

# Act on Recognition of and Assistance for Foreign Insolvency Proceedings

(Act No. 129 of November 29, 2000)

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## Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to appropriately give effect to foreign insolvency proceedings in Japan by providing recognition and assistance proceedings in relation to the foreign insolvency proceedings commenced against debtors who engage in international economic activities, with the aim of ensuring liquidation of the assets or economic rehabilitation of the debtors in an internationally coordinated manner.

(Definitions)

Article 2 (1) In this Act, the terms listed in the following items have the meanings prescribed in those items:

- (i) foreign insolvency proceedings: proceedings petitioned for in a foreign country which are equivalent to bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or special liquidation proceedings;
- (ii) primary foreign proceedings: in the case of a debtor who engages in a commercial business, foreign insolvency proceedings petitioned for in the country where the debtor's principal business office is located; in the case of

- a debtor who does not engage in commercial business or who engages in commercial business but does not have any business offices, foreign insolvency proceedings petitioned for in the country where the debtor, if an individual, has a domicile, or petitioned for in the country where the debtor, if a juridical person or any other association or foundation, has its principal office;
- (iii) secondary foreign proceedings: foreign insolvency proceedings other than primary foreign proceedings;
  - (iv) domestic insolvency proceedings: bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or special liquidation proceedings petitioned for in Japan;
  - (v) recognition of foreign insolvency proceedings: to recognize foreign insolvency proceedings as the basis for rendering a disposition of assistance in Japan pursuant to the provisions of Chapter III;
  - (vi) recognition and assistance procedure: proceedings for making judicial decisions on petitions for recognition of foreign insolvency proceedings and for rendering dispositions with regard to debtors' business and property in Japan in support of foreign insolvency proceedings pursuant to the provisions of the following Chapter and thereafter;
  - (vii) foreign trustee: a person, other than the debtor, who has a right to administer and dispose of a debtor's property in a foreign insolvency proceeding;
  - (viii) foreign trustee, etc.: the foreign trustee if a foreign trustee is appointed in a foreign insolvency proceeding, or the debtor if no foreign trustee is appointed in a foreign insolvency proceeding; and
  - (ix) recognized trustee: a person who is ordered, under the provisions of Article 32, paragraph (1), to administer the debtor's business and property in Japan.
- (2) A claim for which demand by litigation may be made pursuant to the provisions of the Code of Civil Procedure (Act No. 109 of 1996) is deemed to exist in Japan.

(Status of Foreign Nationals)

Article 3 A foreign national or foreign corporation has the same status as a Japanese national or Japanese corporation respectively, with respect to recognition and assistance procedure.

(Jurisdiction over Recognition and Assistance Cases)

Article 4 Recognition and assistance cases are subject to the exclusive jurisdiction of the Tokyo District Court.

(Transfer of Recognition and Assistance Cases)

Article 5 The court prescribed in the preceding Article may, when it finds it necessary in order to avoid extreme harm or delay, by its authority, transfer a recognition and assistance case to the district court that has jurisdiction over the debtor's domicile, residence, business office or other office or the location of the debtor's property, upon making an order of recognition of foreign insolvency proceedings or after making the order.

(Optional Oral Argument)

Article 6 (1) A judicial decision concerning recognition and assistance procedure may be made without oral argument.

(2) By its authority, the court may engage in necessary investigations in recognition and assistance cases.

(Appeal)

Article 7 A person who has an interest in a judicial decision concerning a recognition and assistance procedure may, only as specially provided for in this Act, file an immediate appeal against the judicial decision. Where public notice of the juridical decision is given, the period for filing an appeal is two weeks from the day on which the public notice becomes effective.

(Public Notice)

Article 8 (1) Public notice pursuant to the provisions of this Act is effected by publication in the official gazette.

(2) Public notice becomes effective on the day following the day on which it is published.

(3) Where service is required to be made pursuant to the provisions of this Act, public notice may be substituted for it; provided, however, that this does not apply where both public notice and service are required to be given pursuant to the provisions of this Act.

(4) When public notice of a judicial decision is given pursuant to the provisions of this Act, all interested parties are deemed to have been notified of the judicial decision.

(5) The provisions of the preceding two paragraphs do not apply where special provisions exist in this Act.

(Commission of Registration on Recognition and Assistance Procedure of Juridical Persons)

Article 9 (1) Where a disposition is rendered pursuant to the provisions of Article 32, paragraph (1) or Article 51, paragraph (1) (including as applied mutatis mutandis pursuant to Article 51, paragraph (3)) against a debtor who is a juridical person, a court clerk must, without delay and by their authority,

commission the registry office with jurisdiction over the location of the head office or principal office of the debtor to register the disposition; provided, however, that if the debtor is a foreign corporation which is categorized as a foreign company, the registry office having jurisdiction over the place of domicile of its representative person for Japan (limited to one who has a domicile in Japan) (in the case of a foreign company that has business offices in Japan, the location of each business office) must be commissioned, and if the debtor is any other type of foreign corporation, the registry office having jurisdiction over the location of each of its offices must be commissioned.

- (2) The registration of a disposition prescribed in the preceding paragraph must include the name and address of each recognized trustee or temporary administrator, and if permission as set forth in the proviso to Article 39, paragraph (1) (including as applied mutatis mutandis pursuant to Article 55, paragraph (1); hereinafter the same applies in this paragraph) is granted for independent performance of duties by each recognized trustee or temporary administrator, a statement to that effect. If permission as set forth in the proviso to Article 39, paragraph (1) is granted for the division of duties among recognized trustees or temporary administrators, a statement to that effect and a description of the duties assigned to each recognized trustee or temporary administrator must be included.
- (3) The provisions of paragraph (1) apply mutatis mutandis where a disposition prescribed in that paragraph is changed or revoked, the disposition ceases to be effective (excluding cases where the disposition ceases to be effective due to the recognition and assistance proceedings having ceased to be effective pursuant to the provisions of Article 61, paragraph (2) or Article 64; the same applies in paragraph (2) and paragraph (5) of the following Article) or where there is a change to any of the matters prescribed in the preceding paragraph.
- (4) Where a stay order is issued against a debtor who is a juridical person pursuant to the provisions of the main clause of Article 57, paragraph (2), Article 58, paragraph (1) (including as applied mutatis mutandis pursuant to Article 58, paragraph (2)), Article 59, paragraph (1), item (i) or Article 60, paragraph (1), if any of the following registrations exists with regard to the debtor, a court clerk must, without delay and by their authority, commission the registry office prescribed in paragraph (1) to register the stay order:
  - (i) registration pursuant to the provisions of Article 257, paragraph (1) or paragraph (4) of the Bankruptcy Act (Act No. 75 of 2004);
  - (ii) registration pursuant to the provisions of Article 11, paragraph (1) or paragraph (2) of the Civil Rehabilitation Act (Act No. 225 of 1999);
  - (iii) registration pursuant to the provisions of Article 258, paragraph (1) or paragraph (4) of the Corporate Reorganization Act (Act No. 154 of 2002) or the provisions of Article 159, paragraph (1) or paragraph (4) or Article 332,

paragraph (1) or paragraph (4) of the Act on Special Measures for the Reorganization Proceedings of Financial Institutions (Act No. 95 of 1996); or (iv) registration under the provisions of Article 938, paragraph (1), item (i) of the Companies Act (Act No. 86 of 2005) (including as applied mutatis mutandis pursuant to other Acts).

- (5) The provisions of the preceding paragraph apply mutatis mutandis where a stay order as prescribed in that paragraph is revoked or where the stay order ceases to be effective.
- (6) Where an order of rescission of recognition made pursuant to the provisions of Article 56, paragraph (1), item (iii) becomes final and binding with regard to a debtor who is a juridical person, if any of the registrations listed under paragraph (4) exist or there is a registration made pursuant to the provisions of paragraph (1) in other recognition and assistance procedure that has ceased to be effective pursuant to the provisions of Article 64 with regard to the debtor, a court clerk must, without delay and by their authority, commission cancellation of the registrations.
- (7) Where an order of termination of bankruptcy proceedings is issued or where an order of confirmation of the rehabilitation plan, an order of confirmation of the reorganization plan, or an order of termination of special liquidation proceedings becomes final and binding, if there is a registration made under the provision of paragraph (1) in the recognition and assistance procedure that have ceased to be effective pursuant to the provision of Article 61, paragraph (2), a court clerk of the court before which the bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or special liquidation proceedings are pending must, without delay and by their authority, commission cancellation of the registration.

