

Loan Agreement



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[Loan Agreement]

When preparing an Agreement for Consumer Cash Loan, the lender must verify that the borrower's identity is properly specified in the promissory note. It is advisable for the lender to carry out due diligence regarding the borrower's financial status and enter into a collateral agreement to take security for the loan. It is also advisable that the promissory note be notarized for its evidential admissibility and for safekeeping.

When preparing an Agreement for Consumer Cash Loan, the borrower must verify that the lender's identity is properly specified in the promissory note. It is advisable that the promissory note be notarized for its evidential admissibility and for safekeeping. Meanwhile, if the borrower makes repayment in due course, he or she must receive a receipt from the lender and keep the receipt for a reasonable period of time to prevent double repayment of the same loan. The borrower should beware of illegal debt collection.

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1. Entering into Loan Agreement

1.1. Checklist for Loan Agreement

1.1.1. Checklist for Loan Agreement

Checklist for the Lender

- You must verify the identity of the borrower.
 - You must know the borrower's personal details (e.g. national identification number, telephone number, address, etc.).
 - If the borrower has designated a person with power of attorney such as the case of borrowing money in the name of his or her spouse, you must contact the borrower directly to make sure that he or she intends to borrow money and you must also verify the agent's identity and the power of attorney.
- You must properly prepare a promissory note.
 - On the promissory note, you must specify essential terms such as (1) principal sum; (2) interest; (3) repayment date; (4) place of repayment; and (5) forfeiture of benefit of time.
- If you are not sure about the borrower's repayment ability, you may take a security for the loan.
 - If you are not sure about the borrower's repayment ability, you may require the borrower to provide either personal security such as a joint guarantee or real security such as a mortgage.
- It is advisable that the promissory note be notarized to ensure its evidential admissibility and for safekeeping.
 - You may notarize the promissory note for its evidential admissibility and for safekeeping.
 - Notarization may be done by endorsement on the loan agreement, or by preparing the loan agreement in the form of a 'deed' from the outset.

Checklist for the Borrower

- You must verify the identity of the lender.
 - You must verify the identity of the lender.
 - In particular, if the lender is not registered under the "Act on Registration of Credit Business, etc. and Protection of Finance Users," the lender's business activity shall necessarily be restricted under the "Act on Registration of Credit Business, etc. and Protection of Finance Users."

※ For further details, please visit the [<Borrowing from Personal Lenders>](#) section of this website.

- You must properly prepare a promissory note.

- On the promissory note, you must specify essential terms such as (1) principal sum; (2) interest; (3) repayment date; (3) place of repayment; and (4) forfeiture of benefit of time.
- It is advisable that the promissory note be notarized for its evidential admissibility and for safekeeping.
- You may notarize the promissory note for its evidential admissibility and for safekeeping.
- Notarization may be done by endorsement on the loan agreement, or by preparing the loan agreement in the form of a 'deed' from the outset.
- If you make repayment, you must receive a receipt and keep it safely for a reasonable period of time.
- If you make repayment of your debt in full or in part, you must receive a receipt (Article 474 of the Civil Act).
- In order to prevent double repayment, you must keep the receipt during the limitation period, which normally expires after 10 years unless the right of claim is exercised by the claimant. (Article 162-1 of the Civil Act)
- You must beware of illegal debt collection.
- Some debt collectors use illegal debt collection tactics such as assault or threats. These may lead to criminal prosecution.

1.2. Preparing a Promissory Note

1.2.1. Preparing Promissory Note

Preparation of Promissory Note

- Agreement for Consumer Cash Loan: Promissory Note
- An Agreement for Consumer Cash Loan comes into effect when an agreement is reached between the lender (i.e. the person who lends money) and the borrower (i.e. the person who borrows money) (Article 598 of the Civil Act).
- Principally, drafting a written Agreement for Consumer Cash Loan can prevent potential disputes that may arise later between the parties (refer to Seoul Central District Court - Communication - Accessible Legal Lectures - Contracts in Daily Life).
- After repaying the debt, the debtor should retrieve the original promissory note and also remember to get a receipt from the creditor (refer to Seoul Central District Court - Communication - Accessible Legal Lectures - Contracts in Daily Life).
- Key Terms for Promissory Note
- A promissory note should include the following: (Seoul Central District Court - Communication - Accessible Legal Lectures - Contracts in Everyday Life)
- Specifying the Amount
- √ The principal amount being lent should be specified here. For prevention of

mistakes, it's safer to write the amount both in Korean Hangeul and Arabic numerals side by side.

- Recording Personal Details

- √ The person lending the money is called the creditor (lender), and the person borrowing the money is called the debtor (borrower).

- √ It can be more conclusive evidence to prevent potential disputes later if the debtor writes his/her personal details in his/her own handwriting.

- Interest

- √ If interest isn't specified, you cannot claim interest in a loan. However, in a loan between merchants, even without a special agreement, the lender can claim the legal interest rate (6% annually). Moreover, if you've agreed to pay interest but haven't specified the rate, civil debt is charged at an annual rate of 5%, and commercial debt at 6%.

- √ The interest payment can be structured in various ways: it can be divided and paid monthly, paid all at once when repaying the principal, or even received upfront (commonly known as pre-paid interest).

- √ The past law that limited interest rates has been abolished, but under the current Act on Registration of Credit Business and Protection of Finance Users, the maximum interest rate for lenders lending to individuals or small corporations designated by the Presidential Decree is limited to 66% annually.

- How and when the debtor repays

- √ The payment due date refers to the day agreed upon between the parties to repay the money. If the parties have agreed to repay the borrowed money in installments rather than in one lump sum, this should be noted.

- √ Payment should be made at the current address of the creditor (the lender) unless otherwise agreed upon by the parties (however, the payment of business-related debts should be made at the current business location of the creditor). It would be convenient to specify a place that is convenient for both parties to repay the money in the contract or to note the creditor's bank account number.

※ Detailed information on how to draft a loan agreement can be found at <Seoul Central District Court - Communication - Accessible Legal Lectures - Contracts in Daily Life>.

Creditor & Debtor

- Personal details of the creditor and the debtor (e.g. national registration numbers and addresses)

- It is important to correctly specify the creditor (or lender) and the debtor (or borrower), both of which are parties of the Agreement for Consumer Cash Loan.

- Using nicknames or pennames of the parties may be sufficient if the parties can be properly identified. However, it is advisable to specify legal names, national registration numbers, addresses, and telephone numbers.

- The parties of the agreement should check each other's ID card to verify his or her identification before concluding the agreement.

- In the case where the other party appoints an attorney/attorneys

- If the other party appoints an attorney/attorneys, you should additionally specify the authority of the attorney(s) in the agreement and check the ID card(s) of the attorney(s).
- If the attorney(s) appointed by the other party signs the Agreement for Consumer Cash Loan, you should receive a Power of Attorney, which can prove the authority of the attorney(s), from the other party.

※ A "Power of Attorney" means a written authorization given by one person to another to act on his or her behalf.

※ You may refer to a template for a Power of Attorney at: [>.](#)

▶ Loan Amount

■ Principal Sum

- Please specify the principal sum of the money being borrowed.
 - In order to avoid typographic errors, it is advisable to use both words and digits when stating a number.

▶ Interest

■ Interest-Free Loan

- If the creditor (or lender) agreed to lend interest-free money, it is advisable to expressly state such agreement.

■ Interest Accruing Loan

- If a Consumer Cash Loan is an interest accruing loan, it should be expressly provided for in the agreement.
 - The amount a creditor receives in connection with a loan, no matter how the items are referred to, such as a deposit, rebate, fees, deduction, or advance interests, shall be deemed interest. (Article 4-(1) of the Interest Limitation Act)
 - Where a debtor agrees to bear a duty to pay money in connection with a loan, such payment shall be deemed interest when a creditor is presumed to bear the duty from the nature thereof, in light of causes of the occurrence of the duty, relevant Acts and subordinate statutes, of details of the duty, common principles of deals, etc. (Article 4-(2) of the Interest Limitation Act)
- If the agreement expressly provides that the loan account should be an interest-bearing one, but fails to provide for a specific interest rate, the interest rate shall be five percent (5%) per annum, which is the statutory interest rate (Articles 379 and 397-(1) of the Civil Act)

※ Notwithstanding the above, if the money transaction is by nature a commercial transaction, the statutory interest rate shall be six percent (6%) per annum. (Article 54 of the Commercial Act)

■ Agreement on Amount of Interest and Interest Rate

- In the case where the principal sum of the loan amounts to KRW 100,000 or more, the parties to the agreement may freely agree on the interest rate, but such interest rate shall not exceed twenty percent (20%) per annum. (Articles 2(1) and 2(5) of the Interest Limitation Act; the "Regulations on Maximum Interest Rate"

under Article 2(1) of the Interest Limitation Act)

- A person who has received interest which exceeds the maximum interest rate shall be punished by imprisonment for a term not exceeding one (1) year and/or by a fine not exceeding KRW 10 million. The person may be subject to imprisonment and the fine concurrently. (Article 8 of the Interest Limitation Act)

■ Agreement for Interest-in-Advance Loan

- When the parties of an Agreement for Consumer Cash Loan agree to an interest rate, such parties may agree to deduct the interest in advance from the principal sum. (Articles 2-(1) and 3 of the Interest Limitation Act; the "Regulations on Maximum Interest Rate" under Article 2-(1) of the Interest Limitation Act)
- For example, if the parties enter into an Agreement for Consumer Cash Loan of a principal sum of KRW 10 million at an interest rate of twenty percent (20%) per annum, the debtor may receive KRW 8 million from the creditor after deducting the interest of KRW 2 million in advance from the principal sum of KRW 10 million
- In the case where the interest is deducted in advance, if the deducted amount exceeds twenty percent (20%) per annum assuming that the net amount paid is to be the principal sum, such excess shall be deemed to be a partial repayment of the loan. (Articles 2(1) and 3 of the Interest Limitation Act; the "Regulations on Maximum Interest Rate" under Article 2(1) of the Interest Limitation Act)

■ Effect of Excess of Maximum Interest Rate

- If any interest accrued through the agreement exceeds twenty percent (20%) per annum, such excess shall be void and have no effect. (Articles 2(1) and (3) of the Interest Limitation Act; the "Regulations on Maximum Interest Rate" under Article 2(1) of the Interest Limitation Act)
- If any interest accrued exceeds twenty percent (20%) per annum through an agreement on compound interest, which means interest added to the principal sum of the loan, such excess shall be void and have no effect. (Articles 2(1) and 5 of the Interest Limitation Act; the "Regulations on Maximum Interest Rate" under Article 2(1) of the Interest Limitation Act)

▶ Repayment Due Date(s)

■ Agreement as to Repayment Due Date(s)

- It is advisable that you should expressly specify repayment due date(s) by stating the year(s), the month(s) and the date(s) in the agreement.

■ In the case where there is no agreement as to repayment due date(s)

- If there is no agreement as to repayment due date(s), you may not specify the due date(s) in the agreement. However, if reasonable time has been passed after the creditor demands for repayment, the repayment is deemed to become due.

▶ Term

■ Definition of "Term"

- "Term" means an Additional Clause set out by a party who performs a legal act for the purpose of giving effect to such act in order to make the clause come into force or become null, or to set out the matters in relation to discharging repayment obligation subject to a certain event which is bound to happen.

※ An "Additional Clause" means a clause which is contained in an agreement for the purpose of restricting the taking effect or nullification of a legal act.

- For example, if you agree to lend money by 31 December, it is a Fixed Term Agreement for Consumer Cash Loan.

■ Loss of Benefit from Fixed Term

- Fixed term is presumed to be stipulated for the benefit of the debtor. (Article 153-(1) of the Civil Act)
 - The purpose of the presumption for the benefit of the debtor is to allow the debtor to defer the repayment by entrusting his or her financial credibility during the fixed term.
- Therefore, if the debtor's financial credibility is at risk in any one of the following circumstances, the debtor will lose the benefit resulting from the fixed term.
 - A circumstance where the debtor damages, diminishes or nullifies the security (Article 388-1 of the Civil Act)
 - A circumstance where the debtor fails to discharge his or her obligation to provide for the security (Article 388-2 of the Civil Act)
 - A circumstance where the debtor becomes insolvent (Article 425 of the Debtor Rehabilitation and Bankruptcy Act)

※ You may additionally expressly state the matter regarding debtor's loss of benefit resulting from the fixed term as a special condition in the agreement.

▶ Other Special Agreements

■ Condition

- A "condition" means an Additional Clause set out by a party who performs a legal act for the purpose of giving effect to such act in order to make the clause come into force or become null, or to set out the matters in relation to discharging repayment obligation subject to an uncertain event which may or may not happen.
 - You should not agree to any uncertain conditions, such as 'The debtor shall repay if he or she gets money'.

