

KOREA

COMPOSITION ACT

Act No. 997, Jan. 20. 1962
Amended by Act No. 5518, Feb. 24. 1998

CHAPTER I GENERAL PROVISIONS

Article 1 (Meaning of Composition)

For the purpose of this Act, the term "composition" shall mean a compulsory composition for the purpose of prevention of bankruptcy.

Article 2 (Effectuation Time of Composition)

A composition procedure shall enter into force at the time of determination of its commencement.

Article 3 (Jurisdiction over Composition Matter)

Articles 96, 98, and 98-2 of the Bankruptcy Act shall apply mutatis mutandis to the jurisdiction over a composition matter. [This Article Wholly Amended by Act No. 5518, Feb. 24, 1998]

Article 4 (Redemptive Right)

Articles 79 through 82 and 83 (1) of the Bankruptcy Act shall apply mutatis mutandis to cases, where the commencement of composition be made.

Article 5 (Right of Offset)

Articles 89 through 95 of the Bankruptcy Act shall apply mutatis mutandis to the offset right of a composition creditor.

Article 6 (Application for Bankruptcy, Presumption of Adjudication)

In application of the provisions of the two preceding Articles, an application for the commencement of composition shall be considered as an application for bankruptcy, and a commencement of composition shall be considered as the adjudication of bankruptcy.

Article 7 (Appeal)

- (1) A person interested in the adjudication may make an immediate appeal of the adjudication regarding composition only in cases where a special provision concerning it exists in this Act.
- (2) The time limit of appeal under the provisions of the preceding paragraph shall be fourteen days from its public notification in cases where the adjudication is publicly notified.

Article 8 (Registration, Record on Composition)

Articles 109, 110, 112 and 114 of the Bankruptcy Act shall apply mutatis mutandis to the commencement of composition, the cancellation of its decision, or recession of composition, and to cases where decision of the approval or disapproval of composition or cancellation of composition has become final and conclusive.

Article 9 (Transfer to Bankruptcy Proceeding)

- (1) If recession of composition has been decided, or if decision of disapproval or the cancellation of composition has become final and conclusive, the court shall make a adjudication of bankruptcy ex officio, except in the case where causes of bankruptcy do not exist.
- (2) If the adjudication of bankruptcy has been made pursuant to the provisions of the

preceding paragraph, the entrustment of registration or record under the provisions of the preceding Article shall be made with the entrustment of registration or record of bankruptcy.

Article 10 (Presumption as Suspension of Payment and Application of Bankruptcy)

Where the adjudication of bankruptcy is made pursuant to the provisions of paragraph (1) of the preceding Article, an application for the commencement of composition or the cancellation of composition, or conduct of applicant for composition falling under the fraud in insolvency in applying Part One of the Bankruptcy Act, shall, if an application for suspension of payment or bankruptcy is not made before that time, be considered as an application for suspension of payment or bankruptcy, and obligation for composition and cost of composition shall be the foundation obligation.

Article 11 (Provisions which Apply Mutatis Mutandis)

(1) Articles 2, 3, 100 through 102, 104 through 108 and 115 of the Bankruptcy Act shall apply mutatis mutandis to the composition procedure.

(2) In case where there is no particular provisions on composition procedure in this Act, the Civil Procedure Act shall apply mutatis mutandis.

Article 11-2 (Duty and Power of the Administrative Committee)

(1) If the administrative committee pursuant to Article 93-2 of the Company Reorganization Act (hereinafter referred to as the "administrative committee") has been established, the administrative committee shall exercise its duty prescribed by law or by the court, among the duties set forth in the following subparagraphs, regarding the composition procedure, under the directions of the court.

1. Presentation of the opinion regarding the designation of preservative administrators, liquidation commissioner, and administrators;
2. Supervision and evaluation regarding the performance of duty of preservative administrators, liquidation commissioner, administrators;
3. Inspection and arbitration regarding composition conditions;
4. Providing information about the creditor and arbitration of opinions; and/ or
5. Any other business regarding the composition procedure.

