

# Act on General Incorporated Associations and General Incorporated Foundations

(Act No. 48 of June 2, 2006)

## Chapter I General Provisions

Section 1 General Rules (Article 1 to Article 4)

Section 2 Names of Corporations (Article 5 to Article 8)

Section 3 Inapplicability of Provisions of the Commercial Code (Article 9)

## Chapter II General Incorporated Associations

### Section 1 Incorporation

Subsection 1 Preparation of Articles of Incorporation (Article 10 to Article 14)

Subsection 2 Appointment and Dismissal of Officers at Incorporation (Article 15 to Article 19)

Subsection 3 Investigations by Directors at Incorporation (Article 20)

Subsection 4 Selection of Representative Directors at Incorporation (Article 21)

Subsection 5 Formation of a General Incorporated Association (Article 22)

Subsection 6 Liability of the Members at Incorporation (Article 23 to Article 26)

### Section 2 Members

Subsection 1 General Provisions (Article 27 to Article 30)

Subsection 2 Member Registries (Article 31 to Article 34)

### Section 3 Organs

Subsection 1 The General Assembly (Article 35 to Article 59)

Subsection 2 Establishment of Organs Other than the General Assembly (Article 60 to Article 62)

Subsection 3 Appointment and Dismissal of Officers (Article 63 to Article 75)

Subsection 4 Directors (Article 76 to Article 89)

Subsection 5 Board of Directors (Article 90 to Article 98)

Subsection 6 Auditors (Article 99 to Article 106)

Subsection 7 Financial Auditors (Article 107 to Article 110)

Subsection 8 Liability of the Officers for Compensation for Damages (Article 111 to Article 118)

### Section 4 Calculations

Subsection 1 Principles of Accounting (Article 119)

Subsection 2 Accounting Books (Article 120 to Article 122)

Subsection 3 Financial Statements (Article 123 to Article 130)

## Section 5 Funds

Subsection 1 Solicitation of Persons to Contribute to Funds (Article 131 to Article 140)

Subsection 2 Returning Funds (Article 141 to Article 145)

## Section 6 Changing the Articles of Incorporation (Article 146)

## Section 7 Transferring Business (Article 147)

## Section 8 Dissolution (Article 148 to Article 151)

# Chapter III General Incorporated Foundations

## Section 1 Incorporation

Subsection 1 Preparation of Articles of Incorporation (Article 152 to Article 156)

Subsection 2 Contribution of Assets (Article 157 and Article 158)

Subsection 3 Appointment of Councilors at Incorporation (Article 159 and Article 160)

Subsection 4 Investigation by Directors at Incorporation (Article 161)

Subsection 5 Selection of Representative Directors at Incorporation (Article 162)

Subsection 6 Formation of a General Incorporated Foundation (Article 163 to Article 165)

Subsection 7 Liability of Founders (Article 166 to Article 169)

## Section 2 Organs

Subsection 1 Establishment of Organs (Article 170 and Article 171)

Subsection 2 Appointment and Dismissal of Councilors (Article 172 to Article 177)

Subsection 3 Councilors and the Board of Councilors (Article 178 to Article 196)

Subsection 4 Directors, Boards of Directors, Auditors, and Financial Auditors (Article 197)

Subsection 5 Liability of Officers for Compensation for Damages (Article 198)

## Section 3 Calculations (Article 199)

## Section 4 Amending the Articles of Incorporation (Article 200)

## Section 5 Transferring Business (Article 201)

## Section 6 Dissolution (Article 202 to Article 205)

# Chapter IV Liquidation

## Section 1 Commencement of Liquidation (Article 206 and Article 207)

## Section 2 Organs of Corporation in Liquidation

Subsection 1 Establishment of Organs for Corporation in Liquidation (Article 208)

Subsection 2 Assumption of the Position of a Liquidator, Dismissal of Liquidators, and Resignation of Auditors (Article 209 to Article 211)

- Subsection 3 Liquidators' Duties (Article 212 to Article 219)
- Subsection 4 Boards of Liquidators (Article 220 to Article 223)
- Subsection 5 Application of Provisions Regarding Directors (Article 224)
- Section 3 Inventory of Assets (Article 225 to Article 232)
- Section 4 Performance of Obligations (Article 233 to Article 238)
- Section 5 Ownership of Residual Assets (Article 239)
- Section 6 Completion of Liquidation Administration (Article 240 and Article 241)
- Chapter V Mergers
  - Section 1 General Rules (Article 242 and Article 243)
  - Section 2 Absorption-Type Mergers
    - Subsection 1 Absorption-Type Merger Agreements (Article 244 and Article 245)
    - Subsection 2 Procedures for Corporations Disappearing in Absorption-Type Mergers (Article 246 to Article 249)
    - Subsection 3 Procedures for Corporations Surviving Absorption-Type Mergers (Article 250 to Article 253)
  - Section 3 Consolidation-Type Mergers
    - Subsection 1 Consolidation-Type Merger Agreements (Article 254 and Article 255)
    - Subsection 2 Procedures for Corporations Disappearing in Consolidation-Type Mergers (Article 256 to Article 258)
    - Subsection 3 Procedures for Corporations Incorporated through Consolidation-Type Mergers (Article 259 and Article 260)
- Chapter VI Miscellaneous Provisions
  - Section 1 Dissolution Orders (Article 261 to Article 263)
  - Section 2 Legal Process
    - Subsection 1 Actions Concerning the Organs of a General Incorporated Association (Article 264 to Article 277)
    - Subsection 2 Action to Enforce Liability against General Incorporated Associations (Article 278 to Article 283)
    - Subsection 3 Actions Seeking Dismissal of Officers of General Incorporated Associations (Article 284 to Article 286)
  - Section 3 Non-contentious Cases
    - Subsection 1 General Provisions (Article 287 to Article 295)
    - Subsection 2 Special Provisions on Procedures under a Dissolution Order (Article 296 to Article 298)
  - Section 4 Registration
    - Subsection 1 General Provisions (Article 299 and Article 300)
    - Subsection 2 Registration at the Location of the Principal Office (Article 301 to Article 311)

Subsection 3 Registration at the Location of a Branch Office (Article 312 to Article 314)  
Subsection 4 Commissioning of Registration (Article 315)  
Subsection 5 Registration Procedures (Article 316 to Article 330)  
Section 5 Public Notice (Article 331 to Article 333)  
Chapter VII Penal Provisions (Article 334 to Article 344)

## **Chapter I General Provisions**

### **Section 1 General Rules**

(Purpose)

Article 1 The incorporation, organization, operation and management of general incorporated associations and general incorporated foundations are governed by the provisions of this Act, except as specifically provided by other Acts.

(Definitions)

Article 2 In this Act, the meanings of the terms listed in the following items are as prescribed respectively in those items:

- (i) a "general incorporated association, etc." means a general incorporated association or a general incorporated foundation;
- (ii) a "large-scale general incorporated association" means a general incorporated association for which the total amount calculated in the liabilities section of the balance sheet (referring to, (for the financial statement) prescribed in the first sentence of Article 127, the balance sheet reported to the annual general assembly meeting pursuant to the provisions of the same Article, or referring to, during the interval from formation of the general incorporated association until the initial annual general assembly meeting, the balance sheet prescribed under Article 123, paragraph (1)) of the most recent business year (referring to the latest of any of the business years in which approval was obtained pursuant to Article 126, paragraph (2) for the financial statements prescribed under Article 123, paragraph (2) (or approval pursuant to Article 124, paragraph (3)(for the financial statement) prescribed under the first sentence of Article 127)) is twenty billion yen or more;
- (iii) a "large-scale general incorporated foundation" means a general incorporated foundation for which the total amount calculated in the liabilities section of the balance sheet (referring to, (for the financial statement) prescribed in the first sentence of Article 127 as applied mutatis mutandis pursuant to Article 199, the balance sheet reported to the annual meeting of the board of councilors pursuant to the provisions of the same Article, or referring to, during the interval from formation of the general

- incorporated foundation until the initial annual meeting of the board of councilors, the balance sheet prescribed under Article 123, paragraph (1) as applied mutatis mutandis pursuant to Article 199) of the most recent business year (referring to the latest of any of the business years in which approval was obtained pursuant to Article 126, paragraph (2) as applied mutatis mutandis pursuant to Article 199 for the financial statements prescribed under Article 123, paragraph (2) as applied mutatis mutandis pursuant to Article 199 (or approval pursuant to Article 124, paragraph (3) as applied mutatis mutandis pursuant to Article 199 (for the financial statement) prescribed under the first sentence of Article 127 as applied mutatis mutandis pursuant to Article 199)) is twenty billion yen or more.
- (iv) a "subsidiary" means a corporation as provided by the applicable Order of the Ministry of Justice whose operations are controlled by a general incorporated association or a general incorporated foundation.
- (v) an "absorption-type merger" means a merger in which a general incorporated association or a general incorporated foundation is transformed into another general incorporated association or a general incorporated foundation, wherein any and all of the rights and obligations of the corporation ceasing to exist due to the merger are succeeded to by the corporation surviving after the merger.
- (vi) a "consolidation-type merger" means a merger carried out by at least two general incorporated associations and/or general incorporated foundations, wherein any and all of the rights and obligations of the corporations ceasing to exist due to the merger are succeeded to by the corporation incorporated in the merger;
- (vii) "method of public notice" means the method by which a general incorporated association or a general incorporated foundation gives public notice (except for notice that must be given by means of publication in the Official Gazette pursuant to the provisions of this Act or other Acts).

(Juridical Personality)

Article 3 General incorporated associations and general incorporated foundations are corporations.

(Address)

Article 4 The address of general incorporated associations and general incorporated foundations are the location of its principal office.

## **Section 2 Names of Corporations**

(Name)

- Article 5 (1) A general incorporated association or a general incorporated foundation must use the Japanese characters "一般社団法人" (pronounced "ippan shadan houjin", meaning "general incorporated association" )or "一般財団法人" (pronounced "ippan zaidan houjin", meaning "general incorporated foundation") in its name according to the kind of entity.
- (2) A general incorporated association must not use words in its name that are likely to lead to it being mistaken for a general incorporated foundation.
- (3) A general incorporated foundation must not use words in its name that are likely to lead to it being mistaken for a general incorporated association.

(Prohibition on the Use of Names That Are Likely to Lead to an Organization to Be Mistaken for a General Incorporated Association or a General Incorporated Foundation)

Article 6 An entity that is not a general incorporated association or a general incorporated foundation must not use words in its name or trade name that are likely to lead to it being mistaken for a general incorporated association or a general incorporated foundation.

- Article 7 (1) No person may use with fraudulent intent any name or any trade name that is likely to cause any entity to be mistaken for a general incorporated association or a general incorporated foundation.
- (2) A general incorporated association or a general incorporated foundation whose business interests are infringed upon or are likely to be infringed upon by the use of a name or a trade name that is in violation of the provisions set forth in the preceding paragraph may file a claim against the party infringing on those interests or the party likely to do so, requesting suspension or prevention of that infringement.

(Responsibility of a General Incorporated Association or a General Incorporated Foundation Permitting the Use of Its Name by Another Party)

Article 8 A general incorporated association or a general incorporated foundation that permits the use of its name by another party to carry out business or operations has joint and several liability with that other party for payment of obligations arising from any transaction between that other party and a third party that carried out the transaction under the mistaken understanding that the business was being carried out by the general incorporated association or the general incorporated foundation.

### **Section 3 Inapplicability of Provisions of the Commercial Code**

Article 9 The provisions of Article 11 through Article 15 and Article 19 through

Article 24 of the Commercial Code (Act No. 48 of 1899) do not apply to general incorporated associations and general incorporated foundations.

## **Chapter II General Incorporated Associations**

### **Section 1 Incorporation**

#### **Subsection 1 Preparation of Articles of Incorporation**

(Preparation of Articles of Incorporation)

Article 10 (1) In the incorporation of a general incorporated association, persons wishing to be members (hereinafter referred to as "members at incorporation") jointly prepare articles of incorporation, which all of those persons must sign or affix their names and seal to.

(2) The articles of incorporation set forth in the preceding paragraph can be prepared by means of electronic or magnetic record (meaning records created in electronic form, magnetic form, or any other form that is impossible to perceive through human senses alone, and that are prescribed by the applicable Order of the Ministry of Justice as records to be submitted for computer-based information processing; the same applies hereinafter). In that cases, with respect to the information that is recorded in those electronic or magnetic records, measures must be taken to provide alternative means for affixing signatures or names and seals in accordance with means prescribed by the applicable Order of the Ministry of Justice.

(Contents or Recorded Particulars in the Articles of Incorporation)

Article 11 (1) The articles of incorporation of a general incorporated association are to contain or have recorded therein the following particulars:

- (i) purpose;
- (ii) name;
- (iii) location of the principal office;
- (iv) names and addresses of members at incorporation;
- (v) provisions on the acquisition or loss of member qualifications;
- (vi) means of public notice; and
- (vii) business year.

(2) Any provisions in the articles of incorporation that grants to members the right to receive the distribution of a surplus or residual assets has no effect.

Article 12 Beyond the particulars provided in the items listed in paragraph (1) of the preceding Article, the articles of incorporation of a general incorporated association may state or record matters that will not take effect unless provided in the articles of incorporation, as provided in this Act, and other matters that do not violate the provisions of this Act

(Notarization of the Articles of Incorporation)

Article 13 The articles of incorporation set forth in Article 10, paragraph (1) do not take effect unless they are certified by a notary.

(Retainment and Inspection of the Articles of Incorporation)

Article 14 (1) Members at incorporation (or, after the formation of a general incorporated association, that general incorporated association) must keep the articles of incorporation in a place specified by a member at incorporation (or, after the formation of a general incorporated association, at the principal office and a branch office of that general incorporated association).

(2) Members at incorporation (or, after the formation of the general incorporated association, the members and creditors of that general incorporated association) can make any of the requests listed below at any time during the hours determined by the members at incorporation (or, after the formation of the general incorporated association, the operating hours of the general incorporated association); provided, however, that when that member makes a request listed in item (ii) or (iv), the requestor must pay for any costs prescribed by the members at incorporation (or after the establishment of the general incorporated association, that general incorporated association):

(i) if the articles of incorporation are prepared in the form of a document, a request to inspect the document;

(ii) a request for the delivery of a copy or extract of the document set forth in the preceding item;

(iii) if the articles of incorporation are prepared in the form of electronic or magnetic records, a request to inspect anything recorded in the electronic or magnetic records in accordance with methods prescribed by the applicable Order of the Ministry of Justice;

(iv) a request that the particulars recorded in the electronic or magnetic records set forth in the preceding item be provided by electronic or magnetic means (means that uses an electronic data processing system or a means that uses other information communication technology as provided in the applicable Order of the Ministry of Justice; the same applies hereinafter) as prescribed by a member at incorporation (or, after the formation of a general incorporated association, that relevant general incorporated association), or a request for the issuance of any document that describes those particulars.

(3) If the articles of incorporation are prepared in the form of electronic or magnetic records, with respect to general incorporated associations enacting measures in accordance with methods prescribed by the applicable Order of the Ministry of Justice to make it possible for a branch office to comply with requests listed in items (iii) and (iv) of the preceding paragraph, regarding

application of the provisions of paragraph (1), the term "principal office or a branch office" is to be "the principal office" in that paragraph.

### **Subsection 2 Appointment and Dismissal of Officers at Incorporation**

(Appointment of Officers at Incorporation)

Article 15 (1) If no director at incorporation is provided for in the articles of incorporation (meaning a person or persons to serve as director at the time of incorporation of a general incorporated association; the same applies hereinafter in this Chapter, Article 278 and Article 318, paragraph (2)), the members at incorporation must appoint a director or directors at incorporation without delay after certification by a notary as provided in Article 13.

(2) If the general incorporated association to be incorporated is one set forth in the following items, and the articles of incorporation did not designate persons as provided in those items, the members at incorporation must appoint those persons without delay after certification by a notary as provided in Article 13:

- (i) a general incorporated association with auditor(s) (meaning a general incorporated association that provides an auditor or a general incorporated association that is required to provide an auditor pursuant to the provisions of this Act; the same applies hereinafter): an auditor at incorporation (meaning a person who serves as an auditor at the time of incorporation of a general incorporated association; the same applies hereinafter in this Chapter, Article 254, item (vi), and Article 318, paragraph (2), item (iii));
- (ii) a general incorporated association with financial auditor(s) (meaning a general incorporated association that provides financial auditor(s) or a general incorporated association that is required to provide financial auditor(s) pursuant to the provisions of this Act; the same applies hereinafter): a financial auditor at incorporation (meaning a person who serves as a financial auditor at the time of incorporation of a general incorporated association; the same applies in the following Article, paragraph (2), and Article 318, paragraph (2), item (iv)).

Article 16 (1) If the general incorporated association to be incorporated has a board of directors (meaning a general incorporated association with a board of directors; the same applies hereinafter), at least three directors at incorporation must be designated.

(2) Pursuant to the provisions of Article 65, paragraph (1), Article 68, paragraph (1) and paragraph (3), individuals who cannot be a director, an auditor, or a financial auditor in an formed general incorporated association, cannot be a director at incorporation, an auditor at incorporation, or a financial auditor at incorporation (hereinafter referred to as "officers, etc. at incorporation" in this

Subsection).

(Methods of Appointing Officers at Incorporation)

Article 17 (1) The appointment of officers, etc. at incorporation is to be determined by a majority vote of the members at incorporation.

(2) In cases set forth in the preceding paragraph, each member at incorporation has one voting right; provided, however, that this does not preclude the articles of incorporation from providing otherwise.

(Dismissal of Officers at Incorporation)

Article 18 Members at incorporation may dismiss officers, etc. at incorporation until that time as the general incorporated association is formed.

(Methods of Dismissal of Officers at Incorporation)

Article 19 (1) Dismissal of officers, etc. at incorporation is to be decided by a majority vote of the members at incorporation (the dismissal of an auditor at incorporation requires a minimum two-thirds majority).

(2) The provisions of Article 17, paragraph (2) apply mutatis mutandis to the preceding paragraph.

**Subsection 3 Investigations by Directors at Incorporation**

Article 20 (1) Directors at incorporation (if the general incorporated association to be incorporated is a general incorporated association with auditor(s), the term means the directors at incorporation and the auditor(s) at incorporation; the same applies in the following paragraph), after being appointed, must investigate without delay whether the procedures employed in incorporating the general incorporated association are in compliance with laws and regulations as well as with the articles of incorporation.

(2) Directors at incorporation, based upon the investigation conducted pursuant to the provisions of the preceding paragraph, must notify the members at incorporation if the procedures employed in the incorporation of the general incorporated association violate any laws and regulations or the articles of incorporation, or contain improper matters.

**Subsection 4 Selection of Representative Directors at Incorporation**

Article 21 (1) Directors at incorporation, provided that the general incorporated association to be incorporated is a general incorporated association with a board of directors, must select a representative director (meaning the director who will represent the general incorporated association; the same applies

hereinafter in this Chapter and Article 301, paragraph (2), item (vi)) from among the directors at incorporation at the time of the incorporation of the general incorporated association (hereinafter referred to as the "representative director at incorporation" in this Article and Article 318, paragraph (2)).

- (2) Directors at incorporation can dismiss the representative director at incorporation until the time as the general incorporated association is formed.
- (3) The selection and dismissal of the representative director at incorporation pursuant to the provisions set forth in the preceding two paragraphs are determined by a majority of the directors at incorporation.

### **Subsection 5 Formation of a General Incorporated Association**

Article 22 A general incorporated association is formed when its incorporation is registered at the address of its principal office.

### **Subsection 6 Liability of Members at Incorporation**

(Liability of Members at Incorporation for Compensation for Damages)

Article 23 (1) If a member at incorporation, a director at incorporation, or an auditor at incorporation neglects duties with respect to the incorporation of the general incorporated association, that person is liable to that general incorporated association for damages arising as a result thereof.

- (2) If a member at incorporation, a director at incorporation, or an auditor at incorporation has acted in bad faith or with gross negligence in the performance of duties, that member at incorporation, director at incorporation, or auditor at incorporation is liable to third parties for damages arising as a result thereof.

(The Joint and Several Liability of Members at Incorporation)

Article 24 If a member at incorporation, a director at incorporation, or an auditor at incorporation bears liability to compensate for damages suffered by a general incorporated association or a third party, and other members at incorporation, directors at incorporation or auditors at incorporation are also liable to compensate for the damages, these persons will be joint and several obligors.

(Exemption from Liability)

Article 25 The members at incorporation, directors at incorporation or auditors at incorporation prescribed by the provisions of Article 23, paragraph (1) cannot be exempted from liability without the consent of all members.

(Liability in the Event of Failure to Form a General Incorporated Association)  
Article 26 If there is a failure to form a general incorporated association, the members at incorporation take responsibility jointly and severally for any action they took with regard to the incorporation of the general incorporated association, and bear expenses incurred with respect to the incorporation of the general incorporated association.

## **Section 2 Members**

### **Subsection 1 General Provisions**

(Liability for Expenses)

Article 27 Members, as provided by the articles of incorporation, bear the responsibility for payment of expenses to the general incorporated association.

(Voluntary Withdrawal)

Article 28 (1) Members may withdraw at any time; provided, however, that this does not preclude the articles of incorporation from providing otherwise.  
(2) Even if there are provisions in the articles of incorporation set forth in the proviso to the preceding paragraph stating otherwise, a member may withdraw at any time if there are unavoidable circumstances.

(Statutory Withdrawal)

Article 29 Beyond what is provided in the preceding Article, members are to withdraw on the following grounds:  
(i) the occurrence of grounds set forth in the articles of incorporation;  
(ii) the agreement of all members;  
(iii) death or dissolution;  
(iv) expulsion.

(Expulsion)

Article 30 (1) The expulsion of a member can be decided by resolution of the general assembly, provided that justifiable grounds exist. In these cases, the general incorporated association must notify that member within one week from the general assembly meeting, and must provide the member an opportunity to give an explanation at the general assembly meeting.  
(2) Unless notice is served to the affected member, expulsion cannot be asserted against the affected member.

### **Subsection 2 Member Registries**

(Member Registry)

Article 31 The general incorporated association must prepare a registry (hereinafter referred to as a "member registry") of members that includes or has recorded therein the names and addresses of members.

(Retainment and Inspection of Member Registries)

Article 32 (1) The general incorporated association must keep its member registry at its principal office.

(2) Members may make the following requests at any time during the business hours of the general incorporated association. In these cases, the reasons for the request must be clearly stated:

(i) if the member registry is prepared in the form of a document, a request to inspect or copy that document;

(ii) if the member registry is prepared in the form of electronic or magnetic records, a request to inspect or copy anything recorded in the electronic or magnetic records in accordance with methods prescribed by the applicable Order of the Ministry of Justice.

(3) If a request is made pursuant to the preceding paragraph, the general incorporated association may not decline the request unless one of the following conditions applies:

(i) the member making the request (hereinafter referred to as the "requestor" in this paragraph) is making the request for purposes other than conducting an investigation related to the procurement or exercise of that member's rights;

(ii) the requestor is making the request for a purpose that impairs the execution of the operations of the general incorporated association, or for a purpose that prejudices the common interest of members;

(iii) the requestor is making the request in order to inform a third party, for a profit, of the facts acquired through the inspection or copying of the member registry; or

(iv) during the past two years, the requestor has made a request in order to inform a third party, for a profit, of the facts acquired through the inspection or copying of the member registry.

(Notifying Members)

Article 33 (1) If the general incorporated association wishes to serve a notice or request on a member, it is sufficient to issue that notice or request to the member's address that is contained or recorded in the member registry (or, if the member has notified the general incorporated association of another place or a contact address where notices or requests are to be received, to that place or contact address).

(2) The notice or request referred to in the preceding paragraph is deemed to

have been received at the time when that notice or request should normally have been received.

- (3) The provisions of the preceding two paragraphs apply mutatis mutandis to cases where, when the notice set forth in Article 39, paragraph (1) is to be served, a document is to be delivered, or the matters to be stated in that document are provided by electronic or magnetic means. In such a case, the term "to have been received" is to be replaced with "to have been given in that document or to have been provided by electronic or magnetic means with matters".

(Omission of Notifying Members)

Article 34 (1) If notices or requests served to a member by the general incorporated association have not reached that member for a continuous period of five or more years, the general incorporated association is not required to serve notices or requests to that member.

- (2) In cases set forth in the preceding paragraph, the place where the general incorporated association is to perform its obligations with respect to the member referred to in that paragraph is the address of the general incorporated association.

### **Section 3 Organs**

#### **Subsection 1 General Assembly**

(The Authority of General Assemblies)

Article 35 (1) A general assembly may adopt resolutions on the matters set forth in this Act and on the organization, operation, and management of general incorporated associations, as well as on all matters related to the general incorporated associations.

- (2) Notwithstanding the provisions of the preceding paragraph, in a general incorporated association with a board of directors, a general assembly may only adopt resolutions on the matters provided for in this Act and the matters set forth in the articles of incorporation.
- (3) Notwithstanding the provisions set forth in the preceding two paragraphs, a general assembly may adopt resolutions regarding the distribution of surplus to members.
- (4) With regard to matters that require a resolution by a general assembly pursuant to this Act, any provisions of the articles of incorporation that provide that directors, the board of directors, or organs other than the general assembly are to have decision-making powers have no effect.

(Convocation of General Assemblies)

Article 36 (1) General assembly meetings must called at a fixed time after the end of each business year.

(2) General assembly meetings may be called at any time when deemed necessary.

(3) General assembly meetings are called by a director except when they are called pursuant to the provisions of the following Article, paragraph (2).

(Request by Members for the Convocation of a General Assembly)

Article 37 (1) Members who have at least one-tenth of the voting rights of all members (if the articles of incorporation provide for a ratio of one-fifth or less, that ratio) may request that the director call a general assembly meeting by indicating matters to be covered in the general assembly and the reasons for convocation.

(2) In the cases listed below, members who have made a request pursuant to the provisions set forth in the preceding paragraph may call a meeting of a general assembly by obtaining court approval:

(i) if procedures for convocation of a meeting of a general assembly were not carried out without delay after a request was made pursuant to provisions of the preceding paragraph;

(ii) if no notice to convene for a general assembly was issued, stating a date within six weeks (if a shorter time period is prescribed in the articles of incorporation, that time period) of the request made pursuant to the provisions of the preceding paragraph as the date of a general assembly meeting.

(Decision for Convocation of a General Assembly)

Article 38 (1) When calling a general assembly meeting, the director (if a member calls a general assembly meeting pursuant to the provisions of the preceding Article, paragraph (2), that member; the same applies in the following Article through Article 42) must provide the matters listed below:

(i) the time and place of the general assembly meeting;

(ii) if there is a matter that functions as the purpose of the general assembly, that matter;

(iii) if members not attending the general assembly meeting can exercise their voting rights in writing, information to that effect;

(iv) if members not attending the general assembly meeting can exercise their voting rights by electronic or magnetic means, information to that effect;

(v) beyond the conditions provided in the preceding items, matters provided in the applicable Order of the Ministry of Justice.

(2) In a general incorporated association with a board of directors, except when a member calls a general assembly meeting pursuant to the provisions of the preceding Article, paragraph (2), any decision made with respect to the matters

provided in the preceding items must be made through a resolution of the board of directors.

(Notice of Convocation of a General Assembly)

- Article 39 (1) When calling a general assembly meeting, the director must issue notice of that meeting to the members at least one week before the date of the general assembly meeting (if the articles of incorporation in a general incorporated association other than a general incorporated association with a board of directors provides a time period less than one week, that time period); provided, however, that where a matter identified in paragraph (1), item (iii) or item (iv) in the preceding Article has been provided, the notice must be issued at least two weeks prior to the date of the general assembly meeting.
- (2) In the following cases, the notice set forth in the preceding paragraph must be made in writing:
- (i) if matters identified in paragraph (1), item (iii) or item (iv) in the preceding Article are provided;
  - (ii) if the general incorporated association is a general incorporated association with a board of directors.
- (3) In lieu of issuing a notice in writing in accordance with the preceding paragraph, the director may issue the notice by electronic or magnetic means with the consent of members, as prescribed by Cabinet Order. In such a case, it is deemed that director has issued the notice in writing in accordance with the provisions set forth in the preceding paragraph.
- (4) The notice set forth in the preceding two paragraphs must contain or have recorded therein the matters listed in the items in paragraph (1) of the preceding Article.

(Omission of Procedures for Convocation)

Article 40 Notwithstanding the provisions of the preceding Article, a general assembly meeting may be held without procedures for convocation, provided that the consent of all members is obtained; provided, however, that this does not apply if matters listed in Article 38, paragraph (1), item (iii) or item (iv) are provided.

(Delivery of Reference Documents for the General Assembly and of Voting Cards)

Article 41 (1) If the matter listed in Article 38, paragraph (1), item (iii) is identified, the director, when issuing a notice pursuant to Article 38, paragraph (1), must issue documents (hereinafter referred to as "reference documents" in this Subsection) that provide a reference for exercising voting rights by members, and documents (hereinafter referred to as "voting cards" in

this Subsection) for exercising voting rights by members, as provided in the applicable Order of the Ministry of Justice.

- (2) When issuing notice by electronic or magnetic means set forth in Article 39, paragraph (3) to members who have given consent pursuant to the provisions set forth in that paragraph, the director may provide matters to be contained in the documents by electronic or magnetic means in lieu of the delivery of reference documents and voting cards pursuant to the provisions of the preceding paragraph; provided, however, that when requested by a member, the director must issue the documents to the member.

Article 42 (1) If the matter listed in Article 38, paragraph (1), item (iv) is identified, the director, when issuing the notice pursuant to Article 39, paragraph (1), must issue reference documents as prescribed by the applicable Order of the Ministry of Justice.

- (2) When issuing notice by electronic or magnetic means set forth in Article 39, paragraph (3) to members who have given consent pursuant to that paragraph, the director may provide matters to be contained in the documents by electronic or magnetic means in lieu of the delivery of reference documents pursuant to the provisions of the preceding paragraph; provided, however, that when requested by a member, the director must issue the documents to the member.
- (3) In the cases provided for in paragraph (1), when sending notice to the members who have given consent set forth in Article 39, paragraph (3) by the electronic or magnetic means set forth in the same paragraph, the directors must provide to the members the matters to be specified in the voting card by electronic or magnetic means, pursuant to the provisions of the applicable Order of the Ministry of Justice.
- (4) In the cases provided for in paragraph (1), when it has been requested by members who have not given consent pursuant to Article 39, paragraph (3) at least one week prior to the date of a general assembly meeting the matters to be listed on the voting card be provided by electronic or magnetic means, the director must immediately provide the matters by electronic or magnetic means to the relevant members, as prescribed in the applicable Order of the Ministry of Justice.

#### (Members' Right to Issue Proposals)

Article 43 (1) Members may submit a request to the director that certain matters be taken up as the purpose of a general assembly meeting.

- (2) Notwithstanding the provisions of the preceding paragraph, in a general incorporated association with a board of directors, members, provided they have at least one-thirtieth of the voting rights of all members (if a lower ratio

is prescribed in the articles of incorporation, that ratio), may submit a request to a director that certain matters be taken up as the purpose of a general assembly meeting. In such a case, the request must be made six weeks prior to the date of the general assembly meeting (if a shorter time period is prescribed in the articles of incorporation, that time period).

Article 44 At a general assembly meeting, members may submit a proposal with respect to the matter that is the subject of the meeting; provided, however, that this does not apply where that proposal is in violation of laws and regulations or the articles of incorporation, or where three years have not elapsed since the day when a proposal that was materially the same failed to obtain votes in its favor constituting at least one-tenth of the votes (or, if a lower ratio is prescribed in the articles of incorporation, that ratio) of all the members present at the general assembly meeting.

Article 45 (1) A member may request a director to issue members a notice outlining the proposal which that member plans to submit in accordance with the purpose of the general assembly meeting (in case the notice is to be issued pursuant to Article 39, paragraphs (2) and (3), a member may request a director to include or record the matters in the notice) within six weeks of the date of a general assembly meeting (if a shorter time period is prescribed in the articles of incorporation, that time period); provided however, that in a general incorporated association with a board of directors, such a request may be made only by members who have at least one-thirtieth of the voting rights of all members (if a lower ratio is prescribed in the articles of incorporation, that ratio).

(2) The provisions of the preceding paragraph do not apply if the proposal is in violation of laws and regulations or the articles of incorporation, or where three years have not elapsed since the day when a proposal that was materially the same failed to obtain votes in its favor constituting at least one-tenth of the votes of all the members present at the general assembly meeting (if a lower ratio is prescribed in the articles of incorporation, that ratio).

(The Appointment of an Inspector for Procedures for Convocation of a General Assembly)

Article 46 (1) Members who have at least one-thirtieth of the voting rights of all members (if a lower ratio is prescribed in the articles of incorporation, that ratio), or the general incorporated association may petition the court to appoint an inspector, prior to a general assembly meeting, in order to carry out an investigation of the procedures employed and resolutions made concerning the convocation of the general assembly.

- (2) If a petition for the appointment of an inspector has been submitted pursuant to the provisions of the preceding paragraph, the court, unless dismissing the petition as being unlawful, must appoint an inspector.
- (3) When appointing an inspector as set forth in the preceding paragraph, the court may determine the amount of compensation to be paid to that inspector by the general incorporated association.
- (4) The inspector set forth in paragraph (2) must conduct the required investigation, and report to the court by submitting documents or electronic or magnetic records (limited to those prescribed in the applicable Order of the Ministry of Justice) that contain or in which results of the investigation are recorded.
- (5) With respect to the report set forth in the preceding paragraph, if the court finds it necessary to make the contents of the report clear or to verify the grounds thereof, it may require further reports set forth in the preceding paragraph of the inspector set forth in paragraph (2).
- (6) When submitting a report pursuant to paragraph (4), the inspector set forth in paragraph (2) must provide a copy of the document as prescribed in paragraph (4) or matters recorded in electronic or magnetic records as referred to in the same paragraph by the means prescribed in the applicable Order of the Ministry of Justice to the general incorporated association (if the person who petitioned for the appointment of an inspector is not that general incorporated association, either that general incorporated association or that person).

