusion of Objection)

(1) Any creditor who has been related to the objection under Article 151 shall make a statement thereon.

(2) When the related persons have deemed that the objection under Article 151 is justifiable or have reached an agreement by other methods, the distribution shall be made by revising the distribution schedule pursuant thereto.

(3) When the objection under Article 151 has not been concluded, the distribution shall be made for only the unobjectionable portions.

### Article 153 (Creditors Not Present)

(1) Any creditors not present on the date shall be deemed to have agreed to making distributions as described in the distribution schedule.

(2) When the creditors not present on the date have been related to the objection raised by other creditors, such creditors shall be deemed not to have regarded the objection as justifiable.

### Article 154 (Lawsuit of Demurrer, etc. against Distribution)

(1) The debtors who have raised an objection against the creditors who do not have an executory exemplification of executive titles (excluding the provisional seizure obligees), and the creditors who have raised an objection against other creditors, shall file a lawsuit of demurrer against the distribution.

(2) The debtors who have raised an objection against the creditors who have an executory exemplification of executive titles shall file a lawsuit of demurrer against the demand.

(3) When the objecting creditors or debtors have failed to submit the documents attesting the fact of filing a lawsuit under paragraph (1) before the court of execution, or failed to submit the documents attesting the fact of filing a lawsuit under paragraph (2) as well as an exemplification of the judgment on a suspension of execution regarding such lawsuit, within one week from the date of distribution, it shall be deemed that the objections

have been withdrawn.

Article 155 (Alleging Preferential Right by Objecting Persons, etc.)

Even in case where the objecting creditors have failed to observe the period under Article 154 (3), it shall not affect any exercise of a preferential right and other rights by means of a lawsuit against the creditors who have received distributions pursuant to the distribution schedule.

Article 156 (Jurisdiction over Lawsuit of Demurrer against Distribution)

(1) Lawsuit of demurrer against the distribution under Article 154 (1) shall be subject to a jurisdiction of the district court whereto belongs the court of execution making distributions: *Provided*, That in case where the subject-matter of lawsuit is not subject to a jurisdiction of a single judge, it shall be subject to a jurisdiction of a collegiate panel of the district court.

(2) In case where several lawsuits of demurrer against the distribution have been filed, if one lawsuit of them is subject to a jurisdiction of a collegiate panel, the other lawsuits shall be concurrently subject thereto.

(3) The provisions of paragraphs (1) (proviso) and (2) shall not apply to the case where the objecting person and the other party have reached an agreement that the case of objection shall be subject to a judgment by a single judge.

Article 157 (Judgment on Lawsuit of Demurrer against Distribution)

At a judgment on a lawsuit of demurrer against distribution, the relevant amount of distribution shall be fixed together with the creditors who are to receive distributions in respect of the portions contested on the amount of distribution. When deemed that it is not proper to fix it, it shall be ordered by the judgment that a new distribution schedule shall be prepared and a different distribution procedure shall be taken.

Article 158 (Treating Lawsuit of Demurrer against Distribution as Withdrawn)

When the objecting person has failed to appear on the date of first pleading at the lawsuit of demurrer against distribution, it shall be deemed that the lawsuit has been withdrawn.

Article 159 (Procedure for Making Distributions and Protocol of Distribution)

(1) A court shall make the distribution in compliance with a distribution schedule, pursuant to the procedures as stipulated in paragraphs (2)

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and (3).

(2) Simultaneously with issuing, to the creditor who is to receive a dividend on all of his claims, a certificate of payment of the dividend, the court shall receive an executory exemplification or a certificate of claims possessed by the said creditor, and deliver it to the debtor.

(3) The court shall have the creditor entitled to receive a dividend on a part of his claims, submit an executory exemplification or a certificate of claims, and return it with an entry of the dividend, and it shall receive a receipt, simultaneously with issuing a certificate of payment of the dividend to him, and deliver it to the debtor.

(4) The procedures for making the distribution under paragraphs (1) through (3) shall be clearly entered in the protocol.

### Article 160 (Deposit of Dividend)

(1) If there exists any one reason out of the following subparagraphs against the claims of the creditor entitled to receive the dividend, the amount of distribution to him shall be deposited:

1. When a condition for suspension or the unfixed maturity is attached to the claims;
2. When it is a claim of a provisional seizure obligee;
3. When the documents stipulated in subparagraph 2 of Article 49 and Article 266 (1) 5 have been submitted;
4. When a provisional registration of the establishment of mortgage has been completed;
5. When a lawsuit of demurrer against a distribution under Article 154 (1) has been filed; and
6. When a request for the deposit of dividend under Articles 340 (2) and 370 of the Civil Act has been made.

(2) When the creditor has failed to appear on the date of distribution, the amount of distribution to him shall be deposited.

### Article 161 (Making Distributions of Deposit Money)

(1) When the cause for deposit has been extinguished after a court deposited the amount of distribution to the creditor under the provisions of Article 160 (1), the court shall either pay the deposit money or make the distribution of the deposit money.

(2) When it falls under any one of the following subparagraphs in making

the distribution pursuant to paragraph (1), the court shall alter the distribution schedule even for the sake of the creditor unobjectionable to the distribution:

1. When it has become impossible to make any distribution to the creditor related to the deposit due to the reasons under Article 160 (1) 1 through 4;
  2. When the creditor related to the deposit under Article 160 (1) 5 has been defeated in a lawsuit of demurrer against the distribution filed by the debtor; and
  3. When the creditor related to the deposit under Article 160 (1) 6 has received a distribution from the proceeds of sale of the thing mortgaged.
- (3) When the creditor under Article 160 (2) has expressed to the court his intent to waive any receipt of deposit money, the court shall alter the distribution schedule by deeming that the claims of such creditor are nonexistent.
- (4) When an objection is raised under Article 151 on the date of additional distributions pursuant to the alteration of a distribution schedule under paragraphs (2) and (3), only such reasons as have not been allegeable on the previous date of distribution may be alleged.

Article 162 (Joint Auction)

The provisions of Articles 80 through 161 shall apply *mutatis mutandis* to the auction procedures for the immovables that are simultaneously conducted for several execution creditors.

Sub-Section 3 Compulsory Administration

Article 163 (Application *Mutatis Mutandis* of Provisions of Compulsory Auction)

The provisions of Articles 80 through 82, 83 (1) and (3) through (5), 85 through 89, and 94 through 96 shall apply *mutatis mutandis* to the compulsory administration.

Article 164 (Ruling on Commencing Compulsory Administration)

- (1) In rendering a ruling on commencing a compulsory administration, a court shall prohibit the debtor from interfering in the administrative affairs and also from disposing of any profits from the immovables, and order the third party who is to pay the profits to the debtor, to pay them to the administrator.

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(2) Fruits which have been or are to be yielded, and those which have become or are to become due, shall belong to the profits under paragraph (1).

(3) A ruling on commencing a compulsory administration shall take effect to the third parties only upon service of a written ruling on them.

(4) An immediate appeal may be raised against a judgment on either dismissing or rejecting a request for compulsory administration.

### Article 165 (Notification of Ruling, etc., on Commencing Compulsory Administration)

When rendering again a ruling on commencing a compulsory administration on the immovables for which a ruling on the said commencing has been rendered, or when there exists a request for demanding a distribution, a court shall notify the administrator thereof.

### Article 166 (Appointment, etc. of Administrator)

(1) A court shall appoint an administrator: *Provided*, That a creditor may recommend a suitable person for the said post.

(2) An administrator may occupy the immovables in order to perform an administration and to make the profits. In this case, if he encounters any resistance, he may request an execution officer to render assistances.

(3) An administrator shall have the authority to collect the profits of a third party which are to be paid to the debtor.

### Article 167 (Direction and Supervision by Court)

(1) A court shall set forth matters necessary for the administration and the administrator's remunerations, and direct and supervise the administrator.

(2) The court may order the administrator to furnish the guarantee.

(3) In case where there occurs any cause to the administrator for being unable to continue the administration, the court may dismiss the administrator either *ex officio* or upon a motion of the interested parties. In this case, the court shall examine the administrator.

### Article 168 (Provisions to be Applied *Mutatis Mutandis*)

The provisions of Article 48 shall apply *mutatis mutandis* to the case where a third party alleges that he has a right to prevent any compulsory administration of the immovables.

### Article 169 (Disposition of Profits)

(1) An administrator shall reimburse the costs for administration of immovables with the profits therefrom less any taxes and other public imposts to be imposed on such immovables, and pay the remaining amount to the creditors.

(2) In the case of paragraph (1), when it is impossible to make all creditors satisfied, the administrator shall make the distribution in compliance with the consultation on distribution among the creditors.

(3) In case where any consultation on distribution has not been achieved among the creditors, the administrator shall report the reasons therefor to the court.

(4) In case where there exists a report under paragraph (3), the court shall prepare a distribution schedule by applying *mutatis mutandis* the provisions of Articles 145, 146, and 148 through 161, and have the administrator pay to the creditors in compliance therewith.

Article 170 (Report of Account by Administrator)

(1) An administrator shall submit a statement of accounts every year to a creditor, a debtor, and a court. The same shall also apply even after the termination of his duties.

(2) A creditor and debtor may, within one week from the date of receiving a service of the statement of accounts, raise an objection against it to the court of execution.

(3) When there exists no objection within the period under paragraph (2), the administrator shall be deemed to have been exempted from his liability.

(4) When there exists an objection within the period under paragraph (2), the court shall judge by its ruling after examining the administrator. When the raised objection has been concluded, the court shall exempt the administrator from his liability.

Article 171 (Revocation of Compulsory Administration)

(1) Revocation of a compulsory administration shall be rendered by a court by its ruling.