■ Liquidated Damages

- The parties of an Agreement for Consumer Cash Loan may agree to the amount of damages for non-performance of repayment. (Article 398-(1) of the Civil Act)
- In the case where the amount of liquidated damages is unduly excessive, the court may reduce the amount to a reasonable sum. (Article 398-(2) of the Civil Act)
- The parties' agreement as to liquidated damages shall not affect any demand for performance of obligation nor rescission of the contract. (Article 398-(3) of the Civil Act)
- Agreement as to damages for breach of a contract shall be presumed by agreement with regard to liquidated damages. (Article 398-(4) of the Civil Act)

▶ Template for Preparing Promissory Note

- A Promissory Note may be prepared as follows:

[Template for Preparing Promissory Note]

Agreement for Consumer Cash Loan

The "Creditor": Dae-Han Kim (700101-1230000)

Addresss: OO-ho, OO-dong, OO APT, Yeonmujang 7-gil, Seongdong-gu, Seoul

The "Debtor": Min-Kook Lee (650101-1340000)

OO Building, Jongno 1-gil, Jongno-gu, Seoul

1. The Debtor shall borrow KRW 10 million from the Creditor at interest rate of 10% per annum for a period of 1 year as of 1 March 2009.
2. If the Debtor fails to repay the Creditor on or before the repayment due date, the Debtor shall pay an overdue interest rate of 30% per annum to the Creditor.
3. In any one of the following circumstances, the Debtor shall immediately repay the Creditor even if the repayment is not due.
 - a. A circumstance where the debtor damages, diminishes or nullifies the security
 - b. A circumstance where the debtor fails to discharge his or her obligation to provide for the security
 - c. A circumstance where the debtor becomes insolvent

March 1, 2015

Creditor: Dae-Han Kim [SEALED]

Debtor: Min-Kook Lee [SEALED]

※ Please note that above Clauses 2 and 3 only are special conditions, which may be agreed upon by the parties, and the other clauses are essential terms.

1.2.2. Notarizing Promissory Note

Notarization of Promissory Note

■ Meaning of Notarizing Promissory Note

- "Notarizing Promissory Note" means that you are preparing a promissory note in the form of a 'deed' from the first place in the presence of a Notary Public at a licensed Notary Public Office, or receiving a notary's endorsement on the signed promissory note.

■ Benefits of Notarization of Promissory Note

- Notarized documents will be of assistance in prevention and resolution of a dispute, as civil or criminal courts will consider such documents as having strong evidential value.
- Given that a notarized document is presumed to be authentic once it is completed, the authenticity of the notarized promissory note shall be presumed. (Article 2 of the Notary Public Act; Article 356(1) of the Civil Procedure Act)
- Under the Criminal Procedure Act, a certified copy of a notarized document shall be duly admissible as evidence. (Subparagraph 1 of Article 315 of the Criminal Procedure Act)

- If a notarized promissory note expressly provides for the creditor's right of compulsory execution, the creditor may enforce compulsory execution by exercising such right without commencing civil proceedings. (Subparagraph 4 of Article 56 of the Civil Execution Act)
- Copies of notarized documents shall be kept for a certain period of time, thus reducing risk of loss.

■ Notary Public Office

- You may notarize documents at a Notary Public Office that is licensed and authorized by the Minister of Justice. (Article 17 of the Notary Public Act)

※ A "Notary Public Office" means ① an office established by a duly appointed Notary Public, and ② an office established by a law firm employing an Attorney-at-Law in charge of notarization. (Articles 13-2 and 15-6 of the Notary Public Act)

■ Notarization Fees

- If you notarize a promissory note, you should pay notarization fees to the Notary Public. (Article 2 of the Regulations on Notary Public's Fees)
- Fees for notarizing legal documents are as follows: (Article 2 of the Regulations on Notary Public's Fees)

Value of consideration in a legal contract, or face value of a promissory note or a check	Fees
Up to KRW 2,000,000	KRW 11,000
Up to KRW 5,000,000	KRW 22,000
Up to KRW 10,000,000	KRW 33,000
Up to KRW 15,000,000	KRW 44,000
Over KRW 15,000,000	KRW 44,000 plus 0.15% of any excess amount but the fee charged shall not exceed KRW3,000,000

■ Preservation of Deed

- A Notary Public shall keep and maintain notarized copies of documents and originals of deeds and documents attached thereto which were notarized. (Article 24 of the Notary Public Act)
 - Such documents shall be kept and maintained in a storage facility or a sturdy file cabinet. (Article 4 of the Regulations on Preservation of Notarized Documents)
- A Notary Public shall keep and maintain an original Agreement for Consumer Cash Loan (or a Promissory Note) prepared in a deed form for 10 years, whereas a certified copy of a document shall be kept for 3 years. (Article 5(1) of the Regulations on Preservation of Notarized Documents)

※ The period referred to above shall commence on the first day of the year after the time when such document has been prepared. (Article 5(2) of the Regulations

on Preservation of Notarized Documents)

1.3. Security Agreement

1.3.1. Entering into a Security Agreement

Debtor's Financial Credibility and Seizable Assets

■ Debtor's Financial Credibility and Seizable Assets

- It is an important matter for the creditor to know the actual value of the debtor's asset, because the creditor should collect the debt by way of proceeding to seize, and liquidate the asset for enforcement if the debtor is in default.
- Subject to its nature, the right to collect debt may be exercised by seizing the debtor's assets. In such circumstance, the subject matter to be seized is called "Seizable Assets."

Purpose of Security Agreement

■ Purpose of Security Agreement

- The Purpose of a "Security Agreement" is to provide security for the loan or to guarantee repayment under the law.
- Security Agreements are classified into two categories: Personal Security Agreements and Property Security Agreements.
 - A "Personal Security Agreement" means an agreement to secure repayment of loan by way of adding a third party's property to "Seizable Assets."
- ※ Personal Security Agreements are classified into two categories: Surety Agreements and Joint Debt Agreements. (Articles 428 and 413 of the Civil Act)
- A "Property Security Agreement" means an agreement to secure repayment of loan by way of securing or assigning movables or immovables owned by the debtor or a third party.
- ※ A Property Security Agreement may establish rights such as lien, pledge, or mortgage under the Civil Act.

Entering into Security Agreement

■ Entering into Security Agreement

- Considering the debtor's financial credibility, the creditor may require him or her to enter into a Property Security Agreement or a Personal Guarantee Agreement.
- A Security Agreement may be concluded with reference to an Agreement for Consumer Cash Loan, but the former shall be separate and independent from the latter.
 - The debtor is not necessarily obliged to provide security. Accordingly, not only the debtor but also any third party may be a party to a Security Agreement.

1.3.2. Personal Security Agreement

■ Surety Agreement

■ Purpose

- A "Surety Agreement" means an agreement between a creditor and a surety for the purpose of secure repayment of another person's debt.
- A "Surety Obligation" means an obligation owed by the surety arising out of a Surety Agreement under which the surety is obliged to discharge the debt if the original debtor is in default (Article 428-(1) of the Civil Act).

■ Scope of Security

- The creditor and the surety may agree on the scope of security (i.e. Surety Obligation) in the Surety Agreement. However, unless a contrary intention is expressed, the obligation of the surety shall include the principal sum of debt, interest accrued on the principal sum, any damages payable to the creditor, and any other charges incidental to the principal debt (Article 429(1) of the Civil Act).
- For the purpose of securing the execution of the surety's obligation, the creditor and the surety may agree on liquidated damages and any other damages in relation to surety's obligations (Article 429(2) of the Civil Act).

■ Requirements for a Surety

- If a debtor is obliged to furnish a surety, such surety shall be the person who has full capacity and is financially solvent to repay the debt (Article 431(1) of the Civil Act).
- If the surety becomes unable to repay the debt, the creditor may request for a replacement of such surety (Article 431(2) of the Civil Act).
- ※ Notwithstanding the above, if the creditor has designated the surety, the requirements for full capacity and solvency referred to in paragraph above shall not be applicable (Article 431(3) of the Civil Act).

- The debtor may be exempted from an obligation to furnish a surety by providing other reasonable security in lieu thereof (Article 432 of the Civil Act).

■ Effect of Change in Principal Debtor's Obligation

- Regardless of any cause, the surety's obligation ceases to exist if the principal debt becomes extinct.
- For example, in a case where a principal debt became extinct after the limitation period, the Supreme Court held that the surety's obligation also ceased to exist by reason of its appendant nature even though the limitation period was to be suspended (Supreme Court Decision, May 14, 2002, [2000 Da 62476](#)).
- If the loan is assigned to a third party, the creditor's right against the surety shall also be assigned to the third party.
- In order for the creditor to defend the surety's claim that the assignment was invalid, it is sufficient for the creditor to prepare defense against the principal debtor (Article 450 of the Civil Act). It is not necessary for the creditor to give notice to the surety, regarding assignment or to receive the surety's consent (Supreme Court Decision, October 26, 2001, [2000 Da 61435](#)).
- The limitation period for claiming against the principal debtor shall also apply and be effective as to the surety (Article 440 of the Civil Act).

- However, any expiration of the limitation period for the surety's obligation shall not affect to the limitation period regarding the principal debt obligation (Supreme Court Decision, May 14, 2002, [2000 Da 62476](#)).

■ Surety's Right to be Indemnified

- If a surety discharges his or her obligation, he or she may exercise the surety's 'Right to be Indemnified' against the principal debtor. (Note: the 'Right to be Indemnified' means a right to claim by the persons who have discharged debt on behalf of the debtor.)
- If a surety who has become such surety at the request of principal debtor (hereinafter referred to as the "Fiduciary Surety") repays without any default at his or her own expense, such surety shall have a right to be indemnified (Article 441(1) of the Civil Act).
- If part of the principal debt is extinguished, the "Fiduciary Surety" shall have the right to be indemnified to such an extent.
- The extent of the Fiduciary Surety's Right to be Indemnified shall include statutory interest accrued as from the date when the principal debt was extinguished and other damages including unavoidable costs incurred therefrom (Articles 441(2) and 425(2) of the Civil Act).
- In principle, a Fiduciary Surety shall be entitled to exercise his or her Right to be Indemnified, after the Fiduciary Surety has repaid the principal debt at his or her own expense (Article 441(1) of the Civil Act).

※ Exceptional circumstances where a Fiduciary Surety may exercise his or her Right to be Indemnified, before the Fiduciary Surety repays the principal debt (Article 442(1) of the Civil Act).

1. In the case where the surety, without his or her negligence, is held to indemnify the creditor by judgment
2. In the case where the principal debtor is declared bankrupt and where the creditor does not participate in the bankruptcy of estate
3. In the case where the period of repayment due was not specified in a Surety Agreement and where the maximum period cannot be ascertained, but when a fixed five years have elapsed after the conclusion of the Surety Agreement.
4. In the case when the repayment is due

- If an advance/follow-up notice of exemption was not given to the principal debtor, the surety's right to exercise his or her Right to be Indemnified may be limited.
- √ In the case where a surety has, without notifying the principal debtor in advance, but executed or otherwise discharged the principal debt at his or her own expense, and where the principal debtor had a defense available against the creditor, such defense shall be successful against the surety, whereas if the available defense is a set-off, the principal debtor's claim which would have been extinguished by the set-off shall be transferred to the surety (Article 445(1) of the Civil Act).
- √ In the case where a surety has not notified the principal debtor that he or she

had performed the obligation or otherwise procured at his or her own expense a discharge, and the principal debtor has in good faith effected performance to the creditor or otherwise procured a discharge for value, the principal debtor may treat his or her act of discharge as being effective (Article 445(2) of the Civil Act).

※ In this circumstance, the surety may not exercise his or her Right to be Indemnified, but merely claim for unjust enrichment against the creditor.

- In the case where a person who has become a surety without any request of the principal debtor, has performed the repayment obligation or has otherwise, at his or her own expense, procured the discharge of the principal debt, the surety shall have a Right to be Indemnified against the principal debtor to the extent that the principal debtor was enriched as of the time of discharge (Article 444(1) of the Civil Act).
- Accordingly, any statutory interest accrued or damages incurred after the date of discharge of the principal debt shall not be within the scope of the Right to be Indemnified.
- In the case where a person who has become a surety without any request or approval of the principal debtor, has performed the repayment obligation or has otherwise, at his or her own expense, procured the discharge of the principal debt, the surety shall have a Right to be Indemnified against the principal debtor only to the extent that the principal debtor is still being enriched (Article 444(2) of the Civil Act).

■ Surety Agreement

- A Surety Agreement may be entered into at the same time when an Agreement for Consumer Cash Loan is concluded, but the former may later be entered into separately from the latter.
- You may refer to a template for a Surety Agreement at [<Korea Legal Aid Corporation's website-legal information-legal template>](#).

▶ Joint Guarantee Agreement

■ Purpose

- "Joint Guarantee" means that a guarantor jointly and severally undertakes to repay the debt owed by the principal debtor.
- Joint Guarantee is similar to general suretyship in view of guaranteeing the repayment but differs from the latter in that the guarantor shall be primarily and independently liable for repayment and in that a Surety's Right to Defense of First Demand and Enforcement by contending that the creditor should first demand the principal debtor to repay the debt shall not be available to a Joint Guarantor.
- ※ A Surety's Right to Defense of First Demand and Enforcement arises where a creditor demands for repayment from the surety without first approaching the principal debtor. In such circumstance, the surety proves that the principal debtor is financially solvent and that the debt may be repaid by way of enforcement against the principal debtor, and thereby exercising his or her Right to Defense of First Demand and Enforcement.
- Accordingly, the Right to Defense of First Demand and Enforcement shall not be available to a Joint Guarantor (Article 437 of the Civil Act).

