

Trust Act

(Act No. 108 of December 15, 2006)

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Chapter I General Provisions

(Purpose)

Article 1 The requirements, effect, etc. of a trust shall be governed by the provisions of this Act in addition to the provisions of other laws and regulations.

(Definitions)

Article 2 (1) The term "trust" as used in this Act means an arrangement in

which a specific person, by employing any of the methods listed in the items of the following Article, administers or disposes of property in accordance with a certain purpose (excluding the purpose of exclusively promoting the person's own interests; the same shall apply in said Article) and conducts any other acts that are necessary to achieve such purpose.

- (2) The term "act of trust" as used in this Act means a juridical act specified in each of the following items for the categories of trusts listed in the respective items:
 - (i) a trust created by the method set forth in item (i) of the following Article: a trust agreement as set forth in said item;
 - (ii) a trust created by the method set forth in item (ii) of the following Article: a will as set forth in said item; and
 - (iii) a trust created by the method set forth in item (iii) of the following Article: a manifestation of such intention in a document or electromagnetic record (meaning an electromagnetic record as prescribed in said item) as set forth in said item.
- (3) The term "trust property" as used in this Act means any and all property which belongs to a trustee and which should be administered or disposed of through a trust.
- (4) The term "settlor" as used in this Act means a person who creates a trust by any of the methods listed in the items of the following Article.
- (5) The term "trustee" as used in this Act means a person who is under an obligation to administer or dispose of property that belongs to the trust property and to conduct any other acts that are necessary to achieve the purpose of a trust as provided for by the terms of trust.
- (6) The term "beneficiary" as used in this Act means a person who holds a beneficial interest in a trust.
- (7) The term "beneficial interest" as used in this Act means a claim based on the terms of trust pertaining to the obligation of a trustee to distribute property that is among trust property to a beneficiary or to make any other distribution involving the trust property (hereinafter referred to as a "distribution claim as a beneficiary"), and the right to request a trustee or any other person to carry out certain acts under the provisions of this Act in order to secure such a claim.
- (8) The term the "trustee's own property" as used in this Act means any and all property which belongs to a trustee and which is not among the trust property.
- (9) The term "obligations covered by the trust property" as used in this Act means obligations on which the trustee is liable to perform through the use of property that belongs to the trust property.
- (10) The term "consolidation of trusts" as used in this Act means the consolidation of the whole of the trust properties of two or more trusts that have the same trustee into the trust property of a single new trust.

- (11) As used in this Act: the term "absorption-type trust split" means the transfer of a part of a trust's trust property into the trust property of another trust that has the same trustee; the term "creation-type trust split" means the transfer of a part of a trust's trust property into the trust property of a new trust that has the same trustee; and the term "split of trust" means an absorption-type trust split or creation-type trust split.
- (12) The term "limited liability trust" as used in this Act means a trust in which a trustee is only liable to perform all of the obligations covered by the trust property only by using property that belongs to the trust property.

(Method of Creating a Trust)

Article 3 A trust shall be created by any of the following methods:

- (i) by concluding an agreement with a specific person to the effect that the person will be assigned property, that the person will be granted a security interest in property, or that property will otherwise be disposed of to the person, and that said specific person should administer or dispose of such property in accordance with a certain purpose and carry out any other acts that are necessary for achieving such purpose (hereinafter referred to as a "trust agreement");
- (ii) by making a will to the effect that property will be assigned to a specific person, that a specific person will granted a security interest in property, or that property will otherwise be disposed of to a specific person, and that the specific person should administer or dispose of such property in accordance with a certain purpose and carry out any other acts that are necessary for achieving such purpose; or
- (iii) by manifestation of an intention for a specific person to administer or dispose of a certain portion of the property that the person holds in accordance with a certain purpose and for the person to conduct any other acts that are necessary for achieving such purpose by the person, with the manifestation of such intention being evidenced by a notarial deed or any other document or electromagnetic record (meaning a record made in an electronic form, a magnetic form, or any other form not recognizable to human perception and which is used in information processing by computers as specified by Ordinance of the Ministry of Justice; the same shall apply hereinafter) in which said purpose, the matters necessary for specifying said property, and other matters specified by Ordinance of the Ministry of Justice have been stated or recorded.

(The Coming into Effect of a Trust)

Article 4 (1) A trust created by the method set forth in item (i) of the preceding Article shall become effective when a trust agreement is concluded between the

- person who is to be the settlor and another person who is to be the trustee.
- (2) A trust created by the method set forth in item (ii) of the preceding Article shall become effective when the will takes effect.
- (3) A trust created by the method set forth in item (iii) of the preceding Article shall become effective when the events specified in the following items take place for the cases listed in the respective items:
- (i) where the trust is created by means of a notarial deed or any other document or electromagnetic record authenticated by a notary (hereinafter referred to as a "notarial deed, etc." in this item and the following item): when the notarial deed, etc. is executed; or
 - (ii) where the trust is created by means of a document or electromagnetic record other than a notarial deed, etc.: when notice is given by means of an instrument bearing a fixed date to the third party designated as the person who is to be the beneficiary (if there are two or more such third parties, to one of them), with regard to the fact that the trust has been created and the contents thereof.
- (4) Notwithstanding the provisions of the preceding three paragraphs, when a trust is subject to a condition precedent or a designated time of commencement by the terms of trust, said trust shall become effective when the condition precedent is fulfilled or when the time of commencement arrives.

(Call to Undertake the Trust by Will)

- Article 5 (1) Where a trust is created by the method set forth in Article 3, item (ii), if the will contains a provision designating a particular person to be the trustee, any interested party may specify a reasonable period of time and call on the person designated as the one who is to be the trustee to give a definite answer within that period of time with regard to whether the specific person will undertake the trust; provided, however, that if the will designates a condition precedent or a time of commencement for the provision, this may only be done after the condition precedent is fulfilled or after the time of commencement arrives.
- (2) Where a call for an answer is made under the provisions of the preceding paragraph, if the person designated as the one who is to be the trustee fails to give a definite answer to the settlor's heir within the period set forth in said paragraph, it shall be deemed that such person does not undertake the trust.
- (3) For the purpose of the application of the provisions of the preceding paragraph in cases where the settlor has no heir at the time in question, the phrase "the settlor's heir" in said paragraph shall be deemed to be replaced with "the beneficiary (if there are two or more beneficiaries at that time, to one of them, and if there is a trust caretaker at that time, to the trust caretaker)."

(Appointment of a Trustee by the Court in the Case of a Testamentary Trust)

- Article 6 (1) Where a trust is created by the method set forth in Article 3, item (ii), if the will contains no provision concerning the designation of a trustee or if the person designated as the one who is to be the trustee does not undertake or is unable to undertake the trust, the court may appoint a trustee on the petition of an interested party.
- (2) The judicial decision on the petition set forth in the preceding paragraph shall include the reasons for said decision.
- (3) A beneficiary or the current trustee may file an immediate appeal against a judicial decision on the appointment of a trustee under the provisions of paragraph (1).
- (4) The immediate appeal set forth in the preceding paragraph shall have the effect of a stay of execution.

(Qualification of a Trustee)

Article 7 No trust may be created with a minor, adult ward, or person under curatorship serving as a trustee.

(Prohibition on the Trustee's Enjoyment of Benefit)

Article 8 No trustee may benefit from the trust under any name, except where the trustee benefits from the trust as its beneficiary.

(Prohibition of Trusts for Evasion of the Law)

Article 9 A person who may not enjoy a certain property right under laws and regulations may not enjoy, as a beneficiary, the same benefit as that derived from holding such right.

(Prohibition on Trusts for Suits)

Article 10 No trust may be created for the primary purpose of having another person conduct any procedural act.

(Cancellation of Fraudulent Trusts, etc.)

Article 11 (1) Where a settlor has created a trust with the knowledge that it would harm the settlor's creditor, the creditor may, irrespective of whether or not the trustee had knowledge of the fact that the creditor would be harmed, request the court for a rescission under the provisions of Article 424, paragraph (1) of the Civil Code (Act No. 89 of 1896), with the trustee as the defendant; provided, however, that this shall not apply where there are any beneficiaries at the time, all or some of who had no knowledge of the fact that the creditor would be harmed at the time when they became aware that they had been designated as beneficiaries (meaning being designated as an initial

beneficiary or new beneficiary after a change in the provisions of the terms of trust or as a result of the exercise of the right to designate or change a beneficiary prescribed in Article 89, paragraph (1); the same shall apply hereinafter) or when they acquired beneficial interests.

- (2) Where a judgment upholding a request under the provisions of the preceding paragraph has become final and binding, if a creditor (excluding one who is the settlor) who has a claim pertaining to an obligation covered by the trust property had no knowledge at the time when the creditor acquired the claim of the fact that would harm the creditor, the settlor shall be liable to perform the obligation covered by the trust property to the creditor who holds such a claim; provided, however, that such performance shall be limited to the value of the property to be transferred from the trustee to the settlor by reason of the rescission under the provisions of said paragraph.
- (3) For the purpose of the application of the provisions of the preceding paragraph, the right that the trustee has pursuant to the provisions of Article 49, paragraph (1) (including cases where applied *mutatis mutandis* pursuant to Article 53, paragraph (2) and Article 54, paragraph (4)) shall be deemed to be a monetary claim.
- (4) Where a settlor has created a trust with the knowledge that it would harm the settlor's creditor, if a beneficiary has been distributed property by the trustee from among the trust property, the creditor may request the court for a rescission under the provisions of Article 424, paragraph (1) of the Civil Code, with the beneficiary as the defendant; provided, however, that this shall not apply where said beneficiary had no knowledge of the fact that the creditor would be harmed at the time when the said beneficiary became aware to have been designated as a beneficiary or when the said beneficiary acquired a beneficial interest.
- (5) Where a settlor has created a trust with the knowledge that it would harm the settlor's creditor, the creditor may demand, by a suit designating a beneficiary as a defendant, that the beneficiary assign the beneficiary's beneficial interest to the settlor. In this case, the provisions of the proviso to the preceding paragraph shall apply *mutatis mutandis*.
- (6) The provisions of Article 426 of the Civil Code shall apply *mutatis mutandis* to the right to make a demand under the provisions of the preceding paragraph.
- (7) When designating a beneficiary or assigning a beneficial interest, it shall not be permitted to, for the purpose of unjustly circumventing the application of the provisions of the main clause of paragraph (1), the main clause of paragraph (4) or the first sentence of paragraph (5), designate a person who has no knowledge of the fact that any creditor could be harmed (hereinafter referred to as a "person without knowledge" in this paragraph) as a beneficiary without value (including cases where such designation is made with value that

should be deemed to be equal to a designation being made without value; hereinafter the same shall apply in this paragraph), or assign a beneficial interest to a person without knowledge without value.

- (8) With regard to a person who has become a beneficiary as a result of the designation of a beneficiary or the acquisition of a beneficial interest in violation of the provisions of the preceding paragraph, the provisions of the proviso to paragraph (1) and the proviso to paragraph (4) (including cases where applied *mutatis mutandis* pursuant to the second sentence of paragraph (5)) shall not apply.

(Avoidance of Fraudulent Trusts, etc.)

Article 12 (1) For the purpose of the application of the provisions of Article 160, paragraph (1) of the Bankruptcy Act (Act No. 75 of 2004) to a trust created with a bankrupt person as the settlor, the phrase "the person who has benefited from" in the items of said paragraph shall be deemed to be replaced with "all or part of the beneficiaries who have benefited from."

- (2) Where a bankrupt has created a trust as the settlor with the knowledge that it would harm the bankruptcy creditors, the bankruptcy trustee may demand, by filing an action against the beneficiary, that the beneficiary return the beneficial interest to the bankruptcy estate. In this case, the provisions of the proviso to paragraph (4) of the preceding Article shall apply *mutatis mutandis*.

- (3) For the purpose of the application of the provisions of Article 127, paragraph (1) of the Civil Rehabilitation Act (Act No. 225 of 1999) to a trust created with a debtor under rehabilitation procedure as the settlor, the phrase "the person who has benefited from" in the items of said paragraph shall be deemed to be replaced with "all or part of the beneficiaries who have benefited from."

- (4) Where a rehabilitation debtor has created a trust as the settlor with the knowledge that it would harm the rehabilitation creditors, a supervisor with avoiding powers or a trustee in charge of rehabilitation proceedings may demand, by filing an action against a beneficiary, that the beneficiary return the beneficial interest to the assets of rehabilitation debtor (meaning the assets of rehabilitation debtor as prescribed in Article 12, paragraph (1), item (i) of the Civil Rehabilitation Act; the same shall apply in Article 25, paragraph (4)). In this case, the provisions of the proviso to paragraph (4) of the preceding Article shall apply *mutatis mutandis*.

- (5) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to a company under reorganization (meaning a company under reorganization as prescribed in Article 2, paragraph (7) of the Corporate Reorganization Act (Act No. 154 of 2002) or a company under reorganization as prescribed in Article 169, paragraph (7) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc. (Act No. 95 of 1996)) or a

cooperative financial institution under reorganization (meaning a cooperative financial institution under reorganization as prescribed in Article 4, paragraph (7) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc). In this case, in paragraph (3), the phrase "the provisions of Article 127, paragraph (1) of the Civil Rehabilitation Act (Act No. 225 of 1999)" shall be deemed to be replaced with "the provisions of Article 86, paragraph (1) of the Corporate Reorganization Act (Act No. 154 of 2002) and Article 57, paragraph (1) and Article 223, paragraph (1) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc. (Act No. 95 of 1996)," and the phrase "the items of said paragraph" shall be deemed to be replaced with "these provisions," and in the preceding paragraph, the term "rehabilitation creditors" shall be deemed to be replaced with "reorganization creditors or secured reorganization creditors," and the phrase "supervisor with avoidance powers or a trustee in charge of rehabilitation proceedings" shall be deemed to be replaced with "trustee in charge of reorganization proceedings," and the phrase "the assets of rehabilitation debtor (meaning the assets of rehabilitation debtor prescribed in Article 12, paragraph (1), item (i) of the Civil Rehabilitation Act; the same shall apply in Article 25, paragraph (4))" shall be deemed to be replaced with "the assets of the company under reorganization (meaning assets of a company under reorganization as prescribed in Article 2, paragraph (14) of the Corporate Reorganization Act or assets of a company under reorganization as prescribed in Article 169, paragraph (14) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc.) or assets of a cooperative financial institution under reorganization (meaning assets of a cooperative financial institution under reorganization as prescribed in Article 4, paragraph (14) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc.)"

(Accounting Principles)

Article 13 The accounting for a trust shall be subject to accounting practices that are generally accepted as fair and appropriate.

Chapter II Trust Property, etc.

(Requirements for Perfection Concerning Property that Belongs to Trust Property)

Article 14 With regard to any property for which the acquisition, loss, and modification of any right may not be duly asserted against a third party unless it is registered, the fact that such property belongs to the trust property may not be duly asserted against a third party unless the fact that the property is

under the trust is registered.

(Succession of a Defect in the Possession of Property That Belongs to Trust Property)

Article 15 A trustee shall succeed to a settlor's defect in possession of property that belongs to the trust property.

(Scope of Trust Property)

Article 16 In addition to property specified by the terms of trust as being among trust property, the following property shall be among the trust property:

- (i) any property obtained by the trustee as a result of the administration, disposition, loss or damage of, or any other events occurring to property that belongs to the trust property; and
- (ii) any property that has come to be among the trust property pursuant to the provisions of the following Article, Article 18, Article 19 (including cases where applied mutatis mutandis by replacing the relevant terms and phrases pursuant to the provisions of Article 84; hereinafter the same shall apply in this item), Article 226, paragraph (3), Article 228, paragraph (3), and Article 254, paragraph (2) (including any co-ownership interest that is deemed to be among the trust property pursuant to the provisions of Article 18, paragraph (1) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article) and any property that is made to be among the trust property as a result of the division under the provisions of Article 19).

(Accession, etc. of Property that belongs to Trust Property)

Article 17 Where property that belongs to trust property is joined by accession to or mixture with the trustee's own property or any property that belongs to the trust property of another trust, or where processing is conducted using these properties as materials, those properties that are among the trust properties of the respective trusts and the property that belongs to the trustee's own property shall be deemed to belong to their respective owners, and the provisions of Article 242 to Article 248 of the Civil Code shall apply.

Article 18 (1) Where property that belongs to the trust property becomes indistinguishable from property that belongs to the trustee's own property (excluding the case prescribed in the preceding Article), it shall be deemed that a co-ownership interest in either of these properties is an interest in both the trust property and the trustee's own property. In this case, the shares of such co-ownership interests shall be in proportion to the prices of the respective properties as of the time when they became indistinguishable from each other.

(2) The co-ownership interests set forth in the preceding paragraph shall be

presumed to be equal.

- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis where a trustee of a trust also serves as a trustee of another trust, and where properties that are among the trust properties of these trusts have become indistinguishable from each other (excluding the case prescribed in the preceding Article). In this case, the phrase "the trust property and the trustee's own property" in paragraph (1) shall be deemed to be replaced with "the trust properties of these trusts."

(Division of Properties in Co-ownership that Are Among Both the Trust Property and the Trustee's Own Property, etc.)

Article 19 (1) Where a co-ownership interest in a specific property that belongs to a trustee is an interest in both the trust property and the trustee's own property, such property may be divided by the following methods:

- (i) by the method specified by the terms of trust;
 - (ii) based on an agreement between the trustee and the beneficiary (if there is a trust caretaker at the time in question, the trust caretaker); and
 - (iii) based on a decision by the trustee in cases where the division of the property in question is considered to be necessary to a reasonable extent in order to achieve the purpose of the trust and where it is clear that the division will not harm the interests of the beneficiary, or where there are justifiable grounds for the division in light of the impact of the division on the trust property, the purpose and manner of the division, the substantial status of the relationship between the trustee and the beneficiary as interested parties and other relevant circumstances.
- (2) In the case prescribed in the preceding paragraph, if the agreement set forth in item (ii) of said paragraph is not reached or if it is impossible to effect the division by any of the methods listed in the items of said paragraph for other reasons, the trustee or the beneficiary (if there is a trust caretaker at the time in question, the trust caretaker) may submit a demand to the court for the division of the property in co-ownership set forth in said paragraph.
- (3) Where a co-ownership interest in a specific property that belongs to a trustee is an interest in both the trust property and the trust property of another trust, such property may be divided by the following methods:
- (i) by the method specified by the terms of trust of both trusts;
 - (ii) based on an agreement between the beneficiaries of both trusts (if there is a trust caretaker for each trust at the time in question, the trust caretakers); and
 - (iii) based on a decision by the trustees of both trusts in cases where the partition of the property in question is considered to be necessary to a reasonable extent in order to achieve the purpose of each trust and where it

is clear that the division will not harm the interest of the beneficiaries, or where there are justifiable grounds for the division in light of the impact of the division on the trust properties, the purpose and manner of the division, the status of the substantial relationship of interests between the trustees and the beneficiaries, and other relevant circumstances.

- (4) In the case prescribed in the preceding paragraph, if the agreement set forth in item (ii) of said paragraph is not reached or if it is impossible to make the division by any of the methods listed in the items of said paragraph for other reasons, the beneficiary of each trust (if there is a trust caretaker at the time in question, the trust caretaker) may submit a demand to the court for the division of the property in co-ownership set forth in said paragraph.

(Special Rules for the Confusion of Property That Belongs to Trust Property)

Article 20 (1) Where ownership and any other real right existing on a single property have each come to be among either the trust property and the trustee's own property or among the trust property of another trust, such other real right shall not be extinguished, notwithstanding the provisions of the main clause of Article 179, paragraph (1) of the Civil Code.

(2) Where any real right other than ownership and any other right for which the said real right is the object have come to exist with respect to the trust property and the trustee's own property or among the trust property of another trust, such other right shall not be extinguished, notwithstanding the provisions of the first sentence of Article 179, paragraph (2) of the Civil Code.

(3) In the following cases, the claim set forth therein shall not be extinguished, notwithstanding the provisions of the main clause of Article 520 of the Civil Code:

- (i) where an obligation pertaining to a claim belonging to the trust property has vested in the trustee (excluding the case where such obligation has become an obligation covered by the trust property);
- (ii) where a claim pertaining to an obligation covered by the trust property has vested in the trustee (excluding the case where such claim has come to belong to the trust property);
- (iii) where an obligation pertaining to a claim belonging to the trustee's own property or the trust property of another trust has vested in the trustee (limited to the case where such obligation has become an obligation covered by the trust property); and
- (iv) where a claim pertaining to a trustee's obligation (excluding an obligation covered by the trust property) has vested in the trustee (limited to the case where such claim has come to belong to the trust property).

(Scope of Obligations Covered by the Trust Property)

Article 21 (1) Obligations pertaining to the following claims shall be obligations covered by the trust property:

- (i) a distribution claim as a beneficiary;
 - (ii) a right arising with respect to property that belongs to the trust property from a cause that occurred prior to the creation of the trust;
 - (iii) a claim arising against the settlor prior to the creation of the trust, for which it is provided by the terms of trust that the obligation pertaining to said claim is an obligation covered by the trust property;
 - (iv) a beneficiary's right to demand that the trustee acquire the distribution claim as a beneficiary interest under the provisions of Article 103, paragraph (1) or paragraph (2);
 - (v) a right arising from an act which is conducted in the interest of the trust property and which falls within the scope of the trustee's powers;
 - (vi) a right arising from any of the following acts which is conducted in the interest of the trust property and which does not fall within the scope of the trustee's powers:
 - (a) an act that may not be rescinded pursuant to the provisions of Article 27, paragraph (1) or paragraph (2) (including cases where these provisions are applied mutatis mutandis pursuant to Article 75, paragraph (4); the same shall apply in (b)) (excluding cases where the other party to the act did not know, at the time of the act, that the act was being conducted in the interest of the trust property (excluding the act of establishing or transferring a right with respect to property that belongs to the trust property));
 - (b) an act that may be rescinded pursuant to the provisions of Article 27, paragraph (1) or paragraph (2) but has not yet been rescinded;
 - (vii) a right arising from a disposition or any other act prescribed in Article 31, paragraph (6) or from an act prescribed in paragraph (7) of said Article, which may not be rescinded pursuant to these provisions or which may be rescinded pursuant to these provisions but has not yet been rescinded;
 - (viii) a right arising from a tort committed by the trustee in the course of the trust administration; and
 - (ix) in addition to what is listed in item (v) to the preceding item, a right arising in the course of the trust administration.
- (2) With regard to obligations pertaining to the following rights which fall within the scope of obligation covered by the trust property, a trustee shall be liable to perform such obligations only by using property that belongs to the trust property:
- (i) a distribution claim as a beneficiary;
 - (ii) a trust claim (meaning a claim pertaining to an obligation covered by the trust property, other than a distribution claim as a beneficiary; the same

shall apply hereinafter) in cases where the terms of trust contains the provision set forth in Article 216, paragraph (1) and a registration has been made as provided for in Article 232;

- (iii) in addition to those listed in the preceding two items, a trust claim in cases where the trustee is deemed to only be liable for using property that belongs to the trust property to satisfy said claim, pursuant to the provisions of this Act; and
- (iv) a trust claim in cases where there is an agreement between the trustee and the holder of the trust claim (hereinafter referred to as a "trust creditor") to the effect that the trustee is to be liable to satisfy said claim only by using property that belongs to the trust property.

(Restriction on the Set-Off of Claims, etc. that Are Among the Trust Property)

Article 22 (1) A person who holds a claim pertaining to an obligation which the trustee is liable to perform only by using property that belongs to trustee's own property or the trust property of another trust (referred to as the "trustee's own property, etc." in item (i)) (such obligations shall be referred to as "obligations covered by trustee's own property only, etc." in item (i) and item (ii)) may not use said claim to set off the obligation pertaining to a claim belonging to the trust property; provided, however, that this shall not apply in the following cases:

- (i) where, either at the time when a person acquired the claim or at the time when a person assumed the obligation pertaining to a claim belonging to the trust property, whichever occurred later, the said person who holds the claim pertaining to the obligation covered by the trustee's own property only, etc. did not know and was not negligent in failing to know that the claim belonging to the trust property did not belong to the trustee's own property, etc.; or
 - (ii) where, either at the time when a person acquired a claim or at the time when a person assumed the obligation pertaining to a claim belonging to the trust property, whichever occurred later, the person who holds the claim pertaining to the obligation covered by the trustee's own property only, etc. did not know and was not negligent in failing to know that the obligation covered by the trustee's own property only, etc. is liable was not an obligation covered by the trust property.
- (2) The provisions of the main clause of the preceding paragraph shall not apply in the cases listed in the items of Article 31, paragraph (2) in which the trustee has approved the set-off set forth in said paragraph.
- (3) A person who holds a claim pertaining to an obligation covered by the trust property (limited to an obligation that the trustee is liable to perform only by using property that belongs to the trust property) may not use said claim to set

off against the person's obligation pertaining to a claim belonging to the trustee's own property; provided, however, that this shall not apply where, at the time when said person acquired the claim or when the person assumed the obligation pertaining to the claim belonging to the trustee's own property, whichever occurred later, the person who holds the claim pertaining to the obligation covered by the trust property did not know and was not negligent in failing to know that the claim belonging to the trustee's own property did not belong to the trust property.

- (4) The provisions of the main clause of the preceding paragraph shall not apply where the trustee has approved the set-off set forth in said paragraph.

(Restriction, etc. on Execution, etc. Against Property that Belongs to Trust Property)

Article 23 (1) Except where based on a claim pertaining to an obligation covered by the trust property (including a right arising with respect to property that belongs to the trust property; the same shall apply in the following paragraph), no execution, provisional seizure, provisional disposition, or exercise of a security interest or an auction (excluding an auction for the exercise of a security interest; the same shall apply hereinafter) nor collection proceedings for delinquent national tax (including a procedure to be enforced pursuant to the provisions on collection proceedings for delinquent national tax; the same shall apply hereinafter) may be enforced against property that belongs to the trust property.

- (2) In addition to a creditor who holds a claim pertaining to an obligation covered by the trust property, where a trust has been created by the method set forth in Article 3, item (iii), if the settlor has created the trust with the knowledge that it would harm settlor's creditor(s), notwithstanding the provisions of the preceding paragraph, a person who holds a claim against the settlor (limited to cases where the settlor is a trustee) which has arisen prior to the creation of the trust may commence a execution, provisional seizure, provisional disposition or exercise of a security interest, or an auction, or may commence collection proceedings for delinquent national tax against property that belongs to the trust property; provided, however, that this shall not apply where there are beneficiaries at the time in question, and when all or some of those beneficiaries did not know, at the time when they became aware that they had been designated as beneficiaries or when they acquired beneficial interests, of the fact that the creditor would be harmed.
- (3) The provisions of Article 11, paragraph (7) and paragraph (8) shall apply mutatis mutandis to the application of the provisions of the preceding paragraph.
- (4) The provisions of the preceding two paragraphs shall not apply when two

years have elapsed since the trust set forth in paragraph (2) was created.

- (5) A trustee or beneficiary may assert an objection to the execution, provisional seizure, provisional disposition or exercise of a security interest, or auction that is being commenced in violation of the provisions of paragraph (1) or paragraph (2). In this case, the provisions of Article 38 of the Civil Execution Act (Act No. 4 of 1979) and the provisions of Article 45 of the Civil Preservation Act (Act No. 91 of 1989) shall apply *mutatis mutandis*.
- (6) A trustee or beneficiary may assert an objection to the collection proceeding for delinquent national tax that are being enforced in violation of the provisions of paragraph (1) or paragraph (2). In this case, the assertion of the objection shall be made by entering an appeal against the collection proceedings of delinquent national tax.

(Payment, etc. of Expenses, Costs, or Remuneration)

Article 24 (1) Where a beneficiary who has filed an action to assert an objection under the provisions of paragraph (5) or paragraph (6) of the preceding Article has won the beneficiary's case (completely or partially), if the beneficiary has paid any expenses or costs (excluding court costs) that were necessary in relation to the action or if the beneficiary is liable for paying remuneration to an attorney-at-law, legal professional corporation, judicial scrivener, or judicial scrivener corporation, such expenses, costs, or remuneration shall be paid from the trust property, up to the amount considered reasonable, not exceeding the actual amount thereof.

- (2) Even where the beneficiary who filed the action set forth in the preceding paragraph has lost the beneficiary's case, the beneficiary shall not be liable to compensate the trustee for any damage arising from the action, except where the beneficiary was in bad faith.

(Relationship between Trust Property and Bankruptcy Proceedings, etc.

Against a Trustee)

Article 25 (1) Even where an order for the commencement of bankruptcy is entered against a trustee, no property that belongs to the trust property shall be included in the bankruptcy estate.

- (2) In the case referred to in the preceding paragraph, no distribution claim as a beneficiary shall be the bankruptcy claims. The same shall apply to a trust claim that the trustee is liable to satisfy only by using property that belongs to the trust property.
- (3) In the case referred to in paragraph (1), discharge of an obligation pertaining to a trust claim (excluding a trust claim prescribed in the preceding paragraph) based on a discharge order as set forth in Article 252, paragraph (1) of the Bankruptcy Act may not be asserted to the trust property.

- (4) Even where an order for the commencement of rehabilitation proceedings is entered against a trustee, no trust property shall be included in the rehabilitation debtor's assets.
- (5) In the case referred to in the preceding paragraph, no distribution claim as a beneficiary shall be included in the rehabilitation claims. The same shall apply to a trust claim that the trustee is liable to satisfy only by using property that belongs to the trust property.
- (6) In the case referred to in paragraph (4), a discharge of or modification to an obligation pertaining to a trust claim (excluding a trust claim as prescribed in the preceding paragraph) by a rehabilitation plan, an order for the confirmation of the rehabilitation plan, or discharge order set forth in Article 235, paragraph (1) of the Civil Rehabilitation Act may not be asserted to the trust property.
- (7) The provisions of the preceding three paragraphs shall apply mutatis mutandis where an order for the commencement of reorganization is entered against a trustee. In this case, the term " rehabilitation debtor's assets" in paragraph (4) shall be deemed to be replaced with " of reorganization company's assets (meaning the assets of a company under reorganization as prescribed in Article 2, paragraph (14) of the Corporate Reorganization Act or the assets of a company in reorganization as prescribed in Article 169, paragraph (14) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc.) or the assets of a cooperative financial institution under reorganization (meaning the assets of a cooperative financial institution under reorganization as prescribed in Article 4, paragraph (14) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc)," the term "rehabilitation claims" in paragraph (5) shall be deemed to be replaced with "reorganization claims or secured reorganization claims," and the phrase "rehabilitation plan, an order for the confirmation of the rehabilitation plan, or an order of discharge set forth in Article 235, paragraph (1) of the Civil Rehabilitation Act" in the preceding paragraph shall be deemed to be replaced with "reorganization plan or an order for the confirmation of the reorganization plan."

Chapter III Trustees, etc.

Section 1 Trustees' Powers

(Scope of the Trustee's Powers)

Article 26 A trustee shall have the power to administer or dispose of property that belongs to the trust property and to conduct any other acts that are necessary to achieve the purpose of the trust; provided, however, that this shall not preclude such power from being restricted by the terms of trust.

(Rescission of Acts Conducted by Trustee Beyond the Powers)

Article 27 (1) Where an act conducted by a trustee for the trust property does not fall within the scope of the trustee's powers, a beneficiary may rescind such act, if all of the following conditions are met:

- (i) that the other party to the act knew, at the time of the act, that the act was conducted for the trust property; and
- (ii) that the other party to the act knew or was grossly negligent in failing to know, at the time of the act, that the act did not fall within the scope of the trustee's powers.

(2) Notwithstanding the provisions of the preceding paragraph, where an act conducted by a trustee to establish or transfer a right for property that belongs to the trust property (limited to such property for which a trust registration as set forth in Article 14 may be made) does not fall within the scope of trustee's powers, a beneficiary may rescind such act, if all of the following conditions are met:

- (i) that at the time of the act, the trust registration as set forth in Article 14 existed with regard to the property that belongs to the trust property; and
- (ii) that the other party to the act knew or was grossly negligent in failing to know, at the time of the act, that the act did not fall within the scope of the trustee's powers.

(3) When any one of the two or more beneficiaries has exercised the right to rescind under the provisions of the preceding two paragraphs, the rescission shall also be effective for other beneficiaries.

(4) The right to rescind under the provisions of paragraph (1) or paragraph (2) shall be extinguished by prescription if it is not exercised within three months from the time when the beneficiary (if there is a trust caretaker at the time in question, the trust caretaker) became aware of the existence of the grounds for rescission. The same shall apply when one year has elapsed from the time of the act.

(Delegation of Trust administration to a Third Party)

Article 28 In the following cases, a trustee may delegate the trust administration to a third party:

- (i) where it is provided by the terms of trust that the trust administration is to be or may be delegated to a third party;
- (ii) where the terms of trust does not contain any provisions concerning the delegation of the trust administration to a third party, but delegating the trust administration to a third party is considered to be appropriate in light of the purpose of the trust; and
- (iii) where it is provided by the terms of trust that the trust administration

shall not be delegated to a third party, but delegating the trust administration to a third party is considered to be unavoidable in light of the purpose of the trust.

