

Asset-Backed Securitization Act

Amended By

2003· 5·29

Act No. 6916

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to contribute to the sound progress of the national economy by establishing a system of asset-backed securitization in order to enhance the soundness of the financial structure of financial institutions and corporations through facilitating their financing activities and in order to secure the basis of housing financing through stable supply of long-term housing loans, and by protecting the investors who invest in asset-backed securities.

Article 2 (Definitions)

The terms used in this Act shall be defined as follows: <Amended by Act No. 6073, Dec. 31, 1999; Act No. 6181, Jan. 21, 2000; Act No. 6275, Oct. 23, 2000; Act No. 6429, Mar. 28, 2001; Act No. 6916, May 29, 2003>

1. The term "asset-backed securitization" means the activities falling under one of the following items:

(a) A series of activities involving issuance of asset-backed securities by a special purpose company (including foreign corporations specializing in the business of asset-backed securitization) using securitization assets transferred to the special purpose company by the originator as the underlying assets, and payment by the special purpose company of amounts of principal and interest or dividends with respect to the asset-backed securities out of the earnings or loans, etc. accruing from the management, operation, or disposition of the securitization assets;

(b) A series of activities involving issuance of asset-backed securities by a trust company under the Trust Business Act (including banks concurrently engaging in the trust business; hereinafter referred to as a "trust company") using securitization assets received in trust by the trust company from the originator as the underlying assets, and payment by the trust company of the proceeds of the asset-backed securities out of the earnings or loans, etc. accruing from the

management, operation, or disposition of the securitization assets;

(c) A series of activities involving acquisition by a trust company of securitization assets from the originator using the funds received in trust by the trust company through issuance of asset-backed securities and payment by the trust company of the proceeds of the asset-backed securities out of the earnings or loans, etc. accruing from the management, operation, or disposition of the securitization assets; or

(d) A series of activities involving issuance of asset-backed securities by a special purpose company or a trust company using securitization assets, or asset-backed securities issued on the basis of such securitization assets, which are transferred or entrusted to the special purpose company by another special purpose company or trust company as the underlying assets, and payment by the special purpose company or trust company of amounts of principal and interest, dividends, or earnings of the asset-backed securities issued by the special purpose company or trust company out of the earnings or loans, etc. accruing from the management, operation, or disposition of the securitization assets or asset-backed securities originally transferred or trusted;

2. The term "originator" means any of the following persons who are in possession of securitization assets:

(a) The Korea Development Bank under the Korea Development Bank Act;

(b) The Export-Import Bank of Korea under the Export-Import Bank of Korea Act;

(c) The Industrial Bank of Korea under the Industrial Bank of Korea Act;

(d) Financial institutions established with approval under the Banking Act (including those deemed financial institutions pursuant to Articles 5 and 59 of the same Act);

(e) Long-term credit banks under the Long-Term Credit Bank Act;

(f) Merchant banks under the Merchant Banks Act;

(g) Insurers under the Insurance Business Act;

(h) Securities companies under the Securities and Exchange Act;

- (i) Management companies under the Securities Investment Trust Business Act;
- (j) Mutual Savings banks under the Mutual Savings banks Act;
- (k) Specialized credit financial companies under the Specialized Credit Financial Business Act;
- (l) The Korea Asset Management Corporation under the Act on the Efficient Disposal of Non-Performing Assets, etc. of Financial Institutions and the Establishment of Korea Asset Management Corporation (hereinafter referred to as the "Korea Asset Management Corporation");
- (m) The Korea Land Corporation under the Korea Land Corporation Act (hereinafter referred to as the "Korea Land Corporation");
- (n) The Korea National Housing Corporation under the Korea National Housing Corporation Act;
- (o) The person who manages and administers the national housing fund under the Housing Act;
- (p) Corporations of good credit (including foreign corporations and Korea subsidiaries established by foreign corporations) for whose assets the Financial Supervisory Commission recognizes a need of securitization in accordance with the standards prescribed in advance by the Financial Supervisory Commission;
- (q) Corporate restructuring investment companies under subparagraph 3 of Article 2 of the Corporate Restructuring Investment Companies Act; or
- (r) Other persons who are similar to any of those specified in items (a) through (q) above and who are specified in the Presidential Decree;

3. The term "securitization assets" means claims, immovable property and other property rights that are the subject matters of asset-backed securitization;

4. The term "asset-backed securities" means subscription certificates, bonds, beneficial

certificates, and other securities or certificates issued pursuant to an asset-backed securitization plan mentioned in Article 3 with securitization assets as underlying assets; and

5. The term "special purpose company" means a company that is established pursuant to Articles 17 and 20, engaging in the business of asset-backed securitization.

