

# Act on Investment Trusts and Investment Corporations

(Act No. 198 of June 4, 1951)

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## **Part I General Provisions**

(Purpose)

Article 1 The purpose of this Act is to facilitate investors' investments in securities and other assets by establishing a system for persons other than investors to use investment trusts and investment corporations so as to collectively invest investors' funds mainly in securities and other assets and distribute the fruits of this investment to the investors, ensuring the appropriate investment of funds through investment trusts and investment corporations, as well as by protecting persons such as the purchaser of each type of security issued based on this system, thereby contributing to the sound development of the national economy.

(Definitions)

- Article 2 (1) The term "Investment Trust Managed under Instructions from the Settlor" as used in this Act means a trust whose purpose is for trust property to be invested mainly in Securities, real property, and other assets that Cabinet Order specifies as those in which it is necessary to facilitate investment (hereinafter collectively referred to as "Specified Assets") based on the settlor's instructions (or based on the instructions of a person provided by Cabinet Order, if such a person is entrusted with all or part of the authority for giving instructions), which is established based on this Act, and whose purpose is for the beneficial interest to be divided and for multiple persons to acquire it.
- (2) The term "Investment Trust Managed without Instructions from the Settlor" as used in this Act means a trust whose purpose is for the trustee to invest, as a consolidated unit, the monies accepted thereby pursuant to trust agreements concluded with multiple settlors based on a single set of basic terms and conditions of trust, mainly in Specified Assets, without instructions from the settlor (this includes investment by a person provided by Cabinet Order, if such a person is entrusted with a part of the authority to make such investments), which is established based on this Act.
- (3) The term "Investment Trust" as used in this Act means an Investment Trust Managed under Instructions from the Settlor or an Investment Trust Managed without Instructions from the Settlor.
- (4) The term "Securities Investment Trust" as used in this Act means an Investment Trust Managed under Instructions from the Settlor as prescribed by Cabinet Order, whose purpose is for investments to be made mainly in Securities (other than the rights set forth in the items of Article 2, paragraph (2) of the Financial Instruments and Exchange Act (Act No. 25 of 1948) which are deemed to be Securities pursuant to the provisions of that paragraph; the same applies in Article 7 and Article 48) (such investments include transactions in securities-related derivatives as provided in Article 28,

paragraph (8), item (vi) of that Act which Cabinet Order prescribes; the same applies in Article 7 and Article 48).

- (5) The term "Securities" as used in this Act means Securities as prescribed in Article 2, paragraph (1) of the Financial Instruments and Exchange Act or rights deemed to be Securities pursuant to paragraph (2) of that Article.
- (6) The term "Derivatives Transaction" as used in this Act means a derivatives transaction as prescribed in Article 2, paragraph (20) of the Financial Instruments and Exchange Act.
- (7) The term "Beneficiary Certificate" as used in this Act means a certificate representing a beneficial interest under the trust agreement for an investment trust, which the settlor issues pursuant to the provisions of this Act if the trust is an Investment Trust Managed under Instructions from the Settlor, or which the trustee issues pursuant to the provisions of this Act if it is an Investment Trust Managed without Instructions from the Settlor; or a certificate from a Foreign Investment Trust that is similar to this.
- (8) The term "Public Offering" as used in this Act means soliciting offers to acquire newly issued Beneficiary Certificates (including what Cabinet Office Order prescribes as being similar to such solicitation; the same applies hereinafter) in a way that falls under a case that Cabinet Order prescribes as one in which a large number of persons are being solicited (other than a Private Placement with Qualified Institutional Investors and Professional Investors)
- (9) The term "Private Placement with Qualified Institutional Investors and Professional Investors" as used in this Act means soliciting offers to acquire newly issued Beneficiary Certificates in a way that falls under one of the following items:
  - (i) a case as prescribed by Cabinet Order in which only qualified institutional investors (meaning qualified institutional investors as prescribed in Article 2, paragraph (3), item (i) of the Financial Instruments and Exchange Act) are solicited; or
  - (ii) a case as prescribed by Cabinet Order in which only professional investors (meaning professional investors as prescribed in Article 2, paragraph (31) of the Financial Instruments and Exchange Act; this includes persons as prescribed by Cabinet Office Order that are deemed to be professional investors pursuant to the provisions of Article 34-3, paragraph (4) of that Act (including as applied mutatis mutandis pursuant to Article 34-4, paragraph (6) of that Act) or Article 34-3, paragraph (6) of that Act (including as applied mutatis mutandis pursuant to Article 34-4, paragraph (6) of that Act) and excludes persons as prescribed by Cabinet Office Order that are deemed to be customers other than professional investors pursuant to Article 34-2, paragraph (5) or paragraph (8) of that Act) are solicited.

- (10) The term "Private Placement with General Investors" as used in this Act means soliciting offers to acquire newly issued Beneficiary Certificates in a way that falls under neither a Public Offering nor a Private Placement with Qualified Institutional Investors and Professional Investors.
- (11) The term "Settlor Company of an Investment Trust" as used in this Act means a financial instruments business operator (meaning a financial instruments business operator as prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (this is limited to a financial instruments business operator conducting investment management business as provided in Article 28, paragraph (4) of that Act, and excludes trust companies); hereinafter the same applies except in Article 208, paragraph (2), item (ii) that is the settlor of an Investment Trust Managed under Instructions from the Settlor.
- (12) The term "Investment Corporation" as used in this Act means an association incorporated based on this Act for the purpose of investing assets, mainly in Specified Assets.
- (13) The term "Registered Investment Corporation" as used in this Act means an Investment Corporation registered as referred to in Article 187.
- (14) The term "Investment Equity" as used in this Act means membership status in an Investment Corporation that has been divided into equal units.
- (15) The term "Investment Security" as used in this Act means a certificate that represents Investment Equity.
- (16) The term "Investor" as used in this Act means a member of an Investment Corporation.
- (17) The term "Investment Equity Option" as used in this Act means a right that entitles the holder to acquire Investment Equity issued by an Investment Corporation by exercising it against that Investment Corporation.
- (18) The term "Investment Equity Option Certificate" as used in this Act means a certificate that represents an Investment Equity Option.
- (19) The term "Investment Corporation Bond" as used in this Act means a monetary claim with an Investment Corporation as its obligor that the Investment Corporation issues in an allotment that it makes pursuant to the provisions of this Act, which has that Investment Corporation as its obligor and which is redeemed based on what is prescribed as regards the information set forth in the items of Article 139-3, paragraph (1).
- (20) The term "Investment Corporation Bond Certificate" as used in this Act means a certificate that represents an Investment Corporation Bond.
- (21) The term "Asset Management Company" as used in this Act means a financial instruments business operator that engages in the operations involved in the investment of a Registered Investment Corporation's assets as entrusted thereby.

- (22) The term "Asset Custody Company" as used in this Act means a corporation engages in the operations involved in custody of a Registered Investment Corporation's assets as entrusted thereby.
- (23) The term "Administrative Agent" as used in this Act means a person carrying out administrative processes connected with operations other than investment and custody of an Investment Corporation's assets as entrusted thereby.
- (24) The term "Foreign Investment Trust" as used in this Act means a trust established in a foreign state under the laws and regulations thereof which is similar to an Investment Trust.
- (25) The term "Foreign Investment Corporation" as used in this Act means an association that is a corporation or that lacks the legal capacity to hold rights, which has been incorporated in compliance with the laws and regulations of a foreign state, and which issues Investment Securities, Investment Equity Option Certificates, or certificates similar to Investment Corporation Bond Certificates.

## **Part II The Investment Trust System**

### **Chapter I Investment Trusts Managed under Instructions from the Settlor**

(Settlers and Trustees of Investment Trusts Managed under Instructions from the Settlor)

Article 3 It is prohibited for an agreement for an Investment Trust Managed under Instructions from the Settlor (hereinafter referred to as an "investment trust agreement" in this Chapter) to be concluded unless a single financial instruments business operator (for an investment trust agreement set forth in one of the following items, this means the financial instruments business operator referred to in the relevant item) is the settlor and a single trust company or similar institution (meaning a trust company or financial institution engaged in trust business (meaning a financial institution authorized under Article 1, paragraph (1) of the Act on Engagement in Trust Business Activities by Financial Institutions (Act No. 43 of 1943); the same applies hereinafter); hereinafter the same applies except in the following Chapter, Article 223-3, paragraph (4) and Article 249) is the trustee:

- (i) an investment trust agreement that has real property (meaning buildings or building lots as prescribed in Article 2, item (i) of the Real Estate Brokerage Act (Act No. 176 of 1952); the same applies in the following item, Article 66, paragraph (3), item (i), sub-items (a) and (b); Article 199, items (i) and (ii); and Article 224-2) as one of the assets targeted for investment: a financial instruments business operator licensed as referred to in Article 3, paragraph (1) of that Act;

- (ii) an investment trust agreement whose purpose is for the trust property of an Investment Trust Managed under Instructions from the Settlor (hereinafter such trust property is referred to as "investment trust property" in this Chapter) to be invested mainly in real property: a financial instruments business operator authorized as referred to in Article 50-2, paragraph (1) of the Real Estate Brokerage Act; and
- (iii) an investment trust agreement as prescribed by Cabinet Order, beyond what is set forth in the preceding two items: a financial instruments business operator as prescribed by Cabinet Order.

(Conclusion of Investment Trust Agreements)

Article 4 (1) Before concluding an investment trust agreement, a financial instruments business operator must first notify the Prime Minister of the details of the basic terms and conditions of trust for the Investment Trust Managed under Instructions from the Settlor governing that investment trust agreement (hereinafter referred to as the "basic terms and conditions of the investment trust" in this Chapter).

(2) The basic terms and conditions of an investment trust must give the following information:

- (i) the trade names or names of the settlor and trustee (including an indication that the settlor is a financial instruments business operator registered as referred to in Article 29 of the Financial Instruments and Exchange Act to conduct investment management for qualified investors (meaning the investment management for qualified investors provided for in Article 29-5, paragraph (1) of that Act; the same applies hereinafter), if this is the case);
- (ii) information concerning the beneficiary;
- (iii) information concerning the business of the settlor and trustee;
- (iv) information concerning the amount of trust principal;
- (v) information concerning Beneficiary Certificates;
- (vi) information concerning the management and investment of the trust principal and profits (including the type of assets invested in);
- (vii) information concerning the method, criteria, and record date for assessing investment trust property;
- (viii) information concerning the redemption of trust principal and profit distribution;
- (ix) information concerning the term of the trust agreement, extension thereof, and cancellation during the term of the trust agreement;
- (x) information concerning the accounting period for the trust;
- (xi) information concerning how trust fees and other fees received by the trustee and the settlor are calculated, as well as how and when they will be paid;

- (xii) whether the trust will use Public Offerings, private placement with qualified institutional investors (meaning soliciting offers to acquire newly issued Beneficiary Certificates in a way that falls under Article 2, paragraph (9), item (i); the same applies hereinafter), private placement with professional investors (meaning soliciting offers to acquire newly issued Beneficiary Certificates in a way that falls under Article 2, paragraph (9), item (ii); the same applies hereinafter), or Private Placement with General Investors;
  - (xiii) if the trustee will borrow the funds needed to create the trust, information concerning the limit on the amount of those borrowings;
  - (xiv) if the settlor will entrust another person with the authority to give instructions on investment, the trade name or name of the person that the settlor will entrust with the authority to give instructions on investment (including an indication that the person is a financial instruments business operator registered as referred to in Article 29 of the Financial Instruments and Exchange Act to conduct investment management for qualified investors, if this is the case) and the place where that person is located;
  - (xv) the cost of the entrustment in the case referred to in the preceding item;
  - (xvi) information concerning revising the basic terms and conditions of the investment trust;
  - (xvii) the means of public notice by the settlor; and
  - (xviii) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (3) Except in the cases that Cabinet Office Order prescribes, the accounting period referred to in item (x) of the preceding paragraph may not exceed one year.
- (4) Cabinet Office Order prescribes the details of the information set forth in the items of paragraph (2).

(Issuing Documents Giving Details of Basic Terms and Conditions of Investment Trusts)

Article 5 (1) A financial instruments business operator must issue a paper document that gives the details of the basic terms and conditions of an investment trust that govern the investment trust agreement that it will conclude and any other information that Cabinet Office Order prescribes, to the person seeking to acquire Beneficiary Certificates under the investment trust agreement; provided, however, that this does not apply if the information required to be given in that document has already been given in a prospectus as prescribed in Article 2, paragraph (10) of the Financial Instruments and Exchange Act, nor does it apply to any other case that Cabinet Office Order prescribes as one in which non-application of these provisions is unlikely to

lead to a lack of protection for the beneficiaries.

- (2) In lieu of delivering a paper document as under the preceding paragraph, a financial instruments business operator may use an electronic data processing system or apply information and communications technology in a way that Cabinet Office Order prescribes to provide a person seeking to acquire Beneficiary Certificates with the information required to be given in that document, with the consent of that person and pursuant to the provisions of Cabinet Order. In such a case, the financial instruments business operator is deemed to have delivered the paper document.

(Beneficiary Certificates)

Article 6 (1) The beneficial interest in an Investment Trust Managed under Instructions from the Settlor must be divided equally, and the divided beneficial interest must be indicated on Beneficiary Certificates.

- (2) A divided beneficial interest in an Investment Trust Managed under Instructions from the Settlor must be transferred or exercised using a Beneficiary Certificate, except as indicated on a registered Beneficiary Certificate.
- (3) The beneficiary of an Investment Trust Managed under Instructions from the Settlor is to hold rights to the redemption of trust principal and distribution of profits commensurate with the number of units of beneficial interest held thereby.
- (4) Beneficiary Certificates are in bearer form; provided, however, that a Beneficiary Certificate may be converted to registered form at the request of the beneficiary.
- (5) A Beneficiary Certificate in registered form may be converted into bearer form at the request of the beneficiary.
- (6) The following information and the serial number of the Beneficiary Certificate must appear on the Beneficiary Certificates of an Investment Trust Managed under Instructions from the Settlor, and the representative of the settlor must sign it or have the name and seal thereof affixed to it:
- (i) the trade name or name of the settlor and trustee (including an indication that the settlor is a financial instruments business operator registered as referred to in Article 29 of the Financial Instruments and Exchange Act to conduct investment management for qualified investors, if this is the case);
  - (ii) the number of units of beneficial interest;
  - (iii) the initial amount of trust principal and the total number of units of beneficial interest at the time of the conclusion of the investment trust agreement;
  - (iv) the term of the trust agreement;
  - (v) the time and place for redemption of the trust principal and distribution of

- profits;
- (vi) how trust fees and other fees received by the trustee and the settlor are calculated, as well as how and when they will be paid;
  - (vii) whether the trust uses Public Offerings, private placement with qualified institutional investors, private placement with professional investors, or Private Placement with General Investors;
  - (viii) for the Beneficiary Certificates of an Investment Trust Managed under Instructions from the Settlor whose principal may be added to, the limit on the amount of the principal up to which additions may be made;
  - (ix) if the settlor will entrust another person with the authority to give instructions on investment, the trade name or name of the person that the settlor will entrust with the authority to give instructions on investment (including an indication that the other person is a financial instruments business operator registered as referred to in Article 29 of the Financial Instruments and Exchange Act to conduct investment management for qualified investors, if this is the case) and the place where that person is located;
  - (x) the cost of the entrustment in the case referred to in the preceding item; and
  - (xi) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (7) The provisions of Chapter 8 of the Trust Act (Act No. 108 of 2006) (excluding Article 185; Article 187; Article 192; Article 195, paragraph (2); Article 200, paragraph (2); Article 202, paragraph (4); Article 206; Article 207; Article 209; Article 210; Article 212; Article 214; and Article 215) apply mutatis mutandis to Investment Trusts Managed under Instructions from the Settlor. In such a case, the term "Ministry of Justice Order" in those provisions is deemed to be replaced with "Cabinet Office Order"; the term "trustee" in Article 186; Article 188; Article 189, paragraph (1), paragraph (3), and paragraph (4); Article 190, paragraph (1) through paragraph (3); Article 193; Article 197, paragraph (1) through paragraph (3); Article 198, paragraph (1); Article 201, paragraph (1); Article 202, paragraph (1) through paragraph (3); Article 204; Article 205; and Article 208, paragraph (1) through paragraph (4) and paragraph (6) of that Act is deemed to be replaced with "settlor"; the phrase "shall give public notice in the Official Gazette" in Article 189, paragraph (4) and Article 191, paragraph (5) of that Act is deemed to be replaced with "must give public notice"; the term "settlor" in Article 190, paragraph (2) of that Act is deemed to be replaced with "trustee"; the terms "a trustee" and "the trustee" in Article 191, paragraph (1) and paragraph (3) and Article 203, paragraph (1) of that Act are deemed to be replaced with "the settlor or trustee" and "the settlor", respectively; the term "the trustee" in Article 191, paragraph (4) of that Act is deemed to be replaced

with "the settlor or trustee"; the phrase "beneficial interest in a trust that issues beneficiary certificates (excluding a beneficial interest under Article 185, paragraph (2))" in Article 194 of that Act is deemed to be replaced with "beneficial interest for which a registered Beneficiary Certificate is issued"; the term "trustee" in Article 195, paragraph (1) and Article 200, paragraph (1) of that Act is deemed to be replaced with "settlor and trustee"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Prohibition on Placing Assets into Trusts Other than Securities Investment Trusts with Objective of Investing in Securities)

Article 7 Unless the trust is a Securities Investment Trust, it is prohibited for any person to enter into a trust agreement for investing trust property mainly in Securities or to place assets into trust for that purpose in the way set forth in Article 3, item (iii) of the Trust Act; provided, however, that this does not apply to a trust not issuing beneficiary certificates as specified in Article 185, paragraph (3) of that Act whose purpose is not for the beneficial interest to be divided and for multiple persons to acquire it.

(Prohibition on Investment Trusts Managed under Instructions from Settlor Other than Cash Trusts)

Article 8 (1) An Investment Trust Managed under Instructions from the Settlor (other than one falling under the category of a Securities Investment Trust whose purpose is to invest mainly in assets that can be easily realized, and that Cabinet Order prescribes as being unlikely to lead to a lack of protection for the beneficiaries) must be a cash trust.

(2) Notwithstanding the provisions of Article 151 of the Trust Act, the trust property of an Investment Trust Managed under Instructions from the Settlor and the trust property of a trust other than an Investment Trust Managed under Instructions from the Settlor may not be merged together into a new trust.

(3) The provisions of Section 3 of Chapter 6 and of Chapter 9 of the Trust Act do not apply to Investment Trusts Managed under Instructions from the Settlor.

(Restriction on Investment Instructions)

Article 9 The Settlor Company of an Investment Trust may not instruct the trust company or similar institution that is the trustee of the investment trust property (hereinafter referred to as the "Trustee Company") to use investment trust property to acquire shares issued by a single corporation if this would cause the number referred to in item (i) below to exceed the number referred to in item (ii):

(i) the total number of voting rights (excluding voting rights in respect of

shares that do not entitle the holder to vote on all matters that can be resolved at a shareholders meeting, but including voting rights in respect of shares that are deemed to entitle the holder to a vote pursuant to the provisions of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); hereinafter the same applies in the following item; Article 11, paragraph (1); the items of Article 194, paragraph (1); and Article 201, paragraph (1)) from shares held as investment trust property by all of the Investment Trusts Managed under Instructions from the Settlor on whose investment the Settlor Company gives instructions;

- (ii) the number arrived at when the total number of voting rights from those shares is multiplied by the rate that Cabinet Office Order prescribes.

(Exercise of Voting Rights by Instruction)

Article 10 (1) The Settlor Company of an Investment Trust is to give instructions on the exercise of voting rights; shareholder rights based on Article 166, paragraph (1), Article 202, paragraph (2), and Article 469, paragraph (1) of the Companies Act; the right to assert the invalidity of the acts set forth in Article 828, paragraph (1), item (ii) and item (iii) of that Act based on Article 828, paragraph (1) of that Act; and shareholder rights that Cabinet Office Order prescribes as being equivalent to these (including the rights of an Investor, preferred equity investor under the Act on Preferred Equity Investment by Cooperatively Structured Financial Institutions (Act No. 44 of 1993; referred to as the "Act on Preferred Equity Investment" in the following paragraph), or person prescribed by Cabinet Order, which Cabinet Order prescribes as being similar to these rights), in connection with securities that are held as investment trust property.

- (2) Article 310, paragraph (5) of the Companies Act (including as applied mutatis mutandis pursuant to Article 94, paragraph (1) of this Act; Article 40, paragraph (2) of the Act on Preferred Equity Investment; or the provisions that Cabinet Order prescribes) does not apply to the exercise of voting rights in respect of shares (including Investment Equity, preferred equity investment under the Act on Preferred Equity Investment, or other rights that Cabinet Order prescribes) held as investment trust property.

(Assessment of Value of Specified Assets)

Article 11 (1) If an acquisition or transfer of Specified Assets (but only of lands or buildings or of associated rights or assets that Cabinet Order prescribes) has been made in connection with investment trust property about whose investment the Settlor Company of an Investment Trust gives instructions, the Settlor Company of the Investment Trust, pursuant to Cabinet Office Order, must have a person other than an interested person or other close affiliate

(meaning a person that Cabinet Order prescribes as holding over half of all shareholders' voting rights in the Settlor Company of the Investment Trust or as being otherwise closely affiliated with the Settlor Company of the Investment Trust; the same applies in Article 13, paragraph (1), item (ii) and item (iii)) that is a real estate appraiser, appraise the real property constituting the Specified Assets; provided, however, that this does not apply if the Settlor Company of the Investment Trust has that appraisal done prior to the acquisition or transfer.

- (2) If an acquisition or transfer of Specified Assets other than those provided for in the preceding paragraph (and other than Securities listed on a Financial Instruments Exchange as provided in Article 2, paragraph (16) of the Financial Instruments and Exchange Act and other assets that Cabinet Office Order prescribes (hereinafter referred to as "Designated Assets")) is made or any other action that Cabinet Office Order prescribes is taken in connection with investment trust property about whose investment the Settlor Company of an Investment Trust gives instructions, the Settlor Company of the Investment Trust must have a person that Cabinet Order prescribes which is other than itself, its interested person or other close affiliate, or the Trustee Company assess the value of the Specified Assets and investigate other matters that Cabinet Office Order prescribes; provided, however, that this does not apply if the Settlor Company of the Investment Trust has that appraisal done prior to the action being taken.

(Entrustment of Authority to Give Instructions on Investment)

Article 12 (1) The Settlor Company of an Investment Trust must not entrust a person provided by Cabinet Order as referenced in Article 2, paragraph (1) or any other person with the full authority to give instructions for all of the Investment Trusts Managed under Instructions from the Settlor for which it gives instructions on investment.

- (2) To apply the preceding three Articles if the Settlor Company of an Investment Trust full or partial authority to give instructions on the investment of specific investment trust property on whose investment it gives instructions, the term "Settlor Company of an Investment Trust" as used in those provisions is deemed to be replaced with "Settlor Company of an Investment Trust (or a person provided by Cabinet Order as referenced in Article 2, paragraph (1) that has been entrusted by the Settlor Company of the Investment Trust with full or partial authority to give instructions on investment)".

(Delivery of Paper Documents to Beneficiaries If Conflict of Interests Is Likely)

Article 13 (1) If a transaction set forth in one of the following items has been made, the Settlor Company of an Investment Trust, pursuant to the provisions

of Cabinet Office Order, must deliver a paper document that gives the particulars of the transaction to all of the beneficiaries of the investment trust property that the item prescribes (and to the persons that Cabinet Order prescribes); provided, however, that, if offers to acquire Beneficiary Certificates in connection with the investment trust property have been solicited by way of a Public Offering, the company must deliver the document to the known beneficiaries of the investment trust property that the item prescribes (and to the persons that Cabinet Order prescribes):

- (i) a sale and purchase of Specified Assets (but only those constituting real property or other assets that Cabinet Order prescribes; hereinafter the same applies in this item and the following item) or any other transaction that Cabinet Order prescribes which the company makes on its own account: investment trust property of an Investment Trust Managed under Instructions from the Settlor investing in the same type of assets as those Specified Assets;
  - (ii) a sale and purchase of Specified Assets or any other transaction that Cabinet Order prescribes which takes place between the investment trust property about whose investment the company gives instructions and itself, its director, or its executive officer; other investment trust property about whose investment it gives instructions (if the Settlor Company of the Investment Trust is an Asset Management Company, this includes Investment Corporations whose assets it invests; the same applies in the following item); its interested person or other close affiliate; or any other person that Cabinet Order prescribes: the investment trust property about whose investment it gives instructions and other investment trust property of an Investment Trust Managed under Instructions from the Settlor investing in the same type of assets as those Specified Assets; and
  - (iii) a sale and purchase of Specified Assets (other than Designated Assets and the assets that Cabinet Office Order prescribes) or any other transaction that Cabinet Order prescribes, other than as set forth in the preceding item, which takes place between the investment trust property about whose investment the company gives instructions and itself, its director, or its executive officer; other investment trust property about whose investment it gives instructions; its interested person or other close affiliate; or any other person that Cabinet Order prescribes: the investment trust property about whose investment it gives instructions.
- (2) The provisions of Article 5, paragraph (2) apply mutatis mutandis to the delivery of documents prescribed in the preceding paragraph. In such a case, the phrase "a person seeking to acquire Beneficiary Certificates" in paragraph (2) of that Article is deemed to be replaced with "the beneficiary".
- (3) The preceding two paragraphs do not apply if:

- (i) offers to acquire Beneficiary Certificates for investment trust property have been solicited by way of a private placement with qualified institutional investors and the basic terms and conditions of the investment trust provide that paper documents referred to in paragraph (1) will not be delivered; and
- (ii) the Beneficiary Certificates for investment trust property fall under the category of Securities for Professional Investors as provided in Article 4, paragraph (3) of the Financial Instrument and Exchange Act, and the information on the particulars that are required to be given in the document referred to in paragraph (1) is provided or disclosed to all the beneficiaries (and to the persons that Cabinet Order prescribes) pursuant to Article 27-32, paragraph (1) or paragraph (2) of that Act as the information on the issuer prescribed in Article 27-32, paragraph (1) of that Act (but only if the basic terms and conditions of the investment trust provide that this information is to be provided or disclosed in lieu of the document referred to in paragraph (1) being delivered).

(Delivery of Investment Reports)

Article 14 (1) The Settlor Company of an Investment Trust, pursuant to Cabinet Office Order, must prepare a paper investment report for the investment trust property about whose investment it gives instructions, on the last day of the accounting period for that investment trust property (or, for investment trust property that Cabinet Office Order prescribes, on the date that Cabinet Office Order prescribes; referred to as the "preparation date" in item (ii)) and deliver it to known beneficiaries of the investment trust property; provided, however, that this does not apply:

- (i) if offers to acquire Beneficiary Certificates have been solicited by way of private placement with qualified institutional investors, and the basic terms and conditions of the investment trust provide that an investment report will not be delivered;
  - (ii) if a cohabitant of the beneficiary is likely to receive investment reports, and the beneficiary, by the preparation date, has consented to not being delivered an investment report (unless the beneficiary then requests, by the preparation date, to be delivered that investment report); and
  - (iii) in a case other than as set forth in the preceding two items that Cabinet Office Order prescribes as one in which, even if the company does not deliver investment reports, this is unlikely to lead to a lack of protection for the beneficiaries.
- (2) If the Settlor Company of an Investment Trust provides in the basic terms and conditions of the investment trust that, in lieu of delivering the paper investment reports referred to in the preceding paragraph, it will provide the relevant persons with the information it is required to give in the paper

investment reports referred to in that paragraph by electronic magnetic means (meaning by using an electronic data processing system or applying information and communications technology in a way that Cabinet Office Order prescribes; hereinafter the same applies in this paragraph), it may provide those persons with that information by electronic or magnetic means. In doing so, the Settlor Company of the Investment Trust is deemed to have delivered a paper investment report as prescribed in the preceding paragraph.

(3) Notwithstanding the provisions of the preceding paragraph, if a beneficiary requests to be delivered a paper investment report as referred to in paragraph (1), the Settlor Company of the Investment Trust must deliver it.

(4) The Settlor Company of an Investment Trust must prepare and deliver a paper document giving what Cabinet Office Order prescribes as the important part of the information required to be included in a paper investment report as referred to in paragraph (1) to known beneficiaries of the investment trust property referred to in that paragraph, pursuant to the provisions of Cabinet Office Order; provided, however, that this does not apply in a case set forth in one of the items of that paragraph.

(5) The provisions of Article 5, paragraph (2) apply mutatis mutandis to the delivery of a paper document under the preceding paragraph. In such a case, the phrase "a person seeking to acquire Beneficiary Certificates" in paragraph (2) of that Article is deemed to be replaced with "the known beneficiaries".

(6) A Settlor Company of an Investment Trust that has prepared a paper investment report as referred to in paragraph (1) and a paper document as referred to in paragraph (4) must file them with the Prime Minister without delay.

(7) The provisions of Article 42-7 of the Financial Instruments and Exchange Act do not apply to investment trust property about whose investment the Settlor Company of an Investment Trust gives instructions.

(Books and Documents for Investment Trust Property)

Article 15 (1) The Settlor Company of an Investment Trust must prepare and keep books and documents for investment trust property on file, pursuant to Cabinet Office Order.

(2) A beneficiary of an Investment Trust Managed under Instructions from the Settlor may file a request with the Settlor Company of the Investment Trust, during its business hours, to inspect or copy the books and documents for the investment trust property associated with that beneficiary.

(Notification of Details of Revisions to Basic Terms and Conditions of Investment Trusts)

Article 16 In one of the following cases, the Settlor Company of an Investment

Trust must notify the Prime Minister that such is the case and indicate the details thereof, in advance:

- (i) before changing the basic terms and conditions of the investment trust; and
- (ii) before implementing a consolidation of Investment Trusts Managed under Instructions from the Settlor (which means making the trust properties of two or more Investment Trusts Managed under Instructions from the Settlor that have the same beneficiaries into the trust property of a single new Investment Trust Managed under Instructions from the Settlor; the same applies in Article 17, paragraph (1), item (ii)).

(Revising to Basic Terms and Conditions of Investment Trusts)

Article 17 (1) In a case as set forth in one of the items of the preceding Article (for a case as set forth in item (i) of that Article, this is limited to if it falls under the category of a case that Cabinet Office Order prescribes as one in which the details of the revision are material; and for a case as set forth in item (ii) of that Article, this excludes if it falls under the category of a case that Cabinet Office Order prescribes as one in which the consolidation has only a minor influence on beneficiaries' interests), the Settlor Company of an Investment Trust must establish the following particulars and hold a vote on a written resolution:

- (i) the day of the vote on the written resolution;
  - (ii) the details of and reason for the revision to the basic terms and conditions of the investment trust or the consolidation of Investment Trusts Managed under Instructions from the Settlor (hereinafter referred to as "a Material Revision to the Terms and Conditions or a Merger");
  - (iii) that beneficiaries will be able to exercise voting rights by electronic or magnetic means (meaning by using an electronic data processing system or applying information and communications technology in a way that Cabinet Office Order prescribes; the same applies in paragraph (3)), if it has been decided that they may; and
  - (iv) the particulars that Cabinet Office Order prescribes, beyond what is set forth in the preceding three items.
- (2) To hold a vote on a written resolution, the Settlor Company of an Investment Trust must send notice of this in writing to known beneficiaries by two weeks prior to the day of the vote on the resolution.
- (3) In lieu of sending a written notice referred to in the preceding paragraph, the Settlor Company of an Investment Trust may issue notice by electronic or magnetic means with the consent of the person that would receive a notice as referred to in that paragraph, pursuant to Cabinet Order. Having done so, the Settlor Company of the Investment Trust is deemed to have issued the written notice under that paragraph.

- (4) The things set forth in the items of paragraph (1) must be included or recorded in the notice referred to the preceding two paragraphs.
- (5) If bearer Beneficiary Certificates have been issued, in order to hold a written vote on a resolution, the Settlor Company of an Investment Trust must issue public notice indicating that it will hold a vote on a written resolution and indicating the things set forth in the items of paragraph (1) by three weeks prior to the day of the vote on the resolution; provided, however, that this does not apply if the Settlor Company of the Investment Trust issues a notice as referred to in paragraph (2) to all the beneficiaries.
- (6) In a vote on a written resolution, a beneficiary (other than the Settlor Company of the Investment Trust, itself) holds voting rights in accordance with the number of units of beneficial interest held thereby.
- (7) The Settlor Company of an Investment Trust may provide in the basic terms and conditions of the investment trust that if a known beneficiary does not vote, that beneficiary is deemed to cast a vote in favor in the vote on a written resolution. In such a case, the Settlor Company of the Investment Trust establishing such a provision must include or record that provision in the notice referred to in paragraph (2) or paragraph (3).
- (8) A vote on a written resolution passes with a voting majority representing at least two-thirds of the voting rights of all beneficiaries entitled to vote.
- (9) The provisions of Article 110; Article 111; Article 112, paragraph (2); Article 114; Article 115, paragraph (2); Article 116, paragraph (1) and paragraph (2); Article 117; Article 120; and Article 121 of the Trust Act apply mutatis mutandis if the Settlor Company of an Investment Trust votes on a written resolution. In such a case, the term "Ministry of Justice Order" in those provisions is deemed to be replaced with "Cabinet Office Order"; the phrase "paragraph (1) of the preceding Article" in Article 110, paragraph (1) of that Act is deemed to be replaced with "Article 17, paragraph (2) of the Act on Investment Trusts and Investment Corporations (hereinafter referred to as the 'Investment Trust Act')"; the phrases "paragraph (2) of the preceding Article" in Article 110, paragraph (2) and "Article 109, paragraph (2)" in Article 114, paragraph (4) and Article 116, paragraph (2) of the Trust Act are deemed to be replaced with "Article 17, paragraph (3) of the Investment Trust Act"; the phrase "paragraph (4) of the preceding Article" in Article 110, paragraph (3) of the Trust Act is deemed to be replaced with "Article 17, paragraph (5) of the Investment Trust Act"; the phrases "Article 108, item (iii)" and "Article 109, paragraph (2)" in Article 111 of the Trust Act are deemed to be replaced with "Article 17, paragraph (1), item (iii) of the Investment Trust Act" and "paragraph (3) of that Article", respectively; the phrase "the preceding paragraph" in Article 112, paragraph (2) of the Trust Act is deemed to be replaced with "Article 17, paragraph (6) of the Investment Trust Act"; and

Cabinet Order provides for any other necessary technical replacement of terms.

(10) The provisions of the preceding paragraphs do not apply if the Settlor Company of an Investment Trust proposes a Material Revision to the Terms and Conditions or a Merger and all of the beneficiaries, on paper or in an electronic or magnetic record (meaning a record that Cabinet Office Order prescribes as being used in computerized information processing, which is created in electronic form, magnetic form, or any other form that cannot be perceived by the human senses), manifest the intention to be bound by their consent to the proposal; nor do they apply in a case that Cabinet Office Order prescribes as one in which non-application of those provisions is unlikely to lead to a lack of protection for the beneficiaries.

(Dissenting Beneficiaries' Appraisal Rights in Respect of Beneficial Interests)

Article 18 (1) If a Material Revision to the Terms and Conditions or a Merger will be effected, beneficiaries that vote against the Material Revision to the Terms and Conditions or the Merger during the voting on a written resolution are entitled to demand that the trustee purchase their beneficial interests at a fair price using investment trust property to which their beneficial interests pertain.

(2) The provisions of the preceding paragraph do not apply to an Investment Trust Managed under Instructions from the Settlor for which the Settlor Company of the Investment Trust decides that, if a beneficiary requests a full or partial redemption of the principal of the investment trust for a beneficial interest during the term of the trust agreement, it will accommodate that request by cancelling part of the investment trust agreement (but only one that Cabinet Office Order prescribes as being unlikely to lead to a lack of protection for the beneficiaries).

(3) The provisions of Article 103, paragraphs (6) through (8); Article 104, paragraphs (1) through (11); Article 262, paragraph (1) and paragraph (3); Article 263; and Article 264 of the Trust Act apply mutatis mutandis to a demand prescribed in paragraph (1). In such a case, the phrase "the notice under paragraph (4) and the public notice prescribed in the preceding paragraph" in Article 103, paragraph (6) of that Act is deemed to be replaced with "the vote on a written resolution"; the phrase "material changes, etc. to the trust" in paragraph (8) of that Article is deemed to be replaced with "Material Revision to the Terms and Conditions or a Merger"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Notification of Cancellation of Investment Trust Agreements)

Article 19 Before cancelling an investment trust agreement, the Settlor Company of the Investment Trust must first notify the Prime Minister that it

will do so.

(Cancellation of Investment Trust Agreements)

Article 20 (1) The provisions of Article 17 and Article 18 apply mutatis mutandis if the Settlor Company of an Investment Trust seeks to cancel an investment trust agreement. In such a case, the phrase "the details of and reason for" in Article 17, paragraph (1), item (ii) is deemed to be replaced with "the reason for"; and Cabinet Order provides for any other necessary technical replacement of terms.

(2) The preceding paragraph does not apply to a case that Cabinet Office Order prescribes as one in which the non-application of those provisions is unlikely to lead to a lack of protection for the beneficiaries.

(Liability of Settlor Company of Investment Trust)

Article 21 If the Settlor Company of an Investment Trust (or a person provided by Cabinet Order as referenced in Article 2, paragraph (1) that has been entrusted by the Settlor Company of the Investment Trust with full or partial authority to give instructions on investment) damages the beneficiaries of the investment trust property about whose investment it gives instructions by neglecting its duties, it is jointly and severally liable to compensate the beneficiaries for the damage.

(On-Site Inspections)

Article 22 (1) The Prime Minister may order the Settlor Company of an Investment Trust or a person that was the Settlor Company of an Investment Trust (hereinafter collectively referred to as the "current or former settlor company of the investment trust" in this paragraph); the Trustee Company of the investment trust property established by the current or former settlor company of the investment trust or the person that was such a Trustee Company (hereinafter collectively referred to as the "current or former trustee company" in this paragraph); or a person that has business dealings with the current or former trustee company in connection with the Investment Trust of which it is or was the current or former trustee company, to submit reports or materials that should serve as a reference with regard to the operations or assets of the current or former settlor company of the investment trust or the current or former trustee company; and may have the relevant officials enter the business office of the current or former settlor company of the investment trust or current or former trustee company, inspect its operational or financial status and its books and documents and other articles, and question any persons concerned, within the limits of what is necessary for the implementation of this Act.

- (2) An official that conducts an on-site inspection pursuant to the preceding paragraph must carry identification and present it if so requested by a person concerned.
- (3) The authority to conduct an on-site inspection under paragraph (1) must not be construed as having been accorded for the purposes of a criminal investigation.

(Handing Over Business under Investment Trust Agreements)

Article 23 (1) If the Settlor Company of an Investment Trust or a Trustee Company comes to fall under item (i) or item (ii) but the Prime Minister finds the continued existence of an investment trust agreement with the Settlor Company of the Investment Trust or Trustee Company to be necessary and appropriate in the public interest or for investor protection, the Prime Minister, having first obtained the consent of the Trustee Company or Settlor Company of the Investment Trust with which the investment trust agreement has been concluded and another Settlor Company of an Investment Trust or Trustee Company, may order the Settlor Company of the Investment Trust or Trustee Company to hand over the business under the investment trust agreement to the other Settlor Company or Trustee Company that has so consented:

- (i) the Settlor Company of the Investment Trust has its registration as referred to in Article 29 of the Financial Instruments and Exchange Act revoked pursuant to Article 52, paragraph (1); Article 53, paragraph (3); or Article 57-6, paragraph (3) of that Act; or
  - (ii) the Trustee Company has its business license or registration or its authorization to engage in trust business rescinded.
- (2) If unable to obtain the consent referred to in the preceding paragraph, the Prime Minister must notify the Settlor Company of the Investment Trust referred to in that paragraph of this, of the fact that the Settlor Company of the Investment Trust is likely to come to fall under item (i) of that paragraph, and of the due date for the application under the following paragraph.
  - (3) The Settlor Company of an Investment Trust that has been notified under the preceding paragraph may apply for approval for the investment trust agreement to remain in place, up until the due date of which it has been notified.
  - (4) On receipt of an application as referred to in the preceding paragraph, the Prime Minister may give approval for the investment trust agreement to remain in place, attaching conditions on the duration of the investment trust agreement or on anything else, on or after the day on which the Prime Minister revokes the registration of the Settlor Company of the Investment Trust under Article 29 of the Financial Instruments and Exchange Act, pursuant to the provisions of Article 52, paragraph (1); Article 53, paragraph (3); or Article 57-

6, paragraph (3) of that Act. In such a case, the former Settlor Company of the Investment Trust is deemed not to be subject to the revocation of its Article 29 registration inasmuch as the executive management of its business is concerned.

- (5) Upon deciding to give approval for an investment trust agreement to remain in place under the preceding paragraph or upon deciding not to do so, the Prime Minister must notify the applicant of this in writing without delay.

(Cancellation of Investment Trust Agreements and Public Notice upon Cancellation)

Article 24 (1) If the Settlor Company of an Investment Trust or a Trustee Company falls under one of the following items, the corporation that was that Settlor Company (or, if the Settlor Company of the Investment Trust has dissolved as a result of a merger, the corporation surviving the merger or the corporation incorporated as a result of the merger) or the Settlor Company of the Investment Trust that has concluded the investment trust agreement with that Trustee Company must cancel the investment trust agreement without delay:

- (i) the Settlor Company of the Investment Trust has its registration as referred to in Article 29 of the Financial Instruments and Exchange Act revoked pursuant to the provisions of Article 52, paragraph (1); Article 53, paragraph (3); or Article 57-6, paragraph (3) of that Act;
  - (ii) the Settlor Company of the Investment Trust is dissolved;
  - (iii) the Settlor Company of an Investment Trust discontinues business connected with an Investment Trust Managed under Instructions from the Settlor; or
  - (iv) the Trustee Company ceases to be a trust company or similar institution due to the rescission of its business license or for any other reason.
- (2) The preceding paragraph does not apply to a case falling under one of the following items:
- (i) if the Settlor Company of the Investment Trust falls under item (i) of the preceding paragraph, and it hands over the business under the investment trust agreement in accordance with the order of the Prime Minister under paragraph (1) of the preceding Article or receives approval for its investment trust agreement to remain in place under paragraph (4) of that Article;
  - (ii) if the Settlor Company of the Investment Trust is dissolved as a result of a merger, and the corporation surviving the merger is a financial instruments business operator (or, for an investment trust agreement set forth in one of the items of Article 3, the corporation surviving the merger is the financial instruments business operator provided for in the item; the same applies in the following items);

- (iii) if the Settlor Company of the Investment Trust has been dissolved as a result of a merger, and the corporation incorporated as a result of the merger becomes a financial instruments business operator without delay after its incorporation; or
  - (iv) if the Settlor Company of the Investment Trust falls under item (ii) or item (iii) of the preceding paragraph or the Trustee Company falls under item (iv) of that paragraph, and business under the investment trust agreement has been handed over from the Settlor Company of the Investment Trust or the Trustee Company to another Settlor Company of an Investment Trust or another Trustee Company.
- (3) Once an investment trust agreement is cancelled or business under the investment trust agreement is handed over pursuant to the preceding two paragraphs, the Settlor Company of the Investment Trust or the corporation that was formerly the Settlor Company of the Investment Trust must issue public notice of this within two weeks from that day.

(Means of Public Notice)

Article 25 (1) The public notice issued pursuant to the provisions of this Act by the Settlor Company of an Investment Trust (or a corporation that was formerly the Settlor Company of an Investment Trust issuing public notice pursuant to paragraph (3) of the preceding Article; hereinafter the same applies in this Article) must be issued by the means that the Settlor Company of the Investment Trust uses to issue public notice (and during its period for public notice, but only for the following means of public notice):

- (i) publication in a daily newspaper that publishes information on current affairs; or
  - (ii) electronic public notice (meaning electronic public notice as prescribed in Article 2, item (xxxiv) of the Companies Act; the same applies in the following paragraph).
- (2) The provisions of Article 940, paragraph (1) (excluding item (ii) and item (iii)) and paragraph (3); Article 941; Article 946; Article 947; Article 951, paragraph (2); Article 953; and Article 955 of the Companies Act apply mutatis mutandis if the Settlor Company of an Investment Trust that is a foreign corporation issues public notice under the provisions of this Act by electronic public notice. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Order of Prohibition or Suspension on Handling Public Offerings or Similar Dealings in Beneficiary Certificates)

Article 26 (1) If the court finds that the handling of a public offering or similar dealings (meaning the handling of a public offering (meaning the handling of a

public offering of securities as prescribed in Article 2, paragraph (8), item (ix) of the Financial Instruments and Exchange Act; the same applies in Article 196, paragraph (2)), the handling of a private placement (meaning the handling of a private placement of securities as provided in Article 2, paragraph (8), item (ix) of that Act), and other actions that Cabinet Order prescribes; the same applies hereinafter) in Beneficiary Certificates of an Investment Trust Managed under Instructions from the Settlor falls under one of the following items, the court may issue an order, at the petition of the Prime Minister, against the person that is actually taking or is attempting to take that action (hereinafter referred to as the "person taking the action" in this Article) prohibiting or suspending the action:

- (i) the person taking the action is violating this Act, a Cabinet Order based on this Act, or a disposition based on either of these, and there is an urgent need to prevent further damage to Investors; or
  - (ii) the instructions on investment given by the Settlor Company of the Investment Trust issuing the Beneficiary Certificates or by a person provided by Cabinet Order as referenced in Article 2, paragraph (1) that has been entrusted by the Settlor Company of the Investment Trust with full or partial authority to give instructions on investment are highly inappropriate and have actually or clearly will cause serious damage to Investor profits, and there is an urgent need to prevent further damage to Investors.
- (2) The court may rescind or change an order that it has issued pursuant to the preceding paragraph.
- (3) A case as referred to in the preceding two paragraphs is under the jurisdiction of the district court that has jurisdiction in the locality of the principal office of the person taking the action or in the place where the action prescribed in paragraph (1) has been or would be taken.
- (4) A judicial decision under paragraph (1) or paragraph (2) must be accompanied by the reasons therefor.
- (5) Before the court issues a judicial decision under paragraph (1), it must first ask for statements from the Prime Minister and the person taking the action.
- (6) Except in the cases referred to in the preceding three paragraphs, proceedings that involve a judicial decision as referred to paragraph (1) or paragraph (2) are governed by the Non-Contentious Cases Procedures Act (Act No. 51 of 2011).
- (7) The provisions of Article 187 and Article 191 of the Financial Instruments and Exchange Act apply mutatis mutandis to a petition as referred to in paragraph (1).