(2) The administrative committee may mandate a part of its duties to a member of the administrative committee (hereinafter referred to as the "administrative member") in favor of the effective performance of its duties in each item under the preceding Paragraph (1) effectively.

(3) In cases where the administrative member performing its duty pursuant to the provision of Paragraph (2) above is deemed to be inappropriate to perform such duty, the court may issue an order to the administrative committee to mandate such duty to another administrative member.

(4) The court may mandate a part of permitted business regarding composition procedure to the administrative member. In this case, the scope and procedure of the mandate shall be provided by the regulations of the Supreme Court.

(5) The provision of Article 54-3 of the Company Reorganization Act shall apply mutatis mutandis to the business performed by an administrative member pursuant to the provision of

Paragraph (4) above.

(6) In the case where the administrative committee is not established, provisions related with the administrative committee, among Article 13 (5), proviso of Article 19-2, latter part of Article 20 (1), Article 20 (2) and (3), Article 21 (1) and Article 27 (1), shall not be applied thereto. [This Article Newly Inserted Act No. 5518, Feb. 24, 1998]

CHAPTER II COMMENCEMENT OF COMPOSITION

Article 12 (Requirement of Commencement of Composition)

(1) In cases where there exists a fact as the ground of bankruptcy or threatens to occur such fact, a debtor may file an application for commencement of composition; provided, that a director or an equivalent person, in cases of a juristic person, shall consent thereto.

(2) A commencement of composition shall not be applied on inherited property.

Article 13 (Application for Commencement of Composition)

(1) In applying for commencement of composition, the method of repayment, or in furnishing security, the security and any other conditions of composition shall be reported to the court.

(2) The applicant for composition shall produce a detailed statement, which can show the situation of the assets, and a list of creditors and debtors simultaneously with the application. In case where the production is not made simultaneously with the application, these shall be produced without delay thereafter.

(3) The applicant for composition may change composition conditions with the permission of the court.

(4) In deciding permission and non-permission of Paragraph (3) above, the court shall listen to the opinion of a liquidation commissioner under the provision of Article 21 and consider the will of an interested party such as a composition creditor, etc..

(5) The court may cause to furnish personal guarantee and mortgage property (including security over corporate stock) on composition conditions, listening to the opinion of the administrative committee and the council of creditors pursuant to Article 49-2.

Article 14 (Prepayment of Expenses)

Where the commencement of composition is applied, the expenses of composition, which the court finds as reasonable, shall be paid in advance.

Article 15 (Commencement of Composition and Non-permission of Application for Bankruptcy)

After the commencement of composition has been decided, an application for bankruptcy may not be filed.

Article 16 (Adjudication of Bankruptcy and Non-permission of Application for Composition)

After the bankruptcy has been adjudicated, an application for a commencement of composition may not be filed.

Article 17 (Suspension of Bankruptcy Proceeding)

If an application for a commencement of composition and a bankruptcy are made, the bankruptcy proceedings shall be suspended.

Article 18 (Cases where Application shall be Dismissed)

In cases falling under any of the following subparagraphs, the court shall dismiss the application for the commencement of composition:

6. If the application is made for the avoidance of bankruptcy;
7. If the whereabouts of the applicant for composition is unknown;
8. If any conduct falling under the fraud in insolvency is deemed to have been made;
9. If the condition of composition is contrary to any Act; or
10. If the condition of composition is contrary to the general interests of composition creditors.

Article 19 (Cases where Application may be Dismissed)

In cases falling under any of the following subparagraphs, the court may dismiss the application for the commencement of composition:

1. If the expenses of composition procedure are not paid in advance;
2. If the composition has been rejected in the meeting of creditors;
3. If an application for the commencement of composition or a tender of composition has been withdrawn;
4. If a disapproval of composition has been decided; or
5. If a cancellation of composition has been decided.

