

# Companies Act (Part I, Part II, Part III and Part IV)

(Act No. 86 of July 26, 2005)

## Part I General Provisions

### Chapter I Common Provisions

(Purpose)

Article 1 The formation, organization, operation and management of companies are governed by the provisions of this Act, except as otherwise provided by other acts.

(Definitions)

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

- (i) "company" means any stock company, general partnership company, limited partnership company or limited liability company;
- (ii) "foreign company" means such any corporation incorporated under the law of a foreign country or relevant other foreign organization that is of the same kind as the company or is similar to a company;
- (iii) "subsidiary company" means any entity which is prescribed by Ministry of Justice Order as the corporation the management of which is controlled by a company, including, but not limited to, a stock company in which a majority of all voting rights are owned by the company;
- (iii)-2 "subsidiary company, etc." means a person corresponding to any of the following:
  - (a) subsidiary company; or
  - (b) Any entity which is prescribed by Ministry of Justice Order as the corporation for which management is controlled by a person other than a company;
- (iv) "parent company" means any entity which is prescribed by Ministry of Justice Order as a corporation who controls the management of a stock company, including, but not limited to, a company which has a stock company as its subsidiary company;
- (iv)-2 "parent company, etc." means a person corresponding to any of the following:
  - (a) parent company; or
  - (b) any entity which is prescribed by Ministry of Justice Order as a person who controls the management of a stock company (excluding entities who are corporations);

- (v) "public company" means any stock company in which the articles of incorporation of which do not require, as a feature of all or part of its shares, the approval of the stock company for the acquisition of relevant shares by transfer;
- (vi) "large company" means any stock company which satisfies any of the following requirements:
  - (a) that the amount of the stated capital in the balance sheet as of the end of its most recent business year (meaning the balance sheet reported to the annual shareholders meeting under the provisions of Article 439 in cases provided for in the first sentence of that Article, and referring to the balance sheet under Article 435, paragraph (1) if the first annual shareholders meeting after the incorporation of the stock company has not yet been held; the same applies in (b)) is 500,000,000 yen or more; or
  - (b) that the total sum of the amounts in the liabilities section of the balance sheet as of the end of its most recent business year is 20,000,000,000 yen or more;
- (vii) "company with board of directors" means any stock company which has a board of directors, or any stock company which is required to have a board of directors under the provisions of this Act;
- (viii) "company with accounting advisor" means any stock company which has accounting advisor;
- (ix) "company with company auditor" means any stock company which has company auditor (excluding any stock company the articles of incorporation of which provide that the scope of the audit by its company auditor is limited to an audit related to accounting), or any stock company which is required to have company auditor under the provisions of this Act;
- (x) "company with board of company auditors" means any stock company which has a board of company auditors, or any stock company which is required to have a board of company auditors under the provisions of this Act;
- (xi) "company with financial auditor" means any stock company which has financial auditor, or any stock company which is required to have financial auditor under the provisions of this Act;
- (xi)-2 "company with audit and supervisory committee" means any stock company which has an audit and supervisory committee;
- (xii) "company with nominating committee, etc." means any stock company which has a nominating committee, an audit committee and a remuneration committee (hereinafter referred to as "nominating committees, etc.");
- (xiii) "company with class shares" means any stock company which issues two or more classes of shares with different features as to the matters set forth in the items of Article 108, paragraph (1), including, but not limited to, the dividend of surplus;

- (xiv) "general meeting of class shareholders" means a meeting of class shareholders (meaning shareholders of any class of shares of a company with class shares; the same applies hereinafter);
- (xv) "outside director" means a director of any stock company who satisfies all of the following requirements:
  - (a) a person who is not an executive director (meaning a director as set forth in the items of Article 363, paragraph (1) of a stock company or other directors who execute the operations of the stock company; the same applies hereinafter) or executive officer, manager, or other employee (hereinafter collectively referred to as "executive directors, etc.") of the stock company or its subsidiary company and has not been an executive directors, etc. of the stock company or its subsidiary company for ten years prior to assuming office;
  - (b) if a person who has been a director, accounting advisor (if the accounting advisor is a corporation, a member who is in charge of the affairs), or company auditor of the stock company or its subsidiary company (excluding a person who has been an executive directors, etc.) at the time within ten years prior to assuming office, a person who has not been an executive directors, etc. of the stock company or its subsidiary company for ten years prior to assuming office as director, accounting advisor, or company auditor;
  - (c) a person who is not a parent company, etc. of the relevant stock company (limited to a natural person) or director or executive officer, manager, or other employee of a parent company, etc.;
  - (d) a person who is not an executive directors, etc. of a subsidiary company, etc. of the parent company, etc. of relevant stock company (excluding relevant stock company and its subsidiary company); and
  - (e) a person who is not a spouse or relative within the second degree of kinship of a director or executive officer, manager, or other important employee of relevant stock company, or its parent company, etc. (limited to a natural person);
- (xvi) "outside company auditor" means a company auditor of any stock company who satisfies all of the following requirements:
  - (a) a person who has not been a director, accounting advisor (if the accounting advisor is a corporation, a member who is in charge of the affairs; the same applies in (b)), or executive officer, manager, or other employee of relevant stock company or its subsidiary company for ten years prior to assuming office;
  - (b) if a person who has been a company auditor of relevant stock company or its subsidiary company at the time within ten years prior to assuming office, the person who has not been a director, accounting advisor, or

- executive officer, manager, or other employee of relevant stock company or its subsidiary company for ten years prior to assuming office as company auditor;
- (c) a person who is not a parent company, etc. of the relevant stock company (limited to a natural person) or director or executive officer, manager, or other employee of a parent company, etc.;
  - (d) a person who is not an executive directors, etc. of a subsidiary company, etc. of parent company, etc. of relevant stock company (excluding the stock company and its subsidiary company); and
  - (e) a person who is not a spouse or relative within the second degree of kinship of a director, manager, or other important employee of relevant stock company, or its parent company, etc. (limited to a natural person);
- (xvii) "shares with restriction on transfer" means the shares if a stock company provides, as a feature of all or part of its shares, that the approval of the stock company is required for the acquisition of relevant shares by transfer;
- (xviii) "shares with put options" means the shares if a stock company provides, as a feature of all or part of its shares, that a shareholder may demand the stock company to redeem relevant shares;
- (xix) "shares subject to call" means the shares if a stock company provides, as a feature of all or part of its shares, that relevant stock company may redeem relevant shares upon the occurrence of specified event;
- (xx) "share unit" means the certain number if a stock company provides in its articles of incorporation that certain number of shares it issues constitute one unit of shares which entitles a shareholder to cast one vote in a shareholders meeting or general meeting of class shareholders;
- (xxi) "share option" means any right which entitles the holder to acquire shares in a stock company by exercising the right against relevant stock company;
- (xxii) "bonds with share options" means any bond with attached share options;
- (xxiii) "bond" means any monetary claim owed by a company by allotment under the provisions of this Act and which will be redeemed in accordance with the provisions on the matters set forth in the items of Article 676;
- (xxiv) "most recent business year" means the latest of business years for which approval under Article 438, paragraph (2) (or any approval under Article 436, paragraph (3) in cases provided for in the first sentence of Article 439) is obtained with respect to the financial statements provided in Article 435, paragraph (2) relating to each business year;
- (xxv) "dividend property" means the property to be distributed if a stock company pays the dividend of surplus;
- (xxvi) "entity conversion" means any change, through conversion, from a company set forth in (a) or (b) below, respectively, to another form of company prescribed immediately thereafter in the following (a) or (b):

- (a) from a stock company to a general partnership company, limited partnership company or limited liability company;
- (b) from a general partnership company, limited partnership company or limited liability company to a stock company;
- (xxvii) "absorption-type merger" means a merger that a company effects with another company which causes the company surviving the merger to succeed to all of the rights and obligations of the company that disappears in the merger;
- (xxviii) "consolidation-type merger" means a merger effected by two or more companies which causes the company incorporated in the merger to succeed to all of the rights and obligations of the companies that disappear in the merger;
- (xxix) "absorption-type company split" means the action of causing another company to succeed to all or part of the rights and obligations that a stock company or limited liability company holds in connection with its business undertakings;
- (xxx) "incorporation-type company split" means the action of causing the company incorporated in a company split to succeed to all or part of the rights and obligations that one or multiple stock companies or limited liability companies hold in connection with their business undertakings;
- (xxxi) "share exchange" means any exchange of shares whereby stock company cause all of its issued shares (meaning shares issued by a stock company; the same applies hereinafter) to be acquired by another stock company or limited liability company;
- (xxxii) "share transfer" means any transfer whereby one or multiple stock companies cause all of its issued shares to be acquired by a newly incorporated stock company;
- (xxxii)-2 "partial share exchange" means the acceptance by a stock company of the shares of another stock company and the delivery of the shares of the stock company to the transferor as consideration for the accepted shares in order to make that other stock company a subsidiary (limited to a subsidiary prescribed by Ministry of Justice Order; the same applies in Article 774-3, paragraph (2)) of the stock company;
- (xxxiii) "means of giving public notice" means the means which a company (including a foreign company) adopts to give public notice (excluding those which are required to be effected by publishing the notice in Official Gazette pursuant to the provisions of this Act or any other acts);
- (xxxiv) "electronic public notice" means a means of giving public notice prescribed by Ministry of Justice Order which enables the general public to access the public notice by electronic or magnetic means (meaning that it enables the general public to access that public notice through the use of an

electronic data processing system or through any other application of information and communications technology which is specified by Ministry of Justice Order; the same applies hereinafter).

(Legal Personality)

Article 3 Companies have legal personality.

(Address)

Article 4 The address of a company is to be the location of its head office.

(Commercial Transactions)

Article 5 Any act which a company (including a foreign company; the same applies in paragraph (1) of the following Article, Article 8 and Article 9) carries out as its business and any act which it carries out for its business constitute a commercial transaction.

## **Chapter II Trade Name of Company**

(Trade Name)

Article 6 (1) The name of a company is its trade name.

(2) A company must use the Japanese characters "株式会社"(pronounced "kabushiki-kaisha", meaning "stock company"), "合名会社"(pronounced "gomei-kaisha" meaning "general partnership company"), "合資会社"(pronounced "goushi-kaisha" meaning "limited partnership company") or "合同会社"(pronounced "goudou-kaisha", meaning "limited liability company") in its trade name, respectively for stock company, general partnership company, limited partnership company or limited liability company.

(3) A company may not use in its trade name any word which makes it likely that the company may be mistaken for a different form of company.

(No Use of Name Which Is Likely to Be Mistaken for a Company)

Article 7 No person who is not a company may use in its name or trade name any word which makes it likely that the person may be mistaken as a company.

Article 8 (1) No person may use, with a wrongful purpose, any name or trade name which makes it likely that the person may be mistaken for the other company.

(2) Any company the enterprise interests of which have been, or are likely to be, infringed by the use of any name or trade name in violation of the provisions of the preceding paragraph may seek an injunction suspending or preventing the infringement against the person who infringes, or is likely to infringe, those

enterprise interests.

(Liability of Companies Permitting Others to Use Its Trade Name)

Article 9 Any company that has permitted others to carry out business or engage in any enterprise by using the company's own trade name is jointly and severally liable, regarding any person who has transacted with relevant others based on misunderstanding that relevant company carries out relevant business, for the performance of any obligations which may arise from relevant transaction.

### **Chapter III Employees of a Company**

#### **Section 1 Employees of a Company**

(Manager)

Article 10 A company (including a foreign company; hereinafter the same applies in this Part) may appoint managers and have them carry out its business at its head office or branch office.

(Manager's Authority of Representation)

Article 11 (1) A manager has authority to do any and all judicial and non-judicial acts on behalf of a company in connection with its business.

(2) A manager may appoint or dismiss other employee.

(3) No limitation on a manager's authority of representation may be asserted against a third party in good faith.

(Non-Competition by Manager)

Article 12 (1) A manager may not commit any of the following acts without the permission of the company:

(i) engage in the manager's own enterprise;

(ii) carry out, for themselves or for a third party, any transaction which is in the line of business of the company;

(iii) become an employee of any other company or merchant (excluding any company; the same applies in Article 24);

(iv) become a director, executive officer or any member who executes the operation of any other company.

(2) If a manager commits any act set forth in item (ii) of the preceding paragraph in violation of the provisions of that paragraph, the amount of the profit obtained by the manager or any third party as a result of relevant act is presumed to be amount of the damage suffered by the company.

(Apparent Manager)

Article 13 Employees with a title which holds them out as the chief of the business of the head office or any branch office of a company are deemed to have the authority to do any and all non-judicial acts in connection with the business of relevant head office or branch office; provided, however, that this does not apply to the cases where the counterparty acts with knowledge of the counterparty's actual authority.

(Employees to Whom the Authority of a Certain Kind of Matter or a Specific Matter Is Delegated)

Article 14 (1) Any employee to whom the authority of a certain kind of matter or a specific matter in connection with the business is delegated has the authority to do any and all non-judicial acts in connection with relevant matter.

(2) No limitation on the authority of representation of the employee provided in the preceding paragraph may be asserted against a third party in good faith.

(Employees of Stores for the Purpose of Selling Goods)

Article 15 Any employee of a store the purpose of which is the sale, etc.

(meaning sale, lease or any other act similar to the foregoing; hereinafter the same applies in this Article) of goods is deemed to have authority to conduct the sale, etc. of the goods located in that store; provided, however, that this does not apply to the cases where the counterparty acts with knowledge of the counterparty's actual authority.

## **Section 2 Commercial Agents of the Companies**

(Obligation to Give Notice)

Article 16 When any commercial agent (meaning a person who acts on behalf of a company as an agent or intermediary in any transaction in the ordinary line of business of the company, and is not an employee of the company; hereinafter the same applies in this Section) undertakes any transaction as an agent or intermediary, the commercial agent must give notice of that fact to the company without delay.

(Non-Competition by Commercial Agents)

Article 17 (1) A commercial agent may not carry out any of the following acts without the permission of the company:

- (i) carry out, for themselves or for a third party, any transaction which is in the line of business of the company;
- (ii) become a director, executive officer or any member who executes operation of any other company which carries out the same kind of business as the company.



(2) If a commercial agent commits any act set forth in item (i) of the preceding paragraph in violation of provisions of that paragraph, the amount of the profit obtained by the commercial agent or any third party as a result of relevant act is presumed to be amount of the damage suffered by the company.

(Authority to Receive Notice)

Article 18 A commercial agent to whom the authority of the sale of goods or the role of intermediary in the same is delegated has authority to receive the notice regarding the sale and purchase including, but not limited to, the notice under Article 526, paragraph (2) of the Commercial Code (Act No. 48 of 1899).

(Cancellation of Commercial Agency Contracts)

Article 19 (1) A company or the commercial agent may, when they did not define the period of the commercial agency contract, cancel the contract by giving an advance notice more than two months in advance.

(2) Notwithstanding the provisions of the preceding paragraph, if there is any compelling reason, the company or its commercial agent may cancel the commercial agency contract at any time.

(Right of Retention of Commercial Agent)

Article 20 If any claim arising from acting as an agent or intermediary in any transaction is due, the commercial agent can retain any property or negotiable instruments of value which it possesses on behalf of the company until the satisfaction of the claim; provided, however, that this does not apply to the cases where the parties otherwise manifest their intention.

## **Chapter IV Non-Competition after Transfers of Business**

(Non-Competition by Transferor Company)

Article 21 (1) Unless the parties otherwise manifest their intention, a company which transferred its business (hereinafter in this Chapter referred to as "transferor company") may not carry out the same line of business within the area of the same city, town or village (including special wards, and ward or administratively consolidated ward of the cities designated under Article 252-19 paragraph (1) of the Local Autonomy Act (Act No. 67 of 1947); hereinafter the same applies in this paragraph), or within the area of any of its neighboring cities, towns or villages for twenty years from the day of the transfer of the business.

(2) If the transferor company agreed to special provisions to the effect that it will not carry out the same line of the business, the effectiveness of the special provision is limited to the period of thirty years from the day of the transfer of

the business.

- (3) Notwithstanding the provisions of the preceding two paragraphs, the transferor company may not carry out the same line of business with the purpose of unfair competition.

(Liabilities of the Transferee Company Using the Trade Name of the Transferor Company)

Article 22 (1) If any company to which any business is transferred (hereinafter in this Chapter referred to as "transferee company") continues to use the trade name of the transferor company, the transferee company is also liable for the performance of any obligations having arisen from the business of the transferor company.

- (2) The provisions of the preceding paragraph do not apply if the transferee company registers, at the location of its head office, without delay after it has accepted the transfer of the business, a statement to the effect that it will not be liable for the performance of the obligations of the transferor company. If the transferee company and transferor company give notice to the above effect to any third party without delay after the transfer of the business, the same applies to the third party who receives that notice.
- (3) If the transferee company is liable for the performance of the obligations of the transferor company pursuant to the provisions of paragraph (1), the liability of the transferor company is extinguished upon lapse of two years after the day of the transfer of the business to any obligee who does not demand the performance, or does not give an advance notice of the demand, within that period.
- (4) In cases provided for in paragraph (1), any performance made to the transferee company with respect to any claim arising from the business of the transferor company remains effective if the performing party has acted in good faith and without gross negligence.

(Assumption of Obligations by Transferee Company)

Article 23 (1) Even if a transferee company does not continue to use the trade name of the transferor company, if it advertises to the effect that it will assume the obligations that have arisen from the business of the transferor company, the obligees of the transferor company may demand the performance against the transferee company.

- (2) If the transferee company is liable for the performance of the obligations of the transferor company pursuant to the provisions of the preceding paragraph, the liability of the transferor company is extinguished upon lapse of two years after the day of the advertisement under that paragraph regarding any obligee who does not demand the performance, or does not give an advance notice of

the demand, within that period.

(Request for Performance of Obligations from a Transferee Company Related to Fraudulent Transfer of Business)

Article 23-2 (1) If a transferor company transfers business, with the knowledge that it harms creditors of the obligations that are not succeeded by the transferee company (hereinafter the creditors are referred to as "remaining creditor" in this Article), the remaining creditor may demand from the transferee company the performance of obligations up to the value of the succeeding properties; provided, however, that this does not apply to cases where the transferee company has no knowledge that it harms remaining creditor when the transfer of business becomes effective.

(2) If a transferor company is liable to performance of obligations referred to in the preceding paragraph pursuant to that paragraph, relevant liability for a remaining creditor, who does not demand or give an advance notice of the demand within two years from when the transferee company transferred business with the knowledge that it harms the remaining creditor, extinguishes when that period elapses. The same applies when ten years have elapsed from the day when the transfer of business comes into effect.

(3) When an order of commencement of bankruptcy proceedings, order of commencement of rehabilitation proceedings, or order of commencement of reorganization proceedings is made against the transferor company, the remaining creditor may not exercise the right to demand pursuant to the provisions of paragraph (1) from the transferee company.

(Transfers of Business to or from a Merchant)

Article 24 (1) If a company transfers its business to a merchant, relevant company is deemed to be the transferee provided for in Article 16, paragraph (1) of the Commercial Code, and the provisions of Articles 17 through 18-2 of the Code apply. In this case, the phrase "or an order of commencement of rehabilitation proceedings" in paragraph (3) of the same Article is deemed to be replaced with "an order of commencement of rehabilitation proceedings or order of commencement of reorganization proceedings".

(2) If a company accepts transfer of the enterprise of any merchant, relevant merchant is deemed to be the transferor company, and the provisions of the preceding three articles apply. In this case, the phrase ", order of commencement of rehabilitation proceedings or order of commencement of reorganization proceedings" in paragraph (3) of the preceding Article is deemed to be replaced with "or an order of commencement of rehabilitation proceedings".

**Part II Stock Company**  
**Chapter I Incorporation**  
**Section 1 General Provisions**

Article 25 (1) A stock company may be incorporated by either of the following methods:

- (i) the method by which incorporator subscribe for all shares issued at incorporation (meaning the shares which are issued at incorporation of a stock company; the same applies hereinafter) pursuant to the provisions of the following Section through Section 8; or
  - (ii) the method by which, in addition to the subscription by incorporator for the shares issued at incorporation, person who will subscribe for the shares issued at incorporation is solicited pursuant to the provisions of the following Section, Section 3, Article 39 and Section 6 through Section 9.
- (2) Each incorporator must subscribe for one or more shares issued at incorporation in the incorporation of a stock company.

**Section 2 Preparation of Articles of Incorporation**

(Preparation of Articles of Incorporation)

Article 26 (1) In order to incorporate a stock company, incorporator must prepare articles of incorporation, and all incorporators must sign or affix the name and seal to it.

- (2) Articles of incorporation referred to in the preceding paragraph may be prepared in the form of an electronic or magnetic record (meaning a record that Ministry of Justice Order prescribes as being used in computerized information processing and created in electronic form, magnetic form, or any other form that cannot be perceived by the human senses; the same applies hereinafter). In these cases, actions prescribed by Ministry of Justice Order must be taken in lieu of the signing or the affixing of the names and seals, with respect to the data recorded in such an electronic or magnetic record.

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

Article 27 Articles of incorporation of a stock company must specify or record the following matters:

- (i) purpose;
- (ii) trade name;
- (iii) location of the head office;
- (iv) value of property to be contributed at the incorporation or the lower limit thereof;
- (v) name and address of the incorporator.

Article 28 If a stock company is to be incorporated, the following matters do not become effective unless they are specified or recorded in the articles of incorporation referred to in Article 26, paragraph (1):

- (i) name of person who contribute by any property other than money, the description of relevant property and the value thereof, and the number of the shares issued at incorporation that are to be allotted to that person (if the stock company to be incorporated is a company with class shares, referring to the class and the number of each class of the shares issued at incorporation; the same applies in Article 32, paragraph (1), item (i));
- (ii) property that is agreed to be transferred to the stock company after the formation thereof, the value thereof, and the name of the transferor;
- (iii) compensation or other special benefit which the incorporator is to obtain by the formation of the stock company, and the name of that incorporator; and
- (iv) expenses regarding the incorporation that are borne by the stock company (excluding the fees for the certification of the articles of incorporation, and other expenses which are prescribed by Ministry of Justice Order as expenses that are unlikely to cause harm to the stock company).

Article 29 Beyond the matters set forth in each item of Article 27 and each item of the preceding Article, articles of incorporation of a stock company may specify or record the matters which, pursuant to the provisions of this Act, may not become effective unless provided for in the articles of incorporation, or other matters which do not violate any provisions of this Act.

(Certification of Articles of Incorporation)

Article 30 (1) Articles of incorporation referred to in Article 26, paragraph (1) do not become effective unless they are certified by a notary public.

(2) Articles of incorporation that are certified by a notary public pursuant to the preceding paragraph may not be amended before the formation of the stock company except when they are amended under the provisions of Article 33, paragraph (7) or (9), or Article 37, paragraph (1) or (2).

(Keeping and Inspection of Articles of Incorporation)

Article 31 (1) The incorporator (or the stock company after the formation of relevant stock company) must keep articles of incorporation at the place designated by the incorporator (or at the head office or branch office of the stock company after the formation of that stock company).

(2) The incorporator (or, after the formation of that stock company, the shareholder and creditor of that stock company) may submit the following

- request at any time during the hours designated by the incorporator (or, after the formation of the stock company, during the business hours of relevant stock company); provided, however, that the fees designated by the incorporator (or, after the formation of the stock company, relevant stock company) are required to be paid in order to submit the requests set forth in item (ii) or item (iv):
- (i) if articles of incorporation are prepared in writing, a request to inspect it;
  - (ii) a request for a transcript or extract of the articles of incorporation referred to in the preceding item;
  - (iii) if articles of incorporation have been prepared as an electronic or magnetic record, a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record; or
  - (iv) a request to be provided with the information recorded in the electronic or magnetic record referred to in the preceding item by an electronic or magnetic means that the incorporators have designated (or, after the formation of the stock company, relevant stock company), or a request to be issued a document showing that information.
- (3) After the formation of a stock company, if it is necessary for the purpose of exercising the rights of a member of the parent company (meaning the shareholders and other members of the parent companies; the same applies hereinafter) of relevant stock company, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of the preceding paragraph with respect to the articles of incorporation of relevant stock company; provided, however, that, in order to make the requests set forth in item (ii) or item (iv) of that paragraph, the fees designated by relevant stock company is required to be paid.
- (4) If articles of incorporation are prepared as an electronic or magnetic record, for the purpose of the application of the provisions of paragraph (1) with respect to a stock company which adopts the measures prescribed by Ministry of Justice Order as the measures that enable its branch offices to respond to the request set forth in paragraph (2), item (iii) and item (iv), the phrase "head office and branch office" in paragraph (1) is deemed to be replaced with "head office".

### **Section 3 Contributions**

(Determination of Matters Regarding Shares Issued at Incorporation)  
Article 32 (1) When incorporator determine the following matters at the incorporation of the stock company (excluding matters provided for in the articles of incorporation), the incorporator must obtain the consent of all incorporators:

- (i) the number of the shares issued at incorporation that is to be allotted to each incorporator;
  - (ii) the amount of money to be paid in exchange for the shares issued at incorporation set forth in the preceding item; and
  - (iii) matters regarding the amount of the stated capital and capital reserves of the stock company after the formation.
- (2) If the stock company to be incorporated is a company with class shares, if the shares issued at incorporation referred to in item (i) of the preceding paragraph are those which are provided for in the articles of incorporation under the provisions of the first sentence of Article 108, paragraph (3), the incorporator must, with the consent of all incorporators, determine the features of relevant shares issued at incorporation.

(Appointment of Inspector of Information Specified or Recorded in the Articles of Incorporation)

- Article 33 (1) If articles of incorporation specify or record the matters set forth in each item of Article 28, the incorporator must, without delay after the certification by the notary public under Article 30, paragraph (1), file a petition for the appointment of an inspector with the court in order to have the inspector investigate relevant matters.
- (2) If the petition referred to in the preceding paragraph has been filed, the court must appoint the inspector except in case it dismisses the petition as non-conforming.
  - (3) If the court has appointed the inspector referred to in the preceding paragraph, it may fix the amount of the remuneration that the stock company after the formation pays to relevant inspector.
  - (4) The inspector referred to in paragraph (2) must conduct the necessary investigation and submit a report to the court by providing it with a document detailing the results of the investigation or with an electronic or magnetic record (limited to one as prescribed by Ministry of Justice Order) in which these have been recorded.
  - (5) If the court finds it necessary for the purpose of clarification of the contents of the report referred to in the preceding paragraph or of confirmation of the grounds supporting that report, it may request the inspector stated in paragraph (2) a further report stated in the preceding paragraph.
  - (6) When the inspector referred to in paragraph (2) reports pursuant to paragraph (4), the inspector must deliver a copy of the document referred to in that paragraph to the incorporators or use a means prescribed by Ministry of Justice Order to provide them with the information recorded in the electronic or magnetic record referred to in that paragraph.
  - (7) If the court receives a report under paragraph (4), if it finds the provisions in

- articles of incorporation relating to matters set forth in each item of Article 28 (excluding any matters not subjected to the investigation by the inspector under paragraph (2)) to be improper, it must make a ruling amending the same.
- (8) If some or all of the provisions in articles of incorporation relating to matters set forth in each item of Article 28 are amended by a ruling stated in the preceding paragraph, the incorporator may rescind the manifestation of intention relating to subscription for the relevant shares issued at incorporation within one week from the finalization of relevant ruling.
- (9) In the cases prescribed in the preceding paragraph, the incorporator may, with the consent of all incorporators, amend articles of incorporation repealing the provisions which have been amended by relevant ruling, within one week from the finalization of the ruling referred to in paragraph (7).
- (10) The provisions of the preceding nine paragraphs do not apply to the matters prescribed in following items:
- (i) if the total value specified or recorded in the articles of incorporation with respect to the property under Article 28, item (i) and item (ii) (hereinafter in this Chapter referred to as "property contributed in kind") does not exceed 5,000,000 yen: matters set forth in item (i) and item (ii) of that Article;
  - (ii) if the value specified or recorded in the articles of incorporation with respect to property contributed in kind that constitutes securities (meaning the securities provided for in Article 2, paragraph (1) of the Financial Instruments and Exchange Act (Act No. 25 of 1948), including rights deemed to be securities pursuant to the provisions of paragraph (2) of that Article; the same applies hereinafter) with a market price does not exceed the value calculated by the method prescribed by Ministry of Justice Order as the market price of relevant securities: matters set forth in Article 28, item (i) and item (ii) with respect to the securities;
  - (iii) if the verification of an attorney, a legal professional corporation, an attorney and registered foreign lawyer joint corporation, a certified public accountant (including a foreign certified public accountant as defined in Article 16-2, paragraph (5) of the Certified Public Accountant Act (Act No. 103 of 1948); the same applies hereinafter), an audit corporation, a certified public tax accountant or a tax accountancy corporation (if the property contributed in kind consist of any real estate, referring to relevant verification and appraisal by a real estate appraiser; hereinafter the same applies in this item) is obtained with respect to the reasonableness of the value specified or recorded in the articles of incorporation with respect to the property contributed in kind: matters set forth in Article 28, item (i) or item (ii) (limited to those relating to the property contributed in kind for which verification has been obtained).
- (11) None of the following persons may provide the verification prescribed in item



(iii) of the preceding paragraph:

(i) an incorporator;

(ii) a transferor of property under Article 28, item (ii);

(iii) a director at incorporation (referring to a director at incorporation prescribed in Article 38, paragraph (1)) or a company auditor at incorporation (referring to a company auditor at incorporation prescribed for in paragraph (3), item (ii) of that Article);

(iv) a person who is subject to the disciplinary action ordering a suspension of operations and for whom the period of that suspension has not yet elapsed; or

(v) a legal professional company, a lawyer and registered foreign lawyer joint corporation, an audit corporation or a tax accountancy corporation more than half of whose members are any of the persons who fall under items (i) through (iii) above.

(Performance of Contributions)

Article 34 (1) An incorporator must, without delay after subscription for shares issued at incorporation, pay in the entire sum of monies relating to the incorporator's contribution, or deliver all properties other than monies relating to the incorporator's contribution fully in money or in kind, with respect to the shares issued at incorporation for which the incorporator has subscribed; provided, however, that, if the consent of all incorporators is obtained, the foregoing provisions do not preclude an incorporator from performing registration, recording or other acts necessary to assert the creation or transfer of rights against third parties after the formation of the stock company.

(2) The contribution in money pursuant to the provisions of the preceding paragraph must be paid at the bank, etc. (meaning a bank (meaning a bank as defined in Article 2, paragraph (1) of the Bank Act (Act No. 59 of 1981); the same applies in Article 703, item (i)), a trust company (meaning a trust company as defined in Article 2, paragraph (2) of the Trust Business Act (Act No. 154 of 2004); the same applies hereinafter) and other entities prescribed by Ministry of Justice Order as entities equivalent to the same; the same applies hereinafter) designated for payment by the incorporator.

(Transferring of a Right to Become a Holder of Shares Issued at Incorporation)

Article 35 The transferring of a right to become a holder of the shares issued at incorporation by contribution pursuant to the provisions of paragraph (1) of the preceding Article (hereinafter in this Chapter referred to as "performance of contributions") may not be asserted against the stock company after the formation.

(Forfeiture of Right to Become a Holder of Shares Issued at Incorporation)

- Article 36 (1) If not all of the incorporators fulfill the performance of contributions, the incorporators must set a date and notify any incorporator who does not fulfill the performance of contributions that the incorporator must fulfill the performance of contributions by that date.
- (2) The notice under the provisions of the preceding paragraph must be given no later than two weeks prior to the date provided for in that paragraph.
- (3) Incorporator who is notified pursuant to the provisions of paragraph (1) will forfeit the right to become the holder of shares issued at incorporation by fulfilling the performance of contributions if the same fail to fulfill the performance of contributions by the date provided for in that paragraph.

(Provisions on Total Number of Authorized Shares)

- Article 37 (1) If the total number of shares that may be issued by a stock company (hereinafter referred to as "total number of authorized shares") is not provided for in the articles of incorporation, the incorporators must, with the consent of all incorporators, amend the articles of incorporation and create a provision on the total number of authorized shares prior to the formation of the stock company.
- (2) If the total number of authorized shares is provided for in the articles of incorporation, the incorporators may, with the consent of all incorporators, amend the articles of incorporation with respect to the total number of authorized shares at any time prior to the formation of the stock company.
- (3) The total number of shares issued at incorporation may not be less than one quarter of the total number of authorized shares; provided, however, that this does not apply if the stock company to be incorporated is not a public company.

**Section 4 Election and Dismissal of Officers at Incorporation**

(Election of Officers at Incorporation)

- Article 38 (1) The incorporator must elect the director at incorporation (meaning person who becomes director at the incorporation; the same applies hereinafter) without delay after the fulfillment of the performance of contributions.
- (2) If the stock company to be incorporated is a company with audit and supervisory committee, the election of directors at incorporation pursuant to the provisions of the preceding paragraph must be implemented by distinguishing the election of a director at incorporation who is an audit and supervisory committee member at incorporation (meaning a person who becomes an audit and supervisory committee member (meaning an member of the audit and supervisory committee; the same applies hereinafter) at incorporation of a stock company; the same applies hereinafter) from among

other directors at incorporation.

- (3) In the cases set forth in the following items, the incorporator must elect the persons specified in each of those items without delay after the fulfillment of the performance of contributions:
- (i) if the stock company to be incorporated is a company with accounting advisor: accounting advisor at incorporation (meaning a person who becomes an accounting advisor at the incorporation; the same applies hereinafter);
  - (ii) if the stock company to be incorporated is a company with company auditor (including any stock company the articles of incorporation of which provide that the scope of the audit by its company auditor is limited to an audit related to accounting): company auditor at incorporation (meaning a person who becomes a company auditor at the incorporation; the same applies hereinafter);
  - (iii) if the stock company to be incorporated is a company with financial auditor: financial auditor at incorporation (meaning a person who becomes a financial auditor at the incorporation; the same applies hereinafter).
- (4) Persons who are prescribed in articles of incorporation as directors at incorporation (if the stock company to be incorporated is a company with audit and supervisory committee, directors at incorporation who are audit and supervisory committee members at incorporation or other directors at incorporation; hereinafter the same applies in this paragraph), accounting advisors at incorporation, company auditors at incorporation, and financial auditors at incorporation are deemed to be elected as directors at incorporation, accounting advisors at incorporation, company auditors at incorporation, and financial auditors at incorporation, respectively, upon the fulfillment of the performance of contributions.

Article 39 (1) If a stock company to be incorporated is a company with board of directors, there must be three or more directors at incorporation.

- (2) If a stock company to be incorporated is a company with board of company auditors, there must be three or more company auditors at incorporation.
- (3) If the stock company to be incorporated is a company with audit and supervisory committee, directors at incorporation who are audit and supervisory committee members at incorporation must be three persons or more.
- (4) A person who may not be a director (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory committee member or other director), accounting advisor, company auditor or financial auditor of a stock company after formation pursuant to the provisions of Article 331, paragraph (1) (including the case where it is applied mutatis mutandis pursuant to Article 335, paragraph (1)), Article 333, paragraph (1) or (3), or

Article 337, paragraph (1) or (3) may not become a director at incorporation (if a stock company after incorporation is a company with audit and supervisory committee, a director at incorporation who is an audit and supervisory committee member at incorporation or other director at incorporation), an accounting advisor at incorporation, a company auditor at incorporation, or a financial auditor at incorporation (hereinafter in this Section referred to as "officers, etc. at incorporation"), respectively.

- (5) The provisions of Article 331-2 apply mutatis mutandis to directors at incorporation and company auditors at incorporation.

(Method of Election of Officers at Incorporation)

Article 40 (1) The election of the officers, etc. at incorporation is determined by a majority of the votes of the incorporators.

- (2) In the cases provided for in the preceding paragraph, an incorporator is entitled to one vote for each one share issued at incorporation for which the performance of contributions has been fulfilled; provided, however, that, if the share unit is provided for in the articles of incorporation, an incorporator is entitled to one vote for each one unit of the shares issued at incorporation.

- (3) Notwithstanding the provisions of the preceding paragraph, if the stock company to be incorporated is a company with class shares, and it issues shares issued at incorporation of a class for which it is provided that the voting rights may not be exercised in connection with the election of some or all of the directors, with respect to relevant class of the shares issued at incorporation, the incorporators may not exercise voting rights in connection with the election of the directors at incorporation who are to become relevant directors.

- (4) For the purpose of the application of the provisions of the preceding paragraph if the stock company to be incorporated is a company with audit and supervisory committee, the phrase", director" in the same paragraph is deemed to be replaced with ", director who is an audit and supervisory committee member or other director", and the term "relevant director" is deemed to be replaced with "these directors".

- (5) The provisions of paragraph (3) apply mutatis mutandis to the election of accounting advisors at incorporation, company auditors at incorporation and financial auditors at incorporation.

(Special Provisions on the Method of Election of Officers at Incorporation)

Article 41 (1) Notwithstanding the provisions of paragraph (1) of the preceding Article, if, at the incorporation of a stock company, it issues shares of a class for which the matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to directors (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory committee member or

other director)) are provided, the election of the directors at incorporation (if the stock company to be incorporated is a company with audit and supervisory committee, a director at incorporation who is an audit and supervisory committee member at incorporation or other director at incorporation) is determined by a majority of the votes (limited to the votes with respect to relevant class of the shares issued at incorporation) of the incorporators who subscribed for relevant class of the shares issued at incorporation, consistently with the provisions of articles of incorporation with respect to the matters provided for in paragraph (2), item (ix) of that Article.

- (2) In the cases provided for in the preceding paragraph, an incorporator is entitled to one vote for each one share issued at incorporation of that class for which the performance of contributions is fulfilled; provided, however, that, if the share unit is provided for in the articles of incorporation, an incorporator is entitled to one vote for each one unit of the shares issued at incorporation of that class.
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis to the cases where the shares of a class for which matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to company auditors) are provided are issued at incorporation of the stock company.

#### (Dismissal of Officers at Incorporation)

Article 42 The incorporators may dismiss the officers, etc. at incorporation elected by the incorporators (including those deemed to be elected as the officers, etc. at incorporation pursuant to the provisions of Article 38, paragraph (4)) at any time prior to the formation of the stock company.

#### (Method of Dismissal of Officers at Incorporation)

Article 43 (1) Dismissal of the officers, etc. at incorporation is determined by a majority of the votes of the incorporators (or by a majority of two thirds or more in case of dismissal of a director at incorporation who is an audit and supervisory committee member at incorporation or a company auditor at incorporation).

- (2) In the cases provided for in the preceding paragraph, an incorporator is entitled to one vote for each one share issued at incorporation for which the performance of contributions has been fulfilled; provided, however, that, if the share unit is provided for in the articles of incorporation, an incorporator is entitled to one vote for each one unit of the shares issued at incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, if the stock company to be incorporated is a company with class shares , and it issues shares issued at incorporation of a class for which it is provided that the voting rights may not be exercised in connection with the dismissal of some or all of

the directors, with respect to relevant class of the shares issued at incorporation, the incorporators may not exercise voting rights in connection with the dismissal of the directors at incorporation who are to become relevant directors.

- (4) For the purpose of the application of the provisions of the preceding paragraph if the stock company to be incorporated is a company with audit and supervisory committee, the phrase", director" in the same paragraph is deemed to be replaced with ", director who is an audit and supervisory committee member or other director", and the term "relevant director" is deemed to be replaced with "these directors".
- (5) The provisions of paragraph (3) apply mutatis mutandis to the dismissal of accounting advisors at incorporation, company auditors at incorporation and financial auditors at incorporation.

(Special Provisions on Method of Dismissal of Directors at Incorporation)

Article 44 (1) Notwithstanding the provisions of paragraph (1) of the preceding Article, the dismissal of director at incorporation (excluding a director at incorporation who is an audit and supervisory committee member at incorporation; the same applies in the following paragraph and paragraph (4)) who is elected pursuant to the provisions of Article 41, paragraph (1) is determined by a majority of the votes of the incorporators relating to the election.

- (2) Notwithstanding the provisions of the preceding paragraph, if there are provisions in the articles of incorporation to the effect that a director (excluding a director who is an audit and supervisory committee member; the same applies in paragraph (4)) who is elected pursuant to the provisions of Article 41, paragraph (1), or is elected at an organizational meeting of class shareholders (referring to organizational meeting of class shareholders provided for in Article 84) or at a general meeting of class shareholders may be dismissed by a resolution at the shareholders meeting, the dismissal of the director at incorporation who is elected pursuant to Article 41, paragraph (1) is determined by a majority of the votes of the incorporators.
- (3) In the cases provided for in the preceding paragraph, an incorporator is entitled to one vote for each one share issued at incorporation of that class for which the performance of contributions is fulfilled; provided, however, that, if the share unit is provided for in the articles of incorporation, an incorporator is entitled to one vote for each one unit of the shares issued at incorporation of that class.
- (4) Notwithstanding the provisions of the preceding paragraph, if a director at incorporation is to be dismissed pursuant to the provisions of paragraph (2) above, and shares issued at incorporation of a class for which it is provided

that the voting rights may not be exercised in connection with the dismissal of some or all of the directors are to be issued, with respect to relevant class of the shares issued at incorporation, the incorporators may not exercise voting rights in connection with the dismissal of the directors at incorporation who are to become relevant directors.

- (5) The provisions of the preceding four paragraphs apply mutatis mutandis to the dismissal of directors at incorporation who are audit and supervisory committee members at incorporation elected pursuant to the provisions of Article 41, paragraph (1) and company auditors at incorporation who are elected pursuant to the provisions of paragraph (3) of that Article which are applied mutatis mutandis under paragraph (3) of that Article. In these cases, the term "majority" in paragraph (1) and paragraph (2) is deemed to be replaced with "majority of two thirds or more".

(Special Provisions on Effect of Election or Dismissal of Officers at Incorporation)

Article 45 (1) If, at the incorporation of a stock company, it issues shares of a class for which the matters set forth in Article 108, paragraph (1), item (viii) are provided, and there are provisions in the articles of incorporation to the effect that a resolution at the general meeting of class shareholders is required with respect to the matters set forth in the following items as the features of the shares of relevant class, the matters provided for in each of those items do not become effective unless, in addition to the determination pursuant to the provisions of Article 40, paragraph (1) or Article 43, paragraph (1), there is a determination by a majority of the votes (limited to the votes with respect to the shares issued at incorporation of relevant class) of the incorporators who subscribe for the shares issued at incorporation of relevant class in accordance with the applicable provisions of the articles of incorporation:

- (i) election or dismissal of some or all of the directors (excluding director of a company with audit and supervisory committee): election or dismissal of directors at incorporation who are to become relevant directors;
- (ii) election or dismissal of some or all of directors who are audit and supervisory committee members or other directors: election or dismissal of directors at incorporation who are to become these directors;
- (iii) election or dismissal of some or all of the accounting advisors: election or dismissal of accounting advisors at incorporation who are to become relevant accounting advisors;
- (iv) election or dismissal of some or all of the company auditors: election or dismissal of company auditors at incorporation who are to become relevant company auditors; and
- (v) election or dismissal of some or all of the financial auditors: election or

dismissal of financial auditors at incorporation who are to become relevant financial auditors.

- (2) In the cases provided for in the preceding paragraph, an incorporator is entitled to one vote for each one share issued at incorporation of that class for which the performance of contributions is fulfilled; provided, however, that, if the share unit is provided for in the articles of incorporation, an incorporator is entitled to one vote for each one unit of the shares issued at incorporation of relevant class.

### **Section 5 Investigation by Directors at Incorporation**

Article 46 (1) The directors at incorporation (referring to the directors at incorporation and company auditor at incorporation if the stock company to be incorporated is a company with company auditor; hereinafter the same applies in this Article) must investigate the following matters without delay after their election:

- (i) that, with respect to the property contributed in kind in the cases set forth in Article 33, paragraph (10), item (i) or item (ii) (if set forth in that item, limited to the securities under that item), the value specified or recorded in the articles of incorporation is reasonable;
  - (ii) that the verification provided for in Article 33, paragraph (10), item (iii) is appropriate;
  - (iii) that the performance of contributions has been fulfilled; and
  - (iv) that, beyond the matters set forth in the preceding three items, the procedures for the incorporation of the stock company do not violate laws and regulations or articles of incorporation.
- (2) If, as a result of the investigation pursuant to the preceding paragraph, the directors at incorporation find that there is any violation of laws and regulations or articles of incorporation or there is any inappropriate matter in a matter set forth in any item of that paragraph, directors must give notice to that effect to the incorporator;
- (3) If the stock company to be incorporated is a company with nominating committee, etc., the director at incorporation must give the representative executive officer at incorporation (referring to the representative executive officer at incorporation provided for in Article 48, paragraph (1), item (iii)) notice to the effect that the investigation under paragraph (1) has been completed, or, if the notice under the preceding paragraph has been given, notice to that effect and a description of the contents.

### **Section 6 Appointment of Representative Directors at Incorporation**



(Appointment of Representative Directors at Incorporation)

- Article 47 (1) If the stock company to be incorporated is a company with board of directors (excluding a company with nominating committees, etc.), the directors at incorporation must appoint among the directors at incorporation (if the stock company to be incorporated is a company with audit and supervisory committee, excluding a director at incorporation who is an audit and supervisory committee member at incorporation) a person who is to be the representative director (meaning the director who represents the stock company; the same applies hereinafter) as at incorporation of the stock company (hereinafter referred to as "representative director at incorporation").
- (2) The directors at incorporation may remove the representative director at incorporation at any time prior to the formation of the stock company.
- (3) The appointment and removal of the representative director at incorporation pursuant to the provisions of the preceding two paragraphs are determined by a majority of the directors at incorporation.

(Appointment of Committee Members at Incorporation)

- Article 48 (1) If the stock company to be incorporated is a company with nominating committee, etc., the director at incorporation must take the following measures:
- (i) appoint the following persons (in the following paragraph referred to as "committee members at incorporation") among the directors at incorporation:
- (a) persons who are to be members of the nominating committee at incorporation of the stock company;
  - (b) persons who are to be committee members of the audit committee at incorporation of the stock company;
  - (c) persons who are to be committee members of the remuneration committee at incorporation of the stock company;
- (ii) elect persons who are to be the executive officers at incorporation of the stock company (hereinafter referred to as "executive officers at incorporation"); and
- (iii) appoint among the executive officers at incorporation the persons who are to be the representative executive officers at incorporation of the stock company (hereinafter referred to as "representative executive officers at incorporation"); provided, however, that, if there is only one executive officer at incorporation, the person is deemed to have been appointed as the representative executive officer at incorporation.
- (2) At any time prior to the formation of the stock company, the directors at incorporation may remove the committee members at incorporation or the representative executive officers at incorporation, or dismiss the executive officers at incorporation.

- (3) The decision pursuant to the provisions of the preceding two paragraphs is made by a majority of the directors at incorporation.

## **Section 7 Formation of Stock Companies**

(Formation of Stock Companies)

Article 49 A stock company is formed by the registration of the incorporation at the location of its head office.

(Right of Subscribers of Shares)

Article 50 (1) As at formation of a stock company, the incorporator becomes a shareholder for the shares issued at incorporation for which the performance of contributions has been fulfilled.

- (2) The transferring of a right to become a shareholder pursuant to the provisions of the preceding paragraph may not be asserted against the stock company after the formation.

(Restrictions on Invalidation or Rescission of Subscription)

Article 51 (1) The provisions of the proviso to Article 93, paragraph (1) and the provisions of Article 94, paragraph (1) of the Civil Code (Act No. 89 of 1896) do not apply to the manifestation of intention relating to the subscription for shares issued at incorporation.

- (2) After the formation of the stock company, the incorporator may not rescind the subscription for shares issued at incorporation on the grounds of mistake, fraud or duress.

## **Section 8 Liability of Incorporators**

(Liability for Insufficiency of Value of Properties Contributed)

Article 52 (1) If the value of the property contributed in kind at formation of a stock company is substantially short of the value specified or recorded in the articles of incorporation with respect to relevant property contributed in kind (or if there is any amendment of the articles of incorporation, the value so amended), the incorporators and directors at incorporation are jointly and severally liable to relevant stock company for the payment of the amount of relevant shortfall.

- (2) Notwithstanding the provisions of the preceding paragraph, the incorporators (excluding those who contributed in kind under Article 28, item (i) or the transferor of the property under item (ii) of the same Article; the same applies in item (ii)) and directors at incorporation are not held liable in accordance with that paragraph with respect to the property contributed in kind in the

following cases:

- (i) where the investigation by the inspector under Article 33, paragraph (2) has been carried out with respect to the matters set forth in Article 28, item (i) or item (ii); or
  - (ii) where relevant incorporators or directors at incorporation prove that they did not fail to exercise due care with respect to the performance of their duties.
- (3) In the cases set forth in paragraph (1), the person who carried out the verification provided for in Article 33, paragraph (10), item (iii) (hereinafter in this paragraph referred to as "verifying person") is jointly and severally liable with the person who assumes the liability under paragraph (1) for the payment of the amount of the shortfall under that paragraph; provided, however, that this does not apply if relevant verifying person prove that the verifying person did not fail to exercise due care with respect to the carrying out relevant verification.

(Responsibility in Cases of Falsifying Performance of Contributions)

Article 52-2 (1) In the cases set forth in the following items, incorporators are liable to perform the act specified in those items for a stock company:

- (i) in cases of falsifying payment pursuant to the provisions of Article 34, paragraph (1): payment of all monies related to the contributions for which the payment is falsified; or
  - (ii) in cases of falsifying the delivery pursuant to the provisions of Article 34, paragraph (1): delivery of all properties other than monies related to the contributions for which the delivery is falsified (if a stock company demands payment of monies equivalent to the value of the properties in lieu of the payment, the payment of the entire amount of the monies).
- (2) In the cases set forth in items of the preceding paragraph, incorporators who are involved in falsifying the performance of the contributions or persons who are prescribed by Ministry of Justice Order as a director at incorporation are liable to make the payments prescribed in those items to the stock company; provided, however, that this does not apply if the persons (excluding the person who falsified the performance of the contributions) prove that they did not fail to exercise due care with respect to the performance of their duties.
- (3) If incorporators are liable to make the payments prescribed in the items of paragraph (1), when the persons prescribed in the preceding paragraph assume the obligation set forth in that paragraph, the persons will be joint and several obligors.
- (4) In the cases set forth in each item of paragraph (1), incorporators may exercise the rights of shareholders at incorporation (meaning shareholders at incorporation as prescribed in Article 65, paragraph (1)); the same applies in

the following paragraph) and holders of the shares issued at incorporation falsified the performance of contribution only after the payment or delivery specified in those items or the payment prescribed in paragraph (2) is made.

- (5) A person who accepts transfer of shares issued at incorporation as referred to in the preceding paragraph or a right to become their shareholders may exercise the right of shareholders at incorporation and holders regarding relevant shares issued at incorporation; provided, however, that this does not apply to cases where the person has acted in bad faith or with gross negligence.

(Liability for Damages of Incorporators)

Article 53 (1) If an incorporator, director at incorporation or company auditor at incorporation neglects their duties with respect to the incorporation of a stock company, they are liable to relevant stock company for damages arising as a result thereof.

- (2) If an incorporator, director at incorporation or company auditor at incorporation has acted in bad faith or with gross negligence in performing their duties, relevant incorporator, director at incorporation or auditor at incorporation is liable to a third party for damages arising as a result thereof.

(Joint and Several Liabilities of Incorporators)

Article 54 If an incorporator, a director at incorporation or a company auditor at incorporation is liable for damages arising in the stock company or a third party, if other incorporators, directors at incorporation or company auditors at incorporation are also liable, relevant persons will be joint and several obligors.

(Exemption from Liability)

Article 55 An exemption from the obligations assumed by an incorporator or director at incorporation pursuant to the provisions of Article 52, paragraph (1), obligations assumed by an incorporator pursuant to the provisions of Article 52-2, paragraph (1), obligations assumed by an incorporator or director at incorporation pursuant to the provisions of paragraph (2) of that Article, and the liability assumed by an incorporator, director at incorporation or company auditor at incorporation pursuant to the provisions of Article 53, paragraph (1) may not be given without the consent of all shareholders.

(Liability in Cases of Failure to Form a Stock Company)

Article 56 If the formation of a stock company fails, the incorporator is jointly and severally liable for any act committed in connection with the incorporation of the stock company, and bears the costs expended in connection with the incorporation of the stock company.

## **Section 9 Incorporation by Solicitation**

### **Subsection 1 Solicitation to Subscribe for Shares Issued at Incorporation**

(Solicitation to Subscribe for Shares Issued at Incorporation)

Article 57 (1) Pursuant to the provisions of this Subsection, the incorporators may provide to the effect that persons will be solicited to subscribe for the shares issued at incorporation.

(2) Incorporators intending to provide to the effect that the solicitation under the preceding paragraph be carried out must obtain the consent of all incorporators.

(Determination of Matters Regarding Shares Solicited at Incorporation)

Article 58 (1) Whenever the incorporator intends to carry out the solicitation under paragraph (1) of the preceding Article, the incorporator must decide the following matters with respect to the shares solicited at incorporation (meaning the shares issued at incorporation that are allotted to the persons who accept the solicitation under that paragraph and apply to subscribe for the shares issued at incorporation; hereinafter the same applies in this Section):

(i) the number of the shares solicited at incorporation (if the stock company to be incorporated is a company with class shares, referring to the class and the number of each class of shares solicited at incorporation; hereinafter the same applies in this Subsection);

(ii) the amount to be paid in for shares solicited at incorporation (meaning the amount of money which is to be paid in in exchange for one share solicited at incorporation; hereinafter the same applies in this Subsection);

(iii) the date by or period during which payment is to be made of the money to be paid in in exchange for the shares solicited at incorporation;

(iv) if there is any arrangement that subscriptions for shares solicited at incorporation may be rescinded if the registration of incorporation is not effected by a certain date, a statement of the arrangement and the date.

(2) If the incorporator intends to determine the matters set forth in any item of the preceding paragraph, the incorporator must obtain the consent of all incorporators.