(2) When the creditors have received the whole reimbursement with the profits from the immovables, the court shall render *ex officio* a ruling on revocation under paragraph (1).

(3) An immediate appeal may be made against the ruling under paragraphs (1) and (2).

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(4) When the ruling on revocation of a compulsory administration has become final and conclusive, the junior administrative officer, etc. of the court shall entrust the cancellation of entered registration as to a compulsory administration.

### SECTION 3 Compulsory Execution against Vessels, etc.

#### Article 172 (Compulsory Execution against Vessel)

Compulsory execution against a registerable vessel shall be governed by the provisions for a compulsory auction of immovables: *Provided*, That the same shall not apply to the case where there exists any difference resulting from the nature of things, or where there exist any special provisions.

#### Article 173 (Competent Court)

The court of execution of a compulsory execution against a vessel shall be the district court having jurisdiction over the port of anchorage of such vessel at the time of seizure.

#### Article 174 (Submission of Ship's Nationality Certificate, etc.)

(1) When a court has rendered a ruling on commencing an auction, it shall order an execution officer to receive from the ship's captain a certificate of the ship's nationality and other documents necessary for its navigation (hereinafter referred to as the "ship's nationality certificate, etc."), and to submit them to the court.

(2) In case where an execution officer has received the ship's nationality certificate, etc. prior to a service or registration of the ruling on commencing an auction, the effect of seizure shall arise at such time.

#### Article 175 (Order to Deliver Ship's Nationality Certificate, etc. before Request for Execution of Ship)

(1) In case where there exists a concern about a serious difficulty in the execution unless the ship's nationality certificate, etc. is not received before requesting the execution of ship, the district court having the jurisdiction over the location of the ship's registry (when the ship has no registry, the court stipulated by the Supreme Court Regulations) may, upon request, order the debtor to deliver the ship's nationality certificate, etc. to an execution officer. In an urgent case, the district court having the jurisdiction over the location of the ship may also issue such an order.

(2) An execution officer shall return the ship's nationality certificate, etc. when he has failed to receive from the creditor the document attesting that a request for the execution of ship has been filed, within 5 days after receiving a delivery of such certificate, etc.

(3) An immediate appeal may be raised against a judgment pursuant to paragraph (1).

(4) The provisions of Article 292 (2) and (3) shall apply *mutatis mutandis* to a judgment pursuant to paragraph (1).

Article 176 (Mooring of Seized Vessel)

(1) A court shall order the vessel to continuously stay at the place where it was at the time of seizure, during the period of carrying out an execution procedure.

(2) In case where it is deemed that there exists any need for business or other proper reason, the court may permit the ship's operation, upon a motion of the debtor. In this case, there shall be a consent of the creditor, highest bidder, next highest bidder and successful bidder.

(3) An immediate appeal may be raised against a ruling on the permit for the ship's operation under paragraph (2).

(4) A ruling on the permit for the ship's operation under paragraph (2) shall take effect only when it becomes final and conclusive.

Article 177 (Documents to be Attached to Request for Auction)

(1) In making a request for a compulsory auction, the documents falling under each of the following subparagraphs shall be submitted:

1. A document attesting that in case where the debtor is the ship's owner, he occupies the ship as her owner, and that in case where he is the ship's captain, he commands the ship as its captain; and
2. An abridged copy or a certified copy of the register, which contains the registered items in respect of the ship.

(2) A creditor may, when the public office in charge of the public register is located in a distant place, file with the court a request for the forwarding of an abridged copy or a certified copy under paragraph (1) 2.

Article 178 (Disposition of Observation and Preservation)

(1) A court may, upon a motion of the creditor, make the dispositions required for observing and preserving the ship.

(2) If the dispositions under paragraph (1) have been made, the effect of seizure shall arise even before the ruling on commencing an auction



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is served.

### Article 179 (Execution of Judgment on Captain)

(1) If a ship is seized for the sake of a ship's creditor by virtue of a judgment on the captain, such seizure shall take effect even on its owner. In this case, the owner shall also be deemed to be an interested party.

(2) Even if the owner or captain is altered subsequent to the seizure, the execution procedure shall not be affected.

(3) If the captain is altered subsequent to the seizure, only the altered captain shall become an interested party.

### Article 180 (Revocation of Procedure due to Violation of Jurisdiction)

If it has become clear that a ship has not been under the jurisdiction of the relevant court at the time of its seizure, the procedure therefor shall be revoked.

### Article 181 (Revocation of Procedure for Compulsory Auction by Offer of Security)

(1) When a debtor has submitted the documents under subparagraph 2 or 4 of Article 49, and furnished the guarantee equivalent to the claims of the execution creditors and the creditors demanding a distribution and to the costs for execution, before a declaration of bid, the court shall, upon request, revoke other procedures than those for distribution.

(2) When a suspension of execution by virtue of a submission of documents under paragraph (1) has become null and void, the court shall distribute the guarantee money under paragraph (1).

(3) An immediate appeal may be raised against a judgment rejecting the request under paragraph (1).

(4) The provisions of Article 17 (2) shall not apply to a ruling on revocation of execution under paragraph (1).

(5) Matters necessary for furnishing the guarantee under paragraph (1) shall be prescribed by the Supreme Court Regulations.

### Article 182 (Transfer of Cases)

(1) When a seized ship has departed out of the territorial jurisdiction, the court of execution may transfer the case to another court having jurisdiction over the location of the ship.

(2) A ruling pursuant to paragraph (1) shall be subject to no appeal.

### Article 183 (Revocation of Auction Procedure in Case Where Ship's Nationality Certificate, etc. is not Transferred)

A court may revoke the procedures for a compulsory auction when an execution officer fails to obtain a transfer of the ship's nationality certificate, etc. and the location of the ship is not evident, not later than an elapse of 2 months from the date on which a ruling on commencing an auction has been rendered.

Article 184 (Public Notification of Date of Auction)

Public notification of the date of auction shall contain a description of the ship and the place of her anchorage.

Article 185 (Order for Seizure of Shares in Ship)

(1) A compulsory execution against the shares in a ship shall be governed by an example of compulsory execution as stipulated in Article 251.

(2) In making a request for a compulsory execution against a share in a ship, the creditor shall submit a certified copy of the ship register attestable of the fact that the debtor owns a share in the ship, and other certificates.

(3) An order of seizure shall be served also on the ship administrator appointed under Article 764 of the Commercial Act (hereafter in this Article, referred to as the "ship administrator"), in addition to the debtor. *<Amended by Act No. 8581, Aug. 3, 2007>*

(4) If an order of seizure is served on the ship administrator, it shall take effect identical with a service on the debtor.

Article 186 (Seizure of Foreign Vessel)

The provisions relating to the procedure for entries in the register shall not apply to the compulsory execution against a foreign vessel.

Article 187 (Compulsory Execution against Motor Vehicles, etc.)

Procedures for a compulsory execution against motor vehicles, construction machines, small-sized ships (referring to small-sized ships under subparagraph 2 of Article 3 of the Act on Mortgage on Automobiles and Other Specific Movables) and aircraft shall be determined by the Supreme Court Regulations corresponding to the provisions of Sections 2 through 4. *<Amended by Act No. 8622, Aug. 3, 2007; Act No. 9525, Mar. 25, 2009>*

## SECTION 4 Compulsory Execution against Movables

### Sub-Section 1 Common Provisions

Article 188 (Method of Execution and Scope of Seizure)

(1) Compulsory execution against movables shall be commenced by a

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seizure.

(2) A seizure shall be enforced within the limit required for the reimbursement of claimed amount, which has been entered in an executory exemplification, and for the compensation for the costs of execution.

(3) No execution shall be enforced in case where there exist no leftovers except for the costs of execution, even if the seized goods are encashed.

### Sub-Section 2 Compulsory Execution against Corporeal Movables

Article 189 (Seizure of Articles in Possession of Debtor)

(1) A seizure of corporeal movables in possession of the debtor shall be effected by taking possession thereof by the execution officer: *Provided*, That when the creditor consents thereto or their transport is difficult, they may be left in the custody of the debtor by clarifying, by the sealing or by other means, that they are the seized objects.

(2) Objects falling under any one of the following subparagraphs shall be deemed in this Act to be corporeal movables:

1. Fixtures to the unregistrable land, which may independently be the objects of transaction;
2. Fruits before separation from the land, which may be harvested within a month; and
3. Securities for which an endorsement is not prohibited.

(3) An execution officer shall notify the debtor of the reason for a seizure.

Article 190 (Seizure of Corporeal Movables Co-Owned by Married Couple)

Corporeal movables under a co-ownership of the debtor and his spouse, which are possessed by the debtor or jointly possessed with his spouse, may be seized pursuant to Article 189.

Article 191 (Seizure of Objects in Possession of Persons Other Than Debtor)

Objects possessed by the creditor or the third party who does not refuse to surrender them, may be seized by applying *mutatis mutandis* the provisions of Article 189.

Article 192 (Seizure of National Funds)

Compulsory execution against the State shall be effected by seizure of the national funds.

Article 193 (Delivery of Seized Objects)

- (1) In case where a third party has come to possess a seized object, the court may, upon a motion of the creditor, order the said third party to deliver it to the execution officer.
- (2) A motion under paragraph (1) shall be made within one week from the date on which the creditor becomes aware that the seized object is possessed by the third party.
- (3) The judgment under paragraph (1) may be executed even before it is served on the other party.
- (4) The judgment under paragraph (1) may not be executed with the lapse of two weeks after the person who made the motion is notified thereof.
- (5) An immediate appeal may be raised against the judgment under paragraph (1).

Article 194 (Effect of Seizure)

Effect of a seizure shall also extend to the natural products taken from the seized object.