Articles 27 through 46 Deleted

## **Chapter II Investment Trusts Managed without Instructions from the Settlor**

(Trustees of Investment Trusts Managed without Instructions from the Settlor)

Article 47 (1) It is prohibited for an agreement for an Investment Trust Managed without Instructions from the Settlor (hereinafter referred to as an "investment trust agreement" in this Chapter) to be concluded unless a single trust company or similar institution (meaning a trust company (but only one that has obtained a license as referred to in Article 3 or Article 53, paragraph (1) of the Trust Business Act (Act No. 154 of 2004)) or a financial institution engaged in trust business; hereinafter the same applies in this Chapter, Article 223-3, paragraph (4) and Article 249) is the trustee.

(2) Notwithstanding the provisions of Article 6 of the Act on Engagement in Trust Business Activities by Financial Institutions, a financial institution engaged in trust business must not conclude an agreement to compensate in the event of a loss of principal or to supplement profits in the event that a predetermined amount of profit does not accrue with regard to an Investment Trust Managed without Instructions from the Settlor.

(Prohibition of Investment Trusts Managed without Instructions from the Settlor Whose Purposes Are Securities Investment)

Article 48 A trust company or similar institution must not conclude an investment trust agreement whose purpose is for the trust property of an Investment Trust Managed without Instructions from the Settlor (hereinafter referred to as "investment trust property" in this Chapter) to be invested mainly in Securities.

(Conclusion of Investment Trust Agreements)

Article 49 (1) Before concluding an investment trust agreement, a trust company or similar institution must first notify the Prime Minister of the contents of the basic terms and conditions of trust for the Investment Trust Managed without Instructions from the Settlor governing that investment trust agreement (hereinafter referred to as the "basic terms and conditions of the investment trust" in this Chapter).

(2) The basic terms and conditions of the investment trust must give the following information:

- (i) the trade name or name of the trustee;
- (ii) information concerning the total amount of trust principal under joint investment;
- (iii) information concerning Beneficiary Certificates;
- (iv) information concerning the settlor and succession to the rights and

- obligations thereof;
- (v) information concerning the management and investment of the trust principal and profits (including the type of assets invested in);
  - (vi) information concerning the method, criteria, and record date for assessing investment trust property;
  - (vii) information concerning the redemption of trust principal and distribution of profits;
  - (viii) information concerning the joint investment of investment trust property under the investment trust agreement based on the basic terms and conditions of the investment trust;
  - (ix) information concerning the separate investment of the investment trust property prescribed in the preceding item from that of other trust property;
  - (x) information on the term of the trust agreement, the extension thereof, and cancellation during the term of the trust agreement;
  - (xi) information concerning the trust's accounting period;
  - (xii) information concerning how trust fees and other fees are calculated, as well as how and when they will be paid;
  - (xiii) whether the trust uses Public Offerings, private placement with qualified institutional investors, private placement with professional investors, or Private Placement with General Investors;
  - (xiv) if a trustee will borrow the funds needed to create the trust, information concerning the limit on the amount of those borrowings
  - (xv) if the trustee will entrust another person with the authority for investment, the trade name or name of the person that the settlor will entrust with the authority for investment (including an indication that the other person is a financial instruments business operator registered as referred to in Article 29 of the Financial Instruments and Exchange Act to conduct investment management for qualified investors, if this is the case) and the place where that person is located;
  - (xvi) the cost of the entrustment in the case referred to in the preceding item;
  - (xvii) information concerning revising the basic terms and conditions of the investment trust;
  - (xviii) the means of public notice to be used by the trust company or similar institution; and
  - (xix) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (3) Except in the cases that Cabinet Office Order prescribes, the accounting period referred to in item (xi) of the preceding paragraph may not exceed one year.
- (4) Cabinet Office Order prescribes the details of the information set forth in the items of paragraph (2).

(Beneficiary Certificates)

- Article 50 (1) The beneficial interest in an Investment Trust Managed without Instructions from the Settlor must be indicated on Beneficiary Certificates.
- (2) The following information and the serial number of the Beneficiary Certificate must appear on the Beneficiary Certificates of an Investment Trust Managed without Instructions from the Settlor, and the representative of the trustees must sign it or have the name and seal thereof affixed to it:
- (i) the trade name or name of the trustee;
  - (ii) the face value and the number of units equivalent thereto;
  - (iii) the total amount of principal under joint investment and the number of units equivalent thereto;
  - (iv) the term of the trust agreement;
  - (v) the time and place for the redemption of trust principal and distribution of profits;
  - (vi) how trust fees and other fees are calculated, as well as how and when they will be paid;
  - (vii) whether the trust uses Public Offerings, private placement with qualified institutional investors, private placement with professional investors, or Private Placement with General Investors;
  - (viii) the limit on the total amount of principal, for Beneficiary Certificates of an Investment Trust Managed without Instructions from the Settlor for which the total amount of trust principal under joint investment may be increased;
  - (ix) if the trustee will entrust another person with authority for investment, the trade name or name of the person that the settlor will entrust with the authority for investment (including an indication that the other person is a financial instruments business operator registered as referred to in Article 29 of the Financial Instruments and Exchange Act to conduct investment management for qualified investors, if this is the case) and the place where that person is located;
  - (x) the cost of the entrustment in the case referred to in the preceding item; and
  - (xi) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (3) The provisions of Article 6, paragraph (2) apply mutatis mutandis to the transfer and exercise of beneficial interest in an Investment Trust Managed without Instructions from the Settlor, and paragraph (4) and paragraph (5) of that Article apply mutatis mutandis to the Beneficiary Certificates of an Investment Trust Managed without Instructions from the Settlor.
- (4) The provisions of Chapter 8 of the Trust Act (excluding Article 185; Article

187; Article 192; Article 195, paragraph (2); Article 200, paragraph (2); Article 202, paragraph (4); Article 206; Article 207; Article 209; Article 210; and Article 212 through Article 215) apply mutatis mutandis to Investment Trusts Managed without Instructions from the Settlor. In such a case, the term "Ministry of Justice Order" in those provisions is deemed to be replaced with "Cabinet Office Order"; the phrase "shall give public notice in the official gazette" in Article 189, paragraph (2) and Article 191, paragraph (5) of that Act is deemed to be replaced with "must issue public notice"; the phrase "beneficial interest in a trust issuing beneficiary certificates (excluding beneficial interest as provided in Article 185, paragraph (2))" in Article 194 of that Act is deemed to be replaced with "beneficial interest for which registered Beneficiary Certificates are issued"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Succession to Rights and Obligations of Settlor)

Article 51 Through the acquisition of Beneficiary Certificates, the person acquiring them succeeds to the rights and obligations of the settlor of the investment trust agreement connected with those Beneficiary Certificates. In such a case, the provisions of Article 6, paragraph (2) apply mutatis mutandis to the exercise of rights of the settlor of an Investment Trust Managed without Instructions from the Settlor.

(Prohibition of Investment Trusts Managed without Instructions from the Settlor Other than Cash Trusts)

Article 52 (1) An Investment Trust Managed without Instructions from the Settlor must be a cash trust.  
(2) The provisions of Article 8, paragraph (2) and paragraph (3) apply mutatis mutandis to Investment Trusts Managed without Instructions from the Settlor.

(Investment of Investment Trust Property)

Article 53 Investment trust property must be invested separately from any other trust property.

(Application Mutatis Mutandis of Provisions Concerning Investment Trusts Managed under Instructions from the Settlor)

Article 54 (1) The provisions of Article 5, Article 9, Article 11, Article 13, Article 14, and Article 16 through Article 18 apply mutatis mutandis to business related to Investment Trusts Managed without Instructions from the Settlor carried out by a trust company or similar institution, and Article 26 applies mutatis mutandis to Investment Trusts Managed without Instructions from the Settlor. In such a case, the term "instructions on investment" in those

provisions is deemed to be replaced with "investment"; the phrase "may not instruct the trust company or similar institution that is the trustee of the investment trust property (hereinafter referred to as the 'Trustee Company') to use investment trust property to acquire" in Article 9 is deemed to be replaced with "may not use investment trust property to acquire"; the phrases "other investment trust property about whose investment it gives instructions (if the Settlor Company of the Investment Trust is an Asset Management Company, this includes Investment Corporations whose assets it invests; the same applies in the following item)" in Article 13, paragraph (1), item (ii) and "other investment trust property" in item (iii) of that paragraph are deemed to be replaced with "other trust property"; the phrase "for which the Settlor Company of the Investment Trust decides that, if a beneficiary requests a full or partial redemption of the principal of the investment trust for a beneficial interest during the term of the trust agreement, it will accommodate that request by cancelling part of the investment trust agreement (but only one that Cabinet Office Order prescribes as being unlikely to lead to a lack of protection for the beneficiaries)" in Article 18, paragraph (2) is deemed to be replaced with "that the settlor may cancel part of the investment trust agreement (but only one that Cabinet Office Order prescribes as being unlikely to lead to a lack of protection for the beneficiaries) during the term of the trust agreement" and Cabinet Order provides for any other necessary technical replacement of terms.

- (2) The provisions of Article 25 through Article 27; Article 29, paragraph (3); and Article 29-2 of the Trust Business Act do not apply to investment trust agreements.

(Entrustment of Authority for Investment)

Article 55 (1) A trust company or similar institution must not entrust a person provided by Cabinet Order as referenced in Article 2, paragraph (2) or any other person with the full authority for the investment of specific investment trust property that it invests.

- (2) To apply Article 9 and Article 11, as applied mutatis mutandis pursuant to paragraph (1) of the preceding Article, if a trust company or similar institution entrusts a person with part of the authority for the investment of specific investment trust property that it invests, the term "Settlor Company of an Investment Trust" in those provisions is deemed to be replaced with "trust company or similar institution (including a person provided by Cabinet Order as referenced in Article 2, paragraph (2) that has been entrusted with part of the authority for investment by the trust company or similar institution)".

(Trust Company Liability)

Article 56 If a trust company or similar institution (or a person provided by Cabinet Order as referenced in Article 2, paragraph (2) that has been entrusted with part of the authority for investment by the trust company or similar institution) damages the beneficiaries of the investment trust property that it invests by neglecting its duties, it is jointly and severally liable to compensate the beneficiaries for the damage.

(Means of Public Notice)

Article 57 Public notice concerning an Investment Trust Managed without Instructions from the Settlor pursuant to the provisions of this Act must be issued by the means of public notice that the trust company or similar institution that is the trustee of the Investment Trust Managed without Instructions from the Settlor uses for issuing public notice (or, if the trust company or similar institution that is the new trustee has yet to assume the role of trust company or similar institution that is the former trustee after the former trustee has completed its duties, the means of public notice that the trust company or similar institution that is the former trustee uses) (and during its period for public notice, but only for the following means of public notice):

- (i) publication in a daily newspaper that publishes information on current affairs; or
- (ii) electronic public notice (meaning a means of public notice that involves a person taking the measures that Article 2, item (xxxiv) of the Companies Act prescribes to put the information that a public notice is required to contain into a format that will allow a large, non-specific group of persons to gain access to it by electronic or magnetic means (meaning electronic or magnetic means as prescribed in that item)).

### **Chapter III Foreign Investment Trusts**

(Notification by Foreign Investment Trusts)

Article 58 (1) Before the handling of a public offering or similar dealings in Beneficiary Certificates (other than dealings that Cabinet Order Prescribes as being found not to pose an obstacle to investor protection, in consideration of their contents) are carried out, the issuer of Beneficiary Certificates in a Foreign Investment Trust must first notify the Prime Minister of the following information concerning the Foreign Investment Trust, pursuant to Cabinet Office Order:

- (i) information on the settlor (but only if the Foreign Investment Trust is similar to an Investment Trust Managed under Instructions on a Settlor's Order), trustee, and beneficiary;

- (ii) information concerning the Beneficiary Certificates;
  - (iii) information concerning the management and investment of the trust;
  - (iv) information concerning calculation of the trust and the distribution of profits; and
  - (v) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (2) The basic terms and conditions of the Foreign Investment Trust in question or documents similar to this, and the documents that Cabinet Office Order prescribes must accompany the notification under the preceding paragraph.

(Notification of Revisions to Basic Terms and Conditions of Foreign Investment Trusts)

Article 59 The provisions of Article 5; Article 14; Article 16; Article 17, paragraph (1) (excluding item (i) and item (iii)) and paragraph (2) through paragraph (5); and Article 25 apply mutatis mutandis to a person that issues Beneficiary Certificates in a Foreign Investment Trust (but only one that has filed a notification under paragraph (1) of the preceding Article; hereinafter the same applies in this Article); and Article 19 and Article 20, paragraph (1) apply mutatis mutandis to a person that issues Beneficiary Certificates in a Foreign Investment Trust that is similar to an Investment Trust Managed under Instructions from the Settlor. In such a case, the phrase "must prescribe the following information and hold a vote on a written resolution" in Article 17, paragraph (1) (other than item (i) and item (iii)) is deemed to be replaced with "must prescribe the following things"; the terms "a written resolution" and "resolution" in paragraph (2) and paragraph (5) of that Article are deemed to be replaced with "Material Revision to the Terms and Conditions or a Merger"; the phrase "Article 17 and Article 18" in Article 20, paragraph (1) is deemed to be replaced with "Article 17, paragraph (1) (excluding item (i) and item (iii)) and paragraph (2) through paragraph (5)"; the phrase "excluding item (ii) and item (iii)" in Article 25, paragraph (2) is deemed to be replaced with "but only the part that is relevant to item (i)"; and Cabinet Order provides for any other necessary replacement of terms.

(Order of Prohibition or Suspension on Handling Public Offerings or Similar Dealings in Beneficiary Certificates in Foreign Investment Trusts)

Article 60 (1) If investment instructions or investment of the assets of a Foreign Investment Trust during the handling of a public offering or similar dealings in the Beneficiary Certificates in that trust is highly inappropriate and has actually caused or clearly will cause serious damage to Investor profits, and the court finds that there is an urgent need to prevent further damage to Investors, it may issue an order, at the petition of the Prime Minister, against

the person that is actually taking or is attempting to take that action, prohibiting or suspending the action.

- (2) The provisions of Article 26, paragraph (2) through paragraph (6) apply mutatis mutandis to a judicial decision under the preceding paragraph.
- (3) The provisions of Article 187 and Article 191 of the Financial Instruments and Exchange Act apply mutatis mutandis to a petition under paragraph (1).

### **Part III The Investment Corporation System**

#### **Chapter I Investment Corporations**

##### **Section 1 General Rules**

(Legal Personality)

Article 61 An Investment Corporation is a juridical person.

(Address)

Article 62 The address of an Investment Corporation is its address in the locality of its head office.

(Restriction on Capacity)

Article 63 (1) An Investment Corporation may not engage in business activities other than asset investment.

- (2) An Investment Corporation may not establish a business office other than a head office, and may not have employees.

(Commercial Transactions)

Article 63-2 (1) Actions that an Investment Corporation undertakes as a part of its business and actions that it undertakes for the sake of its business constitute commercial transactions.

- (2) The provisions of Article 11 through Article 15 and Article 19 of the Commercial Code (Act No. 48 of 1899) do not apply to Investment Corporations.

(Trade Name)

Article 64 (1) The name of an Investment Corporation is its trade name.

- (2) An Investment Corporation must use the characters "投資法人" (pronounced "toshi hojin" and meaning "Investment Corporation") in its trade name.

- (3) A person other than an Investment Corporation must not use a character in its name or trade name that could give rise to the misconception that it is an Investment Corporation.

- (4) It is prohibited for any person to use, for a wrongful purpose, a name or trade name that could give rise to the misconception that it is a different Investment Corporation.

- (5) An Investment Corporation whose business interests have been or are likely to be infringed by the use of a name or trade name that violates the preceding paragraph may demand that the person infringing or likely to infringe upon those business interests discontinue or refrain from the infringement.
- (6) An Investment Corporation that permits another person to carry on a business or engage in operations using the Investment Corporation's trade name is jointly and severally liable together with that other person to a party that has dealings with the other person based on the misconception that the Investment Corporation is the one carrying on the business, for performance of the obligations arising from those dealings.

(Replacement of Terms When the Companies Act Is Applied Mutatis Mutandis)

Article 65 (1) Except as otherwise provided, when the Companies Act is applied mutatis mutandis pursuant to the provisions of this Part (excluding Article 186-2, paragraph (4)) and Part V, the terms "electronic or magnetic record"; "electronic or magnetic means"; "Ministry of Justice Order"; "Stock Company"; "shares"; "shareholder"; "articles of incorporation"; "incorporator"; "share certificate"; "Share Options"; "share option certificates"; and "share option holder" as used in the provisions of that Act are deemed to be replaced with "electronic or magnetic record (meaning an electronic or magnetic record as prescribed in Article 66, paragraph (2) of the Investment Corporations Act)"; "electronic or magnetic means (meaning the electronic or magnetic means as prescribed in Article 71 of the Investment Corporations Act)"; "Cabinet Office Order"; "Investment Corporation"; "Investment Equity"; "Investor"; "certificate of incorporation"; "organizer"; "Investment Securities"; "Investment Equity Options"; "Investment Equity Option Certificates"; and "holders of investment equity options", respectively.

- (2) The term "Investment Corporations Act" in the provisions of the Companies Act and Commercial Registration Act (Act No. 125 of 1963) following the deemed replacement of terms pursuant to the provisions of this Part as applied mutatis mutandis pursuant to this Part is deemed to mean the Act on Investment Trusts and Investment Corporations.

## **Section 2 Incorporation**

(Preparation of Certificate of Incorporation by Organizers)

Article 66 (1) In order to incorporate an Investment Corporation, the organizers must prepare a certificate of incorporation and all the organizers must sign this or have their names and seals affixed to it.

- (2) The certificate of incorporation referred to in the preceding paragraph may be created as an electronic or magnetic record (meaning one that Cabinet Office

- Order prescribes as being used in computerized information processing, which is created in electronic form, magnetic form, or any other form that cannot be perceived with the human senses). In such a case, the measures that Cabinet Office Order prescribes to replace signatures or the affixation of names and seals must be taken for the data recorded in the electronic or magnetic record.
- (3) An organizer (or at least one of them, if there are two or more organizers) must be one of the persons set forth in the following items:
- (i) a financial instruments business operator that invests in the same kind of assets as the Specified Assets in which the Investment Corporation that it seeks to incorporate will invest (or the financial instruments business operator specified in sub-item (a) or (b), in a case as set forth in that item):
    - (a) if the Specified Assets include real property: a financial instruments business operator licensed as referred to in Article 3, paragraph (1) of the Real Estate Brokerage Act and authorized as referred to in Article 50-2 of that Act; or
    - (b) if the Specified Assets include assets other than Securities and real property that Cabinet Order prescribes: a financial instruments business operator as prescribed by Cabinet Order.
  - (ii) a person that Cabinet Order prescribes as having the appropriate knowledge and experience in the administrative processes involved in the investment of others' assets, other than as set forth in the preceding item.
- (4) A person as set forth in Article 98, item (ii) through item (v) may not become an organizer.

(Information Included or Recorded on Certificates of Incorporation)

Article 67 (1) The following information must be included or recorded in the certificate of incorporation of an Investment Corporation:

- (i) the purpose;
- (ii) the trade name
- (iii) whether Investment Equity will or will not be refunded at the request of an Investor;
- (iv) the total number of units of Investment Equity that the Investment Corporation may issue (hereinafter referred to as the "Total Number of Issuable Units of Investment Equity");
- (v) the amount of monies invested at incorporation;
- (vi) the minimum amount of net assets regularly held by the Investment Corporation;
- (vii) the subject matter and policy for asset investment;
- (viii) the method, criteria, and record date for asset assessment;
- (ix) the policies for distributing monies;
- (x) the accounting period;

- (xi) the locality of the head office;
  - (xii) the amount of remuneration for executive managing officers, supervisory officers, and financial auditors, or the criteria for paying them remuneration;
  - (xiii) the amount of asset investment fees for the Asset Management Company or the criteria for paying it asset investment fees;
  - (xiv) the name and address of the person that will become the Administrative Agent, Asset Management Company, or Asset Custody Company at establishment, and an outline of the contract concluded with that person;
  - (xv) the limit on the amount of borrowings and on the amount of Investment Corporation Bonds it may issue;
  - (xvi) the names and addresses of the organizers;
  - (xvii) whether the organizers receive remuneration or any other special benefit at the establishment of the Investment Corporation, and if there are those that receive a special benefit, the names of the organizers receiving it and the amount; and
  - (xviii) whether there are incorporation expenses that the Investment Corporation will bear, and if there are expenses that it will bear, their details and amount.
- (2) If, as the information set forth in item (iii) of the preceding paragraph, an Investment Corporation provides that Investment Equity will be refunded at the request of the Investor, the Investment Corporation may also provide that it will suspend such refunds in certain cases;
- (3) An Investment Corporation may fix the amount referred to in paragraph (1), item (v) by establishing maximum and minimum limits on that amount.
- (4) The minimum limit on the amount of net assets as referred to in paragraph (1), item (vi) (hereinafter referred to as the "Minimum Net Assets") may not fall below the amount of at least 50 million yen that Cabinet Order prescribes.
- (5) Cabinet Office Order prescribes the details of the information set forth in the items of paragraph (1)
- (6) Beyond what is set forth in the items of paragraph (1), any matter that does not become valid unless provided for in the certificate of incorporation pursuant to the provisions of this Act and any other matters that does not violate the provisions of this Act may be included or recorded on the certificate of incorporation of an Investment Corporation, pursuant to the provisions of this Act.
- (7) The provisions of Article 31, paragraph (1) through paragraph (3) of the Companies Act apply mutatis mutandis to the certificate of incorporation. In such a case, the phrase "the head office or branch office" in Article 31, paragraph (1) is deemed to be replaced with "the head office"; the term "the court" in paragraph (3) of that Article is deemed to be replaced with "the Prime Minister"; and Cabinet Order provides for any other necessary technical

replacement of terms.

(Total Amount of Investment at Establishment)

Article 68 (1) The total amount of investment in an Investment Corporation at the time of its establishment is the total amount to be paid in for the investment equity issued at incorporation (meaning the Investment Equity that the Investment Corporation issues at the time of its incorporation; the same applies hereinafter) (meaning the amount to be paid in exchange for one unit of investment equity issued at incorporation).

(2) The total amount of investment referred to in the preceding paragraph may not fall below the amount of at least 100 million yen that Cabinet Order prescribes.

(Notification of Incorporation)

Article 69 (1) Before incorporating an Investment Corporation, an organizer must first notify the Prime Minister that it will do so, giving the names and addresses of the candidates for executive managing officer at incorporation (meaning persons that will become executive managing officers at the time of the Investment Corporation's incorporation; the same applies hereinafter) pursuant to the provisions of Cabinet Office Order.

(2) A certificate of incorporation and other paper documents that Cabinet Office Order prescribes must accompany the notification referred to in the preceding paragraph.

(3) In a case as referred to in the preceding paragraph, if the certificate of incorporation has been created as an electronic or magnetic record, the electronic or magnetic record (but only one as Cabinet Office Order prescribes) may accompany the notification in lieu of the paper documents.

(4) An organizer must not notify a person as under Article 71, paragraph (1), solicit offers to subscribe for investment equity issued at incorporation, or take action to personally subscribe for investment equity issued at incorporation or to have another person subscribe for it, until after filing a notification under paragraph (1).

(5) The certificate of incorporation comes into effect when a notification under paragraph (1) is accepted.

(6) A certificate of incorporation for which a notification under paragraph (1) has been accepted may not be revised before the establishment of the Investment Corporation.

(7) The provisions of Article 96 and Article 97 of the Companies Act apply mutatis mutandis to the revision of a certificate of incorporation. In such a case, the term "Article 30 (2)" in Article 96 of that Act is deemed to be replaced with "Article 69, paragraph (6) of the Investment Corporations Act"; the term

"each item of Article 28" in Article 97 of the Companies Act is deemed to be replaced with "Article 67, paragraph (1), item (xvii) or item (xviii) of the Investment Corporations Act" and Cabinet Order provides for any other necessary technical replacement of terms.

(Obligations of Organizers)

Article 70 (1) Organizers must observe laws, regulations, and the certificate of incorporation and loyally carry out their duties for the benefit of the Investment Corporation that they seek to incorporate.

(2) Organizers must observe laws, regulations, and the certificate of incorporation, and employ the due care of a prudent manager toward the Investment Corporation that they seek to incorporate when carrying out its operations.

(Decision on Information Concerning Investment Equity for Subscription at Incorporation)

Article 70-2 (1) On each occasion before soliciting persons to subscribe for investment equity issued at incorporation, an organizer must establish the following particulars with regard to the investment equity for subscription at incorporation (meaning the investment equity issued at incorporation allotted to persons responding to that solicitation by offering to subscribe for investment equity issued at incorporation; the same applies hereinafter):

(i) the number of units of investment equity for subscription at incorporation;

(ii) the amount to be paid in for the investment equity for subscription at incorporation (meaning the amount to be paid in exchange for one unit of investment equity for subscription at incorporation); and

(iii) the due date or period for paying in monies in exchange for the investment equity for subscription at incorporation.

(2) Before establishing the particulars is set forth in the items of the preceding paragraph, the organizer must first obtain the consent all of the organizers.

(3) The conditions for solicitation referred to in paragraph (1) must be prescribed equally for each solicitation.

(Offer on Investment Equity for Subscription at Incorporation)

Article 71 (1) An organizer must notify a person seeking to respond to the solicitation referred to in paragraph (1) of the preceding Article by offering offer to subscribe for investment equity for subscription at incorporation of the following information:

(i) the date on which the notifier filed the notification under Article 69, paragraph (1);

(ii) the information set forth in the items of Article 67, paragraph (1) and the

- items of paragraph (1) of the preceding Article;
- (iii) the provisions of the certificate of incorporation regarding the period of time during which the Investment Corporation is to exist or grounds for its dissolution, if the certificate of incorporation provides for this;
  - (iv) the way investment equity for subscription at incorporation will be allotted;
  - (v) the place at which the institution handling payments handles the payments;
  - (vi) the names and addresses of the executive managing officers at incorporation, supervisory officers at incorporation (meaning persons that will become supervisory officers at the time of the Investment Corporation's incorporation; the same applies hereinafter), and financial auditors at incorporation (meaning persons that will become financial auditors at the Investment Corporation's incorporation; the same applies hereinafter), as well as whether a candidate to become executive managing officer at incorporation and an organizer are related as interested parties, and the details of any such relationship that exists;
  - (vii) that the incorporation will be cancelled unless subscriptions reach the amount prescribed in Article 67, paragraph (1), item (v);
  - (viii) that subscriptions for investment equity for subscription at incorporation may be cancelled if the registration incorporating the Investment Corporation is not made by a certain time or if the Investment Corporation is not registered by the Prime Minister by a certain time;
  - (ix) if there are any provisions in the certificate of incorporation on exempting executive managing officers, supervisory officers, or financial auditors from liability under Article 115-6, paragraph (7), those provisions; and
  - (x) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (2) The institution handling payments as referred to in item (v) of the preceding paragraph must be a bank or equivalent institution (meaning a bank, trust company, or other institution that Cabinet Office Order prescribes as being equivalent thereto; the same applies in Article 88-17, paragraph(1)).
- (3) Cabinet Office Order prescribes the details of the information set forth in paragraph (1), item (vi).
- (4) A person responding to a solicitation as referred to in paragraph (1) of the preceding Article by offering offer to subscribe for investment equity for subscription at incorporation must deliver a paper document to the organizers giving the following information:
- (i) the name and address of the person making the offer; and
  - (ii) the number of units of investment equity for subscription at incorporation for which the person seeks to subscribe.

- (5) With the consent of the organizers and pursuant to the provisions of Cabinet Order, in lieu of delivering a paper document as prescribed in the preceding paragraph, a person making an offer as referred to in that paragraph may provide the organizers with the information that the person is required to give in the paper document referred to in the preceding paragraph by electronic or magnetic means (meaning by using an electronic data processing system or applying information and communications technology in a way that Cabinet Office Order prescribes; hereinafter the same applies except in Article 186-2, paragraph (1), item (iii)). In such a case, the person making the offer is deemed to have delivered the paper document referred to in the preceding paragraph.
- (6) If a piece of information set forth in one of the items of paragraph (1) changes, an organizer must immediately notify a person that has made an offer as referred to in paragraph (4) (referred to as an "offeror" in the following paragraph) of this and of the information that has changed.
- (7) It is sufficient for a notice or demand that an organizer issues to an offeror to be sent to the address referred to in paragraph (4), item (i) (or to any other place or point of contact for receiving notices or demands of which the offeror has notified the organizer).
- (8) A notice or demand as referred to in the preceding paragraph is deemed to arrive at the time that it would normally arrive.
- (9) A person must use money to pay in for a subscription for investment equity for subscription at incorporation.
- (10) The provisions of Article 60; Article 62 (excluding item (ii)); and Article 63 of the Companies Act apply mutatis mutandis to investment equity for subscription at incorporation, and Article 64 of that Act applies mutatis mutandis to the bank or equivalent institution prescribed in paragraph (2). In such a case, the phrase "item (ii), paragraph (3) of the preceding Article" in Article 60, paragraph (1) of that Act is deemed to be replaced with "Article 71, paragraph (4), item (ii) of the Investment Corporations Act"; the phrase "item (iii) of Article 58 (1)" in Article 60, paragraph (2) and Article 63, paragraph (1) of the Companies Act is deemed to be replaced with "Article 70-2, paragraph (1), item (iii) of the Investment Corporations Act"; the phrase "Article 57 (1)" in Article 64, paragraph (1) of the Companies Act is deemed to be replaced with "Article 70-2, paragraph (1) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Appointment of Executive Managing Officers at Incorporation)

Article 72 The candidates for executive managing officer at incorporation, supervisory officer at incorporation, and financial auditor at incorporation of which persons have been notified pursuant to paragraph (1) of the preceding Article are deemed to have been appointed as executive managing officers at

incorporation, supervisory officers at incorporation, and financial auditors at incorporation when the allotment of investment equity issued at incorporation is complete.

(Investigations by Executive Managing Officers at Incorporation)

Article 73 (1) An executive managing officer at incorporation or supervisory officer at incorporation must investigate the following matters with regard to the incorporation of an Investment Corporation without delay after the date referred to in Article 70-2, paragraph (1), item (iii) or the last day of the period referred to in that item, whichever comes later:

(i) that subscriptions for investment equity for subscription at incorporation have reached the amount prescribed in Article 67, paragraph (1), item (v);

(ii) that payments under Article 63, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 71, paragraph (10) have been completed; and

(iii) that, beyond as set forth in the preceding two items, there is no particular connected with the procedures for incorporating the Investment Corporation that violates laws and regulations or the certificate of incorporation nor is there any particular as prescribed by Cabinet Office Order.

(2) If, due to an investigation under the preceding paragraph, an executive managing officer at incorporation finds anything lacking in terms of the matters set forth in the items of the preceding paragraph, the officer must report this to the organizer.

(3) On receipt of a report under the preceding paragraph, an organizer must call a general meeting of investors at incorporation (meaning persons that will become Investors in an Investment Corporation pursuant to Article 102, paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to Article 75, paragraph (5); the same applies hereinafter) (hereinafter such a general meeting is referred to as an "Organizational Meeting").

(4) The provisions of Article 90-2 and Article 91 of this Act apply mutatis mutandis if an organizer calls an Organizational Meeting, the provisions of Article 68, paragraph (5) through paragraph (7); the main clause of Article 72, paragraph (1); Article 73, paragraph (1) and paragraph (4); Article 74 through Article 83; and Article 93, paragraph (2) and paragraph (3) of the Companies Act apply mutatis mutandis to the Organizational Meeting of an Investment Corporation, and the provisions of Article 830; Article 831; Article 834 (but only the part that is relevant to item (xvi) and item (xvii)); Article 835, paragraph (1); Article 836, paragraph (1) and paragraph (3); Article 837; Article 838; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to sub-item (g) of item (i)) of the Companies Act apply mutatis mutandis to an action seeking a declaratory judgment to establish the absence

or invalidity of a resolution at an Organizational Meeting of an Investment Corporation or an action seeking the rescission of such a resolution. In such a case, the phrase "must issue public notice of the date of the investors' meeting by at least two months before that date, and must send notice of this in writing to the Investors by two weeks before that date" in Article 91, paragraph (1) of this Act is deemed to be replaced with "must send notice of this in writing to the Investors by two weeks before that date"; the phrase "item (v) of Article 27, or item (i) of Article 59 (3)" in Article 68, paragraph (5) of the Companies Act is deemed to be replaced with "Article 67, paragraph (1), item (xvi) or Article 71, paragraph (4), item (i) of the Investment Corporations Act"; the term "paragraph (1)" in Article 68, paragraph (7) of the Companies Act is deemed to be replaced with "Article 91, paragraph (1) of the Investment Corporations Act as applied mutatis mutandis pursuant to Article 73, paragraph (4) of the Investment Corporations Act"; the phrase "item (ii) of Article 67 (1)" in Article 73, paragraph (4) of the Companies Act is deemed to be replaced with "Article 90-2, paragraph (1), item (ii) of the Investment Corporations Act as applied mutatis mutandis pursuant to Article 73, paragraph (4) of the Investment Corporations Act"; the phrase "Article 68 (3)" in Article 74, paragraph (4) and Article 76, paragraph (2) of the Companies Act is deemed to be replaced with "Article 91, paragraph (2) of the Investment Corporations Act as applied mutatis mutandis pursuant to Article 73, paragraph (4) of the Investment Corporations Act"; the phrase "Article 67 and Article 68" in Article 80 of the Companies Act is deemed to be replaced with "Article 90-2, paragraph (1) and Article 91, paragraph (1) through paragraph (3) of the Investment Corporations Act as applied mutatis mutandis pursuant to Article 73, paragraph (4) of the Investment Corporations Act"; the term "the court" in Article 81, paragraph (4) and Article 82, paragraph (4) of the Companies Act is deemed to be replaced with "the Prime Minister"; the phrase "The Directors at Incorporation" in Article 93, paragraph (2) and paragraph (3) of the Companies Act is deemed to be replaced with "The executive managing officers at incorporation and supervisory officers at incorporation"; the phrases "the preceding paragraph" in Article 93, paragraph (2) of the Companies Act and "paragraph (1)" in paragraph (3) of that Article are deemed to be replaced with "Article 73, paragraph (1) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Establishment of Investment Corporations)

Article 74 An Investment Corporation is established by a registration being made of its incorporation.

(Application Mutatis Mutandis of the Companies Act)

- Article 75 (1) The provisions of Article 53 through Article 56 of the Companies Act apply mutatis mutandis to Investment Corporations. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (2) If any part of the investment equity for subscription at incorporation remains unsubscribed for at the time of the establishment of an Investment Corporation, the organizers, executive managing officers at incorporation, and supervisory officers at incorporation are deemed to have jointly subscribed for that part of the equity. The same applies if a subscriber for Investment Equity rescinds the intention it has manifested to be bound by its subscription for investment equity for subscription at incorporation after the establishment of the Investment Corporation.
- (3) If there is investment equity for subscription at incorporation for which payment as under Article 63, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 71, paragraph (10) has not been made at the time of the establishment of the Investment Corporation, the organizers, executive managing officers at incorporation, and supervisory officers at incorporation have a joint and several obligation to pay the amount that has not been paid in.
- (4) Persons (other than the organizers) that consent to having their names and an indication of their support for the incorporation of an Investment Corporation included or recorded in an advertisement for solicitation as prescribed in Article 70-2, paragraph (1) or in other solicitation-related documents or electronic or magnetic records are deemed to be organizers and the preceding three paragraphs apply.
- (5) Article 102 of the Companies Act (excluding paragraph (3) and paragraph (4)) apply mutatis mutandis to investment equity for subscription at incorporation. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (6) The provisions of Article 828, paragraph (1) (but only the part that is relevant to item (i)) and paragraph (2) (but only the part that is relevant to item (i)); Article 834 (but only the part that is relevant to item (i)); Article 835, paragraph (1); Article 836, paragraph (1) and paragraph (3); Article 837 through Article 839; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to sub-item (a) of item (i)) of the Companies Act apply mutatis mutandis to an action to invalidate the incorporation of an Investment Corporation. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (7) The provisions of Part VII, Chapter 2, Section 2 of the Companies Act (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and

Article 853, paragraph (1), item (ii) and item (iii)) apply mutatis mutandis to an action to enforce the liability of an organizer, executive managing officer at incorporation, or supervisory officer at incorporation. Cabinet Order provides for the necessary technical replacement of terms in such a case.

### **Section 3 Investment Equity and Investment Securities**

(Investment Equity)

Article 76 (1) Investment Equity issued by an Investment Corporation has no par value.

(2) The provisions of Article 113, paragraph (2) and paragraph (4) of the Companies Act apply mutatis mutandis to the Total Number of Issuable Units of Investment Equity. In such a case, the phrases "Article 236, paragraph (1), item (iv)", "Article 282, paragraph(1)", and "Issued Shares (excluding Treasury Shares (meaning shares in a Stock Company owned by that Stock Company itself. The same applies hereinafter.))" in Article 113, paragraph (4) of that Act are deemed to be replaced with "Article 88-2, item (iii) of the Investment Corporations Act", "Article 88-18, paragraph (1) of the Investment Corporations Act", and "issued investment equity", respectively; and Cabinet Order provides for any other necessary technical replacement of terms.

(Liability and Rights of Investors)

Article 77 (1) Investor liability is limited to the subscription price of the Investment Equity held by the Investor.

(2) An Investor has the following rights and rights accorded thereto pursuant to the provisions of this Act in respect of the Investment Equity held thereby:

- (i) the right to be distributed monies;
- (ii) the right to be distributed residual assets; and
- (iii) the right to vote at investors' meetings.

(3) Provisions of the certificate of incorporation indicating that Investors will not be granted all of the rights set forth in item (i) and item (ii) of the preceding paragraph or all or a part of the rights set forth in item (iii) of that paragraph are invalid.

(4) The provisions of Article 106 and Article 109, paragraph (1) of the Companies Act apply mutatis mutandis to Investment Equity. In such a case, the phrase "the features and numbers" in that paragraph is deemed to be replaced with "the number of units" and Cabinet Order provides for any other necessary technical replacement of terms.

(Providing Benefits for Exercising Rights as Investors)

Article 77-2 (1) An Investment Corporation must not provide any person with an

economic benefit (but only one provided on the account of the Investment Corporation or its subsidiary corporation (meaning an Investment Corporation in which the relevant Investment Corporation holds the majority of the issued investment equity (meaning the Investment Equity that an Investment Corporation issues; the same applies hereinafter); the same applies hereinafter); hereinafter the same applies in this Article) in association with a person's exercise of a right as an Investor.

- (2) If an Investment Corporation provides an economic benefit to a particular Investor free of charge, the Investment Corporation is presumed to have accorded that economic benefit to the Investor in association with their exercise of a right. The same applies if an Investment Corporation provides an economic benefit to a particular Investor at a charge, if the benefit received by the Investment Corporation or its subsidiary corporation is significantly less than that economic benefit.
- (3) If an Investment Corporation violates paragraph (1) in providing a person with an economic benefit in violation of paragraph (1), the person receiving the benefit must return it to the Investment Corporation or its subsidiary corporation. In such a case, if the person receiving the benefit has paid or delivered something to the Investment Corporation or its subsidiary corporation in exchange for it, the person is entitled to its return.
- (4) If an Investment Corporation violates paragraph (1) in providing a person with an economic benefit, the executive managing officers or supervisory officers that Cabinet Office Order prescribes as being involved in providing the benefit have a joint and several obligation to pay the Investment Corporation an amount equivalent to the value of the benefit; provided, however, that, this does not apply if those persons (other than the executive managing officer providing the person with the benefit) prove that they did not neglect to exercise due care in undertaking their duties.
- (5) A release from the obligation referred to in the preceding paragraph may not be granted without all Investors' agreement.
- (6) The provisions of Part VII, Chapter 2, Section 2 of the Companies Act (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853, paragraph (1), item (ii) and item (iii)) apply mutatis mutandis to an action seeking the return of the benefit referred to in paragraph (3). Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Investor Register)

Article 77-3 (1) An Investment Corporation must prepare an investor register and enter or record the following information and the total number of units of

issued investment equity therein:

- (i) the names and addresses of the Investors;
  - (ii) the number of units of Investment Equity held by the Investors referred to in the preceding item;
  - (iii) the day on which the Investors referred to in item (i) acquired the Investment Equity; and
  - (iv) the serial numbers of the Investment Securities representing the Investment Equity referred to in item (ii) (limited to Investment Equity for which Investment Securities are issued).
- (2) An Investment Corporation may fix a specific date (hereinafter referred to as the "record date" in this paragraph and the following paragraph) and establish that the Investors entered or recorded in the investor register on the record date are the persons that are entitled to exercise their rights.
- (3) The provisions of Article 124, paragraph (2) and paragraph (3) of the Companies Act apply mutatis mutandis to record dates, Article 125 of that Act applies mutatis mutandis to investor registers, and the provisions of Article 126 and Article 596, paragraph (1) and paragraph (2) of that Act apply mutatis mutandis to notices or demands issued to Investors. In such a case, the phrase "its head office (or, in cases where there is an Administrator of Shareholder Registry, at its business office)" in Article 125, paragraph (1) of that Act is deemed to be replaced with "the business office of the administrator of registers as prescribed in Article 166, paragraph (2), item (viii) of the Investment Corporations Act"; the term "the court" in Article 125, paragraph (4) and paragraph (5) of the Companies Act is deemed to be replaced with "the Prime Minister"; the phrase "Article 299 (1) (including the case where applied mutatis mutandis pursuant to Article 325)" in Article 126, paragraph (5) of that Act is deemed to be replaced with "Article 91, paragraph (1) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.
- (4) The provisions of paragraph (2), as well as the provisions of Article 124, paragraph (2) and paragraph (3) of the Companies Act and Article 196, paragraph (1) and paragraph (2) of that Act as applied mutatis mutandis pursuant to the preceding paragraph apply mutatis mutandis to a pledgee for which the information set forth in the items of Article 148 of that Act as applied mutatis mutandis pursuant to Article 79, paragraph (4) has been entered or recorded in the investor register (hereinafter such a pledgee is referred to as "Registered Pledgee of Investment Equity") and Article 150 of that Act applies mutatis mutandis to a notice or demand issued to a Registered Pledgee of Investment Equity. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (5) If an Investment Corporation has not issued Investment Securities for any of

its Investment Equity, it may notify the Investors and Registered Pledges of Investment Equity of the information of which it is required to issue public notice, in lieu of issuing public notice as referred to in Article 124, paragraph (3) of the Companies Act (including as applied mutatis mutandis pursuant to the preceding paragraph) as applied mutatis mutandis pursuant to paragraph (3).

(Transfer of Investment Equity)

- Article 78 (1) An Investor may transfer the Investment Equity held thereby.
- (2) An Investment Corporation may not require the approval of the board of officers for a transfer of Investment Equity or otherwise restrict the transfer thereof.
- (3) A transfer of Investment Equity is invalid unless the Investment Securities representing that Investment Equity are delivered.
- (4) A transfer of Investment Equity effected before the issuance of Investment Securities is not valid against an Investment Corporation.

(Requirements to Duly Assert Transfers of Investment Equity against Third Parties)

- Article 79 (1) A transfer of Investment Equity may not be duly asserted against the Investment Corporation unless the name and address of the person acquiring the Investment Equity have been entered or recorded in the investor register.
- (2) The possessor of an Investment Security is presumed to be the lawful owner of the rights to the Investment Equity that the Investment Security represents.
- (3) Article 131, paragraph (2) of the Companies Act applies mutatis mutandis to Investment Securities, and the provisions of Article 132 and Article 133 of that Act apply mutatis mutandis to Investment Equity. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (4) The provisions of Article 146; Article 147, paragraph (2) and paragraph (3); Article 148; Article 151, paragraph (1) (but only the part that is relevant to item (iv), item (v), item (vii) through item (ix), item (xi), and item (xiv)); Article 153, paragraph (2) and paragraph (3); and Article 154, paragraph (1) and paragraph (2) (but only the part that is relevant to item (i) and item (iii)) of the Companies Act apply mutatis mutandis to the pledging of Investment Equity. In such a case, the phrase "Allotment of Share Options without Contribution provided for in Article 277" in Article 151, paragraph (1), item (vii) of that Act is deemed to be replaced with "Free Allotment of Investment Equity Options provided for in Article 88-13 of the Investment Corporations Act"; the phrase "Dividends of surplus" in Article 151, item (viii) of the Companies Act is deemed to be replaced with "distribution of monies"; the term "Acquisition" in

item (xiv) of that paragraph is deemed to be replaced with "refund or acquisition"; the phrase "In the cases provided for in paragraph (2) of the preceding article" in Article 153, paragraph (2) of that Act is deemed to be replaced with "If the Investment Equity is consolidated"; the phrase "In the cases provided for in paragraph (3) of the preceding Article" in paragraph (3) of that Article is deemed to be replaced with "If the Investment Equity is split" and Cabinet Order provides for any other necessary technical replacement of terms.

(Prohibition on Investment Corporation's Acquisition of Investment Equity in Itself and Receipt Thereof as Subject of Pledge)

Article 80 (1) An Investment Corporation may not acquire Investment Equity in itself or receive Investment Equity in itself as the subject of a pledge; provided, however, that this does not apply if it acquires the Investment Equity in the one of the following cases:

- (i) an Investment Corporation established for the purpose of investing its assets mainly in the Specified Assets that Cabinet Order prescribes has provided in its certificate of incorporation that it may acquire Investment Equity in itself for compensation based on an agreement with its Investors;
  - (ii) an Investment Corporation succeeds to that Investment Equity from an Investment Corporation disappearing as a result of a merger;
  - (iii) an Investment Corporation purchases that Investment Equity pursuant to the provisions of this Act; or
  - (iv) in cases that Cabinet Office Order prescribes, other than as set forth in the preceding two items.
- (2) In a case as referred to in the proviso to the preceding paragraph, the Investment Corporation must dispose of or cancel its Investment Equity at an appropriate time.
- (3) Cabinet Office Order provides for the means for the disposal referred to in the preceding paragraph.
- (4) If disposing of or cancelling Investment Equity pursuant to the provisions of paragraph (2), an Investment Corporation must decide on the number of units of Investment Equity in itself that will be disposed of or cancelled, by resolution of the board of officers.
- (5) If Investment Equity is cancelled pursuant to the provisions of paragraph (2), the part of the total amount of investment and investment surplus as referred to in Article 135 (hereinafter referred to as the "Total Amount of Investment and Surplus") that is equivalent to the amount of Investment Equity that has been cancelled must be deducted from the Total Amount of Investment and Surplus, pursuant to the provisions of Cabinet Office Order.

