

# Regulation on Security Deposits by Financial Institutions Engaged in Trust Business

(Cabinet Office and Ministry of Justice Order No. 4 of December 28, 2004)

Pursuant to the provisions of Article 11, paragraph (11) of the Trust Business Act (Act No. 154 of 2004) as applied mutatis mutandis pursuant to Article 4, paragraph (1) of the Act on Engagement in Trust Business Activities by Financial Institutions (Act No. 43 of 1943), the Regulation on Security Deposits by Financial Institutions Engaged in Trust Business is hereby enacted as follows.

## (Procedures for Filing a Petition)

Article 1 A person who intends to file a petition for the enforcement of the right as prescribed in Article 6, paragraph (1) of the Enforcement Order of the Act on Engagement in Trust Business Activities by Financial Institutions (Cabinet Order No. 31 of 1993; hereinafter referred to as the "Order") must submit a written petition by Form 1, together with a document proving that that person holds the right (hereinafter, said right is referred to as the "Right") set forth in Article 11, paragraph (6) of the Trust Business Act as applied mutatis mutandis pursuant to Article 2, paragraph (1) of the Act on Engagement in Trust Business Activities by Financial Institutions (hereinafter referred to as the "Act"), respectively, to the Director General of the Local Finance Bureau (including the Director General of the Local Finance Branch Bureau; the same applies hereinafter) that has jurisdiction over the location of the head office, etc. (meaning the head office, etc. prescribed in Article 7, paragraph (1), item (i) of the Order; the same applies in Article 2 and Article 15) when that person is a financial institution engaged in trust business (excluding the financial institutions engaged in trust business designated by the Commissioner of the Financial Services Agency as prescribed in Article 18, paragraph (1) of the Order), or to the Commissioner of the Financial Services Agency when that person is a financial institution engaged in trust business designated by the Commissioner of the Financial Services Agency as prescribed in Article 18, paragraph (1) of the Order.

## (Procedures for Reporting the Right)

Article 2 A person who intends to report the Right as prescribed in Article 6, paragraph (2) of the Order must submit a written report by Form 2, together with a document proving that that person holds the Right, to the Commissioner of the Financial Services Agency or the Director General of the Local Finance Bureau that has jurisdiction over the location of the head office, etc. of the

financial institution engaged in trust business (excluding the financial institutions engaged in trust business designated by the Commissioner of the Financial Services Agency as prescribed in Article 18, paragraph (1) of the Order) (hereinafter referred to as the "Commissioner of the Financial Services Agency, etc.").

(Provisional Distribution List)

Article 3 In order to make an examination into the Rights pursuant to the provisions of Article 6, paragraph (4) of the Order, the Commissioner of the Financial Services Agency, etc. must, without delay after the expiration of the period set forth in paragraph (2) of the Article, prepare a provisional distribution list, give public notice thereof, and also give a notice thereof to the depositor (if, pursuant to the order set forth in Article 11, paragraph (4) of the Trust Business Act as applied mutatis mutandis pursuant to Article 2, paragraph (1) of the Act and under the contract set forth in paragraph (3) of the Article, the depositor has deposited the entire security deposit set forth in Article 11, paragraph (1) of the Trust Business Act as applied mutatis mutandis pursuant to Article 2, paragraph (1) of the Act for a financial institution that has obtained the authorization set forth in Article 1, paragraph (1) of the Act (hereinafter referred to as the "Financial Institution Engaged in Trust Business"), including that Financial Institution Engaged in Trust Business; the same applies in paragraph (2) of the following Article and Article 7).

(Hearing Session)

Article 4 (1) The procedures for an examination into the Rights pursuant to the provisions of Article 6, paragraph (4) of the Order are to be implemented through a hearing session in which an official designated by the Commissioner of the Financial Services Agency, etc. presides as the chairperson.

(2) When a person who has filed a petition pursuant to the provisions of Article 6, paragraph (1) of the Order (referred to as a "petitioner" in Article 16, paragraph (2)), a person who has reported the Right within the period set forth in Article 6, paragraph (2) of the Order, or the representative person of the depositor (hereinafter collectively referred to as "Relevant Persons") is unable to attend the hearing session due to illness or any other compelling reason, that person may submit an affidavit, on which that person has affixed signature and seal, in lieu of making a statement at the hearing session.

Article 5 When finding it necessary, the chairperson may request a person with relevant knowledge and experience or any other person of reference to attend the hearing session.