- On the other hand, if a guarantee was given in the context of a commercial transaction, such guarantee shall always be construed as a Joint Guarantee under the law (Article 57(2) of the Commercial Act).

■ Scope of Security

- Similar to the scope of the surety's obligation, that of a guarantee shall include the principal sum of debt, interest accrued on the principal sum, any damages payable to the creditor, and any other charges incidental to the principal debt (Article 429(1) of the Civil Act).

■ Requirements for a Joint Guarantor

- If a debtor is obliged to furnish a Joint Guarantor, such Joint Guarantor shall be the person who has full capacity and is financially solvent to repay the debt (Article 431(1) of the Civil Act).
- The debtor may be exempted from an obligation to furnish a Joint Guarantor by providing other reasonable security in lieu thereof (Article 432 of the Civil Act).

■ Effect of Change in Principal Debtor's Obligation

- The matters regarding effect of change in principal debtor's obligation shall be the same as those of a general surety.

■ Joint Guarantor's Right to be Indemnified

- The Joint Guarantor's Right to be Indemnified against the principal debtor shall be the same as that of a general surety.

■ Agreement for Consumer Cash Loan incorporating clauses regarding Joint Guarantee

- You may refer to a template for an Agreement for Consumer Cash Loan incorporating clauses regarding Joint Guarantee at: <Seoul District Court website-Litigation proceduretemplate-Contractformat>.

☐ Agreement for Joint Debt

■ Purpose

- "Agreement for Joint Debt" means you agree to undertake, as a Joint Debtor who is independent from the principal debtor, to jointly and severally repay the whole debt (Article 413 of the Civil Act).
 - If you as a Joint Debtor enter into an Agreement for Joint Debt, each Joint Debtor including you, is obliged to discharge full repayment obligation.
 - ※ If each of the several debtors becomes liable for any debt in connection with commercial transaction, each debtor shall be jointly and severally liable for such debt (Article 57(1) of the Commercial Act).

■ Scope of Security

- If Joint Debtors undertake to make repayment, each Joint Debtor is equally liable for the entire debt, being closely connected to each other.
- Accordingly, if one of the several Joint Debtors discharges his or her repayment obligation, the other Joint Debtor(s) shall be exempt from such obligation (Article 413 of the Civil Act).

- As a consequence, the creditor is more likely to be repaid.
- As each Joint Debtor's repayment obligation is independent from the other's obligations, any rescission or cancellation of Joint Debtor's agreement shall not affect the other's obligations (Article 415 of the Civil Act).
- Agreement for Consumer Cash Loan Incorporating Clauses regarding Joint Debt
 - You may refer to a template for an Agreement for Consumer Cash Loan incorporating clauses regarding Joint Debt at: [<Korea Legal Aid Corporation's website-legal information-legal template>](http://www.klegalaid.or.kr/website-legal-information-legal-template).

1.3.3. Property Security Agreement

■ Mortgage Agreement

- Purpose
 - A Mortgage may be attached by agreement between the parties for such intention and by registration of the mortgage on the title to the property (Article 186 of the Civil Act).
 - Parties to a mortgage agreement shall be the mortgagee who secures his or her interest against mortgagor's property, and the mortgagor who owns a property to be secured.
 - √ In principle, the mortgagee is the creditor in an Agreement for Consumer Cash Loan.
 - √ A third party to the Agreement for Consumer Cash Loan may become a mortgagee of the relevant mortgage agreement.
 - √ Under the Civil Act, a mortgage may be attached to the title of immovable property (Article 356 of the Civil Act) or Superficies/Chonsewon (right of registered lease on deposit basis) (Article 371(1) of the Civil Act).
- Scope of Security
 - A mortgage shall secure the principal, interest, liquidated damages, damages arising from non-performance of a debt obligation, and the costs for enforcing the mortgage. However, as to the damages for delayed repayment, the mortgage may be exercised only as to the amount incurred for 1 year as from the original repayment due date (Article 360 of the Civil Act).
- Effect of Mortgage
 - If the debtor fails to repay the debt by the due date, the mortgagee may proceed to a mortgage sale and receive from the sales proceeds, taking precedence over other creditors (Article 356 of the Civil Act).
 - A mortgagee shall take precedence over other creditors subject to the following exceptions:
 - √ A lessee of a residential property or a commercial building who qualifies certain requirements stipulated in the House Lease Protection Act or the Commercial Building Lease Protection Act (e.g. Counter-Defense, Registration of Fixed Date, or Requirements for Counter-Defense prior to mortgagee's application for mortgage sale by auction) shall take precedence over the mortgagee (Articles 3 and 8 of the House Lease Protection Act; Articles 3 and 14 of the Commercial

Building Lease Protection Act).

- √ National taxes and additional dues imposed on a mortgaged property shall always take precedence over a mortgage even if the mortgage had been registered before the date of posting of notification of such taxes or dues (Item (a) of Subparagraph 3 of Article 35(1) of the Framework Act on National Taxes).
- √ Any claim for retirement benefits regarding the final three years of service shall take priority over claims secured by pledges or mortgages, and over taxes, public charges, and other claims on the whole property of an employer (Article 12(2) of the Guarantee of Workers' Retirement Benefits Act).
- √ Any claim for the wages of the last three months and for an accident compensation shall take priority over claims secured by pledges, mortgages, and over taxes, public charges, and other claims on the whole property of the employer (Article 38(2) of the Labor Standards Act).
- If there are competing interests that are secured against the same immovable, priority shall be determined in chronological order of registration of such interests.

■ Enforcement of Mortgage Security

- Enforcement of Mortgage Security arises when the mortgagee exercises his or her statutory power of sale after a relevant default by the mortgagor, by which the mortgage is entitled to the sale proceeds in lieu of the debt.
- Such enforcement shall be governed under Part III, "Auction for Exercise, etc. of Security Right" of the Civil Execution Act.
- In general, an auction procedure shall be as follows: Application for Auction → Ruling on Commencing Auction & Service of Notification → Survey on Current Status (e.g. Survey Valuation) → Disposition by Sale → Approval of Sale → Distribution of Sale Proceeds.

※ For detailed information on procedure of auction, please refer to the Supreme Court's website: www.courtauction.go.kr.

■ Agreement for Consumer Cash Loan incorporating clauses regarding Mortgage Security

- You may refer to a template for an Agreement for Consumer Cash Loan incorporating clauses regarding Mortgage Security at: < Seoul Central District Court's website-legal proceedings and templates-agreement>.

※ Establishing Pledge

- In order to secure the loan, the creditor may establish a pledge against movables owned by the debtor or any other third party.
- A pledge means a right to hold possession of the movables which the creditor has received from the debtor or a third person as security for the loan and to obtain satisfaction of his or her claim out of the movables in preference to other creditors (Article 329 of the Civil Act).
- For example, if a debtor borrows KRW 1 million from the creditor and if the debtor delivers his or her luxury watch being worth KRW 1.5 million as a security to the creditor, a pledge shall become effective thereupon (Article 330 of the Civil Act).

- A pledge shall secure the principal, interest, liquidated damages, expense for enforcement of the pledge, expense for preservation of the pledged article, and the damages arising out of the non-fulfilment of the obligation or from latent defects in the pledged article (Article 334 of the Civil Act).
- A pledgee of movables shall be entitled to hold possession of the pledged article which he or she has received from the debtor or a third person as security for the debt, and to obtain satisfaction of his or her claim out of the movables in preference to other creditors (Articles 335 and 329 of the Civil Act).

2. Discharge of Debt Obligation

2.1. Discharge of Debt Obligation

2.1.1. Method to Discharge Debt Obligation

Debtor's Repayment

■ Meaning of Repayment

- "Repayment" means an act to discharge debt obligation, repayment in terms of an Agreement for Consumer Cash Loan means that the debtor's making payment of the borrowed money back to the creditor.

■ Tender of Repayment

- Repayment shall be made by way of actual tender in strict accordance with the tenor of debt obligation. (Article 460 of the Civil Act)
 - "Tender in strict accordance with the tenor of the debt obligation" means a tender of the borrowed money prepared for the purpose of making repayment by the debtor to the creditor.
 - However, if the creditor refuses to accept any advance repayment or if any act of the creditor is required for making repayment, it shall be sufficient for the debtor to give the creditor a peremptory notice that the debtor is ready and willing to make repayment. (Article 460 of the Civil Act)
- A tender of repayment shall discharge the debtor from debt obligation for non-performance of such obligation as from the time of such tender. (Article 461 of the Civil Act)

■ Place of Repayment

- If the place of repayment has not been agreed by the parties, repayment shall be made at the place of current address of the creditor. However, repayment in relation to commercial transaction, the place of repayment shall be the business address of the creditor. (Article 467(2) of the Civil Act)

■ Bearing Expenses of Repayment

- Unless otherwise specifically agreed by the parties, the expenses of repayment shall be borne by the debtor. However, if the expense of repayment is increased by changing the address of the creditor or by his or her any other act, the amount of such increase shall be borne by the creditor. (Article 473 of the Civil Act)
 - For example, expenses of repayment include bank fees for remittance and any travel expenses incurred by the debtor who had to travel from Busan to Seoul for making repayment.

Person Who Makes Repayment & Person Who Receives Repayment

■ Repayment Made by a Third Party

- Any third party may perform repayment of debt. However, if such repayment is not

allowed by the agreement between the parties, a third party shall not make repayment. (Article 469(1) of the Civil Act)

- Any third party who has no interest in the debt obligation may not make repayment against the debtor's intention. (Article 469(2) of the Civil Act)
 - A Joint Guarantor or a Mortgagee may make repayment against the debtor's intention since they have interest in the debt obligation.

■ Repayment to a Third Party

- A repayment made to a quasi-possessor of the claim shall be effective only if he or she was made so in good faith and without negligence. (Article 470 of the Civil Act)

※ A "quasi-possessor of the claim" means the person who appears to actually have such claim.

- For example, a person having a forged receipt (Supreme Court Decision, October 10, 1963, 63 Da 384), or a person who is specified as a child in the Family Register but actually is not entitled as a successor.

※ The quasi-possessor of the claim was made so "in good faith and without negligence" means that he or she had no knowledge of his or her right to receive repayment and that he or she was not negligent in receiving such repayment.

- A repayment made to the bearer of a receipt shall be effective even where he or she was not authorized to accept the repayment. However, this shall not be applicable if the person making repayment had or should have had knowledge of such authority. (Article 471 of the Civil Act)

※ A "Receipt" means a document which proves that repayment has been made.

- Except in the case of repayment made to a quasi-possessor of the claim and the case of repayment made to the bearer of a receipt, any repayment made to a person who had not been authorized to receive the repayment shall be effective only to the extent that the creditor has been enriched thereby. (Article 472 of the Civil Act)
 - Even if repayment was made to the person who had not been authorized to receive the repayment, such repayment shall not be effective in principle.
 - Nevertheless, if the person who had not been authorized to receive the repayment transfers the repayment to the creditor, such transfer shall be effective and the debt obligation shall be extinguished to the extent that the creditor has been enriched therefrom.

▶ Repayment Before Due Date

■ Repayment Before Due Date

- Unless otherwise specifically agreed by the parties, the debtor may make repayment before the due date. However, if the creditor suffers loss arising out of early repayment, the debtor shall indemnify such loss. (Article 468 of the Civil Act)
- In the case where the debtor makes repayment before the due date, loss suffered by the creditor shall be the interest which would have incurred as from the date of such repayment to the due date under the Agreement for Consumer Cash Loan.

▶ Partial Satisfaction by Partial Payment of Debt

■ Purpose of Partial Satisfaction

- The "Partial Satisfaction" issue arises when the debtor owes to the same creditor several obligations whose subject is of the same kind (Article 476 of the Civil Act), or when the debtor is obliged to pay expenses and/or interest other than the principal debt with regard to one or more debts. (Articles 478 and 479 of the Civil Act) In the above circumstances, a question of whether which debt obligation was discharged may arise.
- Partial Satisfaction shall be done according to the parties' agreement. However, if such agreement cannot be reached by the parties, the person who has authority shall decide which obligation was discharged, and if there has been no such decision, it shall be done in accordance with the order set out by the law.

■ Order to satisfy expenses, interest, and the principal debt

- The creditor and the debtor may agree in advance to the order to satisfy expenses, interest, and the principal debt if partial satisfaction of debt would be made.
 - If there is an agreement between the parties, the order of satisfaction shall be done in accordance with such agreement. (Supreme Court Decision, March 24, 1987, [84 Daka 1324](#)) Such agreement may be expressly specified in the promissory note or may be reached orally.
- In the case where the debtor pays expenses incurred and interest accrued to one or more debt obligations, and unless otherwise agreed by the parties, the order of satisfaction shall be: expenses, interest, and the principal debt. (Article 479(1) of the Civil Act)
- The detailed order of satisfying expenses, interest, and the principal debt shall be the following statutory order. (Articles 477 and 479(2) of the Civil Act)
 - If some of the debt obligations are due and others are not due, it shall be satisfied for the repayment of debt obligation which is due.
 - If all the debt obligations are due or all are not due, it shall be satisfied for the repayment of debt obligation, the discharge of which is more beneficial to the debtor.
- ※ "Benefit of Debtor" means the benefit enjoyed by the debtor if he or she chooses to make repayment against one of several debts. It will be more beneficial for the borrower if he or she makes repayment against interest-bearing debt rather than no-interest loan. Also, high-interest-rate loan rather than low-interest-rate loan, and own debt rather than Joint Debt.
 - If the Benefits of Debtor are all equal, it shall be satisfied for the repayment of debt obligation which first became due or will become due.
 - In the case of the order mentioned in the above, it shall be satisfied for the repayment of debt obligation in proportion to the amount of each obligation.