(3) The conditions for the solicitation under paragraph (1) of the preceding Article, such as the amount to be paid in for shares solicited at incorporation, must be decided uniformly for each relevant solicitation (or, if the stock company to be incorporated is a company with class shares, for each that class and solicitation).

(Subscription for Shares Solicited at Incorporation)

Article 59 (1) The incorporator must notify the person who, in response to the

solicitation under Article 57, paragraph (1), intends to apply to subscribe for the shares solicited at incorporation of the following matters:

- (i) the date of the certification of the articles of incorporation and the name of the notary public who effected the certification;
  - (ii) the matters set forth in each item of Article 27, each item of Article 28, each item of Article 32, paragraph (1) and each item of paragraph (1) of the preceding Article;
  - (iii) the value of the property contributed by the incorporator;
  - (iv) the place designated for payment pursuant to the provisions of Article 63, paragraph (1);
  - (v) beyond what is set forth in the preceding items, any other matters provided by Ministry of Justice Order.
- (2) If not all of the incorporators fulfill the performance of contributions, the incorporators may not give the notice pursuant to the provisions of the preceding paragraph until after the date provided for in Article 36, paragraph (1).
- (3) A person who intends to apply to subscribe for shares solicited at incorporation in response to a solicitation under Article 57, paragraph (1) must deliver a document giving the following information to the incorporators:
- (i) the name and address of the person who intends to apply; and
  - (ii) the number of shares solicited at incorporation that the person intends to subscribe for.
- (4) A person who submits the application referred to in the preceding paragraph may, in lieu of delivering a document as referred to in that paragraph, provide the information that is required to be detailed in the document referred to in that paragraph by electronic or magnetic means, with the approval of the incorporators and pursuant to the provisions of Cabinet Order. In these cases, the person who submitted the application is deemed to have given a document under that paragraph.
- (5) If there are changes in the matters set forth in any item of paragraph (1), the incorporators must immediately notify persons who submitted applications under paragraph (3) (hereinafter in this Subsection referred to as "applicants") thereof and of the matters so changed.
- (6) It would be sufficient for a notice or demand to an applicant by the incorporators to be sent to the address under paragraph (3), item (i) (or, if relevant applicant notifies the incorporators of a different place or contact address for the receipt of notices or demand, to the place or contact address).
- (7) The notice or demand referred to in the preceding paragraph is deemed to have arrived at the time when that notice or demand should normally have arrived.

(Allotment of Shares Solicited at Incorporation)

Article 60 (1) The incorporators must specify from among the applicants the persons to whom the shares solicited at incorporation are allotted, and specify the number of the shares solicited at incorporation that are allotted to relevant persons. In these cases, the incorporators may reduce the number of the shares solicited at incorporation to be allotted to relevant applicants to less than the number referred to in paragraph (3), item (ii) of the preceding Article.

(2) The incorporator must notify the Applicant, no later than the day immediately preceding the date referred to in Article 58, paragraph (1), item (iii) (or, in case a period is specified under that item, no later than the day immediately preceding the first day of that period), of the number of the shares solicited at incorporation that are allotted to relevant applicant.

(Special Provisions on the Subscription for and Allotment of Shares Solicited at Incorporation)

Article 61 The provisions of the preceding two Articles do not apply if persons who intend to subscribe for shares solicited at incorporation execute contracts for subscriptions for the total number of those shares.

(Subscriptions for Shares Solicited at Incorporation)

Article 62 The persons set forth in the following items will be the subscribers for the number of the shares solicited at incorporation provided for in each item with respect to the shares solicited at incorporation:

- (i) applicants: the number of the shares solicited at incorporation as allotted by the incorporators; or
- (ii) persons who subscribed for the total number of the shares solicited at incorporation under the contracts referred to in the preceding Article: the number of the shares solicited at incorporation for which the persons have subscribed.

(Payment of Amount to Be Paid in for Shares Solicited at Incorporation)

Article 63 (1) The subscribers for the shares solicited at incorporation must pay fully the amount to be paid in for shares solicited at incorporation for which the subscribers subscribed, at the bank, etc. designated for payment by the incorporator, no later than the date set forth in Article 58, paragraph (1), item (iii) or within the period under that item.

(2) Transferring of the right to become a holder of the shares issued at incorporation by effecting payment pursuant to the preceding paragraph may not be asserted against the stock company after formation.

(3) If a subscriber for the shares solicited at incorporation fails to make payment pursuant to the provisions of paragraph (1), the subscriber will forfeit the right

to become the holder of the shares solicited at incorporation by making relevant payment.

(Certificate of Deposit of Paid Money)

Article 64 (1) If solicitation under Article 57, paragraph (1) has been carried out, the incorporators may request the bank, etc. that handled the payment pursuant to the provisions of Article 34, paragraph (1) and paragraph (1) of the preceding Article to issue a certificate of deposit of a money amount paid in pursuant to the provisions.

(2) The bank, etc. that issued the certificate referred to in the preceding paragraph may not assert against the stock company after formation any misstatement in relevant certificate or the existence of restrictions regarding the return of money paid in pursuant to the provisions of Article 34, paragraph (1) or paragraph (1) of the preceding Article.

## **Subsection 2 Organizational Meetings**

(Calling of Organizational Meetings)

Article 65 (1) If solicitation under Article 57, paragraph (1) is to be carried out, the incorporator must call a meeting of the shareholders at incorporation (meaning shareholders who are to be the shareholders of the stock company pursuant to the provisions of Article 50, paragraph (1) or Article 102, paragraph (2); the same applies hereinafter) without delay on and after either the date under Article 58, paragraph (1), item (iii) or the last day of the period under that item, whichever comes later (relevant meeting is referred to as an "organizational meeting" hereinafter).

(2) In the cases referred to in the preceding paragraph, the incorporators may call an organizational meeting at any time when the incorporators find it necessary.

(Authority of Organizational Meetings)

Article 66 At an organizational meeting, only the matters provided for in this Section and matters regarding the incorporation of a stock company, such as the discontinuation of the incorporation of a stock company and the conclusion of an organizational meeting, may be resolved.

(Determinations to Call Organizational Meetings)

Article 67 (1) The incorporators must decide the following matters if the incorporators call an organizational meeting:

- (i) the date, time and place of the organizational meeting;
- (ii) the purpose of the organizational meeting;



- (iii) that shareholders at incorporation who do not attend the organizational meeting may vote in writing, if so arranged;
  - (iv) that shareholders at incorporation who do not attend the organizational meeting may vote by electronic or magnetic means, if so arranged;
  - (v) beyond what is set forth in the preceding items, any matters prescribed by Ministry of Justice Order.
- (2) If the number of the shareholders at incorporation (excluding shareholders at incorporation who may not exercise votes on all matters which may be resolved at organizational meetings; the same applies in the following Article through Article 71) is one thousand or more, the incorporators must decide the matters set forth in item (iii) of the preceding paragraph.

(Notices of Calling Organizational Meetings)

- Article 68 (1) In order to call an organizational meeting, incorporators must dispatch notice thereof to the shareholders at incorporation no later than two weeks (or one week if the stock company to be incorporated is not a public company, except if the matters set forth in paragraph (1), item (iii) or item (iv) of the preceding Article are decided (or if a shorter period of time is provided for in the articles of incorporation if the stock company to be incorporated is a stock company other than a company with board of directors, relevant shorter period of time)) prior to the day of the organizational meeting.
- (2) The notice referred to in the preceding paragraph must be in writing in the following cases:
- (i) if the matters set forth in paragraph (1), item (iii) or item (iv) of the preceding Article are decided; or
  - (ii) if the stock company to be incorporated is a company with board of directors.
- (3) In lieu of the dispatch of the written notice referred to in the preceding paragraph, the incorporators may dispatch the notice by electronic or magnetic means, with the consent of the shareholders at incorporation, in accordance with the provisions of Cabinet Order. In these cases, relevant incorporators are deemed to have dispatched the written notice under that paragraph.
- (4) The notice under the preceding two paragraphs must specify or record the matters set forth in each item of paragraph (1) of the preceding Article.
- (5) It would be sufficient for a notice or demand to a shareholder at incorporation by the incorporators to be sent to the address under Article 27, item (v), or Article 59, paragraph (3), item (i) (or, if relevant shareholder at incorporation notifies the incorporator of a different place or contact address for the receipt of notices or letters of demand, to that place or contact address).
- (6) The notice or demand referred to in the preceding paragraph is deemed to have arrived at the time when the notice or demand should normally have

arrived.

- (7) The provisions of the preceding two paragraphs apply mutatis mutandis to cases where a writing is given to the shareholders at incorporation when giving the notice referred to in paragraph (1), or to cases where the information to be detailed in relevant writing is provided by electronic or magnetic means. In these cases, the term "to have arrived" in the preceding paragraph is deemed to be replaced with "to have been given in relevant writing or to have been provided by electronic or magnetic means with the information".

(Omission of Calling Procedures)

Article 69 Notwithstanding the provisions of the preceding Article, organizational meetings may be held without the procedures of calling if the consent of all shareholders at incorporation is obtained; provided, however, that this does not apply if the matters set forth in Article 67, paragraph (1), item (iii) or item (iv) are decided.

(Giving of Reference Documents for Organizational Meetings and Voting Forms)

Article 70 (1) If the matters set forth in Article 67, paragraph (1), item (iii) are decided, the incorporators must, when dispatching a notice under Article 68, paragraph (1), give the shareholders at incorporation documents stating matters of reference for voting (hereinafter in this Subsection referred to as "reference documents for an organizational meeting") and documents to be used by the shareholders at incorporation to exercise votes (hereinafter in this Subsection referred to as "voting form"), as prescribed by Ministry of Justice Order.

- (2) If the incorporators dispatch notices by electronic or magnetic means as referred to in Article 68, paragraph (3) to shareholders at incorporation who have given consent under the same paragraph, the incorporators may provide, in lieu of the giving of reference documents for an organizational meeting and voting form pursuant to the provisions of the preceding paragraph, the information to be detailed in these documents by electronic or magnetic means; provided, however, that, if requested by any shareholder at incorporation, the incorporators must give these documents to relevant shareholder at incorporation.

Article 71 (1) If the matters set forth in Article 67, paragraph (1), item (iv) are decided, the incorporators must, when dispatching notice under Article 68, paragraph (1), give the shareholders at incorporation the reference documents for an organizational Meeting as prescribed by Ministry of Justice Order.

- (2) If the incorporators dispatch notices by electronic or magnetic means as

referred to in Article 68, paragraph (3) to shareholders at incorporation who have given consent under the same paragraph, the incorporators may provide, in lieu of the giving of reference documents for an organizational meeting pursuant to the provisions of the preceding paragraph, the information to be detailed in these documents by electronic or magnetic means; provided, however, that, if requested by any shareholder at incorporation, the incorporators must give the reference documents for an organizational meeting to relevant shareholders at incorporation.

- (3) In the cases provided for in paragraph (1), when using electronic or magnetic means as referred to in Article 68, paragraph (3) to notify shareholders at incorporation that have given the consent referred to in that paragraph, the incorporators must use those electronic or magnetic means to provide the shareholders at incorporation with the information that is required to be detailed in the voting form, as prescribed by Ministry of Justice Order.
- (4) In the cases provided for in paragraph (1), if any shareholder at incorporation who has not given consent under Article 68, paragraph (3) requests, no later than one week prior to the day of the organizational meeting, to be provided with the information that is required to be detailed in the voting form by electronic or magnetic means, the incorporators must use electronic or magnetic means to immediately provide the shareholder at incorporation with that information, as prescribed by Ministry of Justice Order.

(Number of Votes)

- Article 72 (1) Shareholders at incorporation (excluding shareholders at incorporation prescribed by Ministry of Justice Order as entities in a relationship that may allow the stock company after the formation to have substantial control of the entity through the holding of one quarter or more of the votes of all shareholders of the entity or other reasons) are entitled to one vote for each one share issued at incorporation for which they subscribed at organizational meetings; provided, however, that, if a share unit is provided for in the articles of incorporation, they are entitled to one vote for each one unit of the shares issued at incorporation.
- (2) If the stock company to be incorporated is a company with class shares, if it issues shares issued at incorporation of a class that has restrictions on matters for which votes may be exercised at the shareholders meeting, the shareholders at incorporation may exercise, at the organizational meeting, votes with respect to relevant shares issued at incorporation only in relation to matters that are equivalent to the matters for which they may vote at the shareholders meeting.
  - (3) Notwithstanding the provisions of the preceding paragraph, shareholders at incorporation may exercise votes with respect to the shares issued at

incorporation for which they subscribed in relation to the discontinuation of the incorporation of the stock company.

(Resolutions at Organizational Meetings)

- Article 73 (1) Resolutions at an organizational meeting will be passed by a majority of the votes of the shareholders at incorporation entitled to vote at relevant organizational meeting, being a majority of two thirds or more of the votes of relevant shareholders at incorporation who are present at the meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, if the articles of incorporation are amended creating provisions to the effect that, as a feature of all shares issued by a stock company, the approval of relevant stock company is required for the acquisition of relevant shares by transfer (excluding cases where the stock company to be incorporated is a company with class shares), the resolution at the organizational meeting with respect to relevant amendment in the articles of incorporation must be passed by a majority of the shareholders at incorporation entitled to vote at relevant organizational meeting, being a majority of two thirds or more of the votes of relevant shareholders at incorporation.
- (3) If it is intended to create, as a feature of all shares issued by a stock company, any provisions in articles of incorporation with respect to the matters set forth in Article 107, paragraph (1), item (iii) by amending the articles of incorporation, or to effect any amendment (excluding that which repeals provisions of the articles of incorporation with respect to relevant matters) in the articles of incorporation with respect to relevant matters (excluding cases where the stock company to be incorporated is a company with class shares), the consent of all shareholders at incorporation must be obtained.
- (4) At an organizational meeting, matters other than the matters set forth in Article 67, paragraph (1), item (ii) may not be resolved; provided, however, that this does not apply to amendment in the articles of incorporation or discontinuation of the incorporation of a stock company.

(Proxy Voting)

- Article 74 (1) Shareholders at incorporation may vote by proxy. In these cases, the shareholders at incorporation or proxies must submit to the incorporators a document evidencing the authority of proxy.
- (2) The grant of the authority of proxy under the preceding paragraph must be made for each organizational meeting.
- (3) The shareholders at incorporation or proxies referred to in paragraph (1) may, in lieu of submitting a document evidencing the authority of proxy, use electronic or magnetic means to provide the incorporators with the information that is required to be detailed in such a document, with the approval of the

incorporators and pursuant to the provisions of Cabinet Order. In these cases, the shareholders at incorporation or proxies are deemed to have submitted relevant document.

- (4) If the shareholders at incorporation are persons who gave consent under Article 68, paragraph (3), the incorporators may not refuse to grant the approval under the preceding paragraph without justifiable reasons.
- (5) The incorporators may restrict the number of proxies who may attend the organizational meeting.
- (6) The incorporators (or the stock company after the formation of relevant stock company; the same applies in paragraph (3) of the following Article and Article 76, paragraph (4)) must keep the documents evidencing the authority of proxy and any electronic or magnetic record in which the information with which it has been provided by electronic or magnetic means as referred to in paragraph (3) has been recorded at a place designated by the incorporators (or at the head office of the stock company after the formation of relevant stock company; the same applies in paragraph (3) of the following Article and Article 76, paragraph (4)) for the period of three months from the day of the organizational meeting.
- (7) The shareholders at incorporation (or the shareholders of the stock company after the formation of relevant stock company; the same applies in paragraph (4) of the following Article and Article 76, paragraph (5)) may submit the following request at any time during the hours designated by the incorporators (or during the business hours of the stock company after the formation of relevant stock company; the same applies in paragraph (4) of the following Article and Article 76, paragraph (5)):
  - (i) requests for the inspection or copying of the documents evidencing the authority of proxy; and
  - (ii) requests to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in the electronic or magnetic record referred to in the preceding paragraph.

(Voting in Writing)

- Article 75 (1) The exercise of voting rights in writing is effected by entering the voting form with the necessary matters and submitting it to the incorporators no later than the time prescribed by Ministry of Justice Order.
- (2) The number of the votes exercised in writing pursuant to the provisions of the preceding paragraph is included in the number of the votes of the shareholders at incorporation who are present at the meeting.
  - (3) The incorporators must keep the voting forms submitted pursuant to the provisions of paragraph (1) at a place designated by the incorporators for the period of three months from the day of the organizational meeting.

- (4) The shareholders at incorporation may make requests for the inspection or copying of the voting forms submitted pursuant to the provisions of paragraph (1) at any time during the hours designated by the incorporators.

(Voting by Electronic or Magnetic Means)

Article 76 (1) The exercise of voting rights by electronic or magnetic means is effected by using electronic or magnetic means to provide the incorporators with the information that is required to be entered in the voting form no later than the time prescribed by Ministry of Justice Order, with the approval of the incorporators and pursuant to the provisions of Cabinet Order.

- (2) If the shareholders at incorporation are persons who have given consent under Article 68, paragraph (3), the incorporators may not refuse to give the approval under the preceding paragraph without justifiable reasons.
- (3) The number of the votes exercised by electronic or magnetic means pursuant to the provisions of paragraph (1) is included in the number of the votes of the shareholders at incorporation who are present at the meeting.
- (4) The incorporators must keep any electronic or magnetic record in which the information with which they have been provided pursuant to the provisions of paragraph (1) is recorded at a place designated by the incorporators for the period of three months from the day of the organizational meeting.
- (5) The shareholders at incorporation may, at any time during the hours designated by the incorporators, request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the data recorded in the electronic or magnetic record referred to in the preceding paragraph.

(Diverse Exercise of Voting Rights)

Article 77 (1) Shareholders at incorporation may diversely exercise the voting rights they hold. In these cases, the shareholders must notify the incorporators to that effect and of the reasons for the same no later than three days prior to the day of the organizational meeting.

- (2) If the shareholders at incorporation referred to in the preceding paragraph are not persons who subscribed for the shares issued at incorporation on behalf of others, the incorporators may refuse the diverse exercise of voting rights held by relevant shareholders at incorporation pursuant to the provisions of the preceding paragraph.

(Accountability of Incorporators)

Article 78 If incorporators are requested by the shareholders at incorporation to provide explanations on certain matters at an organizational meeting, the incorporators must provide necessary explanations with respect to relevant

matters; provided, however, that this does not apply if relevant matters are not relevant to the matters that are the purpose of the organizational meeting, or if relevant explanations are to the serious detriment of the common interest of the shareholders at incorporation, or in other cases prescribed by Ministry of Justice Order as cases where there are justifiable grounds.

(Authority of Chairperson)

- Article 79 (1) The chairperson of an organizational meeting maintains the order of relevant organizational meeting and organize the business of the meeting.
- (2) The chairperson of an organizational meeting may require anyone who does not comply with the orders of the chairperson or who otherwise disturbs the order of relevant organizational meeting to leave the room.

(Resolution for Postponement or Adjournment)

- Article 80 If a resolution for the postponement or adjournment is passed at an organizational meeting, the provisions of Article 67 and Article 68 do not apply.

(Minutes)

- Article 81 (1) Minutes must be prepared with respect to the business of organizational meetings pursuant to the provisions of Ministry of Justice Order.
- (2) The incorporators (or the stock company after the formation of relevant stock company; the same applies in paragraph (2) of the following Article) must keep the minutes referred to in the preceding paragraph at a place designated by the incorporators (or at the head office of the stock company if after the incorporation of relevant stock company; the same applies in paragraph (2) of the same Article) for the period of ten years from the day of the organizational meeting.
- (3) The shareholders at incorporation (or the shareholders and creditors of the stock company after the formation of relevant stock company; the same applies in paragraph (3) of the following Article) may submit the following requests at any time during the hours designated by the incorporators (or during the business hours of relevant stock company if after the incorporation of relevant stock company; the same applies in the same paragraph):
- (i) if the minutes under paragraph (1) are prepared in writing, requests for inspection or copying of relevant documents; and
  - (ii) if the minutes under paragraph (1) have been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (4) If, after the formation of a stock company, it is necessary for the purpose of exercising the rights of a member of the parent company of relevant stock

company, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of the preceding paragraph with respect to the minutes referred to in paragraph (1).

(Omission of Resolutions at Organizational Meetings)

Article 82 (1) If incorporators submit a proposal with respect to any matter that is the purpose of an organizational meeting, if all shareholders at incorporation (limited to those who may vote with respect to relevant matter) manifest their intention to agree to relevant proposal in writing or using an electronic or magnetic record, it is deemed that a resolution to approve relevant proposal has been passed at an organizational meeting.

(2) The incorporators must keep the documents or an electronic or magnetic record as referred to in the provisions of the preceding paragraph at a place designated by the incorporators for the period of ten years from the day when the resolution at the organizational meeting is deemed to have been passed pursuant to the provisions of the preceding paragraph.

(3) The shareholders at incorporation may submit the following requests at any time during the hours designated by the incorporators:

(i) requests for inspection or copying of the documents under the preceding paragraph; and

(ii) requests to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in the electronic or magnetic record referred to in the preceding paragraph.

(4) If, after the formation of a stock company, it is necessary for the purpose of exercising the rights of a member of the parent company of relevant stock company, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of the preceding paragraph with respect to the documents or an electronic or magnetic record as referred to in paragraph (2).

(Omission of Reports to Organizational Meetings)

Article 83 If the incorporators notify all shareholders at incorporation of any matter that is to be reported to an organizational meeting, if all shareholders at incorporation manifest in writing or using an electronic or magnetic record their intention to agree that it is not necessary to report relevant matter to the organizational meeting, it is deemed that relevant matter has been reported to the organizational meeting.

(Cases of Provisions Requiring Resolutions at General Meetings of Class Shareholders)

Article 84 If the stock company to be incorporated is a company with class



shares, if there are provisions, as a feature of a certain class of shares to be issued as at the incorporation, to the effect that, with respect to the matter that is subject to the resolution at a shareholders meeting, in addition to relevant resolution, the resolution at a general meeting of class shareholders constituted by the class shareholders of relevant class of shares is required, relevant matter does not become effective unless the resolution is passed at an organizational meeting of class shareholders (meaning a meeting of class shareholders at incorporation of a certain class of the shares issued at incorporation; the same applies hereinafter) constituted by the class shareholders at incorporation of the shares issued at incorporation of relevant class (meaning the shareholders at incorporation of a certain class of shares issued at incorporation; hereinafter the same applies in this Section) in addition to the resolution at the organizational meeting, consistently with the provisions of articles of incorporation; provided, however, that this does not apply to the case where there exists no class shareholder at incorporation who may vote at relevant organizational meeting of class shareholders.

(Calling of and Resolutions at Organizational Meetings of Class Shareholders)

Article 85 (1) If a resolution is to be passed at an organizational meeting of class shareholders pursuant to the provisions of the preceding Article, Article 90, paragraph (1) (including the case where it is applied mutatis mutandis under paragraph (2) of the same Article), Article 92, paragraph (1) (including the case where it is applied mutatis mutandis under paragraph (4) of the same Article), Article 100, paragraph (1) or Article 101, paragraph (1), the incorporators must call an organizational meeting of class shareholders.

(2) Resolutions at an organizational meeting of class shareholders will be passed by a majority of the votes of the class shareholders at incorporation who are entitled to vote at relevant organizational meeting of class shareholders, being a majority of two thirds or more of the votes of relevant class shareholders at incorporation who are present at the meeting.

(3) Notwithstanding the provisions of the preceding paragraph, resolutions under Article 100, paragraph (1) must be passed by a majority of the class shareholders at incorporation who are entitled to vote at relevant organizational meeting of class shareholders, being a majority of two thirds or more of the votes of relevant class shareholders at incorporation.

(Mutatis Mutandis Application of Provisions Regarding Organizational Meetings)

Article 86 The provisions of Article 67 through Article 71, Article 72, paragraph (1), and Article 74 through Article 82 apply mutatis mutandis to organizational meetings of class shareholders. In these cases, the term "shareholders at

incorporation" in Article 67, paragraph (1), item (iii) and item (iv) and paragraph (2) of the same Article, Article 68, paragraph (1) and paragraph (3), Article 69 through Article 71, Article 72, paragraph (1), Article 74, paragraph (1), paragraph (3) and paragraph (4), Article 75, paragraph (2), Article 76, paragraph (2) and paragraph (3), Article 77, the main clause of Article 78 and Article 82, paragraph (1) is deemed to be replaced with as "class shareholders at incorporation (meaning shareholders at incorporation for a certain class of shares issued at incorporation)".

### **Subsection 3 Reporting of Matters Regarding Incorporation**

Article 87 (1) The incorporators must report matters regarding the incorporation of a stock company to an organizational meeting.

(2) In the cases set forth in the following items, the incorporators must submit or provide to an organizational meeting a document or an electronic or magnetic record in which the information provided for in these items has been detailed or recorded:

- (i) if articles of incorporation provide for the matters set forth in each item of Article 28 (excluding the matters provided for in each item of Article 33, paragraph (10) in cases set forth in these items): the content of the report referred to in Article 33, paragraph (4) of the inspector under paragraph (2) of the that Article; and
- (ii) in the case set forth in Article 33, paragraph (10), item (iii): the content of the verification provided in that item.

### **Subsection 4 Election and Dismissal of Directors at Incorporation**

(Election of Directors at Incorporation)

Article 88 (1) If the solicitation under Article 57, paragraph (1) is carried out, the election of the directors at incorporation, accounting advisors at incorporation, company auditors at incorporation and financial auditors at incorporation must be made by the resolution at an organizational meeting.

(2) If the stock company to be incorporated is a company with audit and supervisory committee, election of a director at incorporation pursuant to the provisions of the preceding paragraph must be implemented by distinguishing a director at incorporation who is an audit and supervisory committee member at incorporation and other directors.

(Election of Directors at Incorporation by Cumulative Vote)

Article 89 (1) If the purpose of an organizational meeting is the election of two or more directors at incorporation (if the stock company to be incorporated is a

company with audit and supervisory committee, a director at incorporation who is an audit and supervisory committee member at incorporation or other director at incorporation; hereinafter the same applies in this Article), the shareholders at incorporation (limited to the shareholders at incorporation entitled to vote with respect to the election of the directors at incorporation; hereinafter the same applies in this Article) may request the incorporators that the directors at incorporation be elected pursuant to the provisions of paragraph (3) through paragraph (5), except as otherwise provided in the articles of incorporation.

- (2) The request under the provisions of the preceding paragraph must be made no later than five days prior to the day of the organizational meeting referred to in the same paragraph.
- (3) Notwithstanding the provisions of Article 72, paragraph (1), if a request is made pursuant to the provisions of paragraph (1), a shareholder at incorporation is entitled to relevant number of votes as is equal to the number of the directors at incorporation to be elected in relevant organizational meeting, for each one share issued at incorporation for which the shareholder at incorporation subscribed (or, if the share unit is provided for in the articles of incorporation, for each one unit of the shares issued at incorporation) with respect to the resolution of the election of the directors at incorporation. In these cases, the shareholder at incorporation may exercise the votes of the shareholder at incorporation by casting votes for only one candidate or for two or more candidates.
- (4) In the cases referred to in the preceding paragraph, the directors at incorporation are to be elected in the order of the votes obtained by respective candidates.
- (5) Beyond what is specified in the preceding two paragraphs, necessary matters regarding the election of directors at incorporation if a request has been made pursuant to the provisions of paragraph (1) are prescribed by Ministry of Justice Order.

(Election of Directors at Incorporation by Resolutions at Organizational Meetings of Class Shareholders)

Article 90 (1) Notwithstanding the provisions of Article 88, if, at incorporation of the stock company, it issues shares of a class for which the matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to directors (if the stock company to be incorporated is a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors)) are provided, the directors at incorporation (if the stock company to be incorporated is a company with audit and supervisory committee, directors at incorporation who are audit and supervisory committee

members at incorporation or other directors at incorporation) must be elected by a resolution at an organizational meeting of class shareholders constituted by the class shareholders at incorporation of relevant class of shares issued at incorporation, consistently with the provisions of articles of incorporation with respect to the matters provided for in paragraph (2), item (ix) of that Article.

(2) The provisions of the preceding paragraph apply mutatis mutandis to the cases where the shares of a class for which matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to company auditors) are provided are issued at incorporation of the stock company.

(Dismissal of Directors at Incorporation)

Article 91 Directors at incorporation, accounting advisors at incorporation, company auditors at incorporation or financial auditors at incorporation who are elected pursuant to the provisions of Article 88 may be dismissed by a resolution at an organizational meeting at any time prior to the formation of the stock company.

Article 92 (1) Directors at incorporation who are elected pursuant to the provisions of Article 90, paragraph (1) may be dismissed by a resolution at a general meeting of class shareholders constituted by the class shareholders at incorporation of relevant class of shares issued at incorporation relating to relevant election at any time prior to the formation of the stock company.

(2) Notwithstanding the provisions of the preceding paragraph, if there are provisions in articles of incorporation to the effect that a director who is elected pursuant to the provisions of Article 41, paragraph (1), or at an organizational meeting of class shareholders or at a general meeting of class shareholders may be dismissed by a resolution at the shareholders meeting, a director at incorporation who is elected pursuant to the provisions of Article 90, paragraph (1) may be dismissed by a resolution at an organizational meeting at any time prior to the formation of the stock company.

(3) When applying provisions of the preceding paragraph if the stock company to be incorporated is a company with audit and supervisory committee, the term "a director" in the same paragraph is deemed to be replaced with "a director who is an audit and supervisory committee member or other directors", and the term "a director at incorporation" is deemed to be replaced with "a director at incorporation who is an audit and supervisory committee member at incorporation or other directors at incorporation" respectively.

(4) The provisions of paragraphs (1) and (2) apply mutatis mutandis to a company auditor at incorporation who is elected pursuant to the provisions of Article 90, paragraph (1) applied mutatis mutandis under paragraph (2) of that Article.

### **Subsection 5 Investigation by Directors at Incorporation**

(Investigation by Directors at Incorporation)

Article 93 (1) The directors at incorporation (referring to the directors at incorporation and company auditors at incorporation if the stock company to be incorporated is a company with company auditor; hereinafter the same applies in this Article) must investigate the following matters without delay after their election:

- (i) that, with respect to the property contributed in kind in the cases set forth in Article 33, paragraph (10), item (i) or item (ii) (if set forth in that item, limited to the securities under that item), the value specified or recorded in the articles of incorporation is reasonable;
  - (ii) that the verification provided for in Article 33, paragraph (10), item (iii) is appropriate;
  - (iii) that the performance of contributions by the incorporators and the payments pursuant to the provisions of Article 63, paragraph (1) have been fulfilled; and
  - (iv) that, beyond the matters set forth in the preceding three items, the procedures for the incorporation of the stock company do not violate laws and regulations or the articles of incorporation.
- (2) The directors at incorporation must report the outcome of the investigations pursuant to the provisions of the preceding paragraph to an organizational meeting.
- (3) If incorporators are asked by the shareholders at incorporation to provide explanations on the matters regarding the investigation pursuant to the provisions of the paragraph (1) at an organizational meeting, the incorporators must provide necessary explanations with respect to relevant matters.

(Special Provisions in Case Directors at Incorporation Are Incorporators)

Article 94 (1) If some or all of the directors at incorporation (or the directors at incorporation and company auditors at incorporation if the stock company to be incorporated is a company with company auditor) are incorporators, a person to investigate the matters set forth in each item of paragraph (1) of the preceding Article may be elected by a resolution at the organizational meeting.

- (2) A person who is elected pursuant to the provisions of the preceding paragraph must conduct the necessary investigation and report the outcome of relevant investigation to an organizational meeting.

### **Subsection 6 Amendment in Articles of Incorporation**

(No Amendment in Articles of Incorporation by Incorporators)

Article 95 If the solicitation under Article 57, paragraph (1) is carried out, the incorporators may not effect any amendment in the articles of incorporation on and after either the date referred to in Article 58, paragraph (1), item (iii) or the first day of the period referred to in the same item, whichever comes earlier, notwithstanding the provisions of Article 33, paragraph (9) and Article 37, paragraphs (1) and (2).

(Amendment in Articles of Incorporation at Organizational Meetings)

Article 96 Notwithstanding the provisions of Article 30, paragraph (2), articles of incorporation may be amended by a resolution at an organizational meeting.

(Rescission of Subscription for Shares Issued at Incorporation)

Article 97 If it is resolved at the organizational meeting to effect an amendment in the articles of incorporation to change the matters set forth in each item of Article 28, the shareholders at incorporation who dissented from that amendment at relevant organizational meeting may rescind the manifestation of their intention relating to the subscription for relevant shares issued at incorporation only within two weeks after relevant resolution.

(Provisions for the Total Number of Authorized Shares by Resolutions at Organizational Meetings)

Article 98 If, if the solicitation under Article 57, paragraph (1) is carried out, the total number of authorized shares is not provided for in the articles of incorporation, the provisions on the total number of authorized shares must be created by amending the articles of incorporation prior to the formation of the stock company by a resolution at an organizational meeting.

(Special Provisions on Procedures for Amendment in Articles of Incorporation)

Article 99 If the stock company to be incorporated is a company with classes shares, and the cases set forth in any of the following items apply, the consent of all class shareholders at incorporation of relevant classes of the shares issued at incorporation in each of relevant items must be obtained:

- (i) if it is intended to create, as a feature of a certain class of shares, any provisions in the articles of incorporation with respect to the matters set forth in Article 108, paragraph (1), item (vi), or to effect any amendment in the articles of incorporation with respect to relevant matters (excluding any amendment which repeals the provisions of the articles of incorporation with respect to relevant matters);
- (ii) if it is intended to create any provisions in the articles of incorporation pursuant to the provisions of Article 322, paragraph (2) with respect to a

certain class of shares.

Article 100 (1) If the stock company to be incorporated is a company with class shares, if it is intended to create, as a feature of a certain class of shares, any provisions in the articles of incorporation with respect to the matters set forth in Article 108, paragraph (1), item (iv) or item (vii) by amending the articles of incorporation, relevant amendment in the articles of incorporation does not become effective unless a resolution is passed at an organizational meeting of class shareholders constituted by the following class shareholders at incorporation (if there are two or more classes of shares issued at incorporation relating to relevant class shareholders at incorporation, referring to the respective organizational meetings of class shareholders constituted by class shareholders at incorporation categorized by the class of relevant two or more classes of shares issued at incorporation; hereinafter the same applies in this Article); provided, however, that this does not apply to cases where there is no class shareholder at incorporation who may exercise votes at relevant organizational meeting of class shareholders:

- (i) the class shareholders at incorporation of relevant class of shares issued at incorporation;
  - (ii) the class shareholders at incorporation of shares with put options for which there are provisions that the relevant other shares referred to in Article 108, paragraph (2), item (v), (b) are to be relevant class of share; or
  - (iii) the class shareholders at incorporation of shares subject to call option for which there are a provisions that the relevant other shares referred to in Article 108, paragraph (2), item (vi), (b) are to be relevant class of shares.
- (2) The class shareholders at incorporation who, at the organizational meeting of class shareholders referred to in the preceding paragraph, dissented from relevant amendment in the articles of incorporation may rescind the manifestation of their intention relating to the subscription for relevant shares issued at incorporation only within two weeks after the resolution passed at relevant organizational meeting of class shareholders.

Article 101 (1) If the stock company to be incorporated is a company with class shares, and effecting any amendment in articles of incorporation with respect to any of the following matters is likely to cause detriment to the class shareholders at incorporation of any class of shares issued at incorporation, relevant amendment in the articles of incorporation does not become effective unless a resolution is passed at an organizational meeting of class shareholders constituted by the class shareholders at incorporation of the shares issued at incorporation of relevant class (if there are two or more classes of shares issued at incorporation relating to relevant class shareholders at incorporation,

referring to the respective class organizational meetings of class shareholders constituted by the class shareholders at incorporation categorized by the class of relevant two or more classes of shares issued at incorporation); provided, however, that this does not apply to cases where there is no class shareholder at incorporation who may exercise votes at relevant organizational meeting of class shareholders:

- (i) creation of a new class of shares;
  - (ii) changes in the features of shares;
  - (iii) increase of the total number of authorized shares, or the total number of authorized shares in a class (meaning the total number of shares in one class that the stock company is authorized to issue; the same applies hereinafter).
- (2) If any amendment in the articles of incorporation with respect to the share unit is to be effected and there are provisions in the articles of incorporation pursuant to the provisions of Article 322, paragraph (2) with respect to relevant amendment in the articles of incorporation, the provisions of the preceding paragraph do not apply to the organizational meeting of class shareholders constituted by the class shareholders at incorporation of relevant class of the shares issued at incorporation.

#### **Subsection 7 Special Provisions on Incorporation Procedures**

(Special Provisions on Incorporation Procedures)

- Article 102 (1) A subscriber for the shares solicited at incorporation may submit the requests set forth in each item of Article 31, paragraph (2) at any time during the hours designated by the incorporators; provided, however, that the fees designated by the incorporators are required to be paid in order to submit the requests set forth in item (ii) or item (iv) of that paragraph.
- (2) As at formation of a stock company, the subscriber for the shares solicited at incorporation becomes a shareholder of the shares issued at incorporation for which the relevant subscriber has made payment pursuant to the provisions of Article 63, paragraph (1).
- (3) If a subscriber for the shares solicited at incorporation falsified the payment pursuant to the provisions of Article 63, paragraph (1), the subscriber may exercise the right of shareholders at incorporation and shareholders for shares issued at incorporation for which the payment is falsified, only after the payment pursuant to the provisions of paragraph (1) of the following Article or Article 103, paragraph (2) is made.
- (4) A person who accepts transfer of shares issued at incorporation as referred to in the preceding paragraph or the right to become their shareholder may exercise the right of shareholders at incorporation and shareholders for relevant shares issued at incorporation; provided, however, that this does not



- apply to cases where the person has acted in bad faith or with gross negligence.
- (5) The provisions of the proviso to Article 93, paragraph (1) and the provisions of Article 94, paragraph (1) of the Civil Code do not apply to the manifestation of intention relating to an offer of subscription for and allotment of the shares solicited at incorporation, and relating to contracts under Article 61.
- (6) The subscriber for the shares solicited at incorporation may not rescind the subscription for shares issued at incorporation on the grounds of mistake, fraud or duress after the formation of a stock company, or after exercising the subscriber's votes at an organizational meeting or organizational meeting of class shareholders.

(Responsibilities of Subscribers for the Shares Solicited at Incorporation for Which Payment Is Falsified)

- Article 102-2 (1) In the case prescribed in paragraph (3) of the preceding Article, a subscriber for the shares solicited at incorporation is liable to pay the entire amount of payment for which the payment was falsified, to the stock company.
- (2) The obligation assumed by a subscriber for the shares solicited at incorporation pursuant to the provisions of the preceding paragraph may not be exempted without the consent of all shareholders.

(Liabilities of Incorporators)

- Article 103 (1) If the solicitation under Article 57, paragraph (1) is carried out, for the purpose of the application of the provisions of Article 52, paragraph (2), the phrase "in the following cases" in that paragraph is deemed to be replaced with "in the cases of item (i)".
- (2) In the case prescribed in Article 102, paragraph (3), a person prescribed by Ministry of Justice Order as an incorporator or director at incorporation involved in falsifying payment is jointly and severally liable with subscribers referred to in paragraph (1) of the preceding Article to make payment prescribed in that paragraph; provided, however, that this does not apply to cases where the person (excluding those persons who falsified the payment) proves that the person did not fail to exercise due care with respect to the performance of the person's duties.
- (3) The obligations assumed by an incorporator or director at incorporation pursuant to the provisions of the preceding paragraph may not be exempted without the consent of all shareholders.
- (4) If the solicitation under Article 57, paragraph (1) is carried out, any person (excluding the incorporators) who consents to specifying or recording the person's name and a statement to the effect that the person supports the incorporation of the stock company in a document or an electronic or magnetic record regarding relevant solicitation, including an advertisement for relevant

solicitation, is deemed to be an incorporator and the provisions of the preceding Section and the preceding three paragraphs apply.

## **Chapter II Shares**

### **Section 1 General Provisions**

(Shareholders' Liabilities)

Article 104 A shareholder's liability is limited to the amount of the subscription price of the shares the shareholder holds.

(Rights of Shareholders)

Article 105 (1) A shareholder has the following rights and other rights recognized pursuant to the provisions of this Act with respect to the shares the shareholder holds:

- (i) the right to receive dividends of surplus;
- (ii) the right to receive distribution of residual assets;
- (iii) the right to cast a vote at shareholders meeting.

(2) Provisions of articles of incorporation that do not give the entirety of the rights set forth in item (i) and item (ii) of the preceding paragraph to shareholders are not effective.

(Exercise of Rights by Co-owners)

Article 106 If any share is co-owned by two or more persons, the co-owners may not exercise their rights in relation to relevant share unless they specify one person who exercises the rights in relation to relevant share, and notify the stock company of the name of that person; provided, however, that this does not apply if the stock company agrees to the exercise of relevant rights.

(Special Provisions on Features of Shares)

Article 107 (1) A stock company may determine the matters set forth in the following items as the features of all shares it issues:

- (i) that the approval of relevant stock company is required for the acquisition of relevant shares by transfer;
- (ii) that shareholders may demand, that relevant stock company acquire relevant shares held by relevant shareholders;
- (iii) that relevant stock company may acquire relevant shares on condition of certain grounds arising.

(2) If a stock company determines the matters set forth in the following items as the features of all shares it issues, it must provide for the matters prescribed in each that item in the articles of incorporation:

- (i) regarding the fact that the approval of relevant stock company is required

- for the acquisition of relevant shares by transfer: the matters set forth below:
- (a) a statement to the effect that the acquisition of relevant shares by transfer requires the approval of relevant stock company;
  - (b) if the stock company is deemed to have effected the approval under Article 136 or Article 137, paragraph (1) under certain circumstances, a statement to that effect and a description of relevant circumstances;
- (ii) regarding the fact that shareholders may demand that relevant stock company acquire relevant shares held by relevant shareholders: the matters set forth below:
- (a) a statement to the effect that shareholders may demand that relevant stock company acquire the shares held by relevant shareholders;
  - (b) if bonds of relevant stock company (other than those in relation to bonds with share option) are delivered to relevant shareholders in exchange for the acquisition of one of the shares referred to in (a), the description of the classes of relevant bonds (meaning the classes defined in Article 681, item (i); hereinafter the same applies in this Part) and the total amount for each class of bonds, or the method for calculating that total amount;
  - (c) if share options of relevant stock company (other than those attached to bonds with share option) are delivered to relevant shareholders in exchange for the acquisition of one of the shares referred to in (a), the features and number of relevant share options, or the method for calculating that number;
  - (d) if bonds with share option of relevant stock company are delivered to relevant shareholders in exchange for the acquisition of one of the shares referred to in (a), the matters prescribed in (b) with respect to relevant bonds with share option, and the matters prescribed in (c) with respect to the share options attached to relevant bonds with share option;
  - (e) if any property other than shares, etc. (meaning shares, bonds and share options; the same applies hereinafter) of relevant stock company is delivered to relevant shareholders in exchange for the acquisition of one of the shares referred to in (a), the description of the features and number or amount of relevant property, or the method for calculating relevant number or amount;
  - (f) the period during which the shareholders may demand that relevant stock company acquire relevant shares held by the shareholders;
- (iii) regarding the fact that relevant stock company may acquire relevant shares on condition of certain grounds arising: the matters set forth below:
- (a) a statement to the effect that relevant stock company will acquire its shares on the day when certain grounds arise, and of the grounds;
  - (b) if the grounds referred to in (a) will arise with the arrival of a day to be separately specified by relevant stock company, a statement to that effect;

- (c) if a portion of the shares referred to in (a) will be acquired on the day the grounds referred to in (a) arise, a statement to that effect and of the method for determining the portion of shares to be acquired;
- (d) if bonds of relevant stock company (other than those of bonds with share option) are delivered to relevant shareholders in exchange for the acquisition of one of the shares referred to in (a), the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating the total amounts;
- (e) if share options of relevant stock company (other than those attached to bonds with share option) are delivered to relevant shareholders in exchange for the acquisition of one of the shares referred to in (a), the features and number of relevant share options, or the method for calculating the number;
- (f) if bonds with share option of relevant stock company are delivered to relevant shareholders in exchange for the acquisition of one share of the shares referred to in (a), the matters prescribed in (d) with respect to relevant bonds with share option, and the matters prescribed in (e) with respect to the share options attached to relevant bonds with share option;
- (g) if any property other than shares, etc. of relevant stock company is delivered to relevant shareholders in exchange for the acquisition of one of the shares referred to in (a), the features and number or amount of relevant property, or the method for calculating relevant number or amount.

(Shares of Different Classes)

Article 108 (1) A stock company may issue two or more classes of shares with different features which have different provisions on the following matters; provided, however, that a company with nominating committee, etc. and a public company may not issue shares of a class that has provisions in relation to the matters set forth in item (ix):

- (i) dividends of surplus;
- (ii) distribution of residual assets;
- (iii) capacity to exercise the right to vote at a shareholders meeting;
- (iv) that the approval of relevant stock company is required for the acquisition of relevant class shares by transfer;
- (v) that shareholders may demand that relevant stock company acquire relevant class shares held by the shareholders;
- (vi) that relevant stock company may acquire relevant class shares on condition of certain grounds arising;
- (vii) that relevant stock company acquires all of relevant class shares by a resolution at the shareholders meeting;

- (viii) regarding the matters to be resolved at a shareholders meeting (or at a shareholders meeting or board of directors meeting for a company with board of directors, or at a shareholders meeting or board of liquidators meeting for a company with board of liquidators (meaning the company with board of liquidators as provided for Article 478, paragraph (8); hereinafter the same applies in this Article)), that require, in addition to relevant resolution, a resolution at a general meeting of class shareholders constituted by the class shareholders of relevant class shares;
  - (ix) that directors (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory committee member or other directors; the same applies in item (ix) of the following paragraph and Article 112, paragraph (1)) or company auditors are elected at a general meeting of class shareholders constituted by the class shareholders of relevant class shares.
- (2) If a stock company issues two or more classes of shares with different features that have different provisions on the following matters, it must provide for the matters prescribed in each of these items and the total number of authorized shares in a class in the articles of incorporation:
- (i) regarding dividends of surplus: the method for determining the dividend property to be delivered to the shareholders of relevant classes, the conditions for dividends of surplus, and other features relating to dividends of surplus;
  - (ii) regarding the distribution of residual assets: the method for determining the value of the residual assets to be delivered to the shareholders of relevant classes, the kinds of relevant residual assets, and other features of treatment relating to the distribution of residual assets;
  - (iii) regarding the matter of capacity to exercise the right to vote at shareholders meetings: the following matters:
    - (a) the matters in relation to which the voting right may be exercised at a shareholders meeting; and
    - (b) if any condition on the exercise of the voting right is to be prescribed for relevant class shares, the condition;
  - (iv) regarding the fact that the approval of relevant stock company is required for the acquisition of relevant class shares by transfer: the matters prescribed in paragraph (2), item (i) of the preceding Article with respect to relevant class shares;
  - (v) regarding the fact that shareholders may demand that relevant stock company acquire relevant class shares held by the shareholders: the following matters:
    - (a) the matters prescribed in paragraph (2), item (ii) of the preceding Article with respect to relevant class shares;

- (b) if, in exchange for the acquisition of one share of relevant class shares, other shares of relevant stock company are delivered to relevant shareholders, the class of relevant other shares and the total number of each class, or the method for calculating the number;
- (vi) regarding the fact that relevant stock company may acquire relevant class shares on condition of certain grounds arising: the following matters:
  - (a) the matters prescribed in paragraph (2), item (iii) of the preceding Article with respect to relevant class shares;
  - (b) if, in exchange for the acquisition of one share of relevant class shares, other shares of relevant stock company are delivered to relevant shareholders, the class of relevant other shares and the total number of each class, or the method for calculating the number;
- (vii) regarding the fact that relevant stock company acquires all of relevant class of shares by a resolution at a shareholders meeting: the following matters:
  - (a) the method for determining the value of the acquisition price prescribed in Article 171, paragraph (1), item (i);
  - (b) if any condition is to be prescribed on whether or not the resolution at relevant shareholders meeting may be effected, the condition;
- (viii) regarding the matters to be resolved at a shareholders meeting (or at a shareholders meeting or board of directors meeting for a company with board of directors, or at a shareholders meeting or board of liquidators meeting for a company with board of liquidators), that require, in addition to relevant resolution, a resolution at a general meeting of class shareholders constituted by the class shareholders of relevant class shares: the following matters:
  - (a) the matters for which the resolution at relevant general meeting of class shareholders is required; and
  - (b) if any condition for which the resolution at relevant general meeting of class shareholders is required is to be prescribed, the condition;
- (ix) regarding the fact that directors or company auditors are elected at a general meeting of class shareholders constituted by the class shareholders of relevant class shares: the following matters:
  - (a) the election of directors or company auditors at a general meeting of class shareholders constituted by relevant class shareholders and the number of directors or company auditors to be elected;
  - (b) if some or all of the directors or company auditors who may be elected pursuant to the provisions of (a) are elected jointly with other class shareholders, the class of the shares held by relevant other class shareholders, and the number of directors or company auditors to be elected jointly;

- (c) if there is any condition that alters the matters set forth in (a) or (b), the condition, and the matters set forth in (a) or (b) after the alternation if that condition is fulfilled; and
- (d) beyond what is set forth in (a) through (c), any matter prescribed by Ministry of Justice Order.
- (3) Notwithstanding the provisions of the preceding paragraph, with respect to some or all of the matters prescribed in each item of the same paragraph (limited to the amount of dividends which may be received by class shareholders of classes with different features with respect to dividends of surplus, and other matters prescribed by Ministry of Justice Order), it may be provided in the articles of incorporation to the effect that the matters are determined by a resolution at a shareholders meeting (or at a shareholders meeting or board of directors meeting for a company with board of directors, or at a shareholders meeting or board of liquidators meeting for a company with board of liquidators) by the time of the first issue of relevant class shares. In these cases, an outline of the features thereof must be provided for in the articles of incorporation.

(Equality of Shareholders)

- Article 109 (1) A stock company must treat its shareholders equally in accordance with the features and number of the shares they hold.
- (2) Notwithstanding the provisions of the preceding paragraph, a stock company that is not a public company may provide in its articles of incorporation to the effect that each shareholder is treated differently with respect to the matters regarding the rights set forth in each item of Article 105, paragraph (1).
- (3) If there are provisions in the articles of incorporation that is provided for in the preceding paragraph, the shares held by the shareholders under that paragraph are deemed to be class shares with different features with respect to the matters regarding the rights under that paragraph, and the provisions of this Part and Part V apply.

(Special Provisions on Procedures for Amendments in Articles of Incorporation)

- Article 110 If it is intended to create, as a feature of all shares to be issued by a stock company, provisions in the articles of incorporation with respect to the matters set forth in Article 107, paragraph (1), item (iii) by amending the articles of incorporation, or to effect any amendment (excluding that which abolishes the provisions of the articles of incorporation with respect to relevant matters) in the articles of incorporation with respect to relevant matters (excluding the case where the stock company is a company with class shares), the consent of all shareholders must be obtained.

Article 111 (1) If a company with class shares intends, after it has issued a certain class of shares, to create, as a feature of relevant class shares, a provision in the articles of incorporation with respect to the matters set forth in Article 108, paragraph (1), item (vi) by amending the articles of incorporation, or to effect any amendment to the articles of incorporation with respect to the matters (excluding any amendment which abolishes the provisions of the articles of incorporation with respect to the matters), the consent of all class shareholders who hold relevant class shares must be obtained.

(2) If a company with class shares intends to create, as a feature of a certain class of shares, provisions in the articles of incorporation with respect to the matters set forth in Article 108, paragraph (1), item (iv) or (vii), relevant amendment to the articles of incorporation does not become effective unless a resolution is passed at a general meeting of class shareholders constituted by the following class shareholders (if there are two or more classes of shares relating to relevant class shareholders, referring to the respective general meetings of class shareholders constituted by class shareholders categorized by the class of relevant two or more classes of shares; hereinafter the same applies in this Article); provided, however, that this does not apply to cases where there is no class shareholder who can exercise voting right at relevant general meeting of class shareholder:

(i) the class shareholders of shares of relevant class;

(ii) the class shareholders of shares with put options for which there are provisions that the relevant other shares referred to in Article 108, paragraph (2), item (v), (b) are to be the shares of relevant class; or

(iii) the class shareholders of shares subject to call for which there are provisions that the relevant other shares referred to in Article 108, paragraph (2), item (vi), (b) are to be the shares of relevant class.

(Special Provisions on Abolition of Provisions in Articles of Incorporation on Class Shares in Relation to Election of Directors)

Article 112 (1) The provisions in the articles of incorporation on the matters set forth in Article 108, paragraph (2), item (ix) (limited to those on directors) are deemed to have been abolished, if the number of directors is less than the number prescribed in this Act or the articles of incorporation, and hence it is not possible to elect directors in a number sufficient to satisfy the requirement.

(2) The provisions of the preceding paragraph apply mutatis mutandis to the provisions of the articles of incorporation on the matters set forth in Article 108, paragraph (2), item (ix) (limited to those on company auditors).

(Total Number of Authorized Shares)



- Article 113 (1) A stock company may not abolish the provisions on the total number of authorized shares by amending its articles of incorporation.
- (2) If it is intended to reduce the total number of authorized shares by amending the articles of incorporation, the total number of authorized shares after the amendment may not be less than the total number of the issued shares at the time when relevant amendment to the articles of incorporation becomes effective.
- (3) In the following cases, the total number of authorized shares after relevant amendment in the articles of incorporations may not exceed the number four times the total number of the issued shares at the time when that amendment to the articles of incorporation becomes effective:
- (i) if a public company amends the articles of incorporation and increases the total number of authorized shares; or
  - (ii) if a stock company that is not a public company amends the articles of incorporation and becomes a public company.
- (4) The number of the shares which a holder of share options (excluding share options for which the first day of the period prescribed in Article 236, paragraph (1), item (iv) has not yet arrived) acquire pursuant to the provisions of Article 282, paragraph (1) may not exceed the number obtained by subtracting the total number of the issued shares (excluding treasury shares (meaning shares in a stock company owned by that stock company itself; the same applies hereinafter)) from the total number of authorized shares.