Article 6 (1) When finding it necessary for organizing the business of the session, the chairperson may give necessary instructions with regard to the statement of opinions, production of evidence, etc.

(2) When finding it necessary for maintaining order in the hearing session, the chairperson may have a person who is disturbing the order or is acting or behaving in a disturbing manner leave the session.

Article 7 When finding it necessary, the chairperson may postpone or continue the hearing session. In this case, the chairperson must determine and give public notice of the date and place of the next session and also give a notice thereof to the depositor.

Article 8 The chairperson must prepare a record stating the following matters with regard to the hearing session, and affix the chairperson's signature and seal thereon:

- (i) indication of the case concerning the hearing session;
- (ii) date and place of the hearing session;
- (iii) official title and name of the chairperson;
- (iv) names and domiciles of the Relevant Persons present;
- (v) names of other persons present;
- (vi) gist of the opinions stated;
- (vii) if any affidavit is submitted, a statement to that effect and the gist thereof;
- (viii) if any evidence is produced, a statement to that effect and a list of the evidence;
- (ix) other matters found to be necessary by the chairperson.

Article 9 The Relevant Persons may inspect the record set forth in the preceding Article.

(Distribution)

Article 10 When the security deposit pertaining to a Financial Institution Engaged in Trust Business includes a security deposit from a person who has concluded a contract set forth in Article 11, paragraph (3) of the Trust Business Act as applied mutatis mutandis pursuant to Article 2, paragraph (1) of the Act with that Financial Institution Engaged in Trust Business, the Commissioner of the Financial Services Agency, etc. must first conduct a distribution with regard to the security deposit deposited by that Financial Institution Engaged in Trust Business.

(Procedures for Distribution)

Article 11 (1) For the purpose of conducting a distribution, the Commissioner of the Financial Services Agency, etc. must send a payment entrustment document prepared using Form 27, Form 28, or Form 28-2 of the Deposit Regulation (Ministry of Justice Order No. 2 of 1959) to the official depository and deliver certificates prepared using Form 29 of the Deposit Regulation to the persons who are to receive the distribution.

(2) With regard to the application of Article 11, paragraph (8) of the Trust Business Act as applied mutatis mutandis pursuant to Article 2, paragraph (1) of the Act, the Right is deemed to have been enforced as set forth in Article 11, paragraph (6) of the Trust Business Act as applied mutatis mutandis pursuant to Article 2, paragraph (1) of the Act when the period prescribed in Article 6, paragraph (6) of the Order has elapsed.

(3) Having taken the procedures as set forth in paragraph (1), the Commissioner of the Financial Services Agency, etc. must send a written notice by Form 3, together with a copy of the payment entrustment document, to the Financial Institution Engaged in Trust Business.

(Realization of Securities)

Article 12 (1) When the Commissioner of the Financial Services Agency, etc. intends to receive the return of securities (including Japanese Government Bonds for which the ownership of the right is to be determined based on the statement or record in the book-entry account pursuant to the provisions of the Act on Book-Entry of Corporate Bonds and Shares (Act No. 75 of 2001) (hereinafter referred to as "Book-Entry Transfer Japanese Government Bonds"); the same applies hereinafter) in order to realize them pursuant to the provisions of Article 6, paragraph (7) of the Order, the Commissioner, etc. must submit to the official depository two copies of the written request for paying out of deposited property.

(2) Having realized securities, the Commissioner of the Financial Services Agency, etc. must deposit the amount that remained after deducting the expense for the realization from the realized value, as a security deposit in lieu of the relevant securities.

(3) The security deposit deposited pursuant to the provisions of the preceding paragraph is deemed to have been deposited by the person who deposited the securities that were refunded pursuant to the provisions of paragraph (1).

(4) Having realized a security deposit pursuant to the provisions of paragraph (2), the Commissioner of the Financial Services Agency, etc. must give a notice to that effect in writing to the person prescribed in the preceding paragraph.

(Recovery of the Security Deposit)

Article 13 (1) A Financial Institution Engaged in Trust Business or its successor, or a person who has deposited a security deposit for that Financial Institution Engaged in Trust Business, which intends to obtain the approval of the Commissioner of the Financial Services Agency, etc. pursuant to the provisions of Article 7 of the Order, must submit to the Commissioner of the Financial Services Agency, etc. a written application for approval by Form 4 that states the grounds therefor and the amount of the deposit to be recovered, or the name, quantity, total face value, etc. of the deposited securities to be recovered (or the issue, price, etc. in the case of Book-Entry Transfer Japanese Government Bonds).