Section 2 Duties, etc. of a Trustee

(The Trustee's Duty of Care)

Article 29 (1) A trustee shall administer trust affairs in line with the purpose of the trust.

(2) A trustee shall administer trust affairs with the due care of a prudent manager; provided, however, that if terms of trust otherwise provide, the trustee shall administer trust affairs with such care as provided for by the terms of trust.

(Duty of Loyalty)

Article 30 A trustee shall administer trust affairs and conduct any other acts faithfully on behalf of the beneficiary.

(Restriction on Acts that Create Conflicts of Interest)

Article 31 (1) A trustee shall not carry out the following acts:

(i) causing property that belongs to the trust property (including any right for such property) to be included in the trustee's own property, or causing property that belongs to the trustee's own property (including any right for such property) to be included in the trust property;

(ii) causing property that belongs to the trust property (including any right for such property) to be included in the trust property of another trust;

(iii) carrying out an act for the trust property with a third party while serving as the third party's agent; and

(iv) establishing a security interest on property that belongs to the trust property in order to secure a claim pertaining to an obligation that the trustee is liable to perform only by using property that belongs to the trustee's own property, or carrying out any other act with a third party for the trust property which would create a conflict of interest between the trustee or an interested party thereof and the beneficiary.

(2) Notwithstanding the provisions of the preceding paragraph, in any of the following cases, a trustee may carry out the acts listed in the items of said paragraph; provided, however, that this shall not apply in the case set forth in item (ii) if it is provided for by the terms of trust that the trustee may not carry out said acts even in the case set forth in said item:

(i) where it is provided by the terms of trust that the trustee is allowed to carry out said acts;

- (ii) where the trustee has disclosed the material facts and obtained approval from the beneficiary for carrying out said acts;
 - (iii) where any right to property that belongs to the trust property has been included in the trustee's own property by reason of inheritance or any other universal succession; or
 - (iv) where, in order to achieve the purpose of the trust, it is considered reasonably necessary for the trustee to carry out said acts, and it is clear that said acts conducted by the trustee will not harm the interests of the beneficiary, or where there are justifiable grounds for the trustee to carry out said acts in light of the impact of said acts on the trust property, the purpose and manner of the acts, the status of a substantial relationship between the trustee and the beneficiary which makes the trustee an interested party, and other relevant circumstances.
- (3) A trustee shall, when the trustee has carried out any of the acts listed in the items of paragraph (1), give notice of the material facts concerning said act to a beneficiary; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (4) Where the act set forth in paragraph (1), item (i) or item (ii) is carried out in violation of the provisions of paragraph (1) or paragraph (2), such act shall be void.
- (5) The act set forth in the preceding paragraph shall become effective retroactively as of the time of the act, if it is ratified by the beneficiary.
- (6) In the case prescribed in paragraph (4), when a trustee has disposed of or carried out any other act regarding the property set forth in paragraph (1), item (i) or item (ii) with a third party, a beneficiary may rescind the disposition or other act only if the third party knew or was grossly negligent in failing to know that the act set forth in paragraph (1), item (i) or item (ii) was carried out in violation of the provisions of paragraph (1) or paragraph (2). In this case, the provisions of Article 27, paragraph (3) and paragraph (4) shall apply *mutatis mutandis*.
- (7) Where an act set forth in paragraph (1), item (iii) or item (iv) has been carried out in violation of the provisions of paragraph (1) and paragraph (2), a beneficiary may rescind the act only if the third party knew or was grossly negligent in failing to know that such act was conducted in violation of these provisions. In this case, the provisions of Article 27, paragraph (3) and paragraph (4) shall apply *mutatis mutandis*.

Article 32 (1) With regard to an act that a trustee may carry out in the course of administering trust affairs based on the trustee's powers as a trustee, if the trustee's failure to carry out such an act would be contrary to the interests of a beneficiary, the trustee may not conduct such act on the account of the

trustee's own property or on the account of an interested party thereof.

- (2) Notwithstanding the provisions of the preceding paragraph, in any of the following cases, a trustee may carry out the act prescribed in said paragraph on the account of the trustee's own property or on the account of the interested party thereof; provided, however, that this shall not apply in the case set forth in item (ii) if it is provided by the terms of trust that the trustee may not carry out said act on the account of the trustee's own property or on the account of an interested party thereof even in the case set forth in said item:
- (i) where it is provided by the terms of trust that the trustee is allowed to carry out said act on the account of the trustee's own property or on the account of an interested party thereof; or
 - (ii) where the trustee has disclosed the material facts and obtained approval from the beneficiary for carrying out said act on the account of the trustee's own property or on the account of an interested party thereof.
- (3) A trustee shall, when the trustee has carried out the act prescribed in paragraph (1) on the account of the trustee's own property or on the account of an interested party thereof, give notice to the beneficiary of the material facts concerning the act; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (4) Where a trustee has carried out an act prescribed in paragraph (1) in violation of the provisions of paragraph (1) and paragraph (2), the beneficiary may deem that said act has been conducted in the interests of the trust property; provided, however, that this may not harm rights of any third party.
- (5) The rights under the provisions of the preceding paragraph shall be extinguished when one year has elapsed from the time of the act.

(Duty of Equity)

Article 33 In the case of a trust with two or more beneficiaries, the trustee shall perform duties of the trustee equitably on behalf of these beneficiaries.

(Duty to Segregate Property)

Article 34 (1) A trustee shall segregate property that belongs to the trust property from property that belongs to the trustee's own property and that which belongs to the trust property of other trusts by the method specified in each of the following items for the categories of property listed in the respective items; provided, however, that if the terms of trust otherwise provides for the method of segregation, such provisions shall prevail:

- (i) property for which a trust registration set forth in Article 14 may be made (excluding the property set forth in item (iii)): by said trust registration;
- (ii) property for which a trust registration set forth in Article 14 may not be made (excluding the property set forth in the following item): either of the

methods specified in (a) or (b) below for the categories of property listed in (a) or (b), respectively:

- (a) movables (excluding monies): by retaining property that belongs to the trust property separately from property that belongs to the trustee's own property and the trust property of other trusts in the manner whereby they can be distinguished from each other on sight; or
 - (b) monies and any property other than those set forth in (a): by clarifying the accounting thereof; or
 - (iii) property specified by Ordinance of the Ministry of Justice: by a method specified by Ordinance of the Ministry of Justice for the appropriate segregation of the property.
- (2) Notwithstanding the provisions of the proviso to the preceding paragraph, a trustee shall not be exempted from the duty for trust registration set forth in Article 14 for the property set forth in item (i) of said paragraph.

(Duty to Appoint and Supervise a Third Party when Delegating the Trust administration)

- Article 35 (1) When delegating the trust administration to a third party pursuant to the provisions of Article 28, the trustee shall delegate said administration to a suitable person in light of the purpose of the trust.
- (2) A trustee, when the trustee has delegated the trust administration to a third party pursuant to the provisions of Article 28, shall conduct the necessary and appropriate supervision of the third party in order to achieve the purpose of the trust.
- (3) When a trustee has delegated the trust administration to any of the following third parties, the provisions of the preceding two paragraphs shall not apply; provided, however, that when the trustee becomes aware that the third party is unsuitable or unfaithful or that the administration of affairs by the third party is inappropriate, the trustee shall give notice to the beneficiary to that effect, cancel the delegation to the third party, or take other necessary measures:
- (i) a third party designated by the terms of trust; or
 - (ii) in cases where it is provided by the terms of trust that the trust administration shall be delegated to a third party designated by the settlor or the beneficiary, the third party designated pursuant to such provisions.
- (4) Notwithstanding the provisions of the proviso to the preceding paragraph, if the terms of trust otherwise provides for, such provisions shall prevail.

(Duty to Report on the Processing Status Trust administration)

- Article 36 A settlor or beneficiary may request that a trustee to report on the processing status of trust administration as well as the status of property that belongs to the trust property and the obligation covered by the trust property.

(Duty to Prepare, Report On, and Preserve Books, etc.)

- Article 37 (1) A trustee shall prepare books and other documents or electromagnetic records relating to the trust property, as provided for by Ordinance of the Ministry of Justice, in order to clarify the accounts on trust affairs as well as the status of property that belongs to the trust property and the obligation covered by the trust property.
- (2) A trustee shall prepare a balance sheet, profit and loss statement, and any other documents or electromagnetic records specified by Ordinance of the Ministry of Justice, once each year, at a certain time, as provided for by Ordinance of the Ministry of Justice.
- (3) When a trustee has prepared the documents or electromagnetic records set forth in the preceding paragraph, the trustee shall report to a beneficiary (if there is a trust caretaker at the time in question, to the trust caretaker) on the content thereof; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (4) Where a trustee has prepared the documents or electromagnetic records set forth in paragraph (1), the trustee shall preserve said documents (if electromagnetic records are prepared in lieu of said documents by the method specified by Ordinance of the Ministry of Justice, such electromagnetic records) or said electromagnetic records (if documents are prepared in lieu of said electromagnetic records, such documents) for ten years from the date of their preparation (or until the date of the completion of the liquidation of the trust if this occurs within said ten-year period; the same shall apply in the following paragraph); provided, however, that this shall not apply where the trustee has delivered said documents or copies thereof to the beneficiary (if there are two or more beneficiaries at the time in question, to all beneficiaries; if there is a trust caretaker at the time in question, to the trust caretaker; the same shall apply in the proviso to paragraph (6)), or has provided the beneficiary with information on the matters recorded in said electromagnetic records by the method specified by Ordinance of the Ministry of Justice.
- (5) Where a trustee has prepared or acquired a written contract relating to the disposition of property that belongs to the trust property or any other documents or electromagnetic records concerning the trust administration, the trustee shall preserve said documents (if electromagnetic records are prepared in lieu of said documents by the method specified by Ordinance of the Ministry of Justice, such electromagnetic records) or said electromagnetic records (if documents are prepared in lieu of said electromagnetic records, such documents) for ten years from the date of the preparation or acquisition. In this case, the provisions of the proviso to the preceding paragraph shall apply *mutatis mutandis*.

(6) Where a trustee has prepared the documents or electromagnetic records set forth in paragraph (2), the trustee shall preserve said documents (if electromagnetic records are prepared in lieu of said documents by the method specified by Ordinance of the Ministry of Justice, such electromagnetic records) or said electromagnetic records (if documents are prepared in lieu of said electromagnetic records, such documents) until the date of the completion of the liquidation of the trust; provided, however that this shall not apply where the trustee has, after ten years have elapsed from the date of their preparation, delivered said documents or copies thereof to the beneficiary, or has provided the beneficiary with information on the matters recorded in said electromagnetic records by the method specified by Ordinance of the Ministry of Justice.

(Request to Inspect, etc. of the Books, etc.)

Article 38 (1) A beneficiary may make the following requests to a trustee. In this case, in making such a request, the reasons therefor shall be specified:

- (i) a request to inspect or copy the documents set forth in paragraph (1) or paragraph (5) of the preceding Article; and
- (ii) a request to inspect or copy any object which shows the matters recorded in the electromagnetic records set forth in paragraph (1) or paragraph (5) of the preceding Article by a method specified by Ordinance of the Ministry of Justice.

(2) The trustee may not refuse a request set forth in the preceding paragraph when such a request has been received, except where it is found to fall under any of the following cases:

- (i) where the person making such request (hereinafter referred to as the "requester" in this paragraph) has made the request for purposes other than an investigation related to the securement or exercise of the requester's rights;
- (ii) where the requester has made the request at an inappropriate time;
- (iii) where the requester has made the request for the purpose of disturbing the trust administration or harming the common interests of the beneficiaries;
- (iv) where the requester operates or engages in a business which is effectively in competition with business pertaining to the trust;
- (v) where the requester has made the request in order to inform a third party, for profit, of any fact that the requester may learn by way of inspecting or copying documents or any other object under the provisions of the preceding paragraph; or
- (vi) where the requester has informed a third party, for profit, of any fact that the requester has learned by way of inspecting or copying documents or any other object under the provisions of the preceding paragraph within the past

two years.

- (3) The provisions of the preceding paragraph (excluding item (i) and item (ii)) shall not apply when there are two or more beneficiaries of a trust and the request set forth in paragraph (1) is made by all beneficiaries, or when there is only one beneficiary of the trust and the request set forth in said paragraph is made by such beneficiary.
- (4) Where it is provided by the terms of trust that a request to inspect or copy documents or any other object under the provisions of paragraph (1) is to be restricted with regard to any information other than the those listed below if a beneficiary gives consent for such restriction, the beneficiary who has given such consent (including the beneficiary's successor; hereinafter the same shall apply in this Article) may not revoke the consent:
 - (i) information that is indispensable for preparing the documents or electromagnetic records set forth in paragraph (2) of the preceding Article or any other material information concerning the trust; and
 - (ii) information that is unlikely to harm the interests of any person other than said beneficiary.
- (5) Upon receiving a request to inspect or copy documents or any other object under the provisions of paragraph (1) from a beneficiary who has given the consent as set forth in the preceding paragraph, a trustee may refuse such a request, except for the part that falls under the information listed in the items of the preceding paragraph.
- (6) An interested party may make the following requests to a trustee:
 - (i) a request to inspect or copy the documents set forth in paragraph (2) of the preceding Article; and
 - (ii) a request to inspect or copy any object which shows the matters recorded in the electromagnetic records set forth in paragraph (2) of the preceding Article by a method specified by Ordinance of the Ministry of Justice.

(Request for the Disclosure of Names, etc. of Other Beneficiaries)

- Article 39 (1) In the case of a trust with two or more beneficiaries, each beneficiary may request that trustee disclose the following matters by an appropriate method. In this case, in making such a request, the reasons therefor shall be specified:
- (i) the names and addresses of the other beneficiaries; and
 - (ii) the content of the beneficial interest held by other beneficiaries.
- (2) A trustee may not refuse a request set forth in the preceding paragraph when such a request has been received, except where it is found to fall under any of the following cases:
- (i) where the person making such request (hereinafter referred to as the "requester" in this paragraph) has made the request for purposes other than

- an investigation related to the securement or exercise of the requester's rights;
- (ii) where the requester has made the request at an inappropriate time;
 - (iii) where the requester has made the request for the purpose of disturbing the trust administration or harming the common interests of the beneficiaries;
 - (iv) where the requester operates or engages in business which is effectively in competition with business pertaining to the trust;
 - (v) where the requester has made the request in order to inform a third party, for profit, of any fact that the requester may learn by way of the disclosure under the provisions of the preceding paragraph; or
 - (vi) where the requester has informed a third party, for profit, of any fact that the requester learned by way of the disclosure under the provisions of the preceding paragraph within the past two years.
- (3) Notwithstanding the provisions of the preceding two paragraphs, if the terms of trust otherwise provides, such provisions shall prevail.

Section 3 Trustee Liabilities, etc.

(Trustee Liability to Compensate for Losses, etc.)

- Article 40 (1) When any of the cases listed in the following items has occurred due to the trustee's breach of the duties, the beneficiary may demand that the trustee take the measures specified in the respective items; provided, however, that this shall not apply to the measures specified in item (ii), if it is extremely difficult to restore the trust property, if the restoration would require excessive expenses, or if there are other special circumstances where it is inappropriate to have the trustee restore the trust property:
- (i) where any loss to the trust property has occurred: compensation for such loss; and
 - (ii) where any change to the trust property has occurred: restoration of the trust property.
- (2) Where a trustee has delegated the trust administration to a third party in violation of the provisions of Article 28, if any loss or change to the trust property has occurred, the trustee may not be released from liability as set forth in the preceding paragraph unless the trustee proves that such loss or change would have occurred even if the trustee had not delegated the trust administration to the third party.
- (3) Where a trustee has carried out any act in violation of the provisions of Article 30, Article 31, paragraph (1) and paragraph (2) or Article 32, paragraph (1) and paragraph (2), the trustee shall be presumed to have caused a loss to the trust property in the same amount as the amount of the profit obtained by the trustee or an interested party thereof as a result of such act.

(4) Where a trustee has administered property that belongs to the trust property in violation of the provisions of Article 34, if any loss or change to the trust property has occurred, the trustee may not be released from the liability set forth in paragraph (1) unless the trustee proves that such loss or change would have occurred even if the trustee had segregated the relevant property in accordance with the provisions of said Article.

(Joint and Several Liability of the Officers of a Trustee Who Is a Juridical Person)

Article 41 Where a trustee that is a juridical person has incurred liability under the provisions of the preceding Article, the trustee's director, executive officer, or any other person equivalent thereto shall be jointly and severally liable together with the juridical person to compensate the beneficiary for any loss or to restore the trust property if the trustee's director, executive officer, or any other person equivalent thereto was willful or grossly negligent for an act that the juridical person carried out in violation of laws and regulations or the provisions of the terms of trust.

(Release from Liability to Compensate for Losses, etc.)

Article 42 Beneficiaries may grant a release from the following liabilities:

- (i) liability under the provisions of Article 40; and
- (ii) liability under the provisions of the preceding Article.

(Limitation to the Term for Claims Pertaining to Liability to Compensate for Losses, etc.)

Article 43 (1) The extinctive prescription for a claim pertaining to liability under the provisions of Article 40 shall be governed by the provisions on extinctive prescription for claims pertaining to liability arising from the failure to perform an obligation.

- (2) The claim pertaining to liability under the provisions of Article 41 shall be extinguished by prescription if it is not exercised within ten years.
- (3) The period of the extinctive prescription for a beneficiary's claim pertaining to liability under the provisions of Article 40 or Article 41 shall not begin to run until the beneficiary becomes aware that the beneficiary has been designated as a beneficiary (if there is no beneficiary at the time in question, until a trust caretaker is appointed).
- (4) The claim prescribed in the preceding paragraph shall be extinguished when 20 years have elapsed from the time when any loss or change occurred to the trust property due to the trustee's breach of the duties.

(Cessation of a Trustee's Acts At the Demand of the Beneficiary)

Article 44 (1) Where a trustee has acted or is likely to act in violation of laws and regulations or the provisions of the terms of trust, if said action is likely to cause substantial harm to the trust property, the beneficiary may demand that the trustee cease said action.

(2) Where a trustee has acted or is likely to act in violation of the provisions of Article 33, if said action is likely to cause substantial harm to some of the beneficiaries, those beneficiaries may demand that the trustee cease said action.

(Payment of Expenses, Costs, or Remuneration, etc.)

Article 45 (1) Where a beneficiary who has filed a suit pertaining to the demand under the provisions of Article 40, Article 41, or the preceding Article has won the case (completely or partially), if the beneficiary has paid any expenses or costs (excluding court costs) that were necessary in relation to the suit or if the beneficiary is liable for paying remunerations to an attorney-at-law, legal professional corporation, judicial scrivener, or judicial scrivener corporation, such expenses, costs, or remuneration shall be paid from the trust property, up to the amount considered reasonable, not exceeding the actual amount thereof.

(2) Even where the beneficiary who filed the action set forth in the preceding paragraph has lost the case, the beneficiary shall not be liable to compensate the trustee for any damage arising from the action, except where the beneficiary was in bad faith.

(Appointment of an Inspector)

Article 46 (1) When there are sufficient grounds to suspect misconduct or material facts in violation of laws and regulations or the provisions of the terms of trust in connection with the trust administration by a trustee, the beneficiary may file a petition with the court for the appointment of an inspector in order to have the inspector investigate the status of the trust administration as well as the status of property that belongs to the trust property and the obligation covered by the trust property.

(2) When a petition set forth in the preceding paragraph is filed, the court shall appoint an inspector, except where it dismisses the petition as unlawful.

(3) A judicial decision dismissing the petition set forth in paragraph (1) shall include the reasons therefor.

(4) No appeal may be entered against a judicial decision on the appointment of an inspector under the provisions of paragraph (1).

(5) The inspector set forth in paragraph (2) may receive remuneration as determined by the court from the trust property.

(6) The court, before making a judicial decision determining the remuneration for an inspector under the provisions of the preceding paragraph, shall hear

statements from the trustee and the inspector set forth in paragraph (2).

- (7) A trustee or an inspector set forth in paragraph (2) may file an immediate appeal against a judicial decision determining the remuneration for the inspector made under the provisions of paragraph (5).

Article 47 (1) An inspector set forth in paragraph (2) of the preceding Article may, when it is necessary in order for the inspector to perform the duties, request that a trustee report on the status of the trust administration as well as the status of the property that belongs to the trust property and the obligation covered by the trust property, and may investigate the books, documents, and any other objects pertaining to the trust.

- (2) An inspector set forth in paragraph (2) of the preceding Article shall conduct the necessary investigation, and shall report to the court through the submission of documents or electromagnetic records (limited to such record specified by Ordinance of the Ministry of Justice) in which the results of the investigation are stated or recorded.
- (3) When the court finds it necessary for clarifying the contents of or confirming the basis of the report set forth in the preceding paragraph, it may request that the inspector set forth in paragraph (2) of the preceding Article make a further report set forth in the preceding paragraph.
- (4) An inspector set forth in paragraph (2) of the preceding Article shall, when the inspector has made a report set forth in paragraph (2), deliver to the trustee and the person who filed the petition set forth in paragraph (1) of said Article a copy of the documents set forth in paragraph (2), or shall provide them with information on the matters recorded in the electromagnetic records set forth in said paragraph by the method specified by Ordinance of the Ministry of Justice.
- (5) When a trustee has received a copy of the documents or information on the matters recorded in the electromagnetic records by the method specified by Ordinance of the Ministry of Justice under the provisions of the preceding paragraph, the trustee shall immediately give notice to the beneficiaries (excluding the beneficiary who filed the petition set forth in paragraph (1) of the preceding Article; the same shall apply in the following paragraph) to that effect; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (6) Where a report set forth in paragraph (2) has been made, the court, when it finds it necessary, shall order the trustee to give notice of the results of the investigation set forth in said paragraph to the beneficiary or to take any other appropriate measures to make public the content of the report.

Section 4 Expenses, etc. and Trust Fees, etc. for the Trustee

(Reimbursement of Expenses, etc. from the Trust Property)

- Article 48 (1) Where a trustee has paid, from the trustee's own property, expenses that are considered to be necessary for the trust administration, the trustee may receive reimbursement for such expenses and interest thereon accruing from the date of payment (hereinafter referred to as "expenses, etc.") from the trust property; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (2) When a trustee needs expenses for the trust administration, the trustee may receive advance payment thereof from the trust property; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (3) In order to receive advance payment of expenses from the trust property pursuant to the provisions of the main clause of the preceding paragraph, a trustee shall give notice to a beneficiary of the amount of advance payment to be received and the basis for the calculation of such amount; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (4) Notwithstanding the provisions of paragraph (1) or paragraph (2), where a trustee has incurred liability under the provisions of Article 40, the trustee may not receive reimbursement for expenses, etc. or advance payment of expenses until after the trustee performs such liability; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (5) In the case referred to in paragraph (1) or paragraph (2), a trustee shall not be precluded from receiving reimbursement for expenses, etc. or advance payment of expenses from a beneficiary based on an agreement between the trustee and the beneficiary.

(Method of Reimbursement, etc. for Expenses, etc.)

- Article 49 (1) Where a trustee may receive reimbursement for expenses, etc. or advance payment of expenses from the trust property pursuant to the provisions of paragraph (1) or paragraph (2) of the preceding Article, said trustee may transfer monies that belong to the trust property to the coffers of trustee's own property, up to the amount receivable.
- (2) In the case prescribed in the preceding paragraph, when necessary, a trustee may dispose of property that belongs to the trust property (excluding such property whose disposal would make it impossible to achieve the purpose of the trust); provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (3) In the case prescribed in paragraph (1), if any of the items of Article 31, paragraph (2) apply, a trustee may transfer property that belongs to the trust property other than monies, to the coffers of trustee's own property, instead of exercising the right under the provisions of paragraph (1); provided, however,

- that if the terms of trust otherwise provides for, such provisions shall prevail.
- (4) When proceedings are commenced for execution against or for the exercise of a security interest in property that belongs to the trust property, the right that a trustee has pursuant to the provisions of paragraph (1) shall be deemed to be a monetary claim in relation to such proceedings.
- (5) In the case referred to in the preceding paragraph, a trustee who has proved that the trustee has the right prescribed in said paragraph by means of a document certifying the existence of said right may also demand a distribution under the proceedings for execution or for the exercise of a security interest set forth in said paragraph.
- (6) The right that a trustee has pursuant to the provisions of paragraph (1) with regard to expenses, etc. for the preservation, liquidation, or distribution of property that belongs to the trust property, which has been conducted in the common interest of creditors (limited to creditors who hold claims pertaining to the obligation covered by the trust property; hereinafter the same shall apply in this paragraph and the following paragraph) shall, in the proceedings for execution or for the exercise of a security interest set forth in paragraph (4), prevail over the rights of other creditors (in cases where such expenses, etc. were not beneficial to all creditors, those who did not benefit from such expenses, etc. shall be excluded). In this case, said right has the same rank in the order of priority as a statutory lien prescribed in Article 307, paragraph (1) of the Civil Code.
- (7) The right that a trustee has pursuant to the provisions of paragraph (1) with regard to the expenses, etc. which fall under the following items shall, in the proceedings for execution against or for the exercise of a security interest in the property set forth in the respective items, as set forth in paragraph (4), prevail over the rights of other creditors for the amount specified in the respective items:
- (i) the amount of expenses paid for the preservation of property that belongs to the trust property or any other amount that is considered to be necessary for maintaining the value of such property: such amount; and
 - (ii) the amount of expenses paid for the improvement of property that belongs to the trust property or any other amount that is considered to be conducive to increasing the value of such property: such amount or the amount of the increase in value at the time in question, whichever is smaller.

(Subrogation of a Trustee through Performance of Obligations Covered by the Trust Property)

Article 50 (1) Where a trustee has performed an obligation covered by the trust property by using trustee's own property, when the trustee acquires the right under the provisions of paragraph (1) of the preceding Article through such

performance, the trustee shall be subrogated to the creditor who holds the claim pertaining to said obligation covered by the trust property. In this case, the right that the trustee has pursuant to the provisions of said paragraph shall be deemed to be a monetary claim in relation to such subrogation.

- (2) When a trustee is subrogated to the creditor set forth in the preceding paragraph pursuant to the provisions of said paragraph, the trustee shall give notice to the creditor, without delay, to the effect that the claim held by the creditor is a claim pertaining to an obligation covered by the trust property and that the trustee has performed said obligation by using the trustee's own property.

(Reimbursement of Expenses, etc. and Simultaneous Performance)

Article 51 A trustee may, before the right that the trustee has pursuant to the provisions of Article 49, paragraph (1) is extinguished, refuse to perform the obligation of distribution involving the trust property to a beneficiary or a holder of a vested right prescribed in Article 182, paragraph (1), item (ii); provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.

(Measures for Trust Property that Is Insufficient for the Reimbursement of Expenses, etc.)

Article 52 (1) Where a trustee wishes to receive reimbursement for expenses, etc. or advance payment of expenses from the trust property pursuant to the provisions of Article 48, paragraph (1) or paragraph (2) but the trust property (excluding any property that may not be disposed of pursuant to the provisions of Article 49, paragraph (2)); the same shall apply in item (i) and paragraph (4)) is insufficient to provide such reimbursement or advance payment, the trustee may terminate the trust if the trustee has given notice of the following matters to the settlor and the beneficiary but has not received reimbursement of expenses, etc. or advance payment of expenses from the settlor or the beneficiary even when a reasonable period of time set forth in item (ii) has elapsed:

- (i) a statement to the effect that the trustee is unable to receive reimbursement of expenses, etc. or advance payment of expenses due to the insufficient trust property; and
 - (ii) a statement to the effect that the trustee will terminate the trust if the trustee is unable to receive reimbursement of expenses, etc. or advance payment of expenses from the settlor or the beneficiary within a reasonable period of time specified by the trustee.
- (2) For the purpose of the application of the provisions of the preceding paragraph in cases where there is no settlor at the time in question, the phrase

"the settlor and the beneficiary" and "the settlor or the beneficiary" in said paragraph shall be deemed to be replaced with "the beneficiary."

- (3) For the purpose of the application of the provisions of paragraph (1) in cases where there is no beneficiary at the time in question, the phrase "the settlor and the beneficiary" and "the settlor or the beneficiary" in said paragraph shall be deemed to be replaced with "the settlor."
- (4) Where the trust property is insufficient to provide for reimbursement of expenses, etc. or advance payment of expenses pursuant to the provisions of Article 48, paragraph (1) or paragraph (2), or if there is neither a settlor nor a beneficiary at the time in question, the trustee may terminate the trust.

(Compensation for Damages Out of the Trust Property)

Article 53 (1) In the cases listed in the following items, a trustee may receive compensation from the trust property for the amount of damages specified in the respective items; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail:

- (i) where the trustee has suffered any damages in the course of administering trust affairs, in the absence of trustee's own negligence: the amount of such damages; and
- (ii) where the trustee has suffered any damages in the course of administering trust affairs due to an intentional or negligent act of a third party (excluding the case set forth in the preceding item): the amount of compensation that may be demanded from such third party.
- (2) The provisions of Article 48, paragraph (4) and paragraph (5), Article 49 (excluding paragraph (6) and paragraph (7)), and the preceding two Articles shall apply mutatis mutandis to the compensation for damages from the trust property under the provisions of the preceding paragraph.

(Trust Fees for the Trustee)

- Article 54 (1) In addition to the case where the provisions of Article 512 of the Commercial Code (Act No. 48 of 1899) shall apply to the undertaking of acceptance of a trust, a trustee may receive trust fees (meaning a property benefit to be received by a trustee as the consideration for the trust administration; the same shall apply hereinafter) from the trust property only where it is provided by the terms of trust that the trustee shall receive trust fees from the trust property.
- (2) In the case referred to in the preceding paragraph, the amount of trust fees shall be, if the terms of trust contains provisions concerning the amount of trust fees or the calculation method thereof, determined pursuant to such provisions, and if there are no such provisions, a reasonable amount.
- (3) In the absence of provisions of the terms of trust as set forth in the preceding

paragraph, a trustee shall, in order to receive trust fees from the trust property, give notice to a beneficiary of the amount of trust fees and the basis for the calculation of such amount.

- (4) The provisions of Article 48, paragraph (4) and paragraph (5), Article 49 (excluding paragraph (6) and paragraph (7)), Article 51, and Article 52, as well as the provisions of Article 648, paragraph (2) and paragraph (3) of the Civil Code, shall apply mutatis mutandis to the trustee's trust fees.

(Exercise of a Security Interest by the Trustee)

Article 55 In the case of a trust created with a security interest as the trust property, if it is provided by the terms of trust that the beneficiary shall be the creditor of the claim to be secured by said security interest, the trustee may, as the holder of the security interest, file a petition for the enforcement of the security interest and be distributed the proceeds of the sale or be delivered payment monies, within the scope of trust affairs.

Section 5 Changing, etc. of Trustees

Subsection 1 Termination of a Trustee's Duty as Trustee

(Grounds for Termination of a Trustee's Duty as Trustee)

Article 56 (1) A trustee's duty as trustee shall terminate on the following grounds, in addition to the completion of the liquidation of the trust; provided, however, that in the case of the termination on the grounds set forth in item (iii), if the terms of trust otherwise provides, such provisions shall prevail:

- (i) the death of the individual who is the trustee;
- (ii) a ruling for commencement of guardianship or commencement of curatorship against the individual who is the trustee;
- (iii) an order for the commencement of bankruptcy proceedings against the trustee (excluding cases of dissolution by an order for the commencement of bankruptcy proceedings);
- (iv) the dissolution of the juridical person who is the trustee for reasons other than a merger;
- (v) the resignation of the trustee under the provisions of the following Article;
- (vi) the dismissal of the trustee under the provisions of Article 58; or
- (vii) any grounds specified by the terms of trust.

- (2) Where the juridical person who is the trustee has effected a merger, the judicial person that survives the merger or judicial person that is incorporated through the merger shall take over the trustee's duty. Where the judicial person who is the trustee has effected a company split, the same shall apply to the juridical person that succeeds to the rights and duties of the trustee as a result of the company split.

- (3) Notwithstanding the provisions of the preceding paragraph, if the terms of trust otherwise provides for, such provisions shall prevail.
- (4) Where the grounds set forth in paragraph (1), item (iii) occur, if the trustee's duty as trustee does not terminate pursuant to the provisions of the proviso to said paragraph, the bankrupt shall perform the duties of the trustee.
- (5) A trustee's duty as trustee shall not terminate on the grounds that the trustee has been handed an order for the commencement of rehabilitation proceedings; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (6) In the case prescribed in the main clause of the preceding paragraph, when there is a rehabilitation trustee, the right of the trustee to perform the trustee's duties and administer and dispose of property that belongs to the trust property shall be vested exclusively in the rehabilitation trustee. The same shall apply where there is a provisional administrator in charge of rehabilitation proceedings.
- (7) The provisions of the preceding two paragraphs shall apply mutatis mutandis where the trustee is given an order for the commencement of reorganization proceedings. In this case, the phrase "there is a rehabilitation trustee" in the preceding paragraph shall be deemed to be replaced with "there is a reorganization trustee (excluding the period set forth in Article 74, paragraph (2) of the Corporate Reorganization Act (including cases where applied mutatis mutandis pursuant to Article 47 and Article 213 of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc.))."

