

Government of the Republic of Korea



Commercial Act

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CHAPTER I COMMON PROVISIONS

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Article 1 (Applicable Rules to Commercial Matters)

When there is no provision in this Act as to a commercial matter, the commercial customary law shall apply; and if there is no such law, the provisions of the Civil Act shall apply.

Article 2 (Commercial Activities by Public Juristic Persons) Except as otherwise provided for by any Acts and subordinate statutes, this Act shall apply to commercial activities effected by a public juristic person.

Article 3 (Unilateral Commercial Activities) If an act of a party among the relevant parties is considered as a commercial activity, this Act shall apply to all the parties involved.

CHAPTER II MERCHANTS

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Article 4 (Merchant-by Nature of Business) A person who engages in commercial activities in his/her own name is called a merchant.

Article 5 (Merchant-by Legal Construction) (1) A person who engages in a business in a merchant's way maintaining a shop or similar equipment shall be deemed to be a merchant, even if he does not engage in commercial activities.

(2) The provisions of paragraph (1) shall also be applicable to a company even if it does not engage in commercial activities.

Article 6 (Business of Incompetent Person and Registration thereof)

When a minor or a quasi-incompetent person engages in any business upon the permission of his legal representative, registration thereof shall be effected.

Article 7 (Incompetent Person and Member with Unlimited Liability)

When a minor or quasi-incompetent person has become a member with unlimited liability of a company upon the permission of his legal representative, he shall be deemed to be a person with full capacity in respect of any act done in the capacity of such member.

Article 8 (Representation of Business by Legal Representative)

(1) If a legal representative engages in any business on behalf of a minor, quasi-incompetent or incompetent

person, registration thereof shall be effected.

(2) Any restriction upon the authority of legal representative shall not be effective against a third person acting in good faith.

Article 9 (Petty Merchants)

The provisions relating to manager, trade names, trade books, and commercial registrations shall not apply to petty merchants.

CHAPTER III TRADE EMPLOYEES

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Article 10 (Appointment of Manager)

A merchant may appoint a manager and have him run business either at the principal office or at a branch office.

Article 11 (Agency Authority of Manager)

(1) A manager may perform all judicial and extrajudicial acts relating to his business on behalf of the proprietor of the business.

(2) A manager may appoint and dismiss shop clerk and other employees who are not managers.

(3) Any restriction upon the authority of a manager shall not be effective against a third person acting in good faith.

Article 12 (Co-manager)

(1) A merchant may cause several managers to exercise the agency of authority on a joint basis.

(2) In the case mentioned in the preceding paragraph, any declaration of intention made to any one of the managers shall be effective as to the proprietor of the business.

Article 13 (Registration of Manager)

The appointment of a manager and the extinguishment of his/her agency of authority shall be registered by the merchant at the place either of the principal office or of the branch office for which he/she has been appointed. The same shall apply to matters provided for in paragraph (1) of the preceding Article, and to any alteration thereof.

Article 14 (Apparent Manager)

(1) A person who has been given a title of a chief of the principal office or of a branch office, or other person who uses a title to be recognized as a manager shall be deemed to have the same authority as that of a manager of the principal office or of a branch office: Provided, That this shall not apply in respect of judicial acts.

(2) Paragraph (1) shall not apply where the other party has acted in bad faith.

[This Article Wholly Amended by Act No. 10281, May 14, 2010]

Article 15 (Employee Invested with Partial Comprehensive Agency Authority)

(1) An employee who has been entrusted with certain branches of business or specified matters relating to business may effect all acts other than judicial acts.

(2) Article 11 (3) shall apply mutatis mutandis to the case mentioned in the preceding paragraph.

Article 16 (Employee of Shop which Sells Goods)

(1) An employee of a shop which sells goods shall be deemed to have all the authority in regard to the sale of goods.

(2) Article 14 (2) shall apply mutatis mutandis to the case mentioned in the preceding paragraph.