Article 19-2 (Exceptions to Dismissal of Application of Stock Company)

In cases where the application for the commencement of composition of a stock company falls under any of the following subparagraphs, the court may dismiss such application; provided, that in case falling under the subparagraph 2, the court shall listen to the opinion of the administrative committee and the council of creditors:

1. If the cause of the financial bankruptcy of a stock company, which is a debtor, arises from the misappropriation or secretion of company property, or the intentional insolvent management, by a director, an equivalent person, or an executive manager.
2. If it is unreasonable to follow the composition procedure, taking into consideration of general circumstances such as where the scale of asset or indebtedness of a debtor is large, or the number of an interested party, such as creditors, is large, etc.. [This Article Newly Inserted by Act No. 5518, Feb. 24, 1998]

Article 20 (Preservative Measure and Preservative Administrator)

(1) The court may order provisional attachment, provisional disposition or any necessary preservative measure on the debtor's property upon the request of any interested person or ex officio before the decision of the commencement of composition.

(2) The court may, if the court deems it necessary for the measures under the provision of Paragraph (1) above, appoint a preservative administrator, listening to the opinion of the administrative committee.

(3) The court may modify or cancel the measures under the provisions of the preceding Paragraphs (1) and (2), listening to the opinion of the administrative committee.

(4) The adjudication under the provisions of the preceding Paragraphs (1) through (3) shall be made in the form of decision. An immediate appeal may be filed against this decision.

(5) The immediate appeal under the provision of Paragraph (4) above shall not have the effect of the suspension of execution.

(6) In cases where the measures under the preceding Paragraphs (1) through (3) has been taken, the court shall make a request of a registration to a register office which has jurisdiction over the objects of the rights to be disposed or to a register office governing the location of the main office (in case the main office is located outside Korea, to a register office governing the location of the principal office of business in Korea), ex officio without delay.

(7) The provision of Paragraph (6) above shall apply mutatis mutandis to what is recorded as the assets of a debtor.

(8) In making a request of registrations or records under the provisions of the preceding Paragraph (6) and (7), a transcript or abridged copy of the determination note shall be attached.

(9) The applicant for composition shall not withdraw the application for commencement of composition without the permission of the court after the measures under Paragraph (1) above is taken.

Article 21 (Appointment of Liquidation Commissioner)

(1) The court shall appoint a liquidation commissioner to make any necessary investigations into the debtor's assets, books, and composition conditions and to produce his written opinion of whether or not the composition should be commenced, listening to the opinion of the administrative committee, within a definite period of time.

(2) The liquidation commissioner may appoint an expert witness at his own discretion.

(3) The period for the investigation and production of the written opinion by a liquidation commissioner shall not exceed two (2) months after the day appointed; provided, that in unavoidable circumstances such as the resignation of a liquidation commissioner the period may be extended within the extent of one (1) month with the permission of the court.

Article 22 (Obligation Not to Interfere in Investigation)

The applicant for composition shall not refuse the investigation under the provisions of Paragraph (1) of the preceding Article.

Article 23 (Duty of Explanation)

Article 143 of the Bankruptcy Act shall apply mutatis mutandis to a claim of liquidation commissioner in relation to a composition.

Article 24 (Resignation of Liquidation Commissioner)

The court may dismiss the liquidation commissioner ex officio or upon request of any interested person in cases where an important reason exists. In this case, the court shall examine the liquidation commissioner.

Article 25 (Application of Provisions over Administrator-in-Bankruptcy, etc.)

Articles 149 through 151, 154 through 156, 159 and 171 of the Bankruptcy Act shall apply mutatis mutandis to the liquidation commissioner.

Article 26 (Notice of Commencement of Composition)

In a written decision of the commencement of composition, the date of decision shall be stated.

Article 26-2 (Time for Decision of Commencement)

The decision of whether or not the composition should be commenced shall be made within three (3) months from the date of application; provided, that the court may extend the period within the extent of one (1) month if there occurs unavoidable causes. [This Article Newly Inserted by Act No. 5518, Feb. 24, 1998]

Article 27 (Matters to be Determined Simultaneously)

(1) The court shall appoint an administrator and decide the following particulars simultaneously with the decision of the commencement of composition, listening to the opinion of the administrative committee and the council of creditors under the provision of Article 49-2.