(Commissioning of Registration Regarding Registered Rights)

- Article 10 (1) Where a disposition is rendered against the debtor pursuant to the provisions of Article 32, paragraph (1), and a court clerk becomes aware that there is any registered right that belongs to the debtor's property, the court clerk must, without delay and by their authority, commission registration of the disposition.
- (2) The provisions of the preceding paragraph apply mutatis mutandis where a disposition as prescribed in that paragraph is revoked or where the disposition ceases to be effective.
  - (3) The provisions of the preceding two paragraphs do not apply where a registration of a disposition pursuant to the provisions of Article 32, paragraph (1) is commissioned pursuant to the provisions of paragraph (1) of the preceding Article.
  - (4) Where a disposition is rendered pursuant to the provisions of Article 26,

paragraph (1) or paragraph (2) with regard to a registered right that belongs to the debtor's property, a court clerk must, without delay and by their authority, commission registration of the disposition.

- (5) The provisions of the preceding paragraph apply mutatis mutandis where a disposition as prescribed in that paragraph is changed or revoked or where the disposition ceases to be effective.
- (6) Where an order of rescission of recognition pursuant to the provisions of Article 56, paragraph (1), item (iii) becomes final and binding, and a court clerk becomes aware that any of the following registrations exists, the court clerk must, without delay and by their authority, commission cancellation of the registration:
  - (i) a registration made with regard to a registered right to the debtor's property pursuant to the provisions of Article 258, paragraph (1), item (ii) of the Bankruptcy Act or Article 259, paragraph (1), item (i) of that Act (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 12, paragraph (1) of the Civil Rehabilitation Act (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 260, paragraph (1) of the Corporate Reorganization Act (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 161, paragraph (1) of the Act on Special Measures for Reorganization Proceedings of Financial Institutions (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) or Article 334, paragraph (1) of that Act (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) or Article 938, paragraph (3) of the Companies Act (including as applied mutatis mutandis pursuant to paragraph (4) of that Article or to other Acts); or
  - (ii) a registration made pursuant to the provisions of paragraph (1) or paragraph (4) in other recognition and assistance procedure that has ceased to be effective pursuant to the provisions of Article 64.
- (7) Where an order of termination of bankruptcy proceedings is issued or where an order of confirmation of the rehabilitation plan, order of confirmation of the reorganization plan or order of termination of the special liquidation proceedings becomes final and binding, if a court clerk of the court before which the bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or special liquidation proceedings are pending becomes aware that there is a registration made pursuant to the provisions of paragraph (1) or paragraph (4) in the recognition and assistance procedure that has ceased to be effective pursuant to the provisions of Article 61, paragraph (2), the court clerk must, without delay and by their authority, commission cancellation of the registration.

(Exclusion from Taxation)

Article 11 The registration and license tax must not be imposed on the registrations pursuant to the provisions of the preceding two Articles.

(Application Mutatis Mutandis to Registered Rights)

Article 12 The provisions of the preceding two Articles apply mutatis mutandis to other registered rights.

(Inspection of Case Documents)

Article 13 (1) Pursuant to the provisions of this Act or the provisions of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 15, an interested person may make a request to a court clerk for the right to inspect documents and any other objects (hereinafter referred to as "documents, etc." in this Article and paragraph (1) of the following Article) submitted to the court or prepared by the court.

(2) An interested person may make a request to a court clerk for the copying of documents, etc., issuance of an authenticated copy, transcript or extract of documents, etc. or issuance of a certificate of matters concerning the case in question.

(3) The provisions of the preceding paragraph do not apply with respect to documents, etc. which are prepared in the form of audiotapes or videotapes (including objects on which certain matters are recorded by any means equivalent thereto). In this case, upon the request of an interested person with regard to these objects, a court clerk must permit reproduction thereof.

(4) Notwithstanding the provisions of the preceding three paragraphs, an interested person other than a foreign trustee, etc. may not make a request pursuant to the provisions of the preceding three paragraphs until a stay order pursuant to the provisions of Article 25, paragraph (2), a disposition pursuant to the provisions of Article 26, paragraph (2), a stay order pursuant to the provisions of Article 27, paragraph (2), a disposition pursuant to the provisions of Article 51, paragraph (1), a stay order pursuant to the provisions of Article 58, paragraph (1) or Article 63, paragraph (1) or a judicial decision on a petition for recognition of foreign insolvency proceedings is made.

(Restriction on Inspection of Detrimental Part of Documents)

Article 14 (1) Where, with regard to the following documents, etc., a prima facie showing is made to the effect that the documents, etc. in question contain a part that is likely to be significantly detrimental to the achievement of the purpose of recognition and assistance procedure if it is subject to inspection or copying, issuance of an authenticated copy, transcript or extract or reproduction (hereinafter referred to as "inspection, etc." in this Article) (the

part of the documents, etc. is hereinafter referred to as a "detrimental part" in this Article) by an interested person, the court may, upon petition by the debtor, foreign trustee, recognized trustee (including a recognized deputy trustee; hereinafter the same applies in this paragraph and the following paragraph) or temporary administrator (including a temporary administrator representative; hereinafter the same applies in this paragraph and the following paragraph) who submitted the documents, etc. in question, limit persons who may request inspection, etc. of the detrimental part to the person who has filed the petition, foreign trustee, etc., recognized trustee and temporary administrator:

- (i) documents, etc. submitted to the court for the purpose of obtaining permission pursuant to the provisions of Article 31, paragraph (1), Article 35, paragraph (1) (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)), Article 35, paragraph (1) as applied mutatis mutandis pursuant to Article 40, paragraph (3) (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)) or of the proviso to Article 53, paragraph (1); and
  - (ii) documents, etc. pertaining to the report pursuant to the provisions of Article 17, paragraph (3) or Article 46 (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)).
- (2) When the petition set forth in the preceding paragraph is filed, no interested person (excluding the person who filed the petition set forth in that paragraph and foreign trustees, etc., recognized trustees and temporary administrators; the same applies in the following paragraph) may request inspection, etc. of the detrimental part until a judicial decision on the petition becomes final and binding.
- (3) An interested person who intends to request inspection, etc. of the detrimental part may file a petition with the court for revocation of the order made pursuant to the provisions of paragraph (1), on the grounds that the requirement prescribed in that paragraph is not met or is no longer met.
- (4) An immediate appeal may be filed against an order to dismiss without prejudice the petition set forth in paragraph (1) and a judicial decision on the petition set forth in the preceding paragraph.
- (5) An order to revoke an order issued pursuant to the provisions of paragraph (1) does not become effective unless it becomes final and binding.

(Mutatis Mutandis Application of the Code of Civil Procedure)

Article 15 With respect to recognition and assistance procedure, except as otherwise provided, the provisions of the Code of Civil Procedure apply mutatis mutandis.

(Rules of the Supreme Court)

Article 16 In addition to what is provided for in this Act, the necessary matters concerning recognition and assistance procedure are prescribed by the Rules of the Supreme Court.

## **Chapter II Recognition of Foreign Insolvency Proceedings**

(Petition for Recognition of Foreign Insolvency Proceedings)

Article 17 (1) Where the debtor has a domicile, residence, business office or other office in the country where foreign insolvency proceedings are petitioned against the debtor, a foreign trustee, etc. may file a petition with a court for recognition of the foreign insolvency proceedings.

(2) The petition set forth in the preceding paragraph may be filed even before a decision equivalent to an order of commencement of bankruptcy proceedings, order of commencement of rehabilitation proceedings, order of commencement of reorganization proceedings or order of commencement of special liquidation proceedings (referred to as a "decision to commence proceedings" in Article 22, paragraph (1)) is made with regard to the foreign insolvency proceedings.

(3) Where a foreign trustee has filed a petition set forth in paragraph (1), the foreign trustee must, as provided for by the court, report to the court progress in the foreign insolvency proceedings to which the petition pertains, and any other matters ordered by the court.

(4) The court, when it finds it necessary in order to ensure smooth progress in recognition and assistance procedure, may order the foreign trustee who has filed the petition set forth in paragraph (1) to appoint an attorney at law to act as an agent for the recognition and assistance procedure.