CHAPTER II REGISTRATION OF ASSET-BACKED SECURITIZATION PLAN AND TRANSFER OF SECURITIZATION ASSETS, ETC.

Article 3 (Registration of Asset-backed Securitization Plan)

(1) When a special purpose company, or a foreign corporation or a trust company specializing in the business of asset-backed securitization (hereinafter referred to as a "special purpose company, etc.") proposes to be governed by this Act in relation to asset-backed securitization, it shall register with the Financial Supervisory Commission an asset-backed securitization plan containing the scope of securitization assets, classes of asset-backed securities, the methods of management of securitization assets, etc. (hereinafter referred to as an "asset-backed securitization plan"). This provision shall also apply to the cases of changes in an asset-backed securitization plan: Provided, That the same shall not apply to those in minor items to be prescribed by the Presidential Decree.

(2) The number of asset-backed securitization plan to be registered by a special purpose company, etc. (excluding trust companies) pursuant to paragraph (1) shall be limited to only one.

(3) A special purpose company, etc. shall, when it intends to register pursuant to paragraph (1), furnish the documents prescribed by the Financial Supervisory Commission.

(4) Where a special purpose company, etc. has made a registration of an asset-backed securitization plan pursuant to paragraph (1), it shall be deemed to have made a registration of an issuer of securities under Article 3 of the Securities and Exchange Act. <Newly Inserted by Act No. 6181, Jan. 21, 2000>

Article 4 (Asset-backed Securitization Plan)

The asset-backed securitization plan shall include the following:

1. Matters concerning the name of a special purpose company, etc. and the locations, etc. of offices thereof;
2. Matters concerning the originator;
3. The duration of the asset-backed securitization plan;
4. Matters concerning the relevant securitization assets such as their types, total amount and valuation;
5. Matters concerning the asset-backed securities such as their classes, total amount, and issuing terms and conditions;
6. Matters concerning the administration, operation, and disposition of the securitization assets;
7. Matters concerning the caretaker mentioned in Article 10 (1); and
8. Other matters prescribed by the Presidential Decree.

Article 5 (Refusal, etc. of Registration)

(1) The Financial Supervisory Commission may, when there is a cause falling under any of the following subparagraphs, refuse the registration of an asset-backed securitization plan or demand the changes of the contents thereof:

1. When the application document for registration contains false information or lacks necessary information;
2. When the asset-backed securitization plan contains matters that are in contravention of Acts and subordinate statutes; or

3. When there is a violation of Acts and subordinate statutes in relation to the establishment of a special purpose company.

(2) The Financial Supervisory Commission shall, when it intends to refuse the registration of an asset-backed securitization plan or demand the changes in the contents thereof pursuant to paragraph (1), promptly notify the special purpose company, etc. of the reasons therefor in writing by specifying the details.

Article 6 (Registration of Transfer, etc. of Securitization Assets)

(1) When the securitization assets (including the claim for return to a third party when such party occupies the securitization assets; hereafter in this Article the same shall apply) are transferred, entrusted, returned, pledged or mortgaged in accordance with an asset-backed securitization plan, either the originator or the special purpose company, etc. shall promptly register this fact with the Financial Supervisory Commission in accordance with the following classifications:

1. The originator shall effect the registration in any of the following items:

(a) When the securitization assets are transferred to the special purpose company, etc. in accordance with the asset-backed securitization plan; or

(b) When the securitization assets are entrusted to a trust company in accordance with the asset-backed securitization plan; and

2. The special purpose company, etc. (in the case of item (b), referring to the special purpose company that transfers the securitization assets or to which such assets are returned) shall effect the registration in any of the following items:

(a) When the special purpose company, etc., in accordance with the asset-backed securitization plan, transfers the securitization assets to the originator or returns the same to the originator on the ground of a cancellation of the transfer, etc.;

(b) When the special purpose company, in accordance with the asset-backed securitization plan, transfers the securitization assets to another special purpose company or recovers the same from

the other special purpose company; or

(c) When the special purpose company, etc., in accordance with the asset-backed securitization plan, creates or cancels a pledge or mortgage on the securitization assets in favor of a third party on behalf of the investors of the asset-backed securities.