(Court Determination to Convene a General Assembly Meeting)

- Article 47 (1) The court must, when it has received a report set forth in paragraph (4) of the preceding Article, and when it finds necessary, order the director to comply with all or part of following measures:
- (i) to call a general assembly meeting within a fixed period of time;
  - (ii) to notify members of the results of the investigation set forth in the preceding Article, paragraph (4).
- (2) If the court orders the measures listed in item (i) of the preceding paragraph, the director must disclose the contents of the report referred to in paragraph (4) of the preceding Article at the general assembly meeting as prescribed in the same item.
  - (3) If it is so prescribed as under the preceding paragraph, the director (or in a general incorporated association with auditor(s), the director and the auditor) must examine the contents of the report referred to in paragraph (4) of the preceding Article, and report the results of the examination at the general assembly meeting set forth in paragraph (1), item (i).

(Number of Votes)

Article 48 (1) Each member has one vote; this, however, does not preclude other provisions from being made in the articles of incorporation.

(2) Notwithstanding the provisions set forth in the proviso to preceding paragraph, any provision in the articles of incorporation that prescribes that members cannot exercise their voting rights on all of the matters subject to resolution at a general assembly meeting has no effect.

(Resolutions at General Assembly Meetings)

Article 49 (1) Except as otherwise prescribed in the articles of incorporation, a resolution at a general assembly meeting is effected by a majority vote of the members in attendance who have voting rights, provided that the members with a majority of the voting rights are present.

(2) Notwithstanding the provisions of the preceding paragraph, resolutions at the following meetings of the general assembly must be effected by at least a two-thirds majority (if a higher ratio is prescribed in the article of incorporation, that ratio) of the votes of all members and with a quorum of at least one-half of the total number of members:

(i) a general assembly meeting as set forth in Article 30, paragraph (1);

(ii) a general assembly meeting as set forth in Article 70, paragraph (1) (limited to the dismissal of an auditor);

(iii) a general assembly meeting as set forth in Article 103, paragraph (1);

(iv) a general assembly meeting as set forth in Article 146;

(v) a general assembly meeting as set forth in Article 14;

(vi) a general assembly meeting as set forth in Article 148, item (iii) and Article 150;

(vii) a general assembly meeting as set forth in Article 247, Article 251, paragraph (1), and Article 257.

(3) For general incorporated associations with a board of directors, a general assembly meeting may not make resolutions on matters other than those listed in Article 38, paragraph (1), item (ii); provided, however, that this does not apply to the appointment of persons set forth in Article 55, paragraph (1) or (2), or to requests for the attendance of the financial auditor set forth in Article 109, paragraph (2)).

(Exercising Voting Rights by Proxy)

Article 50 (1) Members may exercise their voting rights by proxy. In such a case, the subject member or proxy must submit a document certifying the authority of representation to the general incorporated association.

(2) The granting of the authority of representation must be made for each general assembly meeting.

- (3) The member or proxy referred to in paragraph (1) may, in lieu of submitting a document certifying the authority of representation, provide matters to be included in the document by electronic or magnetic means, upon approval of the general incorporated association as prescribed by Cabinet Order. In such a case, the member or proxy is deemed to have submitted the document.
- (4) If a member has received consent pursuant to Article 39, paragraph (3), the general incorporated association may not refuse the consent set forth in the preceding paragraph without justifiable grounds.
- (5) The general incorporated association must keep at its principal office documents certifying the authority of representation and electronic or magnetic records containing the matters provided by the electronic or magnetic means set forth in paragraph (3), for three months from the date of the general assembly meeting.
- (6) Members may make the following requests at any time during the business hours of the general incorporated association:
  - (i) a request to inspect or copy documents certifying the authority of representation;
  - (ii) a request to inspect or copy anything which displays matters recorded in electronic or magnetic records set forth in the preceding paragraph in accordance with methods prescribed by the applicable Order of the Ministry of Justice.

(Exercising Voting Rights in Writing)

- Article 51 (1) Exercising voting rights in writing is performed by entering the required matters on a voting card and submitting the entered voting card to the general incorporated association by a time prescribed by the applicable Order of the Ministry of Justice.
- (2) The number of votes exercised in writing pursuant to the provisions of the preceding paragraph is added to the number of votes of the members present at the general assembly meeting.
  - (3) The general incorporated association must keep at its principal office voting cards submitted in accordance with the provisions of paragraph (1) for three months from the date of the general assembly meeting.
  - (4) Members may request to inspect or copy the voting cards submitted pursuant to the provisions of paragraph (1) at any time during the business hours of the general incorporated association.

(Exercising Voting Rights by Electronic or Magnetic Means)

- Article 52 (1) Voting by electronic or magnetic means is to be performed as specified by Cabinet Order by obtaining the consent of the general incorporated association and by submitting to the general incorporated association matters

to be entered in a voting card by electronic or magnetic means by the time prescribed in the applicable Order of the Ministry of Justice.

- (2) If a member has received consent pursuant to Article 39, paragraph (3), the general incorporated association may not refuse the consent set forth in the preceding paragraph without justifiable grounds.
- (3) The number of votes exercised by electronic or magnetic means pursuant to the provisions of paragraph (1) is added to the number of votes of the members present at the general assembly meeting.
- (4) The general incorporated association must keep at its principal office electronic or magnetic records containing matters submitted pursuant to the provisions of paragraph (1) for three months from the date of the general assembly meeting.
- (5) Members may request to inspect or copy anything contained in the electronic or magnetic records set forth in the preceding paragraph by methods prescribed in the applicable Order of the Ministry of Justice, at any time during the business hours of the general incorporated association.

#### (Directors' Obligation to Provide Explanations)

Article 53 If requested by a member or members to explain a specific matter at a general assembly meeting, the director (in a general incorporated association with auditor(s), the director and the auditor) must provide the required explanation on that matter; provided, however, that this does not apply if that matter is not related to the purpose of the general assembly meeting, if doing so would materially harm the common interest of the members, or if there are other justifiable grounds prescribed by the applicable Order of the Ministry of Justice.

#### (The Authority of the Chairperson)

- Article 54 (1) The chairperson of the general assembly maintains order at the meetings of the general assembly and organizes the business of the meeting.
- (2) The chairperson of the general assembly may remove persons who do not comply with their instructions or those who otherwise disturb order.

#### (Investigation of Materials Submitted to the General Assembly)

- Article 55 (1) At a general assembly meeting, the directors, the auditor(s), and the financial auditor(s) may, by resolution, appoint a person to investigate materials that are submitted or provided to the general assembly.
- (2) At a general assembly meeting called pursuant to the provisions of Article 37, the general assembly may, by resolution, appoint a person to investigate the business and the assets status of the general incorporated association.

(Resolutions to Postpone or Continue)

Article 56 If a resolution is passed to postpone or continue proceedings at a general assembly meeting, the provisions set forth in Articles 38 and 39 do not apply.

(Minutes)

Article 57 (1) With respect to the agenda of a general assembly meeting, minutes of the meeting must be prepared as prescribed by the applicable Order of the Ministry of Justice.

(2) The general incorporated association must keep the minutes set forth in the preceding paragraph at its principal office for ten years from the date of the general assembly meeting.

(3) The general incorporated association must keep a copy of the minutes set forth in paragraph (1) at its branch office for five years from the date of the general assembly meeting; provided, however, that this does not apply if the minutes are prepared in electronic or magnetic records and they are in compliance with the provisions of the applicable Order of the Ministry of Justice as a measure to make it possible to comply with requests set forth in item (ii) of the following paragraph.

(4) Members and creditors may make the following requests at any time during the business hours of the general incorporated association:

(i) if the minutes of paragraph (1) are prepared in document form, a request to inspect a copy of the document or to copy that document;

(ii) if the minutes of paragraph (1) are recorded in electronic or magnetic records, a request to inspect or copy anything recorded in that electronic or magnetic records in accordance with methods prescribed in the applicable Order of the Ministry of Justice.

(Omission of a Resolution at a General Assembly)

Article 58 (1) If a director or a member makes a proposal regarding a matter for the purpose of a general assembly meeting and where all members manifest their intention to agree with the proposal either in writing or by electronic or magnetic records, a resolution of the general assembly that affirms the proposal is deemed to have passed.

(2) The general incorporated association must keep the documents or electronic or magnetic records pursuant to the provisions of the preceding paragraph at its principal office for ten years from the date when the resolution is deemed to have passed at the general assembly meeting pursuant to the provisions of the preceding paragraph.

(3) Members and creditors may make the following requests at any time during the business hours of the general incorporated association:

- (i) if the minutes set forth in paragraph (1) are prepared in the form of a document, a request to inspect a copy of the document or to copy the document;
  - (ii) if the minutes set forth in paragraph (1) are prepared in the form of electronic or magnetic records, a request to inspect or copy anything recorded in those electronic or magnetic records in accordance with methods prescribed in the applicable Order of the Ministry of Justice.
- (4) If, in accordance with the provisions of paragraph (1), there is deemed to have been a resolution of the general assembly on all the matters related to the purpose of the annual general assembly meeting, the annual general assembly meeting is deemed to have concluded at that time.

(Omission of Reports to the General Assembly)

Article 59 If a director provides notice to all members regarding matters to be reported to the general assembly and all members have manifested their intentions, either in writing or by electronic or magnetic records, to agree that the matters need not be reported to the general assembly, the matters are deemed to have been reported to the general assembly.

**Subsection 2 Establishment of Organs Other than the General Assembly**

(Establishment of Organs Other than the General Assembly)

Article 60 (1) A general incorporated association must have one, two or more directors.

(2) General incorporated associations, by provisions in their articles of incorporation, may have a board of directors, an auditor, or a financial auditor.

(Obligation to Have an Auditor)

Article 61 General incorporated associations with a board of directors or general incorporated associations with financial auditor(s) must have an auditor.

(Obligation to Have a Financial Auditor)

Article 62 Large-scale general incorporated associations must have a financial auditor.

**Subsection 3 Appointment and Dismissal of Officers**

(Appointments)

Article 63 (1) Officers, etc. (meaning directors and auditors; the same applies hereinafter in this Subsection) and financial auditor(s) are appointed by a

resolution of the general assembly.

- (2) When the resolution set forth in the preceding paragraph is made, pursuant to the provisions of the applicable Order of the Ministry of Justice, substitute officers, etc. may be appointed to provide for a vacancy in officer positions or for cases where a shortage occurs in the number of officers, etc. prescribed by this Act or by the articles of incorporation.

(Relationship between the General Incorporated Association and Its Officers)

Article 64 The relationship between a general incorporated association and its officers, etc. or financial auditor(s) are governed by the provisions on mandate.

(The Qualifications of Officers)

Article 65 (1) The following persons cannot be officers, etc.:

- (i) a corporation;
  - (ii) an adult ward, a person under conservatorship, or a person with a similar status under foreign laws and regulations;
  - (iii) a person who has been sentenced for having violated the provisions of this Act or the Companies Act (Act No. 86 of 2005); or for having committed a crime under the Civil Rehabilitation Act (Act No. 225 of 1999), Article 255, Article 256, Articles 258 through 260, or Article 262; a crime under the Act on Recognition and Assistance for Foreign Insolvency Procedures (Act No. 129 of 2000) Article 65, Article 66, Article 68, or Article 69; a crime under the Corporate Rehabilitation Act (Act No. 154 of 2002) Article 266, Article 267, Articles 269 through 271, or Article 273; or a crime under the Bankruptcy Act (Act No. 75 of 2004) Article 265, Article 266, Articles 268 through 272, or Article 274; and for whom two years have not passed since the day on which the execution of the sentence was completed or that person ceased to be subject to its execution;
  - (iv) a person who has violated the provisions of laws and regulations other than the Acts referred to in the preceding item, has been sentenced to imprisonment without work or a more severe penalty, and who is serving a sentence until its completion or until ceasing to be subject to its execution (excluding persons who have received a suspended execution of sentence).
- (2) An auditor may not serve concurrently as a director and an employee of a general incorporated association or its subsidiary.
- (3) In a general incorporated association with a board of directors, at least three directors must be designated.

(Tenure of Directors)

Article 66 The tenure of a director is to be until the end of the final annual general assembly meeting in a business year that ends within two years after

that director's appointment; provided, however, that it does not preclude a reduction in the length of tenure by means of the articles of incorporation or through a resolution at a general assembly meeting.

(Tenure of Auditors)

Article 67 (1) The tenure of an auditor is until the end of the final annual general assembly meeting in a business year that ends within four years after their appointment; provided, however, that it does not preclude a reduction in the length of tenure by means of the articles of incorporation, limited to the end of the final annual general assembly meeting in a business year that ends within two years after that auditor's appointment.

(2) The provisions of the preceding paragraph do not preclude the establishment, by means of the articles of incorporation, of the length of the tenure of an auditor who is appointed as a substitute for an auditor who was terminated before the expiration of that auditor's tenure, as being until the time as the expiration of the auditor who was terminated.

(3) Notwithstanding the provisions set forth in the preceding two paragraphs, if the provisions of the articles of incorporation that provide for an auditor have been amended, the auditor's tenure expires when the amendment to the articles of incorporation takes effect.

(Qualifications of Financial Auditors)

Article 68 (1) A financial auditor must be a certified public accountant (including foreign certified public accountants prescribed in Article 16-2, paragraph (5) of the Act on Certified Public Accountants (Act 103 of 1948); the same applies hereinafter) or an auditing firm.

(2) The auditing firm appointed as the financial auditor must select an individual who will perform financial auditor duties and notify the general incorporated association of the selection. In those cases, none of the persons listed in item (ii) of the following paragraph may be selected.

(3) No person listed below may serve as a financial auditor:

(i) persons who may not audit any of the financial statements prescribed in Article 123, paragraph (2), pursuant to the provisions of the Act on Certified Public Accountants;

(ii) a person, or their spouse, who receives remuneration on an ongoing basis for conducting business other than that of a certified public accountant or an auditing firm, from a subsidiary of the general incorporated association or a director or auditor thereof;

(iii) an auditing firm of which more than one-half of its members fall into the category identified in the preceding item.

(Tenure of Financial Auditors)

Article 69 (1) The tenure of financial auditors is until the end of the final annual general assembly meeting in a business year that ends within one year after the financial auditor's appointment.

(2) Except when a resolution otherwise is passed at the annual general assembly meeting set forth in the preceding paragraph, the financial auditor is deemed to have been reappointed at that general assembly meeting.

(3) Notwithstanding the provisions set forth in the preceding two paragraphs, if the provisions of the articles of incorporation that provide for financial auditor(s) are amended, the financial auditor's tenure expires when the amendment to the articles of incorporation takes effect.

(Dismissal)

Article 70 (1) Officers, etc. and financial auditors may be dismissed at any time by resolution of the general assembly.

(2) A person dismissed pursuant to the provisions of the preceding paragraph, except when there are justifiable grounds with respect to the dismissal, may request payment from the general incorporated association for damages arising from the dismissal.

(Dismissal of Financial Auditors by an Auditor)

Article 71 (1) If a financial auditor comes to fall under any of the following conditions, an auditor may dismiss the financial auditor:

(i) the financial auditor has violated the obligations of that financial auditor's duties or has been negligent in the performance thereof;

(ii) the financial auditor has committed conduct unbecoming of a financial auditor;

(iii) due to a mental or physical disorder, the financial auditor is unable to perform duties or is incapable of handling their duties.

(2) if there are two or more auditors, any dismissal pursuant to the provisions of the preceding paragraph must be effected with the consensus of all auditors.

(3) If a financial auditor is dismissed pursuant to the provisions set forth in paragraph (1), the auditor (if there are two or more auditors, the auditor that they have decided on among themselves) must report on the dismissal and the grounds thereof at the first general assembly meeting called after dismissal.

(Agreement of Auditors with Respect to the Appointment of an Auditor)

Article 72 (1) If there is an auditor, when submitting a proposal regarding the appointment of an auditor, the director must obtain the agreement of that auditor (if two or more auditors exist, a majority thereof).

(2) Auditors may request that the director submit a proposal to the general

assembly stating that the purpose of a general assembly meeting is to appoint an auditor, or pertains to the appointment of an auditor.

(Determination on the Contents of Proposals with Respect to the Appointment of a Financial Auditor)

Article 73 (1) In a general incorporated association with auditor(s), the contents of proposals to be submitted to the general assembly with respect to the appointment and dismissal of a financial auditor and the decision not to reappoint a financial auditor is determined by the auditor(s).

(2) With respect to the application of the provisions of the preceding paragraph in a general incorporated association with two or more auditors, the term "by auditor(s)" is to be replaced with "by a majority of the auditors."

(Stating Opinions on the Appointment of an Auditor)

Article 74 (1) Auditors may state their opinions with respect to the appointment or the dismissal, or the resignation of an auditor at a general assembly meeting.

(2) A person who has resigned as auditor may attend the first general assembly meeting called after resignation to state the fact that person has resigned and the reasons therefor.

(3) The director must notify the person set forth in the preceding paragraph to the effect that a general assembly meeting has been called pursuant to that paragraph as well as matters listed in Article 38, paragraph (1), item (i).

(4) The provisions set forth in paragraph (1) apply mutatis mutandis to financial auditors, and the provisions of the preceding two paragraphs apply mutatis mutandis to persons who have resigned as a financial auditor or those who were dismissed as a financial auditor pursuant to the provisions of Article 71, paragraph (1), respectively. In such cases, the term "with respect to the appointment or the dismissal, or the resignation of an auditor at the general assembly meeting" in paragraph (1) is to be replaced with "with respect to the appointment, the dismissal or the refusal of reappointment, or the resignation of a financial auditor, attending a general assembly meeting"; in paragraph (2), the term "after resignation" is to be replaced with "after dismissal or resignation," and the term "the fact that person has resigned and the reasons therefor" is to be replaced with "the fact that that person has resigned and the reasons therefor or an opinion on the dismissal".

(Measures to Be Taken in the Event of a Vacancy Among the Officers)

Article 75 (1) If a vacancy arises among the officers, etc. or a shortage occurs in the number of officers, etc. prescribed in this Act or the articles of incorporation, an officer who has been terminated due to the expiration of that

officer's tenure or by resignation has the rights and obligations to serve as an officer until the time as a newly appointed officer (including persons who are to perform the duties of a temporary officer as provided in the following paragraph) assumes the role.

- (2) In cases set forth in the preceding paragraph, when the court finds necessary, it may appoint a person to perform the duties of a temporary officer, upon petition by an interested party.
- (3) The court may determine, when appointing a person to perform the duties of a temporary officer as set forth in the preceding paragraph, the amount of remuneration that the general incorporated association pays that person.
- (4) If a vacancy arises among the financial auditors or a shortage occurs in the number of financial auditors prescribed in the articles of incorporation, if a financial auditor is not appointed without delay, the auditor must appoint a person to perform the duties of a temporary financial auditor.
- (5) The provisions of Article 68 and Article 71 apply mutatis mutandis to the person appointed to perform the duties of a temporary financial auditor set forth in the preceding paragraph.

#### **Subsection 4 Directors**

(Administration of Business Operations)

Article 76 (1) Except when otherwise provided in the articles of incorporation, directors administer the business operations of the general incorporated association (except for a general incorporated association with a board of directors; the same applies hereinafter in this Article).

- (2) If there are two or more directors, except when otherwise provided in the articles of incorporation, the business operations of the general incorporated association are determined by a majority rule among the directors.
- (3) In cases set forth in the preceding paragraph, directors may not delegate decisions on the matters listed below to other directors:
  - (i) the establishment, relocation, or abolishment of a branch office;
  - (ii) the matters listed in the items in Article 38, paragraph (1);
  - (iii) the establishment of a system that ensures that the performance of the directors' performance of their duties is in compliance with laws and regulations as well as the articles of incorporation, and the establishment of a system, as prescribed in the applicable Order of the Ministry of Justice as being necessary, to ensure that all other business of the general incorporated association is conducted in the proper manner;
  - (iv) exemption from liability pursuant to Article 111, paragraph (1) based on the provisions of the articles of incorporation as prescribed in Article 114, paragraph (1).

- (4) In a large-scale general incorporated association, directors must make decisions regarding the matters listed in item (iii) of the preceding paragraph.

(Representation of a General Incorporated Association)

Article 77 (1) The director represents the general incorporated association; provided, however, that this does not apply if a representative director or other persons who represent the general incorporated association are otherwise provided for.

- (2) If there are two or more directors as set forth in the main clause of the preceding paragraph, each director represents the general incorporated association.
- (3) The general incorporated association (excluding a general incorporated association with a board of directors) may designate a representative director from among the directors either by means of the articles of incorporation, by choosing a director from among their number as provided for in the articles of incorporation, or by a resolution of the general assembly.
- (4) The representative director has the authority to perform all acts in or out of court regarding the business of the general incorporated association.
- (5) No limitation on a director's authority set forth in the preceding paragraph may be duly asserted against a third party in good faith.

(Liability to Compensate for Damages Arising from the Acts of Representatives)

Article 78 A general incorporated association is liable to provide compensation for damages caused to a third party by its representative director or other representatives in the course of performing their duties.

(Measures to Be Taken in the Event of a Vacancy Among the Representative Directors)

- Article 79 (1) If a vacancy arises among representative directors or a shortage occurs in the number of representative directors prescribed in the articles of incorporation, a representative director who has been terminated due to tenure expiration or by resignation has the rights and obligations to serve as a representative director until the time as a newly selected representative director (including persons who are to perform the duties of a temporary representative director set forth in the following paragraph) assumes the role.
- (2) In cases set forth in the preceding paragraph, when finding it necessary, the court may appoint a person to perform the duties of a temporary representative director upon petition by an interested party.
- (3) The court, when appointing a person to perform the duties of a temporary representative director as set forth in the preceding paragraph, may determine

the amount of remuneration that the general incorporated association pays that person.

(Authority of a Person Acting on Behalf of a Director)

Article 80 (1) A person who is appointed to act on behalf of a director or a representative director by a provisional disposition order pursuant to Article 65 of the Civil Business Preservation Act (Act No. 91 of 1989), must obtain the approval of the court when engaged in an act not belonging to the regular business of the general incorporated association, except when otherwise provided for in the provisional disposition order.

(2) Any act performed in violation of the provisions of the preceding paragraph by a person acting for a director or a representative director are null and void; provided, however, that the general incorporated association may not duly assert this against a third party in good faith.

(Representation of a Corporation in an Action between the General Incorporated Association and a Director)

Article 81 Notwithstanding the provisions of Article 77, paragraph (4), if a general incorporated association brings an action against a director (or a person who was a director; the same applies hereinafter in this Article), or a director brings an action against the general incorporated association, the general assembly may designate a person to represent the general incorporated association with respect to that action.

(Apparent Representative Director)

Article 82 If a general incorporated association has given a director other than the representative director a title that is perceived as conferring the authority to represent the president, or otherwise represent the general incorporated association, that general incorporated association is liable for any action performed by that director with respect to a third party without knowledge.

(Duty of Loyalty)

Article 83 Directors must comply with the laws and regulations, the articles of incorporation, and the resolutions of general meetings of members, and loyally perform their duties for the benefit of the general incorporated association.

(Restrictions on Competition and Conflict-of-Interest Business Transactions)

Article 84 (1) In the following cases, a director must disclose any important facts with respect to business transactions at the general assembly meeting, and receive the approval of that general meeting:

(i) if a director considers engaging in a business transaction for themselves or

for a third party that is categorized as being the business of the general incorporated association;

(ii) if a director considers engaging in a business transaction with the general incorporated association for themselves or for a third party;

(iii) if the general incorporated association intends to guarantee debts of a director or otherwise to carry out transactions with a person other than the director that results in a conflict of interest between the general incorporated association and the director.

(2) The provisions of the Civil Code (Act No. 89 of 1896), Article 108 do not apply to business transactions prescribed in item (ii) of the preceding paragraph that have received approval pursuant to the provisions set forth in that paragraph.

#### (Director's Obligation to Report)

Article 85 On discovering facts that could potentially cause significant damage to the general incorporated association, the director must immediately report on those facts to the members (an auditor in a general incorporated association with auditor(s)).

#### (Appointment of an Inspector Regarding the Administration of Business Operations)

Article 86 (1) With respect to the administration of general incorporated association's business operations, if there are grounds that raise serious suspicions of improper acts or violations of laws and regulations or the articles of incorporation, members who have at least one-tenth (if a lower ratio is prescribed in the articles of incorporation, that ratio) of the voting rights of all members may petition the court to appoint an inspector in order to investigate the business and the state of assets of the general incorporated association.

(2) When receiving the petition set forth in the preceding paragraph, the court, unless dismissing the petition as being unlawful, must appoint an inspector.

(3) When appointment an inspector as set forth in the preceding paragraph, the court may determine the amount of compensation to be paid to that inspector by the general incorporated association.

(4) The inspector set forth in paragraph (2) may, when it is considered necessary for performing duties, investigate the business and the state of assets of the subsidiary of the general incorporated association.

(5) The inspector set forth in paragraph (2) must conduct the required investigation, and report thereon by providing documents or electronic or magnetic records containing or recording the results of the investigation (limited to those prescribed in the applicable Order of the Ministry of Justice) to the court.

(6) With respect to the report set forth in the preceding paragraph, if it becomes

necessary to make the contents of that report clear or to verify the grounds thereof, the court may require further reports, as set forth in the preceding paragraph, by the inspector set forth in paragraph (2).

- (7) When submitting a report pursuant to paragraph (5), the inspector set forth in paragraph (2) must provide a copy of the documents set forth in paragraph (5) or matters recorded in the electronic or magnetic records set forth in the same paragraph by the means prescribed in the applicable Order of the Ministry of Justice to the general incorporated association and to members who petitioned for the appointment of the inspector.

(Court Decision to Call a General Assembly)

Article 87 (1) When receiving the report set forth in the preceding Article, paragraph (5), and when finding it necessary, the court must order the directors to comply with all or part of the following measures:

- (i) to call a general assembly meeting within a fixed period;
- (ii) to notify members of the results of the investigation set forth in the preceding Article, paragraph (5).

- (2) If the court orders the measures listed in the preceding paragraph, item (i), the directors must disclose the contents of the report set forth in the preceding Article, paragraph (5), at the general assembly meeting set forth in the preceding paragraph, item (i).

- (3) When prescribed in the preceding paragraph, the directors (in a general incorporated association with auditor(s), the directors and the auditor(s)) must investigate the contents of the report in the preceding Article, paragraph (5), and report the results thereof at the general assembly meeting set forth in paragraph (1), item (i).

(Enjoinder of a Director's Actions by Members)

Article 88 (1) If a director engages in an action outside of the scope of purpose of the general incorporated association or engages in an action that violates laws and regulations or the articles of incorporation, or where that director is likely to engage in those actions, and those actions are likely to cause substantial damage to the general incorporated association, members may request that the director refrain from carrying out those actions.

- (2) With respect to the application of the provisions of the preceding paragraph in a general incorporated association with auditor(s), the term "substantial damage" is to be replaced with "irreparable damage".

(Remuneration for Directors)

Article 89 Remuneration, etc. for directors (meaning compensation, bonuses, and other financial profits that directors receive from the general incorporated

association as consideration for the performance of duties; the same applies hereinafter), if the amount thereof is not prescribed in the articles of incorporation, are determined by resolution at a general assembly meeting.

### **Subsection 5 Board of Directors**

(Authority of the Board of Directors)

Article 90 (1) The board of directors is to be composed of all directors.

(2) The board of directors performs the following duties:

- (i) deciding the execution of the operation of the general incorporated association with a board of directors;
- (ii) supervising the execution of duties by directors;
- (iii) selecting and removing of the representative director.

(3) The board of directors must select a representative director from among the directors.

(4) The board of directors may not delegate the following matters or other decisions on the execution of the important operations:

- (i) the appropriation and acceptance of important assets;
- (ii) borrowings of a significant amount;
- (iii) the appointment and dismissal of important employees;
- (iv) the establishment, modification, and discontinuation of branch offices and other important organizations;
- (v) the establishment of a system that ensures that the directors' performance of their duties is in compliance with the laws and regulations as well as the articles of incorporation, and the establishment of a system, as prescribed in the applicable Order of the Ministry of Justice as being necessary to ensure that all other business of the general incorporated association is conducted in the proper manner;
- (vi) the exemption of the responsibilities set forth in Article 111, paragraph (1) based on the provisions of the articles of incorporation pursuant to the provisions of Article 114, paragraph (1).

(5) In a general incorporated association with a board of directors which is a large-scale general incorporated association, the board of directors must make decisions on the matters listed in the preceding paragraph, item (v).

(Authority of a Director in a General Incorporated Association with a Board of Directors)

Article 91 (1) The following directors execute the operations of a general incorporated association with a board of directors:

- (i) representative director;
- (ii) directors, other than the representative director, who are selected by

resolutions of the board of directors to execute the operations of the general incorporated association with a board of directors.

- (2) A minimum of once every three months, the directors listed in the items in the preceding paragraph must report to the board of directors on the status of performance of their own duties; provided, however, that this does not apply if the articles of incorporation provide that the reports must be made at an interval of at least two times every four months during the business year.

(Restrictions on Competition and on Business Transactions with a General Incorporated Association with a Board of Directors)

Article 92 (1) With respect to the application of the provisions of Article 84, in a general incorporated association with a board of directors, the term "general assembly" in the same Article, paragraph (1) is to be replaced with the term "board of directors".

- (2) In a general incorporated association with a board of directors, a director who has engaged in business transactions identified in the items set forth in Article 84, paragraph (1) must report to the board of directors, without delay, any important facts regarding the business after those transactions.

(Convener)

Article 93 (1) Board of directors meetings are called by the directors provided, however, that if the articles of incorporation or the board of directors prescribe a given director to be the one who calls board of directors meetings, that director calls meetings.

- (2) If those provisions are made pursuant to the proviso set forth in the preceding paragraph, directors other than the director designated pursuant to the proviso set forth in the same paragraph (hereinafter referred to as the "convener" in this paragraph and Article 101, paragraph (2)) may indicate matters subject of a board of directors meeting and request the convocation of the board of directors.
- (3) If within five days from the request prescribed in the preceding paragraph, no notice to convene for a board of directors meeting was issued stating a date within two weeks from the date of the request as the date of the board of directors meeting, the director who made the request may call a board of directors meeting.

(Procedures for Convocation of Board of Directors Meetings)

Article 94 (1) The director who calls a board of directors meeting must issue notice thereof to each director and auditor at least one week (if a shorter time period is prescribed in the articles of incorporation, that time period) prior to the planned date of that board of directors meeting.

(2) Notwithstanding the provisions of the preceding paragraph, a board of directors meeting may be called without due convocation procedures, provided that there is a consensus among all directors and auditors.

(Resolutions at Board of Directors Meetings)

Article 95 (1) Resolutions at board of directors meetings are to be adopted made by majority vote (if a larger ratio is provided in the articles of incorporation, that ratio) with the presence of a majority (if a higher ratio is provided in the articles of incorporation, that ratio) of directors who are qualified to participate in resolutions.

(2) With respect to the resolutions set forth in the preceding paragraph, directors who have a vested interest in a resolution may not vote thereon.

(3) With respect to agenda of board of directors meetings, the minutes must be prepared pursuant to the provisions of the applicable Order of the Ministry of Justice. If minutes are prepared in the form of a written document, the attending directors (if the articles of incorporation provide that the director who must sign or affix a seal to the minutes is designated as the representative director who has attended the board of directors meeting, that representative director) and auditor must sign them or affix their names and seals thereto.

(4) If the minutes set forth in the preceding paragraph are prepared in the form of an electronic or magnetic record, with respect to the matters that are recorded in that electronic or magnetic records, measures must be taken to provide alternative means for affixing signatures or names and seals in accordance with means prescribed in the applicable Order of the Ministry of Justice.

(5) Directors who have participated in a resolution at a board of directors meeting and who are not recorded as having raised objections in the minutes set forth in paragraph (3) are assumed to have voted in favor of the resolution.

(Omission of Resolutions at Board of Directors Meetings)

Article 96 Regarding general incorporated associations with a board of directors, if a director has made a proposal on a matter that is the subject of a resolution at a board of directors meeting, and all directors (limited to directors who are qualified to vote on the matter) have provided a manifestation of intent of agreement either in writing or in electronic or magnetic records (except when an auditor has stated an objection to the proposal), that general incorporated association with a board of directors may provide in its articles of incorporation that voting passing the proposal is presumed.

(Minutes)

Article 97 (1) A general incorporated association with a board of directors must keep at its principal office either the minutes set forth in Article 95, paragraph

- (3) or the manifestations of intent set forth in the preceding Article, whether recorded in written form or in electronic or magnetic records (hereinafter referred to as "minutes, etc." in this Article) , for ten years after the date of that board of directors meeting (including the date when a vote by that board of directors meeting is presumed pursuant to the provisions of the preceding Article).
- (2) Members, if necessary to exercise their rights may, upon obtaining the approval of the court, make the following requests:
- (i) if the minutes, etc. set forth in the preceding paragraph are prepared in written form, a request to inspect or copy the documents;
  - (ii) if the minutes, etc. set forth in the preceding paragraph are prepared in electronic or magnetic records, a request to inspect or copy a display of anything recorded in those electronic or magnetic records in accordance with methods prescribed in the applicable Order of the Ministry of Justice.
- (3) When it is necessary for pursuing the liability of a director or auditor, a creditor may, with the court's approval, make the requests listed in the items in the preceding paragraph concerning minutes, etc.
- (4) The court, when it finds that the performance of inspection or copying pursuant to the requests set forth in the preceding two paragraphs could potentially cause significant damage to the general incorporated association with a board of directors, may not grant the approval set forth in the preceding two paragraphs.

(Omission of Reports to the Board of Directors)

- Article 98 (1) If a director, an auditor, or a financial auditor has provided notification to all directors and auditors of the matters to be reported to the board of directors, that director does not need to report on the matters to the board of directors.
- (2) The provisions of the preceding paragraph do not apply to reports that are made pursuant to the provisions of Article 91, paragraph (2).