Article 195 (Things to be Excluded from Seizure)

Objects falling under any of the following subparagraphs shall not be seized:

*<Amended by Act No. 7358, Jan. 27, 2005>*

1. Clothes, bedding, furniture, kitchen utensils and other necessities which are required for the living of a debtor and his cohabiting relatives (including the family pursuant to the factual relations; hereafter in this Article, referred to as the “debtor, etc.”);
2. Foodstuff, fuel and lighting materials required for the living of the debtor, etc. for two months;
3. One-month living expenses required for the living of the debtor, etc., whose amount is determined by the Presidential Decree;
4. Farm tools and implements, fertilizers, cattle, livestock fodder, seeds and other goods corresponding thereto which are indispensable for the person engaged in the farming mainly by using his own labor;
5. Fishing tools and implements, fishing nets and baits, fry and other goods corresponding thereto which are indispensable for the person engaged in the fishery mainly by using his own labor;
6. Uniforms, tools and other goods corresponding thereto which are indispensable for the person engaged in a specialized occupation, technician, worker and others engaged in an occupation or business

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mainly by using his own mental or physical labor;

7. Decorations, medals, badges, and other honorary certificates corresponding thereto, which have been conferred upon the debtor or his relatives;
8. Mortuary tablets, portraits, tombstones and other things required for funeral rites, ancestral rites, or worships;
9. Genealogical tables, family's historic chronicles, photo albums and other things required for the worship of ancestors;
10. Seals, doorplates, signboards and other things corresponding thereto which are indispensable for the debtor's living or performance of his duties;
11. Diaries, commercial books and other things corresponding thereto which are indispensable for the living or business of the debtor;
12. Articles relating to an unpublished writing or invention;
13. Textbooks, dogmatic books, learning implements, and other things corresponding thereto which the debtor, etc. uses at school, church, Buddhist temple, and other educational institutions or religious organizations;
14. Glasses, hearing aids, artificial teeth, artificial arms and legs, sticks, wheel chairs for supplementing the disabled, and other physical supplementary articles corresponding thereto which are required for the daily life of the debtor, etc.;
15. Light-style automobiles for the disabled as prescribed by the Automobile Management Act, which are required for the daily living of the debtor, etc.; and
16. Fire-fighting equipment, alarms and warning implements, shelters and other things corresponding thereto which are to be provided for the prevention of disasters and the preservation of public peace pursuant to the provisions of Acts and subordinate statutes.

### Article 196 (Judgment Designating Properties to be Excluded from Seizure)

- (1) A court may, upon a motion of a party, order a revocation of a seizure of the whole or part of corporeal movables, or order a seizure of corporeal movables under Article 195, by taking account of the living conditions and other circumstances of the creditor and the debtor.
- (2) Subsequent to rendering the ruling under paragraph (1), when the cause therefor has been extinguished or the circumstances have been altered,

the court may, either *ex officio* or upon a motion of a party, revoke or alter such a decision.

(3) In the case of paragraphs (1) and (2), the court may render a ruling corresponding to Article 16 (2).

(4) An immediate appeal may be raised against the ruling under paragraphs (1) and (2).

(5) The ruling under paragraph (3) shall be subject to no appeal.

Article 197 (Blanket Auction)

(1) An execution officer may, when deemed that it is adequate to hold a blanket auction by taking account of the shape of several corporeal movables and their use relations, etc., hold a blanket auction either *ex officio* or upon a motion of an interested party.

(2) The provisions of Articles 98 (3), 99, 100, and 101 (2) through (5) shall apply *mutatis mutandis* to the case of paragraph (1).

Article 198 (Preservation of Seized Objects)

(1) An execution officer shall take proper dispositions, when it is required for the preservation of seized objects.

(2) When any costs are required in the case of paragraph (1), an execution officer shall have the creditor pay them in advance. When there exist several creditors, the said officer shall have them pay such costs in advance in proportion to the amount of their claim.

(3) In case where the documents under subparagraph 2 or 4 of Article 49 have been submitted, if there exists any concern about a big fall of the value or the unduly heavy expenses are required for keeping them unless the seized objects are sold immediately, an execution officer may sell such objects.

(4) An execution officer shall, when he has sold the seized objects pursuant to paragraph (3), deposit the proceeds thereof.

Article 199 (Sale of Seized Objects)

An execution officer shall, after effecting the seizure, make a sale of the seized objects by bidding or by means of a quoted auction.

Article 200 (Assessment of Expensive Valuables)

When there exist any valuable ones among the objects to be sold, an execution officer shall have a proper appraiser assess them.

Article 201 (Seized Money)

(1) Seized money shall be delivered to the creditor.

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(2) When an execution officer has collected any money, it shall be deemed to have been paid by the debtor: *Provided*, That the same shall not apply when the debtor has been allowed to escape the execution by furnishing a security or making a deposit.

### Article 202 (Date of Auction)

There shall be an interval of not less than one week between the day of seizure and that of auction: *Provided*, That the same shall not apply when the unduly heavy expenses are required for keeping the seized objects or when there exists a concern about a big fall of the value of such objects with the lapse of days.

### Article 203 (Place of Auction)

(1) The auction shall be progressed in the *Si/Gu/Eup/Myeon* (with respect to a *Si* in the urban and rural complex form, *Si/Gu* in the case of *Dong* area and *Eup/Myeon* in the case of *Eup/Myeon* area) where the seized corporeal movables are located: *Provided*, That if the execution creditor and the debtor have reached an agreement, it shall be progressed in the place agreed upon.

(2) The date and place of auction shall be publicly notified in the manner as determined by the Supreme Court Regulations. The public notice shall contain the description of objects to be sold.

### Article 204 (Provisions Applicable *Mutatis Mutandis*)

The provisions of Article 108 shall apply *mutatis mutandis* to the maintenance of order in the place of auction.

### Article 205 (Successful Bidding and Second Auction)

(1) An execution officer shall permit the successful bid after announcing the name of the highest bidder and the price of his bid.

(2) The sold object shall be delivered in exchange for the payment of its price.

(3) When the successful bidder has been negligent of paying the price of the objects and demanding a delivery thereof on the date of payment fixed in the conditions of auction, a second auction shall be held. The same shall also apply to the case where the successful bidder has been negligent of paying the price of the objects and demanding a delivery thereof before the closure of the auction date if the payment date has not been fixed.

(4) In the case of paragraph (3), the former successful bidder shall not take part in the second auction, and when the price of the second success-

ful bid is lower than that of the first successful bid, the difference therebetween shall be borne by the said bidder.

Article 206 (Spouse's Preferential Right for Purchase)

(1) In case where the corporeal movables seized under Article 190 are sold by auction, the spouse may attend on the date of auction and declare to make a preferential purchase.

(2) The provisions of Article 140 (1) and (2) shall apply *mutatis mutandis* to the declaration of preferential purchase under paragraph (1).

Article 207 (Limit of Auction)

The auction shall be immediately suspended, if the proceeds have come to suffice to reimburse the claims of the creditor and to cover the costs of compulsory execution: *Provided*, That the same shall not apply to the case of blanket auction pursuant to Articles 197 (2) and 101 (3) (proviso).

Article 208 (Effect of Receipt of Proceeds by Execution Officer)

When an execution officer has received the proceeds, it shall be deemed that the debtor has paid them: *Provided*, That the same shall not apply when the debtor has been allowed to escape the execution by furnishing a security or making a deposit.

Article 209 (Encashment of Gold or Silver Wares)

Gold or silver wares shall be sold pursuant to the provisions for general encashment at the price not lower than the market price of such gold or silver. When there exists no person to purchase them at the amount not lower than the market price, an execution officer may effect the sale by the reasonable method pursuant to their market price.

Article 210 (Encashment of Securities)

When an execution officer has seized securities, those having a market value shall be sold by the reasonable method pursuant to their market price on the date of sale, and those for which no market value has been formed shall be put up for auction pursuant to the provisions for general encashment.

Article 211 (Transfer of Title for Registered Securities)

When securities are in a registered form, an execution officer may, for the sake of the successful bidder, perform in lieu of the debtor an act necessary for an endorsement or a transfer of title.

Article 212 (Duty to Present Bills, etc.)

(1) In case where an execution officer has seized bills, checks and other



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securities aimed at paying the money (hereinafter referred to as “bills, etc.”), which require a presentation for acceptance or payment, or a demand for payment, within a specific period, he shall perform the required act in lieu of the debtor, when such period is commenced.

(2) In case where an execution officer has seized immature bills, etc., he shall urge the debtor, with fixing the period, to supplement matters to be entered in the bills, etc.

### Article 213 (Auction of Fruits Not Yet Separated from Land)

(1) Fruits seized before they are separated from the land shall be put up for auction after they have become sufficiently ripe.

(2) An execution officer may, for the purpose of auction, have the said fruits harvested.

### Article 214 (Special Encashment Method)

(1) A court may, if deemed necessary, have the seized objects auctioned by other methods or at other places, without observing the provisions for general encashment, either *ex officio* or upon a motion of an execution creditor, a creditor demanding a distribution, or a debtor. It may, without entrusting any execution officer, also order another person to sell them at auction.

(2) The judgment under paragraph (1) shall be subject to no appeal.

### Article 215 (Concurrence of Seizure)

(1) When a request is filed for another compulsory execution before arriving at the date of auction subsequent to a seizure or provisional seizure of corporeal movables, an execution officer shall deliver a written request for execution to the execution officer who has made an earlier seizure. In this case, if there exist any objects to be additionally seized, the execution officer shall, subsequent to their seizure, deliver the protocol of additional seizures.

(2) An entrustment of execution by the creditor shall, in the case of paragraph (1), be transferred to the execution officer who has made an earlier seizure.