2.1.2. Discharge of Debt Obligation Other Than Repayment

▣ Accord and Satisfaction

■ Purpose of Accord and Satisfaction

- If a debtor has done an act of performance different from, and in substitution for

the one originally intended with the consent of the creditor, such act shall be deemed a valid performance. (Article 466 of the Civil Act)

- For example, a debtor who had borrowed KRW 5,000,000, with the consent of the creditor, may give the creditor a diamond ring in substitution for the debt.

■ Requirements for Accord and Satisfaction

- There has to be an agreement between the parties as to the accord and satisfaction.
- There shall be a debt in existence.
- There has to be an agreement between the parties as to whether the performance is in substitution for the one originally intended.
- The value of the substitute may not necessarily be the same as that of the one originally intended.
- Accordingly, the debtor who owes KRW 5,000,000 may agree with the creditor to give a diamond ring worth KRW 4,000,000 as an accord and satisfaction.
- An act of performance as an accord and satisfaction shall actually be done by the debtor.

■ Effect of Accord and Satisfaction

- If an act of performance as an accord and satisfaction was done by the debtor, such act shall have the same effect as making repayment. (Article 466 of the Civil Act)
- Therefore, the debt obligation shall extinguish therefrom.

▶ Set-Off

■ Purpose of Set-Off

- A "Set-Off" may arise where two persons are bound to each other by debt obligations whose subject is of the same kind. By making a set-off, the extent of the amount corresponding to that of his or her obligation shall be discharged at the same time.

- For example, if a debtor borrowed KRW 1,000,000 from the creditor, but the creditor had already owed KRW 500,000 to the debtor, the debt obligation of KRW 500,000 may be discharged at the time when the debtor declares a set-off.

■ Requirements for Set-Off

- If two persons are bound to each other by debt obligations whose subject is of the same kind and both of which have become due, each obligor may make a set-off to the extent of the amount corresponding to that of his or her obligation: Provided, that this shall not apply where the nature of the obligations does not so permit. (Article 492(1) of the Civil Act)
- If a party has declared an intention to the contrary, a set-off shall not be made against such intention. However, such declaration of intention cannot be thus set up against a third party acting in good faith. (Article 492(2) of the Civil Act)

■ Method of Set-Off

- A set-off shall be effected by means of a declaration of intention to the other party. No condition may be attached, nor a time be fixed, to such declaration of intention. (Article 493(1) of the Civil Act)
- In the case of a claim which is time-barred, which would have been made a set-off before the time bar, such claim may be set-off by the creditor. (Article 495 of the Civil Act)

■ Prohibition of Set-Off

- Where the debt obligation has arisen from an intentional unlawful act, the debtor cannot avail himself or herself of a set-off against the creditor. (Article 496 of the Civil Act)
- If the claim is one of which an attachment cannot be effected, the debtor may not set up against the creditor any defense of a set-off. (Article 497 of the Civil Act)
- A third obligor under garnishment order may not set up against the obligee any defense of set-off. (Article 498 of the Civil Act)

■ Effect of Set-Off

- The declaration of intention for a set-off shall be deemed to extinguish the debt obligation to the extent of the same amount when each obligation is eligible for a set-off. (Article 493(2) of the Civil Act)

▣ Novation

■ Purpose of Novation

- "Novation" means an agreement by which the essential elements of the obligation are modified in order to extinguish the original debtor's obligation.

- For example, if the creditor considers that the debtor may not afford to make repayment, the creditor may request to change the debtor to any third party to the original contract by novation. Also, the creditor under the original contract may be changed to any third party by novation.

■ Requirements for Novation

- There shall be a debt to be extinguished.
- A new debt obligation shall be arisen from a novation.
 - If the new debt obligation arisen from a novation does not come into existence or has been avoided by reason of illegality of its cause or of any circumstance of which the parties were not aware, the original debt obligation shall not be extinguished. (Article 504 of the Civil Act)
- The debtor, the creditor or the details of the obligation shall be changed by novation.
 - A novation by change of the debtor may be effected by a contract between the creditor and the new debtor. However, it shall not be affected against the intention of the original debtor. (Article 501 of the Civil Act)
 - A novation by change of the creditor cannot be set up against a third person, unless it is done by a document with a certified fixed date. (Article 502 of the Civil Act)

■ Effect of Novation

- If the parties have entered into a contract by which the essential elements of the obligation are modified, such obligation shall be extinguished by novation. (Article 500 of the Civil Act)
- The parties to a novation may transfer the security for the original obligation to that of the new obligation, within the limit of its objective. However, if the security has been furnished by a third person, his or her consent must be obtained. (Article 505 of the Civil Act)

▶ Release

■ Requirements for and Effect of Release

- If the creditor declares to the debtor an intention to release the debtor from the obligation, such obligation shall be extinguished. However, a release cannot be set up against a third person who has a reasonable interest. (Article 506 of the Civil Act)

- For example, the debtor borrows KRW 1,000,000 from the creditor through an Agreement for Consumer Cash Loan, but if the creditor, considering the debtor is in financial difficulties, shows an intention to release the debtor from his or her obligation, such obligation shall be extinguished.

▶ Merger

■ Requirements for and Effect of Merger

- If a claim and the corresponding obligation become vested in one and the same person, the claim shall be extinguished. However, this shall not apply if such claim itself is subject of a third person's right. (Article 507 of the Civil Act)

- For example, if a wife borrows KRW 10,000,000 from her husband, the husband dies, and the wife becomes an heir, the obligation to repay KRW 10,000,000 owed by the wife shall be extinguished because the husband's estate to receive the debt has been inherited to the wife.

2.1.3. Issuance of Receipt

▶ Issuance of Receipt

■ Request for Receipt

- A debtor who has repaid the debt may request for a receipt from the person accepting the repayment. (Article 474 of the Civil Act)

- A right to request for a receipt may arise where the repayment has been made in full or in part.

- Repayment shall be made at the same time as issuance of the receipt.

■ Right to Request for Returning Loan Document

- If any loan document exists, the person who has made repayment in full may request

for the return of such document. This shall also apply where the debt obligation has been extinguished in full by any cause other than repayment. (Article 475 of the Civil Act)

- A "Loan Document" means a document evidencing debt obligation such as a promissory note (or an Agreement for Consumer Cash Loan) and a certificate of deposit.
- Notwithstanding the above, the right to request for returning a loan document shall not be exercised by the person who makes repayment in part. However, such person may specify such partial repayment on the loan document.
- Unlike the right to request for receipt, the debtor may exercise his or her right to request for returning document once he or she has made repayment in full. (Supreme Court Decision, August 19, 2005, [2003 Da 22042](#))

■ How to Prepare a Receipt

- A receipt shall be prepared in the following way.
 - A receipt shall be prepared by the creditor who has received the repayment.
 - The date of repayment and the amount of repayment shall be expressly provided in the receipt.
 - In the case of a partial satisfaction of debt, it shall be agreed between the parties regarding the purpose of such repayment.

[Template for Preparing Receipt]

Receipt

On March 1, 2015, I, the undersigned, confirm that I have duly received KRW 5 million as a part payment of the principal loan in sum of KRW 15 million.

It is hereby agreed that the debtor shall make a one-off payment of the interest in sum of KRW 1.5 million, which has been accrued at the rate of 10% per annum, together with the balance of the principal debt in sum of KRW 10 million.

March 1, 2015

Recipient: Dae-han Kim [SEALED]

2.1.4. Court Deposit for Repayment

📌 Court Deposit for Repayment

■ Purpose of Court Deposit for Repayment

- If the creditor refuses or is unable to accept the repayment from the debtor, the latter may discharge his or her debt obligation by depositing the subject matter into the court. The same shall apply where the creditor cannot be ascertained without any negligence on the part of the debtor. (Article 487 of the Civil Act)
- Possible Scenarios Where The Creditor Is in Default

- The debtor visits the address of the creditor for repayment, but finds that the creditor has already moved away and the debtor is unable to contact the

creditor.

- The debtor tries to remit the repayment, but finds that the bank account number which was informed by the creditor is not in existence.
- The creditor refuses to accept repayment, charging interest rates that are higher than the agreed rate.
- The debtor is unable to make repayment due to an attachment order or a provisional attachment order over his or her asset.

■ Effect of Court Deposit for Repayment

- If the court deposit has been completed, the debtor shall be discharged from his or her debt obligation. (Article 487 of the Civil Act)

■ Place of Court Deposit for Repayment

- The deposit shall be made with the Deposit Office in the place for the performance of the obligation. (Article 488(1) of the Civil Act)
- The Courts shall be in charge of administering the matter regarding the court deposit (Article 2 of the Court Organization Act), and District Courts, their branches and County Courts take charge of such matters.

※ You may find locations of the Courts at: [Court location](#), Court of Korea

- If there are no special provisions under the statutes in respect of the Deposit Office, the court must, upon the application by the debtor who is willing to make repayment, designate a Deposit Office and appoint a custodian of the deposited article. (Article 488(2) of the Civil Act)

▶ Application and Payment Procedure

■ Application for Court Deposit

- A person who applies for a court deposit shall fill out two copies of the application form, submit them to the Court Deposit Officer, and deliver the article to the designated custodian (or deposit the money to the designated bank). (Article 4 of the Deposit Act; Article 20(1) of the Regulations of Deposit)
- An applicant for court deposit shall fill out the application form with the followings, write his or her name and sign it. If the applicant appoints a legal representative, the representative shall write a name/address, and sign it. If the applicant makes an application in his or her capacity of a public officer, he or she shall specify the name of the office and his or her position, who is a public officer makes an application as a capacity of the depositor. (Article 20(2) of the Regulations of Deposit)
 1. Depositor's name (or business name); address (of head office or main office); and National Registration Number (or Business Registration Number)
 2. Amount to be deposited; name of the document, page number(s), any document annexed thereto, and redemption date (if the article to be deposited is a negotiable document); and name, type and quantity of the article to be deposited
 3. Material Facts for Deposit

4. Statutory Authority for Deposit
5. Recipient's name (or business name), address (of head office or main office); and National Registration Number (or Business Registration Number), if any recipient is required for the deposit
6. If any right of pledge, Chonsegwon (right of registered lease on deposit basis), or mortgage is to be extinguished due to the deposit, such right shall be specified.
7. If any consideration is to be required, such consideration shall be specified.
8. If any confirmation or approval from a public office is required to redeem the deposit, the name of such office shall be specified.
9. If the application for deposit was made as a consequence of legal proceedings, the name of the court and case number shall be specified.
10. Name of the court in charge of the deposit
11. Date of application

※ You may find the deposit application form at:

[<Court of Korea-Online application for Deposit-How to use-Deposit Terminology and documents-Templates>.](#)

Claim for and Receipt of Deposit

■ Notice by Depositor

- The depositor must, without delay, give notice of the deposit to the creditor. (Article 488(3) of the Civil Act)

■ Claim for and Receipt of Deposit

- If the creditor claims for and receives the deposit, the debt obligation owed to him or her may be discharged.
- A person who intends to claim for and receive the deposit shall submit the claim form, attaching the following documents (Article 33 of the Regulations of Deposit):
 - Notice of Deposit issued by the Deposit Officer (Article 29 of the Regulations of Deposit) Notwithstanding this, no Notice of Deposit is required in the following circumstances:
 - √ A circumstance where the deposit amount is KRW 50,000,000 or less (including a circumstance where the face value of the deposited negotiable document is KRW 50,000,000 or less). Notwithstanding this, if the claimant is a public office or an unincorporated corporation/foundation, the maximum amount for such deposit shall be KRW 10,000,000 or less.
 - √ A circumstance where a certificate of deposit or a letter of approval from the interested party is attached to the claim form
 - √ A circumstance where the claim was issued pursuant to a compulsory enforcement or a disposition for arrears of taxes
 - √ A circumstance where no Notice of Deposit was posted

- A document demonstrating the right to claim for payment of the deposit. However, this is not required under any of the following circumstances:
- √ If the details of the deposit document clearly indicate the right to claim for payment of the deposit
- √ If a certificate verifying the identity of a beneficiary has been sent to the deposit office
- If any consideration for the deposit is required, the following documents are required: depositor's written statement, written judgment, official document or other public documents prepared by public offices. (Article 10 of the Deposit Act)

※ You may find the claim form at: [<Court of Korea-Online application for Deposit-How to use-Deposit Terminology and documents-Templates>](#).