**Subsection 6 Auditors**

(Authority of Auditors)

- Article 99 (1) Auditors audit directors' performance of their duties. When an auditor does so, that auditor must prepare an audit report as prescribed by the applicable Order of the Ministry of Justice.
- (2) Auditors may request reports on business from directors and employees, or investigate the state of business and assets of the general incorporated association with auditor(s) at any time.
- (3) Auditors, when it is considered necessary for the performance of their duties,

may request reports on business from a subsidiary of the general incorporated association with auditor(s), or investigate the state of business and assets of that subsidiary.

- (4) The subsidiary set forth in the preceding paragraph may refuse the report or investigation set forth in that paragraph when there are justifiable grounds for refusing it.

(Obligation to Provide Reports to Directors)

Article 100 If an auditor finds that a director is engaged in an illegal act or may potentially engage in such an act, or if the auditor finds facts that indicate a violation of the laws and regulations or the articles of incorporation, or there are facts indicating that the director is engaged in a significantly improper act, the auditor must provide a report on those matters to the directors (in a general incorporated association with a board of directors, the board of directors) without delay.

(Obligation to Attend Board of Directors Meetings)

- Article 101 (1) Auditors must attend board of directors meetings and provide their opinions when it is considered necessary to do so.
- (2) In cases set forth in the preceding Article, when it is considered necessary, an auditor may request a director (in the case prescribed in the proviso set forth in Article 93, paragraph (1), the convener) to call a board of directors meeting.
- (3) If within five days from the request prescribed in the preceding paragraph, no notice to convene for a board of directors meeting was issued stating a date within two weeks from the date of the request as the date for the board of directors meeting, the auditor who made the request may call a board of directors meeting.

(Obligation to Provide a Report to the General Assembly)

Article 102 An auditor must investigate proposals, documents, and other items prescribed in the applicable Order of the Ministry of Justice that a director intends to submit to the general assembly. In such a case, if the auditor finds matters that are in violation of laws and regulations or the articles of incorporation, or are significantly improper, the auditor must provide a report on the results of the investigation to the general assembly.

(Enjoinder of a Director's Actions by an Auditor)

Article 103 (1) If a director engages in an action outside of the scope of purpose of the general incorporated association with auditor(s), or engages in an act that violates laws and regulations or the articles of incorporation, or where a director can potentially engage in those acts, and those acts can cause

substantial damage to the general incorporated association with auditors, the auditor may request the director to refrain from conducting those acts.

- (2) In cases referred to in the preceding paragraph, if the court orders that with respect to the director set forth in that paragraph, the acts be restrained by means of a provisional disposition, security is not allowed to be provided.

(Representation of Corporations in Lawsuits between a General Incorporated Association with Auditor(s) and Its Directors)

Article 104 (1) Notwithstanding the provisions set forth in Article 77, paragraph (4) and Article 81, if a general incorporated association with auditor(s) brings a lawsuit against a director (including a person who was a director; the same applies hereinafter in this Article) or a director brings a lawsuit against a general incorporated association with auditor(s), the auditor represents the general incorporated association with auditor(s) with respect to the action.

- (2) Notwithstanding the provisions of Article 77, paragraph (4), in the following cases, an auditor represents a general incorporated association with auditor(s):
- (i) the general incorporated association with auditor(s) is subject to a request to file an action (limited to a request to file an action for the questioning of the liability of a director), as set forth in Article 287, paragraph (1);
  - (ii) the general incorporated association with auditor(s) is subject to a third-party notice (limited to actions for the questioning of the liability of a director), as set forth in Article 280, paragraph (3) and notice and request (limited to out of court settlements in an action regarding an action for the questioning of the liability of a director), as prescribed in Article 281, paragraph (2).

(Remuneration for Auditors)

Article 105 (1) The remuneration, etc. for auditors, if the amount thereof is not prescribed in the articles of incorporation, is determined by a resolution of the general assembly.

- (2) If there are two or more auditors, and if there is no prescription in the articles of incorporation or a resolution at the general assembly meeting with respect to remuneration, etc. for auditors, that remuneration, within the range of remuneration, etc. as prescribed in the preceding paragraph, is determined by agreement among the auditors.
- (3) Auditors may state their opinions regarding their remuneration, etc. at a general assembly meeting.

(Claims for Payment for Expenses)

Article 106 If an auditor, with respect to the performance of duties, makes any of the following claims on a general incorporated association with auditor(s), the

general incorporated association with auditor(s) may not refuse the claim, except if the expenses or obligations in relation to the claim are proved to be unnecessary for the performance of duties of the auditor:

- (i) claim for advanced payment for expenses;
- (ii) claim for reimbursement of expenses or accrued interest after the date of expenditure;
- (iii) claim for payment to a creditor on a debt that the auditor incurred (if that debt is not within a payment due period, provision of reasonable security).

### **Subsection 7 Financial Auditors**

(Authority of Financial Auditors)

Article 107 (1) Financial auditors, as prescribed in the following Section, audit the financial statements (meaning the financial statement prescribed in Article 123, paragraph (2); the same applies in Article 117, paragraph (2), item (i), (a) and their annexed detailed statements of the general incorporated association. In such cases, financial auditors must prepare accounting auditing reports as prescribed in the applicable Order of the Ministry of Justice.

- (2) Financial auditors may at any time inspect and copy the materials listed below, or request accounting reports from directors and employees:
  - (i) if accounting books or related materials are prepared in the form of a document, that document;
  - (ii) if accounting books or related materials are prepared in the form of an electronic or magnetic record, anything recorded in that electronic or magnetic record and displayed by the means prescribed in the applicable Order of the Ministry of Justice.
- (3) When it is necessary for the performance of duties, a financial auditor may seek reports on accounting from subsidiaries of the general incorporated association with financial auditor(s), or investigate the state of business and assets of the general incorporated association with financial auditor(s) or its subsidiary.
- (4) The subsidiary in the preceding paragraph may refuse the report or investigation of the same paragraph if justifiable grounds for that refusal exist.
- (5) In performing duties, financial auditors may not make use of any person who comes under any one of the following categories:
  - (i) a person listed in Article 68, paragraph (3), item (i) or item (ii);
  - (ii) a person who is a director, an auditor, or an employee of a general incorporated association with financial auditor(s) or its subsidiary;
  - (iii) a person who is receiving continual remuneration from business other than that received as a certified public accountant or an auditing firm from a general incorporated association with financial auditor(s) or a subsidiary

thereof.

(Providing Reports to Auditors)

Article 108 (1) In performing duties, if a financial auditor discovers that a director is engaged in an illegal act or discovers facts that indicate a violation of the laws and regulations or the articles of incorporation, that financial auditor must report on the findings to the auditor without delay.

(2) Auditors, when it is necessary for the performance of duties, may request reports on auditing from the financial auditor.

(Statements of Opinion by Financial Auditors at Annual Meetings of the General Assembly)

Article 109 (1) If a financial auditor and auditor have different opinions on whether the documents prescribed in Article 107, paragraph (1) are in compliance with laws and regulations or the articles of incorporation, the financial auditor (if the financial auditor is an auditing firm, a member of the firm who performs these duties; the same applies in the following paragraph) may attend the annual general assembly meeting and provide their opinion.

(2) If a resolution is passed at the annual general assembly meeting requesting a financial auditor's attendance, that financial auditor must attend the annual general assembly meeting and provide their opinion.

(Auditor's Involvement in the Determination of Remuneration for Financial Auditors)

Article 110 When determining the remuneration, etc. for a financial auditor or a person who is to perform the duties of a temporary financial auditor, the director must obtain the agreement of the auditor (if there are two or more auditors, a majority of the same).

**Subsection 8 Liability of Officers for Compensation for Damages**

(Liability of Officers for Compensation for Damages with Respect to the General Incorporated Association)

Article 111 (1) If a director, an auditor, or a financial auditor (hereinafter referred to as "officers, etc." in this Subsection and Article 301, paragraph (2), item (xi)) neglects their duties, they are liable to the general incorporated association for damages arising as a result thereof.

(2) If a director engages in a business transaction listed in Article 84, paragraph (1), item (i) in violation of the provisions of that Article, paragraph (1), the amount of profit gained by the director or a third party is assumed to be the amount of damage set forth in the preceding paragraph.

(3) If damage is caused to the general incorporated association through a business transaction as provided in Article 84, paragraph (1), item (ii) or (iii), the directors listed below is assumed to have been negligent in the performance of their duties:

- (i) the director set forth in Article 84, paragraph (1);
- (ii) the director who made the decision that the general incorporated association should engage in that business transaction;
- (iii) directors who voted in favor of the resolution of the board of directors with respect to that business transaction.

(Exemption from Liability for Compensation for Damages with Respect to a General Incorporated Association)

Article 112 The liability set forth in the preceding Article, paragraph (1), may not be forgiven without the consent of all members.

(Partial Exemption from Liability)

Article 113 (1) Notwithstanding the provisions of the preceding Article, the liability of officers, etc. set forth in Article 111, paragraph (1) may be forgiven through a resolution of the general assembly, with a maximum limitation determined by deducting the amount listed in item (ii) (referred to as the "minimum amount of liability" in Article 155, paragraph (1)) from the amount listed in item (i), provided, however, that officers, etc. performed their duties in good faith and without gross negligence:

- (i) amount of liability for damages;
- (ii) the amount that the officer, etc., during their employment, received from the general incorporated association as consideration for the performance of duties, or the amount equivalent to the amount corresponding to assets benefit per year, assessed by the means prescribed in the applicable Order of the Ministry of Justice, multiplied by a number provided in (a) through (c) according to the classification of the officer listed in (a) through (c) below:
  - (a) representative director: 6
  - (b) a director other than a representative director, who falls under any of the following: 4
    - 1. a director selected by a resolution of the board of directors as a director who administers the business operations of the general incorporated association;
    - 2. a director who has executed the operations of the general incorporated association (excluding the director set forth in 1.); or
    - 3. an employee of the general incorporated association;
  - (c) director (excluding those listed in (a) and (b)), auditor, or financial auditor: 2

- (2) In cases set forth in the preceding paragraph, the directors must disclose the matters listed below at the general assembly meeting set forth in the preceding paragraph:
- (i) the matter that caused the liability and the amount of liability for compensation;
  - (ii) any limitation on the amount that can be forgiven pursuant to the provisions of the preceding paragraph, and the basis for the calculation of same;
  - (iii) the reasons for the exemption from liability and the amount of exemption.
- (3) In a general incorporated association with auditor(s), before a director submits a proposal regarding an exemption from liability under Article 111, paragraph (1) (limited to the director's exemption from liability) to the general assembly, that director must obtain the agreement of the auditor (if there are two or more auditors, the agreement of each auditor).
- (4) If the resolution under paragraph (1) is passed and the general incorporated association provides retirement allowances or other assets benefits prescribed in the applicable Order of the Ministry of Justice to the officer, etc. set forth in that paragraph after that resolution, such action requires the approval of the general assembly.

(Provisions in the Articles of Incorporation Regarding Exemption by Directors)

Article 114 (1) Notwithstanding the provisions of Article 112, the general incorporated association with auditor(s) (provided there are two or more directors), with respect to the liability under Article 111, paragraph (1), if there is no gross negligence in the officers, etc.'s performance of their duties and they have acted in good faith, and considering the nature of the facts that caused the liability, the circumstances under which the officers, etc. performed their duties and other circumstances, and when finding it especially necessary, may provide in the articles of incorporation that exemption can be granted with a maximum limitation equal to the amount that can be exempted pursuant to the provisions of the preceding Article, paragraph (1), based on agreement by a majority of directors (except the director who carries the relevant liability) (in a general incorporated association with a board of directors, by resolution of the board of directors).

- (2) The provisions of the preceding Article, paragraph (3) apply *mutatis mutandis* to cases where, pursuant to the provisions under the preceding paragraph, a proposal to establish provisions (limited to provisions that provide that the liability of directors can be exempted) by amending the articles of incorporation, is to be submitted to the general assembly, to cases where agreement by directors is to be obtained regarding the exemption from liability (limited to the directors' exemption from liability) based on provisions in the articles of

incorporation pursuant to the provisions of the same paragraph, and to cases where a proposal regarding the exemption of that liability is to be submitted to the board of directors.

- (3) When agreeing (in a general incorporated association with a board of directors, when the board of directors resolves) to the officers, etc.' exemption from liability based on provisions in the articles of incorporation pursuant to the provisions of paragraph (1), directors must without delay notify members that any objection to the matters listed in the preceding Article, paragraph (2), each item and to the exemption from liability, are to be stated within a fixed period; provided, however, that the period must not be less than one month.
- (4) If members with at least one-tenth of the voting rights (if a lower ratio is provided in the articles of incorporation, that ratio) of all the members (exclusive of the officers, etc. who carry the liability under the preceding paragraph) state objections pursuant to the preceding paragraph within the period specified in that paragraph, the general incorporated association must not grant an exemption based on the provisions of the articles of incorporation pursuant to the provisions of paragraph (1).
- (5) The provisions of the preceding Article, paragraph (4), apply mutatis mutandis to cases where the liability is exempted from pursuant to the provisions of paragraph (1).

(Limited Liability Contracts)

Article 115 (1) Notwithstanding the provisions set forth in Article 112, with respect to the liability under Article 111, paragraph (1) of a director (limited to a person who is neither an executive director (meaning a representative director or a director other than a representative director selected by a resolution of the board of directors as a director who administers the business operations of the general incorporated association, or any other director who has executed the operations of the general incorporated association; the same applies in the following paragraph and Article 141, paragraph (3)) nor an employee of the general incorporated association), an auditor or a financial auditor (hereinafter referred to as "non-executive director, etc." in this Article and Article 301, paragraph (2), item (xii)) of a general incorporated association, the general incorporated association may provide in the articles of incorporation that it can enter into a contract with a non-executive director, etc. stipulating a limitation that the liability will not exceed the amount that the general incorporated association established in advance within the range of amounts provided in the articles of incorporation, or the minimum liability amount, whichever is higher, if the non-executive director, etc. has performed their duties in good faith and in absence of gross negligence.

- (2) If a non-executive director, etc. who entered into a contract under the

preceding paragraph assumes the role of executive director or employee of the general incorporated association, that contract loses its effect from that time onwards.

- (3) The provisions of Article 113, paragraph (3) apply mutatis mutandis to cases where a proposal for the establishment of provisions (limited to provisions that permit entering into a contract with the director prescribed in paragraph (1)) pursuant to the provisions of paragraph (1) through an amendment to the articles of incorporation is submitted to the general assembly.
- (4) If a general incorporated association that entered into a contract set forth in paragraph (1) learns that the non-executive director, etc. who was the other party to the contract was negligent in performing their duties and as a result it suffered damages, the general incorporated association must disclose the matters listed below at the first general assembly meeting that is called subsequently:
  - (i) matters listed in Article 113, paragraph (2), item (i) and item (ii);
  - (ii) the terms of the contract and the reasons for which the contract was entered into;
  - (iii) of the damages set forth in Article 111, paragraph (1), the amount for which the non-executive director, etc. is not liable for compensation.
- (5) The provisions of Article 113, paragraph (4) apply mutatis mutandis to cases where the non-executive director, etc. is not held liable for compensation for damages regarding the part of the damages that exceeds the limitations prescribed in the same paragraph according to the contract set forth in paragraph (1).

(Special Provisions on Business Transactions Conducted by a Director for Themselves)

- Article 116 (1) The director who conducted the business transaction set forth in Article 84, paragraph (1), item (ii) (limited to transactions conducted for themselves) cannot be exempted from the liability under Article 84, paragraph (1), item (ii) on the grounds that they were not at fault for negligence in the performance of their duties.
- (2) The provisions of the preceding three Articles do not apply to the liability set forth in the preceding paragraph.

(Officer Liability for Compensation for Damages to a Third Party)

- Article 117 (1) If officers, etc. have acted in bad faith or with gross negligence in the performance of their duties, those officers, etc. are liable to compensate third parties for damages resulting therefrom.
- (2) The provisions of the preceding paragraph also apply if any of the persons listed in the items below commit the acts identified in those items; provided,

however, that this does not apply if that person proves that they did not fail to exercise due care when performing that act:

- (i) director: any of the acts listed below:
  - (a) making of a false entry or recording with respect to critical matters to be entered or recorded in financial statements or annexed detailed statements thereof;
  - (b) giving a false notification on critical matters to be notified when recruiting persons who contribute funds (meaning the funding provided in Article 131) or false statements or records with respect to materials used for explanations regarding the business of that general incorporated association and other matters for the purpose of that recruitment;
  - (c) making a false registration;
  - (d) giving a false public notice (including the measures provided in Article 128, paragraph (3));
- (ii) auditor: making a false entry or recording with respect to critical matters to be entered or recorded in an auditing report;
- (iii) financial auditor: making a false entry or recording with respect to critical matters to be entered or recorded in an accounting auditing report.

(Joint and Several Liability of Officers)

Article 118 If officers, etc. assume liability for compensation for damages caused to a general incorporated association or a third party, and other officers, etc. are also held liable for compensating for the damages, these persons are to be joint and several obligors.

## **Section 4 Calculations**

### **Subsection 1 Principles of Accounting**

Article 119 The accounting for general incorporated associations is to be subject to the accounting practices that are generally accepted as fair and appropriated, in accordance with the type of business in which they are engaged.

### **Subsection 2 Accounting Books**

(Preparation and Retention of Accounting Books)

- Article 120 (1) The general incorporated association must prepare accurate accounting books, as appropriate, in accordance with the provisions of the applicable Order of the Ministry of Justice.
- (2) The general incorporated association must retain accounting books and important materials regarding its business for ten years from the time the

accounting books are closed.

(Requests to Inspect Accounting Books)

Article 121 (1) Members who have at least one-tenth (if a lower ratio is prescribed in the articles of incorporation, that ratio) of the voting rights of all members may make the following requests during the business hours of the general incorporated association; in such a case, the members must clearly state the reasons for making the request:

- (i) if accounting books or materials regarding them are prepared in the form of documents, a request to inspect or copy the documents;
  - (ii) if accounting books or materials regarding them are prepared in electronic or magnetic record, a request to inspect or copy the display of anything recorded in that electronic or magnetic record, in accordance with methods prescribed in the applicable Order of the Ministry of Justice.
- (2) When a request is made pursuant to the preceding paragraph, the general incorporated association may not decline the request unless one of the following conditions applies:
- (i) the member making the request (hereinafter referred to as the "requestor" in this paragraph) is making that request for purposes other than conducting an investigation related to the procurement or exercise of their rights;
  - (ii) the requestor is making that request for a purpose that impairs the execution of the operations of the general incorporated association, or for a purpose that prejudices the common interest of members;
  - (iii) the requestor operates or is engaged by a business that is materially in a competing relationship with the operations of the general incorporated association;
  - (iv) the requestor is making that request in order to inform a third party, for a profit, of the facts acquired through the inspection or copying of the accounting books or related materials;
  - (v) during the past two years, the requestor has made a request in order to inform a third party, for a profit, of the facts acquired through the inspection or copying of the accounting books or related materials.

(Orders to Submit Accounting Books)

Article 122 The court, either in response to an application or by virtue of the court's own authority, may order the submission of accounting books, either wholly or in part.

**Subsection 3 Financial Statements**

(Preparation and Retention of Financial Statements)

Article 123 (1) General incorporated associations must prepare a balance sheet as of the date of its formation, in accordance with the provisions of the applicable Order of the Ministry of Justice.

(2) General incorporated associations must prepare financial statements (meaning balance sheets and profit and loss statements; the same applies hereinafter in this Subsection), as well as business reports and annexed detailed statements thereof, in accordance with the provisions of the applicable Order of the Ministry of Justice.

(3) Financial statements and business reports as well as annexed detailed statements thereof may be prepared in the form of an electronic or magnetic record.

(4) General incorporated associations must retain the financial statements and annexed detailed statements for ten years from the time that financial statements are prepared.

#### (Auditing of Financial Statements)

Article 124 (1) General incorporated associations with auditors must receive auditing by an auditor on its financial statements, business reports, and annexed detailed statements thereof pursuant to the preceding Article, paragraph (2), in accordance with the provisions of the applicable Order of the Ministry of Justice.

(2) Notwithstanding the provisions of the preceding paragraph, general incorporated associations with financial auditor(s) must receive auditing by persons listed in the following items, on matters listed in the items below in accordance with the provisions of the applicable Order of the Ministry of Justice:

(i) financial statements and annexed detailed statements thereof set forth in the preceding Article, paragraph (2): auditor and financial auditor;

(ii) business reports and annexed detailed statements thereof under the preceding Article, paragraph (2): auditor.

(3) Regarding a general incorporated association with a board of directors, the financial statements, business reports and annexed detailed statements thereof that have received auditing pursuant to paragraph (1) or the preceding paragraph require the approval of the board of directors.

#### (Provision of Financial Statements to Members)

Article 125 In general incorporated associations with a board of directors, the director, when issuing a notice to convene for the annual general assembly meeting, must provide to members the financial statements, business reports, and the auditing reports that have received the approval set forth in the preceding Article, paragraph (3) (including accounting auditing reports if the

provisions of the preceding Article, paragraph (2) are applied) as prescribed in the applicable Order of the Ministry of Justice.

(Submission of Financial Statements to Annual General Assemblies)

Article 126 (1) At general incorporated associations as listed in the following items, the director must submit or provide the financial statements and business reports prescribed in the respective items:

- (i) general incorporated association with auditor(s) (except general incorporated associations with a board of directors and general incorporated associations with financial auditors): the financial statements and business reports that received auditing pursuant to Article 124, paragraph (1);
  - (ii) general incorporated association with financial auditor(s) (except general incorporated associations with a board of directors): the financial statements and business reports that received auditing pursuant to Article 124, paragraph (2);
  - (iii) general incorporated association with a board of directors: the financial statements and business reports that received auditing pursuant to Article 124, paragraph (3);
  - (iv) general incorporated association other than those listed in the preceding 3 items: financial statements and business reports set forth in Article 123, paragraph (2).
- (2) The financial statements that are submitted or provided pursuant to the provisions of the preceding paragraph require the approval of the annual general assembly meeting.
- (3) The director must report on the contents of the business report that was submitted or provided pursuant to the provisions of paragraph (1) at the annual general assembly meeting.

(Special Provisions for General Incorporated Associations with Financial Auditors)

Article 127 With respect to general incorporated associations with financial auditors, if the financial statements that receive approval pursuant to Article 124, paragraph (3) satisfy the requirements prescribed in the applicable Order of the Ministry of Justice as correctly representing the financial assets and profit/loss condition of the general incorporated association in compliance with laws and regulations and the articles of incorporation, the provisions of the preceding Article, paragraph (2) do not apply. In such a case, the director must report on the content of the financial statements at the annual general assembly meeting.

(Publication of Balance Sheets)

- Article 128 (1) In accordance with the provisions of the applicable Order of the Ministry of Justice, the general incorporated association must publish its balance sheet without delay after the conclusion of its annual general assembly meeting (for large-scale general incorporated associations, the balance sheet and the profit and loss statement).
- (2) Notwithstanding the provisions of the preceding paragraph, for general incorporated associations whose method of publication is that listed in Article 331, paragraph (1), item (i) or item (ii), it is sufficient to publish a summary of the balance sheet prescribed in the preceding paragraph.
- (3) The general incorporated association set forth in the preceding paragraph, pursuant to the provisions of the applicable Order of the Ministry of Justice, may take measures so that, without delay after the conclusion of its annual general assembly meeting, the information which is the content of the balance sheet prescribed in paragraph (1) can be provided to large numbers of indefinite persons continuously by electronic or magnetic means for five years from the date of conclusion of its annual general assembly meeting. In such a case, the provisions of the preceding two paragraphs do not apply.

(Retainment and Inspection of Financial Statements)

- Article 129 (1) The general incorporated association must keep its financial statements, etc. (meaning financial statements, business reports and annexed detailed statements thereof regarding each business year (if the provisions of Article 124, paragraph (1) or paragraph (2) are applicable, this includes auditing reports or accounting auditing reports); the same applies hereinafter in this Article) for five years from one week before (for a general incorporated association with a board of directors, two weeks) the date of the annual general assembly meeting (in the case of Article 58, paragraph (1), the day the proposal set forth in that paragraph was made) at its principal office.
- (2) The general incorporated association must keep copies of its financial statements, etc. for three years beginning from one week before (for a general incorporated association with a board of directors, two weeks) the date of the annual general assembly meeting (in the case of Article 58, paragraph (1), the day the proposal under the same paragraph was made) at its branch office; provided, however, that this does not apply if the financial statements, etc. are prepared in electronic or magnetic record, and if measures are taken as prescribed in the applicable Order of the Ministry of Justice in order to make it possible to comply, at its branch office, with the requests listed in the following paragraph, item (iii) and item (iv).
- (3) Members and creditors may make the following requests at any time during the business hours of the general incorporated association; provided, however, that when they make a request listed in item (ii) or item (iv), they must pay

any costs prescribed by the general incorporated association:

- (i) if financial statements are prepared in the form of a document, a request to inspect that document or a copy thereof;
- (ii) a request for the delivery of a transcript or extract of the document set forth in the preceding item;
- (iii) if the financial statements, etc. are prepared in the form of electronic or magnetic records, a request to inspect anything recorded in that electronic or magnetic record in accordance with methods prescribed in the applicable Order of the Ministry of Justice;
- (iv) a request the matters recorded in the electronic or magnetic record set forth in the preceding item be provided by electronic or magnetic means prescribed by the general incorporated association, or a request for the provision of documents describing those matters.

(Orders for the Submission of Financial Statements)

Article 130 The court, either in response to an application or by virtue of the court's own authority, may order the parties to an action to submit financial statements and annexed detailed statements thereof, either wholly or in part.

## **Section 5 Funds**

### **Subsection 1 Solicitation of Persons to Contribute to Funds**

(Provisions in the Articles of Incorporation Regarding the Solicitation of Persons to Contribute to Funds)

Article 131 General incorporated associations (before the formation of a general incorporated association, members at incorporation; the same applies in the following Article through Article 134 (exclusive of Article 133, paragraph (1), item (i)), and Article 136, item (i)) may provide in their articles of incorporation that they may recruit persons to contribute to funds (meaning monetary and other forms of assets contributed to the general incorporated association pursuant to the provisions of this Subsection, which the general incorporated association assumes the obligation to return (for non-monetary assets, an obligation to return monies equivalent to the amount of the assets at the time of contribution); the same applies hereinafter), pursuant to this Act and in accordance with the provisions of an agreement between the general incorporated association and the contributor). In such cases, the matters listed below must be provided in the articles of incorporation:

- (i) provisions on the fund contributor's rights;
- (ii) procedures for returning funds.

(Determination of the Particulars of Solicitation)

Article 132 (1) When attempting to conduct solicitation pursuant to the provisions of the preceding Article, the general incorporated association must prescribe the following matters (hereinafter referred to as the "particulars of solicitation" in this Subsection) on each occasion thereof:

- (i) total amount of the fund for which solicitation is conducted;
- (ii) if non-monetary assets is the subject of contribution, information to that effect as well as a description of the assets and its value;
- (iii) payment of monies regarding the contribution to the fund or the date or duration of the delivery of the assets set forth in the preceding item.

(2) When establishing provisions regarding the particulars of solicitation, the members at incorporation must obtain the consent of all members.

(Offering Funds)

Article 133 (1) The general incorporated association must notify the persons offering to contribute funds in response to the solicitation set forth in Article 131 of the following matters:

- (i) name of the general incorporated association;
- (ii) particulars of the solicitation;
- (iii) if monies are to be paid, the place that will process the payment;
- (iv) beyond the matters listed in the preceding three items, matters prescribed in the applicable Order of the Ministry of Justice.

(2) Persons who offer to contribute funds in response to the solicitation set forth in Article 131 must deliver a document identifying the following matters to the general incorporated association:

- (i) the name and address of the person making the offer;
- (ii) the amount of funds that the person is willing to contribute.

(3) The person making the offer set forth in the preceding paragraph may provide, at the consent of the general incorporated association and as prescribed by Cabinet Order, the matters to be included in the document set forth in that paragraph, by electronic or magnetic means. In such a case, the person making the offer is deemed to have issued the document set forth in the same paragraph.

(4) When there is a change in the matters listed in the items in paragraph (1), the general incorporated association must immediately notify the person making the offer (hereinafter referred to as "offeror" in the Subsection) set forth in paragraph (2), of that change and the matters that have been changed.

(5) If the general incorporated association is to serve a notice or request to an offeror, it is sufficient to issue that a notice or request to the offeror's address identified in paragraph (2), item (i) (if that offeror has notified the general incorporated association of another place or a contact address where notices or requests are to be received, that place or contact address).

(6) The notice or request set forth in the preceding paragraph are deemed to have arrived at the time when that notice or request should normally arrive.

(Allocation of Funds)

Article 134 (1) A general incorporated association must designate a person who is to receive the allotment of funds from among offerors, and determine the amount of funds to be allotted to that person. In such cases, the general incorporated association may reduce the amount of funds to be allotted to the offeror below the amount provided in the preceding Article, paragraph (2), item (ii).

(2) The general incorporated association must notify the offerors of the amounts of funds to be allotted to the offeror by the day before the date set forth in Article 132, paragraph (1), item (iii) (if a time period for the item is prescribed, the first day of the period).

(Special Provisions on the Offering and Allotment of Funds)

Article 135 The provisions set forth in preceding two Articles do not apply if the person contributing to funds enters into a contract subscribing to the total amount of the funds.

(Contributing Funds)

Article 136 Persons identified in the following items are deemed fund contributors in the amount of funds prescribed in the respective items:

- (i) offeror: the amount of funds allotted by the general incorporated association;
- (ii) persons contributing the total amount of funds pursuant to the contract set forth in the preceding Article: the amount of funds contributed by that person.

(Contribution of Non-monetary Assets)

Article 137 (1) When prescribing the matters identified in Article 132, paragraph (1), item (ii), the general incorporated association (before the formation of the general incorporated association, members at incorporation; the same applies in paragraph (6)) must file, without delay after a decision is made on particulars of the solicitation, a petition with the court to appoint an inspector to investigate the value of the assets set forth in that item (hereinafter referred to as "non-monetary assets").

(2) If a petition has been submitted pursuant to the provisions of the preceding paragraph, the court, unless dismissing the petition as being unlawful, must appoint an inspector.

(3) When appointing an inspector as set forth in the preceding paragraph, the

court may prescribe the amount of remuneration to be paid to that inspector by the general incorporated association.

- (4) The inspector set forth in paragraph (2) must conduct the required investigation, and report to the court by submitting documents or electronic or magnetic records (limited to those prescribed in the applicable Order of the Ministry of Justice) containing or recording the results of that investigation.
- (5) With respect to the report set forth in the preceding paragraph, when the court finds it necessary to make the contents of that report clear or to verify the grounds thereof, it may require further reports set forth in the preceding paragraph of the inspector set forth in paragraph (2).
- (6) When submitting the report set forth in paragraph (4), the inspector set forth in paragraph (2) must provide to the general incorporated association a copy of that document as prescribed in the same paragraph or matters recorded in electronic or magnetic records as referred to in the same paragraph in accordance with methods prescribed in the applicable Order of the Ministry of Justice.
- (7) If it has received the report set forth in paragraph (4), and the court finds the value set forth in Article 132, paragraph (1), item (ii), relating to non-monetary assets (exclusive of assets not investigated by the inspector as provided in paragraph (2)) to be unreasonable, it must issue a decision modifying it.
- (8) If the value of non-monetary assets is modified in whole or in part by a decision pursuant to the preceding paragraph, fund contributors (limited to persons who deliver non-monetary assets; the same applies in paragraph (10), item (ii)) may retract the intention they manifested regarding the offer to contribute funds or the contract set forth in Article 135, provided that the relevant cancellation is done within one week from that decision.
- (9) In the cases listed in the following items, the provisions of the preceding paragraphs do not apply to the matters prescribed in the respective items:
  - (i) if the total value set forth in Article 132, paragraph (1), item (ii), providing for non-monetary assets, does not exceed five million yen: the value of those non-monetary assets;
  - (ii) of the non-monetary assets, if the value set forth in Article 132, paragraph (1), item (ii), providing for negotiable securities with market prices (meaning negotiable securities provided in the Financial Instrument and Exchange Act (Act No. 25 of 1948) Article 2, paragraph (1), including rights that are deemed to be negotiable securities under the provisions of paragraph (2) of the same Article; the same applies hereinafter), does not exceed that which is calculated in accordance with methods prescribed in the applicable Order of the Ministry of Justice as the market price of those negotiable securities: the value of the non-monetary assets with respect to those negotiable securities;
  - (iii) if certification by an attorney, a legal professional corporation, a certified

- public accountant, an auditing firm, a tax accountant, or a tax accounting corporation is received to the effect that the value of the non-monetary assets as prescribed in Article 132, paragraph (1), item (ii) is fair (if the non-monetary assets are real assets, that certification and an appraisal by a real assets appraiser; the same applies hereinafter in this item): the value of the non-monetary assets receiving the certification;
- (iv) if the non-monetary assets are a monetary claim to the general incorporated association (limited to a monetary claim for which payment is due) and the value prescribed in Article 132, paragraph (1), item (ii) regarding that monetary claim does not exceed the debt in relation to that monetary claim: the value of the non-monetary assets with respect to the monetary claim.
- (10) None of the following persons may provide the certification prescribed in item (iii) of the preceding paragraph:
- (i) a director, an auditor, or an employee (before the formation of the general incorporated association, a member at incorporation, a director at incorporation, or an auditor at incorporation);
  - (ii) a fund contributor;
  - (iii) a person who has received an order to suspend business and for whom the period of that business suspension has not elapsed;
  - (iv) a legal professional corporation, an auditing firm, or a tax accountant corporation in which at least one-half of members falls under the categories set forth in item (i) or item (ii).