(Total Number of Authorized Share in a Class)

- Article 114 (1) If it is intended to reduce the total number of authorized shares in a class of a certain class of shares by amending the articles of incorporation, the total number of authorized shares in a class of relevant class of shares after the amendment may not be less than the total number of the issued shares of relevant class at the time when relevant amendment to the articles of incorporation becomes effective.
- (2) The total sum of the numbers set forth below for a certain class of shares may not exceed the number obtained by subtracting the total number of the issued shares of relevant class (excluding treasury shares) from the total number of authorized shares in a class of that class of shares:
- (i) the number of the relevant other shares prescribed in Article 167, paragraph (2), item (iv) which is to be acquired pursuant to the provisions of Article 167, paragraph (2) by the shareholders (excluding the relevant stock company) of shares with put options (excluding those for which the first day of the period prescribed in Article 107, paragraph (2), item (ii), (f) has not yet arrived);
  - (ii) the number of the relevant other shares prescribed in Article 170,

- paragraph (2), item (iv) which is to be acquired pursuant to the provisions of Article 170, paragraph (2) by the shareholders (excluding the relevant stock company) of shares subject to call; and
- (iii) the number of the shares which holders of share options (excluding those for which the first day of the period prescribed in Article 236, paragraph (1), item (iv) has not yet arrived) acquire pursuant to the provisions of Article 282, paragraph (1).

(Number of Issued Shares with Restricted Voting Right)

Article 115 If a company with class shares is a public company, if the number of the shares of a certain class with restriction in relation to matters on which voting right can be exercised at a shareholders meeting (hereinafter in this Article referred to as "shares with restricted voting right") has exceeded one half of the total number of the issued shares, the stock company must immediately take measures necessary to reduce the number of the shares with restricted voting right below one half of the total number of the issued shares.

(Dissenting Shareholders' Appraisal Rights)

Article 116 (1) In the cases set forth in the following items, dissenting shareholders may demand that the stock company purchase, at a fair price, the shares prescribed in these items that they hold:

- (i) if it is intended to effect an amendment to the articles of incorporation to create a provision on matters set forth in Article 107, paragraph (1), item (i) as a feature of all shares issued by a stock company: All shares;
- (ii) if it is intended to effect an amendment to the articles of incorporation to create provisions on matters set forth in Article 108, paragraph (1), item (iv) or (vii) as the feature of a certain class of shares: the shares prescribed in each item of Article 111, paragraph (2);
- (iii) if any act set forth below is to be performed, and any detriment is likely to be suffered by class shareholders who hold a certain class of shares (limited to those provided for in the articles of incorporation under the provisions of Article 322, paragraph (2)): the shares of the class:
- (a) consolidation of shares or splitting of shares;
- (b) allotment of shares without contribution provided for in Article 185;
- (c) amendment to the articles of incorporation on the share unit;
- (d) solicitation of persons to subscribe for the shares of relevant stock company (limited to solicitation for which the stock company provides for the matters set forth in each item of Article 202, paragraph (1));
- (e) solicitation of persons to subscribe for the share options of relevant stock company (limited to solicitation for which the stock company provides for the matters set forth in each item of Article 241, paragraph (1));

- (f) allotment of share options without contribution provided for in Article 277.
- (2) The "dissenting shareholders" provided for in the preceding paragraph means the shareholders provided for in the following items in the cases set forth in the same items:
- (i) if a resolution at a shareholders meeting (including a general meeting of class shareholders) is required to perform an act in any item of the preceding paragraph: the following shareholders:
    - (a) shareholders who gave notice to relevant stock company to the effect that they dissented from relevant act prior to relevant shareholders meeting and who dissented from relevant act at relevant shareholders meeting (limited to those who can exercise voting right at relevant shareholders meetings);
    - (b) shareholders who cannot exercise voting right at relevant shareholders meetings;
  - (ii) in cases other than those prescribed in the preceding item: all shareholders.
- (3) A stock company that intends to perform an act in any item of paragraph (1) must give notice to the shareholders of the shares provided for in each item of that paragraph to the effect that it intends to perform relevant act, no later than twenty days prior to the day when relevant act becomes effective (hereinafter in this Article and in the following Article referred to as "effective day").
- (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph.
- (5) To make a demand under the provisions of paragraph (1) (hereinafter in this Section referred to as the "exercise of appraisal rights"), a dissenting shareholder must indicate the number of shares with regard to which the shareholder is exercising appraisal rights (or, for a company with class shares, the classes of the shares and the number of shares for each class), between twenty days prior to the effective day and the day immediately preceding the effective day.
- (6) When intending to exercise appraisal rights of shares for which share certificates have been issued, a shareholder of relevant shares must submit the share certificates representing those shares to the stock company; provided, however, that this does not apply to a person who makes a request pursuant to the provisions of Article 223 concerning relevant shares.
- (7) Shareholders exercising appraisal rights may withdraw their demands for appraisal only with the approval of the stock company.
- (8) The demands of the shareholders exercising appraisal rights lose effect if the stock company cancels the action referred to in the items of paragraph (1).
- (9) The provisions of Article 133 do not apply to shares that are subject of the exercise of appraisal rights.

(Determination of the Price of Shares)

- Article 117 (1) If a shareholder exercises appraisal rights and an agreement determining the price of the shares is reached between the shareholder and the stock company, the stock company must pay that price within sixty days from the effective day.
- (2) If no agreement is reached within thirty days from the effective day on the determination of the price of the shares, the shareholders or the stock company may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (7) of the preceding Article, in the cases provided for in the preceding paragraph, if the petition under that paragraph is not made within sixty days after the effective day, shareholders exercising appraisal rights may withdraw their demands for appraisal at any time after the expiration of that period.
- (4) The stock company must also pay interest on the price determined by the court at the statutory interest rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) A stock company may pay the amount that the stock company considers to be a fair price to shareholders until the determination of the price of shares.
- (6) A share purchase connected with the exercise of appraisal rights becomes effective on the effective day.
- (7) If a shareholder exercises appraisal rights with respect to shares for which share certificates are issued, the share certificate-issuing company (meaning a stock company the articles of incorporation of which have provisions to the effect that share certificate representing its shares (or, in case of a company with class shares, shares of all classes) are issued; the same applies hereinafter) must pay the price of the shares relating to the exercise of the appraisal rights in exchange for the share certificates.

(Exercise of Appraisal Rights on Share Options)

- Article 118 (1) If it is intended to effect any amendment to articles of incorporation set forth in the following items, the holders of share options provided for in any item may demand that the stock company purchase, at a fair price, the share options that they hold:
- (i) if it is intended to effect an amendment to the articles of incorporation to create a provision on matters set forth in Article 107, paragraph (1), item (i) as a feature of all shares issued by a stock company: all share options;
- (ii) if it is intended to effect an amendment to the articles of incorporation to create provisions on matters set forth in Article 108, paragraph (1), item (iv) or (vii) as a feature of a certain class of shares: the share options for which

shares of relevant class are the underlying shares.

- (2) If holders of the share options attached to bonds with share option intend to make the demand under the preceding paragraph (hereinafter in this Section referred to as the "exercise of appraisal rights on share options"), they must also demand that the stock company purchase the bonds with respect to bonds with share option; provided, however, that this does not apply if it is otherwise provided for with respect to the share options attached to bonds with share option.
- (3) A stock company which intends to effect an amendment to the articles of incorporation set forth in each item of paragraph (1) must give notice to the holders of share options provided for in each item of that paragraph, no later than twenty days prior to the day when relevant amendment to the articles of incorporation becomes effective (hereinafter in this Article and in the following Article referred to as "day of amendment to articles of incorporation"), to the effect that relevant amendment to the articles of incorporation is to be effected.
- (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph.
- (5) To exercise appraisal rights on share options, the share option holder must indicate the features and number of the share options with regard to which the holder is exercising the appraisal rights, between twenty days prior to the day of amendment to articles of incorporation and the day immediately preceding the day of amendment to articles of incorporation.
- (6) When intending to exercise appraisal rights on share options for which share option certificates are issued, the holder of those share options must submit the share option certificates to the stock company; provided, however, that this does not apply to a person who files a petition for public notification as prescribed in Article 114 of the Non-Contentious Cases Procedure Act (Act No. 51 of 2011).
- (7) When intending to exercise appraisal rights on share options in respect of a share option that is attached to any bonds with share options for which a bond certificate has been issued (meaning a bond certificate representing the bonds with share options as prescribed in Article 249, item (ii); hereinafter the same applies in this paragraph and paragraph (8) of the following Article), the holder of the share options must submit the bond certificate representing the bond with those share options to the stock company; provided, however, that this does not apply to a person who files a petition for public notification as prescribed in Article 114 of the Non-Contentious Cases Procedure Act.
- (8) Share option holders exercising appraisal rights on share options may withdraw their demands for appraisal of the share options only with the approval of the stock company.
- (9) The demands of the share option holders exercising appraisal rights on share

options lose effect if the stock company cancels the amendment to articles of incorporation provided for in the items of paragraph (1).

(10) The provisions of Article 260 do not apply to share options for the exercise of appraisal rights on share options.

(Determination of the Price of Share Options)

Article 119 (1) If a share option holder exercises appraisal rights on the share options, if an agreement on the determination of the price of the share options is reached between the share option holder (if relevant share options are attached to bonds with share option, if a holder thereof demands that the stock company purchase the bonds constituting those bonds with share options, including relevant bonds; hereinafter the same applies in this Article) and the stock company, the stock company must make payment within sixty days from the day of the amendment to the articles of incorporation.

(2) If no agreement on the determination of the price of the share options is reached within thirty days from the day of amendment to articles of incorporation, the share option holders or the stock company may file a petition for the court to determine the price within thirty days after the expiration of that period.

(3) Notwithstanding the provisions of paragraph (8) of the preceding Article, in the cases provided for in the preceding paragraph, if the petition under that paragraph is not filed within sixty days after the day of amendment to articles of incorporation, share option holders exercising appraisal rights on the share options may withdraw their demands for appraisal of the share options at any time after the expiration of that period.

(4) The stock company must also pay interest on the price determined by the court at the statutory interest rate from and including the day of the expiration of the period referred to in paragraph (1).

(5) A stock company may pay the amount that relevant stock company considers to be a fair price to a share option holder until the determination of the price of share options.

(6) The purchase relating to the exercise of appraisal rights on share options becomes effective on the day of amendment to articles of incorporation.

(7) If a share option holder exercises appraisal rights on share options with respect to share options for which share option certificates are issued, the stock company must pay the price of the share options relating to the exercise of appraisal rights on the share options in exchange for the share option certificates.

(8) If a share option holder exercises appraisal rights on share options in respect of a share option attached to any bonds with share options for which a bond certificate has been issued, the stock company must pay the price of the share

options in respect of which the holder is exercising appraisal rights in exchange for the certificate representing the bonds with share options.

(Giving Benefits on Exercise of Rights of Shareholders)

- Article 120 (1) A stock company may not give property benefits (limited to benefits given for the accounts of relevant stock company or its subsidiary company; hereinafter the same applies in this Article) to any person in connection with the person's exercise of shareholders' rights, rights as qualified former shareholders (meaning qualified former shareholders as prescribed in Article 847-2, paragraph (9)), or rights as shareholders in the ultimate, wholly owning parent company, etc. of the stock company (meaning an ultimate, wholly owning parent company, etc. prescribed in Article 847-3, paragraph (1)).
- (2) If a stock company gives property benefits to a specific shareholder without charge, it is presumed that relevant stock company has given property benefits regarding the exercise of shareholders' rights. The same applies if a stock company gives property benefits to a specific shareholder for value if the benefit received by relevant stock company or its subsidiary company is insignificant in comparison to relevant property benefits.
- (3) If a stock company gives property benefits in violation of the provisions of paragraph (1), the recipient of relevant benefit must return the same to relevant stock company or its subsidiary company. In these cases, if the recipient has tendered anything to relevant stock company or its subsidiary company in exchange for that benefit, that person may receive the return of the same.
- (4) If a stock company gives property benefits in violation of the provisions of paragraph (1), persons prescribed by Ministry of Justice Order as directors (including executive officers for companies with nominating committee, etc.; hereinafter the same applies in this paragraph.) who are involved in giving relevant benefits are jointly and severally liable to relevant stock company for payment of an amount equivalent to the value of the benefit so given; provided, however, that this does not apply if that person (excluding the directors who gave relevant benefit) proves that they did not fail to exercise due care with respect to the performance of their duties.
- (5) Exemptions from the obligations referred to in the preceding paragraph may not be given without the consent of all shareholders.

## **Section 2 Shareholder Registers**

(Shareholder Registers)

Article 121 A stock company must prepare a shareholder register and enter or record the following information (hereinafter referred to as "information

required to be entered in the shareholder register") in the same:

- (i) the names and addresses of shareholders;
- (ii) the number of shares held by the shareholders referred to in the preceding item (or the classes of shares and number for each class for a company with class shares);
- (iii) the days when the shareholders referred to in item (i) acquired the shares; and
- (iv) if the stock company is a share certificate-issuing company, the serial numbers of share certificates representing the shares (limited to those for which share certificates are issued) under item (ii).

(Delivery of Documents Showing Information Required to Be Entered in the Shareholder Register)

Article 122 (1) A shareholder as referred to in item (i) of the preceding Article may file a request with the stock company to be issued a document showing the information required to be entered in the shareholder register which has been entered or recorded in the shareholder register with respect to that shareholder, or to be provided with the electronic or magnetic record in which the information required to be entered in the shareholder register has been recorded.

- (2) The documents referred to in the preceding paragraph must be affixed with the signature, or name and seal, of the representative director of the stock company (referring to the representative executive officer for a company with nominating committee, etc.; the same applies in the following paragraph).
- (3) With respect to an electronic or magnetic record referred to in paragraph (1), the representative director of the stock company must implement measures in lieu of the affixing of the signature, or name and seal that is prescribed by Ministry of Justice Order.
- (4) The provisions of the preceding three paragraphs do not apply to a share certificate-issuing company.

(Shareholder Register Administrator)

Article 123 A stock company, in its articles of incorporation, may provide for the hiring of a shareholder register administrator (meaning a person to prepare, keep, and otherwise administer the shareholder register on behalf of the stock company; the same applies hereinafter), and may entrust that administrator with administering the same.

(Record Date)

Article 124 (1) A stock company may, by prescribing a certain date (hereinafter in this Chapter referred to as a "record date"), prescribe the shareholders that



have been entered or recorded in the shareholder register as of the record date (hereinafter in this Article referred to as "shareholders as of the record date") as the persons that may exercise their rights.

- (2) If a record date is to be established, the stock company must prescribe the content of the rights which the shareholders on the record date may exercise (limited to those which are exercised within three months from the record date).
- (3) If a stock company has prescribed a record date, it must give public notice of relevant record date and the matters prescribed pursuant to the provisions of the preceding paragraph no later than two weeks prior to relevant record date; provided, however, that this does not apply if the articles of incorporation provide for relevant record date and relevant matters.
- (4) If the rights that the shareholders on the record date may exercise are voting right at a shareholders meeting or general meeting of class shareholders, the stock company may prescribe some or all persons who acquire shares on or after relevant record date as persons who may exercise relevant right; provided, however, that these provisions may not prejudice the rights of the shareholders on the record date of relevant shares.
- (5) The provisions of paragraph (1) to paragraph (3) apply mutatis mutandis to the registered pledgees of shares provided for in Article 149, paragraph (1).

(Keeping and Making Available for Inspection of Shareholder Register)

- Article 125 (1) A stock company must keep the shareholder register at its head office (or, if it has a shareholder register administrator, at its business office).
- (2) Shareholders and creditors may make the following requests at any time during the business hours of the stock company. In these cases, the reasons for relevant requests must be disclosed:
    - (i) if the shareholder register is prepared in writing, a request for the inspection or copying of relevant document;
    - (ii) if the shareholder register has been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
  - (3) If a request in the preceding paragraph is made, a stock company may not refuse the request, except cases it falls under any of the following:
    - (i) the shareholder or creditor who made relevant request (hereinafter in this paragraph referred to as the "requestor") made the request for other purposes than research on securing or exercising the requestor's rights;
    - (ii) the requestor made the request with the purpose of interfering with the execution of the operations of relevant stock company or prejudicing the common benefit of the shareholders;
    - (iii) the requestor made the request in order to notify the facts learned by

inspecting or copying the shareholder register to third parties for profit; or  
(iv) the requestor is a person who has notified the facts learned by inspecting or copying the shareholder register to third parties for profit in the immediately preceding two years.

- (4) If it is necessary for the purpose of exercising the rights of a member of the parent company of a stock company, the relevant member of the parent company may, with the permission of the court, make the requests in each item of paragraph (2) with respect to the shareholder register of relevant stock company. In these cases, the reasons for the requests must be disclosed.
- (5) The court may not grant the permission in the preceding paragraph if grounds provided for in any item of paragraph (3) apply to the member of the parent company in the preceding paragraph.

(Notices to Shareholders)

- Article 126 (1) It is sufficient for a notice or demand to shareholders to be sent by a stock company to the addresses of relevant shareholders stated or recorded in the shareholder register (or, if relevant shareholders notify relevant stock company of a different place or contact address for the receipt of notices or demands, to that place or contact address).
- (2) The notices or demand in the preceding paragraph are deemed to have arrived at the time when that notice or demand should normally have arrived.
- (3) If a share is co-owned by two or more persons, the co-owners must specify one person to receive the notices or demand sent by the stock company to shareholders and notify relevant stock company of the name of that person. In these cases, that person is deemed to be the shareholder and the provisions of the preceding two paragraphs apply.
- (4) If there is no notice by co-owners under the provisions of the preceding paragraph, it is sufficient for a notice or demand sent by a stock company to the co-owners of the shareholders if it is sent to one of them.
- (5) The provisions of each of the preceding two paragraphs apply mutatis mutandis to cases where, when the notice referred to in Article 299, paragraph (1) (including the case where it is applied mutatis mutandis in Article 325) is given, a document is delivered to shareholders or matters to be stated in relevant document are provided to shareholders by electronic or magnetic means. In these cases, the phrase "to have arrived" in paragraph (2) is deemed to be replaced with "to have been effected by delivery of relevant documents or the provision of relevant matters by electronic or magnetic means".

### **Section 3 Transferring Shares**

#### **Subsection 1 Transferring Shares**

(Transferring Shares)

Article 127 Shareholders may transfer the shares held by the same.

(Transferring Shares in a Share Certificate-Issuing Company)

Article 128 (1) Transferring shares in a share certificate-issuing company does not become effective unless the share certificates representing those shares are delivered; provided, however, that this does not apply to transferring shares that arise out of the disposition of treasury shares.

(2) Transfers effected prior to the issuance of the share certificate do not be effective regarding the share certificate-issuing company.

(Special Provisions on the Disposition of Treasury Shares)

Article 129 (1) A share certificate-issuing company must deliver the share certificates to persons who acquire treasury shares without delay after the day of the disposition of relevant treasury shares.

(2) Notwithstanding the provisions of the preceding paragraph, a share certificate-issuing company that is not a public company may choose to not deliver the share certificates under that paragraph until the persons under that paragraph so request.

(Perfection of Transferring Shares)

Article 130 (1) Transferring shares may not be perfected against the stock company and other third parties unless the name and address of the person who acquires those shares is stated or recorded in the shareholder register.

(2) For the purpose of the application of the provisions of the preceding paragraph with respect to a share certificate-issuing company, the phrase "the stock company and other third parties" in that paragraph is deemed to be replaced with "the stock company".

(Presumption of Rights)

Article 131 (1) A possessor of share certificates is presumed to be the lawful owner of the rights in relation to the shares representing relevant share certificates.

(2) A person who receives delivery of the share certificates acquires the rights in relation to the shares represented by relevant share certificates; provided, however, that this does not apply if that person has acted in bad faith or with gross negligence as to the fact of defective title of the transferor.

(Entry or Recording of Information Required to Be Entered in the Shareholder Register Not Requested by Shareholders)

Article 132 (1) In a case as set forth in one the following items, a stock company

must enter or record in the shareholder register the information that is required to be entered in the shareholder register in respect of any shareholder holding shares as referred to in that item:

- (i) if it has issued shares;
  - (ii) if it has acquired shares in relevant stock company;
  - (iii) if it has disposed of treasury shares.
- (2) In cases of consolidating shares, a stock company must state or record the matters to be specified in the shareholder register related to the shareholders of relevant shares on the shareholder register, with regard to the consolidated shares.
- (3) If a stock company splits its shares, it must enter or record in the shareholder register the information that is required to be entered in the shareholder register in respect of any shareholder holding a share that has been split.

(Entering or Recording Information Required to Be Entered in the Shareholder Register at the Request of Shareholders)

Article 133 (1) A person acquiring shares (other than the stock company itself, hereinafter in this Section referred to as "acquirer of shares") from any person other than the stock company that issued those shares may request the stock company to enter or record in the shareholder register the information that is required to be entered in the shareholder register in connection with those shares.

- (2) Except for the cases prescribed by Ministry of Justice Order as cases of no likelihood of detriment to interested parties, requests pursuant to the provisions of the preceding paragraph must be made jointly with the person stated or recorded in the shareholder register as the shareholder of the shares so acquired, or general successors including the person's heirs.

Article 134 The provisions of the preceding paragraph do not apply if the shares acquired by the acquirer of shares are shares with restriction on transfer; provided, however, that this does not apply if it falls under any of the following:

- (i) that acquirer of shares has obtained approval under Article 136 as to an intended acquisition of those shares with restriction on transfer;
- (ii) that acquirer of shares has obtained approval under Article 137, paragraph (1) as to a completed acquisition of those shares with restriction on transfer;
- (iii) that acquirer of shares is a designated purchaser provided for in Article 140, paragraph (4);
- (iv) that acquirer of shares is a person who has acquired the shares with restriction on transfer by general succession including inheritance.

(Acquisition of Shares of Parent Companies Prohibited)

Article 135 (1) A subsidiary company may not acquire the shares of a stock company that is its parent company (hereinafter in this Article referred to as "parent company's shares").

- (2) The provisions of the preceding paragraph do not apply to the following cases:
- (i) if the subsidiary company accepts the transfer of the parent company's shares held by another company if the subsidiary company accepts the transfer of the entire business of relevant other company (including foreign companies);
  - (ii) if the subsidiary company succeeds to the parent company's shares from a company disappearing due to merger;
  - (iii) if the subsidiary company succeeds to the parent company's shares from another company by absorption-type company split;
  - (iv) if the subsidiary company succeeds to the parent company's shares from another company by incorporation-type company split; or
  - (v) beyond what is set forth in the preceding items, cases prescribed by Ministry of Justice Order.
- (3) The subsidiary company must dispose of the parent company's shares held by the same at an appropriate time.

**Subsection 2 Approval Procedures Relating to Transferring Shares**

(Requests for Approval by Shareholders)

Article 136 If shareholders of shares with restriction on transfer intend to transfer the shares with restriction on transfer held by the same to others (excluding the stock company which issued relevant shares with restriction on transfer), they may request that relevant stock company make a determination as to whether or not to approve the acquisition by relevant others of relevant shares with restriction on transfer.

(Request for Approval by Acquirers of Shares)

Article 137 (1) Acquirers of shares who have acquired shares with restriction on transfer may request that the stock company make a determination as to whether or not to approve the acquisition of relevant shares with restriction on transfer.

- (2) Except for the cases prescribed by Ministry of Justice Order as cases of no likelihood of detriment to interested parties, requests pursuant to the provisions of the preceding paragraph must be made jointly with the person stated or recorded in the shareholder register as the shareholder of the shares so acquired, or general successors including the person's heirs.

(Method for Requests for Approval of Transfer)

Article 138 The requests set forth in the following items (hereinafter in this Subsection referred to as "requests for approval of transfer") must be made by disclosing the matters provided for in relevant items:

- (i) requests pursuant to the provisions of Article 136: the following matters:
  - (a) the number of shares with restriction on transfer that the shareholders making relevant request intend to transfer to others (or, for a company with class shares, the classes of the shares and the number of shares for each class);
  - (b) the name of the person accepting the transfer of the shares with restriction on transfer referred to in (a);
  - (c) if a stock company determines not to give approval under Article 136, if it is requested that relevant stock company or designated purchaser provided for in Article 140, paragraph (4) purchase the shares with restriction on transfer referred to in (a), the statement to that effect;
- (ii) the request pursuant to the provisions of paragraph (1) of the preceding Article: the following matters:
  - (a) the number of shares with restriction on transfer which the acquirer of shares making relevant request has acquired (or, for a company with class shares, the classes of the shares and the number of shares for each class);
  - (b) the name of the acquirer of shares referred to in (a);
  - (c) if a stock company determines not to effect the approval under paragraph (1) of the preceding Article, and it is requested that relevant stock company or the designated purchaser provided for in Article 140, paragraph (4) purchase the shares with restrictions on their transfer referred to in (a), a statement to that effect.

(Determination of Approval of Transfer)

Article 139 (1) The determination by a stock company as to whether or not to grant approval under Article 136 or Article 137, paragraph (1) must be made by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

- (2) If a stock company has made a determination under the preceding paragraph, it must notify the person who made the requests for approval of transfer (hereinafter in this Subsection referred to as "requester for approval of transfer") of the content of relevant determination.

(Purchase by Stock Company or Designated Purchaser)

Article 140 (1) If a stock company receives a request under Article 138, item (i), (c) or item (ii), (c), if it makes a determination to not give approval under

Article 136 or Article 137, paragraph (1), it must purchase the shares with restriction on transfer relating to relevant requests for approval of transfer (hereinafter in this Subsection referred to as "subject shares"). In these cases, the following matters must be prescribed:

- (i) a statement to the effect that the stock company will purchase the subject shares;
  - (ii) the number of the subject shares that will be purchased by the stock company (or, for a company with class shares, the classes of the subject shares and the number of shares for each class).
- (2) The determination of the matters set forth in the items of the preceding paragraph must be made by a resolution at a shareholders meeting.
- (3) Requesters for approval of transfer may not exercise voting right at the shareholders meeting referred to in the preceding paragraph; provided, however, that this does not apply if all shareholders other than relevant requesters for approval of transfer may not exercise voting right at the shareholders meeting referred to in that paragraph.
- (4) Notwithstanding the provisions of paragraph (1), in the cases provided for in that paragraph, a stock company may designate a person to purchase some or all of the subject shares (hereinafter in this subsection referred to as "designated purchaser").
- (5) The designation pursuant to the provisions of the preceding paragraph must be made by a resolution at the shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

(Notice of Purchases by Stock Company)

- Article 141 (1) If a stock company has determined the matters set forth in any item of paragraph (1) of the preceding Article, it must notify the requester for approval of transfer of these matters.
- (2) If a stock company intends to give notice pursuant to the provisions of the preceding paragraph, it must deposit the amount obtained by multiplying the amount of the net assets per share (meaning the amount prescribed by Ministry of Justice Order as the amount of net assets per share; the same applies hereinafter) by the number of the subject shares under paragraph (1), item (ii) of the preceding Article, with a depository located in the area where its head office is located, and deliver a document certifying relevant deposit to the requester for approval of transfer.
- (3) If the subject shares are the shares of a share certificate-issuing company, the requester for approval of transfer who received delivery of the document referred to in the preceding paragraph must deposit the share certificates representing the subject shares referred to in paragraph (1), item (ii) of the

preceding Article with a depository located in the area where the head office of relevant share certificate-issuing company is located within one week from the day of receipt of relevant delivery. In these cases, the requester for approval of transfer must give notice of relevant deposit to relevant share certificate-issuing company without delay.

- (4) If the requester for approval of a transfer under the preceding paragraph does not effect the deposit pursuant to the provisions of that paragraph within the period under that paragraph, the share certificate-issuing company may cancel the contract for the sale and purchase of the subject shares provided for in paragraph (1), item (ii) of the preceding Article.

(Designated Purchaser's Notice to Purchase)

Article 142 (1) If a designated purchaser is designated pursuant to the provisions of Article 140, paragraph (4), the designated purchaser must notify the requester for approval of transfer of the following matters:

- (i) a statement to the effect that the designated purchaser has been designated as a designated purchaser; and
  - (ii) the number of the subject shares that the designated purchaser will purchase (or, for a company with class shares, the classes of the subject shares and the number of shares for each class).
- (2) If a designated purchaser intends to give notice pursuant to the provisions of the preceding paragraph, the designated purchaser must deposit the amount obtained by multiplying the amount of the net assets per share by the number of the subject shares under item (ii) of that paragraph with a depository located in the area where the head office of the stock company is located, and deliver a document certifying relevant deposit to the requester for approval of transfer.
- (3) If the subject shares are the shares of a share certificate-issuing company, the requester for approval of transfers who received delivery of the document referred to in the preceding paragraph must deposit the share certificates representing the subject shares referred to in paragraph (1), item (ii) with a depository located in the area where the head office of relevant share certificate-issuing company is located within one week from the day of receipt of relevant delivery. In these cases, relevant requester for approval of transfer must give notice of relevant deposit to the designated purchaser without delay.
- (4) If the requester for approval of a transfer under the preceding paragraph does not effect the deposit pursuant to the provisions of that paragraph within the period under that paragraph, the designated purchaser may cancel the contract for the sale and purchase of the subject shares provided for in paragraph (1), item (ii).



(Withdrawal of Requests for Approval of Transfer)

Article 143 (1) A requester for approval of transfer who made a request under Article 138, item (i), (c) or item (ii), (c) may, after having received notice pursuant to the provisions of Article 141, paragraph (1), withdraw the request only if the requester for approval of transfer obtains the approval of the stock company.

(2) A requester of approval of transfer who made a request under Article 138, item (i), (c) or item (ii), (c) may, after having received notice pursuant to the provisions of paragraph (1) of the preceding Article, withdraw the request only if the requester for approval of transfer obtains the approval of the designated purchaser.

(Determination of Sale Prices)

Article 144 (1) If notice is given pursuant to the provisions of Article 141, paragraph (1), the sale price of the subject shares under Article 140, paragraph (1), item (ii) is prescribed through discussion between the stock company and the requester for approval of transfer.

(2) The stock company or requester for approval of transfers may file a petition for the court to determine the sale price within twenty days from the day when notice is given pursuant to the provisions of Article 141, paragraph (1).

(3) In order to make the determination under the preceding paragraph, the court must consider the financial conditions of the stock company at the time of the requests for approval of transfer and all other circumstances.

(4) Notwithstanding the provisions of paragraph (1), if a petition under paragraph (2) is made within the period provided for in that paragraph, the amount determined by the court in response to relevant petition is to be the sale price of the subject shares under Article 140, paragraph (1), item (ii).

(5) Notwithstanding the provisions of paragraph (1), if no petition under paragraph (2) is made within the period provided for in that paragraph (except if the discussions under paragraph (1) are successfully concluded within the period), the amount obtained by multiplying the amount of the net assets per share by the number of the subject shares under Article 140, paragraph (1), item (ii) is to be the sale price of the subject shares.

(6) If a deposit is effected pursuant to the provisions of Article 141, paragraph (2), and the sale price of the subject shares under Article 140, paragraph (1), item (ii) has been finalized, the stock company is deemed to have paid the sale price, in whole or in part, up to an amount equivalent to the value of the money so deposited.

(7) The provisions of the preceding paragraphs apply mutatis mutandis if notice is given pursuant to the provisions of Article 142, paragraph (1). phrase In these cases, in paragraph (1), the phrase "Article 140, paragraph (1), item (ii)"

is deemed to be replaced with "Article 142, paragraph (1), item (ii)" and the term "stock company" is deemed to be replaced with "designated purchaser"; in paragraph (2), the term "stock company" is deemed to be replaced with "designated purchaser"; in paragraph (4) and paragraph (5), the phrase "Article 140, paragraph (1), item (ii)" is deemed to be replaced with "Article 142, paragraph (1), item (ii)"; and in the preceding paragraph, the phrase "Article 141, paragraph (2)" is deemed to be replaced with "Article 142, paragraph (2)", the phrase "Article 140, paragraph (1), item (ii)" is deemed to be replaced with "paragraph (1), item (ii) of that Article", and the term "stock company" is deemed to be replaced with "designated purchaser".

(Cases Where Stock Company Is Deemed to Have Approved)

Article 145 In the cases set forth below, the stock company is deemed to have given the approval under Article 136 or Article 137, paragraph (1); provided, however, that this does not apply if otherwise provided for by the agreement between the stock company and the requester for approval of transfer:

- (i) if the stock company has failed to give notice pursuant to the provisions of Article 139, paragraph (2) within two weeks (or if any shorter period of time is provided for in the articles of incorporation, relevant shorter period of time) from the day of the request pursuant to the provisions of Article 136 or Article 137, paragraph (1);
- (ii) if the stock company has failed to give notice pursuant to the provisions of Article 141, paragraph (1) within forty days (or if any shorter period of time is provided for in the articles of incorporation, relevant shorter period of time) from the day of the notice pursuant to the provisions of Article 139, paragraph (2) (except the cases where the designated purchaser gives notice pursuant to the provisions of Article 142, paragraph (1) within ten days (or if any shorter period of time is provided in the articles of incorporation, that shorter period of time) from the day of the notice pursuant to the provisions of Article 139, paragraph (2));
- (iii) beyond the cases set forth in the preceding two items, the cases prescribed by Ministry of Justice Order.

### **Subsection 3 Pledging of Shares**

(Pledging of Shares)

Article 146 (1) Shareholders may pledge the shares which they hold.

(2) Pledging shares in a share certificate-issuing company does not become effective unless the share certificates representing those shares are delivered.

(Perfection of Pledging Shares)

Article 147 (1) Pledging shares may not be perfected against the stock company and other third parties unless the names and addresses of the pledgees are stated or recorded in the shareholder register.

(2) Notwithstanding the provisions of the preceding paragraph, a pledgee of shares in a share certificate-issuing company may not assert the pledge against the stock company and other third parties unless the pledgee is in continuous possession of the share certificates representing those shares.

(3) The provisions of Article 364 of the Civil Code do not apply to shares.

(Entries in Shareholder Register)

Article 148 A person who pledges shares may request that the stock company enter or record the following matters in the shareholder register:

- (i) the name and address of the pledgee;
- (ii) the shares underlying the pledge.

(Delivery of Documents Showing the Information Entered in the Shareholder Register)

Article 149 (1) A pledgee whose information as set forth in the items of the preceding Article has been entered or recorded in the shareholder register (hereinafter referred to as a "registered pledgee of shares") may file a request with the stock company to be issued a document showing the information set forth in the items of that Article which has been entered or recorded in the shareholder register with respect to that registered pledgee of shares, or to be provided with the electronic or magnetic record in which that information has been recorded.

(2) The documents in the preceding paragraph must be affixed with the signature, or name and seal, of the representative director of the stock company (the representative executive officer for a company with nominating committee, etc.; the same applies in the following paragraph).

(3) With respect to an electronic or magnetic record referred to in paragraph (1), the representative director of the stock company must implement measures in lieu of the affixation of signature, or name and seal prescribed by Ministry of Justice Order.

(4) The provisions of the preceding three paragraphs do not apply to a share certificate-issuing company.

(Notices to Registered Pledgees of Shares)

Article 150 (1) It is sufficient for a notice or demand to a registered pledgee of shares to be sent by a stock company to the addresses of relevant registered pledgee of shares which have been entered or recorded in the shareholder register (or, if relevant registered pledgee of shares notifies the stock company

of any different place or contact address for the receipt of notices or demands, to the place or contact address).

- (2) The notices or demands referred to in the preceding paragraph are deemed to have arrived at the time when the notice or demand should normally have arrived.

(Effect of Pledging Shares)

Article 151 (1) If a stock company carries out any of the acts set forth below, the pledge for shares is effective with respect to the monies, etc. (meaning monies and other properties; the same applies hereinafter) which the shareholders of relevant shares are entitled to receive as a result of relevant act:

- (i) the acquisition of shares with put options pursuant to the provisions Article 167, paragraph (1);
- (ii) the acquisition of shares subject to call pursuant to the provisions of Article 170, paragraph (1);
- (iii) the acquisition of shares subject to class-wide call provided for in Article 171, paragraph (1) pursuant to the provisions of Article 173, paragraph (1);
- (iv) consolidation of shares;
- (v) share split;
- (vi) allotment of shares without contribution provided for in Article 185;
- (vii) allotment of share options without contribution provided for in Article 277;
- (viii) dividends of surplus;
- (ix) distribution of residual assets;
- (x) entity conversion;
- (xi) merger (but only if the stock company disappears in the merger);
- (xii) share exchange;
- (xiii) share transfer; or
- (xiv) acquisition of shares (excluding the acts set forth in item (i) through item (iii)).

- (2) If a special controlling shareholder (meaning a special controlling shareholder as prescribed in Article 179, paragraph (1); the same applies in Article 154, paragraph (3)) acquires shares subject to cash-out (meaning shares subject to cash-out prescribed in Article 179-2, paragraph (1), item (ii); hereinafter the same applies in this paragraph) by demand for cash-out (meaning demand for cash-out as prescribed in Article 179, paragraph (2)), the pledge for shares subject to cash-out is effective for monies that shareholders of relevant shares subject to the cash-out can receive by relevant acquisition.

Article 152 (1) If a stock company (excluding a share certificate-issuing company; hereinafter the same applies in this Article) carries out the acts set

forth in paragraph (1), item (i) through item (iii) of the preceding Article (limited to the cases where relevant stock company delivers the shares when carrying out relevant acts), or carries out the act set forth in item (vi) of that paragraph, if the pledgees of the pledges under that paragraph are registered pledgees of shares (excluding those for whom the information set forth in each item of Article 148 has been entered or recorded in the shareholder register because of a request pursuant to the provisions of Article 218, paragraph (5); hereinafter the same applies in this Subsection), the names and addresses of relevant pledgees must be entered or recorded in the shareholder register with respect to the shares under paragraph (1) of the preceding Article that the shareholders are entitled to receive.

- (2) If the consolidation of shares has been effected, if the pledgees of the pledge under paragraph (1) of the preceding Article are registered pledgees of shares, the stock company must state or record the names and addresses of the pledgees with respect to the shares that have been consolidated.
- (3) If the share split has been effected, if the pledgees of the pledge under paragraph (1) of the preceding Article are registered pledgees of shares, the stock company must state or record the names and addresses of the pledgees with respect to the shares that have been split.

Article 153 (1) In the cases provided for in paragraph (1) of the preceding Article, the share certificate-issuing company must deliver the share certificates representing the shares that the shareholders under Article 151, paragraph (1) receive to the registered pledgees of shares.

- (2) In the cases provided for in paragraph (2) of the preceding Article, the share certificate-issuing company must deliver the share certificates representing the shares that have been consolidated to the registered pledgees of shares.
- (3) In the cases provided for in paragraph (3) of the preceding Article, the share certificate-issuing company must deliver the share certificates that will be newly issued with respect to the shares that have been split to the registered pledgees of shares.

Article 154 (1) Registered pledgees of shares may receive the monies, etc. (limited to monies) under Article 151, paragraph (1), or monies under paragraph (2) of that Article, and appropriate them as payment to satisfy their own claims in priority to other creditors.

- (2) If a stock company performs the acts set forth in the following items, if the claims under the preceding paragraph have not yet become due and payable, the registered pledgees of shares may have the person specified in each of those items deposit an amount equivalent to the value of the monies, etc. provided for in that paragraph. In these cases, the pledge is effective with

respect to the monies so deposited:

- (i) acts set forth in Article 151, paragraph (1), items (i) through (vi), item (viii), item (ix), or item (xiv): that stock company;
  - (ii) entity conversion: membership company after entity conversion as prescribed in Article 744, paragraph (1), item (i);
  - (iii) merger (but only if the stock company disappears in the merger): the company surviving the absorption-type merger as prescribed in Article 749, paragraph (1) or the company incorporated in the consolidation-type merger as prescribed in Article 753, paragraph (1);
  - (iv) share exchange: the wholly owning parent company resulting from the share exchange prescribed in Article 767; or
  - (v) share transfer: the wholly owning parent company incorporated in a share transfer as prescribed in Article 773, paragraph (1), item (i).
- (3) In the case prescribed in Article 151, paragraph (2), if the claim under paragraph (1) has not yet come due and payable, a registered pledgee of shares may have the special controlling shareholders deposit an amount equivalent to the value of the monies under paragraph (2) of that Article. In this case, the pledge is effective with respect to the monies so deposited

#### **Subsection 4 Perfection of Shares That Belong to the Trust Property**

Article 154-2 (1) With regard to shares, it may not be perfected that relevant shares belong to the trust property against the stock company and other third parties unless the fact that relevant shares belong to the trust property is entered or recorded in the shareholder register

- (2) When shares held by shareholders under Article 121, item (i) belong to the trust property, it may request the stock company to enter or record to that effect in the shareholder register.
- (3) For the purpose of the application of the provisions of Article 122, paragraph (1) and Article 132 if the entry or record is made pursuant to the provisions of the preceding paragraph in the shareholder register, the phrase "information required to be entered in the shareholder register which has been entered or recorded in the shareholder register with respect to that shareholder" in Article 122, paragraph (1) is deemed to be replaced with "information required to be entered in the shareholder register which has been entered or recorded in the shareholder register with respect to that shareholder (including the fact that shares held by that shareholder belong to the trust property)" and the phrase "information that is required to be entered in the shareholder register in respect of any shareholder holding shares as referred to in that item" in Article 132 is deemed to be replaced with "information required to be entered in the shareholder register in respect of any shareholder holding shares as

referred to in that item (including the fact that shares held by that shareholder belongs to the trust property)".

(4) The provisions of the preceding three paragraphs do not apply to a share certificate-issuing company.

## **Section 4 Acquisition of Own Shares by Stock Company**

### **Subsection 1 General Provisions**

Article 155 A stock company may acquire shares issued by relevant stock company only in the following cases:

- (i) the grounds under Article 107, paragraph (2), item (iii), (a) have arisen;
- (ii) a request has been made under Article 138, item (i), (c) or item (ii), (c);
- (iii) a resolution has been passed under paragraph (1) of the following Article;
- (iv) a request has been made pursuant to the provisions of Article 166, paragraph (1);
- (v) a resolution has been passed under Article 171, paragraph (1);
- (vi) the stock company has made a request under the provisions of Article 176, paragraph (1);
- (vii) a request has been made pursuant to the provisions of Article 192, paragraph (1);
- (viii) the stock company has prescribed the matters set forth in each item of Article 197, paragraph (3);
- (ix) the stock company has prescribed the matters set forth in each item of Article 234, paragraph (4) (including the cases where applied mutatis mutandis pursuant to Article 235, paragraph (2));
- (x) the stock company accepts the transfer of the entire business of another company (including foreign companies) if relevant stock company accepts the transfer of own shares held by relevant other company;
- (xi) the stock company succeeds to its own shares from a company disappearing due to merger;
- (xii) the stock company succeeds to own shares held by a company that is effecting an absorption-type company split; or
- (xiii) beyond the cases set forth in the preceding items, in any case prescribed by Ministry of Justice Order.

## **Subsection 2 Acquisition by Agreement with Shareholders**

### **Division 1 General Provisions**

(Determination of Matters Regarding Acquisition of Shares)

Article 156 (1) A stock company must prescribe the following matters by a resolution at a shareholders meeting in advance in order to acquire for value

own shares by agreement with its shareholders; provided, however, that the period under item (iii) cannot exceed one year:

- (i) the number of shares to be acquired (or, for a company with class shares, the classes of the shares and the number of shares for each class); and
  - (ii) the description and total amount of the monies, etc. (excluding the shares, etc. of the relevant stock company; hereinafter the same applies in this Subsection) that will be delivered in exchange for the acquisition of the shares; and
  - (iii) the period during which the shares can be acquired.
- (2) The provisions of the preceding paragraph do not apply to the cases set forth in item (i) and item (ii), and in item (iv) through item (xiii) of the preceding Article.

#### (Determination of Acquisition Price)

Article 157 (1) Whenever a stock company intends to acquire its shares in accordance with a determination pursuant to the provisions of paragraph (1) of the preceding Article, it must prescribe the following matters:

- (i) the number of shares to be acquired (or, for a company with class shares, the class of the shares and the number of the shares);
  - (ii) the description, and the number or amount, or the method for the calculation thereof, of the monies, etc. that will be delivered in exchange for the acquisition of one share;
  - (iii) the total amount of the monies, etc. that will be delivered in exchange for the acquisition of the shares; and
  - (iv) the date on which the offer to transfer the shares will be made.
- (2) A company with board of directors must determine the matters set forth in each item of the preceding paragraph by a resolution of the board of directors meeting.
- (3) The conditions prescribed for the acquisition of shares under paragraph (1) must be uniform for each determination made under the provisions of that paragraph.

#### (Notice to Shareholders)

Article 158 (1) A stock company must notify its shareholders (or, for a company with class shares, the class shareholders of the classes of the shares it intends to acquire) of the matters set forth in each item of paragraph (1) of the preceding Article.

- (2) A public company may substitute a public notice for the notice under the provisions of the preceding paragraph.

#### (Offers to Transfer)



Article 159 (1) If a shareholder who receives a notice pursuant to the provisions of paragraph (1) of the preceding Article intends to make an offer to transfer the shares the shareholder holds, the shareholder must disclose to the stock company the number of shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) relating to that offer.

(2) A stock company is deemed to have accepted, on the date provided for in Article 157, paragraph (1), item (iv), the transfer of shares that the shareholders under the preceding paragraph offered; provided, however, that if the total number of shares that the shareholders under that paragraph offered (hereinafter in this paragraph referred to as "total number of shares offered") exceed the number provided for in paragraph (1), item (i) of that Article (hereinafter in this paragraph referred to as "total number of shares to be acquired"), it is deemed that the stock company has accepted the transfer of the shares in the number obtained by first dividing the total number of shares to be acquired by the total number of shares offered, and then multiplying relevant product by the number of the shares offered by the shareholders under the preceding paragraph (if the number so obtained includes a fractional share, this fractional share is to be rounded off).

## **Division 2 Acquisition from Specific Shareholders**

(Acquisition from Specific Shareholders)

Article 160 (1) In conjunction with the determination of the matters set forth in each item of Article 156, paragraph (1), a stock company may, by a resolution at a shareholders meeting under that paragraph, make a determination to the effect that notice under the provisions of Article 158, paragraph (1) may be given to specific shareholders.

(2) If a stock company intends to make a determination under the provisions of the preceding paragraph, it must give notice to the shareholders (or, for a company with class shares, the class shareholders of the classes of the shares to be acquired), by the time prescribed by Ministry of Justice Order, to the effect that the shareholders may make the requests under the provisions of the following paragraph.

(3) The shareholders under the preceding paragraph may, by the time prescribed by Ministry of Justice Order, request that they be added to the specific shareholders provided for in paragraph (1) for the proposal for the shareholders meeting under that paragraph.

(4) The specific shareholders under paragraph (1) may not exercise voting right at the shareholders meeting provided for in Article 156, paragraph (1); provided, however, that this does not apply if all shareholders other than the specific shareholders under paragraph (1) may not exercise the voting right at

relevant shareholders meeting.

- (5) If specific shareholders are prescribed under paragraph (1), for the purpose of the application of the provisions of Article 158, paragraph (1), the phrase "shareholders (or, for a company with class shares, the class shareholder of the classes of the shares it intends to acquire)" in that paragraph is deemed to be replaced with "specific shareholders under Article 160, paragraph (1)".

(Special Provisions on Acquisition of Shares with Market Price)

Article 161 The provisions of paragraph (2) and paragraph (3) of the preceding Article do not apply if, if the shares to be acquired are shares with a market price, the amount of the monies, etc. to be delivered in exchange for the acquisition of one relevant share does not exceed the amount of the market price of one relevant share calculated by the method prescribed by Ministry of Justice Order.

(Special Provisions on Acquisition from Heirs)

Article 162 The provisions of Article 160, paragraphs (2) and (3) do not apply if a stock company acquires, from general successors of the shareholders, including their heirs, the shares of the stock company that the same acquired by general succession including inheritance; provided, however, that this does not apply if it falls under any of the following:

- (i) the stock company is a public company; or
- (ii) relevant general successors, including heirs exercised the voting right on the shares at a shareholders meeting or general meeting of class shareholders.

(Acquisition of Shares from Subsidiary Companies)

Article 163 If a stock company acquires shares in relevant stock company that are held by its subsidiary company, for the purpose of the application of the provisions of Article 156, paragraph (1), the phrase "shareholders meeting" in that paragraph is deemed to be replaced with "shareholders meeting (or board of directors meeting for a company with board of directors)". In these cases, the provisions of Article 157 through Article 160 do not apply.

(Provisions of Articles of Incorporation Regarding Acquisition from Specific Shareholders)

Article 164 (1) If a stock company intends to make a determination under the provisions of Article 160, paragraph (1) with respect to the acquisition of shares (or, for a company with class shares, shares of a certain class; the same applies in the following paragraph), it may provide in the articles of incorporation to the effect that the provisions of paragraph (2) and paragraph

- (3) of that Article do not apply.
- (2) If, after the shares are issued, it is intended to create provisions in the articles of incorporation under the provisions of the preceding paragraph with respect to relevant shares by amending the articles of incorporation, or to effect any amendment (excluding that which abolishes the provisions of the articles of incorporation under that paragraph) in the articles of incorporation with respect to relevant provisions, the consent of all shareholders who hold relevant shares must be obtained.

### **Division 3 Acquisition of Shares by Market Transactions**

- Article 165 (1) The provisions of Article 157 through Article 160 do not apply if a stock company acquires shares in relevant stock company through transactions undertaken by that stock company in the market or through a takeover bid provided for in Article 27-2, paragraph (6) of the Financial Instruments and Exchange Act (hereinafter in this Article referred to as "market transactions").
- (2) A company with board of directors may provide in its articles of incorporation to the effect that the acquisition of own shares by market transactions may be prescribed by a resolution at a board of directors meeting.
- (3) If the provisions of the articles of incorporation under the provisions of the preceding paragraph is created, for the purpose of the application of the provisions of Article 156, paragraph (1), the phrase "shareholders meeting" in this paragraph is deemed to be replaced with "shareholders meeting (or shareholders meeting or board of director's meeting in the cases provided for in Article 165, paragraph (1))".

### **Subsection 3 Acquisition of Shares with Put Options and Shares Subject to Call**

#### **Division 1 Demand for Acquisition of Shares with Put Options**

(Demand for Acquisition)

- Article 166 (1) Shareholders of shares with put options may demand that the stock company acquire the shares with put options held by these shareholders; provided, however, that this does not apply if, if the properties provided for in Article 107, paragraph (2), item (ii), (b) through (e) are delivered in exchange for the acquisition of relevant shares with put options, the book value of these properties exceeds the distributable amount under Article 461, paragraph (2) on the day when relevant demand is made.
- (2) The demand pursuant to the provisions of the preceding paragraph must be submitted by disclosing the number of shares with put options relating to relevant demand (or, for a company with class shares, the classes of the shares

with put options and the number of shares for each class).

- (3) If shareholders of a share certificate-issuing company intend to submit demand pursuant to the provisions of paragraph (1) with respect to the shares with put options held by the same, they must submit the share certificates representing the shares with put options to the share certificate-issuing company; provided, however, that this does not apply if no share certificate representing relevant shares with put options is issued.

(Effectuation)

Article 167 (1) A stock company acquires the shares with put options relating to a demand pursuant to the provisions of paragraph (1) of the preceding Article on the day of relevant demand.

- (2) In the cases set forth in the following items, a shareholder who submits a demand pursuant to the provisions of paragraph (1) of the preceding Article becomes a person specified in each of those items in accordance with the provisions with respect to the matters provided for in Article 107, paragraph (2), item (ii) (or, for a company with class shares, Article 108, paragraph (2), item (v)) on the day of the demand:
- (i) if there are provisions on the matters set forth in Article 107, paragraph (2), item (ii), (b): holders of the bonds referred to (b) of that item;
  - (ii) if there are provisions on the matters set forth in Article 107, paragraph (2), item (ii), (c): share option holders referred to (c) of that item;
  - (iii) if there are provisions on the matters set forth in Article 107, paragraph (2), item (ii), (d): holders of bonds constituting the bonds with share option referred to in (d) of that item, and the holders of share options attached to those bonds;
  - (iv) if there are provisions on the matters set forth in Article 108, paragraph (2), item (v), (b): holders of the relevant other shares under (b) of that item.
- (3) In the cases provided for in item (iv) of the preceding paragraph, if the number of the relevant other shares provided for in that item includes a fractional share, it is to be rounded off. In these cases, unless otherwise provided in the articles of incorporation, the stock company must, in accordance with the categories of the cases set forth in the following items, deliver to the shareholders who submitted demands pursuant to the provisions of paragraph (1) of the preceding Article the monies in the amount equivalent to the amount obtained by multiplying the amount provided for in each of these items by the fractional share:
- (i) if relevant shares are shares with a market price: the amount calculated by the method prescribed by Ministry of Justice Order as the amount of the market price of one relevant share;
  - (ii) in cases other than the cases set forth in the preceding item: the amount of

net assets per share.

- (4) The provisions of the preceding paragraph apply mutatis mutandis to cases where there is a fractional share with respect to the bonds and share options of the stock company. In these cases, the term "amount of net assets per share" in item (ii) of that paragraph is deemed to be replaced with "the amount prescribed by Ministry of Justice Order".