(Deciding Particulars of Acquisition of Investment Equity)

Article 80-2 (1) On each occasion before acquiring Investment Equity in itself in accordance with the provisions of a certificate of incorporation under the provisions of paragraph (1), item (i) of the preceding Article, an Investment Corporation must establish the following particulars:

- (i) the number of units of the Investment Equity it will acquire;
  - (ii) the amount of monies it will deliver in exchange for acquisition of one unit of Investment Equity, or how this is calculated;
  - (iii) the total amount of monies it will deliver in exchange for its acquisition of Investment Equity; and
  - (iv) the date for offers to transfer Investment Equity.
- (2) The acquisition of Investment Equity under the preceding paragraph is deemed to be a distribution of monies and the provisions of Article 137, paragraph (1); Article 138; and Article 139 apply. In such a case, the phrase "the statements related to the distribution of monies approved under Article 131, paragraph (2) to its Investors" in that paragraph is deemed to be replaced with "the total of the amount set forth in Article 80-2, paragraph (1), item (iii)" and the phrase "Article 131, paragraph (2)" in Article 138, paragraph (1), item (ii) is deemed to be replaced with "Article 80-2, paragraph (3)".
- (3) The particulars set forth in the items of paragraph (1) must be decided by resolution of the board of officers.
- (4) The conditions for acquisition of Investment Equity referred to in paragraph (1) must be prescribed equally for each decision under that paragraph.

(Notifying Investors)

Article 80-3 (1) An Investment Corporation must notify the Investors of the particulars set forth in the items of paragraph (1) of the preceding Article.

(2) Public notice may be substituted for the notice under the preceding paragraph.

(Offers to Transfer Equity)

Article 80-4 (1) When offering to transfer the Investment Equity held thereby, an Investor that has been notified under paragraph (1) of the preceding Article must make clear to the Investment Corporation the number of units of Investment Equity subject to the offer.

(2) An Investment Corporation is deemed to accept a transfer of Investment Equity that an Investor referred to in the preceding paragraph offers on the date provided for in Article 80-2, paragraph (1), item (iv); provided, however, that if the total number of units of Investment Equity that the Investors under that paragraph offer (hereinafter referred to as the "total number of units offered" in this paragraph) exceeds the number of units provided for in paragraph (1), item (i) of that Article (hereinafter referred to as the "total

number of units for acquisition" in this paragraph) the Investment Corporation is deemed to accept a transfer of Investment Equity in the number of units arrived at when the total number of units for acquisition is divided by the total number of units offered, and then the product is multiplied by the number of units of Investment Equity offered by the Investors under the preceding paragraph (any fractional unit arising from that calculation is to be disregarded).

(Acquisition of Investment Equity through Market Transactions)

Article 80-5 (1) The provisions of Article 80-2 (but only the part that is relevant to paragraph (4)) through the preceding Article do not apply if an Investment Corporation acquires Investment Equity in itself through transactions on a Financial Instruments Exchange Market as prescribed in Article 2, paragraph (17) of the Financial Instruments and Exchange Act, through the transactions that Cabinet Order prescribes as prescribed in the proviso to Article 27-22-2, paragraph (1) of that Act, or through a tender offer as prescribed in Article 27-2, paragraph (6) of that Act.

(2) To apply Article 80-2, paragraph (1) in a case as prescribed in the preceding paragraph, the phrase "On each occasion before acquiring Investment Equity in itself in accordance with the provisions of a certificate of incorporation under the provisions of paragraph (1), item (i) of the preceding Article, an Investment Corporation must establish the following particulars" in Article 80-2, paragraph (1) is deemed to be replaced with "Before acquiring Investment Equity in itself in accordance with the provisions of a certificate of incorporation under the provisions of paragraph (1), item (i) of the preceding Article, an Investment Corporation must first establish the following particulars (excluding those set forth in item (ii)); provided however, that the period prescribed in item (iv) may not exceed one year" and the phrase "the date for offers to transfer Investment Equity" in item (iv) of that paragraph is deemed to be replaced with "the period during which it may acquire the Investment Equity".

(Prohibition on Acquisition of Investment Equity in a Parent Corporation)

Article 81 (1) A subsidiary corporation may not acquire Investment Equity in an Investment Corporation that constitutes its parent corporation (meaning an Investment Corporation that has another Investment Corporation as its subsidiary corporation; the same applies hereinafter) (hereinafter such Investment Equity is referred to as the "investment equity in a parent corporation" in this Article).

(2) The preceding paragraph does not apply:

(i) if the subsidiary corporation succeeds to investment equity in a parent

- corporation from an Investment Corporation disappearing as a result of a merger; and
- (ii) in a case that Cabinet Office Order prescribes, other than as set forth in the preceding item.
- (3) A subsidiary corporation must dispose of the investment equity in a parent corporation it holds at an appropriate time.
- (4) To apply this Act if a parent corporation and its subsidiary corporation together, or a subsidiary corporation alone, holds Investment Equity representing over half of the issued investment equity in another Investment Corporation, the other Investment Corporation is deemed to be the subsidiary corporation of that parent corporation.
- (5) The provisions of Article 80, paragraph (3) apply mutatis mutandis if the investment equity in a parent corporation is disposed of as referred to in paragraph (3).

(Consolidation of Investment Equity)

- Article 81-2 (1) An Investment Corporation may consolidate its Investment Equity.
- (2) The provisions of Article 180 paragraph (2) (excluding item (iii) and item (iv)) and paragraph (3); Article 181; Article 182, paragraph (1); Article 182-2 (excluding paragraph (1), item (ii)); Article 182-3; and Article 182-6 of the Companies Act apply mutatis mutandis to a case as prescribed in the preceding paragraph, and Article 215, paragraph (2) of that Act applies mutatis mutandis to an Investment Corporation (other than one that has established the provisions under the first sentence of Article 86, paragraph (1) in its certificate of incorporation). In such a case, the term "shareholders meeting" in Article 180, paragraph (2) of that Act is deemed to be replaced with "investors' meeting" and Cabinet Order provides for any other necessary technical replacement of terms.

(Splitting of Investment Equity)

- Article 81-3 (1) An Investment Corporation may split its Investment Equity.
- (2) The provisions of Article 183, paragraph (2) (excluding item (iii)) and Article 184 of the Companies Act apply mutatis mutandis to the cases prescribed in the preceding paragraph, and Article 215, paragraph (3) of that Act applies mutatis mutandis to an Investment Corporation (other than one that has established the provisions under the first sentence of Article 86, paragraph (1) in its certificate of incorporation). In such a case, the phrases "a Stock Company" and "it prescribes the following matters by resolution at a shareholders meeting (or of a board of directors meeting for a Company with a Board of Directors)" in Article 183, paragraph (2) of that Act are deemed to be

replaced with "an Investment Corporation" and "the executive managing officers must prescribe the following particulars and get the approval of the board of officers", respectively; the term "Article 466" in Article 184, paragraph (2) of that Act is deemed to be replaced with "Article 140 of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

Article 81-4 (1) An Investment Corporation as prescribed in Article 86, paragraph (1) may include provisions in its first certificate of incorporation upon incorporation indicating that it will that it will split its Investment Equity without abiding by the provisions of Article 183, paragraph (2) of the Companies Act (excluding item (iii)) as applied mutatis mutandis pursuant to paragraph (2) of the preceding Article. In such a case, the Investment Corporation must notify persons seeking to respond to a solicitation as referred to in Article 70-2, paragraph (1) or paragraph (1) of the following Article by offering to subscribe for investment equity for subscription at incorporation or investment equity for subscription as prescribed in paragraph (1) of the following Article, giving an indication of this and giving the information set forth in the items of the following paragraph.

(2) In a case as referred to in the first sentence of the preceding paragraph, the certificate of incorporation must establish the following particulars:

- (i) the way of splitting the Investment Equity;
- (ii) the time at which the splitting of the Investment Equity becomes effective;
- (iii) that the Investors that have been entered or recorded in the investor register as of the time referred to in the preceding are entitled to receive Investment Equity once it has been split; and
- (iv) the particulars that Cabinet Office Order prescribes, beyond what is set forth in the preceding three items.

(3) In a case as referred to in the first sentence of paragraph (1), for each period that Cabinet Office Order prescribes, the Investment Corporation must notify the Investors prescribed in item (iii) of the preceding paragraph and the Registered Pledgees of Investment Equity held by those Investors, of the number of units of Investment Equity that the Investors will receive as a result of the splitting of the Investment Equity, the calculations involved in the split, and other information that Cabinet Office Order prescribes.

(Determination of Subscription Requirements for Investment Equity for Subscription)

Article 82 (1) On each occasion before an Investment Corporation solicits persons to subscribe for the Investment Equity it issues, its executive managing officer must establish the following particulars regarding the

investment equity for subscription (meaning the Investment Equity allotted to persons responding to that solicitation by offering to subscribe for Investment Equity; hereinafter the same applies in this Section) and get the approval of the board of officers:

- (i) the number of units of investment equity for subscription;
  - (ii) the amount to be paid in for investment equity for subscription (meaning the amount of monies to be paid in, in exchange for one unit of investment equity for subscription; hereinafter the same applies in this Article) or the way of calculating that amount; and
  - (iii) the due date or period for paying in monies in exchange for the investment equity for subscription.
- (2) Notwithstanding the provisions of the preceding paragraph, the executive managing officers of an Investment Corporation as provided in Article 86, paragraph (1) must specify the issuance period and seek the approval of the board of officers for the ensemble of solicitations for persons to subscribe for investment equity for subscription within the issuance period.
- (3) In a case as referred to in the preceding paragraph, in addition to the issuance period, the executive managing officers referred to in that paragraph must prescribe the following particulars and get the approval of the board of officers:
- (i) the upper limit on the total number of units of Investment Equity that may be issued within the issuance period; and
  - (ii) the way of prescribing the amount to be paid in for the investment equity for subscription and the due date for paying in monies in exchange for investment equity for subscription, for each solicitation within the period for the issue.
- (4) In a case as referred to in paragraph (2), the Investment Corporation must issue public notice of the amount to be paid in, for each solicitation as referred to in item (ii) of the preceding paragraph, that has been established in the way set forth in that item. Cabinet Office Order prescribes the means of public notice and any other necessary particulars in such a case.
- (5) The particulars set forth in the items of paragraph (1) (or, in a case as referred to in paragraph (2), the issuance period referred to in paragraph (3) and the particulars set forth in the items of that paragraph; referred to as "subscription requirements" in paragraph (1), item (vi) of the following Article) must be prescribed equally for each solicitation under paragraph (1).
- (6) In a case as referred to in the preceding paragraph, the amount to be paid in for the investment equity for subscription must be fair in light of the contents of the assets held by the Investment Corporation.
- (7) Once an Investment Corporation issues Investment Equity after its establishment, it must incorporate the total amount to be paid in for the

Investment Equity into its total amount of investment.

(Offers to Subscribe for Investment Equity for Subscription)

Article 83 (1) An Investment Corporation must notify a person seeking to respond to a solicitation as referred to in paragraph (1) of the preceding Article by offering offer to subscribe for investment equity for subscription of the following information:

- (i) the information set forth in Article 67, paragraph (1), item (i) through item (iv) and item (vi) through item (xiii);
  - (ii) the information set forth in Article 71, paragraph (1), item (iii), item (v), and item (ix);
  - (iii) the name and address of the Administrative Agent and the details of the administrative processes with which the agent is entrusted;
  - (iv) the name of the Asset Management Company and an outline of the entrustment contract for asset investments concluded with that Asset Management Company;
  - (v) the name of the Asset Custody Company;
  - (vi) the subscription requirements; and
  - (vii) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (2) Cabinet Office Order prescribes the details of the information set forth in item (iv) of the preceding paragraph.
- (3) A person responding to a solicitation as referred to in paragraph (1) of the preceding Article by offering to subscribe for investment equity for subscription must deliver a paper document to the Investment Corporation giving the following information:
- (i) the name and address of the person making the offer; and
  - (ii) the number of units of investment equity for subscription for which the person seeks to subscribe.
- (4) With the consent of the Investment Corporation and pursuant to the provisions of Cabinet Order, in lieu of delivering a paper document as referred to in the preceding paragraph, a person making an offer as referred to in that paragraph may provide the Investment Corporation with the information that the person is required to give in the paper document referred to in the preceding paragraph by electronic or magnetic means. Having done so, the person making the offer is deemed to have delivered the paper document referred to in that paragraph.
- (5) The provisions of paragraph (1) do not apply if an Investment Corporation has delivered a prospectus as prescribed in Article 2, paragraph (10) of the Financial Instruments and Exchange Act that gives the information set forth in the items of paragraph (1) to the person seeking to make the offer referred

to in paragraph (1), nor do they apply to any other case that Cabinet Office Order prescribes as one in which non-application of these provisions is unlikely to lead to a lack of protection for the persons seeking to offer to subscribe for investment equity for subscription.

- (6) If a piece of information set forth in one of the items of paragraph (1) changes, the Investment Corporation must immediately notify a person that has made an offer as referred to in paragraph (3) (referred to as an "offeror" in the following paragraph) of this and of the information that has changed.
- (7) It is sufficient for a notice or demand that an Investment Corporation issues to an offeror to be sent to the address referred to in paragraph (3), item (i) (or to any other place or point of contact for receiving notices or demands of which the offeror has notified the Investment Corporation).
- (8) A notice or demand as referred to in the preceding paragraph is deemed to arrive at the time that it would normally arrive.
- (9) The provisions of Article 204, paragraph (1) and paragraph (3); Article 205, paragraph (1) and Article 206 of the Companies Act apply mutatis mutandis to an investment equity for subscription. In such a case, the phrase "item (ii), paragraph (2) of the preceding Article" in Article 204, paragraph (1) of that Act is deemed to be replaced with "Article 83, paragraph (3), item (ii) of the Investment Corporations Act"; the phrase "the date referred to in item (iv), paragraph (1) of Article 199 (or, in cases where a period is prescribed under that item, no later than the day immediately preceding the first day of that period)" in Article 204, paragraph (3) of the Companies Act is deemed to be replaced with "the date referred to in Article 82, paragraph (1), item (iii) of the Investment Corporations Act (or, if a period as referred to in that item has been prescribed, no later than the day immediately preceding the first day of that period; and in a case as referred to in paragraph (2) of that Article, the date referred to in item (ii), paragraph (3) of that Article as fixed in the way set forth in that item)"; the phrase "the preceding two Articles" in Article 205, paragraph (1) of the Companies Act is deemed to be replaced with "the provisions of Article 83, paragraph (1) through paragraph (8) and paragraph (1), and paragraph (3) of the preceding Article as applied mutatis mutandis pursuant to Article 83, paragraph (9) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Application Mutatis Mutandis of the Companies Act)

Article 84 (1) The provisions of Article 208 (excluding paragraph (2)); Article 209 through Article 211; Article 212, paragraph (1) (excluding item (ii)); Article 213-2 (excluding paragraph (1), item (ii)); and Article 213-3 of the Companies Act apply mutatis mutandis to investment equity for subscription. In such a case, the phrase "on the date or within the period provided for in Article 199

(1)(iv)" in Article 208, paragraph (1) of that Act is deemed to be replaced with "on the date or within the period provided for in Article 82, paragraph (1), item (iii) of the Investment Corporations Act (or, in a case as referred to in paragraph (2) of that Article, the date referred to in item (ii), paragraph (3) of that Article fixed in the way set forth in that item)"; the phrase "a date under Article 199 (1)(iv)" in Article 209, paragraph (1), item (i) of the Companies Act is deemed to be replaced with "a date under Article 82, paragraph (1), item (iii) of the Investment Corporations Act (or, in a case as referred to in paragraph (2) of that Article, the date referred to in Article 82, paragraph (3), item (ii) fixed in the way set forth in that item)"; the phrase "Article 199 (1)(iv)" in Article 209, paragraph (1), item (ii) is deemed to be replaced with "Article 82, paragraph (1), item (iii) of the Investment Corporations Act"; the phrases "Article 199, paragraph (1)" and "share issue or disposition of Treasury Shares" in Article 210 of the Companies Act are deemed to be replaced with "Article 82, paragraph (1) of the Investment Corporations Act" and "issue", respectively; and Cabinet Order provides for any other necessary technical replacement of terms.

- (2) The provisions of Article 828, paragraph (1) (but only the part that is relevant to item (ii)) and paragraph (2) (but only the part that is relevant to item (ii)); Article 834 (but only the part that is relevant to item (ii)); Article 835, paragraph (1); Article 836, paragraph (1) and paragraph (3); Article 837 through Article 840; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to sub-item (b) of item (i)) of the Companies Act apply mutatis mutandis to an action to invalidate the issuance of Investment Equity after the establishment of an Investment Corporation, and the provisions of Article 868, paragraph (1); the main clause of Article 871; Article 872 (but only the part that is relevant to item (ii)); the main clause of Article 873; Article 875 through Article 877; and Article 878, paragraph (1) of that Act apply mutatis mutandis to a petition referred to in Article 840, paragraph (2) of that Act as applied mutatis mutandis pursuant to this paragraph. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (3) The provisions of Article 829 (but only the part that is relevant to item (i)); Article 834 (but only the part that is relevant to item (xiii)); Article 835, paragraph (1); Article 836 through Article 838; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to sub-item (e) of item (i)) of the Companies Act apply mutatis mutandis to an action for a declaratory judgment establishing the non-occurrence of the issuance of Investment Equity after the establishment of an Investment Corporation. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (4) The provisions of Part VII, Chapter 2, Section 2 (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2),

paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853, paragraph (1), item (ii) and item (iii)) of the Companies Act apply mutatis mutandis to an action for payment under Article 212, paragraph (1) (excluding item (ii)) and Article 213-2 (excluding paragraph (1), item (ii)) of that Act as applied mutatis mutandis pursuant to paragraph (1). Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Issuance of Investment Securities)

Article 85 (1) without delay on or after the day it has issued Investment Equity, an Investment Corporation must issue Investment Securities representing that Investment Equity.

(2) The following information and the serial number of the Investment Security must appear on an Investment Security, and an executive managing officer must sign it or have the name and seal thereof affixed to it:

(i) the trade name of the Investment Corporation; and

(ii) the number of units of Investment Equity that the Investment Security represents.

(3) The provisions of Article 217 of the Companies Act apply mutatis mutandis to the Investment Securities of an Investment Corporation (other than one that has included provisions in its certificate of incorporation as under the first sentence of paragraph (1) of the following Article), and the provisions of Article 291 of that Act apply mutatis mutandis pursuant to Investment Securities. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Non-Issuance of Investment Securities)

Article 86 (1) Notwithstanding the provisions of paragraph (1) of the preceding Article, an Investment Corporation whose certificate of incorporation includes provisions indicating that the corporation will refund Investment Equity at the request of the Investor may include provisions in its certificate of incorporation that it will not issue Investment Securities unless requested to do so by the Investor. In such a case, the Investment Corporation must notify a person seeking respond to a solicitation as referred to in Article 70-2, paragraph (1) or Article 82, paragraph (1) by offering to subscribe for investment equity for subscription at incorporation or investment equity for subscription, of this.

(2) In a case as referred to in the first sentence of the preceding paragraph, Investors holding Investment Securities that have already been issued may submit those Investment Securities to the Investment Corporation and inform it that they do not wish to hold them. In such a case, the Investment Securities submitted to the Investment Corporation are invalid.

- (3) If an Investment Corporation that has established the provisions prescribed in the first sentence of paragraph (1) issues Investment Securities at the request of an Investor it must enter or record this in the investor register without delay, and if it is informed as under the first sentence of the preceding paragraph, it must make an entry or record in the investor register without delay indicating that the Investment Securities have been returned.
- (4) If an Investment Corporation as referred to in the preceding paragraph decides to revise its certificate of incorporation so as not to accommodate requests for refunds of Investment Equity, it must revise its certificate of incorporation to repeal the provisions referred to in that paragraph, and must issue un-issued Investment Securities without delay.

(Public Notice to Submit Investment Securities)

Article 87 (1) If an Investment Corporation takes one of the following actions, it must issue public notice and individual notices to all Investors and Registered Pledges of Investment Equity by at least one month before the day on which the action becomes effective, indicating that persons must submit all of the Investment Securities representing Investment Equity to the Investment Corporation by the day on which the action becomes effective; provided, however, that this does not apply if the Investment Corporation has not issued Investment Securities for any of its Investment Equity:

- (i) a consolidation of Investment Equity; or
- (ii) a merger (but only if the Investment Corporation will disappear as a result of the merger).

(2) The provisions of Article 219, paragraph (2) (but only the part that is relevant to item (i) and item (iv)) and paragraph (3) and Article 220 of the Companies Act apply mutatis mutandis to Investment Securities. In such a case, the phrase "item (i) through item (iv) of the preceding paragraph" in Article 219, paragraph (2), item (i) of that Act is deemed to be replaced with "Article 87, paragraph (1), item (i) of the Investment Corporations Act"; the phrases "A Company Surviving an Absorption-Type Merger as prescribed in Article 749, paragraph (1)" and "a Company Incorporated in a Consolidation-Type Merger as prescribed in Article 753, paragraph (1)" in Article 219, paragraph (2), item (iv) of the Companies Act are deemed to be replaced with "an Corporation Surviving an Absorption-Type Merger as prescribed in Article 147, paragraph (1), item (i) of the Investment Corporations Act" and "a Corporation Incorporated in a Consolidation-Type Merger as prescribed in Article 148, paragraph (1), item (ii) of the Investment Corporations Act", respectively; the phrases "each item of paragraph (1)" in Article 219, paragraph (3) of the Companies Act and "each item of paragraph (1) of the preceding Article" in Article 220, paragraph (1) of that Act are deemed to be replaced with "the

items of Article 87, paragraph (1) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Numerical Rounding)

Article 88 (1) If fractional units of Investment Equity arise due to an Investment Corporation's splitting or consolidating Investment Equity, the Investment Corporation must sell a number of units of Investment Equity that is equivalent to the total sum of those fractional units in what Cabinet Office Order prescribes as a way that is appropriate for selling Investment Equity at a fair price, and must deliver the proceeds of the sale to the Investors in proportion to their fractional units.

(2) Notwithstanding the provisions of the preceding paragraph, an Investment Corporation as prescribed in Article 86, paragraph (1) may refund fractional units of Investment Equity arising due to the corporation's splitting or consolidation of Investment Equity, in an amount that is fair in light of the Investment Corporation's amount of net assets.

(3) In a case as referred to in the preceding paragraph, an amount equivalent to the refunded Investment Equity must be deducted from the Total Amount of Investment and Surplus, pursuant to the provisions of Cabinet Office Order.

### **Section 3-2 Investment Equity Options and Investment Equity Option Certificates**

(Features of Investment Equity Options)

Article 88-2 If an Investment Corporation issues Investment Equity Options, it must decide on the following as the features of those Investment Equity Options:

(i) the number of units of Investment Equity underlying the Investment Equity Options or the way of calculating that number of units;

(ii) the amount of monies to be contributed upon the exercise of the Investment Equity Options or the way of calculating that amount;

(iii) the period during which the Investment Equity Options may be exercised;

(iv) if it is decided that the Investment Corporation may acquire the Investment Equity Options provided that certain grounds arise, the following:

(a) that the Investment Corporation may acquire those Investment Equity Options on the day that certain grounds arise, and what those grounds are;

(b) that the grounds referred to in (a) arise upon the arrival of a day separately prescribed by the Investment Corporation, if this is what is decided;

(c) that the Investment Corporation may acquire a part of the Investment

- Equity Options referred to in (a) on the day the grounds referred to in (a) arise, if this is what is decided, and the way of determining the part of the Investment Equity Options it will acquire;
- (d) the amount of money that will be delivered to the holder of the Investment Equity Options in exchange for the corporation's acquiring the Investment Equity Options referred to in (a) or the way of calculating that amount.
  - (v) that a fractional unit is to be disregarded in the event that it arises in the calculation of the number of units of Investment Equity that will be delivered to a holder of Investment Equity Options that has exercised those options, if this is the case;
  - (vi) that it has decided to issue Investment Equity Option Certificates representing the Investment Equity Options, if this is the case; and
  - (vii) that, in a case as provided for in the preceding item, the holder of Investment Equity Options is not entitled to make all or part of a demand under the provisions of Article 290 of the Companies Act as applied mutatis mutandis pursuant to Article 88-21, paragraph (2), if this is the case.

(Exercise of Rights by Co-owners)

Article 88-3 If an Investment Equity Option is co-owned by two or more persons, the co-owners may not exercise their rights associated with that Investment Equity Option unless they specify one person to exercise the rights associated with the Investment Equity Option and notify the Investment Corporation of the name of that person; provided, however, that this does not apply if the Investment Corporation agrees to the exercise of those rights.

(Issuance of Investment Equity Options)

Article 88-4 (1) An Investment Corporation may issue Investment Equity Options only if it effects free allotments of Investment Equity Options.

(2) The period prescribed in Article 88-2, item (iii) for Investment Equity Options to be issued pursuant to the preceding paragraph may not exceed three months from the day prescribed in Article 88-14, paragraph (1), item (ii).

(Investment Equity Options Register)

Article 88-5 (1) Without delay after the day on which it issues Investment Equity Options, an Investment Corporation must prepare an investment equity options register and enter or record the information that the relevant of the following items prescribes for the category of Investment Equity Options set forth in that item:

- (i) Investment Equity Options for which bearer form Investment Equity Option Certificates have been issued (hereinafter referred to as "Bearer Investment

Equity Options" in this Section): the serial numbers of the Investment Equity Option Certificates and the features and number of Bearer Investment Equity Options; and

- (ii) Investment Equity Options other than as set forth in the preceding item: the following information:
  - (a) the names and addresses of the investment equity option holders;
  - (b) the features and number of Investment Equity Options held by the investment equity option holders referred to in (a);
  - (c) the days on which the investment equity option holders referred to in (a) acquired the Investment Equity Options; and
  - (d) if the Investment Equity Options referred to in (b) are investment equity options for which certificates are issued (meaning Investment Equity Options for which it is provided that Investment Equity Option Certificates will be issued; hereinafter the same applies in this Section), the serial numbers of the Investment Equity Option Certificates representing those Investment Equity Options (but only those for which Investment Equity Option Certificates have been issued).
- (2) The provisions of Article 252 of the Companies Act apply mutatis mutandis to the investment equity options register, and the provisions of 253 of that Act apply mutatis mutandis to notices and demands issued to investment equity option holders. In such a case, the phrase "its head office (or, if there is an Administrator of Shareholder Registry, at its business office)" in Article 252, paragraph (1) of that Act is deemed to be replaced with "the business office of the administrator of registers prescribed in Article 166, paragraph (2), item (viii) of the Investment Corporations Act" and Cabinet Order provides for any other necessary technical replacement of terms.

(Transfer of Investment Equity Options)

Article 88-6 (1) A holder of investment equity options may transfer the Investment Equity Options held thereby.

- (2) An Investment Corporation may not require the approval of the board of officers for a transfer of Investment Equity Options or otherwise restrict the transfer thereof.

(Transfer of Investment Equity Options for Which Certificates Are Issued)

Article 88-7 A transfer of investment equity options for which certificates are issued is not valid unless the Investment Equity Option Certificates representing them are delivered.

(Requirements to Duly Assert Transfers of Investment Equity Options against Third Parties)

- Article 88-8 (1) A transfer of Investment Equity Options may not be duly asserted against the Investment Corporation or another third party unless the name and address of the person acquiring the Investment Equity Options have been entered or recorded in the investment equity options register.
- (2) To apply the provisions of the preceding paragraph to investment equity options for which certificates are issued if the certificates issued are registered Investment Equity Option Certificates, the phrase "the Investment Corporation or another third party" in that paragraph is deemed to be replaced with "the Investment Corporation".
- (3) The provisions of paragraph (1) do not apply to Bearer Investment Equity Options.
- (4) The provisions of Article 258, paragraph (1) and paragraph (2) of the Companies Act apply mutatis mutandis to Investment Equity Option Certificates and the provisions of Article 259 and Article 260 of that Act apply mutatis mutandis to Investment Equity Options. Cabinet Order provides for the necessary technical replacement of terms in such a case.
- (5) The provisions of Article 267, paragraph (1) and paragraph (4); Article 268 (excluding paragraph (3)); Article 269; Article 271; and Article 272, paragraph (1) (but only the part that is relevant to item (i) and item (iii)), paragraph (2) and paragraph (3) (excluding item (ii)) of the Companies Act apply mutatis mutandis to the pledging of an Investment Equity Option. In such a case, the term "Monies, etc." in paragraph (1) of that Article, the phrase "Monies, etc. (limited to monies)" in paragraph (2) of that Article, and the phrase "an amount equivalent to the value of the Monies, etc." in paragraph (3) of that Article are deemed to be replaced with "monies"; the phrases "A Company Surviving an Absorption-Type Merger as prescribed in Article 749, paragraph (1)" and "a Company Incorporated in a Consolidation-Type Merger as prescribed in Article 753, paragraph (1)" in Article 272, paragraph (3), item (iii) of the Companies Act are deemed to be replaced with "an Corporation Surviving an Absorption-Type Merger as prescribed in Article 147, paragraph (1), item (i) of the Investment Corporations Act" and "the Corporation Incorporated in a Consolidation-Type Merger as prescribed in Article 148, paragraph (1), item (ii) of the Investment Corporations Act", respectively; and Cabinet Order provides for any other necessary technical replacement of terms.

(Determination of Day of Acquisition)

- Article 88-9 (1) If the particulars set forth in Article 88-2, item (iv), sub-item (b) have been prescribed as a feature of a callable investment equity option (meaning an Investment Equity Option for which the particulars set forth in sub-item (a) of that item have been prescribed; hereinafter the same applies in this Section), the Investment Corporation must fix the day referred to in sub-

item (b) of that item by resolution of the board of officers; provided, however, that this does not apply if there are other provisions as a feature of the callable investment equity option.

- (2) Once an Investment Corporation fixes the day referred to in Article 88-2, item (iv), sub-item (b), it must notify the holders of callable investment equity options (or, if the particulars set forth in sub-item (c) of that item have been prescribed, the holders of callable investment equity options determined pursuant to the provisions of paragraph (1) of the following Article) and the registered pledgees of those investment equity options (meaning the pledgees for which the information set forth in the items of Article 269, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to paragraph (5) of the preceding Article have been entered or recorded in the investment equity options register; hereinafter the same applies) of that date, no later than two weeks prior to it.
- (3) Public notice may be substituted for the notice under the preceding paragraph.

(Deciding Which Investment Equity Options to Acquire)

Article 88-10 (1) If the particulars set forth in Article 88-2, item (iv), sub-item (c) have been prescribed as the features of Investment Equity Options, before acquiring callable investment equity options, an Investment Corporation must decide which callable investment equity options it will acquire.

- (2) The callable investment equity options referred to the preceding paragraph must be decided on by resolution of the board of officers; provided, however, that this does not apply if there are other provisions as a feature of the callable investment equity options.
- (3) Once an Investment Corporation makes a decision under the provisions of paragraph (1), it must immediately notify the holders of callable investment equity options that have been decided on pursuant to the provisions of that paragraph and the registered pledgees of investment equity options thereof that it will acquire those callable investment equity options.
- (4) Public notice may be substituted for the notice under the preceding paragraph.

(Entry into Effect)

Article 88-11 (1) An Investment Corporation acquires callable investment equity options (or, if the particulars set forth in item (iv), sub-item (c) of that Article have been prescribed, the callable investment equity options decided on pursuant to the provisions of paragraph (1) of the preceding Article) on the day that the grounds referred to in Article 88-2, item (iv), sub-item (a) arise (or, if the particulars set forth in sub-item (c) of that item have been prescribed, on either the day set forth in item (i) or the day set forth in item (ii) below, whichever comes later):

- (i) day on which the grounds under Article 88-2, item (iv), sub-item (a) arise; or
  - (ii) the day of a notice under the provisions of paragraph (3) of the preceding Article, or the day marking two weeks' time since the day of the public notice referred to in paragraph (4) of that Article.
- (2) Without delay after the grounds under Article 88-2, item (iv), sub-item (a) arise, an Investment Corporation must notify the holders of callable investment equity options and their registered pledgees of investment equity options (or, if the particulars set forth in sub-item (c) of that item have been prescribed, this means the holders of callable investment equity options decided on pursuant to the provisions of paragraph (1) of the preceding Article and their registered pledgees of investment equity options thereof) that those grounds have arisen; provided, however, that this does not apply if the Investment Corporation issues notice under the provisions of Article 88-9, paragraph (2) or issues the public notice referred to in paragraph (3) of that Article.
- (3) Public notice may be substituted for the notice under the main clause of the preceding paragraph.

(Cancellation of Investment Equity Options)

Article 88-12 (1) An Investment Corporation may cancel its investment equity options in itself (meaning Investment Equity Options that an Investment Corporation holds in itself; hereinafter the same applies in this Section). In such a case, the Investment Corporation must fix the features and number of the investment equity options in itself that it will cancel.

- (2) A decision under the provisions of the second sentence of the preceding paragraph must be reached by resolution of the board of officers.

(Free Allotment of Investment Equity Options)

Article 88-13 An Investment Corporation may allot Investment Equity Options therein to Investors without having them make any new payments (hereinafter referred to as effecting a "Free Allotment of Investment Equity Options").

(Deciding on Particulars Free Allotments of Investment Equity Options)

Article 88-14 (1) On each occasion before effecting a Free Allotment of Investment Equity Options, an Investment Corporation must establish the following particulars:

- (i) the features and number of the Investment Equity Options it will allot to Investors or the way of calculating that number; and
  - (ii) the day on which the Free Allotment of Investment Equity Options becomes effective.
- (2) Provisions for the particulars set forth in item (i) of the preceding paragraph

must establish that the Investment Equity Options referred to in that item will be allotted in proportion to the number of units of Investment Equity held by Investors other than the Investment Corporation.

- (3) Decisions on the particulars set forth in the items of paragraph (1) must be effected by resolution of the board of officers.

(Entry into Effect of Free Allotments of Investment Equity Options)

Article 88-15 (1) Investors to which Investment Equity Options as referred to in paragraph (1), item (i) of the preceding Article have been allotted become the holders of the Investment Equity Options referred to in item (i) of that paragraph on the day referred to in item (ii) of that paragraph.

- (2) An Investment Corporation must notify the Investors and their Registered Pledges of Investment Equity of the features and number of the Investment Equity Options that have been allotted to the Investors, without delay after the day referred to in paragraph (1), item (ii) of the preceding Article.

- (3) If persons have been notified as under the provisions of the preceding paragraph but the end of the period referred to in Article 88-2, item (iii) for the Investment Equity Options referred to in paragraph (1), item (i) of the preceding Article arrives before the day marking the last day of the two-week period following the day on which they were notified, the period referred to in Article 88-2, item (iii) is deemed to be extended to the day that marks the last day of the two-week period following the day on which they were notified.

(Exercise of Investment Equity Options)

Article 88-16 (1) A person must clarify the following information when exercising Investment Equity Options:

- (i) the features and number of Investment Equity Options being exercised; and
  - (ii) the day on which the person is exercising the Investment Equity Options.
- (2) When exercising investment equity options for which certificates are issued, the holder thereof must submit the Investment Equity Option Certificates to the Investment Corporation; provided, however, that this does not apply if no such Investment Equity Option Certificates have been issued.
- (3) An Investment Corporation may not exercise its investment equity options in itself.

(Paying In on Exercise of Investment Equity Options)

Article 88-17 (1) The holder of an Investment Equity Option must pay in the entire amount of the monies provided for in Article 88-2, item (ii) for the Investment Equity Options that the holder is exercising, at the place that the Investment Corporation prescribes for the bank or equivalent institution handling the payments to handle the payments, on the day provided for in

- paragraph (1), item (ii) of the preceding Article.
- (2) A holder of Investment Equity Options may not set off the obligation to pay in as under the provisions of the preceding paragraph against a claim held thereby against the Investment Corporation.
  - (3) The provisions of Article 286-2 (excluding paragraph (1), item (i) and item (iii)) and Article 286-3 of the Companies Act apply mutatis mutandis to the liability of the investment equity option holders and executive managing officers. In such a case, the term "Article 281, paragraph (1) or the second sentence of paragraph (2)" in Article 286-2, paragraph (1), item (ii) of that Act is deemed to be replaced with "Article 88-17, paragraph (1) of the Investment Corporations Act" and Cabinet Order provides for any other necessary technical replacement of terms.
  - (4) The provisions of Part VII, Chapter II, Section 2 of the Companies Act (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853, paragraph (1), item (ii) and item (iii)) apply mutatis mutandis to an action for payment under Article 286-2 (excluding paragraph (1), item (i) and item (iii)) as applied mutatis mutandis pursuant to the preceding paragraph. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Timing of Becoming Investors)

- Article 88-18 (1) A holder of an Investment Equity Options that exercises that Investment Equity Option becomes an Investor in the Investment Equity underlying the Investment Equity Option on the day that the holder exercises that Investment Equity Option.
- (2) A holder of an Investment Equity Option that exercises that Investment Equity Option and that falls under a category of persons set forth in Article 286-2, paragraph (1), item (ii) of the Companies Act as applied mutatis mutandis pursuant to paragraph (3) of the preceding Article, may not exercise the rights of an Investor with respect to the Investment Equity underlying the Investment Equity Option for which the payment referred to in Article 286-2, paragraph (1), item (ii) of the Companies Act has been falsified, unless a payment as specified in that item or a payment under the provisions of Article 268-3, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to paragraph (3) of the preceding Article is made.
  - (3) The person acquiring Investment Equity referred to in the preceding paragraph may exercise an Investors' right with respect to the Investment Equity; provided, however, that this does not apply if the person acted in bad faith or with gross negligence.

(Numerical Rounding)

Article 88-19 If an Investment Equity Option is exercised and a fractional unit of Investment Equity would be delivered to the holder of the Investment Equity Option, the Investment Corporation must deliver monies to the holder of the Investment Equity Option in an amount equivalent to what is arrived at when the fractional unit of equity is multiplied by the amount that the relevant of the following items prescribes for the category of case set forth in that item; provided, however, that this does not apply if the particulars set forth in Article 88-2, item (v) have been prescribed:

- (i) if the Investment Equity has a market price: the amount calculated in the way that Cabinet Office Order prescribes as the market price of one unit of that Investment Equity; and
- (ii) in a case other than as set forth in the preceding item: a fair amount in light of the amount of net assets per one unit.

(Extinguishment of Investment Equity Options)

Article 88-20 In addition as provided in Article 88-12, paragraph (1), if a holder of an Investment Equity Options can no longer exercise the Investment Equity Option held thereby, that Investment Equity Option is extinguished.

(Issuance of Investment Equity Option Certificates)

Article 88-21 (1) Without delay after the day on which an Investment Corporation issues investment equity options for which certificates are issued, it must issue Investment Equity Option Certificates for them.

(2) The provisions of Article 289 through Article 291 of the Companies Act apply mutatis mutandis to Investment Equity Option Certificates. In such a case, the phrase "Representative Director of the Stock Company (or the representative executive officer for a Company with Nominating Committee, etc.)" in Article 289 of that Act is deemed to be replaced with "executive managing officer of the Investment Corporation"; the phrase "Article 236, paragraph (1), item (xi)" in Article 290 of that Act is deemed to be replaced with "Article 88-2, item (vii) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Public Notice to Submit Investment Equity Option Certificates)

Article 88-22 (1) If an Investment Corporation takes an action set forth in one of the following items and it has issued Investment Equity Option Certificates representing the Investment Equity Options provided for in the relevant item, it must issue public notice and individual notices to all investment equity option holders and registered pledgees of investment equity options by one

month before the day on which the action becomes effective (hereinafter referred to as the "Day for Submitting Investment Equity Option Certificates"), indicating that persons must submit those Investment Equity Option Certificates to the Investment Corporation by the Day for Submitting Investment Equity Option Certificates:

- (i) the acquisition of callable investment equity options: the callable investment equity options; or
  - (ii) a merger (but only if the Investment Corporation will disappear as a result of the merger): all Investment Equity Options.
- (2) If an Investment Corporation takes an action set forth in one of the following items and a person has failed to submit an Investment Equity Option Certificate to the Investment Corporation by the Day for Submitting Investment Equity Option Certificates, the person specified in the item may refuse to deliver monies to which the holder of the Investment Equity Option that the Investment Equity Option Certificate represents is entitled as a result of that action:
- (i) the acquisition of callable investment equity options: the Investment Corporation; or
  - (ii) a merger (but only if the Investment Corporation will disappear as a result of the merger): the Corporation Surviving an Absorption-Type Merger as prescribed in Article 147, paragraph (1), item (i) or the Corporation Incorporated in a Consolidation-Type Merger as prescribed in Article 148, paragraph (1), item (ii).
- (3) An Investment Equity Option Certificate representing an Investment Equity Option provided for in the items of paragraph (1) becomes invalid on the Day for Submitting Investment Equity Option Certificates.
- (4) The provisions of Article 220 of the Companies Act apply mutatis mutandis if an action as set forth in one of the items of paragraph (1) is taken and a person has failed to submit an Investment Equity Option Certificate. In such a case, the phrase "each item of paragraph (1) of the preceding article" in Article 220, paragraph (1) of that Act is deemed to be replaced with "the items of Article 88-22, paragraph (1) of the Investment Corporations Act"; the phrases "the items of paragraph (2) of the preceding article" and "Monies, etc." in Article 220, paragraph (2) of that Act are deemed to be replaced with "the items of Article 88-22, paragraph (2) of the Investment Corporations Act" and "monies", respectively; and Cabinet Order provides for any other necessary technical replacement of terms.

(Application Mutatis Mutandis of the Companies Act)

Article 88-23 (1) The provisions of Article 828, paragraph (1) (but only the part that is relevant to item (iv)) and paragraph (2) (but only the part that is

relevant to item (iv)); Article 834 (but only the part that is relevant to item (iv)); Article 835, paragraph (1); Article 836, paragraph (1) and paragraph (3); Article 837 through Article 839; Article 842; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to item (i), sub-item (c)) of the Companies Act apply mutatis mutandis to an action to invalidate the issuance of Investment Equity Options, and the provisions of Article 868, paragraph (1); the main clause of Article 871; Article 872 (but only the part that is relevant to item (iii)); the main clause of Article 873; Article 875 through Article 877; and Article 878, paragraph (2) of that Act apply mutatis mutandis to a petition prescribed in Article 840, paragraph (2) of that Act as applied mutatis mutandis pursuant to Article 842, paragraph (2) of that Act as applied mutatis mutandis pursuant to this paragraph. Cabinet Order provides for the necessary technical replacement of terms in such a case.

- (2) The provisions of Article 829 (but only the part that is relevant to item (iii)); Article 834 (but only the part that is relevant to item (xv)); Article 835, paragraph (1); Article 836 through Article 838; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to item (i), sub-item (f)) of the Companies Act apply mutatis mutandis to an action for a declaratory judgment establishing the non-issuance of Investment Equity Options. Cabinet Order provides for the necessary technical replacement of terms in such a case.

## **Section 4 Administrative Instruments**

### **Subsection 1 Investors' Meetings**

(Authority of Investors' Meetings)

- Article 89 (1) Only a matter provided for in this Act or a matter specified in the certificate of incorporation may be put to a resolution at an investors' meeting.
- (2) A provision of the certificate of incorporation indicating that an executive managing officer, board of officers, or administrative instrument other than an investors' meeting may make a decision on a matter that this Act requires to be put to a resolution at an investors' meeting, is invalid.

(Convocation)

- Article 90 (1) An investors' meeting is called by an executive managing officer unless otherwise provided in this Act.
- (2) A supervisory officer may request an executive managing officer to call an investors' meeting by indicating a subject matter for an investors' meeting to handle and a reason for calling one.
- (3) The provisions of Article 297, paragraph (1) and paragraph (4) of the Companies Act apply mutatis mutandis to the calling of an investors' meeting. In such a case, the phrase "not less than three-hundredths (3/100) (or, if a

lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders" in Article 297, paragraph (1) of that Act is deemed to be replaced with "three percent (or, if a smaller proportion is prescribed in the certificate of incorporation, that proportion) or more of the units of issued investment equity"; the term "the court" in paragraph (4) of that Article is deemed to be replaced with "the Prime Minister"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Deciding to Convoke Investors' Meetings)

Article 90-2 (1) An executive managing officer (or an Investor, if that Investor calls an investors' meeting pursuant to Article 297, paragraph (4) of the Companies Act as applied mutatis mutandis pursuant to paragraph (3) of the preceding Article; or supervisory officers, if supervisory officers jointly call an investors' meeting pursuant to the main clause of Article 114, paragraph (3); the same applies in the following Article) must establish the following particulars when calling an investors' meeting:

- (i) the time and place of the investors' meeting;
- (ii) the subject matter that the investors' meeting will handle;
- (iii) that it has been decided that Investors not attending the investors' meeting may exercise their voting rights by electronic or magnetic means, if this is the case; and
- (iv) the particulars that Cabinet Office Order prescribes, beyond what is set forth in the preceding three items.

(2) Investors not attending an investors' meeting may vote in writing.

(Convocation Procedures)

Article 91 (1) In order to call an investors' meeting, an executive managing officer must issue public notice of the date of the investors' meeting by at least two months before that date, and must issue notice of this in writing to the Investors by two weeks before that date; provided, however, that if the certificate of incorporation indicates that the executive managing officer must call an investors' meeting on a certain date or without delay after that date, the officer is not required to issue the relevant public notice for an investors' meeting that will be held before the last day of the 25-month period after the date on which the immediately preceding investors' meeting was held in accordance with the provisions of the certificate of incorporation.

(2) In lieu of sending a written notice as referred to in the preceding paragraph, an executive managing officer may issue notice by electronic or magnetic means, with the consent of the Investors and pursuant to Cabinet Order. In such a case, the executive managing officer is deemed to have issued the written notice referred to in the preceding paragraph.