Article 17 (Duties of Trade Employee)

(1) Without the permission by the proprietor of the business, a trade employee shall neither effect any transaction falling within the class of the proprietor's business on his account or on that of a third person nor shall he become a member with unlimited liability, nor a director of a company, nor a employee of another merchant.

(2) In the case that a trade employee has effected a transaction in contravention of the provisions of the preceding paragraph, and such transaction has been effected on his account, the proprietor of the business may regard such a transaction as effected on his own account, and if it has been effected for the account of a third person, the proprietor may request the employee to transfer the profit accrued from such transaction to himself.

(3) The provisions of the preceding paragraph shall not affect the termination of a contract by the proprietor against an employee or the proprietor's claims for damages against a trade employee.

(4) The right mentioned in paragraph (2) shall become extinct after two weeks from the time when the proprietor has become aware of such transaction or after one year has elapsed from the time when the transaction has been effected.

CHAPTER IV TRADE NAMES

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Article 18 (Free Choice of Trade Name)

A merchant may use his full name or any other denomination as his trade name.

Article 19 (Trade Name of Company)

The word "partnership company", "limited partnership company", "stock company" or "limited liability company" shall be contained in the trade name of a company according to its nature.

Article 20 (Ban on Illegal Use of Trade Name of Company)

No person other than a company may use, in the trade name, any word which is suggestive of a company. This shall apply even in cases where the business of a company has been acquired by transfer.

Article 21 (Unitary Trade Name)

(1) A single trade name shall be used in the same business.

(2) A trade name of a branch office shall expressly show its dependent relationship to the principal office.

Article 22 (Effect of Registration of Trade Name)

No trade name which has been registered by another person shall be registered as a trade name of the same kind of business in the same Seoul Special Metropolitan City, Metropolitan City, and Si/Gun. <Amended by Act No. 3724, Apr. 10, 1984; Act No. 4796, Dec. 22, 1994; Act No. 5053, Dec. 29, 1995>

Article 22-2 (Provisional Registration of Trade Name)

(1) If any person intends to establish a stock or limited liability company, he may apply for a provisional registration of the trade name to the registry having the jurisdiction over the place of its principal office.

(2) If a company intends to change either or both of its trade name or/and purpose, it may apply for a provisional registration of its trade name to the registry having the jurisdiction over the place of its principal office.

(3) If a company intends to move its principal office, it may apply for a provisional registration of its trade name to the registry having the jurisdiction over the place to which it is to move.

(4) In application of Article 22, the provisional registration of the trade name shall be deemed to be as registration of the trade name.

(5) Deleted. <by Act No. 8582, Aug. 3, 2007>

[This Article Newly Inserted by Act No. 5053, Dec. 29, 1995]

Article 23 (Prohibition of Use of Trade Name which is likely to Misconceive Ownership of Business)

(1) No person shall, for unfair purpose, use any trade name which is likely to induce others to believe that it represents the business of another person.

(2) In cases where a person has used such a misrepresenting trade name in contravention of the provisions of paragraph (1), any person whose interest is likely to be thereby harmed or any person who has registered his trade name may demand cessation of its use.

(3) The provisions of paragraph (2) shall not prejudice any claim for damages.

(4) Any person who uses the registered trade name of another person in the same Seoul Special Metropolitan City, Metropolitan City, and Si/Gun, in respect of the

same kind of business shall be presumed to have done so for unfair purpose. <Amended by Act No. 3724, Apr. 10, 1984; Act No. 4796, Dec. 22, 1994; Act No. 5053, Dec. 29, 1995>

Article 24 (Liability of Person who has Lent His Name)

A person, who has allowed another person to carry on business using his name or trade name, shall be liable jointly and severally with such other person to effect performance in respect of any obligation arising from a transaction in favor of a third person who has effected such transaction in the belief that such other person was the proprietor of the business.