(Fulfillment of a Commitment to Contribute Funds)

- Article 138 (1) The fund contributors (except persons who deliver non-monetary assets) must deposit the full amounts of their respective funds at a deposit processing place at the bank, etc. (meaning a bank prescribed in Article 2, paragraph (1) of the Banking Act (Act No. 59 of 1981), a trust company (meaning a trust company prescribed in Article 2, paragraph (2), of the Trust Business Act (Act No. 154 of 2004); the same applies in Article 248, paragraph (5)), or equivalent prescribed in the applicable Order of the Ministry of Justice; the same applies in Article 157, paragraph (2)) specified by the general incorporated association (before the formation of a general incorporated association, members at incorporation) by the date prescribed in Article 132, paragraph (1), item (iii) or the period set forth in that item.
- (2) The fund contributors (limited to persons who deliver non-monetary assets) must deliver non-monetary assets equivalent to the deposit amounts of their respective funds by the date set forth in Article 132, paragraph (1), item (iii) or within the period set forth in the same item; provided, however, that if the assets is to be delivered before the formation of the general incorporated

association, and there is the consent of all members at incorporation, this does not preclude the performance of acts necessary to assert the formation or relocation of registration, recording and other rights with respect to a third party after the formation of the general incorporated association.

- (3) The fund contributors may not offset their obligations to make deposits pursuant to the provisions of paragraph (1) or to perform deliveries pursuant to the provisions of the preceding paragraph (hereinafter referred to as "the fulfillment of commitments to contribution" in this Subsection) against any claim they may have with respect to the general incorporated association.
- (4) If a fund contributor fails to fulfill their commitment to contribute, the subscription to funds ceases to have effect.

(Period in which a Person Serves as a Contributor of Funds)

Article 139 (1) A fund contributor, as identified in the following items, who has fulfilled their commitment to contribute on the day prescribed in the respective item, becomes a contributor of funds:

- (i) if a date is prescribed pursuant to Article 132, paragraph (1), item (iii): that date;
  - (ii) if a period is prescribed pursuant to Article 132, paragraph (1), item (iii): the day the commitment to contribute is fulfilled.
- (2) Notwithstanding the provisions of the preceding paragraph, if solicitation is made for persons contributing funds before the formation of the general incorporated association, those persons become contributors of funds at the time the general incorporated association is formed, provided those persons have fulfilled their commitment to contribute.

(Restrictions on the Nullification or Rescission of Subscriptions)

Article 140 (1) The provisions set forth in the proviso to Civil Code Article 93 and Civil Code Article 94, paragraph (1) do not apply to manifestations of intentions to offer to contribute funds, any allocations thereof, or the contracts set forth in Article 135.

- (2) After the passage of one year from becoming a fund contributor pursuant to the provisions of the preceding Article, a contributor to funds may not claim invalidity of their subscription to funding on the grounds of an error, nor may they rescind the funding subscription on the grounds of fraud or duress.

## **Subsection 2 Returning Funds**

(Returning Funds)

Article 141 (1) Any return of funds must be carried out by a resolution passed at the annual general assembly meeting.

- (2) If the amount of net assets on the balance sheet regarding a particular business year exceeds the total amounts listed below, the general incorporated association may return funds within the limit of the period until the day immediately prior to the annual general assembly meeting regarding the business year which follows the current business year, with the amount in excess of that total being the maximum limit on the total amount of such return:
- (i) the total amount of funds (including the substitute funds set forth in Article 144, paragraph (1));
  - (ii) if assets are evaluated based on the market price pursuant to the provisions of the applicable Order of the Ministry of Justice, and the total amount of the market price exceeds the total amount of the acquired value, the amount of net assets on the balance sheet that increased due to the evaluation based on the market price.
- (3) If a general incorporated association has returned funds in violation of the provisions set forth in the preceding paragraph, persons who received that return, and the operating officer who executed that return (meaning executive directors or persons who were involved in the operations performed by the executive director in the course of duties; the same applies in the following paragraph and paragraph (5)) are jointly and severally liable to pay the amount that was illegally returned to that general incorporated association.
- (4) Notwithstanding the provisions of the preceding paragraph, the person who executed the return, if that person proves that they were not negligent in the performance of their duties, does not assume the liability prescribed in the same paragraph.
- (5) The liability of the person executing the return set forth in paragraph (3) cannot be exempted; provided, however, that this does not apply if all members agree to exempt that liability, with the maximum limitation being the amount of excess set forth in paragraph (2).
- (6) In cases where a return of funds was made in violation of the provisions set forth in paragraph (2), creditors with respect to the general incorporated association may request of the person who received the return the return to the general incorporated association of the amount of that return.

(Prohibition on the Acquisition of Claims Pursuant to Returning Funds)

Article 142 (1) Limited to the matters listed below, a general incorporated association may acquire claims pursuant to return of funds for which the association itself is a creditor:

- (i) a claim arising from a merger or the acceptance of all business of another corporation;
- (ii) in the execution of the rights of the general incorporated association, the

- claim is necessary for accomplishing that purpose;
- (iii) acquiring a claim without compensation.
- (2) When in the cases listed in item (i) or item (ii) of the preceding paragraph, the general incorporated association acquires the claim set forth in that paragraph, notwithstanding the provisions set forth in the main clause of Civil Code Article 520, the claim does not expire. In such a case, the general incorporated association must transfer the claim to another party at an appropriate time.

(Prohibition on Interest on Funds)

Article 143 No interest may accrue on a claim pursuant to the return of funds.

(Substitute Funds)

Article 144 (1) When returning a fund, an amount equivalent to the fund being returned must be added to the books.

(2) The substitute fund set forth in the preceding paragraph may not be broken into.

(3) If a general incorporated association which is to expire due to a merger has included a substitute fund in its books, the amount to be included as a substitute fund by the general incorporated association that survives the merger or the general incorporated association that is incorporated as a result of the merger is provided in the applicable Order of the Ministry of Justice.

(Special Application of the Bankruptcy Act)

Article 145 If a general incorporated association is subject to a ruling for the commencement of bankruptcy proceedings, any claims pursuant to the return of funds are subordinate to subordinate bankruptcy claims prescribed in the Bankruptcy Act, Article 99, paragraph (1) and to consensually-subordinated bankruptcy claims prescribed in the same Article, paragraph (2).

## **Section 6 Changing the Articles of Incorporation**

Article 146 The general incorporated association, after being formed, may change its articles of incorporation by resolution of the general assembly.

## **Section 7 Transferring Business**

Article 147 If the general incorporated association transfers its business in its entirety, the transfer must be in accordance with resolutions of the general assembly.

## **Section 8 Dissolution**

(Grounds for Dissolution)

Article 148 A general incorporated association dissolves on the grounds listed below:

- (i) expiration of its duration as prescribed in the articles of incorporation;
- (ii) the arising of grounds for dissolution as prescribed in the articles of incorporation;
- (iii) by a resolution at a general assembly meeting;
- (iv) a lack of the required number of members;
- (v) a merger (limited to cases where the general incorporated association disappears in the merger);
- (vi) a decision to commence bankruptcy proceedings;
- (vii) a court ruling that orders dissolution pursuant to the provisions set forth in Article 261, paragraph (1) or Article 268.

(Deemed Dissolution of a Dormant General Incorporated Association)

Article 149 (1) If the Minister of Justice has published in the Official Gazette, requesting a dormant general incorporated association (meaning a general incorporated association for which five years elapsed since the date of the most recent registration pertaining to the general incorporated association; the same applies hereinafter in this Article) to notify, within two months, the registry with jurisdiction over the locations of their principal office that their activities have not been discontinued, pursuant to the provisions of the applicable Order of the Ministry of Justice, and, if it does not file a notification, the dormant general incorporated association is deemed as dissolved upon the expiration of that two month period; provided, however, that this does not apply if the dormant general incorporated association registers itself within that period.

(2) If public notice is issued pursuant to the provisions set forth in the preceding paragraph, the registry must notify the dormant general incorporated association of that fact.

(Continuance of a General Incorporated Association)

Article 150 If a general incorporated association has dissolved on the grounds provided in Article 148, item (i) through item (iii) (including cases where that association is presumed to have dissolved pursuant to the provisions of the preceding Article, paragraph (1)), the general incorporated association may continue to exist as a general incorporated association by resolution of the general assembly until such time as the liquidation pursuant to the provisions of Chapter IV is completed (if the general incorporated association is assumed to have dissolved pursuant to the provisions of the same paragraph, limited to three years after the dissolution is presumed).

(Restrictions on Mergers of Dissolved General Incorporated Associations)

Article 151 If a general incorporated association has dissolved, the general incorporated association may not engage in a merger in which the general incorporated association becomes a general incorporated association that survives the merger.

### **Chapter III General Incorporated Foundations**

#### **Section 1 Incorporation**

##### **Subsection 1 Preparation of Articles of Incorporation**

(Preparation of Articles of Incorporation)

Article 152 (1) In the incorporation of a general incorporated foundation, the founder (if there are two or more founders, all of them) prepares articles of incorporation, which all founders must sign or affix their names and seals to.

(2) A founder, in their will, may express their intent to incorporate a general incorporated foundation by providing for the items listed in the following Article, paragraph (1), for each item provided for in Article 154. In that event, after the will has taken effect, without delay, the executor must prepare articles of incorporation that include the matters provided for in that will, and either sign them or affix their name and seal thereto.

(3) The provisions of Article 10, paragraph (2) apply mutatis mutandis to the articles of incorporation prescribed in the preceding two paragraphs.

(Matters to Be Included or Recorded in the Articles of Incorporation)

Article 153 (1) The articles of incorporation of a general incorporated foundation must contain or have recorded therein the following matters:

- (i) purpose;
- (ii) name;
- (iii) location of the principal office;
- (iv) name of the founder and their address;
- (v) the assets to be contributed by the founder (if there are two or more founders, for each founder) at the incorporation and its value;
- (vi) matters regarding the appointment of councilors at incorporation (meaning the persons who become councilors upon the incorporation of the general incorporated foundation; the same applies hereinafter), directors at incorporation (meaning the persons who become directors upon the incorporation of the general incorporated foundation; the same applies hereinafter in this paragraph and Article 319, paragraph (2)), and auditors at incorporation (meaning the persons who become auditors upon the incorporation of the general incorporated foundation; the same applies

hereinafter in this paragraph and Article 254, item (vii) and in the same paragraph);

- (vii) matters regarding the appointment of financial auditor(s) at incorporation (meaning persons who become financial auditors at the time of incorporation of a general incorporated foundation; the same applies hereinafter in this Section and in Article 319, paragraph (2), item (vi)) if the general incorporated foundation to be incorporated is a general incorporated foundation with financial auditor(s) (meaning a general incorporated foundation with financial auditor(s) or a general incorporated foundation that must provide financial auditor(s) pursuant to the provisions of this Act; the same applies hereinafter);
- (viii) method for appointing and dismissing councilors;
- (ix) method of public notice; and
- (x) business year.

(2) The total value of the assets under the preceding paragraph, item (v) may not be less than three million yen.

(3) None provisions of the articles of incorporation listed below are effective:

- (i) any provision in the articles of incorporation which provides that as a method prescribed in paragraph (1), item (viii), either a director or the board of directors appoints or dismisses councilors;
- (ii) any provision in the articles of incorporation which grants the founder the right to receive any surplus monies or residual assets.

Article 154 Beyond the matters provided for in the items in paragraph (1) of the preceding Article, the articles of incorporation of a general incorporated foundation may include or have recorded therein matters that do not take effect unless provided for in the articles of incorporation, as provided for in this Act, and any other matters that do not violate the provisions of this Act.

(Certification of the Articles of Incorporation)

Article 155 The articles of incorporation set forth in Article 152, paragraph (1) and paragraph (2) do not take effect unless they are certified by a notary.

(Retainment and Inspection of the Articles of Incorporation)

Article 156 (1) The founder (or, after the formation of a general incorporated foundation, that general incorporated foundation) must keep the articles of incorporation in a place specified by the founder (or, after the formation of the general incorporated foundation, at the principal office and a branch office).

(2) The founder (after the formation of the general incorporated foundation, its councilors and creditors) can make any of the requests listed below during the hours prescribed by the founder (after the formation of the general

incorporated foundation, during its business hours); provided, however, that when creditors make a request listed in item (ii) or (iv), the requestor must pay the expenses set by the founder (after the formation of the general incorporated foundation, that general incorporated foundation).

- (i) if the articles of incorporation are prepared in the form of a document, a request to inspect the document;
  - (ii) a request to be delivered a copy or extract of the document set forth in the preceding item;
  - (iii) if the articles of incorporation are prepared in the form of electronic or magnetic record, a request to inspect anything recorded in that electronic or magnetic record in accordance with methods prescribed by the applicable Order of the Ministry of Justice;
  - (iv) a request to be provided with the matters recorded in the electronic or magnetic records set forth in the preceding item by electronic or magnetic means, as prescribed by a founder (or, after the formation of the general incorporated foundation, by that general incorporated foundation), or a request to be delivered any document that describes those matters.
- (3) If the articles of incorporation are prepared in the form of electronic or magnetic record, with respect to general incorporated foundations that enact measures in accordance with methods prescribed by the applicable Order of the Ministry of Justice to make it possible for a branch office to comply with requests listed in items (iii) and (iv) of the preceding paragraph, regarding application of the provisions of paragraph (1), the term "principal office or a branch office" is to be "the principal office" in that paragraph.

### **Subsection 2 Contribution of Assets**

(Fulfillment of a Commitment to Contribute Assets)

- Article 157 (1) The founder (in the case of Article 152, paragraph (2), the executor; the same applies hereinafter in this Article, Article 161, paragraph (2), Articles 166 through 168, Article 200, paragraph (2), Article 319, paragraph (3), and Chapter VII), after the certification by a notary pursuant to Article 155, must pay the total amount of the monies regarding the contribution prescribed in Article 153, paragraph (1), item (v), or deliver all of the non-monetary assets regarding the contribution prescribed in the same item without delay; provided, however, that this does not preclude the performance of acts necessary to assert the establishment or relocation of registration, recording and other rights with respect to a third party after the formation of the general incorporated foundation if that is prescribed by the founder (if there are two or more founders, with the agreement of all founders).
- (2) The payment prescribed in the preceding paragraph must be made at a place

for processing payment prescribed by the founder.

(Mutatis Mutandis Application of Provisions Regarding Gifts and Testamentary Gifts)

Article 158 (1) Provided that it does not conflict with the nature of a contribution of assets by inter vivos transfer, the provisions of the Civil Code regarding testamentary gifts apply mutatis mutandis.

(2) Provided that it does not conflict with the nature of a contribution of assets by will, the provisions of the Civil Code regarding testamentary gifts apply mutatis mutandis.

**Subsection 3 Selection of Councilors at Incorporation**

Article 159 (1) If councilors at incorporation, directors at incorporation, or auditors at incorporation are not provided for in the articles of incorporation, these persons must be appointed without delay, pursuant to the articles of incorporation, after completion of deposit or delivery (hereinafter referred to as "fulfillment of the commitment to contribute assets") pursuant to the provisions of Article 157, paragraph (1).

(2) If the general incorporated foundation to be incorporated is a general incorporated foundation with financial auditor(s), and a financial auditor at incorporation is not provided for in the articles of incorporation, a financial auditor at incorporation must be appointed without delay, pursuant to the articles of incorporation after fulfillment of the commitment to contribute assets.

Article 160 (1) In regard to councilors at incorporation and directors at incorporation, there must be at least three of each of those persons.

(2) Individuals who cannot be councilors, auditors, directors, or financial auditors of a general incorporated foundation after formation pursuant to the provisions of Article 65, paragraph (1) as applied mutatis mutandis to Article 173, paragraph (1); or pursuant to the provisions of Article 65, paragraph (1) or Article 68, paragraph (1) or paragraph (3) as applied mutatis mutandis to Article 177 cannot be councilors at incorporation, directors at incorporation, auditors at incorporation or financial auditors at incorporation, respectively.

**Subsection 4 Investigations by Directors at Incorporation**

Article 161 (1) The directors at incorporation and the auditors at incorporation must, after being appointed, investigate without delay the matters listed below:

- (i) that the commitment to contribute assets is fulfilled;
  - (ii) beyond the matter listed in the preceding item, that the procedures employed in the establishment of the general incorporated foundation are not in violation of laws and regulations or the articles of incorporation.
- (2) If, as a result of the investigation conducted pursuant to the provisions of the preceding paragraph, the directors at incorporation or the auditors at incorporation find any violation of the applicable laws and regulations or articles of incorporation or there is any inappropriate matter listed in any items of that paragraph, they must give notice to that effect to the founder.

### **Subsection 5 Selection of Representative Directors at Incorporation**

- Article 162 (1) The directors at incorporation must select a representative director (meaning the director who represents the general incorporated foundation; the same applies in Article 302, paragraph (2), item (vi)) from among the directors at incorporation at the time of the incorporation of the general incorporated foundation (hereinafter referred to as "representative director at incorporation" in this Article and Article 319, paragraph (2)).
- (2) The directors at incorporation may dismiss the representative director at incorporation until such time as the general incorporated foundation is formed.
- (3) The selection and removal of the representative director at incorporation pursuant to the provisions of the preceding two paragraphs is determined by a majority of the directors at incorporation.

### **Subsection 6 Formation of a General Incorporated Foundation**

(Formation of a General Incorporated Foundation)

Article 163 A general incorporated foundation is formed when its incorporation is registered at the address of its principal office.

(Timing of Ownership of Assets)

- Article 164 (1) If assets has been contributed by inter vivos transfer, those assets belong to the general incorporated foundation when the formation of the general incorporated foundation is accomplished.
- (2) If the assets has been contributed to a general incorporated foundation by will, those assets are deemed to belong to the general incorporated foundation when the will has come into effect.

(Restrictions on the Nullification or Rescission of a Contribution of Assets)

Article 165 The founder (in the case of Article 152, paragraph (2), their general successors), after the formation of the general incorporated foundation, may

not claim invalidity of a contribution of assets on the grounds of an error, nor may the founder rescind the contribution of assets on the grounds of fraud or duress.

### **Subsection 7 Liability of the Founders**

(Liability of the Founders for Compensation for Damages)

Article 166 (1) If a founder, a director at incorporation, or an auditor at incorporation neglects their duties with respect to the incorporation of the general incorporated foundation, the founder is liable to that general incorporated foundation for damages arising as a result thereof.

(2) If a founder, a director at incorporation, or an auditor at incorporation acted in bad faith or with gross negligence in the performance of their duties, that founder, director at incorporation, or auditor at incorporation is liable to a third party for damages arising as a result thereof.

(Joint and Several Liability of Founders)

Article 167 If a founder, a director at incorporation, or an auditor at incorporation is liable for damages arising in the general incorporated foundation or a third party, if other founders, directors at incorporation or auditors at incorporation are also liable, those persons are joint and several obligors.

(Exemption from Liability)

Article 168 An exemption from the liability assumed by founders, directors at incorporation, or auditors at incorporation pursuant to the provisions of Article 166, paragraph (1) may not be given without the consent of all councilors.

(Liability in the Event of a Failure to Form a General Incorporated Foundation)

Article 169 If the general incorporated foundation fails to be formed, the founders under Article 152, paragraph (1), are jointly and severally liable for any act committed in connection with the incorporation of the general incorporated foundation, and are to bear the costs expended in connection with the incorporation of the general incorporated foundation.

## **Section 2 Organs**

### **Subsection 1 Establishment of Organs**

(Establishment of Organs)

Article 170 (1) A general incorporated foundation must have councilors, a board

of councilors, directors, a board of directors, and auditors.

- (2) A general incorporated foundation may have a financial auditor pursuant to the provisions of the articles of incorporation.

(Obligation to Have a Financial Auditor)

Article 171 A large-scale general incorporated foundation must have a financial auditor.

### **Subsection 2 Selection and Dismissal of Councilors**

(Relationship Between General Incorporated Foundations and the Councilors)

Article 172 (1) The relationship between a general incorporated foundation and its councilors, directors, auditors, or financial auditors are governed by the provisions on mandate.

- (2) If basic assets is provided for in the articles of incorporation as being essential to conduct the business that is the objective of the general incorporated foundation among the assets of the general incorporated foundation as provided by the articles of incorporation, the directors must maintain them; in addition, they may not dispose of those assets in a manner that would hamper conducting the business that is a purpose of the general incorporated foundation.

(The Qualifications of Councilors)

Article 173 (1) The provisions of Article 65, paragraph (1) apply mutatis mutandis to councilors.

- (2) A councilor may not serve concurrently as a director, an auditor, or an employee of a general incorporated foundation or its subsidiary.
- (3) In a general incorporated foundation, at least three councilors must be designated.

(Tenure of Directors)

Article 174 (1) The tenure of a director is to be until the conclusion of the final annual meeting of the board of councilors in a business year that ends within four years after that director's appointment; provided, however, that this does not preclude an extension of tenure until the conclusion of the final annual meeting of the board of councilors in a business year that ends within six years after their appointment under the articles of incorporation.

- (2) The provisions of the preceding paragraph do not preclude the articles of incorporation from prescribing the tenure of a councilor appointed as a substitute for a councilor who was dismissed prior to the expiration of their tenure to last until the date of expiration of the tenure of the councilor who

was dismissed.

(Measures to Be Taken in the Event of a Vacancy Among Councilors)

Article 175 (1) If a shortage occurs in the number of councilors prescribed in the articles of incorporation, a councilor who has been dismissed due to expiration of their tenure or by resignation have the rights and obligations of a councilor until such time as a newly appointed councilor (including persons who are to perform the duties of temporary councilors as provided in the following paragraph) assumes the role.

(2) In cases set forth in the preceding paragraph, the court, when necessary, may appoint a person to perform the duties of a temporary councilor upon petition by an interested party.

(3) The court, when appointing a person to perform the duties of a temporary councilor as prescribed in the preceding paragraph, may determine the amount of remuneration that the general incorporated foundation may pay that person.

(Dismissal of a Director, an Auditor, or a Financial Auditor)

Article 176 (1) If a director or an auditor comes to fall under any of the following conditions, the director or the auditor may be dismissed by a resolution of the board of councilors:

(i) the director or the auditor has violated the obligations of their duties or has been negligent in the performance thereof;

(ii) due to a mental or physical disorder, the director or the auditor is unable to perform their duties or is incapable of handling their duties.

(2) If a financial auditor falls under any of the items under Article 71, paragraph (1), the financial auditor may be dismissed by a resolution of the board of councilors.

(Mutatis Mutandis Application of Provisions Regarding General Incorporated Associations)

Article 177 The provisions of the preceding Chapter, Section 3, Subsection 3 (except Article 64; Article 67, paragraph (3); and Article 70) apply mutatis mutandis to the appointment and dismissal of directors, auditors, and financial auditors of a general incorporated foundation. In such a case, the term "general assembly" in those provisions (except the proviso in Article 66) is to be replaced with "board of councilors"; the term "by means of the articles of incorporation or by a resolution at a general assembly meeting" in the proviso in Article 66 is to be replaced with "by articles of incorporation"; the term "Article 123, paragraph (2)" in Article 68, paragraph (3), item (i) is to be replaced with "Article 123, paragraph (2) as applied mutatis mutandis pursuant to Article 199"; and the term "Article 38, paragraph (1), item (i)" in Article 74, paragraph

(3) is to be replaced with "Article 181, paragraph (1), item (i)".

### **Subsection 3 Councilors and the Board of Councilors**

(Authority of the Board of Councilors)

Article 178 (1) The board of councilors is composed of all of the councilors.

(2) The board of councilors may make resolutions limited to matters provided in this Act and matters prescribed in the articles of incorporation.

(3) With respect to matters that require a resolution of the board of councilors pursuant to the provisions of this Act, any provision in the articles of incorporation that prescribes contents that may be subject to decision by a director, a board of directors or organs other than the board of councilors is not effective.

(Convocation of Meetings of the Board of Councilors)

Article 179 (1) An annual meeting of the board of councilors must be called at a fixed time after the end of each business year.

(2) A meeting of the board of councilors may be called at any time when it is found necessary.

(3) A meeting of the board of councilors is called by a director except when it is called under the provisions of the following Article, paragraph (2).

(Councilors' Request for the Convocation of a Meeting of the Board of Councilors)

Article 180 (1) Councilors may request that the director call a meeting of the board of councilors by indicating a matter to be the subject of the meeting of the board of councilors and the reasons for convocation.

(2) In the cases listed below, councilors who have made a request pursuant to the provisions of the preceding paragraph may call a meeting of board of councilors by obtaining the approval of a court:

(i) if convocation procedures for a meeting of the board of councilors were not performed without delay after a request was made pursuant to provisions of the preceding paragraph.

(ii) where no notice to convene for a meeting of the board of councilors was issued stating a date within six weeks (if the articles of incorporation provide a time period less than six weeks, that time period) of the request made pursuant to the provisions of the preceding paragraph as the date of the meeting of the board of councilors.

(Decision to Convene a Meeting of the Board of Councilors)

Article 181 (1) When calling a meeting of the board of councilors, a resolution of

the board of directors must provide the matters listed below:

- (i) the time and place of the meeting of the board of councilors;
  - (ii) if there is a matter specifying the subject of the meeting of the board of councilors, that matter;
  - (iii) beyond the conditions provided in the preceding two items, matters provided in the applicable Order of the Ministry of Justice.
- (2) Notwithstanding the provisions of the preceding paragraph, in the case where a councilor calls a meeting of the board of councilors pursuant to the provisions of the preceding Article, paragraph (2), that councilor must determine the matters that are listed in the items in the preceding paragraph.

(Notice to Convene for a Meeting of the Board of Councilors)

Article 182 (1) When calling a meeting of the board of councilors, the director (if a councilor calls a meeting of the board of councilors pursuant to the provisions of Article 180, paragraph (2), that councilor; the same applies in the following paragraph) must issue a notice thereof in writing to the councilors one week before the date of the meeting of the board of councilors (if the articles of incorporation provide a time period of less than one week, that time period).

(2) In lieu of issuing a notice in writing in accordance with the preceding paragraph, the director may issue the notice by electronic or magnetic means with the consent of the councilors, as prescribed in the Cabinet Order. In such a case, it is deemed that that director has issued the notice in writing in accordance with the provisions set forth in that paragraph.

(3) The notice set forth in the preceding two paragraphs must contain or have recorded therein the matters listed in the items in paragraph (1) of the preceding Article.

(Omission of the Procedures for Convocation)

Article 183 Notwithstanding the provisions of the preceding Article, a meeting of the board of councilors may be held without convocation procedures, provided that the consent of all councilors is obtained.

(Councilors' Right to Propose)

Article 184 Councilors may make a request to the directors that certain matters be taken up as the purpose of a meeting of the board of councilors. In such cases, the request must be made four weeks prior to the date of the meeting of the board of councilors (if a shorter time period is prescribed in the articles of incorporation, that time period).

Article 185 At a meeting of the board of councilors, councilors may submit proposals with respect to matters that constitute the subject of the meeting;

provided, however, that this does not apply where that proposal is in violation of laws and regulations or the articles of incorporation, or where three years have not elapsed since the day when a proposal that was materially the same failed to obtain votes in its favor constituting at least one-tenth of the votes of all the councilors present at the meeting of the board of councilors (if a lower ratio is provided in the articles of incorporation, that ratio).

Article 186 (1) A councilor may, at least four weeks prior to the date of a meeting of the board of councilors (if a shorter time period is prescribed in the articles of incorporation, that time period) make a request to the director that a summary of the proposal that that councilor will submit on matters that constitute the subject of the meeting of the board of councilors be included or recorded in a notice under Article 182, paragraph (1) or paragraph (2), and issued to the councilors.

(2) The provisions of the preceding paragraph do not apply where such a proposal is in violation of laws and regulations or the articles of incorporation, or where three years have not elapsed since the day when the a proposal that was materially the same failed to obtain votes in its favor constituting at least one-tenth of the votes of all the councilors present at the meeting of the board of councilors for passage (if a lower ratio is prescribed in the articles of incorporation, that ratio).

(The Appointment of an Inspector for the Procedures for Convocation of Meetings of the Board of Councilors)

Article 187 (1) Either the general incorporated foundation or councilors may petition the court to appoint an inspector prior to the meeting of the board of councilors, in order to carry out the investigation of the procedures employed and resolutions made concerning the convocation of a meeting of the board of councilors.

(2) Except if the court dismisses a petition to appoint an inspector that has been submitted pursuant to the provisions of the preceding paragraph, as unlawful, the court must appoint an inspector.

(3) When appointing an inspector set forth in the preceding paragraph, the court may determine the amount of compensation to be paid to that inspector by the general incorporated foundation.

(4) The inspector set forth in paragraph (2) must conduct the required investigation, and must report to the court by submitting documents or electronic or magnetic record (limited to those prescribed in the applicable Order of the Ministry of Justice) containing or recording the results of that investigation.

(5) With respect to the report set forth in the preceding paragraph, if the court

finds it necessary to make the contents of the report clear or to verify the grounds thereof, it may require further reports set forth in the preceding paragraph of the inspector set forth in paragraph (2).

- (6) When submitting a report pursuant to paragraph (4), the inspector set forth in paragraph (2) must provide a copy of that document as prescribed in paragraph (4) or matters recorded electronic or magnetic records as referred to in the same paragraph by the means prescribed in the applicable Order of the Ministry of Justice to the general incorporated foundation (if the person who petitioned for the appointment of an inspector is not that general incorporated foundation, either that general incorporated foundation or that person).

(Court Decision to Convene a Meeting of the Board of Councilors)

Article 188 (1) When the court has received a report set forth in paragraph (4) of the preceding Article, and when finding it necessary, the court must order that the director take the whole or part of the following measures:

- (i) to call a meeting of the board of councilors within a fixed period of time;
- (ii) to notify the councilors of the results of the investigation set forth in the preceding Article, paragraph (4).

- (2) If the court orders the measures listed in item (i) of the preceding paragraph, the director must disclose the contents of the report referred to in paragraph (4) of the preceding Article, at the meeting of the board of councilors prescribed in the same item.

- (3) In cases prescribed in the preceding paragraph, the director and the auditor must examine the contents of the report referred to in paragraph (4) of the preceding Article, and must report the results of the examination at the meeting of the board of councilors set forth in paragraph (1), item (i).

(Resolutions of the Board of Councilors)

Article 189 (1) Resolutions at a board of councilors meeting are effected by a majority vote (if a higher ratio is prescribed in the articles of incorporation, that ratio or higher) of the councilors in attendance who have voting rights, provided that a majority (if a higher ratio is prescribed in the articles of incorporation, that ratio or higher) of councilors eligible to vote is present.

- (2) Notwithstanding the provisions of the preceding paragraph, resolutions at the following board of councilors meetings must be effected by at least a two-thirds majority (if a higher ratio is prescribed in the articles of incorporation, that ratio) of the votes of all of the councilors who are eligible to vote:

- (i) a board of councilors meeting under Article 176, paragraph (1) (limited to the dismissal of an auditor);
- (ii) a board of councilors meeting under Article 113, paragraph (1) as applied *mutatis mutandis* pursuant to Article 198;

- (iii) a board of councilors meeting under Article 200;
  - (iv) a board of councilors meeting under Article 201;
  - (v) a board of councilors meeting under Article 204;
  - (vi) a board of councilors meeting under Article 247, Article 251, paragraph (1), or Article 257.
- (3) With respect to resolutions under the preceding two paragraphs, councilors with a special vested interest may not vote.
- (4) The board of councilors may not resolve matters regarding those listed in Article 181, paragraph (1), item (ii); provided, however, that this does not apply to the appointment of persons prescribed in Article 191, paragraph (1) or (2), or requesting the attendance of the financial auditor prescribed in Article 109, paragraph (2) as applied mutatis mutandis pursuant to Article 197.

(Directors' Obligation to Provide Explanations)

Article 190 The director and the auditor must, when requested by a councilor to explain a specific matter at a meeting of the board of councilors, provide the required explanation on that matter; provided, however, that this does not apply if Order of the Ministry of Justice provides that an explanation is not required in the case where the matter is not related to the subject of the meeting of the board of councilors or if there are other justifiable grounds.

(Investigation of Materials Submitted to a Board of Councilors)

Article 191 (1) At a meeting of the board of councilors, the directors, the auditors, and the financial auditors may, by resolution, appoint a person to investigate materials that are submitted or provided to the meeting of the board of councilors by resolution.

(2) At a meeting of the board of councilors called pursuant to the provisions of Article 180, a person may be appointed by resolution to investigate the business and the assets condition of the general incorporated foundation.

(A Resolution to Postpone or Continue)

Article 192 If a resolution is passed to postpone or continue proceedings at a meeting of the board of councilors, the provisions set forth in Articles 181 and 182 do not apply.

(Minutes)

Article 193 (1) With respect to the agenda of a meeting of the board of councilors, minutes of the meeting must be prepared as prescribed in the applicable Order of the Ministry of Justice.

(2) The general incorporated foundation must keep the minutes set forth in the preceding paragraph at its principal office for ten years from the date of the

meeting of the board of councilors.

- (3) The general incorporated foundation must keep a copy of the minutes set forth in paragraph (1) at its branch office for five years from the date of the meeting of the board of councilors; provided, however, that this does not apply if the minutes are prepared in electronic or magnetic record and they are in compliance with the provisions of the applicable Order of the Ministry of Justice as a measure to make it possible to comply with requests set forth in item (ii) of the following paragraph.
- (4) Councilors and creditors may make the following requests at any time during the business hours of the general incorporated foundation:
  - (i) if the minutes of paragraph (1) are prepared in document form, a request to inspect a copy of that document or to copy the document;
  - (ii) if the minutes of paragraph (1) are recorded in electronic or magnetic record, a request to inspect or copy anything recorded in that electronic or magnetic record in accordance with methods prescribed in the applicable Order of the Ministry of Justice.

(Omission of a Resolution at a Meeting of the Board of Councilors)

- Article 194 (1) If a director makes a proposal regarding a matter that is the purpose of a meeting of the board of councilors and where all councilors manifest their intention to agree with that proposal either in writing or by electronic or magnetic record, a resolution of the board of councilors that affirms the proposal is deemed to have been passed.
- (2) The general incorporated foundation must keep the written documents or electronic or magnetic record pursuant to the provisions of the preceding paragraph at its principal office for ten years from the date when the resolution is deemed to have passed at the meeting of the board of councilors pursuant to the provisions of the preceding paragraph.
  - (3) Councilors and creditors may make the following requests at any time during the business hours of the general incorporated foundation:
    - (i) a request to inspect a copy of the document of the preceding paragraph or to copy the document;
    - (ii) a request to inspect or copy anything which displays matters recorded in electronic or magnetic records set forth in the preceding paragraph in accordance with methods prescribed by the applicable Order of the Ministry of Justice.
  - (4) If it is deemed that the resolutions to approve proposals on all matters that are the purpose of the annual meeting of the board of councilors have been made at the meeting of the board of councilors pursuant to the provisions of paragraph (1), that annual meeting of the board of councilors is deemed concluded at that time.