(Obligation to File a Petition for Commencement of Bankruptcy Proceedings and Relationship with a Petition for Recognition of Foreign Insolvency Proceedings)

Article 18 Even where a director or a person equivalent to a director of a juridical person is required to file a petition for commencement of bankruptcy proceedings or commencement of special liquidation proceedings against the juridical person pursuant to the provisions of other laws, it does not preclude the filing of a petition for recognition of foreign insolvency proceedings.

(Prima Facie Showing)

Article 19 When filing a petition for recognition of foreign insolvency proceedings, the petitioner must make a prima facie showing that the debtor has a domicile, residence, business office or other office in the country where foreign insolvency proceedings are petitioned for against the debtor.

(Prepayment of Expenses)

- Article 20 (1) When filing a petition for recognition of foreign insolvency proceedings, a foreign trustee must prepay an amount designated by the court for expenses related to the recognition and assistance procedure.
- (2) An immediate appeal may be filed against an order on prepayment of expenses.

(Requirements for Recognition of Foreign Insolvency Proceedings)

- Article 21 If any of the following items applies, the court must dismiss with prejudice on the merits a petition for recognition of foreign insolvency proceedings:
- (i) where the expenses for recognition and assistance procedure are not prepaid;
  - (ii) where it is obvious that the effect of the foreign insolvency proceedings does not extend to the debtor's property in Japan;
  - (iii) where it is contrary to public policy in Japan to render a disposition of assistance for the foreign insolvency proceedings pursuant to the provisions of the following Chapter;
  - (iv) where it is obviously unnecessary to render a disposition of assistance for the foreign insolvency proceedings pursuant to the provisions of the following Chapter;
  - (v) where the foreign trustee has violated the provisions of Article 17, paragraph (3), provided, however, that this does not apply if the degree of violation is minor; or
  - (vi) where it is obvious that the petition was filed for an unjustifiable purpose or was not filed in good faith.

(Order of Recognition of Foreign Insolvency Proceedings)

- Article 22 (1) Where a petition for recognition of foreign insolvency proceedings which meets the requirements prescribed in Article 17, paragraph (1) is filed and a decision to commence the proceedings is made, the court issues an order of recognition of foreign insolvency proceedings, except where it dismisses the petition with prejudice on the merits pursuant to the provisions of the preceding Article, Article 57, paragraph (1) or Article 62, paragraph (1).
- (2) The order set forth in the preceding paragraph becomes effective when it is made.

(Public Notice Recognition of Foreign Insolvency Proceedings)

- Article 23 (1) The court, when it has issued an order of recognition of foreign insolvency proceedings, must immediately provide public notice of the main

text of the judgment.

- (2) A document stating the main text of the judgment on recognition of foreign insolvency proceedings must be served upon the foreign trustee. In cases where a disposition is rendered pursuant to the provisions of Article 51, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (3) of that Article), the relevant document must be served upon the temporary administrator.
- (3) The persons listed in the following items must be provided with notice to the effect that an order of recognition of foreign insolvency proceedings has been issued; provided, however, that this does not apply to any person who has already been provided with notice pursuant to the provisions of the main clause of Article 25, paragraph (9) (including as applied mutatis mutandis pursuant to Article 26, paragraph (6), Article 27, paragraph (8), Article 52, paragraph (5), and Article 58, paragraph (7)):
  - (i) government agencies or public offices having administrative jurisdiction over taxes and other public charges, which are specified by the Rules of the Supreme Court; and
  - (ii) labor unions consisting of the majority of the debtor's employees and other workers in Japan, if there are any labor unions, or the representative of the majority of the debtor's employees and other workers in Japan if there is no labor union comprising a majority of the debtor's employees and other workers in Japan.

(Immediate Appeal)

- Article 24 (1) An immediate appeal may be filed against a judicial decision on a petition for recognition of foreign insolvency proceedings.
- (2) If an immediate appeal as set forth in the preceding paragraph is filed and an order to revoke the order of recognition of foreign insolvency proceedings becomes final and binding, the court that issued the order of recognition of foreign insolvency proceedings must immediately give public notice of the main text of the judgment and serve a document containing the main text thereof upon the foreign trustee.
  - (3) When an order to revoke an order of recognition of foreign insolvency proceedings becomes final and binding, a stay order pursuant to the provisions of paragraph (1) or paragraph (2) of the following Article, a disposition pursuant to the provisions of Article 26, paragraph (1) or paragraph (2), a stay order pursuant to the provisions of Article 27, paragraph (1) or paragraph (2), a prohibition order pursuant to the provisions of Article 28, paragraph (1) and a disposition pursuant to the provisions of Article 32, paragraph (1) cease to be effective.

### Chapter III Disposition of Assistance for Foreign Insolvency Proceedings

(Stay Order on Other Procedures and Proceedings)

Article 25 (1) The court may, when it finds it necessary in order to achieve the purpose of the recognition and assistance procedure, upon the petition of an interested person or by their authority, order a stay on the following procedures or proceedings, upon issuing an order of recognition of foreign insolvency proceedings or after issuing the order:

- (i) a procedure for compulsory execution, provisional seizure or provisional disposition (hereinafter referred to as "compulsory execution, etc.") which has already been initiated against the debtor's property (limited to property which exists in Japan; hereinafter the same applies in this paragraph);
  - (ii) litigation proceedings relating to the debtor's property; and
  - (iii) a procedure in a case relating to the debtor's property that is pending before an administrative authority.
- (2) Where a petition for recognition of foreign insolvency proceedings is filed, the court may issue a stay order pursuant to the provisions of the preceding paragraph even before issuing an order on the petition. The same applies where an immediate appeal set forth in paragraph (1) of the preceding Article is filed against an order to dismiss with prejudice on the merits a petition for recognition of foreign insolvency proceedings.
- (3) A stay order pursuant to the provisions of the preceding paragraph ceases to be effective when an order is issued to dismiss with prejudice on the merits the petition for recognition of foreign insolvency proceedings or dismiss with prejudice on the merits an immediate appeal as set forth in that paragraph.
- (4) The court may change or revoke a stay order issued pursuant to the provisions of paragraph (1) or paragraph (2).
- (5) The court may, when it finds it particularly necessary in order to achieve the purpose of the recognition and assistance procedure, upon the petition of the debtor (limited to a debtor who has no foreign trustee) or of a recognized trustee or by court's authority, order the revocation of the procedure for compulsory execution, etc. which has been discontinued pursuant to the provisions of paragraph (1) or paragraph (2), while requiring or not requiring the provision of security; provided, however, that the procedure for compulsory execution, etc. which has been discontinued pursuant to the provisions of paragraph (2) may be revoked only after an order of recognition of foreign insolvency proceedings is issued.
- (6) An immediate appeal may be filed against a stay order issued pursuant to the provisions of paragraph (1) or paragraph (2), an order issued pursuant to the provisions of paragraph (4) or a revocation order issued pursuant to the provisions of the preceding paragraph.

- (7) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (8) Where a judicial decision prescribed in paragraph (6) and a judicial decision on the immediate appeal set forth in that paragraph are made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 8, paragraph (3) do not apply.
- (9) The persons listed in the items of Article 23, paragraph (3) must be given notice to the effect that a stay order is issued pursuant to the provisions of paragraph (2); provided, however, that this does not apply to any person who has already been given a notice pursuant to the provisions of the proviso to paragraph (3) of that Article.

(Prohibition of Disposition of Property, Prohibition of Payment and Other Dispositions)

- Article 26 (1) The court may, when it finds it necessary in order to achieve the purpose of the recognition and assistance procedure, upon the petition of an interested person or by court's authority, render a disposition prohibiting a disposition of property, a disposition prohibiting payment and any other disposition with regard to the debtor's business and property in Japan, upon issuing an order of recognition of foreign insolvency proceedings or after issuing the order.
- (2) Where a petition for recognition of foreign insolvency proceedings is filed, the court may render a disposition pursuant to the provisions of the preceding paragraph even before issuing an order on the petition. The same applies where the immediate appeal set forth in Article 24, paragraph (1) is filed against an order to dismiss with prejudice on the merits a petition for recognition of foreign insolvency proceedings.
  - (3) The disposition pursuant to the provisions of the preceding paragraph ceases to be effective when an order is issued to dismiss with prejudice on the merits a petition for recognition of foreign insolvency proceedings or to dismiss with prejudice on the merits an immediate appeal set forth in that paragraph.
  - (4) The court may change or revoke a disposition rendered pursuant to the provisions of paragraph (1) or paragraph (2).
  - (5) Where the court, pursuant to the provisions of paragraph (1) or paragraph (2), has rendered a disposition prohibiting the debtor from making payments to a creditor or from engaging in any other act involving a creditor intended to cause their debt to be extinguished, the creditor may not assert, in relation to the recognition and assistance procedure, the effect of the payment or any other act to cause the debt to be extinguished which is made or engaged in violation of the disposition; provided, however, that this does apply only if the creditor knew, at the time when the act was committed, the fact that the

disposition was rendered.

