

Regulation on Security Deposits by Financial Service Intermediaries

(Cabinet Office and Ministry of Justice Order No. 4 of June 2, 2021)

Pursuant to the provisions of Article 22, paragraph (12) of the Act on the Provision of Financial Services (Act No. 101 of 2000), the Regulation on Security Deposits by Financial Service Intermediaries is hereby enacted as follows.

(Procedures for Filing a Petition for the Fulfilment of Rights)

Article 1 A person who intends to file a petition for the fulfillment of the right prescribed in Article 28, paragraph (1) of the Order for Enforcement of the Act on the Provision of Financial Services (Cabinet Order No. 484 of 2000; hereinafter referred to as the "Order") is to submit to the Commissioner of the Financial Services Agency (if the authority of the Commissioner of the Financial Services Agency has been delegated to the Director General of the Local Finance Bureau or the Director General of the Fukuoka Local Finance Branch Bureau pursuant to the provisions of Article 46, paragraph (1) of the Order, the Director General of the Local Finance Bureau or the Director General of the Fukuoka Local Finance Branch Bureau; the same applies hereinafter) a written petition prepared using Appended Form 1, by attaching a document proving that the person has the rights referred to in Article 22, paragraph (6) of the Act on the Provision of Financial Services (hereinafter referred to as the "Act") (hereinafter such right is referred to as the "Right").

(Procedures for Reporting of Rights)

Article 2 A person who intends to report the Right prescribed in Article 28, paragraph (2) of the Order must submit to the Commissioner of the Financial Services Agency a written report prepared using the Appended Form 2, by attaching a document proving that the person has the Right.

(Preparation of Provisional Distribution List)

Article 3 (1) In order to carry out the investigation of the Right under the provisions of Article 28, paragraph (4) of the Order, the Commissioner of the Financial Services Agency must, without delay after the expiration of the period referred to in paragraph (2) of the same Article, prepare a provisional distribution list, give public notice thereof, and notify the financial service intermediary (meaning a financial service intermediary prescribed in Article 11, paragraph (6) of the Act; the same applies hereinafter) pertaining to the security deposit subject to the investigation of the Right and a person who has

concluded the contract referred to in Article 22, paragraph (3) of the Act with that intermediary (hereinafter referred to as a "trustee") of the contents thereof.

- (2) If the Commissioner of the Financial Services Agency cannot ascertain the location of the place of business or office of the financial service intermediary, the Commissioner is not required to notify the intermediary under the provisions of the preceding paragraph.

(Holding a Hearing Session)

Article 4 (1) The procedures for the investigation of the Right under Article 28, paragraph (4) of the Order are conducted through a hearing session over which an official designated by the Commissioner of the Financial Services Agency presides as the presiding official.

- (2) When a person who has filed a petition for the fulfillment of the Right under the provisions of Article 28, paragraph (1) of the Order, a person who has reported the Right within the period referred to in paragraph (2) of the same Article, or the financial service intermediary or trustee prescribed in paragraph (1) of the preceding Article (collectively referred to as a "relevant person" in Article 8, item (iv) and Article 9) is unable to attend the hearing session due to illness or any other compelling reason, the relevant person may submit a written statement in lieu of making a statement at the hearing session.

Article 5 When the presiding official finds it necessary, they may request a person with relevant expertise or any other persons of reference to attend the hearing session.

Article 6 (1) When the presiding official finds it necessary for organizing the business of the session, they may give instructions with regard to the statement of opinions, production of evidence, and any other necessary matters.

- (2) When the presiding official finds it necessary for maintaining order in the hearing session, they may have a person who is disturbing the order or is acting or behaving in a disturbing manner leave the session.

Article 7 (1) When the presiding official finds it necessary, they may postpone or continue the hearing session. In this case, the presiding official must determine and give public notice of the date and place of the next session, and notify the financial service intermediary and trustee prescribed in Article 3, paragraph (1) thereof in advance.

- (2) The provisions of Article 3, paragraph (2) apply mutatis mutandis to the notice to the financial service intermediary under the provisions of the

preceding paragraph.

Article 8 The presiding official must prepare a record stating the following matters with regard to the hearing session:

- (i) indication of the case concerning the hearing session ;
- (ii) date and place of the hearing session;
- (iii) job title and name of the presiding official;
- (iv) names and domiciles of the relevant persons who were present;
- (v) names of any other persons present;
- (vi) gist of the opinions stated;
- (vii) if any written statement referred to in Article 4, paragraph (2) has been submitted, a statement to that effect and the gist thereof;
- (viii) if any evidence has been produced, a statement to that effect and a list of the evidence; and
- (ix) other matters found to be necessary by the presiding official.

Article 9 Relevant persons may inspect the record referred to in the preceding Article.

