(2) Option contract

- A separate contract
- One or both parties may have the option to conclude the main contract.
- Notice of the exercise of the option is sufficient to conclude the main contract. No separate acceptance is required. The discussion regarding the ‘obligation to accept’ is meaningless.

1. Duration of the option (absolute time limit)

- Determined by the option contract. May not exceed 10 years **from the date when the option arises** if the parties did not stipulate the duration. The parties may freely agree upon a duration which is longer than 10 years.
    - 91Da44766 (28 July 1992): 10 years begins to run from the date the option contract was concluded. An option to purchase the land expires upon lapse of 10 years even if the land is delivered and has been in possession of the option holder. Absolute time limit absolutely expires. Unlike the statute of limitations, there cannot be any suspension, tolling or resetting the absolute time limit.
    - 94Da22682 (10 Nov. 1995) Parties agreed on 1 May 1980 that Plaintiff may have the option to purchase which is exercisable from 26 March 1985. Plaintiff excercised the option on 6 August 1992. *Ruled:* The option must be exercised before the end of 1 May 1990. Even if the parties agreed that the option may only be exercisable after a period, the option expires upon lapse of 10 years from the

date the option came into existence (□□□ □□□ □) regardless of when the option became exercisable.

- 99Da18725 (13 Oct 2010) Shops in a ‘department store’ were leased for 10 years. Parties agreed that lessees shall have an option to purchase the shops after 10 years or more of lease. Is this option valid? Lower court accepted that the lessees validly exercised the option to purchase. Supreme Court overturned the decision pointing out that the lower court should have examined whether the option was exercised within 10 years since it was created. The court must examine this question *suo motu*.
- 97Da12488 (27 June 1997) ruled that the option to complete the accord and satisfaction in the event of the borrower’s default may be exercised for 10 years counting from the moment of default, which is when the option arises.
- 2016□42077 (25 Jan 2017): parties explicitly agreed that the option shall be exercisable for 30 years. Supreme Court ruled that such an agreement is valid. Cf. Article 184.

- However, **2019Da271661** (14 July 2022) ruled that a put option in a contract arising from an investment (which was done as a commercial activity) shall expire in 5 years **from the date the option was excercisable**.
- If the duration is not specified, the counterpart may propose a reasonable period within which the option must be exercised. Upon lapse of the period, the option expires. Art. 564(2)

2. Multiple parties

- Where several parties jointly hold an option, whether a

party may separately exercise the option (in respect of his/her portion) must be determined by looking at the details of the option contract. 2010Da82530 overturning 83Daka2282 (which had ruled that the option must be jointly exercised without exception). Several buyers were to be co-owners upon exercise of the option. In the case, one buyer was allowed to exercise the option and acquire his portion of ownership. Each was treated as 'solely' holding the option for his/her portion of the ownership (thus, not a 'jointly held' option.)

- But the principle is that jointly held option can only be exercised jointly because a person who does not want to exercise the option should not be forced to become bound by the main contract. The main contract as agreed by the option contract cannot be completed if the option is not jointly exercised. Whether to conclude the main contract with the 'willing' option holders is a matter of negotiating a new contract.
- Where a jointly held option (to purchase real estate) is registered, the party seeking cancellation of the registration may bring a lawsuit against some (not all) of the joint holders of the option. 2000Da26425

3. Option contract to secure a debt

- Art. 607 Option contract to convey title of an asset in the event a loan is not repaid. If the asset's value (at the time of the option contract) exceeds the principal and interest (until due date), the option contract is invalid (Art. 608). However, the contract may instead be interpreted as creating a 'security right' for the creditor (80Da998). See also 91Da11223 below.
- Art. 607 inapplicable to option contract to secure a debt other than an obligation to repay a loan. 65Da1302, 68Da1468
- Court is willing to interpret the main contract to

convey the title as creating a ‘security right’ for the creditor. The creditor is thus required to return the surplus (in excess of the principal and interest) to the debtor.

- 91Da11223. It was agreed that A shall convey the property worth 55 million KRW in satisfaction of an existing debt amounting to 42 million. It was also agreed that A shall have a buyback option within 3 years at a price equivalent to the principal and interest at the time of A’s exercise of the buyback option. After the lapse of 3 years, A offered to repay the debt with interest and demanded the property back. Court interpreted the parties’ agreement either i) as an agreement to provide a security for the repayment of debt (rather than an accord and satisfaction); or ii) as an “option contract to carry out accord and satisfaction” in the future when the debtor can no longer reclaim the property upon lapse of three years (rather than an accord and satisfaction with immediate effect). The court held that A can recover the property either because the agreement was merely a security agreement or because the option to complete the accord and satisfaction is invalid because the property at the time of the option contract is worth more than the amount of debt (principal plus aggregate interest at the time three years have completed). B shall be required to return the property to A when A offers the principal and interest (even after the expriry of 3 year buyback option).

4. Registration of an option

- Applicable to an option to effect conveyance of real estate (as accord and satisfaction of an existing debt)
- Act Regarding Registration of Option to Secure Debts 1983

- Creditor must give a “two month” notice of settlement to the debtor after the repayment date. The notice must set out (Art. 3 of the 1983 Act):
    - the credit amount (including the amount of secured credit owed to other creditors who have priority)
    - the valuation amount of the property
    - the balance (if any)

- Secured creditors having an inferior claim must also be notified. They may demand auction of the property before the balance (if any) is paid out to the debtor or before the expiry of the 2 month-settlement period (when there is no balance to be paid to the debtor). Art. 12(2) of the 1983 Act
- Debtor or the guarantor/owner of the property may repay the debt before receiving the “correct amount” of the balance (i.e., the creditor’s calculation of the balance may be challenged). Until the settlement amount which is calculated in a justifiable manner is paid to the debtor/collateral provider, the debtor/collateral provider may resist the conveyancing and resist the transfer of possession” and that “the debtor/collateral provider is entitled to receive the justifiably assessed settlement amount“. See 96Da6974 (30 July 1996) and 2005Da36618 (11 April 2008), for example. The debtor may tender the full repayment of the debt and the interest and demand cancellation of the registered option(94Da3087) or the title transfer (if the title transfer had already taken place at the time of loan) shall be cancelled. In the latter case, the right of recovery must be excercised before the lapse of 10 years from the repayment date and before the property is conveyed to a third party in good faith. Art. 11 of 1983 Act.
- Special rules for a forfeited pledge agreement: as long as the method of disposal was compliant with the

contract, unjustness of the price is not a ground to invalidate the disposal. 2018Da304007