1. The period for reporting credits; provided, that the period shall be not less than two weeks and not more than two months from the date of decision; and
2. The fixed date for the meeting of creditors; provided, that a period of not less than one week and not more than one month shall be between the fixed date and the last day of the period for reporting credits.

(2) The court may cause a liquidation commissioner to serve as an administrator concurrently, taking into the consideration of general circumstances such as the scale and content of the business of a debtor, the scale of assets and indebtedness, the degree of the difficulty of the investigation, etc..

(3) An immediate appeal may be made against the decision of the commencement of composition.

Article 28 (Public Notification and Service of Composition Commencement)

(1) If the court decides upon the commencement of composition, it shall notify publicly the following particulars:

1. The judgement of the commencement of composition;
2. Name and address of the administrator; and
3. The period for reporting credits and the fixed date for the meeting of creditors.

(2) On the verified creditors, the applicant for composition, the administrator, and the liquidation commissioner, the written instrument on which matters as provided in the preceding paragraph, condition of composition and gist of opinions of liquidation commissioner are stated, shall be served.

(3) The two preceding paragraphs shall apply mutatis mutandis to cases where matters as provided in Paragraph (1) 2 and 3 are modified.

Article 29 (Public Notification of Cancellation of Composition Commencement)

(1) If the court decides to cancel the decision of commencement of composition, the court shall notify publicly the judgement at once.

(2) This Article shall apply mutatis mutandis to cases falling under the provisions of the preceding Article Paragraph (2).

Article 30 (Keeping of Document)

The documents of application for commencement of composition, the investigation documents and written opinion of liquidation commissioner under the provisions of Article 21 shall be kept in the court for perusal by interested persons.

Article 31 (Restriction against Conduct of Debtor)

(1) From the time of application for commencement of composition to the time of decision, a debtor shall not carry out any conduct beyond the ordinary course of business.

(2) In cases where a preservative administrator is appointed after the application for the commencement of composition, even the conduct within the ordinary course of business may not be made by a debtor if the preservative administrator raises his or her objection thereto.

(3) With regard to the obligations falling under any of the following particulars which incur after the application for the commencement of the composition, a debtor may perform the obligations even beyond the ordinary course of business, if a preservative administrator agrees thereto.

1. Obligations incurred from the supply by the other party due to a continuous contract for the supply;
2. Obligations incurred from the conduct indispensable to the borrowing of funds, purchase of materials, and continuance of other business of a debtor; or
3. Other expenses to be defrayed unavoidably for the benefit of a debtor.

(4) If a preservative administrator is not appointed, a debtor may perform the conduct of the preceding Paragraph (3) with the permission of the court.

(5) A preservative administrator may request a report to a debtor, at any time, regarding the income and expenditure of money, and other duties over a property of a debtor, and may request an investigation or correction, or take other proper actions, if it deems to be necessary.

Article 32 (Effect of Commencement of Composition)

(1) A commencement of composition shall not affect the rights of a debtor on administration and disposition of his own assets; provided, that any conduct beyond the ordinary course of business may not be made without the consent of the administrator.

(2) Though it is conduct within the ordinary course of business, a debtor shall not conduct it in case of dissent of administrator.

(3) If the administrator is to assent to the important conduct pursuant to the provisions of Paragraph (1) above, he shall listen to the opinion of the liquidation commissioner; provided, that exceptions shall be made in the case of Article 27 (2).

Article 33 (Denying Power of Composition Creditor)

The composition creditor may deny any conduct against Article 31 or Paragraphs (1) and (2) of the preceding Article; provided, that the other party shall have known the fact at the time of that conduct.

Article 34 (Payment and Receipt of Money by Administrator)

The administrator may request to pay and receive money by his own efforts, to a debtor. (??)

Article 35 (Aid Allowance)

The administrator may determine the sum of the aid allowance to be paid to the debtor and the person supported by him with permission of the court.

Article 36 (Report and Inspection of Property)

(1) The administrator may request a report to a debtor, at any time, regarding the income and expenditure of money, and other duties over a property of a debtor, and may request an

investigation or correction of the situation of the property, or take other proper actions, if it deems to be necessary.