(Order of Distribution)

Article 10 If, in addition to the part of the security deposit prescribed in Article 3, paragraph (1) that a financial service intermediary has provided, a trustee has also provided a part of that security deposit, the Commissioner of the Financial Services Agency must first distribute monies from the security deposit that the financial service intermediary has provided.

(Procedures for Distribution)

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

(2) If the Commissioner of the Financial Services Agency has conducted the procedures referred to in the preceding paragraph, the Commissioner must send a copy of the payment entrustment document to the financial service intermediary pertaining to the security deposit subject to the distribution and the trustee who has deposited all or part of the security deposit pursuant to the provisions of Article 22, paragraph (4) of the Act.

(3) The provisions of Article 3, paragraph (2) apply mutatis mutandis to the sending of a copy of the payment entrustment document to the financial service

intermediary under the provisions of the preceding paragraph.

(Recovery of Security Deposit)

- Article 12 (1) When a person who has provided a security deposit pursuant to the provisions of Article 22, paragraph (1), (4), or (8) of the Act (if the provisions of Article 15, paragraph (3) apply, such person includes a financial service intermediary that is deemed to have provided a security deposit pursuant to the provisions of the same paragraph; such person is referred to as the "depositor" in paragraphs (1) through (3) and paragraph (6) of the following Article) intends to obtain the approval of the Commissioner of the Financial Services Agency for the recovery of the security deposit pursuant to the provisions of Article 22, paragraph (10) of the Act, the person is to submit to the Commissioner of the Financial Services Agency a written application for approval to recover a security deposit which has been prepared using the Appended Form 3, stating the grounds for recovery and the amount of money to be recovered, or the name, quantity, total face value, etc. of the securities to be recovered (including Japanese government bonds where the ownership of the right for the bond is based on the entry or record in the book-entry transfer account under the Act on Book-Entry Transfer of Corporate Bonds and Shares (Act No. 75 of 2001) (hereinafter referred to as "book-entry Japanese government bonds"); the same applies hereinafter) (or, for book-entry Japanese government bonds, the issue, amount, etc. thereof; the same applies in paragraph (8) of the following Article and Article 14, paragraph (2)) by attaching a document proving that the person is entitled to the recovery and a document that provides a reference for the designation referred to in Article 22, paragraph (11) of the Act.
- (2) When the Commissioner of the Financial Services Agency intends to grant the approval referred to in the preceding paragraph, the Commissioner must, excluding the case of approving the recovery of security deposit under Article 22, paragraph (10), item (iii) of the Act, give public notice of the fact that the person who has the Right to the security deposit referred to in the preceding paragraph must report the Right within a certain period of not less than six months, and that any person failing to report their rights within that period will be excluded from the distribution process; and must also notify the financial service intermediary and trustee pertaining to the security deposit to that effect.
- (3) The provisions of Article 3, paragraph (2) apply mutatis mutandis to the notice given to a financial service intermediary under the provisions of the preceding paragraph.
- (4) A person who intends to report the Right referred to in paragraph (2) is to submit to the Commissioner of the Financial Services Agency a written report

prepared using the Appended Form 4 by attaching a document proving that the person has the right.

- (5) The provisions of Article 28, paragraphs (4) through (8) of the Order and the provisions of Article 3 through the preceding Article apply mutatis mutandis to the case where the reporting of the Right is made within the period referred to in paragraph (2). In this case, the term "paragraph (2)" in Article 28, paragraph (4) of the Order is deemed to be replaced with "Article 12, paragraph (2) of the Regulation on Security Deposits by Financial Service Intermediaries (Cabinet Office and Ministry of Justice Order No. 4 of 2021)", the term "paragraphs (2), (4), and (5)" in paragraph (7) of the same Article is deemed to be replaced with "paragraphs (4) and (5)", the term "when it is necessary for the fulfillment of the Right" in paragraph (8) of the same Article is deemed to be replaced with "when it is necessary for the fulfillment of the Right if the reporting of the Right prescribed in Article 12, paragraph (2) of the Regulation on Security Deposits by Financial Service Intermediaries has been made", the term "Article 28, paragraph (4) of the Order" in Article 3, paragraph (1) is deemed to be replaced with "Article 28, paragraph (4) of the Order as applied mutatis mutandis pursuant to Article 12, paragraph (5)", the term "paragraph (2) of the same Article" in the same paragraph is deemed to be replaced with "Article 12, paragraph (2)", the term "Article 28, paragraph (4) of the Order" in Article 4, paragraph (1) is deemed to be replaced with "Article 28, paragraph (4) of the Order as applied mutatis mutandis pursuant to Article 12, paragraph (5)", the term "person who has filed a petition for the fulfillment of the Right under the provisions of Article 28, paragraph (1) of the Order, a person who has reported the Right within the period referred to in paragraph (2) of the same Article" in paragraph (2) of the same Article is deemed to be replaced with "a person who has reported the Right within the period referred to in Article 12, paragraph (2)".
- (6) If the Commissioner of the Financial Services Agency has granted the approval referred to in paragraph (1), the Commissioner must deliver a certificate of approval for recovery of a security deposit prepared using the Appended Form 5 to the person who has filed the application for approval referred to in the same paragraph; provided, however, that if, pursuant to the provisions of Article 22, paragraph (11) of the Act, the Commissioner of the Financial Services Agency has designated the period in which the security deposit may be recovered and the amount of security deposit that may be recovered, the second page of the certificate is delivered when such period has arrived (when the procedures for the fulfillment of the Right prescribed in Article 28 of the Order, the transfer of custody, etc. referred to in the following Article, or the recovery referred to in Article 14 are still pending, it is delivered when the relevant procedures have been completed).