Article 25 (Transfer of Trade Name)

- (1) A trade name may be transferred only in cases where business is discontinued or it is transferred together with the business.
- (2) Transfer of a trade name shall not be effective as to third persons unless it has been registered.

Article 26 (Effect of Failure to Use Trade Name)

If a person who has registered his trade name has failed to use it for a period of two years without any justifiable reason, he shall be deemed to have abolished trade name.

Article 27 (Application for Cancellation of Registration of Trade Name)

If a trade name has been altered or abolished, and the person who has registered such trade name has failed to register such alteration or abolition within two weeks, any person interested may apply to the court for the cancellation of such registration.

Article 28 (Penalties for Illegal Use of Trade Name)

Any person who has violated Articles 20 and 23 (1) shall be punished for a fine for negligence not exceeding two million won. <Amended by Act No. 3724, Apr. 10, 1984; Act No. 5053, Dec. 29, 1995>

CHAPTER V TRADE BOOKS

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Article 29 (Kinds of and Principles to make Trade Books)

(1) In order to make clear the situation of property, profit and loss in the business, the merchant shall prepare an account book and balance sheet.

(2) Except as otherwise provided by this Act, the trade books shall be made in accordance with the generally fair and proper accounting practices.

[This Article Wholly Amended by Act No. 3724, Apr. 10, 1984]

Article 30 (Method to Make Trade Books)

(1) In an account book, there shall be entered transactions and other particulars having effect on property in business.

(2) A merchant shall, at the time of commencement of his/her business and thereafter at a fixed time, at least once a year, prepare a balance sheet based on the account books and a person who prepared it shall write his/her name and affix his/her seal or sign thereon, and a company shall prepare such a balance sheet in the same manner as a merchant at the time of its incorporation and at the end of each period for the settlement of accounts. <Amended by Act No. 5053, Dec. 29, 1995>

[This Article Wholly Amended by Act No. 3724, Apr. 10, 1984]

Article 31 Deleted. <by Amended by Act No. 10281, May 14, 2010>

Article 32 (Production of Trade Books)

The court may, on application or by its own initiative, order a party to an action to produce his/her trade books or any part thereof.

Article 33 (Preservation of Trade Books, etc.)

(1) Every merchant shall preserve his/her trade books, and all important documents relating to his/her business, for a period of ten years: Provided, That the slips or similar documents thereto shall be kept for five years. <Amended by Act No. 5053, Dec. 29, 1995>

(2) In the case of trade books, the period mentioned in the preceding paragraph shall be computed as from the time at which the book is closed.

(3) The books and documents under paragraph (1) may be preserved by means of the microfilms and other data processing systems. <Newly Inserted by Act No. 5053, Dec. 29, 1995>

(4) Where the books and documents are preserved under paragraph (3), the method of preservation and other necessary matters shall be determined by Presidential Decree. <Newly Inserted by Act No. 5053, Dec. 29, 1995>

CHAPTER VI COMMERCIAL REGISTRATION

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Article 34 (General Rules)

Matters required to be registered under this Act shall, on the application by the party concerned, be entered in the commercial register maintained by the court having jurisdiction over the place of business office.

[This Article Wholly Amended by Act No. 10281, May 14, 2010]

Article 34-2 Deleted. <by Act No. 8582, Aug. 3, 2007>

Article 35 (Registration at Place of Branch Office)

Matters required to be registered at the place of the principal office shall, except as otherwise provided for in this Act, be registered also at the place of each branch office.

Article 36 Deleted. <by Act No. 5053, Dec. 29, 1995>

Article 37 (Effect of Registration)

(1) Matters required to be registered shall not be effective as to any third person acting in good faith without registering them.

(2) Even after the registration is made, if the third person fails to know it for any justifiable reason, paragraph (1) shall be applicable.

[This Article Wholly Amended by Act No. 5053, Dec. 29, 1995]

Article 38 (Effect of Registration at Location of Branch Office)

Where matters required to be registered at the place of a branch office have not been registered, the provisions of the preceding Article shall apply only to transactions at such branch office.