- (6) The provisions of paragraph (6) through paragraph (8) in the preceding Article apply mutatis mutandis to a disposition pursuant to the provisions of paragraph (1) or paragraph (2) and to an order pursuant to the provisions of paragraph (4); the provisions of paragraph (8) of that Article apply mutatis mutandis where a judicial decision is rendered on an immediate appeal set forth in paragraph (6) of that Article as applied mutatis mutandis pursuant to this paragraph; and the provisions of paragraph (9) of that Article apply mutatis mutandis where a disposition is rendered pursuant to the provisions of paragraph (2).

(Stay Order on Procedure for Exercising Security Rights)

- Article 27 (1) The court may, upon the petition of an interested person or by court's authority, specify a reasonable time period and issue an order to discontinue a procedure for exercising any security interest or on a procedure for the exercise of an enterprise mortgage, which has already been initiated against the debtor's property, upon issuing an order of recognition of foreign insolvency proceedings or after issuing the order, when it finds that the stay on the procedure conforms to the common interests of creditors and is not likely to cause undue damage to an auction applicant or a petitioner for a procedure for the exercise of an enterprise mortgage.
- (2) Where a petition for recognition of foreign insolvency proceedings is filed, the court may issue a stay order pursuant to the provisions of the preceding paragraph even before issuing an order on the petition. The same applies where an immediate appeal set forth in Article 24, paragraph (1) is filed against an order dismissing with prejudice on the merits a petition for recognition of foreign insolvency proceedings.
- (3) The stay order pursuant to the provisions of the preceding paragraph ceases to be effective when an order is issued to dismiss with prejudice on the merits a petition for recognition of foreign insolvency proceedings or to dismiss with prejudice on the merits an immediate appeal set forth in that paragraph.
- (4) The court must, when issuing a stay order pursuant to the provisions of paragraph (1) or paragraph (2), hear the opinions of the auction applicant or the petitioner for the procedure for the exercise of the enterprise mortgage.
- (5) The court may change or revoke a stay order issued pursuant to the provisions of paragraph (1) or paragraph (2).
- (6) Only the auction applicant or the applicant who filed a petition for exercise of enterprise mortgage may file an immediate appeal against a stay order pursuant to the provisions of paragraph (1) or paragraph (2) or against an order to change the order issued pursuant to the provisions of the preceding paragraph,.

- (7) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (8) The provisions of Article 25, paragraph (8) apply mutatis mutandis where a stay order pursuant to the provisions of paragraph (1) or paragraph (2), an order pursuant to the provisions of paragraph (5) or a judicial decision on the immediate appeal set forth in paragraph (6) is issued, and the provisions of paragraph (9) of that Article apply mutatis mutandis where a stay order is issued pursuant to the provisions of paragraph (2).

(Injunction Prohibiting Compulsory Execution)

Article 28 (1) The court may, when it finds it necessary in order to achieve the purpose of the recognition and assistance procedure, upon the petition of an interested person or by court's authority, issue an injunction prohibiting all creditors from enforcing compulsory execution, etc. against the debtor's property, upon issuing an order of recognition of foreign insolvency proceedings or after issuing the order. In this case, the court, when it finds it appropriate, may exclude compulsory execution, etc. based on a certain range of claims or compulsory execution, etc. against a certain range of the debtor's property from the injunction.

- (2) Where an injunction pursuant to the provisions of the preceding paragraph (hereinafter referred to as an "injunction prohibiting compulsory execution") is issued, the procedure for compulsory execution already initiated against the debtor's property (limited to the procedure that is to be prohibited by the injunction) must be discontinued.
- (3) The court may change or revoke an injunction prohibiting compulsory execution.
- (4) The court may order the revocation of the procedure which has been discontinued pursuant to the provisions of paragraph (2) when it finds it particularly necessary in order to achieve the purpose of the recognition and assistance procedure, upon the petition of the debtor (limited to a debtor who has no foreign trustee) or recognized trustee or by court's authority, while requiring or not requiring the provision of security.
- (5) An immediate appeal may be filed against an injunction prohibiting compulsory execution, or an order issued pursuant to the provisions of paragraph (3) or a revocation order issued pursuant to the provisions of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (7) When an injunction prohibiting compulsory execution is issued, the prescription is not completed with regard to a claim against the debtor (limited to the claim for which compulsory execution is prohibited by the injunction) until the day on which two months have elapsed since the day following the

date on which the prohibition order ceases to be effective.

(Public Notice and Service Concerning Injunction Prohibiting Compulsory Execution)

- Article 29 (1) Where an injunction prohibiting compulsory execution is issued and an order to change or revoke the injunction is issued, public notice must be given regarding the main texts of the judgment, and the written judgment must be served upon the foreign trustee, etc., recognized trustee and petitioner.
- (2) When the court has simultaneously issued an injunction prohibiting compulsory execution and an order of recognition of foreign insolvency proceedings, it must include the main text of the injunction prohibiting compulsory execution in the public notice pursuant to the provisions of Article 23, paragraph (1). In this case, public notice pursuant to the provisions of the preceding paragraph is not required.
- (3) In the case referred to in paragraph (1), the foreign trustee, etc. who has received the service of the written judgment set forth in that paragraph must take necessary measures to make public the contents thereof among known creditors.
- (4) An injunction prohibiting compulsory execution, and an order to change or revoke the injunction, becomes effective when the written judgment thereof is served upon a foreign trustee, etc. (or a recognized trustee if any recognized trustee is appointed).
- (5) Where a revocation order pursuant to the provisions of paragraph (4) of the preceding Article is issued and a judicial decision on the immediate appeal set forth in paragraph (5) of that Article (excluding an order to change or revoke an injunction prohibiting compulsory execution) is rendered, the written judgment thereof must be served upon the parties concerned.

(Cancellation of Injunction Prohibiting Compulsory Execution)

- Article 30 (1) When the court finds, after issuing an injunction prohibiting compulsory execution that the injunction is likely to cause undue damage to the creditor who filed a petition for compulsory execution, the court may, upon the petition of the creditor, issue an order cancelling the injunction prohibiting compulsory execution with regard to the creditor. In this case, the creditor may enforce compulsory execution against the debtor's property, and any procedure for compulsory execution initiated by the creditor prior to the issuance of the injunction prohibiting compulsory execution must be continued.
- (2) For the purpose of applying the provisions of Article 28, paragraph (7) to a person who has obtained a cancellation order pursuant to the provisions of the preceding paragraph, the phrase "the day on which the prohibitory injunction ceases to be effective" in Article 28, paragraph (7) is deemed to be replaced

with "the day on which a cancellation order pursuant to the provisions of Article 30, paragraph (1) becomes effective."

- (3) An immediate appeal may be filed against a judicial decision on the petition set forth in paragraph (1).
- (4) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (5) Where a judicial decision on the petition set forth in paragraph (1) and a judicial decision on the immediate appeal set forth in paragraph (3) are rendered, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 8, paragraph (3) do not apply.