(7) It is sufficient for a person who has obtained the approval referred to in paragraph (1) to attach the certificate of approval for recovery of the security deposit that has been delivered pursuant to the provisions of the preceding paragraph, as the document to be attached to a written request for paying out of deposited property pursuant to the provisions of Article 25, paragraph (1) of the Deposit Ordinance.

(Transferring Custody of Security Deposits)

Article 13 (1) A depositor who has provided a security deposit in the form of money alone is to file a notification with the Commissioner of the Financial Services Agency without delay if the official depository nearest to the principal place of business or office of the financial service intermediary pertaining to the security deposit has changed due to a change in the location of the intermediary's office (or if the official depository has changed from the Tokyo Legal Affairs Bureau, the Tokyo Legal Affairs Bureau for a financial services intermediary without a place of business or office in Japan; hereinafter the same applies in this Article).

(2) If the notification referred to in the preceding paragraph has been given, the Commissioner of the Financial Services Agency must, excluding cases where the procedures for the fulfillment of the Right prescribed in Article 28 of the Order or the recovery referred to in the preceding Article or the following Article are still pending, deliver an authenticated copy of the deposit certificate for the security deposit to the depositor.

(3) A depositor who has given the notification referred to in paragraph (1) is to, without delay after receiving delivery of the authenticated copy of the deposit certificate pursuant to the provisions of the preceding paragraph, and upon prepaying the costs and request the official depository with which the depositor has placed the security deposit to transfer custody of the deposit to the official depository nearest to the principal place of business or office after relocation.

(4) A person who has requested the transfer of custody referred to in the preceding paragraph is to, without delay after completing the procedures for the transfer of custody, submit to the Commissioner of the Financial Services Agency a written notification prepared using the Appended Form 6 by attaching an authenticated copy of the deposit certificate that has been delivered pursuant to the provisions of Article 21-5, paragraph (3) of the Deposit Ordinance and a statement of security deposit, etc. prescribed in Article 26, paragraph (3) of the Cabinet Office Order on Financial Service Intermediaries (Cabinet Office Order No. 35 of 2021).

(5) If the Commissioner of the Financial Services Agency has received an authenticated copy of the deposit certificate attached to the written notification referred to in the preceding paragraph, the Commissioner must deliver a

custody certificate for the authenticated copy of the deposit certificate to the person who has requested the transfer of custody.

- (6) A depositor who has deposited a security deposit in the form of securities or in the form of money and securities pursuant to the provisions of Article 22, paragraph (9) of the Act is to, if, due to a change in the location of the principal place of business or office of the financial service intermediary pertaining to the security deposit, the official depository nearest thereto has changed, make a security deposit in the same amount as the security deposit with the official depository nearest to the principal place of business or office as of after the change of the location without delay.
- (7) A person who has made the deposit pursuant to the provisions of the preceding paragraph may file with the Commissioner of the Financial Services Agency an application for approval for the recovery of the security deposit deposited with the official depository nearest to the principal place of business or office as of before the change of the location.
- (8) When a person who has made the deposit pursuant to the provisions of paragraph (6) intends to file the application for approval of recovery of security deposit as referred to in the preceding paragraph, the person is to submit to the Commissioner of the Financial Services Agency a written application for approval to recover a security deposit that has been prepared using the Appended Form 7, stating the grounds for the recovery and the amount of money to be recovered or the name, quantity, total face value, etc. of the securities to be recovered.
- (9) The provisions of the main clause of paragraph (6) and paragraph (7) of the preceding Article apply mutatis mutandis to the procedures for recovery referred to in paragraph (7). In this case, the term "has granted the approval referred to in paragraph (1)" in the main clause of paragraph (6) of the same Article is deemed to be replaced with "has granted the approval for the recovery of the security deposit pertaining to the application for approval referred to in paragraph (7) of the following Article", the term "Appended Form 5" in the same clause is deemed to be replaced with "Appended Form 8", and the term "person who has obtained the approval referred to in paragraph (1)" in paragraph (7) of the same Article is deemed to be replaced with "person who has obtained the approval pertaining to the application referred to in paragraph (7) of the following Article".