(3) Respective seized objects shall, in the case of paragraph (1), be deemed to have been seized for the sake of all creditors who have requested a compulsory execution.

(4) An execution officer who has made an earlier seizure shall, in the case of paragraph (1), make an entry in such protocol by attaching the purport that a second seizure is effected for the sake of the creditors who have subsequently made a request for compulsory execution.

Article 216 (Peremptory Notice of Auction by Creditor)

(1) When an execution officer fails to hold an auction in spite of an elapse of considerable period, an execution creditor may give the said officer a peremptory notice to hold an auction within a specific period.

(2) When an execution officer has failed to comply with the peremptory notice under paragraph (1), an execution creditor may request the court to issue a required order.

Article 217 (Demand for Distribution by Person Having Preferential Right)

Any creditor who has the right to preferential payment under the Civil Act, the Commercial Act and other Acts may demand a distribution of the proceeds of sale.

Article 218 (Procedure for Demand for Distribution)

The demand for distribution under Article 217 shall be made to an execution officer by clarifying the grounds therefor.

Article 219 (Notification of Demand, etc. for Distribution)

In the case of Articles 215 (1) and 218, an execution officer shall notify the grounds therefor to the creditors and debtors who have taken part in the distribution.

Article 220 (Time for Demand for Distribution)

(1) Demand for distribution shall be made not later than the time falling under any of the following subparagraphs:

1. When an execution officer has seized the money, or received the proceeds of sale; and
2. When an execution officer has received the money for the bills, checks, and other securities aimed at paying the money.

(2) Demand for distribution may be made, for the proceeds of sale deposited under Article 198 (4), not later than the time when it has become possible to continuously progress the execution of movables, and for the proceeds of sale deposited under the proviso of Article 296 (5), not later than the time when a request for the seizure has been made.

Article 221 (Demand for Payment by Spouse)

(1) A spouse who alleges a co-owned share in the corporeal movables seized under Article 190 may demand a payment of the proceeds of sale.

(2) The provisions of Articles 218 through 220 shall apply *mutatis mutandis* to the demand for payment under paragraph (1).

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(3) When the creditor in receipt of a notification under Article 219 has an objection against an allegation of co-ownership by his spouse, he shall file a lawsuit against the spouse, and make a nonexistence of co-ownership finally confirmed.

(4) The provisions of Articles 154 (3), 155 through 158, 160 (1) 5, and 161 (1), (2) and (4) shall apply *mutatis mutandis* to a lawsuit under paragraph (3).

### Article 222 (Deposit of Proceeds of Sale)

(1) When the proceeds of sale do not suffice to satisfy all creditors who have taken part in the distribution, and when a consultation on distribution has not been achieved between the creditors within two weeks from the date of approval for a successful bidding, the proceeds of sale shall be deposited.

(2) The provisions of paragraph (1) shall also apply to the case where the money has been seized simultaneously for the sake of several creditors.

(3) An execution officer shall, in the cases of paragraphs (1) and (2), file a report on the relevant grounds with the court, by attaching the documents concerning the execution procedures.

### Sub-Section 3 Compulsory Execution against Claims and Other Property Rights

#### Article 223 (Seizure Order against Claims)

A compulsory execution against a debtor's monetary claim against a third party and his other claims aiming at a transfer of rights for, or a delivery of, securities or other corporeal articles against a third party, shall be commenced by an order for seizure issued by the court of execution.

#### Article 224 (Court of Execution)

(1) The court of execution under Article 223 shall be the district court in the location of a debtor's general forum.

(2) The court of execution shall, in the case of an absence of the district court under paragraph (1), be the district court in the location of a general forum of the debtor to the seized claims (hereinafter referred to as the "garnishee"): *Provided*, That in respect of the claims aiming at a delivery of articles and the claims accompanying the security right in kind, the court of execution shall be the district court in the location of such articles.

(3) In the case of a seizure of claims to be transferred from a provisional

seizure, the court of execution under Article 223 shall be the district court having jurisdiction over the location of the court which has issued an order for the provisional seizure.

Article 225 (Request for Order of Seizure)

A creditor shall clarify, in his request for an order of seizure, the kind and amount of the claims to be seized.

Article 226 (Omission of Examination)

An order of seizure shall be issued without making an examination of the garnishee and the debtor.

Article 227 (Seizure of Monetary Claim)

(1) In effecting a seizure of a monetary claim, the court shall prohibit the garnishee from making any payment to the debtor, and the debtor from disposing of the claims and from receiving the payment.

(2) An order of seizure shall be served on the garnishee and the debtor.

(3) An order of seizure shall take effect upon a service on the garnishee.

(4) An immediate appeal may be raised against a judgment on a request for issuance of an order of seizure.

Article 228 (Seizure of Claims Secured by Mortgage)

(1) In case where a claim secured by a mortgage is seized, the creditor may request the junior administrative officer, etc. of a court to enter the fact of seizing the claim in the register. Such request may be filed, without a consent of the debtor, simultaneously with a request to the court for issuance of an order of seizure.

(2) The junior administrative officer, etc. of the court shall entrust the registration in accordance with a request under paragraph (1), after the order of seizure has been served on the owner of the encumbered immovables.

Article 229 (Method of Encashment of Monetary Claim)

(1) An execution creditor may request the issuance of a collection order or an assignment order against the seized monetary claim.

(2) When there exists a collection order, the execution creditor may collect the seized claim without going through the subrogation procedure.

(3) When there exists an assignment order, the seized claim shall be transferred to the execution creditor in lieu of the payment.

(4) The provisions of Article 227 (2) and (3) shall apply *mutatis mutandis* to a collection order, and those of Article 227 (2) to an assignment order, respectively.

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(5) In case where another creditor has made a request for a seizure or provisional seizure or a demand for a distribution in respect of such monetary claim not later than the time when an assignment order is served on a garnishee, the assignment order shall be null and void.

(6) An immediate appeal may be raised against a judgment on the request under paragraph (1).

(7) An assignment order shall take effect only after it becomes final and conclusive.

(8) In case where an immediate appeal has been raised against an assignment order on the ground that the documents under subparagraph 2 or 4 of Article 49 were submitted subsequent to the issuance of an assignment order, the appellate court shall suspend the trial on such appeal, except for the case where the assignment order is revoked on another ground.

### Article 230 (Transfer of Claims with Mortgage)

The provisions of Article 228 shall apply *mutatis mutandis* to the case where an assignment order is issued with regard to the claims with a mortgage.

### Article 231 (Effect of Assignment Order)

In case where an assignment order has become final and conclusive, it shall be deemed that the debtor has reimbursed his debts when the assignment order was served on the garnishee: *Provided*, That the same shall not apply when the transferred claims were nonexistent.

### Article 232 (Effect of Collection Order)

(1) A collection order extends to the whole amount of the claim: *Provided*, That the court may, upon request of the debtor, examine the execution creditor, and limit the amount of seizure to the amount requested by such creditor, and permit the debtor to make a disposal and receipt of the excessive amount.

(2) No other creditor shall demand a distribution with regard to the limited portions under the proviso of paragraph (1).

(3) The garnishee and the creditor shall be notified of the permit under paragraph (1).

### Article 233 (Seizure of Designated Bonds)

Any seizure of bills, checks and other bond claims prohibited from any endorsement, which are those transferable by an endorsement, shall be effected by possessing such bonds by an execution officer under an order

for seizure issued by a court.

Article 234 (Document Evidencing Claims)

(1) A debtor shall transfer to an execution creditor any documents evidencing the claim, if any.

(2) The creditor may receive such documents by means of a compulsory execution under the order of seizure.

Article 235 (Concurrence of Seizure)

(1) When another order of seizure has been issued, subsequent to a seizure of a part of a claim, in excess of the remaining portion, the effect of individual seizure shall extend to the whole of such claim.

(2) When another seizure order has been issued, subsequent to the seizure of the whole claim, against a part of such claim, the effect of such seizure shall be identical with the case of paragraph (1).

Article 236 (Report on Collection)

(1) A creditor shall file a report on the collected amount of claims with a court.

(2) When there has been another seizure, provisional seizure or demand for distribution prior to the report under paragraph (1), the creditor shall promptly deposit the collected amount, and file a report on the grounds therefor.

Article 237 (Garnishee's Obligation to Make Statement)

(1) An execution creditor may request a court to make a garnishee state in writing the matters falling under the following subparagraphs within one week from the date of receiving a service of an order of seizure:

1. Whether to acknowledge the claims, and if so, the extent thereof;
2. Whether to intend to pay for the claims, and if so, the extent thereof;
3. Whether or not there exists any demand by another person for the claims, and if so, the kinds thereof; and
4. Whether or not there exists any fact that other creditors have seized the claims, and if so, the kinds of such demand.

(2) The court shall serve on the garnishee the document ordering the statement under paragraph (1).

(3) The court may, when the garnishee has neglected to make the statement, examine the garnishee on the matters under paragraph (1).

Article 238 (Filing Lawsuit for Collection)

When a creditor files a lawsuit against a garnishee pursuant to the purport

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of an order, he shall file it before the competent court under the general provisions, and notify the debtor of such lawsuit: *Provided*, That when the debtor stays in a foreign state or his whereabouts is unknown, such notification may be dispensed with.

### Article 239 (Neglect of Collection)

When a creditor has neglected to exercise his right for claims to be collected, he shall indemnify the debtor for any damage resulting therefrom.

### Article 240 (Waiver of Right to Collect)

(1) A creditor may waive the right acquired by virtue of the collection order: *Provided*, That this shall not affect the underlying claim.

(2) The waiver under paragraph (1) shall be reported in writing to the court. The junior administrative officer, etc. of the court shall serve a certified copy thereof on the garnishee and the debtor.