(Resignation of the Trustee)

- Article 57 (1) The trustee may resign from the office as trustee with the permission of the settlor and the beneficiary; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (2) The trustee may resign from the office as trustee with the permission of the court when there is a compelling reason.
 - (3) When filing a petition for the permission set forth in the preceding paragraph, the trustee shall make a prima facie showing of the facts constituting the grounds for the petition.
 - (4) A judicial decision dismissing the petition for permission set forth in paragraph (2) shall include the reasons therefor.
 - (5) No appeal may be entered against a judicial decision on permission for resignation under the provisions of paragraph (2).
 - (6) The provisions of the main clause of paragraph (1) shall not apply where there is no settlor at the time in question.

(Dismissal of the Trustee)

- Article 58 (1) The settlor and the beneficiary may, based on an agreement between them, dismiss the trustee at any time.
- (2) When the settlor and the beneficiary have dismissed a trustee at a time that is detrimental to the trustee, the settlor and the beneficiary shall compensate the trustee for any damages; provided, however, that this shall not apply if there was a compelling reason for such dismissal.
- (3) Notwithstanding the provisions of the preceding two paragraphs, if the terms of trust otherwise provides, such provisions shall prevail.
- (4) When the trustee has caused a substantial detriment to the trust property through a breach of the duties or where there are other material grounds, the court may, upon the petition of a settlor or a beneficiary, dismiss the trustee.
- (5) Before dismissing the trustee pursuant to the provisions of the preceding paragraph, the court shall hear a statement from the trustee.
- (6) The judicial decision on the petition for permission set forth in paragraph (4) shall include the reasons for said decision.
- (7) A settlor, trustee or beneficiary may file an immediate appeal against a judicial decision of dismissal under the provisions of paragraph (4).
- (8) The provisions of paragraph (1) and paragraph (2) shall not apply where there is no settlor at the time in question.

Subsection 2 Duties, etc. of the Former Trustee

(Former Trustee's Duty to Give Notice and Retain Property, etc.)

- Article 59 (1) Where a trustee's duty as trustee has been terminated on any of the grounds listed in Article 56, paragraph (1), item (iii) to item (vii), the person who was the trustee (hereinafter referred to as the "former trustee") shall give notice of the termination to a beneficiary; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (2) Where a trustee's duty as trustee has been terminated on the grounds listed in Article 56, paragraph (1), item (iii), the former trustee shall give notice to the bankruptcy trustee of the content and location of property that belongs to the trust property, the content of the obligation covered by the trust property, and other matters specified by Ordinance of the Ministry of Justice.
- (3) Where a trustee's duty as trustee has been terminated on any of the grounds listed in Article 56, paragraph (1), item (iv) to item (vii), the former trustee shall continue to retain property that belongs to the trust property until a new trustee (if a trust property administrator is appointed pursuant to the provisions of Article 64, paragraph (1), the trust property administrator; hereinafter referred to as a "new trustee, etc." in this Section) becomes able to administer trust affairs, and shall carry out the necessary actions for the transfer of trust affairs; provided, however, that if the terms of trust otherwise

provides, the new trustee's duties may be expanded.

- (4) Notwithstanding the provisions of the preceding paragraph, where a trustee's duty as trustee has been terminated on the grounds listed in Article 56, paragraph (1), item (v) (limited to the case under the provisions of Article 57, paragraph (1)), the former trustee shall continue to have the rights and duties of a trustee until a new trustee, etc. becomes able to administer trust affairs; provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.
- (5) In the cases referred to in paragraph (3) (excluding the case prescribed in the main clause of the preceding paragraph), if the former trustee attempts to dispose of property that belongs to the trust property, a beneficiary may demand that the former trustee cease to dispose of the property; provided, however, that this shall not apply after a new trustee, etc. becomes able to administer trust affairs.

(Duty of the Former Trustee's Heir to Give Notice and Retain Property, etc.)

- Article 60 (1) Where a trustee's duty as trustee has been terminated on any of the grounds listed in Article 56, paragraph (1), item (i) or item (ii), if the former trustee's heir (if there is a statutory agent at the time in question, the statutory agent) or guardian or curator of an adult trustee (hereinafter collectively referred to as the "former trustee's heir, etc." in this Section) knows such a fact, the former trustee's heir, etc. shall give notice of the fact to a known beneficiary; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (2) Where a trustee's duty as trustee has been terminated on any of the grounds listed in Article 56, paragraph (1), item (i) or item (ii), the former trustee's heir, etc. shall continue to retain property that belongs to the trust property until a new trustee, etc. or an incorporated trust property administrator becomes able to administer trust affairs, and shall carry out the necessary actions for the transfer of trust affairs.
- (3) In the case referred to in the preceding paragraph, if the former trustee's heir, etc. attempts to dispose of property that belongs to the trust property, a beneficiary may demand that the former trustee's heir, etc. cease to dispose of the property; provided, however, that this shall not apply after a new trustee, etc. or an incorporated trust property administrator becomes able to administer trust affairs.
- (4) Where a trustee's duty as trustee has been terminated on the grounds listed in Article 56, paragraph (1), item (iii), the bankruptcy trustee shall continue to retain property that belongs to the trust property until a new trustee, etc. becomes able to administer trust affairs, and shall carry out the necessary actions for the transfer of trust affairs.

- (5) In the case referred to in the preceding paragraph, if the bankruptcy trustee attempts to dispose of property that belongs to the trust property, a beneficiary may demand that the bankruptcy trustee cease to dispose of the property; provided, however, that this shall not apply after a new trustee, etc. becomes able to administer trust affairs.
- (6) The former trustee's heir, etc. or the bankruptcy trustee may demand reimbursement, from the new trustee, etc. or from the incorporated trust property administrator, of expenses paid for carrying out the actions under the provisions of paragraph (1), paragraph (2) or paragraph (4), and for interest thereon accruing from the date of payment.
- (7) The provisions of Article 49, paragraph (6) and paragraph (7) shall apply mutatis mutandis to the right that the former trustee's heir, etc. or the bankruptcy trustee has pursuant to the provisions of the preceding paragraph.

(Payment of Expenses, Costs, or Remuneration, etc.)

- Article 61 (1) Where a beneficiary who has filed an action pertaining to the demand under the provisions of Article 59, paragraph (5), or paragraph (3) or paragraph (5) of the preceding Article has won the case (completely or partially), if the beneficiary has paid any expenses or costs (excluding court costs) that were necessary in relation to the action or if the beneficiary is liable to pay remuneration to an attorney-at-law, legal professional corporation, judicial scrivener, or judicial scrivener corporation, such expenses, costs, or remunerations shall be paid from the trust property, up to the amount considered reasonable, not exceeding the actual amount thereof.
- (2) Even where the beneficiary who filed the action set forth in the preceding paragraph has lost the case, the beneficiary shall not be liable to compensate the trustee for any damage arising from the action, except where the beneficiary was in bad faith.

Subsection 3 Appointment of a New Trustee

- Article 62 (1) Where a trustee's duty as trustee has been terminated on any of the grounds listed in the items of Article 56, paragraph (1), if the terms of trust contains no provisions concerning a new trustee, or where the person designated by the provisions of the terms of trust as a person who is to be the new trustee does not undertake or is unable to undertake the trust, the settlor and the beneficiary may, based on an agreement between them, appoint a new trustee.
- (2) Where a trustee's duty as trustee has been terminated on any of the grounds listed in the items of Article 56, paragraph (1), if the terms of trust contains provisions designating a particular person to be the new trustee, any

interested party may specify a reasonable period of time and call on the person designated as the one to be the new trustee to give a definite answer within that period of time with regard to whether the person will accept the duty; provided, however, that if the terms of trust designates a condition precedent or a time of commencement for the provisions, this may only be done after the condition precedent is fulfilled or after the time of commencement arrives.

- (3) Where a call for an answer is made under the provisions of the preceding paragraph, if the person designated as the one who is to be the new trustee fails to give a definite answer to the settlor and the beneficiary (if there are two or more beneficiaries at the time in question, to one of them; if there is a trust caretaker at the time in question, to the trust caretaker) within the period set forth in said paragraph, it shall be deemed that the person does not accept the duty.
- (4) In the case referred to in paragraph (1), the court may, at the petition of an interested party, appoint a new trustee when it finds it necessary in light of the status of discussions pertaining to the agreement set forth in said paragraph and any other circumstances.
- (5) The judicial decision on the petition set forth in the preceding paragraph shall include the reasons for said decision.
- (6) The settlor, beneficiary, or the current trustee may file an immediate appeal against a judicial decision on the appointment of a new trustee under the provisions of paragraph (4).
- (7) The immediate appeal set forth in the preceding paragraph shall have the effect of a stay of execution.
- (8) For the purpose of the application of the provisions of the preceding paragraphs in cases where there is no settlor at the time in question, the phrase "the settlor and the beneficiary may, based on an agreement between them" in paragraph (1) shall be deemed to be replaced with "the beneficiary may," the phrase "the settlor and the beneficiary" in paragraph (3) shall be deemed to be replaced with "the beneficiary," and the phrase "status of discussions pertaining to the agreement set forth in said paragraph" in paragraph (4) shall be deemed to be replaced with "status of the beneficiary."

Subsection 4 Trust Property Administrators, etc.

(Trust Property Administration Orders)

Article 63 (1) Where a trustee's duty as trustee has been terminated on any of the grounds listed in the items of Article 56, paragraph (1), at the petition of an interested party, the court may, when a new trustee has not yet been appointed and when it finds it to be necessary, make a disposition ordering administration by a trust property administrator (hereinafter referred to as a

"trust property administration order" in this Subsection) until a new trustee is appointed.

- (2) A judicial decision dismissing the petition set forth in the preceding paragraph shall include the reasons therefor.
- (3) The court may change or revoke a trust property administration order.
- (4) An interested party may file an immediate appeal against a trust property administration order and an order made under the provisions of the preceding paragraph.

(Appointment of Trust Property Administrators, etc.)

Article 64 (1) When the court issues a trust property administration order, it shall appoint a trust property administrator therein.

- (2) No appeal may be entered against a judicial decision on the appointment of a trust property administrator made under the provisions of the preceding paragraph.
- (3) When the court has made a judicial decision on the appointment of a trust property administrator under the provisions of paragraph (1), it shall immediately give public notice of the following matters:
 - (i) a statement to the effect that a trust property administrator has been appointed; and
 - (ii) the name of the trust property administrator.
- (4) The provisions of item (ii) of the preceding paragraph shall apply mutatis mutandis where there is a change to the matters set forth in said item.
- (5) Where a trust property administration order is issued, when a court clerk becomes aware of the existence of any registered right that belongs to the trust property, the court clerk shall, on the own authority of the court clerk and without delay, commission a registration of the trust property administration order.
- (6) When a judicial decision is made to revoke a trust property administration order or when a new trustee who has been appointed after a trust property administration order was issued has filed a petition to commission the cancellation of the registration of the trust property administration order, a court clerk shall, on the own authority of the court clerk and without delay, commission the cancellation of the registration of the trust property administration order.

(Effect of Juridical Acts by a Former Trustee)

Article 65 (1) After a judicial decision on the appointment of a trust property administrator has been made under the provisions of paragraph (1) of the preceding Article, no juridical act conducted by the former trustee with respect to property that belongs to the trust property may be asserted as effective in

relation to the trust property.

- (2) Any juridical act conducted by the former trustee on the day on which the judicial decision on the appointment of a trust property administrator is made under the provision of paragraph (1) of the preceding Article shall be presumed to have been conducted after said judicial decision was made.

(Trust Property Administrator's Powers)

Article 66 (1) Where a trust property administrator is appointed pursuant to the provisions of Article 64, paragraph (1), a trustee's right to perform the duties and administer and dispose of property that belongs to the trust property shall be vested exclusively in the trust property administrator.

- (2) When there are two or more trust property administrators, they shall act within the scope of their power jointly; provided, however, that with the permission of the court, they may perform their duties severally or divide their duties among themselves.
- (3) When there are two or more trust property administrators, it shall be sufficient if a third party make manifestation of intention to any one of them.
- (4) A trust property administrator shall obtain the court's permission in order to carry out any actions beyond the scope of the following acts:
 - (i) an act of preservation; and
 - (ii) an act with the intent to use or improve property that belongs to the trust property, to the extent that such act does not change the nature of such property.
- (5) Any act conducted by a trust property administrator in violation of the provisions of the preceding paragraph shall be void; provided, however, that the trust property administrator may not duly assert this against a third party who has no knowledge of such violation.
- (6) When filing a petition for the permission set forth in the proviso to paragraph (2) or paragraph (4), a trust property administrator shall make a prima facie showing of the facts constituting the grounds for the petition.
- (7) A judicial decision dismissing the petition for permission set forth in the proviso to paragraph (2) or paragraph (4) shall include the reasons therefor.
- (8) No appeal may be entered against a judicial decision on the permission under the provisions of the proviso to paragraph (2) or paragraph (4).

(Administration of Property that Belongs to Trust Property)

Article 67 A trust property administrator shall commence the administration of property that belongs to the trust property immediately after assuming the office.

(Standing to Sue or to Be Sued)

Article 68 In an action relating to the trust property, a trust property administrator shall be either a plaintiff or defendant.

(Trust Property Administrator's Duties, etc.)

Article 69 A trust property administrator, when performing the duties, shall assume the same duties and liabilities as a trustee.

(Resignation and Dismissal of Trust Property Administrators)

Article 70 The provisions of Article 57, paragraph (2) to paragraph (5) shall apply mutatis mutandis to the resignation of a trust property administrator, and the provisions of Article 58, paragraph (4) to paragraph (7) shall apply mutatis mutandis to the dismissal of a trust property administrator. In this case, the phrase "there is a compelling reason" in Article 57, paragraph (2) shall be deemed to be replaced with "there are justifiable grounds."

(Remuneration, etc. for Trust Property Administrators)

Article 71 (1) A trust property administrator may receive such amounts for advance payment of expenses and remuneration as determined by the court from the trust property.

(2) The court, before it makes a judicial decision determining the amount of expenses or remuneration under the provisions of the preceding paragraph, shall hear the statement of the trust property administrator.

(3) A trust property administrator may file an immediate appeal against a judicial decision determining the amount of expenses or remuneration under the provisions of paragraph (1).

(Transfer, etc. of Trust Affairs from Trust Property Administrator to New Trustee)

Article 72 The provisions of Article 77 shall apply mutatis mutandis where a new trustee assumes the office as trustee after the appointment of a trust property administrator. In this case, the phrase "the beneficiary (if there are two or more beneficiaries at the time in question, from all of them, and if there is a trust caretaker at the time in question, from the trust caretaker)" in paragraph (1) of said Article and the phrase "beneficiary (if there is a trust caretaker at the time in question, the trust caretaker; the same shall apply in the following paragraph)" in paragraph (2) of said Article, and the term "the beneficiary" in paragraph (3) of said Article shall be deemed to be replaced with "the new trustee," and the term "the beneficiary" in paragraph (2) of said Article shall be deemed to be replaced with "the new trustee."

(Powers of the Person Performing a Trustee's Duties on Behalf of the Trustee)

Article 73 The provisions of Article 66 shall apply mutatis mutandis to a person performing the trustee's duties on behalf of the trustee who has been appointed by an order of provisional disposition to appoint a person to perform the duties of a trustee on behalf of the trustee.

(Ownership, etc. of Trust Property Upon Termination of Trustee's Duty as Trustee Due to Death of the Trustee)

Article 74 (1) When a trustee' duty as trustee has been terminated on the grounds set forth in Article 56, paragraph (1), item (i), the trust property shall be incorporated as a juridical person.

(2) In the case prescribed in the preceding paragraph, at the petition of an interested party, the court may, when it finds it to be necessary, make a disposition ordering administration of the trust by an incorporated trust property administrator (hereinafter referred to as an "incorporated trust property administration order" in paragraph (6)).

(3) The provisions of Article 63, paragraph (2) to paragraph (4) shall apply mutatis mutandis to a case pertaining to the petition set forth in the preceding paragraph.

(4) When the new trustee assumes the office of trustee, it shall be deemed that the juridical person set forth in paragraph (1) was never incorporated; provided, however, that this shall not preclude the effect of any acts conducted by the incorporated trust property administrator within the scope of the powers of the said administrator.

(5) The incorporated trust property administrator's authority of representation shall be extinguished when a new trustee becomes able to administer trust affairs.

(6) The provisions of Article 64 shall apply mutatis mutandis where an incorporated trust property administration order is issued, and the provisions of Article 66 to Article 72 shall apply to an incorporated trust property administrator.

Subsection 5 Succession, etc. to Rights and Duties upon a Change of Trustees

(Succession, etc. to Rights and Duties Concerning the Trust)

Article 75 (1) Where a trustee's duty as trustee has been terminated on any of the grounds listed in the items of Article 56, paragraph (1), when a new trustee has assumed the duty, it shall be deemed that the new trustee has succeeded to, at the time of the termination of the former trustee's duty, the former trustee's rights and duties concerning the trust existing as of that time.

(2) Notwithstanding the provisions of the preceding paragraph, where a trustee's

- duty as trustee has been terminated on the grounds listed in the items of Article 56, paragraph (1), item (v) (limited to the case under the provision of Article 57, paragraph (1); excluding the case referred to in the proviso to Article 59, paragraph (4)), it shall be deemed that the new trustee has succeeded to, at the time of assumption of the office by a new trustee, etc., the former trustee's rights and duties concerning the trust existing as of that time.
- (3) The provisions of the preceding two paragraphs shall not preclude the effect of any act carried out by the former trustee, a trust property administrator, or an incorporated trust property administrator within the scope of their powers before the new trustee assumes the office as the new trustee.
 - (4) The provisions of Article 27 shall apply *mutatis mutandis* where the former trustee has carried out any act that does not fall within the scope of the powers of the former trustee before the new trustee, etc. assumes the office as a trustee.
 - (5) Where the former trustee (including the trustee's heir; hereinafter the same shall apply in this Article) has incurred liability under the provision of Article 40, or where a director, executive officer, or any other person equivalent thereto (hereinafter referred to as a "director, etc." in this paragraph) of the former trustee who is a juridical person has incurred liability under the provision of Article 41, the new trustee, etc. or incorporated trust property administrator may make a claim against the former trustee or its director, etc. under the provisions of Article 40 or Article 41.
 - (6) Where the former trustee may receive reimbursement of expenses, etc. or compensation for damages, or where the former trustee may receive trust fees from the trust property, the former trustee may make a demand of the new trustee, etc. or incorporated trust property administrator for reimbursement of expenses, etc., compensation for damages, or payment of trust fees; provided, however, that the new trustee, etc. or incorporated trust property administrator shall only be liable for using property that belongs to the trust property to perform this obligation.
 - (7) The provisions of Article 48, paragraph (4) and Article 49, paragraph (6) and paragraph (7) shall apply *mutatis mutandis* to the right that the former trustee has under the provisions of the preceding paragraph.
 - (8) Execution, execution of a provisional seizure or provisional disposition, procedures for the exercise of a security interest, or an auction which has already been commenced against property that belongs to the trust property before a new trustee assumes the office of trustee, may be continued against the new trustee.
 - (9) The former trustee may retain property that belongs to the trust property until the former trustee receives satisfaction of the claim pertaining to the demand under the provisions of paragraph (6).

(Liabilities of the Former Trustee and the New Trustee for Obligations Succeeded To)

- Article 76 (1) Even where obligations pertaining to trust claims are succeeded to by the new trustee pursuant to the provisions of paragraph (1) or paragraph (2) of the preceding Article, the former trustee shall be liable to perform the obligations thus succeeded to using the former trustee's own property; provided, however, that this shall not apply if the former trustee is only liable for using property that belongs to the trust property to perform such obligations.
- (2) Where the new trustee has succeeded to the obligations prescribed in the main clause of the preceding paragraph, the new trustee shall only be liable for using property that belongs to the trust property to perform those obligations.

(Transfer, etc. of Trust Affairs from the Former Trustee to the New Trustee, etc.)

- Article 77 (1) Where the new trustee, etc. assumes the office of trustee, the former trustee shall, without delay, settle the accounts on trust affairs and request approval for the settlement of accounts from a beneficiary (if there are two or more beneficiaries at the time in question, from all of them; if there is a trust caretaker at the time in question, from the trust caretaker), and shall transfer trust affairs as required in order for the new trustee, etc. to administer them.
- (2) Where a beneficiary (if there is a trust caretaker at the time in question, the trust caretaker; the same shall apply in the following paragraph) has approved the settlement of accounts set forth in the preceding paragraph, the former trustee shall be deemed to have been released from the liability to the beneficiary to transfer trust affairs under the provisions of said paragraph; provided, however, that this shall not apply if the former trustee has committed misconduct in the course of the duties.
- (3) Where a beneficiary has not made any objection within one month from the time when the beneficiary was requested by the former trustee to give an approval for the settlement of accounts set forth in paragraph (1), the beneficiary shall be deemed to have approved the settlement of accounts set forth in said paragraph.

(Transfer, etc. of Trust Affairs from the Former Trustee's Heir, etc. or the Bankruptcy Trustee to the New Trustee, etc.)

- Article 78 The provisions of the preceding Article shall apply to the former trustee's heir, etc. in cases where the trustee's duty as trustee has been terminated on the grounds set forth in Article 56, paragraph (1), item (i) or item (ii), and to the bankruptcy trustee in cases where the trustee's duty as

trustee has been terminated on the grounds set forth in Article 56, paragraph (1), item (iii).

Section 6 Special Rules for Trusts with Two or More Trustees

(Trust Property in Co-ownership Without Share Subject to Certain Restrictions on the Disposition of Shares)

Article 79 In the case of a trust with two or more trustees, the trust property shall be deemed to be held under co-ownership without share, subject to certain restrictions on the disposition of their shares.

(Method of Trust administration)

Article 80 (1) In the case of a trust with two or more trustees, decisions on the trust administration shall be made by the majority of the trustees.

(2) Notwithstanding the provisions of the preceding paragraph, decisions on an act of preservation may be made by each trustee independently.

(3) Where a decision is made on the trust administration pursuant to the provisions of the preceding two paragraphs, each trustee may execute trust affairs based on such decision.

(4) Notwithstanding the provisions of the preceding three paragraphs, where terms of trust contains provisions concerning the division of duties among the trustees, each trustee shall make decisions on the trust administration and execute those affairs pursuant to such provisions.

(5) With regard to an act to be conducted in the interests of the trust property based on a decision on the trust administration made under the provisions of the preceding two paragraphs, each trustee shall have the authority to represent the other trustee(s).

(6) Notwithstanding the provisions of the preceding paragraphs, if the terms of trust otherwise provides for, such provisions shall prevail.

(7) In the case of a trust with two or more trustees, it shall be sufficient for a third party to make a manifestation of intention to any one of them; provided, however, that if the terms of trust otherwise provides for manifestation of intention by a beneficiary, such provisions shall prevail.

(Standing to Sue or to Be Sued of Trustees with Segregated Duties)

Article 81 In the case prescribed in paragraph (4) of the preceding Article, each trustee shall stand as a plaintiff or defendant with respect to duties of the said trustee in any action against the trust property on behalf of the other trustee(s).

(Delegation to Other Trustees to Make Decisions on the Trust administration)

Article 82 In the case of a trust with two or more trustees, no trustee may delegate the other trustee(s) to make decisions on the trust administration (excluding those falling within the scope of the ordinary business), except where terms of trust otherwise provides for or there is a compelling reason to do so.

(Assumption of Obligations in Administering Trust Affairs)

Article 83 (1) In the case of a trust with two or more trustees, where each trustee has assumed an obligation to a third party in the course of administering trust affairs, these trustees shall be joint and several obligors.
(2) Notwithstanding the provisions of the preceding paragraph, where terms of trust contain a provision concerning the division of duties among the trustees, when either of these trustees has assumed an obligation to a third party in the course of administering trust affairs pursuant to such provisions, the other trustees shall be liable only by using property that belongs to the trust property to perform the obligation; provided, however, that where the third party knew, at the time of the act causing the assumption of the obligation, that said act was conducted in the course of administering trust affairs and that there were two or more trustees for the trust, and did not know and was not negligent in failing to know that the terms of trust contained provisions concerning the division of duties among the trustees, the other trustee(s) may not duly assert such provisions on the division of duties against the third party.

(Special Rules for Division of Property in Co-ownership which Is Both Trust Property and the Trustee's Own Property, etc.)

Article 84 For the purpose of the application of the provisions of Article 19 in the case of a trust with two or more trustees, the phrase "Where a co-ownership interest in a specific property that belongs to a trustee is an interest in both the trust property and the trustee's own property" in paragraph (1) of said Article shall be deemed to be replaced with "Where a co-ownership interest in a specific property that belongs to a trustee is an interest in both the trust property and the trustee's own property, when there are two or more trustees for the trust pertaining to said trust property"; the term "trustee" in paragraph (1), item (ii) of said Article shall be deemed to be replaced with "trustee whose own property includes the co-ownership interests"; the term "trustee" in paragraph (1), item (iii) of said Article shall be deemed to be replaced with "trustee whose own property includes the co-ownership interests"; the term "trustee" in paragraph (2) of said Article shall be deemed to be replaced with "trustee whose own property includes the co-ownership interests"; the phrase "Where a co-ownership interest in a specific property that belongs to a trustee is an interest in both the trust property and the trust property of another

trust" in paragraph (3) of said Article shall be deemed to be replaced with "Where a co-ownership interest in a specific property that belongs to a trustee is an interest in both the trust property and the trust property of another trust, when there are two or more trustees for the trust pertaining to said trust property or such other trust"; in paragraph (3), item (iii) of the said Article, the term "trustee" shall be deemed to be replaced with "trustee to whom the co-ownership interests for each trust property belong" and the phrase "based on a decision by the trustee" shall be deemed to be replaced with "based on an agreement between the trustees"; and in paragraph (4) of said Article, the term "item (ii)" shall be deemed to be replaced with "item (ii) and item (iii)."

(Special Rules for Trustee Liability, etc.)

Article 85 (1) In the case of a trust with two or more trustees, where two or more trustees have incurred liability under the provisions of Article 40 for an act that they have committed in breach of their duties, these trustees who have committed such an act shall be joint and several obligors.

(2) For the purpose of the application of the provisions of Article 40, paragraph (1) and Article 41 in the case of a trust with two or more trustees, the term "beneficiary" in these provisions shall be deemed to be replaced with "beneficiary or the other trustee(s)."

(3) In the case of a trust with two or more trustees, if any of these trustees is released from liability under the provisions of Article 40 or Article 41 pursuant to the provisions of Article 42, no other trustee may file a claim to hold the person who would have incurred liability under the provisions of Article 40 or Article 41 liable; provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.

(4) For the purpose of the application of the provisions of Article 44 in the case of a trust with two or more trustees, the term "beneficiary" in paragraph (1) of said Article shall be deemed to be replaced with "beneficiary or the other trustee(s)" and the term "those beneficiaries" shall be deemed to be replaced with "those beneficiaries or the other trustee(s)."

(Special Rules for a Change of Trustees, etc.)

Article 86 (1) For the purpose of the application of the provisions of Article 59 in the case of a trust with two or more trustees, the term "beneficiary" in paragraph (1) of said Article shall be deemed to be replaced with "beneficiary and the other trustee(s)," and the phrase "a trustee's duty as trustee" in paragraph (3) and paragraph (4) of said Article shall be deemed to be replaced with "all trustees' duties as trustees."

(2) For the purpose of the application of the provisions of Article 60 in the case of a trust with two or more trustees, the term "beneficiary" in paragraph (1) of

said Article shall be deemed to be replaced with "beneficiary and the other trustee(s)," and the phrase "a trustee's duty as trustee" in paragraph (2) and paragraph (4) of said Article shall be deemed to be replaced with "all trustees' duties as trustees."

(3) For the purpose of the application of the provisions of Article 74, paragraph (1) in the case of a trust with two or more trustees, the phrase "a trustee's duty as trustee" in said paragraph shall be deemed to be replaced with "all trustees' duties as trustees."

(4) In the case of a trust with two or more trustees, when one of these trustees' duty as a trustee has been terminated on any of the grounds listed in the items of Article 56 paragraph (1), notwithstanding the provisions of Article 75, paragraph (1) and paragraph (2), the other trustee(s) shall succeed to the rights and duties concerning the trust existing as of the time of termination of said duty, by operation of law, and shall perform the terminated duties of such trustee; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(Special Rules for the Termination of a Trust)

Article 87 (1) For the purpose of the application of the provisions of Article 163, item (iii) in the case of a trust with two or more trustees, the phrase "where the trust lacks a trustee" in said item shall be deemed to be replaced with "where of the trust lacks all of its trustees."

(2) In the case of a trust with two or more trustees, the trust shall also be terminated in cases where the trust lacks any of the trustees and the duties of such trustee are not performed by any other trustee pursuant to the provisions of the proviso to paragraph (4), and the trustee's office has not been filled by a new trustee within one year.

Chapter IV Beneficiary, etc.

Section 1 Acquisition and Exercise of Rights by a Beneficiary

(Acquisition of Beneficial Interest)

Article 88 (1) A person designated by the provisions of terms of trust as one who is to be a beneficiary (including a person designated as an initial beneficiary or as a new beneficiary after a change as a result of the exercise of the right to designate or change beneficiaries as prescribed in paragraph (1) of the following Article) shall acquire a beneficial interest by operation of law; provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.

(2) If a person designated as one who is to be a beneficiary as prescribed in the preceding paragraph does not know that the person has acquired a beneficial

interest pursuant to the provisions of said paragraph, the trustee shall notify such person to that effect without delay; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(Right to Designate or Change Beneficiaries)

Article 89 (1) In the case of a trust with provisions on the persons who have the right to designate or change beneficiaries, the right to designate or change a beneficiary shall be exercised by manifestation of intention to do so to the trustee.

(2) Notwithstanding the provisions of the preceding paragraph, the right to designate or change a beneficiary may be exercised through a will.

(3) Where the right to designate or change beneficiaries is exercised through a will pursuant to the provisions of the preceding paragraph, if the trustee does not know of such exercise, the acquisition of the status of a beneficiary through the exercise of said right may not be duly asserted against such trustee.

(4) When the person who was a beneficiary has lost beneficial interest as a result of the exercise of the right to change beneficiaries, the trustee shall notify such person to that effect without delay; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(5) The right to designate or change beneficiaries shall not be succeeded to through inheritance; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(6) For the purpose of the application of the provisions of paragraph (1) in cases where the person who has the right to designate or change beneficiaries is a trustee, the term "trustee" in said paragraph shall be deemed to be replaced with "person who is to be a beneficiary."

(Special Rules for a Trust with Provisions on the Acquisition of Beneficial Interest Upon the Settlor's Death, etc.)

Article 90 (1) In the case of the trusts set forth in each of the following items, the settlor under those items shall have the right to change the beneficiaries; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail:

(i) a trust with provisions that a person designated as one who is to be a beneficiary is to acquire a beneficial interest at the time of the settlor's death; and

(ii) a trust with provisions that a beneficiary is to receive distribution involving the trust property at the time of the settlor's death or thereafter.

(2) The beneficiary set forth in item (ii) of the preceding paragraph shall not have rights as a beneficiary until the settlor under said item dies; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(Special Rules for Trusts with Provisions on the Acquisition of New Beneficial Interest by Another Party Upon the Beneficiary's Death)

Article 91 A trust with provisions that upon the beneficiary's death, the beneficial interest held by said beneficiary shall be extinguished and another person shall acquire a new beneficial interest (including provisions that upon the death of the predecessor beneficiary, another person shall acquire a beneficial interest as the successor beneficiary) shall be effective, in cases where any beneficiary who is alive when 30 years have elapsed since the creation of the trust acquires a beneficial interest pursuant to said provisions, until such beneficiary dies or until the beneficial interest of such beneficiary is extinguished.