Withdrawal of Deposit

Withdrawal of Deposit

- In one or more of the following circumstances, the depositor may withdraw the deposit by proving such circumstance. (Article 9(2) of the Deposit Act)
 - A circumstance where the creditor has approved such deposit, or where the creditor gives notice of approval to the Deposit Office, or where the depositor intends to withdraw the deposit before any judgment being rendered by the court. (Article 489 of the Civil Act)
 - A circumstance where the deposit was done by error
 - A circumstance where cause of the deposit has been extinguished
- ※ However, a deposit may not be withdrawn if a pledge or a mortgage has been extinguished by making the deposit. (Article 489(2) of the Civil Act)
- If a deposit is withdrawn, it is deemed that the deposit has not been made. (Article 489(1) of the Civil Act)

※ You may find the application forms at: [<Court of Korea-Online application for Deposit-How to use-Deposit Terminology and documents-Templates>](#).

- If a deposited article is money, any right to receive or collect interest accrued on the deposited amount shall expire after 10 years unless such right is exercised during this period. (Article 9(3) of the Deposit Act)

Raising Objection

Raising Objection against Disposition

- A person who is dissatisfied with a disposition taken by a Deposit Officer may raise an objection to the District Court which has jurisdiction. (Article 12-(1) of the Deposit Act)
- A person who raises the objection shall submit the application form to the Deposit Office. (Article 12-(2) of the Deposit Act)

※ You may find the application form at: [<Court of Korea-Online application for](#)

[Deposit-How to use-Deposit Terminology and documents-Templates>.](#)

■ Deposit Officer's Review

- If the Deposit Officer recognizes that an objection raised by a complainant has reasonable grounds, the deposit officer shall take a disposition according to the purport of the objection raised and notify the complainant of the contents of such disposition. (Article 13(1) of the Deposit Act)
- If the Deposit Officer recognizes that an objection does not have reasonable grounds, he or she shall submit his or her letter of opinion to the District Court, which has jurisdiction within 5 days from the date on which he or she receives the application form. (Article 13(2) of the Deposit Act)

■ Decision and Appeal with Respect to Objection Raised

- The District Court, which has jurisdiction, shall hand down a judgment with reasoning and such judgment shall be delivered to the complainant. If the judgment is in favor of the complainant, the District Court shall order the Deposit Officer to take a reasonable disposition. (Article 14(1) of the Deposit Act)
- With respect to the trial court's decision, the complainant may appeal against the decision pursuant to the Non-Contentious Case Procedure Act. (Article 14(2) of the Deposit Act)

3. Dealing with Failure to Make Repayment

3.1. Restriction on Claim and Limitation Period

3.1.1. Restriction on Claim

▣ Failure to Make Repayment

■ Failure to Make Repayment

- If the debtor fails to make repayment by the due date, the creditor may claim for damages apart from the principal amount (i.e. the loan principal and the agreed interest). However, if such failure was not caused by the debtor's intention or negligence, the creditor shall not claim for damages. (Article 390 of the Civil Act)
- "Intention" means a state of mind of a person who knows that his or her act or omission would result in any damage or loss, but deliberately lets another suffer such damage or loss, or turns blind eyes to such consequence.
- "Negligence" means a state of mind of a person who fails to take the due care that a reasonable person usually takes. Negligence arises where another person suffers loss as a consequence of such lack of care.

▣ Scope of Claim for Repayment on Loan

- Where there was an agreement as to liquidated damages, the creditor may claim for the liquidated damages.
 - If amounts of liquidated damages were agreed between the parties when they prepared the promissory note, the creditor, without proving the amount of loss, may claim for the liquidated damages where the debtor fails to perform his or her debt obligation. (Article 398-(1) of the Civil Act)
 - If the amount of damages agreed by the parties is unduly excessive, the Court may reduce the amount to a more reasonable and appropriate sum. (Article 398-(2) of the Civil Act)
- Where there was no agreement as to liquidated damages, the creditor may claim for damages in accordance with the statutory interest rate.
 - Where there was no agreement as to liquidated damages, the creditor may claim for damages in accordance with the statutory interest rate of five percent (5%) per annum (or six percent (6%) per annum in the case of a commercial transaction). (Article 397-(1) of the Civil Act; Article 379 of the Civil Act; Article 54 of the Commercial Act)
 - However, if any interest agreed in advance does not exceed twenty percent (20%) per annum, which is a maximum interest chargeable under the Interest Limitation Act, such interest shall apply. (The proviso of Article 397(1) of the Civil Act; Article 2(1) of the Interest Limitation Act; the "Regulations on Maximum Interest Rate" under Article 2(1) of the Interest Limitation Act)
- With regard to damages for non-performance of debt repayment, the creditor is not required to prove the loss whereas the debtor may not raise the defense that he

or she was not negligent. (Article 397-(2) of the Civil Act)

※ In the case where claim for damages are related to performance of repayment obligation, the interest rate shall be twenty percent (12%) per annum.

In the case of claim for damages arising out of non-performance of repayment obligations, the debtor may argue that the statutory interest rate of five percent (5%) per annum would be applicable to such damages. However, as this interest rate is significantly less than the normal interest rate applicable in the cash loan agreement, there is a possibility that the debtor would deliberately refuse to make repayment or delay the action in court.

To prevent this mischief in relation to quantum of damages, the court shall order to increase the statutory interest rate accrued as from the date when the notice of claim or equivalent is delivered to the debtor at twenty percent (12%) per annum. (Article 3 of the Act on Special Cases Concerning Expedition, etc. of Legal Proceedings; Article 3-(1) of the same Act which stipulates said Statutory Interest Rates)

3.1.2. Limitation Period for Monetary Claim

▶ Purpose of Limitation Period

■ Purpose of Limitation Period

- A "Limitation Period" means the period of time within which a party who has a right to claim must issue a claim. Unless the party issues a claim within the limitation period, his or her right to claim shall be extinguished.
- The purpose of the limitation period is to protect social stability, which has long been maintained, and to exclude a person who makes it difficult for the evidences to be preserved by not exercising his or her right to legal remedy. This principle of law originates from a maxim of equity: "Equity aids the vigilant, not those who slumber on their rights." (Supreme Court Decision, November 6, 1976, [76 Da 148](#), Unanimous En Banc Decision)
- If the limitation period expires, the creditor's right to claim shall also be extinguished. (Supreme Court Decision, January 13, 1966, [65 Da 2445](#))
- If the principal debt is extinguished due to expiration of the limitation period, any right to the interest, which would have been accrued, shall also be extinguished. (Article 183 of the Civil Act)

▶ Limitation Period for Claim

■ Civil Claim

- A civil claim shall be time-barred if such claim is not issued within ten (10) years of the limitation period. (Article 162(1) of the Civil Act)

■ Commercial Claim

- Unless otherwise provided in the Commercial Act, a monetary claim arising out of a commercial transaction shall be time-barred if such claim is not issued within five (5) years. However, if a shorter period of limitation is provided by other statute, such provision shall apply. (Article 64 of the Commercial Act)

■ Claim for Interest Accrued for a Period of One Year or Less

- A claim for interest accrued for a period of one (1) year or less shall be time-barred if such claim is not issued within three (3) years. (Article 163 of the Civil Act)
- In terms of a claim for interest accrued for a period of one (1) year or less, it was held that the claim in question shall not be a claim regarding the repayment of loan for a period of one year or less but regarding any interest being accrued periodically in a year (e.g. monthly interest). (Supreme Court Decision, September 20, 1996, [96 Da 25302](#))

■ Limitation Period for Claim Established by Court's Judgment

- Limitation period for a claim established by court's judgment shall be ten (10) years, even where the limitation period for the original claim is shorter than ten (10) years. (Article 165(1) of the Civil Act)
- Limitation period for a claim established by bankruptcy proceedings, mediation in court, or any other alternative dispute resolution process with the same effect as a judgment shall be ten (10) years. (Article 165(2) of the Civil Act)
- In the case of an inchoate claim, of which the repayment was not yet due at the time of the judgment, the limitation period shall not be extended to ten (10) years even if the claim was established by such judgment. (Article 165(3) of the Civil Act)

▣ Commencement Date for Limitation Period

■ Commencement Date for Limitation Period

- A limitation period shall run as from the time when the right may be exercised. (Article 166(1) of the Civil Act)
- Meaning of "the time when the right may be exercised" is as follows:

Classification	Meaning of "the time when the right may be exercised"	Example
Where a due date is agreed	The due date	March 1, 2015
Where a due date is not agreed but where the loan is a fixed-term loan	The time when the period of loan expires, and such expiration is known to the claimant.	When the government purchases rice from the fall harvest
Where a due date is neither agreed nor specified in the agreement	The time when the creditor is able to exercise his or her right to repayment claims	
Where there is a certain condition for repayment	The time when the condition is fulfilled	If a person passes the Public Official Examination

■ Interrupting Limitation Period

■ Interrupting Limitation Period

- The creditor shall interrupt the limitation period before such period expires.
- The creditor may interrupt the limitation period by the following ways: issuing claim before the court, participating as a party to the bankruptcy proceedings, applying for a payment order, applying for court mediation, voluntarily appearing before the court, or applying for an attachment order or a provisional attachment order. In the case where the debtor acknowledges his or her debt, the limitation period shall be interrupted.
 - Issuing Claim Before Court
 - √ The limitation period shall be interrupted if the creditor issues a claim before the court. However, this interruption shall not be applicable if the claim is dismissed, rejected or withdrawn by the court. (Article 170(1) of the Civil Act)
 - √ Although the claim issued by the creditor was dismissed, rejected or withdrawn (Article 170(1) of the Civil Act), the limitation period shall be deemed to have been interrupted as from the time when the initial proceedings were issued if one or more of the following circumstances arises within six (6) months as from such dismissal, rejection or withdrawal: (i) where the claim is reissued before the court, (ii) where the creditor participates as a party to the bankruptcy proceedings, (iii) where the creditor applies for a payment order, (iv) where the creditor applies for a court mediation, (v) where the creditor voluntarily appears before the court, or (vi) where the creditor applies an attachment order or a provisional attachment order. (Article 170(2) of the Civil Act)
 - Participating as Party to Bankruptcy Proceedings
 - √ If the creditor participates as a party to bankruptcy proceedings, the limitation period shall be interrupted. However, if the creditor withdraws his or her participation or such participation is dismissed, the limitation period shall not be applicable. (Article 171 of the Civil Act)
 - ※ "Participating as a party to bankruptcy proceedings" occurs when a bankruptcy creditor reports the matters regarding his or her right to claim to the court for the purpose of receiving any settlements or proceeds apportioned by the court. (Article 447 of the Debtor Rehabilitation and Bankruptcy Act)
 - Applying for Repayment Order
 - √ If the creditor applies for a repayment order by way of taking a demanding procedure of repayment, the limitation period shall be interrupted. (Article 172 of the Civil Act)
 - ※ A "repayment order" means a demanding procedure of repayment, which the creditor may simply and promptly take to exercise his or her right to claim for repayment without need to pursue a legal proceeding. (Article 462 of the Civil Procedure Act)
 - Summons for Court Mediation
 - √ If the creditor applies for court mediation, the limitation period shall be interrupted. However, such interruption shall not be effective if the debtor does not appear after the creditor's application, or if the creditor does not issue a legal proceeding after failing to reach an agreement by way of such

mediation. (Article 173 of the Civil Act)

※ "Summons for court mediation" occurs when the court summons a defendant in order to recommend resolving the dispute by way of court mediation under Article 385 of the Civil Procedure Act.

※ A "resolution by court mediation" shall take effect when the parties to the dispute agree to settle the dispute by mutual concession. (Article 731 of the Civil Act)

• Voluntary Appearance

√ If the parties to a court proceeding voluntarily appear before the court in a small claim case, the limitation period shall be interrupted. However, if the creditor does not issue a legal proceeding after failing to reach an agreement by way of court mediation, any interruption of the limitation period shall not take effect. (Article 173 of the Civil Act)

※ "Voluntary appearance" occurs when both parties voluntarily appear before the court in a small claim case, and plead for an action without issuing legal proceedings. (Article 5 of the Trial of Small Claims Act)

• Peremptory Notice

√ If a creditor issues a claim for repayment to the debtor, the limitation period shall be interrupted. A peremptory notice shall have no effect of interrupting the limitation period unless a demand by judicial proceedings, participation in bankruptcy proceedings, a summons for compromise or a voluntary appearance for the same purpose, an attachment, a provisional attachment or a provisional disposition is taken within six months. (Article 174 of the Civil Act)

• Attachment, Provisional Attachment, Provisional Disposition

√ An attachment, a provisional attachment, or a provisional disposition, shall have no effect of interrupting the limitation period if annulled on the application of the claimant or by reason of non-compliance with the law. (Article 175 of the Civil Act)

※ An "attachment" means a compulsory enforcement by an order of the court or by right of enforcement for a claimant's satisfaction.

※ A "provisional attachment" may be effected in order to preserve compulsory enforcement against the property of the debtor in respect of a monetary claim, or a claim convertible into money.

※ In a non-monetary claim, a "provisional disposition" may be ordered by the court. Under this order, the debtor must preserve his or her property as is it is, in order to protect the creditor's right against the property.

