

Loan Trust Act

(Act No. 195 of June 14, 1952)

(Purpose)

Article 1 The purpose of this Act is to facilitate investment by general investors by having beneficial interests in loan trusts embodied in beneficiary certificates and also by ensuring the protection of beneficiaries, thereby contributing to the smooth supply of long-term funds to fields that are necessary for the sound development of the national economy.

(Definitions)

Article 2 (1) The term "loan trust" as used in this Act means a money trust in which a trustee accepts money under trust agreements concluded with a number of settlors based on the same basic terms and conditions of trust, and which is jointly operated mainly by providing loans or discounting bills, with the beneficial interests under the trust agreements being represented by means of beneficiary certificates.

(2) The term "beneficiary certificate" as used in this Act means a security issued by a trustee pursuant to the provisions of this Act that represents a beneficial interest under a trust agreement for a loan trust.

(Basic Terms and Conditions of Trusts, and Trust Agreements)

Article 3 (1) A trust company, etc. (meaning a trust company (meaning a person that has obtained a license referred to in Article 3 or Article 53, paragraph (1) (License) of the Trust Business Act (Act No. 154 of 2004)) or financial institution engaged in trust business activities (meaning a financial institution that has obtained authorization from the Prime Minister referred to in Article 1, paragraph (1) (Authorization for Engagement in Trust Business Activities by Financial Institutions) of the Act on Engagement in Trust Business Activities by Financial Institutions (Act No. 43 of 1943); the same applies in item (xi) of the following paragraph); the same applies hereinafter) must conclude trust agreements for a loan trust based on the basic terms and conditions of trust for which it has obtained approval from the Prime Minister in advance.

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

- (i) the purpose of the trust;
- (ii) information concerning the amount of the trust property at the time of the conclusion of trust agreements;
- (iii) information concerning beneficiary certificates;

- (iv) information concerning the settlor and succession to the settlor's rights and obligations;
 - (v) information concerning the management and operation of the principal and profit of the trust;
 - (vi) information concerning the time and method of the calculation of profit of the trust;
 - (vii) information concerning the time, method, and place of redemption of the principal and distribution of profit of the trust;
 - (viii) information concerning the joint operation of the trust property under the trust agreement based on the basic terms and conditions of trust;
 - (ix) information concerning the separation of operation of the trust property set forth in the preceding item from that of other trust property;
 - (x) information concerning the period of the trust agreement, the extension thereof, and cancellation during the period of the trust agreement;
 - (xi) if a financial institution engaged in trust business activities concludes an agreement for compensation for any loss in the principal pursuant to the provisions of Article 6 (Conclusion of a Trust Agreement on Compensation of Loss) of the Act on Engagement in Trust Business Activities by Financial Institutions, the rate of compensation and other related information;
 - (xii) information concerning the method of calculation of trust fees, as well as the method and time of payment of the fees;
 - (xiii) information concerning changes to the basic terms and conditions of trust;
 - (xiv) the method of public notice to be used by the trust company, etc.; and
 - (xv) other information found necessary and appropriate for the public interest or protection of beneficiaries, as specified by Cabinet Office Order.
- (3) The period of a trust agreement for a loan trust must not be less than two years.
- (4) The provisions of Chapter IX of the Trust Act (Act No. 108 of 2006) do not apply to a loan trust.

(Approval of Basic Terms and Conditions of a Trust)

- Article 4 (1) If a trust company, etc. intends to obtain approval pursuant to the provisions of paragraph (1) of the preceding Article, it must submit to the Prime Minister a written application for approval stating the basic terms and conditions of the trust, with documents stating a plan for operation of trust property and a plan for issuance of beneficiary certificates attached.
- (2) If an application for approval pursuant to the provisions of the preceding paragraph is filed, and the plan for operation of trust property and plan for issuance of beneficiary certificates are appropriate, the content of the basic terms and conditions of the trust does not violate any laws or regulations, and it is unlikely that the public interest or protection of beneficiaries will be

compromised, the Prime Minister must give approval within 30 days from the day on which the Prime Minister received the written application for approval.

(Changes to Basic Terms and Conditions of a Trust)

- Article 5 (1) If a trust company, etc. intends to change the basic terms and conditions of a trust approved pursuant to the provisions of the preceding Article, it must obtain approval from the Prime Minister by submitting a written application for approval stating the matters to be changed and the reasons for the changes to the Prime Minister.
- (2) The provisions of the preceding Article apply mutatis mutandis to approval for changes pursuant to the provisions of the preceding paragraph. In this case, the phrase "with documents stating a plan for operation of trust property and a plan for issuance of beneficiary certificates attached" in paragraph (1) of the preceding Article is deemed to be replaced with "with a document stating the plan for operation of trust property or plan for issuance of beneficiary certificates containing any change due to the change in the basic terms and conditions of the trust attached" and the phrase "plan for operation of trust property and plan for issuance of beneficiary certificates" in paragraph (2) of that Article is deemed to be replaced with "plan for operation of trust property and plan for issuance of beneficiary certificates containing the change".