### Article 241 (Method of Special Encashment)

(1) When a seized claim is on a conditional basis or subject to time limit, or is connected with a performance of a counter obligation, or is difficult to be collected due to other reasons, the court may, upon a motion of the creditor, issue the orders falling under any of the following subparagraphs:

1. Transfer order to transfer the claim to the execution creditor, in lieu of paying for the claim at the price as fixed by the court;
2. Sale order to order the execution officer to sell such claim in the manner as fixed by the court, in lieu of the collection;
3. Management order to appoint a manager, and to order him to manage such claim; and
4. Other orders to encash by an adequate method.

(2) The court shall, in the case of paragraph (1), examine the debtor before rendering the ruling on permitting such request: *Provided*, That when the debtor stays in a foreign state or his whereabouts is unknown, such examination may be dispensed with.

(3) An immediate appeal may be raised against the ruling under paragraph (1).

(4) The ruling under paragraph (1) shall take effect only when it becomes final and conclusive.

(5) An execution officer shall, on behalf of the debtor, notify in writing the garnishee of such transfer, in case where he has sold a seized claim.

(6) The provisions of Articles 227 (2), 229 (5), 230 and 231 shall apply

*mutatis mutandis* to the transfer order; those of Article 108 to the sale by the execution officer under an order for sale; those of Article 227 (2) to the management order; and those of Articles 167, 169 through 171, 222 (2) and (3) to the management under an order for management, respectively.

Article 242 (Execution against Claims for Delivery, etc. of Corporeal Articles)

The provisions of Articles 227 through 240 shall apply *mutatis mutandis*, except for a preferential application of those of Articles 243 through 245, to the compulsory execution against the claims for the delivery of, or the transfer of rights to, corporeal articles, such as immovables, corporeal movables, ships, automobiles, construction machines, aircraft, etc.

Article 243 (Seizure of Claims for Corporeal Movables)

- (1) A court shall, in case where the claims for corporeal movables are seized, order the garnishee to deliver such movables to an execution officer entrusted by the creditor.
- (2) The creditor may request the court to issue a collection order, in order



to request the garnishee to perform the order under paragraph (1).

(3) The provisions for the encashment of seized corporeal movables shall be applicable to the encashment of movables under paragraph (1).

Article 244 (Seizure of Claims for Immovables)

(1) With respect to a seizure of the claim for delivery of immovables, the district court in the location of such immovables shall, upon a motion of the creditor or the garnishee, designate the custodian and order the garnishee to deliver such immovables to the custodian.

(2) With respect to a seizure of a claim for transfer of right to immovables, the district court in the location of such immovables shall, upon a motion of the creditor or the garnishee, designate the custodian and order the garnishee to transfer to the custodian the registration procedure for transfer of rights in the name of the debtor to such immovables.

(3) The custodian shall, in the case of paragraph (2), become a representative of the debtor with respect to the request for registration of transfer of rights in the name of the debtor.

(4) The creditor may request the court to issue a collection order, in order to request the garnishee to perform the order under paragraph (1) or (2).

Article 245 (Exclusion of Assignment Order)

No assignment order shall be issued with respect to the claims regarding a delivery of corporeal articles or a transfer of rights.

Article 246 (Claims Subject to Prohibition of Seizure)

(1) Claims falling under each of the following subparagraphs shall not be seized: *<Amended by Act No. 7358, Jan. 27, 2005>*

1. Supporting allowance and relief allowance to the bereaved family as prescribed by Acts and subordinate statutes;
2. Continuous income received by the debtor from any relief projects or a third party's charity;
3. Soldiers' pay;
4. Amount equivalent to one half of the wage, pension, salary, bonus, retirement pension and other wage claims of similar nature: *Provided*, That the amount falls short of the amount the Presidential Decree prescribes in consideration of the minimum living cost pursuant to the provisions of the National Basic Living Security Act, or exceeds the amount the Presidential Decree prescribes in consideration of the living cost of a standard family, the amount the Presidential Decree prescribes shall apply respectively; and
5. Amount equivalent to one half of retirement allowance or other wage claim that has similar quality.

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(2) A court may, upon a motion of a party, revoke the whole or part of a seizure order, or issue a seizure order against the claims subject to prohibition of seizure under paragraph (1), in consideration of the living conditions and other circumstances of a creditor and a debtor.

(3) The provisions of Article 196 (2) through (5) shall apply *mutatis mutandis* to the case of paragraph (2).

Article 247 (Demand for Distribution)

(1) Any creditor who has a claim for preferential payment under the Civil Act, the Commercial Act and other Acts, or who has an executory exemplification, may file a demand for distribution with a court not later than the time falling under any of the following subparagraphs:

1. When the garnishee has made a report on the deposit under Article 248 (4);
2. When the creditor has made a report on the collection under Article 236; and
3. When the execution officer has submitted the encashed money to the court.

(2) No demand for distribution shall be made after the assignment order has been served on the garnishee.

(3) The provisions of Articles 218 and 219 shall apply *mutatis mutandis* to the demand for distribution under paragraph (1).

(4) The demand for distribution under paragraph (1) shall be notified to the garnishee.

Article 248 (Deposit of Garnishee's Debt Amount)

(1) A garnishee may deposit the whole amount of monetary claims related to the seizure.

(2) A garnishee in receipt of a service of the written demand for distribution as to the monetary claims shall, upon request of the creditor taking part in the distribution, deposit the amount equivalent to the seized portions.

(3) In case where a seizure order or a provisional seizure order has been repeatedly issued in excess of the unseized portions from among the monetary claims, the garnishee in receipt of a service of such order shall, upon request of the creditor of the seizure or provisional seizure, deposit the amount equivalent to the whole amount of such claims.

(4) When the garnishee has deposited his debt amount, he shall file a report on the ground therefor with the court: *Provided*, That when no report has been filed within a reasonable period, the execution creditor, the provisional seizure creditor, the creditor taking part in the distribution, the debtor, and other interested parties may file a report on the

ground therefor with the court.

Article 249 (Lawsuit for Collection)

- (1) When a garnishee fails to perform his obligations in collection procedures, the execution creditor may demand such performance by a lawsuit.
- (2) All creditors having an executory exemplification are entitled to participate on the side of a plaintiff as the co-litigants.
- (3) A garnishee against whom the lawsuit has been filed may request not later than the first day of pleadings that the creditor under paragraph (2) shall be ordered to participate as a co-litigant on the side of a plaintiff.
- (4) The judgment on the lawsuit shall be effective to the creditor in receipt of the order under paragraph (3).

Article 250 (Peremptory Notice of Collection by Creditors)

When an execution creditor has neglected to proceed with the collection procedure, the creditor who demanded distribution by virtue of an executory exemplification may urge such collection within a specific period, and when the execution creditor fails to comply with such urge, the said creditor may directly make such collection subject to a permit of the court.

Article 251 (Execution against Other Property Rights)

- (1) The provisions of this Sub-section and those of Articles 98 through 101 shall apply *mutatis mutandis* to the compulsory execution against the property right not aiming at immovables, other than the property rights listed in several preceding Articles.
- (2) Any seizure shall, in case where there exists no garnishee, take effect when an order has been served on the debtor, which prohibits him from making any disposition of rights.

#### Sub-Section 4 Distribution Procedure

Article 252 (Commencement of Distribution Procedure)

A court shall commence the distribution procedure in the cases falling under any of the following subparagraphs:

1. When an execution officer has made a deposit under Article 222;
2. When a collection creditor has made a deposit under Article 236, or a garnishee has made it under Article 248; and
3. When the money encashed under Article 241 has been presented to a court.

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### Article 253 (Peremptory Notice of Submission of Account Statement)

A court shall issue a peremptory notice to the creditors to submit within one week the account statement of the principal, interests, expenses and other incidental claims.

### Article 254 (Preparation of Distribution Schedule)

(1) A court shall prepare a distribution schedule, subsequent to an expiration of the period under Article 253.

(2) Claims of a creditor who has failed to observe the period under paragraph (1) shall be calculated pursuant to the purport of the written demand for distribution and of the written report on the grounds, and to the evidential documents thereof. In this case, no new amount of claims shall be added.

### Article 255 (Preparation for Distribution Date)

A court shall designate the date for effecting the distribution, and notify the creditors and debtors thereof: *Provided*, That when the debtor stays in a foreign state or his whereabouts is unknown, such notification may be dispensed with.

### Article 256 (Preparation of Distribution Schedule and Enforcement Thereof)

The provisions of Articles 149 through 161 shall apply *mutatis mutandis* to the preparation of distribution schedule, an objection against the said schedule and its conclusion, and the enforcement of the said schedule.

## CHAPTER III COMPULSORY EXECUTION VIRTUE OF CLAIMS OTHER THAN MONETARY CLAIM

### Article 257 (Execution of Claim for Delivery of Movables)

When a debtor is liable for delivering a specific quantity of specified movables or fungibles, an execution officer shall take them away from the debtor, and deliver the same to the creditor.

### Article 258 (Execution of Claim for Delivery of Immovables, etc.)

(1) When a debtor is liable for delivering any immovables or ship, an execution officer shall deprive the debtor of his possession thereof, and deliver the same to the creditor.

(2) The compulsory execution under paragraph (1) shall be made only

when the creditor or his representative has appeared in order to receive such delivery.

(3) Movables other than the objects of a compulsory execution shall be removed by the execution officer, and delivered to the debtor.

(4) In the case of paragraph (3), when there exists no debtor, the execution officer shall deliver such movables to the relatives, who are men of sense and live together with the debtor, his representative or his employees.