(Omission of a Report to the Board of Councilors)

Article 195 If a director provides notice to all councilors regarding matters to be reported to the board of councilors and all councilors have provided a manifestation of intent, either in writing or by electronic or magnetic record, indicating agreement that those matters need not be reported to the board of councilors, those matters are deemed to have been reported to the board of councilors.

(Remuneration for Councilors)

Article 196 The amount of remuneration, etc. for a councilor must be prescribed in the articles of incorporation.

#### **Subsection 4 Directors, Boards of Directors, Auditors, and Financial Auditors**

Article 197 The provisions of Section 3, Subsection 4 in the preceding Chapter (except Article 76; Article 77, paragraph (1) through paragraph (3); Article 81; and Article 88, paragraph (2)), Subsection 5 (except Article 92, paragraph (1)), Subsection 6 (except Article 104, paragraph (2)), and Subsection 7 apply mutatis mutandis to directors, the board of directors, auditors, and financial auditors of general incorporated foundations. In such a case, the term "general assembly" in these provisions (except Article 83 and Article 84, paragraph (1)) is to be replaced with "board of councilors"; the term "the articles of incorporation, and the resolutions of a general assembly" in Article 83 is to be replaced with "articles of incorporation"; the term "general assembly" in Article 84, paragraph (1) is to be replaced with "board of directors "; the term "the members (an auditor in a general incorporated association with auditor(s))" in Article 85 is to be replaced with "auditors"; the term "members who have at least one-tenth (if a lower ratio is prescribed in the articles of incorporation, that ratio) of the voting rights of all the members" in Article 86, paragraph (1) and the term "members" in the same Article, paragraph (7), Article 87, paragraph (1), item (ii) and Article 88, paragraph (1) is to be replaced with "councilors"; the term "substantial damage" in the same paragraph is to be replaced with "irreparable damage"; in Article 90, paragraph (4), item (vi), the term "Article 114, paragraph (1)" is to be replaced with "Article 114, paragraph (1) as applied mutatis mutandis pursuant to Article 198"; the term "Article 111, paragraph (1)" is to be replaced with "Article 111, paragraph (1) as applied mutatis mutandis pursuant to Article 198"; the term "If it is necessary for exercising a member's rights, that member may, upon obtaining the approval of the court" in Article 97, paragraph (2) is to be replaced with "Councilors may,

at any time during the business hours of the general incorporated foundation"; in the same Article, paragraph (4), the term "the requests set forth in the preceding two paragraphs" is to be replaced with "the requests set forth in the preceding paragraph"; the term "the approval set forth in the preceding two paragraphs" is to be replaced with "the approval set forth in the same paragraph"; the term "Article 77, paragraph (4) and Article 81" in Article 104, paragraph (1) is to be replaced with "Article 77, paragraph (4)"; in Article 107, paragraph (1), the term "Article 123, paragraph (2)" is to be replaced with "Article 123, paragraph (2) as applied mutatis mutandis pursuant to Article 199"; the term "Article 117, paragraph (2), item (i), (a)" is to be replaced with "Article 117, paragraph (2), item (i), (a) as applied mutatis mutandis pursuant to Article 198"; and the term "Article 68, paragraph (3), item (i)" in the same Article, paragraph (5), item (i) is to be replaced with "Article 68, paragraph (3), item (i), as applied mutatis mutandis pursuant to Article 177".

#### **Subsection 5 Liability of the Officers for Compensation for Damages**

Article 198 The provisions of Section 3, Subsection 8 in the preceding Chapter (except Article 117, paragraph (2), item (i), (b)) apply mutatis mutandis to the damage compensation liability of directors, auditors, financial auditors, and councilors of general incorporated foundations. In that case, the term "general assembly" in these provisions is to be replaced with "board of councilors"; the term "a director, an auditor, or a financial auditor (hereinafter referred to as 'officers, etc.' in this Subsection and Article 301, paragraph (2), item (xi))" in Article 111, paragraph (1) is to be replaced with "a director, an auditor, or a financial auditor (hereinafter referred to as 'officers, etc.' in this Subsection and Article 302, paragraph (2), item (ix)) or councilors"; the term "Article 84, paragraph (1)" in the same Article, paragraph (2) is to be replaced with "Article 84, paragraph (1) as applied mutatis mutandis pursuant to Article 197"; the term "Article 84, paragraph (1), item (ii)" in the same Article, paragraph (3) is to be replaced with "Article 84, paragraph (1), item (ii) as applied mutatis mutandis pursuant to Article 197"; the term "Article 84, paragraph (1)" in the same paragraph, item (i) is to be replaced with "Article 84, paragraph (1) as applied mutatis mutandis pursuant to Article 197"; the term "all members" in Article 112 is to be replaced with "all councilors"; the term "to cases where agreement by directors is to be obtained regarding the exemption from liability (limited to directors' exemption from liability) based on provisions in the articles of incorporation pursuant to the provisions of the same paragraph, and to cases where a proposal regarding the exemption from that liability" in Article 114, paragraph (2) is to be replaced with "to cases where a proposal regarding the exemption from liability (limited to directors' exemption from

liability) based on provisions in the articles of incorporation pursuant to the provisions of the same paragraph"; the term "members" in the same Article, paragraph (3) is to be replaced with "councilors"; the term "members with at least one-tenth of the voting rights (if a lower ratio is provided in the articles of incorporation, that ratio) of all members (exclusive of the officers, etc. who carry the liability under the preceding paragraph)" in the same Article, paragraph (4) is to be replaced with "councilors with at least one-tenth of the voting rights (if a lower ratio is provided in the articles of incorporation, that ratio) of all councilors"; in Article 115, paragraph (1), the term "Article 301, paragraph (2), item (xii)" is to be replaced with "Article 302, paragraph (2), item (x)"; the term "Article 84, paragraph (1), item (ii)" in Article 116, paragraph (1) is to be replaced with "Article 84, paragraph (1), item (ii) as applied mutatis mutandis pursuant to Article 197"; the term "officers, etc." in Article 117, paragraph (1) and Article 118 is to be replaced with "officers, etc. or councilors"; the term "Article 128, paragraph (3)" in Article 117, paragraph (2), item (i), (d) is to be replaced with "Article 128, paragraph (3), as applied mutatis mutandis pursuant to Article 199".

### **Section 3 Calculations**

Article 199 The provisions of the preceding Chapter, Section 4 (except the second sentence in Article 121, paragraph (1), paragraph (2), and Article 126, paragraph (1), item (ii) and item (iv)) apply mutatis mutandis to calculations for a general incorporated foundation. In this case, the term "general assembly" in these provisions is to be replaced with "board of councilors"; the term "Members who have at least one-tenth (if a lower ratio is prescribed in the articles of incorporation, that ratio) of the voting rights of all members" in Article 121, paragraph (1) and the term "members" in Article 129, paragraph (3) is to be replaced with "councilors"; the term "to members" in Article 125 is to be replaced with "to councilors"; the term "Article 58, paragraph (1)" in Article 129, paragraph (1) and paragraph (2) is to be replaced with "Article 194, paragraph (1)"; the term "when they make a request listed in item (ii)" in the same Article, paragraph (3), proviso is to be replaced with "when creditors make a request listed in item (ii)".

### **Section 4 Amending the Articles of Incorporation**

Article 200 (1) The general incorporated foundation, after being formed, may change its articles of incorporation by resolutions of the board of councilors; provided, however, that this does not apply to the provisions of the articles of incorporation regarding the matters listed in Article 153, paragraph (1), item

- (i) and item (viii).
- (2) Notwithstanding the proviso in the preceding paragraph, if the founder has provided in the articles of incorporation prescribed in Article 152, paragraph (1) or paragraph (2) that the provisions of the articles of incorporation prescribed in the proviso in the same paragraph may be amended by resolution of the board of councilors, the provisions of the articles of incorporation prescribed in the proviso in the preceding paragraph may be amended.
- (3) If, due to special circumstances not foreseen at the time of its incorporation, the general incorporated foundation finds itself in a situation where continued operations are impossible or extremely difficult unless the provisions of the articles of incorporation prescribed in the proviso in the paragraph (1) are amended, with the approval of a court and by resolution of the board of councilors, the general incorporated foundation may amend the provisions of the articles of incorporation prescribed in the proviso in the same paragraph.

### **Section 5 Transferring Business**

Article 201 The transfer of the operations of a general incorporated foundation must only occur by resolution of the board of councilors.

### **Section 6 Dissolution**

(Grounds for Dissolution)

- Article 202 (1) A general incorporated foundation dissolves on the grounds listed below:
- (i) expiration of its duration as prescribed in the articles of incorporation;
  - (ii) the arising of grounds for dissolution as prescribed in the articles of incorporation;
  - (iii) inability to succeed in the business which is the purpose of the general incorporated foundation due to a loss of the basic assets and other grounds;
  - (iv) merger (limited to the case where that general incorporated foundation disappears due to the merger);
  - (v) a decision to commence bankruptcy proceedings;
  - (vi) a court ruling that orders dissolution pursuant to the provisions of Article 261, paragraph (1) or Article 268.
- (2) Beyond the grounds listed in the items in the preceding paragraph, the general incorporated foundation may also dissolve at the end of an annual meeting of the board of councilors at which, with respect to that business year, the net assets on the balance sheet for a given business year and those in the subsequent business year both decline below three million yen.
- (3) Beyond the grounds listed in the items in the preceding paragraph, a general

incorporated foundation that is incorporated in a consolidation-type merger also dissolves at the end of an annual meeting of the board of councilors with respect to the next business year if the net assets on the balance sheet under Article 123, paragraph (1) as applied mutatis mutandis pursuant to Article 199 and the net assets on the balance sheet for the business year in which the date of formation of the general incorporated foundation both decline below three million yen.

(Dissolution of Dormant General Incorporated Foundations)

- Article 203 (1) If the Minister of Justice has published in the Official Gazette, requesting a dormant general incorporated foundations (meaning a general incorporated foundation for which five years have elapsed since the date of the most recent registration pertaining the general incorporated association; the same applies hereinafter in this Article) to notify, within two months, the registry with jurisdiction over the locations of its principal offices that their activities have not discontinued, pursuant to the provisions of the applicable Order of the Ministry of Justice, and, if it does not file a notification, the dormant general incorporated foundation is deemed as dissolved upon the expiration of that two month; provided, however, that this does not apply if the dormant general incorporated foundation registers itself within that period.
- (2) If a public notice is issued pursuant to the provisions of the preceding paragraph, the office of registry must notify the dormant general incorporated foundations of the fact.

(Continuation of a General Incorporated Foundation)

- Article 204 In the cases listed below, a general incorporated foundation may continue to exist as a general incorporated foundation by resolution of the board of councilors until such time as the liquidation pursuant to the provisions of following Chapter is completed (in the cases listed in item (ii), limited to three years after the dissolution is presumed).
- (i) after dissolution pursuant to the provisions of Article 202, paragraph (2) or paragraph (3), the net assets on the balance sheet regarding the liquidating administrative year (meaning the liquidating administrative year set forth in Article 227, paragraph (1)) are three million yen or more;
- (ii) the general incorporated foundation is presumed to have dissolved pursuant to the provisions of the preceding Article, paragraph (1).

(Restrictions on the Merger of a Dissolved General Incorporated Foundation)

- Article 205 If a general incorporated foundation has dissolved, the general incorporated foundation may not engage in a merger in which the general incorporated foundation becomes a general incorporated foundation that

survives the merger.

## **Chapter IV Liquidation**

### **Section 1 Commencement of Liquidation**

(Causes for Commencement of Liquidation)

Article 206 A general incorporated association or general incorporated foundation must go into liquidation in the cases listed below pursuant to the provisions of this Chapter:

- (i) if a general incorporated association or general incorporated foundation has dissolved (excluding cases of dissolution on the grounds listed in Article 148, item (v) or Article 202, paragraph (1), item (iv) and cases of dissolution where it dissolved as a result of a ruling to commence bankruptcy proceedings and the bankruptcy proceedings have not ended);
- (ii) if a judgment upholding a claim seeking invalidation of the incorporation has become final and binding; or
- (iii) if a judgment upholding a claim seeking rescission of the incorporation has become final and binding.

(Capacity of Corporations in Liquidation)

Article 207 A general incorporated association or general incorporated foundation that goes into liquidation pursuant to the provisions of the preceding Article (hereinafter referred to as "corporation in liquidation") is deemed to remain in existence until the completion of liquidation, to the extent of the purpose of the liquidation.

### **Section 2 Organs of corporations in Liquidation**

#### **Subsection 1 Establishment of Organs for Corporations in Liquidation**

- Article 208 (1) A corporation in liquidation must have one or more liquidators.
- (2) A corporation in liquidation may have a board of liquidators or auditors as provided in its articles of incorporation.
- (3) A corporation in liquidation that, when it falls under any of the items of Article 206, has been a large scale general incorporated association or large scale general incorporated foundation must have an auditor.
- (4) The provisions of Chapter II, Section 3, Subsection 2 and the preceding Chapter, Section 2, Subsection 1 (excluding portions regarding councilors and a board of councilors) do not apply to corporation in liquidation.

#### **Subsection 2 Assumption of the Role of Liquidator, Dismissal of Liquidators and Resignation of Auditors**

(Assumption of the Role of Liquidator)

Article 209 (1) The following persons become liquidators of a corporation in liquidation:

- (i) a director (excluding cases where persons listed in the following item or in item (iii) exist);
  - (ii) a person prescribed in the articles of incorporation; or
  - (iii) a person appointed by resolution of the general assembly or the board of councilors.
- (2) In the absence of a liquidator pursuant to the provisions of the preceding paragraph, the court appoints a liquidator in response to a petition by any interested party.
- (3) Notwithstanding the provisions of the preceding two paragraphs, with respect to a corporation in liquidation that has dissolved on the grounds listed in Article 148, item (vii) or Article 202, paragraph (1), item (vi), the court appoints a liquidator in response to a petition by any interested party, by the Minister of Justice, or on the court's own authority.
- (4) Notwithstanding the provisions of paragraph (1) and paragraph (2), with respect to a corporation in liquidation who falls under the cases listed in Article 206, item (ii) or item (iii), the court appoints a liquidator in response to a petition by any interested party.
- (5) The provisions of Article 64 and Article 65, paragraph (1) apply mutatis mutandis to liquidators and the provisions of that Article, paragraph (3) apply mutatis mutandis to a corporation in liquidation with a board of liquidators (meaning a corporation in liquidation with a board of liquidators; the same applies hereinafter), respectively. In such cases, the term "directors" in the same paragraph are to be replaced with "liquidators".

(Dismissal of Liquidators)

Article 210 (1) A liquidator (excluding those appointed by the court pursuant to provisions of the preceding Article, paragraphs (2) through (4)) of a liquidating general incorporated association (meaning a corporation in liquidation that is a general incorporated association; the same applies hereinafter) may be dismissed at any time by resolution of the general assembly.

- (2) A liquidator (excluding those appointed by the court pursuant to the provisions of the preceding Article, paragraphs (2) through (4)) of a general incorporated foundation in liquidation (meaning a corporation in liquidation that is a general incorporated foundation; the same applies hereinafter) may be dismissed by resolution of a board of councilors when that liquidator falls under any of the following conditions:
- (i) the liquidator has violated the obligations of their duties or has been

- negligent in the performance thereof;
- (ii) due to a mental or physical disorder, the liquidator is unable to perform their duties or is incapable of handling their duties.
- (3) If there are significant grounds, the court may dismiss a liquidator in response to a petition by interested parties.
- (4) The provisions of Article 75, paragraphs (1) through (3) apply mutatis mutandis to liquidators.

(Resignation of Auditors)

Article 211 (1) If a corporation in liquidation has amended the articles of incorporation to abolish the provisions of the articles of incorporation to the effect that an auditor is established, the auditor of the corporation in liquidation resigns when the amendments to the articles of incorporation take effect.

- (2) Provisions listed in any of the following items do not apply to corporations in liquidation as prescribed respectively in those items.
  - (i) article 67 (including cases that apply mutatis mutandis to Article 177): corporations in liquidation
  - (ii) article 174: general incorporated foundations in liquidation

### **Subsection 3 Liquidators' Duties**

(Liquidators' Duties)

Article 212 A liquidator performs the following:

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

(Execution of Operations)

Article 213 (1) A liquidator executes the operations of the corporation in liquidation (excluding corporations in liquidation with a board of liquidators; the same applies in the following paragraph).

- (2) If there are two or more liquidators, the operations of the corporation in liquidation is decided by a majority of the liquidators, unless otherwise provided for in the articles of incorporation.
- (3) In cases provided for in the preceding paragraph, liquidators may not delegate decisions on the following matters to individual liquidators:
  - (i) the establishment, relocation or abolition of branch offices;
  - (ii) the matters listed in Article 38, paragraph (1), all items;
  - (iii) the matters listed in Article 181, paragraph (1), all items; and
  - (iv) the establishment of systems to ensure the liquidators' execution of their

duties is in compliance with the laws and regulations as well as the articles of incorporation and the establishment of a systems, as prescribed in the applicable Order of the Ministry of Justice as being necessary, to ensure that all other business of the liquidator is conducted in the proper manner.

- (4) The provisions of Articles 81 through 85, Article 88 and Article 89 apply mutatis mutandis to liquidators (as to the provisions of these Articles, excluding liquidators appointed by the court under the provisions of Article 209, paragraph (2) through (4)). In such a case, the term "Article 77, paragraph (4)" in Article 81 is to be replaced with "Article 77, paragraph (4) as applied mutatis mutandis pursuant Article 214, paragraph (7)"; the term "general assembly" in the same Article; Article 84, paragraph (1) and Article 89 is to be replaced with "general assembly or board of councilors"; the term "representative director" in Article 82 is to be replaced with "representative liquidator (meaning a representative liquidator prescribed in Article 214, paragraph (1))"; the term "and the resolutions of general meetings of members" in Article 83 is to be replaced with "(for liquidating general incorporated associations, laws and regulations, articles of incorporation and the resolutions of general meetings of members)"; the term "members" in Article 85 and Article 88, paragraph (1) is to be replaced with "members or councilors"; and the term "general incorporated association with auditor(s)" in Article 85 and Article 88, paragraph (2) is to be replaced with "corporation in liquidation with auditors (meaning a corporation in liquidation with auditors as prescribed in Article 214, paragraph (6))".

#### (Representatives of Corporations in Liquidation)

- Article 214 (1) A liquidator or liquidators represent the corporation in liquidation; provided, however, that this does not apply if representative liquidators (meaning a liquidator or liquidators who represent the corporation in liquidation; the same applies hereinafter) or other persons who represent the corporation in liquidation are otherwise prescribed.
- (2) If there are two or more liquidators referred to in the main clause of the preceding paragraph, each liquidator represents the corporation in liquidation individually.
- (3) A corporation in liquidation (excluding a corporation in liquidation with a board of liquidators) may prescribe a representative liquidator from among the liquidators by appointment of a liquidator under the articles of incorporation, by choosing from among the liquidators pursuant to the prescriptions of the articles of incorporation (excluding liquidators appointed by the court under the provisions of Articles 209, paragraphs (2) through (4); the same applies hereinafter in this paragraph) or by a resolution of the general assembly or the board of councilors.

- (4) If directors become liquidators pursuant to the provisions of Article 209, paragraph (1), item (i), and at the time a representative director (meaning a director who represents a general incorporated association, etc.; the same applies hereinafter in this paragraph, Article 261, paragraph (1), item (iii); Article 289, item (ii); Article 293 item (i), Article 305, Article 315, paragraph (1), item (ii), (a) and Article 320, paragraph (1)) has been specified, that representative director becomes a representative liquidator.
- (5) If the court has appointed liquidators pursuant to the provisions of Article 209, paragraphs (2) through (4), a representative liquidator can be specified from among those liquidators.
- (6) Notwithstanding the provisions of Article 81 applied mutatis mutandis to the preceding Article, paragraph (4); the provisions of Article 77, paragraph (4) applied mutatis mutandis to the following paragraph and the provisions of Article 220, paragraph (8), in cases when a corporation in liquidation with auditors (meaning a corporation in liquidation with an auditor or a corporation in liquidation who must have an auditor pursuant to the provisions of this Act; the same applies hereinafter in this paragraph) files an action against liquidators (including persons who were liquidators; the same applies hereinafter) or when liquidators file an action against a corporation in liquidation with auditors, an auditor represents the corporation in liquidation with auditors in those actions.
- (7) The provisions of Article 77, paragraphs (4) and (5) and Article 79 apply mutatis mutandis to representative liquidators and the provisions of Article 80 apply mutatis mutandis to persons appointed by the provisional disposition order prescribed in the Civil Business Preservation Act's Article 56 to perform duties on behalf of liquidators or representative liquidators, respectively.

(Commencement of Bankruptcy Proceedings with Respect to Corporation in Liquidation)

- Article 215 (1) If it has become clear that the assets of a corporation in liquidation is not sufficient to fully discharge its debts, liquidators must immediately file a petition for the commencement of bankruptcy proceedings.
- (2) If a corporation in liquidation is subject to a ruling for the commencement of bankruptcy proceedings, and liquidators have transferred the administration of the matter to bankruptcy trustees, the liquidators are deemed to have completed their duties.
  - (3) In cases set forth in the preceding paragraph, when the corporation in liquidation has already made payments to creditors or has transferred residual assets to persons to whom they belong, bankruptcy trustees may retrieve the same.

(Remuneration of Court-Appointed Liquidators)

Article 216 When appointing a liquidator under the provisions of Article 209, paragraphs (2) through (4), the court may determine the amount of remuneration to be paid to the liquidator by the corporation in liquidation.

(Liquidators' Liability to Corporation in Liquidation)

- Article 217 (1) If a liquidator neglects their duties, they are liable to the corporation in liquidation for damages arising as a result thereof.
- (2) If a liquidator engages in a business transaction listed in Article 84, paragraph (1), item (i) in violation of the provisions of that Article, paragraph (1) applied mutatis mutandis to Article 213, paragraph (4), the amount of profit gained by the liquidator or a third party is assumed to be the amount of damage set forth in the preceding paragraph.
- (3) If damages are caused to the corporation in liquidation through a business transaction as provided in Article 84, paragraph (1), item (ii) or (iii) applied mutatis mutandis to Article 213, paragraph (4), the liquidators listed below are assumed to have been negligent in the performance of their duties:
- (i) liquidators set forth in Article 84, paragraph (1) applied mutatis mutandis to Article 213, paragraph (4);
  - (ii) liquidators who decided that the corporation in liquidation would undertake that transaction; or
  - (iii) liquidators who agreed to the board of liquidators' resolution to approve that transaction.
- (4) The provisions of Article 112 and Article 116, paragraph (1) apply mutatis mutandis to the liquidators' liability set forth in paragraph (1). In such a case, the term "all members" in Article 112 is to be replaced with "all members or councilors"; and the term "Article 84, paragraph (1), item (ii)" in Article 116, paragraph (1) is to be replaced with "Article 84, paragraph (1) item (ii) applied mutatis mutandis to Article 213, paragraph (4)".

(Liquidators' Liability to Third Parties)

- Article 218 (1) If a liquidator acted in bad faith or with gross negligence in the performance of their duties, that liquidator is liable to compensate losses arising in a third party as a result thereof.
- (2) The provisions of the preceding paragraph also apply if a liquidator commits the following acts; provided, however, that this does not apply if that liquidator has proven that they did not fail to exercise due care with respect to the performance of their duties:
- (i) the making false statements or records in respect to important matters to be stated or recorded in the inventory of assets, etc. provided for in Article 225, paragraph (1), and balance sheets and administrative reports set forth in

- Article 227, paragraph (1), and the annexed detailed statements thereof;
- (ii) making a false registration;
  - (iii) giving false public notice; or
  - (iv) giving false notification with respect to important matters, notice of which must be given when soliciting contribution of funds; or making false statements or records with respect to materials used for explanations regarding the business of that liquidating general incorporated association and other matters for the purpose of that solicitation.

(Joint and Several Liability of Liquidators)

- Article 219 (1) If a liquidator, director or councilor is liable for damages arising in the corporation in liquidation or third parties, and other liquidators, directors or councilors are also liable, those persons are joint and several obligors.
- (2) In cases described in the preceding paragraph, the provisions of Article 118 (including cases applied mutatis mutandis pursuant to Article 198) do not apply.

**Subsection 4 Boards of Liquidators**

(Authority of Boards of Liquidators)

- Article 220 (1) A board of liquidators is to be organized by all liquidators.
- (2) A board of liquidators perform the following duties:
- (i) deciding the execution of the operations of the corporation in liquidation with a board of liquidators;
  - (ii) supervising the execution of the duties of the liquidators; and
  - (iii) selecting and removing representative liquidators.
- (3) A board of liquidators must select a representative liquidator from among the liquidators; provided, however, that this does not apply when there is another representative liquidator.
- (4) A board of liquidators may remove a selected representative liquidator or person who becomes a representative liquidator under the provisions of Article 214, paragraph (4).
- (5) If a representative liquidator has been prescribed by the court as set forth in the provisions of Article 214, paragraph (5), a board of liquidators cannot select or remove that representative liquidator.
- (6) A board of liquidators cannot delegate to a liquidator decisions on the execution of important business, such as the following:
- (i) disposition and acceptance of material assets;
  - (ii) taking out of substantial loans;
  - (iii) appointment and removal of important employees;

- (iv) establishment, amendment and abolition of branch offices and other important components; or
  - (v) the establishment of a system that ensure that the liquidators' the execution of their duties is in compliance with the laws and regulations as well as the articles of incorporation, and the establishment of a system, as prescribed in applicable Order of the Ministry of Justice as being necessary to ensure that all other business of the liquidator is conducted in the proper manner.
- (7) The following liquidators execute the operations of a corporation in liquidation which has a board of liquidators:
- (i) a representative liquidator; and
  - (ii) a liquidator, other than the representative liquidator, who has been selected by resolution of the board of liquidators to execute the business of the corporation in liquidation with a board of liquidators.
- (8) In cases prescribed in Article 81 applied mutatis mutandis by the reading of terms pursuant to Article 213, paragraph (4), a board of liquidators may decide on a person to represent the corporation in liquidation with a board of liquidators with respect to actions under that Article, except if the general assembly or the board of councilors has prescribed otherwise as set forth in the provisions of the same Article.
- (9) Liquidators listed in the items of paragraph (7) must report to the board of liquidators on the status of their own execution of duties not less than once every three months; provided, however, that this does not apply if it is prescribed by the articles of incorporation that the reports must be made not less than twice in intervals exceeding four months of each business year.
- (10) The provisions of Article 92 are applied mutatis mutandis to corporations in liquidation with a board of liquidators. In such cases, the term "Article 84" in that Article, paragraph (1) is to be replaced with "Article 84 as applied mutatis mutandis pursuant to Article 213, paragraph (4)," the term "general assembly" is to be replaced with "general assembly or board of councilors," the term "board of directors" is to be replaced with "board of liquidators," the term "Article 84, paragraph (1), all items" in that Article, paragraph (2) is to be replaced with "Article 84, paragraph (4), all items applied mutatis mutandis pursuant to Article 213, paragraph (4)," the term "director" is to be replaced with "liquidator," the term "to the board of directors" is to be replaced with "to the board of liquidators".

#### (Operations of Boards of Liquidators)

Article 221 (1) A board of liquidators meeting is called by any liquidator; provided, however, that if a liquidator who calls a board of liquidators meeting is prescribed by the articles of incorporation or the board of liquidators, that

liquidator calls that meeting.

- (2) In cases provided in the proviso to the preceding paragraph, liquidators other than the liquidator referred to in the proviso to the preceding paragraph (hereinafter referred to as the "convener" in this paragraph and the following Article, paragraph (2)) may request the convener to convene a meeting of the board of liquidators by indicating a matter to be the purpose of the board of liquidators meeting.
- (3) If no notice to convene for a board of liquidators meeting was issued within five days from the day of the request set forth in the provisions of the preceding paragraph stating a day within two weeks of the day that request was made as the date of a board of liquidators meeting, the liquidator who made that request may convene the board of liquidators meeting.
- (4) The provisions of Article 94 apply mutatis mutandis to the convening of board of liquidators meetings for a corporation in liquidation with a board of liquidators. In such a case the term "each director and each auditor" in that Article, paragraph (1) is to be replaced with "each liquidator (or, for a corporation in liquidation with auditors (meaning a corporation in liquidation with auditors set forth in the provisions of Article 214, paragraph (6); the same applies in the following paragraph) each liquidator and each auditor)"; the term "directors and auditors" in that Article, paragraph (2) is to be replaced with "liquidators (or, for a corporation in liquidation with auditors, liquidators and auditors)".
- (5) The provisions of Article 95 and Article 96 are applied mutatis mutandis with respect to the resolutions of a board of liquidators for a corporation in liquidation with a board of liquidators. In such a case, the term "of directors" in Article 95, paragraph (1) is to be replaced with "of liquidators"; the term "directors" in that Article, paragraph (2) is to be replaced with "liquidators"; the term "directors(where" in that Article, paragraph (3) is to be replaced with "liquidators (where"; the term "representative director" is to be replaced with "representative liquidator"; the term "Directors who" in that Article, paragraph (5) is to be replaced with "Liquidators who"; the term "a director" is to be replaced with "a liquidator"; and the term "directors (limited" is to be replaced with "liquidators (limited".
- (6) The provisions of Article 98 are applied mutatis mutandis with respect to reports to a board of liquidators for a corporation in liquidation with a board of liquidators. In such a case, the term "directors, auditors or financial auditors" in that Article, paragraph (1) are to be replaced with "liquidators or auditors"; the term "directors and auditors" is to be replaced with "liquidators (for corporations in liquidation with a board of auditors (meaning corporation in liquidation with auditors set forth in the provisions of Article 214, paragraph (6)), liquidators and auditors)"; the term "Article 91, paragraph (2)" in that

Article, paragraph (2) is to be replaced with "Article 220, paragraph (9)".

(Request for the Convocation of a Meeting by Members or Councilors)

Article 222 (1) A member or councilor of a corporation in liquidation with a board of liquidators (excluding corporation in liquidation with a board of auditors) may request the convocation of a board of liquidators meeting when a liquidator has engaged in actions outside the scope of the purposes of the corporation in liquidation with a board of liquidators or has engaged in other actions that violate laws and regulations or the articles of incorporation, or when a risk of those actions is found.

(2) A request under the provisions of the preceding paragraph must be made by indicating to the liquidators (or, for cases which are under the provisions of the proviso of the preceding paragraph, conveners) the matters that are to be the purpose of the board of liquidators meeting.

(3) The provisions of paragraph (3) of the preceding Article apply mutatis mutandis if requests are made under the provisions of paragraph (1).

(4) A member or councilor who has made a request under the provisions of paragraph (1) may attend and offer opinions at the board of liquidators meeting convened based on that request, or under the provisions of the preceding Article, paragraph (3) applied mutatis mutandis pursuant to the preceding paragraph.

(Minutes)

Article 223 (1) A corporation in liquidation with a board of liquidators must keep in its principal office, from the day of a board of liquidators meeting (including days it has been deemed that a resolution of the board of liquidators has been made under the provisions of Article 96 applied mutatis mutandis pursuant to Article 221, paragraph (5)) for a period of ten years, minutes referred to in Article 95, paragraph (3) applied mutatis mutandis pursuant to that paragraph, or written documents or electronic or magnetic record which specify or have recorded therein the manifestations of intent referred to in Article 96 applied mutatis mutandis pursuant to Article 221, paragraph (5) (hereinafter referred to as "minutes, etc." in this Article).

(2) A member or councilor may make the following requests at any time during the business hours of the corporation in liquidation; provided, however, that with respect to members this is limited to times when it is necessary to exercise those rights:

(i) if minutes, etc. set forth in the preceding paragraph have been prepared as documents, to request inspection or copy of those documents; or

(ii) if minutes, etc. set forth in the preceding paragraph have been prepared as electronic or magnetic records, to request the inspection or a copy of anything

- that displays the data recorded in that electronic or magnetic record in a manner prescribed by the applicable Order of the Ministry of Justice.
- (3) With respect to the application of the provisions of the preceding paragraph to a liquidating general incorporated association that is a corporation in liquidation with auditors, the term "anytime during the business hours of the corporation in liquidation" in that paragraph is to be "with the permission of the court".
- (4) Creditors may make the requests listed in the items of paragraph (2) with respect to minutes, etc. of paragraph (1), with the permission of the court, when it is necessary to pursue the liability of liquidators or auditors.
- (5) If the court finds that the inspection or copying with respect to the requests listed in all the items of paragraph (2) applied by the reading of terms under the provisions of paragraph (3) or a request set forth in the preceding paragraph is likely to cause substantial detriment to that corporation in liquidation with a board of liquidators, the court may not grant permission under paragraph (2) applied by the reading of terms under the provisions of paragraph (3) or the permissions set forth in the preceding paragraph.