## **Division 2 Acquisition of Shares Subject to Call**

(Determination of the Day of Acquisition)

Article 168 (1) If there are provisions with respect to the matters set forth in Article 107, paragraph (2), item (iii), (b), the stock company must prescribe the day under (b) of that item by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

- (2) If a stock company prescribes the day under Article 107, paragraph (2), item (iii), (b), the stock company must notify the shareholders of the shares subject to call (or, if there are provisions with respect to the matters set forth in (c) of that item, the shareholders of shares subject to call who are determined under the provisions of paragraph (1) of the following Article) and the registered pledgees of shares thereof of relevant day no later than two weeks prior to relevant day.
- (3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

(Determination of Shares to Be Acquired)

Article 169 (1) If there are provisions with respect to the matters set forth in Article 107, paragraph (2), item (iii), (c), if a stock company intends to acquire shares subject to call, it must determine the shares subject to call that it intends to acquire.

- (2) The shares subject to call under the preceding paragraph must be determined by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.
- (3) If a stock company makes the determination pursuant to the provisions of paragraph (1), the stock company must immediately notify the shareholders of the shares subject to call who are identified pursuant to the provisions of that paragraph and the registered pledgees of shares thereof to the effect that the stock company will acquire the shares subject to call.
- (4) A public notice may be substituted for the notice pursuant to the provisions of

the preceding paragraph.

(Effectuation)

Article 170 (1) A stock company acquires, on the day when the grounds under Article 107, paragraph (2), item (iii), (a) have arisen (or, if there are provisions with respect to the matters set forth in (c) of that item, on the day set forth in item (i) or the day set forth in item (ii) below, whichever comes later; the same applies in the following paragraph and paragraph (5)), the shares subject to call (or, if there are provisions with respect to the matters set forth in paragraph (2), item (iii), (c) of that Article, those determined pursuant to the provisions of paragraph (1) of the preceding Article; the same applies in the following paragraph):

(i) the day when grounds under Article 107, paragraph (2), item (iii), (a) have arisen; or

(ii) the day of notice pursuant to the provisions of paragraph (3) of the preceding Article, or the day when two weeks have lapsed from the day of the public notice under paragraph (4) of that Article.

(2) In the cases set forth in the following items, the shareholders of the shares subject to call (excluding the relevant stock company) become the persons specified in each of those items in accordance with the provisions with respect to the matters provided for in Article 107, paragraph (2), item (iii), (a) (or, for a company with class shares, Article 108, paragraph (2), item (vi)) on the day when the grounds under Article 107, paragraph (2), item (iii), (a) arise:

(i) if there are provisions on the matters set forth in Article 107, paragraph (2), item (iii), (d): holders of the bonds referred to in (d) of that item;

(ii) if there are provisions on the matters set forth in Article 107, paragraph (2), item (iii), (e): share option holder referred to in (e) of that item;

(iii) if there are provisions on the matters set forth in Article 107, paragraph (2), item (iii), (f): holders of the bonds constituting the bonds with share option referred to in (f) of that item, and holders of share options attached to those bonds;

(iv) if there are provisions on the matters set forth in Article 108, paragraph (2), item (vi), (b): holders of the relevant other shares referred to in (b) of that item.

(3) A stock company must notify the shareholders of shares subject to call and registered pledgees of shares thereof without delay after grounds have arisen referred to in Article 107, paragraph (2), item (iii), (a) (if there are provisions regarding the matters set forth in (c) of that item, the holders of shares subject to call determined pursuant to the provisions of paragraph (1) of the preceding Article, and the registered pledgees of shares) to the effect that relevant grounds have arisen; provided, however, that this does not apply if the stock

company has given notice referred to in the provisions of Article 168, paragraph (2) or has given public notice referred to in the provisions of paragraph (3) of that Article.

- (4) A public notice may be substituted for the notice referred to in the provisions of the preceding paragraph.
- (5) The provisions of the preceding paragraphs do not apply if, if the properties provided for in Article 107, paragraph (2), item (iii), (d) through (g) is delivered in exchange for the acquisition of the shares subject to call, the book value of relevant properties exceeds the distributable amount under Article 461, paragraph (2) on the day when the grounds under Article 107, paragraph (2), item (iii), (a) arose.

#### **Subsection 4 Acquisition of Shares Subject to Class-Wide Call**

(Determinations Regarding Acquisition of Shares Subject to Class-Wide Call)

Article 171 (1) A company with class shares which has issued shares subject to class-wide call (meaning the class shares that have provisions with respect to the matters set forth in Article 108, paragraph (1), item (vii) hereof; hereinafter the same applies in this Subsection) may acquire all of the shares subject to class-wide call by a resolution at a shareholders meeting. In these cases, the following matters must be prescribed by a resolution at relevant shareholders meeting:

- (i) if monies, etc. will be delivered in exchange for the acquisition of the shares subject to class-wide call, the following matters with respect to relevant monies, etc. (hereinafter in this Article referred to as "consideration for acquisition"):
- (a) if relevant consideration for acquisition consists of the shares in the stock company, the classes of relevant shares and the number of shares for each class, or the method for calculating the numbers;
- (b) if relevant consideration for acquisition consists of the bonds of the stock company (excluding those with respect to the bonds with share option), the classes of relevant bonds and the total amount of bonds for each class, or the method for calculating the total amounts;
- (c) if consideration for acquisition consists of the share options of the stock company (excluding those attached to bonds with share option), the features and number of relevant share options, or the method for calculating the number;
- (d) if relevant consideration for acquisition consists of the bonds with share option of the stock company, the matters prescribed in (b) above with respect to relevant bonds with share option, and the matters prescribed in (c) above with respect to the share options attached to relevant bonds with

- share option; and
- (e) if relevant consideration for acquisition consists of properties other than the shares, etc. of the stock company, the description and number or value of relevant properties, or the method for calculating the number or value;
  - (ii) in the cases provided for in the preceding item, the matters regarding the allotment of the consideration for acquisition to the shareholders of the shares subject to class-wide call;
  - (iii) the day on which the stock company will acquire the shares subject to class-wide call (hereinafter in this Subsection referred to as "acquisition day").
- (2) The provisions regarding the matters set forth in item (ii) of the preceding paragraph must stipulate that the consideration for acquisition will be allotted in proportion to the number of the shares subject to class-wide call held by the shareholders (excluding the relevant stock company).
- (3) The directors, at the shareholders meeting under paragraph (1) above, must explain the reasons for the need to acquire all of the shares subject to class-wide call.

(Keeping and Inspection of Documents Related to Consideration for Acquisition of Share Subject to Class-Wide Call)

- Article 171-2 (1) A stock company acquiring shares subject to class-wide call must keep documents detailing the information set forth in the items of paragraph (1) of the preceding Article or other information prescribed by Ministry of Justice Order, or electronic or magnetic records in which the information has been recorded, at its head office for the period from the earliest of the following days until the day when six months elapse after the acquisition day:
- (i) the day two weeks before the day of the shareholders meeting under paragraph (1) of the preceding Article (in the case under Article 319, paragraph (1), the day the proposal under that paragraph is made); or
  - (ii) the day of notice pursuant to the provisions of Article 172, paragraph (2) or the day of the public notice under paragraph (3) of that Article, whichever comes first.
- (2) Shareholders of a stock company acquiring share subject to class-wide call may make the following request to relevant stock company at any time during the business hours; provided, however, that the shareholders must pay the cost specified by relevant stock company in order to make a request set forth in items (ii) or (iv):
- (i) a request to inspect documents under the preceding paragraph;
  - (ii) a request for a transcript or extract of documents under the preceding paragraph;



- (iii) a request to inspect anything that is used in the manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and
- (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the stock company has designated, or a request to be issued a document showing that information.

(Demand to Cease Acquisition of Shares Subject to Class-Wide Call)

Article 171-3 If acquisition of shares subject to class-wide call pursuant to the provisions of Article 171, paragraph (1) violates laws and regulations or the articles of incorporation, when shareholders are likely to suffer a disadvantage, shareholders may demand to cease the acquisition of the shares subject to class-wide call from the stock company.

(Petition for the Court to Determine the Price)

Article 172 (1) If the matters set forth in each item of Article 171, paragraph (1) are prescribed, the following shareholders may file a petition for the court to determine the price of the shares subject to class-wide call for the acquisition by the stock company, between twenty days prior the acquisition day and the day immediately preceding the acquisition day:

- (i) shareholders who give notice to relevant stock company to the effect that they dissent from the acquisition by the stock company of the shares subject to class-wide call act prior to relevant shareholders meeting and do dissent from relevant acquisition at that shareholders meeting (limited to those who can exercise voting right at that shareholders meeting);
  - (ii) shareholders who cannot exercise voting right at that shareholders meeting.
- (2) A stock company must notify shareholders of shares subject to class-wide call that the stock company acquires all of the shares subject to class-wide call by twenty days before the acquisition day.
- (3) The notice under the provisions of the preceding paragraph may be substituted with a public notice.
- (4) The stock company must also pay the interest on the price determined by the court at the statutory interest rate from and including the acquisition day.
- (5) A stock company may pay to shareholders the amount that relevant stock company considers to be a fair price until the determination of the price of shares subject to class-wide call for acquisition.

(Effectuation)

Article 173 (1) A stock company acquires shares subject to class-wide call on the acquisition day.

- (2) In the cases set forth in the following items, shareholders of the shares subject to class-wide call other than the stock company (excluding shareholders who file a petition under paragraph (1) of the preceding Article) become the person specified in each of those items in accordance with provisions made by a resolution at the shareholders meeting under Article 171, paragraph (1) on the acquisition day:
- (i) if there are provisions on the matters set forth in Article 171, paragraph (1), item (i), (a): the holders of shares referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth in Article 171, paragraph (1), item (i), (b): the holders of bonds referred to in (b) of that item;
  - (iii) if there are provisions on the matters set forth in Article 171, paragraph (1), item (i), (c): the holders of share option referred to in (c) of that item;
  - (iv) if there are provisions on the matters set forth in Article 171, paragraph (1), item (i), (d): the holders of bonds constituting the bonds with share option referred to in (d) of that item, and holders of the share option attached to those bonds.

(Keeping and Inspection of Documents Related to Acquisition of Shares Subject to Class-Wide Call)

Article 173-2 (1) A stock company must prepare a document or electronic or magnetic record in which it details or records the number of shares subject to class-wide call that the stock company acquired and other information prescribed by Ministry of Justice Order as information related to the acquisition of shares subject to class-wide call, after the acquisition day without delay.

- (2) A stock company must keep the document or electronic or magnetic record referred to in the preceding paragraph at its head office for six months from the acquisition day.
- (3) Shareholders of a stock company that acquired shares subject to class-wide call or persons who were shareholders of shares subject to class-wide call on the acquisition day may make the following requests of the stock company at any time during its business hours; provided, however, that the cost specified by relevant stock company must be paid in order to make a request set forth in items (ii) or (iv):
- (i) a request to inspect documents under the preceding paragraph;
  - (ii) a request for a transcript or extract of documents under the preceding paragraph;
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and
  - (iv) a request to be provided with the information recorded in an electronic or

magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the stock company has designated, or a request to be issued a document showing that information.

### **Subsection 5 Demand for Sale to Heirs**

(Provisions of Articles of Incorporation Regarding Demand for Sale to Heirs)

Article 174 A stock company may provide in the articles of incorporation to the effect that it may demand that a person who has acquired shares (limited to shares with restriction on transfer) in relevant stock company by general succession, including inheritance, sell relevant shares to that stock company.

(Determinations Regarding Demand for Sale)

Article 175 (1) If there are provisions of the articles of incorporation under the provisions of the preceding Article, whenever a stock company intends to effect a demand pursuant to the provisions of paragraph (1) of the following Article, it must prescribe the following matters by a resolution at a shareholders meeting:

- (i) the number of shares for which the stock company intends to effect the demand pursuant to the provisions of paragraph (1) of the following Article (or, for a company with class shares, the classes of the shares and the number of shares for each class); and
  - (ii) the names of the persons who hold the shares under the preceding item.
- (2) The persons under item (ii) of the preceding paragraph may not exercise voting right at the shareholders meeting under that paragraph; provided, however, that this does not apply if all shareholders other than the persons under that paragraph may not exercise the voting right at relevant shareholders meeting.

(Demand for Sale)

Article 176 (1) If a stock company determines the matters set forth in each item of paragraph (1) of the preceding Article, it may demand that the persons under item (ii) of that paragraph sell the shares under item (i) of that paragraph to relevant stock company; provided, however, that this does not apply when one year has lapsed from the day when that stock company acquires knowledge of the general succession, including inheritances.

- (2) Demands pursuant to the provisions of paragraph (1) must be made by disclosing the number of shares relating to relevant demand (or, for a company with class shares, the classes of the shares and the number of shares for each class).
- (3) A stock company may withdraw a demand under the provisions of paragraph

(1) at any time.

(Determination of Sale Price)

Article 177 (1) If notice is given under the provisions of paragraph (1) of the preceding Article, the sale price of the shares under Article 175, paragraph (1), item (i) is prescribed through discussion between the stock company and the persons under item (ii) of that paragraph.

(2) The stock company or persons under Article 175, paragraph (1), item (ii) may file a petition for the court to determine the sale price within twenty days from the day when a demand is made under the provisions of paragraph (1) of the preceding Article.

(3) In order to make the determination under the preceding paragraph, the court must consider the financial conditions of the stock company at the time of the demand pursuant to the provisions of paragraph (1) of the preceding Article and all other circumstances.

(4) Notwithstanding the provisions of paragraph (1), if a petition is made under paragraph (2) within the period provided for in that paragraph, the amount determined by the court in response to relevant petition is to be the sale price of the shares under Article 175, paragraph (1), item (i).

(5) If no petition is made under paragraph (2) within the period provided for in that paragraph (except if the discussions under paragraph (1) are successfully concluded within the period), a demand under the provisions of paragraph (1) of the preceding Article becomes ineffective.

**Subsection 6 Cancellation of Shares**

Article 178 (1) A stock company may cancel its treasury shares. In these cases, the stock company must determine the number of the treasury shares it intends to cancel (or, for a company with class shares, the classes of the shares and the number of treasury shares for each class).

(2) For a company with board of directors, the determination under the provisions of the second sentence of the preceding paragraph must be made by a resolution at a board of directors meeting.

**Section 4-2 Demand for Share Cash-Out of Special Controlling Shareholders**

(Demand for Share Cash-Out)

Article 179 (1) Special controlling shareholders of a stock company (if a person if not less than nine-tenths of the votes of all shareholders of the stock company (if a higher proportion is provided for in the articles of incorporation of that

stock company, that proportion) are held by that person other than that stock company and if a corporation prescribed by Ministry of Justice Order as a stock company all of the issued shares of which are held by that person or one equivalent thereto (hereinafter referred to as "wholly owned subsidiary corporation of the special controlling shareholder" in this Article and paragraph (1) of the following Article), meaning that person; the same applies hereinafter) may demand from all shareholders of relevant stock company (excluding relevant stock company and the special controlling shareholders) to sell all of the shares of that stock company that they hold to relevant special controlling shareholder; provided, however, that these special controlling shareholders may choose not to make a demand to a wholly owned subsidiary corporation of the special controlling shareholder.

- (2) When making a demand pursuant to the provisions of the preceding paragraph (hereinafter referred to as "demand for cash-out" in this Chapter and Article 846-2, paragraph (2), item (i)), a special controlling shareholders may also request from all of the share option holders (excluding subject company and the special controlling shareholders) of a stock company issuing shares for the demand for cash-out (hereinafter referred to as "subject company") to sell all of the share options of the subject company that they have to relevant special controlling shareholders; provided, however, that the special controlling shareholders may choose not to make a demand to a wholly owned subsidiary corporation of the special controlling shareholder.
- (3) When making a demand pursuant to the provisions of the preceding paragraph with regard to share options (hereinafter referred to as "demand for share option cash-out") attached to bonds with share option, special controlling shareholders must also demand to sell all bonds concerning bonds with share option to the special controlling shareholders; provided, however, that this does not apply to cases where it is otherwise provided for with respect to the share options attached to relevant bonds with share option.

#### (Method of Demand for Share Cash-Out)

Article 179-2 (1) The demand for share, etc. cash-out must be made by specifying the matters set forth below:

- (i) when choosing not to make a demand for share, etc. cash-out to a wholly owned subsidiary corporation of the special controlling shareholder, to that effect and the name of relevant wholly owned subsidiary corporation of the special controlling shareholder;
- (ii) the amount of money to be delivered to shareholders who sell shares of the subject company that they hold by demand for cash-out (hereinafter the shareholders are referred to as "shareholders subject to the cash-out") as the value for the shares (hereinafter referred to as "shares subject to the cash-

- out" in this Chapter) or the calculation method;
- (iii) matters related to allotment of money under the preceding item to shareholders subject to the cash-out;
  - (iv) when making a demand for share option cash-out (including the demand pursuant to the provisions of paragraph (3) of the preceding Article if share options related to the demand for share option cash-out is attached to bonds with share option; the same applies hereinafter) along with the demand for cash-out, to that effect and the following matters:
    - (a) when choosing not to make a demand for share option cash-out to a wholly owned subsidiary corporation of the special controlling shareholder, to that effect and the name of the wholly owned subsidiary corporation of the special controlling shareholder;
    - (b) the amount of money to be delivered to a share option holder who sells share options of the subject company that the share option holder holds by the demand for share option cash-out (hereinafter the person is referred to as "share option holder subject to the cash-out") as the value of the share options (if the share option is the one attached to bonds with share option, and making a demand pursuant to the provisions of paragraph (3) of the preceding Article, including bonds for relevant bonds with share option; hereinafter referred to as "share options subject to the cash-out" in this Part) or the calculation method; and
    - (c) matters related to the allotment of money under (b) to a share option holder subject to the cash-out;
  - (v) the day when a special controlling shareholder acquires shares subject to the cash-out (if making a demand for share option cash-out along with the demand for cash-out, shares subject to the cash-out and share options subject to the cash-out; hereinafter referred to as "shares, etc. subject to the cash-out") (hereinafter that day is referred to as "acquisition day" in this Section); and
  - (vi) beyond what is set forth in the preceding items, matters prescribed by Ministry of Justice Order.
- (2) If a subject company is a company with class shares, a special controlling shareholder may stipulate that the allotment of money under item (ii) of the preceding paragraph will be treated differently for each class of shares subject to the cash-out as matters set forth in item (iii) of that paragraph depending on the content of class of shares issued by the subject company, and the content of the different treatment.
- (3) The provisions on matters set forth in paragraph (1), item (iii) must stipulate that money is delivered depending on the number of shares subject to the cash-out (if there are provisions prescribed in the preceding paragraph, the number of shares subject to the cash-out in each class) held by shareholders subject to

the cash-out.

(Approval of Subject Company)

- Article 179-3 (1) When a special controlling shareholder intends to make a demand for cash-out (in cases of making a demand for share option cash-out along with the demand for cash-out, the demand for cash-out and demand for share option cash-out; hereinafter collectively referred to as "demand for share, etc. cash-out"), the special controlling shareholder must notify the subject company to that effect and matters set forth in the items of paragraph (1) of the preceding Article, and must obtain its approval.
- (2) When a special controlling shareholder intends to make a demand for share option cash-out along with the demand for cash-out, the subject company may not approve only the demand for share option cash-out.
- (3) A company with board of directors must make a determination as to whether or not to approve by a resolution of the board of directors meeting.
- (4) When a subject company makes a determination as to whether or not to approve under paragraph (1), it must notify the special controlling shareholder of the content of the determination.

(Notice to Shareholders Subject to the Cash-Out)

- Article 179-4 (1) When a subject company approves under paragraph (1) of the preceding Article, it must notify the persons set forth in the following items of the matters specified in relevant items by twenty days before the acquisition day:
- (i) shareholders subject to the cash-out (if a special controlling shareholder makes a demand for share option cash-out along with the demand for cash-out, shareholders subject to the cash-out and share option holders subject to the cash-out; hereinafter collectively referred to as "shareholders, etc. subject to the cash-out" in this Section): the fact that the approval is granted, name and address of the special controlling shareholder, matters set forth in Article 179-2, paragraph (1), items (i) through (v), and other matters prescribed by Ministry of Justice Order; and
- (ii) registered pledgee of shares subject to the cash-out (if a special controlling shareholder makes a demand for share option cash-out along with the demand for cash-out, registered pledgees of shares of shares subject to the cash-out and registered pledgees of share options of share option subject to the cash-out (relevant registered pledgee of share options means a registered pledgee of share options prescribed in Article 270, paragraph (1))): the fact that relevant approval is granted.
- (2) Notice under the provisions of the preceding paragraph (excluding those for shareholders subject to the cash-out) may be substituted with a public notice.

- (3) When a subject company makes notice pursuant to the provisions of paragraph (1) or public notice under the preceding paragraph, it is deemed that a special controlling shareholder has made a demand for share, etc. cash-out to shareholders, etc. subject to the cash-out.
- (4) The cost for notice pursuant to the provisions of paragraph (1) or public notice under paragraph (2) is paid by the special controlling shareholder.

(Keeping and Inspection of Documents Related to the Demand for Share Cash-Out)

Article 179-5 (1) A subject company must keep documents detailing the following information, or electronic or magnetic records in which the information has been recorded, at its head office for the period from the day of notice pursuant to the provisions of paragraph (1), item (i) of the preceding Article or the day of public notice under paragraph (2) of the same Article, whichever comes first, until the day when six months elapse after the acquisition day (if the subject company is not a public company, one year after the acquisition day):

- (i) name and address of the special controlling shareholder;
  - (ii) matters set forth in the items of Article 179-2, paragraph (1);
  - (iii) the fact that approval under Article 179-3, paragraph (1) is granted; and
  - (iv) beyond what is set forth in the preceding three items, matters prescribed by Ministry of Justice Order.
- (2) Shareholders, etc. subject to the cash-out may make the following requests to the subject company at any time during its business hours; provided, however, that the cost specified by the subject company must be paid for making a request set forth in items (ii) or (iv):
- (i) a request to inspect documents under the preceding paragraph;
  - (ii) a request for a transcript or extract of documents under the preceding paragraph;
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the subject company has designated, or a request to be issued a document showing that information.

(Withdrawal of Demand for Share Cash-Out)

Article 179-6 (1) After obtaining the approval under Article 179-3, paragraph (1), a special controlling shareholder may withdraw the demand for share, etc. cash-out for all shares, etc. subject to the cash-out only if the approval of the subject company is obtained by the day before the acquisition day.



- (2) A company with board of directors must make a determination as to whether or not to approve under the preceding paragraph by a resolution of the board of directors meeting.
- (3) When a subject company makes a determination as to whether or not to approve under paragraph (1), it must notify the special controlling shareholder content of relevant determination.
- (4) When the subject company grants approval under paragraph (1), it must notify shareholders, etc. subject to the cash-out of the fact that the approval is granted without delay.
- (5) The notice pursuant to the provisions of the preceding paragraph may be substituted by a public notice.
- (6) When a subject company makes a notice pursuant to the provisions of paragraph (4) or a notice under the preceding paragraph, the demand for share, etc. cash-out is deemed to be withdrawn for all of shares, etc. subject to the cash-out.
- (7) The cost of the notice pursuant to the provisions of paragraph (4) or the public notice under paragraph (5) is paid by the special controlling shareholder.
- (8) The provisions of the preceding paragraphs apply mutatis mutandis to cases of withdrawing only the demand for share option cash-out. In this case, the phrase "shareholders, etc. subject to the cash-out" in paragraph (4) is deemed to be replaced with "share option holders subject to the cash-out".

(Demand to Cease Acquisition of Shares Subject to the Cash-Out)

Article 179-7 (1) In the following cases, if a shareholder subject to the cash-out is likely to suffer any disadvantages, the shareholder subject to the cash-out may demand to a special controlling shareholder to cease acquisition of all shares, etc. subject to the cash-out related to the demand for share, etc. cash-out:

- (i) if the demand for share, etc. cash-out violates the laws and regulations;
  - (ii) if a subject company violates the provisions of Article 179-4, paragraph (1), item (i) (limited to the portion relating to the notice to shareholders subject to the Cash-Out) or Article 179-5; and
  - (iii) if the matters set forth in Article 179-2, paragraph (1), item (ii) or (iii) are extremely unfair according to financial status of the subject company or other circumstances.
- (2) In the following cases, if a share option holder subject to the cash-out is likely to suffer any disadvantages, the share option holder subject to the cash-out may demand that the special controlling shareholder cease acquisition of all of shares, etc. subject to the cash-out related to the demand for share, etc. cash-out:
- (i) if the demand for share option cash-out violates the laws and regulations;

- (ii) if a subject company violates the provisions of Article 179-4, paragraph (1), item (i) (limited to the portion relating to the notice to share option holder subject to the cash-out) or Article 179-5; and
- (iii) if the matters set forth in Article 179-2, paragraph (1), item (iv), (b) or (c) are extremely unfair according to the financial status of the subject company or other circumstances.

(Petition to Determine the Sale Price)

- Article 179-8 (1) If a demand for shares, etc. cash-out is made, shareholders, etc. subject to the cash-out may file a petition for the court to determine the sale price of their shares, etc. subject to the cash-out, between twenty days prior to the acquisition day and the day immediately preceding the acquisition day.
- (2) A special controlling shareholder must also pay interest on the sale price determined by the court at the statutory interest rate from and including the acquisition day.
- (3) A special controlling shareholder may pay to shareholders, etc. subject to the cash-out the amount that relevant special controlling shareholder considers to be a fair sale price until the determination of the sale price of the shares, etc. subject to the cash-out is made.

(Acquisition of Shares Subject to the Cash-Out)

- Article 179-9 (1) A special controlling shareholder who has made a demand for share, etc. cash-out acquires all of the shares, etc. subject to the cash-out on the acquisition day.
- (2) If shares, etc. subject to the cash-out that a special controlling shareholder acquired pursuant to the provisions of the preceding paragraph are shares with restriction on transfer or share options with restriction on transfer (meaning the share options with restriction on transfer prescribed in Article 243, paragraph (2), item (ii)), it is deemed that the subject company determined to grant an approval under Article 137, paragraph (1) or Article 263, paragraph (1) with respect to the fact that the special controlling shareholder acquires the shares, etc. subject to the cash-out.

(Keeping and Inspection of Documents Related to Acquisition of Shares Subject to the Cash-Out)

- Article 179-10 (1) A subject company must prepare a document or an electronic or magnetic record in which it details or records the number of shares, etc. subject to the cash-out that a special controlling shareholder acquired by the demand for shares, etc. cash-out and other information prescribed by Ministry of Justice Order as information related to the acquisition of shares, etc. subject to cash out related to the demand for shares, etc. cash-out, after the acquisition

day without delay.

- (2) A subject company must keep the document or electronic or magnetic record referred to in the preceding paragraph at its head office for six months from the acquisition day (if the subject company is not a public company, one year after the acquisition day).
- (3) A person who is a shareholder, etc. subject to the cash-out on the acquisition day may make the following requests to a subject company at any time during its business hours; provided, however, that the cost specified by the subject company must be paid for making a request set forth in items (ii) or (iv):
  - (i) a request to inspect documents under the preceding paragraph;
  - (ii) a request for a transcript or extract of documents under the preceding paragraph;
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the subject company has designated, or a request to be issued a document showing that information.

## **Section 5 Consolidation of Shares**

### **Subsection 1 Consolidation of Shares**

(Consolidation of Shares)

Article 180 (1) A stock company may consolidate its shares.

- (2) Whenever a stock company intends to consolidate its shares, it must determine the following matters by a resolution at a shareholders meeting:
  - (i) the ratio of the consolidation;
  - (ii) the day when the consolidation of shares will become effective (hereinafter referred to as "effective day" in this Subsection);
  - (iii) if the stock company is a company with class shares, the classes of the shares it will consolidate; and
  - (iv) the total number of authorized shares on the effective day.
- (3) The total number of authorized shares under item (iv) of the preceding paragraph may not exceed the number four times the number of total issued shares on the effective day; provided, however, that this does not apply if the stock company is not a public company.
- (4) The directors must, at the shareholders meeting referred to in paragraph (2), explain the reasons for the need to consolidate the shares.

(Notices to Shareholders)

Article 181 (1) No later than two weeks prior to the effective day, the stock company must notify the shareholders (or, for a company with class shares , referring to the class shareholders of the classes of shares under paragraph (2), item (iii) of the preceding Article; hereinafter the same applies in this Subsection) and the registered pledgees of the shares thereof of the matters set forth in each item of that paragraph.

(2) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

(Effectuation)

Article 182 (1) On the effective day, the shareholders become shareholders of shares in the number obtained by multiplying the number of shares (or, for a company with class shares , shares of the classes provided for in Article 180, paragraph (2), item (iii); hereinafter the same applies in this paragraph) they held on the day immediately preceding that day, by the ratio provided for in paragraph (2), item (i) of that Article.

(2) A stock company consolidating shares is deemed to have changed the articles of incorporation related to the matters set forth in Article 180, paragraph (2), item (iv) on the effective day in accordance with provisions on those matters.

(Keeping and Inspection of Documents Related to the Consolidation of Shares)

Article 182-2 (1) A stock company consolidating shares (if share units (in cases of a company with class shares, share units of shares of classes under Article 180, paragraph (2), item (iii); hereinafter the same applies in this paragraph) are stipulated in the articles of incorporation, limited to those generating fractional shares with the number obtained by multiplying the rate under paragraph (2), item (i) of the same Article; hereinafter the same applies in this Subsection) must keep documents detailing the information set forth in the items of the same paragraph and other information prescribed by Ministry of Justice Order, or electronic or magnetic records in which the information has been recorded, at its head office for the period from the earliest of the following days until the day when six months elapse after the effective day:

(i) the day two weeks before the day of the shareholders meeting under Article 180, paragraph (2) (if a resolution at a general meeting of class shareholders is required for consolidation of shares, including the general meeting of class shareholders; the same applies in Article 182-4, paragraph (2)) (in cases under Article 319, paragraph (1), the day when the proposal under the same paragraph is made); or

(ii) the day of notice made to shareholders pursuant to the provisions of Article 181, paragraph (1) as applied following the deemed replacement of terms pursuant to the provisions of Article 182-4, paragraph (3), or the day of

- public notice under Article 181, paragraph (2), whichever comes first.
- (2) Shareholders of stock company consolidating shares may make the following request to the stock company at any time during its business hours; provided, however, that the cost specified by the stock company must be paid for making a request set forth in items (i) or (iv):
- (i) a request to inspect documents under the preceding paragraph;
  - (ii) a request for a transcript or extract of documents under the preceding paragraph;
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the stock company has designated, or a request to be issued a document showing that information.

(Demand to Cease Consolidation of Shares)

Article 182-3 If the consolidation of shares violates laws and regulations or the articles of incorporation, when shareholders are likely to suffer disadvantage, shareholders may demand to cease the consolidation of shares from the stock company.

(Dissenting Shareholders' Appraisal Rights)

- Article 182-4 (1) If fractional shares are included in the number of shares when a stock company consolidates shares, dissenting shareholders may demand that the stock company purchase, at a fair price, all of the fractional shares from among shares that they hold.
- (2) "dissenting shareholders" prescribed in the preceding paragraph means the following shareholders:
- (i) a shareholder who gives notice to the stock company that the shareholder is against the consolidation of shares prior to the shareholders meeting under Article 180, paragraph (2) and is against the consolidation of shares at the shareholders meeting (limited to persons who can exercise voting rights at the shareholders meeting); and
  - (ii) a shareholder who cannot exercise voting rights at the shareholders meeting.
- (3) When applying the provisions of Article 181, paragraph (1) to the notice to shareholders if a stock company consolidates shares, the term "two weeks" in the same paragraph is deemed to be replaced with "twenty days".
- (4) To make a demand under the provisions of paragraph (1) (hereinafter in this Section referred to as the "exercise of appraisal rights"), a dissenting

shareholder must indicate the number of shares with regard to which the shareholder is exercising appraisal rights (or, for a company with class shares, the classes of the shares and the number of shares for each class), between twenty days prior to the effective day and the day immediately preceding the effective day.

- (5) When intending to exercise appraisal rights for shares for which share certificates have been issued, shareholders of those shares must submit to the stock company the share certificates representing those shares; provided, however, that this does not apply to a person who made a request under the provisions of Article 223 with respect to the shares.
- (6) Shareholders exercising appraisal rights may withdraw their demands for appraisal only with the approval of the stock company.
- (7) The provisions of Article 133 do not apply to shares that are subject of the exercise of appraisal rights.

(Determination of the Price of Shares)

Article 182-5 (1) If a shareholder exercises appraisal rights and an agreement determining the price of the shares is reached between the shareholder and the stock company, the stock company must pay that price within sixty days from the effective day.

- (2) If no agreement deciding the price of shares is reached within thirty days from the effective day, the shareholders or the stock company may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (6) of the preceding Article, in the cases provided for in the preceding paragraph, if the petition under the same paragraph is not made within sixty days after the effective day, shareholders exercising appraisal rights may withdraw their demands for appraisal at any time after the expiration of that period.
- (4) The stock company must also pay interest on the price determined by the court at the statutory interest rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) The stock company may pay to shareholders the amount the stock company considers as a fair price until the determination of the price of shares.
- (6) A share purchase connected with the exercise of appraisal rights becomes effective on the effective day.
- (7) If a shareholder exercises appraisal rights with respect to shares for which share certificates are issued, the share certificate-issuing company must pay the price of the shares relating to the exercise of the appraisal rights in exchange for the share certificates.

(Keeping and Inspection of Documents Related to Consolidation of Shares)

Article 182-6 (1) A stock company having consolidated shares must prepare a document or an electronic or magnetic record in which it details or records the total number of issued shares at the time when consolidation of shares comes into effect (in cases of a company with class shares, total number of the issued shares of class under Article 180, paragraph (2), item (iii)) and other information prescribed by Ministry of Justice Order as related to the consolidation of shares after the effective day without delay.

(2) A stock company must keep the document or electronic or magnetic record referred to in the preceding paragraph at its head office for six months from the effective day.

(3) Shareholders of a stock company that consolidated shares or persons who were shareholders of the stock company on the effective day may make the following requests from the stock company at any time during its business hours; provided, however, that the cost specified by the stock company must be paid for making a request set forth in items (ii) or (iv):

(i) a request to inspect documents under the preceding paragraph;

(ii) a request for a transcript or extract of documents under the preceding paragraph;

(iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and

(iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the stock company has designated, or a request to be issued a document showing that information.

### **Subsection 2 Share Splits**

(Share Splits)

Article 183 (1) A stock company may split its shares.

(2) Whenever a stock company intends to split its shares, it must prescribe the following matters by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors):

(i) the ratio of the total number of shares after the increase as a result of the share split to the total number of issued shares (or, for a company with class shares, issued shares of the classes under item (iii)) immediately before the share split, and the record date relating to that share split;

(ii) the day when the share split will become effective;

(iii) if the stock company is a company with class shares, the classes of the shares it splits.

(Effectuation)

Article 184 (1) Shareholders that have been entered or recorded in the shareholder register on the record date (or, for a company with class shares, class shareholders of the classes provided for in paragraph (2), item (iii) of the preceding Article that have been entered or recorded in the shareholder register on the record date) acquire, on the day provided for in item (ii) of that paragraph, shares in the number obtained by multiplying the number of shares (or, for a company with class shares, shares of the classes provided for in item (iii) of that paragraph; hereinafter the same applies in this paragraph) they hold on the record date, by the ratio provided for in paragraph (2), item (i) of that Article.

(2) Notwithstanding the provisions of Article 466, a stock company (excluding a stock company that in fact issues two or more classes of shares) may, without a resolution at a shareholders meeting, effect an amendment to the articles of incorporation that is intended to increase the total number of authorized shares on the day provided for in paragraph (2), item (ii) of the preceding Article to the extent of the number obtained by multiplying the total number of authorized shares as of the day immediately preceding that day, by the ratio provided for in item (i) of that paragraph.

### **Subsection 3 Allotment of Shares without Contribution**

(Allotment of Shares without Contribution)

Article 185 A stock company may allot the shares of that stock company to shareholders (or, for a company with class shares, shareholders of certain classes) without requiring them to make additional contribution (hereinafter in this Subsection referred to as "allotment of shares without contribution").

(Determination of Matters Concerning Allotment of Shares without Contribution)

Article 186 (1) Whenever a stock company intends to effect the allotment of shares without contribution, it must prescribe the following matters:

- (i) the number of shares the stock company will allot to shareholders (or, for a company with class shares, the classes of shares and the number of shares for each class), or the method for calculating that number;
- (ii) the day when that allotment of shares without contribution becomes effective; and
- (iii) if the stock company is a company with class shares, the classes of shares held by the shareholders entitled to that allotment of shares without contribution.



- (2) The provisions regarding the matters set forth in item (i) of the preceding paragraph must stipulate that the shares under item (i) of that paragraph will be allotted in proportion to the number of shares (or, for a company with class shares, shares of the classes under item (iii) of that paragraph) held by shareholders (or, for a company with class shares, class shareholders of shares of the classes under item (iii) of that paragraph) other than that stock company.
- (3) The determination of the matters set forth in each item of paragraph (1) must be made by a resolution at a shareholders meeting (or of a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided in the articles of incorporation.

(Effectuation of Allotment of Shares without Contribution)

- Article 187 (1) Shareholders to whom the shares under paragraph (1), item (i) of the preceding Article have been allotted become shareholders of the shares provided for in item (i) of that paragraph on the day provided for in item (ii) of that paragraph.
- (2) Without delay after the day provided for in item (ii) of that paragraph, a stock company must notify shareholders (or, for a company with class shares, class shareholders of the classes under item (iii) of that paragraph) and the registered pledgees of the shares thereof of the number of the shares (or, for a company with class shares, the classes of the shares and the number of shares for each class) that have been allotted to the shareholders.

## **Section 6 Share Units**

### **Subsection 1 General Provisions**

(Share Units)

- Article 188 (1) A stock company may provide in the articles of incorporation, with respect to the shares it issues, to the effect that a fixed number of shares constitutes one unit of shares, which entitles a shareholder to cast one vote at a shareholders meeting or general meeting of class shareholders.
- (2) The fixed number in the preceding paragraph may not exceed the number prescribed by Ministry of Justice Order.
- (3) A company with class shares must provide for the share unit for each class of its shares.

(Restriction on Rights in Relation to Shareholdings Less than One Unit)

- Article 189 (1) Shareholders who hold shares in a number less than one share unit (hereinafter referred to respectively as "holder of shares less than one unit" and "shares less than one unit") may not exercise voting right at a shareholders meeting or general meeting of class shareholders with respect to

their shares less than one unit.

(2) A stock company may provide in the articles of incorporation to the effect that holders of shares less than one unit may not exercise some or all rights, other than the following rights, with respect to the relevant shares less than one unit:

- (i) the right to take delivery of the consideration for acquisition provided for in Article 171, paragraph (1), item (i);
- (ii) the right to take delivery of monies, etc. in exchange for the acquisition by the stock company of shares subject to call;
- (iii) the right to receive the allotment of shares without contribution provided for in Article 185;
- (iv) the right to demand the purchase of the shares less than one unit pursuant to the provisions of Article 192, paragraph (1);
- (v) the right to receive the distribution of residual assets;
- (vi) beyond what is set forth in the preceding items, any matters prescribed by Ministry of Justice Order.

(3) A share certificate-issuing company may provide in the articles of incorporation to the effect that it may elect to not issue share certificates representing shares less than one unit.

#### (Disclosure of Reasons)

Article 190 If the share unit is to be prescribed, the directors must explain the reasons for the need to prescribe relevant share unit at the shareholders meeting at which it is intended to amend the articles of incorporation to prescribe relevant share unit.

#### (Special Provisions on Procedures)

Article 191 Notwithstanding the provisions of Article 466, a stock company may effect an amendment to the articles of incorporation that will increase the size of the share unit (or, for a company with class shares, the size of the share unit for the shares of each class; hereinafter the same applies in this Article) or create the provisions in the articles of incorporation with respect to the share unit without a resolution at a shareholders meeting, in cases that fall under both of the following items:

- (i) that the amendment will increase the size of the share unit simultaneously with a share split, or create the provisions in the articles of incorporation with respect to the share unit; and
- (ii) that the number provided for in (a) below is not less than the number provided for in (b) below:
  - (a) the number obtained by dividing the number of the shares held by each shareholder after the amendment to the articles of incorporation by the

share unit;

- (b) the number of the shares held by each shareholder before relevant amendment to the articles of incorporation (or, if the share unit is prescribed, the number obtained by dividing the number of relevant shares by the share unit).

### **Subsection 2 Demand for Purchase from Holder of Shares Less than One Unit**

(Demand for Purchase of Holder of Shares Less than One Unit)

Article 192 (1) Holders of shares less than one unit may demand that the stock company purchase the shares less than one unit that they hold.

- (2) A demand under the provisions of the preceding paragraph must be made by disclosing the number of the shares less than one unit relating to that demand (or, for a company with class shares, the classes of the shares less than one unit and the number of shares for each class).
- (3) A holder of shares less than one unit who makes a demand pursuant to the provisions of paragraph (1) may withdraw relevant demand only if the approval of the stock company is obtained.

(Determination of Price of Shares Less than One Unit)

Article 193 (1) If the demand pursuant to the provisions of paragraph (1) of the preceding Article is made, the amount provided for in each of the following items in accordance with the categories of the cases set forth in relevant items is to be the price of the shares less than one unit relating to relevant demand:

- (i) if the shares less than one unit are shares with a market price, the amount calculated by the method prescribed by Ministry of Justice Order as the market price of relevant shares less than one unit;
- (ii) in cases other than the cases set forth in the preceding item, the amount prescribed through discussions between the stock company and the holder of shares less than one unit who made the demand under the provisions of paragraph (1) of the preceding Article.
- (2) In the cases set forth in item (ii) of the preceding paragraph, the holder of shares less than one unit who made the demand pursuant to the provisions of paragraph (1) of the preceding Article, or the stock company, may file a petition for the court to determine the price within twenty days from the day when relevant demand is made.
- (3) In order to make the determination under the preceding paragraph, the court must consider the financial condition of the stock company at the time of the demand pursuant to the provisions of paragraph (1) of the preceding Article and all other circumstances.

- (4) Notwithstanding the provisions of paragraph (1), if petition is filed under paragraph (2) within the period provided for in that paragraph, the amount determined by the court in response to relevant petition is to be the price of the shares less than one unit.
- (5) Notwithstanding the provisions of paragraph (1), in the cases set forth in item (ii) of that paragraph, if no petition is filed under paragraph (2) within the period provided for in that paragraph (except if the discussions under paragraph (1), item (ii) are successfully concluded within the period), the sale price of the shares less than one unit is to be the amount obtained by multiplying the amount of the net assets per share by the number of the shares less than one unit related to the demand pursuant to the provisions of paragraph (1) of the preceding Article.
- (6) The purchase of the shares related to the demand pursuant to the provisions of paragraph (1) of the preceding Article becomes effective as at payment for the shares.
- (7) If a holder of shares less than one unit makes a demand pursuant to the provisions of paragraph (1) of the preceding Article with respect to shares for which share certificates are issued, the share certificate-issuing company must pay the price of the shares related to the demand in exchange for the share certificates.

### **Subsection 3 Demand for Sale to Holder of Shares Less than One Unit**

Article 194 (1) A stock company may provide in the articles of incorporation to the effect that a holder of shares less than one unit may submit to relevant stock company a demand for the sale of shares less than one unit (meaning a demand that the stock company sell to a holder of shares less than one unit the number of shares which, together with the number of shares less than one unit held by relevant holder of shares less than one unit, will constitute one share unit; hereinafter the same applies in this Article).

- (2) Demand for the sale of shares less than one unit must be made by disclosing the number of the shares less than one unit to be sold to relevant holder of shares less than one unit (or, for a company with class shares, the classes of the shares less than one unit and the number of shares for each class).
- (3) A stock company that is subject to a demand for the sale of shares less than one unit must sell its treasury shares to relevant holders of shares less than one unit, unless the stock company does not hold, at the time of reception of relevant demand for the sale of shares less than one unit, treasury shares in a number corresponding to the number of the shares less than one unit provided for in the preceding paragraph.
- (4) The provisions of Article 192, paragraph (3), and paragraph (1) to paragraph

(6) of the preceding Article apply mutatis mutandis to demand for the sale of shares less than one unit.

#### **Subsection 4 Changes in Share Unit**

Article 195 (1) Notwithstanding the provisions of Article 466, a stock company may decrease the size of the share unit or abolish the provisions of the articles of incorporation with respect to the share unit by effecting an amendment to the articles of incorporation by decision of the directors (or a resolution at a board of directors meeting for a company with board of directors).

(2) If an amendment is made in the articles of incorporation pursuant to the provisions of the preceding paragraph, the stock company must, without delay after the day of the effectuation of relevant amendment to the articles of incorporation, notify its shareholders (or, for a company with class shares, its class shareholders of the classes for which the share unit has been changed pursuant to the provisions of that paragraph) to the effect that relevant amendment to the articles of incorporation has been made.

(3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

#### **Section 7 Omission of Notices to Shareholders**

(Omission of Notices to Shareholders)

Article 196 (1) If notices or demands from a stock company do not reach a shareholder for five consecutive years or more, the stock company is no longer required to give notices or issue demands to relevant shareholder.

(2) In the cases provided for in the preceding paragraph, the address of the stock company is to be the place where the obligation of the stock company with regard to the shareholder under that paragraph is performed.

(3) The provisions of the preceding two paragraphs apply mutatis mutandis to registered pledgees of shares.

(Auction of Shares)

Article 197 (1) A stock company may sell shares that fall under both of the following items by auction and tender the proceeds thereof to the shareholders of relevant shares:

(i) that there is no requirement to give notice or issue a demand to the shareholder of relevant shares pursuant to the provisions of paragraph (1) of the preceding Article, or Article 294, paragraph (2); and

(ii) that the shareholders of those shares have not received dividends of surplus for consecutive five years.

- (2) In lieu of sale by auction under the provisions of the preceding paragraph, a stock company may sell shares under that paragraph with a market price in an amount calculated by the method prescribed by Ministry of Justice Order as the market price thereof, and shares under that paragraph without a market price using a method other than auction with the permission of the court. In these cases, if there are two or more directors, the petition for the permission must be filed with the consent of all directors.
- (3) The stock company may purchase some or all of the shares sold under the provisions of the preceding paragraph. In these cases, the stock company must prescribe the following matters:
- (i) the number of shares to be purchased (or, for a company with class shares, the classes of shares and the number of shares for each class);
  - (ii) the total amount of the monies to be delivered in exchange for the purchase of the shares in the preceding item.
- (4) A company with board of directors must determine the matters set forth in each item of the preceding paragraph by a resolution at a board of directors meeting.
- (5) Notwithstanding the provisions of paragraph (1) and paragraph (2), if there are registered pledgees of shares, the stock company may effect the auction under the provisions of paragraph (1), or the sale pursuant to the provisions of paragraph (2), only if relevant registered pledgees of shares are the persons who fall under both of the following items:
- (i) that there is no requirement to give notice or issue a demand to those persons under the provisions paragraph (1) of the preceding Article applied *mutatis mutandis* under paragraph (3) of that paragraph; and
  - (ii) that the persons have not received the dividends of surplus to which they are entitled under the provisions of Article 154, paragraph (1) for consecutive five years.

(Objections of Interested Parties)

- Article 198 (1) If a stock company effects an auction under the provisions of paragraph (1) of the preceding Article, or a sale under the provisions of paragraph (2) of that Article, the stock company must give public notice to the effect that interested parties, including the shareholders of the shares provided for in paragraph (1) of that Article, may state their objections during a certain period of time, and other matters prescribed by Ministry of Justice Order, and must issue separate demands seeking the objections, if any, to each shareholder of relevant shares and each registered pledgee of shares thereof; provided, however, that the period cannot be less than three months.
- (2) Notwithstanding the provisions of Article 126, paragraph (1) and Article 150, paragraph (1), the demands under the provisions of the preceding paragraph

must be sent to the addresses of relevant shareholders and registered pledgees of shares which have been entered or recorded in the shareholder register (or, if relevant shareholders or registered pledgees of shares notify relevant stock company of a different place or contact address for the receipt of notices or demands, to that place or contact address).

- (3) Notwithstanding the provisions of Article 126, paragraphs (3) and (4), if a share is co-owned by two or more persons, the demand pursuant to the provisions of paragraph (1) must be sent to the address of the co-owners which has been entered or recorded in the shareholder register (or, if relevant co-owners notify relevant stock company of a different place or contact address for the receipt of notices or demands, to that place or contact address).
- (4) The provisions of Article 196, paragraph (1) (including cases where it is applied mutatis mutandis under paragraph (3) of that paragraph) do not apply to demands under the provisions of paragraph (1).
- (5) If public notice is given under the provisions of paragraph (1) (limited to cases where share certificates representing the shares under paragraph (1) of the preceding Article have been issued), and no interested party raises any objection within the period under paragraph (1), the share certificates representing those shares become invalid on the last day of that period.

## **Section 8 Issuing Shares for Subscription**

### **Subsection 1 Determination of Subscription Requirements**

(Determination of Subscription Requirements)

Article 199 (1) Whenever a stock company intends to solicit persons to subscribe for shares it issues or for treasury shares it disposes of, the stock company must prescribe the following matters with respect to the shares for subscription (meaning shares the stock company allots to persons who subscribed for those shares in response to the solicitation; hereinafter the same applies in this Section):

- (i) the number of shares for subscription (or, for a company with class shares, the classes and the number of the shares for subscription; hereinafter the same applies in this Section);
- (ii) the amount to be paid in (meaning the amount of the monies to be paid in in exchange for one of the shares for subscription, or the amount of any property other than monies to be contributed; hereinafter the same applies in this Section) for the shares for subscription or the method for calculating the amount;
- (iii) if property other than monies will be the subject of the contribution, a statement to that effect and the description and value of relevant property;
- (iv) the day or period for the payment of the monies in exchange for the shares

for subscription, or the contribution of the property under the preceding item;

- (v) if shares are issued, matters regarding the capital and capital reserves that is to be increased.
- (2) The determination of the matters set forth in each item of the preceding paragraph (hereinafter in this Section referred to as "subscription requirements") must be made by a resolution at a shareholders meeting.
- (3) If the amount to be paid in under paragraph (1), item (ii) is particularly favorable to subscribers for the shares for subscription, the directors must, at the shareholders meeting under the preceding paragraph, explain the reasons for the need to solicit these persons with such an offer of the amount to be paid in.
- (4) For a company with class shares, if the class of the shares for subscription under paragraph (1), item (i) is that of shares with restriction on transfer, the determination of the subscription requirements regarding the class of shares does not become effective without a resolution at the relevant general meeting of class shareholders, except if there are provisions in the articles of incorporation to the effect that, with respect to the solicitation of subscribers for relevant class shares, a resolution at the general meeting of class shareholders constituted by the class shareholders of relevant class shares is not required; provided, however, that this does not apply to cases where there is no class shareholder who can exercise voting right at relevant general meeting of class shareholders.
- (5) The subscription requirements must be uniform for each solicitation under paragraph (1).

(Delegation of Determination of Subscription Requirements)

Article 200 (1) Notwithstanding the provisions of paragraphs (2) and (4) of the preceding Article, at a shareholders meeting, the determination of the subscription requirements may be delegated to the directors by a resolution at the relevant shareholders meeting (or, for a company with board of directors, of the board of directors). In these cases, the shareholders meeting must prescribe the maximum number of the shares for subscription for which the subscription requirements may be determined under that delegation, and the minimum amount to be paid in.

- (2) If the minimum amount to be paid in in the preceding paragraph is particularly favorable to subscribers for the shares for subscription, the directors must, at the shareholders meeting under that paragraph, explain the reason for the need to solicit that persons with such an offer of the amount to be paid in.
- (3) The resolution under paragraph (1) is effective with respect only to



solicitations under paragraph (1) of the preceding Article under which the date in item (iv) of that paragraph (if a period is determined under that item, the last day of the period) falls within one year from the day of relevant resolution.

(4) For a company with class shares, if the class of the shares for subscription under paragraph (1) is that of shares with restriction on transfer, the delegation of the determination of the subscription requirements regarding relevant class shares does not become effective without a resolution at the general meeting of class shareholders constituted by the class shareholders of relevant class shares, except if there are provisions in the articles of incorporation under paragraph (4) of the preceding Article with respect to relevant class shares; provided, however, that this does not apply to cases where there is no class shareholder who can exercise voting right at relevant general meeting of class shareholders.

(Special Provisions on Determination of Subscription Requirements for Public Company)

Article 201 (1) Except for cases provided for in Article 199, paragraph (3), for the purpose of the application of the provisions of paragraph (2) of that Article to a public company, the term "shareholders meeting" in that paragraph is deemed to be replaced with "board of directors meeting". In these cases, the provisions of the preceding Article do not apply.

(2) If subscription requirements are determined by a resolution at the board of directors meeting provided for in Article 199, paragraph (2) applied following the deemed replacement of terms pursuant to the provisions of the preceding paragraph, if a public company solicits subscribers for shares with a market price, it may prescribe, in lieu of the matters set forth in paragraph (1), item (ii) of that Article, the method for determining the amount to be paid in that is appropriate to realize payment in at a fair value.

(3) If a public company has determined subscription requirements by a resolution at the board of directors meeting provided for in Article 199, paragraph (2) applied following the deemed replacement of terms pursuant to the provisions of paragraph (1), that public company must notify the shareholders of relevant subscription requirements (if the method for determining the amount to be paid in has been prescribed, including that method; hereinafter the same applies in this Section) no later than two weeks prior to the day referred to in paragraph (1), item (iv) of that Article (or, if a period has been prescribed under that item, no later than two weeks prior to the first day of that period).

(4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

(5) The provisions of paragraph (3) do not apply in cases prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of

shareholders is compromised, including cases where, with respect to subscription requirements, the stock company has submitted, no later than two weeks prior to the date provided for in that paragraph, a notice under Article 4, paragraphs (1) through (3) of the Financial Instruments and Exchange Act.