- (3) The information set forth in the items of paragraph (1) of the preceding Article must be included or recorded in a notice as referred to in the preceding two paragraphs.
- (4) When notifying persons as referred to in paragraph (1), an executive managing officer must deliver paper documents to the Investors which give them information that should help them to vote (such documents are referred to as "reference documents for the investors' meeting" in the following paragraph) and paper documents that will allow the Investors to vote (hereinafter referred to as "voting forms" in this Subsection), pursuant to the provisions of Cabinet Office Order.
- (5) If an executive managing officer issues notices by electronic or magnetic means as provided in paragraph (2) to Investors that have consented as referred to in that paragraph, the officer may use electronic or magnetic means to provide Investors with the information that the officer is required to give in the reference documents for an investors' meeting and voting forms prescribed in the preceding paragraph, in lieu of delivering the paper documents; provided, however, that an executive managing officer must deliver the paper documents to an Investor if requested to do so.
- (6) Having established what is set forth in item (iii) of paragraph (1) of the preceding Article, when using electronic or magnetic means to notify, under paragraph (2), the Investors that have given the consent referred to in that paragraph, an executive managing officer must use electronic or magnetic means to provide them with the information that must appear in the voting forms, pursuant to the provisions of Cabinet Office Order.
- (7) In a case as provided in the preceding paragraph, if, by one week before the day of an investors' meeting, an executive managing officer receives a request from an Investor that has not consented as referred to in paragraph (2) to be provided with the information that must appear in the voting form by electronic or magnetic means, the executive managing officer must immediately provide the Investor with that information by electronic or magnetic means, pursuant to the provisions of Cabinet Office Order.

(Voting in Writing)

- Article 92 (1) Voting in writing is effected through the entry of the necessary information in the voting form and the submission of that voting form to the Investment Corporation by the time prescribed by Cabinet Office Order.
- (2) Votes exercised in writing pursuant to the preceding paragraph are included in the calculation of the number of votes by Investors attending the investors' meeting.
  - (3) An Investment Corporation must keep voting forms submitted pursuant to paragraph (1) at its head office for three months from the day of the investors'

meeting.

- (4) An Investor may request to inspect or copy voting forms submitted pursuant to paragraph (1) at any time during the business hours of the Investment Corporation.

(Voting by Electronic or Magnetic Means)

Article 92-2 (1) A person votes by electronic or magnetic means by obtaining the consent of the Investment Corporation pursuant to the provisions of Cabinet Order and using electronic or magnetic means to provide the corporation with the information that must appear in the voting form by the time that Cabinet Office Order prescribes.

- (2) If an Investor has consented as referred to in Article 91, paragraph (2), the Investment Corporation must not refuse to give the consent referred to in the preceding paragraph without legitimate grounds for refusing to do so.

- (3) Votes exercised by electronic or magnetic means pursuant to paragraph (1) are included in the calculation of the number of votes by Investors attending the investors' meeting.

- (4) An Investment Corporation must keep the electronic or magnetic records in which the information with which it has been provided pursuant to paragraph (1) has been recorded at its head office for three months from the day of the investors' meeting.

- (5) An Investor may request to inspect or copy something that has been made to show the information recorded in an electronic or magnetic record referred to in the preceding paragraph through a means that Cabinet Office Order prescribes, at any time during the business hours of the Investment Corporation.

(Deemed Votes in Favor)

Article 93 (1) An Investment Corporation may include provisions in its certificate of incorporation indicating that if an Investor does not attend an investors' meeting and does not vote, that Investor is deemed to vote in favor of the proposals submitted at the investors' meeting (excluding conflicting proposals, if more than one proposal is submitted and these conflict with each other).

- (2) An Investment Corporation that has established the provisions under the preceding paragraph must include or record those provisions in the notice referred to in Article 91, paragraph (1) or paragraph (2).

- (3) Votes held by Investors that are deemed to vote in favor of a proposal based on the provisions under paragraph (1) are included in the calculation of the number of votes by Investors attending the investors' meeting.

(Resolutions at Investors' Meetings)

Article 93-2 (1) Unless otherwise provided for in the certificate of incorporation, a resolution at an investors' meeting is passed by the majority vote of the attending Investors, with the Investors in attendance holding over half of the issued investment equity.

(2) Notwithstanding the provisions of the preceding paragraph, a resolution at an investors' meeting as set forth in one of the following items is effected by at least a two-thirds majority (or, if a higher proportion is provided for in the certificate of incorporation, that proportion) of the votes of the attending Investors, with the Investors in attendance holding over half of the issued investment equity. However, this does not preclude the certificate of incorporation from establishing provisions in addition to these requirements for a resolution, indicating that votes in favor are required from at least a certain number of the Investors or any other requirements:

(i) an investors' meeting as provided in Article 180, paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to Article 81-2, paragraph (2) following the deemed replacement of terms;

(ii) an investors' meeting as provided in Article 115-6, paragraph (3);

(iii) an investors' meeting as provided in Article 140;

(iv) an investors' meeting as provided in Article 143, item (iii); or

(v) an investors' meeting as provided in Article 149-2, paragraph (1); Article 149-7, paragraph (1); or Article 149-12, paragraph (1).

(3) It is not permissible for a resolution on a matter other than as set forth in Article 90-2, paragraph (1), item (ii) to be put to a vote at an investors' meeting; provided, however, that this does not apply to the appointment of persons prescribed in Article 316, paragraph (1) or paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to paragraph (1) of the following Article or to a request for the attendance of the financial auditor as referred to in Article 115-4.

(Application Mutatis Mutandis of the Companies Act)

Article 94 (1) The provisions of the main clause of Article 300; Article 303, paragraph (2); Article 304; the main clause of Article 305, paragraph (1); Article 305, paragraph (4); Article 306 (excluding paragraph (2) and paragraph (4)); Article 307; Article 308 (excluding the proviso to paragraph (1)); Article 310; and Article 313 through Article 318 (excluding paragraph (3)) of the Companies Act apply mutatis mutandis to an investors' meeting. In such a case, the term "the preceding Article" in the main clause of Article 300 of that Act is deemed to be replaced with "Article 91, paragraph (1) through paragraph (3) of the Investment Corporations Act"; the phrase "Notwithstanding the provisions of the preceding paragraph, at a Company with a Board of Directors" in Article

303, paragraph (2) of the Companies Act is deemed to be deleted; the phrase "the votes of all shareholders" in that paragraph is deemed to be replaced with "issued investment equity"; the phrase "or not less than three hundred (or, if lesser number is prescribed in the articles of incorporation, such number of) votes of all shareholder" in that paragraph is deemed to be deleted, the phrase "only shareholders" in that paragraph is deemed to be replaced with "the Investors"; the term "Shareholders" in the main clause of Article 305, paragraph (1) of that Act is deemed to be replaced with "Investors that have held at least one percent (or, if a lower proportion is provided for in the certificate of incorporation, that proportion) of the units of issued investment equity continuously for the past six months (or, if a shorter period is provided for in the certificate of incorporation, for that period)"; the phrase "shareholders be notified of" in that paragraph is deemed to be deleted; the phrase "(or, if a notice pursuant to paragraph (2) or paragraph (3) of Article 299 is to be given, such summary be specified or recorded in that notice)" in that paragraph is deemed to be replaced with "must be included or recorded in the notice under Article 91, paragraph (1) or paragraph (2) of the Investment Corporations Act"; the phrase "who hold not less than one hundredth (1/100) (or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their votes on all matters which may be resolved at the shareholders meeting)" in Article 306, paragraph (1) of the Companies Act is deemed to be replaced with "that have held issued investment equity continuously for the last six months (or, if a shorter period is provided for in the certificate of incorporation, for that period)"; the term "the court" in Article 306, paragraph (1), paragraph (3), paragraph (5), and paragraph (6); Article 307, paragraph (1) and paragraph (2); and Article 318, paragraph (5) of the Companies Act is deemed to be replaced with "the Prime Minister"; the phrase "Article 299, paragraph (3)" in Article 310, paragraph (4) of the Companies Act is deemed to be replaced with "Article 91, paragraph (2) of the Investment Corporations Act"; the phrase "Article 297" in Article 316, paragraph (2) of the Companies Act is deemed to be replaced with "Article 297, paragraph (1) and paragraph (4) as applied mutatis mutandis pursuant to Article 90, paragraph (3) of the Investment Corporations Act"; the phrase "Article 298 and Article 299" in Article 317 of the Companies Act is deemed to be replaced with "Article 90-2, paragraph (1) and Article 91, paragraph (1) through paragraph (3) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

- (2) The provisions of Article 830; Article 831; Article 834 (but only the part that is relevant to item (xvi) and item (xvii)); Article 835, paragraph (1); Article 836, paragraph (1) and paragraph (3); Article 837; Article 838; Article 846; and

Article 937, paragraph (1) (but only the part that is relevant to sub-item (g) of item (i)) of the Companies Act apply mutatis mutandis to an action seeking a declaratory judgment to establish the absence or invalidity of a resolution adopted at an investors' meeting or an action seeking the recession of such a resolution. In such a case, Cabinet Order provides for any necessary technical replacement of terms.

### **Subsection 2 Establishment of Administrative Instruments Other Than Investors' Meetings**

Article 95 An Investment Corporation must have the following administrative instruments:

- (i) one or more executive managing officers;
- (ii) supervisory officers numbering at least one more than the number of executive managing officers;
- (iii) a board of officers; and
- (iv) a financial auditor.

### **Subsection 3 Appointment and Dismissal of Officers and Financial Auditors**

(Appointment)

Article 96 (1) Officers (meaning executive managing officers and supervisory officers; hereinafter the same applies in this Subsection (excluding Article 100, item (iii) and item (v))) and financial auditors are appointed by resolution at an investors' meeting.

(2) The provisions of Article 329, paragraph (3) of the Companies Act apply mutatis mutandis to a resolution as prescribed in the preceding paragraph. In such a case, the term "this Act" in Article 329, paragraph (3) of that Act is deemed to be replaced with "the Investment Corporations Act" and Cabinet Order provides for any other necessary technical replacement of terms.

(Relationship between Investment Corporations and Their Officers)

Article 97 The relationship between an Investment Corporation and its Officers and financial auditors is governed by the provisions on mandates.

(Qualification as Executive managing officer)

Article 98 The following persons may not act as an executive managing officer:

- (i) a corporation;
- (ii) an adult ward, person under curatorship, or person that is treated in the same manner under foreign laws or regulations;

- (iii) a person subject to an order commencing bankruptcy proceedings and that remains undischarged, or a person that is treated in the same manner under foreign laws or regulations;
- (iv) a person that has been sentenced to imprisonment without work or a heavier punishment (including an equivalent punishment under foreign laws or regulations) and that has not gone five years since the day on which the person finished serving the sentence or ceased to be subject to its enforcement; and
- (v) a person that has been sentenced to a fine (or an equivalent punishment under foreign laws or regulations) for having violated the provisions of this Act, the Trust Act, the Trust Business Act, the Act on Engagement in Trust Business Activities by Financial Institutions, the Financial Instruments and Exchange Act, the Commodity Derivatives Act (Act No. 239 of 1950), the Real Estate Brokerage Act, the Act Regulating the Receipt of Contributions, Receipt of Deposits, and Interest Rates (Act No. 195 of 1954), the Installment Sales Act (Act No. 159 of 1961), the Money Lending Business Act (Act No. 32 of 1983), the Act on Deposit Transaction Agreements of Specified Commodities (Act No. 62 of 1986), the Act on Regulation of Business Pertaining to Commodity Investment (Act No. 66 of 1991), the Act on Specified Joint Real Estate Ventures (Act No. 77 of 1994), the Act on Securitization of Assets (Act No. 105 of 1998), the Act on Issuance of Bonds for Financial Corporations' Loan Business (Act No. 32 of 1999), the Companies Act, or the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006); for having violated the provisions of a foreign law or regulation that is equivalent to any of these Acts; or for having committed a crime prescribed in Article 255, Article 256, Article 258 through Article 260, or Article 262 of the Civil Rehabilitation Act (Act No. 225 of 1999), Article 65, Article 66, Article 68, or Article 69 of the Act on Recognition and Assistance for Foreign Insolvency Procedures (Act No. 129 of 2000), Article 265, Article 266, Article 268 through Article 272, or Article 274 of the Bankruptcy Act (Act No. 75 of 2004), Article 204, Article 206, Article 208, Article 208-2, Article 222, and Article 247 of the Penal Code (Act No. 45 of 1907), the Act on the Punishment of Violent Acts (Act No. 60 of 1926), Article 46 through 49, Article 50 (but only the part that is relevant to item (i)), or Article 51 of the Act on Prevention of Illegal Activities by Members of Organized Crime Groups (Act No. 77 of 1991), if the person has not gone five years since the day that the person finished serving the sentence or ceased to be subject to its enforcement.

(Term of Office of Executive managing officers)

Article 99 (1) The term of office of an executive managing officer may not exceed

two years.

- (2) Notwithstanding the provisions of the preceding paragraph, if the certificate of incorporation includes provisions as referred to in the proviso to Article 91, paragraph (1), it may be decided by resolution at an investors' meeting that the term of office of an executive managing officer will continue until the conclusion of an investors' meeting held within 30 days after the day following the date that marks two years since the manager's appointment, at which a vote will be held on the appointment of an executive managing officer.

(Qualification as Supervisory Officer)

Article 100 The following persons may not act as supervisory officers:

- (i) a person as set forth in one of the items of Article 98;
- (ii) the organizer of an Investment Corporation;
- (iii) an officer or employee, or a person that formerly held one or multiple such positions, at a corporation that is the organizer of an Investment Corporation or at the subsidiary company of such a corporation (meaning a stock company in which such a corporation holds the majority of all shareholders' voting rights (other than voting rights in respect of shares that do not entitle the holder to vote on all matters that can be resolved at a shareholders meeting, but including voting rights in respect of shares that are deemed to entitle the holder to a vote pursuant to the provisions of Article 897, paragraph (3) of the Companies Act); the same applies in item (v) and Article 200, item (i));
- (iv) an executive managing officer of an Investment Corporation;
- (v) an officer or employee, or a person that formerly held one or multiple such positions, at a financial instruments business operator, etc. (meaning a financial instruments business operator, etc. referred to in Article 34 of the Financial Instruments and Exchange Act) or a financial instruments intermediary service provider (meaning a financial instruments intermediary service provider as provided in Article 2, paragraph (12) of that Act; hereinafter the same applies in this item); at the subsidiary company of such a corporation; or at a financial instruments intermediary service provider that is an individual; and
- (vi) a person that Cabinet Office Order prescribes as likely to be hindered in the performance of duties as a supervisory officer because of a relationship to the organizer or executive managing officer of an Investment Corporation which constitutes that of an interested party or due to any other circumstances.

(Term of Office of Supervisory Officers)

Article 101 (1) The term of office of a supervisory officer is four years; provided, however, that this does not preclude the shortening of terms of office through

the certificate of incorporation or by resolution at an investors' meeting.

- (2) The provisions of Article 99, paragraph (2) of this Act and Article 336, paragraph (3) of the Companies Act apply mutatis mutandis to the term of office of a supervisory officer as prescribed in the preceding paragraph. In such a case, the phrases "preceding paragraph" and "two years" in Article 99, paragraph (2) are deemed to be replaced with "the main clause of Article 101, paragraph (1)" and "four years", respectively; the phrase "paragraph (1)" in Article 336, paragraph (3) of that Act is deemed to be replaced with "Article 101, paragraph (1) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Qualification as Financial Auditor)

Article 102 (1) A financial auditor must be a certified public accountant (or a foreign certified public accountant as prescribed in Article 16-2, paragraph (5) of the Certified Public Accountants Act (Act No. 103 of 1948); the same applies hereinafter) or an auditing firm.

- (2) An auditing firm appointed as the financial auditor must select a person to perform the duties of the financial auditor from among its members, and must notify the Investment Corporation to that effect. In such a case, it may not select a person as set forth in item (ii) or item (iii) of the following paragraph.

(3) The following persons may not act as financial auditors:

(i) a person that, pursuant to the provisions of the Certified Public Accountants Act, may not audit the documents set forth in the items of Article 115-2, paragraph (1);

(ii) a person that is being continuously remunerated by the subsidiary corporation of an Investment Corporation or by its executive managing officer or supervisory officer for services other than those of a certified public accountant or auditing firm, or the spouse of such a person;

(iii) a person that that is being continuously remunerated by the Administrative Agent, Asset Management Company, or Asset Custody Company of an Investment Corporation, or by the director, accounting advisor, auditor, or executive officer thereof for services other than those of a certified public accountant or auditing firm, or the spouse of such a person;  
and

(iv) an auditing firm more than half of whose members are persons as set forth in the preceding two items.

(Term of Office of Financial Auditors)

Article 103 (1) The term of office of a financial auditor continues until the conclusion of the first investors' meeting that is held after the first accounting period that ends after one year's time has passed since the auditor assumes

that role.

- (2) If it is not resolved otherwise at the investors' meeting prescribed in the preceding paragraph, the financial auditor is deemed to be reappointed at that investors' meeting.
- (3) The provisions of the preceding two paragraphs do not apply to the financial auditor of an Investment Corporation in Liquidation (meaning an Investment Corporation in Liquidation as prescribed in Article 150-3; the same applies in Article 115-2, paragraph (1), item (ii)).

(Dismissal)

Article 104 (1) An officer or financial auditor may be dismissed at any time by resolution at an investors' meeting.

- (2) Unless there are legitimate grounds for a dismissal, a person that has been dismissed pursuant to the preceding paragraph may demand compensation from the Investment Corporation for damage arising from the dismissal.
- (3) The provisions of Article 854, paragraph (1) (but only the part that is relevant to item (ii)); Article 855; Article 856; and Article 937, paragraph (1) (but only the part that is relevant to item (i), sub-item (j)) of the Companies Act apply mutatis mutandis to an action seeking the dismissal of an officer. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Dismissal of Financial Auditors by Board of Officers)

Article 105 (1) If a financial auditor falls under one of the following items, the board of officers or board of liquidators may dismiss that financial auditor:

- (i) the financial auditor breaches an obligation in the course of duties or has neglects the duties thereof;
  - (ii) the financial auditor engages in conduct unbecoming a financial auditor; or
  - (iii) the financial auditor has difficulty or is unable to cope with the execution of duties due to a mental or physical disorder.
- (2) A dismissal under the preceding paragraph must be effected with unanimous agreement among the members of the board of officers or board of liquidators.
  - (3) If a financial auditor is dismissed pursuant to paragraph (1), the supervisory officer selected by the board of officers or a liquidation supervisor selected by the board of liquidators must report this at the first investors' meeting called after the dismissal, giving the reasons for the dismissal.

(Resolutions at Investors' Meetings for Dismissal of Officers)

Article 106 Notwithstanding the provisions of Article 93-2, paragraph (1), a resolution at an investors' meeting to dismiss an Officer is effected by the majority vote (or, if a higher proportion is provided for in the certificate of incorporation, a majority vote representing at least that proportion) of the

attending Investors, with the Investors in attendance holding over half of the issued investment equity.

(Statement of Opinions on Appointment of Financial Auditors)

Article 107 (1) A financial auditor may attend an investors' meeting and state an opinion on the appointment, dismissal, refusal of reappointment, or resignation thereof.

(2) A person that resigns as financial auditor or that is dismissed as financial auditor pursuant to Article 105, paragraph (1) may attend the first investors' meeting that is called after that resignation or dismissal and either indicate that the person has resigned and give the reason therefor or state an opinion on the dismissal.

(3) An executive managing officer or executive liquidator must notify a persons as referred to in the preceding paragraph that an investors' meeting as referred to in that paragraph is being called and of the information set forth in Article 90-2, paragraph (1), item (i).

(Measures for Officer Position Vacancies)

Article 108 (1) If there is a position vacant for an officer or a shortfall in the number of officers as prescribed by this Act or by the certificate of incorporation, an officer that has left office due to the expiration of that officer's term of office or due to resignation continues to have the rights and duties of an officer until a newly appointed officer (or a person that will temporarily perform the duties of an officer as provided in the following paragraph) assumes the role.

(2) In a case as referred to in the preceding paragraph, on finding that it is necessary to do so, the Prime Minister may appoint a person that will temporarily perform the duties of an officer, at the petition of an interested person.

(3) If there is a position vacant for a financial auditor or a shortfall in the number of financial auditors as provided in the certificate of incorporation, unless a new financial auditor is appointed without delay, the board of officers or board of liquidators must appoint a person to temporarily perform the duties of financial auditor.

(4) The provisions of Article 102 and Article 105 apply mutatis mutandis to a person that will temporarily perform the duties of financial auditor as referred to in the preceding paragraph.

#### **Subsection 4 Executive Managing Officers**

(Duties)

Article 109 (1) An executive managing officer undertakes executive management for the business of an Investment Corporation and represents the Investment Corporation.

(2) Except as otherwise provided in this Act, before doing the following or performing any other important duties, an executive managing officer must get the approval of the board of officers:

- (i) calling an investors' meeting under Article 90;
- (ii) entrusting a person with the administrative processes under Article 117;
- (iii) entrusting a person with administrative processes connected with Investment Corporation Bonds under Article 139-8;
- (iv) suspending a refund of Investment Equity under Article 146, paragraph (1);
- (v) concluding a merger agreement;
- (vi) concluding an entrustment contract for asset investment or custody of assets or changing the contents of such a contract;
- (vii) paying asset investment fees, fees for the custody of assets, and other costs for asset investments or custody of assets; and
- (viii) consenting as referred to in Article 205, paragraph (1).

(3) Executive managing officers must report on their job performance status to the board of officers at least once every three months.

(4) If the amount of remuneration for an executive managing officer is not provided for in the certificate of incorporation, the board of officers decides the amount according to the criteria prescribed in Article 67, paragraph (1), item (xii).

(5) The provisions of Article 349, paragraph (4) and paragraph (5); Article 355; and Article 360, paragraph (1) of the Companies Act apply mutatis mutandis to executive managing officers, Article 350 of that Act apply mutatis mutandis to Investment Corporations, and the provisions of Article 352; Article 868, paragraph (1); Article 869; Article 871; Article 874 (but only the part that is relevant to item (iv)); Article 875; and Article 876 of that Act apply mutatis mutandis to a person standing in for an executive managing officer. In such a case, the phrase "substantial detriment" in Article 360, paragraph (1) of that Act is deemed to be replaced with "irreparable harm"; and Cabinet Order provides for any other necessary technical replacement of terms.

#### (Appointment of Inspector of Executive Business Management)

Article 110 (1) If there are sufficient grounds to suspect misconduct in the executive management of an Investment Corporation or the existence of a material fact in connection with its executive management that would constitute a violation of laws and regulations or the certificate of incorporation, Investors holding three percent (or, if a lower proportion is provided for in the

certificate of incorporation, that proportion) or more of the units of issued investment equity may file a petition with the Prime Minister to appoint an inspector to investigate the operational and financial status of the Investment Corporation.

- (2) The provisions of Article 358, paragraph (2) and paragraph (4) through paragraph (7) and Article 359 of the Companies Act apply mutatis mutandis to an inspector if a petition as referred to in the preceding paragraph has been filed and to once the inspector makes a report. In such a case, the term "the court" in Article 358, paragraph (2), paragraph (5) and paragraph (6) Article 359, paragraph (1) and paragraph (2) of that Act is deemed to be replaced with "the Prime Minister", and Cabinet Order provides for any other necessary technical replacement of terms.

### **Subsection 5 Supervisory Officers**

Article 111 (1) Supervisory officers supervise executive managing officers' performance of their duties.

- (2) At any time, a supervisory officer may request an executive managing officer, Administrative Agent, Asset Management Company, or Asset Custody Company to report on the operational or financial status of the Investment Corporation or to make the necessary investigations.
- (3) Article 109, paragraph (4) of this Act and the provisions of Article 355; Article 381, paragraph (3) and paragraph (4); and Article 384 through Article 386 of the Companies Act apply mutatis mutandis to supervisory officers. Cabinet Order provides for the necessary technical replacement of terms in such a case.

### **Subsection 6 Board of Officers**

(Board of Officers)

Article 112 A board of officers is composed of all the executive managing officers and supervisory officers.

(Calling Board of Officers Meetings)

Article 113 (1) A meeting of the board of officers is called by one executive managing officer if there is only one of them, or by any of the executive managing officers if there are two or more of them; provided, however, that, if there are multiple executive managing officers and the certificate of incorporation or the board of officers has specified an executive managing officer to call meetings of the board of officers, the relevant executive managing officer calls those meetings.

- (2) In a case as referred to in the proviso to the preceding paragraph, an

executive managing officer other than the one prescribed in the proviso to that paragraph (hereinafter referred to as the "convenor" in this paragraph and the following paragraph) may request that the convenor call a meeting of board of officers by indicating a subject matter for the board of officers to handle.

- (3) On finding it to be necessary to do so in order to perform the duties thereof, a supervisory officer may request that an executive managing officer (or the convenor, in the case referred to in the proviso to paragraph (1)) call a meeting of the board of officers by indicating a subject matter for the board of officers to handle.
- (4) If a request under the preceding two paragraphs has been made, but a notice of convocation is not issued within five days from the date of the request setting a day within two weeks from the date of the request as the day for a board of officers meeting, the executive managing officer or supervisory officer that made the request may call a board of officers meeting.

(Authority of the Board of Officers)

Article 114 (1) In addition to exercising the authority prescribed in this Act and the certificate of incorporation, a board of officers supervises the execution of duties by executive managing officers.

- (2) If an executive managing officer falls under one of the following items, the board of officers may dismiss that executive managing officer:
  - (i) the officer breaches an obligation in the course of the duties thereof or neglects the duties thereof;
  - (ii) the officer engages in conduct unbecoming an executive managing officer; or
  - (iii) the officer has difficulty or is unable to cope with the execution of duties due to a mental or physical disorder.
- (3) If there is a position vacant for an executive managing officer because an executive managing officer has been dismissed pursuant to the preceding paragraph or for any other reason (other than the expiration of the executive managing officer's term of office or the resignation thereof), the supervisory officers must immediately and jointly call an investors' meeting to appoint a new executive managing officer; provided, however, that this does not apply if a substitute executive managing officer is appointed pursuant to Article 329, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 96, paragraph (2).
- (4) In a case as referred to in the main clause of the preceding paragraph, the supervisory officers, by unanimous agreement, must prepare a proposal to appoint a new executive managing officer and submit the proposal at the investors' meeting prescribed in the main clause of that paragraph.
- (5) If an executive managing officer is dismissed pursuant to paragraph (2), the supervisory officer that has been selected by the majority of the supervisory

officers must report this at the first investors' meeting called after the dismissal, giving the reasons for the dismissal.

(6) A person that has been dismissed as executive managing officer pursuant to paragraph (2) may attend the investors' meeting referred to in the preceding paragraph and state an opinion on the dismissal thereof.

(7) A person that calls an investors' meeting as referred to in the preceding paragraph must notify the person prescribed in Article 90-2, paragraph (1) that an investors' meeting is being called, giving the information set forth in Article 90-2, paragraph (1), item (i).

(Application Mutatis Mutandis of the Companies Act)

Article 115 (1) The provisions of Article 368 and Article 369 of the Companies Act apply mutatis mutandis to a board of officers and Article 371 (excluding paragraph (3)) of that Act apply mutatis mutandis to an Investment Corporation. In such a case, the phrase "of the directors" in Article 369, paragraph (1) of that Act is deemed to be replaced with "of the members"; the terms "Directors" in paragraph (2) of that Article and "the directors and company auditors" in paragraph (3) of that Article is deemed to be replaced with "the executive managing officer and supervisory officers"; the term "Directors" in paragraph (5) of that Article is deemed to be replaced with "executive managing officer and supervisory officers"; the phrase "at any time during the business hours of a Stock Company" in Article 371, paragraph (2) of that Act is deemed to be replaced with "by obtaining the permission of the Prime Minister"; the term "the court" in paragraph (4) and paragraph (6) of that Article is deemed to be replaced with "the Prime Minister"; and Cabinet Order provides for any other necessary technical replacement of terms.

(2) Before reaching a disposition on a petition for the permission under Article 371, paragraph (2) and paragraph (4) of the Companies Act (including as applied mutatis mutandis to paragraph (5) of that Article) as applied mutatis mutandis pursuant to the preceding paragraph following the deemed replacement of terms, the Prime Minister must hear the statement of the Investment Corporation in connection with that petition.

### **Subsection 7 Financial Auditors**

(Authority of Financial Auditors)

Article 115-2 (1) A financial auditor must audit the following documents pursuant to the provisions of Section 7 and Section 12. When doing so, the financial auditor must prepare accounting audit reports pursuant to the provisions of Cabinet Office Order:

(i) the Investment Corporation's financial statements (meaning financial

- statements as prescribed in Article 129, paragraph (2); the same applies in Article 115-7, paragraph (2), item (i), sub-item (b)), asset investment reports, statements on the distribution of monies, and their annexed detailed statements; and
- (ii) an Investment Corporation in Liquidation's inventory and balance sheet (meaning an inventory and balance sheet as prescribed in Article 155, paragraph (1)) and statement of accounts.
- (2) On finding it to be necessary to do so in order to perform the duties thereof, a financial auditor may request that an Administrative Agent, Asset Management Company, or Asset Custody Company report on the accounting of the Investment Corporation.
- (3) A financial auditor must not employ a person falling under one of the following items in the course of the duties thereof:
- (i) a person as set forth in Article 102, paragraph (3), item (i) through item (iii);
  - (ii) the executive managing officer, supervisory officer, executive liquidator, liquidation supervisor, or Administrative Agent of an Investment Corporation or its subsidiary corporation;
  - (iii) the director, accounting advisor (or the member responsible for performing those duties, if the accounting advisor is an auditing firm or tax accounting firm), auditor, executive officer, or other officer or employee of the Administrative Agent, Asset Management Company, or Asset Custody Company of an Investment Corporation or its subsidiary corporation; or
  - (iv) a person that that that is being continuously remunerated by the Investment Corporation or its subsidiary corporation, or by the Administrative Agent, Asset Management Company, or Asset Custody Company of either of these for services other than those of a certified public accountant or auditing firm.
- (4) The provisions of Article 396, paragraph (2) through paragraph (4) of the Companies Act apply mutatis mutandis to the financial auditor of an Investment Corporation. In such a case, the phrase "directors and accounting advisors as well as managers or other employees" in Article 396, paragraph (2) of that Act is deemed to be replaced with "executive managing officer and executive liquidator", and Cabinet Order provides for any other necessary technical replacement of terms.

(Reports from Financial Auditors to Supervisory Officers)

Article 115-3 (1) If a financial auditor, in the course of the duties thereof, discovers misconduct in the performance of an executive managing officer's or executive liquidator's duties or a material fact whose existence constitutes a violation of laws and regulations or the certificate of incorporation, the auditor must report this to the supervisory officers or liquidation supervisors without

delay.

- (2) If it is necessary for the supervisory officers or liquidation supervisors to do so in order to carry out the duties thereof, they may ask the financial auditor to report on the auditing thereof.

(Financial Auditor's Statement of Opinions at Investors' Meetings)

Article 115-4 If a resolution requiring the attendance of a financial auditor (or the member responsible for performing those duties, if the financial auditor is an auditing firm; hereinafter the same applies in this Article) is to be voted on at an investors' meeting, the financial auditor must attend the investors' meeting and state an opinion.

(Remuneration for Financial Auditors)

- Article 115-5 (1) If the amount of remuneration for a financial auditor is not prescribed in the certificate of incorporation, the board of officers or board of liquidators decides the amount according to the criteria prescribed in Article 67, paragraph (1), item (xii).
- (2) An executive managing officer or executive liquidator must get the approval of the board of officers or board of liquidators when deciding the amount of remuneration for a person that has been appointed under Article 108, paragraph (3) to temporarily perform the duties of a financial auditor.

### **Subsection 8 Officers' and Similar Persons' Liability for Damage**

(Officers' and Similar Persons' Liability for Damage to Investment Corporations)

- Article 115-6 (1) If an executive officer, supervisory officer, or financial auditor (hereinafter referred to as an "officer or similar person" in this Subsection) neglects the duties thereof, the officer or similar person is liable to the Investment Corporation for damage resulting from this.
- (2) An exemption from the liability referred to in the preceding paragraph may not be granted without all Investors' agreement.
  - (3) Notwithstanding the provisions of the preceding paragraph, if an officer or similar person performs the duties thereof in good faith and without gross negligence, an exemption from the liability prescribed in paragraph (1) may be granted by resolution at an investors' meeting, up to the amount arrived at when the number that the relevant of the following items prescribes for the category of officer or similar person set forth in the item is multiplied by the amount calculated in the way that Cabinet Office Order prescribes as being equivalent to the annual amount of the financial benefit that the officer or similar person has received or will receive from the Investment Corporation

while in the position, as the consideration for performing the duties thereof, and the amount so arrived at is deducted from the amount for which the officer or similar person is liable:

- (i) an executive managing officer or supervisory officer: four; and
- (ii) an accounting auditor: two.

(4) In a case as referred to in the preceding paragraph, the executive managing officer must disclose the following information at the investors' meeting prescribed in that paragraph:

- (i) the facts that are the source of liability and the amount of liability for damage;
- (ii) the limit on the amount that may be exempted pursuant to the preceding paragraph and the basis for its calculation; and
- (iii) the reasons for granting an exemption from liability and the amount of that exemption.

(5) In order to submit a proposal involving an exemption from liability as prescribed in paragraph (1) (but only an executive managing officer's exemption from liability) at an investors' meeting, the executive managing officer must obtain the approval of each of the supervisory officers.

(6) Once a resolution as referred to in paragraph (3) is adopted, the Investment Corporation must get approval at an investors' meeting to grant a severance package or other economic benefit that Cabinet Office Order prescribes to the officer or similar person referred to in that paragraph after that resolution.

(7) Notwithstanding the provisions of paragraph (2), an Investment Corporation may include provisions in its certificate of incorporation indicating that if an officer or similar person performs the duties thereof in good faith and without gross negligence and the board of officers finds it to be particularly necessary to do so in consideration of the details of the facts that are the source of liability, the status of the officer's or similar person's performance of duties, and any other circumstances, an exemption from liability prescribed in paragraph (1) may be granted by resolution of the board of officers, up to the amount for which an exemption may be given pursuant to paragraph (3).

(8) The provisions of paragraph (5) apply *mutatis mutandis* if a proposal is submitted at an investors' meeting to revise the certificate of incorporation and include provisions in the certificate of incorporation under the preceding paragraph (but only provisions indicating that it is permissible to exempt the executive managing officer from liability) and if a proposal is submitted at a board of officers meeting on an exemption from liability based on provisions of the certificate of incorporation as under paragraph (5) (but only if it is to exempt an executive managing officer from liability).

(9) If a resolution is adopted at a board of officers meeting indicating that an officer or similar person is exempted from liability based on the provisions of

the certificate of incorporation as under paragraph (7), an executive managing officer, without delay, must issue public notice or notify the Investors that persons objecting to a matter set forth in one of the items of paragraph (4) or to the exemption from liability must state their objections within a certain period; provided, however, that this period may not be shorter than one month.

(10) If Investors holding three percent (or, if a lower proportion is provided for in the certificate of incorporation, that proportion) or more of the units of issued investment equity (other than Investment Equity held by the officer or similar person that bears the liability prescribed in the preceding paragraph) state their objections within the period provided in that paragraph, the Investment Corporation must not give an exemption based on the provisions of the certificate of incorporation as under paragraph (7).

(11) The provisions of paragraph (6) apply mutatis mutandis if an exemption from liability is granted based pm the provisions of the certificate of incorporation as under paragraph (7).

(12) The provisions of Article 427 of the Companies Act (excluding paragraph (3)) apply mutatis mutandis to a financial auditor's liability as prescribed in paragraph (1). In such a case, the phrases "Article 424" and "the Minimum Liability Amount" in Article 427, paragraph (1) of that Act are deemed to be replaced with "Article 115-6, paragraph (2) of the Investment Corporations Act" and "the amount arrived at when the multiplication referred to in Article 115-6, paragraph (3) is made", respectively; the phrase "Article 425 (2)(i)" in Article 427, paragraph (4), item (i) of the Companies Act is deemed to be replaced with "Article 115-6, paragraph (4), item (i) and item (ii) of the Investment Corporations Act"; the phrase "Article 423 (1)" in Article 427, paragraph (4), item (iii) of the Companies Act is deemed to be replaced with "Article 115-6, paragraph (1) of the Investment Corporations Act"; the phrase "Article 425 (4) and (5)" in Article 427, paragraph (5) of the Companies Act is deemed to be replaced with "Article 115-6, paragraph (6) of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

#### (Officers' and Similar Persons' Liability for Damage to Third Parties)

Article 115-7 (1) If an officer or similar person acts in bad faith or with gross negligence in performing the duties thereof, the officer or similar person is liable to compensate for damage that a third party incurs as a result of this.

(2) The provisions of the preceding paragraph also apply if a person as set forth in one of the following items engages in the conduct prescribed in the item; provided, however, that this does not apply if the person proves that they did not neglect to exercise due care in engaging in that conduct:

(i) an executive managing officer or supervisory officer: the following conduct:

- (a) falsely notifying a person of material information regarding which the executive managing officer or supervisory officer must notify persons when soliciting them to subscribe for Investment Equity or Investment Corporation Bonds; or making a false entry or record in the materials that are used to explain the business of the Investment Corporation or other information about the corporation when soliciting them;
  - (b) making false entries or records for material information that is required to be entered or recorded in financial statements, asset investment reports, statements on the distribution of monies, and their annexed detailed statements;
  - (c) making a false registration; or
  - (d) issuing false public notice.
- (ii) an accounting auditor: making false entries or records for material information that is required to be entered or recorded in the accounting audit reports.

(Joint and Several Liability of Officers)

Article 115-8 If an officer or similar person is liable to compensate for damage that an Investment Corporation or a third party incurs and another officer or similar person is also liable to compensate for that damage, these persons are joint and several obligors.

(Actions to Enforce Liability of Officers and Similar Persons)

Article 116 The provisions of Part VII, Chapter 2, Section 2 of the Companies Act (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853, paragraph (1), item (ii) and item (iii)) apply mutatis mutandis to an action to enforce the liability of an officer or similar person. Cabinet Order provides for the necessary technical replacement of terms in such a case.

## **Section 5 Entrustment of Administrative Processes**

(Entrustment of Administrative Processes)

Article 117 An Investment Corporation must entrust administrative processes other than those involving asset investment and the custody of assets set forth in the following items to other persons, pursuant to Cabinet Office Order:

- (i) administrative processes involving solicitation of persons to subscribe for the Investment Equity and Investment Corporation Bonds that the Investment Corporation issues and involving the Free Allotment of Investment Equity Options;

- (ii) preparation and keeping of the investor register, investment equity options register, and investment corporation bond register and other administrative processes involving the investor register, investment equity options register, and investment corporation bond register;
- (iii) administrative processes involving the issuance of Investment Securities, Investment Equity Option Certificates, and Investment Corporation Bond Certificates (hereinafter referred to as "Investment Securities and Similar Certificates");
- (iv) administrative processes involved in the operation of the administrative instruments;
- (v) administrative processes involving accounts; and
- (vi) administrative processes that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.

(Obligations of Persons Entrusted with Administrative Processes)

Article 118 (1) An Administrative Agent that has been entrusted with the administrative processes set forth the items of the preceding Article by an Investment Corporation must carry out those administrative processes with due loyalty to the Investment Corporation.

(2) An Administrative Agent that has been entrusted with the administrative processes set forth in the items of the preceding Article by an Investment Corporation must carry out those administrative processes with due care of a prudent manager toward the Investment Corporation.

(Liability of Administrative Agents)

Article 119 (1) If an Administrative Agent neglects the duties thereof, the agent is liable to the Investment Corporation for damage resulting from this.

(2) If an Administrative Agent is liable to compensate for damage that an Investment Corporation incurs and an executive managing officer, supervisory officer, executive liquidator, liquidation supervisor, or financial auditor is also liable to compensate for that damage, the Administrative Agent, executive managing officer, supervisory officer, executive liquidator, liquidation supervisor, and financial auditor are joint and several obligors.

(3) Article 115-6, paragraph (2) of this Act apply mutatis mutandis to the liability prescribed in paragraph (1) and the provisions of Part VII, Chapter 2, Section 2 (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853, paragraph (1), item (ii) and item (iii)) of the Companies Act apply mutatis mutandis to an action to enforce the liability of an Administrative Agent. Cabinet Order provides for the necessary technical

replacement of terms in such a case.

Article 120 Deleted

Article 121 Deleted

Article 122 Deleted

Article 123 Deleted

### **Section 6 Refunds on Investment Equity**

(Requests for Refunds)

Article 124 (1) Except in the following cases, an Investment Corporation as prescribed in Article 86, paragraph (1) must refund the Investment Equity at the request of an Investor:

- (i) if so requested within the period that runs from the record date prescribed in Article 77-3, paragraph (2) to the day on which the Investor may exercise rights as an Investor or pledgee;
  - (ii) if the Investment Corporation has been dissolved;
  - (iii) if the amount of net assets has fallen below the net asset threshold (meaning the amount arrived at when the amount that Cabinet Order prescribes of at least fifty million yen is added to the Minimum Net Assets; the same applies in the provisions of Subsection 4 of the following Section and Article 215, paragraph (1));
  - (iv) a case falling under any of the grounds specified in the certificate of incorporation; and
  - (v) if refunds must be suspended or may be suspended pursuant to laws and regulations or a disposition based on laws and regulations.
- (2) An Investor must clarify the following information when making a request as referred to in the preceding paragraph:
- (i) the number of units of Investment Equity for which the Investor seeks to request a refund; and
  - (ii) the day of the request.
- (3) An Investor making a request referred to in paragraph (1) must submit the Investment Securities to the Investment Corporation; provided, however, that this does not apply if Investment Securities have not been issued.

(Refunds)

Article 125 (1) When refunding Investment Equity, an Investment Corporation must give an Investor an amount that is fair in light of the content of the

assets that the Investment Corporation holds.

- (2) A refund of Investment Equity becomes effective when the amount to be refunded is paid.
- (3) Once an Investment Corporation has refunded Investment Equity, it must make an entry for the refund in the investor register and deduct an amount equivalent to the refunded Investment Equity from the Total Amount of Investment and Surplus, pursuant to Cabinet Office Order.

(Public Notice of Amounts to Be Refunded)

Article 126 An Investment Corporation, pursuant to the provisions of Cabinet Office Order, may issue public notice of an amount to be refunded for Investment Equity in advance. Having done so, the Investment Corporation must make a refund of Investment Equity in the amount indicated in the public notice.

(Liability for Illegal Refunds)

Article 126-2 (1) If an Investment Corporation refunds Investment Equity in a case as referred to in Article 124, paragraph (1), item (iii), the person delivered the monies in the refund and the managing executives (meaning the executive managing officers and persons that Cabinet Office Order prescribes as being involved, in the course of their duties, in the executive business management undertaken by the executive managing officers; hereinafter the same applies in this Article and paragraph (1) of the following Article) undertaking the duties involved in making the refund are jointly and severally liable to pay the Investment Corporation monies equivalent to the amount delivered to the person that was delivered the refund.

- (2) Notwithstanding the provisions of the preceding paragraph, a managing executive is not liable as referred to in that paragraph if the executive proves that the executive did not neglect to exercise due care in undertaking those duties.
- (3) A release from the obligation assumed by the managing executive pursuant to paragraph (1) may not be granted without all Investors' agreement.

(Limits on Rights to Claim Reimbursement from Investors)

Article 126-3 (1) In a case as referred to in paragraph (1) of the preceding Article, an Investor that was without knowledge that the situation fell under the case referred to in that paragraph has no obligation to accommodate a request for reimbursement from the managing executive that paid the monies referred to in that paragraph which have been delivered to the Investor.

- (2) In a case as referred to in paragraph (1) of the preceding Article, the creditors of an Investment Corporation may have an Investor that is liable pursuant to

that paragraph pay the Investment Corporation an amount equivalent to the monies delivered to the Investor.

- (3) A person that pays monies referred to in the preceding paragraph to the Investment Corporation pursuant to that paragraph is deemed to still be an Investor, retroactive to the time when the person was delivered the refund on Investment Equity.

(Liability of Persons Delivered Unlawful Refunds)

Article 127 (1) A person that is knowingly delivered a refund on Investment Equity at an unfair price has an obligation to pay the Investment Corporation monies equivalent to the difference between the fair price and the unfair price.

- (2) The provisions of Part VII, Chapter 2, Section 2 (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853, paragraph (1), item (ii) and item (iii)) of the Companies Act apply mutatis mutandis to an action for payment under the preceding paragraph. Cabinet Order provides for the necessary technical replacement of terms in such a case.

## **Section 7 Accounting**

### **Subsection 1 Accounting Principles**

Article 128 The accounting of an Investment Corporation is subject to business accounting practices that are generally accepted as being fair and appropriate.

### **Subsection 2 Accounting Books**

#### **Division 1 Accounting Books**

(Preparing and Keeping On File Accounting Books)

Article 128-2 (1) An Investment Corporation must prepare accurate accounting books in a timely manner, pursuant to the provisions of Cabinet Office Order.

- (2) An Investment Corporation must keep on file its accounting books and other important materials related to its business for ten years from the day of the closing of the accounting books.

(Request to Inspect Accounting Books)

Article 128-3 (1) An Investor may make the following requests at any time during the business hours of an Investment Corporation. To do so, the Investor must clarify the reason for the request when making it:

- (i) a request to inspect or copy the paper documents constituting the accounting books and related materials, if these are prepared as paper

- documents; and
- (ii) a request to inspect or copy something that has been made to show the information recorded in the electronic or magnetic records constituting the accounting books and related materials through the means that Cabinet Office Order prescribes, if these are prepared as electronic or magnetic records.
- (2) The provisions of Article 433, paragraph (2) of the Companies Act (excluding item (iii)) apply mutatis mutandis to a request as referred to in the preceding paragraph and paragraph (3) and paragraph (4) of that Article apply mutatis mutandis to a the parent corporation's Investors. In such a case, the term "the court" in paragraph (3) and paragraph (4) of that Article is deemed to be replaced with "the Prime Minister"; the phrase "each item of paragraph (1)" in paragraph (3) of that Article is deemed to be replaced with "the items of Article 128-3, paragraph (1) of the Investment Corporations Act"; and the phrase "each item of paragraph (2)" in Article 433, paragraph (4) of the Companies Act is deemed to be replaced with "item (i), item (ii), item (iv), or item (v) of paragraph (2)".

(Order to Submit Accounting Books)

Article 128-4 The court, upon petition or by its own authority, may order the parties to litigation to submit all or part of their accounting books.