(Replacement of Security Deposit)

Article 14 (1) A person who has deposited securities pursuant to the provisions of Article 22, paragraph (9) of the Act may, if the maturity date of the securities has arrived, if the person provides a security deposit in lieu of the securities in advance, file with the Commissioner of the Financial Services

Agency an application for approval for the recovery of the securities.

- (2) A person who intends to file the application for approval referred to in the preceding paragraph is to submit to the Commissioner of the Financial Services Agency a written application for approval of recovery of security deposit prepared using the Appended Form 9, stating the content of the deposited property provided in lieu of the securities and the name, quantity, total face value, etc. of the securities to be recovered.
- (3) The provisions of the main clause of paragraph (6) and paragraph (7) of Article 12 apply mutatis mutandis to the procedures for recovery referred to in paragraph (1). In this case, the term "has granted the approval referred to in paragraph (1)" in the main clause of paragraph (6) of the same Article is deemed to be replaced with "has granted the approval for the recovery of the security deposit pertaining to the application for approval referred to in Article 14, paragraph (1)", the term "Appended Form 5" in the same clause is deemed to be replaced with "Appended Form 10", and the term "person who has obtained the approval referred to in paragraph (1)" in paragraph (7) of the same Article is deemed to be replaced with "person who has obtained the approval pertaining to the application referred to in Article 14, paragraph (1)".

(Realization of Securities)

- Article 15 (1) When the Commissioner of the Financial Services Agency intends to receive the return of securities in order to realize them pursuant to the provisions of Article 28, paragraph (8) of the Order (including as applied mutatis mutandis pursuant to Article 12, paragraph (5)), the Commissioner must submit to the official depository two copies of the written request for paying out of deposited property.
- (2) If the Commissioner of the Financial Services Agency has realized securities into cash, the Commissioner must deposit the amount arrived at when the expense for their realization are deducted from the monies obtained through their realization, as a deposit in lieu of the securities in question.
 - (3) Monies deposited pursuant to the provisions of the preceding paragraph is deemed to have been deposited by the financial service intermediary who has deposited the securities that were returned pursuant to the provisions of paragraph (1).
 - (4) If the Commissioner of the Financial Services Agency has made the deposit pursuant to the provisions of paragraph (2), the Commissioner must notify the financial service intermediary prescribed in the preceding paragraph to that effect.

(Public Notice)

- Article 16 (1) The public notice prescribed in Article 28, paragraphs (2), (4), and

(5) of the Order (including the case where these provisions are applied mutatis mutandis pursuant to Article 12, paragraph (5)) and Article 3, paragraph (1) and Article 7, paragraph (1) (including cases where these provisions are applied mutatis mutandis pursuant to Article 12, paragraph (5)) and Article 12, paragraph (2) is given through publication in an official gazette.

(2) The expense for the public notice under the preceding paragraph and any other expenses necessary for the procedures for the paying out of security deposit (excluding the expense for realization referred to in Article 28, paragraph (8) of the Order (including as applied mutatis mutandis pursuant to Article 12, paragraph (5))), are borne by the person to whom the security deposit will be paid out, with the amount being in accordance with the amount to be paid out through the procedures for return or recovery and not more than the amount.

(Application of the Deposit Ordinance)

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

Supplementary Provisions

This Order comes into effect as of the day on which the Act Partially Amending the Act on the Provision of Financial Services and Other Acts to Improve Convenience for Users of Financial Services and to Help Protect Them (Act No. 50 of 2020) comes into effect (November 1, 2021).

Supplementary Provisions [Cabinet Office and Ministry of Justice Order No. 5 of June 30, 2021]

This Order comes into effect as of the date of promulgation; provided, however, that the provisions of Article 13 come into effect as of the day on which the Act Partially Amending the Act on the Provision of Financial Services and Other Acts to Improve Convenience for Users of Financial Services and to Help Protect Them (Act No. 50 of 2020) comes into effect (November 1, 2021).

Appended Form 1 (Re: Article 1)

Appended Form 2 (Re: Article 2)

Appended Form 3 (Re: Article 12, paragraph (1))

Appended Form 4 (Re: Article 12, paragraph (4))

Appended Form 5 (Re: Article 12, paragraphs (6) and (7))

Appended Form 6 (Re: Article 13, paragraph (4))

Appended Form 7 (Re: Article 13, paragraph (8))

Appended Form 8 (Re: Article 13, paragraph (9))

Appended Form 9 (Re: Article 14, paragraph (2))

Appended Form 10 (Re: Article 14, paragraph (3))