※ An attachment, a provisional attachment, or a provisional disposition, if not effected against the person in whose favor the limitation period is running, shall not have the effect of interrupting the limitation period unless and until such person has been notified thereof. For example, if a person who was not the debtor allowed a mortgage to be attached against his or her property for the benefit of the debtor, any interruption of the limitation period shall be subject to giving notice to the debtor of such mortgage. (Article 176 of the Civil Act)

• Acknowledgment of Debt

√ If the debtor acknowledges his or her debt and informs the creditor of such acknowledgement, the limitation period shall be interrupted.

※ In order to make an acknowledgement, having the effect of interrupting the limitation period, no capacity or authority for approval in respect of the rights of the other party is required. (Supreme Court Decision, March 10, 1970, [69 Da 401](#); Article 177 of the Civil Act)

※ An acknowledgement of debt may be done not only by an explicit approval but also by an act (e.g. payment of interest, making partial repayment, providing security for the debt).

■ Effect of Interrupting Limitation Period

- Where a limitation period is interrupted, the time passed until such interruption shall not be counted, and a new limitation period shall begin to run as from the time when the cause of such interruption has ceased to exist. (Article 178(1) of the Civil Act)
- In the case of a limitation period that was interrupted by a court claim, a new limitation period shall begin to run as from the time when the decision thereon becomes finally binding. (Article 178(2) of the Civil Act)

Useful Legal Information
In the case of a Consumer Cash Loan Agreement, is the creditor able to exercise the right to be repaid even after a long time has passed since the repayment due date? A. A creditor's repayment claim based on a Consumer Cash Loan Agreement shall be time-barred if such claim is not issued within ten (10) years of the limitation period because such claim amounts to a civil claim (Article 162 of the Civil Act). The purpose of the limitation period is to protect social stability, which has long been maintained, and to exclude a person who makes it difficult for the evidences to be preserved by not exercising his or her right to legal remedy. This principle of law originates from a maxim of equity: "Equity aids the vigilant, not those who slumber on their rights." (Supreme Court Decision, November 6, 1976, 76 Da 148, Unanimous En Banc Decision) Nevertheless, if the debtor, without knowing the limitation period has expired, voluntarily repays the debt, such repayment shall not be construed as an unjust enrichment but as a discharge of his or her moral obligation. (Article 744 of the Civil Act)

3.2. How to Deal with Failure to Make Repayment

3.2.1. Preparing Content-Certified Post

▶ Creditor's Claim for Repayment

- A creditor may claim for repayment when the repayment is due.

- Nevertheless, when a creditor demands for repayment, he or she may do so within the limitation period. (Article 162 of the Civil Act and subsequent Articles)

- ※ For detailed information with regard to the limitation period for repayment claim, please refer to the Section named "[Dealing with Failure to Make Repayment Restriction on Claim and Limitation Period Limitation Period for Monetary Claim](#)" in this article.

■ When the creditor may claim for repayment, he or she may do so orally, but usual practice is using content-certified post and delivery-certified post at a time.

- A "content-certified post" is an extra postal service provided by the post offices. With this service, the post office shall register and certify: (i) when the post was sent by the sender, and (ii) what the contents of the post were. (Article 15(3) of the Postal Service Act and Item (a) of Subparagraph 4 of Article 25(1) of Enforcement Rule thereof.)
- A "delivery-certified post" is an extra postal service provided by the post offices. With this service, the post office shall register and certify when the post was delivered to the recipient and notify the sender of such delivery. (Article 15(3) of the Postal Service Act and Item (c) of Subparagraph 4 of Article 25(1) of Enforcement Rule thereof.)

※ What would be the benefits of using the services of content-certified post and delivery-certified post?

- A content-certified post service is a public service that is provided for certifying when and where the contents of the post were sent by the sender.
- Although the content-certified post service cannot prove the truthfulness of the contents, it can be proved when and where such contents were sent by the sender and when such contents were delivered to the recipient.
- If the creditor claims for repayment of debt using the content-certified post service, the post office will prove that such claim was made to the debtor. It may be important evidence if an issue arises of whether the limitation period has expired.
- A delivery-certified post service can be used to prove when the recipient has duly received the content-certified post.

▶ Preparing Content-Certified Post

■ Criteria for Preparing Content-Certified Post

- In terms of a content-certified post, an original copy and the photocopies for registration shall be prepared on a 210 mm × 297 mm paper (hereinafter referred to as the "standard paper") pursuant to Article 7(6) of the Regulations on the Operation and Innovation of Administrative Tasks, and the photocopies for registration shall be prepared by photocopying the original copy. (Article 49(1) of the Enforcement Rules of the Postal Service Act)
- If the text or figures contained in the content-certified post have been amended, inserted, or deleted, such amendment, insertion, and/or deletion shall be expressly stated on the original copy, and the photocopies for registration shall be marked as "Deleted," "Amended," and "Inserted" in the margins of the form.

Furthermore, the form must bear the sender's seal, thumbprint, or signature (Article 50(1) of 「Enforcement Rule of the Postal Service Act」).

- With respect of the addresses and names of the sender and the recipient stated in the content-certified post and the envelope thereof, the photocopies for registration shall be identical to the original copy. (Article 51(1) of the Enforcement Regulations of the Postal Service Act)

■ How to Prepare Content-Certified Post

- You may write the letter according to the principle of 5W1H on A4 paper(s) so that the reader can easily understand the content.
- At the head of the letter, you should state names and addresses of the sender and the recipient.
- It is usual that three copies of the content-certified post are required.
 - One copy will be used as an original and the other two copies will be used for registration purposes.
- Names and addresses of the sender and the recipient stated on the envelope of the letter shall be identical to the names and addresses stated on the letter.

■ Actual Template for Preparing Content-Certified Post

[Template for Preparing Content-Certified Post]

Claim Letter for Repayment of Loan

1. It is a fact that on March 1, 2014, I, the undersigned, entered into a cash loan agreement with you. Under the agreement, I lent money in the sum of KRW 15,000,000 to you at an interest rate of thirty percent (20%) per annum as from March 1, 2014, and you undertook to repay the principal and the interest accrued on or before February 28, 2015.
2. Although your repayment is overdue and I have repeatedly requested you to make prompt repayment, you failed to make repayment of the principal and the interest accrued.
3. Please be notified that I will take legal action against you unless you make the repayment on or before May 31, 2015.

April 1, 2015

Sender: Dae-Han Kim (700101-123 0000)

OO-dong, OO-ho, OO APT, Yeonmujang 7-gil, Seongdong-gu, Seoul

Min-Kook Lee (650101-1340000)

OO Building, Jongno-1-gil, Jongno-gu, Seoul

▶ Procedure for Content-Certified Post

- Submitting Original Copy and Photocopies for Registration of Content-Certified Post
- A person who intends to send a content-certified post shall submit the original copy and two photocopies of it for registration. (Article 48(1) of the Enforcement Regulations of the Postal Service Act)

- If there should be multiple recipients, an original copy and two photocopies for registration of each original, all of which contain all recipients' names and addresses, shall be submitted. (Article 48(2) of the Enforcement Regulations of the Postal Service Act)
- When two photocopies for registration are submitted, the post office shall register them, return one of the two copies to the sender, and archive the other copy for a period of three years as from the day after the submission. (Article 48(3) of the Enforcement Regulations of the Postal Service Act)

■ Registration and Certifying Content-Certified Post

- When three copies of a content-certified post are submitted, the post office shall verify that two photocopies submitted are true and correct copies of the original copy, and register the content-certified post by impressing an official stamp on each of three copies. The stamp may include the date of posting and the name of the post office. (Article 52(1) of the Enforcement Regulations of the Postal Service Act)
- Between the original copy for sending, one photocopy for archiving in the post office, and the other photocopy for the sender, a postal date stamp shall be impressed over the joint edges of the copies (Article 52(2) of 「Enforcement Rule of the Postal Service Act」).
- If the document for content-certified post has two or more pages, an official stamp shall be impressed over the joint of every two pages. If any text of the document was amended, inserted or deleted in part or in full, an official stamp shall be impressed thereon. (Article 52(3) of the Enforcement Regulations of the Postal Service Act)
- When the content-certified post is registered, the sender shall put the original copy into an envelope, on which the names and addresses of the sender and the recipient are written or printed, and seal the envelope in the presence of the personnel of the post office. (Article 52(4) of the Enforcement Regulations of the Postal Service Act)

■ Registration Fee for Content-Certified Post

- The registration fee for content-certified post shall be charged in proportion to the number of pages that it contains. If a sheet of paper is double-sided, such sheet shall be calculated as having two pages. (Article 53(1) of the Enforcement Regulations of the Postal Service Act)
- The registration fee for content-certified post shall be KRW 1,300 for a page and additional fee of KRW 650 shall be charged for any subsequent page(s) (Article 12 of the Enforcement Decree of the Postal Service Act).

■ Application for Certificate of Content-Certified Post or Application for Inspection

- The sender or the recipient of a content-certified post may apply for a certificate of the content-certified post within 3 years as from the day after the date of posting, by showing his or her ID Card and/or the receipt issued by the post office. (Article 54(1) of the Enforcement Regulations of the Postal Service Act)
- Any applicant for a certificate of content-certified mail shall submit the registered copy, which is identical to the photocopy archived in the post office,

and the said post office shall issue a certificate of the content-certified mail after checking if the one that the post office keeps and the one that the applicant has submitted. However, in cases in which it is not possible for the applicant to submit the content-certified mail due to the loss thereof, etc., the post office may replicate the one that it keeps and issue a copy of the said content-certified mail (Article 54(2) of the Enforcement Regulations of the Postal Service Act).

- The sender or the recipient of a content-certified post may apply for an inspection of the registered copy of the content-certified post within 3 years as from the day after the date of posting by showing his or her ID Card and/or the receipt issued by the post office. (Article 55 of the Enforcement Regulations of the Postal Service Act)

Procedure for Delivery-Certified Post

■ Indication of Delivery-Certified Post

- A sender of a delivery-certified post shall clearly state "Delivery-Certified" on the place, which can be easily identifiable, of the envelope. (Article 57 of the Enforcement Regulations of the Postal Service Act)

■ Sending Delivery-Certified Post

- When a delivery-certified post is delivered to the recipient, the post office shall give a notice of delivery in writing to the sender. Notwithstanding this, such notice may be given electronically in the case where the sender had consented to such mode of notice. (Article 58 of the Enforcement Regulations of the Postal Service Act)

■ Application for Certificate of Delivery

- The sender or the recipient of a registered post may apply for a certificate of the delivery-certified post within 1 year as from the day after the date of posting by showing his or her ID Card and/or the receipt issued by the post office. Notwithstanding this, such application may be made within 3 years as from the day after the date of posting in the case where the registered post was a content-certified post. (Article 59 of the Enforcement Regulations of the Postal Service Act)

■ Fee for Delivery-Certified Post

- The fee for delivery-certified post shall be KRW 1,300 per envelope. (Article 12 of the Enforcement Decree of the Postal Service Act; ["Fees for Postal Service"](#))

※ I am the recipient of a content-certified post and/or a delivery-certified post. What should I do?

- In a money transaction, if the creditor sent a claim letter demanding your repayment of debt by way of content-certified post, such mode does not necessarily prove the truthfulness of the contents of the letter. Accordingly, you may not be prejudiced even if you have not raised any objection to the contents of the letter.
- However, given the fact that the creditor claimed for your repayment by way of content-certified post, he or she is likely to take further legal action against you. As such, it is advisable for you to take legal advice from a legal expert as to what measures should be taken to defend against the

creditor's claim ("Korea Legal Aid Corporation").

※ Content-Certified Post & Delivery-Certified Post Services Provided by Post Offices

- You may visit a post office during the office hours or visit www.epost.go.kr for 24 hours to use content-certified post service and/or delivery-certified service.
- For further detailed information, you may visit <http://service.epost.go.kr/> or call 1588-1300.

3.2.2. Application for Provisional Attachment

▶ Provisional Attachment

■ Provisional Attachment as Measure for Preservation

- A "measure for preservation" means a measure taken in order to freeze the debtor's property for the time being, until the right to sell the property by compulsory enforcement is obtained.
- A "provisional attachment" may be effected in order to preserve compulsory enforcement against the property of the debtor in respect of a monetary claim or a claim convertible into money. (Article 276 of the Civil Execution Act)

■ Effects and Advantages of Provisional Attachment

- A provisional attachment may have an indirect effect of compelling the debtor to make repayment immediately, and also have a direct effect of interrupting the limitation period.
- The limitation period shall be interrupted by a provisional attachment. (Article 168 of the Civil Act)

※However, a provisional attachment shall have no effect of interrupting the limitation period if annulled on the application of the claimant or by reason of non-compliance with the law. (Article 175 of the Civil Act)

※A provisional attachment, if not effected against the person in whose favor the limitation period is running, shall not have the effect of interrupting the limitation period unless and until such person has been notified thereof. (Article 176 of the Civil Act)

■ How to Apply for Provisional Attachment

- Procedural matters in relation to a provisional attachment shall be under the exclusive jurisdiction of the District Court having jurisdiction over the location of the property to be provisionally attached, or under that of the court having jurisdiction over the merits of the principal claim. (Articles 278 and 21 of the Civil Execution Act)
- An application form for a provisional attachment shall provide for the following items (Article 279(1) of the Civil Execution Act):
 - The personal details of the applicant and his or her legal representative(s) if any (Article 249(1) of the Civil Procedure Act)

- Amount of money claimed (N.B: If the claim is not a monetary claim, such claim shall be converted into the money.)
- Material facts that may be grounds for a provisional attachment order. (Article 277 of the Civil Execution Act)

※You may find the application form for a provisional attachment at: <[Korea Legal Aid Corporation's website-legal information-legal template](#)>.