## **Division 2 Financial Statements**

(Preparation of Financial Statements)

- Article 129 (1) An Investment Corporation must prepare a balance sheet for the day of its establishment pursuant to the provisions of Cabinet Office Order.
- (2) An Investment Corporation must prepare financial statements (meaning a balance sheet, profit and loss statement, and any other documents that Cabinet Office Order prescribes as being necessary and appropriate to indicate the status of the assets and the profits and losses of the Investment Corporation; the same applies hereinafter), asset investments reports, and statements on the distribution of monies for each business period (meaning the period running from the day after the final day in the accounting period that immediately precedes the relevant accounting period (if there is no such day, the day of the establishment of the Investment Corporation) to the last day of the relevant accounting period; the same applies in Article 132, paragraph (1) and Article 212) pursuant to the provisions of Cabinet Office Order.
- (3) Financial statements, asset investment reports, statements on the distribution of monies, and their annexed detailed statements may be prepared as electronic or magnetic records.

- (4) An Investment Corporation must keep on file the relevant financial statements and their annexed detailed statements for ten years from the day on which the financial statements were prepared.

(Auditing Financial Statements)

Article 130 Financial statements, asset investment reports, statements on the distribution of monies and their annexed detailed statements as referred to in paragraph (2) of the preceding Article (but only the part concerning accounting, in respect of the asset investment reports and their annexed detailed statements) must be audited by a financial auditor pursuant to the provisions of Cabinet Office Order.

(Approval of Financial Statements)

Article 131 (1) An executive managing officer must submit or provide financial statements, asset investment reports, statements on the distribution of monies, and annexed detailed statements audited as referred to in the preceding Article and the accounting audit reports, to the board of officers.

(2) The financial statements, asset investment reports, statements on the distribution of monies, and annexed detailed statements submitted or provided pursuant to the preceding paragraph must be approved by the board of officers.

(3) Once a statement or report is approved as referred to in the preceding paragraph, an executive managing officer must notify the Investors of this without delay.

(4) Before notifying Investors as under the preceding paragraph using an electronic data processing system or by applying other information and communications technology, an executive managing officer must obtain the consent of the Investors to do so pursuant to the provisions of Cabinet Order and notify them using the means that Cabinet Office Order prescribes.

(5) When notifying Investors under paragraph (3), an executive managing officer must provide them with financial statements, asset investment reports, and statements on the distribution of monies that have been approved as referred to in paragraph (2), as well as the accounting audit reports, pursuant to the provisions of Cabinet Office Order.

(Keeping and Inspection of Financial Statements)

Article 132 (1) An Investment Corporation must keep its financial statements, asset investment reports, statements on the distribution of monies, their annexed detailed statements, and the accounting audit reports for each business period at its head office for a period of five years after the day the documents are approved as referred to in paragraph (2) of the preceding Article.

(2) Article 442, paragraph (3) and paragraph (4) of the Companies Act apply

mutatis mutandis to the financial statements, asset investment reports, statements on the distribution of monies, annexed detailed statements, and accounting audit reports referred to in the preceding paragraph. In such a case, the term "the court" in paragraph (4) of that Article is deemed to be replaced with "the Prime Minister" and Cabinet Order provides for any other necessary technical replacement of terms.

(Order to Submit Financial Statements)

Article 133 The court, upon petition or by its own authority, may order the parties to a lawsuit to submit all or part of their financial statements and annexed detailed statements.

Article 134 Deleted

### **Subsection 3 Investment Surplus**

(Investment Surplus)

Article 135 (1) If the amount calculated as the Total Amount of Investment and Surplus after a reduction due to a refund on Investment Equity exceeds the amount needed for refunding Investment Equity, the Investment Corporation must reserve the excess amount as investment surplus.

(2) Cabinet Office Order provides for the amount that must be reserved as investment surplus upon a merger.

(Handling of Profits and Losses)

Article 136 (1) An Investment Corporation may incorporate all or part of its profits (meaning the amount arrived at when the amount calculated as the Total Amount of Investment and Surplus is deducted from the amount of net assets stated on the balance sheet, if the amount of net assets exceeds the amount calculated as the Total Amount of Investment and Surplus; the same applies in paragraph (1) and paragraph (3) of the following Article) into the total amount of investment under the statements on the distribution of monies approved as referred to in Article 131, paragraph (2).

(2) An Investment Corporation may deduct all or part of its losses (meaning the amount arrived at when the amount of net assets stated on the balance sheet is deducted from the amount calculated as the Total Amount of Investment and Surplus, if the amount calculated as the Total Amount of Investment and Surplus exceeds the amount of net assets) from the total amount of investment under the statements on the distribution of monies under the preceding paragraph, pursuant to the provisions of Cabinet Office Order.

#### **Subsection 4 Distribution of Monies**

(Distribution of Monies)

Article 137 (1) An Investment Corporation may distribute monies in excess of its profits based on the statements on the distribution of monies that have been approved as referred to in Article 131, paragraph (2) to its Investors; provided, however, that these monies may not exceed the amount arrived at when the net asset threshold is deducted from the amount of net assets stated on the balance sheet.

- (2) Statements on the distribution of monies must be prepared in accordance with the policy for distributing monies provided in the certificate of incorporation.
- (3) In a case as referred to in the main clause of paragraph (1), the amount distributed to the Investors in excess of profits must be deducted from the total amount of investment or the investment surplus prescribed in Article 135, pursuant to Cabinet Office Order.
- (4) A distribution of monies must be made in accordance with the number of units of Investment Equity held by each Investor.
- (5) The provisions of Article 457 of the Companies Act apply mutatis mutandis to the distribution of monies by an Investment Corporation. In such a case, the phrase "The Dividend Property (including monies paid pursuant to the provisions of Article 455 (2) and monies paid pursuant to the provisions of the preceding Article. The same applies hereinafter in this Article)" in Article 457, paragraph (1) of that Act is deemed to be replaced with "The monies to be distributed pursuant to Article 137, paragraph (1) of the Investment Corporations Act"; the term "Dividend Property" in Article 457, paragraph (2) and paragraph (3) of the Companies Act is deemed to be replaced with "monies"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Liability for Distribution of Monies)

Article 138 (1) If an Investment Corporation distributes monies in violation of the proviso to paragraph (1) of the preceding Article, persons that have been delivered monies through the distribution and the following persons are jointly and severally liable to pay to the Investment Corporation monies equivalent to the amounts delivered to the persons that were delivered those monies:

- (i) the managing executives (meaning the executive managing officers and persons that Cabinet Office Order prescribes as being involved, in the course of their duties, in the executive business management undertaken by the executive managing officers) undertaking the duties involved in making the distribution of monies; and

- (ii) the executive managing officer that Cabinet Office Order prescribes as having submitted a proposal to the board of officers as referred to in Article 131, paragraph (2).
- (2) Notwithstanding the provisions of the preceding paragraph, the persons set forth in the items of that paragraph are not liable as referred to in that paragraph if they prove that they did not neglect to exercise due care in undertaking their duties.
- (3) An exemption may not be granted from the obligation assumed by the persons set forth in the items of paragraph (1) pursuant to that paragraph; provided, however, that this does not apply if all of the Investors agree to grant an exemption of up to the amount arrived at when the net asset threshold is deducted from the amount of net assets stated on the balance sheet at the time of the distribution of monies.

(Limits on Rights to Claim Reimbursement from Investors)

- Article 139 (1) In a case as referred to in paragraph (1) of the preceding Article, an Investor that was without knowledge that the total amount of monies that the Investment Corporation was delivering to Investors through the distribution of monies exceeded the amount arrived at when the net asset threshold was deducted from the amount of net assets stated in the balance sheet on the day that the distribution of monies became effective has no obligation to accommodate a request for reimbursement from the person set forth in the items of that paragraph that paid the monies referred to in that paragraph which have been delivered to the Investor.
- (2) In a case as referred to in paragraph (1) of the preceding Article, the creditors of an Investment Corporation may have Investors that are liable pursuant to that paragraph pay an amount equivalent to the monies delivered to them (or, if the amount delivered to them exceeds the amount that the Investment Corporation owes the creditors, the amount owed).

**Section 8 Investment Corporation Bonds**

(Issuance of Investment Corporation Bonds)

- Article 139-2 (1) An Investment Corporation whose certificate of incorporation includes provisions indicating that the corporation will not refund Investment Equity at the request of the Investors may issue Investment Corporation Bonds, with an issuance limit of the amount provided in its certificate of incorporation.
- (2) An Investment Corporation may not act in concert with another Investment Corporation to jointly issue Investment Corporation Bonds.

(Deciding on Information about Investment Corporation Bonds for

Subscription)

- Article 139-3 (1) On each occasion before soliciting persons to subscribe for the Investment Corporation Bonds it issues, an Investment Corporation must establish the following particulars with regard to its investment corporation bonds for subscription (meaning Investment Corporation Bonds that it will allot to persons responding to the solicitation by offering to subscribe for its Investment Corporation Bonds; hereinafter the same applies in this Section):
- (i) the total amount of investment corporation bonds for subscription;
  - (ii) the amount of money for each investment corporation bond for subscription;
  - (iii) the interest rate on the investment corporation bonds for subscription;
  - (iv) the method and due date for redemption of the investment corporation bonds for subscription;
  - (v) the method and due date for the payment of interest;
  - (vi) that it will issue Investment Corporation Bond Certificates, if this is the case;
  - (vii) that it has decided that the holders of Investment Corporation Bonds (hereinafter referred to as the "Investment Corporation's Bondholders") may not make all or part of a request under Article 698 of the Companies Act as applied mutatis mutandis pursuant to Article 139-7, if this is the case;
  - (viii) that it has decided that an investment corporation bond administrator may take an action set forth in Article 139-9, paragraph (4), item (ii) without putting this to a resolution at an investment corporation bondholders meeting, if this is the case;
  - (ix) the time limit for specifying the persons to which investment corporation bonds for subscription will be allotted;
  - (x) the name of any person that has promised to subscribe for the remaining amount of investment corporation bonds for subscription in the event that the persons to which the full amount of investment corporation bonds for subscription will be allotted have not been decided by the time limit prescribed in the preceding item;
  - (xi) the amount to be paid in for each of the investment corporation bonds for subscription (meaning the amount to be paid in, in exchange for each of the investment corporation bonds for subscription; hereinafter the same applies in this Section) or the minimum amount thereof, or the way of calculating these amounts;
  - (xii) the due date for paying in monies in exchange for investment corporation bonds for subscription; and
  - (xiii) the particulars that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (2) The decision on the particulars set forth in item (i) of the preceding paragraph and anything else that Cabinet Office Order prescribes as important

information in connection with the solicitation of persons to subscribe for Investment Corporation Bonds must be reached by a resolution of the board of officers.

- (3) Unless there is a person as prescribed in item (x) of paragraph (1), if an Investment Corporation has decided which persons it will allot the total amount of investment corporation bonds for subscription to by the time limit referred to in item (ix) of that paragraph, it must not issue all of the investment corporation bonds for subscription.

(Offers Involving Investment Corporation Bonds for Subscription)

Article 139-4 (1) An Investment Corporation must notify a person seeking to respond to a solicitation as referred to in paragraph (1) of the preceding Article by offering to subscribe for an investment corporation bond for subscription of the following information:

- (i) the trade name of the Investment Corporation as well as the date of registration and the registration number under Article 189, paragraph (1), item (ii);
  - (ii) that the subject of the offer is Investment Corporation Bonds;
  - (iii) the information set forth in the items of paragraph (1) of the preceding Article as regards the solicitation;
  - (iv) the name and address of the Administrative Agent and the contents of the administrative processes entrusted thereto;
  - (v) the name of the Asset Management Company and an outline of the entrustment contract for asset investment concluded with that Asset Management Company;
  - (vi) the name of the Asset Custody Company; and
  - (vii) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (2) A person responding to a solicitation as referred to in paragraph (1) of the preceding Article by offering to subscribe for investment corporation bonds for subscription must deliver a paper document to the Investment Corporation giving the following information:
- (i) the name and address of the person making the offer;
  - (ii) the amount of investment corporation bonds for subscription for which the person seeks to subscribe and the number of Investment Corporation Bonds for each amount; and
  - (iii) if the Investment Corporation has prescribed a minimum amount as referred to in paragraph (1), item (xi) of the preceding Article, the preferred amount for payment.
- (3) With the consent of the Investment Corporation and pursuant to the provisions of Cabinet Order, in lieu of delivering a paper document as referred

to in the preceding paragraph, a person making an offer as referred to in that paragraph may provide the Investment Corporation with the information that the person is required to give in the paper document referred to in the preceding paragraph by electronic or magnetic means. Having done so, the person making the offer is deemed to have delivered the paper document referred to in that paragraph.

- (4) The provisions of paragraph (1) do not apply if an Investment Corporation has delivered the Prospectus prescribed in Article 2, paragraph (10) of the Financial Instruments and Exchange Act that gives the information set forth in the items of paragraph (1), to the person seeking to make the offer referred to in paragraph (1), nor do they apply to any other case that Cabinet Office Order prescribes as one in which non-application of these provisions is unlikely to lead to a lack of protection for the person seeking to offer to subscribe for investment corporation bonds for subscription.
- (5) If a piece of information set forth in one of the items of paragraph (1) changes, the Investment Corporation must immediately notify a person that has made an offer as referred to in paragraph (2) (referred to as an "offeror" in the following paragraph and the following Article) of this and of the information that has changed.
- (6) It is sufficient for a notice or demand that an Investment Corporation makes to an offeror to be sent to the address referred to in paragraph (2), item (ii) (or to any other place or point of contact for receiving notices or demands of which the offeror has notified the Investment Corporation).
- (7) A notice or demand as referred to in the preceding paragraph is deemed to arrive at the time that it would normally arrive.

(Allotment of Investment Corporation Bonds for Subscription)

Article 139-5 (1) An Investment Corporation must decide which persons among the offerors the investment corporation bonds for subscription will be allotted to, and decide the amount of investment corporation bonds for subscription and the number of investment corporation bonds for subscription in each amount that it will allot to those persons. In doing so, the Investment Corporation may reduce the number of investment corporation bonds for subscription of each amount that it will allot to those offerors to below the number referred to in paragraph (2), item (ii) of the preceding Article.

- (2) An Investment Corporation must notify an offeror of the amount of investment corporation bonds for subscription and the number of investment corporation bonds for subscription in each amount that will be allotted to that offeror, by the day before the due date prescribed in Article 139-3, paragraph (1), item (xii).

(Special Provisions on Subscription for and Allotment of Investment Corporation Bonds for Subscription)

Article 139-6 The provisions of the preceding two Articles do not apply if the person seeking to subscribe for investment corporation bonds for subscription enters into a contract to subscribe for the full amount of investment corporation bonds for subscription.

(Application Mutatis Mutandis of the Companies Act)

Article 139-7 The provisions of Article 680 through Article 701 of the Companies Act apply mutatis mutandis to Investment Corporation Bonds, an Investment Corporation's Bondholders, investment corporation bond registers, and Investment Corporation Bond Certificates if an Investment Corporation issues Investment Corporation Bonds. In such a case, the phrase "the preceding Article" in Article 680, item (ii) of that Act is deemed to be replaced with "Article 139-6 of the Investment Corporations Act"; the phrase "items (iii) through (viii) of Article 676" in Article 681, item (i) of the Companies Act is deemed to be replaced with "Article 139-3, paragraph (1), item (iii) through item (viii) of the Investment Corporations Act"; the phrase "its head office (or, in case a manager of Bond Registry is appointed, its business office)" in Article 684, paragraph (1) of the Companies Act is deemed to be replaced with "the business office of the administrator of registers as referred to in Article 166, paragraph (2), item (viii) of the Investment Corporations Act"; the term "the court" in Article 684, paragraph (4) and paragraph (5) of the Companies Act is deemed to be replaced with "the Prime Minister"; the phrase "item (vii) of Article 676" in Article 698 of the Companies Act is deemed to be replaced with "Article 139-3, paragraph (1), item (vii) of the Investment Corporations Act"; and Cabinet Order prescribes any other necessary technical replacement of terms.

(Employment of Investment Corporation Bond Administrators)

Article 139-8 If an Investment Corporation issues Investment Corporation Bonds, it must employ an investment corporation bond administrator and entrust that administrator with receiving settlement payments, preserving claims, and otherwise managing Investment Corporation Bonds on behalf of the Investment Corporation's Bondholders; provided, however, that this does not apply if the amount for each of its Investment Corporation Bonds is at least 100 million yen, nor does it apply in any other case that Cabinet Office Order prescribes as one in which non-application of these provisions is unlikely to lead to a lack of protection for the Investment Corporation's Bondholders.

(Authority of Investment Corporation Bond Administrators)

- Article 139-9 (1) An investment corporation bond administrator has the authority to engage in any act in or out of court on behalf of an Investment Corporation's Bondholder that is necessary for getting the claim under an Investment Corporation Bond settled or for safeguarding the fulfillment of the claim under an Investment Corporation Bond.
- (2) If an investment corporation bond administrator gets a claim settled as referred to in the preceding paragraph, the Investment Corporation's Bondholder may demand payment of the redemption amount for the Investment Corporation Bond and the interest thereon from the investment corporation bond administrator. In such a case, if there are provisions indicating that Investment Corporation Bond Certificates are to be issued, the Investment Corporation's Bondholder must claim payment of the redemption amount in exchange for the Investment Corporation Bond Certificate, and claim the payment of the interest in exchange for the coupon.
- (3) If a claim under the first sentence of the preceding paragraph has not been exercised for ten years, is extinguished by prescription.
- (4) An investment corporation bond administrator must not take the following actions without a resolution at an investment corporation bondholders meeting; provided, however, that this does not apply with regard to the action set forth in item (ii), if the particulars set forth in Article 139-3, paragraph (1), item (viii) have been prescribed:
- (i) granting a grace period for payment of all of the Investment Corporation Bonds or granting exemptions from liability arising from a failure to perform on obligations for all of the Investment Corporation Bonds (other an action as set forth in the following item); and
  - (ii) carrying out procedural acts in connection with all of the Investment Corporation Bonds, or carrying out acts involved in bankruptcy proceedings, rehabilitation, or special liquidation proceedings for all Investment Corporation Bonds (other than an action as referred to in paragraph (1)).
- (5) If an investment corporation bond administrator takes an action as set forth in item (ii) of the preceding paragraph without recourse to a resolution at an investment corporation bondholders meeting pursuant to the proviso to that paragraph, the administrator must issue public notice of this and individually notify each of the known Investment Corporation's Bondholders of this without delay.
- (6) The public notice under the preceding paragraph must be issued by the means of public notice used at the Investment Corporation that has issued the Investment Corporation Bonds (referred to as the "corporation issuing the investment corporation bonds" in the following paragraph); provided, however, that if the corporation's means of notice is electronic public notice (meaning electronic public notice as set forth in Article 186-2, paragraph (1), item (iii));

the same applies in Section 13), public notice must be issued by publication in the Official Gazette.

- (7) If it is necessary for an investment corporation bond administrator to do so in order to take an action set forth in paragraph (1) or an action set forth in one of the items of paragraph (4) for Investment Corporation Bonds with whose management the administrator has been entrusted, the administrator may investigate the operational and financial status of the corporation issuing the investment corporation bonds through the corporation issuing those investment corporation bonds or its Administrative Agent, Asset Management Company, or Asset Custody Company.
- (8) The provisions of Article 703; Article 704; Article 707 through Article 714; Article 868; paragraph (4); Article 869; Article 870, paragraph (1) (but only the part that is relevant to item (ii)); Article 871; Article 872 (but only the part that is relevant to item (iv)); Article 874 (but only the part that is relevant to item (i) and item (iv)); Article 875; and Article 876 of the Companies Act apply mutatis mutandis to an investment corporation bond administrator. In such a case, the terms "bond"; "bondholders"; and "bondholders' meeting" in the provisions is deemed to be replaced with "Investment Corporation Bonds", "Investment Corporation's Bondholders", and "investment corporation bondholders meeting", respectively; the phrase "paragraph (1) of Article 705" in Article 709, paragraph (2) of that Act is deemed to be replaced with "Article 139-9, paragraph (1) of the Investment Corporations Act"; the term "this Act" in Article 710, paragraph (1) of the Companies Act is deemed to be replaced with "the Investment Corporations Act"; the phrase "Article 702" in Article 711, paragraph (2) of the Companies Act is deemed to be replaced with "Article 139-8 of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Investment Corporation Bondholders Meetings)

- Article 139-10 (1) The Investment Corporation's Bondholders are organized into investment corporation bondholders meetings for each class of Investment Corporation Bonds (meaning classes as prescribed in Article 681, item (i) of the Companies Act as applied mutatis mutandis pursuant to Article 139-7).
- (2) The provisions of Article 716 through Article 742; the provisions of Part VII, Chapter 2, Section 7; Article 868, paragraph (4); Article 869; Article 870, paragraph (1) (but only the part that is relevant to item (vii) through item (ix)); Article 871; Article 872 (but only the part that is relevant to item (iv)); Article 873; Article 874 (but only the part that is relevant to item (iv)); Article 875; and Article 876 of the Companies Act apply mutatis mutandis to Investment Corporation Bonds, an Investment Corporation's Bondholders, Investment Corporation Bond Certificates, investment corporation bond administrators,

and investment corporation bondholders meetings if an Investment Corporation issues Investment Corporation Bonds. In such a case, the term "this Act" in Article 716 of that Act is deemed to be replaced with "the Investment Corporations Act"; the phrase "each item of Article 706 (1)" in Article 724, paragraph (2), item (i) of the Companies Act is deemed to be replaced with "the items of Article 139-9, paragraph (4) of the Investment Corporations Act"; the phrase "Article 676" in Article 733, item (i) of the Companies Act is deemed to be replaced with "Article 139-3, paragraph (1) of the Investment Corporations Act"; the phrase "paragraphs (1) through (3) of Article 705" in Article 737, paragraph (2) of the Companies Act is deemed to be replaced with "Article 139-9, paragraph (1) through paragraph (3) of the Investment Corporations Act"; the phrase "paragraph (1) of Article 705" in Article 741, paragraph (3) of the Companies Act is deemed to be replaced with "Article 139-9, paragraph (1) of the Investment Corporations Act"; the phrase "Article 449, Article 627, Article 635, Article 670, Article 779 (including cases where applied mutatis mutandis under paragraph (2) of Article 781), Article 789 (including cases where applied mutatis mutandis under paragraph (2) of Article 793), Article 799 (including cases where applied mutatis mutandis under paragraph (2) of Article 802) or Article 810 (including cases where applied mutatis mutandis in paragraph (2) of Article 813)" in Article 740, paragraph (1) of the Companies Act is deemed to be replaced with "paragraph (1) through paragraph (5) of Article 142 or Article 149-4 (including as applied mutatis mutandis pursuant to Article 149-9 or Article 149-14) of the Investment Corporations Act"; the phrase "Article 702" in Article 740, paragraph (2) of the Companies Act is deemed to be replaced with "Article 139-8 of the Investment Corporations Act"; the phrases "paragraph (2) of Article 449, paragraph (2) of Article 627 (hereinafter in this paragraph including cases where applied mutatis mutandis under paragraph (2) of Article 781), paragraph (2) of Article 789, (hereinafter in this paragraph including cases where applied mutatis mutandis under paragraph (2) of Article 793), paragraph (2) of Article 799, (hereinafter in this paragraph including cases where applied mutatis mutandis under paragraph (2) of Article 802), paragraph (2) of Article 810, (hereinafter in this paragraph including cases where applied mutatis mutandis under paragraph (2) of Article 813)" and "paragraph (2) of Article 449, paragraph (2) of Article 627, paragraph (2) of Article 635, paragraph (2) of Article 670, paragraph (2) of Article 779 and paragraph (2) of Article 799" in Article 740, paragraph (3) of the Companies Act are deemed to be replaced with "Article 142, paragraph (2) and Article 149-4, paragraph (2) (including as applied mutatis mutandis pursuant to Article 149-9 and Article 149-14 of the Investment Corporations Act; hereinafter the same applies in this paragraph) of the Investment Corporations Act" and

"Article 142, paragraph (2) and Article 149-4, paragraph (2) of the Investment Corporations Act", respectively; and Cabinet Order provides for any other necessary technical replacement of terms.

(Application of the Secured Bonds Trust Act)

Article 139-11 To apply the Secured Bonds Trust Act (Act No. 52 of 1905) and other laws and regulations that Cabinet Order prescribes, Investment Corporation Bonds are deemed to be corporate bonds pursuant to the provisions of Cabinet Order.

(Special Provisions on Short-Term Investment Corporation Bonds)

Article 139-12 (1) Notwithstanding the provisions of Article 681 of the Companies Act as applied mutatis mutandis pursuant to Article 139-7, an Investment Corporation issuing Investment Corporation Bonds falling under all of the following requirements (such Investment Corporation Bonds is referred to as "Short-Term Investment Corporation Bonds" in the following paragraph and following Article) is not required to prepare an investment corporation bond register for those bonds:

- (i) the amount of each Investment Corporation Bond is no less than 100 million yen;
- (ii) the principal is to be redeemed by a fixed due date that falls within one year from the date that the total amount is paid in for the Investment Corporation Bonds, and is not to be redeemed through installment payments;
- (iii) the due date for the payment of interest is to be the same date as the due date for the redemption of the principal referred to in the preceding item; and
- (iv) the Investment Corporation Bond is not secured pursuant to the provisions of the Secured Bonds Trust Act.

(2) The provisions of Article 139-8 through Article 139-10 do not apply to Short-Term Investment Corporation Bonds.

(Issuance of Short-Term Investment Corporation Bonds)

Article 139-13 Except in the following cases, an Investment Corporation may not issue Short-Term Investment Corporation Bonds:

- (i) if all of the following requirements are satisfied:
  - (a) it issues them in order to procure the funds necessary to acquire Specified Assets (but only real property and other assets that Cabinet Order prescribes) or for any other purpose that Cabinet Office Order prescribes;
  - (b) the limit on the amount of Short-Term Investment Corporation Bonds that it may issue is provided in its certificate of incorporation; and
  - (c) requirements that Cabinet Office Order prescribes as being necessary for

investor protection, beyond what is set forth in sub-item (a) and sub-item (b);

- (ii) doing so allows it to procure funds for the redemption of Short-Term Investment Corporation Bonds (limited to cases that Cabinet Office Order prescribes).

### **Section 9 Revising the Certificate of Incorporation**

(Revising the Certificate of Incorporation)

Article 140 An Investment Corporation may revise its certificate of incorporation by resolution at an investors' meeting after its establishment.

(Revising the Certificate of Incorporation Pertaining to Refunds of Investment Equity)

Article 141 (1) If an Investment Corporation decides to revise its certificate of incorporation so as not to accommodate requests for refunds of Investment Equity, Investors that notify the Investment Corporation that they will vote against the revision to the certificate of incorporation prior to the investors' meeting referred to in the preceding Article and that vote against the revision at the investors' meeting are entitled to demand that the Investment Corporation purchase their Investment Equity at a fair price.

(2) An Investment Corporation must notify its Investors that it will revise the certificate of incorporation so as not to accommodate requests for refunds of Investment Equity by 20 days prior to the day on which the revision takes effect.

(3) Public notice may be substituted for the notice under the preceding paragraph.

(4) An Investment Corporation may decide to revise the certificate of incorporation under the preceding Article so as to accommodate Investors' requests for refunds of Investment Equity only if there is no outstanding amount of Investment Corporation Bonds.

(5) The provisions of Article 116, paragraph (5) through paragraph (9); Article 117; Article 868, paragraph (1); Article 870, paragraph (2) (but only the part that is relevant to item (ii)); Article 870-2; the main clause of Article 871; Article 872 (but only the part that is relevant to item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of the Companies Act apply mutatis mutandis to a demand under paragraph (1). Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Revising the Certificate of Incorporation to Reduce Minimum Net Assets)

Article 142 (1) If it is decided that the certificate of incorporation will be revised so as to reduce the Minimum Net Assets, an Investment Corporation's creditors

may state their objections to the revision of the certificate of incorporation to the Investment Corporation.

- (2) In a case as referred to in the preceding paragraph, the Investment Corporation must issue public notice of the following information in the Official Gazette and issue an individual notice to each known creditor indicating the same; provided, however, that the period referred to in item (ii) may not be shorter than one month:
  - (i) the details of the reduction to the Minimum Net Assets; and
  - (ii) that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if, in addition to issuing public notice in the Official Gazette, the Investment Corporation referred to in paragraph (1) issues the public notice under the preceding paragraph by the means of public notice referred to in item (ii) or item (iii) of Article 186-2, paragraph (1) in accordance with provisions of the certificate of incorporation as under Article 186-2, paragraph (1), it is not required to issue the individual notices under the preceding paragraph.
- (4) If a creditor does not state an objection within the period prescribed in item (i) of paragraph (2), that creditor is deemed to approve of the reduction to the Minimum Net Assets.
- (5) If a creditor states an objection within the period referred to in paragraph (2), item (ii), the Investment Corporation referred to in paragraph (1) must repay its debt or provide suitable collateral to the creditor, or must place suitable assets into trust with a trust company or similar institution to ensure that the creditor is repaid; provided, however, that this does not apply if the reduction of Minimum Net Assets is unlikely to harm the creditor.
- (6) The provisions of Article 828 paragraph (1) (but only the part that is relevant to item (v)) and paragraph (2) (but only the part that is relevant to item (v)); Article 834 (but only the part that is relevant to item (v)); Article 835, paragraph (1); Article 836 through Article 839; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to sub-item (d) of item (i) of the Companies Act apply mutatis mutandis to an action to invalidate a reduction in Minimum Net Assets. Cabinet Order provides for the necessary technical replacement of terms in such a case.

## **Section 10 Dissolution**

(Grounds for Dissolution)

Article 143 An Investment Corporation is dissolved on the following grounds:

- (i) the expiration of the period of time during which it is to exist, as prescribed in its certificate of incorporation;
- (ii) the occurrence of the grounds for dissolution as provided in its certificate of

- incorporation;
- (iii) a resolution at an investors' meeting;
- (iv) a merger (but only if the Investment Corporation disappears as a result of the merger);
- (v) an order commencing bankruptcy proceedings;
- (vi) a juridical decision ordering dissolution under Article 144 or Article 824, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 143-3, paragraph (1);
- (vii) the revocation of the registration referred to in Article 187; and
- (viii) denial of the registration referred to in Article 187 pursuant to Article 190, paragraph (1).

(Restriction on Mergers by Dissolved Investment Corporations)

Article 143-2 If an Investment Corporation has been dissolved, it may not implement a merger.

(Action Seeking Dissolution of Investment Corporations)

Article 143-3 (1) In one of the following cases, if there are compelling grounds, Investors holding one-tenth (or, if a lower proportion is provided for in the certificate of incorporation, that proportion) or more of the units of issued investment equity may file an action demanding the dissolution of an Investment Corporation:

- (i) if the Investment Corporation has come to be in an extremely difficult situation in terms of its executive management, and has suffered or is likely to suffer irreparable harm; or
  - (ii) if the Investment Corporation's administration or disposition of assets is extremely inadvisable and puts the existence of the Investment Corporation at risk.
- (2) The provisions of Article 834 (but only the part that is relevant to item (xx)); Article 835, paragraph (1); Article 836, paragraph (1) and paragraph (3); Article 837; Article 838; Article 846; and Article 937, paragraph (1) (but only the part that is relevant to sub-item (i) of item (i)) of the Companies Act apply mutatis mutandis to an action seeking the dissolution of an Investment Corporation. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Application Mutatis Mutandis of the Companies Act)

Article 144 The provisions of Article 824; Article 826; Article 868, paragraph (1); Article 870, paragraph (1) (but only the part that is relevant to item (x)); the main clause of Article 871; Article 872 (but only the part that is relevant to item (iv)); the main clause of Article 873; Article 875; Article 876; Article 904;

and Article 937, paragraph (1) (but only the part that is relevant to sub-item (b) of item (iii)) of the Companies Act apply mutatis mutandis to an order for the dissolution of an Investment Corporation, and the provisions of Article 825; Article 868, paragraph (1); Article 870, paragraph (1) (but only the part that is relevant to item (i)); Article 871; Article 872 (but only the part that is relevant to item (i) and item (iv)); Article 873; Article 874 (but only the part that is relevant to item (ii) and item (iii)); Article 875; Article 876; Article 905; and Article 906 of that Act apply mutatis mutandis to the preservation of the assets of an Investment Corporation if a petition has been filed under Article 824, paragraph (1) of that Act as applied mutatis mutandis pursuant to this Article. In such a case, the term "the Minister of Justice" in Article 824, paragraph (1); Article 825, paragraph (1) and paragraph (3); Article 826; Article 904; and Article 906, paragraph (4) of that Act is deemed to be replaced with "the Prime Minister"; the phrase "the executive director, an executive officer or a partner that executes the business" in Article 824, paragraph (1), item (iii) of that Act is deemed to be replaced with "the executive managing officer or supervisory officer"; and Cabinet Order provides for any other necessary technical replacement of terms.

## **Section 11 Mergers**

### **Subsection 1 General Rules**

(Conclusion of Merger Agreements)

Article 145 An Investment Corporation may merge with another Investment Corporation. To do so, the merging Investment Corporations must conclude a merger agreement.

(Suspension of Refunds Due to Merger)

Article 146 (1) In order to reach an agreement on a merger or to effect a merger, an Investment Corporation as referred to in Article 86, paragraph (1) may suspend Investment Equity refunds by issuing public notice of the refund suspension period or issuing individual notices of this to each of the Investors.

(2) The refund suspension period referred to the preceding paragraph may not exceed three months.

(3) A public notice or notice under paragraph (1) must be issued at least one month prior to the time of commencement of the refund suspension period referred to in that paragraph.

### **Subsection 2 Absorption-Type Mergers**

(Absorption-Type Merger Agreements)

Article 147 (1) If an Investment Corporation enters into an absorption-type merger (meaning a merger that an Investment Corporation enters into with another Investment Corporation, in which the Investment Corporation surviving the merger succeeds to all of the rights and obligations of the Investment Corporation that disappears as a result of the merger; the same applies hereinafter), they must set forth the following particulars in an absorption-type merger agreement:

- (i) the trade names and addresses of the Investment Corporation that will survive the absorption-type merger (hereinafter referred to as the "Corporation Surviving the Absorption-Type Merger") and the Investment Corporation that will disappear as a result of the absorption-type merger (hereinafter referred to as the "Corporation Disappearing in the Absorption-Type Merger");
  - (ii) either the number of units of Investment Equity in the Corporation Surviving the Absorption-Type Merger that the Corporation Surviving the Absorption-Type Merger will deliver to the Investors of the Corporation Disappearing in the Absorption-Type Merger at the time of the merger to replace that Investment Equity or the way of calculating that number of units, and particulars concerning the total amount of investment in the Corporation Surviving the Absorption-Type Merger;
  - (iii) the particulars of the allotment of the Investment Equity referred to in the preceding item to Investors of the Corporation Disappearing in the Absorption-Type Merger (meaning Investors other than the Corporation Disappearing in the Absorption-Type Merger and the Corporation Surviving the Absorption-Type Merger; the same applies in the following paragraph);
  - (iv) if the Corporation Disappearing in the Absorption-Type Merger has issued Investment Equity Options, the amount of monies that the Corporation Surviving the Absorption-Type Merger will deliver to investment equity option holders at the time of the merger to replace those Investment Equity Options; and
  - (v) the day on which the absorption-type merger will come into effect (referred to as the "effective date" in the following Article and Subsection 4).
- (2) In a case as referred to in the preceding paragraph, provisions for the particulars set forth in item (iii) of that paragraph must establish that the Investment Equity of the Corporation Surviving the Absorption-Type Merger will be delivered based on the number of units of Investment Equity held by the Investors of the Corporation Disappearing in the Absorption-Type Merger.

(Entry into Effect of Absorption-Type Mergers)

Article 147-2 (1) The Corporation Surviving an Absorption-Type Merger succeeds to all of the rights and obligations of the Corporation Disappearing in

the Absorption-Type Merger on the effective date.

- (2) The dissolution of the Corporation Disappearing in an Absorption-Type Merger as a result of the absorption-type merger may not be duly asserted against a third party until after the absorption-type merger is registered.
- (3) Investors of a Corporation Disappearing in an Absorption-Type Merger become Investors in the Investment Equity prescribed in Article 147, paragraph (1), item (ii) based on what is provided with regard to the particulars set forth in paragraph (1), item (iii) of that Article on the effective date.
- (4) Investment Equity Options in a Corporation Disappearing in the Absorption-Type Merger are extinguished on the effective date.
- (5) The provisions of the preceding paragraphs do not apply if the procedures under Article 149-4 (including as applied mutatis mutandis pursuant to Article 149-9) have not been completed or if the absorption-type merger is cancelled.

### **Subsection 3 Consolidation-Type Mergers**

(Consolidation-Type Merger Agreements)

Article 148 (1) If two or more Investment Corporations enter into a consolidation-type merger (meaning a merger entered into by two or more Investment Corporations, in which the Investment Corporation that is incorporated as a result of the merger succeeds to all of the rights and obligations of the Investment Corporations that disappear as a result of the merger; the same applies hereinafter), they must set forth the following particulars in a consolidation-type merger agreement:

- (i) the trade names and addresses of the Investment Corporations that will disappear as a result of the consolidation-type merger (hereinafter each of these is referred to as a "Corporation Disappearing in the Consolidation-Type Merger");
- (ii) the purpose, trade name, location of the head office, and Total Number of Issuable Units of Investment Equity of the Investment Corporation that will be incorporated as a result of the consolidation-type merger (hereinafter referred to as the "Corporation Incorporated in the Consolidation-Type Merger");
- (iii) particulars beyond what is set forth in the preceding item, which are specified by the certificate of incorporation of the Corporation Incorporated in the Consolidation-Type Merger;
- (iv) the names of the executive managing officers at incorporation, supervisory officers at incorporation, and financial auditors at incorporation of the Corporation Incorporated in the Consolidation-Type Merger;
- (v) either the number of units of Investment Equity in the Corporation

Incorporated in the Consolidation-Type Merger that that corporation will deliver at the time of the merger to the Investors of the Corporations Disappearing in the Consolidation-Type Merger to replace their Investment Equity or the way of calculating that number of units; and information concerning the total amount of investment in the Corporation Incorporated in the Consolidation-Type Merger;

(vi) the particulars of allotting Investment Equity as referred to in the preceding item to Investors of the Corporations Disappearing in the Consolidation-Type Merger (meaning Investors other than the Corporations Disappearing in the Consolidation-Type Merger; the same applies in the following paragraph); and

(vii) if a Corporation Disappearing in the Consolidation-Type Merger has issued Investment Equity Options, the amount of monies that the Corporation Incorporated in the Consolidation-Type Merger will deliver at the time of the merger to investment equity option holders to replace their Investment Equity Options.

(2) In a case as referred to in the preceding paragraph, the provisions for the particulars set forth in item (vi) of that paragraph must establish that Investment Equity in the Corporation Incorporated in the Consolidation-Type Merger will be delivered based on the number of units of Investment Equity held by the Investors of the Corporations Disappearing in the Consolidation-Type Merger.

(Entry into Effect of Consolidation-Type Mergers)

Article 148-2 (1) A Corporation Incorporated in a Consolidation-Type Merger succeeds to all of the rights and obligations of the Corporations Disappearing in the Consolidation-Type Merger on the day of its establishment

(2) In a case as referred to in paragraph (1) of the preceding Article, the Investors of the Corporations Disappearing in the Consolidation-Type Merger become Investors in the Investment Equity prescribed in item (v) of that paragraph based on the provisions for the particulars set forth in item (vi) of that paragraph on the day of the establishment of the Corporation Incorporated in the Consolidation-Type Merger.

(3) The Investment Equity Options issued by a Corporation Disappearing in a Consolidation-Type Merger are extinguished on the day of the establishment of the Corporation Incorporated in the Consolidation-Type Merger.

#### **Subsection 4 The Absorption-Type Merger Process**

##### **Division 1 Procedures for Corporations Disappearing in Absorption-Type Mergers**

(Keeping and Inspection Absorption-Type Merger Agreement Documents)

Article 149 (1) A Corporation Disappearing in an Absorption-Type Merger must keep a document or electronic or magnetic record in which it documents or records the details of the absorption-type merger agreement and the particulars that Cabinet Office Order prescribes at its head office, during the period that runs from the earliest of the following days until the effective date:

- (i) the day two weeks prior to the day of the investors' meeting referred to in paragraph (1) of the following Article;
- (ii) the day of the notice under Article 149-3, paragraph (2) or the day of the public notice under Article 149-3, paragraph (3), whichever comes earlier;
- (iii) if there are investment equity option holders that it is to notify as under Article 149-3-2, paragraph (2), the day on which it notifies them under that paragraph or the day of the public notice under paragraph (3) of that Article, whichever comes earlier; or
- (iv) the day of the public notice under Article 149-4, paragraph (2) or the day of the notice under Article 149-4, paragraph (2), whichever comes earlier.

(2) The Investors and creditors of a Corporation Disappearing in an Absorption-Type Merger may file the following requests with the Corporation Disappearing in the Absorption-Type Merger at any time during its business hours; provided, however, that a person must pay the fees designated by the Corporation Disappearing in the Absorption-Type Merger in order to make the requests set forth in item (ii) and item (iv):

- (i) a request to inspect a document as referred to in the preceding paragraph;
- (ii) a request to be issued a copy or an extract of a document as referred to in the preceding paragraph;
- (iii) a request to inspect something that has been made to show the information recorded in an electronic or magnetic record as referred to in the preceding paragraph through the means that Cabinet Office Order prescribes; and
- (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by the electronic or magnetic means that the Corporation Disappearing in the Absorption-Type Merger prescribes, or a request to be issued a document that gives this information.

(Approval for Absorption-Type Merger Agreements)

Article 149-2 (1) A Corporation Disappearing in an Absorption-Type Merger must get approval for the absorption-type merger agreement by resolution at an investors' meeting by the day immediately preceding the effective date.

(2) A Corporation Disappearing in an Absorption-Type Merger must notify its Registered Pledges of Investment Equity and its registered pledges of investment equity options that it will effect an absorption-type merger, by 20

days prior to the effective date.

(3) Public notice may be substituted for the notice under the preceding paragraph.

(Dissenting Investors' Appraisal Rights in Respect of Investment Equity)

Article 149-3 (1) In the event of an absorption-type merger, Investors that notify the Corporation Disappearing in the Absorption-Type Merger that they will vote against the absorption-type merger prior to the investors' meeting referred to in paragraph (1) of the preceding Article, and that vote against the absorption-type merger at that investors' meeting are entitled to demand that the Corporation Disappearing in the Absorption-Type Merger purchase their Investment Equity at a fair price.

(2) A Corporation Disappearing in an Absorption-Type Merger must notify its Investors that it will implement an absorption-type merger, indicating the trade name and address of the Corporation Surviving the Absorption-Type Merger, by twenty days prior to the effective date.

(3) Public notice may be substituted for the notice under the preceding paragraph.

(4) The provisions of Article 785, paragraph (5) through paragraph (9); Article 786; Article 868, paragraph (1); Article 870, paragraph (2) (but only the part that is relevant to item (ii)); Article 870-2, the main clause of Article 871; Article 872 (but only the part that is relevant to item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of the Companies Act apply mutatis mutandis to a demand under paragraph (1). Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Appraisal Rights in Respect of Investment Equity Options)

Article 149-3-2 (1) In the event of an absorption-type merger, the holders of the Investment Equity Options issued by the Corporation Disappearing in the Absorption-Type Merger are entitled to demand that the Corporation Disappearing in the Absorption-Type Merger purchase their Investment Equity Options at a fair price.

(2) A Corporation Disappearing in an Absorption-Type Merger must notify its investment equity option holders that it will implement an absorption-type merger, indicating the trade name and address of the Corporation Surviving the Absorption-Type Merger, by 20 days prior to the effective date.

(3) Public notice may be substituted for the notice under the preceding paragraph.

(4) The provisions of Article 787, paragraph (5), paragraph (6) and paragraph (8) through paragraph (10); Article 788 (excluding paragraph (8)); Article 868, paragraph (1); Article 870, paragraph (2) (but only the part that is relevant to item (ii)); Article 870-2; the main clause of Article 871; Article 872 (but only the part that is relevant to item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of the Companies Act apply mutatis mutandis

to demands under paragraph (1). Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Objections by Creditors)

Article 149-4 (1) In the event of an absorption-type merger, the creditors of an Corporation Disappearing in the Absorption-Type Merger may state their objections to the absorption-type merger to the Corporation Disappearing in the Absorption-Type Merger.

(2) In a case as referred to in the preceding paragraph, the Corporation Disappearing in the Absorption-Type Merger must issue public notice of the following information in the Official Gazette and issue an individual notice to each known creditor indicating the same; provided, however, that the period referred to in item (iii) may not be shorter than one month:

(i) that it will implement an absorption-type merger;

(ii) the trade name and address of the Corporation Surviving the Absorption-Type Merger; and

(iii) that creditors may state their objections within a certain period of time.

(3) Notwithstanding the provisions of the preceding paragraph, if, in addition to issuing public notice in the Official Gazette, a Corporation Disappearing in an Absorption-Type Merger issues the public notice under that paragraph by the means of public notice set forth in Article 186-2, paragraph (1), item (ii) and item (iii) in accordance with provisions of the certificate of incorporation as under Article 186-2, paragraph (1), the Corporation Disappearing in the Absorption-Type Merger is not required to issue the individual notice under the preceding paragraph.

(4) If a creditor does not state an objection within the period referred to in item (iii) of paragraph (2), the creditor is deemed to approve of the absorption-type merger.

(5) If a creditor states an objection within the period specified in item (iii) of paragraph (2), the Corporation Disappearing in the Absorption-Type Merger must repay its debt or provide suitable collateral to the creditor, or must place suitable assets into trust with a trust company or similar institution to ensure that the creditor is repaid; provided, however, that this does not apply if the absorption-type merger is unlikely to harm the creditor.

(Changing Effective Dates of Absorption-Type Mergers)

Article 149-5 (1) A Corporation Disappearing in an Absorption-Type Merger may change the effective date by an agreement with the Corporation Surviving the Absorption-Type Merger.

(2) When changing the effective date pursuant to the preceding paragraph, the Corporation Disappearing in the Absorption-Type Merger must issue public

notice of the changed effective date by the day immediately preceding the original effective date (or before the changed effective date, if this comes before the original effective date).

- (3) If an effective date is changed pursuant to paragraph (1), the changed effective date is deemed to be the effective date and the provisions of this Subsection and Article 147-2 apply.