(5) When there exists neither any debtor nor any person listed in paragraph (4), the execution officer shall take such movables in his custody at the expense of the debtor.

(6) When the debtor neglects to accept such movables, the execution officer shall put them up for auction subject to a permit of the court of execution and pursuant to the provisions for auction procedures for a compulsory execution against the movables, and deposit the proceeds which remain after deducting the costs thereof.

Article 259 (Case Where Third Party Possesses Objects)

When a third party possesses the objects to be delivered, the right of the debtor to demand the delivery of the third party shall be assigned to the creditor, upon the request of the creditor and pursuant to the provisions for a seizure of monetary claims.

Article 260 (Substitutional Execution)

(1) In the cases under Article 389 (2) (the latter part) and (3) of the Civil Act, the court of first instance shall, upon request of a creditor, render a ruling pursuant to the provisions of the Civil Act.

(2) A creditor may request a ruling to order the debtor to pay in advance the costs required for the acts under paragraph (1): *Provided*, That the same shall not affect the right to demand in the future the payment of the costs in excess thereof.

(3) An immediate appeal may be raised against a judgment on the request under paragraphs (1) and (2).

Article 261 (Indirect Compulsory Performance)

(1) In case where the nature of debts enables one to make an indirect compulsory performance, the court of first instance shall, upon request of a creditor, render a ruling on ordering an indirect compulsory performance. Such ruling shall clarify an obligation to perform the debts and an appropriate period for performance, and when the debtor defaults on the performance

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within such period, the court may order him to make a reimbursement of specific amount in proportion to the defaulted period, or order him to make an immediate compensation for damages.

(2) An immediate appeal may be raised against a judgment on the request under paragraph (1).

### Article 262 (Examination of Debtor)

The ruling under Articles 260 and 261 may be rendered without holding any pleadings: *Provided*, That the debtor shall be examined prior to rendering the ruling.

### Article 263 (Execution of Obligation to Declare Intention)

(1) When a debtor has acknowledged a constitution of the relation of rights, it shall be deemed that a constitution of the relation of rights has been acknowledged by such protocol, and when a judgment ordering a declaration of intention has become final and conclusive, it shall be deemed that an intention has been declared by such judgment.

(2) In cases where a constitution of the relation of rights has been acknowledged, or where an intention has been declared, subsequent to a performance of counter obligation, such effect shall arise at the time of issuing the execution clause pursuant to the provisions of Articles 30 and 32.

## PART III AUCTION FOR EXERCISE, ETC. OF SECURITY RIGHT

### Article 264 (Request for Auction of Immovables)

(1) In filing a request for auction to execute a security right to immovables, the documents attesting the existence of such security right shall be submitted.

(2) In case where a security right has been succeeded, the document attesting such succession shall be submitted.

(3) When a ruling on commencing an auction is served on the owner of immovables, it shall be accompanied by a certified copy of the documents submitted under paragraph (2).

### Article 265 (Grounds for Objection against Ruling on Commencing Auction)

The nonexistence or extinguishment of a security right may be alleged as the grounds for an objection against the ruling on commencing an auction procedure.

Article 266 (Suspension of Auction Procedure)

(1) If the documents falling under any of the following subparagraphs are submitted to an auction court, it shall suspend the auction procedure:

1. A certified copy of the register, which states a cancellation of the registration of the security right;
2. An authentic copy of the final judgment ordering to cancel the registration of the security right;
3. An authentic copy of the final judgment with a purport of a non-existence of the security right or of an extinguishment thereof;
4. A document to the effect that a creditor has determined not to exercise the security right or would withdraw his request for an auction, or that he has received a reimbursement of the secured claims, or he has consented to a deferment of such reimbursement; and
5. An authentic copy of a judgment ordering a temporary suspension of an exercise of the security right.

(2) In the cases of paragraph (1) 1 through 3, and in case where the document under subparagraph 4 is an authentic copy of a protocol of settlement, or that of a notarial deed, the auction court shall revoke the alreadyeffected auction procedure, and in the case under subparagraph 5, it shall make the already-effected auction procedure maintained temporarily, only when the auction procedure has not been revoked pursuant to such judgment.

(3) The provisions of Article 17 shall not apply to the case where an auction procedure is revoked pursuant to paragraph (2).

Article 267 (Effect of Acquisition of Immovables by Full Payment of Price)

A successful bidder's acquisition of immovables shall not be affected by an extinguishment of the security right.

Article 268 (Provisions Applicable *Mutatis Mutandis*)

The provisions of Articles 79 through 162 shall apply *mutatis mutandis* to an auction procedure for exercising the security right to immovables.

Article 269 (Auction for Ship)

The provisions of Articles 172 through 186, and 264 through 268 shall apply *mutatis mutandis* to an auction procedure for exercising the security right to a ship.

Article 270 (Auction for Automobiles, etc.)

The auction procedure for exercising the security right to automobiles, construction machines, small-sized ships (referring to small-sized ships

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under subparagraph 2 of Article 3 of the Act on Mortgage on Automobiles and Other Specific Movables) and aircraft shall be prescribed by the Supreme Court Regulations, corresponding to the provisions of Articles 264 through 269, 271 and 272. <Amended by Act No. 8622, Aug. 3, 2007; Act No. 9525, Mar. 25, 2009>

### Article 271 (Auction for Corporeal Movables)

An auction for exercising the security right to corporeal movables shall be commenced when the creditor presents such objects, or the possessor of such objects has consented to a seizure.

### Article 272 (Provisions Applicable *Mutatis Mutandis*)

The provisions of Sub-section 2 of Section 4 of Chapter II of Part II, and those of Articles 265 and 266 shall apply *mutatis mutandis* to the auction procedure under Article 271.

### Article 273 (Exercise of Security Right to Claims and other Property Rights)

(1) An exercise of the security right to claims and other property rights shall be commenced when a document attesting the existence of such security right (in case where a register or a registration is required for a transfer of rights, a certified copy of such register or of such original registry) has been submitted.

(2) Even in case where a right is exercised to the money or other articles to be received by a creator of the security right under Article 342 of the Civil Act, the provisions of paragraph (1) shall also be applicable.

(3) The provisions of Sub-section 3 of Section 4 of Chapter II of Part II shall apply *mutatis mutandis* to the procedure for exercising the rights under paragraphs (1) and (2).

### Article 274 (Auction under Lien, etc.)

(1) Any auction under a lien and an auction under the conditions as prescribed by the Civil Act, Commercial Act and other Acts (hereinafter referred to as the "auction under the lien, etc."), shall be executed in conformity with the example of an auction to exercise the security right.

(2) In case where a compulsory auction against an object or an auction procedure for exercising the security right thereto has been commenced, the auction procedure under the lien, etc. shall be suspended, and such



procedures shall be continuously progressed for the sake of the creditor or the person holding the security right.

(3) In the case of paragraph (2), if a compulsory auction or an auction for exercising the security right has been revoked, the auction procedure under the lien, etc. shall be continuously progressed.

Article 275 (Provisions Applicable *Mutatis Mutandis*)

The provisions of Articles 42 through 44 and 46 through 53 shall apply *mutatis mutandis* to the procedure for the auction, etc. as provided in this Part.

## PART IV PRESERVATIVE MEASURES

Article 276 (Purpose of Provisional Seizure)

(1) Provisional seizure may be effected in order to preserve a compulsory execution against the movables or immovables in respect of a monetary claim or a claim convertible into the money.

(2) Provisional seizure may be effected even in case where a claim under paragraph (1) is conditional, or whose term has been not yet due.

Article 277 (Necessity of Preservation)

Provisional seizure may be effected in case where, unless such seizure is not effected, an execution of the judgment is impossible, or there exists a concern about the remarkable difficulty in executing the judgment.

Article 278 (Court of Provisional Seizure)

Provisional seizure shall be under the jurisdiction of the district court having jurisdiction over the location of the objects to be provisionally seized, or under that of the court having jurisdiction over the merits.

Article 279 (Request for Provisional Seizure)

(1) Matters falling under each of the following subparagraphs shall be entered in a request for provisional seizure:

1. Indication of a requested claim, and when such requested claim is not a specific sum of money, the amount converted into the money; and
2. Indication of the facts which are to become the reasons for a provisional seizure under Article 277.

(2) Grounds for a requested claim and a provisional seizure shall be vindicated.

Article 280 (Order for Provisional Seizure)

(1) A judgment on the request for a provisional seizure may be rendered

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without holding any pleadings.

(2) Even when the grounds for a requested claim or a provisional seizure have not been vindicated, the court may order a provisional seizure when the security fixed by the court has been furnished for the damages sustainable by the debtor due to a provisional seizure.

(3) Even when the grounds for a requested claim and a provisional seizure have been vindicated, the court may order a provisional seizure by having the security furnished.

(4) When a security has been furnished, the furnishing of the security and the method of furnishing the security shall be entered in the order for provisional seizure.

### Article 281 (Formalities of Judgment)

(1) Judgment on an application for provisional seizure shall be effected by a ruling. <Amended by Act No. 7358, Jan. 27, 2005>

(2) A creditor may make an immediate appeal against the ruling of dismissing or rejecting a request for provisional seizure.

(3) For the judgment on having a security furnished, that on dismissing or rejecting a request for provisional seizure, and that on dismissing or rejecting an immediate appeal under paragraph (2), any notification thereof to the debtor may be dispensed with.

### Article 282 (Amount of Money to Obtain Release from Provisional Seizure)

An order for provisional seizure shall contain an entry of the amount of money to be deposited by the debtor in order to make the execution of provisional seizure suspended, or to have the effected provisional seizure revoked.

### Article 283 (Objection by Debtor against Ruling on Provisional Seizure)

(1) A debtor may raise an objection against the ruling on a provisional seizure.