(2) The liquidation commissioner may request a report on the debtor's property from the administrator at any time.

Article 37 (Duty of Explanation)

Article 143 of the Bankruptcy Act shall apply mutatis mutandis to cases where the administrator or the meeting of creditors makes a demand for composition.

Article 38 (Report of Accounts)

If the duties of an administrator are terminated, the administrator or the successor shall report the accounts to the court without delay.

Article 39 (Applicable Provisions)

Article 24 of this Act and Articles 148 through 151, 153 through 156, and 159 of the Bankruptcy Act shall apply mutatis mutandis to the administrator.

Article 40 (Prohibition, Suspension of Preservative Measure, Compulsory Execution)

(1) During the composition procedure, compulsory execution, provisional attachment, or provisional disposition on the debtor's property shall not be made in relation to composition credits.

(2) The compulsory execution, provisional attachment, and provisional disposition on the debtor's property in relation to composition credits made prior to the commencement of composition shall be suspended during the composition procedure.

Article 41 (Interruption of Prescription)

The intervention in the composition procedure shall be considered a judicial claim on interruption of prescription.

CHAPTER III COMPOSITION CREDIT AND REPORT THEREOF

Article 42 (Composition Credit)

The property claim against the debtor out of a cause prior to the commencement of composition shall be regarded as composition credit.

Article 43 (Exclusion of Credit with General Priority)

A credit with general priority shall not be regarded as a composition credit.

Article 44 (Rightful Person of Separation)

A person, who may exercise the right of separation in case of bankruptcy, may exercise the right as a composition creditor up to the sum of credit which cannot be satisfied with the exercise of the right.

Article 45 (Claim Posterior to Composition Credit)

(1) Any of the following claims shall not be considered as composition credits:

11. Interest accrued after the commencement of composition;
12. Indemnification and penalty out of default after the commencement of composition;
13. Expenses of the intervention in the composition procedure; or
14. Fine, minor fine, cost of criminal procedure, forfeit and fine for negligence.

(2) The claims under the preceding paragraph shall be posterior to the composition credits.

Article 46 (Composition Credits Amount of Credits Bearing No Interest with Maturity)

If a credit is interest-free and the maturity date comes after the commencement of composition, the sum of the composition credits shall be sum of credits minus the legal interest of the composition credits from the commencement of composition to the maturity date.

Article 47 (Composition Credits Amount of Credits for Money Payable on Installments with Certain Sum)

The provisions of the preceding Article shall apply mutatis mutandis to the credits for money payable in installments with a certain sum and duration; provided, that if the total sum exceeds the principal to be interested equivalent to the money payable in installments with the legal rate of interest, the principal shall be considered as the sum of composition credits.

Article 48 (Sum of Composition Credits of Claim with Unfixed Maturity)

In case of Article 46 the amount appraised at the time of commencement of composition, if the maturity is not fixed, shall be the sum of composition credits.

Article 49 (Application Mutatis Mutandis of Provisions on Credits in Bankruptcy)

Articles 16 through 22 and 201 through 203 of the Bankruptcy Act shall apply mutatis mutandis to the composition credits. In such case, the commencement of composition shall be considered adjudication of bankruptcy.

CHAPTER IV MEETING OF CREDITORS

Article 49-2 (Organization of Council of Creditors)

(1) The administrative committee (if the administrative committee is not established, it shall mean the court, and hereinafter the same shall apply in this Article) shall organize a council of creditors whose members shall be the leading creditors of a debtor who is a proprietor (hereinafter referred to as the "Council") after the application for the commencement of composition.

(2) The Council shall be composed of ten (10) and less members.

(3) The administrative committee may, if it deems to be necessary, cause a minority creditor to participate in the Council as a member of the Council. [This Article Newly Inserted by Act No. 5518, Feb. 24, 1998]

Article 49-3 (Function of Council)

(1) The Council may mediate the interests among creditors and present an opinion regarding the composition procedure to the court.