(2) Where the originator or the special purpose company, etc. intends to make a registration of the transfer, trust, or return of securitization assets or the creation of a pledge or mortgage on securitization assets pursuant to paragraph (1), it shall submit an application for such registration and a contract for transfer, etc. of securitization assets to the Financial Supervisory Commission. <Amended by Act No. 6181, Jan. 21, 2000>

(3) An application for registration under paragraph (2) shall specify the following matters, and the matters of subparagraph 1 shall be prepared and submitted using electromagnetic means or other similar means: <Newly Inserted by Act No. 6181, Jan. 21, 2000>

1. Specification of securitization assets;

2. Method and plan of the transfer, trust, or return of securitization assets, and method of payment of the price thereof;

3. If the securitization assets are claims, whether or not the requirements for setting up against the transfer of such claims are satisfied;

4. Requisites for revocation of a contract for transfer, etc. of securitization assets;

5. If a transferee disposes of the securitization assets concerned, whether or not the transferor, etc. thereof has the right of preference purchase; and

6. Such other necessary matters concerning protecting investors as prescribed by the Financial Supervisory Commission.

(4) A special purpose company, etc. shall keep and manage the transfer, etc. contract, registration completion certificate, and registration certificate of securitization assets, and other necessary documentary evidence, under the conditions as prescribed by the Presidential Decree, and shall comply with a request for inspection of such documents from the Financial Supervisory

Commission or investors in the securitization securities. <Newly Inserted by Act No. 6181, Jan. 21, 2000>

(5) Necessary matters concerning the form, entry method, and handling procedures of the registration application, etc. under paragraph (3) shall be prescribed by the Financial Supervisory Commission. <Newly Inserted by Act No. 6181, Jan. 21, 2000>

Article 7 (Special Cases for Requisite for Setting-up against Transfer of Claims)

(1) A transfer, trust, or return of claims in accordance with an asset-backed securitization plan shall not be effective against the obligor of the claims unless the transferor (including a trustor; hereinafter the same shall apply) or transferee (including a trustee; hereinafter the same shall apply) gives a notice to or obtains a consent from the obligor: Provided, That if the transferor or the transferee sent a notice of transfer of claims (including the trust or return of claims; hereinafter the same shall apply in this Article) to either of the addresses of the obligor specified below not less than twice by content-proof mail but such notice was returned to the transferor or the transferee because of the failure to locate the obligor, etc., the transferor or the transferee may place a public notice of transfer in two or more daily newspapers (including at least one daily newspaper of nationwide circulation) which cover the area of the address of the obligor as a main area of circulation; in such case the notice shall be deemed to have been given to the obligor on the date of such public notice: <Amended by Act No. 6181, Jan. 21, 2000>

1.The address of the obligor as shown on the registry or registration books of the relevant mortgage (if the address shown on the registry or registration books is not the last address of the obligor and if the transferor or transferee knows the last address of the obligor, then such last address of the obligor); or

2.The last address of the obligor if there is no address shown on the registry or registration books of the relevant mortgage or there is no such registry or registration book and if the transferor or transferee knows the last address of the obligor.

(2) When, with respect to the transfer, trust, or return of claims in accordance with an asset-backed securitization plan, a registration is completed pursuant to Article 6 (1), the requirement of effective transfer provided in Article 450 (2) of the Civil Act shall be deemed to be

satisfied as of the date of the registration under Article 6 (1) with respect to such transfer as far as its effectiveness as against any third parties other than the obligor of the concerned claims (including the third party who occupies securitization assets in case of a transfer of claims for return of such securitization assets; hereinafter the same shall apply) is concerned. <Amended by Act No. 6181, Jan. 21, 2000>

Article 7-2 (Fixing Amount of Claims Secured by Maximal-Mortgage)

When securitization assets to be transferred or entrusted pursuant to the asset-backed securitization plan are claims secured by the maximal-mortgage and the originator has sent the obligor a notice expressing his intention to transfer or entrust all of the claims, fixing the amount of claims secured by the maximal-mortgage with no additional claim, by content-proof mail, the claims shall be deemed to have been fixed on the day following the date of service of the notice: Provided, That this shall not apply where the obligor has raised an objection thereto within 10 days therefrom.