Article 6 (1) If a trustee obtains approval from the Prime Minister for the changes to the basic terms and conditions of trust pursuant to the provisions of the preceding Article, the trustee must immediately give public notice of the content of the changes and to the effect that any holders of beneficiary certificates who have objections to the changes should state the objections within a certain period of time.

- (2) The period of time referred to in the preceding paragraph may not be shorter than one month.
- (3) If a holder of a beneficiary certificate does not state any objection within the period of time referred to in paragraph (1), the holder is deemed to have accepted the changes.
- (4) A holder of a beneficiary certificate who has stated an objection within the period of time referred to in paragraph (1) may demand that the trustee purchase the beneficiary certificate at a fair price that it would have paid if the changes had not been made.
- (5) The provisions of Article 103, paragraph (7) and Article 104, paragraphs (1) to (10) of the Trust Act apply mutatis mutandis when the demand pursuant to the provisions of the preceding paragraph is made. In this case, any necessary technical replacement of terms is specified by Cabinet Order.
- (6) If a demand pursuant to the provisions of paragraph (4) is made, the trustee

must purchase the beneficiary certificate subject to the demand with the trustee's own funds.

(Procedures for Concluding Trust Agreements)

Article 7 (1) If a trust company, etc. intends to conclude trust agreements for a loan trust, it must give public notice of the following information:

- (i) the trade name or name of the trust company, etc.;
- (ii) the purpose of the trust;
- (iii) the period of handling the trust agreements;
- (iv) the face value of each beneficiary certificate;
- (v) the time of calculation of profit; and
- (vi) the due date for redemption of the principal.

(2) The period referred to in item (iii) of the preceding paragraph must not exceed two months.

(Beneficiary Certificates)

Article 8 (1) The transfer and exercise of beneficial interests under trust agreements for a loan trust must be effected by means of beneficiary certificates, except when beneficial interests are represented by means of beneficiary certificates in registered form.

(2) A beneficiary certificate is to be in bearer form; provided, however, that it may be converted to one in registered form at the request of the beneficiary.

(3) A beneficiary certificate in registered form may be converted to one in bearer form at the request of the beneficiary.

(4) On a beneficiary certificate, the code, number, basic terms and conditions of trust, and the following information must be stated, and the officer who represents the trust company, etc. must sign it or affix the officer's name and seal to it:

- (i) a statement to the effect that the beneficiary certificate is a beneficiary certificate of a loan trust;
- (ii) the trade name or name of the trustee;
- (iii) if the beneficiary certificate is in registered form, the name of the beneficiary;
- (iv) the face value;
- (v) the period of the trust agreement;
- (vi) the time and place of redemption of the principal and distribution of profit of the trust;
- (vii) the method of the calculation of trust fees; and
- (viii) other information specified by Cabinet Office Order.

(5) The provisions of Chapter VIII of the Trust Act (excluding Article 185, Article 187, Article 190, paragraph (4), Article 192, Article 195, paragraph (2), Article

200, paragraph (2), Article 206, Article 207, the proviso to Article 208, paragraph (1), Article 209, Article 210, and Articles 212 to 215) apply mutatis mutandis to loan trusts. In this case, the term "Ministry of Justice Order" in these provisions is deemed to be replaced with "Cabinet Office Order", the phrase "give public notice in an official gazette" in Article 189, paragraph (4) and Article 191, paragraph (5) of that Act is deemed to be replaced with "give public notice", and the phrase "beneficial interests in a beneficiary certificate-issuing trust (excluding beneficial interests subject to the provisions referred to in Article 185, paragraph (2))" in Article 194 of that Act is deemed to be replaced with "beneficial interests for which beneficiary certificates in registered form are issued"; and any necessary technical replacement of terms is specified by Cabinet Order.

(Notification of Issuance of Beneficiary Certificates)

Article 9 A trustee must notify the Prime Minister of the types of beneficiary certificates issued during the period of handling trust agreements for a loan trust and the total amount for each type without delay after the expiration of the period of handling the agreements.

(Succession to Rights and Obligations of a Settlor)

Article 10 A person who acquires a beneficiary certificate is to succeed, upon acquisition, to the rights and obligations of the settlor under the trust agreement to which the beneficiary certificate pertains. In this case, the provisions of Article 8, paragraph (1) apply mutatis mutandis to the exercise of the rights of the settlor.