(2) An objection under paragraph (1) shall clarify the reasons for requesting a revocation or alteration of the provisional seizure.

(3) No raising of an objection shall suspend the execution of provisional seizure.

### Article 284 (Transfer of Case of Objection against Provisional Seizure)

When there exists the necessity for avoiding any significant loss or delay in respect of the case of raising an objection against the provisional seizure, the court may, either *ex officio* or under request of a party, transfer by

its ruling such case to another court having jurisdiction over such case of provisional seizure: *Provided*, That the same shall not apply to the case where such court ranks differently in the instance.

Article 285 (Withdrawal of Objection against Provisional Seizure)

(1) A debtor may withdraw his objection against provisional seizure not later than the judgment on the objection against provisional seizure.

<Amended by Act No. 7358, Jan. 27, 2005>

(2) For the withdrawal under paragraph (1), a consent by the creditor may be dispensed with.

(3) The withdrawal of an objection against provisional seizure shall be made in writing: *Provided*, That it may be made orally in the case of date of pleading or date of examination. <Amended by Act No. 7358, Jan. 27, 2005>

(4) Subsequent to a service of a written objection against provisional seizure, the written withdrawal shall be served on the creditor.

(5) In the case of the proviso of paragraph (3), when the creditor fails to appear on the date of pleading or examination, a certified copy of the protocol of such date shall be served. <Amended by Act No. 7358, Jan. 27, 2005>

Article 286 (Trial and Judgment on Application for Objection)

(1) When an objection is raised, the court shall fix a date of pleading, or a date of examination when both parties shall be able to attend, and notify the parties thereof.

(2) When the court intends to close trial, it shall fix a date to close the trial with proper deferment, and notify the parties thereof: *Provided*, That the trial may close immediately on the date of pleading, or on the date of examination when both parties shall be able to attend.

(3) Judgment on application for objection shall be effected by a ruling.

(4) Ruling pursuant to the provisions of paragraph (3) shall bear reasons: *Provided*, That it has not gone through pleadings, a summary of the reason may be borne.

(5) The court may authorize, change or revoke all or part of the provisional seizure pursuant to the ruling of paragraph (3). In this case, the court may order to supply proper guaranty.

(6) When the court makes a ruling of revoking provisional seizure pursuant to the provisions of paragraph (3), it may declare that the ruling shall become effective after an elapse of a period deemed reasonable within the limit of two weeks from the date the creditor shall have received a

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notice.

(7) An immediate appeal may be lodged against a ruling pursuant to paragraph (3). The provisions of Article 447 of the Civil Procedures Act shall not apply in this case.

*[This Article Wholly Amended by Act No. 7358, Jan. 27, 2005]*

### Article 287 (Order to File Lawsuit on Merits)

(1) The court of provisional seizure shall, upon request of the debtor and without holding any pleadings, order the creditor to file a lawsuit on merits within a proper period and to submit the documents attesting thereof, or if any lawsuit has been already filed, to submit the documents attesting the fact of the lawsuit pending.

(2) The period under paragraph (1) shall be fixed not less than two weeks.

(3) When a creditor has failed to submit documents under paragraph (1) within the period under paragraph (1), the court shall, upon request of a debtor, revoke the provisional seizure by its ruling.

(4) In case where the lawsuit on the merits has been withdrawn or rejected after the documents under paragraph (1) have been submitted, such documents shall be deemed not to have been submitted.

(5) An immediate appeal may be made against the ruling on the request under paragraph (3). In this case, the provisions of Article 447 of the Civil Procedure Act shall not apply *mutatis mutandis*.

### Article 288 (Revocation of Provisional Seizure due to Changes, etc. in Circumstances)

(1) A debtor may, where there is a cause falling under any of the following subparagraphs, request for a revocation of provisional seizure even after it has been authorized. Interested parties may apply in case where it falls under subparagraph 3:

1. Where the reason of provisional seizure has ceased to exist, or circumstances have changed;
2. Where the guaranty that the court decided has been offered; or
3. Where the main trial has not been raised within 3 years since the provisional seizure was executed.

(2) Judgment on the application pursuant to the provisions of paragraph (1) shall be rendered by the court that has ordered the provisional seizure: *Provided*, That the main trial has already started, the court in charge of the main trial shall render judgment.

(3) Article 286 (1) through (4), (6) and (7) shall apply correspondingly to

the judgment on the application pursuant to the provisions of paragraph (1).

[This Article Wholly Amended by Act No. 7358, Jan. 27, 2005]

Article 289 (Suspension of Effect of Ruling on Revocation of Provisional Seizure)

(1) In case where an immediate appeal has been filed against the ruling to revoke provisional seizure, when the grounds alleged as the reasons for objection are deemed to have legally justifiable grounds and there exists a vindication of the fact, and when there exists a vindication of situations that such revocation of provisional seizure carries a risk of causing irreparable damages, the court may, upon request of a party, suspend the effect of a ruling to revoke provisional seizure with or without having the security furnished.

(2) The vindication as stipulated in paragraph (1) shall not be substituted by such methods as depositing the security money or as taking oath that the allegation is true.

(3) When the judgment record is kept in the court of original judgment, the court of original judgment shall make judgment under paragraph (1).

(4) The appellate court shall authorize, change or revoke the judgment pursuant to the provisions of paragraph (1) in the appellate judgment.

(5) The judgment pursuant to the provisions of paragraphs (1) and (4) shall not be objected.

[This Article Wholly Amended by Act No. 7358, Jan. 27, 2005]

Article 290 (*Mutatis Mutandis* Application of Provisions for Objection against Provisional Seizure)

(1) The provisions of Article 284 shall apply *mutatis mutandis* to the case of the judgment pursuant to Articles 287 (3) and 288 (1). <Amended by Act No. 7358, Jan. 27, 2005>

(2) The provisions of Article 285 shall apply *mutatis mutandis* to the withdrawal of requests pursuant to Articles 287 (1) and (3) and 288 (1). <Amended by Act No. 7358, Jan. 27, 2005>

Article 291 (*Mutatis Mutandis* Application of Principal Execution to Provisional Seizure Execution)

The provisions relating to a compulsory execution shall apply *mutatis mutandis* to the execution of a provisional seizure: *Provided*, That the same shall not apply to the case where there exist such differences as listed in the following several Articles.

Article 292 (Requisite for Commencement of Execution)

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(1) In case where a succession has been achieved to a creditor or a debtor after a judgment on provisional seizure was rendered, if it is intended to execute the judgment on provisional seizure, an execution clause shall be attached thereto.

(2) Execution of a judgment on provisional seizure shall not be effected when two weeks have passed from the date of notifying the creditor of the judgment. <Amended by Act No. 7358, Jan. 27, 2005>

(3) Execution under paragraph (2) may be enforced even before the judgment is served on the debtor.

### Article 293 (Execution of Provisional Seizure against Immovables)

(1) Execution of a provisional seizure against immovables shall be effected by entering the matters related to the judgment on the provisional seizure in the register.

(2) The court of execution under paragraph (1) shall be the court rendering the decision on a provisional seizure.

(3) The registration of a provisional seizure shall be entrusted by the junior administrative officer, etc. of a court.

### Article 294 (Compulsory Administration for Provisional Seizure)

In case where a compulsory administration is effected by the execution of a provisional seizure, the amount of money equivalent to that of the requested claim shall be collected and deposited by the administrator.

### Article 295 (Execution of Provisional Seizure against Vessel)

(1) In case where a provisional seizure is executed against a registerable vessel, it shall be effected by a method of making a registration of provisional seizure, or of ordering an execution officer to receive the vessel's nationality certificate, etc. from the vessel's captain and to submit them to the court of execution. These methods may be concurrently used.

(2) The court ordering a provisional seizure shall, as the court of execution, exercise jurisdiction over an execution of a provisional seizure by the method of making a registration of provisional seizure, and the district court having jurisdiction over the location of a vessel's anchorage shall do likewise over an execution of a provisional seizure by the method of ordering the said officer to receive the vessel's nationality certificate, etc. and to submit them.

(3) The provisions of Article 293 (3) shall apply *mutatis mutandis* to the execution of a provisional seizure by the method of making a registration

of provisional seizure.

Article 296 (Execution of Provisional Seizure against Movables)

- (1) Execution of a provisional seizure against movables shall be in compliance with the principles identical with a seizure.
- (2) The court of execution of a provisional seizure against claims shall be the court ordering the provisional seizure.
- (3) For a provisional seizure against claims, only an order shall be issued to the garnishee to the effect that he shall not make any payment to the debtor.
- (4) The money seized provisionally shall be deposited.
- (5) Objects seized provisionally shall not be encashed: *Provided*, That in case where, unless the objects seized provisionally are sold immediately, there exists a concern about the great fall of their prices, or the unduly large expenses are required for keeping them, the execution officer shall sell such objects, and deposit the proceeds thereof.

Article 297 (Garnishee's Deposit)

In case where a garnishee has deposited the amount of monetary claim which has been seized provisionally, the effect of such provisional seizure shall persist in the defrayment claim by the debtor on the amount of deposit equivalent to the amount of such requested claims.

Article 298 (Revocation and Execution of Ruling to Revoke Provisional Seizure)

- (1) In case where the appellate court has revoked a ruling to revoke provisional seizure, when the court becomes the executing agency of such provisional seizure, the appellate court rendering the judgment on such revocation shall execute *ex officio* the provisional seizure. <Amended by Act No. 7358, Jan. 27, 2005>
- (2) In the case of paragraph (1), when the appellate court rendering the judgment on such revocation is the Supreme Court, the court of first instance shall execute the provisional seizure, upon request of the creditor.