Article 39 (False Registration)

A person who has either intentionally or negligently registered any matter which is different from the truth shall not assert the difference of such matter to a third person acting in good faith.

Article 40 (Registration of Changes or Extinguishment)

If any change has occurred to any of the matters registered, or if any of such matters has been extinguished, the party concerned shall immediately effect registration of such change or extinguishment.

CHAPTER VII TRANSFER OF BUSINESS

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Article 41 (Prohibition of Competitive Business of Transferor)

(1) When a person has transferred his/her business, he/she shall neither, for a period of ten years, carry on the same kind of business in the same Seoul Special Metropolitan City, Metropolitan City, or Si/Gun, nor in any adjacent Seoul Special Metropolitan City, Metropolitan City, or Si/Gun, unless the parties have made any specific agreement. <Amended by Act No. 3724, Apr. 10, 1984; Act No. 4796, Dec. 22, 1994; Act No. 5053, Dec. 29, 1995>

(2) If the transferor has made an agreement not to carry on the same kind of business, such agreement shall be valid, only in the same Seoul Special Metropolitan City, Metropolitan City, Si/Gun and in any adjacent Seoul Special Metropolitan City, Metropolitan City, Si/Gun, and only for a period not exceeding twenty years.
<Amended by Act No. 3724, Apr. 10, 1984; Act No. 4796, Dec. 22, 1994; Act No. 5053, Dec. 29, 1995>

Article 42 (Liability of Business Transferee who Continues to Use Trade Name)

(1) If the transferee of a business continues to use the trade name of the transferor, he shall also be liable to effect performance in respect of any claim of a third person arising from the business of the transferor.

(2) The provisions of the preceding paragraph shall not apply in cases where the transferee has, without delay after the transfer of the business, effected the registration to the effect that he shall not be liable for any obligation of the transferor. The same shall apply to a third person to whom both the transferor and the

transferee have, without delay after the transfer of the business, dispatched notice to the above effect and who has received such notice.

Article 43 (Performance of Obligations to Business Transferee)

In the case mentioned in paragraph (1) of the preceding Article, a performance made to the transferee in respect of any obligation that has arisen from the business of the transferor shall be valid, in cases where the obligor effecting the performance has acted in good faith and without gross negligence.

Article 44 (Liability of Business Transferee who has Made Advertisement of Obligation Acceptance)

If, in cases where the transferee does not continue to use the transferor's trade name, he has made an advertisement to the effect that he will be liable for any obligation arising from the business of the transferor, the transferee shall also be liable to effect performance of such obligation.

Article 45 (Duration of Liability of Business Transferor)

If the transferee is liable for any obligation of the transferor in accordance with Article 42 (1) or the preceding Article, the obligation of the transferor in respect of a third person shall cease to exist after the lapse of two years subsequent to the transfer of the business or to an advertisement.

PART II COMMERCIAL ACTIVITIES

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CHAPTER I COMMON PROVISIONS

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Article 46 (Basic Commercial Activities) The following activities which are effected as business are called commercial activities: Provided, That this shall not apply to such activities as are effected by persons who manufacture articles or render services solely for the purpose of earning wages: <Amended by Act No. 5053, Dec. 29, 1995; Act No. 10281, May 14, 2010>

1. Sale of movables, immovables, valuable instruments and any other properties;
2. Lease of movables, immovables, valuable instruments, and any other properties;
3. Activities relating to the manufacturing, processing, or repairing;
4. Activities relating to the supply of electricity, electric wave, gas, or water;
5. Acceptance of contracts to complete works or to supply service;
6. Activities relating to publishing, printing, or photographing;
7. Activities relating to advertisements, communications, or information;
8. Receiving and giving the credit, exchange, and other financial transactions;
9. Transaction by facilities used by the public;