[This Article Newly Inserted by Act No. 6181, Jan. 21, 2000]

Article 8 (Special Cases for Acquisition of Mortgage, etc.)

(1) When the claims transferred or entrusted in accordance with an asset-backed securitization plan are secured by a pledge or mortgage, the special purpose company, etc. shall acquire the pledge or mortgage upon registration pursuant to Article 6 (1). <Amended by Act No. 6181, Jan. 21, 2000>

(2) When the Korea Asset Management Corporation or the Korea Land Corporation, in accordance with an asset-backed securitization plan, transfers or entrusts to a special purpose company, etc. immovable property acquired for the resolution of non-performing assets of a financial institution, for the support of a self-rescue plan of a failing company or for the restructuring of a company, the special purpose company, etc. shall acquire the ownership of such property upon registration pursuant to Article 6 (1). <Amended by Act No. 6073, Dec. 31, 1999>

Article 9 (Public Disclosure of Registered Documents, etc.)

(1) The Financial Supervisory Commission shall make available for public view the documents relating to registration and registration changes mentioned in Articles 3 and 6.

(2) The trust company, the caretaker mentioned in Article 10 (1), and those entrusted with business pursuant to Article 23 (1) shall prepare and maintain the details of the securitization assets and documents relating to their status and make them available for perusal by investors in the special purpose company, etc.

Article 10 (Entrustment of Asset Management)

(1) A special purpose company, etc. (excluding trust companies) shall entrust the management of the securitization assets to any of the following subparagraphs (hereinafter referred to as a "caretaker") by entering into a service agreement: <Amended by Act No. 6181, Jan. 21, 2000>

1. The originator;

2. A person engaged in credit information business with a license for the businesses specified in Article 4 (3) 1 through 3 of the Use and Protection of Credit Information Act; or

3. Such other persons specializing in the management business of assets as meet the requirements prescribed by the Presidential Decree.

(2) Notwithstanding Article 4 of the Use and Protection of Credit Information Act, the caretaker mentioned in paragraph (1) 1 and 3 may engage in claims collection business with respect to securitization assets transferred or entrusted to the special purpose company, etc. pursuant to subparagraph 3 of Article 6 of the Use and Protection of Credit Information Act. <Amended by Act No. 6181, Jan. 21, 2000>

(3) When a service agreement is terminated before its expiry date, the special purpose company, etc. shall not be entitled to assert rights against the obligors of the claims constituting the securitization assets on the ground that the caretaker's right to receive payments has been

terminated: Provided, That this provision shall not apply to the cases where the obligor knew or should have known that the caretaker's right to receive payments has been terminated.
<Amended by Act No. 6181, Jan. 21, 2000>

Article 11 (Management of Securitization Assets)

(1) The caretaker shall manage separately from its own assets the securitization assets entrusted to him pursuant to Article 10 (1) (including the funds and other property rights received as a result of the administration, operation, and disposition of such assets; hereafter the same shall apply in subparagraph 1 of Article 40). <Amended by Act No. 6181, Jan. 21, 2000>

(2) The caretaker shall prepare and maintain separate books for the administration of the securitization assets.

Article 12 (Bankruptcy, etc. of Caretaker)

(1) In the event of a bankruptcy of the caretaker, the securitization assets administered in trust pursuant to Article 10 (1) (including the funds and other property rights received as a result of the administration, operation, and disposition of such assets; hereafter the same shall apply in this Article) shall not become a part of the caretaker's bankrupt estate, and the special purpose company, etc. may require the caretaker or the trustee in bankruptcy to return such assets.
<Amended by Act No. 6181, Jan. 21, 2000>

(2) Paragraph (1) shall apply mutatis mutandis to the cases where a composition proceeding under the Composition Act or a corporate reorganization proceeding under the Company Reorganization Act has commenced.

(3) The creditors of the caretaker may not execute compulsorily the securitization assets managed in trust by the caretaker pursuant to Article 10 (1), and such assets shall not be subject to a preservation order or injunction order under the Bankruptcy Act, the Composition Act, or the Company Reorganization Act.