(Cases Where Entitlement to Allotment of Shares Is Granted to Shareholders)

Article 202 (1) In carrying out solicitation under Article 199, paragraph (1), the stock company may grant entitlement to the allotment of shares to its shareholders. In these cases, the stock company must prescribe the following matters in addition to the subscription requirements:

- (i) a statement to the effect that the stock company will grant entitlement to the allotment of the shares for subscription of that stock company (or, for a company with class shares, class shares identical to the class shares held by relevant shareholders) to shareholders, subject to the application provided for in paragraph (2) of the following Article;
  - (ii) the day for the application for subscription for the shares for subscription referred to in the preceding item.
- (2) In the cases provided for in the preceding paragraph, the shareholders under item (i) of that paragraph (excluding the stock company) are entitled to the allotment of the shares for subscription in accordance with the number of shares they hold; provided, however, that if the number of the shares for subscription to be allotted to the shareholders includes a fractional share, it is to be rounded off.
- (3) If the stock company prescribes the matters set forth in each item of paragraph (1), the subscription requirements and the matters set forth in each item of that paragraph must be prescribed in accordance with the categories of the cases set forth in the following items, by the methods provided for in each of these items:
- (i) if there are provisions in the articles of incorporation to the effect that relevant subscription requirements and the matters set forth in each item of paragraph (1) may be prescribed by decision of the directors (excluding the cases where the stock company is a company with board of directors): a decision of the directors;
  - (ii) if there are provisions in the articles of incorporation to the effect that relevant subscription requirements and the matters set forth in each item of paragraph (1) may be prescribed by a resolution of the board of directors meeting (excluding the cases set forth in the following item): a resolution of the board of directors meeting;
  - (iii) if the stock company is a public company: a resolution of the board of directors meeting;
  - (iv) in cases other than those set forth in the preceding three items: a

resolution at a shareholders meeting.

- (4) If a stock company prescribes the matters set forth in each item of paragraph (1), the stock company must notify the shareholders under item (i) of that paragraph (excluding relevant stock company) of the following matters no later than two weeks prior to the date provided for in item (ii) of that paragraph:
- (i) the subscription requirements;
  - (ii) the number of shares for subscription to be allotted to relevant shareholders; and
  - (iii) the date provided for in paragraph (1), item (ii).
- (5) The provisions of Article 199, paragraphs (2) through (4) and the preceding two Articles do not apply if entitlement to the allotment of shares is granted to shareholders under the provisions of paragraphs (1) through (3) hereof.

(Special Provisions on Determination of Subscription Requirements Relating to Director Remuneration)

Article 202-2 (1) When a stock company that has issued shares that are set forth on a financial instruments exchange provided for in Article 2, paragraph (16) of the Financial Instruments and Exchange Act solicits persons to subscribe for shares it issues or for treasury shares it disposes of in accordance with the provisions on the matters set forth in Article 361, paragraph (1), item (iii) pursuant to its articles of incorporation or a resolution of the shareholders meeting, it is not necessary to determine the matters set forth in Article 199, paragraph (1), item (ii) and item (iv). In these cases, the stock company must decide the following matters concerning the shares for subscription:

- (i) that the issuance of shares or disposal of treasury shares relating to the subscription is intended as remuneration of directors (meaning remuneration as provided in Article 361, paragraph (1); the same applies in Article 236, paragraph (3), item (i)) and that the payment of the monies or contribution of property in exchange for the shares for subscription provided for in Article 199, paragraph (1), item (iii) is not required; and
  - (ii) the day of allotment of the shares for subscription (hereinafter in this Section referred to as the "day of allotment").
- (2) For the purpose of the application of the provisions of Article 199, paragraph (2) if the matters set forth in the items of the preceding paragraph are determined, the term "items of the preceding paragraph" in Article 199, paragraph (2) is deemed to be replaced with "items of the preceding paragraph (excluding item (ii) and item (iv)) and the items of Article 202-2, paragraph (1)". In these cases, the provisions of Article 200 and the preceding Article do not apply.
- (3) For the purpose of application of the provisions of paragraph (1) by a company with nominating committee, etc., the phrase "the provisions on the matters set

forth in Article 361, paragraph (1), item (iii) pursuant to its articles of incorporation or a resolution of the shareholders meeting" in that paragraph is deemed to be replaced with "decision on the matters provided for in Article 409, paragraph (3), item (iii) by the remuneration committee" and the term "director" is deemed to be replaced with "executive officer or director".

### **Subsection 2 Allotment of Shares for Subscription**

(Applications for Shares for Subscription)

Article 203 (1) A stock company must notify persons who intend to subscribe for shares for subscription in response to solicitation in Article 199, paragraph (1) of the matters set forth in the following items:

- (i) the trade name of the stock company;
- (ii) the subscription requirements;
- (iii) if any money payment is to be made, the place where payments are handled;
- (iv) beyond what is set forth in the preceding three items, matters prescribed by Ministry of Justice Order.

(2) A person who submits an application to subscribe for shares for subscription in response to solicitation in Article 199, paragraph (1) must deliver a document giving the following information:

- (i) the name and address of the person applying;
- (ii) the number of shares for subscription for which the person intends to subscribe.

(3) A person who submits an application under the preceding paragraph may, in lieu of delivering a document as referred to in that paragraph, provide the information that is required to be detailed in the document referred to in that paragraph by electronic or magnetic means, with the approval of the stock company and pursuant to the provisions of Cabinet Order. In these cases, the person who submitted the application is deemed to have delivered the document under that paragraph.

(4) The provisions of paragraph (3) do not apply if the stock company has issued a prospectus provided for in Article 2, paragraph (10) of the Financial Instruments and Exchange Act that states the matters set forth in each item of that paragraph to a person who intends to submit the application in paragraph (1), and in other cases prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of persons who intend to submit applications for subscription for shares for subscription is compromised.

(5) If there are changes in the matters set forth in each item of paragraph (1), the stock company must immediately notify persons who have submitted applications in paragraph (2) (hereinafter in this Subsection referred to as

"applicants") thereof and of the matters so changed.

- (6) It is sufficient for a notice or demand to an applicant to be sent by the stock company to the address under paragraph (2), item (i) (or, if the applicant notifies the stock company of a different place or contact address for the receipt of notices or demands, to the place or contact address).
- (7) The notices or demands referred to in the preceding paragraph are deemed to have arrived at the time when that notice or demand should normally have arrived.

#### (Allotment of Shares for Subscription)

Article 204 (1) A stock company must specify the persons to whom shares for subscription will be allotted from among the applicants and the number of shares for subscription to be allotted to those persons. In these cases, the stock company may reduce the number of shares for subscription the stock company allots to the applicants below the number under paragraph (2), item (ii) of the preceding Article.

- (2) If shares for subscription are shares with restriction on transfer, the determination under the provisions of the preceding paragraph must be made by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise prescribed in the articles of incorporation.
- (3) The stock company must notify the applicants, no later than the day immediately preceding the date referred to in Article 199, paragraph (1), item (iv) (or, if a period is prescribed under that item, no later than the day immediately preceding the first day of that period), of the number of shares for subscription that will be allotted to relevant applicants.
- (4) If the stock company has granted entitlement to the allotment of shares to its shareholders pursuant to the provisions of Article 202, if the shareholders do not submit, no later than the date under item (ii), paragraph (1) of that Article, applications under paragraph (2) of the preceding Article, relevant shareholders will lose the entitlement to the allotment of shares for subscription.

#### (Special Provisions on Subscription and Allotment of Shares for Subscription)

- Article 205 (1) The provisions of the preceding two Articles do not apply if a person who intends to subscribe for shares for subscription executes a contract for subscription for the total number of those shares.
- (2) In the case prescribed in the preceding paragraph, if shares for subscription are shares with restriction on transfer, the stock company must obtain approval of the contract referred to in the same paragraph by the resolution at shareholders meeting (or at a the board of directors meeting for a company with

board of directors); provided, however, that this does not apply if it is otherwise prescribed in the articles of incorporation.

- (3) If there are provisions on the matters set forth in each item of Article 202-2, paragraph (1) pursuant to the provisions of the second sentence of that paragraph, a person other than a director (including a person who was a director) related to provisions regarding the matters set forth in Article 361, paragraph (1), item (iii) pursuant to the articles of incorporation or a resolution of a shareholders meeting may not make an application provided in Article 203, paragraph (2) or enter into an agreement provided in paragraph (1).
- (4) For the purpose of the application of the provisions of paragraph (3) of the preceding Article and Article 206-2, paragraph (1), paragraph (3), and paragraph (4), in the cases provided in the preceding paragraph, the phrases "the date referred to in Article 199, paragraph (1), item (iv) (or, if a period is prescribed under that item, no later than the first day of that period)" in paragraph (3) of the preceding Article and Article 206-2, paragraph (1) and "the day prescribed in the same paragraph" in paragraph (3) of the preceding Article and Article 206-2, paragraph (1) and "the day specified in paragraph (1) in paragraph (4) of that article are deemed to be replaced with "the day of allotment."
- (5) For the purpose of application of the provisions of paragraph (3) by a company with nominating committee, etc., the phrase "the provisions regarding the matters set forth in Article 361, paragraph (1), item (iii) pursuant to the articles of incorporation or a resolution of the shareholders meeting" in that paragraph is deemed to be replaced with "decision on the matters provided for in Article 409, paragraph (3), item (iii) by the remuneration committee" and the term "director "is deemed to be replaced with "executive officer or director."

(Subscription for Shares for Subscription)

Article 206 the persons set forth in the following items will be the subscribers for shares for subscription with respect to the number of shares for subscription prescribed in each of relevant items:

- (i) applicants: the number of the shares for subscription allotted by the stock company; or
- (ii) A person who subscribed for all of the shares for subscription under a contract in paragraph (1) of the preceding Article: the number of shares for subscription for which that person has subscribed.

(Special Provisions on Allotment of Shares for Subscription of a Public Company)

Article 206-2 (1) If the rate of the number set forth in item (I) to the number set

forth in item (ii) exceeds 50% with regard to a subscriber for shares for subscription, a public company must notify shareholders of the name or address of the subscriber (hereinafter referred to as "special subscriber" in this paragraph and paragraph (4)), the number set forth in item (I) with respect to the special subscriber, and other matters prescribed by Ministry of Justice Order by two weeks before the day referred to in Article 199, paragraph (1), item (iv) (if the period referred to in the same item is specified, the first day of the period); provided however that this does not apply to cases where the special subscriber is a parent company, etc. of the public company or where the right to obtain the allotment of shares is granted to shareholders pursuant to the provisions of Article 202:

- (i) the number of votes that the subscriber (including its subsidiary companies, etc.) will hold when the subscriber becomes a shareholder of shares for subscription that the subscriber subscribed; and
  - (ii) the number of votes of all shareholders if all subscribers of the shares for subscription become shareholders of shares for subscription that they subscribed.
- (2) The notice pursuant to the provisions of the preceding paragraph may be substituted with a public notice.
- (3) Notwithstanding the provisions of paragraph (1), if a stock company has made a notification under Article 4, paragraphs (1) through (3) of the Financial Instruments and Exchange Act with respect to the matters referred to in paragraph (1) of this Article by two weeks before the day prescribed in the same paragraph, or where it is prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of shareholders is compromised, the notice pursuant to the provisions of paragraph (1) is not required.
- (4) When a shareholder holding one-tenth or more (if lesser proportion is prescribed in the articles of incorporation, the proportion) of the votes of all shareholders (excluding shareholders who cannot exercise voting rights in the shareholders meeting set forth in this paragraph) makes a notice to a public company that the shareholder is against subscription for shares for subscription by a special subscriber (including its subsidiary companies, etc.; hereinafter the same applies in this paragraph) within two weeks from the day of notice pursuant to the provisions of paragraph (1) or the day of public notice referred to in paragraph (2) (in the case set forth in the preceding paragraph, the day specified by Ministry of Justice Order), the public company must obtain approval for the allotment of shares for subscription to the special subscriber or for the contract referred to in Article 205, paragraph (1) with the special subscriber by the resolution at the shareholders meeting by the day before the day specified in paragraph (1); provided, however, that this does not apply if the public company's financial condition has deteriorated greatly and

there is an urgent necessity in order for the public company to continue in business.

- (5) Notwithstanding the provisions of Article 309, paragraph (1), the resolution at the shareholders meeting referred to in the preceding paragraph must be passed by attendance of the shareholders holding a majority of votes out of the shareholders who can exercise voting rights (if one third or more of the proportion is stipulated by the articles of incorporation, the proportion or more) and by a majority of voting rights of the shareholders presents (if any proportion higher than that is provided for in the articles of incorporation, the proportion or more).

### **Subsection 3 Contribution of Property Other than Monies**

Article 207 (1) If a stock company has prescribed the matters set forth in Article 199, paragraph (1), item (iii), the stock company must file a petition to the court, without delay after the determination of the subscription requirements, for the appointment of an inspector in order to have the inspector investigate the value of the property provided for in that item (hereinafter in this Section referred to as "property contributed in kind").

- (2) If the petition referred to in the preceding paragraph has been filed, the court must appoint an inspector, except if it dismisses the petition as unlawful.
- (3) If the court has appointed the inspector under the preceding paragraph, it may fix the amount of the remuneration that the stock company pays to relevant inspector.
- (4) The inspector referred to in paragraph (2) must conduct the necessary investigation and submit a report to the court by providing it with a document detailing the results of the investigation or with an electronic or magnetic record (limited to one as prescribed by Ministry of Justice Order) in which these have been recorded.
- (5) If the court finds it necessary to clarify the contents of the report under the preceding paragraph or to confirm the grounds supporting that report, it may request that the inspector referred to in the paragraph (2) submit a further report referred to in the preceding paragraph.
- (6) If the inspector referred to in the paragraph (2) has submitted the report referred to in paragraph (4), the inspector must deliver a copy of the document referred to in that paragraph to the stock company or use a means prescribed by Ministry of Justice Order to provide it with the information recorded in the electronic or magnetic record referred to in that paragraph.
- (7) If the court receives a report referred to in the paragraph (4), if it finds the value provided for in Article 199, paragraph (1), item (iii) with respect to property contributed in kind (excluding a value not subjected to investigation



by the inspector referred to in the paragraph (2)) to be improper, it must issue a ruling changing that value.

- (8) If the value of property contributed in kind has been changed, in whole or in part, because of a ruling under the preceding paragraph, the subscriber for shares for subscription (limited to a person who tenders property contributed in kind; hereinafter the same applies in this Article) may rescind the manifestation of intention relating to applications for subscription for shares for subscription or relating to the contract provided for in Article 205, paragraph (1), limited to within one week from the finalization of that ruling.
- (9) The provisions of the preceding paragraphs do not apply in the cases in each of the following items with respect to the matters prescribed respectively in those items:
- (i) if the total number of the shares to be allotted to the subscribers for the shares for subscription does not exceed one tenth of the total number of issued shares: the value of the property contributed in kind tendered by the subscribers for relevant shares for subscription;
  - (ii) if the total sum of the value provided for under Article 199, paragraph (1), item (iii) with respect to the property contributed in kind does not exceed 5,000,000 yen: the value of relevant property contributed in kind;
  - (iii) if the value of the securities with market price provided for under Article 199, paragraph (1), item (iii) with respect to property contributed in kind does not exceed the value calculated by the method prescribed by Ministry of Justice Order as the market price of the securities: the value of the property contributed in kind with respect to the securities;
  - (iv) if the verification of an attorney, a legal professional corporation, a lawyer and registered foreign lawyer joint corporation, a certified public accountant, an audit corporation, a certified public tax accountant or a tax accountancy corporation (or if the property contributed in kind consist of real estate, relevant verification and an appraisal by a real estate appraiser; hereinafter the same applies in this item) is obtained with respect to the reasonableness of the value provided for under Article 199, paragraph (1), item (iii) with respect to property contributed in kind: the value of the property contributed in kind for which verification has been obtained;
  - (v) if the property contributed in kind consist of a money claim (limited to claims that have already fallen due) to the stock company, and the value provided for under Article 199, paragraph (1), item (iii) with respect to the money claim does not exceed the book value of the debt representing relevant monetary claim: the value of the property contributed in kind with respect to relevant monetary claim.
- (10) None of the following persons can provide the verification provided in item (iv) of the preceding paragraph:

- (i) a director, an accounting advisor, a company auditor or executive officer, or an employee including a manager;
- (ii) a subscriber for shares for subscription;
- (iii) a person who is subject to a suspension of operations for whom the period of that suspension has not elapsed yet; or
- (iv) a legal profession corporation, a lawyer and registered foreign lawyer joint corporation, an audit corporation or a tax accountancy corporation with respect to which more than half of its members are persons who fall under either item (i) or item (ii) above.

#### **Subsection 4 Performance of Contributions**

(Performance of Contributions)

Article 208 (1) Subscribers for shares for subscription (excluding persons who tender property contributed in kind) must, on the date or within the period provided for in Article 199, paragraph (1), item (iv), pay in the entire amount to be paid in for the shares for subscription for which the subscribers respectively subscribed, at the bank, etc. designated by the stock company as the place for the handling of payments.

(2) Subscribers for shares for subscription (limited to persons who tender property contributed in kind) must, on the date or within the period provided for in Article 199, paragraph (1), item (iv), deliver the property contributed in kind equivalent in value to the entire amount to be paid in of the shares for subscription for which the subscribers respectively subscribed.

(3) Subscribers for shares for subscription may not set off their obligations to effect payment under the provisions of paragraph (1) or delivery under the provisions of the preceding paragraph (hereinafter in this subsection referred to as "performance of contribution") against claims they have against the stock company.

(4) Transferring of the right to become a shareholder of shares for subscription by effecting the performance of contribution cannot be asserted against the stock company.

(5) A subscriber for shares for subscription will lose a right to become the shareholder of shares for subscription by effecting the performance of contribution if the subscriber fails to effect the performance of contribution.

(Timing of Shareholder Status)

Article 209 (1) In the cases set forth in the following items, a subscriber for shares for subscription becomes the shareholder of the shares for subscription for which the subscriber effects the performance of contribution on the day prescribed in each of these items:

- (i) if a date under Article 199, paragraph (1), item (iv) is prescribed: relevant date; and
  - (ii) if a period under Article 199, paragraph (1), item (iv) is prescribed: the day on which the performance of contribution is effected.
- (2) In the cases set forth in the items of Article 213-2, paragraph (1), a subscriber of shares for subscription may not exercise the rights of shareholders with respect to shares for subscription for which the performance of contribution is falsified, only after the payment prescribed in those items or the payment pursuant to the provisions of Article 213-3, paragraph (1) is made.
- (3) A person who accepts transfer of shares for subscription as referred to in the preceding paragraph may exercise the right of shareholders with respect to the shares for subscription; provided, however, that this does not apply when the person has acted in bad faith or with gross negligence.
- (4) Notwithstanding the provisions of paragraph (1), if there are provisions with respect to the matters set forth in each item of Article 202-2, paragraph (1) pursuant to the provisions of the second sentence of that paragraph, a subscriber for shares for subscription becomes the shareholder of the shares for subscription that the subscriber subscribed to on the day of allotment.

#### **Subsection 5 Demanding Cessation of Issuing Shares for Subscription**

Article 210 In the following cases, if shareholders are likely to suffer disadvantage, shareholders may demand that the stock company cease a share issue or disposition of treasury shares relating to solicitations under Article 199, paragraph (1):

- (i) if relevant share issue or disposition of treasury shares violates laws and regulations or the articles of incorporation; or
- (ii) if relevant share issue or disposition of treasury shares is effected by using a method which is extremely unfair.

#### **Subsection 6 Liabilities Relating to Solicitation**

(Restrictions on Invalidation or Rescission of Subscription)

Article 211 (1) The provisions of the proviso to Article 93, paragraph (1) and the provisions of Article 94, paragraph (1) of the Civil Code do not apply to manifestation of intention relating to applications for subscription for and the allotment of shares for subscription, and relating to the contract referred to in the Article 205, paragraph (1).

- (2) If one year has elapsed from the day on which a subscriber for shares for subscription became a shareholder pursuant to the provisions of Article 209, paragraph (1), or if the subscriber has exercised the rights in relation to

relevant shares, the subscriber for shares for subscription may not rescind the subscription for shares for subscription on the grounds of mistake, fraud or duress.

(Liabilities of Persons Who Subscribed for Shares with Unfair Amount to Be Paid in)

Article 212 (1) In the cases set forth in the following items, subscribers for shares for subscription are liable to a stock company for payment of the amount provided for in relevant items:

(i) if the subscriber subscribed for the shares for subscription at an amount to be paid in that is extremely unfair, in collusion with directors (or directors or executive officers for a company with nominating committee, etc.): the amount equivalent to the difference between the amount to be paid in and the fair value of the shares for subscription;

(ii) if the value of the property contributed in kind that the subscriber tendered when the subscriber became a shareholder of the shares for subscription pursuant to the provisions of Article 209, paragraph (1) is extremely short of the value provided for under Article 199, paragraph (1), item (iii) with respect to the property contributed in kind: the amount of relevant shortfall.

(2) In the cases provided for in item (ii) of the preceding paragraph, if the subscriber for shares for subscription who tendered the property contributed in kind has acted in good faith and without gross negligence as to the fact that the value of the property contributed in kind is extremely short of the value prescribed under Article 199, paragraph (1), item (iii) with respect to the property contributed in kind, the relevant subscriber may rescind the manifestation of intention relating to applications for subscription for shares for subscription or relating to the contract provided for in Article 205, paragraph (1).

(Liabilities of Directors in Case of Shortfall in Value of Property Contributed)

Article 213 (1) In the cases set forth in paragraph (1), item (ii) of the preceding Article, the following persons (hereinafter in this Article referred to as "directors, etc.") are liable to the stock company for payment of the amounts specified in relevant items:

(i) executive directors who carried out duties regarding the solicitation of subscribers for relevant shares for subscription (or, for a company with nominating committee, etc., executive officers; hereinafter the same applies in this item) and other persons prescribed by Ministry of Justice Order as persons who were involved, in the performance of their duties, in the execution of the business of the executive directors;

(ii) if a resolution regarding the determination of the value of property

- contributed in kind is passed at a shareholders meeting, the persons prescribed by Ministry of Justice Order as the directors who submitted proposals to relevant shareholders meeting;
- (iii) if a resolution regarding the determination of the value of property contributed in kind is passed at a board of directors meeting, the persons prescribed by Ministry of Justice Order as the directors (or, for a company with nominating committee, etc., directors or executive officers) who submitted proposals to relevant board of directors meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, the directors, etc. are not liable for property contributed in kind under that paragraph in the cases set forth below:
- (i) an investigation has been carried out by an inspector under Article 207, paragraph (2) with respect to the value of the property contributed in kind;  
or
- (ii) relevant directors, etc. have proven that they did not fail to exercise due care with respect to the performance of their duties.
- (3) In the cases provided for in paragraph (1), the person who submitted the verification provided for in Article 207, paragraph (9), item (iv) (hereinafter in this Article referred to as "verifying person") is liable for payment of the amount provided for in paragraph (1), item (ii) of the preceding Article to the stock company; provided, however, that this does not apply if relevant verifying person has proven that the verifying person did not fail to exercise care with respect to the submission of the verification.
- (4) If a subscriber for shares for subscription bears an obligation to pay an amount provided for in paragraph (1), item (ii) of the preceding Article with respect to property contributed in kind tendered by the subscriber, if the persons set forth as follows bear obligations provided for in relevant items with respect to relevant property contributed in kind, these persons will be joint and several obligors:
- (i) directors, etc.: the obligations under paragraph (1); and
- (ii) verifying persons: the obligations under the main clause of the preceding paragraph.

(Liabilities of Subscribers of Shares for Subscription for Which the Performance of Contribution Is Falsified)

Article 213-2 (1) In the cases set forth in the following items, subscribers for shares for subscription are liable to a stock company for performing the acts specified in those items:

- (i) in cases of falsifying the payment pursuant to the provisions of Article 208, paragraph (1): payment of the entire payment amount for which the payment is falsified; and

- (ii) in cases of falsifying the delivery pursuant to the provisions of Article 208, paragraph (2): payment of property contributed in kind for which the delivery is falsified (if a stock company requests to pay money equivalent to the value of the property contributed in kind in lieu of the delivery, payment of the entire amount of the money).
- (2) The liabilities of the subscriber of shares for subscription pursuant to the provisions of the preceding paragraph may not be exempted without the consent of all shareholders.

(Liabilities of Directors in the Case of Falsifying the Performance of Contribution)

- Article 213-3 (1) In the cases set forth in the items of paragraph (1) of the preceding Article, a person prescribed by Ministry of Justice Order as a director (in cases of a company with nominating committee, etc., including executive officers) involved in the falsifying of the performance of contribution by a subscriber of shares for subscription is liable to make the payment prescribed in those items to the stock company; provided, however, that this does not apply to cases where the person (excluding the person who falsified the performance of contribution) proves that the person did not fail to exercise due care with respect to the performance of the person's duties.
- (2) If a subscriber of shares for subscription is liable to make the payment prescribed in the items of paragraph (1) of the preceding Article, if the person prescribed in the preceding paragraph is liable as set forth in the same paragraph, these persons will be joint and several obligors.

**Section 9 Share Certificate**  
**Subsection 1 General Provisions**

(Provisions of Articles of Incorporation to the Effect That Share Certificates Be Issued)

Article 214 A stock company may provide in the articles of incorporation to the effect that it issues share certificates relating to its shares (or, for a company with class shares, the shares of all classes).

(Issuing of Share Certificate)

- Article 215 (1) A share certificate-issuing company must, without delay after the day of a share issue, issue share certificates representing those shares.
- (2) If a share certificate-issuing company consolidates shares, it must issue share certificates representing those consolidated shares without delay after the day provided for in Article 180, paragraph (2), item (ii).
- (3) If a share certificate-issuing company splits shares, it must issue share

certificates representing those split shares (excluding those which have been already issued) without delay after the day provided for in Article 183, paragraph (2), item (ii).

- (4) Notwithstanding the provisions of the preceding three paragraphs, a share certificate-issuing company that is not a public company may elect to not deliver share certificates under those paragraphs until shareholders so request.

(Matters to Be Specified on Share Certificates)

Article 216 A stock company must state the following matters and the serial number on a share certificate, and the representative director of the share certificate-issuing company (or the representative executive officer for a company with nominating committee, etc.) must affix the representative director's signature, or name and seal:

- (i) the trade name of the share certificate-issuing company;
- (ii) the number of shares represented by relevant share certificates;
- (iii) if it is provided that the approval of the stock company is required for the acquisition of shares which are represented by relevant share certificates by transfer, a statement to that effect; and
- (iv) for a company with class shares, the class and features of the shares represented by relevant share certificates.

(Offer Not to Possess Share Certificates)

Article 217 (1) Shareholders of a share certificate-issuing company may make an offer to relevant share certificate-issuing company to the effect that they do not wish to hold share certificates representing the shares that they hold.

- (2) The offer pursuant to the provisions of the preceding paragraph must be made by disclosing the number of shares relating to the offer (or, for a company with class shares, the classes of shares and the number of shares for each class). In these cases, if share certificates representing those shares have been issued, relevant shareholders must submit relevant share certificates to the share certificate-issuing company.

- (3) A share certificate-issuing company that has received an offer under the provisions of paragraph (1) must enter or record in the shareholder register, without delay, a statement that it will not issue share certificates representing the shares referred to in the first sentence of the preceding paragraph.

- (4) If a share certificate-issuing company has stated or recorded the statement pursuant to the provisions of the preceding paragraph, it may not issue share certificates representing the shares referred to in the first sentence of paragraph (2).

- (5) Share certificates submitted pursuant to the provisions of the second sentence of paragraph (2) become ineffective when a statement is stated or recorded

pursuant to the provisions of paragraph (3).

- (6) A shareholder who has made an offer pursuant to the provisions of paragraph (1) may at any time demand that the share certificate-issuing company issue share certificates for the shares referred to in the first sentence of paragraph (2). In these cases, if there are any share certificates that have been submitted pursuant to the provisions of the second sentence of paragraph (2), the cost for the issuing of the share certificates is borne by relevant shareholder.

(Abolition of Provisions of Articles of Incorporation That Share Certificates Be Issued)

Article 218 (1) If a share certificate-issuing company intends to effect an amendment to the articles of incorporation to abolish provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a company with class shares, shares of all classes), it must give public notice of the following matters, and give separate notice thereof to each shareholder and each registered pledgee of shares no later than two weeks prior to the day on which relevant amendment to the articles of incorporation takes effect:

- (i) a statement to the effect that the stock company abolishes the provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a company with class shares, shares of all classes);
  - (ii) the day on which the amendment to the articles of incorporation will take effect; and
  - (iii) a statement to the effect that the share certificates of relevant stock company become invalid on the day provided for in the preceding item.
- (2) Share certificates representing the shares of a share certificate-issuing company become invalid on the day provided for in item (ii) of the preceding paragraph.
- (3) Notwithstanding the provisions of paragraph (1), if a share certificate-issuing company that does not issue share certificates for any of its shares intends to effect an amendment to the articles of incorporation to abolish provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a company with class shares, shares of all classes), it is sufficient to notify the shareholders and registered pledgees of shares of the matters set forth in item (i) and item (ii) of that paragraph no later than two weeks prior to the day provided for in item (ii) of that paragraph.
- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.
- (5) In the cases provided for in paragraph (1), pledgees of shares (excluding registered pledgees of shares) may, no later than the day immediately preceding the day provided for in item (ii) of that paragraph, demand that the



share certificate-issuing company state or record the matters set forth in each item of Article 148 in the shareholder register.

### **Subsection 2 Submission of Share Certificate**

(Public Notice in Relation to Submission of Share Certificate)

Article 219 (1) If a share certificate-issuing company carries out an act set forth in the following items, it must, more than one month prior to the day when relevant act takes effect (in cases of performing the act set forth in item (iv)-2, the acquisition day prescribed in Article 179-2, paragraph (1), item (v); hereinafter the day is referred to as the "share certificate submission day"), give public notice to the effect that share certificates representing the shares provided for in each of these items be submitted to relevant share certificate-issuing company before the share certificate submission day, and a separate notice to that effect to each shareholder and each registered pledgee of shares thereof; provided, however, that this does not apply if the share certificate-issuing company does not issue share certificates for any of its shares:

- (i) amendments to the articles of incorporation to create provisions of the articles of incorporation with respect to the matters set forth in Article 107, paragraph (1), item (i): all shares (or, for a company with class shares, the class shares that have provisions with respect to relevant matters);
- (ii) consolidation of shares: all shares (or, for a company with class shares, the class shares under Article 180, paragraph (2), item (iii));
- (iii) acquisitions of shares subject to class-wide call provided for in Article 171, paragraph (1): relevant shares subject to class-wide call;
- (iv) acquisitions of shares subject to call: relevant shares subject to call;
- (iv)-2 approval set forth in Article 179-3, paragraph (1): shares subject to the cash-out;
- (v) entity conversion: all shares;
- (vi) merger (but only if the stock company disappears in the merger): all shares;
- (vii) share exchanges: all shares;
- (viii) share transfers: all shares.

(2) If a share certificate-issuing company performs the acts set forth in the following items, if a person fails to submit the share certificates to the share certificate-issuing company by the share certificate submission day the person specified in each of those items may refuse to deliver monies, etc. to the shareholders of the shares that are subject of the share certificates by relevant act (in cases of performing acts set forth in item (ii), acquisition of shares subject to cash-out related to demand for cash-out) until the share certificates are submitted:

- (i) acts set forth in the items (i) through (iv) of the preceding paragraph: the share certificate-issuing company;
  - (ii) approval set forth in Article 179-3, paragraph (1): special controlling shareholders;
  - (iii) entity conversion: membership company after entity conversion prescribed in Article 744, paragraph (1), item (i);
  - (iv) merger (but only if the stock company disappears in the merger): the company surviving the absorption-type merger as prescribed in Article 749, paragraph (1) or the company incorporated in the consolidation-type merger as prescribed in Article 753, paragraph (1);
  - (v) share exchange: the wholly owning parent company resulting from the share exchange as prescribed in Article 767; and
  - (vi) share transfer: the wholly owning parent company incorporated in a share transfer as prescribed in Article 773, paragraph (1), item (i).
- (3) Share certificates representing the shares provided for in each item of paragraph (1) become invalid on the share certificate submission day.
- (4) The cost of public notice and notice pursuant to the provisions of paragraph (1), item (iv)-2 is paid by the special controlling shareholder.

(Cases Where Share Certificates Cannot Be Submitted)

- Article 220 (1) If the acts set forth in each item of paragraph (1) of the preceding Article are carried out, and a person cannot submit share certificates, the share certificate-issuing company may, at the request of that person, give public notice to interested parties to the effect that they can state their objections, if any, during a certain period of time; provided, however, that the period cannot be less than three months.
- (2) If a share certificate-issuing company makes public notice pursuant to the provisions of the preceding paragraph, if no interested party states an objection during the period of time under that paragraph, the person specified in each of those items of paragraph (2) of the preceding Article may deliver monies, etc. under paragraph (2) of the same Article to the person who made the request under the preceding paragraph.
- (3) The costs of the public notice under the provisions of paragraph (1) are borne by the person who makes the request under that paragraph.

**Subsection 3 Registration of Lost Share Certificate**

(Register of Lost Share Certificates)

Article 221 A share certificate-issuing company (including a stock company, if one year has not elapsed from the day immediately following the day on which the stock company has effected an amendment to the articles of incorporation

to abolish provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a company with class shares, shares of all classes); hereinafter the same applies in this Subsection (excluding Article 223, Article 227 and Article 228, paragraph (2))) must prepare a register of lost share certificates and enter or record the following information (hereinafter in this Subsection referred to as "information required to be entered in the lost share certificates register") in the same:

- (i) the serial numbers of the share certificates relating to the request under the provisions of Article 223 (including share certificates that have become invalid under the provisions of Article 218, paragraph (2) or Article 219, paragraph (3), and share certificates representing shares if a judgment upholding a claim seeking invalidation of the share issue or the disposition of relevant shares has become final and binding; hereinafter the same applies in this Subsection (excluding Article 228));
- (ii) the names and addresses of persons who have lost share certificates under the preceding item;
- (iii) the names and addresses of persons entered or recorded in the shareholder register as the shareholders or registered pledgees of shares of the shares represented by the share certificates (hereinafter in this Subsection, referring to as "registered holder") under paragraph (1); and
- (iv) the day on which the matters set forth in the preceding three paragraphs are stated or recorded for the share certificates provided for in paragraph (1) (hereinafter in this Subsection referred to as "day of registration of loss of share certificate").

(Entrusting a Person with Administering the Lost Share Certificates Register)

Article 222 For the purpose of the application of the provisions of Article 123 to a share certificate-issuing company, in that Article, the phrase "of the shareholder register" is deemed to be replaced with "of the shareholder register and the lost share certificates register", and the phrase "keeping the shareholder register" is deemed to be replaced with "keeping the shareholder register and the lost share certificates register".

(Requests for Registration of Lost Share Certificate)

Article 223 A person that loses a share certificate may request the share certificate-issuing company, pursuant to the provisions of Ministry of Justice Order, to enter or record the information required to be entered in the lost share certificates register in the lost share certificates register with respect to that share certificate (hereinafter referred to as the "registration of a lost share certificate").

(Notices to Registered Holders)

- Article 224 (1) If a share certificate-issuing company has effected the registration of lost share certificate in response to a request under the provisions of the preceding Article, if the person entered or recorded in the lost share certificates register as the person that lost the share certificates relating to relevant request (hereinafter in this Subsection referred to as "registrant of lost share certificate") is not the registered holder of the shares represented by relevant share certificates, the share certificate-issuing company must, without delay, notify relevant registered holder to the effect that the share certificate-issuing company has effected the registration of lost share certificates for relevant share certificates, and of the matters set forth in Article 221, items (i), (ii) and (iv).
- (2) If share certificates have been submitted to the share certificate-issuing company in order to exercise rights with respect to the shares, if the registration of lost share certificate has been effected for relevant share certificates, the share certificate-issuing company must, without delay, notify the person who submitted relevant share certificates to the effect that the registration of lost share certificate has been effected for relevant share certificates.

(Filing of Application to Cancel by Holders of Share Certificate)

- Article 225 (1) A person who holds share certificates subject to the registration of lost share certificate (excluding the registrant of lost share certificate for relevant share certificates) may file an application with the share certificate-issuing company for the cancellation of relevant registration of lost share certificate, as prescribed by Ministry of Justice Order; provided, however, that this does not apply if one year has elapsed from the day immediately following the day of registration of the loss of share certificate.
- (2) A person who intends to make an application under the provisions of the preceding paragraph must submit the share certificates referred to in that paragraph to the share certificate-issuing company.
- (3) A share certificate-issuing company that has received an application under the provisions of paragraph (1) must, without delay, notify the registrant of lost share certificate referred to in that paragraph of the name and address of the person who made the application under the provisions of that paragraph, and of the serial numbers of the share certificates referred to in that paragraph.
- (4) On the day on which two weeks have elapsed from the day of the notice under the provisions of the preceding paragraph, the share certificate-issuing company must cancel the registration of lost share certificate relating to share certificates submitted pursuant to the provisions of paragraph (2). In these cases, the share certificate-issuing company must return relevant share

certificates to the person who filed the application under the provisions of paragraph (1).

(Filing of Application to Cancel by Registrant of Lost Share Certificates)

Article 226 (1) A registrant of lost share certificate may file an application with the share certificate-issuing company, as prescribed by Ministry of Justice Order, to cancel the registration of lost share certificate (excluding the registration of lost share certificate for share certificates submitted under the provisions of paragraph (2) of the preceding Article if an amendment is effected to the articles of incorporation to abolish provisions of the articles of incorporation to the effect that the share certificate-issuing company issues share certificates for its shares (or, for a company with class shares, shares of all classes)).

(2) A share certificate-issuing company that has received an application under the provisions of the preceding paragraph must cancel the registration of lost share certificate relating to relevant application on the day of the receipt of relevant application.

(Cancellation of Registration of Lost Share Certificate Where Provisions of Articles of Incorporation to Issue Share Certificates Are Abolished)

Article 227 If a share certificate-issuing company amends the articles of incorporation to abolish provisions of the articles of incorporation to the effect that the share certificate-issuing company issues share certificates for its shares (or, for a company with class shares, shares of all classes), the share certificate-issuing company must cancel the registration of lost share certificate (excluding registrations for share certificates submitted under the provisions of Article 225, paragraph (2) only if the registrant of lost share certificate is the registered holder of the shares relating to the share certificates subject to relevant registration of lost share certificate) on the day of the effectuation of relevant amendment to the articles of incorporation.

(Invalidation of Share Certificate)

Article 228 (1) Share certificates subject to the registration of lost share certificate (excluding registrations that have been cancelled) become invalid on the day on which one year has elapsed from the day immediately following the day of registration of lost share certificate.

(2) If share certificates become invalid under the provisions of the preceding paragraph, the share certificate-issuing company must reissue share certificates to the registrant of lost share certificate for relevant share certificates.

(Relationship with Procedures for Notices Seeking Objections)

Article 229 (1) If a registrant of lost share certificate submits a request under Article 220, paragraph (1), the share certificate-issuing company may give public notice pursuant to the provisions of that paragraph only if the last day of the period under that paragraph arrives before the day on which one year has elapsed from the day immediately following the day of registration of lost share certificate.

(2) If a share certificate-issuing company gives public notice under the provisions of Article 220, paragraph (1), relevant share certificate-issuing company must cancel the registration of lost share certificate for the share certificates relating to relevant public notice on the day of relevant public notice.

(Effect of Registration of Lost Share Certificate)

Article 230 (1) A share certificate-issuing company may not state or record the names and addresses of the persons who acquired shares represented by share certificates subject to the registration of lost share certificate until the earliest of the following days (hereinafter in this Article referred to as the "day of cancellation of registration"):

(i) the day on which relevant registration of lost share certificate is cancelled;  
or

(ii) the day on which one year has elapsed from the day immediately following the day of registration of lost share certificate.

(2) A share certificate-issuing company may reissue share certificates subject to the registration of lost share certificate only after the day of cancellation of registration.

(3) If a registrant of lost share certificate is not the registered holder of the shares represented by the share certificates subject to the registration of lost share certificate, the shareholders of relevant shares may not exercise voting right at a shareholders meeting or general meeting of class shareholders until the day of cancellation of registration.

(4) An auction pursuant to the provisions of Article 197, paragraph (1) or a sale pursuant to the provisions of paragraph (2) of that Article may not be effected with respect to shares represented by share certificates subject to the registration of lost share certificate.

(Keeping and Making Available for Inspection of the Lost Share Certificates Register)

Article 231 (1) A share certificate-issuing company must keep the lost share certificates register at its head office (or, if it has a shareholder register administrator, at its business office).

(2) Any person may submit the following requests at any time during the

business hours of a share certificate-issuing company with respect to the lost share certificates register (limited to the portion in which the person has an interest). In these cases, the reasons for the request must be disclosed:

- (i) if the lost share certificates register has been prepared in writing, a request for the review or copying of relevant document;
- (ii) if the lost share certificates register has been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.

(Notices to Registrants of Lost Share Certificate)

- Article 232 (1) It is sufficient for a notice or demand to a registrant of lost share certificate to be sent by a share certificate-issuing company to the address of relevant registrant of lost share certificate stated or recorded in the lost share certificates register (or, if relevant registrant of lost share certificate notifies the share certificate-issuing company of a different place or contact address for the receipt of notices or demands, to the place or contact address).
- (2) The notices or demands referred to in the preceding paragraph are deemed to have arrived at the time when the notice or demand should normally have arrived.

(Exception to Application)

Article 233 The provisions of Part IV of the Non-Contentious Cases Procedures Act do not apply to share certificates.

## **Section 10 Miscellaneous Provisions**

(Treatment of Fractional Shares)

- Article 234 (1) If a stock company delivers shares in relevant stock company to the persons specified in each of those items when any act set forth in the items is carried out, if the number of the shares of relevant stock company that must be delivered to that persons includes a fractional share, the stock company must sell the number of shares equivalent to the total sum of the fractional shares by auction (if the total sum includes a fractional share, that fractional share is to be rounded off) and must deliver the proceeds of that auction to relevant persons in proportion to the fractional shares attributed to them:
- (i) the acquisition of shares under the provisions of Article 170, paragraph (1): the shareholders of relevant stock company;
  - (ii) the acquisition of shares under the provisions of Article 173, paragraph (1): the shareholders of relevant stock company;
  - (iii) the allotment of shares without contribution provided for in the provisions

- of Article 185: the shareholders of relevant stock company;
  - (iv) the acquisition of share options pursuant to the provisions of Article 275, paragraph (1): the holders of the share options provided for in Article 236, paragraph (1), item (vii), (a);
  - (v) merger (but only if the stock company survives the merger): the shareholders or members of the company disappearing due to the merger;
  - (vi) the issuing of shares to be issued at the time of incorporation under merger contracts: the shareholders or members of the company disappearing due to the merger;
  - (vii) the acquisition of all issued shares of another stock company by share exchange: the shareholders of the stock company that effects the share exchange;
  - (viii) the issuing of shares to be issued at the time of incorporation under share transfer plan: the shareholders of the stock company that effects the share transfer plan.
  - (ix) partial share exchange: the person who, in a partial share exchange, transferred the shares or share options, etc. (meaning share options, etc. provided in Article 774-3, paragraph (1), item (vii)) of a subsidiary company resulting from a partial share exchange (meaning a subsidiary company resulting from a partial share exchange provided in Article 774-3, paragraph (1), item (i) ) to a share delivery parent company (meaning a parent company resulting from a partial share exchange provided in that item).
- (2) In lieu of sale by auction under the provisions of the preceding paragraph, a stock company may sell shares under that paragraph with a market price in an amount calculated by the method prescribed by Ministry of Justice Order as the market price thereof, and shares under that paragraph without a market price using a method other than auction with the permission of the court. In these cases, if there are two or more directors, the petition for relevant permission must be filed with the consent of all directors.
- (3) For the purpose of the application of the provisions of the preceding paragraph if the shares under paragraph (1) are sold, the phrase "of that auction" in paragraph (1) is deemed to be replaced with "of that sale".
- (4) A stock company may purchase some or all of the shares sold pursuant to the provisions of paragraph (2). In these cases, the following matters must be prescribed:
- (i) the number of shares to be purchased (or, for a company with class shares, the classes of the shares and the number of shares for each class); and
  - (ii) the total amount of the monies to be delivered in exchange for the purchase of the shares under the preceding item.
- (5) A company with board of directors must determine the matters set forth in each item of the preceding paragraph by a resolution of the board of directors



meeting.

- (6) The provisions of paragraphs (1) through (4) apply mutatis mutandis to cases where bonds or share options of relevant stock company are delivered to the persons specified in each of those items of paragraph (1) when any act set forth in relevant items is carried out.

Article 235 (1) If a share split or consolidation of shares effected by a stock company produces any fractional share in the number of the shares, the stock company must sell the number of shares equivalent to the total sum of the fractional shares by auction (if the total sum includes a fractional share, relevant fractional share is to be rounded off) and must deliver the proceeds of that auction to the shareholders in proportion to the fractional shares attributed to them:

- (2) The provisions of paragraphs (2) through (5) of the preceding Article apply mutatis mutandis to the cases provided for in the preceding paragraph.

### **Chapter III Share Option**

#### **Section 1 General Provisions**

(Features of Share Option)

Article 236 (1) If a stock company issues share options, the features of the share options must consist of the following matters:

- (i) the number of the shares underlying the share options (or, for a company with class shares, the classes of the shares and the number of shares for each class), or the method for calculating that number;
- (ii) the value of the property to be contributed when relevant share options are exercised or the method for calculating that value;
- (iii) if property other than monies will be the subject of the contribution when share options are exercised, a statement to that effect and the description and value of that property;
- (iv) the period during which relevant share options can be exercised;
- (v) matters regarding the capital and capital reserves that will be increased if shares will be issued as a result of the exercise of relevant share options;
- (vi) if it is arranged that the approval of relevant stock company will be required for the acquisition of relevant share options by transfer, a statement to that effect;
- (vii) if it is arranged that relevant stock company may acquire relevant share options on condition of certain grounds arising, the following matters:
  - (a) a statement that relevant stock company may acquire its share options on the day when certain grounds arise, and of those grounds;
  - (b) if it is arranged that the grounds referred to in (a) will arise as at the

- arrival of a day to be separately prescribed by relevant stock company, a statement of the arrangement;
- (c) if it is arranged that a portion of the share options referred to in (a) may be acquired on the day the grounds referred to in (a) arise, a statement of relevant arrangement and of the method for determining the portion of the share options to be acquired;
  - (d) if shares in relevant stock company are delivered to the holders of relevant share options in exchange for the acquisition of the share options referred to in (a), the number of relevant shares (or, for a company with class shares, the classes of the shares and the number of shares for each class), or the method for calculating that number;
  - (e) if bonds of relevant stock company (other than those on bonds with share option) are delivered to the holders of relevant share options in exchange for the acquisition of the share options referred to in (a), the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
  - (f) if other share options of relevant stock company (other than those attached to bonds with share option) are delivered to the holders of relevant share options in exchange for the acquisition of the share options referred to in (a), the feature and number of relevant other share options, or the method for calculating that number;
  - (g) if bonds with share option of relevant stock company are delivered to the holders of relevant share options in exchange for the acquisition of the share options referred to in (a), the matters prescribed in (e) for relevant bonds with share option, and the matters prescribed in (f) for the share options attached to relevant bonds with share option;
  - (h) if property other than share options, etc. of relevant stock company is delivered to the holders of relevant share options in exchange for the acquisition of the share options referred to in (a), a description of the features and number or amount of relevant property, or the method for calculating that number or amount;
- (viii) if it is arranged that if relevant stock company carries out acts set forth in (a) through (e) below, the share options of the stock company provided for in (a) through (e) is to be delivered to the holders of relevant share options, a statement to that effect and of the conditions of the same:
- (a) merger (but only if the stock company disappears in the merger): the stock company that survives the merger or the stock company incorporated as a result of the merger;
  - (b) absorption-type company split: the stock company which succeeds, in whole or in part, to any rights and obligations that a stock company effecting an absorption-type company split holds in connection with its

- business;
- (c) incorporation-type company split: the stock company that is incorporated in the incorporation-type company split;
  - (d) share exchange: the stock company that acquires all of the issued shares of the stock company effecting the share exchange;
  - (e) share transfer: the stock company incorporated as a result of the share transfer;
  - (ix) if the number of the shares to be issued to a share option holder that has exercised a share option includes a fractional share, and the fractional share is to be rounded off, a statement to that effect;
  - (x) if it is arranged to issue share option certificates representing relevant share options (excluding those attached to bonds with share option), a statement to that effect;
  - (xi) in the cases provided for in the preceding item, if the share option holders cannot make, in whole or in part, the demand under the provisions of Article 290, a statement to that effect.
- (2) The number of the share options attached to bonds with share option must be uniform for each monetary amount for the bonds with respect to relevant bonds with share option.
- (Exercise of Rights by Co-Owners)
- (3) When a stock company that has issued shares that are set forth on a financial instruments exchange provided for in Article 2, paragraph (16) of the Financial Instruments and Exchange Act issues share options in accordance with the provisions on the matters set forth in Article 361, paragraph (1), item (iv) or item (v), (b) pursuant to its articles of incorporation or a resolution of the shareholders meeting, the matters set forth in paragraph (1), item (ii) need not be included in the features of the share options. In these cases, the stock company must include the following matters in the features of the share options:
- (i) that the issuance of the share options is intended as remuneration of directors or in exchange for payments made with remuneration of directors and that payment of monies or delivery of property provided in paragraph (1), item (iii) upon exercise of these share options is not required; and
  - (ii) that a person other than a director (including a person who was a director) is subject of provisions regarding the matters set forth in Article 361, paragraph (1), item (iv) or item (v), (b) pursuant to the articles of incorporation or a resolution of a shareholders meeting may not exercise these share options.
- (4) For the purpose of application of the provisions of the preceding paragraph by a company with nominating committee, etc., the phrase "the provisions regarding the matters set forth in Article 361, paragraph (1), item (iv) or item

(v), (b) pursuant to its articles of incorporation or a resolution of the shareholders meeting" in that paragraph is deemed to be replaced with "decision on the matters provided for in Article 409, paragraph (3), item (iv) or item (v), (b) by the remuneration committee," and the term "director" in item (i) of that paragraph is deemed to be replaced with "executive officer or director, the phrase" and director" in item (ii) of that paragraph is deemed to be replaced with "executive officer or director."

Article 237 If any share option is co-owned by two or more persons, the co-owners may not exercise their rights in relation to relevant share option unless they specify one person to exercise the rights in relation to relevant share option, and notify the stock company of the name of that person; provided, however, that this does not apply if the stock company has agreed to the exercise of relevant rights.

## **Section 2 Issuance of Share Options**

### **Subsection 1 Determination of Subscription Requirements**

(Determination of Subscription Requirements)

Article 238 (1) Whenever a stock company intends to solicit subscribers for an issuance of share options, the stock company must prescribe the following matters (hereinafter in this Section referred to as "subscription requirements") with respect to the share options for subscription (meaning the share options that is to be allotted to persons who subscribed for relevant share options in response to relevant solicitation; hereinafter the same applies in this Chapter):

- (i) the features and number of the share options for subscription;
- (ii) if it is arranged that there is no requirement for monies to be paid in exchange for the share options for subscription, a statement to that effect;
- (iii) in cases other than the cases provided for in the preceding item, the amount to be paid in for the share options for subscription (meaning the amount of money to be paid in in exchange for one share option for subscription. The same applies hereinafter in this Chapter.) or the method for calculating that amount;
- (iv) the day on which the share options for subscription is allotted (hereinafter in this Section referred to as the "day of allotment");
- (v) if the stock company prescribes the date for the payment of monies in exchange for the share options for subscription, that date;
- (vi) if share options for subscription are attached to bonds with share option, the matters set forth in each item of Article 676;
- (vii) in the cases provided for in the preceding item, if the stock company otherwise provides for the method for submission of a demand under the

- provisions of Article 118, paragraph (1), Article 179, paragraph (2), Article 777, paragraph (1), Article 787, paragraph (1), or Article 808, paragraph (1) with respect to the share options for subscription attached to the bonds with share option under that item, that provision.
- (2) The determination of the subscription requirements must be made by a resolution at a shareholders meeting.
  - (3) In the following cases, the directors must explain at the shareholders meeting referred to in the preceding paragraph the reasons for the need to solicit subscribers for share options for subscription with the offer of the conditions under item (i) or in the amount under item (ii):
    - (i) if, in the cases provided for in paragraph (1), item (ii), the absence of a requirement for the payment in of monies is particularly favorable to relevant persons; or
    - (ii) if, in the cases provided for in paragraph (1), item (iii), the amount to be paid in under that paragraph is particularly favorable to relevant persons.
  - (4) For a company with class shares, if some or all classes of the shares underlying the share options for subscription are shares with restriction on transfer, the determination of the subscription requirements regarding relevant share options for subscription does not become effective without a resolution at the general meeting of class shareholders, except if there are provisions in the articles of incorporation to the effect that, with respect to the solicitation of subscribers for share options for subscription for which the underlying shares are relevant class shares, a resolution at the relevant general meeting of class shareholders constituted by the class shareholders of relevant class is not required; provided, however, that this does not apply to cases where there is no class shareholder who can exercise a voting right at relevant general meeting of class shareholders.
  - (5) The subscription requirements must be uniform for each solicitation under paragraph (1).