(Permission for Disposition of Property by the Debtor)

Article 31 (1) If any of the following items applies, the court may, when it finds it necessary, require the debtor to obtain the permission of the court in order to dispose of their property in Japan or take it out of Japan or engage in any other act designated by the court; provided, however, that this does not apply where a recognized trustee or temporary administrator is appointed:

- (i) where a stay order pursuant to the provisions of Article 25, paragraph (1) or paragraph (2), a disposition pursuant to the provisions of Article 26, paragraph (1) or paragraph (2), a stay order pursuant to the provisions of Article 27, paragraph (1) or paragraph (2), an injunction prohibiting compulsory execution or a stay order pursuant to the provisions of Article 57, paragraph (2), Article 58, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 58, paragraph (2)), Article 59, paragraph (1), item (i), Article 60, paragraph (1) or Article 63, paragraph (1) is issued; or
  - (ii) where there exist recognition and assistance procedure in relation to secondary foreign proceedings that have been discontinued pursuant to the provisions of Article 62, paragraph (2).
- (2) The court may grant the permission set forth in the preceding paragraph only where it finds that the debtor's act is unlikely to cause undue harm to creditors' interests in Japan.
  - (3) Any juridical act engaged in without the permission set forth in paragraph (1) is void; provided, however, that this may not be duly asserted against a third party in good faith.

(Administration Order)

Article 32 (1) The court may, when it finds it necessary in order to achieve the purpose of the recognition and assistance procedure, upon the petition of an interested person or by court's authority, render a disposition to order that the debtor's business and property in Japan be administered by a recognized

trustee, upon issuing an order of recognition of foreign insolvency proceedings or after issuing the order.

- (2) The court, when it renders a disposition set forth in the preceding paragraph (hereinafter referred to as an "administration order"), appoint one or more recognized trustees in the administration order.
- (3) A juridical person may serve as a recognized trustee.
- (4) The court may change or revoke an administration order.
- (5) An immediate appeal may be filed against an administration order or an order issued pursuant to the provisions of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.

(Public Notice and Service Concerning Administration Order)

Article 33 (1) The court, when it has issued an administration order, must give public notice of the following matters, except in the cases prescribed in the following paragraph:

- (i) the fact that an administration order has been issued and the name of the recognized trustee; and
  - (ii) an indication to the effect that a possessor of the debtor's property (limited to property which exists in Japan) and who owes a debt to the debtor (limited to a debt arising from a claim which exists in Japan) (referred to as a " possessor of property, etc." in paragraph (6)) must not deliver the property or make payment to the debtor.
- (2) In the case where the court has issued an administration order at the same time as issuing an order of recognition of foreign insolvency proceedings, it must include the matters listed in the preceding paragraph in the public notice to be given pursuant to the provisions of Article 23, paragraph (1).
  - (3) The court, when it has issued an order to change or revoke an administration order, must give public notice to that effect.
  - (4) Where an administration order is issued, an order set forth in the preceding paragraph is issued, or a judicial decision on the immediate appeal set forth in paragraph (5) of the preceding Article is rendered, the written judgment thereof must be served upon the parties concerned.
  - (5) An administration order and an order to change or revoke the order becomes effective when the writing judgment thereof is served upon a recognized trustee.
  - (6) Where an administration order is issued, notice must be given to known possessors of property, etc. with regard to the matters listed in paragraph (1). Where an order set forth in paragraph (3) is issued or where an order to revoke the order of recognition of foreign insolvency proceedings has become final and binding after the issuance of an administration order, notice must be given of

the order to known possessors of property, etc.

- (7) The provisions of Article 8, paragraph (4) do not apply where both public notice and service are required to be given with regard to an administration order.

(Powers of Recognized Trustee)

Article 34 When an administration order is issued, the rights to carry out the debtor's business and to administer and dispose of the debtor's property in Japan are vested exclusively in a recognized trustee.

(Permission to Dispose of Property by Recognized Trustee)

Article 35 (1) A recognized trustee must obtain the permission of the court in order to dispose of the debtor's property in Japan or take it out of Japan or to perform any other act designated by the court.

- (2) The court may grant the permission set forth in the preceding paragraph only where it finds that the recognized trustee's act is unlikely to cause undue harm to the creditors' interests in Japan.
- (3) Any juridical act engaged in without the permission set forth in paragraph (1) must be void; provided, however, that this may not be duly asserted against a third party in good faith.

(Action Relating to the Debtor's Property Where an Administration Order Is Issued)

Article 36 (1) Where an administration order is issued, a recognized trustee stands as the plaintiff or defendant in an action relating to the debtor's property in Japan.

- (2) Where an administration order is issued, any litigation proceedings relating to the debtor's property in Japan in which the debtor stands as a party must be discontinued.
- (3) A recognized trustee may take over the litigation proceedings which have been discontinued pursuant to the provisions of the preceding paragraph. In this case, a petition for a succession may also be filed by the opponent.
- (4) When an administration order ceases to be effective before the litigation proceedings which have been discontinued pursuant to the provisions of paragraph (2), will be taken over pursuant to the provisions of the preceding paragraph, the debtor automatically takes over the litigation proceedings.
- (5) When an administration order has ceased to be effective after the litigation proceedings which had been discontinued pursuant to the provisions of paragraph (2) are taken over pursuant to the provisions of paragraph (3), the action must be discontinued.
- (6) In the case referred to in the preceding paragraph, the debtor must take over

the litigation proceedings. In this case, a petition for a succession may also be filed by the opponent.

(Case Pending Before an Administrative Authority)

Article 37 The provisions of paragraph (2) to paragraph (6) of the preceding Article apply *mutatis mutandis* to a case relating to the debtor's property in Japan that is pending before an administrative authority at the time when an administration order is issued.

(Supervision of Recognized Trustee)

Article 38 (1) A recognized trustee is supervised by the court.

(2) The court, upon the petition of an interested person, or by court's authority, may dismiss a recognized trustee if there are any material reasons to do so. In this case, the court must interrogate the recognized trustee.

(Performance of Duties by Two or More Recognized Trustees)

Article 39 (1) If there are two or more recognized trustees, they perform their duties jointly; provided, however, that with the permission of the court, they may perform their duties severally or divide their duties among them.

(2) If there are two or more recognized trustees, it is sufficient for a manifestation of intention by a third party to be made to any one of them.

(Recognized Deputy Trustee)

Article 40 (1) A recognized trustee may, if necessary, appoint one or more recognized deputy trustees on their own responsibility, in order to have them perform their duties.

(2) A recognized trustee must obtain the permission of the court in order to appoint a recognized deputy trustee as set forth in the preceding paragraph.

(3) The provisions of Article 35 apply *mutatis mutandis* to a recognized deputy trustee.

(Investigation by Recognized trustee)

Article 41 (1) A recognized trustee may request the following persons to report on the status of the debtor's business and property in Japan, and may audit the debtor's books, documents and other items:

(i) the debtor;

(ii) the debtor's agent;

(iii) in cases where the debtor is a juridical person, its director, executive officer, inspector, auditor or liquidator;

(iv) any other person equivalent to the persons listed in the preceding item; or

(v) an employee of the debtor (excluding a person falling under item (ii)).

- (2) The provisions of the preceding paragraph apply mutatis mutandis to any of the persons listed in the items of that paragraph (excluding item (i)).
- (3) A recognized trustee, when necessary in order to perform their duties, may request a subsidiary company, etc. (meaning a juridical person as specified in each of the following items for the cases described in the respective items; the same applies in the following paragraph) of the debtor to report on the status of their business and property in Japan, or may audit their books, documents and other items:
- (i) where the debtor is a stock company: a subsidiary company (meaning a subsidiary company as prescribed in Article 2, item (iii) of the Companies Act) of the debtor; and
  - (ii) where the debtor is a person other than a stock company: a stock company in which the debtor holds a majority of the voting rights (excluding the voting rights of shares which may not be exercised for all matters that may be resolved at a shareholders' meeting, and including the voting rights of shares for which the shareholder is deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act; hereinafter the same applies in the following paragraph) of all the shareholders.
- (4) Where a subsidiary company, etc. of the debtor (limited to a debtor that is a person other than a stock company; hereinafter the same applies in this paragraph) independently holds or the debtor and the debtor's subsidiary company, etc. jointly hold a majority of the voting rights of all the shareholders of another stock company, for the purpose of applying the provisions of the preceding paragraph, the other relevant stock company is deemed to be a subsidiary company of the debtor.

(Administration of the Debtor's Business and Property)

Article 42 A recognized trustee must commence the administration of the debtor's business and property in Japan immediately after assuming office.