## **Division 2 Procedures for Corporations Surviving Absorption-Type Mergers**

(Keeping and Inspection of Absorption-Type Merger Agreement Documents)

Article 149-6 (1) A Corporation Surviving an Absorption-Type Merger must keep a document or electronic or magnetic record in which it documents or records the details of the absorption-type merger agreement and the particulars that Cabinet Office Order prescribes at its head office, during the period that runs from the earliest of the following days until the last day in the six-month period after the effective date:

- (i) if the absorption-type merger agreement must be approved by resolution at an investors' meeting, the day two weeks prior to the day of the investors' meeting;
  - (ii) the day of the notice under Article 149-8, paragraph (2) or the day of the public notice under Article 149-8, paragraph (3), whichever comes earlier; or
  - (iii) the day of the public notice under Article 149-4, paragraph (2) as applied mutatis mutandis pursuant to Article 149-9 or the day of the notice under Article 149-4, paragraph (2), whichever comes earlier.
- (2) Article 149, paragraph (2) applies mutatis mutandis to the document or electronic or magnetic record referred to in the preceding paragraph which is kept by the Corporation Surviving an Absorption-Type Merger.

(Approval for Absorption-Type Merger Agreements)

Article 149-7 (1) A Corporation Surviving an Absorption-Type Merger must get approval for the absorption-type merger agreement by resolution at an investors' meeting by the day immediately preceding the effective date.

- (2) The provisions of the preceding paragraph do not apply if the total number of units of Investment Equity that the Corporation Surviving the Absorption-Type Merger will deliver to Investors of the Corporation Disappearing in the Absorption-Type Merger at the time of the absorption-type merger will not exceed one-fifth of the total number of units of issued investment equity in the Corporation Surviving the Absorption-Type Merger. In such a case, the absorption-type merger agreement must provide that the Corporation Surviving the Absorption-Type Merger, will implement the absorption-type

merger without getting the approval referred to the preceding paragraph.

(Dissenting Investors' Appraisal Rights in Respect of Investment Equity)

Article 149-8 (1) In the event of an absorption-type merger, Investors that notify the Corporation Surviving the Absorption-Type Merger that they will vote against the absorption-type merger prior to the investors' meeting referred to in paragraph (1) of the preceding Article, and that vote against the absorption-type merger at that investors' meeting are entitled to demand that the Corporation Surviving the Absorption-Type Merger purchase their Investment Equity at a fair price.

(2) A Corporation Surviving an Absorption-Type Merger must notify its Investors that it will implement an absorption-type merger, indicating the trade name and address of the Corporation Disappearing in the Absorption-Type Merger, by 20 days prior to the effective date.

(3) Public notice may be substituted for the notice under the preceding paragraph.

(4) The provisions of Article 797, paragraph (5) through paragraph (9); Article 798; Article 868, paragraph (1); Article 870, paragraph (2) (but only the part that is relevant to item (ii)); Article 870-2; the main clause of Article 871; Article 872 (but only the part that is relevant to item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of the Companies Act apply mutatis mutandis to a demand under paragraph (1). Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Objections by Creditors)

Article 149-9 The provisions of Article 149-4 apply mutatis mutandis to a Corporation Surviving an Absorption-Type Merger. In such a case, the term "Corporation Surviving the Absorption-Type Merger" in Article 149-4, paragraph (2), item (ii) is deemed to be replaced with "Corporation Disappearing in the Absorption-Type Merger".

(Keeping and Inspection of Absorption-Type Merger Documents)

Article 149-10 (1) Without delay after the effective date, a Corporation Surviving an Absorption-Type Merger must prepare a document or electronic or magnetic record in which it documents or records the rights and obligations of the Corporation Disappearing in the Absorption-Type Merger to which it has succeeded as a result of the absorption-type merger and other information that Cabinet Office Order prescribes as concerning the absorption-type merger.

(2) A Corporation Surviving an Absorption-Type Merger must keep the document or electronic or magnetic record referred to in the preceding paragraph at its head office for a period of six months from the effective date.

(3) The provisions of Article 149, paragraph (2) apply mutatis mutandis to a

document or electronic or magnetic record as referred to in the preceding paragraph which is kept by a Corporation Surviving an Absorption-Type Merger.

**Subsection 5 The Consolidation-Type Merger Process**  
**Division 1 Procedures for Corporations Disappearing in**  
**Consolidation-Type Mergers**

(Keeping and Inspection of Consolidation-Type Merger Agreement Documents)

Article 149-11 (1) A Corporation Disappearing in a Consolidation-Type Merger must keep a document or electronic or magnetic record in which it documents or records the details of the consolidation-type merger agreement and the particulars that Cabinet Office Order prescribes at its head office, during the period that runs from the earliest of the following days until the day of the establishment of the Corporation Incorporated in the Consolidation-Type Merger:

- (i) the day two weeks prior to the day of the investors' meeting referred to in paragraph (1) of the following Article;
  - (ii) the day of the notice under Article 149-13, paragraph (2) or the day of the public notice under Article 149-13, paragraph (3), whichever comes earlier;
  - (iii) if there are investment equity option holders that it is to notify as under Article 149-13-2, paragraph (2), the day of the notice under that paragraph or the day of the public notice under paragraph (3) of that Article, whichever comes earlier; or
  - (iv) the day of the public notice under Article 149-4, paragraph (2) as applied mutatis mutandis pursuant to Article 149-14 or the day of the notice under Article 149-4, paragraph (2), whichever comes earlier.
- (2) The provisions of Article 149, paragraph (2) apply mutatis mutandis to a document or electronic or magnetic record as referred to in the preceding paragraph which is kept by a Corporation Disappearing in a Consolidation-Type Merger.

(Approval for Consolidation-Type Merger Agreements)

- Article 149-12 (1) A Corporation Disappearing in a Consolidation-Type Merger must get approval for the consolidation-type merger agreement by resolution at an investors' meeting.
- (2) A Corporation Disappearing in a Consolidation-Type Merger must notify its Registered Pledges of Investment Equity and registered pledges of investment equity options that it will implement a consolidation-type merger, within two weeks from the day of the resolution at the investors' meeting referred to in the preceding paragraph.

(3) Public notice may be substituted for the notice under the preceding paragraph.

(Dissenting Investors' Appraisal Rights in Respect of Investment Equity)

Article 149-13 (1) In the event of a consolidation-type merger, Investors that notify a Corporation Disappearing in a Consolidation-Type Merger that they will vote against the consolidation-type merger prior to the investors' meeting referred to in paragraph (1) of the preceding Article and that vote against the consolidation-type merger at that investors' meeting are entitled to demand that the Corporation Disappearing in the Consolidation-Type Merger purchase their Investment Equity at a fair price.

(2) Within two weeks from the day of a resolution at the investors' meetings referred to in paragraph (1) of the preceding Article, a Corporation Disappearing in a Consolidation-Type Merger must notify its Investors that it will implement a consolidation-type merger, indicating the trade names and addresses of the other Corporations Disappearing in the Consolidation-Type Merger and of the Corporation Incorporated in the Consolidation-Type Merger.

(3) Public notice may be substituted for the notice under the preceding paragraph.

(4) The provisions of Article 806, paragraph (5) through paragraph (9); Article 807; Article 868, paragraph (1); Article 870, paragraph (2) (but only the part that is relevant to item (ii)); Article 870-2; the main clause of Article 871; Article 872 (but only the part that is relevant to item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of the Companies Act apply mutatis mutandis to the demand prescribed in paragraph (1). In such a case, the phrase "paragraph (3)" and "the preceding paragraph" in Article 806, paragraph (5) of that Act are deemed to be replaced with "Article 149-13, paragraph (2) of the Investment Corporations Act" and "paragraph (3) of that Article", respectively, and Cabinet Order provides for any other necessary technical replacement of terms.

(Appraisal Rights in Respect of Investment Equity Options)

Article 149-13-2 (1) In the event of a consolidation-type merger, the holders of Investment Equity Options in a Corporation Disappearing in a Consolidation-Type Merger are entitled to demand that the Corporation Disappearing in the Consolidation-Type Merger purchase their Investment Equity Options at a fair price.

(2) Within two weeks from the day of a resolution at an investors' meeting as referred to in Article 149-12, paragraph (1), a Corporation Disappearing in a Consolidation-Type Merger must notify its Investors that it will implement a consolidation-type merger, indicating the trade names and addresses of the other Corporations Disappearing in the Consolidation-Type Merger and the Corporation Incorporated in the Consolidation-Type Merger.

- (3) Public notice may be substituted for the notice under the preceding paragraph.
- (4) The provisions of Article 808, paragraph (5), paragraph (6), and paragraph (8) through paragraph (10); Article 809 (excluding paragraph (8)); Article 868, paragraph (1); Article 870, paragraph (2) (but only the part that is relevant to item (ii)); Article 870-2; the main clause of Article 871; Article 872 (but only the part that is relevant to item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of the Companies Act apply mutatis mutandis to a demand under paragraph (1). In such a case, the phrases "paragraph (3)" and "the preceding paragraph" in Article 808, paragraph (5) of that Act are deemed to be replaced with "Article 149-13, paragraph (2) of the Investment Corporations Act" and "paragraph (3) of that Article", respectively; and Cabinet Order provides for any other necessary technical replacement of terms.

(Objections by Creditors)

Article 149-14 The provisions of Article 149-4 apply mutatis mutandis to a Corporation Disappearing in a Consolidation-Type Merger. In such a case, the term "Corporation Surviving the Absorption-Type Merger" in Article 149-4, paragraph (2), item (ii) is deemed to be replaced with "the other Corporations Disappearing in the Consolidation-Type Merger and the Corporation Incorporated in the Consolidation-Type Merger".

**Division 2 Procedures for Corporations Incorporated in Consolidation-Type Mergers**

(Special Provisions on Incorporation of Investment Corporations)

Article 149-15 (1) The provisions of Section 2 (excluding Article 67 (other than item (v) and item (xvi) through item (xviii) of paragraph (1) and paragraph (3)) and Article 74) do not apply to the incorporation of a Corporation Incorporated in a Consolidation-Type Merger.

(2) The Corporations Disappearing in a Consolidation-Type Merger must prepare a certificate of incorporation for the Corporation Incorporated in the Consolidation-Type Merger.

(Keeping and Inspection of Consolidation-Type Merger Documents)

Article 149-16 (1) Without delay after the day of its establishment, a Corporation Incorporated in a Consolidation-Type Merger must prepare a document or electronic or magnetic record in which it documents or records the rights and obligations of the Corporations Disappearing in the Consolidation-Type Merger to which it has succeeded as a result of the consolidation-type merger and other information that Cabinet Office Order prescribes as concerning the consolidation-type merger.

- (2) A Corporation Incorporated in a Consolidation-Type Merger must keep a document or electronic or magnetic record as referred to in the preceding paragraph and a document or electronic or magnetic record in which it documents or records the details of the consolidation-type merger agreement and the information that Cabinet Office Order prescribes at its head office for a period of six months from the day of its establishment.
- (3) The provisions of Article 149, paragraph (2) apply mutatis mutandis to a document or electronic or magnetic record as referred to in the preceding paragraph which is kept by a Corporation Incorporated in a Consolidation-Type Merger.

### **Subsection 6 Miscellaneous Provisions**

(Numerical Rounding)

Article 149-17 (1) If an Investment Corporation delivers Investment Equity in itself to the persons that one of the following items prescribes at the time it takes the action set forth in the relevant item, and fractional units of Investment Equity are among the Investment Equity that it would be required to deliver to those persons, the Investment Corporation must sell a number of units of Investment Equity that is equivalent to the sum total of those fractional units (and if that sum total includes a fractional unit, this is disregarded) in what Cabinet Office Order prescribes as a way that is appropriate for selling Investment Equity at a fair price, and must deliver the proceeds of the sale to those persons in proportion to their fractional units:

- (i) an absorption-type merger (but only one that the Investment Corporation survives): Investors of the Corporation Disappearing in the Absorption-Type Merger; and
- (ii) issuance of investment equity issued at incorporation based on a consolidation-type merger agreement: Investors of the Corporations Disappearing in the Consolidation-Type Merger.

(2) The provisions of Article 88, paragraph (2) and paragraph (3) apply mutatis mutandis to a case as referred to in the preceding paragraph.

(Application Mutatis Mutandis of the Companies Act)

Article 150 The provisions of Article 784-2; Article 796-2; and Article 805-2 of the Companies Act apply mutatis mutandis to the cancellation of a merger of Investment Corporations, the provisions of Article 828, paragraph (1) (but only the part that is relevant to item (vii) and item (viii)) and paragraph (2) (but only the part that is relevant to item (vii) and item (viii)); Article 834 (but only the part that is relevant to item (vii) and item (viii)); Article 835, paragraph (1); Article 836 through Article 839; Article 843 (excluding paragraph (1), item

(iii) and item (iv) and the proviso to paragraph (2)); Article 846; and Article 937, paragraph (3) (but only the part that is relevant to item (ii) and item (iii)) of that Act apply mutatis mutandis to an action to invalidate a merger of Investment Corporations, and the provisions of Article 868, paragraph (6); Article 870, paragraph (2) (but only the part that is relevant to item (vi)); Article 870-2; the main clause of Article 871; Article 872 (but only the part that is relevant to item (v)); Article 872-2; the main clause of Article 873; Article 875; and Article 876 of that Act apply mutatis mutandis to a petition as referred to in Article 843, paragraph (4) of that Act as applied mutatis mutandis pursuant to this Article. Cabinet Order provides for the necessary technical replacement of terms in such a case.

## **Section 12 Liquidation**

### **Subsection 1 General Rules**

(Cause to Commence Liquidation)

Article 150-2 In the following cases, an Investment Corporation must go into liquidation pursuant to the provisions of this Section:

- (i) if the Investment Corporation is dissolved (unless it is dissolved based on the grounds set forth in Article 143, item (iv); or unless it is dissolved as a result of an order commencing bankruptcy proceedings and the bankruptcy proceedings have not come to an end); or
- (ii) if a judgment upholding the claims in an action to invalidate its incorporation has become final and binding.

(Capacity of Investment Corporations in Liquidation)

Article 150-3 An Investment Corporation that goes into liquidation pursuant to the preceding Article (hereinafter referred to as an "Investment Corporation in Liquidation") is deemed to continue to exist inasmuch as the task of liquidation is concerned, until the completion of the liquidation.

(Establishment of Administrative Instruments Other than Investors' Meetings)

Article 150-4 (1) An Investment Corporation in Liquidation must have the following administrative instruments:

- (i) one or multiple executive liquidators;
- (ii) liquidation supervisors numbering at least one more than the number of executive liquidators;
- (iii) a board of liquidators; and
- (iv) a financial auditor.

(2) The provisions of Article 95 do not apply to an Investment Corporation in Liquidation.

(Assuming the Role of Executive Liquidator)

Article 151 (1) The following persons become the executive liquidators of an Investment Corporation in Liquidation:

- (i) executive managing officers (unless there is a person as set forth in the following item or item (iii))
- (ii) persons that the certificate of incorporation prescribes; or
- (iii) persons appointed by resolution at an investors' meeting.

(2) The following persons become the liquidation supervisors of an Investment Corporation in Liquidation:

- (i) supervisory officers (unless there is a person as set forth in the following item or item (iii));
- (ii) persons that the certificate of incorporation prescribes; or
- (iii) persons appointed by resolution at an investors' meeting.

(3) Unless a special liquidation has been commenced, if there is no one to become an executive liquidator pursuant to paragraph (1) or if there is no one to become a liquidation supervisor pursuant to the preceding paragraph, the Prime Minister appoints the executive liquidator or liquidation supervisors, at the petition of an interested person or sua sponte.

(4) Notwithstanding the provisions of the preceding three paragraphs, unless a special liquidation has been commenced, the Prime Minister appoints an executive liquidator and liquidation supervisors at the petition of an interested person or sua sponte for an Investment Corporation in Liquidation that has been dissolved on the grounds set forth in Article 143, item (vi) or an Investment Corporation in Liquidation that has come to fall under a case set forth in Article 150-2, item (ii).

(5) Notwithstanding the provisions of paragraph (1) through paragraph (3), unless a special liquidation has been commenced, the Prime Minister appoints an executive liquidator and liquidation supervisors sua sponte for an Investment Corporation in Liquidation that has been dissolved on the grounds set forth in Article 143, item (vii) or item (viii).

(6) Article 97 applies mutatis mutandis to executive liquidators and liquidation supervisors; Article 98 applies mutatis mutandis to executive liquidators; and Article 100 applies mutatis mutandis to liquidation supervisors. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Notification by Executive Liquidators)

Article 152 An executive liquidator and the liquidation supervisors (other than a person appointed by the Prime Minister, and other than the executive liquidator or liquidation supervisor of a corporation for which a special liquidation has been commenced) must file notification of the following

information with the Prime Minister within two weeks from the day of they assume their roles; provided, however, that this does not apply if a special liquidation is commenced within that period:

- (i) the grounds for the dissolution (or if an Investment Corporation in Liquidation has come to fall under a cases set forth in Article 150-2, item (ii), an indication of this) and the date thereof;
- (ii) the names and addresses of the executive liquidator and liquidation supervisors.

#### (Dismissal of Executive Liquidators)

Article 153 (1) Unless a special liquidation has been commenced, on finding there to be material grounds to do so, the Prime Minister may dismiss an executive liquidator or liquidation supervisor, at the petition of an interested person or sua sponte. Having done so, the Prime Minister may appoint a new executive liquidator or liquidation supervisor.

(2) Article 108, paragraph (1) and paragraph (2) of this Act and the provisions of Article 346, paragraph (3) and Article 479, paragraph (1) of the Companies Act apply mutatis mutandis to an executive liquidator or liquidation supervisor. In such a case, the term "the Prime Minister" in Article 108, paragraph (2) of this Act is deemed to be replaced with "the Prime Minister (or the court, if a special liquidation has been commenced)"; the phrase "the preceding paragraph" in Article 346, paragraph (3) of the Companies Act is deemed to be replaced with "Article 108, paragraph (2) as applied mutatis mutandis pursuant to Article 153, paragraph (2) of the Investment Corporations Act following the deemed replacement of terms"; the phrase "the court pursuant to the provisions of paragraphs (2) through (4) of the preceding Article" in Article 479, paragraph (1) of the Companies Act is deemed to be replaced with "the Prime Minister or the court"; and Cabinet Order provides for any other necessary technical replacement of terms.

#### (Duties of Executive Liquidators)

Article 153-2 An executive liquidator performs the following duties:

- (i) conclusion of current business;
- (ii) collection of debts and performance of obligations; and
- (iii) distribution of residual assets.

Article 153-3 (1) An executive liquidator undertakes executive management for the business of an Investment Corporation in Liquidation and represents the Investment Corporation in Liquidation.

(2) Article 109, paragraph (3) of this Act and the provisions of Article 349, paragraph (4) and paragraph (5); Article 355; Article 360, paragraph (1); and

Article 484 of the Companies Act apply mutatis mutandis to an executive liquidator and the provisions of Article 352; Article 868, paragraph (1); Article 869; Article 871; Article 874 (but only the part that is relevant to item (iv)); Article 875; and Article 876 of that Act apply mutatis mutandis to a person standing in for an executive liquidator. In such a case, the term "substantial detriment" in Article 360, paragraph (1) of that Act is deemed to be replaced with "irreparable harm"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Remuneration for Executive Liquidators)

Article 154 (1) If the amount of remuneration for an executive liquidator (other than one appointed by the Prime Minister or the court) is not provided for in the certificate of incorporation but the certificate of incorporation prescribes the criteria for paying remuneration, the amount of remuneration is decided by resolution of the board of liquidators in accordance with those criteria; and if the certificate of incorporation prescribes neither the amount of the remuneration nor the criteria for paying it the amount of remuneration is decided by resolution at an investors' meeting.

(2) Having appointed an executive liquidator pursuant to Article 151, paragraph (3) through paragraph (5) or Article 153, paragraph (1), the Prime Minister may decide the amount of remuneration that the Investment Corporation in Liquidation will pay the executive liquidator, pursuant to the provisions of Cabinet Office Order.

(Duties of Liquidation Supervisors)

Article 154-2 (1) Liquidation supervisors supervise the executive liquidators in the performance of their duties.

(2) The provisions of Article 111, paragraph (2) and the preceding Article of this Act and the provisions of Article 355; Article 381, paragraph (3) and paragraph (4); Article 384; Article 385; and Article 386, paragraph (1) (but only the part that is relevant to item (i)) and paragraph (2) (but only the part that is relevant to item (i) and item (ii)) of the Companies Act apply mutatis mutandis to liquidation supervisors. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Board of Liquidators)

Article 154-3 (1) A board of liquidators is composed of all of the executive liquidators and liquidating supervisors.

(2) The provisions of Article 113 and Article 114, paragraph (1) of this Act and the provisions of Article 368 and Article 369 of the Companies Act apply mutatis mutandis to a board of liquidators, and Article 371 (excluding

paragraph (3)) of that Act applies mutatis mutandis to an Investment Corporation in Liquidation. In such a case, the phrase "of the directors" in Article 369, paragraph (1) of that Act is deemed to be replaced with "of the members"; the term "Directors" in Article 369, paragraph (2) of that Act and the term "the directors and company auditors" in paragraph (3) of that Article are deemed to be replaced with "the executive liquidators and liquidation supervisors"; the term "Directors" in paragraph (5) of that Article is deemed to be replaced with "Executive liquidators and liquidation supervisors"; the phrase "at any time during the business hours of a Stock Company" in Article 371, paragraph (2) of that Act is deemed to be replaced with "with the permission of the Prime Minister (or the court, if a special liquidation has been commenced; the same applies in paragraph (4) and paragraph (6))"; the term "the court" in Article 371, paragraph (4) and paragraph (6) of that Act is deemed to be replaced with "the Prime Minister"; and Cabinet Order provides for any other necessary technical replacement of terms.

- (3) Before reaching a disposition on a petition for permission under Article 371, paragraph (2) or paragraph (4) (including as applied mutatis mutandis pursuant to paragraph (5) of that Article) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph following the deemed replacement of terms, the Prime Minister must hear the statement or the Investment Corporation in Liquidation in connection with that petition.

(Executive Liquidators' Liability for Damage to Investment Corporations in Liquidation)

Article 154-4 (1) If an executive liquidator or liquidation supervisor neglects the duties thereof, the liquidator is liable to the Investment Corporation in Liquidation for damage resulting from this.

- (2) An exemption from the liability referred to in the preceding paragraph may not be granted without all Investors' agreement.

(Executive Liquidators' Liability for Damage to Third Parties)

Article 154-5 (1) If an executive liquidator or liquidation supervisor acts in bad faith or with gross negligence in performing the duties thereof, the executive liquidator or liquidation supervisor is liable to compensate for damage that a third party incurs as a result of this.

- (2) The provisions of the preceding paragraph also apply if an executive liquidator or liquidation supervisor engages the following conduct; provided, however, that this does not apply if the executive liquidator or liquidation supervisor proves that they did not neglect to exercise due care in engaging in that conduct:

(i) making false entries or records for material information that is required to

- be entered or recorded in the inventory or balance sheet referred to in Article 155, paragraph (1);
- (ii) making a false registration; or
  - (iii) issuing false public notice.

(Joint and Several Liability of Executive Liquidators)

- Article 154-6 (1) If an executive liquidator, liquidation supervisor, or financial auditor is liable to compensate for damage that an Investment Corporation in Liquidation or a third party incurs and another executive liquidator, liquidation supervisor, or financial auditor is also liable to compensate for that damage, these persons are joint and several obligors.
- (2) In a case as referred to in the preceding paragraph, the provisions of Article 115-8 do not apply.

(Actions to Enforce Liability of Executive Liquidators)

- Article 154-7 The provisions of Part VII, Chapter 2, Section 2 (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853, paragraph (1), item (ii) and item (iii)) of the Companies Act apply mutatis mutandis to an action to enforce the liability of an executive liquidator or liquidation supervisor. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Application of Provisions on Executive Managing Officers)

- Article 154-8 The provisions of Article 77-2, paragraph (4) and Section 4, Subsection 1 that involve executive managing officers, supervisory officers, and boards of officers apply to executive liquidators, liquidation supervisors, and boards of liquidators at Investment Corporations in Liquidation, with the provisions on executive managing officers applying to executive liquidators, the provisions on supervisory officers applying to liquidation supervisors, and the provisions on boards of officers applying to boards of liquidators.

(Preparation of an Inventory and Balance Sheet)

- Article 155 (1) An executive liquidator, without delay after assuming that role, must investigate the state of the assets at the Investment Corporation in Liquidation at that time, and must prepare an inventory of property and a balance sheet (hereinafter collectively referred to as the "inventory and balance sheet" in this Article and the following Article), pursuant to the provisions of Cabinet Office Order, for the day that the Investment Corporation in Liquidation came to fall under either of the cases set forth in the items of

Article 150-2.

- (2) An inventory and balance sheet must be audited by a financial auditor pursuant to the provisions of Cabinet Office Order.
- (3) An executive liquidator must submit or provide an inventory and balance sheet audited as referred to in the preceding paragraph and accounting audit reports to the board of liquidators and have them approved.
- (4) Unless a special liquidation has been commenced, having obtained the approval referred to in the preceding paragraph, an executive liquidator must submit the inventory and balance sheet and the accounting audit report referred to in that paragraph to the Prime Minister without delay.
- (5) An Investment Corporation in Liquidation must keep the inventory and balance sheet on file from the time it is prepared until the time of the completion of liquidation is registered.

(Order to Submit an Inventory and Balance Sheet)

Article 156 The court, upon petition or by its own authority, may order a party to litigation to submit all or part of its inventory and balance sheet.

(Performance of Obligations)

- Article 157 (1) Without delay after coming to fall under either of the cases set forth in the items of Article 150-2, an Investment Corporation in Liquidation must issue public notice in the Official Gazette indicating to its creditors that they must assert their claims within a certain period of time, and must also issue individual notices to each of its known creditors indicating the same; provided, however, that the period of time of which it notifies them may not be shorter than one month.
- (2) The public notice under the preceding paragraph must include a supplementary note indicating that creditors not asserting their claims within the relevant period will have those claims excluded from the liquidation.
  - (3) The provisions of Article 500 through Article 503 of the Companies Act apply mutatis mutandis to the performance of obligations by an Investment Corporation in Liquidation. In such a case, the phrases "paragraph (1) of the preceding Article" in Article 500, paragraph (1) and paragraph (2) of that Act and "paragraph (1) of Article 499" in Article 503, paragraph (1) of that Act is deemed to be replaced with "Article 157, paragraph (1) of the Investment Corporations Act"; the term "the court" in Article 500, paragraph (2) and Article 501, paragraph (1) of the Companies Act is deemed to be replaced with "the Prime Minister (or the court, if a special liquidation has been commenced)"; and Cabinet Order prescribes any other necessary technical replacement of terms.

(Distribution of Residual Assets)

Article 158 (1) Before distributing residual assets, an Investment Corporation in Liquidation must prescribe the following particulars by resolution of the board of liquidators:

- (i) the type of residual assets; and
  - (ii) the particulars of the allotment of residual assets to Investors.
- (2) Provisions for the particulars set forth in item (ii) of the preceding paragraph must establish that residual assets will be allotted in proportion to the number of units of Investment Equity held by the Investors (meaning Investors other than the Investment Corporation in Liquidation).
- (3) The provisions of Article 505 and Article 506 of the Companies Act apply mutatis mutandis to an Investment Corporation in Liquidation. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Preparation of Statements of Accounts)

Article 159 (1) Once the liquidation process has been concluded, the Investment Corporation in Liquidation must prepare a statement of its accounts pursuant to the provisions of Cabinet Office Order without delay.

- (2) Unless a special liquidation has been commenced, a statement of accounts must be audited by a financial auditor pursuant to the provisions of Cabinet Office Order.
- (3) An executive liquidator must submit or provide a statement of accounts audited as referred to in the preceding paragraph and the accounting audit reports (or the account statements alone, if a special liquidation has been commenced) to the board of liquidators and have them approved.
- (4) If an executive liquidator (other than the executive liquidator of a corporation for which a special liquidation has been commenced; the same applies in the following paragraph and paragraph (1) and paragraph (4) of the following Article) has obtained the approval referred to in the preceding paragraph, and it has been indicated or recorded in the accounting audit report referred to in the preceding paragraph which is subject to that approval that the statement of accounts violates a law, regulation, or the certificate of incorporation as it does not indicate the correct settlement status, the executive liquidator must submit or provide the statement of accounts audited under paragraph (2) and the financial auditor report to the investors' meeting, and get approval at that meeting.
- (5) If the approval referred to in paragraph (3) (or, in the case referred to in the preceding paragraph, approval at an investors' meeting under that paragraph) has been given, the executive liquidator is deemed to have been exempted from the liability to compensate for damage due to neglect of duties; provided, however, that this does not apply if there has been misconduct in the

performance of an executive managing officer's duties.

(Notice of Conclusion of Liquidation)

Article 160 (1) Having obtained the approval referred to in paragraph (3) of the preceding Article, an executive liquidator must, without delay, notify the Investors that the administration of liquidation has been concluded; provided, however, that this does not apply to a case referred to in paragraph (4) of that Article.

(2) Article 131, paragraph (4) apply mutatis mutandis to the notice referred to in the main clause of the preceding paragraph.

(3) In giving the notice under the main clause of paragraph (1), the executive liquidator must provide the statement of accounts and the accounting audit report referred to in paragraph (3) of the preceding Article to the Investors, pursuant to the provisions of Cabinet Office Order.

(4) Having obtained the approval referred to in paragraph (3) of the preceding Article (or approval at an investors' meeting as referred to in that paragraph, in a case as referred to in paragraph (4) of that Article), an executive liquidator must submit transcripts of the statement of accounts and the accounting audit report subject to the approval to the Prime Minister without delay.

(Keeping Accounting Materials on File)

Article 161 Article 508 of the Companies Act applies mutatis mutandis to the keeping on file of the books of an Investment Corporation in Liquidation and important materials related to its business and liquidation. In such a case, the phrase "The court may, in response to the petition by the interested parties" in Article 508, paragraph (2) of that Act is deemed to be replaced with "The Prime Minister (or the court, if a special liquidation is commenced) may, at the petition of an interested person or sua sponte (or, if a special liquidation has been commenced, at the petition of an interested person)"; and Cabinet Order provides for any other necessary technical replacement of terms.

(Supervision Order for Liquidation)

Article 162 In the event of the liquidation of an Investment Corporation (other than a special liquidation), on finding that it is necessary to do so, the Prime Minister may order the Investment Corporation, its Administrative Agent, Asset Management Company, or Asset Custody Company to deposit its property or to take other measures necessary for the supervision of the liquidation.

(Application Mutatis Mutandis of the Companies Act)

Article 163 The provisions of Article 868 (1); Article 869; Article 870, paragraph

(1) (but only the part that is relevant to item (i), item (v), and item (vi)) and paragraph (2) (but only the part that is relevant to item (i)); Article 870-2; Article 871; Article 872 (but only the part that is relevant to item (iv) and item (v)); Article 872-2; Article 873; Article 874 (but only the part that is relevant to item (i) and item (iv)); Article 875; and Article 876 of the Companies Act apply mutatis mutandis to the liquidation of an Investment Corporation. Cabinet Order provides for the necessary technical replacement of terms in such a case.

### **Subsection 2 Special Liquidation**

Article 164 (1) If the court finds that the following grounds exist at an Investment Corporation in Liquidation, it may order the Investment Corporation in Liquidation to commence a special liquidation upon petition, based on the provisions of Article 514 of the Companies Act as applied mutatis mutandis pursuant to paragraph (4):

- (i) there are circumstances in place that would significantly impede the implementation of a liquidation; or
  - (ii) it is suspected to be insolvent (meaning in a state in which the assets of the Investment Corporation in Liquidation are insufficient to fully repay its debts; the same applies in paragraph (3));
- (2) A creditor, executive liquidator, liquidation supervisor, or Investor may file a petition to commence a special liquidation.
- (3) If the Investment Corporation in Liquidation is suspected to be insolvent, an executive liquidator must file a petition to commence a special liquidation.
- (4) The provisions of Article 512 through Article 518-2; the provisions of Subsection 2 through Subsection 10 of Part II, Chapter 9, Section 2 (excluding Article 522, paragraph (3); Article 536, paragraph (1), item (iii) and paragraph (3)); the provisions of Part VII, Chapter 2, Section 4; the provisions of Chapter 3, Section 1 of that Part (excluding Article 870, paragraph (2) through paragraph (6) and Article 870 through Article 874); the provisions of Section 3 of that Chapter (excluding Article 879; Article 880; Article 882, paragraph (2); and Article 896, paragraph (2)); and Article 938 (excluding paragraph (6)) of the Companies Act apply mutatis mutandis to the special liquidation of an Investment Corporation in Liquidation. In such a case, the phrase "paragraph (3) of Article 492" in Article 521 of that Act is deemed to be replaced with "Article 155, paragraph (3) of the Investment Corporations Act"; the phrase "or shareholders that have held, for the consecutive period of past six months or more (or, if a shorter period is provided for in the articles of incorporation, such period), not less than three-hundredths (3/100) of the voting rights of all shareholders (excluding the shareholders that cannot exercise voting rights on all matters on which resolutions can be passed at the shareholders meeting; or,

if any proportion less than that is provided for in the articles of incorporation, such proportion) or shareholders that have held, for the consecutive period of past six months or more (or, if a shorter period is provided for in the articles of incorporation, such period), not less than three-hundredths (3/100) of the issued shares (excluding treasury shares; or, if a lower proportion is provided for in the articles of incorporation, such proportion)" in Article 522, paragraph (1) of the Companies Act is deemed to be replaced with "or Investors that have held three percent (if a lower proportion is provided for in the certificate of incorporation, that proportion) or more of the units of issued investment equity continuously for the last six months (or, if a shorter period is provided for in the certificate of incorporation, for that period)"; the term "liquidators" in Article 523 and Article 526, paragraph (1) of the Companies Act is deemed to be replaced with "executive liquidators and liquidation supervisors"; the term "liquidators" in Article 524 of that Act is deemed to be replaced with "executive liquidator or liquidation supervisor"; the terms "liquidators" and "liquidators' agent" in Article 525, paragraph (1) of that Act are deemed to be replaced with "executive liquidators" and "executive liquidators' agent", respectively; the phrase "liquidators and Company Auditors of a Liquidating Stock Company and employees, including managers"; in Article 530, paragraph (1) of that Act is deemed to be replaced with "executive liquidators and liquidation supervisors of an Investment Corporation in Liquidation, as well as the Administrative Agent, Asset Management Company, and Asset Custody Company"; the phrase "directors upon incorporation, Company Auditors upon incorporation, Qualified Officers provided for in paragraph (1) of Article 423 or liquidators" in Article 542, paragraph (1) of the Companies Act is deemed to be replaced with "executive managing officer at incorporation, supervisory officer at incorporation, officer or similar person as specified in Article 115-6, paragraph (1) of the Investment Corporations Act, executive liquidator, or liquidation supervisor"; the phrases "the liquidators provided for in paragraph (1) of Article 492" and "that paragraph" in Article 562 of the Companies Act are deemed to be replaced with "the executive liquidators" and "Article 155, paragraph (1) of the Investment Corporations Act", respectively; the phrase "the head office (or, in cases referred to in item (iii), if a ruling to conclude special liquidation is made due to completion of a special liquidation, the head office and branch office)" in Article 938, paragraph (1) of the Companies Act is deemed to be replaced with "the head office"; the phrase "Article 351 (2) as applied mutatis mutandis pursuant to Article 346 (2) or Article 483 (6) as applied mutatis mutandis pursuant to Article 479 (4)" in Article 938, paragraph (2), item (i) of the Companies Act is deemed to be replaced with "Article 108, paragraph (2) of the Investment Corporations Act as applied mutatis mutandis pursuant to Article 153, paragraph (2) of the Investment

Corporations Act following the deemed replacement of terms"; and Cabinet Order provides for any other necessary technical replacement of terms.

### **Section 13 Registration**

(Registering Investment Corporations)

Article 165 The provisions of Article 908 through Article 910 of the Companies Act apply mutatis mutandis to the registration of an Investment Corporation. In such a case, the term "this Act" in those provisions is deemed to be replaced with "the Investment Corporations Act".

(Registering Incorporation)

Article 166 (1) An Investment Corporation's incorporation must be registered in the locality of its head office within two weeks after whichever of the following days is later:

- (i) the day on which the investigation under Article 73, paragraph (1) ended;
- (ii) if an Organizational Meeting has been called pursuant to Article 73, paragraph (3), the day on which the Organizational Meeting concluded; or
- (iii) if a resolution has been made at an Organizational Meeting as referred to in Article 97 of the Companies Act as applied mutatis mutandis pursuant to Article 69, paragraph (7), the day that marks the passage of two weeks since the day of the resolution.

(2) The following information must be registered in a registration as referred to in the preceding paragraph:

- (i) the purpose;
- (ii) the trade name;
- (iii) the location of the head office;
- (iv) the provisions of the certificate of incorporation regarding the period of time during which the Investment Corporation is to exist or grounds for its dissolution, if the certificate of incorporation provides for this;
- (v) the Minimum Net Assets;
- (vi) the Total Number of Issuable Units of Investment Equity;
- (vii) either that the Investment Equity will be refunded at the demand of an Investor, or that it will not;
- (viii) the name and address of the administrator of registers (meaning the person that prepares and keeps the investor register, investment equity options register, and investment corporation bond register, and that administers other administrative processes related to the investor register, investment equity options register and investment corporation bond register on behalf of the Investment Corporation; the same applies in Article 173, paragraph (1), item (vi)) as well as the business office thereof;

- (ix) the names and addresses of the executive managing officers;
- (x) the names of the supervisory officers;
- (xi) the names of the financial auditors;
- (xii) the name of the person that will temporarily perform the duties of financial auditor and that has been appointed pursuant to Article 108, paragraph (3), if the corporation has hired such a person;
- (xiii) the provisions of the certificate of incorporation on exempting executive managing officers, supervisory officers, or financial auditors from liability as under Article 115-6, paragraph (7), if the certificate of incorporation provides for this;
- (xiv) the provisions of the certificate of incorporation regarding the conclusion of contracts to limit the liability assumed by a financial auditor under Article 427, paragraph (1) as applied mutatis mutandis pursuant to Article 115-6, paragraph (12), if the certificate of incorporation provides for this;
- (xv) the provisions of the certificate of incorporation regarding the means of public notice (meaning the means of public notice that the Investment Corporation uses (other than public notice that it is required to issue by publication in the Official Gazette pursuant to the provisions of this Act or any other Acts); hereinafter the same applies in this Part) under Article 186-2, paragraph (1), if the certificate of incorporation provides for this;
- (xvi) the following information, if the provisions of the certificate of incorporation that are referred to in the preceding item provide that electronic public notice is the means of public notice:
  - (a) the information prescribed in Article 911, paragraph (3), item (xxviii), sub-item (a) of the Companies Act that is needed in order for a large, non-specific group of persons to gain access to the information that a public notice is required to contain, through an electronic public notice; and
  - (b) the provisions of the certificate of incorporation under the second sentence of Article 186-2, paragraph (2), if the certificate of incorporation provides for this.
- (xvii) that the means set forth in Article 186-2, paragraph (1), item (i) under paragraph (3) of that Article is the means of public notice, if there are no provisions in the certificate of incorporation as referred to in item (xv).

(Registering Changes)

Article 167 (1) If a piece of information as set forth in one of the items of paragraph (2) of the preceding Article regarding an Investment Corporation changes, the change must be registered in the locality of its head office within two weeks.

(2) Article 916 (but only the part that is relevant to item (i)) of the Companies Act apply mutatis mutandis to Investment Corporations, and Article 917 (but

only the part that is relevant to item (i) of that Act applies mutatis mutandis to executive managing officers and supervisory officers. In such a case, the phrase "the items of Article 911 (3)" in Article 916, item (i) of the Companies Act is deemed to be replaced with "the items of Article 166, paragraph (2) of the Investment Corporations Act".

(Registering Dissolution)

Article 168 If an Investment Corporation is dissolved pursuant to the provisions of Article 143, item (i) through item (iii), its dissolution must be registered in the locality of its head office within two weeks.

(Registering Mergers)

Article 169 (1) If two or more Investment Corporations implement an absorption-type merger, the dissolution of the Corporation Disappearing in the Absorption-Type Merger must be registered in the locality of its head office within two weeks after the day on which the absorption-type merger takes effect, and a change involving the Corporation Surviving the Absorption-Type Merger must be registered in the locality of its head office within two weeks after the day on which the absorption-type merger takes effect.

(2) If two or more Investment Corporations implement a consolidation-type merger, the dissolution of the Corporations Disappearing in the Consolidation-Type Merger must be registered in the localities of their head offices within two weeks after whichever of the days set forth in the following items is the latest, and the incorporation of the Corporation Incorporated in the Consolidation-Type Merger must be registered in the locality of its head office within two weeks after whichever of the days set forth in the following items is the latest:

- (i) the day of resolution at an investors' meeting, as referred to in Article 149-12, paragraph (1);
- (ii) the day that marks the passage of 20 days following the day on which the notice under Article 149-13, paragraph (2) or the public notice under paragraph (3) of that Article was issued;
- (iii) the day that marks the passage of 20 days following the day on which the notice under Article 149-13-2, paragraph (2) or the public notice under paragraph (3) of that Article was issued, if a Corporation Disappearing in a Consolidation-Type Merger has issued Investment Equity Options;
- (iv) the day on which the procedures under Article 149-4 as applied mutatis mutandis pursuant to Article 149-14 are completed; or
- (v) the day specified by an agreement between or among the Corporations Disappearing in the Consolidation-Type Merger.

(Registering Executive Liquidators)

- Article 170 (1) The names and addresses of executive liquidators must be registered in the locality of the head office of the Investment Corporation in Liquidation, either within two weeks after the day of its dissolution, if the executive managing officers have become the executive liquidators, or within two weeks after the appointment of the executive liquidators, if they have been appointed.
- (2) The names of liquidation supervisors must be registered in the locality of the head office of the Investment Corporation in Liquidation, either within two weeks after the day of its dissolution, if the supervisory officers have become the liquidation supervisors, or within two weeks after the appointment of the liquidation supervisors, if they have been appointed.
- (3) Article 167, paragraph (1) of this Act applies mutatis mutandis to a registrations as referred to in one of the preceding two paragraphs, and Article 917 (but only the part that is relevant to item (i)) of the Companies Act applies mutatis mutandis to executive liquidators and liquidation supervisors. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Registering Completion of Liquidation)

Article 171 Once the liquidation of an Investment Corporation in Liquidation is completed, the completion of the liquidation must be registered in the locality of its head office within two weeks after the approval under Article 159, paragraph (3) (or, in a case as referred to in Article 159, paragraph (4), the approval at an investors' meeting under that paragraph) has been given.

(Registers)

Article 172 An investment corporation register is kept at a registry office.

(Applying to Register Incorporation)

- Article 173 (1) Unless otherwise provided by law or regulation, the following documents must accompany the application for registration referred to in Article 166, paragraph (1):
- (i) the certificate of incorporation;
  - (ii) a document evidencing that the notification filed with the Prime Minister under Article 69, paragraph (1) has been accepted;
  - (iii) documents evidencing offers to subscribe for investment equity for subscription at incorporation;
  - (iv) documents giving the results of the investigation report by the executive managing officers at incorporation and supervisory officers at incorporation, and annexed documents;
  - (v) a certificate of deposit for monies as prescribed in Article 64, paragraph (1)

- of the Companies Act as applied mutatis mutandis pursuant to Article 71, paragraph (10);
- (vi) a document evidencing a contract with an administrator of registers;
  - (vii) documents regarding the appointment of executive managing officers at incorporation, supervisory officers at incorporation, and financial auditors at incorporation;
  - (viii) if an Organizational Meeting has been called, its minutes;
  - (ix) documents evidencing that the executive managing officers at incorporation and supervisory officers at incorporation that have been appointed pursuant to the provisions of this Act have agreed to assume those roles;
  - (x) the following documents regarding financial auditors at incorporation:
    - (a) documents evidencing that the financial auditors at incorporation have agreed to assume that role;
    - (b) if a financial auditor at incorporation is a corporation, its certificate of registered information; provided, however, that this does not apply if the principal office of the corporation is within the jurisdictional district of the registry office in question; or
    - (c) if a financial auditor at incorporation is not a corporation, a document evidencing that the financial auditor at incorporation is a person as prescribed in Article 102, paragraph (1).
- (2) If, pursuant to Article 82, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 73, paragraph (4), a resolution is deemed to have been passed at an Organizational Meeting, a document evidencing this is the case must accompany the application for registration referred to in the preceding paragraph in lieu of the minutes referred to in item (viii) of that paragraph.

(Applying to Register Mergers)

- Article 174 The following documents must accompany an application to register a change resulting from an absorption-type merger:
- (i) the written absorption-type merger agreement;
  - (ii) in a case as referred to in Article 149-7, paragraph (2), a document evidencing that the situation constitutes a case prescribed in that paragraph;
  - (iii) a document evidencing that the relevant corporation has issued the public notice and notices under Article 149-4, paragraph (2) as applied mutatis mutandis pursuant to Article 149-9 (or evidencing that, in addition to issuing public notice in the Official Gazette, it has issued public notice by publication in a daily newspaper that publishes information about current affairs or has issued public notice in the form of an electronic public notice, pursuant to Article 149-4, paragraph (3) as applied mutatis mutandis pursuant to Article

- 149-9, if it has done so in addition to issuing public notice by publication in the Official Gazette); and if a creditor has stated an objection, a document evidencing that the corporation has repaid its debt or provided suitable collateral to the creditor, that it has placed suitable assets into trust to ensure that the creditor will be repaid, or that the absorption-type merger is unlikely to harm the creditor;
- (iv) if the Minimum Net Assets will increase due to the absorption-type merger, documents evidencing that net assets will exceed the Minimum Net Assets after the increase;
  - (v) the certificate of registered information of the Corporation Disappearing in the Absorption-Type Merger; provided, however, that this does not apply if the head office of the Corporation Disappearing in the Absorption-Type Merger is within the jurisdictional district of the registry office in question;
  - (vi) a document evidencing that the approval under Article 149-2, paragraph (1) has been given;
  - (vii) a document evidencing that the Corporation Disappearing in the Absorption-Type Merger has issued the public notice and notices under Article 149-4, paragraph (2) (or evidencing that, in addition to issuing public notice in the Official Gazette, it has issued public notice by publication in a daily newspaper that publishes information about current affairs or has issued public notice in the form of an electronic public notice, pursuant to Article 149-4, paragraph (3)), and if a creditor has stated an objection, a document evidencing that the corporation has repaid its debt or provided suitable collateral to the creditor, that it has placed suitable assets into trust to ensure that the creditor will be repaid, or that the absorption-type merger is unlikely to harm the creditor;
  - (viii) a document evidencing that the Corporation Disappearing in the Absorption-Type Merger has issued the public notice referred to in the main clause of Article 87, paragraph (1) or that it has not issued Investment Securities for all of its Investment Equity; and
  - (ix) if the Corporation Disappearing in the Absorption-Type Merger has issued Investment Equity Options, a document evidencing that it has issued the public notice referred to in Article 88-22, paragraph (1) or that it has not issued Investment Equity Option Certificates.