(Delegation of Determination of Subscription Requirements)

- Article 239 (1) Notwithstanding the provisions of paragraphs (2) and (4) of the preceding Article, at a shareholders meeting, the determination of the subscription requirements may be delegated to the directors by a resolution at the relevant shareholders meeting (or, for a company with board of directors, the board of directors) by a resolution. In these cases, the shareholders meeting must prescribe the following matters:
- (i) the features and maximum number of share options for subscription for which the subscription requirements may be determined under the delegation; and
  - (ii) if it is arranged that there will be no requirement to pay monies in with

- respect to the share options for subscription under the preceding item, a statement to that effect;
- (iii) in cases other than those prescribed in the preceding item, the minimum amount to be paid in for share options for subscription.
- (2) In the following cases, the directors must explain at the shareholders meeting referred to in the preceding paragraph the reasons for the need to solicit subscribers for share options for subscription with the offer of the conditions under item (i) or in the amount under item (ii):
- (i) in the cases provided for in item (ii) of the preceding paragraph, if the absence of a requirement for the payment in of monies is particularly favorable to relevant persons; or
- (ii) if, in the cases provided for in item (iii) of the preceding paragraph, the minimum amount to be paid in under that paragraph is particularly favorable to relevant persons.
- (3) A resolution under paragraph (1) is effective with respect only to solicitation under paragraph (1) of the preceding Article whose day of allotment falls within one year from the day of relevant resolution.
- (4) For a company with class shares, if some or all of the classes of the shares underlying the share options for subscription are shares with restriction on transfer, the determination of the subscription requirements regarding relevant share options for subscription does not become effective without a resolution at the relevant general meeting of class shareholders, except if there are provisions in the articles of incorporation referred to in paragraph (4) of the preceding Article; provided, however, that this does not apply to the case where there is no class shareholder who can exercise a voting right at relevant general meeting of class shareholders.

(Special Provisions on Determination of Subscription Requirements for Public Company)

- Article 240 (1) Except for the cases set forth in each item of Article 238, paragraph (3), for the purpose of the application of the provisions of paragraph (2) of that Article to a public company, the term "shareholders meeting" in that paragraph is deemed to be replaced with "board of directors meeting". In these cases, the provisions of the preceding Article do not apply.
- (2) If a public company has determined subscription requirements by a resolution at a board of directors meeting provided for in Article 238, paragraph (2) applied following the deemed replacement of terms pursuant to the provisions of the preceding paragraph, the public company must notify the shareholders of relevant subscription requirements no later than two weeks prior to the day of allotment.
- (3) A public notice may be substituted for the notice under the provisions of the

preceding paragraph.

- (4) The provisions of paragraph (2) do not apply in cases prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of shareholders is compromised, including cases where, with respect to subscription requirements, the stock company has submitted, no later than two weeks prior to the day of allotment, a notice under Article 4, paragraphs (1) through (3) of the Financial Instruments and Exchange Act.

(Cases Where Entitlement to Allotment of Share Options Is Granted to Shareholders)

Article 241 (1) In carrying out solicitation under Article 238, paragraph (1), the stock company may grant entitlement to the allotment of share options to its shareholders. In these cases, in addition to the subscription requirements, the stock company must prescribe the following matters:

- (i) a statement to the effect that the stock company will grant entitlement to the allotment of the share options for subscription of that stock company (or, for a company with class shares, the share options the shares underlying which have the class identical to the class of the shares held by relevant shareholders) to shareholders subject to the application provided for in paragraph (2) of the following Article;
  - (ii) the day for the application for subscription for the share options for subscription referred to in the preceding item.
- (2) In the cases provided for in the preceding paragraph, the shareholders under item (i) of that paragraph (excluding the stock company) are entitled to the allotment of the share options for subscription in accordance with the number of shares they hold; provided, however, that if the number of the share options for subscription to be allotted to relevant shareholders includes a fractional share, it is to be rounded off.
- (3) If the stock company prescribes the matters set forth in each item of paragraph (1), the subscription requirements and the matters set forth in each item of that paragraph must be prescribed in accordance with the categories of the cases set forth in the following items, by the methods provided for in each of these items:
- (i) if there are provisions in the articles of incorporation to the effect that relevant subscription requirements and the matters set forth in each item of paragraph (1) may be prescribed by decision of the directors (excluding the cases where the stock company is a company with board of directors): a decision of the directors;
  - (ii) if there are provisions in the articles of incorporation to the effect that relevant subscription requirements and the matters set forth in each item of paragraph (1) may be prescribed by a resolution of the board of directors

- meeting (excluding the cases set forth in the following item): a resolution of the board of directors meeting;
- (iii) if the stock company is a public company: a resolution of the board of directors meeting;
- (iv) in cases other than those set forth in the preceding three items: a resolution at a shareholders meeting;
- (4) if a stock company determines the matters set forth in each item of paragraph (1), the stock company must notify the shareholders under item (i) of that paragraph (excluding relevant stock company) of the following matters no later than two weeks prior to the date provided for in item (ii) of that paragraph:
- (i) the subscription requirements;
- (ii) the features and number of share options for subscription to be allotted to relevant shareholders; and
- (iii) the date provided for in paragraph (1), item (ii).
- (5) The provisions of Article 238, paragraphs (2) through (4) and the preceding two Articles do not apply in cases where entitlement to the allotment of share options is granted to the shareholders under the provisions of paragraph (1) through paragraph (3) hereof.

### **Subsection 2 Allotment of Share Options for Subscription**

(Application for Share Options for Subscription)

- Article 242 (1) A stock company must notify persons who intend to subscribe for share options for subscription in response to solicitation in Article 238, paragraph (1) of the matters set forth in the following items:
- (i) the trade name of the stock company;
- (ii) the subscription requirements;
- (iii) if any payment is to be made when the share options are exercised, the place where payments are handled;
- (iv) beyond what is set forth in the preceding three items, any matter prescribed by Ministry of Justice Order.
- (2) A person who applies to subscribe for the share options for subscription in response to solicitation in Article 238, paragraph (1) must deliver a document giving the following information:
- (i) the name and address of the person applying;
- (ii) the number of share options for subscription for which the person intends to subscribe.
- (3) A person who applies referred to in the preceding paragraph may, in lieu of delivering a document as referred to in that paragraph, provide the information that is required to be detailed in the document referred to in that paragraph by electronic or magnetic means, with the approval of the stock



company and pursuant to the provisions of Cabinet Order. In these cases, the person applying is deemed to have delivered the document under that paragraph.

- (4) The provisions of paragraph (3) do not apply in cases where the stock company has issued a prospectus provided for in Article 2, paragraph (10) of the Financial Instruments and Exchange Act that specifies the matters set forth in each item of that paragraph to the person who intends to submit the application under paragraph (1), and in other cases prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of persons who intend to submit applications for subscription for share options for subscription are compromised.
- (5) If there are changes in the matters set forth in each item of paragraph (1), the stock company must immediately notify persons who have submitted applications under paragraph (2) (hereinafter in this subsection referred to as "applicants") thereof and of the matter so changed.
- (6) If share options for subscription are attached to bonds with share option, applicants (limited to those who submitted applications solely for share options for subscription) are deemed to have applied for subscription for the bonds with share option to which the share options for subscription relating to that applications are attached.
- (7) It is sufficient for a notice or demand to an applicant to be sent by the stock company to the address under paragraph (2), item (i) (or, if that applicant notifies the stock company of a different place or contact address for the receipt of notices or demands, to the place or contact address).
- (8) The notices or demands referred to in the preceding paragraph are deemed to have arrived at the time when that notice or demand should normally have arrived.

#### (Allotment of Share Options for Subscription)

- Article 243 (1) A stock company must specify the persons from among the applicants the persons to whom share options for subscription will be allotted, and determine the number of share options for subscription to be allotted to those persons. In these cases, the stock company may reduce the number of share options for subscription the stock company allots to these applicants below the number under paragraph (2), item (ii) of the preceding Article.
- (2) In the following cases, the determination under the provisions of the preceding paragraph must be made by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation:
    - (i) if some or all of the shares underlying the share options for subscription are

- shares with restriction on transfer; or
- (ii) if the share options for subscription are share options with restriction on transfer (meaning share options for which it is provided that the acquisition of relevant share options by transfer requires the approval of the stock company; hereinafter the same applies in this Chapter).
- (3) The stock company must notify the applicants, no later than the day immediately preceding the day of allotment, of the number of the share options for subscription that will be allotted to relevant applicants (if relevant share options for subscription are attached to bonds with share option, including a description of the classes of bonds with respect to relevant bonds with share option and the total amount of money for each class of bonds).
- (4) If the stock company has granted entitlement to the allotment of share options pursuant to the provisions of Article 241 to its shareholders, if the shareholders do not submit, no later than the date under paragraph (1), item (ii) of that Article, applications under paragraph (2) of the preceding Article, relevant shareholders will lose the entitlement to the allotment of share options for subscription.

(Special Provisions on the Subscription for and Allotment of Share Options for Subscription)

- Article 244 (1) The provisions of the preceding two Articles do not apply if a person who intends to subscribe for share options for subscription executes a contract for subscription for the total number of those share options.
- (2) For the purpose of the application of the preceding paragraph if the share options for subscription are those attached to bonds with share option, the phrase "for subscription for the total number of those share options" in that paragraph is deemed to be replaced with "for subscription for the total number of those share options and the total amount of the bonds to which relevant share options for subscription are attached".
- (3) In the case prescribed in paragraph (1), in the following cases, a stock company must obtain approval for the contact set forth in the same paragraph by the resolution at the shareholders meeting (or at a the board of directors meeting for a company with board of directors); provided, however, that this does not apply to cases where it is otherwise provided for in the articles of incorporation:
- (i) if all or part of shares underlying share options for subscription are shares with restriction on transfer; and
  - (ii) if share options for subscription are share options with restriction on transfer.

(Special Provisions on Allotment of Share Options for Subscription of a Public

Company)

Article 244-2 (1) If the ratio of the number set forth in item (i) to the number set forth in item (ii) exceeds 50% with regard to an applicant who receives allotment of share options for subscription or a subscriber of all of share options for subscription pursuant to the contract set forth in paragraph (1) of the preceding Article (hereinafter collectively referred to as "subscriber" in this paragraph), a public company must notify to shareholders name and address of the subscriber (hereinafter referred to as "special subscriber" in this paragraph and paragraph (5)), the number set forth in item (i) with respect to the special subscriber, and other matters prescribed by Ministry of Justice Order by two weeks before the allotment day; provided, however, that this does not apply to cases where the special subscriber is a parent company, etc. of the public company or where the right to obtain allotment of share options is granted to shareholders pursuant to the provisions of Article 241:

- (i) the largest number of voting rights that the subscriber (including its subsidiary company, etc.) will hold when the subscriber becomes a shareholder of shares issued related to shares for subscription that the subscriber subscribed; and
  - (ii) the largest number of voting rights of all shareholders in the case prescribed in the preceding item.
- (2) The term "shares issued" as prescribed in item (i) of the preceding paragraph means shares underlying share options for subscription, shares set forth in Article 236, paragraph (1), item (vii), (d) if there are provisions on the matter set forth in (d) of the same item as the content of share options for subscription, and other shares prescribed by Ministry of Justice Order as shares to be issued to a holder of share options for subscription.
- (3) The notice pursuant to the provisions of paragraph (1) may be substituted with a public notice.
- (4) Notwithstanding the provisions of paragraph (1), if a stock company has made a notification under Article 4, paragraphs (1) through (3) of the Financial Instruments and Exchange Act with respect to the matters set forth in paragraph (1) of this Article by two weeks before the allotment day, or where it is prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of shareholders is compromised, the notice pursuant to the provisions of paragraph (1) is not required.
- (5) When a shareholder holding one-tenth or more (if any lower proportion is provided for in the articles of incorporation, that proportion) of voting rights of all shareholders (excluding shareholders who cannot exercise voting rights in the shareholders meeting set forth in this paragraph) makes a notice to a public company that the shareholder is against subscription for shares options for subscription by a special subscriber (including its subsidiary company, etc.;

hereinafter the same applies in this paragraph) within two weeks from the day of notice pursuant to the provisions of paragraph (1) or the day of public notice set forth in paragraph (3) (in the case set forth in the preceding paragraph, the day specified by Ministry of Justice Order), the public company must obtain approval for the allotment of share options for subscription to the special subscriber or for the contract set forth in paragraph (1) of the preceding Article with the special subscriber by the resolution at the shareholders meeting by the day before the allotment day; provided, however, that this does not apply if the public company's financial condition has deteriorated greatly and there is an urgent necessity in order for the public company to continue in business.

(6) Notwithstanding the provisions of Article 309, paragraph (1), the resolution at the shareholders meeting set forth in the preceding paragraph must be passed by attendance of the shareholders holding a majority of votes out of the shareholders who can exercise voting rights (if one-third or more of the proportion is stipulated by the articles of incorporation, the proportion or more) and by a majority of the votes of the shareholders present (if any proportion higher than that is provided for in the articles of incorporation, the proportion or more).

(Status as Share Option Holder)

Article 245 (1) The persons set forth in the following items become the share option holders of the share options for subscription provided for in relevant items on the day of allotment:

(i) applicants: the share options for subscription allotted by the stock company; and

(ii) persons who subscribed for the total number of the share options for subscription under the provisions of Article 244, paragraph (1): the share options for subscription for which those persons have subscribed.

(2) If share options for subscription are attached to bonds with share option, the persons who become share option holders under the provisions of the preceding paragraph become the holders of bonds constituting the bonds with share option to which relevant share options for subscription are attached.

### **Subsection 3 Payments for Share Options for Subscription**

Article 246 (1) In the cases provided for under Article 238, paragraph (1), item (iii), holders of share options must pay the entire amount to be paid in for the share options for subscription for which the holders respectively subscribed, at the place for the handling of bank, etc. payments designated by the stock company, no later than the day immediately preceding the first day of the period provided for under Article 236, paragraph (1), item (iv) for share options

for subscription (or, in the cases provided for under Article 238, paragraph (1), item (v), no later than the date under that item; in paragraph (3) referred to as the "payment date").

- (2) Notwithstanding the provisions of the preceding paragraph, share option holders may, with the approval of the stock company, tender property other than monies equivalent to the amount to be paid in or set off their claims against relevant stock company, in lieu of payment under the provisions of that paragraph.
- (3) In the cases provided for under Article 238, paragraph (1), item (iii), share option holders may not exercise the share options for subscription unless they pay in the entire amount to be paid in for their respective share options for subscription (including tendering property other than monies or setting off claims against relevant stock company in lieu of relevant payment) no later than the payment date with respect to relevant share options for subscription.

#### **Subsection 4 Demand for Discontinuation of Issue of Share Options for Subscription**

Article 247 In the following cases, if shareholders are likely to suffer any disadvantage, shareholders may demand that the stock company discontinue an issue of the share options relating to solicitation under Article 238, paragraph (1):

- (i) if relevant issuance of share options violates laws and regulations or the articles of incorporation; or
- (ii) if relevant issuance of share options is effected by using a method that is extremely unfair.

#### **Subsection 5 Miscellaneous Provisions**

Article 248 The provisions of Article 676 through Article 680 do not apply to the solicitation of subscribers for the bonds with respect to the bonds with share option.

### **Section 3 Share Option Register**

(Share Option Register)

Article 249 A stock company must, without delay after the day share options are issued, prepare a share option register and enter or record, in accordance with the categories of share options set forth in the following items, the information set forth in these items (hereinafter referred to as "information required to be entered in the share option register"):

- (i) share options for which bearer form share option certificates are issued (hereinafter in this Chapter referred to as "bearer share options"): the serial numbers of relevant share option certificates and the features and number of relevant bearer share options; and
- (ii) share options that are attached to any bonds with share options under a certificate that represents that bonds with share options (meaning a bond certificate representing a bonds with share options for which a certificate is issued (meaning a bonds with share options for which the stock company has established that it issues a bond certificate; hereinafter the same applies in this Chapter); the same applies hereinafter) has been issued in bearer form (hereinafter in this Chapter a bonds with share options represented by such a bearer-form bond certificate is referred to as a "bearer bonds with share options"): the serial number of the certificate representing the bonds with share options and the features and number of relevant share options; and
- (iii) share options other than the share options set forth in the preceding two items: the following matters:
  - (a) the names and addresses of the share option holders;
  - (b) the features and number of the share options held by the share option holders referred to in (a);
  - (c) the days when the share option holders referred to in (a) acquired the share options;
  - (d) if the share options referred to in (b) are share options for which certificates are issued (meaning share options (excluding those attached to bonds with share options) for which the stock company has established that it issues share option certificates; hereinafter the same applies in this Chapter), the serial numbers of the share option certificates representing those share options (but only if the share option certificates have been issued); and
  - (e) if the share options referred to in (b) are attached to a bonds with share options for which a certificate is issued, the serial number of the certificate that represents that bonds with share options (but only if the certificate representing the bonds with share options has been issued).

(Delivery of Documents Showing Information Required to Be Entered in the Share Option Register)

Article 250 (1) A share option holder as referred to in item (iii), (a) of the preceding Article may file a request with the stock company to be issued a document showing the information required to be entered in the share option register which has been entered or recorded in the share option register with respect to that share option holder, or to be provided with the electronic or magnetic record in which the information required to be entered in the share

option register has been recorded.

- (2) The documents referred to in the preceding paragraph must be affixed with the signature, or name and seal, of the representative director of the stock company (referring to the representative executive officer for a company with nominating committee, etc.; the same applies in the following paragraph).
- (3) With respect to the electronic or magnetic record referred to in paragraph (1), the representative director of the stock company must implement measures in lieu of the affixation of signature, or name and seal, prescribed by Ministry of Justice Order.
- (4) The provisions of the preceding three paragraphs do not apply to share options for which certificates are issued or share options attached to a bonds with share options for which a certificate is issued.

#### (Administration of the Share Option Register)

Article 251 For the purpose of the application of Article 123 if a stock company issues share options, in that Article, the phrase "shareholder register administrator" is deemed to be replaced with "shareholder and share option register administrator" and the phrase "administer the shareholder register" is deemed to be replaced with "administer the shareholder register and the share option register".

#### (Keeping and Making Available for Inspection of Share Option Register)

- Article 252 (1) A stock company must keep the share option register at its head office (or, if it has a shareholder register administrator, at its business office).
- (2) Shareholders and creditors may submit the following requests at any time during the business hours of the stock company. In these cases, the reasons for relevant requests must be disclosed:
    - (i) if the share option register is prepared in writing, a request for the inspection or copying of relevant document;
    - (ii) if the share option register has been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
  - (3) If a request referred to in the preceding paragraph is made, a stock company may not refuse this request unless it falls under any of the following:
    - (i) the shareholder or creditor who made relevant request (hereinafter in this paragraph referred to as the "requestor") submitted the request for other purposes than research on securing or exercising their rights;
    - (ii) the requestor made the request with the purpose of interfering with the execution of the operations of relevant stock company or prejudicing the common benefit of the shareholders;

- (iii) the requestor made the request in order to notify the facts learned by inspecting or copying the share option register to third parties for profit; or
  - (iv) the requestor is a person who has notified the facts learned by reviewing or copying the share option register to third parties for profit in the immediately preceding two years.
- (4) If it is necessary for the purpose of exercising the rights of a member of the parent company of a stock company, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of paragraph (2) with respect to the share option register of relevant stock company. In these cases, the reasons for relevant requests must be disclosed.
- (5) The court may not grant the permission referred to in the preceding paragraph if any circumstance provided for in any item of paragraph (3) applies to the member of the parent company referred to in the preceding paragraph.

(Notices to Share Option Holders)

- Article 253 (1) It is sufficient for a notice or demand to holders of share options to be sent by a stock company to the addresses of relevant holders of share options which have been entered or recorded in the share option register (or, if relevant share option holders notify relevant stock company of a different place or contact address for the receipt of notices or demands, to relevant place or contact address).
- (2) The notices or demands referred to in the preceding paragraph are deemed to have arrived at the time when that notice or demand should normally have arrived.
- (3) If a share option is co-owned by two or more persons, the co-owners must specify one person who receives the notice or demand sent by the stock company to the share option holders and notify relevant stock company of the name of that person. In this case, that person is deemed to be the share option holder and the provisions of the preceding two paragraphs apply.
- (4) If there is no notice by co-owners pursuant to the provisions of the preceding paragraph, it is sufficient for a notice or demand sent by a stock company to the co-owners of the share options if it is sent to one of them.

**Section 4 Transfers of Share Options**

**Subsection 1 Transfers of Share Options**

(Transfers of Share Options)

- Article 254 (1) Share option holders may transfer the share options held by the same.



- (2) Notwithstanding the provisions of the preceding paragraph, share options attached to bonds with share option may not be transferred on a stand-alone basis; provided, however, that this does not apply if the bonds with respect to relevant bonds with share option are extinguished.
- (3) bonds with respect to bonds with share option may not be transferred on a stand-alone basis; provided, however, that this does not apply if the share options attached to relevant bonds with share option are extinguished.

(Transfers of Share Options for Which Certificates Are Issued)

Article 255 (1) Transfers of share options for which certificates are issued do not become effective unless the share option certificates representing the share options for which relevant certificates are issued are delivered; provided, however, that this does not apply to transfers of share options for which certificates are issued that arise out of the disposition of own share options (meaning own share options that the stock company holds; hereinafter the same applies in this Chapter).

- (2) Transfers of share options attached to a bonds with share options for which a certificate is issued do not become effective unless the certificate representing the bonds with share options for which such a certificate is issued is delivered; provided, however, that this does not apply to transfers of share options attached to own bonds with share option (meaning own bonds with share option that the stock company holds; hereinafter the same applies in this Article and the following Article) that arise out of the disposition of relevant own bonds with share option.

(Special Provisions on Disposition of Own Share Option)

Article 256 (1) A stock company must, without delay after the day of the disposition of its own share options (limited to share options for which certificates are issued), deliver the share option certificates to the persons who acquired relevant own share options.

- (2) Notwithstanding the provisions of the preceding paragraph, a stock company may elect to not deliver share option certificates under that paragraph until the persons under that paragraph so request.
- (3) A stock company must, without delay after the day of the disposition of its own bonds with share option (limited to a bonds with share options for which a certificate is issued), deliver the certificate representing the bonds with share options to the persons who acquire relevant own bonds with share option.
- (4) The provisions of Article 687 do not apply to the transfer of bonds with respect to the own bonds with share option arising from the disposition of relevant own bonds with share option.

(Perfection of Transfers of Share Options)

Article 257 (1) Transfers of share options may not be perfected against the stock company and other third parties unless the names and addresses of the person who acquire those share options is stated or recorded in the share options register.

- (2) For the purpose of the application of the provisions of the preceding paragraph to share options for which certificates are issued and in respect of which registered share option certificates have been issued, and share options attached to a bonds with share options for which a certificate is issued and in respect of which a registered certificate representing the bonds with share options has been issued, the phrase "the stock company and other third parties" in that paragraph is deemed to be replaced with "the stock company".
- (3) The provisions of paragraph (1) do not apply to any bearer share options or share options attached to bearer bonds with share option.

(Presumption of Rights)

Article 258 (1) A possessor of share option certificates is presumed to be the lawful owner of the rights in relation to share options for which certificates are issued and which those share option certificates represent.

(2) A person who receives delivery of share option certificates acquires the rights in relation to the share options for which certificates are issued and which those share option certificates represent; provided, however, that this does not apply if that person has acted in bad faith or with gross negligence as to the fact of defective title of the transferor.

(3) A possessor of a certificate representing a bonds with share options is presumed to be the lawful owner of the rights in relation to the share options that are attached to the bonds with share options for which the certificate is issued and which the certificate representing the bonds with share options represents.

(4) A person who receives delivery of a certificate representing a bonds with share options acquires the rights in relation to the share options that are attached to the bonds with share options for which a certificate is issued and which the certificate representing the bonds with share options represents; provided, however, that this does not apply if that person has acted in bad faith or with gross negligence.

(Entry or Recording of Information Required to Be Entered in the share option Register Not Requested by Share Option Holders)

Article 259 (1) In the cases provided for in the following items, a stock company must enter or record the information required to be entered in the share option register in respect of the share option holders referred to in these items:

- (i) if it has acquired the share options of relevant stock company;
  - (ii) if it has disposed of own share options.
- (2) The provisions of the preceding paragraph do not apply to bearer share options or share options attached to bearer bonds with share option.

(Entry or Recording of Information Required to Be Entered in the Share Option Register at the Request of Share Option Holders)

Article 260 (1) A person who has acquired share options from a person other than the stock company that issued relevant share options (excluding relevant stock company, hereinafter in this Section referred to as "acquirer of share options") may request the stock company to enter or record the information required to be entered in the share option register with respect to those share options, in the share option register.

- (2) Except for cases prescribed by Ministry of Justice Order as cases of no likelihood of detriment to interested parties, requests under the provisions of the preceding paragraph must be made jointly with the person stated or recorded in the share option register as the share option holder so acquired, or the person's general successors including the person's heirs.
- (3) The provisions of the preceding two paragraphs do not apply to bearer share options or share options attached to bearer bonds with share option.

Article 261 The provisions of the preceding paragraph do not apply if the share options acquired by the acquirer of share options are share options with restriction on transfer; provided, however, that this does not apply if it falls under any of the following:

- (i) relevant acquirer of share options has obtained approval under the following Article as to an intended acquisition of relevant share options with restriction of transfer;
- (ii) relevant acquirer of share options has obtained approval under Article 263, paragraph (1) as to a completed acquisition of relevant share options with restriction of transfer;
- (iii) relevant acquirer of share options is a person who acquired the share options with restriction of transfer by general succession including inheritance.

**Subsection 2 Restriction on Transfers of Shares**

(Requests for Approval by Share Option Holders)

Article 262 If share option holders with restriction on transfer intend to transfer share options with restriction on transfer held by the same to others (excluding the stock company which issued relevant share options with restriction on

transfer), they may request that relevant stock company make a determination as to whether or not to approve the acquisition by relevant others of relevant share options with restriction on transfer.

(Request for Approval by Acquirers of Share Options)

Article 263 (1) Acquirers of share options who have acquired share options with restriction on transfer may request that the stock company make a determination as to whether or not to approve the acquisition of relevant share options with restriction on transfer.

(2) Except for cases prescribed by Ministry of Justice Order as cases of no likelihood of detriment to interested parties, requests pursuant to the provisions of the preceding paragraph must be submitted jointly with the person stated or recorded in the share option register as the share option holders so acquired, or the person's general successors including the person's heirs.

(Method for Requests for Approval of Transfer)

Article 264 The requests set forth in the following items (hereinafter in this Subsection referred to as "requests for approval of transfer") must be made by disclosing the matters provided for in these items:

- (i) requests under the provisions of Article 262: the following matters:
  - (a) the features and number of share options with restriction on transfer that the share option holders making relevant request intend to transfer to others;
  - (b) the names of the person accepting the transfer of the share options with restrictions on transfer referred to in (a);
- (ii) requests under the provisions of paragraph (1) of the preceding Article: the following matters:
  - (a) the features and number of share options with restriction on transfer that the acquirer of share options making relevant request has acquired;
  - (b) the name of the acquirer of share options referred to in (a).

(Determination of Approval of Transfer)

Article 265 (1) The determination by a stock company as to whether or not to grant approval under Article 262 or Article 263, paragraph (1) must be made by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply in cases where it is otherwise provided for as a feature of the share options.

(2) If a stock company has made a determination under the preceding paragraph, it must notify the person who made the requests for approval of transfer of the

content of relevant determination.

(Cases Where Stock Company Is Deemed to Have Approved)

Article 266 If a stock company has failed to give notice pursuant to the provisions of paragraph (2) of the preceding Article within two weeks (or if any shorter period of time is provided for in the articles of incorporation, relevant shorter period of time) from the day of the requests for approval of transfer, the stock company is deemed to have given the approval under Article 262 or Article 263, paragraph (1); provided, however, that this does not apply if otherwise provided for by agreement between the stock company and the person who made the requests for approval of transfer.

### **Subsection 3 Pledging Share Options**

(Pledging Share Options)

- Article 267 (1) Share option holders may pledge the share options held by the same.
- (2) Notwithstanding the provisions of the preceding paragraph, share options attached to bonds with share option may not be pledged on a stand-alone basis; provided, however, that this does not apply if the bonds with respect to relevant bonds with share option are extinguished.
- (3) bonds with respect to bonds with share option may not be pledged on a stand-alone basis; provided, however, that this does not apply if the share options attached to relevant bonds with share option are extinguished.
- (4) Pledging share options for which certificates are issued does not become effective unless the share option certificates representing the share options for which certificates are issued have been delivered.
- (5) Pledging share options attached to a bonds with share options for which a certificate is issued does not become effective unless the certificate representing the bonds with share options for such a bonds with share options for which a certificate is issued is delivered.

(Perfection of Pledging Share Options)

- Article 268 (1) Pledging share options may not be perfected against the stock company and other third parties unless the names and addresses of pledgees are stated or recorded in the share option register.
- (2) Notwithstanding the provisions of the preceding paragraph, a pledgee of share options for which certificates are issued may not assert the pledge against the stock company and other third parties unless the pledgee is in continuous possession of the share option certificates representing the share options for which certificates are issued.

(3) Notwithstanding the provisions of paragraph (1), a pledgee of share options attached to a bonds with share options for which a certificate is issued may not assert the pledge against the stock company and other third parties unless the pledgee is in continuous possession of the certificate representing the bonds with share options for such a bonds with share options for which a certificate is issued.

(Entries in Share Option Registers)

Article 269 (1) A person who pledges share options may request that the stock company enter or record the following information in the share option register:

- (i) the name and address of the pledgee;
- (ii) the share options underlying the pledge.

(2) The provisions of the preceding paragraph do not apply to bearer share options or share options attached to bearer bonds with share option.

(Delivery of Documents Showing Information That Has Been Entered in the Share Option Register)

Article 270 (1) A pledgee whose information as set forth in the items of the preceding Article has been entered or recorded in the share option register (hereinafter referred to as a "registered pledgee of share options") may file a request with the stock company to be issued a document showing the information set forth in the items of that paragraph which has been entered or recorded in the share option register with respect to the registered pledgee of share options, or to be provided with the electronic or magnetic record in which that information has been recorded.

- (2) The documents referred to in the preceding paragraph must be affixed with the signature, or name and seal, of the representative director of the stock company (the representative executive officer for a company with nominating committee, etc.; the same applies in the following paragraph).
- (3) With respect to the electronic or magnetic record referred to in paragraph (1), the representative director of the stock company must implement measures in lieu of the affixation of signature, or name and seal prescribed by Ministry of Justice Order.
- (4) The provisions of the preceding three paragraphs do not apply to share options for which certificates are issued or share options attached to a bonds with share options for which a certificate is issued.

(Notices to Registered Pledges of Share Options)

Article 271 (1) It is sufficient for a notice or demand to a registered pledges of share options to be sent by a stock company to the addresses of relevant registered pledges of share options stated or recorded in the share option

register (or, if relevant registered pledgees of share options notify the stock company of any different place or contact address for the receipt of notices or demands, to that place or contact address).

- (2) The notices or demands referred to in the preceding paragraph are deemed to have arrived at the time when that notice or demand should normally have arrived.

(Effect of Pledging Share Options)

Article 272 (1) In cases where a stock company carries out any of the acts set forth below, pledge for share options is effective with respect to the monies, etc. which the holders of relevant share options are entitled to receive as a result of relevant act:

- (i) the acquisition of share options;
- (ii) entity conversion;
- (iii) merger (but only if relevant stock company disappears in the merger);
- (iv) absorption-type company split;
- (v) incorporation-type company split;
- (vi) share exchange; or
- (vii) share transfer.

- (2) Registered pledgees of share options may receive the monies, etc. (limited to monies) under the preceding paragraph, and appropriate them as payment to satisfy their own claims in priority to other creditors.

- (3) If a stock company performs the acts set forth in the following items, if the claims under the preceding paragraph have not yet become due and payable, the registered pledgees of share options may have the person specified in each of those items deposit an amount equivalent to the value of the monies, etc. provided for in that paragraph. In these cases, the pledge is effective with respect to the monies so deposited:

- (i) acquisition of share options: the stock company;
- (ii) entity conversion: a membership company after entity conversion prescribed in Article 744, paragraph (1), item (i); and
- (iii) merger (but only if the stock company disappears in the merger): the company surviving the absorption-type merger as prescribed in Article 749, paragraph (1) or the company incorporated in the consolidation-type merger as prescribed in Article 753, paragraph (1).

- (4) The provisions of the preceding three paragraphs apply mutatis mutandis to cases where a special controlling shareholder acquires share options subject to the cash-out by the demand for share option cash-out. In this case, "the person specified in each of those items" in the preceding paragraph is deemed to be replaced with "the special controlling shareholder".

- (5) Pledges for share options attached to bonds with share option (limited to

cases where the property provided for in Article 236, paragraph (1), item (iii) consists of the bonds with respect to relevant bonds with share option, and the redemption amount for relevant bonds is equal to or more than the value provided for in item (ii) of that paragraph with respect to relevant share options) are effective with respect to the shares that the holders of relevant share options receive by exercising relevant share options.

#### **Subsection 4 Perfection of Share Options Belong to the Trust Property**

Article 272-2 (1) With regard to share options, the fact that the share options belong to the trust property may not be perfected against the stock company and other third parties unless the fact that the share options belong to the trust property is entered or recorded in the share option register.

(2) When share options held by the share option holders set forth in Article 249, item (iii), (a) belong to the trust property, the share option holders may request the stock company to enter or record to that effect in the share option register.

(3) When applying the provisions of Article 250, paragraph (1) and Article 259, paragraph (1) if the statement or record is made pursuant to the provisions of the preceding paragraph in the share option register, the phrase "showing the information required to be entered in the share option register which has been entered or recorded" in Article 250, paragraph (1) is deemed to be replaced with "showing the information required to be entered in the share option register (including the fact that the share options held by those share option holders belong to the trust property) which has been entered or recorded" and the phrase "information required to be entered in the share option register" in Article 259, paragraph (1) is deemed to be replaced with "information required to be entered in the share option register (including the fact that the share options held by those share option holders belong to the trust property)".

(4) The provisions of the preceding three paragraphs do not apply to a share certificate-issuing company.

### **Section 5 Acquisition of Own Share Option by Stock Companies**

#### **Subsection 1 Acquisition of Share Option Pursuant to Subscription Requirements**

(Determination of Day of Acquisition)

Article 273 (1) If there are provisions with respect to the matters set forth in Article 236, paragraph (1), item (vii), (b) as a feature of share options subject to call (meaning share options for which there are provisions with respect to the matters set forth in item (vii), (a) of that paragraph; hereinafter the same applies in this Chapter), the stock company must determine the day under the



same item (vii), (b) by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided as a feature of relevant share options subject to call.

- (2) If a stock company determines the day under Article 236, paragraph (1), item (vii), (b), the stock company must notify the holders of share options subject to call (or, if there are provisions with respect to the matters set forth in item (vii), (c) of that paragraph, the holders of share options subject to call determined under the provisions of paragraph (1) of the following Article) and the registered pledgees of share options thereof of that date, no later than two weeks prior to that day.
- (3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

#### (Determination of Share Options to Be Acquired)

Article 274 (1) If there are provisions with respect to the matters set forth in Article 236, paragraph (1), item (vii), (c), if a stock company intends to acquire share options subject to Call, it must determine the share options subject to call that it intends to acquire.

- (2) The share options subject to call under the preceding paragraph must be determined by a resolution at a shareholders meeting (or at a board of directors meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided as a feature of relevant share options subject to call.
- (3) If a stock company makes the determination pursuant to the provisions of paragraph (1), the stock company must immediately notify the holders of share options subject to call who are determined under the provisions of that paragraph and the registered pledgees of share options thereof to the effect that the stock company will acquire relevant share options subject to call.
- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

#### (Effectuation)

Article 275 (1) A stock company acquires, on the day when the grounds under Article 236, paragraph (1), item (vii), (a) have arisen (or, if there are provisions with respect to the matters set forth in item (vii), (c) thereof, the day set forth in item (i) or the day set forth in item (ii) below, whichever comes later; the same applies in the following paragraph and paragraph (3)), share options subject to call (or, if there are provisions with respect to the matters set forth in paragraph (1), item (vii), (c) of that Article, the share options subject to call determined pursuant to the provisions of paragraph (1) of the preceding

- Article; the same applies in the following paragraph and paragraph (3)):
- (i) the day when the grounds under Article 236, paragraph (1), item (vii), (a) have arisen; or
  - (ii) the day of notice under the provisions of paragraph (3) of the preceding Article, or the day when two weeks have lapsed from the day of the public notice under paragraph (4) of that Article.
- (2) If the share options subject to call that a stock company acquires under the provisions of the preceding paragraph are attached to bonds with share option, the stock company acquires the bonds with respect to relevant bonds with share option on the day when the grounds under Article 236, paragraph (1), item (vii), (a) have arisen.
- (3) In the cases set forth in the following items, the holders of share options subject to call (excluding the relevant stock company) become the persons specified in each of those items in accordance with the provisions with respect to the matters provided for in Article 236, paragraph (1), item (vii), (a), on the day when the grounds under the same item arise:
- (i) if there are provisions on the matters set forth in Article 236, paragraph (1), item (vii), (d): the holders of shares referred to in the same item (vii), (d);
  - (ii) if there are provisions on the matters set forth in Article 236, paragraph (1), item (vii), (e): the holders of bonds referred to in the same item (vii), (e);
  - (iii) if there are provisions on the matters set forth in Article 236, paragraph (1), item (vii), (f): the holders of the relevant other share options under that item (vii), (f);
  - (iv) if there are provisions on the matters set forth in Article 236, paragraph (1), item (vii), (g): the holders of bonds constituting bonds with share option referred to in that item (vii), (g), and holders of share options attached to those bonds.
- (4) Without delay after the grounds under Article 236, paragraph (1), item (vii), (a) have arisen, a stock company must notify the holders of share options subject to call and registered pledgees of share options thereof (if there are provisions with respect to the matters set forth in the same item (vii), (c) thereof, the holders of share options subject to call determined pursuant to the provisions of paragraph (1) of the preceding Article, and registered pledgees of share options thereof) to the effect that relevant grounds has occurred; provided, however, that this does not apply if the stock company has given notice under the provisions of Article 273, paragraph (2) or has given public notice under the provisions of paragraph (3) of the same Article.
- (5) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

## **Subsection 2 Cancellation of Share Options**

Article 276 (1) A stock company may cancel its own share options. In these cases, the stock company must determine the features and number of the own share options it intends to cancel.

(2) For a company with board of directors, the determination under the provisions of the second sentence of the preceding paragraph must be made by a resolution at a board of directors meeting.

### **Section 6 Allotment of Share Options without Contribution**

(Allotment of Share Options without Contribution)

Article 277 A stock company may allot the share options of relevant stock company to shareholders (or, for a company with class shares, shareholders of a certain class) without requiring them to make additional contribution (hereinafter in this Section referred to as "allotment of share options without contribution").

(Determination of Matters in Relation to Allotment of Share Options without Contribution)

- Article 278 (1) Whenever a stock company intends to effect the allotment of share options without contribution, it must prescribe the following matters:
- (i) the features and number of the share options the stock company will allot to shareholders or the method for calculating that number;
  - (ii) if the share options provided for in the preceding item are attached to bonds with share option, the classes of bonds with respect to relevant bonds with share option, and the total of the amounts for each bond or the method for calculating that amount;
  - (iii) the day when relevant allotment of share options without contribution becomes effective; and
  - (iv) if the stock company is a company with class shares, the classes of shares held by shareholders who are entitled to relevant allotment of share options without contribution.
- (2) The provisions regarding the matters set forth in item (i) and item (ii) of the preceding paragraph must be that the share options under item (i) of that paragraph and the bonds under item (ii) of that paragraph will be allotted in proportion to the number of shares (or, for a company with class shares, the shares of the classes under item (iv) of that paragraph) held by shareholders (or, for a company with class shares, class shareholders of the classes under item (iv) of that paragraph) other than relevant stock company.
- (3) The determination of the matters set forth in each item of paragraph (1) must be made by a resolution at a shareholders meeting (or at a board of directors

meeting for a company with board of directors); provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

(Effectuation of Allotment of Share Options without Contribution)

- Article 279 (1) Shareholders to whom the share options under paragraph (1), item (i) of the preceding Article have been allotted become the share option holders provided for in item (i) of that paragraph on the day provided for in item (iii) of that paragraph (or, in the case provided for in item (ii) of that paragraph, the holders of share option provided for in item (i) of that paragraph and the holders of the bonds provided for in item (ii) of that paragraph).
- (2) A stock company must notify shareholders (or, for a company with class shares, class shareholders of the classes under item (iv) of the same paragraph) and the registered pledgees of shares thereof, of the features and number of the share options (in the cases provided for in item (ii) of the same paragraph, including the classes of bonds that have been allotted to relevant shareholders and the total of the amounts for each bond) that have been allotted to relevant shareholders, after the day stated in paragraph (1), item (iii) of the preceding Article without day.
- (3) If notice is made pursuant to the provisions of the preceding paragraph, when the end of the period stated in Article 236, paragraph (1), item (iv) with respect to the share options set forth in paragraph (1), item (i) of the preceding Article arrives before the day when two weeks elapse from the day of the notice, the period stated in the same item is deemed to be extended to the day when two weeks elapse from the day of the notice.

## **Section 7 Exercising Share Option**

### **Subsection 1 General Provisions**

(Exercising Share Options)

- Article 280 (1) Share options must be exercised by disclosing the following matters:
- (i) the features and number of the share options to be exercised; and
  - (ii) the day on which the share options will be exercised.
- (2) If it is intended to exercise share options for which certificates are issued, the holders of relevant share options for which certificates are issued must submit the share option certificates representing the share options for which certificates are issued to the stock company; provided, however, that this does not apply if no relevant share option certificates have been issued.
- (3) If it is intended to exercise share options attached to a bonds with share options for which a certificate is issued, the holders of relevant share options

must submit to the stock company the certificate representing the bonds with share options for bonds with share option to which relevant share options are attached. In these case, relevant stock company must specify in relevant certificate representing the bonds with share options to the effect that those share options attached to such a bonds with share options for which a certificate is issued have been extinguished.

- (4) Notwithstanding the provisions of the preceding paragraph, if it is intended to exercise share options attached to a bonds with share options for which a certificate is issued, if the bonds with respect to such a bonds with share options for which a certificate is issued are extinguished by the exercise of relevant share options, the holders of those share options must submit the certificate representing the bonds with share options for the bonds with share option to which those share options are attached to the stock company.
- (5) Notwithstanding the provisions of paragraph (3), if it is intended to exercise the share options attached to a bonds with share options for which a certificate is issued after the redemption of the bonds with respect to such a bonds with share options for which a certificate is issued, the holders of relevant share options must submit the certificate representing the bonds with share options for the bonds with share option to which relevant share options are attached to the stock company.
- (6) A stock company cannot exercise own share options.

(Payment of Amount to Be Paid in on Exercise of Share Option)

- Article 281 (1) If monies are the subject of the contribution to be made on the exercise of share options, the share option holders must pay in the entire amount of the value provided for in Article 236, paragraph (1), item (ii) with respect to the share options relating to relevant exercise at the place for the handling of bank, etc. payments designated by the stock company on the day provided for in paragraph (1), item (ii) of the preceding Article.
- (2) If any property other than monies is the subject of the contribution to be made on the exercise of share options, the share option holders must deliver the property provided for in Article 236, paragraph (1), item (iii) with respect to the share options relating to that exercise on the day provided for in paragraph (1), item (ii) of the preceding Article. In these cases, if the value of the property falls short of the value provided for in Article 236, paragraph (1), item (ii), the holders of the share options must pay in monies equivalent to the balance thereof at the place for the handling of payments referred to in the preceding paragraph.
  - (3) Share option holders may not set off their obligations to effect payment under the provisions of paragraph (1) or delivery under the provisions of the preceding paragraph against claims the holders of share options have against

the stock company.

(Timing of Shareholder Status)

- Article 282 (1) Share option holders who have exercised share options become shareholders of the shares underlying relevant share options on the day when relevant share options are exercised.
- (2) A share option holder that exercises a share option and is as set forth in items of Article 286-2, paragraph (1) may not exercise the right of shareholders with respect to shares that are subject matters of share options for which payment or delivery set forth in each items of Article 286-2, paragraph (1) is falsified, unless the payment specified in each of those items or the payment pursuant to the provisions of Article 286-3, paragraph (1) is made.
- (3) The person who accepts the transfer of shares referred to in the preceding paragraph may exercise the right of shareholders with respect to the shares; provided, however, that this does not apply if the person has acted in bad faith or with gross negligence.

(Treatment of Fractional Shares)

Article 283 If share options are exercised, if the number of the shares to be issued to the holders of relevant share options includes a fractional share, the stock company must, in accordance with the categories of the cases set forth in each of the following items, deliver to the holders of relevant share options monies equivalent to the amount obtained by multiplying the amount provided for in each relevant item by that fractional share; provided, however, that this does not apply if there are provisions with respect to the matters set forth in Article 236, paragraph (1), item (ix):

- (i) if relevant shares are shares with a market price: the amount calculated by the method prescribed by Ministry of Justice Order as the market price of one relevant share; and
- (ii) in cases other than the cases set forth in the preceding item: the amount of net assets per share.

**Subsection 2 Contribution of Property Other than Monies**

Article 284 (1) If share options for which there are provisions with respect to the matters set forth in Article 236, paragraph (1), item (iii) are exercised, a stock company must petition the court, without delay after a delivery of property under the provisions of Article 281, paragraph (2), for the appointment of an inspector, in order to have the inspector investigate the value of the property provided for in that item (hereinafter in this Section referred to as "property contributed in kind").

- (2) If the petition referred to in the preceding paragraph has been filed, the court must appoint an inspector, except if it dismisses the petition as unlawful.
- (3) If the court has appointed the inspector under the preceding paragraph, it may fix the amount of the remuneration that the stock company pays to relevant inspector.
- (4) The inspector referred to in paragraph (2) must conduct the necessary investigation and submit a report to the court by providing it with a document detailing the results of the investigation or with an electronic or magnetic record (limited one prescribed by Ministry of Justice Order) in which these have been recorded.
- (5) If the court finds it necessary to clarify the contents of the report stated in the preceding paragraph or to confirm the grounds supporting that report, it may request that the inspector referred to in paragraph (2) submit a further report under the preceding paragraph.
- (6) If the inspector under paragraph (2) has submitted the report referred to in paragraph (4), the inspector must deliver a copy of the document referred to in that paragraph to the stock company or use a means prescribed by Ministry of Justice Order to provide it with the information recorded in the electronic or magnetic record referred to in that paragraph.
- (7) If the court receives a report under paragraph (4), if it finds the value provided for in Article 236, paragraph (1), item (iii) with respect to the property contributed in kind (excluding a value not subjected to the investigation by the inspector under paragraph (2)) to be improper, it must issue a ruling changing relevant value.
- (8) If the value of the property contributed in kind has been changed, in whole or in part, because of a ruling under the preceding paragraph, the share option holders referred to in paragraph (1) may rescind their manifestation of intention relating to the exercise of their share options, limited to within one week from the finalization of relevant ruling.
- (9) The provisions of the preceding paragraphs do not apply in the cases in each of the following items with respect to the matters prescribed respectively in those items:
  - (i) if the total number of the shares to be delivered to the holders of share options that have been exercised does not exceed one tenth of the total number of issued shares: the value of the property contributed in kind that are tendered by the holders of relevant share options;
  - (ii) if the total sum of the values provided for under Article 236, paragraph (1), item (iii) with respect to the property contributed in kind does not exceed 5,000,000 yen: the value of relevant property contributed in kind;
  - (iii) if the value provided for under Article 236, paragraph (1), item (iii) with respect to the property contributed in kind does not exceed the value

- calculated by the method prescribed by Ministry of Justice Order as the market price of relevant securities: the value of the property contributed in kind with respect to relevant securities;
- (iv) if, the verification of an attorney, a legal professional corporation, a lawyer and registered foreign lawyer joint corporation, a certified public accountant, an audit corporation, a certified public tax accountant or a tax accountancy corporation (or if the property contributed in kind consist of real estate, relevant verification and an appraisal by a real estate appraiser; hereinafter the same applies in this item) is obtained with respect to the reasonableness of the value provided for under Article 236, paragraph (1), item (iii) with respect to property contributed in kind: the value of the property contributed in kind for which verification has been obtained;
  - (v) if the property contributed in kind consist of a money claim (limited to claims that have already fallen due), and the value provided for under Article 236, paragraph (1), item (iii) with respect to relevant money claim does not exceed the book value of the debt representing the money claim: the value of the property contributed in kind with respect to relevant monetary claim.
- (10) None of the following persons can provide the verification provided in item (iv) of the preceding paragraph:
- (i) a director, an accounting advisor, a company auditor or executive officer, or an employee including a manager;
  - (ii) a share option holder;
  - (iii) a person who has become subject to a suspension of operations for whom the period of that suspension has not elapsed yet; or
  - (iv) a legal professional corporation, a lawyer and registered foreign lawyer joint corporation, an audit corporation or a tax accountancy corporation with respect to which more than half of its members are the persons who fall under either item (i) or item (ii) above.

### **Subsection 3 Liabilities**

(Liabilities of Persons Who Subscribed for Share Options with Unfair Amount to Be Paid in)

Article 285 (1) In a case as set forth in one of the following items, the share option holder exercising the share option is liable to the stock company for payment of the amount provided for in the relevant item:

- (i) in the cases provided for in Article 238, paragraph (1), item (ii), if the arrangement that there is no requirement for monies to be paid in for share options for subscription is a condition that is extremely unfair (limited to the cases where the share option holder subscribed for the share options in collusion with directors (or, directors or executive officers for a company with



nominating committee, etc.; the same applies in the following item)): the fair value of relevant share options:

- (ii) in the cases provided for in Article 238, paragraph (1), item (iii), if the share option holder subscribed for the share options at an amount to be paid in that is extremely unfair, in collusion with directors: the amount equivalent to the difference between relevant amount to be paid in and the fair value of relevant share options;
  - (iii) if the value of the property contributed in kind that the share option holder tendered when becoming a shareholder pursuant to the provisions of Article 282, paragraph (1) is extremely short of the value provided for under Article 236, paragraph (1), item (iii) with respect to the property contributed in kind: the amount of relevant shortfall.
- (2) In the cases provided for in item (iii) of the preceding paragraph, if the share option holder that tendered the property contributed in kind has acted in good faith and without gross negligence as to the fact that the value of relevant property contributed in kind is extremely short of the value provided for under Article 236, paragraph (1), item (iii) with respect to the property contributed in kind, the share option holder may rescind the manifestation of intention relating to the exercise of the share options.

(Liabilities of Directors in Case of Shortfall in Value of Property Contributed)

Article 286 (1) In the cases set forth in paragraph (1), item (iii) of the preceding Article, the following persons (hereinafter in this Article referred to as "directors, etc.") are liable to the stock company for payment of the amounts set forth in relevant items:

- (i) executive directors who carried out duties regarding the solicitation of relevant share option holders (or, for a company with nominating committee, etc., executive officers; hereinafter the same applies in this item) and other persons prescribed by Ministry of Justice Order as persons who were involved, in the performance of their duties, in the execution of the business of relevant executive directors;
  - (ii) if a resolution regarding the determination of the value of the property contributed in kind is passed at a shareholders meeting, the persons prescribed by Ministry of Justice Order as the directors who submitted proposals to relevant shareholders meeting;
  - (iii) if a resolution regarding the determination of the value of property contributed in kind is passed at a board of directors meeting, the persons prescribed by Ministry of Justice Order as the directors (or, for a company with nominating committee, etc., directors or executive officers) who submitted proposals to relevant board of directors meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, the directors, etc.

are not liable for property contributed in kind under that paragraph in the cases set forth below:

- (i) an investigation has been carried out by an inspector under Article 284, paragraph (2) with respect to the value of the property contributed in kind;  
or
  - (ii) relevant directors, etc. have proven that they did not fail to exercise due care with respect to the performance of their duties.
- (3) In the cases provided for in paragraph (1), the person who submitted the verification provided for in Article 284, paragraph (9), item (iv) (hereinafter in this Article referred to as "verifying person") is liable for the payment of the amount provided for in paragraph (1), item (iii) of the preceding Article to the stock company; provided, however, that this does not apply if relevant verifying person has proven that the verifying person did not fail to exercise care with respect to the submission of relevant verification.
- (4) If a share option holder bears an obligation to pay an amount provided for in paragraph (1), item (iii) of the preceding Article with respect to property contributed in kind tendered by the share option holder, if the persons set forth as follows bear obligations provided for in each of relevant items with respect to relevant property contributed in kind, those persons will be joint and several obligors:
- (i) directors, etc.: the obligations under paragraph (1); and
  - (ii) verifying persons: the obligations under the main clause of the preceding paragraph.

(Liabilities of Share Option Holders That Have Falsified Payment of Share Option)

Article 286-2 (1) A share option holder that exercises a share option and is as set forth in the following items is liable to perform the acts specified in those items to a stock company:

- (i) a person that falsified the payment pursuant to the provisions of Article 246, paragraph (1) (including delivery of property other than money that is made in lieu of the payment pursuant to the provisions of paragraph (2) of the same Article) or a person who accepts transfer of share options for subscription and had knowledge or did not know due to having acted in bad faith or with gross negligence that the payment was falsified: payment of the entire paid amount for which the payment has been falsified (if the delivery of property other than money in lieu of the payment is falsified, the delivery of property (if a stock company demands money equivalent to the value of the property in lieu of the delivery, payment of the entire amount of the money));
- (ii) a person that falsified the payment pursuant to the provisions of Article 281, paragraph (1) or the second sentence of paragraph (2) of the same

Article: payment of the entire amount of money for which payment is falsified; and

- (iii) a person that falsified the delivery pursuant to the provisions of the first sentence of Article 281, paragraph (2): delivery of property other than money for which the delivery is falsified (if a stock company requests the payment of money equivalent to the value of the property in lieu of the delivery, the payment of the entire amount of the money).
- (2) The liabilities of share option holders prescribed in the preceding paragraph pursuant to the provisions of the same paragraph may not be exempted without the consent of all shareholders.

(Liabilities of Directors in Cases of Falsifying the Payment of Share Options)

Article 286-3 (1) If a share option holder that exercises a share option and is as set forth in the items of paragraph (1) of the preceding Article is liable to perform the actions specified in the relevant item, a person prescribed by Ministry of Justice Order as a director (in cases of a company with nominating committee, etc., including executive officers) involved in falsifying the payment or delivery under those items is liable to a stock company for the payment prescribed in those items; provided, however, that this does not apply to cases where the person (excluding the person who falsified the payment or delivery) proves that the person did not fail to exercise due care with respect to the performance of the person's duties.