- As an order of provisional attachment may be issued without holding any pleadings (Article 280(1) of the Civil Execution Act), amount of money claimed and the grounds for a provisional attachment order shall be stated in the application form. (Article 279(2) of the Civil Execution Act)

Decision as to Provisional Attachment

■ Decision as to Provisional Attachment

- The court shall issue an order of a provisional attachment where the application is considered to be legitimate and satisfy the requirements for the provisional attachment. (Article 280 of the Civil Execution Act)

■ Enforcement of Provisional Attachment Order

- A provisional attachment order shall take effect immediately.
 - Accordingly, any enforcement of a provisional attachment order shall be carried out without a written order being delivered. (Article 292(1) of the Civil Execution Act)
- If there is a provisional attachment order, the creditor shall enforce the order within two (2) weeks as from the date of the order. (Article 292(2) of the Civil Execution Act)
 - The creditor may apply for a provisional attachment against immovable property, ship, or movable property that is owned by the debtor. (Articles 293-297 of the Civil Execution Act)

■ Effect of Enforcing Provisional Attachment Order

- If a provisional attachment order is enforced, the debtor cannot dispose of the subject matter.
- If the debtor arbitrarily disposes of his or her property, which is subject to a provisional attachment order, such disposal shall have no effect against the beneficiary of the provisional attachment order (i.e. the creditor).
- If the court holds in favor of the creditor that the creditor becomes entitled to a right of enforcement after a provisional attachment order was issued, the provisional attachment shall be transferred as an attachment.

※For detailed information regarding a provisional attachment, you may refer to the "[Application for Provisional Attachment](#)" page of this website.

3.2.3. Procedure for Payment Demand

▶ Purpose of Procedure for Payment Demand

■ Purpose and Advantages of the Payment Demand Procedure

- The "payment demand procedure" is one of the primary civil dispute resolution processes involving the court, alongside litigation and mediation procedures. It has the following advantages (refer to the Korea Court's Electronic Civil Petition Center - Payment Demand Procedure):
 - The court issues a payment order based solely on a document review.
 - It provides a swift solution to disputes.
 - The various costs paid by the creditor to the court are economical.
 - Once the payment order is confirmed, it has the same effect as a final judgment.
- ※ For detailed information on the payment demand procedure, you can refer to the <Korea Court's Electronic Civil Petition Center - Payment Demand Procedure>.

■ Advantages of Procedure for Payment Demand

- It is more advantageous for the creditor to take procedure for payment demand rather than to take civil litigation procedure because in the procedure for payment demand, (i) the parties are not required to appear before the court; (ii) the parties do not need to hold any pleadings; and (iii) the fee for the revenue stamp is inexpensive. Accordingly, the procedure for payment demand is simpler, more expeditious and more economical than the civil litigation procedure.

▶ Application for Payment Order

■ Requirements for Payment Order

- An application for a payment order shall be based on a claim in relation to a fixed amount of money, its substitute, or other negotiable security. (Article 462 of the Civil Procedure Act)
- The applicant shall be the creditor who has the repayment claim. (Article 462 of the Civil Procedure Act)
- The payment order shall be limited to where a service may be effected in the Republic of Korea save as to such service by public notice. (Article 462 of the Civil Procedure Act)

■ Court Having Jurisdiction

- Procedural matters in relation to a payment demand and the payment order shall be under the exclusive jurisdiction of one of the following courts. (Article 463 of the Civil Procedure Act)
 - The District Court in the location of the debtor's registered address (Articles 463 and 3 of the Civil Procedure Act)
 - The debtor's workplace (Article 7 of the Civil Procedure Act)
 - The debtor's place of abode or place of obligation performance (Article 8 of the Civil Procedure Act)
 - The place where the relevant bills or checks were used as payment method(s) (Article 9 of the Civil Procedure Act)
 - The office or business place (Article 12 of the Civil Procedure Act)

·The place where the tort was committed (Article 18 of the Civil Procedure Act)

■ Application Procedure

- The provisions relating to a civil proceeding shall apply to an application for a payment order in so far as they are not contrary to the nature of the payment order. (Article 464 of the Civil Procedure Act)
- Accordingly, the creditor may commence a procedure for payment demand by lodging an application for a payment order to the court having jurisdiction. (Article 248 of the Civil Procedure Act)

※You may find the application forms for a payment order at: [<Online application center of Court of Korea-How to use-Templates>](#)

■ Denial of Application

- If an application for a payment order was not based on a claim in relation to a fixed amount of money, its substitute, or other negotiable security (Article 462 of the Civil Procedure Act); or if an application is lodged to the court that has no jurisdiction (Article 463 of the Civil Procedure Act); or if the court considers that the application evidently lacks a justifiable ground, the court must deny such application. When a payment order is not issuable against part of a claim, the same shall also apply to such part. (Article 465(1) of the Civil Procedure Act)
- No appeal shall be made against such denial by the court. (Article 465(2) of the Civil Procedure Act)

▶ Decision as to Payment Order

■ Case Where Payment Order Is Not Issued

- A creditor may, upon receipt of an order from the court to rectify the debtor's address, file an application for commencing civil litigation proceedings. (Article 466(1) of the Civil Procedure Act)
- When it is impossible to serve the payment order without resorting to a service by public notice, or when it must be served to a foreign country, the court may place the case to civil litigation proceedings at its own discretion. (Article 466(2) of the Civil Procedure Act)
- No appeal shall be made against such decision by the court. (Article 466(3) of the Civil Procedure Act)

■ Case Where Payment Order Is Issued

- A payment order shall be issued ex parte without interrogating the debtor. (Article 467 of the Civil Procedure Act)
- A payment order shall contain an entry of the parties, their legal representatives, the gist and counts of the claim, and an additional entry to the effect that the debtor is entitled to raise an objection within two weeks from the date of receiving the service of the payment order. (Article 468 of the Civil Procedure Act)
- A payment order shall be served on the parties. (Article 469(1) of the Civil Procedure Act)

■ Objection

■ Objection

- The debtor may raise an objection against the payment order. (Article 469(2) of the Civil Procedure Act)

■ Effect of Objection

- When a debtor has raised an objection within two weeks from the date of receiving the service of the payment order, such order shall lose its effect within such extent. (Article 470(1) of the Civil Procedure Act)
- The period for an objection shall be an invariable period. (Article 470(2) of the Civil Procedure Act)

※Unlike other statutory periods, the court may fix an additional period to an "invariable period" (Article 172(2) of the Civil Procedure Act), although the invariable period shall be a fixed period which cannot be extended or shortened by the court (Article 172(1) of the Civil Procedure Act). Notwithstanding this, where a party could not observe the invariable period due to any cause not attributable to him or her, the party may subsequently complete the procedural acts that he or she failed to follow, within two weeks from the date on which such a cause has been extinguished. (Article 173 of the Civil Procedure Act)

■ Denial of Objection

- The court shall, when admitting that an objection is unlawful, deny it by its ruling. (Article 471(1) of the Civil Procedure Act)
- An immediate appeal may be made against such ruling of denial. (Article 471(2) of the Civil Procedure Act)

■ Shifting to Litigation

- If a creditor, upon receipt of an order from the court to rectify the debtor's address, files an application for commencing civil litigation proceedings (Article 466(1) of the Civil Procedure Act), or if the court places the case to civil litigation proceedings at its own discretion (Article 466(2) of the Civil Procedure Act), the civil litigation proceedings shall be deemed to have been commenced when an application for a payment order was lodged. (Article 472(1) of the Civil Procedure Act)
- Where a debtor has raised a lawful objection against the payment order, it shall be deemed that civil litigation proceedings have been commenced for the value of the subject matter of the claim, from which an objection has been raised, when an application for a payment order was lodged. (Article 472(2) of the Civil Procedure Act)

■ Dispositions Following Shifting to Litigation

- Where it is deemed that civil litigation proceedings have been commenced under Article 472 of the Civil Procedure Act, the court that has issued the payment order shall order the creditor, with fixing a reasonable period, to supplement the stamps in the amount obtained by deducting the amount of stamps that have been put on when the application for civil litigation proceedings or for payment order has been lodged, from the amount of stamps to be put on a complaint in commencing civil litigation proceedings. (Article 473(1) of the Civil Procedure Act)

- When a creditor fails to supplement the stamps within the reasonable period fixed by the court, the court that has issued the payment order shall deny an application for the payment order by its ruling. An immediate appeal may be made against such ruling. (Article 473(2) of the Civil Procedure Act)
 - If the stamps are supplemented, a court officer such as a junior administrative officer of the court, shall promptly forward the litigation record to the court having jurisdiction. In such case, if the case falls under the jurisdiction of the collegiate panel, the court officer such as the junior administrative officer, shall promptly forward the litigation record to the collegiate panel of the court having jurisdiction. (Article 473(3) of the Civil Procedure Act)
 - In the case where a procedure for payment demand is shifted to civil litigation proceedings, the cost of demanding procedures shall constitute part of the costs of civil litigation proceedings. (Article 473(4) of the Civil Procedure Act)
- Effect of Payment Order
- When no objection has been raised against a payment order, or an objection has been withdrawn, or a ruling of denial has become final and conclusive, the said payment order shall take the same effect as a final and conclusive judgment. (Article 474 of the Civil Procedure Act)

3.2.4. Civil Litigation

▶ Purpose of Civil Litigation

■ Purpose of Civil Litigation

- Purpose of "civil litigation" is to protect any person's right and to preserve law and order of the country.
- A creditor shall be entitled to claim against the debtor for his or her repayment when it is due, and if the debtor fails to make such repayment, the creditor may commence legal proceedings against the debtor.
- The type of litigation in such a circumstance shall be a Monetary Claim for Payment.

※If the claim amount is KRW 30 million or less, you should preferably use the small claim procedure

■ Jurisdiction of Civil Litigation

- Civil litigation proceedings shall be issued before the court in the location of the defendant's registered address. However, if such address is unknown to the claimant, the location may be the defendant's place of abode secondarily, and if such place of abode is also unknown to the claimant, the location may be the defendant's address that was last known to the claimant. (Article 3 of the Civil Procedure Act)
- Nevertheless, if the civil litigation proceedings are concerned with a property right against the defendant (e.g. a claim for repayment under a Consumer Cash Loan Agreement), the claimant may issue the claim before the court located in the place of the subject matter of the claim or those of the security, or any seizable property of the defendant. (Article 11 of the Civil Procedure Act)

※You may find locations of the Courts at: <[Court of Korea-courts](#)>.

■ Issuing Civil Litigation Claim

■ Submitting Statement of Claim

- Civil litigation claim shall be issued by submitting a statement of claim (Article 248(1) of 「Civil Procedure Act」).

■ Preparing Statement of Claim

- On a statement of claim, personal details of the parties, purpose of claim, and grounds for claim shall be stated.

※You may find a template for a statement of claim at: <[Online application center of Court of Korea-How to use-Templates](#)>.

- In the section of "purpose of claim (which is equivalent to draft judgment)," the claimant should state why he or she issues a claim. Templates for such statement are as follows:

[Template for a Monetary Claim for Payment]

1. The Defendant shall pay KRW0000 and interest accrued thereon at the rate of 20% per annum as from the date when the Defendant received a copy of this Statement of Claim up to the date when the defendant makes such payment.
2. The litigation cost shall be borne by the Defendant.
3. Paragraph number 1 above may be enforced provisionally.

The Claimant hereby requests the court to hold as above.

- "Grounds for claim" means any reason why such legal relationship between the claimant and defendant has been established. A template for grounds for claim is as follows:

[Template for a Monetary Claim for Payment]

1. On March 1, 2008, the Defendant lent KRW0000 to the Claimant for a period of one year at an interest rate of 10% per annum.

■ Payment of Revenue Stamp

- In a civil litigation proceeding, a revenue stamp with a face value based on the claim amount shall be attached to a Statement of Claim. (Article 1 of the Act on the Stamps Attached for Civil Litigation, etc.)
- The face value of revenue stamp to be attached to the Statement of Claim shall be as follows. (Article 2 of the Act on the Stamps Attached for Civil Litigation, etc.):

Claim Amount in Civil Proceedings	Face value of revenue stamp to be attached to the Statement of Claim
Less than KRW 10 million	0.50% of the claim amount
KRW 10 million or more, but less than KRW 100 million	0.45% of the claim amount plus KRW 5,000
KRW 100 million or more, but less than KRW a billion	0.40% of the claim amount plus KRW 55,000
KRW 1 billion or more	0.35% of the claim amount plus KRW 555,000

- Notwithstanding the above, the claimant may make payment for court fees to any designated bank or to any other financial institution by cash, credit or debit card instead of attaching a revenue stamp. (Article 1 of the Act on the Stamps Attached for Civil Litigation, etc.; Articles 27 and 28(2) of the Regulations on the Stamps Attached for Civil Litigation, etc.)