**Article 175** The following documents must accompany an application to register an incorporation resulting from a consolidation-type merger:

- (i) the written consolidation-type merger agreement;
- (ii) the certificate of incorporation;
- (iii) documents as set forth in Article 173, paragraph (1), item (vi), item (vii), item (ix), and item (x);

- (iv) a document evidencing net assets in excess of the Minimum Net Assets;
- (v) the certificates of registered information for the Corporations Disappearing in the Consolidation-Type Merger; provided, however, that this does not apply if the head office of a Corporation Disappearing in the Consolidation-Type Merger is within the jurisdictional district of the registry office in question;
- (vi) a document evidencing that the approval prescribed in Article 149-12, paragraph (1) has been given;
- (vii) a document evidencing that the Corporations Disappearing in the Consolidation-Type Merger have issued the public notice and notices under Article 149-4, paragraph (2) as applied mutatis mutandis pursuant to Article 149-14 (or evidencing that, in addition to issuing public notice in the Official Gazette, they have issued public notice by publication in a daily newspaper that publishes information about current affairs or have issued public notice by electronic public notice, pursuant to Article 149-4, paragraph (3) as applied mutatis mutandis pursuant to Article 149-14); and if a creditor has stated an objection, a paper document evidencing that the corporation in question has repaid its debt or provided suitable collateral to the creditor, that it has placed suitable assets into trust to ensure that the creditor will be repaid, or that the consolidation-type merger is unlikely to harm the creditor; and
- (viii) a document evidencing that the Corporations Disappearing in the Consolidation-Type Merger has issued the public notice prescribed in the main clause of Article 87, paragraph (1) or that it has not issued Investment Securities for all of the Investment Equity.
- (ix) if one of the Corporations Disappearing in the Consolidation-Type Merger has issued Investment Equity Options, a document evidencing that it has issued the public notice referred to in Article 88-22, paragraph (1) or that it has not issued Investment Equity Option Certificates.

(Applying to Register Executive Liquidators)

Article 176 The document that each of the following items prescribes must accompany an application for registration as set forth in that item:

- (i) an application to register an executive liquidator or liquidation supervisor, if an executive managing officer has become an executive liquidator or a supervisory officer has become a liquidation supervisor: the certificate of incorporation;
- (ii) an application to register an executive liquidator or liquidation supervisor, if a person specified by the certificate of incorporation has become an executive liquidator or liquidation supervisor: the certificate of incorporation and a document evidencing that the person has agreed to assume that role;

- (iii) an application to register the appointment of an executive liquidator or liquidation supervisor that has been appointed at an investors' meeting: a document evidencing that the person has agreed to assume that role;
- (iv) an application to register the appointment of an executive liquidator or liquidation supervisor appointed by the Prime Minister or the court: a document evidencing that appointment; and
- (v) an application to register a change resulting from the separation from employment of an executive liquidator or liquidation supervisor: a document evidencing that separation from employment.

(Application Mutatis Mutandis of the Commercial Registration Act)

Article 177 The provisions of Article 1-3 through Article 5; Article 7 through Article 15; Article 17, paragraph (1), paragraph (2), and paragraph (4); Article 18 through Article 19-3; Article 20, paragraph (1) and paragraph (2); Article 21 through Article 27; Article 33; Article 34; Article 46, paragraph (1) and paragraph (2); Article 47, paragraph (1) and paragraph (3); Article 51 through Article 55; Article 64; Article 70; Article 71; Article 75; Article 79; Article 82; Article 83; Article 132 through Article 137; and Article 139 through Article 148 of the Commercial Registration Act apply mutatis mutandis to registrations involving an Investment Corporation. In such a case, the phrases "Article 17" and "Article 24; Article 48 through Article 50 (including as applied mutatis mutandis pursuant to Article 95; Article 111 and Article 118); Article 51, paragraphs (1) and (2); Article 52; Article 78, paragraphs (1) and (3); Article 82, paragraphs (2) and (3); Article 83; Article 87, paragraphs (1) and (2); Article 88; Article 91, paragraphs (1) and (2); Article 92" in Article 15 of that Act are deemed to be replaced with "Article 17, paragraph (1), paragraph (2), and paragraph (4) and Article 18" and "Article 24", respectively; the phrase "or, the matters to be specified in a written application pursuant to the provisions of the preceding paragraph" in Article 17, paragraph (4) of that Act is deemed to be deleted; the phrase "the preceding two paragraphs" in those provisions is deemed to be replaced with "that paragraph"; the phrase "Article 30 (2) or" in Article 24, item (vii) of that Act is deemed to be deleted; the phrases "all shareholders or class shareholders" and "directors or liquidators" in Article 46, paragraph (1) of that Act are deemed to be replaced with "all Investors" and "executive liquidators or liquidation supervisors", respectively; the phrase "a shareholders meeting, class shareholders meeting, board of directors" in paragraph (2) of that Article is deemed to be replaced with "an investors' meeting, meeting of the board of officers"; the phrase "a director, company auditor, representative director or special director (in the case of a company with supervisory committee, a director that is a supervisory committee member or another director, representative director or special director, and in the case

of a company with nominating committee, etc., a director, Committee Member (meaning the member of the nominating committee, supervisory committee or compensation committee), executive officer or representative executive officer)" in Article 54, paragraph (1) of that Act is deemed to be replaced with "an executive managing officer or supervisory officer"; the phrase "an accounting advisor or a financial auditor" in paragraphs (2) and (3) of that Article is deemed to be replaced with "a financial auditor"; the phrase "Article 337, paragraph (1) of the Act" in Article 54, paragraph (2), item (iii) of the Commercial Registration Act is deemed to be replaced with "Article 102, paragraph (1) of the Investment Corporations Act"; the phrase "Article 346, paragraph (4) of the Companies Act" in Article 55, paragraph (1) of the Commercial Registration Act is deemed to be replaced with "Article 108, paragraph (3) of the Investment Corporations Act"; the phrase "an administrator of a shareholder registry" in Article 64 of the Commercial Registration Act is deemed to be replaced with "an administrator of registers (meaning the administrator of registers as prescribed in Article 166, paragraph (2), item (viii) of the Investment Corporations Act)"; the phrase "the articles of incorporation and" in the provision is deemed to be deleted; the phrases "the amount of stated capital" and "Article 449, paragraph (2) of the Companies Act" in Article 70 of the Commercial Registration Act are deemed to be replaced with "the Minimum Net Assets" and "Article 142, paragraph (2) of the Investment Corporations Act", respectively; the phrase "Article 478, paragraph (1), item (i) of the Companies Act" in Article 71, paragraph (3) of the Commercial Registration Act is deemed to be replaced with "Article 151, paragraph (1), item (i) of the Investment Corporations Act"; the phrase "approved under Article 507, paragraph (3) of the Companies Act" in Article 75 of the Commercial Registration Act is deemed to be replaced with "approved as under Article 159, paragraph (3) of the Investment Corporations Act (in the case referred to in paragraph (4) of that Article, approved at an investors' meeting under that paragraph)"; the phrase "Article 80 or the preceding Article" in Article 82, paragraph (3) of the Commercial Registration Act is deemed to be replaced with "Article 174 or Article 175 of the Investment Corporations Act"; and Cabinet Order provides for any other necessary technical replacement of terms.

Articles 178 through 182 Deleted

#### **Section 14 Miscellaneous Provisions**

(Remuneration for Inspectors Appointed by the Prime Minister)

Article 183 The provisions of Article 154, paragraph (2) apply mutatis mutandis

if the Prime Minister appoints an inspector, temporary executive managing officer or similar person (meaning a person that is to temporarily perform the duties of an executive managing officer, supervisory officer, executive liquidator, or liquidation supervisor; the same applies in paragraph (1), item (ii) of the following Article) or appraiser for an Investment Corporation pursuant to the provisions of this Act or pursuant to the provisions of the Companies Act as applied mutatis mutandis pursuant to this Act.

(Prime Minister's Commissioning of Registrations)

Article 184 (1) In one of the following cases, the Prime Minister must commission the registry office in the locality of the head office of the relevant Investment Corporation to make a registration as indicated:

- (i) if the Prime Minister dismisses an executive liquidator or liquidation supervisor pursuant to Article 153, paragraph (1);
- (ii) if the Prime Minister appoints a temporary executive managing officer or similar person; or
- (iii) if the Investment Corporation has been dissolved on the grounds set forth in Article 143, item (vii) or item (viii).

(2) When commissioning a registration pursuant to the preceding paragraph, the Prime Minister must include documents evidencing that the Prime Minister has rendered a disposition in relation to the circumstances that are cause for the registration with the commission request.

(Application Mutatis Mutandis of the Code of Civil Procedure)

Article 185 The provisions of Article 3-3, item (vii), (c) and Article 5, item (viii), sub-item (c) of the Code of Civil Procedure (Act No. 109 of 1996) apply mutatis mutandis to Investment Corporations. In such a case, the term "incorporator" in these provisions is deemed to be replaced with "organizer".

(Application of the National Tax Collection Act)

Article 186 To apply Article 34, paragraph (1) of the National Tax Collection Act (Act No. 147 of 1959) and Article 11-3, paragraph (1) of the Local Tax Act (Act No. 226 of 1950) if an Investment Corporation has been dissolved, the term "liquidator" in these provisions is deemed to be replaced with "executive liquidator".

(Public Notice)

Article 186-2 (1) An Investment Corporation may prescribe one of the following as the means of public notice in its certificate of incorporation:

- (i) publication in the Official Gazette;
- (ii) publication in a daily newspaper that publishes information on current

affairs; or

- (iii) electronic public notice (meaning a means of public notice that involves a person taking the measures that Article 2, item (xxxiv) of the Companies Act prescribes to put the information that a public notice is required to contain into a format that will allow a large, non-specific group of persons to gain access to it by electronic or magnetic means (meaning electronic or magnetic means as prescribed in that item)).
- (2) If the Investment Corporation specifies a means as set forth in item (iii) of the preceding paragraph as the means of public notice in its certificate of incorporation, it is sufficient for it to indicate in its certificate of incorporation that electronic public notice is the means of public notice. In such a case, either of the means set forth in item (i) or item (ii) of the preceding paragraph may be prescribed as the means of public notice that will be used if it is not possible to issue public notice as an electronic public notice due to an accident or other unavoidable circumstances.
- (3) The means set forth in item (i) of paragraph (1) is the means of public notice for Investment Corporations that do not make provisions as under that paragraph.
- (4) The provisions of Article 940, paragraph (1) (excluding item (ii)) and paragraph (3); Article 941; Article 946; Article 947; Article 951, paragraph (2); Article 953; and Article 955 of the Companies Act apply *mutatis mutandis* if an Investment Corporation issues a public notice under the provisions of this Act as an electronic public notice. Cabinet Order provides for the necessary technical replacement of terms in such a case.

## **Chapter II Business Operations of Investment Corporations**

### **Section 1 Registration**

(Registration)

Article 187 An Investment Corporation must not take an action prescribed in Article 193 as an asset investment without being registered by the Prime Minister.

(Applying for Registration)

Article 188 (1) An Investment Corporation seeking registration as referred to in the preceding Article must submit a written application for registration giving the following information to the Prime Minister:

- (i) the information set forth in Article 67, paragraph (1), item (i) through item (iv), item (vi) through (x), item (xii), item (xiii), and item (xv), and the address of the head office;
- (ii) the names and addresses of the executive managing officers, supervisory

- officers, and financial auditors;
  - (iii) the name and address of the Asset Management Company;
  - (iv) an outline of the entrustment contract for asset investments concluded with the Asset Management Company;
  - (v) the name and address of the Asset Custody Company;
  - (vi) the provisions of the certificate of incorporation regarding the period of time during which the Investment Corporation is to exist or grounds for its dissolution, if the certificate of incorporation provides for this; and
  - (vii) other information that Cabinet Office Order prescribes.
- (2) The following documents concerning an Investment Corporation must accompany a written application for registration referred to in the preceding paragraph:
- (i) a document indicating that the information set forth in item (i) of the preceding paragraph differs from what is given in the certificate of incorporation submitted pursuant to Article 69, paragraph (2) in connection with the incorporation of the Investment Corporation, and the reasons therefor, if this is the case;
  - (ii) a document indicating that the executive managing officer set forth in item (ii) of the preceding paragraph differs from the candidates for executive managing officer at incorporation of which notice was filed pursuant to Article 69, paragraph (1), and the reason therefor, if this is the case;
  - (iii) a copy of the entrustment contract for asset investment concluded with the Asset Management Company; and
  - (iv) any other documents that Cabinet Office Order prescribes.

#### (Making Registrations)

- Article 189 (1) When a person applies for a registration as referred to in the preceding Article, the Prime Minister must register the following information in the investment corporation register, unless the minister refuses to register the person pursuant to the provisions of paragraph (1) of the following Article:
- (i) the information set forth in the items of paragraph (1) of the preceding Article; and
  - (ii) the date of registration and registration number.
- (2) Having made the registration under the preceding paragraph, the Prime Minister must notify the Investment Corporation that has applied for the registration of this without delay.
- (3) The Prime Minister must make the investment corporation register available for public inspection.

#### (Refusal to Register)

- Article 190 (1) The Prime Minister must refuse to register an Investment

Corporation applying for registration if it falls under one of the following items or if the written application for registration or a document accompanying it includes a false entry or lacks an entry with regard to a material fact:

- (i) it seeks to take an action as prescribed in Article 193 for an unlawful purpose;
  - (ii) it has a person as its organizer that has acted in violation of Article 197 within five years before the day of application (or as an officer or employee as prescribed by Cabinet Order, if the organizer is a corporation);
  - (iii) it has a person that falls under an item of Article 98 as its executive managing officer or a person that falls under an item of Article 100 as its supervisory officer;
  - (iv) it has a person other than a certified public accountant, auditing firm, or a person falling under the items of Article 102, paragraph (3) as its financial auditor;
  - (v) it entrusts a person other than a financial instruments business operator (or, in a case as set forth in one of the items of Article 199, the financial instruments business operator that the item prescribes) with asset investments, or it entrusts a financial instruments business operator that falls under the items of Article 200 with asset investments; or
  - (vi) it has a person other than a corporation falling under one of the items of Article 208, paragraph (2) as its Asset Custody Company.
- (2) Having refused to make a registration pursuant to the provisions of the preceding paragraph, the Prime Minister must notify the Investment Corporation that applied for the registration of this without delay, indicating the reason for doing so.

(Notification of Changes)

Article 191 (1) If a piece of information set forth in one of the items of Article 188, paragraph (1) changes, a Registered Investment Corporation must file a notification of this with the Prime Minister within two weeks from the day of the change.

- (2) Having accepted a notification under the preceding paragraph, the Prime Minister must register the information subject to the notification in the Investment corporation register.

(Notification of Dissolution)

Article 192 (1) If a Registered Investment Corporation comes to fall under one of the following items, the person that the item prescribes must file a notification of this with the Prime Minister within 30 days from that day:

- (i) it has been extinguished as a result of a merger: the person that was its executive managing officer;

- (ii) it has been dissolved pursuant to an order commencing bankruptcy proceedings; its bankruptcy trustee; or
  - (iii) it has been dissolved on one of the grounds set forth in Article 143, item (i) through item (iii); its executive liquidator.
- (2) If a Registered Investment Corporation comes to fall under one of the items of the preceding paragraph, its Article 187 registration loses its validity.

## **Section 2 Business Operations**

### **Subsection 1 Scope of Business**

(Scope of Asset Investments)

Article 193 (1) A Registered Investment Corporation may engage in the following dealings with regard to the Specified Assets, in line with the subject and policy for asset investments specified in the certificate of incorporation:

- (i) the acquisition or transfer of Securities;
  - (ii) the lending and borrowing of Securities;
  - (iii) the acquisition or transfer of real property;
  - (iv) the lending and borrowing of real property;
  - (v) the entrustment of the management of real property; and
  - (vi) dealings that Cabinet Order prescribes, beyond what is set forth in the preceding items.
- (2) Other than as under the preceding paragraph, a Registered Investment Corporation may acquire, transfer, or otherwise engage in dealings involving assets other than Specified Assets, in line with the subject and policy for asset investments specified in the certificate of incorporation.

(Restriction on Asset Investment)

Article 194 A Registered Investment Corporation must not acquire shares issued by a single corporation if this would cause the number set forth in item (i) to exceed the number set forth in item (ii):

- (i) the total number of voting rights from shares in that corporation that are held by the Registered Investment Corporation;
- (ii) the number arrived at when the total number of voting rights from shares in that corporation are multiplied by the rate that Cabinet Office Order prescribes.

Article 195 (1) A Registered Investment Corporation must not engage in an action as referred to in Article 193 (other than the dealings set forth in Article 193, paragraph (1), item (v) and other actions that Cabinet Order prescribes as those that are found to have little likelihood of leading to a lack of protection for the Investors of the Registered Investment Corporation) with the following

persons:

- (i) its executive managing officer or supervisory officer;
- (ii) its Asset Management Company; or
- (iii) persons that Cabinet Order prescribes, beyond as set forth in the preceding two items.

(2) The provisions of the preceding paragraph do not apply if a Registered Investment Corporation acquires shares issued by a corporation whose sole purpose is to engage in dealings set forth in paragraph (1), item (iii) through item (v) of the preceding Article in connection with a foreign Specified Asset, in a case that Cabinet Order prescribes as one in which the laws and regulations or other restrictions in the country where the Specified Asset is located do not permit the Registered Investment Corporation to engage in those dealings.

(Public Offerings and Similar Actions Involving Investment Securities and Similar Certificates Issued by Investment Corporations)

Article 196 (1) An executive managing officer of an Investment Corporation must not handle the administrative processes involved in public offerings and similar actions (meaning a public offering (meaning a public offering of Securities as prescribed in Article 2, paragraph (3) of the Financial Instruments and Exchange Act), a private placement (meaning a private placement of Securities as prescribed in that paragraph), or an action that Cabinet Order prescribes; the same applies hereinafter) involving Investment Securities and Similar Certificates issued by the Investment Corporation.

(2) To apply the Financial Instruments and Exchange Act if the Asset Management Company of an Investment Corporation is the Administrative Agent that has been entrusted with administrative processes related to the solicitation of persons to subscribe for Investment Equity or Investment Corporation Bonds or Free Allotment of Investment Equity Options issued by the Investment Corporation, the Asset Management Company's handling of public offerings of Investment Securities or Similar Certificates issued by the Investment Corporation and business that it does to engage in the actions that Cabinet Order prescribes is deemed to be Type II Financial Instruments Business as prescribed in Article 28, paragraph (2) of that Act.

(3) To apply the provisions of the preceding two paragraphs, the following Article, and Article 219 if an Investment Corporation does not issue Investment Securities pursuant to the certificate of incorporation, based on the provisions of Article 217, paragraph (1) through paragraph (5) of the Companies Act as applied mutatis mutandis pursuant to Article 85, paragraph (3) or based on the provisions of Article 86, paragraph (1), the units of Investment Equity required to be indicated on the Investment Securities are deemed to be Investment Securities.

(Application Mutatis Mutandis of the Financial Instruments and Exchange Act to Public Offerings and Similar Actions Involving Investment Securities)

Article 197 The provisions of Article 36, paragraph (1); Article 37 (excluding paragraph (1), item (ii)); Article 37-3, paragraph (1) (excluding item (ii) and item (vi)) and paragraph (2); Article 37-4; Article 38 (excluding item (vii)); Article 39; Article 40, paragraph (1), paragraph (3), and paragraph (5); Article 40; Article 44-3, paragraph (1) (excluding item (iii)); and Article 45 (excluding item (iii) and item (iv)) of the Financial Instruments and Exchange Act apply mutatis mutandis to an organizer that effects a public offering or similar action involving Investment Securities issued by an Investment Corporation that is in the process of being incorporated (and to its officers and employees, if the organizer is a corporation; hereinafter referred to as a "specified organizer or its officers or employees" in this Article), and the provisions of Article 39, paragraph (2) and paragraph (4) of that Act apply mutatis mutandis to the customers of a specified organizer or its officers or employees. Cabinet Order provides for the necessary technical replacement of terms in such a case.

## **Subsection 2 Entrustment of Business**

(Entrusting Asset Management Companies with Asset Investment Operations)

Article 198 (1) A Registered Investment Corporation must entrust an Asset Management Company with the operations that are involved in the investment of its assets.

(2) The agreement for entrustment as referred to in the preceding paragraph (excluding any agreement concluded with a person that will become an Asset Management Company as referred to in Article 67, paragraph (1), item (xiv)) does not come into effect without approval at an investors' meeting.

(Asset Management Companies)

Article 199 An Asset Management Company must be a financial instruments business operator (and, in a case as set forth in one of the following items, must be the financial instruments business operator that the item prescribes):

- (i) if real property is one of the assets in which the Registered Investment Corporation invests: a financial instruments business operator that is licensed as referred to in Article 3, paragraph (1) of the Real Estate Brokerage Act;
  - (ii) if the purpose of a Registered Investment Corporation is to invest mainly in real property: a financial instruments business operator that is authorized as referred to in Article 50-2, paragraph (1) of the Real Estate Brokerage Act;
- and

(iii) in a case that Cabinet Order prescribes beyond what is set forth in the preceding two items: a financial instruments business operator as prescribed by Cabinet Order.

(Prohibition on Entrustors' Entrustment of Financial Instruments Business Operators to Which They Are Related as Interested Parties)

Article 200 A Registered Investment Corporation must not entrust a financial instruments business operator that falls under one of the following items with operations involved in the investment of its assets:

- (i) a financial instruments business operator that has or had a supervisory officer of the Registered Investment Corporation as its officer or employee (hereinafter collectively referred to as an "officer or employee" in this item) or as the officer or employee of its Subsidiary Company;
- (ii) a financial instruments business operator that provides continuous remuneration to a supervisory officer of the Registered Investment Corporation; or
- (iii) a financial instruments business operator that Cabinet Office Order prescribes as being related to the supervisory officers of the Registered Investment Corporation in a way that makes it an interested party, other than as set forth in the preceding two items.

(Investigation into Value of Specified Assets)

Article 201 (1) If an acquisition or transfer of Specified Assets (but only of lands or buildings or of associated rights or assets that Cabinet Order prescribes) has been made for an Investment Corporation whose assets an Asset Management Company invests, that company, pursuant to Cabinet Office Order, must have a person other than an interested person or other close affiliate (meaning a person that holds a majority of all shareholders' voting rights in the Asset Management Company or any other person that Cabinet Order prescribes as being otherwise closely affiliated with the Asset Management Company; the same applies in the following paragraph, paragraph (1) of the following Article and Article 203, paragraph (2)), that is a real estate appraiser, appraise the real property constituting the Specified Assets; provided, however, that this does not apply if the Asset Management Company has that appraisal done prior to the acquisition or transfer.

(2) If an acquisition or transfer of Specified Assets other than those provided for in the preceding paragraph (and other than Designated Assets) has been made or any other action that Cabinet Office Order prescribes has been taken for an Investment Corporation whose assets an Asset Management Company invests, that company must have a person that Cabinet Order prescribes which is other than the Investment Corporation, the Asset Management Company itself (and

its interested persons and other close affiliates), or its Asset Custody Company assess the value of the Specified Assets and investigate other matters that Cabinet Office Order prescribes; provided, however, that this does not apply if the Asset Management Company has that appraisal done prior to the action being taken.

(Restriction on Dealings with Interested Persons and Other Close Affiliates)

Article 201-2 (1) If an Asset Management Company invests assets as entrusted by a Registered Investment Corporation, before dealings as referred to in Article 193, paragraph (1), item (i) through item (iv) (other than those that Cabinet Office Order prescribes as having only a minor influence on the assets of the Registered Investment Corporation) come to be entered into between the Registered Investment Corporation and an interested person or other close affiliate of the Asset Management Company, the Asset Management Company must first obtain the consent of the Registered Investment Corporation.

(2) An executive managing officer must get the approval of the board of officers in order to give the consent referred to in the preceding paragraph.

(Further Entrusting Persons with Authority Entrusted by Investment Corporations)

Article 202 (1) If an Asset Management Company invests assets as entrusted by an Investment Corporation, it must not further entrust another person with all of the authority to invest assets with which the Investment Corporation has entrusted it.

(2) To apply Article 201 if an Asset Management Company entrusts another person with part of the authority to invest assets with which an Investment Corporation has entrusted it, the term "Asset Management Company" in that Article is deemed to be replaced with "Asset Management Company (or a person that has been further entrusted by that Asset Management Company with part of the authority to invest assets)".

(Delivering Documents to Investment Corporations under Contract)

Article 203 (1) At least once every three months, an Asset Management Company must deliver a document to an Investment Corporation whose assets it invests in which it discloses the following information:

- (i) whether or not a transaction involving the same issue in which it has invested the Investment Corporation's assets is among the sales and purchases of Securities and other transactions that Cabinet Order prescribes which the Asset Management Company has made on its own account;
- (ii) the breakdown of transactions it has made in a case as referred to in the preceding item as sales or purchases, and other particulars that Cabinet

- Office Order prescribes;
- (iii) whether or not the Asset Management Company has sold or purchased real property or made any other transaction that Cabinet Order prescribes on its own account (but only if real property is one of the Specified Assets in which the Investment Corporation invests);
  - (iv) the breakdown of transactions it has made in a case as referred to in the preceding item as sales or purchases, and other particulars that Cabinet Office Order prescribes; and
  - (v) information that Cabinet Order prescribes other than as set forth in the preceding items.
- (2) If a sale and purchase of Specified Assets (other than Designated Assets and those that Cabinet Office Order prescribes; hereinafter the same applies in this paragraph) or any other transaction that Cabinet Order prescribes takes place between an Investment Corporation whose assets an Asset Management Company invests and that Asset Management Company, one of its directors or executive officers, another Investment Corporation whose assets it invests, its interested person or other close affiliate, or any other person that Cabinet Order prescribes, the Asset Management Company, pursuant to the provisions of Cabinet Office Order, must deliver a paper document giving information about the transaction to the Investment Corporation, other Investment Corporations whose assets it invests (but only those whose assets it invests in assets of the same type as the relevant Specified Assets), and any other person that Cabinet Order prescribes.
- (3) The provisions of Article 5, paragraph (2) apply mutatis mutandis to the delivery of a paper document under paragraph (1). In such a case, the phrase "a person seeking to acquire Beneficiary Certificates" in Article 5, paragraph (2) is deemed to be replaced with "an Investment Corporation whose assets it invests".
- (4) The provisions of Article 5, paragraph (2) apply mutatis mutandis to the delivery of a paper document under paragraph (2). In such a case, the phrase "a person seeking to acquire Beneficiary Certificates" in Article 5, paragraph (2) is deemed to be replaced with "an Investment Corporation whose assets it invests, other Investment Corporations whose assets it invests (but those whose assets it invests in assets of the same type as the Specified Assets), and any other person that Cabinet Order prescribes".

(Asset Management Company Liability)

Article 204 (1) If an Asset Management Company (or a person that has been further entrusted by that Asset Management Company with part of the authority to invest assets; the same applies hereinafter in this Article) damages an Investment Corporation by neglecting its duties, it is jointly and

severally liable to compensate the Investment Corporation for the damage.

- (2) If an Asset Management Company is liable to compensate for damage that an Investment Corporation or a third party incurs and an executive managing officer, supervisory officer, Administrative Agent, or financial auditor is also liable to compensate for that damage, that Asset Management Company, executive managing officer, supervisory officer; Administrative Agent, and financial auditor are joint and several obligors.
- (3) Article 429, paragraph (1) of the Companies Act applies mutatis mutandis to Asset Management Companies; Article 424 of that Act applies mutatis mutandis to the liability prescribed in paragraph (1), and the provisions of Part VII, Chapter 2, Section 2 (excluding Article 847, paragraph (2); Article 847-2; Article 847-3; Article 849, paragraph (2), paragraph (3), item (ii) and item (iii) and paragraph (6) through paragraph (11); Article 851, paragraph (1), item (i) and paragraph (2); and Article 853 paragraph (1), item (ii) and item (iii)) of the that Act apply mutatis mutandis to any action to enforce the liability of an Asset Management Company. Cabinet Order provides for the necessary technical replacement of terms in such a case.

(Cancellation of Entrustment Contracts for Asset Investment by Asset Management Companies)

Article 205 (1) An Asset Management Company may not cancel an entrustment contract for asset investment that it has concluded with a Registered Investment Corporation without the consent of the Registered Investment Corporation.

- (2) An executive managing officer must get approval at an investors' meeting in order to give the consent referred to in the preceding paragraph; provided, however, that this does not apply if the executive managing officer obtains the permission of the Prime Minister as a case in which there are unavoidable circumstances.

(Cancellation of Entrustment Contracts for Asset Investment by Investment Corporations)

Article 206 (1) A Registered Investment Corporation may not cancel an entrustment contract for asset investment that it has concluded with an Asset Management Company without a resolution being adopted at an investors' meeting.

- (2) Notwithstanding the provisions of the preceding paragraph, in circumstances falling under one of the following items, a Registered Investment Company may cancel an entrustment contract for asset investment that it has concluded with an Asset Management Company, by resolution of the board of officers:
- (i) if the Asset Management Company violates an obligations in the course of

- its duties or neglects its duties; or
- (ii) if there are material grounds that make it untenable for the entrustment of asset investment to continue, other than as set forth in the preceding item.

Article 207 (1) If an Asset Management Company falls under one of the following items, an Investment Corporation must cancel the entrustment contract for asset investment that it has concluded with that Asset Management Company:

- (i) it is no longer a financial instruments business operator (or, in a case as set forth in the items of Article 199, it is no longer a financial instruments business operator as prescribed in the relevant item);
  - (ii) it no longer falls under any of the items of Article 200; or
  - (iii) it has been dissolved.
- (2) If a vacancy will open for a Asset Management Company to engage in all or part of the operations involved in the investment of an Investment Corporation's assets, the executive managing officer must select a new Asset Management Company to succeed to all or part of those operations, and must entrust the company with those operations.
- (3) Having entrusted an Asset Management Company as referred to in the preceding paragraph, an executive managing officer must seek approval at an investors' meeting for the entrustment contract that it has concluded with the Asset Management Company, without delay. In such a case, if the contract is not approved, it ceases to be effective from that time on.

(Entrustment of Asset Custody Operations to Asset Custody Companies)

Article 208 (1) A Registered Investment Corporation must entrust an Asset Custody Company with operations involved in the custody of its assets.

- (2) An Asset Custody Company must be a corporation that falls under one of the following items (this excludes a corporation set forth in item (ii), if the Registered Investment Corporation entrusts a company with operations involved in the custody of assets other than Securities and other assets that Cabinet Office Order prescribes):
- (i) a trust company or similar institution;
  - (ii) a financial instruments business operator as prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (but only one engaged in Securities, etc. Management Business as prescribed in Article 28, paragraph (5) of that Act); and
  - (iii) a corporation that Cabinet Office Order prescribes as one with which it appropriate to entrust operations involved in the custody of a Registered Investment Corporation's assets, other than as set forth in the preceding two items.

(Obligations of Asset Custody Companies)

Article 209 (1) An Asset Custody Company must loyally carry out an Investment Corporation's operations on its behalf.

(2) An Asset Custody Company must employ the due care of a prudent manager toward the Investment Corporation when carrying out its operations.

(Separate Custody of Assets)

Article 209-2 An Asset Custody Company must use what Cabinet Office Order prescribes as a way of reliably and orderly managing custody of assets, so as to maintain separate custody of the Investment Corporation's assets and its own property.

(Asset Custody Company Liability)

Article 210 (1) If an Asset Custody Company damages an Investment Corporation by neglecting its duties, it is jointly and severally liable to compensate the Investment Corporation for the damage.

(2) If an Asset Custody Company is liable to compensate for damage that an Investment Corporation incurs and an executive managing officer, supervisory officer, Administrative Agent, financial auditor, or Asset Management Company is also liable to compensate for that damage, that Asset Custody Company, executive managing officer, supervisory officer, Administrative Agent, financial auditor, and Asset Management Company are joint and several obligors.

### **Section 3 Supervision**

(Operational Books and Documents)

Article 211 (1) An Investment Corporation must prepare and keep on file books and documents related to its operations (but only those related to the operations of the Investment Corporation; the same applies in the following paragraph) pursuant to Cabinet Office Order.

(2) An Asset Custody Company must prepare and keep books and documents related to its business on file pursuant to Cabinet Office Order.

(Submission of Business Reports)

Article 212 A Registered Investment Corporation must prepare business reports in the form that Cabinet Office Order prescribes for each business period (or each six months, if the business period is shorter than six months; hereinafter the same applies in this Article) and submit them to the Prime Minister within three months after the end of each business period.

(On-Site Inspections)

- Article 213 (1) The Prime Minister may order the organizer, executive managing officer at incorporation, or supervisory officers at incorporation (hereinafter referred to as the "organizer or officer at incorporation" in this paragraph) of an Investment Corporation being incorporated to submit reports or materials of reference with regard to the operations of the Investment Corporation being incorporated, and may have the relevant officials enter the business office or office of the organizer or officer at incorporation of the Investment Corporation being incorporated; inspect operations, books, documents, and other articles concerning the Investment Corporation being incorporated; and question any persons concerned; within the limits of what is necessary for the implementation of this Act.
- (2) The Prime Minister may order an Investment Corporation to submit reports or materials of reference with regard to the operations of the Investment Corporation, and may have the relevant officials enter the head office of the Investment Corporation; inspect operations, books, documents, and other articles concerning the Investment Corporation; and question any persons concerned; within the limits of what is necessary for the implementation of this Act.
- (3) The Prime Minister may order the current or former Asset Custody Company or Administrative Agent of an Investment Corporation (hereinafter collectively referred to as the "current or former asset custody company or administrative agent" in this paragraph and paragraph (5)) to submit reports or materials of reference with regard to the operations of the Investment Corporation, and may have the relevant officials enter the business office or office of the current or former asset custody company or administrative agent of the Investment Corporation; inspect operations, books, documents, and other articles concerning the Investment Corporation; and question any persons concerned; within the limits of what is necessary for the implementation of this Act.
- (4) The Prime Minister may order a current or former executive managing officer or supervisory officer (hereinafter referred to as the "current or former executive managing or supervisory officer" in this paragraph) to submit reports or materials of reference with regard to the operations of the Investment Corporation, and may have the relevant officials enter the office of the current or former executive managing or supervisory officer of the Investment Corporation; inspect operations, books, documents, and other articles concerning the Investment Corporation; and question any persons concerned; within the limits of what is necessary for the implementation of this Act.
- (5) The Prime Minister may order a person that has business dealings with an Investment Corporation or its current or former asset custody company or administrative agent which involve the Investment Corporation's operations to

submit reports or materials of reference with regard to the operations of the Investment Corporation, within the limits of what is necessary for the implementation of this Act.

- (6) The provisions of Article 22, paragraph (2) and paragraph (3) apply mutatis mutandis to on-site inspections as referred to in paragraph (1) through paragraph (4).

(Order to Improve Business Operations)

Article 214 (1) On finding that it is necessary to do so in order to ensure the sound and appropriate management of an Investment Corporation's operations and protect Investors in light of the operational status of the organizer, executive managing officer at incorporation, or supervisory officer at incorporation of an Investment Corporation being incorporated or in light of the operational status of an Investment Corporation, its Asset Management Company, a person that has been further entrusted by its Asset Management Company with part of the authority to invest its assets, or its Administrative Agent (but only the status of operations as they are related to the operations of the Investment Corporation; hereinafter the same applies in this paragraph), the Prime Minister may order the organizer or the Investment Corporation to change its method of business, change its Asset Management Company, or to take other measures necessary to improve its business operations, to the extent that this is necessary.

- (2) Notwithstanding the category of proceedings for hearing statements of opinion as under Article 13, paragraph (1) of the Administrative Procedure Act, before reaching a disposition under the preceding paragraph, the Prime Minister must hold a hearing.
- (3) Having reached a disposition under paragraph (1), the Prime Minister must notify the Investment Corporation subject to the disposition of this in writing, giving the reason therefor, without delay.

(Notification)

Article 215 (1) If the amount of a Registered Investment Corporation's net assets is likely to fall below the net asset threshold, the corporation must promptly prepare an extraordinary report in the format that that Cabinet Office Order prescribes and submit it to the Prime Minister.

- (2) If a Registered Investment Corporation's amount of net assets falls below the Minimum Net Assets, the Prime Minister notify it that if its amount of net assets does not recover to at least the amount of the Minimum Net Assets within a certain period of time, its registration will be revoked.
- (3) The period referred to in the preceding paragraph may not be shorter than three months.

(Revocation of Registrations)

Article 216 (1) If a Registered Investment Corporation falls under one of the following items, the Prime Minister may revoke its Article 187 registration:

- (i) it comes to fall under one of the provisions of Article 190, paragraph (1), item (i) or item (iii) through item (vi);
- (ii) it obtained its registration by wrongful means; or
- (iii) it violates the provisions of this Act, a Cabinet Order based on this Act, or a disposition based on either of these.

(2) If, notwithstanding that the Prime Minister has notified it as referred to in paragraph (2) of the preceding Article, the amount of net assets of the Registered Investment Corporation that has been so notified has not recovered to at least the amount of the Minimum Net Assets within the period referred to in that paragraph, the Prime Minister must revoke that Registered Investment Corporation's Article 187 registration.

(Deletion of Registration)

Article 217 If an Article 187 registration has ceased to be effective pursuant to Article 192, paragraph (2) or if the Prime Minister has revoked an Article 187 registration pursuant to the preceding Article, the Prime Minister must delete that registration.

(Public Notice of Supervisory Dispositions)

Article 218 Having issued a notice as referred to in Article 205, paragraph (2) or reached a disposition to revoke an Article 187 registration pursuant to Article 216, the Prime Minister must issue public notice of this pursuant to the provisions of Cabinet Office Order.

(Order of Prohibition or Suspension on Handling Public Offerings or Similar Dealings in Investment Securities and Similar Certificates)

Article 219 (1) If the court finds that a person's handling of a public offering or similar dealings in Investment Securities or Similar Certificates falls under one of the following items, it may issue an order, at the petition of the Prime Minister, against the person that is actually taking or is attempting to take that action (hereinafter referred to as the "person taking the action" in this Article) prohibiting or suspending the action:

- (i) the person taking the action is violating this Act, a Cabinet Order based on this Act, or a disposition based on either of these, and there is an urgent need to prevent further damage to Investors; or
- (ii) the investment of the assets of the Investment Corporation issuing the Investment Securities or Similar Certificates is highly inappropriate and has

actually or clearly will cause serious damage to Investor profits, and there is an urgent need to prevent further damage to Investors.

- (2) The provisions of Article 26, paragraph (2) through paragraph (6) apply mutatis mutandis to a judicial decision under the preceding paragraph.
- (3) The provisions of Article 187 and Article 191 of the Financial Instruments and Exchange Act apply mutatis mutandis to the petition referred to in paragraph (1).

### **Chapter III Foreign Investment Corporations**

(Notification by a Foreign Investment Corporation)

Article 220 (1) Before the handling of a public offering or similar dealings (other than dealings that Cabinet Order Prescribes as being found not to pose an obstacle to investor protection, in consideration of their contents) in Investment Securities, Investment Equity Option Certificates, or securities similar to Investment Corporation Bond Certificates which are issued by a Foreign Investment Corporation (hereinafter referred to as "foreign investment securities" in this Article and Article 223) are carried out, the Foreign Investment Corporation or a person that is equivalent to the organizer thereof must first file a notification with the Prime Minister of the following information concerning the Foreign Investment Corporation, pursuant to Cabinet Office Order:

- (i) its purpose, trade name, and address;
  - (ii) information concerning its organization and officers;
  - (iii) information concerning the management and investment of its assets;
  - (iv) information concerning the accounting for and distribution of profits;
  - (v) information concerning the rights indicated on its foreign investment securities;
  - (vi) information concerning the refunding and repurchasing of foreign investment securities; and
  - (vii) information that Cabinet Office Order prescribes, beyond what is set forth in the preceding items.
- (2) The certificate of incorporation or equivalent document of a Foreign Investment Corporation and the documents that Cabinet Office Order prescribes must accompany the notification referred to in the preceding paragraph.

(Notification of Changes at Foreign Investment Corporations)

Article 221 (1) Before changing a piece of information set forth in one of the items of Article 220, paragraph (1), a Foreign Investment Corporation (but only one with regard to which a notification under paragraph (1) of the preceding

Article has been filed; the same applies in the following Article) must first notify the Prime Minister that it will do so, giving the details thereof.

- (2) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis to a case as referred to in the preceding paragraph.

(Notification of Dissolution of Foreign Investment Corporations)

Article 222 (1) If a Foreign Investment Corporation is dissolved following an order commencing bankruptcy proceedings or on other grounds that Cabinet Office Order prescribes, the bankruptcy trustee, liquidator, or person that assumes equivalent obligations must promptly notify the Prime Minister of this.

- (2) Except as referred to in the preceding paragraph, before implementing a dissolution, a Foreign Investment Corporation must first notify the Prime Minister that it will do so.

(Order of Prohibition or Suspension on Handling Public Offerings or Similar Dealings in Foreign Investment Securities)

Article 223 (1) If investment of the assets of a Foreign Investment Corporation that issues foreign investment securities, during the handling of a public offering or similar dealings in those foreign investment securities, is highly inappropriate and has actually caused or clearly will cause serious damage to Investor profits, and the court finds that there is an urgent need to prevent further damage to Investors, it may issue an order, at the petition of the Prime Minister, against the person that is actually taking or is attempting to take that action, prohibiting or suspending the action.

- (2) The provisions of Article 26, paragraph (2) through paragraph (6) apply mutatis mutandis to a judicial decision under the preceding paragraph.
- (3) The provisions of Article 187 and Article 191 of the Financial Instruments and Exchange Act apply mutatis mutandis to a petition as referred to in paragraph (1).

#### **Part IV Miscellaneous Provisions**

(Conditions for Approval)

Article 223-2 (1) The Prime Minister may attach conditions to an approval under the provisions of this Act and may change them.

- (2) The conditions referred to in the preceding paragraph must represent the minimum level of what it is necessary to attach in the public interest or for Investor protection.

(Special Provisions on Application of the Financial Instruments and Exchange

Act)

Article 223-3 (1) To apply the provisions of the Financial Instruments and Exchange Act if a financial instruments business operator or a person seeking to become a financial instruments business operator seeks to give instructions in the course of trade for an investment to be made in real property or other assets (meaning real property or other assets that Cabinet Order prescribes, as prescribed in Article 35, paragraph (1), item (xv), sub-item (a) of that Act) as an investment of the trust property of an Investment Trust Managed under Instructions from the Settlor, or if it seeks to invest assets of a Registered Investment Corporation in real property or other assets, the terms and phrases set forth in the middle column of the following table that appear in the provisions of that Act set forth in the left-hand column of that table are deemed to be replaced with the corresponding terms and phrases set forth in the right-hand column of that table.

Article 29-2, paragraph (2), item (ii)	business	business (if a person seeks to engage in specified investment management activities (meaning concluding a contract set forth in Article 2, paragraph (8), item (xii), sub-item (a) and investing money or other assets in real estate or similar assets (meaning the real estate and other assets that Cabinet Order prescribes, as referenced in Article 35, paragraph (1), item (xv), sub-item (a); hereinafter the same applies in this item), or investing money or other assets contributed by a person that holds a rights indicated on the Beneficiary Certificates of an Investment Trusts set forth in Article 2, paragraph (1), item (x) as an investment in real estate or similar assets, based on such a contract; the same applies hereinafter), this includes the business of engaging in those specified investment management activities)
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Article 29-3	the following Article	the following Article. In such a case, if the person who intends to obtain the registration set forth in Article 29 intends to engage in specified investment management activities in the course of business, the Prime Minister must first hear the opinions of the Minister of Land, Infrastructure, Transport and Tourism or head of another administrative organ that Cabinet Order prescribes and that is found to be related to that person in consideration of the business contents and business method, with regard to whether or not the person has a sufficient personnel structure to carry out the business of engaging in those specified investment management activities in an appropriate manner
Article 29-4, paragraph (1), item (i), sub-item (e)	Financial Instruments Business	Financial Instruments Business (if the person seeks to engage in specified investment management activities in the course of trade, including business concerning those specified investment management activities)
Article 31, paragraph (5)	"information subject to the change"	"information subject to the change"; the phrase "paragraph (1) of the following Article. In such a case, if the person seeking the registration set forth in Article 29 seeks to engage in specified investment management activities in the course of business, the Prime Minister must first hear the opinions of the Minister of Land, Infrastructure, Transport and Tourism or the head of another administrative organ that Cabinet Order prescribes and that is found to be related to that person in consideration of the business contents and business method with regard to whether or not the person has a sufficient personnel structure to carry out the business of engaging in those specified investment management activities in an appropriate manner" in that paragraph is deemed to be replaced with "paragraph (1) of the following Article."
Article 35, paragraph (2), item (v)-2	(excluding business falling under that listed in item (i)	(excluding the business of engaging in specified investment management activities and business falling under that listed in item (i)

Article 35, paragraph (2), item (vi)	(excluding that which falls under the category of the business of conducting the act specified in item (xv) of the preceding paragraph)	(excluding specified investment management activities and that which falls under the category of the business of conducting the act specified in item (xv) of the preceding paragraph)
Article 35, paragraph (4)	engage in a business for which approval has been obtained from the Prime Minister.	engage in business for which approval has been obtained from the Prime Minister. In such a case, if the documents set forth in Article 29-2, paragraph (2), item (ii) indicate that the person seeking an Article 29 registration will engage in specified investment management activities in the course of business and the person is registered the person is deemed to have obtained the approval prescribed in this paragraph with regard to the business of engaging in specified investment management activities.
Article 35, paragraph (5)	may choose not to grant approval only if the implementation of the business subject to the application is found to go against the public interest or hinder the protection of investors due to the difficulty in management of the risks of losses arising from the business.	may choose not to grant approval only if the implementation of the business subject to the application is found to go against the public interest or to hinder the protection of Investors due to the difficulty of managing the risk of losses arising from the business (or, in the case of approval to engage in specified investment management activities in the course of business, if the person is found not to have a sufficient personnel structure sufficient to engage in specified investment management activities in an appropriate manner). In such a case, the Prime Minister must first hear the opinions of the Minister of Land, Infrastructure, Transport and Tourism or the head of another administrative organ that Cabinet Order prescribes and that is found to be related to that person in consideration of the business contents and business method, with regard to whether or not the person has a sufficient personnel structure to carry out the business of engaging in specified investment management activities.