(Management of Postal Items)

- Article 43 (1) When the court finds it necessary in order for a recognized trustee to perform their duties, it may commission a person engaged in correspondence delivery to deliver, to a recognized trustee, a postal item or letter as prescribed in Article 2, paragraph (3) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) (referred to as a "postal item" in the following Article) that is addressed to the debtor.
- (2) The court, upon the petition of the debtor or by court's authority, may cancel or change the commission prescribed in the preceding paragraph, after hearing opinions from a recognized trustee.
- (3) When an administration order ceases to be effective, the court must cancel

the commission prescribed in paragraph (1).

- (4) A foreign trustee, etc. or recognized trustee may file an immediate appeal against an order issued pursuant to the provisions of paragraph (1) or paragraph (2) or a judicial decision to dismiss without prejudice the petition set forth in paragraph (2).
- (5) The immediate appeal set forth in the preceding paragraph filed against an order issued pursuant to the provisions of paragraph (1) does not have the effect on a stay of execution.

Article 44 (1) A recognized trustee, upon receiving a postal item, etc. addressed to the debtor, may open it and view its contents.

- (2) The debtor may request that a recognized trustee allow them to inspect the postal item, etc. set forth in the preceding paragraph received by the recognized trustee, or that the recognized trustee deliver it to them, if the postal item, etc. does not relate to the debtor's property in Japan.

(Recognized Trustee's Duty of Care)

Article 45 (1) A recognized trustee must perform their duties with the due care of a prudent manager.

- (2) If a recognized trustee fails to take the due care set forth in the preceding paragraph, the recognized trustee(s) are jointly and severally liable to compensate any interested person for damages resulting from the failure.

(Recognized trustee's Duty to Report)

Article 46 A recognized trustee, as provided for by the court, must report to the court about the status of the administration of the debtor's business and property in Japan and other matters ordered by the court.

(Restriction on Recognized Trustee's Acts)

Article 47 (1) A recognized trustee may not accept the debtor's property or assign their own property to the debtor, or engage in any other transaction with the debtor on behalf of themselves or a third party without the permission of the court,.

- (2) Any act engaged in without the permission set forth in the preceding paragraph must be void; provided, however, that this may not be duly asserted against a third party in good faith.

(Debtor's Acts after Issuance of an Administration Order)

Article 48 (1) A juridical act engaged in by a debtor after the issuance of an administration order with respect to the debtor's property which a recognized trustee has the right to administer and dispose of may not be duly asserted as

effective in relation to recognition and assistance procedure; provided, however, that this does not apply where the other party did not know, at the time of the act, the fact that an administration order was issued.

- (2) Payment of a claim that exists in Japan, made to a debtor in Japan after the issuance of an administration order without knowledge of it, may also be asserted as effective in relation to the recognition and assistance procedure.
- (3) Payment of a claim set forth in the preceding paragraph, made to the debtor in Japan after the issuance of an administration order with knowledge of it, may be asserted as effective in relation to recognition and assistance procedure only to the extent that the debtor's property, which a recognized trustee has the right to administer and dispose of, has been enriched.
- (4) For the purpose of applying the provisions of the preceding three paragraphs, the absence of knowledge of the issuance of an administration order must be presumed prior to giving public notice pursuant to the provisions of Article 33, paragraph (1) (or a public notice given pursuant to the provisions of Article 23, paragraph (1) in cases where an administration order is issued upon issuing an order of recognition of foreign insolvency proceedings), and the knowledge of the issuance of an administration order must be presumed after the public notice.

#### (Remuneration for Recognized Trustee)

- Article 49 (1) A recognized trustee or recognized deputy trustee may receive advance payments of expenses as well as remuneration determined by the court; provided, however, that this does not apply to a foreign trustee.
- (2) A recognized trustee or recognized deputy trustee must, after being appointed, obtain the permission of the court in order to take over any claims against the debtor or any shares of the debtor or any other contributions to the debtor, or assign these.
  - (3) A recognized trustee or recognized deputy trustee may not receive payment of expenses and remuneration if they have engaged in any act prescribed in the preceding paragraph without obtaining the permission set forth in that paragraph.
  - (4) An immediate appeal may be filed against an order issued pursuant to the provisions of paragraph (1).

#### (Recognized Trustee's Duty to Report upon Termination of Office)

- Article 50 (1) A recognized trustee, upon the termination of their duties, must submit a report of account to the court without delay.
- (2) In the case referred to in the preceding paragraph, if there is a vacancy for a recognized trustee, the report of account set forth in that paragraph, notwithstanding the provisions of said paragraph, must be submitted by a

successor recognized trustee.

- (3) Upon the termination of a recognized trustee's duties, if there are pressing circumstances, the recognized trustee or their successor must make necessary administrative disposition until a successor recognized trustee or the debtor is able to administer the property.

(Order for Temporary Administration)

Article 51 (1) Where a petition for recognition of foreign insolvency proceedings is filed, the court may, upon the petition of an interested person or by court's authority, render a disposition to order that the debtor's business and property in Japan be administered by a temporary administrator until an order is issued on the petition for recognition of foreign insolvency proceedings when the court finds it particularly necessary in order to achieve the purpose of the recognition and assistance procedure.

- (2) The court, when it renders a disposition pursuant to the provisions of the preceding paragraph (hereinafter referred to as an "order for temporary administration"), must appoint one or more temporary administrators in the order for temporary administration.
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis where an immediate appeal set forth in Article 24, paragraph (1) is filed against an order to dismiss with prejudice on the merits a petition for recognition of foreign insolvency proceedings.
- (4) The court may change or revoke an order for temporary administration.
- (5) An immediate appeal may be filed against an order for temporary administration or an order issued pursuant to the provisions of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.

(Public Notice and Service Concerning Order for Temporary Administration)

Article 52 (1) The court, when it has issued an order for temporary administration, must give public notice to that effect. The same applies where the court issues an order to change or revoke an order for temporary administration.

- (2) Where an order for temporary administration or an order pursuant to the provisions of paragraph (4) of the preceding Article is issued, and a judicial decision on the immediate appeal set forth in paragraph (5) of that Article is made, the written judgment must be served upon the parties concerned.
- (3) An order for temporary administration and an order to change or revoke the order become effective when the written judgment is served upon a temporary administrator.

- (4) The provisions of Article 8, paragraph (4) do not apply where both public notice and service are required to be given with regard to an order for temporary administration.
- (5) The provisions of Article 25, paragraph (9) apply mutatis mutandis where an order for temporary administration is issued.

(Powers of the Temporary administrator)

Article 53 (1) When an order for temporary administration is issued, the rights to carry out the debtor's business and to administer and dispose of the debtor's property in Japan are vested exclusively in a temporary administrator; provided, however, that a temporary administrator must obtain the permission of the court in order to engage in any act that does not fall within the scope of the debtor's ordinary business.

- (2) Any act engaged in without the permission set forth in the proviso to the preceding paragraph must be void; provided, however, that this may not be duly asserted against a third party in good faith.

(Temporary Administrator Representative)

Article 54 (1) A temporary administrator may, if necessary, appoint one or more temporary administrator representatives on their own responsibility, in order to have them perform their duties.

- (2) A temporary administrator must obtain the permission of the court in order to appoint a temporary administrator representative as set forth in the provisions of the preceding paragraph.

(Application Mutatis Mutandis of the Provisions on Recognized Trustees to Temporary Administrators)

Article 55 (1) The provisions of Article 32, paragraph (3), Article 35, Article 36, paragraph (1), Article 38, Article 39, Article 41, Article 42, and Article 44 to Article 50 apply mutatis mutandis to a temporary administrator, and the provisions of Article 40, paragraph (3) and Article 49 apply mutatis mutandis to a temporary administrator representative. In this case, the term "successor recognized trustee" in Article 50, paragraph (2) is deemed to be replaced with "successor temporary administrator or recognized trustee," and the term "successor recognized trustee" in Article 50, paragraph (3) is deemed to be replaced with "successor temporary administrator or recognized trustee."

- (2) The provisions of Article 36, paragraph (2) to paragraph (6) apply mutatis mutandis to an action relating to the debtor's property in Japan that is pending at the time when an order for temporary administration is issued, and to a case relating to the debtor's property in Japan that is pending before an administrative authority at the time when a provisional administration order

is issued.