#### **Subsection 5 Application of Provisions Regarding Directors**

- Article 224 (1) With respect to a corporation in liquidation, provisions regarding directors, board of directors or general incorporated associations with a board of directors found under the provisions of Article 65, paragraph (2); Article 72 and Article 74, paragraph (3) (including cases in which these provisions are as applied *mutatis mutandis* pursuant to Article 177); Article 87 and Chapter II, Section 3, Subsection 6 (including cases in which these provisions are as applied *mutatis mutandis* pursuant to Article 197, excluding Article 104, paragraph (1)) apply to liquidators, boards of liquidators or corporations in liquidation with a board of liquidators as provisions regarding each liquidator, board of liquidators or corporation in liquidation with a board of liquidators.
- (2) With respect to liquidating general incorporated associations, provisions regarding directors, boards of directors or general incorporated associations with a board of directors found in provisions of Chapter II, Section 3, Subsection 1 and Article 137, paragraph (10) apply to liquidators, boards of liquidators and liquidating general incorporated associations with boards of liquidators as provisions regarding each liquidator, board of liquidators or liquidating general incorporated association with a board of liquidators.
- (3) With respect to general incorporated foundations in liquidation, provisions regarding directors or the boards of directors in the provisions of Article 153, paragraph (3), item (i); Article 173, paragraph (2) and the preceding Chapter, Section 2, Subsection 3 apply to liquidators or boards of liquidators as

provisions regarding each liquidator or board of liquidators. In such a case, the term "a resolution of the board of directors " in Article 181, paragraph (1) is to be "liquidators"; the term "must provide the matters listed below" is to be "must provide the matters listed below; provided, however, that for a general incorporated foundation in liquidation with a board of liquidators (meaning a general incorporated foundation in liquidation prescribed in Article 210, paragraph (2)) the decision of those matters must be made by resolution of the board of liquidators".

### **Section 3 Inventory of Assets**

(Preparation of Inventory of Assets)

Article 225 (1) Following the assumption of the role of liquidator, liquidators (or, for corporations in liquidation with a board of liquidators, liquidators as listed in Article 220, paragraph (7), all items) must, without delay, investigate the status of the assets of the corporation in liquidation and must prepare, as prescribed by the applicable Order of the Ministry of Justice, an inventory of assets and a balance sheet (hereinafter referred to as "inventory of assets, etc." in this Article and the following Article) as of the day when the corporation in liquidation fell under any of the cases listed in Article 206.

(2) For corporations in liquidation with a board of liquidators, the inventory of assets, etc. must be approved by the board of liquidators.

(3) Liquidators must submit or provide the inventory of assets, etc. (or, in cases of application of the provisions of the preceding paragraph, an inventory of assets, etc. that has been approved under that paragraph) to the general assembly or board of councilors and must obtain approval from that general assembly or board of councilors.

(4) A corporation in liquidation must preserve the inventory of assets, etc. from the time the inventory of assets, etc. is prepared until the time of the registration of the completion of liquidation at the location of the principal office.

(Order to Submit an Inventory of Assets)

Article 226 The court may, in response to a petition or on the court's own authority, order parties to an action to submit inventories of assets, etc., in whole or in part.

(Preparation and Preservation of Balance Sheets)

Article 227 (1) A corporation in liquidation must, as prescribed by the applicable Order of the Ministry of Justice, prepare a balance sheet and administrative report for each liquidating administrative year (meaning each one year period

starting on the day immediately following the day when the corporation in liquidation came to fall under any of the cases of the items listed in Article 206 (or, if such a corresponding day does not exist, the preceding day)) and must prepare annexed detailed statements thereof.

- (2) Balance sheets, administrative reports and annexed detailed statements thereof set forth in the preceding paragraph may be prepared using electronic or magnetic records.
- (3) A corporation in liquidation must, from the time of preparation of the balance sheet under paragraph (1) until the time of registration of the completion of liquidation at the location of the principal office, preserve the balance sheet, administrative report and annexed detailed statements thereof.

#### (Auditing of Balance Sheets)

Article 228 (1) A corporation in liquidation with auditors must have the balance sheet, administrative report and annexed detailed statements thereof set forth in the preceding Article, paragraph (1) audited by auditors as prescribed by the applicable Order of the Ministry of Justice.

- (2) A corporation in liquidation with a board of liquidators must obtain approval of the board of liquidators for the balance sheet, administrative report and annexed detailed statements thereof under the preceding Article, paragraph (1) (or, in cases of application of the provisions of the preceding paragraph, undergo the audit of the preceding paragraph).

#### (Retainment and Inspection of Balance Sheets)

Article 229 (1) Corporations in liquidation listed in each of the following items must keep the balance sheet and administrative report for each liquidating administrative year prescribed in Article 227, paragraph (1) and the annexed detailed statements thereof (including audit reports in cases of the application of the provisions of the preceding Article, paragraph (1); hereinafter referred to as "balance sheet, etc." in this Article) at the principal office thereof, from the day when each applicable item is prescribed until the time of the registration of the completion of liquidation at the location of the principal office:

- (i) liquidating general incorporated association: the day one week prior to the day of the annual general assembly meeting (or, in cases under Article 58, paragraph (1), from the day the proposal under that paragraph is submitted);
  - (ii) general incorporated foundation in liquidation: the day one week prior to the day of the annual meeting of the board of councilors (or, in cases under Article 194, paragraph (1), from the day the proposal under that paragraph is submitted);
- (2) Members, councilors and creditors may make the following requests at any time during the business hours of the corporation in liquidation; provided,

however that members and creditors making requests listed in items (ii) and (iv) pay the fees prescribed by that corporation in liquidation:

- (i) if a balance sheet, etc. is prepared in writing, request to inspect those documents;
- (ii) request for the issuance of a transcript or extract of the documents referred to in the preceding item;
- (iii) if a balance sheet, etc. is prepared by electronic or magnetic records, a request to inspect anything that displays the data recorded in that electronic or magnetic records, in accordance with methods prescribed by the applicable Order of the Ministry of Justice; or
- (iv) request that the matters recorded in the electronic or magnetic records referred to in the preceding item be provided by electronic or magnetic means prescribed by the corporation in liquidation, or request for the issuance of any document that describes these matters.

(Submission of Balance Sheets)

Article 230 (1) For the corporations in liquidation listed in each of the following items, liquidators must submit or provide balance sheets and administrative reports prescribed by each applicable item at the annual general assembly meeting or annual meeting of the board of councilors:

- (i) corporation in liquidation with auditors (excluding corporations in liquidation with a board of liquidators): balance sheet and administrative report that have been audited under the provisions of Article 228, paragraph (1);
  - (ii) corporation in liquidation with a board of liquidators: balance sheet and administrative report that have been approved under the provisions of Article 228, paragraph (2); or
  - (iii) corporation in liquidation other than those listed in the preceding two items: balance sheet and administrative report under the provisions of Article 227, paragraph (1).
- (2) A balance sheet submitted or provided pursuant to the provisions of the preceding paragraph must be approved by the annual general assembly meeting or annual meeting of the board of councilors.
- (3) Liquidators must report the contents of the administrative reports submitted or provided pursuant to the provisions of paragraph (1) to the annual general assembly meeting or annual meeting of the board of councilors.

(Orders to Submit a Balance Sheet)

Article 231 The court may, in response to a petition or on its own authority, order parties to an action to submit the balance sheet and the annexed detailed statements thereof under Article 227, paragraph (1), in whole or in part.

(Exemption from Application)

Article 232 The provisions of Chapter II, Section 4, Subsection 3 (including cases that apply mutatis mutandis pursuant to Article 199, excluding Article 123, paragraph (4); Article 128, paragraph (3); Article 129 and Article 30) do not apply to corporations in liquidation.

#### **Section 4 Performance of Obligations**

(Public Notice to Creditors)

Article 233 (1) A corporation in liquidation must, without delay after coming to fall under any of the cases listed in each item of Article 206, give public notice in the Official Gazette to the creditors of the corporation in liquidation to the effect that creditors should state their claim during a certain period of time, and must give notice separately to each known creditor; provided, however, that the period must not be less than two months.

(2) Public notice pursuant to the provisions of the preceding paragraph must contain a supplementary note to the effect that the creditors will be excluded from the liquidation if they do not state a claim within that period of time.

(Restrictions on the Performance of Obligations)

Article 234 (1) A corporation in liquidation may not perform its obligations during the period of time set forth in the preceding Article, paragraph (1). In such a case, a corporation in liquidation may not be made exempt from liability arising from failure to perform the obligations.

(2) Notwithstanding the provisions of the preceding paragraph, even during the period of time set forth in the preceding Article, paragraph (1), a corporation in liquidation may, with permission of the court, perform its obligations regarding minor claims, claims secured by security interests over the assets of the corporation in liquidation, or other claims unlikely to be detrimental to other creditors even if performed. In such a case, if there are two or more liquidators, the petition for that permission must be made with the consent of all liquidators.

(Performance of Obligations Regarding Conditional Claims)

Article 235 (1) A corporation in liquidation may perform its obligations regarding conditional claims, claims of indeterminate duration or other claims of indeterminable amount. In such a case, a petition to appoint an appraiser must be made to the court for the purpose of having those claims evaluated.

(2) In cases set forth in the preceding paragraph, a corporation in liquidation must perform its obligations regarding the claims under that paragraph in

accordance with the evaluation of the appraiser under that paragraph.

- (3) Expenses for the procedures for the appointment of an appraiser under paragraph (1) are borne by the corporation in liquidation. The same applies to the expenses for summonses and questions for the purposes of the appraisal performed by that appraiser.

(Restriction on Returning Funds)

Article 236 The performance of obligations regarding the return of funds may not be performed until after the remaining liquidating general incorporated association obligations have been performed.

(Restrictions on the Transfer of Residual Assets Prior to Performance of Obligation)

Article 237 A corporation in liquidation may not transfer assets until it has performed the obligations of that corporation in liquidation; provided, however, that this does not apply if assets regarded as necessary for the performance of obligations regarding a claim that is the subject of dispute as to its existence or amount have been withheld.

(Exclusion from Liquidation)

- Article 238 (1) Creditors of a corporation in liquidation (excluding known creditors) who fail to state their claim during the period under Article 233, paragraph (1) are excluded from the liquidation.
- (2) Creditors who are excluded from liquidation pursuant to the provisions of the preceding paragraph may request performance only with respect to residual assets that have not been transferred.

### **Section 5 Ownership of Residual Assets**

- Article 239 (1) Ownership of residual assets are as prescribed by the articles of incorporation.
- (2) When ownership of residual assets is not prescribed pursuant to the provisions of the preceding paragraph, the ownership is prescribed by resolution of the general assembly or board of councilors of the corporation in liquidation.
- (3) Residual assets of which ownership is not prescribed pursuant to the provisions of the preceding two paragraphs belong to the national treasury.

### **Section 6 Completion of Liquidation Administration**

(Completion of Liquidation Administration)

- Article 240 (1) When liquidation administration has been completed, the corporation in liquidation must prepare, without delay, a statement of accounts as prescribed by the applicable Order of the Ministry of Justice.
- (2) For a corporation in liquidation with a board of liquidators, the statement of accounts must be approved by the board of liquidators.
- (3) A liquidator must submit or provide a statement of accounts (or, if provisions of the preceding paragraph apply, a statement of accounts that has been approved under that paragraph) to the general assembly or board of councilors and obtain the approval of the same.
- (4) If approval is given under the preceding paragraph, an exemption is deemed to have been given for the liquidator's liability for failure to perform its duties; provided, however, that this does not apply when there has been misconduct regarding the execution of the liquidator's duties.

(Preservation of Accounting Materials)

- Article 241 (1) A liquidator (or, for a corporation in liquidation with a board of liquidators, the liquidators listed in Article 220, paragraph (7), all items) must preserve the books of the corporation in liquidation and all important materials regarding the business and liquidation of the same (hereinafter referred to as "accounting materials" in this Article) for a period of ten years from the time of the registration of the completion of the liquidation at the location of the principal office of the corporation in liquidation.
- (2) The court may, in response to a petition by interested parties, appoint a person to preserve the accounting materials on behalf of the liquidator set forth in the preceding paragraph. In such a case, the provisions set forth in this paragraph do not apply.
- (3) The person appointed pursuant to the provisions of the preceding paragraph must preserve the accounting materials for a period of ten years from the time of the registration of the completion of the liquidation at the location of the principal office of the corporation in liquidation.
- (4) Expenses for the procedures of appointment pursuant to the provisions of paragraph (2) are borne by the corporation in liquidation.

## **Chapter V Mergers**

### **Section 1 General Rules**

(Conclusion of Merger Agreements)

- Article 242 A general incorporated association or a general incorporated foundation may merge with another general incorporated association or general incorporated foundation. In such a case, the corporations wishing to conduct the merger must conclude a merger agreement.

(Limitations on Mergers)

Article 243 (1) In the cases described in the following items, the general incorporated association or general incorporated foundation surviving the merger, or the general incorporated association or general incorporated foundation incorporated in the merger, must be of the type of corporation prescribed respectively in that item:

- (i) a general incorporated association, in cases in which the merging corporations are general incorporated associations only;
  - (ii) a general incorporated foundation, in cases in which the merging corporations are general incorporated foundations only;
- (2) In cases other than those listed in the items above, when the merging general incorporated association has not returned the total amount of funds by the date of conclusion of the merger agreement, the corporation surviving the merger or the corporation incorporated in the merger must be a general incorporated association.

## **Section 2 Absorption-Type Mergers**

### **Subsection 1 Absorption-Type Merger Agreements**

(Absorption-Type Merger Agreements)

Article 244 In cases in which a general incorporated association or a general incorporated foundation performs an absorption-type merger, the following matters must be specified in the absorption-type merger agreement:

- (i) the name and address of the general incorporated association or general incorporated foundation surviving the absorption-type merger (hereinafter referred to as "the corporation surviving the absorption-type merger") and the general incorporated association or general incorporated foundation disappearing in the absorption-type merger (hereinafter referred to as "the corporation disappearing in the absorption-type merger");
- (ii) the date on which the absorption-type merger comes into effect (hereinafter in this Section referred to as "effective date").

(Effectuation of Absorption-Type Mergers)

Article 245 (1) The corporation surviving the absorption-type merger assumes the rights and obligations of the corporation disappearing in the absorption-type merger on the effective date.

- (2) If the dissolution by absorption-type merger of the corporation disappearing in the absorption-type merger does not occur after the registration of that merger, the above provisions cannot be asserted against a third party.
- (3) The provisions of the preceding two paragraphs do not apply in cases in which

procedures under the provisions of Article 248 or Article 252 have not terminated, or in cases in which the absorption-type merger is suspended.

### **Subsection 2 Procedures for Corporations Disappearing in an Absorption-Type Merger**

(Retention and Inspection of Documents Related to Absorption-Type Merger Agreements)

Article 246 (1) The corporation disappearing in an absorption-type merger must record the content of the absorption-type merger agreement and matters otherwise prescribed by the applicable Order of the Ministry of Justice from the date of commencement for keeping the absorption-type merger agreement to the effective date, and must keep documents or electronic or magnetic records at its principal office.

- (2) "The date of commencement for keeping the absorption-type merger agreement" prescribed in the preceding paragraph is the earliest of the following dates:
- (i) two weeks before the date of the general assembly meeting referred to in the following Article, when the corporation disappearing in the absorption-type merger is a general incorporated association (or in cases under Article 58 paragraph (1), the date proposed in that paragraph);
  - (ii) two weeks before the date of the meeting of the board of councilors referred to in the following Article, when the corporation disappearing in the absorption-type merger is a general incorporated foundation (or in cases under Article 94 paragraph (1), the date proposed in that paragraph);
  - (iii) the date of public notice under the provisions of Article 248 paragraph (2), or the date of notice under the provisions of the same Article; whichever is earlier.
- (3) The members, councilors, and creditors of the corporation disappearing in the absorption-type merger may make the following requests at any time during the business hours of the corporation disappearing in the absorption-type merger; provided, however, that when making the requests listed in items (ii) and (iv), members and creditors must pay for any costs prescribed by the corporation disappearing in the absorption-type merger:
- (i) requests to inspect the documents described in paragraph (1);
  - (ii) requests to receive a certified copy or abridged copy of the documents described in paragraph (1);
  - (iii) requests to inspect anything recorded pursuant to paragraph (1) in electronic or magnetic records, in accordance with methods prescribed by the applicable Order of the Ministry of Justice;
  - (iv) requests to be provided with the matters recorded in electronic or magnetic

records pursuant to paragraph (1) by the electronic or magnetic means prescribed by the corporation disappearing in the absorption-type merger, or requests to be issued any document that describes those matters.

(Approval of Absorption-Type Merger Agreements)

Article 247 A corporation disappearing in an absorption-type merger must receive approval for the absorption-type merger agreement by a resolution of the general assembly or board of councilors by the day immediately prior to the effective date.

(Objections of Creditors)

Article 248 (1) Creditors of a corporation disappearing in an absorption-type merger may state their objections regarding the absorption-type merger to the corporation disappearing in the absorption-type merger.

(2) A corporation disappearing in an absorption-type merger must give public notice of the matters listed below in the Official Gazette, and give notice separately to each known creditor; provided, however, that the period described in item (iv) must not less than one month:

(i) intent to perform an absorption-type merger;

(ii) name and address of the corporation surviving the absorption-type merger;

(iii) items prescribed by the applicable Order of the Ministry of Justice as related to financial statements (refers to financial statements as specified in Article 123 paragraph (2) (including cases applied mutatis mutandis pursuant to Article 199); the same applies hereinafter) of the corporation disappearing in the absorption-type merger and the corporation surviving the absorption-type merger;

(iv) the fact that creditors may state objections within a certain period of time.

(3) Notwithstanding the provisions of the preceding paragraph, when a corporation disappearing in an absorption-type merger provides public notice under the provisions of the preceding paragraph by the methods listed in items (ii) and (iii) of that paragraph in accordance with provisions of Article 331 paragraph (1), beyond the Official Gazette, the separate notice under the provisions of the preceding paragraph is not required.

(4) If a creditor has not stated an objection within the period of time specified under the terms of paragraph (2) item (iv), that creditor is deemed to have approved the absorption-type merger.

(5) If a creditor has stated an objection within the period of time specified under the terms of paragraph (2) item (iv), the corporation disappearing in the absorption-type merger must make payments, provide adequate collateral, or place adequate assets in trust with a trust company, etc. (refers to trust companies and financial institutions operating trust businesses (refers to

financial institutions approved under Article 1 paragraph (1) of the Act on the Concurrent Undertaking of Trust Business by Financial Institutions (Act No. 43, 1943); the same applies hereinafter) for the purpose of payment to the creditor; provided, however, that this does not apply when there is no risk of harm to that creditor from the absorption-type merger.

(6) The provisions of the preceding paragraphs do not apply to creditors of claims regarding the return of funds.

(Changes to the Effective Date of Absorption-Type Mergers)

Article 249 (1) A corporation disappearing in an absorption-type merger may change the effective date with the consent of the corporation surviving the absorption-type merger.

(2) In cases described in the preceding paragraph, the corporation disappearing in the absorption-type merger must provide public notice of the post-change effective date by the day immediately prior to the pre-change effective date (if the post-change effective date is a date prior to the pre-change effective date, that post-change effective date).

(3) If the effective date is changed according to the provisions of paragraph (1), the post-change effective date is treated as the effective date, and the provisions of Article 245 and this Subsection apply.

### **Subsection 3 Procedures for Corporations Surviving Absorption-Type Mergers**

(Retainment and Inspection of Documents Related to Absorption-Type Merger Agreements)

Article 250 (1) A corporation surviving an absorption-type merger must record the content of the absorption-type merger agreement and matters otherwise prescribed by the applicable Order of the Ministry of Justice from the date of commencement for keeping the absorption-type merger agreement until six months after the effective date, and must keep documents or electronic or magnetic records at its principal office.

(2) "The date of commencement for keeping the absorption-type merger agreement" prescribed in the preceding paragraph is the earliest of the following dates:

(i) two weeks before the date of the general assembly meeting referred to in the following Article, when the corporation surviving the absorption-type merger is a general incorporated association (or in cases under Article 58 paragraph (1), the date proposed in that paragraph);

(ii) two weeks before the date of the meeting of the board councilors referred to in the following Article, when the corporation surviving the absorption-type

- mergers is a general incorporated foundation (or in cases under Article 194 paragraph (1), the date proposed in that paragraph);
- (iii) the date of public notice under provisions of Article 252, paragraph (2), or the date of notice under provisions of the same Article; whichever is earlier.
- (3) The members, councilors, and creditors of a corporation surviving an absorption-type merger may make the following requests at any time during the business hours of the corporation surviving the absorption-type merger; provided, however, that when making the requests listed in items (ii) or (iv), members and creditors must pay for any costs prescribed by the corporation surviving the absorption-type merger:
- (i) requests to inspect the documents described in paragraph (1);
- (ii) requests to receive a certified copy or abridged copy of the documents described in paragraph (1);
- (iii) requests to inspect anything recorded pursuant to paragraph (1) in electronic or magnetic records, in accordance with methods prescribed by the applicable Order of the Ministry of Justice;
- (iv) requests to be provided with the matters recorded in electronic or magnetic records pursuant to paragraph (1) by the electronic or magnetic means prescribed by the corporation surviving the absorption-type merger, or request the issuance of any document that describes those matters.

#### (Approval of Absorption-Type Merger Agreements)

- Article 251 (1) A corporation surviving an absorption-type merger must receive approval for the absorption-type merger agreement by a resolution of the general assembly or board of councilors by the day immediately prior to the effective date.
- (2) If the amount prescribed by the applicable Order of the Ministry of Justice as the amount of debt of a corporation disappearing in an absorption-type merger to which the corporation surviving the absorption-type merger succeeds by transfer exceeds the amount prescribed by the applicable Order of the Ministry of Justice as the amount of assets of the corporation disappearing in the absorption-type merger to which the corporation surviving the absorption-type merger succeeds by transfer, the director must explain this fact to the general assembly or the board of councilors set forth in the preceding paragraph.

#### (Objections of Creditors)

- Article 252 (1) Creditors of a corporation surviving an absorption-type merger may state objections regarding the absorption-type merger to the corporation surviving the absorption-type merger.
- (2) A corporation surviving an absorption-type merger must give public notice of the matters listed below in the Official Gazette, and give notice separately to

each known creditor; provided, however, that the period described in item (iv) must not be less than one month:

- (i) intent to perform an absorption-type merger;
  - (ii) name and address of the corporation disappearing in the absorption-type merger;
  - (iii) items prescribed by the applicable Order of the Ministry of Justice as related to financial statements of the corporation surviving the absorption-type merger and the corporation disappearing in the absorption-type merger;
  - (iv) the fact that creditors may state objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, when the corporation surviving the absorption-type merger provides public notice under the provisions of the preceding paragraph by the methods listed in items (ii) and (iii) of that paragraph in accordance with provisions of Article 331, paragraph (1), beyond the Official Gazette, the separate notice under provisions of the preceding paragraph is not required.
- (4) If a creditor has not stated an objection within the period of time specified under the terms of paragraph (2) item (iv), that creditor is deemed to have approved the absorption-type merger.
- (5) If a creditor has stated an objection within the period of time specified under the terms of paragraph (2) item (iv), the corporation surviving the absorption-type merger must make payments, provide adequate collateral, or place adequate assets in trust with a trust company, etc. for the purpose of payment to the creditor; provided, however, that this does not apply when there is no risk of harm to the creditor from the absorption-type merger.
- (6) The provisions of the preceding paragraphs do not apply to creditors of claims for the return of funds.

(Retainment and Inspection of Documents Related to Absorption-Type Merger Agreements)

Article 253 (1) A corporation surviving an absorption-type merger must without delay document the rights and obligations of the corporation disappearing in the absorption-type merger succeeded to by the corporation surviving the absorption-type merger through the absorption-type merger, and matters otherwise prescribed by the applicable Order of the Ministry of Justice, or must prepare recorded documents or electronic or magnetic records.

- (2) The corporation surviving an absorption-type merger must keep the documents or electronic or magnetic records set forth in the preceding paragraphs at its principal office for six months from the effective date.
- (3) The members, councilors, and creditors of the corporation surviving the absorption-type merger may at any time make the following requests of the corporation surviving the absorption-type merger during its operating hours;

provided, however, that when making the requests listed in items (ii) and (iv), members and creditors must pay for any costs prescribed by the corporation surviving the absorption-type merger:

- (i) request to inspect the documents described in paragraph (1);
- (ii) request to receive a certified copy or abridged copy of the documents described in paragraph (1);
- (iii) request to inspect anything recorded pursuant to paragraph (1) in electronic or magnetic records, in accordance with methods prescribed by the applicable Order of the Ministry of Justice;
- (iv) request that the matters recorded in electronic or magnetic records pursuant to paragraph (1) be provided by an electronic or magnetic means prescribed by the corporation surviving the absorption-type merger or request the issuance of any document that describes those matters.

### **Section 3 Consolidation-Type Mergers**

#### **Subsection 1 Consolidation-Type Merger Agreements**

(Consolidation-Type Merger Agreements)

Article 254 In cases in which two or more general incorporated associations or general incorporated foundations perform a consolidation-type merger, the following matters must be specified in the consolidation-type merger agreement:

- (i) the names and addresses of the general incorporated associations or general incorporated foundations disappearing in the consolidation-type merger (hereinafter referred to as " corporation disappearing through the consolidation-type merger");
- (ii) the purpose, name, and location of the principal office of the general incorporated association or general incorporated foundation incorporated through the consolidation-type merger (hereinafter referred to as "corporation incorporated through the consolidation-type merger");
- (iii) matters prescribed in the articles of incorporation of the corporation incorporated through the consolidation-type merger, beyond the items in the preceding paragraph;
- (iv) the names of the persons to serve as directors upon incorporation of the corporation incorporated through the consolidation-type merger;
- (v) if the corporation incorporated through the consolidation-type merger is a general incorporated association with financial auditor(s) or a general incorporated foundation with financial auditor(s), the name of the persons or entities serving as financial auditors upon incorporation;
- (vi) if the corporation incorporated through the consolidation-type merger is a general incorporated association with auditor(s), the name of the auditors at

- incorporation;
- (vii) if the corporation incorporated through the consolidation-type merger is a general incorporated foundation, the names of the councilors at incorporation and the auditors at incorporation.

(Effectuation of Consolidation-Type Mergers)

Article 255 A corporation incorporated through a consolidation-type merger assumes the rights and obligations of the corporation disappearing through the consolidation-type merger on the date of formation.

**Subsection 2 Procedures for Corporation Disappearing through a Consolidation-Type Merger**

(Retainment and Inspection of Documents Related to Consolidation-Type Merger Agreements)

Article 256 (1) Corporations disappearing through a consolidation-type merger must record the content of the consolidation-type merger agreement and matters otherwise prescribed by the applicable Order of the Ministry of Justice from the date of commencement for keeping the consolidation-type merger agreement to the effective date, or keep documents or electronic or magnetic records at their principal offices.

- (2) "The date of commencement for keeping the consolidation-type merger agreement" prescribed in the preceding paragraph is the earliest of the following dates:
- (i) two weeks before the date of the general assembly meeting referred to in the following Article, when the corporation disappearing through the consolidation-type merger is a general incorporated association (or the date proposed under Article 58 paragraph (1));
  - (ii) two weeks before the date of the meeting of the board of councilors referred to in the following Article, when the corporation disappearing through the consolidation-type merger is a general incorporated foundation (or the date proposed under Article 194 paragraph (1));
  - (iii) the date of public notice under provisions of Article 258 paragraph (2) or the date of notice under provisions of the same paragraph; whichever is the earlier.
- (3) The members, councilors, and creditors of a corporation disappearing through the consolidation-type merger may make the following requests at any time during the business hours of the corporation disappearing through the consolidation-type merger; provided, however, that when making the requests listed in items (ii) and (iv), members and creditors must pay for any costs prescribed by that corporation disappearing through the consolidation-type

merger:

- (i) request to inspect the documents described in paragraph (1);
- (ii) request to receive a certified copy or abridged copy of the documents described in paragraph (1);
- (iii) request to inspect anything recorded pursuant to paragraph (1) in electronic or magnetic records, in accordance with methods prescribed by the Ministry of Justice;
- (iv) request that the matters recorded in electronic or magnetic records pursuant to paragraph (1) be provided by an electronic or magnetic means prescribed by the corporation disappearing through the consolidation-type merger, or request the issuance of any documents describing those matters.

(Approval of Consolidation-Type Merger Agreements)

Article 257 Each corporation disappearing through the consolidation-type merger must receive approval for the consolidation-type merger agreement by a resolution of the general assembly meeting or board of councilors.

(Objections of Creditors)

Article 258 (1) Creditors of a corporation disappearing through a consolidation-type merger may state objections regarding the consolidation-type merger to that corporation disappearing through a consolidation-type merger.

(2) Each corporation disappearing through a consolidation-type merger must give public notice of the matters listed below in the Official Gazette, and must give notice separately to each known creditor; provided, however, that the period described in item (iv) must not be less than one month:

- (i) intent to effect a consolidation-type merger;
- (ii) the names and addresses of all other corporations disappearing through the consolidation-type merger and the corporations incorporated through the consolidation-type merger;
- (iii) items prescribed by the applicable Order of the Ministry of Justice as related to financial statements of the corporation disappearing through the consolidation-type merger;
- (iv) the fact that creditors may state objections within a certain period of time.

(3) Notwithstanding the provisions of the preceding paragraph, when a corporation disappearing through a consolidation-type merger provides public notice under the provisions of the preceding paragraph by the methods listed in items (ii) and (iii) of that paragraph in accordance with provisions of Article 331 paragraph (1), beyond the Official Gazette, the separate notice under provisions of the preceding paragraph is not required.

(4) If a creditor has not stated an objection within the period of time specified under the terms of paragraph (2) item (iv), that creditor is deemed to have

approved the consolidation-type merger.

- (5) If a creditor has stated an objection within the period of time specified under the terms of paragraph (2) item (iv), the corporation disappearing through the consolidation-type merger must make payments, provide adequate collateral, or place adequate assets in trust with a trust company, etc. for the purpose of payment to the creditor; provided, however, that this does not apply when there is no risk of harm to the creditor from the consolidation-type merger.
- (6) The provisions of the preceding paragraphs do not apply to creditors of claims regarding a return of funds.

### **Subsection 3 Procedures for Corporations Incorporated through Consolidation-Type Mergers**

(Special Provisions on Incorporation)

- Article 259 (1) The provisions of Chapter II, Section 1 (except for Article 11 (except for paragraph (1), item (iv)), Article 12, Article 14, Article 16, Subsection 4, and Subsection 5) do not apply to the incorporation of corporations incorporated through consolidation-type mergers that are general incorporated associations.
- (2) The provisions of Chapter III, Section 1 (except for Article 153, paragraph (1), items (i) through (iii) and (viii) through (x), and paragraph (3), Article 154, Article 156, Article 160, Subsection 5 and Article 163) do not apply to the incorporation of corporation incorporated through the consolidation-type merger that are general incorporated foundations.
- (3) Corporation disappearing through a consolidation-type merger prepares the articles of incorporation of the corporation incorporated through the consolidation-type merger.

(Retainment and Inspection of Documents Related to Consolidation-Type Merger Agreements)

- Article 260 (1) A corporation incorporated through a consolidation-type merger must without delay after formation document the matters prescribed by the applicable Order of the Ministry of Justice as matters regarding the consolidation-type merger, such as the rights and obligations that the corporation incorporated through the consolidation-type merger succeeded to by transfer from the corporations disappearing through the consolidation-type merger through the consolidation-type merger, and must prepare documents or electronic or magnetic records.
- (2) A corporation incorporated through a consolidation-type merger must for six months after the date of formation record the documents or electronic or magnetic records set forth in the preceding paragraph, the content of the

consolidation-type merger agreement, and matters prescribed by the applicable Order of the Ministry of Justice, and keep the documents or electronic or magnetic records at its principal office.

- (3) The members, councilors, and creditors of the corporation incorporated through the consolidation-type merger may make the following requests at any time during the business hours of the corporation incorporated through the consolidation-type merger; provided, however, that when making the requests listed in item (ii) or (iv), members and creditors must pay for any costs prescribed by the corporation incorporated through the consolidation-type merger:
- (i) request to inspect the documents set forth in the preceding paragraph;
  - (ii) request to receive a certified copy or abridged copy of the documents set forth in the preceding paragraph;
  - (iii) request to inspect anything recorded pursuant to the preceding paragraph in electronic or magnetic records, in accordance with methods prescribed by the applicable Order of the Ministry of Justice;
  - (iv) request that the matters recorded in electronic or magnetic records pursuant to the preceding paragraph be provided by an electronic or magnetic means prescribed by the corporation incorporated through the consolidation-type merger, or request the issuance of any document that describes those matters.

## **Chapter VI Miscellaneous Provisions**

### **Section 1 Dissolution Orders**

(Dissolution Orders)

Article 261 (1) In the cases listed below, if the court finds that the existence of a general incorporated association, etc. is unallowable for reasons regarding the protection of public interests, it may, in response to a petition by the Minister of Justice, members, councilors, creditors or any other interested parties, order the dissolution of the general incorporated association etc.:

- (i) if the general incorporated association, etc. is incorporated for an illegal purpose;
- (ii) if the general incorporated association, etc. fails to commence its business within one year from the day of its formation or suspends its business continuously for one year or more, without justifiable grounds; or
- (iii) if an executive director (meaning a representative director or other director who is a director other than a representative director, who has been selected to execute the business of the general incorporated association, etc., by resolution of the board of directors, and who has executed the business of the general incorporated association, etc.) has committed an act that goes

beyond or abuses the authority of the general incorporated association, etc. prescribed by laws and regulations or the articles of incorporation or that violates criminal laws and regulations, if the person commits that act continuously or repeatedly despite receiving a written warning from the Minister of Justice.

- (2) If a member, a councilor, a creditor or any other interested party files the petition set forth in the preceding paragraph, the court may, in response to a petition by the general incorporated association, etc., order the person who filed the petition set forth in that paragraph to provide reasonable security.
- (3) If a general incorporated association, etc. intends to file the petition set forth under the provisions of the preceding paragraph, it must make a prima facie showing that the petition set forth in paragraph (1) has been filed in bad faith.
- (4) The provisions of Article 75, paragraph (5) and paragraph (7) and Articles 76 through 80 of the Code of Civil Procedure (Act No. 109 of 1996) apply mutatis mutandis to the security to be provided with respect to the petition set forth in paragraph (1) pursuant to the provisions of paragraph (2).