(2) The Council may, after the decision of the approval of composition is confirmed finally, evaluate the effective performance or non-performance of composition conditions, and request a debtor to present information necessary to determine the circumstances of performance of composition conditions. [This Article Newly Inserted by Act No. 5518, Feb. 24, 1998]

Article 49-4 (Furnishing Data on Council)

(1) The court shall furnish the Council with the copies of documents and the determination notes in connection with the application for the commencement of composition procedure, and other principal data on composition procedure prescribed by the regulations of the

Supreme Court.

(2) The Council may request an inspection of data with regard to the book of a debtor and other composition procedure if it is necessary for the determination of the will regarding the composition procedure.

(3) In cases where a debtor is requested of inspection under the provision of Paragraph (2) above, the debtor shall comply therewith unless there exist justifiable reasons.

(4) The Council shall furnish information and data with regard to the composition procedure, if there is a request by creditors other than the members of the Council.

(5) The organization, function, authority, and other necessary matters of the Council shall be prescribed by the regulations of the Supreme Court. [This Article Newly Inserted by Act No. 5518, Feb. 24, 1998]

Article 50 (Summons on Day for Meeting of Creditors)

(1) On the day for meeting of creditors, the composition creditor who has reported, the applicant for composition and a person who has become a guarantor for composition or is under obligation with the debtor or has furnished security for composition creditor, shall be summoned.

(2) To the persons in the preceding paragraph, written instruments on which are stated the conditions of composition and the gist of opinion of the liquidation commissioner, shall be served, except the person to whom it has already been served pursuant to the provisions of Article 28 (2) and (3).

Article 51 (Voting Right of Interested Persons)

The administrator and the liquidation commissioner shall inspect whether or not the voting right is exercised in the meeting of creditors in relation to each reported claim and in what amount it shall be exercised.

Article 52 (Report of Administrator and Liquidation Commissioner)

(1) The administrator and the liquidation commissioner shall report the circumstances causing commencement of composition, the progress and the present state of debtor and his property and the result of investigation under the provisions of the preceding Article and express their opinions on the suitability of composition conditions in a meeting of creditors.

(2) Article 166 (2) through (4) of the Bankruptcy Act shall apply mutatis mutandis to the dissent of the person as provided in Article 50 (1), the administrator or the liquidation commissioner on a reported claim.

Article 53 (Provisions of Meeting of Creditors in Bankruptcy which Apply Mutatis Mutandis)

(1) Articles 162, 165, the proviso of Article 211, Articles 273, 274, 278, and 279 of the Bankruptcy Act shall apply mutatis mutandis to the meeting of creditors.

(2) Articles 276 and 277 of the Bankruptcy Act shall apply mutatis mutandis to a composition.

Article 53-2 (Exceptions to Small and Medium Enterprise)

With regard to small and medium enterprise pursuant to the provision of Article 2 (1) of the Basic Small and Medium Enterprise Act (except for the small and medium enterprise pursuant to the provision of Article 2 (3) of the same Act), the court shall appoint a

preservative administrator, liquidation commissioner, or administrator among the members of the administrative committee if it deems to be necessary to run the composition procedure as soon as possible. [This Article Newly Inserted by Act No. 5518, Feb. 24, 1998]

CHAPTER V APPROVAL OR DISAPPROVAL OF COMPOSITION

Article 54 (Approval or Disapproval of Composition)

(1) If the composition has been approved in the meeting of creditors, the court shall determine the approval or disapproval of composition on the fixed date or the immediately announced date.

(2) The persons as provided in Article 50 (1), the administrator and the liquidation commissioner may express their opinions on the approval or disapproval of composition.

(3) The proviso of Article 211 of the Bankruptcy Act shall apply mutatis mutandis to the decision which determines the fixed date for the approval or disapproval of composition.

Article 55 (Cases where Disapproval of Composition may be Decided)

15. Only in cases falling under any of the following subparagraphs, the court may decide the disapproval of composition ex officio or upon the request of a composition creditor:

16. If the proceedings or the resolution of composition is contrary to the provisions of any Act and the subsequent remedy of its defect is impossible;

17. If there are causes of Subparagraph 2 or 3 of Article 18;

18. If a resolution of composition has been made by unlawful manners; or 4. If a resolution of composition is contrary to the general interest of composition creditor.