(2) To apply the provisions of the Financial Instruments and Exchange Act if the Settlor Company of an Investment Trust gives instructions in the course of

trade for the trust property of an Investment Trust Managed under Instructions from the Settlor to be invested in Securities or in assets other than rights connected with Derivative Transactions (if the Settlor Company of an Investment Trust is engaged in specified investment management activities as referred to in Article 29-2, paragraph (2), item (ii) of that Act as per a deemed replacement of terms pursuant to the provisions of the preceding paragraph, this refers only to a case in which the Settlor Company of the Investment Trust has gotten the approval referred to in Article 35, paragraph (4) of that Act to engage in those specified investment management activities in the course of trade), those instructions are deemed to fall under the category of an action set forth in Article 2, paragraph (8), item (xiv) of that Act.

- (3) To apply the provisions of the Financial Instruments and Exchange Act if an Asset Management Company invests a Registered Investment Corporation's assets in Securities or in assets other than rights connected with Derivative Transactions in the course of trade (if the Asset Management Company conducts specified investment management activities as referred to in Article 29-2, paragraph (2), item (ii) of that Act as per a deemed replacement of terms pursuant to paragraph (1), this refers only to a case in which the Asset Management Company has gotten the approval referred to in Article 35, paragraph (4) of that Act to engage in those specified investment management activities in the course of trade), the investment is deemed to fall under the category of an action set forth in Article 2, paragraph (8), item (xii) of that Act (but only one conducted under a contract as set forth in Article 2, paragraph (8), item (xii), sub-item (a) of that Act).
- (4) To apply Article 67-2, paragraph (1) and paragraph (2); Article 68, paragraph (1) and paragraph (2); Article 78, paragraph (1); Article 79-7, paragraph (1), and Article 79-11 of the Financial Instruments and Exchange Act, a trust company or similar institution is deemed to be a financial instruments business operator to the extent that it engages in business operations connected with an Investment Trust Managed without Instructions from the Settlor.
- (5) To apply the provisions of the Trust Business Act if a trust company (but only one that has been licensed as referred to in Article 3 or Article 53, paragraph (1) of the Trust Business Act) invests trust property of an Investment Trust Managed without Instructions from the Settlor, the phrase "and the provisions of Article 42-2 (Prohibited Conduct) and Article 44-3, paragraph (1) (Restriction on Actions Involving Parent Corporations and Subsidiary Corporations) of that Act (and the associated penal provisions) apply mutatis mutandis to a trust company's engagement in operations involved in investing the trust property of an Investment Trust Managed without Instructions from the Settlor as referred to in Article 2, paragraph (2) of the Act on Investment

Trusts and Investment Corporations" is deemed to be added after the phrase "; hereinafter referred to as 'Specific Trust Agreement')" in Article 24-2 of the Trust Business Act; the phrases "in those provisions" and "in Article 39, paragraph (4) of the Act" in Article 24-2 of the Trust Business Act are deemed to be replaced with "in those provisions (other than Article 42-2 and Article 44-3, paragraph (1) of the Financial Instruments and Exchange Act" and "in Article 39, paragraph (4) and Article 42-2, item (vi) of that Act", respectively; and the phrase ", the phrase 'a contract with a customer for any of the actions set forth in the items of Article 2, paragraph (8)' in Article 44-3, paragraph (1), item (ii) of that Act is deemed to be replaced with 'a contract for an Investment Trust Managed without Instructions from the Settlor as prescribed in Article 47, paragraph (1) of the Act on Investment Trusts and Investment Corporations' and the phrase 'giving advice in connection with the Investment Advisory Services it conducts, that would involve a transaction being conducted that is unnecessary in light of the transaction policy, the amount of the transaction, or the market conditions, or making an investment in connection with the Investment Management it conducts' in Article 44-3, paragraph (1), item (iii) of the Financial Instruments and Exchange Act is deemed to be replaced with 'business for conducting the investment of the trust property of an Investment Trust Managed without Instructions from the Settlor' " is deemed to be added after the phrase " 'an accident imputable to a Trust Company' " in Article 24-2 of the Trust Business Act.

- (6) To apply the provisions of the Act on Engagement in Trust Business Activities by Financial Institutions if a financial institution engaged in trust business invests the trust property of an Investment Trust Managed without Instructions from the Settlor, the phrase "and the provisions Article 42-2 and Article 44-3, paragraph (2) (excluding item (ii)) of the Financial Instruments and Exchange Act (and the associated penal provisions) apply mutatis mutandis to the business of investing the trust property of an Investment Trust Managed without Instructions from the Settlor as prescribed in Article 2, paragraph (2) of the Act on Investment Trusts and to Investment Trusts operated by a financial institution" is deemed to be added after the phrase "(meaning a specific trust agreement prescribed in Article 24-2 of the Trust Business Act)" in Article 2-2 of the Act on Engagement in Trust Business Activities by Financial Institutions; the phrases "in these provisions", "Article 34 of the Financial Instruments and Exchange Act", and "in Article 39, paragraph (4) of the Financial Instruments and Exchange Act" in Article 2-2 of the Act on Engagement in Trust Business Activities by Financial Institutions are deemed to be replaced with "in these provisions (other than in Article 42-2 of the Financial Instruments and Exchange Act)", "Article 34 of the Trust Business Act", and "in Article 39, paragraph (4) and Article 42-2, item (vi) of

the Financial Instruments and Exchange Act", respectively; and the phrase ", the term 'giving advice in connection with the Investment Advisory Services it conducts, that would involve a transaction being conducted that is unnecessary in light of the transaction policy, the amount of the transaction, or the market conditions, or making an investment in connection with the Investment Management it conducts' in Article 44-3, paragraph (2), item (iii) of the Financial Instruments and Exchange Act is deemed to be replaced with 'or making an investment to conduct a transaction with regard to business for conducting investment of the trust property of an Investment Trust Managed without Instructions from the Settlor'" is deemed to be added after the phrase "a Financial Institution (meaning a Financial Institution as prescribed in Article 1, paragraph (1) of the Act on Engagement in Trust Business Activities by Financial Institutions)" in Article 2-2 of the Act on Engagement in Trust Business Activities by Financial Institutions.

- (7) Cabinet Order provides for technical replacements of terms and any other necessary particulars, beyond what is set forth in the preceding paragraphs, for applying the provisions of the Financial Instruments and Exchange Act, the Trust Business Act, and the Act on Engagement in Trust Business Activities by Financial Institutions pursuant to the provisions of this Article.

(Submission of Materials to the Minister of Finance)

Article 224 (1) On finding that it is necessary to do so in order to undertake planning or policymaking for Investment Trust systems (including those for Foreign Investment Trusts; the same applies in the following paragraph) or Investment Corporation systems (including those for Foreign Investment Corporations; the same applies in the following paragraph) that are linked with the system for handling failed financial institutions or financial risk management under the jurisdiction thereof, the Minister of Finance may ask the Prime Minister to submit the necessary materials and explanations.

- (2) On finding that it is particularly necessary to do so in order to undertake planning or policymaking for Investment Trust or Investment Corporation systems that are linked with the system for handling failed financial institutions or financial risk management under the jurisdiction thereof, the Minister of Finance, within the scope of that necessity, may ask the Settlor Company of an Investment Trust or a Trustee Company, Asset Management Company, Asset Custody Company, or any other person concerned to submit materials and explanations and to otherwise cooperate.

(Consultations)

Article 224-2 Cabinet Order provides for consulting with the Minister of Land, Infrastructure, Transport and Tourism and other heads of the relevant

administrative organs; for notifying these persons; and for other procedures applicable if the Prime Minister establishes a Cabinet Office Order (but only one as Cabinet Order prescribes) pursuant to the provisions of this Act or the provisions of the Financial Instruments and Exchange Act, the Trust Business Act, or the Act on Engagement in Trust Business Activities by Financial Institutions as applied following a deemed replacement of terms pursuant to Article 223-3; if the Prime Minister issues an order or other disposition (but only one as Cabinet Order prescribes); or if a notification (but only one as Cabinet Order prescribes) or an application for registration involving real property or Specified Assets that Cabinet Order prescribes has been filed with the Prime Minister.

(Delegation of Authority)

Article 225 (1) The Prime Minister delegates the authority that this Act confers thereto (other than what Cabinet Order prescribes) to the Commissioner of the Financial Services Agency.

(2) The Commissioner of the Financial Services Agency delegates the authority that has been delegated thereto pursuant to the provisions of the preceding paragraph which is as prescribed in Article 213, paragraph (1) (but only the part involving the provisions that Cabinet Order prescribes as being for ensuring the fairness of transactions involved in public offerings and similar actions involving Investment Securities) to the Securities and Exchange Surveillance Commission (hereinafter referred to as the "Commission"); provided; however, that this does not preclude the Commissioner of the Financial Services Agency from personally exercising the authority to issue an order for a person to submit reports or materials.

(3) The Commissioner of the Financial Services Agency may delegate the authority that has been delegated thereto pursuant to paragraph (1) (other than that which is delegated to the Commission pursuant to the preceding paragraph) which is prescribed in Article 22, paragraph (1) and Article 213, paragraph (1) through paragraph (5) to the Commission.

(4) The Commissioner of the Financial Services Agency delegates the authority that has been delegated thereto pursuant to paragraph (1) (other than that which is delegated to the Commission pursuant to the preceding two paragraphs) which is as follows to the Commission; provided, however, that this does not preclude the Commissioner of the Financial Services Agency from personally exercising that authority:

(i) the authority under Article 26, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 54, paragraph (1)); Article 60, paragraph (1); Article 219, paragraph (1); and Article 223, paragraph (1); and

(ii) the authority under Article 26, paragraph (7) (including as applied *mutatis*

mutandis pursuant to Article 54, paragraph (1)); Article 60, paragraph (3); and Article 219, paragraph (3); and under Article 187 of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 223, paragraph (3).

- (5) Having exercised the authority delegated thereto pursuant to the preceding two paragraphs, the Commission is to promptly report the results of this to the Commissioner of the Financial Services Agency.
- (6) The Commissioner of the Financial Services Agency may delegate part of the authority delegated thereto pursuant to paragraph (1) (other than that which is delegated to the Commission pursuant to paragraphs (2) through (4)) to the director-general of a finance bureau or the commissioner of a local finance branch bureau, pursuant to the provisions of Cabinet Order.
- (7) The Commission may delegate part of the authority delegated thereto pursuant to paragraphs (2) through (4) to the director-general of a finance bureau or the commissioner of a local finance branch bureau, pursuant to the provisions of Cabinet Order.
- (8) The Commission directs and supervises the director-general of a finance bureau or the commissioner of a local finance branch bureau in the administrative processes involved in the authority delegated to the director-general of the finance bureau or the commissioner of the local finance branch bureau pursuant to the preceding paragraph.

(Requests for Administrative Review of Orders Issued by the Commission)

Article 225-2 A request for the administrative review of an order to submit reports or materials issued by the Commission pursuant to paragraph (2) or paragraph (3) of the preceding Article (including if the director-general of a finance bureau or commissioner of a local finance branch bureau issues that order pursuant to the provisions of paragraph (7) of that Article) may only be filed against the Commission.

(Provisions for Bringing This Act into Force)

Article 226 Cabinet Office Order prescribes procedures for bringing this Act into force and provides for the necessary particulars regarding their implementation.

(Transitional Measures)

Article 227 If a Cabinet Order is established, revised, or abolished based on the provisions of this Act, the necessary transitional measures (including transitional measures for penal provisions) may be prescribed by that Cabinet Order, to the extent considered reasonably necessary for the establishment, revision, or abolition of the Cabinet Order.

## Part V Penal Provisions

- Article 228 (1) If one of the following persons, with the aim of furthering their own interests or the interests of a third party or of causing damage to an Investment Corporation, acts in breach the duties thereof and causes financial damage to the Investment Corporation, that person is subject to imprisonment for not more than ten years, a fine of not more than ten million yen, or both:
- (i) the Investment Corporation's organizer;
  - (ii) the Investment Corporation's executive managing officer at incorporation or supervisory officer at incorporation;
  - (iii) the Investment Corporation's executive managing officer or supervisory officer;
  - (iv) a person standing in for the Investment Corporation's executive managing officer or supervisory officer, as appointed pursuant to an order of provisional disposition prescribed in Article 56 of the Civil Provisional Remedies Act (Act No. 91 of 1989);
  - (v) a person temporarily performing duties as the Investment Corporation's officer, as appointed pursuant to the provisions of Article 108, paragraph (2);
  - (vi) an Administrative Agent; or
  - (vii) the Investment Corporation's inspector.
- (2) The provisions of the preceding paragraph also apply if one of the following persons, with the aim of furthering their own interests or the interests of a third party or of causing damage to an Investment Corporation in Liquidation, acts in breach of the duties thereof and causes financial damage to the Investment Corporation in Liquidation:
- (i) the Investment Corporation in Liquidation's executive liquidator or liquidation supervisor;
  - (ii) a person standing in for the Investment Corporation in Liquidation's executive liquidator or liquidation supervisor, as appointed pursuant to an order of provisional disposition prescribed in Article 56 of the Civil Provisional Remedies Act;
  - (iii) a person temporarily performing duties as the Investment Corporation in Liquidation's executive liquidator or liquidation supervisor, as appointed pursuant to the provisions of Article 108, paragraph (2) as applied mutatis mutandis pursuant to Article 153, paragraph (2);
  - (iv) the Investment Corporation in Liquidation's executive liquidator's agent (meaning an executive liquidator's agent appointed pursuant to the provisions of Article 525, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 164, paragraph (4) following the deemed replacement of terms; the same applies in Article 249);

- (v) the Investment Corporation in Liquidation's supervisor (meaning a supervisor appointed pursuant to the provisions of Article 527, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 164, paragraph (4); the same applies in Article 249); or
  - (vi) the Investment Corporation in Liquidation's investigator (meaning an investigator appointed pursuant to the provisions of Article 533 of the Companies Act as applied mutatis mutandis pursuant to Article 164, paragraph (4); the same applies in Article 249).
- (3) An attempt to commit a crime as referred to in the preceding two paragraphs is also punishable.

Article 228-2 (1) If the representative creditor of an Investment Corporation (meaning a representative creditor of an Investment Corporation appointed pursuant to the provisions of Article 736, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 139-10, paragraph (2); the same applies in Article 233, paragraph (1), item (ii) and Article 249) or the resolution administrator (meaning a resolution administrator as prescribed in Article 737, paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to Article 139-10, paragraph (2); the same applies in Article 233, paragraph (1), item (ii) and Article 249) of an Investment Corporation, with the aim of furthering the interests thereof or the interests of a third party or of causing damage to the Investment Corporation's Bondholders, acts in breach of the duties thereof and causes financial damage to the Investment Corporation's Bondholders, that person is subject to imprisonment for not more than five years, a fine of not more than five million yen, or both.

- (2) An attempt to commit a crime as referred to in the preceding paragraph is also punishable.

Article 229 (1) If the organizer of an Investment Corporation violates Article 67, paragraph (1) (but only the part that is relevant to item (xvii) and item (xviii)) by failing to include or record information that is required to be included or recorded in the certificate of incorporation or makes a false inclusion or record therein, the organizer is subject to imprisonment for not more than five years, a fine of not more than five million yen, or both.

- (2) The provisions of the preceding paragraph also apply if one of the persons set forth in Article 228, paragraph (1), item (i) or item (ii) give a false statement at an Organizational Meeting or conceals a fact at such a meeting with regard to a payment under Article 63, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 71, paragraph (10).
- (3) The provisions of paragraph (1) also apply if a person set forth in Article 228, paragraph (1), item (iii) through item (vi) comes to fall under one of the

following cases:

- (i) if the person, under any name, unlawfully acquires Investment Equity in an Investment Corporation or receives it as the subject of a pledge on the Investment Corporation's account;
- (ii) if the person violates a law or regulation or the provisions of the certificate of incorporation in paying remuneration to an organizer, executive managing officer, supervisory officer, or financial auditor; in paying asset investment fees, asset custody fees, or any other asset investment or asset custody costs; or in refunding Investment Equity or distributed monies; or
- (iii) if the person uses an Investment Corporation's assets for speculative trading outside the scope of the purpose of the Investment Corporation.

Article 230 (1) If, in soliciting persons to subscribe for Investment Equity, Investment Equity Option or Investment Corporation Bonds, one of the persons set forth in Article 228, paragraph (1), item (i) through item (vi) makes available for use in the solicitation process a material that gives an explanation about the business of an Investment Corporation or other information with regard to it, an advertisement advertising the solicitation, or any other solicitation-related document that gives false details with regard to material information; or uses any electronic or magnetic record that has been prepared in lieu of those documents and that contains a false record with regard to material information; that person is subject to imprisonment for not more than five years, a fine of not more than five million yen, or both.

(2) The provisions of the preceding paragraph also apply if a person making a secondary distribution of Investment Equity or Investment Corporation Bonds makes available for use in the solicitation process a document related to that secondary distribution gives false details with regard to material information or uses any electronic or magnetic record that has been prepared in lieu of such a document and that contains a false record with regard to material information.

Article 231 If one of the persons set forth in Article 228, paragraph (1) item (i) through item (vi) borrows and deposits monies in order to give the appearance of monies being paid in connection with the issuance of Investment Equity, that person is subject to imprisonment for not more than five years, a fine of not more than five million yen, or both. The same applies to a person that accommodates that borrowing and depositing of monies.

Article 232 If one of the following persons issues Investment Equity in excess of the total number of units of Investment Equity that an Investment Corporation is authorized to issue, that person is subject to imprisonment for not more than

five years or a fine of not more than five million yen:

- (i) the Investment Corporation's organizer;
- (ii) the Investment Corporation's executive managing officer at incorporation;
- (iii) the Investment Corporation's executive managing officer or the executive liquidator of an Investment Corporation in Liquidation;
- (iv) a person standing in for the Investment Corporation's executive managing officer or the executive liquidator of an Investment Corporation in Liquidation, as appointed pursuant to an order of provisional disposition as prescribed in Article 56 of the Civil Provisional Remedies Act; or
- (v) a person temporarily performing duties as the Investment Corporation's officer (but only as its executive managing officer) or as the executive liquidator of an Investment Corporation in Liquidation, as appointed pursuant to the provisions of Article 108, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 153, paragraph (2)).

Article 233 (1) If one of the following persons accedes to an unlawful request and accepts an economic benefit in connection with the duties thereof or solicits or agrees to such a benefit, that person persons is subject to imprisonment for not more than five years or a fine of not more than five million yen:

- (i) a person as set forth in the items of Article 228, paragraph (1) or the items of Article 228, paragraph (2);
  - (ii) an Investment Corporation's representative creditor or resolution administrator; or
  - (iii) an Investment Corporation's financial auditor or a person temporarily performing the duties of a financial auditor, as appointed pursuant to Article 108, paragraph (3).
- (2) A person providing a benefit as referred to in the preceding paragraph or offering or agreeing to such a benefit is subject to imprisonment for not more than three years or a fine of not more than three million yen.

Article 234 (1) A person acceding to an unlawful request and accepting an economic benefit in connection with the following things, or a person soliciting or agreeing to such a benefit, is subject to imprisonment for not more than five years or a fine of not more than five million yen:

- (i) for speaking or exercising a voting right at an investors' meeting, Organizational Meeting, meeting of Investment Corporation's Bondholders, or creditors meeting (meaning a creditors meeting as referred to in Article 546, paragraph (1) of the Companies Act as applied *mutatis mutandis* pursuant to Article 164, paragraph (4); the same applies in Article 249, item (vi));
- (ii) for exercising the right of an Investor as prescribed in Article 110,

- paragraph (1); Article 115-6, paragraph (10); Article 128-3, paragraph (1); Article 210 of the Companies Act as applied mutatis mutandis pursuant to Article 84, paragraph (1); the provisions of Article 297, paragraph (1) or paragraph (4) of that Act as applied mutatis mutandis pursuant to Article 90, paragraph (3); the provisions of Article 303, paragraph (2); Article 304; the main clause of Article 305, paragraph (1); Article 306, paragraph (1) of that Act as applied mutatis mutandis pursuant to Article 94, paragraph (1); the provisions of Article 360, paragraph (1) of that Act as applied mutatis mutandis pursuant to Article 109, paragraph (5); or Article 153-3, paragraph (2); exercising the right of an Investor or creditor as prescribed in Article 164, paragraph (2) or the provisions of Article 522, paragraph (1) of that Act as applied mutatis mutandis pursuant to Article 164, paragraph (4); or exercising the right of a creditor as prescribed in Article 457, paragraph (1) or paragraph (3) of that Act as applied mutatis mutandis pursuant to Article 164, paragraph (4);
- (iii) for exercising the right of an Investment Corporation's Bondholder that holds Investment Corporation Bonds accounting for at least one-tenth of the total amount of Investment Corporation Bonds (other than the amount of Investment Corporation Bonds that have been redeemed);
- (iv) for filing an action as prescribed in this Act or the Companies Act as applied mutatis mutandis pursuant to this Act (but only one filed by the Investor or creditor of an Investment Corporation); or
- (v) for an Investor's intervention in an action under the provisions of Article 849, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to this Act.
- (2) The provisions of the preceding paragraph also apply to a person providing a benefit as referred to in that paragraph or offering or agreeing to such a benefit.

Article 235 In a case as referred to in Article 233, paragraph (1) or paragraph (1) of the preceding Article, any benefit that the offender accepts is confiscated. If all or part of this cannot be confiscated, an equivalent value is forcibly collected.

Article 236 (1) If one of the persons set forth in Article 228, paragraph (1), item (iii) through (vi) provides a person with an economic benefit on the account of an Investment Corporation or its subsidiary corporation for a person's exercise of a right as an Investor, that person is subject to imprisonment for not more than three years or a fine of not more than three million yen.

- (2) The provisions of the preceding paragraph also apply to a person that is knowingly provided with a benefit as referred to in the preceding paragraph or

that causes such a benefit to be provided to a third party.

- (3) The provisions of paragraph (1) also apply to a person soliciting one of the persons prescribed in that paragraph to provide the person or a third party with a benefit as prescribed in paragraph (1) on the account of an Investment Corporation or its subsidiary corporation in association with a person's exercise of a right as an Investor.
- (4) If a person committing one of the crimes referred to in the preceding two paragraphs uses intimidating behavior toward the persons prescribed in paragraph (1) in the commission of the crime, the person committing the crime is subject to imprisonment for not more than five years or a fine of not more than five million yen.
- (5) A person committing one of the crimes referred to in the preceding three paragraphs may be sentenced to both imprisonment and a fine, depending on the circumstances.
- (6) If a person committing one of the crimes referred to in paragraph (1) self-denounces, the sentence may be reduced or the person may be granted an absolute discharge.

Article 237 (1) The provisions on the crimes referred to in Article 228 through Article 229; Article 231; Article 232; Article 233, paragraph (1); Article 234, paragraph (1); and paragraph (1) of the preceding Article also apply to persons committing those crimes outside Japan.

(2) The crimes referred to in Article 233, paragraph (2); Article 234, paragraph (2); and paragraph (2) through paragraph (4) of the preceding Article are governed by Article 2 of the Penal Code.

Article 238 If a person as prescribed in Article 228, paragraph (1) or paragraph (2); Article 228-2, paragraph (1); Article 229 through Article 232; Article 233, paragraph (1); or Article 236, paragraph (1) is a corporation, these provisions and the provisions of Article 228, paragraph (3) and Article 228-2, paragraph (2) apply to the director, executive officer, or officer engaged in executive management committing the relevant act.

Article 239 A person falling under one of the following items is subject to imprisonment for not more than three years, a fine of not more than three million yen, or both:

- (i) a person violating the provisions of Article 3 or Article 7;
- (ii) a person failing to prepare an investment report under Article 14, paragraph (1) (including as applied mutatis mutandis pursuant to Article 54, paragraph (1) or Article 59) or the document under Article 14, paragraph (4) (including as applied mutatis mutandis pursuant to Article 54, paragraph

- (1) or Article 59), or a person delivering investment reports or documents that include false information;
- (iii) a person violating an order issued under Article 26, paragraph (1) (including as applied mutatis mutandis pursuant to Article 54, paragraph (1)); Article 60, paragraph (1); Article 219, paragraph (1), or Article 223 (1);
- (iv) a person violating the provisions of Article 47, paragraph (1) or Article 48; or
- (v) a person violating Article 196, paragraph (1) in carrying out the administrative processes involved in a public offering or similar action.

Article 240 If a violation set forth in one of the following items occurs, the organizer of the Investment Corporation (or, if the organizer is a corporation, its representative person, agent, employee, or other worker) or person set forth in Article 228, paragraph (1), item (iii) through item (v) or Article 228, paragraph (2), item (i) through item (iv) that has committed the violation is subject to imprisonment for not more than three years or a fine of not more than three million yen:

- (i) the person violates the provisions of Article 195; or
- (ii) the person violates the provisions of Article 39, paragraph (1) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 197.

Article 241 If a violation set forth in the following items occurs, the organizer of the Investment Corporation (or, if the organizer is a corporation, its representative person, agent, employee, or other worker), person set forth in Article 228, paragraph (1), item (iii) through item (v); Article 228, paragraph (2), item (i) through item (iv), or the representative person, agent, employee, or other worker of the Asset Custody Company that has committed the violation is subject to imprisonment for not more than two years or a fine of not more than three million yen:

- (i) the person fails to maintain separate custody of assets, violating Article 209-2; or
- (ii) the person violates an order under Article 214, paragraph (1).

Article 242 A person falling under one of the following items is subject to imprisonment for not more than one year, a fine of not more than three million yen, or both:

- (i) a person failing to prepare or keep books and documents on file pursuant to Article 15, paragraph (1) or Article 211, paragraph (1) or paragraph (2) or a person preparing false books or documents;
- (ii) a person failing to make a report or submit materials pursuant to Article 22,

- paragraph (1) or Article 213, paragraph (1) through paragraph (4); a person making a false report or submitting false materials; a person refusing, hindering, or evading an inspection under those provisions; a person failing to answer a question under those provisions; or a person giving a false answer to such question; or
- (iii) a person failing to make a report or submit materials under Article 213, paragraph (5) or a person making a false report or submitted false materials.

Article 243 A person falling under one of the following items is subject to imprisonment for not more than one year or a fine of not more than one million yen, or both:

- (i) a person violating the provisions of Article 6, paragraph (1); or
- (ii) a person violating the provisions of Article 39, paragraph (2) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 197.

Article 244 (1) In a case as referred to in item (ii) of the preceding Article, the economic benefit received by the offender or by a third party with knowledge of the circumstances is confiscated. If it is impossible to confiscate all or part of that benefit, an equivalent value is collected.

(2) The provisions of Article 209-2 and Article 209-3, paragraph (2) of the Financial Instruments and Exchange Act apply mutatis mutandis to the confiscation under the preceding paragraph. In such a case, the phrases "Article 198-2, paragraph (1) or Article 200-2", "this Article, paragraph (1) of the following Article and Article 209-4, paragraph (1)", and "the following paragraph and paragraph (1) of the following Article" in Article 209-2, paragraph (1) of that Act are deemed to be replaced with "Article 244, paragraph (1) of the Act on Investment Trusts and Investment Corporations", "this paragraph", and "the following paragraph", respectively; the phrase "Mixed Property (limited to property in which illegal property pertaining to the provisions of Article 200-2 is mixed)" in Article 209-2, paragraph (2) of the Financial Instruments and Exchange Act is deemed to be replaced with "mixed property"; and the phrase "Article 198-2, paragraph (1) or Article 200-2" in Article 209-3, paragraph (2) of that Act is deemed to be replaced with "Article 244, paragraph (1) of the Act on Investment Trusts and Investment Corporations".

Article 245 If a violation set forth in one of the following items occurs, the representative person, agent, employee, or other worker of an Investment Trust's current or former Settlor Company; organizer of an Investment Corporation (or, if the organizer is a corporation, its representative person,

agent, employee, or other worker); or person as set forth in Article 228, paragraph (1), item (iii) through item (v) or Article 228, paragraph (2) item (i) through item (iv) that has committed the violation is subject to imprisonment for not more than one year, a fine of not more than one million yen, or both:

- (i) the person violates conditions attached pursuant to Article 23, paragraph (4);
- (ii) the person fails to cancel an investment trust agreement, in violation of Article 24, paragraph (1);
- (iii) the person takes an action referred to in Article 193 without being registered; or
- (iv) the person enters false information in a written application or document under Article 39, paragraph (5) of the Financial Instruments and Exchange Act as applied *mutatis mutandis* pursuant to Article 197 and submits it.

Article 246 A person falling under one of the following items is subject to imprisonment for not more than six months or a fine of not more than 500 thousand yen, or both:

- (i) a person failing to file a notification under Article 4, paragraph (1); Article 14, paragraph (6) (including as applied *mutatis mutandis* pursuant to Article 54, paragraph (1) or Article 59); Article 16 (including as applied *mutatis mutandis* pursuant to Article 54, paragraph (1) or Article 59); Article 19 (including as applied *mutatis mutandis* pursuant to Article 59); Article 49, paragraph (1); Article 58, paragraph (1); Article 191, paragraph (1); Article 192, paragraph (1); Article 220, paragraph (1); Article 221, paragraph (1), or Article 222, paragraph (2); or a person filing a false notification;
- (ii) a person failing to include information that is required to be included in the basic terms and conditions of the investment trust as referred to in Article 4, paragraph (2) or Article 49, paragraph (2), or a person including false information therein;
- (iii) a person failing to deliver a document under Article 5, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 54, paragraph (1) or Article 59), or a person delivering such a document that gives false information;
- (iv) a person failing to deliver a document under Article 13, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 54, paragraph (1) or Article 203, paragraph (1) or paragraph (2), or a person delivering such a document that gives false information;
- (v) a person failing to issue public notice under Article 24, paragraph (3);
- (vi) a person entering false information in an accompanying document under Article 58, paragraph (2); Article 220, paragraph (2), or Article 221, paragraph (2);

- (vii) a person failing to file the notification under Article 69, paragraph (1) or filing a false notification; or a person including or recording false information in a document or electronic or magnetic record that is required to accompany a notification as referred to in Article 69, paragraph (1) pursuant to Article 69, paragraph (2) or paragraph (3) and submitting it;
- (viii) a person entering false information in a written application for registration under Article 188, paragraph (1) or in an accompanying document under Article 188, paragraph (2), and submitting it;
- (ix) a person failing to submit a business report under Article 212 or a person entering false information in a business report and submitting it; or
- (x) a person entering false information in an extraordinary report under Article 215, paragraph (1) and submitting it.

Article 247 A person falling under one of the following items is subject to a fine of not more than 300 thousand yen:

- (i) a person issuing Beneficiary Securities that do not give the information prescribed in Article 6, paragraph (6) or Article 50, paragraph (2) or a person issuing Beneficiary Certificates giving false information;
- (ii) a person violating Article 25, paragraph (2) (including as applied *mutatis mutandis* pursuant to Article 59) or the provisions of Article 955, paragraph (1) of the Companies Act as applied *mutatis mutandis* pursuant to Article 186-2, paragraph (4) in failing to include or record information prescribed by Ministry of Justice Order in connection with an investigation into an electronic public notice under Article 955, paragraph (1) of that Act in the investigation record book, etc. (meaning an investigation record book, etc. as prescribed in that paragraph; hereinafter the same applies in this item); a person including or recording false information; or a person violating Article 955, paragraph (1) of that Act in failing to keep the investigation record book, etc. on file; or
- (iii) a person violating Article 37-3, paragraph (1) (excluding item (ii) and item (vi)) or Article 37-4, paragraph (1) of the Financial Instruments and Exchange Act as applied *mutatis mutandis* pursuant to Article 197 in failing to deliver documents, a person delivering documents that do not give the information referred to in those provisions, a person delivering documents that give false information, or a person using the means prescribed in Article 34-2, paragraph (4) of that Act as applied *mutatis mutandis* pursuant to the provisions of Article 37-3, paragraph (2) or Article 37-4, paragraph (2) of that Act as applied *mutatis mutandis* pursuant to Article 197 to provide a person with something that lacks that information or to provide a person with false information.

Article 248 If the representative of a corporation (other than an Investment Corporation; hereinafter the same applies in this Article) or the agent, employee, or other worker of a corporation or individual commits a violation set forth in one of the following items in connection with the business of the corporation or individual, in addition to the offender being subject to punishment, the corporation is subject to the fine specified in the item and the individual is subject to the fine prescribed in the Article:

- (i) Article 239, item (ii) or item (iii); Article 240 or Article 241: a fine of not more than 300 million yen;
- (ii) Article 242: a fine of not more than 200 million yen;
- (iii) Article 243, item (ii) or Article 245, item (iv): a fine of not more than 100 million yen; and
- (iv) Article 239 (excluding item (ii) and item (iii)); Article 243, item (i); Article 245, item (i) through item (iii) or the preceding two Articles: a fine as prescribed in the relevant Article.

Article 249 If an Investment Trust's current or former Settlor Company; a trust company or similar institution; the administrator of a beneficial interest holder register; an issuer of the Beneficiary Certificates in a Foreign Investment Trust; an Investment Corporation's organizer, executive managing officer at incorporation, supervisory officer at incorporation, executive managing officer, supervisory officer, financial auditor, or the member responsible for performing those duties; an Investment Corporation's executive liquidator or liquidation supervisor; its executive liquidator's agent; the person standing in for its executive managing officer, supervisory officer, executive liquidator, or liquidation supervisor, as appointed pursuant to an order of provisional disposition under Article 56 of the Civil Provisional Remedies Act; a person temporarily performing the duties of an officer as prescribed in Article 228, paragraph (1), item (v); a person temporarily performing the duties of an executive liquidator or liquidation supervisor prescribed in Article 228, paragraph (2), item (iii); a person temporarily performing the duties of a financial auditor as prescribed in Article 233, paragraph (1), item (iii); an inspector, supervisor, investigator, investment corporation bond administrator, investment corporation bond administrator succeeding to administrative processes; an Investment Corporation's representative creditor or resolution administrator, Administrative Agent, Asset Management Company, or Asset Custody Company falls under one of the following items, that person is subject to a civil fine of not more than one million yen; provided, however, that this does not apply if the person's actions should be subject to criminal punishment:

- (i) the person neglects to register under the provisions of this Act or the provisions of the Companies Act as applied mutatis mutandis pursuant to

- this Act;
- (ii) the person neglects to issue public notice or notice under the provisions of this Act or the provisions of the Companies Act or Trust Act as applied mutatis mutandis pursuant to this Act, or has issues improper public notice or notice;
  - (iii) the person fails to keep books, documents, or electronic or magnetic records, violating the provisions of this Act or the provisions of the Companies Act or Trust Act as applied mutatis mutandis pursuant to this Act;
  - (iv) the person refuses to allow a person to inspect or copy a document or something that has been made to show the information recorded in an electronic or magnetic record through a means that Cabinet Office Order prescribes; to deliver a transcript or an extract of a document; to provide a person with the information recorded in an electronic or magnetic record by electronic or magnetic means; or to deliver a document giving that information, without legitimate grounds and in violation of the provisions of this Act or the provisions of the Companies Act or Trust Act as applied mutatis mutandis pursuant to this Act;
  - (v) the person refuses, hinders, or evades an investigation under the provisions of this Act or the provisions of the Companies Act as applied mutatis mutandis pursuant to this Act;
  - (vi) the person gives false information to or conceals a fact from a government agency with regard to a particular provided in this Act or the Companies Act as applied mutatis mutandis pursuant to this Act, or does so at an investors' meeting, Organizational Meeting, investment corporation bondholders meeting, or Creditors' Meeting;
  - (vii) the person neglects to include or record information that is required to be included or recorded in a beneficial interest holder register, certificate of incorporation, investor register, investment equity options register, investment corporation bond register, minutes, inventory of property, accounting books, balance sheet, profit and loss statement, asset investment report, statement on the distribution of monies, annexed detailed statement as referred to in Article 129, paragraph (2), accounting audit report, statement of accounts, or document or electronic or magnetic record referred to in Article 149, paragraph (1); Article 149-6, paragraph (1); Article 149-10, paragraph (1); Article 149-11, paragraph (1); or Article 149-16, paragraph (1) of this Act, the provisions of Article 182-2, paragraph (1) (excluding item (ii)) or Article 182-6, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 81-2, paragraph (2), or the provisions of Article 682, paragraph (1) or Article 695 of the Companies Act as applied mutatis mutandis pursuant to Article 139-7, or that has included or recorded false

- information;
- (viii) the person violates the provisions of Article 11 (including as applied mutatis mutandis pursuant to Article 54, paragraph (1)) or Article 201;
  - (ix) the person fails to request an investigation under Article 941 of the Companies Act, in violation of that Article as applied mutatis mutandis pursuant to Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 59) or Article 186-2, paragraph (4) of this Act;
  - (x) the person violates the provisions of Article 47, paragraph (2);
  - (xi) the person fails to manage investments separately, violating Article 53;
  - (xii) the person fails to provide an explanation for information that an Investor or investor at incorporation asked be explained at an investors' meeting or Organizational Meeting, without legitimate grounds for failing to do so;
  - (xiii) the person violates Article 81, paragraph (1) in acquiring Investment Equity, violates Article 80, paragraph (2) in neglecting to dispose of or cancel Investment Equity, violates Article 81, paragraph (3) in neglecting to dispose of or cancel Investment Equity, or violates Article 80, paragraph (4) in neglecting to dispose of or cancel Investment Equity;
  - (xiv) the person issues Investment Securities or Similar Certificates prior to the day of issuance of Investment Equity, Investment Equity Options, or Investment Corporation Bonds;
  - (xv) the person fails to issue Investment Securities or Similar Certificates without delay, violating Article 85, paragraph (1) or Article 88-21, paragraph (1) of this Act or the provisions of Article 696 of the Companies Act as applied mutatis mutandis pursuant to Article 139-7;
  - (xvi) the person fails to include information that is required to be included on Investment Securities or Similar Certificates, or includes false information on them;
  - (xvii) the person fails to repeal the provisions referred to in Article 86, paragraph (4), violating that paragraph;
  - (xviii) a demand as prescribed in Article 303, paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to Article 94, paragraph (1) has been filed but the person fails to make the subject matter indicated in the demand the subject of an investors' meeting;
  - (xix) the person fails to call an investors' meeting, violating an order of the Prime Minister under Article 307, paragraph (1), item (i) of the Companies Act as applied mutatis mutandis pursuant to Article 94, paragraph (1) following the deemed replacement of terms, or the provisions of Article 359, paragraph (1), item (i) of the Companies Act as applied mutatis mutandis pursuant to Article 110, paragraph (2) following the deemed replacement of terms;
  - (xx) there are not enough executive managing officers, supervisory officers, or

- financial auditors as specified by this Act or the certificate of incorporation, but the person that neglects to carry out the procedures for appointing a person to assume the relevant position (or to appoint a person to temporarily perform the duties of a financial auditor);
- (xxi) the person neglects to make disclosure under Article 115-6, paragraph (4);
  - (xxii) the person violates the provisions of Article 117; Article 198, paragraph (1); Article 207, paragraph (2) or paragraph (3), or Article 208, paragraph (1);
  - (xxiii) the person fails to provide a financial statement, asset investment report, statement on the distribution of monies, accounting audit report, or statement of accounts in giving notice to the Investors, violating Article 131, paragraph (5) or Article 160, paragraph (3);
  - (xxiv) the person issues Investment Corporation Bonds, violating Article 139-2 or Article 139-8 or fails to specify an investment corporation bond administrator to succeed to the administration of Investment Corporation Bonds, violating Article 714, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 139-9, paragraph (8);
  - (xxv) the person violates Article 141, paragraph (4) in changing the certificate of incorporation;
  - (xxvi) the person violates Article 142, paragraph (2) or paragraph (5) or Article 149-4, paragraph (2) or paragraph (5) (including as applied mutatis mutandis pursuant to Article 149-9 or Article 149-14) in reducing the Minimum Net Assets or implementing a merger;
  - (xxvii) the person violates Article 484, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 153-3, paragraph (2) in neglecting to file a petition to commence bankruptcy proceedings, or violates Article 164, paragraph (3) in neglecting to file a petition to commence special liquidation,;
  - (xxviii) the person inappropriately sets a period as referred to in Article 157, paragraph (1) for the purpose of delaying the completion of liquidation;
  - (xxix) the person violates the provisions of Article 500, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 157, paragraph (3) or the provisions Article 537, paragraph (1) of that Act as applied mutatis mutandis pursuant to Article 164, paragraph (4) in performing an obligation;
  - (xxx) the person violates Article 502 of the Companies Act as applied mutatis mutandis pursuant to Article 157, paragraph (3) in distributing the assets of an Investment Corporation in Liquidation;
  - (xxxi) the person violates an order under Article 162;
  - (xxxii) the person violates the provisions of Article 535, paragraph (1) or Article 536, paragraph (1) of the Companies Act as applied mutatis mutandis pursuant to Article 164, paragraph (4); or

(xxxiii) the person violates a temporary restraining order under the provisions of Article 540, paragraph (1) or paragraph (2) or Article 542, paragraph (1) or paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to Article 164, paragraph (4).

Article 250 A person falling under one of the following items is subject to a civil fine of not more than one million yen:

- (i) a person failing to make a report, violating Article 946, paragraph (3) of the Companies Act as applied mutatis mutandis pursuant to Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 59) or Article 186-2, paragraph (4), or a person making a false report; or
- (ii) a person refusing a request set forth in the items of Article 951, paragraph (2) or the items of Article 955, paragraph (2) of the Companies Act as applied mutatis mutandis pursuant to Article 25, paragraph (2) (including as applied mutatis mutandis pursuant to Article 59) or Article 186-2, paragraph (4).

Article 251 A person falling under one of the following items is subject to a civil fine of not more than one million yen:

- (i) a person using a character in its name or trade name that could give rise to the misconception that it is an Investment Corporation, thereby violating Article 64, paragraph (3); or
- (ii) a person using a character in its name or trade name that could give rise to the misconception that it is a different Investment Corporation, thereby violating Article 64, paragraph (4).

Article 252 A person falling under one of the following items is subject to a civil fine of not more than 50 thousand yen:

- (i) a person failing to appear or make a statement, making a false statement, failing to submit an opinion or report, or submitting a false opinion or report, thereby violating disposition issued to a person concerned or witnesses under Article 187, paragraph (1), item (i) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 26, paragraph (7) (including as applied mutatis mutandis pursuant to Article 54, paragraph (1)); Article 60, paragraph (3); Article 219, paragraph (3) or Article 223, paragraph (3);
- (ii) a person failing to appear or make an expert evaluation, or making a false expert evaluation, thereby violating a disposition issued to an expert witness under Article 187, paragraph (1), item (ii) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 26, paragraph (7) (including as applied mutatis mutandis pursuant to Article 54, paragraph (1)); Article 60, paragraph (3); Article 219, paragraph (3), or Article 223,

- paragraph (3);
- (iii) a person failing to submit an article, thereby violating a disposition issued to a person concerned under Article 187, paragraph (1), item (iii) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 26, paragraph (7) (including as applied mutatis mutandis pursuant to Article 54, paragraph (1)); Article 60, paragraph (3); Article 219, paragraph (3); or Article 223, paragraph (3); or
- (iv) a person refusing, hindering, or evading an inspection under Article 187, paragraph(1), item (iv) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 26, paragraph (7) (including as applied mutatis mutandis pursuant to Article 54, paragraph (1)); Article 60, paragraph (3); Article 219, paragraph (3); or Article 223, paragraph (3).

## **Part VI Special Provisions on Confiscation Procedures**

(Procedure for Confiscation of Third-Party Assets)

- Article 253 (1) If a claim or similar asset (meaning an asset other than real property or a movable; the same applies in the following Article and Article 255) constituting an asset that must be confiscated pursuant to the provisions of Article 244, paragraph (1) belongs to a person other than the defendant (hereinafter such a person is referred to as a "third party" in this Article), and the third party is not allowed to participate in the proceedings of the case against the defendant, a judicial decision to confiscate that asset may not be reached.
- (2) The provisions of the preceding paragraph also apply if the asset sought for confiscation pursuant to the provisions of Article 244, paragraph (1) is subject to a right of superficies, a mortgage, or any other third-party right and the third party is not allowed to participate in the proceedings of the case against the defendant.
- (3) The provisions of Article 209-4, paragraph (3) through paragraph (5) of the Financial Instruments and Exchange Act apply mutatis mutandis if the asset sought for confiscation is subject to a right of superficies, a mortgage, or any other third-party right that must be allowed to continue to exist pursuant to the provisions of Article 209-3, paragraph (2) of that Act as applied mutatis mutandis pursuant to Article 244, paragraph (2). In such a case, the term "paragraph (2) of the preceding Article" in Article 209-4, paragraph (3) and paragraph (4) of that Act is deemed to be replaced with "paragraph (2) of the preceding Article as applied mutatis mutandis pursuant to Article 244, paragraph (2) of the Act on Investment Trusts and Investment Corporations".
- (4) Beyond as otherwise provided in this Act, the provisions of the Act on Emergency Measures on Criminal Procedure to Confiscate Items Owned by

Third Parties (Act No. 138 of 1963) apply mutatis mutandis to the procedures for confiscation of assets under paragraph (1) and paragraph (2).

(Handling of Confiscated Claims and Similar Assets)

Article 254 The provisions of Article 209-5, paragraph (1) of the Financial Instruments and Exchange Act apply mutatis mutandis to claims and similar assets confiscated in connection with the crimes prescribed in Article 243, item (ii); the provisions of Article 209-5, paragraph (2) of that Act apply mutatis mutandis once a judicial decision to confiscate a claim that is required to be confiscated in connection with a crime as prescribed in that item becomes final and binding; and the provisions of Article 209-6 of that Act apply mutatis mutandis if the competent institution is commissioned to register a transfer of rights based on a judicial decision to confiscate an asset in connection with the crime referred to in that item, for an asset requiring registration for rights to transfer.

(Special Provisions on Criminal Compensation)

Article 255 The provisions of Article 4, paragraph (6) of the Criminal Compensation Act (Act No. 1 of 1950) apply mutatis mutandis to the contents of compensation under that Act for executing the confiscation of a claim or similar asset that must be confiscated in connection with the crimes referred to in Article 243, item (ii).