(Prohibition by Provisions in the Terms of Trust of a Beneficiary's Exercise of Rights)

Article 92 No restrictions may be imposed by the provisions of the terms of trust on the beneficiary's exercise of the following rights:

- (i) the right to file a petition with the court under the provisions of this Act;
- (ii) the right to call for a definite answer under the provisions of Article 5, paragraph (1);
- (iii) the right to assert an objection under the provisions of Article 23, paragraph (5) or paragraph (6);
- (iv) the right to demand payment under the provisions of Article 24, paragraph (1);
- (v) the right to rescind under the provisions of Article 27, paragraph (1) or paragraph (2) (including cases where these provisions are applied mutatis mutandis pursuant to Article 75, paragraph (4));
- (vi) the right to rescind under the provisions of Article 31, paragraph (6) or paragraph (7);
- (vii) the right to request a report under the provisions of Article 36;
- (viii) the right to request to inspect or copy materials under the provisions of Article 38, paragraph (1) or paragraph (6);
- (ix) the right to demand compensation for a loss or restoration of the trust property under the provisions of Article 40;
- (x) the right to demand compensation for a loss or restoration of the trust property under the provisions of Article 41;
- (xi) the right to demand a cessation under the provisions of Article 44;
- (xii) the right to demand payment under the provisions of Article 45, paragraph (1);
- (xiii) the right to demand a cessation under the provisions of Article 59, paragraph (5);

- (xiv) the right to demand a cessation under the provisions of Article 60, paragraph (3) or paragraph (5);
- (xv) the right to demand payment under the provisions of Article 61, paragraph (1);
- (xvi) the right to call for a definite answer under the provisions of Article 62, paragraph (2);
- (xvii) the right to waive a beneficial interest under the provisions of Article 99, paragraph (1);
- (xviii) the beneficiary's right to demand that the trustee acquire the beneficial interest under the provisions of Article 103, paragraph (1) or paragraph (2);
- (xix) the right to call for a definite answer under the provisions of Article 131, paragraph (2);
- (xx) the right to call for a definite answer under the provisions of Article 138, paragraph (2);
- (xxi) the right to request the delivery of documents or provision of records under the provisions of Article 187, paragraph (1);
- (xxii) the right to request to inspect or copy materials under the provision of Article 190, paragraph (2);
- (xxiii) the right to request that a matter be stated or recorded in the registry under the provisions of Article 198, paragraph (1)
- (xxiv) the right to demand compensation or payment of monies under the provisions of Article 226, paragraph (1);
- (xxv) the right to demand compensation or payment of monies under the provisions of Article 228, paragraph (1); and
- (xxvi) the right to demand compensation for a loss under the provisions of Article 254, paragraph (1).

Section 2 Beneficial Interest, etc.

Subsection 1 Assignment, etc. of Beneficial Interest

(Assignability of Beneficial Interest)

Article 93 (1) A beneficiary may assign a beneficial interest to another; provided, however, that this shall not apply if the nature thereof does not permit assignment.

(2) The provisions of the preceding paragraph shall not apply if the terms of trust otherwise provide; provided, however, that such provisions of the terms of trust may not be duly asserted against a third party who has no knowledge of such provisions.

(Requirements for Perfection of the Assignment of Beneficial Interest)

Article 94 (1) The assignment of a beneficial interest may not be duly asserted

against a trustee or any other third party unless the assignor gives notice of the assignment to the trustee or the trustee acknowledges the same.

- (2) The notice and acknowledgement set forth in the preceding paragraph may not be duly asserted against a third party other than a trustee unless they are made by means of an instrument bearing a certified date.

(Trustee's Defense Upon the Assignment of a Beneficial Interest)

Article 95 A trustee may duly assert as a defense against the assignor any grounds that have arisen in relation to the assignor before the notice or acknowledgment set forth in paragraph (1) of the preceding Article is made.

(Pledges of Beneficial Interest)

Article 96 (1) A beneficiary may create a pledge on a beneficial interest; provided, however, that this shall not apply if the nature thereof does not permit such a pledge.

- (2) The provisions of the preceding paragraph shall not apply if the terms of trust otherwise provides for; provided, however, that such provisions of the terms of trust may not be duly asserted against a third party who has no knowledge of such provisions.

(Effect of Pledges of Beneficial Interest)

Article 97 A pledge on a beneficial interest shall exist against the following monies, etc. (meaning monies or other property; hereinafter the same shall apply in this Article and the following Article):

- (i) monies, etc. that the beneficiary who holds the pledged beneficial interest has received from the trustee as distribution involving the trust property;
- (ii) monies, etc. that the beneficiary who holds the pledged beneficial interest receives by demanding that the trustee acquire the beneficial interest as prescribed in Article 103, paragraph (6);
- (iii) monies, etc. that the beneficiary who holds the pledged beneficial interest receives through the consolidation of beneficial interests or splitting of a beneficial interest as a result of a modification of the trust;
- (iv) monies, etc. that the beneficiary who holds the pledged beneficial interest receives through the consolidation or split of trust(s) (meaning consolidation of a trust or split of a trust, the same applies hereinafter); and
- (v) in addition to what is listed in the preceding items, monies, etc. that the beneficiary who holds the pledged beneficial interest receives in lieu of such beneficial interest.

Article 98 (1) A person who has created a pledge on a beneficial interest may receive monies, etc. set forth in the preceding Article (limited to monies) and

- appropriate them for payment of a claim of the person prior to other creditors.
- (2) Before the claim set forth in the preceding paragraph becomes due, the person who has created the pledge on a beneficial interest may have the trustee deposit an amount equivalent to the monies, etc. prescribed in said paragraph. In this case, a pledge shall exist on such deposited monies.

Subsection 2 Waiver of Beneficial Interest

- Article 99 (1) A beneficiary may make a manifestation of intention to waive a beneficial interest to the trustee; provided, however, that this shall not apply where the beneficiary is a party to the terms of trust.
- (2) When a beneficiary has made a manifestation of intention as under the provisions of the preceding paragraph, the beneficiary shall be deemed to have never held the beneficial interest; provided, however, that this may not prejudice a third party's rights.

Subsection 3 Distribution claims as a beneficiary

(Trustee Liability for Distribution claims as a beneficiary)

- Article 100 The trustee shall only be liable for using property that belongs to the trust property to perform obligations pertaining to distribution claims as a beneficiary.

(Relationship between Distribution claim as a beneficiary and Trust Claims)

- Article 101 Distribution claim as a beneficiary shall be subordinated to trust claims.

(Limitation to the Term of a Distribution claim as a beneficiary)

- Article 102 (1) Except for the matters specified in the following paragraph and paragraph (3), the extinctive prescription for distribution claim as a beneficiary shall be governed by the provisions on the extinctive prescription for claims.
- (2) The extinctive prescription for a distribution claim as a beneficiary shall not begin to run until the beneficiary becomes aware that the beneficiary has been designated as a beneficiary (if there is no beneficiary at the time in question, until the trust caretaker is appointed).
- (3) The extinctive prescription for a distribution claim as a beneficiary may be invoked only in the following cases:
- (i) where the trustee, without delay after the expiration of the period of extinctive prescription, specified a reasonable period of time and notified the beneficiary of the existence and content of the distribution claim as a

- beneficiary, but did not receive the beneficiary's request for performance within such period; or
- (ii) where, after the expiration of the period of extinctive prescription, the beneficiary's whereabouts are unknown, or there are justifiable grounds for not notifying the beneficiary under the provisions of the preceding item, in light of the provisions of the terms of trust, the status of the beneficiary, the loss of the relevant materials, and other relevant circumstances.
- (4) A distribution claim as a beneficiary shall be extinguished when 20 years have elapsed since it became possible to exercise it.

Subsection 4 The Beneficiary's Right to Demand that the Trustee Acquire the Beneficial Interest of the Beneficiary

(Beneficiary's Demand that the Trustee Acquire the Beneficial Interest of the Beneficiary)

- Article 103 (1) Where a modification is to be made to a trust regarding the following matters (referred to as a "material modification of a trust" in paragraph (3)), a beneficiary who is likely to suffer damages from the modification may demand that the trustee acquire the beneficial interest of the beneficiary at a fair price; provided, however, that where a modification of a trust is to be made regarding the matters listed in item (i) or item (ii), there need not be any likelihood of suffering any damage from the modification:
- (i) a change in the purpose of the trust;
- (ii) restrictions on the assignment of a beneficial interest;
- (iii) a reduction of trustee liability or release therefrom in whole or in part (excluding the case where the terms of trust contains provisions on the scope of such a reduction or release and the method of making decisions thereon);
- (iv) a change in the content of a distribution claim as a beneficiary (excluding the case where the terms of trust contains provisions on the scope of such a change to the content and the method of making decisions thereon); and
- (v) any matter provided for by the terms of trust.
- (2) Where a trust is to be consolidated or split, a beneficiary who is likely to suffer any damage from the consolidation or split may demand that the trustee acquire the beneficial interest of the beneficiary at a fair price; provided, however, that where the consolidation or split of the trust is to involve a modification of the trust regarding the matters listed in item (i) or item (ii) of the preceding paragraph, there need not be any likelihood of suffering any damages from the consolidation or split.
- (3) When the beneficiary set forth in the preceding two paragraphs has participated in the decision to make a material modification to the trust or to consolidate or split the trust (hereinafter referred to as a "material

modification to the trust, etc." in this Chapter), and has made manifestation of intention in the decision-making process to approve such material modification of the trust, etc., the provisions of the preceding two paragraphs shall not apply to such beneficiary.

- (4) The trustee shall notify the beneficiary of the following matters within 20 days from the date of the decision to make a material modification to the trust, etc.:
 - (i) a statement to the effect that a material modification is to be made to the trust, etc.;
 - (ii) the day on which the material modification to the trust, etc. becomes effective (referred to as the "effective day" in paragraph (1) of the following Article); and
 - (iii) conditions for cancellation of the material modification to the trust, etc., if any such conditions are specified.
- (5) Public notice in an official gazette may be substituted for the notification under the provisions of the preceding paragraph.
- (6) A demand under the provisions of paragraph (1) or paragraph (2) (hereinafter referred to as the "(beneficiary's) demand that the trustee acquire the beneficial interest" in this Subsection) shall be made within 20 days from the date of the notice under the provisions of paragraph (4) or the date of the public notice under the provisions of the preceding paragraph, and the contents of the beneficial interest for which the beneficiary is making the demand that the trustee acquire the beneficial interest shall be specified.
- (7) The beneficiary who has made the demand that the trustee acquire the beneficial interest of the beneficiary may revoke the demand that the trustee acquire the beneficial interest only where the beneficiary has obtained approval from the trustee.
- (8) When a material modification of the trust, etc. is cancelled, the beneficiary's demand that the trustee acquire the beneficial interest shall cease to be effective.

(Determination of the Price of a Beneficial Interest, etc.)

- Article 104 (1) Where a beneficiary's demand that the trustee acquire the beneficial interest has been made, if an agreement is reached between the trustee and the beneficiary on the determination of the price of the beneficial interest, the trustee shall pay the price before 60 days have elapsed from the date of the beneficiary's demand that the trustee acquire the beneficial interest (or the effective day if it has not arrived by said date).
- (2) If no agreement is reached on the determination of the price of the beneficial interest within 30 days from the date of the beneficiary's demand that the trustee acquire the beneficial interest, the trustee or the beneficiary may file a

petition with the court for the determination of the price within 30 days after said 30-day period has elapsed.

- (3) The court, in making a judicial decision to determine the price under the provision of the preceding paragraph, shall hear statements from the persons who may file the petition set forth in said paragraph.
- (4) The judicial decision on the petition set forth in paragraph (2) shall include the reasons for said decision.
- (5) The petitioner and any person who may file a petition set forth in said paragraph may file an immediate appeal against a judicial decision on the determination of the price under the provisions of paragraph (2).
- (6) The immediate appeal set forth in the preceding paragraph shall have the effect of a stay of execution.
- (7) Notwithstanding the provisions of paragraph (7) of the preceding Article, in the case prescribed in paragraph (2), if no petition set forth in said paragraph has been made within 60 days from the date of the beneficiary's demand that the trustee acquire the beneficial interest of the beneficiary, the beneficiary may revoke the demand that the trustee acquire the beneficial interest at any time after the expiration of such period.
- (8) The trustee set forth in paragraph (1) shall also pay interest on the price determined by the court for the period from the date on which the period set forth in said paragraph elapsed.
- (9) The acquisition of a beneficial interest by the trustee in response to a beneficiary's demand that the trustee acquire the beneficial interest of the beneficiary shall become effective at the time of payment of the monies equivalent to the price of the beneficial interest.
- (10) When a beneficiary's demand that the trustee acquire the beneficial interest of the beneficiary is made with regard to a beneficial interest for which a certificate of beneficial interest (meaning a certificate of beneficial interest prescribed in Article 185, paragraph (1); hereinafter the same shall apply in this Chapter) is issued, monies equivalent to the price of the beneficial interest to be acquired in response to the beneficiary's demand that the trustee acquire the beneficial interest shall be paid in exchange for the certificate of beneficial interest.
- (11) The trustee shall only be liable for using property that belongs to the trust property to perform obligations pertaining to a beneficiary's demand that the trustee acquire the beneficial interest of the beneficiary; provided, however, that if an terms of trust or the decision to make a material modification to the trust, etc. has otherwise provided for, such provisions shall prevail.
- (12) When the trustee has acquired a beneficial interest pursuant to the provisions of paragraph (1) or paragraph (2) of the preceding Article, the beneficial interest shall be extinguished; provided, however, that if terms of

trust or the decision to make such material modification of the trust, etc. has otherwise provided for, such provisions shall prevail.

Section 3 Special Rules on Decision-Making Methods Involving Two or More Beneficiaries
Subsection 1 General Provisions

- Article 105 (1) In the case of a trust with two or more beneficiaries, the beneficiaries' decisions (excluding decisions on the exercise of the rights listed in the items of Article 92) shall be made with the unanimous consent of all beneficiaries; provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.
- (2) In the case referred to in the proviso to the preceding paragraph, if it is provided in the terms of trust that beneficiaries' decisions shall be made by majority vote at a beneficiaries meeting, the provisions of the following Subsection shall apply; provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.
- (3) Notwithstanding the provisions of the proviso to paragraph (1) or the preceding paragraph, provisions of the terms of trust on the method of making decisions on release from liability under the provisions of Article 42 shall be effective only if they are provisions to the effect that such decisions are to be made by majority vote at a beneficiaries meeting as provided for in the following Subsection.
- (4) The provisions of the proviso to paragraph (1) and the preceding two paragraphs shall not apply to exemptions from liability listed as follows:
- (i) a total exemption from liability under the provisions of Article 42;
 - (ii) a partial exemption from liability under the provisions of Article 42, item (i) (limited to liability arising in cases where the trustee was willful or grossly negligent in the performance of the duties); and
 - (iii) a partial exemption from liability under the provisions of Article 42, item (ii).

Subsection 2 Beneficiaries Meetings

(Convocation of Beneficiaries Meetings)

- Article 106 (1) A beneficiaries meeting may be convened at any time when necessary.
- (2) A beneficiaries meeting shall be convened by a trustee (if there is a trust supervisor at the time in question, a trustee or trust supervisor).

(Beneficiary's Request for Convocation)

- Article 107 (1) A beneficiary may request that a trustee (if there is a trust supervisor at the time in question, a trustee or trust supervisor) convene a beneficiaries meeting by pointing out a matter which is a subject for a beneficiaries meeting and showing the reasons for convocation.
- (2) In the following cases, when significant harm to the trust property is likely to occur, the beneficiary who has made the request under the provisions of the preceding paragraph may convene a beneficiaries meeting:
- (i) where convocation procedures are not conducted without delay after the request was made under the provisions of the preceding paragraph; or
 - (ii) where a notice of convocation of a beneficiaries meeting which designates, as the date of the beneficiaries meeting, any day falling within a period of eight weeks from the date of the request under the provisions of the preceding paragraph, is not issued.

(Decision to Convene a Beneficiaries Meeting)

Article 108 A person who convenes a beneficiaries meeting (hereinafter referred to as a "convener" in this Subsection) shall specify the following matters when convening the beneficiaries meeting:

- (i) the date and place of the beneficiaries meeting;
- (ii) if there is any matter that is the subject of a beneficiaries meeting, such matter;
- (iii) if there is an arrangement in which beneficiaries who do not attend the beneficiaries meeting are entitled to exercise their votes by electromagnetic means (meaning the means of using an electronic data processing system or any other means of using information and communications technology which is specified by Ordinance of the Ministry of Justice; hereinafter the same shall apply in this Subsection), a statement to that effect; and
- (iv) in addition to what is listed in the preceding items, any matters specified by Ordinance of the Ministry of Justice.

(Notice of Convocation of a Beneficiaries Meeting)

Article 109 (1) In order to convene a beneficiaries meeting, the convener shall issue a written notice to the known beneficiaries and the trustee (if there is a trust supervisor at the time in question, to known beneficiaries, a trustee and the trust supervisor), no later than two weeks prior to the date of the beneficiaries meeting.

- (2) In lieu of issuing the written notice set forth in the preceding paragraph, the convener may issue a notice by electromagnetic means with the consent of those persons who are to receive the notice set forth in said paragraph, as provided for by Cabinet Order. In this case, the convener shall be deemed to have issued the written notice set forth in said paragraph.

- (3) The matters listed in the paragraphs of the preceding Article shall be stated or recorded in the notice set forth in the preceding two paragraphs.
- (4) In order to convene a beneficiaries meeting in cases where bearer certificates of beneficial interest are issued, the convener shall give public notice in an official gazette to the effect that a beneficiaries meeting is being convened and with regard to the matters listed in the items of the preceding Article, no later than three weeks prior to the date of the beneficiaries meeting.

(Delivery of Reference Documents for a Beneficiaries Meeting and Voting Cards, etc.)

Article 110 (1) Upon issuing a notice set forth in paragraph (1) of the preceding Article, the convener shall deliver to known beneficiaries, as provided for by Ordinance of the Ministry of Justice, documents stating matters which may be of reference for the exercise of voting rights (hereinafter referred to as "reference documents for the beneficiaries meeting" in this Article) and documents by which the beneficiaries are to exercise their voting rights (hereinafter referred to as "voting cards" in this Subsection).

- (2) When the convener issues a notice by an electromagnetic means set forth in paragraph (2) of the preceding Article to the beneficiaries who have given their consent as set forth in said paragraph, the convener may, in lieu of delivering reference documents for the beneficiaries meeting and voting cards under the provisions of the preceding paragraph, provide information on the matters that should be stated in these documents by electromagnetic means; provided, however, that when requested by a beneficiary, the convener shall deliver these documents to said beneficiary.
- (3) Where the convener has given public notice under the provisions of paragraph (4) of the preceding Article, when the convener is requested by a beneficiary holding a bearer beneficial interest (meaning a beneficial interest for which a bearer certificate of beneficial interest is issued; the same shall apply in Chapter VIII) by one week prior to the date of the beneficiaries meeting, the convener shall immediately deliver reference documents for the beneficiaries meeting and a voting card to such beneficiary.
- (4) In lieu of delivering reference documents for the beneficiaries meeting and the voting cards under the provisions of the preceding paragraph, the convener may, with the consent of the beneficiary, as provided for by Cabinet Order, provide information on the matters that should be stated in these documents by electromagnetic means. In this case, the convener shall be deemed to have delivered these documents under the provisions of said paragraph.

Article 111 (1) Where the convener has specified the matters set forth in Article 108, item (iii), the convener shall, when giving notice by electromagnetic means

to the beneficiaries who have given their consent as set forth in Article 109, paragraph (2), provide these beneficiaries, with the information on the matters that should be stated in the voting cards by said electromagnetic means, as provided by Ordinance of the Ministry of Justice.

- (2) Where the convener has specified the matters set forth in Article 108, item (iii), when the convener is requested by any beneficiary who has not given the consent as set forth in Article 109, paragraph (2), by no later than one week prior to the date of the beneficiaries meeting, to provide such beneficiary with the information on the matters that should be stated in the voting card by electromagnetic means, the convener shall immediately provide such beneficiary with the information on such matters by electromagnetic means.

(Beneficiary's Voting Rights)

Article 112 (1) At a beneficiaries meeting, a beneficiary shall have voting rights based on the matters specified in the following items for the cases listed in the respective items:

- (i) where the content of the beneficial interests is equal: the number of beneficial interests: or
- (ii) in cases other than the case set forth in the preceding item: the value of each beneficial interest as of the time of the decision to convene the beneficiaries meeting.

- (2) Notwithstanding the provisions of the preceding paragraph, if a beneficial interest belongs to the trust property of the trust to which the beneficial interest pertains, the trustee shall have no voting rights with regard to such beneficial interest.

(Resolutions at Beneficiaries Meetings)

Article 113 (1) A resolution at a beneficiaries meeting shall be adopted by a majority of the votes of the beneficiaries present, when the beneficiaries who are present at the meeting hold a majority of the voting rights of all the beneficiaries who are entitled to exercise their voting rights.

- (2) Notwithstanding the provisions of the preceding paragraph, resolutions at beneficiaries meetings regarding each of the following matters shall be adopted by at least a two-thirds majority of the votes of the beneficiaries present, when the beneficiaries who are present hold a majority of the voting rights of all the beneficiaries who are entitled to exercise their voting rights at said beneficiaries meeting:

- (i) a release from liability under the provisions of Article 42 (excluding a release set forth in the items of Article 105, paragraph (4));
- (ii) an agreement prescribed in Article 136, paragraph (1), item (i);
- (iii) an agreement prescribed in Article 143, paragraph (1), item (i);

- (iv) an agreement prescribed in Article 149, paragraph (1) or paragraph (2), item (i), or the manifestation of an intent as prescribed in paragraph (3) of said Article;
 - (v) an agreement prescribed in Article 151, paragraph (1) or paragraph (2), item (i);
 - (vi) an agreement prescribed in Article 155, paragraph (1) or paragraph (2), item (i);
 - (vii) an agreement prescribed in Article 159, paragraph (1) or paragraph (2), item (i); and
 - (viii) an agreement prescribed in Article 164, paragraph (1).
- (3) Notwithstanding the provisions of the preceding two paragraphs, with regard to the material modification of a trust, etc. pertaining to the matters listed in Article 103, paragraph (1), item (ii) to item (iv) (in the case of the matter set forth in item (iv), excluding such a matter that would change the balance among beneficiaries), the resolution at the beneficiaries meeting shall be adopted by at least half of the beneficiaries who are entitled to exercise their voting rights at said beneficiaries meeting, and by at least a two-thirds majority of the votes of such beneficiaries.
- (4) Notwithstanding the provisions of the preceding three paragraphs, with regard to the material modification of a trust, etc. pertaining to the matters listed in Article 103, paragraph (1), item (i) or item (iv) (in the case of the matters set forth in item (iv), limited to such a matter that would change the balance among beneficiaries), the resolution at the beneficiaries meeting shall be adopted by at least half of all of the beneficiaries, and by at least a three-fourths majority of the votes of all beneficiaries.
- (5) A beneficiaries meeting may adopt no resolution on any matters other than the matters set forth in Article 108, item (ii).

(Proxy Voting)

- Article 114 (1) A beneficiary may exercise the voting rights by proxy. In this case, such beneficiary or the proxy shall submit a document to the convener certifying the authority of representation.
- (2) The authority of representation set forth in the preceding paragraph shall be granted for each beneficiaries meeting.
- (3) In lieu of submitting a document certifying the authority of representation, beneficiary or the proxy as set forth in paragraph (1) may, with the approval of the convener, provide the information on the matters that should be stated in said document by electromagnetic means, as provided for by Cabinet Order. In this case, the beneficiary or the proxy shall be deemed to have submitted said document.
- (4) The convener may not refuse to give approval as set forth in the preceding

paragraph to a beneficiary who has given the consent as set forth in Article 109, paragraph (2), without justifiable grounds.

(Voting in Writing)

Article 115 (1) A beneficiary who does not attend a beneficiaries meeting may exercise the voting rights in writing.

(2) The exercise of voting rights in writing shall be performed by stating the necessary matters in a voting card and submitting the voting card containing those matters to the convener by the time specified by Ordinance of the Ministry of Justice.

(3) Voting rights exercised in writing pursuant to the provisions of the preceding paragraph shall be deemed to be voting rights exercised by voting right holders present at the meeting.

(Voting by Electromagnetic Means)

Article 116 (1) The exercise of a voting right by electromagnetic means shall be performed, with the consent of the convener, by providing the convener with the information on the matters that should be stated in a voting card by electromagnetic means, by the time specified by Ordinance of the Ministry of Justice, as provided for by Cabinet Order.

(2) The convener may not refuse to give the consent as set forth in the preceding paragraph to a beneficiary who has given the consent as set forth in Article 109, paragraph (2), without justifiable grounds.

(3) Voting rights exercised by electromagnetic means pursuant to the provisions of paragraph (1) shall be deemed to be voting rights exercised by voting right holders present at the meeting.

(Diverse Voting)

Article 117 (1) A beneficiary may exercise the voting rights differently. In this case, such beneficiary shall give notice to the convener to that effect and of the reasons therefor no later than three days prior to the date of the beneficiaries meeting.

(2) If the beneficiary set forth in the preceding paragraph is not a person who holds a beneficial interest on behalf of others, the convener may refuse to allow such a beneficiary to exercise the voting rights differently pursuant to the provisions of said paragraph.

(Attendance of the Trustee, etc.)

Article 118 (1) The trustee (in the case of a trustee who is a juridical person, its representative or agent; the same shall apply in the following paragraph) may attend a beneficiaries meeting or state opinions in writing.

(2) A beneficiaries meeting or its convener may, when it or the convener finds it necessary, demand that the trustee attend the meeting. In this case, a resolution shall be passed at a beneficiaries' meeting demanding such attendance.

(Resolution for Postponement or Continuation)

Article 119 Where a resolution is adopted at a beneficiaries meeting for the postponement or continuation thereof, the provisions of Articles 108 and 109 shall not apply.

(Minutes of Meetings)

Article 120 The convener shall prepare the minutes with regard to the business of a beneficiaries meeting as provided for by Ordinance of the Ministry of Justice.

(Effect of Resolutions at Beneficiaries Meetings)

Article 121 A resolution made at a beneficiaries meeting shall be effective against all beneficiaries of the trust.

(Burden of Expenses for Beneficiaries Meetings)

Article 122 (1) A person who has paid the expenses necessary for a beneficiaries meeting may demand reimbursement thereof from a trustee.

(2) The trustee shall only be liable for using property that belongs to the trust property to perform the obligation pertaining to the demand under the provisions of the preceding paragraph.

Section 4 Trust Caretakers, etc.

Subsection 1 Trust Caretakers

(Appointment of a Trust Caretaker)

Article 123 (1) Provisions may be established in terms of trust to designate a person who is to be the trust caretaker in cases where there is no beneficiary at the time in question.

(2) If the terms of trust contains provisions designating a particular person to be the trust caretaker, any interested party may specify a reasonable period of time and call on the person designated as the one who is to be the trust caretaker to give a definite answer within that period of time with regard to whether the person will accept the office; provided, however, that if the terms of trust designates a condition precedent or a time of commencement to said provisions, this may only be done after the condition precedent is fulfilled or after the time of commencement arrives.

- (3) Where a call for an answer is made under the provisions of the preceding paragraph, if the person designated as the one who is to be the trust caretaker fails to give a definite answer to the settlor (if there is no settlor at the time in question, to the trustee) within the period set forth in said paragraph, it shall be deemed that the person does not accept the office.
- (4) Where there is no beneficiary at the time in question, if the terms of trust contains no provisions concerning a trust caretaker or if the person designated by the provisions of the terms of trust as the one who is to be the trust caretaker does not accept or is unable to accept the office, the court may appoint a trust caretaker at the petition of an interested party.
- (5) When a judicial decision on the appointment of a trust caretaker has been made under the provisions of the preceding paragraph, it shall be deemed that the provisions set forth in paragraph (1) were established in the terms of trust with regard to the appointed trust caretaker.
- (6) The judicial decision on the petition set forth in paragraph (4) shall include the reasons for said decision.
- (7) The settlor or the trustee, or the trust caretaker at the time in question, may file an immediate appeal against a judicial decision on the appointment of a trust caretaker under the provisions of paragraph (4).
- (8) The immediate appeal set forth in the preceding paragraph shall have the effect of a stay of execution.

(Qualifications of Trust Caretakers)

Article 124 None of the following persons may serve as a trust caretaker:

- (i) a minor or an adult ward or person under curatorship; and
- (ii) the person who is the trustee of the trust in question.

(Trust Caretakers' Powers)

Article 125 (1) A trust caretaker shall have the power to conduct any and all acts in or out of court in the trust caretaker's own name on behalf of a beneficiary in connection with the beneficiary's rights; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

- (2) When there are two or more trust caretakers, they shall carry out acts within the scope of their powers jointly; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (3) When there is a trust caretaker, any notice to be given to a beneficiary pursuant to the provisions of this Act shall be given to the trust caretaker.

(Duties of the Trust Caretaker)

Article 126 (1) The trust caretaker shall exercise the powers set forth in paragraph (1) of the preceding Article with the due care of a prudent manager.

(2) The trust caretaker shall exercise the powers set forth in paragraph (1) of the preceding Article sincerely and equitably on behalf of the beneficiary.

(Expenses, etc. and Remuneration of the Trust Caretaker)

Article 127 (1) A trust caretaker may demand from the trustee the expenses that are considered to be necessary for the administration of the affairs concerned and interest thereon accruing from the date of payment.

- (2) In the following cases, a trust caretaker may demand compensation from a trustee for the amount of damages specified in the respective items:
- (i) where the trust caretaker has suffered any damages in the course of administering the relevant affairs, absent the trust caretaker's own negligence: the amount of such damages; or
 - (ii) where the trust caretaker has suffered any damages in the course of administering the relevant affairs through the intentional or negligent act of a third party (excluding the case set forth in the preceding item): the amount of compensation that may be demanded from the third party.
- (3) In addition to the case where the provisions of Article 512 of the Commercial Code shall apply, the trust caretaker may demand remuneration from the trustee only where it is provided by an terms of trust that the trust caretaker shall receive remuneration.
- (4) The trustee shall only be liable for using property that belongs to the trust property to perform an obligation pertaining to the demand under the provisions of the preceding three paragraphs.
- (5) In the case referred to in paragraph (3), if the terms of trust contains provisions concerning the amount of remuneration or the calculation method thereof, the amount of remuneration shall be determined pursuant to such provisions, and if there are no such provisions, the amount of remuneration shall be a reasonable amount.
- (6) Where the court has appointed a trust caretaker pursuant to the provisions of Article 123, paragraph (4), it may determine the remuneration for the trust caretaker.
- (7) When a judicial decision concerning the remuneration for a trust caretaker is made under the provisions of the preceding paragraph, it shall be deemed that the provisions set forth in paragraph (3) and the provisions on the amount of remuneration set forth in paragraph (5) were included in the terms of trust with regard to the trust caretaker.
- (8) Before the court makes a judicial decision on the remuneration for a trust caretaker under the provisions of paragraph (6), it shall hear the statements of the trustee and the trust caretaker.
- (9) The trustee and the trust caretaker may file an immediate appeal against a judicial decision on the remuneration for a trust caretaker under the provisions

of paragraph (6).

(Termination of Trust Caretaker's Duty as Trust Caretaker)

Article 128 (1) The provisions of Article 56 shall apply mutatis mutandis to the termination of a trust caretaker's duty as trust caretaker. In this case, the term "following Article" in paragraph (1), item (v) of said Article shall be deemed to be replaced with "following Article as applied mutatis mutandis pursuant Article 128, paragraph (2)," and the term "Article 58" in item (vi) of said paragraph shall be deemed to be replaced with "Article 58 as applied mutatis mutandis pursuant to Article 128, paragraph (2)."

(2) The provisions of Article 57 shall apply mutatis mutandis to the resignation of a trust caretaker, and the provisions of Article 58 shall apply mutatis mutandis to the dismissal of a trust caretaker.

(Appointment, etc. of a New Trust Caretaker)

Article 129 (1) The provisions of Article 62 shall apply mutatis mutandis to the appointment of a new trust caretaker in cases where a trust caretaker's duty as trust caretaker has been terminated pursuant to the provisions of the items of Article 56, paragraph (1) as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article (referred to as the "new trust caretaker" in the following paragraph).

(2) Where the new trust caretaker assumes the office, the person who has been the trust caretaker shall, without delay, transfer affairs to the new trust caretaker as required in order for the new trust caretaker to administer the relevant affairs.

(3) When a beneficiary comes into existence and the person who has been the trust caretaker as set forth in the preceding paragraph then learns of said person who has become the beneficiary, the person who has been the trust caretaker shall report to said person who has become the beneficiary on the process and results of the relevant affairs without delay.

(Termination of the Administration of Affairs by a Trust Caretaker)

Article 130 (1) The administration of affairs by a trust caretaker shall terminate on the following grounds; provided, however, that in the case of termination on the grounds set forth in item (ii), if the terms of trust otherwise provides, such provisions shall prevail:

(i) a beneficiary has come into existence;

(ii) the settlor has manifested trust caretaker an intent to terminate the administration of affairs by the trust caretaker to the trust caretaker; or

(iii) any grounds specified by the terms of trust.

(2) Where the administration of affairs by a trust caretaker has terminated

pursuant to the provisions of the preceding paragraph, the person who has been the trust caretaker shall, without delay, report to the beneficiary on the process and results of the relevant affairs; provided, however, that this shall apply only where a beneficiary comes into existence and the person who has been the trust caretaker then learns of said person who has become the beneficiary.

Subsection 2 Trust Supervisors

(Appointment of a Trust Supervisor)

Article 131 (1) Provisions may be established in the terms of trust to designate a person who is to be the trust supervisor in cases where there is a beneficiary at the time in question.