Article 13 (Method of Transfer)

The transfer of securitization assets shall be effected in the following manner, in accordance with the asset-backed securitization plan. In such case, the transfer shall not be deemed as a creation of security interest: <Amended by Act No. 6181, Jan. 21, 2000>

1. The transfer should be effected by means of sale and purchase or exchange;
2. The transferee should have the right to make profits from and the right to dispose of the securitization assets. In this case, even if the transferor has the right of preference purchase to the securitization assets at the time when the transferee disposes of the assets, the right to make profits from and the right to dispose of the assets shall be deemed as held by the transferee;
3. The transferor should not have right to claim back the securitization assets, and the transferee should not have right to claim back the price paid for the transferred securitization assets; and
4. The transferee should undertake risks associated with the securitization assets: Provided, That this shall not apply where the transferor undertakes such risks for a specific period of time or bears warranty liabilities (including the transferor's warranty for the obligor's financial capability).

Article 14 (Amendment to or Termination of Facilities Lease Agreements, etc.)

(1) An originator shall not, when he has transferred or entrusted to a special purpose company, etc. claims under a facilities lease agreement or deferred payment sales agreement pursuant to an asset-backed securitization plan, amend or terminate the relevant facilities lease agreement or deferred payment sales agreement otherwise than in accordance with the asset-backed securitization plan. This provision shall also apply to the receiver, interim receiver, administrator and interim administrator of the originator appointed pursuant to the Bankruptcy Act, the Composition Act, or the Company Reorganization Act and any other persons discharging similar duties.

(2) When the obligor of the claims under the facilities lease agreement or deferred payment sales

agreement has received a notice of, or consented to, the fact that the originator has transferred or entrusted the relevant claims to the special purpose company, etc. in accordance with the asset-backed securitization plan, any amendment made to, or any termination of, the facilities lease agreement or deferred payment sales agreement by the originator in violation of paragraph (1) shall have no effect.

Article 15 (Lease Receivables)

When an originator goes bankrupt or a company reorganization proceeding is commenced against the originator, Article 54 of the Bankruptcy Act and Article 106 of the Company Reorganization Act shall not apply to the lease receivables included in the securitization assets.

Article 16 (Special Cases for Application of Trust Business Act, etc.)

(1) When a trust company falls under any of the following, it shall not be subject to the restrictions on the management of trust assets provided in Article 15-2 of the Trust Business Act:

1. When the trust company received a transfer of securitization assets pursuant to an asset-backed securitization plan; or

2. When the trust company to whom securitization assets were transferred or entrusted pursuant to an asset-backed securitization plan manages surplus funds pursuant to such plan.

(2) Notwithstanding Article 2 of the Trust Act and Articles 563 and 596 of the Civil Act, a trust company may carry on self-dealings in the conduct of a transfer or trust of securitization assets in accordance with the asset-backed securitization plan. <Amended by Act No. 6181, Jan. 21, 2000>

(3) Notwithstanding the proviso of Article 30 of the Trust Act, the trust company shall, in the administration and management of securitization assets, handle such assets, even when such entrusted assets are moneys, separately from its own funds or the funds belonging to other trust

assets.

CHAPTER III SPECIAL PURPOSE COMPANIES

Article 17 (Form of Company)

(1) A special purpose company shall be in the form of limited company.

(2) Chapter V of Part III of the Commercial Act shall apply to the matters relating to special purpose companies unless otherwise provided in this Act.

Article 18 (Number of Equity Holders)

Articles 543 (1) and 545 of the Commercial Act shall not apply to the number of equity holders of a special purpose company. <Amended by Act No. 6181, Jan. 21, 2000>

Article 19 (Equity Holders' Meeting)

(1) Notwithstanding Article 577 (1) and (2) of the Commercial Act, an equity holders' meeting of a special purpose company may be substituted by a written resolution even where the unanimous consent of the equity holders is not obtained.

(2) Resolutions of an equity holders' meeting that are contrary to the asset-backed securitization plan or harm the interests of the holders of the asset-backed securities shall be null and void.

Article 20 (Restriction on Concurrently Conducting Other Business, etc.)

(1) A special purpose company may not engage in any business other than those specified in Article 22.

(2) A special purpose company may not establish business places other than its head office and may not hire employees.

Article 21 (Prohibition on Use of Similar Names)

In describing its trade name or the type of its business, a company that is not a special purpose company may not use any character that indicates a special purpose company.