#### **Chapter IV Rescission of Recognition of Foreign Insolvency Proceedings**

Article 56 (1) If any of the following items applies, the court, upon the petition of an interested person or by court's authority, must issue an order of rescission of recognition of foreign insolvency proceedings:

- (i) where it has become obvious that the petition for recognition of the foreign insolvency proceedings fails to meet the requirements prescribed in Article 17, paragraph (1);
  - (ii) where it has become obvious that any of the grounds prescribed in Article 21, item (ii) to item (vi) exist with regard to the foreign insolvency proceedings;
  - (iii) where the foreign insolvency proceedings are closed with a decision equivalent to an order for the completion of bankruptcy proceedings, order of confirmation of the rehabilitation plan, order of confirmation of the reorganization plan or order closing the special liquidation has been issued;  
or
  - (iv) where the foreign insolvency proceedings are closed for the reasons other than those prescribed in the preceding item.
- (2) If any of the following items applies, the court, upon the petition of an interested person or by court's authority, may issue an order of rescission of recognition of the foreign insolvency proceedings:
- (i) where the debtor has violated the provisions of Article 31, paragraph (1);
  - (ii) where a foreign trustee who is a recognized trustee has violated the provisions of Article 35, paragraph (1) or Article 46; or
  - (iii) where a foreign trustee who is not a recognized trustee has disposed of the debtor's property in Japan or has taken it out of Japan.
- (3) The court, when it has issued a rescission order as set forth in the preceding two paragraphs, must give public notice of the main text of the judgment and the digest of the grounds for its judgment immediately.
- (4) An immediate appeal may be filed against a rescission order set forth in paragraph (1) or paragraph (2).
- (5) When an order to revoke the rescission order set forth in paragraph (1) or paragraph (2) becomes final and binding, the court that issued the rescission order set forth in paragraph (1) or paragraph (2) must immediately give public notice to that effect.
- (6) A rescission order set forth in paragraph (1) or paragraph (2) does not become effective unless it becomes final and binding.
- (7) The provisions of Article 24, paragraph (3) apply mutatis mutandis where a rescission order set forth in paragraph (1) or paragraph (2) becomes final and

binding.

**Chapter V Treatment of Cases in Which Other Insolvency Proceedings Exist**

**Section 1 Treatment of Cases in Which Domestic Insolvency Proceedings Exist**

(Requirements for Recognition Where an Order of Commencement of Domestic Insolvency Proceedings Is Issued)

Article 57 (1) If it becomes obvious, before issuing an order on a petition for recognition of foreign insolvency proceedings, that there exist domestic insolvency proceedings for which an order of commencement has been issued against the same debtor, the court must dismiss the petition with prejudice on the merits, except where all of the following requirements are met:

- (i) the foreign insolvency proceedings are primary foreign proceedings;
  - (ii) rendering a disposition of assistance for the foreign insolvency proceedings pursuant to the provisions of Chapter III is found to conform to the common interests of creditors; and
  - (iii) it is unlikely that undue harm will be caused to the creditors' interests in Japan by rendering a disposition of assistance for the foreign insolvency proceedings pursuant to the provisions of Chapter III.
- (2) Where the existence of the domestic insolvency proceedings prescribed in the preceding paragraph has become obvious, the court set forth in that paragraph must, when it issues an order of recognition of foreign insolvency proceedings, issue an order to discontinue the domestic insolvency proceedings; provided, however, that this does not apply if the domestic insolvency proceedings that have been discontinued pursuant to the provisions of paragraph (1) of the following Article (including as applied *mutatis mutandis* pursuant to paragraph (2) of that Article).
- (3) The court may revoke a stay order issued pursuant to the provisions of the preceding paragraph.
- (4) An immediate appeal may be filed against a stay order issued pursuant to the provisions of paragraph (2) or an order issued pursuant to the provisions of the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (6) Where a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in that paragraph are made, the written judgment thereof must be served upon the parties concerned.

(Stay Order for Domestic Insolvency Proceedings Before Issuance of an Order

of Recognition of Foreign Insolvency Proceedings)

- Article 58 (1) The court before which recognition and assistance procedure is pending may, when it finds it necessary before issuing an order on a petition for recognition of foreign insolvency proceedings, upon the petition of an interested person or by court's authority, order to discontinue the domestic insolvency proceedings against the same debtor; provided, however, that this only applies in cases where all of the requirements listed in the items of paragraph (1) of the preceding Article are met.
- (2) The provisions of the preceding paragraph apply mutatis mutandis where an immediate appeal set forth in Article 24, paragraph (1) is filed against an order to dismiss with prejudice on the merits a petition for recognition of foreign insolvency proceedings.
- (3) The court may change or revoke a stay order issued pursuant to the provisions of paragraph (1) (including as applied mutatis mutandis pursuant to the preceding paragraph; hereinafter the same applies to this Article and Article 61, paragraph (1)).
- (4) An immediate appeal may be filed against a stay order issued pursuant to the provisions of paragraph (1) or an order issued pursuant to the provisions of the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (6) Where a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in that paragraph are rendered, the written judgment thereof must be served upon the parties concerned.
- (7) The provisions of Article 25, paragraph (9) apply mutatis mutandis where a stay order is issued pursuant to the provisions of paragraph (1).

(Coordination in the Event of Conflict Between an Order of Recognition of Foreign Insolvency Proceedings and an Order of Commencement of Domestic Insolvency Proceedings)

- Article 59 (1) Where it becomes obvious, after an order of recognition of foreign insolvency proceedings is issued, that an order of commencement of domestic insolvency proceedings has been issued against the same debtor before or after the recognition order, the court before which recognition and assistance procedure is pending, must issue an order specified in each of the following items in the cases listed in the respective items:
- (i) where all of the requirements listed in the items of Article 57, paragraph (1) are met: an order to discontinue the domestic insolvency proceedings; or
- (ii) where the preceding item does not apply: an order to discontinue the recognition and assistance procedure
- (2) The court may revoke an order issued pursuant to the provisions of the

preceding paragraph.

- (3) An immediate appeal may be filed against an order issued pursuant to the provisions of the preceding two paragraphs.
- (4) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (5) Where a judicial decision as prescribed in paragraph (3) and a judicial decision on the immediate appeal set forth in that paragraph are rendered, the written judgment thereof must be served upon the parties concerned.

(Coordination Between an Order of Recognition of Foreign Insolvency Proceedings and Domestic Insolvency Proceedings Before an Order of Commencement)

Article 60 (1) Where it becomes obvious, after an order of recognition of foreign insolvency proceedings was made, that a petition for commencement of domestic insolvency proceedings has been filed against the same debtor (excluding the case prescribed in paragraph (1) of the preceding Article), the court before which the recognition and assistance procedure is pending, must issue an order specified in item (i) of that paragraph in the case set forth in that item.

- (2) Where it becomes obvious, after an order of recognition of foreign insolvency proceedings was issued, that a petition for commencement of domestic insolvency proceedings has been filed against the same debtor (excluding the case prescribed in paragraph (1) of the preceding Article), the court before which recognition and assistance procedure is pending, may issue an order specified in item (ii) of paragraph (1) of the preceding Article when it finds it necessary in the case set forth in that item, upon the petition of an interested person or by its own authority.
- (3) The court may change an order issued pursuant to the provisions of the preceding paragraph or revoke an order issued pursuant to the provisions of the preceding two paragraphs.
- (4) An immediate appeal may be filed against an order issued pursuant to the provisions of the preceding three paragraphs.
- (5) The immediate appeal set forth in the preceding paragraph does not have the effect on a stay of execution.
- (6) Where a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in said paragraph are rendered, the written judgment thereof must be served upon the parties concerned.

(Expiration of Discontinued Domestic Insolvency Proceedings and Recognition and Assistance Proceedings)

Article 61 (1) Where domestic insolvency proceedings have been discontinued

pursuant to the provisions of Article 57, paragraph (2), Article 58, paragraph (1), Article 59, paragraph (1), item (i) or paragraph (1) of the preceding Article, when an order of rescission of recognition of foreign insolvency proceedings issued with regard to the same debtor pursuant to the provisions of Article 56, paragraph (1), item (iii) becomes final and binding, the discontinued domestic insolvency proceedings cease to be effective.

- (2) Where recognition and assistance procedure in relation to foreign insolvency proceedings have been discontinued pursuant to the provisions of Article 59, paragraph (1), item (ii) or paragraph (2) of the preceding Article, when an order for the completion of bankruptcy proceedings is issued with regard to the debtor or when an order of confirmation of the rehabilitation plan, order of confirmation of the reorganization plan or order closing the special liquidation issued with regard to the debtor becomes final and binding, the discontinued recognition and assistance procedure ceases to be effective.