- (2) If an terms of trust contains provisions designating a particular person to be the trust supervisor, any interested party may specify a reasonable period of time and call on the person designated as the one who is to be the trust supervisor to give a definite answer within that period of time with regard to whether the person will accept the office; provided, however, that if the terms of trust designates a condition precedent or a time of commencement to the provisions, this may only be done after the condition precedent is fulfilled or after the time of commencement arrives.
- (3) Where a call for an answer is made under the provisions of the preceding paragraph, if the person designated as the one who is to be the trust supervisor fails to give a definite answer to the settlor (if there is no settlor at the time in question, to the trustee) within the period set forth in said paragraph, it shall be deemed that the person not accept the office.
- (4) When there are special circumstances wherein a beneficiary is unable to supervise a trustee appropriately, if the terms of trust contains no provisions concerning a trust supervisor or if the person designated by provisions of the terms of trust as the one who is to be the trust supervisor does not accept or is unable to accept the office, the court may appoint a trust supervisor at the petition of an interested party.
- (5) When a judicial decision on the appointment of a trust supervisor has been made under the provisions of the preceding paragraph, it shall be deemed that the provisions set forth in paragraph (1) were established in the terms of trust with regard to the appointed trust supervisor.
- (6) The judicial decision on the petition set forth in paragraph (4) shall include the reasons for said decision.
- (7) A settler, trustee, or beneficiary, or the trust supervisor at the time in question may file an immediate appeal against a judicial decision on the appointment of a trust supervisor under the provisions of paragraph (4).

(8) The immediate appeal set forth in the preceding paragraph shall have the effect of a stay of execution.

(Trust Supervisors' Powers)

Article 132 (1) A trust supervisor shall have the power to carry out any and all acts in or out of court in the trust supervisor's own name on behalf of a beneficiary in connection with the rights listed in the items of Article 92 (excluding item (xvii), item (xviii), item (xxi) and item (xxiii)); provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(2) When there are two or more trust supervisors, they shall carry out acts within the scope of their power jointly; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(Duties of a Trust Supervisor)

Article 133 (1) A trust supervisor shall exercise the powers set forth in paragraph (1) of the preceding Article with the due care of a prudent manager.

(2) A trust supervisor shall exercise the powers set forth in paragraph (1) of the preceding Article sincerely and equitably on behalf of the beneficiary.

(Termination of a Trust Supervisor's Duty as Trust Supervisor)

Article 134 (1) The provisions of Article 56 shall apply mutatis mutandis to the termination of a trust supervisor's duty as trust supervisor. In this case, the term "following Article" in paragraph (1), item (v) of said Article shall be deemed to be replaced with "following Article as applied mutatis mutandis pursuant Article 134, paragraph (2)," and the term "Article 58" in item (vi) of said paragraph shall be deemed to be replaced with "Article 58 as applied mutatis mutandis pursuant to Article 134, paragraph (2)."

(2) The provisions of Article 57 shall apply mutatis mutandis to the resignation of a trust supervisor, and the provisions of Article 58 shall apply mutatis mutandis to the dismissal of a trust supervisor.

(Appointment, etc. of a New Trust Supervisor)

Article 135 (1) The provisions of Article 62 shall apply mutatis mutandis to the appointment of a new trust supervisor in cases where a trust supervisor's duty as trust supervisor has been terminated pursuant to the provisions of the items of Article 56, paragraph (1) as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article (referred to as a "new trust supervisor" in the following paragraph).

(2) Where a new trust supervisor assumes the office, the person who has been a trust supervisor shall, without delay, report to the beneficiary on the process

and results of the affairs concerned, and transfer affairs as required in order for the new trust supervisor to administer the relevant affairs.

(Termination of the Administration of Affairs by a Trust Supervisor)

Article 136 (1) The administration of affairs by a trust supervisor shall terminate on the following grounds, in addition to the completion of the liquidation of the trust; provided, however, that in the case of the termination on the grounds set forth in item (i), if the terms of trust otherwise provides for, such provisions shall prevail:

- (i) the settlor and the beneficiary have agreed to terminate the administration of affairs by a trust supervisor; or
- (ii) any grounds specified by the terms of trust.

(2) Where the administration of affairs by a trust supervisor has been terminated pursuant to the provisions of the preceding paragraph, the person who has been the trust supervisor shall, without delay, report to the beneficiary on the process and results of the affairs concerned.

(3) The provisions of paragraph (1), item (i) shall not apply where there is no settlor at the time in question.

(Application Mutatis Mutandis of Provisions on Trust Caretakers)

Article 137 The provisions of Article 124 and Article 127 shall apply mutatis mutandis to a trust supervisor. In this case, the phrase "Article 123, paragraph (4)" in paragraph (6) of said Article shall be deemed to be replaced with "Article 131, paragraph (4)."

Subsection 3 Beneficiaries' Agents

(Appointment of a Beneficiary's Agent)

Article 138 (1) Provisions may be established in the terms of trust to designate a person who is to be the beneficiary's agent, while specifying the beneficiary or beneficiaries whom the person is to represent.

(2) If an terms of trust contains provisions designating a particular person to be the beneficiary's agent, any interested party may specify a reasonable period of time and call on the person designated as the one who is to be the beneficiary's agent to give a definite answer within that period of time with regard to whether the person will accept the office; provided, however, that if the terms of trust designates a condition precedent or a time of commencement to the provisions, this may only be done after the condition precedent is fulfilled or after the time of commencement arrives.

(3) Where a call for an answer is made under the provisions of the preceding paragraph, if the person designated as the one who is to be the beneficiary's

agent fails to give a definite answer to the settlor (if there is no settlor at the time in question, to the trustee) within the period set forth in said paragraph, it shall be deemed that the person does not accept the office.

(Powers of the Beneficiary's Agent)

Article 139 (1) The beneficiary's agent shall have the power to conduct any and all acts in or out of court on behalf of the beneficiary or beneficiaries whom the agent represents in connection with their rights (excluding the rights pertaining to a release from the liability under the provisions of Article 42); provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.

(2) When a beneficiary's agent conducts any act in or out of court on behalf of the beneficiary or beneficiaries whom the agent represents, it shall be sufficient for the agent to indicate the scope of the beneficiaries whom the agent represents.

(3) When there are two or more beneficiary's agents for a single beneficiary, they shall conduct acts within the scope of their power jointly; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(4) When there is a beneficiary's agent, the beneficiary or beneficiaries represented by the beneficiary's agent may not exercise their rights, except for the rights listed in the items of Article 92 and the rights specified by the terms of trust.

(Duties of a Beneficiary's Agent)

Article 140 (1) A beneficiary's agent shall exercise the power set forth in paragraph (1) of the preceding Article with the due care of a prudent manager.

(2) A beneficiary's agent shall exercise the power set forth in paragraph (1) of the preceding Article sincerely and equitably on behalf of the beneficiary or beneficiaries whom the agent represents.

(Termination of the Beneficiary's Agent's Duty as the Beneficiary's Agent)

Article 141 (1) The provisions of Article 56 shall apply mutatis mutandis to the termination of a beneficiary's agent's duty as the beneficiary's agent. In this case, the term the "following Article" in paragraph (1), item (v) of said Article shall be deemed to be replaced with "following Article as applied mutatis mutandis pursuant Article 141, paragraph (2)," and the term "Article 58" in item (vi) of said paragraph shall be deemed to be replaced with "Article 58 as applied mutatis mutandis pursuant to Article 141, paragraph (2)."

(2) The provisions of Article 57 shall apply mutatis mutandis to the resignation of a beneficiary's agent, and the provisions of Article 58 shall apply mutatis mutandis to the dismissal of a beneficiary's agent.

(Appointment of a New Beneficiary's Agent)

Article 142 (1) The provisions of Article 62 shall apply mutatis mutandis to a new beneficiary's agent in cases where a beneficiary's agent's duty as the beneficiary's agent has been terminated pursuant to the provisions of the items of Article 56, paragraph (1) as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article. In this case, the term "an interested party" in Article 62, paragraph (2) and paragraph (4) shall be deemed to be replaced with "the settlor or any beneficiary represented by the beneficiary's agent."

(2) Where a new beneficiary's agent assumes the office, the person who has been the beneficiary's agent shall, without delay, make a report to the beneficiary or beneficiaries whom the person who has been the beneficiary's agent represents on the process and results of the relevant affairs, and shall transfer affairs as required in order for the new beneficiary's agent to administer the relevant affairs.

(Termination of the Administration of Affairs by a Beneficiary's Agent)

Article 143 (1) The administration of affairs by a beneficiary's agent shall terminate on the following grounds, in addition to the completion of the liquidation of the trust; provided, however, that in case of termination on the grounds set forth in item (i), if the terms of trust otherwise provides, such provisions shall prevail:

(i) the settlor and the beneficiary or beneficiaries represented by the beneficiary's agent have agreed to terminate the administration of affairs by a beneficiary's agent; or

(ii) any grounds specified by the terms of trust.

(2) Where the administration of affairs by a beneficiary's agent has terminated pursuant to the provisions of the preceding paragraph, the person who has been the beneficiary's agent shall, without delay, make a report to the beneficiary or beneficiaries whom the agent has represented on the process and results of the relevant affairs.

(3) The provisions of paragraph (1), item (i) shall not apply where there is no settlor at the time in question.

(Application Mutatis Mutandis of Provisions on Trust Caretakers)

Article 144 The provisions of Article 124 and Article 127, paragraph (1) to paragraph (5) shall apply mutatis mutandis to a beneficiary's agent.

Chapter V Settlers

(Settlers' Rights, etc.)

Article 145 (1) Terms of trust may provide for a settlor not to have all or part of the rights under the provisions of this Act.

(2) Terms of trust may provide for the settlor also to have all or part of the following rights:

- (i) the right to assert an objection under the provisions of Article 23, paragraph (5) or paragraph (6);
- (ii) the right to rescind under the provisions of Article 27, paragraph (1) or paragraph (2) (including cases where these provisions are applied mutatis mutandis pursuant to Article 75, paragraph (4));
- (iii) the right to rescind under the provisions of Article 31, paragraph (6) or paragraph (7);
- (iv) the right under the provisions of Article 32, paragraph (4);
- (v) the right to request to inspect or copy materials under the provisions of Article 38, paragraph (1);
- (vi) the right to request the disclosure under the provisions of Article 39, paragraph (1);
- (vii) the right to demand compensation for a loss or restoration of the trust property under the provisions of Article 40;
- (viii) the right to demand compensation for a loss or restoration of the trust property under the provisions of Article 41;
- (ix) the right to demand a cessation under the provisions of Article 44;
- (x) the right to file a petition for the appointment of an inspector under the provisions of Article 46, paragraph (1);
- (xi) the right to demand a cessation under the provisions of Article 59, paragraph (5);
- (xii) the right to demand a cessation under the provisions of Article 60, paragraph (3) or paragraph (5);
- (xiii) the right to demand compensation or payment of monies under the provisions of Article 226, paragraph (1);
- (xiv) the right to demand compensation or payment of monies under the provisions of Article 228, paragraph (1); and
- (xv) the right to demand compensation for a loss under the provisions of Article 254, paragraph (1).

(3) For the purpose of the application of the provisions of Article 24, Article 45 (including cases where applied mutatis mutandis pursuant to Article 226, paragraph (6), Article 228, paragraph (6), and Article 254, paragraph (3)), or Article 61 in cases where the provisions of an terms of trust are established as set forth in the preceding paragraph with regard to the rights listed in item (i), item (vii) to item (ix), or item (xi) to item (xv) of said paragraph, the term "beneficiary" shall be deemed to be replaced with "settlor or beneficiary."

(4) Terms of trust may provide for a trustee to have the following duties:

- (i) the duty to notify the settlor of the matters of which the trustee should notify the beneficiary (if there is a trust caretaker at the time in question, the matters of which the trustee should notify the trust caretaker; the same shall apply in the following item) pursuant to the provisions of this Act;
 - (ii) the duty to report to the settlor the matters which the trustee should report to the beneficiary pursuant to the provisions of this Act; and
 - (iii) the duty to request that the settlor give an approval for the settlement of accounts for which the trustee is to give approval pursuant to the provisions of Article 77, paragraph (1) or Article 184, paragraph (1).
- (5) For the purpose of the application of the provisions of paragraph (1), paragraph (2) and the preceding paragraph in the case of a trust with two or more settlors, the term "settlor" in these provisions shall be deemed to be replaced with "all or some of the settlors."

(Transfer of Status as the Settlor)

Article 146 (1) The status of a settlor may be transferred to a third party with the consent of the trustee and the beneficiary or by the method specified by the terms of trust.

- (2) For the purpose of the application of the provisions of the preceding paragraph in the case of a trust with two or more settlors, the phrase "the trustee and the beneficiary" shall be deemed to be replaced with "other settlor(s), the trustee and the beneficiary."

(Settlor's Heir in a Testamentary Trust)

Article 147 Where a trust is created by the method set forth in Article 3, item (ii), the settlor's heir shall not succeed to the status of settlor by inheritance; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(Special Rules for Trusts, etc. with Provisions on the Acquisition of Beneficial Interest Upon the Death of the Settlor)

Article 148 In the case of a trust set forth in each of the items of Article 90, paragraph (1), when there is no beneficiary for the trust or no beneficiary has any right as a beneficiary at the time in question pursuant to the provisions of Article 90, paragraph (2), the settlor shall have the rights listed in the items of Article 145, paragraph (2), and the trustee shall have the duties listed in the items of Article 145, paragraph (4); provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.

Chapter VI Modification, Consolidation, and Split of trusts
Section 1 Modification of Trusts

(Agreement, etc. among the Relevant Parties)

Article 149 (1) A trust may be modified at the agreement of the settlor, the trustee, and the beneficiary. In this case, in making such a modification, the contents of the terms of trust after modification shall be specified:

(2) Notwithstanding the provisions of the preceding paragraph, in the cases listed in the following items, a trust may be modified by the methods specified in the respective items. In this case, the trustee shall, without delay, give notice of the contents of the terms of trust after modification, to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii):

(i) where it is clear that the modification is not contrary to the purpose of the trust: an agreement between the trustee and the beneficiary; or

(ii) where it is clear that the modification is not contrary to the purpose of the trust and that it conforms to the interests of the beneficiary: the trustee's manifestation of such intent in a document or electromagnetic record.

(3) Notwithstanding the provisions of the preceding two paragraphs, in the cases listed in the following items, a trust may be modified by the persons specified in the respective items manifesting their intent to do so to the trustee. In this case, in the case set forth in item (ii), the trustee shall, without delay, notify the settlor of the contents of the terms of trust after modification:

(i) where it is clear that the modification will not harm the interests of the trustee: the settlor and the beneficiary; or

(ii) where it is clear that the modification is not contrary to the purpose of the trust and that it will not harm the interests of the trustee: the beneficiary.

(4) Notwithstanding the provisions of the preceding three paragraphs, if the terms of trust otherwise provides for, such provisions shall prevail.

(5) Where there is no settlor at the time in question, the provisions of paragraph (1) and paragraph (3), item (i) shall not apply, and the phrase "to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii)" in paragraph (2) shall be deemed to be replaced with "to the beneficiary in the case set forth in item (ii)."

(Judicial Decision Ordering the Modification of a Trust Due to Special Circumstances)

Article 150 (1) When, due to the special circumstances that were unforeseeable at the time of an act of trust, the provisions of the terms of trust concerning the method of trust administration no longer conforms to the interests of the beneficiary in light of the purpose of the trust, the status of the trust property, and any other relevant circumstances, the court may order a modification of the trust at the petition of the settlor, the trustee or the beneficiary.

- (2) In filing the petition set forth in the preceding paragraph, the provisions of the terms of trust after modification to which the petition pertains shall be specified.
- (3) Before the court makes a judicial decision on the petition set forth in paragraph (1), it shall hear the statement of the trustee.
- (4) A judicial decision on the petition set forth in paragraph (1) shall include a summary of the reasons for said decision.
- (5) The settlor, the trustee, or the beneficiary may file an immediate appeal against the judicial decision on the petition set forth in paragraph (1).
- (6) The immediate appeal set forth in the preceding paragraph shall have the effect of a stay of execution.

Section 2 Consolidation of Trusts

(Agreement, etc. among the Relevant Parties)

- Article 151 (1) Trusts may be consolidated by the agreement of the settlors, trustees, and beneficiaries of the former trusts. In this case, in effecting such a consolidation, the following matters shall be specified:
- (i) the contents of the terms of trust after consolidation of the trusts;
 - (ii) if there is any change in the contents of the beneficial interest provided for by the terms of trust, such contents and the reasons for the change;
 - (iii) if monies or any other property is delivered to a beneficiary upon the consolidation of the trusts, the content and value of such property;
 - (iv) the day on which the consolidation of the trusts becomes effective; and
 - (v) other matters specified by Ordinance of the Ministry of Justice.
- (2) Notwithstanding the provisions of the preceding paragraph, in the cases listed in the following items, trusts may be consolidated by the methods specified in the respective items. In this case, the trustee shall, without delay, give notice of the matters listed in the items of said paragraph, to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii):
- (i) where it is clear that the consolidation is not contrary to the purpose of the trust: an agreement between the trustee and the beneficiary; or
 - (ii) where it is clear that the consolidation is not contrary to the purpose of the trust and that it conforms to the interests of the beneficiary: the trustee's manifestation of such intent in a document or electromagnetic record.
- (3) Notwithstanding the provisions of the preceding two paragraphs, if each terms of trust otherwise provides for, such provisions shall prevail.
- (4) Where there is no settlor at the time in question, the provisions of paragraph (1) shall not apply, and the phrase "to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii)" in

paragraph (2) shall be deemed to be replaced with "to the beneficiary in the case set forth in item (ii)."

(Objections by the Creditors)

- Article 152 (1) Where trusts are to be consolidated, creditors who hold claims pertaining to obligations covered by the trust properties of the former trusts may state their objections to the trustees with regard to the consolidation of the trusts; provided, however, that this shall not apply if there is no risk of such creditors being harmed by the consolidation of the trusts.
- (2) Where all or some of the creditors set forth in the preceding paragraph may state their objections pursuant to the provisions of said paragraph, the trustee shall give public notice of the following matters in the official gazette, and shall give notice of the same separately to each of the known creditors as set forth in said paragraph; provided, however, that the period set forth in item (ii) may not be less than one month:
- (i) a statement to the effect that the trusts are to be consolidated;
 - (ii) a statement to the effect that the creditors set forth in the preceding paragraph may state their objections within a certain period of time; and
 - (iii) other matters specified by Ordinance of the Ministry of Justice.
- (3) Notwithstanding the provisions of the preceding paragraph, a trustee who is a juridical person may substitute public notice (limited to public notice given by the following methods) for the separate notice to each creditor under the provisions of said paragraph:
- (i) publication in a major daily newspaper which publishes matters on current events; or
 - (ii) electronic public notice (meaning, among methods of public notice, a method wherein measures are taken to make the information that should be given in a public notice available to many and unspecified persons by electromagnetic means (meaning an electromagnetic means prescribed in Article 2, item (xxxiv) of the Companies Act (Act No. 86 of 2005), which is prescribed in said item; the same shall apply in the following Section)).
- (4) If any creditors set forth in paragraph (1) do not state any objections within the period set forth in paragraph (2), item (ii), such creditors shall be deemed to have accepted the consolidation of the trusts.
- (5) When any creditors set forth in paragraph (1) state their objections within the period set forth in paragraph (2), item (ii), the trustee shall make payment or provide reasonable security to such creditors, or shall entrust adequate property to a trust company, etc. (meaning a trust company or a financial institution engaging in the trust business (meaning a financial institution authorized under Article 1, paragraph (1) of the Act on the Concurrent Undertaking of Trust Business by Financial Institutions (Act No. 43 of 1943)));

the same shall apply in the following Section) for the purpose of having such creditors receive payment; provided, however, that this shall not apply if there is no risk of such creditors being harmed by the consolidation of the trusts.

(Scope of Obligations Covered by Trust Property After Consolidation of Trusts)

Article 153 Where trusts are consolidated, the obligations covered by the trust properties of the former trusts shall become obligations covered by trust property after the consolidation.

Article 154 Where trusts are consolidated, the obligations covered only by the trust property (meaning obligation covered by the trust property which may be paid only out of property belonging to the trust property, hereinafter the same shall apply in this Chapter) among obligations covered by the trust property with regard to the previous trusts referred to in the preceding Article, shall be obligations covered only by the trust property after consolidation of trusts.

Section 3 Split of trusts

Subsection 1 Absorption-Type Trust Splits

(Agreement, etc. among the Relevant Parties)

Article 155 (1) An absorption-type trust split may be effected at the agreement of the settlor, the trustee, and the beneficiary of a trust. In this case, in effecting such a split, the following matters shall be specified:

- (i) the contents of the terms of trust after the absorption-type trust split;
- (ii) if there is a change in the contents of the beneficial interest provided for by the terms of trust, such contents and the reasons for the change;
- (iii) if monies or any other property is delivered to a beneficiary in the absorption-type trust split, the contents and value of such property;
- (iv) the day on which the absorption-type trust split becomes effective;
- (v) the contents of any property to be transferred;
- (vi) if there is any obligation which will, as a result of the absorption-type trust split, cease to be an obligation covered by the trust property of a trust that transfers a part of its trust property to another trust (hereinafter referred to as the "split trust" in this Subsection), and will become an obligation covered by the trust property of the other trust to which said part of the trust property is transferred (hereinafter referred to as the "succeeding trust"), the matters concerning such obligation; and
- (vii) other matters specified by Ordinance of the Ministry of Justice.

(2) Notwithstanding the provisions of the preceding paragraph, in the cases listed in the following items, an absorption-type trust split may be effected by the methods specified in the respective items. In this case, the trustee shall,

without delay, give notice of the matters listed in the items of said paragraph, to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii):

- (i) where it is clear that the split is not contrary to the purpose of the trust: an agreement between the trustee and the beneficiary; or
 - (ii) where it is clear that the split is not contrary to the purpose of the trust and that it conforms to the interests of the beneficiary: the trustee's manifestation of such intent in a document or electromagnetic record.
- (3) Notwithstanding the provisions of the preceding two paragraphs, if each terms of trust otherwise provides for, such provisions shall prevail.
- (4) Where there is no settlor at the time in question, the provisions of paragraph (1) shall not apply, and the phrase "to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii)" in paragraph (2) shall be deemed to be replaced with "to the beneficiary in the case set forth in item (ii)."

(Objections by the Creditors)

Article 156 (1) Where an absorption-type trust split is effected, creditors who hold claims pertaining to obligations covered by the trust property of the split trust or the succeeding trust may state their objections to the trustee with regard to the absorption-type trust split; provided, however, that this shall not apply if there is no risk of such creditors being harmed by the absorption-type trust split.

- (2) Where all or some of the creditors set forth in the preceding paragraph may state their objections pursuant to the provisions of said paragraph, the trustee shall give public notice of the following matters in the official gazette, and shall give notice of the same separately to each of the known creditors set forth in said paragraph; provided, however, that the period set forth in item (ii) may not be less than one month:
- (i) a statement to the effect that the absorption-type trust split is to be effected;
 - (ii) a statement to the effect that the creditors set forth in the preceding paragraph may state their objections within a certain period of time; and
 - (iii) other matters specified by Ordinance of the Ministry of Justice.
- (3) Notwithstanding the provisions of the preceding paragraph, a trustee who is a juridical person may substitute public notice (limited to public notice given by the following methods) for the separate notice to each creditor under the provisions of said paragraph:
- (i) publication in a major daily newspaper which publishes matters on current events; or
 - (ii) electronic public notice.

- (4) If no creditors set forth in paragraph (1) state any objections within the period set forth in paragraph (2), item (ii), such creditors shall be deemed to have accepted the absorption-type trust split.
- (5) When any creditors set forth in paragraph (1) state their objections within the period set forth in paragraph (2), item (ii), the trustee shall make payment or provide reasonable security to such creditors, or shall entrust adequate property to a trust company, etc. for the purpose of having such creditors receive payment; provided, however, that this shall not apply if there is no risk of such creditors being harmed by the absorption-type trust split.

(Scope of Obligations Covered by the Trust Property of a Split Trust and That of a Succeeding Trust After an Absorption-Type Trust Split)

Article 157 Where an absorption-type trust split is effected, the obligation set forth in Article 155, paragraph (1), item (vi) shall cease to be an obligation covered by the trust property of the split trust after the absorption-type trust split, and shall become an obligation covered by the trust property of the succeeding trust after the absorption-type trust split. In this case, any obligation which was an obligation covered only by the trust property of the split trust shall become an obligation covered only by the trust property of the succeeding trust.

Article 158 Where a creditor who may state objections pursuant to the provisions of Article 156, paragraph (1) (limited to creditors to whom separate notice should be given pursuant to the provisions of paragraph (2) of said Article) has not been given notice as set forth in paragraph (2) of said Article, the creditor may also demand, based on the claim which the creditor has held since prior to the absorption-type trust split and which falls under any of the following items, that the trustee perform the obligation pertaining to said claim by using the property specified in the respective items; provided, however, that such performance shall be limited, in the case of the property set forth in item (i), to the value of the property to be transferred to the succeeding trust as of the day on which the absorption-type trust split becomes effective, and in the case of the property set forth in item (ii), to the value of the trust property of the split trust as of said day:

- (i) a claim pertaining to an obligation covered by the trust property of the split trust (excluding claims pertaining to the obligation set forth in Article 155, paragraph (1), item (vi)): property that belongs to the trust property of the succeeding trust after the absorption-type trust split; or
- (ii) a claim pertaining to an obligation covered by the trust property of the succeeding trust (limited to claims pertaining to the obligation set forth in Article 155, paragraph (1), item (vi)): property that belongs to the trust

property of the split trust after the absorption-type trust split.

Subsection 2 Creation-Type Trust Splits

(Agreement, etc. among the Relevant Parties)

Article 159 (1) A creation-type trust split may be effected at the agreement of the settlor, the trustee, and the beneficiary of a trust. In this case, in effecting such a split, the following matters shall be specified:

- (i) the contents of the terms of trust after the creation-type trust split;
- (ii) if there is a change in the contents of the beneficial interest provided for by the terms of trust, such contents and the reasons for the change;
- (iii) if monies or any other property is delivered to the beneficiary in the creation-type trust split, the contents and value of such property;
- (iv) the day on which the creation-type trust split becomes effective;
- (v) the contents of any property to be transferred;
- (vi) if there is any obligation which will, as a result of the creation-type trust split, cease to be an obligation covered by the trust property of the former trust and become an obligation covered by the trust property of the new trust, matters concerning such obligation; and
- (vii) other matters specified by Ordinance of the Ministry of Justice.

(2) Notwithstanding the provisions of the preceding paragraph, in the cases listed in the following items, a creation-type trust split may be effected by the methods specified in the respective items. In this case, the trustee shall, without delay, give notice of the matters listed in the items of said paragraph, to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii):

- (i) where it is clear that the split is not contrary to the purpose of the trust: an agreement between the trustee and the beneficiary; or
- (ii) where it is clear that the split is not contrary to the purpose of the trust and that it conforms to the interests of the beneficiary: the trustee's manifestation of intention in a document or electromagnetic record.

(3) Notwithstanding the provisions of the preceding two paragraphs, if each terms of trust otherwise provides for, such provisions shall prevail.

(4) Where there is no settlor at the time in question, the provision of paragraph (1) shall not apply, and the phrase "to the settlor in the case set forth in item (i), or to the settlor and the beneficiary in the case set forth in item (ii)" in paragraph (2) shall be deemed to be replaced with "to the beneficiary in the case set forth in item (ii)."

(Objections by the Creditors)

Article 160 (1) Where a creation-type trust split is to be effected, creditors who

hold claims pertaining to obligations covered by the trust property of the former trust may state their objections to the creation-type trust split to the trustee; provided, however, that this shall not apply if there is no risk of such creditors being harmed by the creation-type trust split.

- (2) Where all or some of the creditors set forth in the preceding paragraph may state their objections pursuant to the provisions of said paragraph, the trustee shall give public notice of the following matters in an official gazette, and shall give notice of the same separately to each of the known creditors set forth in said paragraph; provided, however, that the period set forth in item (ii) may not be less than one month:
 - (i) a statement to the effect that the creation-type trust split is to be effected;
 - (ii) a statement to the effect that the creditors set forth in the preceding paragraph may state their objections within a certain period of time; and
 - (iii) other matters specified by Ordinance of the Ministry of Justice.
- (3) Notwithstanding the provisions of the preceding paragraph, a trustee who is a juridical person may substitute public notice (limited to public notice given by the following methods) for the separate notice to each creditor under the provisions of said paragraph:
 - (i) publication in a major daily newspaper which publishes matters on current events; or
 - (ii) electronic public notice.
- (4) If creditors set forth in paragraph (1) do not state any objections within the period set forth in paragraph (2), item (ii), such creditors shall be deemed to have accepted the creation-type trust split.
- (5) When creditors set forth in paragraph (1) state their objections within the period set forth in paragraph (2), item (ii), the trustee shall make payment or provide reasonable security to such creditors, or shall entrust adequate property to a trust company, etc. for the purpose of having such creditors receive payment; provided, however, that this shall not apply if there is no risk of such creditors being harmed by the creation-type trust split.

(Scope of Obligations Covered by the Trust Property of the Former Trust and That of the New Trust After a Creation-Type Trust Split)

Article 161 Where a creation-type trust split is effected, the obligation set forth in Article 159, paragraph (1), item (vi) shall cease to be an obligation covered by the trust property of the former trust after the creation-type trust split, and shall become an obligation covered by the trust property of the new trust after the creation-type trust split. In this case, any obligation which was an obligation covered only by the trust property of the former trust shall be an obligation covered only by the trust property of the new trust.

Article 162 Where a creditor who may state an objection pursuant to the provisions of Article 160, paragraph (1) (limited to such a creditor to whom a separate notice should be given pursuant to the provisions of paragraph (2) of said Article) has not been given notice as set forth in paragraph (2) of said Article, the creditor may also demand, based on a claim which the creditor has held since before the creation-type trust split which falls under any of the following items, that the trustee perform the obligation pertaining to said claim by using the property specified in the respective items; provided, however, that such performance shall be limited, in the case of the property set forth in item (i), to the value of the trust property of the new trust as of the day on which the creation-type trust split becomes effective, and in the case of the property set forth in item (ii), to the value of the trust property of the former trust as of said day:

- (i) a claim pertaining to an obligation covered by the trust property of the former trust (excluding a claim pertaining to the obligation set forth in Article 159, paragraph (1), item (vi)): property that belongs to the trust property of the new trust after the creation-type trust split; or
- (ii) a claim which has become a claim pertaining to an obligation covered by the trust property of the new trust (limited to a claim pertaining to the obligation set forth in Article 159, paragraph (1), item (vi)): property that belongs to the trust property of the former trust after the creation-type trust split.

Chapter VII Termination and Liquidation of Trusts

Section 1 Termination of a Trust

(Grounds for Termination of a Trust)

Article 163 In addition to cases under the provisions of the following Article, a trust shall terminate in the following cases:

- (i) where the purpose of the trust has been achieved or where it has become impossible to achieve the purpose of the trust;
- (ii) where the trustee has continuously held all beneficial interests in the form of the trustee's own property for one year;
- (iii) where the trust lacks a trustee and the office has not been filled with a new trustee for one year;
- (iv) where the trustee has terminated the trust pursuant to the provisions of Article 52 (including cases where applied *mutatis mutandis* pursuant to Article 53, paragraph (2) and Article 54, paragraph (4));
- (v) where the trust is consolidated with another trust;
- (vi) where a judicial decision ordering the termination of the trust has been rendered pursuant to the provisions of Article 165 or Article 166;

- (vii) where an order for the commencement of bankruptcy proceedings has been entered against the trust property;
- (viii) where the settlor is given an order for the commencement of bankruptcy proceedings, an order for the commencement of rehabilitation proceedings, or an order for the commencement of reorganization proceedings, and the trust agreement is cancelled under the provisions of Article 53, paragraph (1) of the Bankruptcy Act, Article 49, paragraph (1) of the Civil Rehabilitation Act or Article 61, paragraph (1) of the Corporate Reorganization Act (including cases where applied mutatis mutandis pursuant to Article 41, paragraph (1) and Article 206, paragraph (1) of the Act on Special Rules, etc. for Reorganization Proceedings for Financial Institutions, etc.); or
- (ix) where any grounds specified by the terms of trust occur.

(Termination of a Trust by Agreement Between the Settlor and the Beneficiary)

- Article 164 (1) A settlor and a beneficiary may terminate a trust at any time by an agreement between them.
- (2) When a settlor and a beneficiary have terminated a trust at a time that is detrimental to the trustee, the settlor and the beneficiary shall compensate the trustee for any damages; provided, however, that this shall not apply if there was a compelling reason for the trust to be terminated at that time.
 - (3) Notwithstanding the provisions of the preceding two paragraphs, if the terms of trust otherwise provides for, such provisions shall prevail.
 - (4) The provisions of paragraph (1) and paragraph (2) shall not apply where there is no settlor at the time in question.

(Judicial Decisions Ordering the Termination of a Trust Due to Special Circumstances)

- Article 165 (1) When it has become clear that, due to the special circumstances that were unforeseeable at the time of the terms of trust, the termination of a trust has come to be in the best interest of the beneficiary in light of the purpose of the trust, the status of the trust property, and any other relevant circumstances, the court may, at the petition of the settlor, the trustee, or the beneficiary, order the termination of the trust.
- (2) Before the court makes a judicial decision on the petition set forth in the preceding paragraph, it shall hear the statement of the trustee.
 - (3) The judicial decision on the petition set forth in paragraph (1) shall include the reasons for said decision.
 - (4) The settlor, the trustee, or the beneficiary may file an immediate appeal against a judicial decision on the petition set forth in paragraph (1).
 - (5) The immediate appeal set forth in the preceding paragraph shall have the

effect of a stay of execution.