Article 56 (Announcement and Public Notification of Approval or Disapproval of Composition)

The decision of approval or disapproval of composition shall be announced, and the judgement and the abstract of reasoning shall be notified publicly; provided, that the service thereof shall not be required.

Article 57 (Immediate Appeal)

(1) An immediate appeal may be filed against the decision of approval or disapproval of a composition.

(2) Article 291 of the Bankruptcy Act shall apply mutatis mutandis to the composition creditor.

Article 58 (Entering-into-Force of Composition)

The composition shall enter into force by the final conclusion of the decision of approval.

Article 59 (Recording in Credits List)

If the approval decision of composition has become final and conclusive, the court administrative officer or clerk shall record the conditions of composition in the credits list.

Article 60 (Payment of Credits without Effect of Composition)

(1) If the decision of approval of composition has become final and decisive, the debtor shall pay the credits coming into existence for composition, the cost of composition procedure, and credits with general priority.

(2) The credits as provided in the preceding paragraph and dissented shall be deposited for

the creditor.

Article 61 (Application Mutatis Mutandis of Provisions over Effect of Compulsory Composition in Bankruptcy)

Articles 297 through 299 and 314 of the Bankruptcy Act shall apply mutatis mutandis to the effect of composition.

Article 62 (Invalidation of Bankruptcy Proceeding, Compulsory Execution, Conservative Measures during Suspension)

If the decision of approval of composition has become final and decisive, the application for bankruptcy suspended pursuant to the provisions of Article 17 and the compulsory execution, the provisional attachment and the provisional disposition suspended pursuant to the provisions of Article 40 (2) shall lose the effect.

Article 62-2 (Duty of Report of Debtor)

A debtor shall report to the court semiannually the matters prescribed by the court as necessary measures to determine the performance or non-performance of composition conditions, circumstances of income and expenditure of funds of a debtor, and other circumstances of the performance of composition conditions, after the decision of approval of composition is confirmed finally. [This Article Newly Inserted by Act No. 5518, Feb. 24, 1998]

CHAPTER VI RESCISSION OF COMPOSITION

Article 63 (Cases where Composition shall be Rescinded)

In case falling under any of the following subparagraphs, the court shall decide the rescission of composition ex officio:

19. If the offerer of composition withdraws the offer prior to the passage of composition; or
20. If the composition has not been passed within two (2) months from the first fixed date of the meeting of creditors.

Article 64 (Cases where Composition may be Rescinded)

In cases falling under any of the following subparagraphs, the court may decide the rescission of composition ex officio or upon the request of the administrator or the liquidation commissioner. In such cases the debtor shall be examined:

6. If the orders of the court under the provisions of Article 20 (1) and (2) have been violated;
7. If the creditor has violated the provisions of Article 31, or 32 (1) and (2); or
8. If the debtor has paid and received money for himself despite the fact that the application under the provisions of Article 34 has been filed.

Article 65 (Public Notification of Rescission of Composition)

In cases where the court has decided the rescission of composition, the court shall notify publicly the judgement and the abstract of reasoning.

CHAPTER VII CANCELLATION OF CONCESSION AND COMPOSITION

Article 66 (Cancellation of Concession)

Articles 301 through 303 of the Bankruptcy Act shall apply mutatis mutandis to the cancellation of concession determined by the composition.

Article 67 (Cancellation of Composition in Case of Fraud in Insolvency)

If there is a conduct of fraud in insolvency on debtor, the court may decide the cancellation of composition ex officio or upon the request of composition creditor.

Article 68 (Cancellation of Composition through Non-Compliance of Composition)

(1) Article 304 (1) and (2) of the Bankruptcy Act Shall apply mutatis mutandis to the cancellation of composition.

(2) In cases where a debtor neglects the performance of the composition conditions without proper reason and is deemed to have no will or capacity to perform the composition conditions in the future, the court shall decide the cancellation of composition upon the application of a creditor or ex officio. < Newly Inserted by Act No. 5518, Feb. 24, 1998>

(3) The calculation of the sum of credits and all credits necessary for the application for the cancellation of composition shall depend on the sum of credits as decided pursuant to the provisions of Article 52.