## **Section 2 Treatment of Cases in which Recognition and Assistance Procedure in relation to Other Foreign Insolvency Proceedings Exist**

(Requirements for Recognition Where Other Foreign Insolvency Proceedings  
Are Recognized)

Article 62 (1) Where a petition for recognition of foreign insolvency proceedings is filed, if there exist recognition and assistance procedure in relation to other foreign insolvency proceedings against the same debtor for which an order of recognition has already been issued, the court must also dismiss the petition with prejudice on the merits if any of the following items applies:

- (i) where the other foreign insolvency proceedings are primary foreign proceedings; or
  - (ii) in cases other than the case set forth in the preceding item, where the foreign insolvency proceedings for which the petition is filed are secondary foreign proceedings, and rendering a disposition of assistance for the foreign insolvency proceedings pursuant to the provisions of Chapter III is found not to conform to the common interests of creditors.
- (2) Where an order of recognition of foreign insolvency proceedings is issued, if there exist other secondary foreign proceedings for which an order of recognition of foreign insolvency proceedings has been issued with regard to the same debtor, the recognition and assistance procedure in relation to the secondary foreign proceedings must be discontinued; provided, however, that this does not apply if a stay order has been issued pursuant to the provisions of paragraph (1) of the following Article.

(Stay Order on Other Recognition and Assistance Procedure Before Issuance of

an Order of Recognition of Foreign Insolvency Proceedings)

Article 63 (1) When the court before which recognition and assistance procedure is pending finds it necessary prior to issuing an order on a petition for recognition of foreign insolvency proceedings, it may, upon the petition of an interested person or by court's authority, issue an order to discontinue the recognition and assistance procedure in relation to secondary foreign proceedings against the same debtor for which orders of recognition of foreign insolvency proceedings have been issued. The same applies if an immediate appeal as set forth in Article 24, paragraph (1) is filed against an order to dismiss with prejudice on the merits a petition for recognition of a foreign insolvency proceeding.

(2) The court may change or revoke a stay order issued pursuant to the provisions of the preceding paragraph.

(3) An immediate appeal may be filed against a stay order issued pursuant to the provisions of paragraph (1) or an order issued pursuant to the provisions of the preceding paragraph.

(4) The immediate appeal as set forth in the preceding paragraph does not have the effect on a stay of execution.

(5) Where a judicial decision prescribed in paragraph (3) and a judicial decision on the immediate appeal set forth in that paragraph are made, the written judgment thereof must be served upon the parties concerned.

(Expiration of Discontinued Recognition and Assistance Proceedings)

Article 64 Where recognition and assistance procedure in relation to foreign insolvency proceedings has been discontinued pursuant to the provisions of Article 62, paragraph (2) or paragraph (1) of the preceding Article, the discontinued recognition and assistance procedure ceases to be effective when an order of rescission of recognition of other foreign insolvency proceedings that has been issued with regard to the same debtor pursuant to the provisions of Article 56, paragraph (1), item (iii) becomes final and binding..

## **Chapter VI Penal Provisions**

(Crime of Refusal to Submit Reports and to Get Audited)

Article 65 (1) Where a person set forth in each item of Article 41, paragraph (1) or a person set forth in item (ii) to item (v) of that paragraph has refused to submit a report as required pursuant to the provisions of paragraph (1) of that Article as applied directly or mutatis mutandis pursuant to paragraph (2) of that Article (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)) or has submitted a false report, the person must be punished by imprisonment with work for not more than three years or a fine of not more

than three million yen, or both.

- (2) The provisions of the preceding paragraph also apply where a representative person, agent, employee or other worker (referred to as a "representative person, etc." in paragraph (4)) of a person set forth in Article 41, paragraph (1), item (ii) to item (v) or person set forth in each of these items (hereinafter referred to as a "person under a duty to report" in this paragraph) has refused to submit a report as required pursuant to the provisions of paragraph (1) of that Article as applied directly or mutatis mutandis pursuant to paragraph (2) of that Article (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)), or has submitted a false report, in connection with the business of the person under a duty to report,.
- (3) The provisions of paragraph (1) also apply where the debtor or their statutory agent has refused an audit pursuant to the provisions of Article 41, paragraph (1) (including as applied mutatis mutandis pursuant to the provisions of Article 55, paragraph (1)).
- (4) The provisions of paragraph (1) also apply where a representative person, etc. of the debtor's subsidiary company, etc. prescribed in Article 41, paragraph (3) (including one that is deemed to be the debtor's subsidiary company, etc. pursuant to paragraph (4) of that Article; hereinafter the same applies to this paragraph) has refused to report or refused an audit pursuant to the provisions of paragraph (3) of that Article (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)), or has submitted a false report, in connection with the business of the debtor's subsidiary company, etc.

(Crime of Obstruction of the Duties of a Recognized Trustee)

Article 66 A person who, by the use of fraudulent means or force, has obstructed the performance of the duties of a recognized trustee, temporary administrator, recognized deputy trustee or temporary administrator representative must be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.

(Crime of Acceptance of Bribes)

Article 67 (1) Where a recognized trustee, temporary administrator, recognized deputy trustee or temporary administrator representative (referred to as a "recognized trustee, etc." in the following paragraph), has accepted, solicited or promised to accept a bribe in connection with their duties, they are punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.

- (2) In the case referred to in the preceding paragraph, where the recognized trustee, etc. has agreed to perform an act in response to an unlawful request, they must be punished by imprisonment with work for not more than five years

or a fine of not more than five million yen, or both.

- (3) Where a recognized trustee or temporary administrator is a juridical person, if the officer or staff member who performs the duties of a recognized trustee or temporary administrator for the juridical person has accepted, solicited or promised to accept a bribe in connection with the duties, they must be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both. The same applies where a recognized trustee or temporary administrator is a juridical person and its executive officer or staff member has caused the recognized trustee or temporary administrator to accept or solicit or promise to accept a bribe in connection with the duties of a recognized trustee or temporary administrator.
- (4) In the case referred to in the preceding paragraph, where the officer or staff member has agreed to perform an act in response to an unlawful request, they must be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.
- (5) In the cases referred to in the preceding paragraphs, a bribe accepted by the offender or by the recognized trustee or temporary administrator who is a juridical person must be confiscated. If all or part of the bribe cannot be confiscated, the equivalent value must be collected.

#### (Crime of Offering of Bribes)

- Article 68 (1) A person who has given, offered or promised to offer a bribe as prescribed in paragraph (1) or paragraph (3) of the preceding Article must be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.
- (2) A person who has given, offered or promised to offer a bribe as prescribed in paragraph (2) or paragraph (4) of the preceding Article must be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.

#### (Crime of Disposing of Property or Taking Property Out of Japan Without Permission)

- Article 69 (1) Where the debtor is required to obtain the permission of the court pursuant to the provisions of Article 31, paragraph (1) in order to dispose of their property in Japan or take it out of Japan or engage in any other act designated by the court, if the debtor violates the requirement, they must be punished by imprisonment with work for not more than three years or a fine of not more than three million yen.
- (2) The provisions of the preceding paragraph also apply where a recognized trustee, temporary administrator, recognized deputy trustee or temporary administrator representative has violated the provisions of Article 35,

paragraph (1) (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)) or the provisions of Article 35, paragraph (1) as applied mutatis mutandis pursuant to Article 40, paragraph (3) (including as applied mutatis mutandis pursuant to Article 55, paragraph (1)).

(Crimes Committed Outside Japan)

Article 70 (1) The crimes set forth in Article 66 and Article 68 must be governed by the provisions of Article 2 of the Penal Code (Act No. 45 of 1907).

(2) The crime set forth in Article 67 must be governed by the provisions of Article 4 of the Penal Code.

(Dual Criminal Liability Provision)

Article 71 When the representative of a juridical person, or, an agent, employee or other worker of the juridical person or individual has violated Article 65 (excluding paragraph (1)), Article 66, Article 68 or Article 69 in connection with the business or property of the juridical person or individual, not only the offender but also the juridical person or individual must be punished with the fine prescribed in the respective Articles.

### **Supplementary Provisions [Extract]**

(Effective Date)

Article 1 This Act comes into effect on the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.