(Acquisition of Beneficiary Certificate by a Trustee)

Article 11 Except in cases pursuant to the provisions of Article 6, paragraph (6), a trustee may purchase a beneficiary certificate at the market value with the trustee's own funds only if at least one year has passed since the date of issuance of the beneficiary certificate.

(Operation of Trust Property)

Article 12 The trust property of a loan trust must be operated separately from any other trust property.

Article 13 (1) A trustee must operate the trust property of a loan trust exclusively by providing loans or discounting bills.

(2) In addition to the methods referred to in the preceding paragraph, a trustee may operate the trust property of a loan trust by acquiring securities if it is found necessary for securing reserves for payment or any other reasons.

(3) The provisions of the preceding two paragraphs do not apply to trust property under trust agreements for a loan trust during the period of handling the agreements or any surplus funds arising from the operation of the trust property of a loan trust.

(Special Reserves)

Article 14 (1) If a trustee concludes an agreement to compensate for any loss in the principal of a loan trust that arises, the trustee must accumulate special reserves from the profit of the loan trust and retain them in the trust property of the loan trust each time of calculation of profit in order to allocate them for compensation.

(2) A trustee may reduce the special reserves pursuant to the provisions of the preceding paragraph in order to compensate for any loss in the principle of the trust property of a loan trust only if such a loss arises.

(3) The limit of special reserves to be accumulated pursuant to the provisions of paragraph (1) and the method of accumulation are specified by Cabinet Order.

(4) If the amount of special reserves referred to in paragraph (1) exceeds the limit specified by Cabinet Order based on the provisions of the preceding paragraph as a result of the redemption of the principal of the loan trust, the trustee must acquire the amount of excess as trust fees, and if the trustee cancels the agreement for compensation for any loss in the principal by making a change to the basic terms and conditions applicable to the loan trust, the trustee must acquire the amount of special reserves as trust fees.

(Method of Public Notice)

Article 15 Public notice to be given with regard to a loan trust pursuant to the provisions of this Act must be given by the method of public notice (including the period of public notice) used by the trust company, etc. that is the trustee of the loan trust (if a trust company, etc. that is to be the new trustee after the termination of office of the trust company, etc. that is the former trustee has yet to assume office, the method used by the trust company, etc. that is the former trustee).

(Application Mutatis Mutandis of the Act on Control of Imitation of Currency and Securities)

Article 16 The provisions of the Act on Control of Imitation of Currency and Securities (Act No. 28 of 1895) apply mutatis mutandis to the imitation of beneficiary certificates.

(Delegation of Authority to the Commissioner of the Financial Services Agency)

Article 17 The Prime Minister delegates the authority vested therein pursuant

to this Act (excluding that specified by Cabinet Order) to the Commissioner of the Financial Services Agency.

(Conduct Subject to Civil Fine)

Article 18 If a trust company, etc., a trustee of a loan trust, or a beneficial interest register administrator falls under any of the following, the company or person is subject to a civil fine of not more than one million yen:

- (i) the company or person fails to give public notice pursuant to the provisions of Article 189, paragraph (4) or Article 191, paragraph (5) of the Trust Act as applied mutatis mutandis pursuant to Article 6, paragraph (1), Article 7, paragraph (1), or Article 8, paragraph (5), or gives a false public notice;
- (ii) the company or person, in violation of the provisions of Article 8, paragraph (4), fails to state the information that should be stated on beneficiary certificates or makes a false statement thereon;
- (iii) the company or person fails to prepare a beneficial interest register referred to in Article 186 of the Trust Act as applied mutatis mutandis pursuant to Article 8, paragraph (5) (hereinafter referred to as a "beneficial interest register"), fails to state or record the matters that should be stated or recorded therein, or makes a false statement or record therein;
- (iv) the company or person, in violation of the provisions of Article 190, paragraph (1) of the Trust Act as applied mutatis mutandis pursuant to Article 8, paragraph (5), fails to keep a beneficial interest register;
- (v) the company or person, in violation of the provisions of Article 190, paragraph (3) of the Trust Act as applied mutatis mutandis pursuant to Article 8, paragraph (5), refuses to allow the inspection or copying of a beneficial interest register or the inspection or copying of a document or any object which indicates by means specified by Cabinet Office Order the information recorded in a beneficial interest register prepared in the form of electronic or magnetic records, without reasonable grounds;
- (vi) the company or person, in violation of the provisions of Article 202, paragraph (1) of the Trust Act as applied mutatis mutandis pursuant to Article 8, paragraph (5), refuses to deliver documents or provide electronic or magnetic records; or
- (vii) the company or person fails to make a notification pursuant to the provisions of Article 9.