Trial of Small Claims

■ Definition of Trial of Small Claims

- A "trial of small claims" means a trial dealing with a small claim which is for a fixed amount of money, its substitute, or other negotiable security in the sum of KRW 30 million or less.
- If the claim amount is KRW 30 million or less and the claim is based on a Cash Loan Agreement, it is mandatory to follow the small claims procedure. (Article 2(1) of the Trial of Small Claims Act; Article 1(2) of the Regulations of the Trial of Small Claims)
- As the small claims procedure is a special procedure followed at the trial court, you shall follow normal civil litigation procedure if you choose to appeal or re-appeal against the judgment of the court below.

※For further detailed information with regard to a trial for small claims, please visit the "[Small Claim Proceedings](#)" section in this website.

3.2.5. Compulsory Enforcement

Compulsory Enforcement

■ Purpose of Compulsory Enforcement

- A "compulsory enforcement" is a compulsory measure or a procedure taken by the government by way of exercising its authority to satisfy any lawful claim.
- A compulsory enforcement procedure can be described as a follow-up procedure, which actually and finally resolves the dispute, whereas a judgment procedure can be described as a procedure that conceptually resolves the dispute by way of ascertaining any right of the party.

Granting Enforcement Order

■ Purpose of Right of Enforcement

- A "right of enforcement" means a right that is required to commence a compulsory enforcement procedure. The public authority may grant such right in the form of a written order stipulating any existence and scope of such right of enforcement and granting authority to exercise such right thereon.
- In relation to a claim for repayment of loan, types of rights of enforcement are as follows (Articles 24, 56, and 291 of the Civil Execution Act):
 - √ A final and conclusive judgment as to a claim for repayment of loan
 - √ A final and conclusive judgment as to provisional enforcement order issued in favor of a claim for repayment of loan
 - √ A fixed payment order
 - √ A document certified by a notary public, which contains the debtor's consent as to the compulsory enforcement of a claim, which is in relation to a fixed amount of money, its substitute, or other negotiable security
 - √ Binding agreements that have the same legal force as a final and conclusive judgment such as a settlement agreement by court mediation or a letter of acceptance of claim
 - √ A provisional attachment order

■ Issuing Enforcement Document

- A compulsory enforcement can be done only with an original judgment (hereinafter referred to as an original "Enforcement Document"). (Article 28(1) of the Civil Execution Act)
- An Enforcement Document shall, upon an application, be issued by a court officer such as a junior administrative officer of the trial court. However, if the litigation record is kept in an appellate court, the court officer such as the junior administrative officer of the appellate court shall issue such Enforcement Document. (Article 28(2) of the Civil Execution Act)

※You may find the application forms for issuing an Enforcement Document at:
[<Online application center of Court of Korea-How to use-Templates>.](#)

■ Exceptions for Issuing Enforcement Document

- Although issuing an Enforcement Document is required in principle for all rights of enforcement to be exercised, such document is not required if there is a fixed payment order, a final and conclusive judgment in the form of a recommendation by the court mediation, or a provisional attachment order. (Articles 58(1) and 292 of the Civil Execution Act; Article 5-8(1) of the Trial of Small Claims Act)

Procedure for Disclosure of Property

■ Purpose of Procedure for Disclosure of Property

- A "procedure for disclosure of property" may be taken by a creditor where he or she intends to enforce the right of enforcement. Pursuant to this procedure, if the creditor cannot locate any property of the debtor, the court may order the debtor to submit a sworn statement including his or her property list and ask public institutions or financial institutions about information regarding such properties to verify the list. If the debtor does not appear on the date for submission, or does not submit the list, he or shall be registered on the List of

Debtors in Default.

- A procedure for disclosure of property mainly consists of the following three parts: disclosure of debtor's property, verification of property, and registration on the List of Debtors in Default.

■ Declaration for Disclosure of Debtor's Property

- A creditor who is entitled to commence compulsory enforcement based upon the right of enforcement aiming at payment of money, may lodge an application for a disclosure of debtor's property before the court in the location of the debtor's general forum. (Article 61(1) of the Civil Execution Act)
- An application shall be in writing and contain the followings: names of the creditor, the debtor and their legal representatives (if any); amount of the debt in default; purpose of application; and grounds for application. (Article 25(1) of the Regulations of Civil Execution)

※ You may find the application forms for disclosure of property at: [<Online application center of Court of Korea-How to use-Templates>](#).

■ Application for Registering on List of Debtors in Default

- In the case where after a creditor is entitled to a right of enforcement, if a debtor fails to make repayment within six (6) months from such entitlement, or if the debtor refuses to appear before the court without any reasonable excuse or refuses to take an oath, or if the debtor fails to submit his or her property list or behaves in an uncooperative manner, the creditor may apply for registering the debtor's name on the List of Debtors in Default. (Article 70(1) of the Civil Execution Act)

※ You may find the application forms for registering on List of Debtors in Default at: [<Online application center of Court of Korea-How to use-Templates>](#).

■ Verification of Property

- The court having jurisdiction over the procedure for disclosure of property may, upon application by the creditor, ask public institutions, financial institutions or other organizations, which control the computer networks on the property and credit of the individuals, about information regarding such properties to verify the list of properties in one of the following circumstances (Article 74 of the Civil Execution Act):
 - Where a disclosure order is unable to be served to the debtor by reason of unknown address even after the creditor has received an order from the court to rectify the debtor's address
 - Where the properties on the list, which was provided by the debtor in accordance with the procedure for disclosure of property, fall short of the satisfaction of the enforcement
 - Where the debtor refuses to appear before the court without any reasonable excuse or to take an oath, or where the debtor fails to submit his or her property list (e.g. submission of falsified property list).

※ You may find the application form for disclosure of property at: [<Online application center of Court of Korea-How to use-Templates>](#).

Seizure of Debtor's Property & Judicial Sale

Types of Compulsory Enforcement

- A compulsory enforcement may be classified according to the subject matter of such enforcement as follows: an enforcement against an immovable (Articles 78 to 171 of the Civil Execution Act); an enforcement against a quasi-immovable such as a ship (Articles 172 to 186 of the Civil Execution Act); an enforcement against an automobile, a construction machinery, or an aircraft (Article 187 of the Civil Execution Act); and an enforcement against a movable which is tangible or receivable. (Articles 188 to 274 of the Civil Execution Act)

Enforcement against Immovables

- The court having jurisdiction may, upon application by the creditor, take into effect the procedure for compulsory enforcement against an immovable. (Articles 78(1) and 79 of the Civil Execution Act)
- A compulsory enforcement against an immovable shall be effected by means of a compulsory auction or a compulsory administration. (Article 78(2) of the Civil Execution Act)
 - A "compulsory auction" is a judicial sale by taking effect the procedure for compulsory enforcement. The process for a compulsory auction shall be as follows: ①Initiating a compulsory auction (Article 83 of the Civil Execution Act), ②Preparing a judicial sale (Article 84 of the Civil Execution Act), ③ Giving a public notice regarding date of sale and date of decision (Article 104 of the Civil Execution Act), ④Taking procedure for judicial sale (Article 72 of the Regulations of the Civil Execution), ⑤Receiving sale proceeds (Article 142 of the Civil Execution Act), and ⑥Distribution (Article 145 of the Civil Execution Act)
 - By a "compulsory administration", the court shall prohibit the debtor from interfering in administrative affairs and also from disposing of any profits from the immovable and shall order that the profits be paid to the creditor for the satisfaction of debt. The process for a compulsory administration shall be as follows: ①Ruling on commencing compulsory administration (Article 164 of the Civil Execution Act); and ②Distribution (Article 169 of the Civil Execution Act).
 - An application for a compulsory enforcement or for a compulsory administration shall be made in writing, and the creditor shall fill out the application form with the details of the creditor and the debtor, the subject property, amount of debt, and any grounds for the application including a right of enforcement. (Article 81 of the Civil Execution Act)

※ You may find the application forms for a compulsory auction of an immovable at: [Online application center of Court of Korea-How to use-Templates](#).

Compulsory Enforcement against Quasi-Immovables

- Apart from immovables, any one of the following movable properties, which can be registered, shall be the subject matter for a compulsory enforcement as quasi-immovables: a ship (Articles 172 to 186 of the Civil Execution Act); an aircraft, an automobile or construction machinery. (Article 187 of the Civil Execution Act)

■ Compulsory Enforcement against a Movable Which Is Tangible or Receivable

- A compulsory enforcement is also available against a movable that is tangible or against the debtor's receivable from a third person. (Articles 188 to 274 of the Civil Execution Act)
- The process for a compulsory enforcement against a movable that is tangible shall be as follows: ①Seizure (Article 189 of the Civil Execution Act); ②A tender or an auction sale (Article 199 of the Civil Execution Act); and ③ Distribution (Article 155 of the Regulations of Civil Execution).
- The process for a compulsory enforcement against the debtor's receivable shall be as follows: ①Seizure (Article 223 of the Civil Execution Act); and ②A collection order or an assignment order (Article 229 of the Civil Execution Act).

※ You may find the application forms for a seizure or an assignment order at: <[Online application center of Court of Korea-How to use-Templates](#)>.

■ Satisfaction of Creditor

■ Enforcement against Immovables or against Quasi-Immovables

- The following creditors shall be entitled to receive a distribution at the same time: (i) Execution creditors who have declared a bid not later than the completion period for demanding a distribution; (ii) Creditors who have demanded a distribution not later than the completion period for demanding a distribution; and (iii) Provisional attachment obligees who have been registered prior to the registration of a decision on commencing the first auction. (Article 148 of the Civil Execution Act; Article 185 of the Regulations of the Civil Execution)
- When the sale proceeds from a compulsory enforcement against an immovable are insufficient to satisfy all creditors taking part in the distribution, the court shall make a distribution in the priority under the Civil Act, the Commercial Act, and any other relevant Acts. This shall apply mutatis mutandis to a compulsory enforcement against a quasi-immovable. (Articles 145(2) and 172 of the Civil Execution Act)
- Except for the costs for enforcement, which is in the highest priority (Article 53(1) of the Civil Execution Act), the next priority for distribution shall be as follows:
 1. A claim for up to three months' pay for each employee that was unpaid; or a claim for a retirement allowance/accident compensation allowance for the last three years; and a claim for refund of small amount of deposit in relation to a residential property or to a commercial building;
 2. Taxes and public dues charged to the property;
 3. General taxes, which take precedence over any secured right;
 4. A mortgage claim, a claim secured by a provisional registration, Chonse(gwon)(right of registered lease on deposit basis), or a registered leasehold, a claim for leasehold deposit having a certification of a fixed date for the deposit in relation to a residential property or a commercial building, all of which were established after taxes that were due under the law;

5. Pay, retirement allowance, accident compensation allowance, or any other claim in relation to labor relationship;
6. Any taxes that are due after a mortgage, or Chonse(gwon(right of registered lease on deposit basis) that has been established;
7. Any claim for a medical insurance, a pension insurance, an employment insurance, or an industrial accident compensation insurance; and
8. General claims

※As a claim right for repayment of a loan constitutes a general claim, its priority shall be number 8.

※If an immovable is under a compulsory administration, the costs for administration of immovables shall be reimbursed from the profits and any taxes and other public imposts to be imposed on the immovables shall be deducted before paying the creditors any balance of the profits. (Article 169(1) of the Civil Execution Act)

■ Compulsory Enforcement against a Movable Which Is Tangible

- The creditor may apply in writing for an enforcement against a movable which is tangible (Article 4 of the Civil Execution Act), and such procedure shall be effected by an enforcement officer who seizes such movable. (Article 189(1) of the Civil Execution Act)
- The enforcement officer shall sell the seized movable at a reasonable price. (Article 199 of the Civil Execution Act)
- A creditor who applied for the enforcement shall be repaid by receiving the sale proceeds. (Articles 217 to 221 of the Civil Execution Act)

■ Compulsory Enforcement against a Receivable

- A compulsory enforcement against a receivable arises where the debtor has a receivable from a third person. In this circumstance, the creditor may apply for a compulsory enforcement against the receivable. (For example, if B owes a debt in the sum of KRW 100 million to A whereas B has a receivable in the sum of KRW 50 million from C, A may apply for a compulsory enforcement against such receivable.)
- When applying for an enforcement based on a monetary claim, the creditor shall make an application in writing (Article 4 of the Civil Execution Act), and not only the creditor, the debtor, the third person debtor, and right of enforcement (Article 159 of the Regulations of the Civil Execution), but also types and amount of money involved in the seizure shall be expressly stipulated in the application form. (Article 225 of the Civil Execution Act)
- A judicial sale and payment of the sale proceeds shall be done by a collection order and an assignment order.

※If the court authorizes the creditor to collect the debt, the creditor shall be repaid by collecting the seized property from the third person debtor. In this circumstance, the creditor is obliged to report to the court of his or her receipt once such repayment has been made. (Article 236(1) of the Civil Execution Act)

※Where an assignment order has become final and conclusive, it shall be deemed that the debtor has reimbursed his or her debts when the assignment order was

served to the third person debtor. (Article 231 of the Civil Execution Act)