(2) When the written application for approval set forth in the preceding paragraph is submitted (excluding cases where the written application for approval set forth in the preceding paragraph is submitted when the case set forth in Article 7, paragraph (1), item (i) of the Order has become applicable), the Commissioner of the Financial Services Agency, etc. must give public notice of the fact that the person should report the Right within a certain period of not less than the periods respectively prescribed in the following items according to the cases set forth therein, and that the person is to be excluded from the distribution procedures if the person fails to make the report within that period:

(i) when an application for approval pursuant to the provisions of Article 7, paragraph (1), item (i) of the Order is filed: six months;

(ii) when an application for approval pursuant to the provisions of Article 7, paragraph (2) of the Order is filed: one month.

(3) A person who intends to report the Right as prescribed in the preceding paragraph must submit to the Commissioner of the Financial Services Agency, etc. a written report by Form 5, together with a document proving that that person holds the Right.

(4) When the report is made within the period set forth in paragraph (2), the Commissioner of the Financial Services Agency, etc. must take the procedures to pay out the security deposit to the relevant person in accordance with the provisions of Article 6, paragraph (4) to paragraph (6) of the Order and Article 3 to the preceding Article.

(5) When the Commissioner of the Financial Services Agency, etc. takes the procedures set forth in the preceding three paragraphs or finds that the case set forth in Article 7, paragraph (1), item (i) of the Order has become applicable, the Commissioner, etc. must deliver a written approval by Form 6 to the person who requested the approval set forth in paragraph (1).

Article 14 It is sufficient for a person who intends to recover the security deposit to submit the written approval delivered thereto under paragraph (5) of the

preceding Article as the document to be attached to a written request for paying out of deposited property pursuant to the provisions of Article 25, paragraph (1) of the Deposit Regulation.

(Transfer of Place of Deposit of the Security Deposit)

Article 15 (1) When a person deposits the security deposit in the form of money alone and if the nearest official depository changes due to a change in the location of the head office, etc. of the Financial Institution Engaged in Trust Business pertaining to that security deposit and that person intends to request the official depository to which that person has deposited the security deposit to transfer the place of deposit thereof, that person must submit a notification to that effect to the Commissioner of the Financial Services Agency, etc. without delay.

(2) When the notification set forth in the preceding paragraph is submitted, the Commissioner of the Financial Services Agency, etc. must deliver an authenticated copy of the deposit certificate for the relevant security deposit to the person who has submitted that notification, except for cases where a petition for the enforcement of the Right is being filed as prescribed in Article 6, paragraph (1) of the Order or an application for approval is being filed as prescribed in Article 7, paragraph (2) of the Order.

(3) A person who has submitted the notification set forth in paragraph (1) must request the official depository to which that person has deposited the security deposit to transfer the place of deposit thereof to the official depository nearest to the head office, etc. of the Financial Institution Engaged in Trust Business after the change of the location thereof, by prepaying the expense, without delay after receiving the delivery of the authenticated copy of the deposit certificate pursuant to the provisions of the preceding paragraph.

(4) A person who has requested the transfer of place of deposit set forth in the preceding paragraph must submit to the Commissioner of the Financial Services Agency, etc. a written notification by Form 7, together with an authenticated copy of the deposit certificate delivered thereto pursuant to the provisions of Article 21-5, paragraph (3) of the Deposit Regulation, without delay after completing the relevant procedures for the transfer of place of deposit.

(5) Having received an authenticated copy of the deposit certificate attached to the written notification set forth in the preceding paragraph, the Commissioner of the Financial Services Agency, etc. must deliver a retention certificate to the person who has requested that transfer of place of deposit.

(Public Notice)

Article 16 (1) The public notice prescribed in Article 6, paragraph (2), paragraph

(4) and paragraph (5) of the Order and Article 3, Article 7, and Article 13, paragraph (2) is to be given through publication in an official gazette.

(2) The expense for the public notice pursuant to the provisions of the preceding paragraph is to be borne by the petitioner (in the case of the recovery of a security deposit, the person who intends to recover the same) and the person who has reported the Right as prescribed in Article 6, paragraph (2) of the Order or Article 13, paragraph (2).

(Application of the Deposit Regulation)

Article 17 Beyond what is provided for in this Regulation, the procedures under the Deposit Regulation apply to the deposit and paying out of a security deposit.