Article 22 (Business Affairs)

(1) A special purpose company shall engage in the following business affairs in accordance with the asset-backed securitization plan:

1. Assumption or assignment of securitization assets, or entrustment thereof to a trust company;
2. Administration, management, and disposal of securitization assets;
3. Issuance and redemption of asset-backed securities;
4. Conclusion of contracts necessary for the execution of the asset-backed securitization plan;
5. Temporary borrowing of funds necessary for redemption, etc. of asset-backed securities;
6. Investment of surplus funds; and
7. Other business activities incidental to those mentioned in subparagraphs 1 through 6.

(2) Accounting of a special purpose company shall be operated in accordance with such accounting axioms as prescribed by the Financial Supervisory Commission. <Newly Inserted by Act No. 6181, Jan. 21, 2000>

Article 23 (Mandate of Business Affairs)

(1) A special purpose company shall mandate its business affairs other than those falling under any of the following subparagraphs to the originator or other third party pursuant to the provisions of the asset-backed securitization plan:

1. Matters requiring the resolution of the equity members' meeting;
2. Matters belonging to the authority of directors to represent the company;
3. Matters belonging to the authority of a statutory auditor;
4. Matters relating to the management of the securitization assets; or
5. Other matters inappropriate to mandate to others which are prescribed by the Presidential Decree.

(2) The eligible third parties to whom the business can be mandated pursuant to paragraph (1) may be limited by the Presidential Decree.

Article 24 (Causes for Dissolution)

A special purpose company shall dissolve for any of the following subparagraphs :

1. Expiration of its corporate period or occurrence of other causes prescribed in the articles of incorporation or the asset-backed securitization plan;
2. Full redemption of the asset-backed securities;
3. Bankruptcy; or
4. Order or decision of a court.

Article 25 (Prohibition of Merger, etc.)

A special purpose company may not merge with another company or change its structure to another company.

Article 26 (Appointment of Liquidator, etc.)

Notwithstanding Article 531 of the Commercial Act, which is applicable *mutatis mutandis* by virtue of Article 613 (1) of the same Act, and Article 147 of the Bankruptcy Act, when a special purpose company is dissolved or bankrupt, the Governor of the Financial Supervisory Service under the Act on the Establishment, etc. of Financial Supervisory Organizations (hereinafter referred to as the "Governor of the Financial Supervisory Service") may recommend to the court a liquidator or receiver, and the court shall appoint the person recommended by the Governor of the Financial Supervisory Service as liquidator or receiver in the absence of any special reason.

CHAPTER IV ISSUANCE OF ASSET-BACKED SECURITIES

Article 27 (Application of Commercial Act, etc.)

The issuance of asset-backed securities pursuant to an asset-backed securitization plan shall be in accordance with the Commercial Act, the Securities and Exchange Act, and other relevant Acts and subordinate statutes unless otherwise provided in this Act.

Article 28 (Issuance of Subscription Certificates)

(1) Notwithstanding Article 555 of the Commercial Act, a special purpose company may issue subscription certificates in bearer form (hereinafter referred to as "subscription certificates") for the subscription payments of its equity holders pursuant to an asset-backed securitization plan.

(2) Articles 358, 359 and 360 of the Commercial Act shall apply *mutatis mutandis* to

investment certificates.

(3) An equity holder of a special purpose company may request the issuance or redemption of investment certificate for its own subscription payment: Provided, That this shall not apply to the cases where the articles of incorporation otherwise provide.

Article 29 (Information Required in Investment Certificates)

The following information shall be required in the investment certificates, and the directors shall affix their names and seals or sign such certificates:

1. Company name;
2. Date of incorporation of the company;
3. Total number of investment units;
4. Par value of investment unit;
5. Cases where there are provisions regarding various equity holdings for which the distribution of profits or remaining assets are different, the types and particulars of such equity holdings; and
6. Serial number.

Article 30 (Exceptions to Transfer, etc. of Equity Holding)

(1) With respect to the transfer of equity shares of an equity holder of a special purpose company, Article 556 of the Commercial Act shall not apply unless otherwise specified in the articles of incorporation.

(2) With respect to the transfer of subscription certificates, Article 557 of the Commercial Act shall not apply.