Article 299 (Revocation of Execution of Provisional Seizure)

- (1) When the amount as fixed in the order of provisional seizure has been deposited, the court shall revoke the provisional seizure executed in accordance with the ruling. <Amended by Act No. 7358, Jan. 27, 2005>
- (2) Deleted. <by Act No. 7358, Jan. 27, 2005>
- (3) An immediate appeal may be made against the ruling on revocation

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under paragraph (1).

(4) The provisions of Article 17 (2) shall not apply *mutatis mutandis* to the ruling on revocation under paragraph (1).

### Article 300 (Purpose of Provisional Disposition)

(1) Provisional dispositions with regard to the objects of dispute may be effected in case where, if the existing situations are altered, the party is unable to exercise his rights, or there exists a concern about a substantial difficulty in exercising it.

(2) Provisional dispositions may also be effected in order to fix a temporary position against the disputed relation of right. In this case, such provisional dispositions shall be effected specially in case where intending to avoid a significant damage on a continuing relation of right or to prevent an imminent danger, or where there exist other necessary reasons.

### Article 301 (*Mutatis Mutandis* Application of Procedure for Provisional Seizure)

Provisions for the procedure for provisional seizure shall apply *mutatis mutandis* to the procedure for provisional disposition: *Provided*, That the same shall not apply to the case where there arise the differences identical with the following several Articles.

Article 302 Deleted. <by Act No. 7358, Jan. 27, 2005>

### Article 303 (Competent Court)

The court having jurisdiction over the merits or the district court having jurisdiction over the location of objects of dispute shall exercise jurisdiction over the judgment on a provisional disposition.

### Article 304 (Provisional Disposition to Fix Temporary Position)

In the judgment on a provisional disposition under Article 300 (2), the date of pleadings or the date of examinations joinable by the debtor shall be opened: *Provided*, That the same shall not apply when there exist any situations under which the purpose of provisional disposition is not attainable, if an examination is effected by opening such dates.

### Article 305 (Method of Provisional Disposition)

(1) A court shall determine *ex officio* the disposition required for achieving the purpose of a request.

(2) An order may, by way of a provisional disposition, be issued to appoint a custodian, to order the counter-party to perform an act, to prohibit the latter from conducting an act, or to order the latter to pay the wages.



(3) When a transfer or mortgage of immovables has been prohibited by way of a provisional disposition, the court shall, by applying *mutatis mutandis* the provisions of Article 293, make an entry of the fact of such prohibitions in the register.

Article 306 (Entrustment of Registration of Provisional Disposition, Such as Suspension of Performance of Duties by Corporation's Officers)

When a court has suspended any performance of duties by the representative of a corporation and other persons registered as its officers, or rendered a provisional disposition to appoint the person to vicariously perform such duties, or altered or revoked such provisional disposition, the junior administrative officer, etc. of the court shall entrust such registrations to the registry in the location of the principal office and sub-offices or of the head office or branch offices of the corporation: *Provided*, That the same shall not apply to the case where these matters are not those to be registered.

Article 307 (Revocation of Provisional Disposition)

(1) Provisional disposition may be revoked by having the security furnished, when there exist any special circumstances.

(2) The provisions of Articles 284, 285, 286 (1) through (4), (6) and (7) shall apply *mutatis mutandis* to the case of paragraph (1). <Amended by Act No. 7358, Jan. 27, 2005>

Article 308 (Judgment on Recovery of Original Status)

In case where a creditor receives a delivery of goods or a payment of money, or uses or keeps the goods, by virtue of the judgment ordering a provisional disposition, the court may, upon request of a debtor, order the creditor to return such goods or money, at the judgement on revoking a provisional disposition.

Article 309 (Suspension of Execution of Provisional Disposition)

(1) In case where there exists an objection against the judgment ordering a provisional disposition with such contents identical with the execution of rights or statutory relations which are the subject matter of lawsuit, when it is deemed that the grounds alleged as the reasons for an objection have legally justifiable grounds, and there exists a vindication for the alleged facts and for the situation that there exists a risk which may cause irreparable damages due to such execution, the court may, at the request of a party, issue an order to suspend the execution of provisional disposition

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with or without the security furnished, or issue an order to revoke the executed disposition with the security furnished.

(2) The vindication as stipulated in paragraph (1) shall not be substituted by means of depositing the security money, or by taking oath that the allegations are true.

(3) When the record of judgment is kept in the court of original judgment, the court of original judgment shall render the judgment under paragraph (1).

(4) The court shall, at its ruling on the application for objection, authorize, change, or revoke the order under paragraph (1).

(5) The judgments under paragraphs (1), (3), or (4) shall be subject to no appeal.

*[This Article Wholly Amended by Act No. 7358, Jan. 27, 2005]*

### Article 310 (Provisions Applicable *Mutatis Mutandis*)

The provisions of Article 309 shall apply *mutatis mutandis* to the case where there exists an application for revocation of provisional disposition pursuant to the provisions of Article 287 (3), 288 (1) or 307, which is applied *mutatis mutandis* pursuant to Article 301.

*[This Article Wholly Amended by Act No. 7358, Jan. 27, 2005]*

### Article 311 (Competent Court of Merits)

The court of merits as stipulated in this Part shall be the court of first instance: *Provided*, That when the merits are pending before the second instance, it shall be such pending court.

### Article 312 (Authority of Presiding Judge)

The presiding judge may, in the imminent case, render a judgement on the requests under this Part. *<Amended by Act No. 7358, Jan. 27, 2005>*

## ADDENDA

### Article 1 (Enforcement Date)

This Act shall enter into force on July 1, 2002.

### Article 2 (Transitional Measures on Pending Cases)

(1) The previous provisions shall govern the cases of execution which have been filed prior to the enforcement of this Act.

(2) Any executing disposition and other acts performed prior to the enforcement of this Act pursuant to the provisions of the previous Civil Procedure Act at the time of enforcement of this Act, shall be deemed,

as to the application of this Act, to have been performed pursuant to the corresponding provisions in this Act.

(3) Matters necessary for the dealing of cases which have been already pending before the court or dealt with by an execution officer at the time of enforcement of this Act, other than those as stipulated in paragraphs (1) and (2), shall be prescribed by the Supreme Court Regulations.

Article 3 (Transitional Measures on Jurisdiction)

Even in case of lacking jurisdiction under this Act, the cases pending before a court at the time of enforcement of this Act shall fall under the jurisdiction, which has been provided pursuant to the previous provisions.

Article 4 (Transitional Measures on Statutory Period)

The statutory period progressed as from before the enforcement of this Act, and its calculation, shall be governed by the previous provisions.

Article 5 (Time Scope to Apply Acts)

This Act shall be applicable to the matters arisen prior to the enforcement of this Act: *Provided*, That it shall not affect the effects arisen pursuant to the previous provisions.

Article 6 Omitted.

Article 7 (Relations with Other Acts)

(1) In case where the provisions of the previous Civil Procedure Act have been cited in other Acts at the time of enforcement of this Act, if there exist any corresponding provisions in this Act, it shall be deemed to have cited the corresponding provisions in this Act.

(2) The term “procedure for clarifying the property relations” and “title of obligations” as stipulated in other Acts at the time of enforcement of this Act shall be deemed to be “procedure for clarifying the property” and “executive titles”.

ADDENDA <Act No. 7358, Jan. 27, 2005>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Article 2 (Transitional Measures on Pending Cases)

Previous provisions shall govern the cases, such as asset inquiry cases, cases of compulsory execution on the movable asset, compensation order cases, cases of objection against compensation order and cases of application for revocation of compensation order, which have been filed prior to the enforcement of this Act: *Provided*, That the compensation order has been

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sentenced as final judgment, appealation or application for revocation thereof shall be governed by the previous provisions even after the enforcement of this Act.

### Article 3 (Amendments of Other Acts)

(1) The Commercial Building Lease Protection Act shall be amended as follows:

“Articles 280 (1), 281, 283, 285, 286, 288 (1), (2) and main sentence of (3), 289 (1) through (4) of the Civil Execution Act” in the fore part of Article 6 (3) shall be amended as “Articles 280 (1), 281, 283, 285, 286, 288 (1) and main sentence of (2), 289 of the Civil Execution Act”.

(2) The Housing Lease Protection Act shall be amended as follows:

“Articles 280 (1), 281, 283, 285, 286, 288 (1), (2) and fore part of (3), 289 (1) through (4) of the Civil Execution Act” in the fore part of Article 3-3 (3) shall be amended as “Articles 280 (1), 281, 283, 285, 286, 288 (1) and main sentence of (2) and 289 of the Civil Execution Act”.

(3) The Individual Debtor Restoration Act shall be amended as follows:

“Article 246 (Claims Subject to Prohibition of Seizure) (1) 4 of the Civil Execution Act” in the proviso of Article 25 (1) shall be amended as “Article 246 (Claims Subject to Prohibition of Seizure) (1) 4 and 5 of the Civil Execution Act”.

### Article 4 (Relationship with Other Acts and Subordinate Statutes)

Where the provisions of former Civil Execution Act are cited in other Acts at the time of enforcement of this Act, the corresponding provisions, if any, of this Act are deemed to have been cited in place of the former provisions.

## ADDENDA <Act No. 8581, Aug. 3, 2007>

### Article 1 (Enforcement Date)

This Act shall enter into force one year after the date of its promulgation.  
(Proviso Omitted.)

Articles 2 through 9 Omitted.

## ADDENDA <Act No. 8622, Aug. 3, 2007>

(1) (Enforcement Date) This Act shall enter into force on July 1, 2008.

(2) and (3) Omitted.

ADDENDA <Act No. 9525, Mar. 25, 2009>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.  
Articles 2 through 5 Omitted.