Article 69 (Effect of Cancellation of Composition)

The cancellation of composition shall not affect the rights which a composition creditor attains through composition.

Article 70 (Public Notification of Cancellation of Composition)

(1) If the court dismisses an application for cancellation of composition or decides a cancellation of composition, it shall notify publicly the judgement and the abstract of reasoning.

(2) An immediate appeal may be filed against the decision under the preceding paragraph.

Article 71 (Progress of Bankruptcy Proceeding by Cancellation of Composition)

Articles 310, 312, and 313 of the Bankruptcy Act shall apply mutatis mutandis to the adjudication of bankruptcy under Article 9.

CHAPTER VIII PENAL PROVISIONS

Article 72 (Acceptance of Bribe)

(1) A member of the administrative committee, liquidation commissioner, preservative administrator, or administrator, who has accepted, requested, or promised a bribe in connection with his duties, shall be punished by imprisonment for not more than five (5) years or a fine not exceeding fifty million (50,000,000) won. This provision shall also apply to cases where the composition creditor, his agent, director, or an equivalent person has accepted, requested, or promised a bribe in connection with a resolution in the meeting of creditors.

(2) In the case of the preceding paragraph the accepted bribe shall be forfeited. If the forfeiture of the whole or part of it is not possible, its equivalent value shall be collected in addition.

Article 73 (Bribery)

(1) A person, who has delivered, offered, or promised a bribe to a member of the administrative committee, liquidation commissioner, preservative administrator, administrator, or composition creditor, his agent, director, or an equivalent person, shall be punished by imprisonment for not more than three (3) years or a fine not exceeding thirty million (30,000,000) won.

(2) If a person who commits a crime under the preceding paragraph, surrenders himself, the punishment may be reduced or exempted.

Article 74 (Breach of Duty of Explanation, Report, Examination)

(1) A person who has the duty of explanation under the provisions of Article 23 or 37 and has not explained or explained falsely without any justified reasons, shall be punished by imprisonment for not more than one (1) year or a fine not exceeding ten million (10,000,000) won. This provision shall also apply to cases where the applicant for the composition or the debtor, who refuses the inspection or the report under the provisions of Article 21 (1), 31 (5), 36 (1), or 62-2 or makes a false report.

(2) If a person who commits a crime under the preceding paragraph reports the fact to the composition court, the punishment may be reduced or exempted.

ADDENDA

(1) (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

(2) (Repealed Act)

The Composition Act, which has applied pursuant to Subparagraph 12 of Article 1 of Korean Civil Affairs Decree (Chosun Minsaryung), Imperial Decree No. 7, 1912, shall be repealed.

(3) (Retroactivity)

This Act shall apply to cases which are pending in the court at the time this Act enters into force; provided, that this Act shall be without prejudice to the effect which has entered into force by the old Act.

ADDENDA

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation.

Article 2 (Transitional Measures)

(1) This Act shall apply to cases which are pending in the court at the time this Act enters into force except for the cases under special provisions herein; provided, that the effect given by the previous provisions shall not be affected.

(2) The cases which are pending in the branch court of a district court at the time this Act enters into force shall be transferred to the competent district court within twenty (20) days from the enforcement date of this Act; provided, that exceptions shall be made in the cases where the decision of commencement of composition or the preservative measure is finally concluded at the time this Act enters into force.

(3) The amended provision of Article 20 (9) shall not apply to the cases where the preservative measure is concluded at the time this Act enters into force.

(4) Computation of period of time under the amended provision of Article 26-2 with regard to the cases pending at the time this Act enters into force shall begin to run from the enforcement date of this Act.

(5) The amended provision of Article 62-2 shall not apply to the cases where the decision of approval is confirmed finally at the time this Act enters into force.

(6) The application of penal provisions to the conduct performed prior to the enforcement of this Act shall be governed by the previous provisions.

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