(Judicial Decisions Ordering the Termination of a Trust to Ensure the Public Interest)

- Article 166 (1) In the following cases, when the court finds the existence of a trust to be unallowable from the perspective of ensuring the public interest, it may, at the petition of the Minister of Justice, the settlor, the beneficiary, a trust creditor, or any other interested party, order the termination of the trust:
- (i) where the trust was created for an unlawful purpose; or
 - (ii) where the trustee has committed an act that goes beyond or abuses the trustee's power as prescribed by laws and regulations or the terms of trust or has committed an act in violation of criminal laws and regulations, and where the trustee continuously or repeatedly commits said act despite having received a written warning from the Minister of Justice.
- (2) Before the court makes a judicial decision on the petition set forth in the preceding paragraph, it shall hear the statement of the trustee.
- (3) The judicial decision on the petition set forth in paragraph (1) shall include the reasons for said decision.
- (4) The person who has filed the petition set forth in paragraph (1) or the settlor, the trustee, or the beneficiary may file an immediate appeal against the judicial decision on the petition set forth in said paragraph.
- (5) The immediate appeal set forth in the preceding paragraph shall have the effect of a stay of execution.
- (6) When the settlor, the beneficiary, a trust creditor, or any other interested party has filed a petition set forth in paragraph (1), the court may, at the petition of the trustee, order the person who has filed the petition set forth in said paragraph to provide reasonable security.
- (7) When filing a petition under the provisions of the preceding paragraph, the trustee shall make a prima facie showing of the fact that the petition set forth in paragraph (1) was filed in bad faith.
- (8) The provisions of Article 75, paragraph (5) and paragraph (7) and Article 76 to Article 80 of the Code of Civil Procedure (Act No. 109 of 1996) shall apply mutatis mutandis to the security to be provided upon the filing of a petition set forth in paragraph (1) pursuant to the provisions of paragraph (6).

(Duty of Government Agencies, etc. to Notify the Minister of Justice)

Article 167 If a court or any other government agency, a public prosecutor, or an official comes to know in the course of performing their duties that there are grounds for filing the petition set forth in paragraph (1) of the preceding Article or for giving the warning set forth in item (ii) of said paragraph, such entity or person shall notify the Minister of Justice to that effect.

(Participation by the Minister of Justice)

- Article 168 (1) Before the court makes a judicial decision on a petition set forth in Article 166, paragraph (1), it shall seek the opinion of the Minister of Justice.
- (2) When the court conducts a hearing on a case based on the petition set forth in the preceding paragraph, the Minister of Justice may attend said hearing.
- (3) The court shall notify the Minister of Justice of the fact that a case based on the petition set forth in paragraph (1) is pending and of the date of the hearing set forth in the preceding paragraph.
- (4) The Minister of Justice may file an immediate appeal against a judicial decision to dismiss the petition set forth in paragraph (1).

(Temporary Restraining Order on Trust Property)

- Article 169 (1) Where a petition set forth in Article 166, paragraph (1) has been filed, the court may, at the petition of the Minister of Justice, the settlor, the beneficiary, a trust creditor, or any other interested party or on its own authority, render a disposition ordering administration by an administrator (referred to as an "administration order" in the following Article) or may issue any other temporary restraining order that is necessary with regard to the trust property.
- (2) The court may change or revoke a temporary restraining order issued under the provisions of the preceding paragraph.
- (3) An interested party may file an immediate appeal against a temporary restraining order under the provisions of paragraph (1) and against an order under the provisions of the preceding paragraph.

- Article 170 (1) When the court issues an administration order, it shall appoint an administrator therein.
- (2) The administrator set forth in the preceding paragraph shall be supervised by the court.
- (3) The court may order the administrator set forth in paragraph (1) to make a report on the status of property that belongs to the trust property and the obligation covered by the trust property, and to settle the administrative accounting thereof.
- (4) The provisions of Article 64 to Article 72 shall apply mutatis mutandis to the administrator set forth in paragraph (1). In this case, the term "former trustee" in Article 65 shall be deemed to be replaced with "trustee."
- (5) When a temporary restraining order under the provisions of paragraph (1) of the preceding Article (excluding an administration order) is issued against any registered right that belongs to the trust property, the court clerk shall, on the clerk's own authority and without delay, commission a registration of said

temporary restraining order.

- (6) The provisions of the preceding paragraph shall apply mutatis mutandis where a temporary restraining order prescribed in said paragraph is changed or revoked or where such temporary restraining order has ceased to be effective.

(Burden of Expenses or Costs for Temporary Restraining Orders)

Article 171 (1) Where the court has issued a temporary restraining order under the provisions of Article 169, paragraph (1), the expenses set forth in the main clause of Article 26 of the Non-Contentious Cases Procedures Act (Act No. 14 of 1898) shall be borne by the trustee. The same shall apply to any expenses necessary for such temporary restraining order.

- (2) Where an immediate appeal is filed against the temporary restraining order set forth in the preceding paragraph or a judicial decision to dismiss the petition set forth in Article 169, paragraph (1), when the court in charge of the appeal finds for said immediate appeal and revokes the judicial decision of prior instance, the court costs required for the proceedings in said instance of appeal, as well as the court costs required for the proceedings in the prior instance that had been borne by the appellant, shall be borne by the trustee.

(Inspection of Materials Related to a Temporary Restraining Order)

Article 172 (1) An interested party may make a request to the court clerk to inspect materials relating to the report or settlement of accounts set forth in Article 170, paragraph (3).

- (2) An interested party may make a request to the court clerk to copy the materials set forth in the preceding paragraph or for the issuance of an authenticated copy, transcript, or extract thereof.
- (3) The provisions of the preceding paragraph shall not apply with respect to materials set forth in paragraph (1) which have been prepared in the form of audiotapes or videotapes (including objects on which certain matters are recorded by any means equivalent thereto). In this case, the court clerk shall permit the reproduction of these objects at the request of an interested party.
- (4) The Minister of Justice may make a request to the court clerk to inspect the materials set forth in paragraph (1).
- (5) The provisions of Article 91, paragraph (5) of the Code of Civil Procedure shall apply mutatis mutandis to the materials set forth in paragraph (1).

(Appointment of a New Trustee)

Article 173 (1) Where the court has ordered the termination of a trust pursuant to the provisions of Article 166, paragraph (1), it may, at the petition of the Minister of Justice, the settlor, the beneficiary, a trust creditor, or any other

interested party or on its own authority, appoint a new trustee for the liquidation of the trust.

- (2) No appeal may be entered against a judicial decision on the appointment of a new trustee under the provisions of the preceding paragraph.
- (3) When a new trustee is appointed pursuant to the provisions of paragraph (1), the former trustee's duty as trustee shall terminate.
- (4) The new trustee set forth in paragraph (1) may receive amounts of advance payment for expenses and remuneration determined by the court from the trust property.
- (5) Before the court makes a judicial decision determining the amount of advance payment for expenses or remuneration under the provisions of the preceding paragraph, it shall hear the statement of the new trustee set forth in paragraph (1).
- (6) The new trustee set forth in paragraph (1) may file an immediate appeal against a judicial decision determining the amount of advance payment for expenses or remuneration under the provisions of paragraph (4).

(Restriction on Absorption-Type Trust Splitting of a Terminated Trust)

Article 174 Where a trust has terminated, it cannot effect an absorption-type trust split in which said trust will be the succeeding trust.

Section 2 Liquidation of a Trust

(Grounds for Commencement of Liquidation)

Article 175 A trust shall go into liquidation as provided for in this Section in cases where the trust has terminated (excluding cases where the trust has terminated on the grounds set forth in Article 163, item (v) and cases where the trust has terminated due to an order for the commencement of bankruptcy proceedings against the trust property and bankruptcy proceedings have not yet been closed).

(Constructive Existence of a Trust)

Article 176 Even where a trust has terminated, such trust shall be deemed to continue to exist until the liquidation is completed.

(Duties of the Liquidation Trustee)

Article 177 The trustee after the termination of a trust (hereinafter referred to as a "liquidation trustee") shall perform the following duties:

- (i) conclusion of pending duties;
- (ii) collection of claims which are among the trust property and performance of obligations pertaining to trust claims;

- (iii) performance of obligations pertaining to distribution claims as a beneficiary (excluding those for the distribution of residual assets); and
- (iv) distribution of residual assets.

(Powers of the Liquidation Trustee)

Article 178 (1) A liquidation trustee shall have the power to conduct any and all acts necessary for the liquidation of a trust; provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.

(2) In the following cases, a liquidation trustee may put property that belongs to the trust property up for auction:

(i) where the beneficiary or the holder of a vested right as prescribed in Article 182, paragraph (1), item (ii) (hereinafter collectively referred to as a "beneficiary, etc." in this Article) has refused or is unable to receive property that belongs to the trust property, and the liquidation trustee has made a demand that such a person receive said property and has specified a reasonable period of time therefor; or

(ii) where the whereabouts of a beneficiary, etc. are unknown.

(3) When the liquidation trustee has put property that belongs to the trust property up for auction pursuant to the provisions of item (i) of the preceding paragraph, the liquidation trustee shall, without delay, give notice to that effect to the beneficiary, etc.

(4) Where the value of any property is likely to decline due to damage or any other reason, the liquidation trustee may put such property up for auction without making the demand set forth in paragraph (2), item (i).

(Commencement of Bankruptcy Proceedings Against Trust Property in Liquidation)

Article 179 (1) When it becomes clear, with regard to a trust in liquidation, that property that belongs to the trust property is insufficient for the payment of its obligations in full, the liquidation trustee shall immediately file a petition for the commencement of bankruptcy proceedings against the trust property.

(2) Where an order for the commencement of bankruptcy proceedings has been entered against the trust property, if the liquidation trustee has already made any payments to a creditor who holds a claim pertaining to an obligation covered by the trust property, the bankruptcy trustee may reclaim such payment.

(Performance of Obligations Pertaining to Conditional Claims, etc.)

Article 180 (1) The liquidation trustee may perform obligations pertaining to conditional claims, claims with indefinite durations, or any other unliquidated claims. In this case, the liquidation trustee shall file a petition with the court

- for the appointment of an appraiser in order to have these claims appraised.
- (2) In the case referred to in the preceding paragraph, the liquidation trustee shall perform obligations pertaining to any of the claims set forth in said paragraph according to the appraisal by the appraiser set forth in said paragraph.
 - (3) Expenses for the procedures for the appointment of an appraiser as set forth in paragraph (1) shall be borne by the liquidation trustee. The same shall apply to expenses for inquiries made and questions asked by such appraiser for the sake of the appraisal.
 - (4) A judicial decision dismissing the petition set forth in paragraph (1) shall include the reasons therefor.
 - (5) No appeal may be entered against a judicial decision on the appointment of an appraiser under the provisions of paragraph (1).
 - (6) The provisions of the preceding paragraphs shall not apply where the liquidation trustee, the beneficiary, the trust creditors, and the holders of vested rights as prescribed in Article 182, paragraph (1), item (ii) have otherwise agreed.

(Restriction on the Distribution of Residual Assets Prior to Performance of Obligations)

Article 181 The liquidation trustee may not distribute property that belongs to the trust property to the beneficiary for residual assets, etc. prescribed in paragraph (2) of the following Article until after the liquidation trustee has performed the obligations set forth in Article 177, item (ii) and item (iii); provided, however, that this shall not apply where the liquidation trustee has reserved assets that are considered to be necessary for performing said obligations.

(Vesting of Residual Assets)

Article 182 (1) Residual assets shall vest in the following persons:

- (i) the person designated by the terms of trust as the person who is to be the beneficiary in relation to distribution claim as a beneficiary involving the distribution of residual assets (referred to as the "beneficiary for residual assets" in the following paragraph); and
 - (ii) the person designated by the terms of trust as a person in whom residual assets should be vested (hereinafter referred to as the "holder of a vested right" in this Section).
- (2) Where the terms of trust contains no provisions concerning the designation of a beneficiary for residual assets or holder of a vested right (hereinafter collectively referred to as a "beneficiary etc. for residual assets." in this paragraph) or where all persons designated by the provisions of the terms of

trust as beneficiaries for residual assets, etc. have waived their rights, it shall be deemed as having been provided by the terms of trust that the settlor or settlor's heir or other universal successor is to be designated as the holder of a vested right.

- (3) When the vesting of residual assets is not determined pursuant to the provisions of the preceding two paragraphs, residual assets shall vest in a liquidation trustee.

(Holder of a Vested Right)

Article 183 (1) A person designated by the provisions of the terms of trust as one who is to be a holder of a vested right shall acquire a claim pertaining to the obligation to distribute residual assets by operation of law; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(2) The provisions of Article 88, paragraph (2) shall apply mutatis mutandis to a person designated as one who is to be a holder of a vested right as prescribed in the preceding paragraph.

(3) A person who has become a holder of a vested right by the provisions of the terms of trust may make a manifestation of intention to the trustee to waive the said right; provided, however, that this shall not apply where the person who has become a holder of a vested right is a party to the act of trust.

(4) When a person who has become a holder of a vested right as prescribed in the main clause of the preceding paragraph has made a manifestation of intention under the provisions of said paragraph, the person shall be deemed to have never held rights as a holder of a vested right; provided, however, that this may not harm the rights of a third party.

(5) The provisions of Article 100 and Article 102 shall apply mutatis mutandis to the claim held by a holder of a vested right which pertains to an obligation to distribute residual assets.

(6) A holder of a vested right shall be deemed to be a beneficiary during the liquidation of the trust.

(Completion of the Duties of the Liquidation Trustee, etc.)

Article 184 (1) When a liquidation trustee has completed the duties, the liquidation trustee shall, without delay, settle the final accounts related to trust affairs and request approval for the settlement of accounts from all of the beneficiaries (if there is a trust caretaker at the time in question, from the trust caretaker) and vested right holders as of the time of the termination of the trust (hereinafter collectively referred to as the "beneficiaries, etc." in this Article).

(2) Where a beneficiary, etc. has approved the settlement of accounts set forth in the preceding paragraph, the liquidation trustee shall be deemed to have been

released from liability in relation to such beneficiary, etc.; provided, however, that this shall not apply if there has been any misconduct in the liquidation trustee's performance of the duties.

- (3) Where a beneficiary, etc. has stated no objections within one month from the time when the beneficiary was requested by the liquidation trustee to give approval for the settlement of accounts set forth in paragraph (1), the beneficiary, etc. shall be deemed to have approved of the settlement of accounts set forth in said paragraph.

Chapter VIII Special Rules for Trusts With Certificate of Beneficial Interest

Section 1 General Provisions

(Provisions of The Terms of trust on the Issuance of Certificate of Beneficial Interest)

- Article 185 (1) The terms of trust may provide for a certificate(s) indicating one, two, or more beneficial interests (hereinafter referred to as a "certificate of beneficial interest") to be issued as provided for in this Chapter.
- (2) The provisions of the preceding paragraph shall not preclude the terms of trust from providing that no certificate of beneficial interest shall be issued for a beneficial interest of specific content.
- (3) In the case of a trust with provisions as set forth in paragraph (1) (hereinafter referred to as a "trust with certificate of beneficial interest"), the provisions set forth in the preceding two paragraphs may not be changed by making modifications to the trust.
- (4) In the case of a trust with no provisions as set forth in paragraph (1), the provisions set forth in said paragraph or paragraph (2) may not be established by making modifications to the trust.

(Beneficial Interest Registry)

- Article 186 A trustee of a trust with certificate of beneficial interest shall, without delay, prepare a beneficial interest registry, and state or record therein the following matters (hereinafter referred to as the "matters to be stated in the beneficial interest registry" in this Chapter):
- (i) the content of the distribution claim as a beneficiary pertaining to each beneficial interest and other matters specified by Ordinance of the Ministry of Justice as matters that specify the content of the beneficial interest;
 - (ii) the serial number of the certificate of beneficial interest pertaining to each beneficial interest, the date of issue, whether each certificate of beneficial interest is a registered certificate or bearer certificate, and the number of bearer beneficial interests;

- (iii) the name and address of the beneficiary pertaining to each beneficial interest (excluding beneficiaries of bearer beneficial interests);
- (iv) the day on which the beneficiary set forth in the preceding item acquired each beneficial interest; and
- (v) in addition to what is listed in the preceding items, the matters specified by Ordinance of the Ministry of Justice.

(Delivery of Documents Stating the Matters to Be Stated in the Beneficial Interest Registry)

- Article 187 (1) A beneficiary of a beneficial interest for which there are provisions as set forth in Article 185, paragraph (2) may request that the trustee of a trust with certificate of beneficial interest deliver to the beneficiary a document stating the matters to be stated in the beneficial interest registry, which are stated or recorded in the beneficial interest registry about said beneficiary, or that said trustee provide the beneficiary with an electromagnetic record containing such matters to be stated in the beneficial interest registry.
- (2) The trustee of a trust with certificate of beneficial interest (in the case of a trustee who is a juridical person, its representative; the same shall apply in the following paragraph) shall sign or affix the trustee's name and seal to the document set forth in the preceding paragraph.
- (3) With respect to the electromagnetic record set forth in paragraph (1), the trustee of a trust with certificate of beneficial interest shall take the measures specified by Ordinance of the Ministry of Justice as an alternative to signing or affixing trustee's name and seal.
- (4) For the purpose of the application of the provisions of the preceding two paragraphs in cases where there are two or more trustees for a trust with certificate of beneficial interest, the phrase "trustee of a trust with certificate of beneficial interest" in these provisions shall be deemed to be replaced with "all trustees of a trust with certificates of beneficial interest."

(Beneficial Interest Registry Administrator)

Article 188 The trustee of a trust with certificate of beneficial interest may appoint a beneficial interest registry administrator (meaning a person who prepares and keeps a beneficial interest registry and executes other affairs concerning the beneficial interest registry on behalf of the trustee of a trust with certificate of beneficial interest; the same shall apply hereinafter), and may delegate the administration of such affairs to the same.

(Record Date)

Article 189 (1) The trustee of trust with certificate of beneficial interest may

specify a certain date (hereinafter referred to as the "record date" in this Article), and designate the beneficiaries who have been stated or recorded in the beneficial interest registry as of the record date (hereinafter referred to as the "beneficiaries as of the record date" in this Article) as the persons who are entitled to exercise their rights.

- (2) The provisions of the preceding paragraph shall not apply to any beneficiaries of bearer beneficial interests.
- (3) When designating the record date, the trustee of a trust with certificate of beneficial interest shall specify the content of the rights that the beneficiaries as of the record date are entitled to exercise (limited to such rights to be exercised within three months from the record date).
- (4) When the trustee of a trust with certificate of beneficial interest has designated the record date, the trustee shall give public notice in an official gazette, no later than two weeks prior to the record date, with regard to the record date and the matters specified pursuant to the provisions of the preceding paragraph; provided, however, that this shall not apply if the terms of trust contains provisions on the record date and the content of the rights that the beneficiaries as of the record date are entitled to exercise.
- (5) Notwithstanding the provisions of paragraph (1), paragraph (3), and the main clause of the preceding paragraph, if the terms of trust otherwise provides, such provisions shall prevail.

(Keeping and Inspection, etc. of the Beneficial Interest Registry)

- Article 190 (1) The trustee of trust with certificate of beneficial interest shall keep a beneficial interest registry at the trustee's address (in cases where the trustee is a juridical person (excluding cases where there is a beneficial interest registry administrator at the time in question), its principal office; in cases where there is a beneficial interest registry administrator at the time in question, the administrator's business office).
- (2) The settlor, beneficiary, and any other interested party may make the following requests of the trustee of a trust with certificate of beneficial interest. In this case, in making such a request, the reasons therefor shall be specified:
 - (i) if the beneficial interest registry has been prepared in the form of a document, a request to inspect or copy such document; and
 - (ii) if the beneficial interest registry has been prepared in the form of an electromagnetic record, a request to inspect or copy any object which shows the matters recorded in the electromagnetic record by a method specified by Ordinance of the Ministry of Justice.
 - (3) The trustee of a trust with certificate of beneficial interest may not refuse a request set forth in the preceding paragraph when such a request has been received, except where it is found to fall under any of the following cases:

- (i) where the person making such request (hereinafter referred to as the "requester" in this paragraph) has made the request for purposes other than an investigation related to the securement or exercise of requester's rights;
 - (ii) where the requester has made the request at an inappropriate time;
 - (iii) where the requester has made the request for the purpose of disturbing the trust administration or harming the common interests of the beneficiaries;
 - (iv) where the requester operates or engages in business which is effectively in competition with business pertaining to the trust;
 - (v) where the requester has made the request in order to inform a third party, for profit, of any fact that the requester may learn by way of inspecting or copying documents or any other object under the provisions of the preceding paragraph; or
 - (vi) where the requester has informed a third party, for profit, of any fact that the requester has learned by way of inspecting or copying documents or any other object under the provisions of the preceding paragraph within the past two years.
- (4) Where any of the requests set forth in paragraph (2) is made with regard to the matters listed in Article 186, item (iii) or item (iv) (limited to the matters concerning a beneficial interest not subject to the provisions set forth in Article 185, paragraph (2)), if the terms of trust otherwise provides for, such provisions shall prevail.

(Notices, etc. Given to Beneficiaries)

- Article 191 (1) It shall be sufficient for the trustee of a trust with certificate of beneficial interest to send any notice that the trustee gives to a beneficiary or demand that the trustee makes, to the beneficiary's address as stated or recorded in the beneficial interest registry (if a beneficiary has notified the trustee of a different place or contact address for receiving notices or demands, to such place or contact address).
- (2) The notice or demand set forth in the preceding paragraph shall be deemed to have reached the addressee at the time when the notice or demand should have normally reached.
 - (3) If a beneficial interest in a trust with certificate of beneficial interest is co-owned by two or more persons, the co-owners shall designate one person who is to receive any notice or demand sent by the trustee of the trust with beneficiary certificate to the beneficiaries, and shall notify the trustee of that person's name. In this case, said person shall be deemed to be a beneficiary and the provisions of the preceding two paragraphs shall apply thereto.
 - (4) Where there has been no notification from the co-owners under the provisions of the preceding paragraph, it shall be sufficient for the trustee of the trust with certificate of beneficial interest to send any notice that the trustee is to

give to the co-owners of the beneficial interest or any demand that the trustee is to make, to any one of them.

- (5) When the trustee of a trust with certificate of beneficial interest should give notice to the beneficiaries of bearer beneficial interest, it shall be sufficient for the trustee to send notices only to such beneficiaries whose names and addresses are known to the trustee. In this case, the trustee shall give public notice in an official gazette of the matters of which to notify them.

(Exercise of Rights by Beneficiaries with Bearer Beneficial Interests)

Article 192 (1) When a beneficiary with a bearer beneficial interest wishes to exercise the right against the trustee of a trust with certificate of beneficial interest or any other person, the beneficiary shall present the certificate of beneficial interest to the trustee or such other person.

- (2) When a beneficiary with a bearer beneficial interest wishes to exercise the voting right at a beneficiaries meeting, the beneficiary shall present the certificate of beneficial interest to the convener prescribed in Article 108 no later than one week prior to the date of the beneficiaries meeting.

(Exercise of Rights by Co-owners)

Article 193 If a beneficial interest in a trust with certificate of beneficial interest is co-owned by two or more persons, the co-owners may not exercise the rights of their beneficial interest unless they designate one person who is to exercise the rights of said beneficial interest and notify the trustee of the trust with certificate of beneficial interest of that person's name; provided, however, that this shall not apply where the trustee has consented to the exercise of said rights.

Section 2 Special Rules for Assignment of a Beneficial Interest, etc.

(Assignment of a Beneficial Interest for Which a Certificate of Beneficial Interest Has Been Issued)

Article 194 The assignment of a beneficial interest in a trust with certificate of beneficial interest (excluding a beneficial interest subject to the provisions set forth in Article 185, paragraph (2)) shall not be effective unless the certificate of beneficial interest pertaining to such assigned beneficial interest is delivered.

(Requirements for the Perfection of an Assignment of a Beneficial Interest in a Trust With Certificate of Beneficial Interest)

Article 195 (1) The assignment of a beneficial interest in a trust with certificate of beneficial interest may not be duly asserted against the trustee of the trust

with certificate of beneficial interest unless the name and address of the person who has acquired the beneficial interest has been stated or recorded in the beneficial interest registry.

- (2) For the purpose of the application of the provisions of the preceding paragraph with regard to a beneficial interest subject to the provisions set forth in Article 185, paragraph (2), the phrase "trustee" of the same paragraph shall be deemed to be replaced with "trustee or any third party."
- (3) The provisions of paragraph (1) shall not apply to bearer beneficial interests.

(Presumption of Rights, etc.)

Article 196 (1) The possessor of a certificate of beneficial interest shall be presumed to be the lawful owner of the beneficial interest pertaining to said certificate of beneficial interest.

- (2) A person who has received the delivery of a certificate of beneficial interest shall acquire the rights of the beneficial interest pertaining to said certificate of beneficial interest; provided, however, that this shall not apply if the person was in bad faith or with gross negligence.

(Stating or Recording Matters to Be Stated in the Beneficial Interest Registry without the Request of the Beneficiary)

Article 197 (1) In the cases listed in the following items, the trustee of a trust with certificate of beneficial shall, as provided for by Ordinance of the Ministry of Justice, state or record in the beneficial interest registry the matters to be stated in the beneficial interest registry which pertain to the beneficiary of the beneficial interest specified in the respective items:

- (i) where the trustee has acquired a beneficial interest in the trust with certificate of beneficial interest and said beneficial interest has not been extinguished; or
 - (ii) where the trustee has disposed of the beneficial interest in the trust with certificates of beneficial interest set forth in the preceding item.
- (2) The trustee of a trust with certificate of beneficial interest shall, where the consolidation of beneficial interests is effected by making a modification to the trust, state or record in the beneficial interest registry the matters to be stated in the beneficial interest registry which pertain to such consolidated beneficial interests.
 - (3) The trustee of a trust with certificate of beneficial interest shall, where the splitting of a beneficial interest is effected by making a modification to the trust, state or record in the beneficial interest registry the matters to be stated in the beneficial interest registry which pertain to such split beneficial interest.
 - (4) The provisions of the preceding three paragraphs shall not apply to bearer beneficial interests.

(Stating or Recording Matters to Be Stated in the Beneficial Interest Registry at the Beneficiary's Request)

- Article 198 (1) A person (excluding the trustee) who has acquired a beneficial interest in a trust with certificates of beneficial interest from a person other than the trustee of the trust with certificate of beneficial interest may request that the trustee of the trust with certificate of beneficial interest, state or record in the beneficial interest registry the matters to be stated in the beneficial interest registry which pertain to said beneficial interest.
- (2) The request under the provisions of the preceding paragraph shall be made jointly with the person who is stated or recorded in the beneficial interest registry as the beneficiary of the beneficial interest thus acquired or the person's heir or any other general successor, except in cases specified by Ordinance of the Ministry of Justice where there is no risk of harm to the interest of any interested party.
- (3) The provisions of the preceding two paragraphs shall not apply to bearer beneficial interests.

(Pledges of Beneficial Interests for Which Certificate of Beneficial Interest Have Been Issued)

Article 199 A pledge of a beneficial interest for a trust with certificate of beneficial interest (excluding a beneficial interest subject to the provisions set forth in Article 185, paragraph (2)) shall not be effective unless the certificate of beneficial interest pertaining to such pledged beneficial interest is delivered.

(Requirements for the Perfection of a Pledge of a Beneficial Interest in a Trust With Certificate of Beneficial Interest)

- Article 200 (1) The pledgee of a beneficial interest in a trust with certificate of beneficial interest (excluding a beneficial interest subject to the provisions set forth in Article 185, paragraph (2)) may not duly assert the right of pledge against the trustee of the trust with certificate of beneficial interest or against any other third party unless the pledge continues to possess the certificate of beneficial interest pertaining to such pledged beneficial interest.
- (2) A pledge of a beneficial interest subject to the provisions set forth in Article 185, paragraph (2) may not be duly asserted against the trustee of a trust with certificate of beneficial interest or against any other third party unless the name and address of the pledgee has been stated or recorded in the beneficial interest registry.

(Stating, etc. Matters Related to a Pledge in the Beneficial Interest Registry)

Article 201 (1) A person who has created a pledge on a beneficial interest for a

trust with certificates of beneficial interest may request the trustee of a trust with certificate of beneficial interest to state or record the following matters in the beneficial interest registry:

- (i) the name and address of the pledgee; and
- (ii) the beneficial interest that is the subject matter of the pledge.

(2) The provisions of the preceding paragraph shall not apply to bearer beneficial interests.

(Delivery of Documents Stating the Matters Stated in the Beneficial Interest Registry Which Relate to a Pledge)

Article 202 (1) A pledgee for whom the matters listed in the items of paragraph (1) of the preceding Article have been stated or recorded in the beneficial interest registry (hereinafter referred to as a "registered pledgee of a beneficial interest" in this Section) may request that the trustee of a trust with certificate of beneficial interest deliver a document to the registered pledgee of a beneficial interest, stating the matters listed in the respective items of said paragraph, which are stated or recorded in the beneficial interest registry of said registered pledgee of a beneficial interest, or may request that said trustee provide the registered pledgee of a beneficial interest with an electromagnetic record containing such matters.

(2) The trustee (in the case of a trustee who is a juridical person, its representative; the same shall apply in the following paragraph) of a trust with certificates of beneficial interest shall sign or affix trustee's (or the representative's) name and seal to the document set forth in the preceding paragraph.

(3) With respect to the electromagnetic record set forth in paragraph (1), the trustee of a trust with certificates of beneficial interest shall take the measures specified by Ordinance of the Ministry of Justice as an alternative to signing or affixing trustee's name and seal.

(4) For the purpose of the application of the provisions of the preceding two paragraphs in cases where there are two or more trustees for the trust with certificate of beneficial interest, the phrase "trustee of a trust with certificate of beneficial interest" in these provisions shall be deemed to be replaced with "all trustees of the trust with certificate of beneficial interest."

(Notices, etc. Given to the Registered Pledgee of a Beneficial Interest)

Article 203 (1) It shall be sufficient for the trustee of a trust with certificate of beneficial interest to send any notice that the trustee gives to a registered pledgee of a beneficial interest or demand that the trustee makes, to the address of the registered pledgee of the beneficial interest that is stated or recorded in the beneficial interest registry (if the registered pledgee of a

beneficial interest has notified the trustee of a different place or contact address for receiving notices or demands, to such place or contact address).

- (2) The notice or demand set forth in the preceding paragraph shall be deemed to have reached the addressee at the time when the notice or demand should have normally reached.

(Stating, etc. Matters in the Beneficial Interest Registry Concerning the Consolidation or Split of Beneficial Interest)

Article 204 (1) The trustee of a trust with certificate of beneficial interest shall, where the consolidation of beneficial interests is effected by making a modification to the trust and the pledgee of the pledge on any of said beneficial interests is a registered pledgee of the beneficial interest, state or record in the beneficial interest registry the name and address of such pledgee with regard to such consolidated beneficial interest.

- (2) The trustee of a trust with certificates of beneficial interest shall, where the splitting of a beneficial interest is effected by making a modification to the trust and the pledgee of the pledge on said beneficial interest is a registered pledgee of the beneficial interest, state or record in the beneficial interest registry the name and address of such pledgee with regard to such split beneficial interest.

Article 205 (1) In the case prescribed in paragraph (1) of the preceding Article, the trustee of the trust with certificates of beneficial interest shall deliver the certificate of beneficial interest for the consolidated beneficial interest to the registered pledgee of the beneficial interest.

- (2) In the case prescribed in paragraph (2) of the preceding Article, the trustee of the trust with certificates of beneficial interest shall deliver the certificates of beneficial interest for the split beneficial interests to the registered pledgee of the beneficial interest.

(Requirements for Perfection Regarding a Beneficial Interest for Which No Certificate of Beneficial Interest Have Been Issued)

Article 206 (1) With regard to a beneficial interest that is subject to the provisions set forth in Article 185, paragraph (2) which belongs to the trust property of another trust, the fact that said beneficial interest belongs to trust property of said other trust may not be duly asserted against the trustee of a trust with certificate of beneficial interest or against any other third party unless such fact that said beneficial interest belongs to the trust property of the other trust is stated or recorded in the beneficial interest registry.

- (2) The trustee of the other trust to which the beneficial interest set forth in the preceding paragraph belongs may request that the trustee of the trust with

certificate of beneficial interest state or record in the beneficial interest registry the fact that said beneficial interest belongs to the trust property of the other trust.

- (3) For the purpose of the application of the provisions of Article 187 in cases where the relevant facts have been stated or recorded in the beneficial interest registry under the provisions of the preceding paragraph, in paragraph (1) of said Article, the phrase "a beneficiary of a beneficial interest for which there are provisions as set forth in Article 185, paragraph (2)" shall be deemed to be replaced with "the trustee of another trust to which a beneficial interest set forth in Article 206, paragraph (1) belongs," the term "said beneficiary" shall be deemed to be replaced with "said beneficial interest," and the phrase "the matters to be stated in the beneficial interest registry, which are stated or recorded in the beneficial interest registry about said beneficiary" shall be deemed to be replaced with "the matters to be stated in the beneficial interest registry, which are stated or recorded in the beneficial interest registry about said beneficiary (including the fact that said beneficial interest belongs to the trust property of the other trust)."