10. Acceptance of agency for commercial transactions;
11. Activities relating to brokerage;
12. Activities relating to commission agency and any other intermediation;
13. Acceptance of carriages;
14. Acceptance of bailments;
15. Acceptance of trusts;
16. Mutual savings accounts and other similar act;
17. Insurance;
18. Activities relating to the collection of minerals or soil and stone;
19. Activities concerning financial lease of machinery, facilities and other properties;
20. Acts concerning business by a consent to the use of trade name, trademark, etc.;
21. Acts concerning purchase, recovery, etc. of any business claims;
22. Acceptance of payment settlement affairs using a credit card, electronic currency, etc.

Article 47 (Subsidiary Commercial Activities) (1) Activities effected by a merchant for the purpose of his/her business shall be deemed to be commercial activities.

(2) The activities of a merchant shall be presumed to be effected for the purpose of his/her business.

Article 48 (Methods of Agency) An activity by an agent for effecting commercial activities shall be effective for his/her principal, even if the agent has not disclosed the fact that he/she is acting on behalf of the principal: Provided, That when the other party did not know that the

transaction was effected on behalf of the principal, he/she may demand performance to the agent.

Article 49 (Mandate) A person who has received a mandate for effecting commercial activities may effect activities for which he/she has not received any specific mandate in so far as such activities are not contrary to the essence of the mandate.

Article 50 (Continuation of Agency Authority) The agency authority granted by a merchant in respect of his/her business shall not be extinguished for the reason of the death of the principal.

[This Article Wholly Amended by Act No. 10281, May 14, 2010]

Article 51 (Binding Force of Offer of Contract Inter Presentes) An offer to enter into a contract made inter presentes, shall lapse, if not immediately accepted by the offeree.

Article 52 Deleted. <by Amended by Act No. 10281, May 14, 2010>

Article 53 (Duty to Dispatch Notice of Acceptance or Rejection) When a merchant has received an offer to enter into a contract which falls within any of the branches of the business carried on by him from a person with whom he is in regular business relations, he shall dispatch notice of acceptance or rejection without delay. If he has neglected to dispatch such notice, he shall be deemed to have accepted the offer.

Article 54 (Legal Rate of Interest in Commercial Activities) The legal rate of interest on obligations resulting

from commercial activities shall be six percent per annum.
<Amended by Act No. 1212, Dec. 12, 1962>

Article 55 (Demand for Legal Interest) (1) When a merchant has loaned money to any other person in respect of his/her business, the merchant may demand the payment of legal interest thereon.

(2) If a merchant has made substituted donation for another person within the scope of his/her own business, the merchant may demand legal interest thereon from the day on which the substituted donation was made.

[This Article Wholly Amended by Act No. 10281, May 14, 2010]

Article 56 (Place of Performance of Obligation Arising out of Transaction at Branch Offices) If the place of performance of an obligation arising from a transaction by a creditor at a branch office has not been specified either by the nature of the activity or by any declaration of intention by the parties, the place of performance of any obligations, other than the delivery of a specific article, shall be deemed the place of such branch office.

[This Article Wholly Amended by Act No. 10281, May 14, 2010]

Article 57 (Joint and Several Obligations of Obligors and Guarantors) (1) If two or more persons have assumed an obligation through a transaction which is a commercial activity in respect of one or all of them, they shall be liable jointly and severally for the obligation.
(2) Where there is a guarantor, if the guaranty itself is a commercial activity, or if the principal obligation has arisen

out of a commercial activity, the principal obligor and the guarantor shall be liable jointly and severally for the obligation.

Article 58 (Mercantile Lien) If a claim which has arisen from a commercial activity between merchants has become due, the obligee may, until he/she has obtained performance thereof, retain things or valuable instruments belonging to the obligor which have come into his/her possession through a commercial activity with the obligor. This shall not apply, however, in cases where there is any specific agreement between the parties.