- (2) If a share option holder that exercises a share options and is as set forth in the items of paragraph (1) of the preceding Article is liable to make the payment prescribed in the relevant item, if the person prescribed in the preceding paragraph assumes the liability set forth in the same paragraph, these persons will be joint and several obligors.

#### **Subsection 4 Miscellaneous Provisions**

Article 287 Beyond the cases provided for in Article 276, paragraph (1), if a share option holder can no longer exercise the share options held by the same, relevant share options will be extinguished.

### **Section 8 Certificates for Share Options**

#### **Subsection 1 Share Option Certificates**

(Issuing of Share Option Certificates)

Article 288 (1) A stock company must, without delay after the day of issue of share options for which certificates are issued, issue share option certificates representing the share options for which certificates are issued.

(2) Notwithstanding the provisions of the preceding paragraph, a stock company may elect to not deliver the share option certificates under that paragraph until the share option holders so request.

(Matters to Be Stated on Share Option Certificates)

Article 289 A stock company must state the following matters and the serial number on a share option certificates and the representative director of the stock company (or the representative executive officer for a company with nominating committee, etc.) must affix the representative director's signature, or name and seal:

- (i) the trade name of the stock company; and
- (ii) the features and number of share options for which certificates are issued relating to relevant share option certificates.

(Conversion between Registered Share Options and Bearer Share Options)

Article 290 Holders of share options for which certificates are issued may demand at any time that the stock company convert their registered share option certificates into bearer share option certificates, or convert their bearer share option certificates into registered share option certificates, except if there is an arrangement that relevant conversion is not possible under the provisions with respect to the matters set forth in Article 236, paragraph (1), item (xi).

(Loss of Share Option Certificates)

Article 291 (1) Share option certificates may be invalidated pursuant to the public notification procedures under Article 100 of the Non-Contentious Cases Procedures Act.

(2) A person who has lost a share option certificate may not request the re-issuing of their share option certificate until after they obtain the decision for invalidation provided for in Article 106, paragraph (1) of the Non-Contentious Cases Procedures Act.

**Subsection 2 Certificates of Bonds with Share Options**

Article 292 (1) The certificate representing the bonds with share options representing a bonds with share options for which a certificate is issued must state the features and number of the share options attached to such a bonds with share options for which a certificate is issued, in addition to the matters to be stated under the provisions of Article 697, paragraph (1).

(2) If it is intended to redeem bonds with respect to a bonds with share options for which a certificate is issued, if the share options attached to such a bonds

with share options for which a certificate is issued have not been extinguished, the stock company may not demand the redemption of the bonds in exchange for the certificate representing the bonds with share options representing such a bonds with share options for which a certificate is issued. In these cases, the stock company may, in exchange for the redemption of the bonds, seek the presentation of relevant certificate representing the bonds with share options and may enter a statement on relevant certificate representing the bonds with share options to the effect that the bonds have been redeemed.

### **Subsection 3 Submission of Share Option Certificates**

(Public Notice in Relation to Submission of Share Option Certificates)

- Article 293 (1) If a stock company carries out an act set forth in the following items, if it has issued share option certificates representing the share options provided for in relevant items (if relevant share options are attached to bonds with share option, the certificate representing the bonds with share options representing relevant bonds with share options; hereinafter the same applies in this Subsection), relevant stock company must, more than one month prior to the day when relevant act takes effect (in cases of performing the action set forth in item (i), the acquisition day prescribed in Article 179-2, paragraph (1), item (v); hereinafter referred to as "share option certificate submission day"), give public notice to the effect that relevant share option certificates must be submitted to relevant stock company before share option certificate submission day, and a separate notice to that effect to each holder of relevant share options and each registered pledgee of relevant share options:
- (i) approval referred to in Article 179-3, paragraph (1): share options subject to the cash-out;
  - (i)-2 acquisitions of share options subject to call: relevant share options subject to call;
  - (ii) entity conversion: all share options;
  - (iii) merger (but only if the stock company disappears in the merger): all share options;
  - (iv) absorption-type company split: share options in absorption-type split agreement provided for in Article 758, item (v), (a);
  - (v) incorporation-type company split: share options in the incorporation-type company split plan provided for in Article 763, paragraph (1), item (x), (a);
  - (vi) share exchange: share options in share exchange agreement provided for in Article 768, paragraph (1), item (iv), (a); or
  - (vii) share transfer: share options in share transfer plan provided for in Article 773, paragraph (1), item (ix), (a).
- (2) If a stock company takes an action set forth in one of the following items and

a person fails to submit share option certificates to the stock company by the share option certificate submission day, the person specified in each of those items may refuse to deliver the monies, etc. that the holder of the share options represented by those share option certificates is entitled to receive as a result of that act (if it takes the action set forth in item (i), this means monies, etc. that the holder is entitled to receive as a result of the acquisition of the share options that are subject to the cash-out based on the demand for a share option cash-out) until the share option certificates are submitted:

- (i) the approval referred to in Article 179-3, paragraph (1): a special controlling shareholder;
  - (ii) acquisition of share options subject to call: that stock company;
  - (iii) entity conversion: membership company after the entity conversion prescribed in Article 744, paragraph (1), item (i);
  - (iv) merger (but only if the stock company disappears in the merger): the company surviving the absorption-type merger as prescribed in Article 749, paragraph (1) or the company incorporated in the consolidation-type merger as prescribed in Article 753, paragraph (1);
  - (v) absorption-type company split: the company succeeding in the absorption-type split as prescribed in Article 758, item (i);
  - (vi) incorporation-type company split: the stock company incorporated in the incorporation-type split as prescribed in Article 763, paragraph (1), item (i);
  - (vii) share exchange: the wholly owning parent stock company resulting from the share exchange as prescribed in Article 768, paragraph (1), item (i); and
  - (viii) share transfer: the wholly owning parent company incorporated in a share transfer as prescribed in Article 773, paragraph (1), item (i).
- (3) The share option certificates representing the share options provided for in each item of paragraph (1) become invalid on the share option certificate submission day.
- (4) The cost of public notice and notice pursuant to the provisions of paragraph (1), item (i) is paid by a special controlling shareholder.
- (5) The provisions of Article 220 apply mutatis mutandis if, if an act set forth in any item of paragraph (1) is carried out, a person cannot submit the share option certificates. In this case, the phrase "items of paragraph (2) of the preceding Article" in paragraph (2) of the same Article is deemed to be replaced with "items of Article 293, paragraph (2)".

(Cases Where Bearer Share Option Certificates Are Not Submitted)

Article 294 (1) Notwithstanding the provisions of Article 132, if the act set forth in paragraph (1), item (i)-2 of the preceding Article is carried out (limited to cases where, in exchange for the acquisition of share options by a stock company, shares in relevant stock company are delivered to the holders of

relevant share options), if share option certificates (limited to those in bearer form; hereinafter the same applies in this Article) are not submitted pursuant to the provisions of that paragraph, the stock company is not required to enter or record the information set forth in Article 121, item (i) in the shareholder register in connection with shares that persons holding those share option certificates are entitled to have delivered.

- (2) In the cases provided for in the preceding paragraph, a stock company is not required to send notices or demands to shareholders of shares that persons who hold share option certificates that must be submitted pursuant to the provisions of paragraph (1) of the preceding Article are entitled to have delivered.
- (3) Notwithstanding the provisions of Article 249 and Article 259, paragraph (1), if the act set forth in paragraph (1), item (i)-2 of the preceding Article is carried out (limited to cases where, in exchange for the acquisition of share options by a stock company, other share options of relevant stock company (excluding those attached to bonds with share option) are delivered to the holders of relevant share options), if no share option certificates are submitted pursuant to the provisions of that paragraph, the stock company is not required to state or record in the share option register the matters set forth in Article 249, item (iii), (a) relating to relevant other share options (excluding bearer share options) that persons who hold relevant share option certificates are entitled to have delivered.
- (4) In the cases provided for in the preceding paragraph, a stock company is not required to send notices or demands to share option holders of share options that persons who hold share option certificates that must be submitted pursuant to the provisions of paragraph (1) of the preceding Article are entitled to have delivered.
- (5) Notwithstanding the provisions of Article 249 and Article 259, paragraph (1), if the act set forth in paragraph (1), item (i)-2 of the preceding Article is carried out (limited to cases where, in exchange for the acquisition of share options by a stock company, bonds with share option of relevant stock company are delivered to the holders of relevant share options), if no share option certificates are submitted pursuant to the provisions of that paragraph, the stock company is not required to state or record in the share option register the matters set forth in Article 249, item (iii), (a) relating to share options attached to the bonds with share option (excluding bearer bonds with share option) that persons who hold relevant share option certificates are entitled to have delivered.
- (6) In the cases provided for in the preceding paragraph, a stock company is not required to send notices or demands to holders of share options attached to the bonds with share option that persons who hold share option certificates that

are to be submitted pursuant to the provisions of paragraph (1) of the preceding Article are entitled to have delivered.

## **Chapter IV Organs**

### **Section 1 Shareholders Meeting and General Meetings of Class Shareholders**

#### **Subsection 1 Shareholders Meeting**

(Authority of Shareholders Meetings)

Article 295 (1) At shareholders meetings, the matters provided for in this Act and any and all other matters regarding a stock company, such as the organization, operations and administration of a stock company, may be resolved.

(2) Notwithstanding the provisions of the preceding paragraph, for a company with board of directors, only the matters provided for in this Act and the matters provided for in the articles of incorporation may be resolved at a shareholders meeting.

(3) Provisions of the articles of incorporation which provide to the effect that any organization other than the shareholders meeting, such as a board of directors, board of executive officers and board of directors, may determine any matter which, pursuant to the provisions of this Act, requires the resolution at the shareholders meeting are not effective.

(Calling of Shareholders Meetings)

Article 296 (1) Annual shareholders meetings must be called within a defined period of time after the end of each business year.

(2) A shareholders meeting may be called whenever necessary.

(3) A shareholders meeting is called by directors, except if it is called pursuant to the provisions of paragraph (4) of the following Article.

(Demand for Calling of Meetings by Shareholders)

Article 297 (1) Shareholders having consecutively for the preceding six months or more (or, if shorter period is prescribed in the articles of incorporation, the period or more) not less than three hundredths (or, if lesser proportion is prescribed in the articles of incorporation, the proportion) of the votes of all shareholders may demand the directors, by showing the matters which are the purpose of the shareholders meeting (limited to the matters on which relevant shareholders may vote) and the reason of the calling, that they call the shareholders meeting.

(2) For the purpose of the application of the preceding paragraph to a stock company which is not a public company, the phrase "having consecutively for



the preceding six months or more (or, if shorter period is prescribed in the articles of incorporation, the period or more)" in that paragraph is deemed to be replaced with "having".

- (3) The number of the votes of the shareholders who may not vote on the matters that are the purpose of the shareholders meeting referred to in paragraph (1) is not included in the number of the votes of all shareholders under that paragraph.
- (4) In the following cases, the shareholders who made the demand pursuant to the provisions of paragraph (1) may call the shareholders meeting with the permission of the court:
  - (i) if the calling procedure is not effected without delay after the demand pursuant to the provisions of paragraph (1); or
  - (ii) if a notice for the calling of the shareholders meeting which designates, as the day of the shareholders meeting, a day falling within the period of eight weeks (or, if any period less than that is provided for in the articles of incorporation, the period) from the day of the demand pursuant to the provisions of paragraph (1) is not dispatched.

(Determination of Calling a Shareholders Meeting)

Article 298 (1) Directors (in cases where shareholders call a shareholders meeting pursuant to the provisions of paragraph (4) of the preceding Article, relevant shareholders; the same applies in the main clause of the following paragraph and the following Article to Article 302) must decide the following matters if they call a shareholders meeting:

- (i) the date, time and place of the shareholders meeting;
  - (ii) if there is any matter which is the purpose of the shareholders meeting, relevant matter;
  - (iii) that shareholders who do not attend the shareholders meeting may vote in writing, if so arranged;
  - (iv) that shareholders may vote by electronic or magnetic means, if so arranged;
  - (v) beyond what is set forth in the preceding items, any matters prescribed by Ministry of Justice Order.
- (2) If the number of the shareholders (excluding shareholders who may not vote on all matters which may be resolved at a shareholders meetings; the same applies in the following Article to Article 302) is one thousand or more, the directors must decide the matters set forth in item (iii) of the preceding paragraph; provided, however, that this does not apply to the cases where relevant stock company is a stock company which issues the shares set forth on the financial instruments exchange provided for in Article 2, paragraph (16) of the Financial Instruments and Exchange Act and is an entity prescribed by

Ministry of Justice Order.

- (3) For the purpose of the application of the provisions of the preceding paragraph to a company with board of directors, the phrase "matters which may be resolved at the shareholders meetings" in that that paragraph is deemed to be replaced with "matters set forth in paragraph (2) of the preceding paragraph".
- (4) At a company with board of directors, the decision of the matters set forth in each item of paragraph (1) must be made by the resolution of the board of directors meeting, except for the cases where the shareholders call the company pursuant to the provisions of paragraph (4) of the preceding Article.

(Notice of Calling of Shareholders Meetings)

Article 299 (1) In order to call the shareholders meeting, the directors must dispatch the notice thereof to the shareholders no later than two weeks (or one week if the stock company is not a public company, except if the matters set forth in paragraph (1), item (iii) or (iv) of the preceding Article are decided, (or if a shorter period of time is provided for in the articles of incorporation if the stock company is a stock company other than the company with board of directors, the shorter period of time)) prior to the day of the shareholders meeting.

- (2) The notice referred to in the preceding paragraph must be in writing in the following cases:
- (i) where the matters set forth in paragraph (1), item (iii) or (iv) of the preceding Article are decided; or
  - (ii) where the stock company is a company with board of directors.
- (3) In lieu of issuing a written notice as referred to in the preceding paragraph, the directors may issue notice by electronic or magnetic means, with the consent of the shareholders and pursuant to the provisions of Cabinet Order. In these cases, the directors are deemed to have issued the written notice referred to in that paragraph.
- (4) The notice under the preceding two paragraphs must specify or record the matters set forth in each item of paragraph (1) of the preceding Article.

(Omission of Calling Procedures)

Article 300 Notwithstanding the provisions of the preceding Article, the shareholders meeting may be held without the procedures of calling if the consent of all shareholders is obtained; provided, however, that this does not apply if the matters set forth in Article 298, paragraph (1), item (iii) or item (iv) are decided.

(Giving of Reference Documents for Shareholders Meetings and Voting Forms)

Article 301 (1) If the matters set forth in Article 298, paragraph (1), item (iii) are decided, the directors must, when dispatching a notice under Article 299, paragraph (1), give the shareholder the document stating matters of reference for voting (hereinafter in this Section referred to as "reference documents for shareholders meetings") and the document to be used by the shareholder to vote (hereinafter in this Section referred to as "voting form") pursuant to the provisions of Ministry of Justice Order.

(2) If the directors issue notices by electronic or magnetic means as referred to in Article 299, paragraph (3) to the shareholders who have given consent under the same paragraph, in lieu of delivering the reference documents for shareholders meetings and voting forms pursuant to the provisions of the preceding paragraph, the directors may use electronic or magnetic means to provide the information that is required to be detailed in those documents; provided, however, that if requested by any shareholder, they must deliver these documents to the shareholder.

Article 302 (1) If the matters set forth in Article 298, paragraph (1), item (iv) are decided, the directors must, when dispatching a notice under Article 299, paragraph (1), give the shareholders the reference documents for shareholders meetings pursuant to the provisions of Ministry of Justice Order.

(2) If the directors issue notice by electronic or magnetic means as referred to in Article 299, paragraph (3) to the shareholders who have given consent as referred to in that paragraph, in lieu of delivering the reference documents for shareholders meetings pursuant to the provisions of the preceding paragraph, the directors may use electronic or magnetic means to provide the information that is required to be detailed in those documents; provided, however, that, if requested by any shareholder, the directors must give the reference documents for shareholders meetings to the shareholder.

(3) In the case provided for in paragraph (1), when using electronic or magnetic means as referred to in Article 299, paragraph (3) to notify the shareholders that have given the consent referred to in that paragraph, the directors must use that electronic or magnetic means to provide the shareholders with the information that is required to be detailed in the voting form, pursuant to the provisions of Ministry of Justice Order.

(4) In the case provided for in paragraph (1), if any shareholder who has not given consent under Article 299, paragraph (3) requests, no later than one week prior to the day of the shareholders meeting, to be provided with the information that is required to be detailed in the voting form by electronic or magnetic means, the directors must use electronic or magnetic means to immediately provide the shareholder with that information, pursuant to the provisions of Ministry of Justice Order.

(Shareholders' Right to Propose)

Article 303 (1) Shareholders may demand that the directors include certain matters (limited to the matters on which relevant shareholders may vote; the same applies in the following paragraph) in the purpose of the shareholders meeting.

(2) Notwithstanding the provisions of the preceding paragraph, at a company with board of directors, only shareholders having consecutively for the preceding six months or more (or, if shorter period is prescribed in the articles of incorporation, the period or more) not less than one hundredth (or, if lesser proportion is prescribed in the articles of incorporation, the proportion) of the votes of all shareholders or not less than three hundred (or, if lesser number is prescribed in the articles of incorporation, the number of) votes of all shareholders may demand the directors that the directors include certain matters in the purpose of the shareholders meeting. In these cases, that demand must be submitted no later than eight weeks (or, if shorter period is prescribed in the articles of incorporation, the period or more) prior to the day of the shareholders meeting.

(3) For the purpose of the application of the preceding paragraph to a company with board of directors which is not a public company, the phrase "having consecutively for the preceding six months or more (or, if shorter period is prescribed in the articles of incorporation, the period or more)" in that paragraph is deemed to be replaced with "having".

(4) The number of the votes to which the shareholders who may not vote on the certain matters referred to in paragraph (2) are entitled is not included in the number of the votes of all shareholders under that paragraph.

Article 304 Shareholders may submit proposals at the shareholders meeting with respect to the matters that are the purpose of the shareholders meeting (limited to the matters on which relevant shareholders may vote; the same applies in paragraph (1) of the following Article); provided, however, that this does not apply if relevant proposals are in violation of the laws or the articles of incorporation, or if three years have not elapsed from the day on which, with respect to the proposal which is essentially identical to relevant proposal, affirmative votes not less than one tenths (or, if any proportion less than that is provided for in the articles of incorporation, the proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their voting rights on the proposal) were not obtained.

Article 305 (1) Shareholders may demand the directors that, no later than eight weeks (or, if any period less than that is provided for in the articles of

incorporation, the period) prior to the day of the shareholders meeting, shareholders be notified of the summary of the proposals which relevant demanding shareholders intend to submit with respect to the matters that are the purpose of the shareholders meeting (or, if a notice pursuant to Article 299, paragraph (2) or paragraph (3) is to be given, the summary be specified or recorded in that notice); provided, however, that, for a company with board of directors, only shareholders having consecutively for the preceding six months or more (or, if shorter period is prescribed in the articles of incorporation, the period or more) not less than one hundredth (or, if lesser proportion is prescribed in the articles of incorporation, the proportion) of the votes of all shareholders or not less than three hundred (or, if lesser number is prescribed in the articles of incorporation, the number of) votes of all shareholders may make relevant demand.

- (2) For the purpose of the application of the proviso to the preceding paragraph to a company with board of directors which is not a public company, the phrase "having consecutively for the preceding six months or more (or, if shorter period is prescribed in the articles of incorporation, the period or more)" in that paragraph is deemed to be replaced with "having".
- (3) The number of the votes to which the shareholders who may not vote on the matters that are the purpose of the shareholders meeting referred to in paragraph (1) are entitled is not included in the number of the votes of all shareholders under the proviso to that paragraph.
- (4) If shareholders of a company with board of directors make a demand pursuant to the provisions of paragraph (1), if the number of proposals that the shareholders intend to submit exceeds ten, the provisions of the preceding three paragraphs does not apply to the number of proposals corresponding to the number in excess of ten. In this case, the number of the proposals that these shareholders intend to submit set forth in the following items are governed by the corresponding items.
  - (i) proposals concerning the election of directors, accounting advisors, company auditors, or financial auditors (referred to in the following items as "officers, etc."): regardless of the number of the proposals, they are deemed one proposal.
  - (ii) proposals concerning the dismissal of officers, etc.: regardless of the number of the proposals, they are deemed one proposal.
  - (iii) proposals concerning the refusal to reelect the financial auditor: regardless of the number of the proposals, they are deemed as one proposal.
  - (iv) two or more proposals concerning amendment of the articles of incorporation: if different resolutions were adopted concerning these two or more proposals, the content of the resolutions may contradict one another, they are deemed one proposal.

- (5) The proposals corresponding to those which are in excess of the ten provided in the first sentence of the preceding paragraph are specified by the directors; provided, however, that if the shareholders who made requests pursuant to the provisions of paragraph (1) set the order of priority among the proposals for all or part of the two or more proposals that the shareholders intend to submit the request, the directors will the proposals in accordance with the order of priority.
- (6) The provisions of paragraph (1) to paragraph (3) do not apply if the proposals under paragraph (1) are in violation of the laws or the articles of incorporation, or if three years have not elapsed from the day on which, with respect to the proposal which is essentially identical to the proposal, affirmative votes not less than one tenths (or, if any proportion less than that is provided for in the articles of incorporation, the proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their voting rights on the proposal) were not obtained.

(Appointment of Inspectors on Calling Procedures of Shareholders Meetings)

Article 306 (1) A stock company or shareholders who hold not less than one hundredth (or, if any proportion less than that is provided for in the articles of incorporation, the proportion) of the votes of all shareholders (excluding the shareholders who may not vote on all matters which may be resolved at the shareholders meeting) may file a petition with the court, before a shareholders meeting, for the appointment of an inspector who is to be retained to investigate the calling procedures and method of resolutions relating to relevant shareholders meeting.

- (2) For the purpose of the provisions of the preceding paragraph to a company with board of directors which is a public company, in that paragraph, the phrase "matters which may be resolved at the shareholders meeting" is deemed to be replaced with "matters set forth in Article 298, paragraph (1), item (ii)" and "hold" is deemed to be replaced with "have held, for the consecutive period of six months or more (or, if any period less than that is provided for in the articles of incorporation, the period)"; and for the purpose of the provisions of the preceding paragraph to a company with board of directors which is not a public company, and the phrase "matters which may be resolved at the shareholders meeting" in that paragraph is deemed to be replaced with "matters set forth in Article 298, paragraph (1), item (ii)".
- (3) If the petition for the appointment of an inspector pursuant to the provisions of the preceding two paragraphs has been filed, the court must appoint the inspector except in case it dismisses relevant petition as non-conforming.
- (4) If the court has appointed the inspector set forth in the preceding paragraph, it may fix the amount of the compensation which the stock company pays to relevant inspector.

- (5) The inspector set forth in paragraph (3) must conduct the necessary investigation and submit a report to the court by providing it with a document detailing the results of the investigation or with an electronic or magnetic record (limited to one prescribed by Ministry of Justice Order) in which these have been recorded.
- (6) If the court finds it necessary to for the purpose of clarification of the contents of the report set forth in the preceding paragraph or of confirmation of the grounds supporting the report, it may request the inspector set forth in paragraph (3) a further report set forth in the preceding paragraph.
- (7) When the inspector set forth in paragraph (3) reports pursuant to paragraph (5), the inspector must deliver a copy of the document referred to in that paragraph to the stock company (in cases where the person who filed a petition for the appointment of an inspector was not relevant stock company, relevant stock company and that person) or use a means prescribed by Ministry of Justice Order to provide it with the information recorded in the electronic or magnetic record referred to in that paragraph.

(Determination by the Court of the Calling of Shareholders Meetings)

- Article 307 (1) If the report under paragraph (5) of the preceding Article is submitted, if the court finds it necessary, it must order the directors to take some or all of the measures set forth below:
- (i) to call a shareholders meeting within a defined period of time; and
  - (ii) to notify the shareholders of the result of the investigation under paragraph (5) of the preceding Article.
- (2) If the court orders the measures set forth in item (i) of the preceding paragraph, the directors must disclose the content of the report under paragraph (5) of the preceding Article at the shareholders meeting under that paragraph.
  - (3) In the cases provided for in the preceding paragraph, the directors (or the directors and company auditors for a company with company auditor) must investigate the content of the report under paragraph (5) of the preceding Article and report the result thereof to the shareholders meeting under paragraph (1), item (i).

(Number of Votes)

- Article 308 (1) Shareholders (excluding the shareholder prescribed by Ministry of Justice Order as the entity in a relationship that may allow the stock company to have substantial control of the entity through the holding of one quarter or more of the votes of all shareholders of the entity or other reasons) are entitled to one vote for each one share they hold at the shareholders meeting; provided, however, that, in cases where a share unit is provided for in

the articles of incorporation, they are entitled to one vote for each one unit of the shares.

- (2) Notwithstanding the provisions of the preceding paragraph, a stock company does not have any votes with respect to its treasury shares.

(Resolutions at Shareholders Meetings)

Article 309 (1) Unless otherwise provided for in the articles of incorporation, the resolution at a shareholders meeting is passed by a majority of the votes of the shareholders present at the meeting where the shareholders holding a majority of the votes of the shareholders who are entitled to vote are present.

- (2) Notwithstanding the provisions of the preceding paragraph, the resolutions at the following shareholders meetings must be passed by a majority of two thirds (if a higher proportion is provided for in the articles of incorporation, the proportion) or more of the votes of the shareholders present at the meeting where the shareholders holding a majority (if a proportion of one third or more is provided for in the articles of incorporation, the proportion or more) of the votes of the shareholders entitled to vote at relevant shareholders meeting are present. In these cases, it is not precluded from providing in the articles of incorporation, in addition to relevant requirements for the resolutions, additional requirements including those providing to the effect that the approval of a certain number or more of the shareholders are required:
- (i) shareholders meeting under Article 140, paragraphs (2) and (5);
  - (ii) shareholders meeting under Article 156, paragraph (1) (limited to the case where the specific shareholders under Article 160, paragraph (1) are to be identified);
  - (iii) shareholders meeting under Article 171, paragraph (1) and Article 175, paragraph (1);
  - (iv) shareholders meeting under Article 180, paragraph (2);
  - (v) shareholders meeting under Article 199, paragraph (2), Article 200, paragraph (1), Article 202, paragraph (3), item (iv), Article 204, paragraph (2), and Article 205, paragraph (2);
  - (vi) shareholders meeting under Article 238, paragraph (2), Article 239, paragraph (1), Article 241, paragraph (3), item (iv), Article 243, paragraph (2), and Article 244, paragraph (3);
  - (vii) shareholders meeting under Article 339, paragraph (1) (limited to the case where directors (excluding a director who is an audit and supervisory committee member) elected pursuant to the provisions of Article 342, paragraphs (3) through (5) are to be dismissed or where directors who are audit and supervisory committee members or company auditors are to be dismissed);
  - (viii) shareholders meeting under Article 425, paragraph (1);



- (ix) shareholders meeting under Article 447, paragraph (1) (excluding the cases which fall under both of the following conditions):
    - (a) that the matters set forth in each item of Article 447, paragraph (1) are determined at the annual shareholders meeting; and
    - (b) that the amount referred to in Article 447, paragraph (1), item (i) does not exceed the amount which is calculated in a manner prescribed by Ministry of Justice Order as the amount of deficit at the day of the annual shareholders meeting referred to in (a) (or, in the case provided for in the first sentence of Article 439, the day when the approval under Article 436, paragraph (3) is effected);
  - (x) shareholders meeting under Article 454, paragraph (4) (limited to the cases where it is to be arranged that the dividend property consists of any property other than cash, and that no right to demand distribution of monies provided for in item (i) of that paragraph is to be granted to the shareholders);
  - (xi) shareholders meeting if the resolution at relevant shareholders meeting is required pursuant to the provisions of Chapter VI through Chapter VIII;
  - (xii) shareholders meeting if the resolution at relevant shareholders meeting is required pursuant to the provisions of Part V.
- (3) Notwithstanding the provisions of the preceding two paragraphs, the resolutions at the following shareholders meetings (excluding the shareholders meetings of a company with class shares) must be passed by at least half (if a higher proportion is provided for in the articles of incorporation, the proportion or more) of the shareholders entitled to vote at relevant shareholders meeting, being a majority of two thirds (if a higher proportion is provided for in the articles of incorporation, the proportion) or more of the votes of relevant shareholders:
- (i) shareholders meetings where the articles of incorporation are amended creating a provision to the effect that, as the features of all shares issued by a stock company, the approval of relevant stock company is required for the acquisition of shares by transfer;
  - (ii) shareholders meetings under Article 783, paragraph (1) (limited to the shareholders meeting held if the stock company disappearing in the merger or the stock company effecting the share exchange is a public company, and some or all of the monies, etc. to be delivered to the shareholders of relevant stock company consist of shares with restriction on transfer, etc. (meaning the shares with restriction on transfer, etc. provided for in paragraph (3) of that paragraph; the same applies in the following item)); or
  - (iii) shareholders meetings under Article 804, paragraph (1) (limited to relevant shareholders meeting where the stock company which effects merger or share transfer is a public company, and some or all of the monies, etc. to be distributed to the shareholders of relevant stock company consist of

shares with restriction on transfer, etc.).

- (4) Notwithstanding the provisions of the preceding three paragraphs, resolutions at the shareholders meetings which effect any amendment in the articles of incorporation (excluding those which repeal relevant provisions of the articles of incorporation) with respect to the amendment in the articles of incorporation pursuant to the provisions of Article 109, paragraph (2) must be passed by the majority (if a higher proportion is provided for in the articles of incorporation, the proportion or more) of all shareholders, being a majority equating three quarters (if a higher proportion is provided for in the articles of incorporation, the proportion) or more of the votes of all shareholders.
- (5) For a company with board of directors, matters other than the matters set forth in Article 298, paragraph (1), item (ii) may not be resolved at the shareholders meeting; provided, however, that this does not apply to the election of the persons provided for in Article 316, paragraph (1) or paragraph (2), nor to requests for the presence of a financial auditor under Article 398, paragraph (2).

#### (Proxy Voting)

- Article 310 (1) Shareholders may vote by proxy. In these cases, relevant shareholders or proxies must submit to the stock company a document evidencing the authority of proxy.
- (2) The grant of the authority of proxy under the preceding paragraph must be made for each shareholders meeting.
  - (3) Shareholders or proxies referred to in paragraph (1) may, in lieu of submitting a document evidencing the authority of proxy, use electronic or magnetic means to provide the information that is required to be detailed in the document, with the approval of the stock company and pursuant to the provisions of Cabinet Order. In these cases, the shareholders or proxies are deemed to have submitted relevant document.
  - (4) If the shareholders are the persons who gave consent under Article 299, paragraph (3), the stock company may not refuse to grant the approval under the preceding paragraph without justifiable reasons.
  - (5) The stock company may restrict the number of proxies who may attend the shareholders meeting.
  - (6) The stock company must keep the documents evidencing the authority of proxy and the electronic or magnetic record in which information with which it is provided by the electronic or magnetic means referred to in paragraph (3) has been recorded at its head office for the period of three months from the day of the shareholders meeting.
  - (7) The shareholders (excluding the shareholders who may not vote on all matters which may be resolved at the shareholders meeting under the

preceding paragraph; the same applies in paragraph (4) of the following Article and Article 312, paragraph (5)) may submit the following request at any time during the business hours of the stock company. In these cases, the reasons for relevant requests must be disclosed:

- (i) request for the inspection or copying of the documents evidencing the authority of proxy; and
  - (ii) request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph.
- (8) If a request specified in the preceding paragraph is made, a stock company may not refuse the request, except in cases it falls under any of the following:
- (i) the shareholder who made relevant request (hereinafter in this paragraph referred to as the "requestor") made the request for other purposes than research on securing or exercising the requestor's rights;
  - (ii) the requestor made the request with the purpose of interfering with the execution of the operations of relevant stock company or prejudicing the common benefit of the shareholders;
  - (iii) the requestor made the request in order to provide notification of facts learned by inspecting or copying documents evidencing the authority of proxy or by inspecting or copying anything that is used in a manner prescribed by Ministry of Justice Order to display the data recorded in the electronic or magnetic record referred to in item (ii) of the preceding paragraph to third parties for profit; or
  - (iv) the requestor is a person who has provided notification of the facts learned by inspecting or copying documents evidencing the authority of proxy or by inspecting or copying anything that is used in a manner prescribed by Ministry of Justice Order to display the data recorded in the electronic or magnetic record referred to in item (ii) of the preceding paragraph to third parties for profit in the immediately preceding two years.

(Voting in Writing)

- Article 311 (1) The exercise of voting rights in writing is effected by entering the voting form with necessary matters and submitting it to the stock company no later than the time prescribed by Ministry of Justice Order.
- (2) The number of the votes exercised in writing pursuant to the provisions of the preceding paragraph is included in the number of the votes of the shareholders who are present at the meeting.
  - (3) The stock company must keep the voting forms submitted pursuant to the provisions of paragraph (1) at its head office for the period of three months from the day of the shareholders meeting.
  - (4) The shareholders may make requests for the inspection or copying of the

voting forms submitted pursuant to the provisions of paragraph (1) at any time during the business hours of the stock company. In these cases, the reasons for the requests must be disclosed.

- (5) If a request specified in the preceding paragraph is made, a stock company may not refuse relevant request, except in cases it falls under any of the following:
- (i) the shareholder who made relevant request (hereinafter in this paragraph referred to as the "requestor") made the request for other purposes than research on securing or exercising the requestor's rights;
  - (ii) the requestor made the request with the purpose of interfering with the execution of the operations of relevant stock company or prejudicing the common benefit of the shareholders;
  - (iii) the requestor made the request in order to provide notification of the facts learned by inspecting or copying the voting form submitted pursuant to the provisions of paragraph (1) to third parties for profit; or
  - (iv) the requestor is a person who has provided notification of the facts learned by inspecting or copying the voting form submitted pursuant to the provisions of paragraph (1) to third parties for profit in the immediately preceding two years.

(Voting by Electronic or Magnetic Means)

- Article 312 (1) The exercise of voting rights by electronic or magnetic means is effected by using electronic or magnetic means to provide the stock company with the information that is required to be entered in the voting form no later than the time prescribed by Ministry of Justice Order, with the approval of the stock company and pursuant to the provisions of Cabinet Order.
- (2) If the shareholders are the persons who have given consent under Article 299, paragraph (3), the stock company may not refuse to give the approval under the preceding paragraph without justifiable reasons.
- (3) The number of the votes exercised by electronic or magnetic means pursuant to the provisions of paragraph (1) is included in the number of the votes of the shareholders who are present at the meeting.
- (4) The stock company must keep any electronic or magnetic record in which the information with which it has been provided pursuant to the provisions of paragraph (1) has been recorded at its office for the period of three months from the day of the shareholders meeting.
- (5) The shareholders may, at any time during the business hours of the stock company, request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph. In these cases, the reasons for the requests must be disclosed.

- (6) If a request specified in the preceding paragraph is made, a stock company may not refuse the request, except in cases it falls under any of the following:
- (i) the shareholder who made the request (hereinafter in this paragraph referred to as the "requestor") made the request for other purposes than research on securing or exercising the requestor's rights;
  - (ii) the requestor made the request with the purpose of interfering with the execution of the operations of relevant stock company or prejudicing the common benefit of the shareholders;
  - (iii) the requestor made the request in order to provide notification of facts learned by inspecting or copying anything that is used in a manner prescribed by Ministry of Justice Order to display the data recorded in the electronic or magnetic record referred to in the preceding paragraph to third parties for profit; or
  - (iv) the requestor is a person who has provided notification of the facts learned by inspecting or copying anything that is used in a manner prescribed by Ministry of Justice Order to display the data recorded in the electronic or magnetic record referred to in the preceding paragraph to third parties for profit in the immediately preceding two years.

(Diverse Exercising of Voting Rights)

Article 313 (1) Shareholders may diversely exercise voting rights they hold.

(2) For a company with board of directors, the shareholders under the preceding paragraph must notify the stock company that they will diversely exercise their voting rights and of the reason thereof no later than three days prior to the day of the shareholders meeting.

(3) If the shareholders referred to in the paragraph (1) are not persons who hold the shares on behalf of others, the stock company may refuse the diverse exercise of voting rights held by relevant shareholders pursuant to the provisions of that paragraph.

(Accountability of Directors)

Article 314 If a director, an accounting advisor, a company auditor or an executive officer is requested by the shareholders to provide explanations on certain matters at the shareholders meeting, they must provide necessary explanations with respect to relevant matters; provided, however, that this does not apply if relevant matters are not relevant to the matters that are the purpose of the shareholders meeting, or if the explanations are to the serious detriment of the common interest of the shareholders, or in other cases prescribed by Ministry of Justice Order as the cases where there are justifiable grounds.

(Authority of Chairperson)

- Article 315 (1) The chairperson of the shareholders meeting maintains the order of relevant shareholders meeting and organize the business of the meeting.
- (2) The chairperson of the shareholders meeting may require any one who does not comply with the orders of the chairperson or who otherwise disturbs the order of relevant shareholders meeting to leave the room.

(Investigation of Materials Submitted to Shareholders Meetings)

- Article 316 (1) At a shareholders meeting, a person to investigate the materials submitted or provided to relevant shareholders meeting by the directors, accounting advisors, company auditors, board of company auditors and financial auditors may be elected by a resolution at the relevant shareholders meeting.
- (2) At the shareholders meeting which is called pursuant to the provisions of Article 297, a person who will be charged to investigate the status of the operations and property of the stock company may be elected by a resolution at the relevant shareholders meeting.

(Resolutions for Postponement or Adjournment)

- Article 317 If a resolution for the postponement or adjournment is passed at the shareholders meeting, the provisions of Article 298 and Article 299 do not apply.

(Minutes)

- Article 318 (1) Minutes must be prepared with respect to the business of a shareholders meeting pursuant to the provisions of Ministry of Justice Order.
- (2) The stock company must keep the minutes referred to in the preceding paragraph at its head office for the period of ten years from the day of the shareholders meeting.
- (3) The stock company must keep copies of the minutes referred to in paragraph (1) at its branch offices for the period of five years from the day of the shareholders meeting; provided, however, that this does not apply to the cases where relevant minutes have been prepared by an electronic or magnetic record and the stock company adopts the measures prescribed by Ministry of Justice Order as measures enabling its branch offices to respond to the request set forth in item (ii) of the following paragraph.
- (4) The shareholders and creditors may submit the following requests at any time during the business hours of the stock company:
- (i) if the minutes under paragraph (1) are prepared in writing, requests for inspection or copying of relevant documents or copies of relevant documents; and

- (ii) if the minutes under paragraph (1) have been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (5) If it is necessary for the purpose of exercising the rights of a member of the parent company of a stock company, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of the preceding paragraph with respect to the minutes referred to in paragraph (1).

(Omission of Resolutions at Shareholders Meetings)

- Article 319 (1) If directors or shareholders submit a proposal with respect to a matter which is the purpose of the shareholders meeting, if all shareholders (limited to those who may vote with respect to relevant matter) manifest their intention to agree to relevant proposal in writing or in an electronic or magnetic record, it is deemed that the resolution to approve relevant proposal has been passed at the shareholders meeting.
- (2) The stock company must keep the document or electronic or magnetic record referred to in the preceding paragraph at its head office for a period of ten years from the day when the resolution at the shareholders meeting is deemed to have been passed pursuant to the provisions of the preceding paragraph.
- (3) The shareholders and creditors may submit the following requests at any time during the business hours of the stock company:
- (i) request for inspection or copying of the documents under the preceding paragraph; and
  - (ii) request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph.
- (4) If it is necessary for the purpose of exercising the rights of a member of the parent company of a stock company, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of the preceding paragraph with respect to the document or electronic or magnetic record referred to in paragraph (2).
- (5) If it is deemed that the resolutions to approve proposals on all matters that are the purpose of the annual shareholders meeting have been passed at the shareholders meeting pursuant to the provisions of paragraph (1), relevant annual shareholders meeting is deemed concluded at that time.

(Omission of Reports to Shareholders Meetings)

- Article 320 If the directors notify all shareholders of any matter that is to be reported to the shareholders meeting, if all shareholders manifest in writing or

in an electronic or magnetic record their intention to agree that it is not necessary to report relevant matter to the shareholders meeting, it is deemed that relevant matter has been reported to the shareholders meeting.

### **Subsection 2 General Meetings of Class Shareholders**

(Authority of General Meetings of Class Shareholders)

Article 321 At general meetings of class shareholders, only the matters provided for in this Act and the matters provided for in the articles of incorporation may be resolved.

(General Meetings of Class Shareholders Where Detriment to Class Shareholders of Certain Class Likely)

Article 322 (1) If a company with class shares carries out an act set forth in the following items, if it is likely to cause detriment to the class shareholders of any class of shares, relevant act does not become effective unless a resolution is passed at a general meeting of class shareholders constituted by the class shareholders of the shares of relevant class (if there are two or more classes of shares relating to relevant class shareholders, referring to the respective general meetings of class shareholders constituted by the class shareholders categorized by the class of relevant two or more classes of shares; hereinafter the same applies in this Article); provided, however, that this does not apply to the case where there exists no class shareholder who may exercise votes at relevant general meeting of class shareholders:

- (i) amendment of the articles of incorporation with respect to the following matters (excluding those provided for in Article 111, paragraph (1) or paragraph (2));
  - (a) creation of a new class of the shares;
  - (b) change in the features of the shares;
  - (c) increase of the total number of authorized shares, or total number of authorized shares in a class;
- (i)-2 the approval referred to in Article 179-3, paragraph (1);
- (ii) consolidation of shares or share split;
- (iii) allotment of share without contribution provided for in Article 185;
- (iv) solicitation of persons who subscribe for the shares of relevant stock company (limited to that which prescribes the matters set forth in each item of Article 202, paragraph (1));
- (v) solicitation of persons who subscribe for the share options of relevant stock company (limited to that which prescribes the matters set forth in each item of Article 241, paragraph (1));
- (vi) allotment of share option without contribution provided for in Article 277;



- (vii) merger;
  - (viii) absorption-type company split;
  - (ix) succession by absorption-type company split to some or all of the rights and obligations held by another company with respect to the company's business;
  - (x) incorporation-type company split;
  - (xi) share exchange;
  - (xii) acquisition of all issued shares of another stock company by share exchange;
  - (xiii) share transfer; or
  - (xiv) partial share exchange.
- (2) A company with class shares may provide in the articles of incorporation that, as a feature of a certain class of shares, a resolution at the general meeting of class shareholders pursuant to the provisions of the preceding paragraph is not required.
- (3) The provisions of the paragraph (1) do not apply to general meeting of class shareholders constituted by the class shareholders of the class which is subject to the provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph; provided, however, that this does not apply to the cases where the amendment in the articles of incorporation prescribed in paragraph (1), item (i) (excluding the amendment relating to share unit) is carried out.
- (4) After shares of a certain class are issued if it is intended to create provisions pursuant to the provisions of paragraph (2) with respect to the shares of the class by effecting an amendment in the articles of incorporation, the consent of all class shareholders of the class must be obtained.

(Cases of Provisions Requiring Resolution at General Meeting of Class Shareholders)

Article 323 If, at a company with class shares, there are provisions, as a feature of a certain class of shares, to the effect that, with respect to the matter that is subject to the resolution at the shareholders meeting (or at a shareholders meeting or board of directors meeting for a company with board of directors, or at a shareholders meeting or board of liquidators meeting for a company with board of liquidators), in addition to relevant resolution, the resolution at a general meeting of class shareholders constituted by the class shareholders of relevant class of shares is required, relevant matter does not become effective unless the resolution is passed at a general meeting of class shareholders constituted by the class shareholders of the shares of relevant class in addition to the resolution at the shareholders meeting, board of directors or board of liquidators, consistently with the provisions of articles of incorporation; provided, however, that this does not apply to the case where there exists no

class shareholder who may vote at relevant general meeting of class shareholders.

(Resolution at General Meeting of Class Shareholders)

- Article 324 (1) Unless otherwise provided for in the articles of incorporation, resolutions at a general meeting of class shareholders are passed by a majority of the votes of the shareholders of that class present at the meeting where the shareholders who hold a majority of the votes of all shareholders of the shares of relevant class are present.
- (2) Notwithstanding the provisions of the preceding paragraph, the resolutions at the following general meetings of class shareholders must be passed by a majority of two thirds (if any higher proportion is provided for in the articles of incorporation, the proportion) or more of the votes of the shareholders present at the meeting where the shareholders who hold a majority of the votes (if any proportion of one third or more is provided for in the articles of incorporation, the proportion or more) of the shareholders who are entitled to vote at relevant general meeting of class shareholders are present. In these cases, it is not precluded from providing in the articles of incorporation, in addition to relevant requirements for resolution, additional requirements including those providing to the effect that the approval of a certain number or more of the shareholders are required:
- (i) general meeting of class shareholders under Article 111, paragraph (2) (limited to the cases where, as a feature of a certain class of shares, a provision of the articles of incorporation is to be created with respect to the matters set forth in Article 108, paragraph (1), item (vii));
  - (ii) general meeting of class shareholders under of Article 199, paragraph (4) and Article 200, paragraph (4);
  - (iii) general meeting of class shareholders under Article 238, paragraph (4) and Article 239, paragraph (4);
  - (iv) general meeting of class shareholders under Article 322, paragraph (1);
  - (v) general meeting of class shareholders under Article 339, paragraph (1) which is applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (2);
  - (vi) general meeting of class shareholders under Article 795, paragraph (4);
  - (vii) general meeting of class shareholders under Article 816-3, paragraph (3).
- (3) Notwithstanding the provisions of the preceding two paragraphs, the resolutions at the following general meetings of class shareholders must be passed by a majority (if a higher proportion is provided for in the articles of incorporation, the proportion or more) of the shareholders entitled to vote at relevant general meeting of class shareholders, being a majority of two thirds (if a higher proportion is provided for in the articles of incorporation, the

proportion) or more of the votes of relevant shareholders:

- (i) general meetings of class shareholders under Article 111, paragraph (2) (limited to the cases where, as a feature of a certain class of shares, a provision of the articles of incorporation is to be created with respect to the matters set forth in Article 108, paragraph (1), item (vii));
- (ii) general meetings of class shareholders under Article 783, paragraph (3) and Article 804, paragraph (3).

(Mutatis Mutandis Application of Provisions Regarding Shareholders Meetings)

Article 325 The provisions of the preceding Subsection (excluding Article 295, paragraph (1) and paragraph (2), Article 296, paragraph (1) and paragraph (2), and Article 309) apply mutatis mutandis to the general meeting of class shareholders. In these cases, in Article 297, paragraph (1), the term "all shareholders" is deemed to be replaced with "all shareholders (limited to the shareholders of a certain class of shares; hereinafter the same applies in this Subsection (excluding Article 308, paragraph (1)))", and the term "shareholders" is deemed to be replaced with "shareholders (limited to the shareholders of a certain class of shares; hereinafter the same applies in this Subsection (excluding Article 318, paragraph (4) and Article 319, paragraph (3)))".

### **Subsection 3 Measures for Electronic Provision**

(Provisions in the Articles of Incorporation to the Effect that Measures for Electronic Provision Will be Taken)

Article 325-2 A stock company may provide in its articles of incorporation that when the directors perform shareholders meeting (including general meeting of class shareholders) convocation procedures, measures may be taken for electronic provision (measures so that shareholders (if the general meeting of class shareholders is convened, limited to shareholders of shares of a class) can receive the provision of information by electronic or magnetic means as prescribed in a Ministry of Justice Order; the same applies in this Subsection, Article 911, paragraph (3), item (xii)-2 and Article 976, item (xix)) of the information which is the content of the materials set forth in the following items (hereinafter in this Subsection referred to as "reference documents for shareholders meeting"). In this case, it is sufficient for the articles of incorporation to provide that measures for electronic provision are taken.

- (i) reference documents for shareholder meetings;
- (ii) voting forms;
- (iii) financial statements and business reports provided in Article 437; and

(iv) consolidated financial statements provided in Article 444, paragraph (6).

(Measures for Electronic Provision)

Article 325-3 (1) In the cases set forth in each item of Article 299, paragraph (2), the directors of a stock corporation with articles of incorporation that provide that measures for electronic provision are taken must continuously take measures for electronic provision of information related to the matters specified in the following items during the period from the day three weeks prior to the day of the shareholders meeting or the day that the notice specified in paragraph (1) of that Article is issued, whichever is earlier (hereinafter in this Subsection referred to as the "electronic provision measures commencement date"), to the day on which three months have lapsed after the day of the shareholders meeting (hereinafter in this Subsection referred to as the "electronic provision measures period").

(i) the matters set forth in each item of Article 298, paragraph (1);

(ii) in the cases provided in Article 301, paragraph (1), matters to be specified in reference documents for shareholders meeting and voting forms;

(iii) in the cases provided in Article 302, paragraph (1), matters to be specified in reference documents for shareholders meeting;

(iv) if demands are made under the provisions of Article 305, paragraph (1), an outline of the proposal made under that paragraph;

(v) if the stock company is a company with board of directors, when a director convenes the annual shareholders meeting, the matters stated or recorded in the financial statements and business reports provided in Article 437;

(vi) if the stock company is a company with financial auditor (limited to a company with board of directors), when a director convenes the annual shareholders meeting, the matters stated or recorded in the consolidated financial statements provided in Article 444, paragraph (6); and

(vii) if the matters specified in the preceding items are corrected, a statement to that effect and the matters before correction.

(2) Notwithstanding the provisions of the preceding paragraph, if the directors deliver voting forms to shareholders when serving the notice set forth in Article 299, paragraph (1), measures for the electronic provision of information need not be taken pursuant to the provisions of the preceding paragraph with regard to information related to matters to be contained in the voting forms.

(3) Notwithstanding the provisions of the paragraph (1), if a stock company that is required to submit an annual securities report to the Prime Minister with respect to shares that the company issues pursuant to the provisions of Article 24, paragraph (1) of the Financial Instruments and Exchange Act performs the procedures for submission of an annual securities report (including attachments and their correct reports) stating the matters set forth in each

item of paragraph (1) (limited to matters relating to the annual shareholders meeting and excluding matters to be stated in the voting form) by the electronic provision measures commencement date using an electronic data processing system for disclosure provided in Article 27-30-2 of the Act (hereinafter in this Subsection simply referred to as "electronic data processing system for disclosure"), the stock company does not be required to take electronic measures pursuant to the provisions of the paragraph with respect to information related to those matters.

(Special Provisions on Notice of Convocation of a Shareholders Meeting)

Article 325-4 (1) For the purpose of the application of the provisions of Article 299, paragraph (1) if measures for electronic provision are taken pursuant to the provisions of paragraph (1) of the preceding Article, the phrase "two weeks (or one week if the stock company is not a public company, except if the matters set forth in paragraph (1), item (iii) or (iv) of the preceding Article are prescribed, (or if a shorter period of time is provided for in the articles of incorporation if the stock company is a stock company other than the company with board of directors, relevant shorter period of time))" in that paragraph is deemed to be replaced with "two weeks."

(2) Notwithstanding the provisions of Article 299, paragraph (4), if measures for electronic provision are taken pursuant to the provisions of paragraph (1) of the preceding paragraph, the matters set forth in Article 298, paragraph (1), item (v) need not be stated or recorded in the notice provided pursuant to Article 299, paragraph (2) or paragraph (3). In this case, beyond the matters provided for in item (i) through item (iv) of that paragraph, the notice must state or record the matters set forth below:

(i) if measures for electronic provision are taken, a statement to that effect;

(ii) if the procedures provided in paragraph (3) of the preceding article are performed using an electronic data processing system for disclosure, a statement to that effect; and

(iii) in addition to the matters set forth in the preceding two items, matters provided in the Ministry of Justice Order.

(3) Notwithstanding the provisions of Article 301, paragraph (1), Article 302, paragraph (1), Article 437, and Article 444, paragraph (6), when the directors of a stock company with articles of incorporation that contain provisions to the effect that measures for electronic provision are taken serve the notice set forth in Article 299, paragraph (1), reference documents for shareholders meeting need not be delivered or provided to shareholders.

(4) With respect to the application of the provisions of Article 305, paragraph (1) to a stock company with articles of incorporation that contain provisions to the effect that measures for electronic provision are taken, in that paragraph, the

term "that summary be specified or recorded in that notice" is deemed to be replaced with "measures for electronic provision as set forth in Article 325-2 with respect to an outline of the proposal be taken."

(Request for Delivery of Documents)

- Article 325-5 (1) A shareholder (excluding a shareholder who gave the consent provided in Article 299, paragraph (3) (including cases where applied mutatis mutandis under Article 325)) of a stock corporation with articles of incorporation that provide that measures for electronic provision are taken may make a request to the stock company for delivery of documents stating the matters set forth in each item of Article 325-3, paragraph (1) (including cases where applied mutatis mutandis under Article 325-7 (hereinafter referred to in this Article as "electronic provision measures matters")).
- (2) If measures for electronic provision are taken pursuant to the provisions of Article 325-3, paragraph (1), and giving the notice provided in Article 299, paragraph (1), the directors must deliver to shareholders (if a record date (meaning a record date provided in Article 124, paragraph (1)) specifying the persons who can exercise voting rights at the relevant shareholders meeting is set, limited to persons who requested delivery of documents by the record date) who made a request pursuant to the preceding paragraph (hereinafter referred to in this Article as "request for delivery of documents") documents stating the electronic provision measures matters concerning the relevant shareholders meeting.
- (3) A stock company may provide in its articles of incorporation that all or some of the electronic provision measures matters specified in a Ministry of Justice Order need not be stated in documents delivered pursuant to the provisions of the preceding paragraph.
- (4) If a shareholder made a request for delivery of documents, a stock company may, after the lapse of one year from the day of the request for delivery of documents (if the shareholder made an objection pursuant to the provisions of the proviso of the following paragraph, from the day of the objection), serve notice to the shareholder to the effect that it will terminate the delivery of documents pursuant to the provisions of paragraph (2) and provide notification to the effect that if the shareholder has an objection to that termination, the shareholder should make an objection within a certain period (hereinafter referred to in this Article as the "notification period"); provided, however, that the notification period may not be less than one month.
- (5) A request for delivery of documents by a shareholder who received notice or notification pursuant to the provisions of the preceding paragraph ceases to be effective when the notification period lapses; provided, however, that this does not apply if the shareholder made an objection within the notification period.