Section 3 Certificates of Beneficial Interest

(Issuance of Certificate of Beneficial Interest)

Article 207 The trustee of a trust with certificate of beneficial interest shall, as provided for by the terms of trust, issue certificates of beneficial interest pertaining to the beneficial interests concerned without delay.

(Notification of Desire Not to Possess Certificate of Beneficial Interest)

Article 208 (1) A beneficiary of a trust with certificates of beneficial interest may notify the trustee of the trust with certificate of beneficial interest to the effect that the beneficiary of a trust with certificates of beneficial interest does not desire to possess a certificate of beneficial interest pertaining to the beneficial interest that such beneficiary holds; provided, however, that if the terms of trust otherwise provides, such provisions shall prevail.

(2) In notifying the trustee under the provisions of the preceding paragraph, the beneficiary shall specify the content of the beneficial interest to which the notification pertains. In this case, if a certificate of beneficial interest pertaining to said beneficial interest has already been issued, the beneficiary shall return said certificate of beneficial interest to the trustee of the trust with the certificate of beneficial interest.

(3) The trustee of a trust with s certificates of beneficial interest who has received a notification under the provisions of paragraph (1) shall, without delay, state or record in the beneficial interest registry a statement to the

effect that the trustee will not issue a certificate of beneficial interest pertaining to the beneficial interest set forth in the first sentence of the preceding paragraph.

- (4) When the trustee of a trust with certificate of beneficial interest has stated or recorded the relevant statements under the provisions of the preceding paragraph, the trustee may not issue a certificate of beneficial interest pertaining to the beneficial interest set forth in the first sentence of paragraph (2).
- (5) A certificate of beneficial interest submitted under the provisions of the second sentence of paragraph (2) shall be become invalid at the time when the relevant statement is stated or recorded under the provisions of paragraph (3).
- (6) A beneficiary who has notified the trustee under the provisions of paragraph (1) may at any time demand that the trustee of the trust with certificate of beneficial interest issue a certificate of beneficial interest pertaining to the beneficial interest set forth in the first sentence of paragraph (2). In this case, if there any certificate of beneficial interest was returned under the provisions of the second sentence of said paragraph, the expenses for issuing a certificate of beneficial interest shall be borne by said beneficiary.
- (7) The provisions of the preceding paragraphs shall not apply to bearer certificate of beneficial interest.

(Matters to Be Stated on a Certificate of Beneficial Interest)

Article 209 (1) On a certificate of beneficial interest, the serial number and the following matters shall be stated, and the trustee of the trust with the certificate of beneficial interest (in the case of a trustee who is a juridical person, its representative) shall sign or affix the trustee's (or the representative's) name and seal to it:

- (i) a statement to the effect that the certificate of beneficial interest is a certificate of beneficial interest of the trust with the certificate of beneficial interest;
- (ii) the names and addresses of the initial settlor and trustee of the trust with the certificate of beneficial interest;
- (iii) if the certificate of beneficial interest is a registered certificate, the name of the beneficiary;
- (iv) the content of the distribution claim as a beneficiary pertaining to each beneficial interest, and other matters specified by Ordinance of the Ministry of Justice as matters that specify the content of the beneficial interest;
- (v) any provisions of the terms of trust concerning reimbursement of expenses, etc. and compensation for damages to the trustee of the trust with the certificate of beneficial interest;
- (vi) the method of calculation for trust fees, and the method and time of

- payment of such fees;
- (vii) if there are restrictions on the assignment of the beneficial interest indicated by the registered certificate of beneficial interest, a statement to that effect and the content of such restrictions;
 - (viii) any provisions of the terms of trust concerning the exercise of rights by the beneficiary (including matters concerning trust supervisors and beneficiaries' agents); and
 - (ix) other matters specified by Ordinance of the Ministry of Justice.
- (2) For the purpose of the application of the provisions of the preceding paragraph in cases where there are two or more trustees for the trust with the certificate of beneficial interest, the phrase "trustee of the trust that issued the certificate of beneficial interest" in these provisions shall be deemed to be replaced with "all trustees of the trust that issued the certificate of beneficial interest."

(Conversion of Registered Certificate and Bearer Certificate)

Article 210 The beneficiary of a beneficial interest for which a certificate of beneficial interest has been issued, may at any time demand that the said beneficiary's registered certificate of beneficial interest be converted into a bearer certificate, or that the said beneficiary's bearer certificate of beneficial interest be converted into a registered certificate; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.

(Loss of a Certificate of Beneficial Interest)

- Article 211 (1) A certificate of beneficial interest may be invalidated through the public notification procedure prescribed in Article 142 of the Non-Contentious Cases Procedures Act.
- (2) A person who has lost the certificate of beneficial interest may not request the re-issuance thereof until after the person obtains an order of nullification as prescribed in Article 148, paragraph (1) of the Non-Contentious Cases Procedures Act.
- (3) When a person who has lost the certificate of beneficial interest has filed a petition for public notification as prescribed in Article 156 of the Non-Contentious Cases Procedures Act, said person who has lost the certificate of beneficial interest may provide reasonable deposit and have the trustee of the certificate of beneficial interest perform the obligations pertaining to the certificate of beneficial interest.

Section 4 Special Rules on the Rights and Duties, etc. of the Relevant Parties

(Special Rules on the Duties of the Trustee of a Trust With Certificates of Beneficial Interests)

- Article 212 (1) In the case of a trust with certificates of beneficial interest, notwithstanding the provisions of the proviso to Article 29, paragraph (2), no provision of the terms of trust may mitigate the duty set forth in the main clause of said paragraph.
- (2) The provisions of Article 35, paragraph (4) shall not apply to a trust with certificate of beneficial interests.

(Special Rules on The Terms of trust Providing for Restrictions on the Exercise of Rights by a Beneficiary)

- Article 213 (1) In the case of a trust with beneficiary certificates, notwithstanding the provisions of Article 92, item (i), item (v), item (vi), and item (viii), provisions may be established in the terms of trust to the effect that, with regard to all or part of the following rights, such rights may be exercised only by a beneficiary who holds a beneficial interest which represents not less than three-hundredths of the voting rights of all beneficiaries (or any smaller proportion provided for by the terms of trust; hereinafter the same shall apply in this paragraph) or a beneficiary who holds beneficial interest which represents not less than three-hundredths of the total number of existing beneficial interests:
- (i) the right to rescind under the provisions of Article 27, paragraph (1) or paragraph (2) (including cases where these provisions are applied mutatis mutandis pursuant to Article 75, paragraph (4));
 - (ii) the right to rescind under the provisions of Article 31, paragraph (6) or paragraph (7);
 - (iii) the right to request to inspect or copy materials under the provisions of Article 38, paragraph (1); and
 - (iv) the right to file a petition for the appointment of an inspector under the provisions of Article 46, paragraph (1).
- (2) In the case of a trust with certificate of beneficial interests, notwithstanding the provisions of Article 92, item (i), provisions may be established in the terms of trust to the effect that, with regard to all or part of the following rights, such rights may be exercised only by a beneficiary who holds a beneficial interest which represents not less than one-tenth of the voting rights of all beneficiaries (or any smaller proportion provided for by the terms of trust; hereinafter the same shall apply in this paragraph) or a beneficiary who holds a beneficial interest which represents not less than one-tenth of the total number of existing beneficial interests:
- (i) the right to file a petition for a judicial decision to order the modification of the trust under the provisions of Article 150, paragraph (1); and

- (ii) the right to file a petition for a judicial decision to order the termination of the trust under the provisions of Article 165, paragraph (1).
- (3) The provisions of the preceding two paragraphs shall not apply to a trust with certificate of beneficial interests if disclosure under the provisions of Article 39, paragraph (1) is restricted by the provisions of the terms of trust as set forth in paragraph (3) of said Article.
- (4) In the case of a trust with beneficiary certificates, notwithstanding the provisions of Article 92, item (xi), provisions may be established in the terms of trust to the effect that the right to demand a cessation under the provisions of Article 44, paragraph (1) may be exercised only by a beneficiary who has continually held a beneficial interest during the preceding six months (or any shorter period provided for by the terms of trust).

(Special Rules on Decision-Making Methods Involving Two or More Beneficiaries)

Article 214 In the case of a trust with certificates of beneficial interest that has two or more beneficiaries, unless otherwise provided for by the terms of trust, it shall be deemed as having been provided for by the terms of trust that a beneficiaries' decision (excluding a decision on the exercise of the rights listed in the items of Article 92) shall be made by a majority vote at a beneficiaries meeting pursuant to the provisions of Chapter IV, Section 3, Subsection 2.

(Special Rules on the Settlor's Rights)

Article 215 In the case of a trust with certificates of beneficial interest among the rights granted to a settlor under the provisions of this Act, the following rights shall be exercised by a beneficiary:

- (i) the right to request a report under the provisions of Article 36;
- (ii) the right to file a petition under the provisions of Article 58, paragraph (4) (including cases where applied mutatis mutandis pursuant to Article 134, paragraph (2), and Article 141, paragraph (2)), Article 62, paragraph (4) (including cases where applied mutatis mutandis pursuant to Article 135, paragraph (1) and Article 142, paragraph (1)), Article 63, paragraph (1), Article 74, paragraph (2), Article 131, paragraph (4), Article 150, paragraph (1), Article 165, paragraph (1), Article 166, paragraph (1), Article 169, paragraph (1), or Article 173, paragraph (1);
- (iii) the right to call for a definite answer under the provisions of Article 62, paragraph (2), Article 131, paragraph (2), or Article 138, paragraph (2);
- (iv) the right to request to inspect, copy, be delivered, or have reproduced materials under the provisions of Article 172, paragraph (1) or paragraph (2) or the second sentence of paragraph (3) of said Article; and
- (v) the right to request to inspect or copy materials under the provisions of

Article 190, paragraph (2).

Chapter IX Special Rules for Limited Liability Trusts
Section 1 General Provisions

(Requirements for a Limited Liability Trust)

Article 216 (1) A limited liability trust shall become effective as a limited liability trust when it is provided by the terms of trust that the trustee is liable to perform all obligation covered by the trust property only by using property that belongs to the trust property, and when a registration of such provisions is made as provided for in Article 232.

(2) The terms of trust set forth in the preceding paragraph shall provide for the following matters:

- (i) the purpose of the limited liability trust;
- (ii) the name of the limited liability trust;
- (iii) the names and addresses of the settlor(s) and the trustee(s);
- (iv) the place where the principal trust affairs for the limited liability trust are to be administered (referred to as the "place for the administration of affairs" in Section 3);
- (v) the method of administration or disposition of property that belongs to the trust property; and
- (vi) other matters specified by Ordinance of the Ministry of Justice.

(Restrictions on Execution, etc. Against Property That Belongs to Trustee's Own Property)

Article 217 (1) In the case of a limited liability trust, no performance may be compelled nor may provisional seizure, provisional disposition, exercise of a security interest, auction, or proceedings for collection of delinquent national taxes be carried out against property that belongs to the trustee's own property, based on a claim pertaining to any obligations covered by trust property (excluding obligations pertaining to the right set forth in Article 21, paragraph (1), item (viii)).

(2) The trustee may assert an objection to performance that was compelled or to, provisional seizure, provisional disposition, exercise of a security interest, or an auction that was carried out in violation of the provisions of the preceding paragraph. In this case, the provisions of Article 38 of the Civil Execution Act and the provisions of Article 45 of the Civil Preservation Act shall apply *mutatis mutandis*.

(3) The trustee may assert an objection to proceedings for collection of delinquent national taxes that were carried out in violation of the provision of paragraph (1). In this case, the assertion of the objection shall be made by entering an

appeal against the proceedings for collection of delinquent national taxes.

(Name, etc. of a Limited Liability Trust)

Article 218 (1) In the name of a limited liability trust, the characters representing the term "limited liability trust" shall be used.

(2) No person may use, in its name or trade name, any characters which make it likely that a trust that is not a limited liability trust, will be mistaken for a limited liability trust.

(3) No person may use, with a wrongful purpose, any name or trade name which makes it likely that a limited liability trust, will be mistaken for another limited liability trust.

(4) Any trustee of a limited liability trust whose business interests have been, or are likely to be, infringed by the use of any name or trade name in violation of the provisions of the preceding paragraph may seek an injunction suspending or preventing the infringement against the person who has or is likely to infringe those business interests.

(Duty of Clear Indication to the Counterparty)

Article 219 A trustee may not, in conducting a transaction as the trustee of a limited liability trust, duly assert against the other party to the transaction as such unless the trustee has clearly indicated to that effect to the other party.

(Effect of Registration)

Article 220 (1) The matters to be registered pursuant to the provisions of this Chapter may not be duly asserted against a third party who has no knowledge of such matters until after the registration. The same shall apply after the registration if a third party did not know that such matters were registered, based on justifiable grounds.

(2) A person who has registered false matters willfully or negligently with regard to the matters to be registered pursuant to the provisions of this Chapter may not duly assert the falsity of such matters against a third party who has no knowledge of such falsity.

(Modification of a Trust to Abolish Provisions on Limited Liability Trust Status)

Article 221 When a modification is made to a trust to abolish the provision set forth in Article 216, paragraph (1) and a registration of termination set forth in Article 235 is made, the provisions of this Chapter shall not apply to the trust after the modification.

Section 2 Special Rules on Accounting, etc.

(Special Rules on the Duty to Prepare, Report on, and Preserve Books, etc.)

Article 222 (1) Notwithstanding the provisions of Article 37 and Article 38, the preparation of books and other documents or electromagnetic records pertaining to a limited liability trust, reporting on their content, and preservation of these materials, as well as the inspection and copying of the same shall be governed by the provisions of the following paragraph to paragraph (9).

- (2) The trustee shall prepare the accounting books for a limited liability trust as provided for by Ordinance of the Ministry of Justice.
- (3) The trustee shall, promptly after a limited liability trust has become effective, prepare a balance sheet as of the day on which it became effective, as provided for by Ordinance of the Ministry of Justice.
- (4) A trustee shall, once each year at a certain time as provided for by Ordinance of the Ministry of Justice, prepare a balance sheet and profit and loss statement for the limited liability trust, as well as annexed detailed statements of these and other documents or electromagnetic records specified by Ordinance of the Ministry of Justice.
- (5) When the trustee has prepared the documents or electromagnetic records set forth in the preceding paragraph, the trustee shall report to the beneficiary (if there is a trust caretaker at the time in question, to the trust caretaker) on the content thereof; provided, however, that if the terms of trust otherwise provides for, such provisions shall prevail.
- (6) Where a trustee has prepared the accounting books set forth in paragraph (2), the trustee shall preserve said books (if electromagnetic records have been prepared in lieu of documents by the method specified by Ordinance of the Ministry of Justice, such electromagnetic records; if documents have been prepared in lieu of electromagnetic records, such documents) for ten years from the date of their preparation (or until the date of the completion of the liquidation of the trust if this occurs within said ten-year period; the same shall apply in the following paragraph); provided, however, that this shall not apply where the trustee has delivered said documents or copies thereof to the beneficiary (if there are two or more beneficiaries at the time in question, to all beneficiaries; if there is a trust caretaker at the time in question, to the trust caretaker; the same shall apply in paragraph (8)), or has provided the beneficiary with information on the matters recorded in said electromagnetic records by the method specified by Ordinance of the Ministry of Justice.
- (7) Where the trustee has prepared or acquired a written contract pertaining to the disposition of property that belongs to the trust property or any other documents or electromagnetic records concerning the trust administration, the trustee shall preserve said documents or electromagnetic records (if

electromagnetic records have been prepared in lieu of said documents by the method specified by Ordinance of the Ministry of Justice, such electromagnetic records; if documents have been prepared in lieu of said electromagnetic records, such documents) for ten years from the date of their preparation or acquisition. In this case, the provisions of the proviso to the preceding paragraph shall apply mutatis mutandis.

- (8) Where a trustee has prepared the balance sheet set forth in paragraph (3) and the documents or electromagnetic records set forth in paragraph (4) (hereinafter referred to as the "balance sheet, etc." in this paragraph and Article 224, paragraph (2), item (i)), the trustee shall preserve said balance sheet, etc. (if electromagnetic records have been prepared in lieu of documents by the method specified by Ordinance of the Ministry of Justice, such electromagnetic records; if documents have been prepared in lieu of electromagnetic records, such documents) until the date of the completion of the liquidation of the trust; provided, however that this shall not apply where the trustee has, after ten years have elapsed from the date of their preparation, delivered said documents or copies thereof to the beneficiary, or has provided the beneficiary with information on the matters recorded in said electromagnetic records by the method specified by Ordinance of the Ministry of Justice.
- (9) For the purpose of the application of the provisions of Article 38 to a limited liability trust, the phrase "paragraph (1) or paragraph (5) of the preceding Article" in the items of paragraph (1) of said Article shall be deemed to be replaced with "Article 222, paragraph (2) or paragraph (7)," and the phrase "paragraph (2) of the preceding Article" in paragraph (4), item (i) of said Article and the items of paragraph (6) of said Article shall be deemed to be replaced with "Article 222, paragraph (3) or paragraph (4)."

(Court's Order to Submit Documents)

Article 223 The court may, upon petition or on its own authority, order the parties to a lawsuit to submit all or part of the documents set forth in paragraph (2) to paragraph (4) of the preceding Article.

(Trustee Liability to Third Parties)

Article 224 (1) In the case of a limited liability trust, if the trustee was willful or grossly negligent in the course of administering trust affairs, the trustee shall be liable to compensate for any damages suffered by a third party arising therefrom.

- (2) The provisions of the preceding paragraph shall also apply when a trustee of a limited liability trust has committed the following acts; provided, however, that this shall not apply if the trustee proves that the trustee did not fail to

exercise due care in committing said act:

- (i) making false statements or records on the matters that should be stated or recorded in the balance sheet, etc.;
- (ii) making a false registration; or
- (iii) giving false public notice.

(3) In the cases referred to in the preceding two paragraphs, when there is another trustee who is also liable to compensate for damages in addition to the trustee set forth in those paragraphs, these trustees shall be joint and several obligors.

(Restriction on Distribution of Trust Property to the Beneficiary)

Article 225 In the case of a limited liability trust, no distribution of trust property may be made to the beneficiary beyond the maximum distributable amount (meaning the maximum amount that may be distributed to the beneficiary, as calculated by the method specified by Ordinance of the Ministry of Justice within the amount of net assets; hereinafter the same shall apply in this Section).

(Liability Relating to the Distribution of Trust Property to the Beneficiary)

Article 226 (1) Where a trustee has distributed trust property to the beneficiary in violation of the provisions of the preceding Article, the persons listed in the following items shall have the joint and several liability specified in the respective items (in the case of the beneficiary set forth in item (ii), joint and several liability up to the amount of each distribution actually received); provided, however, that this shall not apply where the trustee proves that the trustee did not fail to exercise due care in performing the duties:

- (i) the trustee: the liability to compensate the trust property with monies equivalent to the book value of the distribution (hereinafter referred to as the "distributed amount" in this Section); and
- (ii) the beneficiary to whom the distribution was made: the liability to pay to the trustee monies equivalent to each distributed amount actually received.

(2) Where the trustee has satisfied the whole or part of the liability specified in item (i) of the preceding paragraph, the beneficiary set forth in item (ii) of said paragraph shall be released from the liability specified in item (ii) of said paragraph up to the amount obtained by multiplying the amount of liability satisfied by the ratio of the distributed amount as set forth in item (ii) of said paragraph to the distributed amount set forth in item (i) of said paragraph, and where the beneficiary has satisfied the liability specified in item (ii) of said paragraph in whole or in part, the trustee shall be released from the liability specified in item (i) of said paragraph up to the amount of liability satisfied.

(3) Monies paid by the beneficiary to the trustee pursuant to the provisions of

paragraph (1) (limited to the part pertaining to item (ii)) shall belong to the trust property.

- (4) No release may be granted for the liability prescribed in paragraph (1); provided, however, that this shall not apply where all beneficiaries consent to grant a release from said liability up to the maximum distributable amount as of the day on which the distribution was made.
- (5) In the case prescribed in the main clause of paragraph (1), when there is another trustee who also has the liability set forth in item (i) of said paragraph in addition to the trustee set forth therein, these trustees shall be joint and several obligors.
- (6) The provisions of Article 45 shall apply mutatis mutandis to any action pertaining to the claim under the provisions of paragraph (1).

(Restriction on Demands for Reimbursement from the Beneficiary)

Article 227 (1) In the case prescribed in the main clause of paragraph (1) of the preceding Article, if the beneficiary to whom the distribution was made had no knowledge of the fact that the amount of said distribution exceeded the maximum distributable amount as of the day on which said distribution was made, the beneficiary shall not be liable to satisfy the demand by the trustee for reimbursement with regard to the distributed amount.

- (2) In the case prescribed in the main clause of paragraph (1) of the preceding Article, a trust creditor may have the beneficiary to whom the distribution was made, pay monies equivalent to the amount delivered (or the amount of the claim held by said trust creditor if the amount delivered exceeds the amount of the claim).

(Liability in Case of Deficit)

Article 228 (1) Where a trustee has distributed trust property to a beneficiary, if any deficit (meaning the amount obtained by deducting the amount of assets on the balance sheet from the amount of liabilities on the same in cases where the amount of liabilities exceeds the amount of assets; hereinafter the same shall apply in this paragraph) occurs as of the time set forth in Article 222, paragraph (4), when it first comes after the day on which said delivery was made, the persons listed in the following items shall have the joint and several liability specified in the respective items (in the case of the beneficiary set forth in item (ii), the joint and several liability up to the amount of each delivery actually received); provided, however, that this shall not apply where the trustee has proved that the trustee did not fail to exercise due care in performing trustee's duties:

- (i) the trustee: the liability to compensate the trust property with monies equivalent to the deficit (or the amount delivered if the deficit exceeds the

- distributed amount); and
- (ii) the beneficiary to whom the distribution was made: the liability to pay to the trustee monies equivalent to the deficit (or the amount of each delivery actually received if the deficit exceeds the amount delivered).
- (2) Where the trustee has satisfied the liability specified in item (i) of the preceding paragraph in whole or in part, the beneficiary set forth in item (ii) of said paragraph shall be released from the liability specified in item (ii) of said paragraph up to the amount obtained by multiplying the amount of liability satisfied by the ratio of the distributed amount as set forth in item (ii) of said paragraph to the amount delivered as set forth in item (i) of said paragraph, and where the beneficiary has satisfied the liability specified in item (ii) of said paragraph in whole or in part, the trustee shall be released from the liability specified in item (i) of said paragraph up to the amount of liability satisfied.
 - (3) Monies paid by the beneficiary to the trustee pursuant to the provisions of paragraph (1) (limited to the part pertaining to item (ii)) shall fall under the trust property.
 - (4) No release may be granted for the liability prescribed in paragraph (1) without the consent of all beneficiaries.
 - (5) In the case prescribed in the main clause of paragraph (1), when there is another trustee who also has the liability set forth in item (i) of said paragraph in addition to the trustee set forth therein, these trustees shall be joint and several obligors.
 - (6) The provisions of Article 45 shall apply mutatis mutandis to any action pertaining to the demand under the provisions of paragraph (1).

(Public Notice to Creditors)

- Article 229 (1) Without delay after assuming the office, the liquidation trustee of a limited liability trust shall give public notice in an official gazette to the effect that trust creditors should file their claims during a certain period of time, and shall give notice of the same separately to each known creditor; provided, however that said period may not be less than two months.
- (2) The public notice under the provisions of the preceding paragraph shall be accompanied by a supplementary note that those trust creditors shall be excluded from the liquidation if they fail to file during said period.

(Restriction on Performance of Obligations)

- Article 230 (1) A liquidation trustee of a limited liability trust may not perform any obligations of the limited liability trust in liquidation during the period set forth in paragraph (1) of the preceding Article. In this case, the liquidation trustee may not be released from the liability arising from the failure to perform such obligations.

- (2) Notwithstanding the provisions of the preceding paragraph, even during the period set forth in paragraph (1) of the preceding Article, a liquidation trustee may, with the permission of the court, perform obligations pertaining to small claims, claims secured by security interests existing on property that belongs to the trust property of the limited liability trust in liquidation, and any other claims that are unlikely to harm other creditors even if they are performed. In this case, when there are two or more liquidation trustees, a petition for such permission shall be filed with the consent of all of them.
- (3) When filing a petition for the permission set forth in the preceding paragraph, the liquidation trustee shall make a prima facie showing of the facts constituting the grounds for the petition.
- (4) A judicial decision dismissing the petition set forth in paragraph (2) shall include the reasons therefor.
- (5) No appeal may be entered against a judicial decision on the permission for performance under the provisions of paragraph (2).

(Exclusion from Liquidation)

- Article 231 (1) Trust creditors of a limited liability trust in liquidation (excluding known creditors) who have not filed their claims during the period set forth in Article 229, paragraph (1) shall be excluded from the liquidation.
- (2) Trust creditors excluded from the liquidation under the provisions of the preceding paragraph may demand satisfaction of their claims only with respect to undistributed residual assets.
 - (3) Where there are two or more beneficiaries, when residual assets of the limited liability trust in liquidation have been distributed to some of those beneficiaries, the assets necessary for delivery to beneficiaries other than said beneficiaries at the same proportion as that applied to the delivery received by those who have received it, shall be deducted from the residual assets set forth in the preceding paragraph.

Section 3 Registration of a Limited Liability Trust

(Registration of the Provisions on Limited Liability Trust Status)

- Article 232 When the terms of trust has provided as set forth in Article 216, paragraph (1) the terms of trust, a registration of its provisions on the limited liability trust status shall be made within two weeks, by registering the following matters:
- (i) the purpose of the limited liability trust;
 - (ii) the name of the limited liability trust;
 - (iii) the name and address of the trustee;
 - (iv) the place of administration of affairs of the limited liability trust;

- (v) if a trust property administrator or incorporated trust property administrator has been appointed under the provisions of Article 64, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 74, paragraph (6)), the name and address thereof;
- (vi) if the terms of trust contains provisions on the termination of the trust under the provisions of Article 163, item (ix), such provisions; and
- (vii) if the trust is a trust with accounting auditors (meaning a trust with accounting auditors as prescribed in Article 248, paragraph (3); the same shall apply in Article 240, item (iii)), a statement to that effect and the names of the accounting auditors.

(Registration of Changes)

Article 233 (1) When there is a change to the place of administration of affairs of a limited liability trust, a registration of such change shall be made within two weeks at the former place of administration of affairs, and the matters listed in the items of the preceding Article shall be registered at the new place of administration of affairs.

(2) When there is a change to the place of administration of affairs of a limited liability trust within the jurisdictional district of the same registry office, it shall be sufficient to make a registration of such change.

(3) When there is a change to any of the matters listed in the items of the preceding Article (excluding item (iv)), a registration of such change shall be made within two weeks.

(Registration of Provisional Disposition Orders to Suspend the Execution of Duties, etc.)

Article 234 When an provisional disposition order is given to suspend the execution of duties by a trustee of a limited liability trust or to appoint a person who will execute such duties on behalf of the trustee, or when an order is given to change or revoke such provisional disposition order, a registration of such order shall be made at the place of administration of affairs of the trust.

(Registration of Termination)

Article 235 When a limited liability trust has terminated pursuant to the provisions of Article 163 (excluding the part pertaining to item (vi) and item (vii)) or Article 164, paragraph (1) or paragraph (3), or when a modification has been made to a trust to abolish the provisions set forth in Article 216, paragraph (1), a registration of the termination shall be made within two weeks.

(Registration of Liquidation Trustee)

Article 236 (1) When a limited liability trust has terminated, if the trustee at the time of the termination of the limited liability trust will be the liquidation trustee, the name and address of the liquidation trustee shall be registered within two weeks from the date of the termination.

(2) The provisions of the preceding paragraph shall also apply when a liquidation trustee is appointed pursuant to the provisions of the terms of trust or the provisions of Article 62, paragraph (1) or paragraph (4) or Article 173, paragraph (1).

(3) The provisions of Article 233, paragraph (3) shall apply mutatis mutandis to the registration under the provisions of the preceding two paragraphs.

(Registration of the Completion of Liquidation)

Article 237 When the liquidation of a limited liability trust has been completed, a registration of the completion of the liquidation shall be made within two weeks from the date of approval of the settlement of accounts set forth in Article 184, paragraph (1).

(Registry Office with Jurisdiction and the Registry)

Article 238 (1) Affairs for registration of a limited liability trust shall be administered by the Legal Affairs Bureau or District Legal Affairs Bureau, the branch bureau thereof, or the branch office of any of those bureaus, which has jurisdiction over the place of administration of affairs of the limited liability trust.

(2) A registry office shall keep a limited liability trust registry.

(Application for Registration)

Article 239 (1) Registrations under the provisions of Article 232 and Article 233 shall be made upon application by the trustee, and registrations under the provisions of Article 235 to Article 237 shall be made upon application by the liquidation trustee.

(2) Notwithstanding the provisions of the preceding paragraph, where a trust property administrator or incorporated trust property administrator has been appointed, registrations under the provisions of Article 232 and Article 233 (excluding a registration under the provisions of Article 246) shall be made upon application by such trust property administrator or incorporated trust property administrator.

(Attachments to a Registration of the Provisions on Limited Liability Trust Status)

Article 240 The following documents shall be attached to a written application for the registration of the provisions on limited liability trust status:

- (i) a document certifying the terms of trust setting forth the limited liability trust;
- (ii) if the trustee is a juridical person, a certificate of registered matters for the juridical person; provided, however, that this shall not apply where the head office or principal office of the juridical person is located within the jurisdictional district of the registry office;
- (iii) in the case of a trust with an accounting auditor(s), the following documents:
 - (a) a document certifying acceptance of the office(s);
 - (b) if the accounting auditor is a juridical person, a certificate of registered matters for the juridical person; provided, however, that this shall not apply where the head office or principal office of the juridical person is located within the jurisdictional district of the registry office; and
 - (c) if the accounting auditor is not a juridical person, a document certifying that the accounting auditor is a person prescribed in Article 249, paragraph (1).

(Attachments to a Registration of Changes)

Article 241 (1) When filing a written application for the registration of a change in the place of administration of affairs or a registration of a change in any of the matters listed in the items of Article 232 (excluding item (iv)), a document certifying the change in the place of administration of affairs or the change in the relevant registered matter shall be attached.

- (2) When filing a written application for a registration of a change due to a new trustee who is a juridical person having assumed the office of trustee, the document set forth in item (ii) of the preceding Article shall be attached thereto.
- (3) When filing a written application for a registration of a change due to an accounting auditor's assumption of the office, the document set forth in item (iii)(b) or (c) of the preceding Article shall be attached.

(Attachments to a Registration of Termination)

Article 242 When filing a written application for the registration of the termination of a limited liability trust, a document certifying the grounds for the termination shall be attached.

(Attachments to a Registration of Liquidation Trustee)

Article 243 (1) When filing a written application for the registration of a liquidation trustee in cases where any of the persons listed in the following items has become the liquidation trustee, the documents set forth in the respective items shall be attached:

- (i) a person appointed by the provisions of the terms of trust: the following documents:
 - (a) a document certifying that said provisions of the terms of trust exist; and
 - (b) a document certifying that the appointed person has accepted the office;
 - (ii) a person appointed pursuant to the provisions of Article 62, paragraph (1): the following documents:
 - (a) a document certifying that the agreement set forth in Article 62, paragraph (1) has been reached; and
 - (b) a document set forth in (b) of the preceding item; or
 - (iii) a person appointed by the court pursuant to the provisions of Article 62, paragraph (4) or Article 173, paragraph (1): a document certifying the appointment.
- (2) The provisions of Article 240 (limited to the part pertaining to item (ii)) shall apply mutatis mutandis to the registration of a liquidation trustee who is a juridical person.

(Attachments to the Registration of a Change Concerning the Liquidation Trustee)

- Article 244 (1) When filing a written application for the registration of a change due to a liquidation trustee leaving the office, a document certifying that the office has been left shall be attached.
- (2) When filing a written application for the registration of a change to any of the matters prescribed in Article 236, paragraph (1), a document certifying the change to the relevant registered matter shall be attached.
- (3) The provisions of Article 241, paragraph (2) shall apply mutatis mutandis to the registration of a change due to a liquidation trustee who is a juridical person having assumed the office of liquidation trustee.

(Attachments to the Registration of the Completion of Liquidation)

- Article 245 When filing a written application for the registration of the completion of liquidation, a document certifying that the settlement of accounts set forth in Article 184, paragraph (1) has been approved shall be attached.