(Temporary Restraining Orders Concerning Assets of a General Incorporated Association)

- Article 262 (1) If the petition set forth in paragraph (1) of the preceding Article is filed, the court may, in response to a petition by the Minister of Justice or members, councilors, creditors or any other interested parties, or by virtue of the court's own authority, issue a disposition ordering administration by an administrator (referred to as an "administration order" in the following paragraph) or any other necessary temporary restraining order with respect to the assets of the general incorporated association, etc., until a ruling is handed down on the petition set forth in that paragraph.
- (2) If the court issues an administration order, it must appoint an administrator for that administration order.
  - (3) The court may, in response to a petition by the Minister of Justice or members, councilors, creditors or any other interested parties, or by virtue of the court's own authority, dismiss the administrator set forth in the preceding paragraph.
  - (4) When the court appoints an administrator as set forth in paragraph (2), it may specify the amount of remuneration to be paid by the general incorporated association, etc. to that administrator.
  - (5) The administrator set forth in paragraph (2) is supervised by the court.
  - (6) The court may order the administrator set forth in paragraph (2) to report the status of the assets of the general incorporated association, etc. and to account for the administration thereof.
  - (7) The provisions of Article 644, Article 646, Article 647 and Article 650 of the

Civil Code apply mutatis mutandis to the administrator set forth in paragraph (2). In such a case, the term "mandator" in Article 646, Article 647 and Article 650 of that Act is to be replaced with "general incorporated association or general incorporated foundation".

(Duty of a Government Agency to Give Notice to the Minister of Justice)

Article 263 If a court or any other government agency, a public prosecutor or an official comes to know in the course of their duties that there are grounds for filing the petition set forth in Article 261, paragraph (1), or giving the warning set forth in item (iii) of that paragraph, that entity or person must give notice to that effect to the Minister of Justice.

## **Section 2 Legal Action**

### **Subsection 1 Actions Involving the Organs of a General Incorporated Association**

(Actions Seeking Invalidation of Acts concerning the Organs of a General Incorporated Association)

Article 264 (1) Invalidation of the acts listed in the following items may only be asserted by filing an action during the periods specified respectively in those items:

- (i) incorporation of the general incorporated association, etc.: within two years from the day of formation of the general incorporated association, etc.;
- (ii) absorption-type merger of a general incorporated association, etc.: within six months of the day on which the absorption-type merger became effective; and
- (iii) consolidation-type merger of a general incorporated association, etc.: within six months from the day on which the consolidation-type merger became effective;

(2) An action seeking invalidation of the acts listed in the following items may be filed only by the persons specified respectively in those items:

- (i) action set forth in item (i) of the preceding paragraph: a member, etc., of the incorporated general incorporated association etc. (meaning members, councilors, directors, auditors, and liquidators; the same applies hereinafter in this Subsection).
- (ii) action set forth in item (ii) of the preceding paragraph: a member, etc. of the general incorporated association etc. performing an absorption-type merger on the day on which the action became effective, or a member, etc., of the corporation surviving the absorption-type merger, a trustee in bankruptcy, or a creditor who did not give approval to the absorption-type merger.

(iii) action set forth in item (iii) of the preceding paragraph: a member, etc. of the general incorporated association etc. performing a consolidation-type merger on the day on which the action became effective, or a member, etc., of the corporation incorporated through the consolidation-type merger, a trustee in bankruptcy, or a creditor who did not give approval to the consolidation-type merger.

(Actions for Declaratory Judgment of Absence or Invalidation of a Resolution of the General Assembly)

Article 265 (1) With regard to a resolution of the general assembly or a board of councilors, (hereinafter referred to as the "general assembly, etc." in this Subsection and in Article 315, paragraph (1), item (i)), confirmation of the absence of the resolution may be claimed by filing an action.

(2) With regard to resolutions of the general assembly, etc., confirmation of invalidation of a resolution may be claimed by filing an action based on the reason that the contents of the resolution violate laws and regulations.

(Actions Seeking Revocation of a Resolution of the General Assembly)

Article 266 (1) In the cases listed below, a member, etc. may, within three months from the day of resolution of the general assembly, etc., claim revocation of the resolution by filing an action. The same applies to a person who becomes a member, etc. (including persons who have the rights and obligations of a director, auditor, liquidator, or councilor pursuant to the provisions of Article 75, paragraph (1) (including the cases where applied mutatis mutandis pursuant to Article 177 and Article 210, paragraph (4)), or Article 175, paragraph (1)):

(i) if the convocation procedures or the method of resolution of the general assembly, etc. violate laws and regulations or the articles of incorporation or are grossly improper;

(ii) if the contents of the resolution of the general assembly, etc. violate the articles of incorporation; or

(iii) if a grossly improper resolution is made as a result of a person with a special interest in that resolution of the general assembly, etc. exercising a voting right.

(2) If an action set forth in the preceding paragraph is filed, even if the convocation procedures or the method of resolution of the general assembly, etc. are in violation of laws and regulations or the articles of incorporation, the court may dismiss claims made pursuant to that paragraph if it finds that the facts in violation are not serious and will not affect the resolution.

(Actions Seeking Rescission of the Incorporation of a General Incorporated

Association)

Article 267 In the cases listed in the following items, the persons specified respectively in those items may request rescission of the incorporation of the general incorporated association, etc. by filing an action within two years from the day of formation of the general incorporated association, etc.:

- (i) if a member or founder is able to rescind that member or founder's manifestation of intent related to the incorporation pursuant to the provisions of the Civil Code or any other Acts: that member or founder; or
- (ii) if a founder incorporates a general incorporated association, etc., in the knowledge that it will be detrimental to a creditor: that creditor.

(Actions Seeking Dissolution of a General Incorporated Association)

Article 268 In the cases listed below, if there are unavoidable circumstances, members or councilors with not less than one-tenth (or, if a lesser ratio is prescribed in the articles of incorporation, that ratio) of the voting rights of all members or councilors may claim dissolution of the general incorporated association, etc., by filing an action:

- (i) if a general incorporated association, etc. faces extreme difficulty in executing business and the general incorporated association, etc. suffers or is likely to suffer irreparable harm; or
- (ii) if the management or handling of assets of the general incorporated association, etc. is extremely unreasonable and puts the existence of the general incorporated association, etc. at risk.

(Defendants)

Article 269 With regard to the actions listed in the following items (hereinafter collectively referred to as an "action concerning part of a general incorporated association, etc." in this Section), the person specified respectively in those items is the defendant:

- (i) an action seeking invalidation of the incorporation of a general incorporated association, etc.: the incorporated general incorporated association, etc.;
- (ii) an action seeking invalidation of an absorption-type merger: the corporation surviving the absorption-type merger;
- (iii) an action seeking invalidation of a consolidation-type merger: the corporation incorporated through the consolidation-type merger;
- (iv) an action for declaratory judgment of absence of a resolution of the general assembly, etc., or invalidation of a resolution of the general assembly, etc., based on a reason that the contents of the resolution violate laws and regulations: the relevant general incorporated association, etc.;
- (v) an action seeking revocation of a resolution of the general assembly, etc.: the relevant general incorporated association, etc.;

- (vi) an action seeking rescission of the incorporation of a general incorporated association, etc. pursuant to the provisions of Article 267, item (i): that general incorporated association, etc.;
- (vii) an action seeking rescission of the incorporation of a general incorporated association, etc. pursuant to the provisions of Article 267, item (ii): that general incorporated association, etc. and the founder set forth in that item; and
- (viii) an action seeking dissolution of a general incorporated association, etc.: that general incorporated association, etc.

(Jurisdiction over Actions)

Article 270 Actions concerning part of a general incorporated association, etc. are under the exclusive jurisdiction of the district court with jurisdiction over the location of the principal office of the general incorporated association, etc. which is the defendant.

(Orders to Provide Security)

Article 271 (1) With regard to an action concerning part of a general incorporated association, etc. which may be filed by a member, the court may, in response to a petition by the defendant, order the member who has filed that action concerning part of a general incorporated association, etc. to provide reasonable security; provided, however, that this does not apply when that member is a director, auditor, or liquidator.

(2) The provisions of the preceding paragraph apply mutatis mutandis to actions concerning part of a general incorporated association, etc. which may be filed by creditors.

(3) In order for a defendant to file the petition set forth in paragraph (1) (including cases where applied mutatis mutandis pursuant to the preceding paragraph), the defendant must make a prima facie showing that the action filed by the plaintiff is in bad faith.

(Mandatory Consolidation of Oral Arguments)

Article 272 When several actions related to an action concerning part of a general incorporated association, etc. for the same claim are pending simultaneously, the oral arguments and judicial decisions thereof must be made in consolidation.

(Persons Affected by an Upholding Judgment)

Article 273 A final and binding judgment upholding a claim related to an action concerning part of a general incorporated association, etc. is also effective against third parties.

(Effects of a Judgment of Invalidation, Revocation or Rescission)

Article 274 When a judgment upholding a claim related to an action concerning part of a general incorporated association, etc. (limited to any one of the actions listed in Article 269, item (i) through item (iii), item (vi) and item (vii)) becomes final and binding, the act that is held to be invalid or revoked or rescinded by that judgment (if a general incorporated association, etc. was incorporated in that act, it includes that incorporation) becomes ineffective from that time onwards.

(Effects of a Judgment of Invalidation of a Merger)

Article 275 (1) If a judgment upholding a claim related to an action seeking invalidation of any one of the acts listed in the following items becomes final and binding, the general incorporated association, etc. that carried out that act is liable jointly and severally to perform the obligations assumed by the general incorporated associations, etc. specified respectively in those items after the day on which that act became effective:

(i) absorption-type merger of a general incorporated association, etc.: the corporation surviving the absorption-type merger;

(ii) consolidation-type merger of a general incorporated association, etc.: the corporation incorporated through the consolidation-type merger.

(2) In the cases set forth in the preceding paragraph, the assets acquired, after the day on which the acts listed in the items of that paragraph became effective, by the general incorporated associations, etc. specified respectively in those items, are co-owned by the general incorporated associations, etc. that carried out those acts.

(3) In the cases set forth in the two preceding paragraphs, the portion of the obligations to be assumed by each general incorporated association, etc. set forth in paragraph (1) and share of co-ownership of assets set forth in the preceding paragraph are decided through discussion among the general incorporated associations, etc.

(4) If no agreement is reached in the discussion set forth in the preceding paragraph with regard to the portion of the obligations to be assumed by each general incorporated association, etc. set forth in paragraph (1) and share of co-ownership of assets set forth in the preceding paragraph, the court comes to a decision, in response to a petition by each general incorporated associations, etc., by taking into account the amount of assets held by each general incorporated association, etc. as of the time the act set forth in any one of the items of paragraph (1) became effective, and all other circumstances.

(Effects of a Judgments of Invalidation or Rescission of the Incorporation of a

General Incorporated Association)

Article 276 (1) If a judgment upholding a claim related to an action seeking invalidation or rescission of the incorporation of a general incorporated association, etc. becomes final and binding, and the cause of the invalidation or rescission is attributable only to part of the members, the general incorporated association, etc. may continue in existence with the consent of all of the other members. In such a case, the members to whom the cause is attributable are deemed to have withdrawn.

(2) The provisions of the first sentence of the preceding paragraph apply mutatis mutandis when a judgment upholding a claim related to an action seeking invalidation or rescission of the incorporation of a general incorporated association, etc. becomes final and binding. In such a case, the term "member" is to be replaced with "founder".

(Liability for Damages if the Plaintiff Loses an Action)

Article 277 If a plaintiff who filed an action concerning part of a general incorporated association, etc., loses the action, and the plaintiff acted in bad faith or with gross negligence, the plaintiff is jointly and severally liable to compensate the defendant for damages.

**Subsection 2 Actions to Enforce Liability against a General Incorporated Association**

(Actions to Enforce Liability)

Article 278 (1) A member may request that the general incorporated association, in writing or by any other method prescribed by the applicable Order of the Ministry of Justice, file an action to enforce liability against members at incorporation, director at incorporation, and officer, etc. (meaning the officer, etc. prescribed in Article 111, paragraph (1); the same applies in paragraph (3)) or liquidator (hereinafter in this Subsection referred to as a "actions to enforce liability"); provided, however, that this does not apply if the purpose of the liability action is to seek unlawful gains of that member or a third party or to inflict damages on that general incorporated association.

(2) When the general incorporated association has not filed an action to enforce liability within sixty days from the day of a request made pursuant to the provisions of the preceding paragraph, the member who has made that request may file an action to enforce liability on behalf of the general incorporated association.

(3) If the general incorporated association has not filed an action to enforce liability within sixty days from the day of the request made pursuant to the provisions of paragraph (1), and there is a request by the member who made

that request or a member at incorporation, director at incorporation, officer, etc. or liquidator as set forth in that paragraph, it must, without delay, notify the person who made the request of the reason for not filing the action to enforce liability, in writing or by any other method prescribed by the applicable Order of the Ministry of Justice.

- (4) Notwithstanding the provisions of paragraphs (1) and (2), if the general incorporated association is likely to suffer irreparable harm through the elapse of the period set forth in those paragraphs, the member set forth in paragraph (1) may immediately file an action to enforce liability, etc. on behalf of the general incorporated association; provided, however, that this does not apply in the cases set forth in the proviso to that paragraph.
- (5) The action to enforce liability set forth in paragraph (2) or the preceding paragraph is to be an action related to a claim which is not based on assets right when calculating the value of the action.
- (6) If a member files an action to enforce liability, the court may, in response to a petition by the defendant, order that member to provide reasonable security.
- (7) If the defendant intends to file the petition set forth in the preceding paragraph, the defendant must make a prima facie showing that the action to enforce liability has been filed in bad faith.

#### (Jurisdiction of an Action)

Article 279 An action to enforce liability is under the exclusive jurisdiction of the district court with jurisdiction over the location of the principal office of the general incorporated association.

#### (Participation in a Legal Action)

Article 280 (1) A member or a general incorporated association may participate in an action to enforce liability either as a coparty or to assist either of the parties; provided, however, that this does not apply when this would unduly delay court proceedings or impose an excessive administrative burden on the court.

- (2) In order for a general incorporated association with auditor(s) to participate in an action to enforce liability to assist a director, liquidator or a person who was formerly in such a position, it must obtain the consent of the auditor (or, if there are two or more auditors, each auditor).
- (3) If a member files a liability action, the member must give notice of legal action to the general incorporated association without delay.
- (4) When a general incorporated association files an action to enforce liability, or receives the notice of legal action set forth in the preceding paragraph, it must give notice thereof to its members without delay.

(Settlement)

- Article 281 (1) The provisions of Article 267 of the Code of Civil Procedure do not apply to the subject-matter of an action to enforce liability if a general incorporated association is not a party to settlement in that action; provided, however, that this does not apply when that general incorporated association has given approval.
- (2) In cases set forth in the preceding paragraph, the court must notify the general incorporated association of the contents of the settlement and give the general incorporated association notice to the effect that it should state its objection to the settlement, if any, within two weeks.
- (3) If the general incorporated association does not raise any objections in writing within the period set forth in the preceding paragraph, it is to have given approval for members to effect a settlement within the contents of the notice given pursuant to the provisions of that paragraph.
- (4) The provisions of Article 25, Article 112 (including the cases where applied *mutatis mutandis* pursuant to Article 217, paragraph (4)), and Article 141, paragraph (5) (limited to the portion regarding obligations assumed for the portion not exceeding the excess amount set forth in the proviso to that paragraph) do not apply in cases of effecting a settlement in an action to enforce liability.

(Requests for Costs)

- Article 282 (1) If a member who has filed an action to enforce liability wins the action (including cases of partially winning the action), and that member has paid the necessary costs (excluding court costs) or is to pay a fee to an attorney or a legal professional corporation with respect to the liability action, the member may request that the general incorporated association pay an amount that is found to be reasonable and not exceeding the amount of those costs or the amount of the relevant fees.
- (2) Even if a member who has filed an action to enforce liability loses the case, the member is not obligated to compensate that general incorporated association for damages arising as a result thereof, except when that member was acting in bad faith.
- (3) The provisions of the preceding two paragraphs apply *mutatis mutandis* to any member who participates in a legal action pursuant to the provisions set forth in Article 280, paragraph (1).

(Action for a Retrial)

- Article 283 (1) If an action to enforce liability has been filed, and the plaintiff and the defendant, in collusion, have caused the court to render a judgment for the purpose of prejudicing the rights of the general incorporated association

which are the subject-matter of the liability action, the general incorporated association or members may enter an appeal against the judgment that becomes final and conclusive, by filing an action for a retrial.

(2) The provisions of the preceding Article apply mutatis mutandis to the appeal for retrial set forth in the preceding paragraph.

### **Subsection 3 Actions for Dismissal of an Officer of a General Incorporated Association**

(Actions for Dismissal of an Officer of a General Incorporated Association)

Article 284 If, notwithstanding the presence of misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the duties of a director, auditor, or councilor (hereinafter in this Subsection referred to as "officers, etc."), a proposal to dismiss an officer etc. is rejected at the general assembly meeting or the meeting of the board of councilors, the following persons may request dismissal of that officer etc. by filing an action within thirty days from the day of the general assembly meeting or the meeting of the board of councilors:

- (i) members (excluding members who are directors or auditors regarding that request) holding not less than one-tenth (or, if a lesser ratio is prescribed in the articles of incorporation, that ratio) of the voting rights of all members (excluding members who are the director(s) or auditor(s) regarding that request).
- (ii) a councilor.

(Defendants)

Article 285 With regard to the action set forth in the preceding Article (referred to as an "actions for dismissal of an officer, etc. of a general incorporated association, etc." in the following Article and Article 315, paragraph (1), item (i), (d)), that general incorporated association, etc. and the officer etc. set forth in the preceding Article are the defendants.

(Jurisdiction over an Action)

Article 286 An action for dismissal of an officer, etc. of a general incorporated association, etc. is under the exclusive jurisdiction of the district court with jurisdiction over the location of the principal office of that general incorporated association, etc.

### **Section 3 Non-Contentious Cases** **Subsection 1 General Provisions**

(Jurisdiction over Non-Contentious Cases)

Article 287 (1) Non-contentious cases pursuant to the provisions of this Act (excluding the cases prescribed in the following paragraph) are under the exclusive jurisdiction of the district court with jurisdiction over the location of the principal office of the general incorporated association, etc.

(2) Cases related to petitions set forth in Article 275, paragraph (4) are under the jurisdiction of the court of first instance of actions seeking invalidation of the acts listed in the items of paragraph (1) of that Article.

(Prima Facie Showings)

Article 288 If a petition for permission is filed pursuant to the provisions of this Act, a prima facie showing must be made with regard to the facts that serve as the cause thereof.

(Hearing of Statements)

Article 289 If the court makes one of the judicial decisions listed in the following items during the making of a judicial decision related to the non-contentious cases set forth in the provisions of this Act, it must hear statements by the persons specified respectively in those items; provided, however, that this does not apply when the court makes a judicial decision to dismiss the petition as unlawful or clearly groundless:

- (i) a judicial decision related to a petition for permission for inspection or copying, etc. of documents or electronic or magnetic record prepared or kept by a general incorporated association, etc., pursuant to the provisions of this Act: that general incorporated association, etc.;
- (ii) a determination of the amount of remuneration for a person who is temporarily to perform the duties of a director, auditor, representative director, or councilor appointed pursuant to the provisions of Article 75, paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 177), Article 79, paragraph (2) (including cases where it is applied mutatis mutandis pursuant to Article 197), or Article 175, paragraph (2), a liquidator, a person who is temporarily to perform the duties of a liquidator or representative liquidator appointed pursuant to the provisions of Article 75, paragraph (2) as applied mutatis mutandis pursuant to Article 210, paragraph (4) or the provisions of Article 79, paragraph (2) as applied mutatis mutandis pursuant to Article 214, paragraph (7), an inspector, or the administrator set forth in Article 262, paragraph (2): that general incorporated association, etc. (if the person receiving the remuneration is a person representing the general incorporated association, etc. with an auditor, and no person exists representing that general incorporated association, etc.; otherwise, the auditor) and the person receiving the

- remuneration;
- (iii) a judicial decision under provisions of Article 137, paragraph (7): that general incorporated association (when prior to the formation of the general incorporated association, the members at incorporation) and the person who contributed the non-monetary assets;
  - (iv) a judicial decision regarding the dismissal of a liquidator: that liquidator;
  - (v) a judicial decision under provisions of Article 261, paragraph (1): the relevant general incorporated association, etc.;
  - (vi) a judicial decision regarding a petition under Article 275, paragraph (4): the relevant general incorporated association, etc. that engaged in the action specified in that paragraph.

(Appending of Reasons)

Article 290 A judicial decision for a non-contentious case pursuant to the provisions of this Act must append the reason thereof; provided, however, that this does not apply to the following judicial decisions:

- (i) the judicial decisions listed in item (ii) of the preceding Article;
- (ii) the judicial decisions listed in each of the items in Article 293.

(Immediate Appeals)

Article 291 An immediate appeal may be entered against the judicial decisions listed in the following items only by the persons specified respectively in those items:

- (i) a judicial decision on a temporary restraining order under the provisions of Article 262, paragraph (1): an interested party;
- (ii) the judicial decisions listed in each item of Article 289: the petitioner and the relevant persons specified respectively in those items (for the judicial decisions listed in item (ii) and item (iii) of that Article, the relevant persons specified respectively in those items).

(Stay of Execution of a Judicial Decision of the Prior Instance)

Article 292 The immediate appeal set forth in the preceding Article has the effect of staying execution; provided, however, that this does not apply to an immediate appeal against the judicial decisions listed in Article 289, item (ii) through item (iv).

(Restrictions on Appeals)

Article 293 Judicial Decisions listed in the following items may not be appealed:

- (i) a judicial decision on the appointment or selection of a person who is temporarily to perform the duties of a director, auditor, representative director, or councilor prescribed by Article 289, item (ii), a liquidator, a

- representative liquidator, a person who is temporarily to perform the duties of a liquidator or representative liquidator prescribed in that item, an Inspector, the Appraiser set forth in Article 235, paragraph (1), or the person who retains Accounting Materials set forth in Article 241, paragraph (2);
- (ii) a judicial decision on the appointment or dismissal of an administrator set forth in Article 262, paragraph (2).
  - (iii) a judicial decision made pursuant to the provisions of Article 262, paragraph (6).
  - (iv) a judicial decision upholding a petition for permission made pursuant to the provisions of this Act (excluding the judicial decisions listed in Article 289, paragraph (1)).

(Exclusion from Application of the Provisions of the Non-contentious Cases Procedures Act)

Article 294 The provisions of Article 40 and Article 57, paragraph (2), item (ii) of the Non-contentious Cases Procedures Act (Act No. 51 of 2011) do not apply to non-contentious cases pursuant to the provisions of this Act.

(Supreme Court Rules)

Article 295 Beyond what is provided for in this Act, necessary matters concerning the procedures of non-contentious cases pursuant to the provisions of this Act are specified by the applicable Supreme Court rules.

**Subsection 2 Special Provisions on Procedures of a Dissolution Order**

(Participation of the Minister of Justice)

- Article 296 (1) When the court makes a judicial decision related to the petition set forth in Article 261, paragraph (1), it must seek the opinion of the Minister of Justice.
- (2) The Minister of Justice may, when the court carries out a hearing concerning a case related to the petition set forth in the preceding paragraph, attend that hearing.
  - (3) The court must notify the Minister of Justice that a case related to the petition set forth in paragraph (1) has become pending, and of the date of the hearing set forth in the preceding paragraph.
  - (4) Beyond the persons specified in Article 291, item (ii), the Minister of Justice may also enter an immediate appeal against a judicial decision to dismiss the petition set forth in paragraph (1).

(Special Provisions on Temporary Restraining Orders Concerning Assets of a General Incorporated Association)

Article 297 (1) If a court issues the temporary restraining order set forth in Article 262, paragraph (1), the expenses for the procedures of non-contentious cases are borne by the general incorporated association, etc. The same applies to necessary expenses with regard to that temporary restraining order.

(2) If an immediate appeal has been entered against the temporary restraining order set forth in the preceding paragraph or against a judicial decision dismissing a petition pursuant to the provisions of Article 262, paragraph (1), and the appellate court revokes the judicial decision of prior instance by finding that grounds exist for the immediate appeal, the court costs required for the procedures in the appeal and the court costs required for the procedures in the prior instance, which had been borne by the appellant, are borne by the general incorporated association, etc.

Article 298 (1) An interested party may make a request to a court clerk for the inspection of documents related to the report or account set forth in Article 262, paragraph (6).

(2) An interested party may make a request to a court clerk for the copying of the documents set forth in the preceding paragraph or delivery of the original, transcript or an extract thereof.

(3) The provisions of the preceding paragraph do not apply to audio tapes or video tapes (including objects on which certain matters are recorded by a recording method equivalent thereto) among the documents set forth in paragraph (1). In such a case, a court clerk must permit reproduction of these objects if there is a request from an interested party for those objects.

(4) The Minister of Justice may make a request to a court clerk for inspection of the documents set forth in paragraph (1).

(5) The provisions of Article 91, paragraph (5) of the Code of Civil Procedure apply *mutatis mutandis* to the documents set forth in paragraph (1).

## **Section 4 Registration**

### **Subsection 1 General Provisions**

(Effects of Registration)

Article 299 (1) The matters to be registered pursuant to the provisions of this Act may not be duly asserted against a third party who has no knowledge of those matters until after the registration. The same applies after the registration, if a third party did not know that the matters were registered based on justifiable grounds.

(2) A person who has registered false matters whether intentionally or negligently may not duly assert the falsity of those matters against a third party who has no knowledge of such falsity.

(Period for Registration)

Article 300 The period for registration of matters to be registered pursuant to the provisions of this Act and which require the permission of a government agency are counted from the day of arrival of that written permission.

### **Subsection 2 Registration at the Location of the Principal Office**

(Registration of Incorporation of a General Incorporated Association)

Article 301 (1) The registration of incorporation of a general incorporated association must be completed at the location of the principal office within two weeks from whichever of the following days is the later:

- (i) the day on which the investigation pursuant to the provisions of Article 20, paragraph (1) ended; or
- (ii) the day specified by the members at incorporation.

(2) The following matters must be registered upon the registration set forth in the preceding paragraph:

- (i) the purpose;
- (ii) the name;
- (iii) the addresses of the principal office and branch offices;
- (iv) if there are provisions in the articles of incorporation with regard to the duration or the grounds for dissolution of the general incorporated association, etc., those provisions;
- (v) the name of the director;
- (vi) the name and address of the representative director;
- (vii) if the general incorporated association is a general incorporated association with a board of directors, a statement to that effect;
- (viii) if the general incorporated association is a general incorporated association with auditor(s), a statement to that effect and the name of the auditor;
- (ix) if the general incorporated association is a general incorporated association with financial auditor(s), a statement to that effect and the name of the financial auditor;
- (x) if the general incorporated association has a person who is temporarily to perform the duties of a financial auditor and who has been appointed pursuant to the provisions of Article 75, paragraph (4), that person's name;
- (xi) if there are provisions in the articles of incorporation with regard to exemption from liability of officers, etc., pursuant to the provisions of Article 114, paragraph (1), those provisions;
- (xii) if there are provisions in the articles of incorporation with regard to exemption from liability of non-executive directors, etc. pursuant to the

- provisions of Article 115, paragraph (1), those provisions;
- (xiii) if taking measures pursuant to the provisions of Article 128, paragraph (3), the matters which are necessary for making the information contained in the balance sheet provided for in paragraph (1) of that Article available to the general public;
- (xiv) the means of public notice;
- (xv) if the means of public notice in the preceding item is electronic public notice (refers to electronic public notices prescribed in Article 331, paragraph (1), item (iii); the same applies hereinafter in this item and in paragraph (2), item (xiii) of the following Article), the following matters:
  - (a) the matters prescribed by applicable Order of the Ministry of Justice which are necessary for making the information to be publicly notified through electronic public notice available to the general public; and
  - (b) if there are provisions of the articles of incorporation pursuant to the provisions of the second sentence of Article 331, paragraph (2), those provisions.

(Registrations of Incorporation of a General Incorporated Foundation)

Article 302 (1) The registration of incorporation of a general incorporated foundation must be performed at the location of the principal office within two weeks of the latest of the following days:

- (i) the day on which the investigation pursuant to the provisions of Article 61, paragraph (1) ended;
  - (ii) the day specified by the founders.
- (2) When making the registration set forth in the preceding paragraph, the matters listed below must also be registered:
- (i) the purpose;
  - (ii) the name; and
  - (iii) the location of the principal office and branch offices;
  - (iv) if there are provisions in the articles of incorporation with regard to the duration or the grounds for dissolution of the general incorporated foundation, those provisions;
  - (v) the names of the councilors, directors, and auditors;
  - (vi) the name and address of the representative director;
  - (vii) if the general incorporated association, etc. is a general incorporated foundation with financial auditor(s), a statement to that effect and the name of the financial auditor;
  - (viii) if the general incorporated foundation has a person who is temporarily to perform the duties of a financial auditor and who has been appointed pursuant to the provisions of Article 75, paragraph (4) applied mutatis mutandis to Article 77, that person's name;

- (ix) if there are provisions in the articles of incorporation with regard to exemption from liability of officers, etc., pursuant to the provisions of Article 114, paragraph (1) applied mutatis mutandis to Article 198, those provisions;
- (x) if there are provisions in the articles of incorporation with regard to exemption from liability of non-executive directors, etc. pursuant to the provisions of Article 115, paragraph (1) applied mutatis mutandis to Article 198, those provisions;
- (xi) when taking measures pursuant to the provisions of Article 128, paragraph (3) as applied mutatis mutandis pursuant to Article 199, the matters which are necessary for making the information contained in the balance sheet provided for in paragraph (1) of that Article available to the general public and those prescribed by the applicable Order of the Ministry of Justice;
- (xii) the means of public notice;
- (xiii) if the method of public notice set forth in the preceding item is an electronic public notice, the following matters:
  - (a) the matters prescribed by the applicable order of the Ministry of Justice which are necessary for making the information to be publicly notified through electronic public notice available to the general public; and
  - (b) if there are provisions of the articles of incorporation pursuant to the provisions of the second sentence of Article 331, paragraph (2), those provisions.

(Registration of Changes)

Article 303 If there is a change to the matters listed in the items of Article 301, paragraph (2) or in any of the items of paragraph (2) of the preceding Article with regard to a general incorporated association, etc., the registration of that change must be completed at the location of the principal office within two weeks.

(Registration of a Relocation of the Principal Office to the Jurisdictional District of Another Registry)

Article 304 (1) If a general incorporated association, etc. relocates its principal office to the jurisdictional district of another registry, the registration of relocation must be completed at the old location, and the matters specified in the following items for the categories of corporations set forth respectively in those items must be registered at the new location within two weeks:

- (i) for a general incorporated association: the matters listed in the items of Article 301, paragraph (2);
  - (ii) for a general incorporated foundation: the matters listed in the items of Article 302, paragraph (2).
- (2) In the registration taking place in the new location, the date of the formation

of the general incorporated association, etc., the fact that the principal office has been relocated, and the date of relocation must be registered.

(Registration of a Provisional Disposition Suspending Execution of Duties)

Article 305 If a provisional disposition order suspending execution of duties by a director, auditor, representative director, or councilor of a general incorporated association, etc., or appointing a person who will perform those duties on behalf of the former person is issued, or a ruling changing or revoking that provisional disposition order is made, the registration thereof must be completed at the location of the principal office.

(Registration of an Absorption-Type Merger)

Article 306 (1) If a general incorporated association, etc. effects an absorption-type merger, a registration of dissolution must be completed with regard to the corporation disappearing in the absorption-type merger, and a registration of changes must be completed with regard to the corporation surviving the absorption-type merger, at the location of the principal office, within two weeks from the day on which the absorption-type merger became effective.

(2) In the registration of a change pursuant to an absorption-type merger, the fact that an absorption-type merger has been effected, and the name and principal office of the corporation disappearing in the absorption-type merger must be registered.

(Registration of a Consolidation-Type Merger)

Article 307 (1) When two or more general incorporated associations, etc. effect a consolidation-type merger, a registration of dissolution must be completed with regard to the corporations disappearing through the consolidation-type merger and a registration of incorporation must be completed with regard to the corporation incorporated through the consolidation-type merger, at the location of the principal office, within two weeks from whichever of the following days is latest:

(i) the day of the resolution by the general assembly or board of councilors set forth in Article 257;

(ii) the day when procedures pursuant to provisions of Article 258 conclude; or

(iii) the day specified by mutual consent of the corporations disappearing through the consolidation-type merger.

(2) In the registration of a change resulting from a consolidation-type merger, the fact that a consolidation-type merger has been effected, and the names and principal offices of the corporation disappearing through the consolidation-type merger must be registered.

(Registration of Dissolution)

Article 308 (1) If a general incorporated association, etc. is dissolved pursuant to the provisions of Article 148, items (i) through (iv) or Article 202, paragraph (1), items (i) through (iii), paragraph (2), or paragraph (3), the registration of dissolution must be completed at the location of the principal office within two weeks.

(2) In the registration of dissolution, the fact of dissolution, the grounds for dissolution, and the date of dissolution must be registered.

(Registration of Continuation)

Article 309 If a general incorporated association, etc. continues in existence pursuant to the provisions of Article 150, Article 204 or Article 276, the registration of continuation must be completed at the location of the principal office within two weeks.

(Registration of a Liquidator)

Article 310 (1) If the person set forth in Article 209, paragraph (1), item (i) becomes a liquidator, the following matters must be registered at the location of the principal office within two weeks from the day of dissolution:

(i) the name of the liquidator;

(ii) the name and domicile of the representative liquidator;

(iii) when the corporation in liquidation has a board of liquidators, a statement to that effect; and

(iv) if the general incorporated association in liquidation, etc. has an auditor, a statement to that effect.

(2) If a liquidator is appointed, the matters listed in the items of preceding paragraph must be registered at the location of the principal office, within two weeks.

(3) The provisions of Article 303 apply mutatis mutandis to registrations pursuant to the provisions of the preceding two paragraphs, and the provisions of Article 305 apply mutatis mutandis to a liquidator or representative liquidator.

(Registration of Completion of Liquidation)

Article 311 If liquidation is completed, the registration of the completion of liquidation must be completed at the location of the principal office within two weeks from the day of approval set forth in Article 240, paragraph (3).

