

NEW LEGISLATIVE BILL ON INDIVIDUAL DEBTOR PROTECTION APPROVED AT CABINET MEETING

The government approved a new legislative bill on the management of individual financial debt and the protection of individual debtors at a cabinet meeting held on December 13. This bill aims to strengthen rules regarding creditor financial institution's financial debt and the protection of individual debtors.

BACKGROUND

Since personal credit loans became widely prevalent in the 2000s, authorities have made a series of improvements to arrive at the current framework on the individual debtor protection system.¹ As a result, considerable improvements have been made in how debt collection should be carried out. However, from the perspective of individual delinquent debtors, it has been pointed out that they still face excessive penalty fees for overdue debt and harsh debt collection because of the following reasons. First, there exists no legally supported process through which a debtor can directly bargain with a financial institution to enter into a debt settlement quickly.² Second, the currently available Fair Debt Collection Practices Act has limits in its capacity in terms of providing support for debtors' recovery and enhancing their rights and interests because it passively prohibits certain types of debt collection activities such as assault, battery and threat. Third, collection on delinquent debt held by creditor financial institutions are increasingly being performed by third parties via entrustment and transfer, which led to debt collection practices with negligence on consumer protection and a focus on demanding debt payment. In order to address these issues, authorities have prepared a system of rules aimed at achieving proper balance in the rights and obligations of creditor financial institutions, debt collectors and individual debtors.³

KEY DETAILS

a) Scope of rules and definitions: This bill sets forth rules regarding the overall management of individual financial claim after it becomes delinquent. The term "individual financial claim" means a debt claim held by a creditor financial institution on individual debtor as a consequence of lending, payment by subrogation, acquisition of a claim, etc.

¹ (a) Supporting recovery and restart of overdue debtors: Credit Counseling and Recovery Service (CCRS)'s individual workout program (2002), individual rehabilitation administered by the court (2004)

(b) Preventing illegal debt settlement practices: Fair Debt Collection Practices Act (2009), Guidelines on debt collection and sale of loan obligations (2009)

(c) Preventing Illegal private lending activities: Act on Registration of Credit Business and Protection of Finance Users (2002)

² Debt adjustment program from CCRS takes two months and the personal debt recovery process administered by the court takes six to twelve months.

³ The U.S., the U.K., Germany and Australia each have a specific law already in place that rules the process of handling overdue debt, debt settlement process, debt collection business entities, etc.

- Creditor financial institutions are classified into (i) financial companies (credit financial institutions and credit service providers), (ii) public institutions and (iii) other creditors (special purpose companies engaging in the business of asset-backed securitization, etc.). These all can hold individual financial debt.
- Individual financial claim means claims arising from (i) lending money (including settlement of charges for credit card usage, installment financing), (ii) being subrogated to another's claims by payment guarantee or surety insurance and (iii) acquiring loan claims.
- Individual financial debtors are non-corporate, individual debtors (including loans issued to sole proprietors)

b) Debtors are granted a right to request debt settlement. Upon requests by debtors, creditor financial institutions are encouraged to negotiate debt settlement with the debtors.

(DEBTORS) A debtor will be entitled to the right to file a request for debt settlement from his or her creditor financial institution when he or she finds it difficult to make debt payments. Upon receiving a request, the creditor financial institution should halt debt collection activities and notify debtor about whether he or she will be eligible for debt adjustment within 10 business days.

(FINANCIAL INSTITUTIONS) A notification about the opportunity for debt settlement should be made before a debtor faces events of default, transfer of debt or foreclosure of house, which can have a significant impact on the debtor's rights. When a debtor files a request for debt settlement, transfer of debt and debt collection will be restricted until the debt settlement process is finished.

c) Overdue payment burden will be reduced by restricting accrual of late payment charges during the overdue period.

- Improve the calculation method for interests on late payment in an event of default: Currently, in the case of a default before maturity, late payment interest is charged even on the principal that is not overdue until the maturity. The new legislative bill will prohibit financial institutions, in the event of default, from charging additional late payment interest on the principal that is not due yet (only agreed interest can be charged).⁴
- Exemption of future interest receivables when transferring charged-off debt: Currently, interest continues to accrue even on the account of charged-off debt that financial institutions assessed to be unrecoverable and disposed of as a loss. The new legislative bill will permit transfer of charged-off debt that is covered by deductible expenses only when financial institutions relinquish their claim for future interest.
- Obligation to prepare internal standards on the management of extinctive prescription: Financial institutions will be required to notify debtors of the completion of extinctive prescription within 10 business days from the day of completion. Upon receiving a notification, if debtors do not explicitly express their willingness to pay their debt within 10 business days, it will be considered that the extinctive prescription is completed.

⁴ (Example) Loan principal (balance) 100 = Principal that is due (10) + Principal that is not due yet (90)

- (As of now) 100 x (agreed interest + overdue interest) charged

- (To be changed) [10 x (agreed interest + overdue interest)] + [90 x agreed interest] charged

d) Debt collection practices deemed to be disadvantageous to debtors such as excessive contact will be improved.

(TYPES OF DEBT OFF LIMIT FOR COLLECTION OR TRANSFER) The new legislative bill prescribes the types of debt off limit for collection or transfer by creditor financial institutions and debt collecting agencies.⁵

(NOTIFICATION OF DEBT COLLECTION SCHEDULE, ETC.) When commencing debt collection activities, information about debt being collected, debt collection schedule, etc. should be sent to debtors in advance to ensure a sufficient level of predictability.

(RESTRICTIONS ON DEBT COLLECTOR'S CONTACT) Excessive debt collector's contact will be prohibited for the protection of debtors: (i) Debt collectors' calls cannot be made more than 7 times in 7 consecutive days; (ii) debtors can request debt collectors not to contact them via specific method or channel at particular hours; and (iii) debt collection calls can be deferred for a certain period of time upon confirming the occurrence of an unavoidable event such as an accident or disaster.

e) Creditor financial institutions' obligation to protect debtors will be strengthened.

(EVALUATION BEFORE TRANSFER OF ENTRUSTMENT) When a creditor financial institution makes a transfer of claims or entrust claims collection service to a third party, it shall conduct an evaluation on transferees or trustees with a focus on the professional capacity and petition record about them. The counterparty of transfer or entrustment shall be an entity who has the expertise and little likelihood of illegal or excessive debt collection activities.

(RESPONSIBILITY FOR MANAGEMENT) When entrusting claims collection service, creditor financial institutions should guide and supervise trustees not to violate the Individual Debtor Protection Act or the Fair Debt Collection Practices Act.

(STATUTORY DAMAGE CLAIMS) Individual debtors can claim statutory damages of up to KRW3 million from their creditor financial institution or debt collection agency. The creditor financial institution or debt collection agency will be exempted from liabilities if they show that they did not act intentionally or negligently.

ANTICIPATED EFFECT

As this legislative bill regulates the entire process of collecting delinquent loans from loan overdue to debt collection to extinction of debt, it is expected that there will be more proper balance among rights and obligations of financial institutions, debt collectors and debtors. It will strengthen the rights and interests of debtors and help them to recover quickly, while improving the long-term value of debt collectible for financial institutions.

FURTHER PLAN

This new legislative bill on debtor protection will be submitted to the National Assembly in December this year. After parliamentary approval, the new law will become effective one year after the day of promulgation. The FSC will closely communicate and cooperate with the National Assembly to seek swift passage of the legislation.

⁵ Debt with completed extinctive prescription, debt under a lawsuit, debt undergoing a debt adjustment process (newly added), etc.

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