(3) Notwithstanding Article 462 of the Commercial Act, which is applicable mutatis mutandis by virtue of Article 583 of the same Act, a special purpose company may make distributions in excess of its profits (referring to the amount equal to the assets less the liabilities, capital and reserves, as shown on the balance sheets) in accordance with its articles of incorporation.

(4) Notwithstanding Articles 439 (1) and 586 of the Commercial Act, which are applicable mutatis mutandis by virtue of Article 597 of the same Act, a special purpose company may include in its articles of incorporation matters relating to increase and decrease of its capital.

Article 31 (Issuance of Corporate Bonds)

(1) A special purpose company may issue corporate bonds in accordance with the asset-backed securitization plan.

(2) The provisions of Section 8 of Chapter IV of Part III of the Commercial Act (excluding Articles 469 and 470 of the same Act) shall apply mutatis mutandis to the issuance of the corporate bonds pursuant to paragraph (1). <Amended by Act No. 6181, Jan. 21, 2000>

Article 32 (Issuance of Beneficiary Certificates)

(1) A trust company may issue beneficiary certificates in accordance with the asset-backed securitization plan.

(2) Article 17-2 of the Trust Business Act shall not apply to the issuance of beneficiary certificates mentioned in paragraph (1).

Article 33 (Issuing Limit of Asset-backed Securities)

The total amount of asset-backed securities to be issued shall not exceed the total amount of the

purchase price or the valuation price of the securitization assets transferred or entrusted: Provided, That the amount of borrowing pursuant to subparagraph 5 of Article 22 shall not be included in the total amount of issuance.

CHAPTER V SUPPLEMENTARY PROVISIONS

Article 34 (Investigation)

The Governor of the Financial Supervisory Service may, when deemed necessary for the protection of the investors, require the production of materials relating to the business activities or assets of a special purpose company, etc., those entrusted with the business from a special purpose company, etc., and the caretaker, or cause his subordinates to investigate into their business activities or assets in such manner as determined by the Financial Supervisory Commission.

Article 35 (Order for Business Improvement)

The Financial Supervisory Commission may, when it finds that the management of business conducted by a special purpose company, etc. or a caretaker might harm the interests of investors, to the extent necessary for investor protection, order the special purpose company, etc. or the caretaker to change the type and method of business, to deposit its assets, or to take measures necessary to improve the management of business activities.

Article 36 (Special Cases for Resolution of Non-Performing Assets, etc. of Financial Institutions, Support for Self-Rescue Plan of Failing Companies and Restructuring of Companies)

When the Korea Asset Management Corporation or the Korea Land Corporation transfers or entrusts to a special purpose company, etc. in accordance with an asset-backed securitization plan, the immovable property acquired for the resolution of non-performing assets of a financial institution, for the support of a self-rescue plan of a failing company or for the restructuring of a company, the following provisions shall not apply: <Amended by Act No. 6073, Dec. 31, 1999; Act No. 6181, Jan. 21, 2000; Act No. 6642, Jan. 26, 2002; Act No. 6916, May 29, 2003>

1. Articles 2 through 4 of the Act on Special Measures for the Registration of Real Estate;
2. Article 18 of the Urban Traffic Improvement Promotion Act;
3. Article 68 of the Housing Act;
4. Article 21-3 of the Act on the Utilization and Management of the National Territory; and
5. Articles 4 (1) and 5 of the Foreigner's Land Acquisition Act.

Article 36-2 (Exemption from Duties to Purchase National Housing Bonds)

Article 68 of the Housing Act shall not apply, where securitization assets are transferred, entrusted, or mortgaged in accordance with an asset-backed securitization plan. <Amended by Act No. 6916, May 29, 2003>

[This Article Newly Inserted by Act No. 6181, Jan. 21, 2000]

Article 37 (Provision and Use of Information about Obligors)

(1) Notwithstanding the provisions of Article 4 of the Act on Real Name Financial Transactions and Guarantee of Secrecy, an originator or a special purpose company, etc. may provide information about the payment ability of the obligors of claims belonging to the securitization assets to the investors, transferees and other interested parties to the extent necessary for the implementation of the asset-backed securitization plan.

(2) Those to whom securitization assets are transferred or entrusted pursuant to an asset-backed securitization plan (including those to whom the relevant business has been mandated) shall not use information about the payment ability of the obligors of claims belonging to the securitization assets for any purpose other than to obtain the payment of such claims.