Article 59 (Admission of Forfeited Pledge) The provisions of Article 339 of the Civil Act shall not apply to a pledge to secure an obligation arising out of a commercial activity.

Article 60 (Duty to Store Goods in Custody) In cases where a merchant has received a sample or any other items with an offer to enter into a contract which falls within a sector of his/her business, he/she shall, even though he/she rejects the said offer, store such goods in his/her custody at the expense of the offeror. This shall not apply, however, in cases where the value of the goods is insufficient to cover the expenses of custody, or where he/she sustains damage by such custody.

Article 61 (Merchant Right to Demand Remuneration)

A merchant who has performed, on behalf of another person, an act within the scope of his own business may demand a reasonable remuneration in respect of such an act.

Article 62 (Liability of Merchant who Accepted Deposit of Goods)

A merchant who has accepted deposit of goods within the scope of his own business, even though he does not receive any remuneration thereof, shall exercise the care of a good manager.

Article 63 (Business Hours and Performance of Obligation or Demand thereof)

Where business hours have been fixed by Acts and subordinate statutes, or customs, the performance of an obligation or a demand for such performance shall be made only during such hours.

Article 64 (Extinctive Prescription for Commercial Claim)

Except as otherwise provided in this Act, a claim which has arisen through a commercial activity shall be extinguished by prescription if it is not exercised within five years: Provided, That if a shorter period for prescription is provided by other Acts and subordinate statutes, such provision shall apply.

Article 65 (Valuable Instruments and Mutatis Mutandis Application)

The provisions of Articles 508 through 525 of the Civil Act shall apply to valuable instruments issued for the purpose of payment of money, things, or other valuable instruments, and further the provisions of Article 12 (1) and (2) of the Bills of Exchange and Promissory Notes Act shall apply

mutatis mutandis to the aforesaid valuable instruments.
<Amended by Act No. 1212, Dec. 12, 1962>

Article 66 (Quasi Commercial Transactions)

The provisions of this Chapter shall apply mutatis mutandis to the transactions effected by merchants under the provisions of Article 5.

CHAPTER II SALE

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Article 67 (Rights of Seller for Deposit and Auction of Subject-Matter)

(1) If, in the case of a sale between merchants, the buyer refuses or is unable to take delivery of the subject-matter of such sale, the seller may deposit it or may sell it by auction after he has given peremptory notice to accept within a reasonable period fixed by him. In such case, he shall dispatch notice of that fact to the buyer without delay.

(2) If, in the case mentioned in the preceding paragraph, the seller is unable to give peremptory notice to the buyer, or the subject-matter is likely to be lost or injured, he may sell it by auction without giving peremptory notice.

(3) In cases where the seller has sold the subject-matter of the sale by auction in accordance with the provisions of the preceding two paragraphs, he shall deposit the balance after deducting cost of the auction from them: Provided, That he may appropriate the whole or a part of such proceeds to the purchase price.

Article 68 (Rescission of Contract of Sale at Fixed Time)

In a sale between merchants, if, according to the nature of the sale or any declaration of intention of the parties, the purpose of the contract cannot be attained unless it is performed at a fixed time or within a fixed period, and one of the parties has allowed the time to elapse without performance on his part, the other party shall be deemed to have rescinded the contract unless he immediately demands performance.

Article 69 (Buyer's Duty to Examine Subject-Matter and to Notify Defects therein)

(1) In the case of a sale between merchants, the buyer shall, upon taking delivery of the subject-matter, examine it without delay, and if he discovers any defects therein or any deficiency in quantity, he shall immediately dispatch notice thereof to the seller, otherwise, he has no right to rescind the contract, to demand a reduction in the price or to claim damages thereby. The same shall apply in cases where, within six months, the buyer discovers in the subject-matter of the sale a defect which was not immediately discoverable.

(2) The provisions of the preceding paragraph shall not apply to the seller acting in bad faith.

Article 70 (Buyer's Duty of Custody or Deposit of Subject-Matter)