(Commission of a Registration by Juridical Decision)

- Article 246 In the following cases, a court clerk shall, on the clerk's own authority, and without delay, commission the registry office that has jurisdiction over the place of administration of affairs of a limited liability trust to make a registration of the respective matters:
- (i) where any of the following judicial decisions has been made:
 - (a) a judicial decision dismissing the trustee, trust property administrator, or incorporated trust property administrator under the provisions of Article

- 58, paragraph (4) (including cases where applied mutatis mutandis pursuant to Article 70 (including cases where applied mutatis mutandis pursuant to Article 74, paragraph (6))); or
- (b) a judicial decision appointing a trust property administrator or incorporated trust property administrator pursuant to the provisions of Article 64, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 74, paragraph (6)); or
- (ii) where any of the following judicial decisions has become final and binding:
- (a) a judicial decision revoking the judicial decision set forth in (a) of the preceding item; or
- (b) a judicial decision ordering the termination of a trust under the provisions of Article 165 or Article 166.

(Application Mutatis Mutandis of the Commercial Registration Act and the Civil Preservation Act)

Article 247 With regard to the registration of a limited liability trust, the provisions of Article 2 to Article 5, Article 7 to Article 15, Article 17 (excluding paragraph (3)), Article 18 to Article 19-2, Article 20, paragraph (1) and paragraph (2), Article 21 to Article 24, Article 26, Article 27, Article 51 to Article 53, Article 71, paragraph (1), Article 132 to Article 137, and Article 139 to Article 148 of the Commercial Registration Act (Act No. 125 of 1963), and the provisions of Article 56 of the Civil Preservation Act shall apply mutatis mutandis. In this case, in Article 51, paragraph (1) of the Commercial Registration Act, the phrase "head office" shall be deemed to be replaced with "place of administration of affairs (meaning the place of administration of affairs as prescribed in Article 216, paragraph (2), item (iv) of the Trust Act (Act No. 108 of 2006); the same shall apply hereinafter)," and the term "relocation" shall be deemed to be replaced with "change"; in Article 51, paragraph (1) and Article 52, paragraph (2), paragraph (3), and paragraph (5) of said Act, the phrase "new location" shall be deemed to be replaced with "new place of administration of affairs"; in Article 51, paragraph (1) and paragraph (2) and Article 52 of said Act, the phrase "former location" shall be deemed to be replaced with "former place of administration of affairs"; in Article 71, paragraph (1), the term "dissolution" shall be deemed to be replaced with "termination of a limited liability trust"; and in Article 56 of the Civil Preservation Act, the phrase "representative or any other officer of a juridical person" shall be deemed to be replaced with "trustee or liquidation trustee of a limited liability trust," and the phrase "location of the head office and principal office or secondary office of the juridical person" shall be deemed to be replaced with "place of administration of affairs (meaning the place of administration of affairs as prescribed in Article 216, paragraph (2), item (iv) of the Trust Act

(Act No. 108 of 2006) of the limited liability trust)."

Chapter X Special Rules on Limited Liability Trusts With Certificate of Beneficial Interest

(Appointment of an Accounting Auditor, etc.)

Article 248 (1) A limited liability trust which is a trust with certificates of beneficial interest (hereinafter referred to as a "limited liability trust with certificate of beneficial interest") may appoint an accounting auditor by the provisions of the terms of trust.

(2) A limited liability trust with certificate of beneficial interest which has reported a total of 20 billion yen or more in the liabilities section of its most recent balance sheet (meaning a balance sheet prepared at the most recent time set forth in Article 222, paragraph (4)) shall appoint an accounting auditor.

(3) In the case of a trust whose terms of trust has the provisions set forth in paragraph (1) and a trust prescribed in the preceding paragraph (hereinafter collectively referred to as a "trust with accounting auditors"), provisions designating an accounting auditor shall be established in the terms of trust.

(Qualifications of an Accounting Auditor, etc.)

Article 249 (1) An accounting auditor shall be a certified public accountant (including a foreign certified public accountant (meaning a foreign certified public accountant as prescribed in Article 16-2, paragraph (5) of the Certified Public Accountant Act (Act No. 103 of 1948)); the same shall apply in paragraph (3), item (ii)) or an auditing firm.

(2) An auditing firm which has been appointed as an accounting auditor shall select, from among its members, a person who is to perform the duties of an accounting auditor, and notify the trustee thereof. In this case, the person set forth in item (ii) of the following paragraph may not be selected.

(3) None of the following persons may serve as an accounting auditor:

(i) a person who, pursuant to the provisions of the Certified Public Accountant Act, may not audit the documents or electromagnetic records prescribed in Article 222, paragraph (4);

(ii) a person who continuously receives remuneration from the trustee or an interested party thereof for business other than that of a certified public accountant or auditing firm, or the spouse of such person; and

(iii) an auditing firm wherein half or more of the members fall under the preceding item.

(Measures to Be Taken in the Event of a Vacancy in the Position of Accounting

Auditor)

- Article 250 (1) In the case of a trust with accounting auditors, when there is a vacancy in the position of accounting auditor, the settlor and the beneficiary shall appoint, based on an agreement between them, a new accounting auditor within two months from the time when such vacancy of accounting auditor occurred.
- (2) In the case prescribed in the preceding paragraph, if there is no settlor at the time in question or no agreement has been reached as set forth in said paragraph after the expiration of two months from the time when a vacancy of accounting auditor occurred, a new accounting auditor may be appointed independently by the beneficiary.
- (3) In the cases prescribed in the preceding two paragraphs, when there are two or more beneficiaries, the trustee (if there is a trust supervisor at the time in question, the trustee or trust supervisor) shall convene a beneficiaries meeting without delay in order to appoint a new accounting auditor pursuant to the provisions of the preceding two paragraphs.
- (4) When a new accounting auditor has been appointed pursuant to the provisions of paragraph (1) or paragraph (2), it shall be deemed that the provisions set forth in Article 248, paragraph (3) were established in the terms of trust with regard to the appointed new accounting auditor.
- (5) Where there is a vacancy in the position of accounting auditor, an accounting auditor who has left office due to resignation shall continue to hold the rights and duties of an accounting auditor until a new accounting auditor is appointed.

(Resignation and Dismissal of Accounting Auditors)

Article 251 The provisions of the main clause of Article 57, paragraph (1) shall apply mutatis mutandis to the resignation of an accounting auditor, and the provisions of Article 58, paragraph (1) and paragraph (2) shall apply mutatis mutandis to the dismissal of an accounting auditor.

(Powers of the Accounting Auditor)

- Article 252 (1) An accounting auditor shall audit the documents or electromagnetic records set forth in Article 222, paragraph (4). In this case, an accounting auditor shall prepare an accounting audit report as provided for by Ordinance of the Ministry of Justice.
- (2) An accounting auditor may, at any time, inspect and copy the following objects or request a trustee to make a report on accounting:
- (i) if the accounting books or materials relating thereto are prepared in the form of documents, such documents; and
 - (ii) if accounting books or materials relating thereto are prepared in the form of

electromagnetic records, any object which indicates the matters recorded in the electromagnetic records by a method specified by Ordinance of the Ministry of Justice.

- (3) An accounting auditor, in the course of performing the duties, may not employ a person who falls under any of the following:
- (i) the person set forth in Article 249, paragraph (3) item (i) or item (ii);
 - (ii) the trustee or an interested party thereof; or
 - (iii) a person who continuously receives remuneration from the trustee or an interested party thereof for business other than that of a certified public accountant or auditing firm.
- (4) For the purpose of the application of the provisions of Article 222, paragraph (4), paragraph (5) and paragraph (8) in the case of a trust with accounting auditors, the term "prepare" in paragraph (4) of said Article shall be deemed to be replaced with "prepare and receive an accounting audit set forth in Article 252, paragraph (1) of," the phrase "the content thereof" in paragraph (5) of said Article shall be deemed to be replaced with "the content thereof and an accounting audit report," the phrase "prepared" in paragraph (8) of said Article shall be deemed to be replaced with "prepared and received an accounting audit set forth in Article 252, paragraph (1) of," and the phrase "such documents)" in paragraph (8) of said Article shall be deemed to be replaced with "such documents) and the accounting audit report."

(Accounting Auditor's Duty of Care)

Article 253 An accounting auditor shall perform the duties with the due care of a prudent manager.

(Accounting Auditor's Liability to Compensate for Losses, etc.)

- Article 254 (1) When any loss has occurred to the trust property due to an accounting auditor's negligence in the performance of the duties, the beneficiary may demand that the accounting auditor compensate for such loss.
- (2) Monies or other property delivered by the accounting auditor to the trustee as compensation for the loss under the provisions of the preceding paragraph shall belong to the trust property.
- (3) The provisions of Article 42 (limited to the part pertaining to item (i)) and Article 105, paragraph (3) and paragraph (4) (excluding item (iii)) shall apply mutatis mutandis to a release from liability under the provisions of paragraph (1), the provisions of Article 43 shall apply mutatis mutandis to the claim pertaining to liability under the provisions of paragraph (1), and the provisions of Article 45 shall apply mutatis mutandis to an action pertaining to the demand under the provisions of paragraph (1). In this case, the phrase "the trustee has shown bad faith or gross negligence in the performance of the

duties" in Article 105, paragraph (4), item (ii) shall be deemed to be replaced with "the accounting auditor has shown bad faith or gross negligence in the performance of the duties."

(Accounting Auditor's Liability to Third Parties)

Article 255 (1) In the case of a trust with accounting auditors, if an accounting auditor was willful or grossly negligent in the performance of the duties, the accounting auditor shall be liable to compensate for any damage suffered by a third party arising therefrom.

(2) The provisions of the preceding paragraph shall also apply when the accounting auditor of a trust with accounting auditors has made a false statement or record on the matters that should be stated or recorded in the accounting audit report set forth in Article 252, paragraph (1); provided, however, that this shall not apply if the accounting auditor proves that the accounting auditor did not fail to exercise due care in carrying out said act.

(3) In the cases referred to in the preceding two paragraphs, when there is another accounting auditor who is also liable to compensate for the damages in addition to the accounting auditor set forth therein, these accounting auditors shall be joint and several obligors.

(Expenses, etc. and Remuneration of Accounting Auditor)

Article 256 The provisions of Article 127, paragraph (1) to paragraph (5) shall apply mutatis mutandis to expenses and interest thereon accruing from the date of payment, compensation for damages, and remuneration payable to an accounting auditor.

(Special Rules for Beneficiaries Meetings)

Article 257 For the purpose of the application of the provisions of Article 118 in cases where the terms of trust for a trust with accounting auditors does not otherwise provide as set forth in Article 214, the phrase "the same shall apply in the following paragraph)" in Article 118, paragraph (1) shall be deemed to be replaced with "the same shall apply in the following paragraph) and an accounting auditor," and the term "trustee" in Article 118, paragraph (2) shall be deemed to be replaced with "trustee or accounting auditor."

Chapter XI Special Rules for a Trust with No Provisions on Beneficiaries

(Requirements for a Trust With No Provisions on the Beneficiary)

Article 258 (1) A trust with no provisions on the beneficiary (including provisions on the method for specifying a beneficiary; the same shall apply hereinafter) may be created by the method set forth in Article 3, item (i) or

item (ii).

- (2) In the case of a trust with no provisions on the beneficiary, provisions on the beneficiary may be established by making a modification to the trust.
- (3) In the case of a trust with provisions on the beneficiary, such provisions on the beneficiary may not be abolished by making a modification to the trust.
- (4) When a trust with no provisions on the beneficiary is to be created by the method set forth in Article 3, item (ii), provisions to designate a trust caretaker shall be established. In this case, no provisions may be established to restrict the trust caretaker's power to exercise the rights listed in the items of Article 145, paragraph (2) (excluding item (vi)).
- (5) In the case of a trust with no provisions on the beneficiary which was created by the method set forth in Article 3, item (ii) and for which there are no provisions for designating a trust caretaker, if there are provisions on the executor, the executor shall appoint a trust caretaker. In this case, when the executor has appointed a trust caretaker, it shall be deemed that the provisions set forth in the first sentence of the preceding paragraph were established in the terms of trust with regard to the appointed trust caretaker.
- (6) In the case of a trust with no provisions on the beneficiary which was created by the method set forth in Article 3, item (ii) and for which there are no provisions designating a trust caretaker, if there are no provisions on the executor or if the person designated as the one who is to be the executor does not appoint or is unable to appoint a trust caretaker, the court may appoint a trust caretaker at the petition of an interested party. In this case, when a judicial decision on the appointment of a trust caretaker has been made, it shall be deemed that the provisions set forth in the first sentence of paragraph (4) were established in the terms of trust with regard to the appointed trust caretaker.
- (7) The provisions of Article 123, paragraph (6) to paragraph (8) shall apply mutatis mutandis to a judicial decision on the petition set forth in the preceding paragraph.
- (8) In the case of a trust with no provisions on the beneficiary which was created by the method set forth in Article 3, item (ii), the trust shall terminate where there is a vacancy in the position of trust caretaker and the position has not been filled with a new trust caretaker for one year.

(Duration of a Trust with No Provisions on the Beneficiary)

Article 259 The duration of a trust with no provisions on the beneficiary may not exceed 20 years.

(Settlor's Rights in a Trust with No Provisions on the Beneficiary)

Article 260 (1) In the case of a trust with no provisions on the beneficiary which

was created by the method set forth in Article 3, item (i), it shall be deemed as having been provided that the settlor (if there are two or more settlors, all settlors) shall have the rights listed in the items of Article 145, paragraph (2) (excluding item (vi)) and that the trustee shall have the duties listed in the items of paragraph (4) of said Article. In this case, such provisions may not be changed by making a modification to the trust.

(2) In the case of a trust with no provisions on the beneficiary which was created by the method set forth in Article 3, item (ii), if it is deemed, pursuant to the provisions of the second sentence of Article 258, paragraph (5) or the second sentence of paragraph (6) of said Article, that the provisions set forth in the first sentence of paragraph (4) of said Article have been established, it is not allowable to restrict the trust caretaker's power to exercise the rights listed in the items of Article 145, paragraph (2) (excluding item (vi)) by making a modification to the trust.

(Application of This Act)

Article 261 (1) For the purpose of the application of the provisions of this Act listed in the left-hand column of the following table with regard to a trust with no provisions on the beneficiary, the terms and phrases listed in the middle column of said table shall be deemed to be replaced with the terms and phrases listed in the right-hand column of said table, respectively:

Article 19, paragraph (1), item (iii) and paragraph (3), item (iii)	will not harm the interests of the beneficiary	will not hinder the achievement of the purpose of the trust
	between the trustee and the beneficiary	that the trustee has with regard to the purpose of the trust
Article 19, paragraph (3), item (ii)	agreement between the beneficiaries of both trusts (if there is a trust administrator for each trust at the time in question, the trust administrators)	agreement between the trust administrator of the trust with no provisions on the beneficiary and the beneficiary of the other trust (if there is a trust administrator at the time in question, the trust administrator), or on an agreement between the trust administrators of both trusts with no provisions on the beneficiary
Article 30	on behalf of the beneficiary	for the achievement of the purpose of the trust

Article 31, paragraph (1), item (iv)	would cause a conflict of interest between the trustee or an interested party thereof and the beneficiary	would be in the interest of the trustee or an interested party thereof and impede the achievement of the purpose of the trust
Article 31, paragraph (2), item (iv)	will not harm the interests of the beneficiary	will not hinder the achievement of the purpose of the trust
	between the trustee and the beneficiary	that the trustee has with regard to the purpose of the trust
Article 32, paragraph (1)	be contrary to the interest of a beneficiary	hinder the achievement of the purpose of the trust
Proviso to Article 37, paragraph (4)	beneficiary (beneficiaries)	settlor(s)
	to the trust administrator	to the trust administrator or settlor
Proviso to Article 37, paragraph (6)	beneficiary	settlor
Article 38, paragraph (2), item (iii)	harming the common interests of the beneficiaries	hindering the achievement of the purpose of the trust
Article 57, paragraph (1)	the settlor and the beneficiary	the settlor (if there is a trust administrator at the time in question, the settlor and the trust administrator)
Article 58, paragraph (1)	The settlor and the beneficiary may, at any time based on an agreement between them	The settlor may, at any time (if there is a trust administrator at the time in question, the settlor and the trust administrator may, at any time based on an agreement between them)
Article 58, paragraph (2)	the settlor and the beneficiary have	the settlor has (if there is a trust administrator at the time in question, the settlor and the trust administrator have)
	the settlor and the beneficiary	the settlor
Article 62, paragraph (1)	the settlor and the beneficiary may, based on an agreement between them	the settlor may (if there is a trust administrator at the time in question, the settlor and the trust administrator may, based on an agreement between them.)

Article 62, paragraph (3)	the settlor and the beneficiary (if there are two or more beneficiaries at the time in question, to one of them; if there is a trust administrator at the time in question, to the trust administrator)	the settlor (if there is a trust administrator at the time in question, to the settlor and the trust administrator)
Article 62, paragraph (4)	status of discussions pertaining to the agreement set forth in said paragraph	status of the settlor (if there is a trust administrator at the time in question, the status of discussions pertaining to the agreement set forth in said paragraph)
Article 62, paragraph (8)	"the beneficiary may"	"the trust administrator may"
	"the beneficiary"	"the trust administrator"
	"status of the beneficiary"	"status of the trust administrator"
Article 125, paragraph (1)	on behalf of a beneficiary	for the achievement of the purpose of the trust
Article 126, paragraph (2)	on behalf of the beneficiary	for the achievement of the purpose of the trust
Article 146, paragraph (1)	the trustee and the beneficiary	the trustee
Article 146, paragraph (2)	other settlor(s), the trustee, and the beneficiary.	other settlor(s) and the trustee
Article 149, paragraph (1)	the settlor, the trustee, and the beneficiary	the settlor and the trustee (if there is a trust administrator at the time in question, the settlor, the trustee, and the trust administrator)
Article 149, paragraph (2) (excluding item (i))	to the settlor and the beneficiary	to the settlor (if there is a trust administrator at the time in question, to the settlor and the trust administrator)
	is not contrary to the purpose of the trust and that it conforms to the interests of the beneficiary	is necessary for the achievement of the purpose of the trust
Article 149, paragraph (3), item (i)	the settlor and the beneficiary	the settlor (if there is a trust administrator at the time in question, to the settlor and the trust administrator)

Article 149, paragraph (5)	to the beneficiary	to the trust administrator
Article 150, paragraph (1)	no longer conforms to the interest of the beneficiary	comes to hinder the achievement of the purpose of the trust
Article 151, paragraph (1)	the settlors, trustees, and beneficiaries of the former trusts	the settlors and trustees of the former trusts (if there are trust administrators at the time in question, the settlors, the trustees, and the trust administrators)
Article 151, paragraph (2) (excluding item (i))	to the settlor and the beneficiary	to the settlor (if there is a trust administrator at the time in question, to the settlor and the trust administrator)
	is not contrary to the purpose of the trust and that it conforms to the interests of the beneficiary	is necessary for the achievement of the purpose of the trust
Article 151, paragraph (4)	to the beneficiary	to the trust administrator
Article 155, paragraph (1)	the settlor, the trustee, and the beneficiary	the settlor and the trustee (if there is a trust administrator at the time in question, the settlor, the trustee, and the trust administrator)
Article 155, paragraph (2) (excluding item (i))	to the settlor and the beneficiary	to the settlor (if there is a trust administrator at the time in question, to the settlor and the trust administrator)
	is not contrary to the purpose of the trust and that it conforms to the interests of the beneficiary	is necessary for the achievement of the purpose of the trust
Article 155, paragraph (4)	to the beneficiary	to the trust administrator
Article 159, paragraph (1)	the settlor, the trustee, and the beneficiary	the settlor and the trustee (if there is a trust administrator at the time in question, the settlor, the trustee, and the trust administrator)
Article 159, paragraph (2) (excluding item (i))	to the settlor and the beneficiary	to the settlor (if there is a trust administrator at the time in question, to the settlor and the trust administrator)

	is not contrary to the purpose of the trust: an agreement between the trustee and the beneficiary	is necessary for the achievement of the purpose of the trust
Article 159, paragraph (4)	to the beneficiary	to the trust administrator
Article 164, paragraph (1)	The settlor and the beneficiary may, at any time based on an agreement between them	The settlor may, at any time (if there is a trust administrator at the time in question, the settlor and the trust administrator may, at any time based on an agreement between them)
Article 164, paragraph (2)	the settlor and the beneficiary have	the settlor has (if there is a trust administrator at the time in question, the settlor and the trust administrator have)
	the settlor and the beneficiary	the settlor
Article 165, paragraph (1)	has come to be in the best interest of the beneficiary	has come to be reasonable
Proviso to Article 222, paragraph (6)	Beneficiary (beneficiaries)	settlor(s)
	to the trust administrator	to the trust administrator or the settlor
Proviso to Article 222, paragraph (8)	beneficiary	settlor
Article 243, paragraph (1), item (ii)(a)	the agreement	the settlor's manifest intent (if there is a trust administrator at the time in question, the agreement between the settlor and the trust administrator) as

- (2) With regard to expenses, etc., compensation for loss, and trust fees for a trustee in the case of a trust with no provisions on the beneficiary, the provisions of Article 48, paragraph (5) (including cases where applied mutatis mutandis pursuant to Article 53, paragraph (2) and Article 54, paragraph (4)) shall not apply.
- (3) With regard to a modification of a trust in the case of a trust with no provisions on the beneficiary, the provisions of Article 149, paragraph (2), item (i) and paragraph (3), item (ii) shall not apply.
- (4) With regard to the consolidation of trusts in the case of trusts with no provisions on the beneficiary, the provisions of Article 151, paragraph (2), item (i) shall not apply.
- (5) With regard to the split of a trust in the case of a trust with no provisions on the beneficiary, the provisions of Article 155, paragraph (2), item (i) and

Article 159, paragraph (2), item (i) shall not apply.

Chapter XII Miscellaneous Provisions

Section 1 Non-Contentious Cases

(Jurisdiction over Non-Contentious Cases Relating to Trusts)

Article 262 (1) Unless otherwise provided for in this Article, a non-contentious case under the provisions of this Act shall be subject to the jurisdiction of the district court having jurisdiction over the location of the address of the trustee.

(2) For the purpose of the application of the provisions of the preceding paragraph in cases where there are two or more trustees, the phrase "address of the trustee" in said paragraph shall be deemed to be replaced with "address of any of the trustees."

(3) A case pertaining to a petition to the court filed under the provisions of this Act after the termination of a trustee's duty as trustee and prior to the assumption of the office by a new trustee shall be subject to the jurisdiction of the district court having jurisdiction over the address of the former trustee.

(4) For the purpose of the application of the provisions of the preceding paragraph in cases where there are two or more trustees, the phrase "termination of a trustee's duty as trustee" in said paragraph shall be deemed to be replaced with "termination of all trustees' duties as trustees," and for the purpose of the application of the provisions of said paragraph in cases where there are two or more former trustees, the phrase "address of the former trustee" in said paragraph shall be deemed to be replaced with "address of any of the former trustees."

(5) A case pertaining to a petition set forth in Article 6, paragraph (1) or Article 258, paragraph (6) shall be subject to the jurisdiction of the district court having jurisdiction over the testator's last address.

(Special Rules for Procedures for Non-Contentious Cases Relating to Trusts)

Article 263 With regard to non-contentious cases under the provisions of this Act, the provisions of Article 15 of the Non-Contentious Cases Procedures Act shall not apply.

(Supreme Court Rules)

Article 264 In addition to what is provided for in this Act, the necessary matters concerning procedures for non-contentious cases under the provisions of this Act shall be prescribed by the Rules of the Supreme Court.

Section 2 Public Notice, etc.

(Method of Public Notice in the Case of a Trustee Who Is a Juridical Person)

Article 265 In cases where a trustee (after the termination of a trustee's duty as trustee and prior to the assumption of the duty by a new trustee, the former trustee) is a juridical person, public notice under the provisions of this Act (excluding Article 152, paragraph (2), Article 156, paragraph (2), Article 160, paragraph (2) and Article 229, paragraph (1)) shall be given in accordance with the method of public notice (including the period of public notice) which is used by said juridical person.

(Special Rules for Public Notice Procedures, etc. in the Case of the Merger, etc. of a Trustee Who Is a Juridical Person)

Article 266 (1) Where it is provided that creditors of a juridical person may state their objections through a public notice, separate notice, or other procedures with regard to an entity conversion, merger, or any other act to be conducted by the juridical person pursuant to the provisions of the Companies Act and other laws, when a trustee is such a juridical person intends to conduct such an act, creditors who hold claims pertaining to obligation covered by the trust property that the trustee is only liable for using property that belongs to the trust property to perform shall not be included in the scope of such creditors who may state their objections through such procedures with regard to said act.

(2) For the purpose of the application of the provisions on the transfer of a business of a juridical person under the provisions of the Companies Act and other Acts, a trust created by the method set forth in Article 3, item (iii) shall be included in the scope of acts subject to these provisions; provided, however, that this shall not apply if such Acts otherwise provide.

Chapter XIII Penal Provisions

(Crime of Bribery by or of the Trustee, etc. of a Limited Liability Trust With Certificate of Beneficial Interest)

Article 267 (1) When any of the following persons, in connection with such person's duties, has accepted, solicited, or promised to accept a bribe, the person shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen. When such person has committed misconduct or failed to conduct an appropriate act due to such a bribe, the person shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen:

- (i) a trustee (including a former trustee or liquidation trustee; the same shall apply hereinafter) of a limited liability trust with certificate of beneficial interest;
- (ii) a trust property administrator of a limited liability trust with certificate of

- beneficial interest;
- (iii) a person who acts for the trustee of a limited liability trust with certificate of beneficial interest, who was appointed by an order of provisional disposition prescribed in Article 56 of the Civil Preservation Act;
 - (iv) an incorporated trust property administrator of a limited liability trust with certificate of beneficial interest;
 - (v) a trust caretaker of a limited liability trust with certificate of beneficial interest;
 - (vi) a trust supervisor of a limited liability trust with certificate of beneficial interest;
 - (vii) a beneficiary's agent in a limited liability trust with certificate of beneficial interest;
 - (viii) an inspector of a limited liability trust with certificate of beneficial interest; and
 - (ix) an accounting auditor.
- (2) A person who has given, offered, or promised to offer a bribe prescribed in the preceding paragraph shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen.
- (3) In the case referred to in paragraph (1), any bribe accepted by the offender shall be confiscated. If the whole or part of the bribe cannot be confiscated, the equivalent value thereof shall be collected.

(Crimes Committed Outside Japan)

- Article 268 (1) The crime set forth in paragraph (1) of the preceding Article shall also apply to a person who has committed the crime set forth in said paragraph outside Japan.
- (2) The crime set forth in paragraph (2) of the preceding Article shall be governed by the provisions of Article 2 of the Penal Code (Act No. 45 of 1907).

(Application of Penal Provisions to Juridical Persons)

- Article 269 If the person prescribed in Article 267, paragraph (1) is a juridical person, the provisions of said paragraph shall apply to the director, executive officer, or any other officer executing business or manager who has committed such act.

(Acts to Be Punished by Non-Criminal Fine)

- Article 270 (1) Where the trustee, the former trustee's heir, etc. as prescribed in Article 60, paragraph (1), the trust property administrator, a person who acts for the trustee who was appointed by an order of provisional disposition prescribed in Article 56 of the Civil Preservation Act, or the incorporated trust property administrator, trust caretaker, trust supervisor, beneficiary's agent,

or inspector falls under any of the following, such person shall be punished by a non-penal fine of not more than one million yen; provided, however, that this shall not apply if the act in question should be subject to a criminal punishment:

- (i) when the person has failed to give public notice or other notice under the provisions of this Act or has given improper public notice or other notice;
 - (ii) when the person has failed to disclose matters under the provisions of this Act;
 - (iii) when the person has, in violation of the provisions of this Act, refused to allow the inspection or copying of documents or any object which indicates the matters recorded in electromagnetic records by a method specified by Ordinance of the Ministry of Justice, without justifiable grounds;
 - (iv) when the person has failed to give a report under the provisions of this Act or when the person has given a false report;
 - (v) when the person has obstructed an investigation under the provisions of this Act;
 - (vi) when the person has failed to prepare or preserve the documents or electromagnetic records set forth in Article 37, paragraph (1), paragraph (2) or paragraph (5) or the minutes set forth in Article 120 (limited to cases where it is provided by the terms of trust that the beneficiaries' decision shall be made by a majority vote at a beneficiaries meeting as provided for in Chapter IV, Section 3, Subsection 2), when the person has failed to state or record matters that should be stated or recorded in such documents or records, or when the person has made false statements or records;
 - (vii) when the person has effected a consolidation of trusts or split of a trust in violation of the provisions of Article 152, paragraph (2) or paragraph (5), Article 156, paragraph (2) or paragraph (5) or Article 160, paragraph (2) or paragraph (5);
 - (viii) when the person has, in violation of the provision of Article 179, paragraph (1), failed to file a petition for the commencement of bankruptcy proceedings; or
 - (ix) when the person has, in violation of the provision of Article 181, distributed property that belongs to the trust property in liquidation.
- (2) Where the trustee, the trust property administrator, a person who acts for the trustee who was appointed by an order of provisional disposition prescribed in Article 56 of the Civil Preservation Act, or the incorporated trust property administrator, trust supervisor, or beneficial interest registry administrator of a trust with certificates of beneficial interest falls under any of the following, such person shall be punished by a non-criminal fine of not more than one million yen; provided, however, that this shall not apply if the act in question should be subject to criminal punishment:

- (i) when the person has failed to prepare or preserve the minutes set forth in Article 120 (limited to cases where the terms of trust does not otherwise provide as set forth in Article 214) or the beneficial interest registry set forth in Article 186, when the person has failed to state or record matters that should be stated or recorded in these documents or records, or when the person has made false statements or records;
 - (ii) when the person has, in violation of the provisions of Article 187, paragraph (1) or Article 202, paragraph (1), refused to deliver documents or provide electromagnetic records;
 - (iii) when the person has, in violation of the provisions of Article 190, paragraph (1), failed to keep the beneficial interest registry set forth in Article 186;
 - (iv) when the person has, in violation of the provisions of Article 207, failed to issue a certificate of beneficial interest without delay; or
 - (v) when the person has, in violation of the provisions of Article 209, failed to state matters on a certificate of beneficial interest or has made false statements.
- (3) Where the trustee, the trust property administrator, a person who acts for the trustee who was appointed by an order of provisional disposition prescribed in Article 56 of the Civil Preservation Act, or the incorporated trust property administrator of a limited liability trust falls under any of the following, such person shall be punished by a non-criminal fine of not more than one million yen; provided, however, that this shall not apply if the act in question should be subject to criminal punishment:
- (i) when the person has failed to make a registration under the provisions of Chapter IX, Section 3;
 - (ii) when the person has failed to prepare or preserve the accounting books set forth in Article 222, paragraph (2), the balance sheet set forth in paragraph (3) of said Article or the documents or electromagnetic records set forth in paragraph (4) or paragraph (7) of said Article, when the person has failed to state or record matters that should be stated or recorded in these documents or records, or when the person has made false statements or records;
 - (iii) when the person has, with the intention of delaying the completion of the liquidation, inappropriately specified the period set forth in Article 229, paragraph (1); or
 - (iv) when the person has performed any obligation in violation of the provisions of Article 230, paragraph (1).
- (4) When the trustee, the trust property administrator, a person who acts for the trustee who was appointed by an order of provisional disposition prescribed in Article 56 of the Civil Preservation Act, or the incorporated trust property administrator or trust supervisor of a trust with accounting auditors has, in

violation of the provisions of Article 250, paragraph (3), failed to carry out the procedures for appointing an accounting auditor, such person shall be punished by a non-criminal fine of not more than one million yen; provided, however, that this shall not apply if the act in question should be subject to criminal punishment.

Article 271 A person who falls under any of the following shall be punished by a non-criminal fine of not more than one million yen:

- (i) a person who has, in violation of the provisions of Article 218, paragraph (1), failed to use the characters representing the term "limited liability trust" in the name of a limited liability trust;
- (ii) a person who has, in violation of the provisions of Article 218, paragraph (2), used, in its name or trade name, any characters which make it likely that a trust will be mistaken for a limited liability trust; or
- (iii) a person who has, in violation of the provisions of Article 218, paragraph (3), used any name or trade name which makes it likely that a limited liability trust will be mistaken for another limited liability trust.

Supplementary Provisions

(Effective Date)

- (1) This Act shall come into effect as of the day specified by Cabinet Order within a period not exceeding one year and six months from the date of its promulgation.

(Transitional Measures Concerning a Declaration of Trust)

- (2) The provisions of Article 3, item (iii) shall not apply until the day on which one year has elapsed from the date of enforcement of this Act.

(Transitional Measures Concerning Trusts with No Provisions on the Beneficiary)

- (3) Until a date specified separately by law, a trust with no provisions on the beneficiary (excluding trusts to be created for academic activities, art, charity, worship, religion, or any other public interest) may not be created by designating, as the trustee, a person other than a juridical person specified by Cabinet Order as having sufficient financial basis and personnel structure to appropriately administer trust affairs concerning said trust.
- (4) The date specified separately by law set forth in the preceding paragraph shall be considered in light of the status of the review of trusts with no provisions on their beneficiaries which are created for academic activities, art, charity, worship, religion, or other public interest, as well as other

circumstances concerned, and shall be determined based on such consideration.