Article 38 (Mandate of Business Affairs)

(1) The Financial Supervisory Commission may mandate all or part of any of the following business affairs to the Governor of the Financial Supervisory Service:

- 1.Registration of an asset-backed securitization plan pursuant to Article 3;
- 2.Registration of a transfer of assets pursuant to Article 6; and
- 3.Public disclosure of registration documents, etc. pursuant to Article 9.

(2) The Financial Supervisory Commission shall, when it mandates all or part of any business affairs to the Governor of the Financial Supervisory Service pursuant to paragraph (1), publicly announce the fact.

CHAPTER VI PENAL PROVISIONS

Article 39 (Penal Provisions)

Any person falling under one of the following subparagraphs shall be punished by imprisonment for not more than three years or by a fine not exceeding twenty million won: <Amended by Act No. 6181, Jan. 21, 2000>

- 1.Any person who has falsely prepared an application for registration or a contract mentioned in Article 6 (2);
- 2.Any person who has falsely prepared the documents mentioned in Article 9 (2) or has failed to make such documents available for public perusal; or
- 3.Any person who, in violation of Article 37 (2), has used information about the payment ability of an obligor for purposes other than obtaining the payment of the claims.

Article 40 (Penal Provisions)

Any person falling under one of the following subparagraphs shall be punished by imprisonment for not more than one year or by a fine not exceeding ten million won:

1. Any person who, in violation of Article 11 (1), has not administered the entrusted securitization assets in distinction from its own assets;

2. Any person who, in violation of Article 22, has borrowed funds or invested surplus funds otherwise than by the asset-backed securitization plan; or

3. Any person who has failed to comply with an order for business improvement issued pursuant to Article 35.

Article 41 (Joint Penal Provisions)

When the representative of a corporation, an agent, employee or other workers of a corporation or an individual violates Article 39 or 40 with respect to the business affairs of such corporation or individual, such corporation or individual shall also be punished thereby, as well as the person who actually committed the violation.

Article 42 (Fine for Negligence)

(1) Any person falling under one of the following subparagraphs shall be punished by a fine for negligence not exceeding five million won:

1. Any person who has failed to prepare or maintain the documents mentioned in Article 11 (2);
or

2. Any person who, in violation of Article 21, has used any business indication of a special purpose company.

(2) The fine for negligence mentioned in paragraph (1) shall be imposed and collected by the Financial Supervisory Commission in such manner as prescribed by the Presidential Decree.

(3) Any person who objects to the imposition of a fine for negligence mentioned in paragraph (2) may file an objection with the financial Supervisory Commission within thirty days from the date of receiving the notice thereof.

(4) When a person, upon whom a fine for negligence is imposed pursuant to paragraph (2), files an objection mentioned in paragraph (3), the Financial Supervisory Commission shall make a notice of the fact to the competent court without delay, and the court shall adjudicate the case of the imposed fine under the Non-Contentious Case Litigation Procedure Act.

(5) In case an objection has not been filed within the period mentioned in paragraph (3) and the fine for negligence has not been paid, the Financial Supervisory Commission shall collect it in accordance with the examples of disposition on the collection of national taxes in arrears.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) Omitted.

ADDENDA <Act No. 6073, Dec. 31, 1999>

Article 1 (Enforcement Date)

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

Articles 2 and 3

Omitted.

ADDENDUM <Act No. 6181, Jan. 21, 2000>

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

ADDENDA <Act No. 6275, Oct. 23, 2000>

Article 1 (Enforcement Date)

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

Articles 2 and 3

Omitted.

ADDENDA <Act No. 6429, Mar. 28, 2001>

Article 1 (Enforcement Date)

This Act shall enter into force on the date as prescribed by the Presidential Decree within the limit not exceeding 2 years from the promulgation date of this Act. (Proviso Omitted.)

<<Enforcement date of this Act shall be Mar. 1, 2002 pursuant to the Presidential Decree No. 17519, Feb. 25, 2002>>

Articles 2 through 11

Omitted.

ADDENDA <Act No. 6642, Jan. 26, 2002>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Articles 2 through 8

Omitted.

ADDENDA <Act No. 6916, May 29, 2003>

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation. (Proviso Omitted.)

Articles 2 through 13

Omitted.