**Subsection 3 Registration at the Location of a Branch office**

(Registration at the Location of a Branch Office)

Article 312 (1) In the cases listed in the following items (excluding cases where the branch offices prescribed in those items are within the jurisdictional district of the registry with jurisdiction over the location of the principal office), the registration at the location of a branch office must be completed at the location of that branch office within the periods specified respectively in those items:

- (i) if a branch office is established at the time of the incorporation of a general incorporated association, etc. (excluding the cases prescribed in the following item), within two weeks from the day the registration of incorporation was completed at the location of the principal office;
  - (ii) if a branch office is established by the corporation incorporated in the consolidation-type merger at the time of the consolidation-type merger, within three weeks from the latest of the days specified in the items of Article 307, paragraph (1);
  - (iii) if a branch office is established after the formation of the general incorporated association, etc., within three weeks of the day the branch office is established.
- (2) The following matters must be registered upon the registration at the location of a branch office; provided, however, that when a branch office is newly established within the jurisdictional district of a registry that has jurisdiction over the location of an existing branch office, it is sufficient to register the matter set forth in item (iii):
- (i) the name;
  - (ii) the location of the principal office;
  - (iii) the location of the branch office (limited to one whose location is within the jurisdictional district of the registry with jurisdiction over that location).
- (3) When registering the matters listed in the items set forth in the previous two paragraphs pursuant to the provisions of the previous two paragraphs at the location of the branch office, the date of the formation of the general incorporated association, etc., the fact that a branch office has been established, and the date of the establishment of the branch office must be registered.
- (4) When there is a change in the matters listed in the items of the preceding paragraph, the registration of the change must be completed at the location of that branch office within three weeks.

(Registration of the Relocation of a Branch Office to the Jurisdictional District of Another Registry)

Article 313 (1) When a general incorporated association, etc. relocates a branch office to the jurisdictional district of another registry, the registration of relocation must be completed at the old location (excluding cases where the old location is within the jurisdictional district of the registry with jurisdiction

over the location of the principal office) within three weeks, and the matters specified in the items of paragraph (2) of the preceding Article must be registered at the new location (excluding cases where the new location is within the jurisdictional district of the registry with jurisdiction over the location of the principal office; the same applies hereinafter in this Article) within four weeks; provided, however, that it is sufficient to register the matter set forth in item (iii) of that paragraph at the new location when a branch office is relocated to the jurisdictional district of a registry that has jurisdiction over the location of an existing branch office.

- (2) When registering the matters listed in the items of paragraph (2) of the preceding Article, pursuant to the provisions of the preceding paragraph at the location of the branch office, the date of the formation of the general incorporated association, etc., the fact that a branch office has been relocated, and the date of the relocation of the branch office must be registered.

(Registration of Changes Regarding Branch Offices)

Article 314 In the cases prescribed in Article 306, paragraph (1), Article 307, paragraph (1), and Article 311, the registration prescribed in these provisions must also be completed at the locations of the branch offices within three weeks from the days prescribed in these provisions; provided, however, that the registration of changes prescribed in Article 306, paragraph (1) is to be completed only if there is a change to the matters listed in the items of Article 312, paragraph (2).

#### **Subsection 4 Commissioning of Registration**

Article 315 (1) In the following cases, a court clerk must commission the registration, by virtue of the court's own authority, to the registry with jurisdiction over the location of the principal office (or, in the cases prescribed in item (i), (b), if the matters listed in the items of Article 312, paragraph (2) have been registered as a result of a relevant resolution, the principal office and the branch offices regarding that registration) of the general incorporated association, etc. without delay:

- (i) when a judgment upholding a claim related to any one of the following actions becomes final and binding:
- (a) an action seeking invalidation of the incorporation of a general incorporated association, etc.;
  - (b) if matters have been registered as a result of a resolution by the general assembly, etc., the following actions:
    - 1. an action for a declaratory judgment of absence of a resolution by the general assembly, etc. or invalidation of a resolution by the general

- assembly, etc. on the basis that the contents of that resolution violate laws and regulations; or
2. an action seeking revocation of a resolution by the general assembly, etc.;
  - (c) an action seeking dissolution of a general incorporated association, etc.;
  - (d) an action for dismissal of an officer, etc. of a general incorporated association, etc.;
- (ii) if any one of the following judicial decisions is made:
- (a) a judicial decision on the appointment of a person who is temporarily to perform the duties of a director, auditor, representative director, or councilor pursuant to the provisions of Article 75, paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 177), Article 79, paragraph (2) (including cases where it is applied mutatis mutandis pursuant to Article 197), or Article 175, paragraph (2);
  - (b) a judicial decision on the appointment of a person who is temporarily to perform the duties of a liquidator or representative liquidator pursuant to the provisions of Article 75, paragraph (2) as applied mutatis mutandis pursuant to Article 210, paragraph (4), or Article 79, paragraph (2) as applied mutatis mutandis pursuant to Article 214, paragraph (7);
  - (c) a judicial decision revoking the judicial decision set forth in (a) or (b);
  - (d) a judicial decision revoking a judicial decision on the appointment or selection of a liquidator or a representative liquidator; or
  - (e) a judicial decision on the dismissal of a liquidator;
- (iii) when any one of the following judicial decisions becomes final and binding:
- (a) a judicial decision revoking the judicial decision listed in preceding item (e) of the preceding item; or
  - (b) a judicial decision ordering the dissolution of a general incorporated association, etc., pursuant to the provisions of Article 261, paragraph (1).
- (2) If a judgment upholding a claim related to any one of the actions listed in the following items becomes final and binding, a court clerk must commission the registration, by virtue of the court's own authority, to the registry with jurisdiction over the location of the principal office of the general incorporated association, etc. without delay:
- (i) an action seeking invalidation of an absorption-type merger of a general incorporated association, etc.: registration of a change with regard to the corporation surviving the absorption-type merger and registration of restoration with regard to the corporation disappearing in the absorption-type merger;
  - (ii) an action seeking invalidation of a consolidation-type merger of a general incorporated association, etc.: registration of dissolution with regard to the corporation incorporated through the consolidation-type merger and

registration of restoration with regard to the corporation disappearing through the consolidation-type merger.

- (3) In cases set forth in the preceding paragraph, if the matters listed in the items of Article 312, paragraph (2) have been registered as a result of a merger in relation to the purpose of a claim for the actions listed in each of the items of that paragraph, the court clerk must, in addition, commission the registrations set forth in the items of the preceding paragraph to the registry(ies) with jurisdiction over the locations of the branch offices of each general incorporated associations, etc.

### **Subsection 5 Registration Procedures**

(Registers)

Article 316 A general incorporated association register and a general incorporated foundation register are provided at the registry.

(General Rules for Attached Documents)

Article 317 (1) If consent of the entire membership or the unanimity of the directors or liquidators is required with respect to matters to be registered, a document must be attached to the application attesting to that consent or unanimity.

(2) If a resolution of the general assembly, board of councilors, board of directors, or board of liquidators is required with respect to matters to be registered, the minutes of the meeting must be attached to the application.

(3) In cases in which a resolution is deemed to have been adopted by the general assembly, board of directors, board of liquidators, or the board of councilors, pursuant to provisions of Article 58, paragraph (1), Article 96 (including the cases where applied mutatis mutandis pursuant to Article 197 and Article 221, paragraph (5)), or Article 194, paragraph (1) with respect to matters to be registered, a document attesting to the pertinence of that case must be attached to the application in place of the minutes set forth in the preceding paragraph.

(Application for Registration of Incorporation of a General Incorporated Association)

Article 318 (1) Registration of a general incorporated association is effected by application of a person representing that general incorporated association.

(2) The following documents must be attached to the application for registration of incorporation of a general incorporated association, except as otherwise provided by law:

(i) the Articles of Incorporation;

- (ii) if the directors at incorporation have selected a representative director at incorporation, documentation concerning that selection;
- (iii) documents attesting to the fact that the directors at incorporation, the auditors at incorporation, and the representative director at incorporation have consented to assume those roles;
- (iv) if a financial auditor at incorporation is appointed, the documents listed below:
  - (a) documents attesting to that person's consent to assume the role;
  - (b) if the financial auditor at incorporation is a corporation, the registration certificate of that corporation; provided, however, that this excludes cases in which the principal office of that corporation is within the jurisdictional district of that registry;
  - (c) if the financial auditor at incorporation is not a corporation, documentation attesting to the fact that that person is a certified public accountant.
- (3) if consent of all the members at incorporation or the unanimity of the members at incorporation is required with respect to matters to be registered, a document must be attached to the application for registration set forth in the preceding paragraph attesting to that consent or unanimity.

(Application for Registration of Incorporation of a General Incorporated Foundation)

Article 319 (1) Registration of incorporation of a general incorporated foundation is effected by application of a person representing that general incorporated foundation.

- (2) The following documents must be attached to the application for registration of incorporation of a general incorporated foundation, except as otherwise provided by law:
  - (i) the articles of incorporation;
  - (ii) documents attesting to the fulfillment of the commitment to contribute assets;
  - (iii) documents concerning appointment of councilors at incorporation, directors at incorporation, and auditors at incorporation;
  - (iv) documents concerning selection of a representative director at incorporation;
  - (v) documents attesting to the fact that the councilors at incorporation, the directors at incorporation, and the representative director at incorporation have consented to assume those roles;
  - (vi) if a financial auditor at incorporation is appointed, the documents listed below:
    - (a) documents concerning the appointment of a financial auditor at

- incorporation;
  - (b) documents attesting to consent to assume the role;
  - (c) if the financial auditor at incorporation is a corporation, the registration certificate of that corporation; provided, however, that this excludes cases in which the principal office of that corporation is within the jurisdictional district of the relevant registry;
  - (d) if the financial auditor at incorporation is not a corporation, documentation attesting to the fact that that person is a certified public accountant.
- (3) If consent of all founders or the unanimity of the existing founders is required with respect to matters to be registered, a document must be attached to the application for registration set forth in the preceding paragraph attesting to that consent or unanimity.

(Applications for Registration of a Change of Director)

- Article 320 (1) A document must be attached to applications for registration pursuant to the assumption of the role of director, auditor, or representative director attesting to those persons' consent to assume those roles.
- (2) A document concerning the appointment and a document attesting to a councilor's consent to assume the role must be attached to applications for registration pursuant to appointment of a councilor.
- (3) The documents listed below must be attached to applications for registration pursuant to assumption of the role of financial auditor:
- (i) documents attesting to the relevant person's consent to assume the role;
  - (ii) if the financial auditor is a corporation, the registration certificate for that corporation; provided, however, that this does not apply when the principal office of the corporation is within the jurisdictional district of the relevant registry; and
  - (iii) if the financial auditor is not a corporation, documents attesting to the fact that person is a certified public accountant.
- (4) If the financial auditor is a corporation, the documents listed in item (ii) of the preceding paragraph must be attached to applications for registration of a change in the name of the financial auditor; provided, however, that this does not apply in the cases prescribed in the proviso to that item.
- (5) A document must be attached to applications for registration of a change pursuant to resignation of the persons specified in paragraph (1) through paragraph (3) attesting to that resignation.

(Applications for Registration of Changes in the Person to Temporarily Perform Financial Auditor Duties)

- Article 321 (1) The documents listed below must be attached to applications for

registration of a change pursuant to assumption of the role of financial auditor as set forth in Article 75, paragraph (4) (including the cases where applied mutatis mutandis pursuant to Article 177) by a person who is to temporarily perform the duties thereof:

- (i) documents concerning the appointment;
  - (ii) documents attesting to relevant person's consent to assume the role;
  - (iii) if that person is a corporation, the registration certificate of that corporation; provided, however, that this does not apply in cases prescribed in the proviso to paragraph (3), item (ii) of the preceding Article; and
  - (iv) if that person is not a corporation, documents attesting to the fact that that person is a certified public accountant.
- (2) The provisions of paragraph (4) and paragraph (5) of the preceding Article are applied mutatis mutandis with respect to registration of the person to temporarily perform the duties of a financial auditor.

(Applications for Registration of a Change Pursuant to an Absorption-Type Merger)

Article 322 The documents listed below must be attached to applications for registration of a change pursuant to an absorption-type merger:

- (i) the absorption-type merger agreement;
- (ii) documents attesting to public notice and notification pursuant to provisions of Article 252, paragraph (2) (in cases when public notice is effected by the methods listed in item (ii) and item (iii) of that paragraph as specified by provisions of Article 331, paragraph (1), public notice by these methods beyond the Official Gazette pursuant to provisions of paragraph (3) of that Article), and, when a creditor exists who has stated an objection, documents attesting to the fact that payment has occurred to that creditor, or that reasonable security has been provided, or that reasonable assets have been placed in trust for the purpose of payment to the creditor, or that no risk exists of harm to the creditor from that absorption-type merger;
- (iii) the registration certificate of the corporation disappearing in the absorption-type merger; provided, however, that this does not apply if the principal office of the corporation disappearing in the absorption-type merger is in the jurisdictional district of the relevant registry;
- (iv) documents attesting to the approval of the absorption-type merger agreement pursuant to provisions of Article 247; and
- (v) for the corporation disappearing in the absorption-type merger, documents attesting to public notice and notification pursuant to the provisions of Article 248, paragraph (2) (in cases when public notice is effected by the methods listed in item (ii) and item (iii) of that paragraph as specified by the provisions of Article 331, paragraph (1), public notice by these methods

beyond the Official Gazette pursuant to the provisions of paragraph (3) of that Article), and, when a creditor exists who has stated an objection, documents attesting to the fact that payment has occurred to that creditor, or that reasonable security has been provided, or that reasonable assets have been placed in trust for the purpose of payment to the creditor, or that no risk of harm to the creditor from the absorption-type merger exists.

(Applications for Registration of Incorporation of a Consolidation-Type Merger)

Article 323 The documents listed below must be attached to applications for registration of incorporation of a consolidation-type merger:

- (i) the consolidation-type merger agreement;
- (ii) the Articles of Incorporation;
- (iii) the documents listed in Article 318, paragraph (2), items (ii) through (iv) or Article 319, paragraph (2), item (iv), item (v) and item (vi) (excluding (a));
- (iv) the registration certificates of the corporations disappearing through the consolidation-type merger; provided, however, that this does not apply if the principal office of the corporation disappearing through the consolidation-type merger is in the jurisdictional district of the relevant registry;
- (v) documents attesting to the approval of the absorption-type merger agreement pursuant to provisions of Article 257; and
- (vi) for the corporations disappearing through the consolidation-type merger, documents attesting to public notice and notification pursuant to the provisions of Article 258, paragraph (2) (in cases when public notice is effected by the methods listed in item (ii) and item (iii) of that paragraph as pursuant to the provisions of Article 331, paragraph (1), public notice by these methods beyond the Official Gazette pursuant to the provisions of paragraph (3) of that Article), and, when a creditor exists who has stated an objection, documents attesting to the fact that payment has been made to that creditor, or that reasonable security has been provided, or that reasonable assets have been placed in trust for the purpose of payment to the creditor, or that no risk exists of harm to the creditor from the absorption-type merger.

(Application for Registration of Dissolution)

Article 324 (1) Documents must be attached to applications for registration of dissolution pursuant to the grounds for dissolution prescribed in the articles of incorporation or to the occurrence of the grounds prescribed in Article 202, paragraph (1), item (iii), paragraph (2), or paragraph (3).

(2) Documents must be attached to applications for registration of dissolution regarding an application by a representative liquidator; provided, however, that this does not apply when that representative liquidator has become a

liquidator pursuant to the provisions of Article 209, paragraph (1), item (i) (in the case specified in Article 214, paragraph (4), the person who has become a representative liquidator pursuant to provisions of that paragraph).

(Application for Registration of Continuation)

Article 325 If a judgment upholding a claim related to an action seeking invalidation or rescission of the incorporation of a general incorporated association, etc. becomes final and binding, when the general incorporated association, etc. continues to exist pursuant to provisions of Article 276, paragraph (1) (including the cases where applied *mutatis mutandis* pursuant to paragraph (2) of that Article; the same applies hereinafter in this Article), a certified copy of the judgment and documents attesting to the fact that consent was given as set forth in Article 276, paragraph (1), must be attached.

(Application for Registration of a Liquidator)

Article 326 (1) The articles of incorporation must be attached to applications for registration of a liquidator.

- (2) Documents must be attached to applications for registration of a liquidator if one of the persons listed in Article 209, paragraph (1), item (ii) or item (iii) becomes a liquidator, attesting to that person's consent to assume the role.
- (3) Documents must be attached to applications for registration of a liquidator when the liquidator is appointed by the court, attesting to that appointment and to the matters listed in Article 310, paragraph (1), item (ii).

(Application for Registration of a Change Concerning the Liquidator)

- Article 327 (1) Documents must be attached to applications for registration of a change to the matters listed in Article 310, paragraph (1), item (ii) concerning a liquidator appointed by the court, attesting to the reason(s) for the change.
- (2) Documents must be attached to applications for registration of a change pursuant to resignation of a liquidator, attesting to the resignation.

(Application for Registration of Completion of Liquidation)

Article 328 Documents must be attached to applications for registration of completion of liquidation attesting to the approval of the settlement of accounts pursuant to provisions of Article 240, paragraph (3).

(Application for Registration at the Location of a Branch Office)

Article 329 Documents attesting to registration at the location of the principal office with respect to matters to be registered at the location of the principal office and the branch office must be attached to applications for registration at the location of the principal office. In such a case, the attachment of other

documents is not required.

(Mutatis Mutandis Application of the Commercial Registration Act)

Article 330 The provisions of the Commercial Registration Act, Article 1, item (iii), through Article 5, Article 7 through Article 15, Article 17 through Article 27, Article 33, Article 49 through Article 52, Article 72, Article 82, Article 83, and Article 132 through Article 148 are applied mutatis mutandis with respect to registration concerning a general incorporated association, etc. In such a case, in these provisions the term "trade name" is to be replaced with "name," the term "head office" is to be replaced with "principal office," and the term "branch office (pronounced "shiten")" is to be replaced with "branch office (pronounced "jyutaru jimusho")" (except in sections referring to "head office" in Article 27 and Article 33, paragraph (1) of the Act); the term "sales office" in Article 1, paragraph (3) and Article 24, item (i) of the Act is to be replaced with "office"; the term "sales office (in case of a company, the head office; the same applies hereinafter in this Article)" in Article 27 and Article 33, paragraph (1) of the Act and the term "sales office" in Article 27, Article 33, paragraph (1), item (iv) and paragraph (2) of the Act is to be replaced with "principal office"; the term "sales office" in paragraph (1), item (iv) of the same Article of the Act is to be replaced with "principal office"; and the term "the main clause of the Company Act, Article 472, paragraph (1)" in Article 72 of the Act is to be replaced with "the main clause of Article 149, paragraph (1) and the main clause of Article 203, paragraph (1) of the General Incorporated Associations and General Incorporated Foundations Act (Act No. 48, 2006)".

## **Section 5 Public Notice**

(Methods of Public Notice)

Article 331 (1) A general incorporated association, etc. may prescribe any of the methods listed below as the method of giving public notice:

(i) publication in an Official Gazette;

(ii) publication in a daily newspaper that publishes matters on current affairs;

(iii) electronic public notice (refers to measures for making the information to be publicly notified through public notice by electronic or magnetic means available to the general public as prescribed by the applicable Order of the Ministry of Justice; the same applies hereinafter);

(iv) beyond the method listed in the preceding item (iii), any method prescribed by the Ministry of Justice as a measure for making the information to be publicly notified through electronic public notice available to the general public.

(2) If a general incorporated association, etc. prescribes in the articles of

incorporation that the method set forth in item (iii) of the preceding paragraph is the method of public notice, it is sufficient to prescribe that electronic public notice be the method of public notice. In such a case, either the method set forth in item (i) or item (ii) of that paragraph may be prescribed as the method of public notice for cases where public notice is unable to be given by way of electronic public notice, due to an accident or other unavoidable circumstances.

(Public Notice Periods of Electronic Public Notices)

Article 332 If a general incorporated association, etc. gives public notice by way of electronic public notice, it must give public notice by way of electronic public notice continuously until the days specified in the following items, for the categories of public notice set forth respectively in those items:

- (i) public notice pursuant to the provisions of Article 128, paragraph (1): the day on which five years have elapsed after the day of the conclusion of the annual general assembly meeting set forth in that paragraph;
- (ii) public notice pursuant to the provisions of Article 128, paragraph (1) applied *mutatis mutandis* pursuant to Article 199: the day on which five years have elapsed after the day of the conclusion of the annual meeting of the board of councilors set forth in that paragraph;
- (iii) public notice of the prerogative to state an objection within the period prescribed for public notice: the day on which that period has elapsed; or
- (iv) public notice pursuant to the provisions of Article 249, paragraph (2): the effective date prior to the change set forth in that paragraph (or, immediately preceding the changed effective date, if the changed effective day comes before the original effective day).

(Application *Mutatis Mutandis* of the Provisions of the Company Law Concerning Interruption of Public Notice and Electronic Public Notice Investigation Body)

Article 333 With respect to cases in which a general incorporated association, etc. gives public notice pursuant to the provisions of this Act or other Acts by way of electronic public notice, the provisions of the Company Act, Article 940, paragraph (3), Article 941, Article 946, Article 947, Article 951, paragraph (2), Article 953, and Article 955 are applied *mutatis mutandis*. In such cases, text is to be replaced with as follows: in Article 940, paragraph (3) of the Company Act, "Notwithstanding the provisions of the preceding two paragraphs" are to be replaced with "Notwithstanding the provisions of the General Incorporated Associations and General Incorporated Foundations Act (Act No. 48, 2006) Article 332"; in Article 941 of the Company Act, "A Company that intends to give public notice under the provisions of this Act or another Act (Article 440, paragraph (1))" are to be replaced with "public notice pursuant to the

provisions of the General Incorporated Associations and General Incorporated Foundations Act or other Acts (the General Incorporated Associations and General Incorporated Foundations Act, Article 128, paragraph (1) (including the cases where applied mutatis mutandis pursuant to Article 199)); and in Article 946, paragraph (3) of the Company Act, "trade name" are to be replaced with "name".

## **Chapter VII Penal Provisions**

(Crime of an Aggravated Breach of Trust by a Director)

Article 334 (1) If a person listed in the following items carries out an act in violation of their duty with the intent of benefitting themselves or a third party or breaching the trust of a general incorporated association, etc. and causes damage to the assets of that general incorporated association, etc., the person is subject to not more than seven years of imprisonment, a fine or not more than five million yen, or both:

(i) members at incorporation

(ii) a founder;

(iii) a director at incorporation (referring to a person becoming a director upon incorporation of a general incorporated association, etc.; the same applies in Article 342) or an auditor at incorporation (referring to a person becoming an auditor upon incorporation of a general incorporated association, etc.; the same applies in that Article);

(iv) a director, an auditor or a councilor;

(v) a person performing the duties of a director, an auditor or a councilor appointed by an order of provisional disposition provided for in the Civil Business Preservation Act, Article 56;

(vi) a person temporarily carrying out the duties of a director, an auditor, a representative director, or a councilor appointed pursuant to the provisions of Article 75, paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 177), Article 79, paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 197), or Article 175, paragraph (2);

(vii) an employee entrusted with a special matter or a certain type of matter related to the business; or

(viii) an inspector.

(2) A person listed in the following items who carries out an act in violation of their duty with the intent of benefitting themselves or a third party or breaching the trust of a corporation in liquidation will be dealt with in the same manner as in the preceding paragraph even if the damage is caused to the assets of the corporation in liquidation.

- (i) a liquidator;
  - (ii) a person performing the duties of a liquidator appointed by an order of provisional disposition provided for in the Civil Business Preservation Act, Article 56; or
  - (iii) a person temporarily performing the duties of a liquidator or a representative liquidator appointed pursuant to the provisions of Article 75, paragraph (2) as applied mutatis mutandis pursuant to Article 210, paragraph (4) or Article 79, paragraph (2) as applied mutatis mutandis pursuant to Article 240, paragraph (7).
- (3) An attempt to commit the crime of the preceding two paragraphs is subject to punishment.

(Crimes Relating to the Disposal of the Assets of Corporations)

Article 335 If a person listed in the preceding Article, paragraph (1), item (iv) through item (vii) falls under any of the following, that person is subject to not more than three years of imprisonment, a fine of not more than one million yen, or both:

- (i) if the person, in violation of the provisions of laws and regulations or the articles of incorporation, has returned funds; or
- (ii) if the person has disposed of the assets of a general incorporated association, etc. for a speculative transaction outside the scope of the purpose of the general incorporated association, etc.

(Crime of Using False Documents)

Article 336 If a person listed in the following items uses material stating an explanation related to the business or other matters of a general incorporated association when soliciting parties to contribute to a fund, an advertisement for that solicitation, or other documents related to that solicitation containing a false statement about any important matter, or provides for use in the conduct of that solicitation any object containing a false record of any important matter, which record is electronic or magnetic and prepared in lieu of preparing the aforesaid documents, that person is subject to not more than three years of imprisonment, a fine of not more than one million yen, or both:

- (i) a person listed in Article 334, paragraph (1), item (i) or item (iii) through item (vii); or
- (ii) a person entrusted with the solicitation of subscribers to contribute to a fund.

(The Crime of Bribery by a Director)

Article 337 (1) If a person listed in the following items accepts a wrongful request, receives financial benefits, or makes a request or promise therefor

related to their duties, that person is subject to punishment by not more than five years of imprisonment or a fine of not more than five million yen:

- (i) a person listed in Article 334, paragraph (1), any of the items or paragraph (2), any of the items; or
  - (ii) a financial auditor, or a person required temporarily to perform the duties of a financial auditor appointed pursuant to the provisions of Article 75, paragraph (4) (including the cases where applied *mutatis mutandis* pursuant to Article 177).
- (2) A person who provides the benefits set forth in the preceding paragraph, makes application therefor, or makes a promise with respect thereto is subject to not more than three years of imprisonment or a fine of not more than three million yen.
- (3) Any gains received by the violator of the provisions of paragraph (1) are subject to confiscation. If it is impossible to confiscate all or a part of those gains, collection of equivalent value will be made.

(Violations Committed Outside Japan)

Article 338 (1) Violations of Article 334, Article 335, and the preceding Article, paragraph (1) are applicable to persons committing those violations outside of Japan.

- (2) The violation of the preceding Article, paragraph (2) conforms to the example of the Penal Code (Act No. 45 of 1907), Article 2.

(Application of Penal Provisions to Corporations)

Article 339 When the party referred to in Article 334, paragraph (1), Article 336, or Article 337, paragraph (1) is a corporation, those provisions and the provisions of Article 334, paragraph (3) each apply to the director who carried out the act and any other persons who executed the work.

(False Statement Violations)

Article 340 A person who, in violation of the provisions of the Companies Act, Article 955, paragraph (1) as applied *mutatis mutandis* pursuant to Article 333, does not enter or record the items provided by the applicable Order of the Ministry of Justice related to electronic public notice investigations provided in that paragraph in the investigation record book or the like provided in the same paragraph, or enters or records an item that is false or does not preserve the investigation record book or the like is subject to a fine of not more than three hundred thousand yen.

(Dual Liability)

Article 341 If a representative of a corporation, or an agent, worker or employee

of a corporation or an individual violated the preceding Article in relation to the work of the corporation or the individual, not only is the offender subject to punishment, but also the corporation or individual is subject to the fine prescribed in the preceding Article.

(Acts Subject to Non-criminal Fines)

Article 342 If a member at incorporation, a founder, a director at incorporation, an auditor at incorporation, a councilor at incorporation, a director, an auditor, a councilor, a financial auditor, or an employee or a liquidator who is to perform the duties thereof; a person appointed by an order of provisional disposition provided in Civil Business Preservation Act, Article 56 who is to perform the duties of a director, an auditor, a councilor, a liquidator; or a person who is to temporarily perform the duties of a director, auditor, representative director, or councilor provided in Article 334, paragraph (1), item (vi); a person who is to temporarily perform the duties of a liquidator or a representative liquidator provided in that Article, paragraph (2), item (iii); a person who is to temporarily perform the duties of a financial auditor provided in Article 337, paragraph (1), item (ii); or an inspector falls under any of the following, that person is subject to payment of a non-criminal fine of not more than one million yen; provided, however, that this does not apply when a punishment is to be imposed for that act:

- (i) if the person fails to make the registrations provided for in the provisions of this Act;
- (ii) if the person fails to provide public notice or provide notice required in the provisions of this Act or provides a wrongful public or other notice;
- (iii) if the person fails to make the disclosures provided for in the provisions of this Act;
- (iv) if the person, in violation of this Act, refuses, without having justifiable grounds, the inspection or copying of a matter recorded in a document or in an electronic or magnetic record displayed by the methods provided by the applicable Order of the Ministry of Justice; the issuance of a certified copy or an extract of a document; the provision of a matter recorded in an electronic or magnetic record by electronic or magnetic means; or the issuance of a document in which that matter is recorded;
- (v) if the person hinders an investigation provided for in the provisions of this Act;
- (vi) if the person makes a false statement to or conceals a fact from a government agency, the general assembly, or the board of councilors;
- (vii) if the person does not enter or record matters to be entered or recorded, or enters or records a false entry item in the articles of incorporation, the employee record book, the minutes, the inventory of assets, the accounting

- books, the balance sheet, the profit and loss statement, a business report, or an administrative report; an annexed detailed statement, an audit report, an accounting audit report, or a statement of accounts of Article 123, paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 199) or Article 227, paragraph (1); or a document or an electronic or magnetic record of Article 246, paragraph (1), Article 250, paragraph (1), Article 253, paragraph (1), Article 256, paragraph (1), or Article 260, paragraph (2);
- (viii) if the person who, in violation of Article 14, paragraph (1), Article 32, paragraph (1), Article 50, paragraph (5), Article 51, paragraph (3), Article 52, paragraph (4), Article 57, paragraph (2) or paragraph (3), Article 58, paragraph (2), Article 97, paragraph (1) (including the cases where applied mutatis mutandis pursuant to Article 197), Article 129, paragraph (1) or paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 199), Article 156, paragraph (1), Article 193, paragraph (2) or paragraph (3), Article 194, paragraph (2), Article 223, paragraph (1), Article 229, paragraph (1), Article 246, paragraph (1), Article 250, paragraph (1), Article 253, paragraph (2), Article 256, paragraph (1), or Article 260, paragraph (2), has not kept the books, documents or electronic or magnetic record;
- (ix) if the person, in violation of the provisions of Article 36, paragraph (1) or Article 179, paragraph (1), or a court order provided for in the provisions of Article 47, paragraph (1), item (i), Article 87, paragraph (1), item (i) (including the cases where applied mutatis mutandis pursuant to Article 197), or Article 188, paragraph (1), item (i), does not call a general assembly meeting or a board of councilors meeting;
- (x) if there is a request provided for in the provisions of Article 43 or Article 184, and the person does not make the matter regarding that request an objective of a general assembly meeting or a board of councilors meeting;
- (xi) if the person does not explain a matter requested by a member or a councilor at a general assembly meeting or a board of councilors meeting, without justifiable grounds;
- (xii) if there is a request provided for in the provisions of Article 72, paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 177) and the person does not make the matter regarding the request an objective of a general assembly meeting or a board of councilors meeting, or does not submit a proposal regarding that request to the general assembly or to the board of councilors;
- (xiii) if the number of directors, auditors, councilors, or financial auditors provided for in this Act or the articles of incorporation is lacking, and the person fails to carry out procedures for the appointment thereof (including the appointment of a person to temporarily carry out the duties of a financial

- auditor);
- (xiv) if the person who, in violation of Article 92, paragraph (2) (including the cases where applied mutatis mutandis pursuant to Article 97 and Article 220, paragraph (10)), has not reported or has made a false report to the board of directors or the board of liquidators;
  - (xv) if the person who, in violation of Article 142, paragraph (1) has obtained credit for the return of a fund making themselves the debtor, or who, in violation of that Article, paragraph (2), has failed to transfer the credit to another at an appropriate time;
  - (xvi) if the person, in violation of Article 144, paragraph (1), does not allocate a substitute fund or, in violation of the same Article, paragraph (2) breaks into a substitute fund;
  - (xvii) if the person, in violation of Article 215, paragraph (1), has failed to petition for commencement of bankruptcy proceedings;
  - (xviii) if the person unreasonably sets the period of Article 233, paragraph (1) with the object of delaying the conclusion of liquidation;
  - (xix) if the person, in violation of Article 234, paragraph (1), has performed an obligation;
  - (xx) if the person who, in violation of Article 237, has delivered the assets of a corporation in liquidation;
  - (xxi) if the person, in violation of Article 248, paragraph (2) or paragraph (5), Article 252, paragraph (2) or paragraph (5), or Article 258, paragraph (2) or paragraph (5), has carried out an absorption-type merger or a consolidation-type merger; or
  - (xxii) if the person, in violation of the provisions of the Companies Act, Article 941 as applied mutatis mutandis pursuant to Article 333, has not requested an investigation provided for in the provisions of that Article 941.

Article 343 A person who falls under any of the following is subject to a non-criminal fine of not more than one million yen.

- (i) a person who, in violation of the provisions of the Companies Act, Article 946, paragraph (3) as applied mutatis mutandis pursuant to Article 333, has not made a report or has made a false report; or
- (ii) a person who refuses without justifiable grounds a request listed in the provisions of the Companies Act, Article 951, paragraph (2), or Article 955, paragraph (2), any of the items applied mutatis mutandis pursuant to Article 333.

Article 344 A party who falls under any of the following is subject to a non-criminal fine of not more than two hundred thousand yen.

- (i) a party who, in violation of Article 5, paragraph (2), has used words in its

name that are likely to be mistaken as indicating a general incorporated foundation;

- (ii) a party who, in violation of Article 5, paragraph (3), has used words in its name that are likely to be mistaken as indicating a general incorporated association;
- (iii) a party who, in violation of Article 6, has used words in its name or trade name that are likely to be mistaken as indicating a general incorporated association or a general incorporated foundation; or
- (iv) a party who, in violation of Article 7, paragraph (1) has used words in its name or trade name that are likely to be mistaken as indicating a general incorporated association or a general incorporated foundation.