(Interruption of Measures for Electronic Provision)

Article 325-6 Notwithstanding the provisions of Article 325-3, paragraph (1), if measures for electronic provision are interrupted (meaning instances where information that was made available to shareholders is no longer made available or the information is modified after it is made available (excluding corrections made pursuant to the provisions of item (vii) of that paragraph), the same applies hereinafter in this Article) during the electronic provision measures period, in cases falling under all of the following items, relevant interruption of measures for electronic provision does not have an impact on the effectiveness of those measures for electronic provision.

- (i) if the stock company acted in good faith and without gross negligence in relation to the occurrence of interruption of the measures for electronic provision or the stock company has justifiable grounds;
- (ii) if the aggregate time when measures for electronic provision were interruption does not exceed one-tenth the electronic provision measures period;
- (iii) if the interruption of measures for electronic provision occurred during the period from the electronic measures provision commencement date to the day of the shareholders meeting and the aggregate time when measures for electronic provision were interrupted during that period does not exceed one-tenth that period;
- (iv) If promptly after learning of the occurrence of the interruption of measures for electronic provision, the stock company took measures for electronic provision regarding the fact of the occurrence of the interruption of measures for electronic provision, the time of the interruption of the measures for electronic provision, and details of the interruption of the measures for electronic provision along with those measures for electronic provision.

(Mutatis Mutandis Application of Provisions Regarding Shareholders Meetings)

Article 325-7 The provisions of Article 325-3 through the preceding Article (excluding Article 325-3, paragraph (1) (limited to the portion related to item (v) and item (vi)) and paragraph (3) and Article 325-5, paragraph (1) and paragraph (3) through paragraph (5)) apply mutatis mutandis to general meetings of class shareholders. In these cases, in Article 325-3, paragraph (1), the phrase "each item of Article 299, paragraph (2)" is deemed to be replaced with "each item of Article 299, paragraph (2) applied mutatis mutandis pursuant to Article 325", the phrase "paragraph (1) of the Article" is deemed to be replaced with "paragraph (1) of the Article (limited to cases where applied mutatis mutandis pursuant to Article 325; hereinafter the same applies in the

following paragraph, the following Article, and Article 325-5)", the phrase "each item of Article 298, paragraph (1)" is deemed to be replaced with "each item of Article 298, paragraph (1) (limited to cases where applied mutatis mutandis pursuant to Article 325)", the phrase "Article 301, paragraph (1)" is deemed to be replaced with "Article 301, paragraph (1) applied mutatis mutandis pursuant to Article 325", the phrase "Article 302, paragraph (1)" is deemed to be replaced with "Article 302, paragraph (1) applied mutatis mutandis pursuant to Article 325", the phrase "Article 305, paragraph (1)" is deemed to be replaced with "Article 305, paragraph (1) (limited to cases where applied mutatis mutandis pursuant to Article 325; hereinafter the same applies in paragraph (4))"; in paragraph (2) of the Article, the term "shareholder" is deemed to be replaced with "shareholder (limited to the shareholders of a certain class of shares; hereinafter the same applies in the following Article through Article 325-6)", in Article 325-4, paragraph (2), the phrase "Article 299, paragraph (4)" is deemed to be replaced with "Article 299, paragraph (4) applied mutatis mutandis pursuant to Article 325", the phrase "Article 299, paragraph (2)" is deemed to be replaced with "Article 299, paragraph (2) applied mutatis mutandis pursuant to Article 325", the phrase "Article 298, paragraph (1), item (v)" is deemed to be replaced with "Article 298, paragraph (1), item (v) applied mutatis mutandis pursuant to Article 325", the phrase "item (i) through item (iv) of that paragraph" is deemed to be replaced with "item (i) through item (iv) of that paragraph applied mutatis mutandis pursuant to Article 325"; in paragraph (3) of the Article, the phrase "Article 301, paragraph (1), Article 302, paragraph (1), Article 437, and Article 444, paragraph (6)" is deemed to be replaced with "Article 301, paragraph (1), Article 302, paragraph (1) applied mutatis mutandis pursuant to Article 325".

## **Section 2 Establishment of Organs Other than Shareholders Meeting**

(Establishment of Organs Other than Shareholders Meeting)

Article 326 (1) A stock company must have one or more directors.

(2) A stock company may have a board of directors, an accounting advisor, a company auditor, a board of company auditors, a financial auditor, audit and supervisory committee, or nominating committee, etc. as prescribed by the articles of incorporation.

(Obligations to Establish Board of Directors and Other Organizations)

Article 327 (1) The following stock company must have a board of directors:

- (i) a public company;
- (ii) a company with board of company auditors;
- (iii) a company with audit and supervisory committee;



- (iv) a company with nominating committee, etc.
- (2) A company with board of directors (excluding company with audit and supervisory committees and company with nominating committee, etc.) must have a company auditor; provided, however, that this does not apply to a company with accounting advisor that is not a public company.
- (3) A company with financial auditor (excluding a company with audit and supervisory committees and company with nominating committee, etc.) must have a company auditor.
- (4) A company with audit and supervisory committees and company with nominating committee, etc. may not have a company auditor.
- (5) A company with audit and supervisory committees and company with nominating committee, etc. must have a financial auditor.
- (6) A company with nominating committee, etc. must not have an audit and supervisory committee.

(Obligation to Have an Outside Director)

Article 327-2 A company with board of company auditors (limited to a public company that is a large company) that is required to submit an annual securities report to the Prime Minister with respect to shares that the company issues pursuant to the provisions of Article 24, paragraph (1) of the Financial Instruments and Exchange Act must have an outside director.

(Obligations of Large Companies to Establish Board of Company Auditors)

Article 328 (1) A large company (excluding a company which is not a public company, a company with audit and supervisory committee, and a company with nominating committee, etc.) must have a board of company auditors and a financial auditor.

(2) A large company which is not a public company must have a financial auditor.

**Section 3 Election and Dismissal of Officers and Financial Auditors**

**Subsection 1 Election**

(Election)

Article 329 (1) Officers (meaning directors, accounting advisors and company auditors; hereinafter the same applies in this Section, Article 371, paragraph (4) and Article 394, paragraph (3)) and financial auditors are elected by a resolution at a shareholders meeting.

(2) In cases of a company with audit and supervisory committee, the election of directors pursuant to the provisions of the preceding paragraph must be implemented by distinguishing directors who are audit and supervisory committee members and other directors.

(3) In case of the resolution under paragraph (1), substitute officers may be elected as prescribed by Ministry of Justice Order by way of precaution against the cases where there are no officers (in cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors, or accounting advisors; hereinafter the same applies in this paragraph) in office or the cases where there is a vacancy which results in a shortfall in the number of officers prescribed in this Act or articles of incorporation.

(Relationship between Stock Company and Officers)

Article 330 The relationship between a stock company and its officers or financial auditors is governed by the provisions on mandate.

(Qualifications of Directors)

Article 331 (1) The following persons may not act as directors:

(i) a corporation;

(ii) deleted;

(iii) a person who has been sentenced to a penalty for having violated the provisions of this Act or the Act on General Incorporated Association and General Incorporated Foundation (Act No. 48 of 2006), or for having committed: a crime under Article 197, Article 197-2, items (i) through (x)-3 or (xiii) through (xv), Article 198, item (viii), Article 199, Article 200, items (i) through (xii)-2, (xx) or (xxi), Article 203, paragraph (3) or Article 205, items (i) through (vi), (xix) or (xx) of the Financial Instruments and Exchange Act; a crime under Articles 255, 256, 258 through 260 or 262 of the Civil Rehabilitation Act (Act No. 225 of 1999); a crime under Articles 65, 66, 68 or 69 of the Act on Recognition and Assistance for Foreign Insolvency Procedures (Act No. 129 of 2000); a crime under Articles 266, 267, 269 through Article 271 or 273 of the Corporate Reorganization Act (Act No. 154 of 2002); or a crime under Articles 265, 266, 268 through 272 or 274 of the Bankruptcy Act, for whom two years have not elapsed since the day on which the execution of the sentence was completed or the sentence no longer applied;

(iv) a person who violated the provisions of laws and regulations other than those provided for in the preceding item, was sentenced to imprisonment or severer penalty and who has not completed the execution of the sentence or to whom the sentence still applies (excluding persons for whom the execution of the sentence is suspended).

(2) A stock company may not provide in the articles of incorporation that directors must be shareholders; provided, however, that this does not apply to a stock company that is not a public company.

- (3) A director who is an audit and supervisory committee member may not concurrently act as an executive director, manager, or other employees of a company with audit and supervisory committee or its subsidiary company, or accounting advisor (if the accounting advisor is a corporation, the member who is in charge of its affairs) or an executive officer of the subsidiary company.
- (4) A director of a company with nominating committee, etc. may not concurrently act as a manager or other employee of the company with nominating committee, etc.
- (5) A company with board of directors must have three or more directors.
- (6) A company with audit and supervisory committee must have three or more of directors who are audit and supervisory committee members and the majority of them must be outside directors.

(Directors' Terms of Office)

Article 331-2 (1) For an adult ward to assume the role of a director, the guardian of the adult ward must obtain the consent of the adult ward (if there is a supervisor of guardian, the consent of the adult ward and the supervisor of guardian), and the guardian must approve the assumption on behalf of the adult ward.

- (2) For a person under curatorship to assume the role of a director, the content of the curator must be obtained.
- (3) The provisions of paragraph (1) apply mutatis mutandis if a curator approves assumption on behalf of a person under curatorship pursuant to an order to the effect that the power of representation are granted under Article 876-4, paragraph (1) of the Civil Code. In this case, the term "consent of the adult ward (if there is a supervisor of guardian, the consent of the adult ward and the supervisor of guardian)" in paragraph (1) is to be replaced with "consent of the person under curatorship."
- (4) Acts performed by an adult ward or person under curatorship pursuant to their capacity as a director may not be revoked on the grounds of limited capacity.

Article 332 (1) Directors' terms of office continue until the conclusion of the annual shareholders meeting for the last business year which ends within two years from the time of their election; provided, however, that this does not preclude the shortening the term of the directors by the articles of incorporation or by the resolution of the shareholders meeting.

- (2) The provisions of the preceding paragraph do not preclude a stock company which is not a public company (excluding a company with audit and supervisory committee and company with nominating committee, etc.) from extending, by the articles of incorporation, the term of office under that

paragraph until the conclusion of the annual shareholders meeting for the last business year which ends within ten years from the time of the election.

- (3) With regard to application of the provisions of paragraph (1) to directors (excluding those who are the audit and supervisory committee members) of a company with audit and supervisory committee, the term "two years" in the same paragraph is deemed to be replaced with "one year".
- (4) The provisions of the proviso to paragraph (1) do not apply to the terms of office of directors who are the audit and supervisory committee members.
- (5) The provisions of the main clause of paragraph (1) do not preclude to stipulate by articles of incorporation that the term of office of the director who is an audit and supervisory committee member and elected as substitute for a director who is an audit and supervisory committee and retired before expiry of its term of office is to be by the time when the term of office of the retired director who was an audit and supervisory committee member expires.
- (6) For the purpose of the application of the provisions under paragraph (1) to the directors of a company with nominating committee, etc., the term "two years" in that paragraph is deemed to be replaced with as "one year".
- (7) Notwithstanding the provisions of the preceding paragraphs, if any of the following amendments in the articles of incorporation is made, the directors' term of office expires when relevant amendment in the articles of incorporation takes effect:
  - (i) an amendment in the articles of incorporation to the effect that an audit and supervisory committee or nominating committee, etc. is established;
  - (ii) an amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that an audit and supervisory committee or nominating committee, etc. is established; or
  - (iii) an amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that, as a feature of all shares the stock company issues, the approval of the stock company is required for the acquisition of relevant shares by transfer (excluding an amendment made by a company with audit and supervisory committee and company with nominating committee, etc.).

#### (Qualifications of Accounting Advisors)

Article 333 (1) An accounting advisor must be a certified public accountant or audit corporation, or a certified public tax accountant or tax accountancy corporation.

- (2) An audit corporation or tax accountancy corporation which has been elected as the accounting advisor must appoint, from among its members, a person who is in charge of the affairs of an accounting advisor, and notify the stock company to that effect. In these cases, the persons set forth in each item of

following paragraph may not be appointed.

- (3) The following persons may not act as accounting advisors:
- (i) a director, company auditor or executive officer, or an employee, including a manager, of a stock company or its subsidiary company;
  - (ii) a person who is subject to the disciplinary action ordering a suspension of operations and for whom the period of relevant suspension has not yet elapsed; or
  - (iii) a person who, pursuant to the provisions of Article 43 of the Certified Public Tax Accountant Act (Act No. 237 of 1951), may not engage in the business of the certified public tax accountant prescribed in Article 2, paragraph (2) of that Act.

(Accounting Advisors' Terms of Office)

Article 334 (1) The provisions of Article 332 (excluding paragraphs (4) and (5); the same applies in the following paragraph) apply mutatis mutandis to the accounting advisors' terms of office.

- (2) Notwithstanding the provisions of Article 332 applied mutatis mutandis under the preceding paragraph, if a company with accounting advisor effects an amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that it has an accounting advisor, the accounting advisor's term of office expires when relevant amendment in the articles of incorporation takes effect.

(Qualifications of Company Auditors)

Article 335 (1) The provisions of Article 331, paragraph (1) and paragraph (2) and Article 331-2 apply mutatis mutandis to company auditors.

- (2) A company auditor of a stock company may not concurrently act as a director, employee, including manager, of that stock company or its subsidiary company, and may not act as an accounting advisor (if the accounting advisor is a corporation, the member who is in charge of its affairs) or an executive officer of relevant subsidiary company.
- (3) A company with board of company auditors must have three or more company auditors, and the half or more of them must be outside company auditors.

(Company Auditors' Terms of Office)

Article 336 (1) Company auditors' terms of office continue until the conclusion of the annual shareholders meeting for the last business year which ends within four years from the time of their election.

- (2) The provisions of the preceding paragraph do not preclude a stock company which is not a public company from extending, by the articles of incorporation, the terms of office under that paragraph until the conclusion of the annual

shareholders meeting for the last business year which ends within ten years from the time of the election.

- (3) The provisions of paragraph (1) do not preclude providing, by the articles of incorporation, that the term of office of a company auditor, who is elected as the substitute for a company auditor who retired from office before the expiration of the term of office, continues until the time the term of office of the company auditor who retired from office expires.
- (4) Notwithstanding the provisions of the preceding three paragraphs, if any of the following amendments in the articles of incorporation is made, the company auditors' terms of office expire when relevant amendment in the articles of incorporation takes effect:
  - (i) an amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that company auditors are established;
  - (ii) an amendment in the articles of incorporation to the effect that an audit and supervisory committee or nominating committee, etc. is established;
  - (iii) an amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that the scope of the audit by the company auditors is limited to an audit related to accounting;
  - (iv) an amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that, as a feature of all shares the stock company issues, the approval of the stock company is required for the acquisition of relevant shares by transfer.

#### (Qualifications of Financial Auditors)

- Article 337 (1) A financial auditor must be a certified public accountant or an audit corporation.
- (2) An audit corporation which has been elected as a financial auditor must appoint, from among its members, a person who is in charge of the affairs of a financial auditor, and notify the stock company to that effect. In these cases, the person set forth in item (ii) of the following paragraph may not be appointed.
  - (3) The following persons may not act as financial auditors:
    - (i) a person who, pursuant to the provisions of the Certified Public Accountant Act, may not audit the financial statement provided for in Article 435, paragraph (2);
    - (ii) a person who is in continuous receipt of remuneration from a subsidiary company of the stock company, or from a director, accounting advisor, company auditor or executive officer of that subsidiary, for operations other than the operations of the certified public accountant or audit corporation, or the spouse of that person; or
    - (iii) an audit corporation half or more of its members of which are persons set

forth in the above items.

(Financial Auditors' Terms of Office)

Article 338 (1) A financial auditor's term of office continues until the conclusion of the annual shareholders meeting for the last business year which ends within one year from the time of their election.

(2) Unless otherwise resolved at the annual shareholders meeting under the preceding paragraph, financial auditors are deemed to have been re-elected at relevant annual shareholders meeting.

(3) Notwithstanding the provisions of the preceding two paragraphs, in cases where a company with financial auditor makes any amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that it has a financial auditor, the financial auditor's term of office expires when relevant amendment in the articles of incorporation takes effect.

**Subsection 2 Dismissal**

(Dismissal)

Article 339 (1) Officers and financial auditors may be dismissed at any time by a resolution at a shareholders meeting.

(2) A person dismissed pursuant to the provisions of the preceding paragraph is entitled to demand damages arising from the dismissal from the stock company, except in cases where there are justifiable grounds for the dismissal.

(Dismissal of Financial Auditors by Company Auditors)

Article 340 (1) The company auditor may dismiss a financial auditor if that financial auditor:

(i) has breached the obligations in the course of duty, or neglected the financial auditor's duties;

(ii) has engaged in misconduct inappropriate for a financial auditor; or

(iii) has difficulty in, or is unable to cope with the execution of the financial auditor's duties due to mental or physical disability.

(2) Dismissals pursuant to the provisions of the preceding paragraph must be effected by the unanimous consent of all company auditors if there are two or more company auditors.

(3) If a financial auditor is dismissed pursuant to the provisions of paragraph (1), the company auditor (or, if there are two or more company auditors, the company auditor appointed by the company auditors from among themselves) must report that effect and the reason for dismissal to the first shareholders meeting called after the dismissal.

(4) For the purpose of the application of the provisions of the preceding three

paragraphs to a company with board of company auditors, the term "company auditor" in paragraph (1) is deemed to be replaced with as "board of company auditors", the phrase "company auditors if there are two or more company auditors" in paragraph (2) is deemed to be replaced with "company auditors", and the phrase "company auditor (or, if there are two or more company auditors, the company auditor appointed by the company auditors from among themselves)" in the preceding paragraph is deemed to be replaced with "the company auditor appointed by the board of company auditors".

(5) With regard to the application of provisions of paragraphs (1) through (3) in a company with audit and supervisory committee, the term "company auditor" in paragraph (1) is deemed to be replaced with "audit and supervisory committee", the phrase "all company auditors if there are two or more company auditors" in paragraph (2) is deemed to be replaced with "audit and supervisory committee members", and the phrase "company auditor (or, if there are two or more company auditors, the company auditor appointed by the company auditors from among themselves)" in paragraph (3) is deemed to be replaced with "audit and supervisory committee members appointed by the audit and supervisory committee" respectively.

(6) For the purpose of the application of the provisions of paragraph (1) through paragraph (3) to a company with nominating committee, etc., the term "a company auditor" in paragraph (1) is deemed to be replaced with "an audit committee", the phrase "company auditors if there are two or more company auditors" in paragraph (2) is deemed to be replaced with "committee members of the audit committee", and the phrase "company auditor (or, in cases where there are two or more company auditors, the company auditor appointed by the company auditors from among themselves)" in paragraph (3) is deemed to be replaced with "committee member appointed by the audit committee".

### **Subsection 3 Special Provisions on the Procedures for Election and Dismissal**

(Resolution at Shareholders Meeting for Election and Dismissal of Officers)  
Article 341 Notwithstanding the provisions of Article 309, paragraph (1), resolutions at shareholders meetings for the election or dismissal of officers must be passed by the majority (if a higher proportion is provided for in the articles of incorporation, the proportion or more) of the votes of the shareholders present at the meeting where the shareholders holding the majority of the votes (if a proportion of one third or more is provided for in the articles of incorporation, the proportion or more) of the shareholders entitled to vote are present.



(Election of Directors by Cumulative Vote)

- Article 342 (1) If the purpose of the shareholders meeting is the election of two or more directors (in cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors; hereinafter the same applies in this Article), the shareholders (limited to the shareholders entitled to vote with respect to the election of the directors; hereinafter the same applies in this Article) may request the stock company that the directors be elected pursuant to the provisions of paragraph (3) through paragraph (5), except as otherwise provided in the articles of incorporation.
- (2) The request under the provisions of the preceding paragraph must be made no later than five days prior to the day of the shareholders meeting referred to in that paragraph.
- (3) Notwithstanding the provisions of Article 308, paragraph (1), if a request is made pursuant to the provisions of paragraph (1), a shareholder is entitled to relevant number of votes as is equal to the number of the directors to be elected in relevant shareholders meeting for each one share the shareholder holds (or, if the share unit is provided for in the articles of incorporation, for each one unit of the shares the shareholder holds) with respect to the resolution of the election of the directors. In these cases, the shareholder may exercise the shareholder's votes by casting votes for only one candidate or for two or more candidates.
- (4) In the case provided for in the preceding paragraph, the directors are to be elected in the order of the votes obtained by respective candidates.
- (5) Beyond what is specified in the preceding two paragraphs, necessary matters regarding the election of directors if a request has been made pursuant to the provisions of paragraph (1) are prescribed by Ministry of Justice Order.
- (6) The provisions of the preceding Article do not apply to resolutions for the dismissal of the directors elected pursuant to the provisions of the preceding three paragraphs.

(Statement of Opinions on the Election of a Director Who Is an Audit and Supervisory Committee Member)

- Article 342-2 (1) A director who is an audit and supervisory committee member may state their opinions on the election or dismissal, or resignation of directors who are audit and supervisory committee members.
- (2) A person who has resigned as a director who is an audit and supervisory committee member may attend the first shareholders meeting called after the resignation and state the fact of the resignation and the reason thereof.
- (3) Directors must notify the person under the preceding paragraph of the fact that the shareholders meeting under the same paragraph is to be called, and of

the matters set forth in Article 298, paragraph (1), item (i).

- (4) An audit and supervisory committee member appointed by the audit and supervisory committee may state the opinions of the audit and supervisory committee on the election, dismissal, or resignation of directors other than directors who are audit and supervisory committee members at the shareholders meeting.

(Consent of Company Auditors to Election of Company Auditors)

Article 343 (1) If a company auditor is in office, directors must obtain the consent of the company auditor (or, if there are two or more company auditors, the majority of the company auditors) in order to submit a proposal for the election of a company auditor to the shareholders meeting.

- (2) The company auditor may request the directors that they include the election of the company auditor in the purpose of the shareholders meeting, or they submit a proposal regarding the election of company auditor to the shareholders meeting.
- (3) For the purpose of the application of the preceding two paragraphs to a company with board of company auditors, the phrase "company auditor (or, if there are two or more company auditors, the majority of the company auditors)" in paragraph (1) is deemed to be replaced with as "board of company auditors", and the term "company auditor may" in the preceding paragraph is deemed to be replaced with as "board of company auditors may".
- (4) The provisions of Article 341 do not apply to resolutions for the dismissal of company auditors.

(Determination of Content of Proposal on the Election of a Financial Auditor)

Article 344 (1) At a company with company auditor, content of proposals on election and dismissal of a financial auditor and the refusal to reelect the financial auditor to be submitted to the shareholders meeting is determined by the company auditor.

- (2) With regard to the application of provisions of the preceding paragraph to cases where there are two or more company auditors, the phrase "by the company auditor" in the same paragraph is deemed to be replaced with "by a majority of company auditors".
- (3) For the purpose of the application of paragraph (1) to a company with board of company auditors, the term "company auditor" in the same paragraph is deemed to be replaced with as "board of company auditors".

(Consent of the Audit and Supervisory Committee to the Election of Directors Who Are Audit and Supervisory Committee Members)

Article 344-2 (1) If there is an audit and supervisory committee, directors must

obtain the consent of the audit and supervisory committee in order to submit proposals to the shareholders meeting on the election of directors who are audit and supervisory committee members.

- (2) The Audit and supervisory committee may request directors to set the election of directors who are audit and supervisory committee members as the purpose of the shareholders meeting or to submit proposals to the shareholders meeting on the election of directors who are audit and supervisory committee members.
- (3) The provisions of Article 341 do not apply to the resolution of dismissal of directors who are audit and supervisory committee members.

(Statement of Opinions on Election of Accounting Advisors)

Article 345 (1) Accounting advisors may state their opinions on the election or dismissal, or resignation of accounting advisors at the shareholders meeting.

- (2) A person who has resigned as an accounting advisor may attend the first shareholders meeting called after the resignation and state the effect of the resignation and the reason thereof.
- (3) Directors must notify the person under the preceding paragraph of the fact that the shareholders meeting under that paragraph is to be called, and of the matters set forth in Article 298, paragraph (1), item (i).
- (4) The provisions of paragraph (1) apply mutatis mutandis to a company auditor, and the provisions of the preceding two paragraphs apply mutatis mutandis to a person who resigned as the company auditor, respectively. In these cases, the term "accounting advisors" in paragraph (1) is deemed to be replaced with as "company auditors".
- (5) The provisions of paragraph (1) apply mutatis mutandis to a financial auditor, and the provisions of paragraph (2) and paragraph (3) apply mutatis mutandis to a person who resigned as the financial auditor and a person dismissed as the financial auditor pursuant to the provisions of Article 340, paragraph (1), respectively. In these cases, the phrase "on the election or dismissal, or resignation of accounting advisors at the shareholders meeting" in paragraph (1) is deemed to be replaced with "on the election, dismissal or refusal of reelection, or resignation of accounting financial auditors, by attending the shareholders meeting", in paragraph (2), the phrase "after the resignation" is deemed to be replaced with "after the dismissal or resignation", and the phrase "the fact of the resignation and the reason thereof" is deemed to be replaced with "the fact of the resignation and the reason thereof, or opinions on the dismissal".

(Measures When Vacancies Arise among Officers)

Article 346 (1) Where there are no officers (in cases of a company with audit and

supervisory committee, directors who are audit and supervisory committee members or other directors, or accounting advisors; hereinafter the same applies in this Article) in office, or where there is a vacancy which results in a shortfall in the number of officers prescribed in this Act or articles of incorporation, an officer who retired from office due to expiration of the officer's term of office or resignation continues to have the rights and obligations of an officer until a newly elected officer (including a person who is to temporarily perform the duties of an officer under the following paragraph) assumes office.

- (2) In the case provided for in the preceding paragraph, if the court finds it necessary, it may, in response to a petition by interested persons, appoint a person who is to temporarily perform the duties of an officer.
- (3) If the court has appointed a person who is to temporarily perform the duties of an officer under the preceding paragraph, the court may prescribe the amount of the remuneration that the stock company pays to that person.
- (4) Where there are no financial auditors in office, or where there is a vacancy which results in a shortfall in the number of financial auditors prescribed in the articles of incorporation, if a financial auditor is not elected without delay, the company auditor must appoint a person who is to temporarily perform the duties of a financial auditor.
- (5) The provisions of Article 337 and Article 340 apply mutatis mutandis the person who is to temporarily perform the duties of a financial auditor under the preceding paragraph.
- (6) For the purpose of the application of the provisions of paragraph (4) to a company with board of company auditors, the term "company auditor" in that paragraph is deemed to be replaced with "board of company auditors".
- (7) With regard to application of the provisions of paragraph (4) to a company with audit and supervisory committee, the term "company auditors" in the same paragraph is deemed to be replaced with audit and supervisory committee".
- (8) For the purpose of the application of the provisions of paragraph (4) to a company with nominating committee, etc., the term "company auditor" in that paragraph is deemed to be replaced with "audit committee".

(Election of Directors or Company Auditors at General Meeting of Class Shareholders)

Article 347 (1) For the purpose of the application of the provisions of Article 329 (1), Article 332, paragraph (1), Article 339, paragraph (1), Article 341, and Article 344-2, paragraphs (1) and (2) to the cases where it issues shares of a class for which there is the provisions with respect to the matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to directors (in

cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors)), the term "shareholders meeting" in Article 329, paragraph (1) is deemed to be replaced with "shareholders meeting (or, for directors (in cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors; hereinafter the same applies in this paragraph), general meeting of class shareholders constituted by the class shareholders of each class of shares in accordance with the applicable provisions of the articles of incorporation on the matters prescribed in Article 108, paragraph (2), item (ix))"; the phrase "by a resolution at a shareholders meeting" in Article 332, paragraph (1) and Article 339, paragraph (1) is deemed to be replaced with "by a resolution at a shareholders meeting (or, for directors (in cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors) elected pursuant to the provisions of Article 41, paragraph (1), or at an organizational meeting of class shareholders under Article 90, paragraph (1) or a general meeting of class shareholders under Article 329, paragraph (1) applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (1), general meeting of class shareholders constituted by the class shareholders of shares of the class relating to the election of relevant director (or shareholders meeting if it is otherwise provided in the articles of incorporation, or if, before the expiration of the term of office of relevant director, there are no longer any shareholders entitled to exercise votes at relevant general meeting of class shareholders))"; the phrase "Article 309, paragraph (1)" in Article 341 is deemed to be replaced with "Article 309, paragraph (1) and Article 324"; and the term "shareholders meeting" in Article 341 is deemed to be replaced with "shareholders meeting (including the general meeting of class shareholders under Article 329, paragraph (1) and Article 339, paragraph (1) applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (1))"; and the term "shareholders meeting" in Article 344-2, paragraphs (1) and (2) is deemed to be replaced with "general meeting of class shareholders set forth in Article 329, paragraph (1) as applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (1)".

- (2) For the purpose of the application of the provisions of Article 329, paragraph (1), Article 339, paragraph (1), Article 341 and Article 343, paragraph (1) and (2) to the cases where it issues shares of a class for which there is the provisions with respect to the matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to company auditors), the term "shareholders meeting" in Article 329, paragraph (1) is deemed to be replaced with "shareholders meeting (or, for company auditors, general meeting of class

shareholders constituted by the class shareholders of each class of shares in accordance with the applicable provisions of the articles of incorporation on the matters prescribed in Article 108, paragraph (2), item (ix)"); the term "the shareholders meeting" in Article 339, paragraph (1) is deemed to be replaced with "shareholders meeting (or, for company auditors elected pursuant to the provisions of Article 41, paragraph (1) applied mutatis mutandis under paragraph (3) of that Article, or at an organizational meeting of class shareholders under Article 90, paragraph (1) applied mutatis mutandis under paragraph (2) of that Article or at a general meeting of class shareholders under Article 329, paragraph (1) applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (2), general meeting of class shareholders constituted by the class shareholders of shares of the class relating to the election of relevant company auditor (or shareholders meeting if it is otherwise provided in the articles of incorporation, or if, before the expiration of the term of office of relevant company auditor, there are no longer any shareholders entitled to exercise votes at relevant general meeting of class shareholders))"; the phrase "Article 309, paragraph (1)" in Article 341 is deemed to be replaced with "Article 309, paragraph (1) and Article 324"; the term "shareholders meeting" in Article 341 is deemed to be replaced with "shareholders meeting (including the general meeting of class shareholders under Article 329, paragraph (1) applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (2))" ; and the term "shareholders meeting" in Article 343, paragraphs (1) and (2) is deemed to be replaced with "general meeting of class shareholders under Article 329, paragraph (1) applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (2)".

#### **Section 4 Directors**

(Execution of Operations)

- Article 348 (1) The directors execute the operations of the stock company (excluding a company with board of directors; hereinafter the same applies in this Article), unless otherwise provided in the articles of incorporation.
- (2) If there are two or more directors, the operations of the stock company are decided by a majority of the directors, unless otherwise provided in the articles of incorporation.
- (3) In the case provided for in the preceding paragraph, the directors may not delegate the decisions on the following matters to individual directors:
- (i) the appointment or dismissal of managers;
  - (ii) the establishment, relocation and abolition of branch offices;
  - (iii) the matters set forth in each item of Article 298, paragraph (1) (including

the cases where those items are applied mutatis mutandis under Article 325);

- (iv) the development of systems necessary to ensure that the execution of the duties by the directors complies with the laws and regulations and the articles of incorporation, and other systems prescribed by Ministry of Justice Order as systems necessary to ensure the properness of operations of a stock company and operations of group of enterprises consisting of the stock company and its subsidiary companies; or
  - (v) exemption from the liability under Article 423, paragraph (1) pursuant to the provisions of the articles of incorporation under the provisions of Article 426, paragraph (1).
- (4) At a large company, the directors must decide the matters set forth in item (iv) of the preceding paragraph.

(Delegation of Execution of Operations to Outside Directors)

Article 348-2 (1) If a stock company (excluding a company with nominating committee, etc.) has outside directors, if there is a conflict of interests between the stock company and its directors or there is otherwise a likelihood that the interests of shareholders will be prejudiced by the execution of the operations of the stock company by the directors, the stock company may whenever necessary, by a decision of the directors (or a resolution at a board of directors meeting for a company with board of directors) delegate the execution of operations of the stock company to the outside directors.

- (2) If there is a conflict of interests between a company with nominating committee, etc. and its executive officers or there is otherwise a likelihood that the interests of shareholders will be prejudiced by the execution of the operations of the company with nominating committee, etc. by the executive officers, the company with nominating committee, etc. may whenever necessary, by a resolution at the board of directors meeting delegate the execution of operations of the company with nominating committee, etc. to the outside directors.
- (3) The execution of operations delegated pursuant to the provisions of the preceding two paragraphs does not be deemed the execution of operations of a stock company provided in Article 2, item (xv), (a); provided, however, that this does not apply if an outside director executes relevant delegated operations pursuant to the direction and orders of an executive directors (or, for a company with nominating committee, etc., executive officer).

(Representatives of Companies)

Article 349 (1) The directors represent the stock company; provided, however, that this does not apply if representative directors or other persons who

represent the company are otherwise designated.

- (2) If there are two or more directors referred to in the main clause of the preceding paragraph, each director represents the stock company individually.
- (3) A stock company (excluding a company with board of directors) may appoint representative directors from among the directors pursuant to the articles of incorporation, or through the appointment by the directors from among themselves pursuant to the provisions of the articles of incorporation, or by a resolution at a shareholders meeting.
- (4) Representative directors have authority to do any and all judicial and non-judicial acts in connection with the operations of the stock company.
- (5) No limitation on the authority under the preceding paragraph may be asserted against a third party in good faith.

(Liability for Damages Caused by Acts of Directors)

Article 350 A stock company is liable for damage caused to third parties by its representative directors or other representatives during the course of the performance of their duties.

(Measures When Vacancy Arises in Office of Representative Director)

- Article 351 (1) Where there are no representative directors in office, or where there is a vacancy which results in a shortfall in the number of representative directors prescribed in the articles of incorporation, a representative director who retired from office due to expiration of the representative director's term of office or resignation continues to have the rights and obligations of a representative director until a newly appointed representative director (including the person who is to temporarily perform the duties of a representative director under the following paragraph) assumes office.
- (2) In the case provided for in the preceding paragraph, if the court finds it necessary, it may, in response to the petition by the interested persons, appoint a person who is to temporarily perform the duties of a representative director.
  - (3) If the court has appointed the person who is to temporarily perform the duties of a representative director under the preceding paragraph, the court may prescribe the amount of the remuneration that the stock company pays to that person.

(Authority of Persons Who Perform Duties on Behalf of Directors)

Article 352 (1) A person who is appointed by a provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act (Act No. 91 of 1989) to perform the duties of directors or representative directors on behalf of them must obtain the permission of the court in order to engage in acts that do not belong to the ordinary operations of the stock company, unless otherwise



provided for in the provisional disposition order.

- (2) Any act of the person who performs the duties of directors or representative directors on behalf of them that is performed in violation of the provisions of the preceding paragraph is void; provided, however, that the stock company may not assert this against a third party in good faith.

(Representation of Companies in Actions between Stock Company and Directors)

Article 353 Notwithstanding the provisions of Article 349, paragraph (4), if a stock company files an action against its directors (including persons who were directors; hereinafter the same applies in this Article), or the directors of a stock company files an action against that stock company, a person to represent the stock company in relevant action may be designated at a shareholders meeting.

(Apparent Representative Directors)

Article 354 If a stock company gives the title of president, vice president or other title regarded as having authority to represent the stock company to a director who is not a representative director, the stock company is liable to third parties in good faith for the acts of relevant director.

(Duty of Loyalty)

Article 355 Directors must perform their duties for the stock company in a loyal manner in compliance with laws and regulations, the articles of incorporation, and resolutions at shareholders meetings.

(Restrictions on Competition and Conflicting Interest Transactions)

Article 356 (1) In the following cases, a director must disclose the material facts on the relevant transactions at a shareholders meeting and obtain approval of the shareholders meeting:

- (i) if the director intends to carry out, for themselves or for a third party, any transactions in the line of business of the stock company;
  - (ii) if the director intends to carry out any transactions with the stock company for themselves or for a third party; or
  - (iii) if a stock company intends to guarantee debts of a director or otherwise to carry out any transactions with a person other than the director that results in a conflict of interests between the stock company and relevant director.
- (2) The provisions of Article 108 of the Civil Code do not apply to the transactions under item (ii) or item (iii) of the preceding paragraph that are approved under that paragraph.

(Director's Duty to Report)

- Article 357 (1) If directors detect any fact likely to cause substantial detriment to the stock company, they must immediately report the fact to the shareholders (or, for a company with company auditor, the company auditors).
- (2) For the purpose of the application of the provisions of the preceding paragraph to a company with board of company auditors, the phrase "shareholders (or, for a company with company auditor, the company auditors)" in that paragraph is deemed to be replaced with "board of company auditors".
- (3) For the purpose of the application of the provisions of paragraph (1) to a company with audit and supervisory committee, the phrase "shareholders (or, for a company with company auditor, the company auditors)" is deemed to be replaced with "audit and supervisory committee".

(Appointment of Inspector of Execution of Operation)

- Article 358 (1) If there are sufficient grounds to suspect misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the operations of a stock company, the following shareholders may file a petition for the appointment of an inspector with the court in order to have the inspector investigate the status of the operations and the financial status of relevant stock company:
- (i) shareholders who hold not less than three hundredths of the votes (or, if a lesser proportion is prescribed in the articles of incorporation, the proportion) of all shareholders (excluding shareholders who may not vote on all matters which may be resolved at shareholders meetings); or
- (ii) shareholders who hold not less than three hundredths (or, if a lesser proportion prescribed in the articles of incorporation, the proportion) of the issued shares (excluding treasury shares).
- (2) If the petition under the preceding paragraph has been filed, the court must appoint the inspector except in case it dismisses the petition as non-conforming.
- (3) If the court has appointed the inspector under the preceding paragraph, it may fix the amount of the remuneration that the stock company pays to relevant inspector.
- (4) The inspector referred to in paragraph (2) may investigate the status of the operations and the financial status of subsidiary companies of the stock company if it is necessary in order to perform the inspector's duties.
- (5) The inspector referred to in paragraph (2) must conduct the necessary investigation and submit a report to the court by providing it with a document detailing the results of the investigation or with an electronic or magnetic record (limited to one prescribed by Ministry of Justice Order) in which these have been recorded.
- (6) If the court finds it necessary for the purpose of clarification of the contents of

the report under the preceding paragraph or of confirmation of the grounds supporting that report, it may request the inspector under paragraph (2) a further report under the preceding paragraph.

- (7) When the inspector under paragraph (2) reports pursuant to paragraph (5), the inspector must deliver a copy of the document referred to in that paragraph to the stock company and the shareholders who filed the petition for the appointment of an inspector or use a means prescribed by Ministry of Justice Order to provide them with the information recorded in the electronic or magnetic record referred to in that paragraph.

(Decision by Court to Call Shareholders Meeting)

Article 359 (1) If the report under paragraph (5) of the preceding Article is submitted, if the court finds it necessary, it must order the directors to take some or all of the measures set forth below:

- (i) to call a shareholders meeting within a defined period of time; and
- (ii) to notify shareholders of the result of the investigation under paragraph (5) of the preceding Article.

- (2) If the court orders the measures set forth in item (i) of the preceding paragraph, the directors must disclose the content of the report under paragraph (5) of the preceding Article at the shareholders meeting under that paragraph.

- (3) In the cases provided for in the preceding paragraph, the directors (or the directors and company auditors for a company with company auditor) must investigate the content of the report under paragraph (5) of the preceding Article and report the result thereof to the shareholders meeting under paragraph (1), item (i).

(Enjoinment of Acts of Directors by Shareholders)

Article 360 (1) If a director engages, or is likely to engage, in an act outside the scope of the purpose of a stock company, or other acts in violation of laws and regulations or the articles of incorporation, if the act is likely to cause substantial detriment to relevant stock company, shareholders having the shares consecutively for the preceding six months or more (or, if a shorter period is prescribed in the articles of incorporation, that period or more) may demand that relevant director cease relevant act.

- (2) For the purpose of the application of the provisions of the preceding paragraph to a stock company which is not a public company, the phrase "shareholders having the shares consecutively for the preceding six months or more (or, if shorter period is prescribed in the articles of incorporation, that period or more)" in that paragraph is deemed to be replaced with "shareholders".

- (3) For the purpose of the application of the provisions of paragraph (1) to a company with company auditor or a company with audit and supervisory committee or a company with nominating committee, etc., the term "substantial detriment" in that paragraph is deemed to be replaced with "irreparable damage".

(Remuneration for Directors)

Article 361 (1) The following matters with respect to the financial benefits received from a stock company as a consideration for the execution of the duties, such as remunerations and bonuses, (hereinafter in this Chapter referred to as "remunerations") of directors are fixed by a resolution at a shareholders meeting if those matters are not prescribed in the articles of incorporation:

- (i) for remunerations in a fixed amount, that amount;
- (ii) for remunerations the amount of which is not fixed, the specific method for calculating that amount;
- (iii) for remunerations that are shares for subscription (meaning shares for subscription provided in Article 199, paragraph (1); hereinafter the same applies in this paragraph and Article 409, paragraph (3)) of the stock company, the maximum number of the shares for subscription (or, for a company with class shares, the classes of the shares for subscription and the number of shares for subscription for each class) and other matters prescribed by Ministry of Justice Order.
- (iv) for remunerations that are share options for subscription (meaning share options for subscription provided in Article 238, paragraph (1); hereinafter the same applies in this paragraph and Article 409, paragraph (3)) of the stock company, the maximum number of the share options for subscription and other matters prescribed by Ministry of Justice Order.
- (v) for remunerations that are monies allotted to payments in exchange for what is set forth in (a) or (b) below, the matters specified in the relevant (a) or (b):
  - (a) shares for subscription of the stock company: the maximum number of shares for subscription subscribed to by the directors (or, for a company with class shares, the classes of the shares for subscription and the number of shares for subscription for each class) and other matters prescribed by Ministry of Justice Order;
  - (b) share options for subscription of the stock company: the maximum number of share options for subscription subscribed to by the directors and other matters prescribed by Ministry of Justice Order
- (vi) for remunerations that are not monetary (excluding shares for subscription and share options for subscription of the stock company), the specific

contents thereof.

- (2) In cases of a company with audit and supervisory committee, the matters set forth in the items of the preceding paragraph must be determined by distinguishing directors who are audit and supervisory committee members and other directors.
- (3) If there are no provisions in the articles of incorporation or no resolution at shareholders meeting with regard to remunerations of each director who is an audit and supervisory committee member, the remunerations are determined through discussion among directors who are audit and supervisory committee members within the range of remunerations referred to in paragraph (1).
- (4) Directors who prescribed the matters set forth in each item of paragraph (1) or who submitted a proposal to amend these matters to a shareholders meeting must explain the reasons why relevant matters are reasonable at that shareholders meeting.
- (5) Directors who are audit and supervisory committee members may state their opinions on the remunerations of directors who are audit and supervisory committee members in the shareholders meeting.
- (6) The audit and supervisory committee member appointed by the audit and supervisory committee may state the opinions of the audit and supervisory committee on the remunerations of directors other than directors who are audit and supervisory committee members.
- (7) If the articles of incorporation or a resolution of the shareholders meeting contains provisions on the matters set forth in each item of paragraph (1) as the content of the remunerations of directors (excluding directors who are audit and supervisory committee members; hereinafter the same applies in this paragraph), the stock company boards of directors set forth below will determine the matters specified by Ministry of Justice Order as policies relating to the determination of the content of remunerations of individual directors in accordance with the provisions; provided, however, that this does not apply if the content of remunerations of individual directors is specified in the articles of incorporation or a resolution of the shareholders meeting.
  - (i) a company with board of company auditors (limited to a public company that is a large company) that is required to submit an annual securities report to the Prime Minister with respect to shares that the company issues pursuant to the provisions of Article 24, paragraph (1) of the Financial Instruments and Exchange Act; or
  - (ii) a company with audit and supervisory committee.

**Section 5 Board of Directors**  
**Subsection 1 Authority**

(Authority of Board of Directors)

Article 362 (1) Board of directors is composed of all directors.

(2) Board of directors performs the following duties:

(i) deciding the execution of the operations of the company with board of directors;

(ii) supervising the execution of the duties by directors; and

(iii) appointing and removing representative directors.

(3) Board of directors must appoint representative directors from among the directors.

(4) Board of directors may not delegate the decision on the execution of important operations such as the following matters to directors:

(i) the disposal of and acceptance of transfer of important assets;

(ii) borrowing in a significant amount;

(iii) the appointment and dismissal of an important employee including managers;

(iv) the establishment, changes or abolition of important structures including branch offices;

(v) matters prescribed by Ministry of Justice Order as important matters regarding the solicitation of persons who subscribe for bonds such as the matters set forth in Article 676, item (i);

(vi) the development of systems necessary to ensure that the execution of duties by directors complies with laws and regulations and the articles of incorporation, and other systems prescribed by Ministry of Justice Order as systems necessary to ensure the properness of operations of a stock company and operations of group of enterprises consisting of the stock company and its subsidiary companies; or

(vii) exemption from liability under Article 423, paragraph (1) pursuant to provisions of the articles of incorporation under the provisions of Article 426, paragraph (1).

(5) In cases of a company with board of directors that is a large company, the board of directors must decide the matters set forth in item (vi) of the preceding paragraph.

(Authority of Directors of Companies with Board of Directors)

Article 363 (1) The following directors execute the operations of a company with board of directors:

(i) a representative director; or

(ii) a director other than a representative director, who is appointed by a resolution of the board of directors meeting as the director who is to execute the operations of a company with board of directors.

(2) The directors set forth in each item of the preceding paragraph must report

the status of the execution of the director's duties to the board of directors at least once every three months.

(Representation of Company in Actions between Companies with Board of Directors and Directors)

Article 364 In the case provided for in Article 353, except when there is designation by a shareholders meeting pursuant to the provisions of that Article, the board of directors may designate a person to represent the company with board of directors with respect to the actions under that Article.

(Restrictions on Competition and Transactions with Companies with Board of Directors)

Article 365 (1) For the purpose of the application of the provisions of Article 356 to a company with board of directors, the term "shareholders meeting" in paragraph (1) of that Article is deemed to be replaced with "board of directors".  
(2) At a company with board of directors, a director who has engaged in transactions under each item of Article 356, paragraph (1) must report the material facts with respect to relevant transaction to the board of directors without delay after that transaction.

## **Subsection 2 Operations**

(Convenor)

Article 366 (1) A board of directors meetings is called by any director; provided, however, that, if the director to call the board of directors meetings is designated by the articles of incorporation or the board of directors, the director calls the meetings.  
(2) In the case provided for in the proviso to the preceding paragraph, directors other than the director designated pursuant to the provisions of the proviso to that paragraph (referred to as "convenor" the same applies hereinafter in this Chapter.) may demand that the convenor call the board of directors meeting by indicating to the convenor the matters that are the purpose of the board of directors meeting.  
(3) Within five days from the day of the demand made pursuant to the provisions of preceding paragraph, if a notice of calling of the board of directors meeting which designates as the day of the board of directors meeting a day falling within two weeks from the day of the demand is not dispatched, the directors who made the demand may call the board of directors meeting.

(Demand for Calling of Meeting by Shareholders)

Article 367 (1) If shareholders of a company with board of directors (excluding a

company with company auditor, company with audit and supervisory committee, and company with nominating committee, etc.) recognize that a director engages, or is likely to engage, in an act outside the scope of the purpose of the company with board of directors, or other acts in violation of laws and regulations or the articles of incorporation, they may demand the calling of a board of directors meeting.

- (2) The demand pursuant to the provisions of the preceding paragraph must be made to the directors (or to the convenor in the case provided for in the proviso to paragraph (1) of the preceding Article) by indicating the matters that are the purpose of the board of directors meeting.
- (3) The provisions of paragraph (3) of the preceding Article apply mutatis mutandis to the cases where a demand is made pursuant to the provisions of paragraph (1).
- (4) Shareholders who made the demand pursuant to the provisions of paragraph (1) may attend the board of directors meeting which is called pursuant to relevant demand or which they call pursuant to the provisions of paragraph (3) of the preceding Article applied mutatis mutandis under the preceding paragraph and state their opinions.

#### (Calling Procedures)

Article 368 (1) A person who calls a board of directors meeting must dispatch the notice thereof to each director (or, for a company with company auditor, to each director and each company auditor) no later than one week (or if a shorter period of time is prescribed in the articles of incorporation, that period of time) prior to the day of the board of directors meeting.

- (2) Notwithstanding the provisions of the preceding paragraph, the board of directors meeting may be held without the procedures of calling if the consent of all directors (or, for a company with company auditor, directors and company auditors) is obtained.

#### (Resolution at Board of Directors Meetings)

Article 369 (1) The resolution at a board of directors meeting is passed by a majority (if a higher proportion is provided for in the articles of incorporation, that proportion or more) of the directors present at the meeting where the majority (if a higher proportion is provided for in the articles of incorporation, that proportion or more) of the directors entitled to participate in the vote are present.

- (2) Directors with a special interest in the resolution under the preceding paragraph may not participate in the vote.
- (3) With respect to the business of the board of directors meeting, minutes must be prepared pursuant to the provisions of Ministry of Justice Order, and if the



minutes are prepared in writing, the directors and company auditors present at the meeting must sign or affix the names and seals to it.

- (4) With respect to information recorded in an electronic or magnetic record if the minutes under the preceding paragraph have been prepared as an electronic or magnetic record, an action in lieu of the signing or the affixing of names and seals prescribed by Ministry of Justice Order must be taken.
- (5) Directors who participate in resolutions at the board of directors meeting and do not have their objections recorded in the minutes under paragraph (3) are presumed to have agreed to relevant resolutions.

(Omission of Resolution at Board of Directors Meeting)

Article 370 A company with board of directors may provide in the articles of incorporation to the effect that, if directors submit a proposal with respect to a matter which is the purpose of the resolution at a board of directors meeting, if all directors (limited to those who are entitled to participate in votes with respect to these matter) manifest their intention to agree to the proposal in writing or in an electronic or magnetic record (except for the case, at a company with company auditor, where a company auditor states objections to that proposal), it is deemed that the resolution to approve that proposal has been passed at the board of directors meeting.

(Minutes)

- Article 371 (1) A company with board of directors must keep the minutes referred to in Article 369, paragraph (3) or the document or electronic or magnetic record in which the manifestation of intention under the preceding Article (hereinafter in this Article referred to as "minutes") has been detailed or recorded at its head office for the period of ten years from the day of the board of directors meeting (including the day when a resolution at a board of directors meeting is deemed to have been passed pursuant to the provisions of the preceding Article).
- (2) If it is necessary for the purpose of exercising the rights of a shareholder, the relevant shareholder may make the following requests at any time during the business hours of a stock company:
    - (i) if the minutes under the preceding paragraph are prepared in writing, requests for inspection or copying of relevant documents; and
    - (ii) if the minutes under the preceding paragraph have been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
  - (3) For the purpose of the application of the provisions of the preceding paragraph to a company with company auditor, company with audit and

supervisory committee, and company with nominating committee, etc., the phrase "at any time during the business hours of a stock company" in that paragraph is deemed to be replaced with "with the permission of the court".

- (4) If it is necessary for the purpose of enforcing the liability of officers or executive officers by a creditor of a company with board of directors, the creditor may, with the permission of the court, make the request set forth in each item of paragraph (2) with respect to the minutes of relevant company with board of directors.
- (5) The provisions of the preceding paragraph apply mutatis mutandis to the cases where it is necessary for the purpose of exercising the rights of a member of the parent company of a company with board of directors.
- (6) If the court finds that the inspection or copying relating to the requests set forth in each item of paragraph (2) applied pursuant to paragraph (3) following the deemed replacement of terms, or a request under paragraph (4) (including the case of the mutatis mutandis application under the preceding paragraph; hereinafter the same applies in this paragraph) is likely to cause substantial detriment to relevant company with board of directors or its parent company or subsidiary company, the court may not grant the permission under paragraph (2) applied pursuant to paragraph (3) following the deemed replacement of terms or the permission under paragraph (4).

(Omission of Report to Board of Directors)

Article 372 (1) If the directors, accounting advisors, company auditors or financial auditors have notified all directors (or, for a company with company auditor, directors and company auditors) of matters that are to be reported to a board of directors meeting, it is unnecessary to report relevant matters to a board of directors meeting.

- (2) The provisions of the preceding paragraph do not apply to reports under the provisions of Article 363, paragraph (2).
- (3) For the purpose of the application of the provisions of the preceding two paragraphs to a company with nominating committee, etc., the phrase "company auditors or financial auditors" in paragraph (1) is deemed to be replaced with "financial auditors or executive officers"; the phrase "directors (or, for a company with company auditor, directors and company auditors)" in paragraph (1) is deemed to be replaced with "directors"; and the phrase "Article 363, paragraph (2)" in the preceding paragraph is deemed to be replaced with "Article 417, paragraph (4)".

(Resolution of Board of Directors by Special Directors)

Article 373 (1) Notwithstanding the provisions of Article 369, paragraph (1), if a company with board of directors (excluding a company with nominating

committee, etc.) falls under all of the following requirements (in cases of a company with audit and supervisory committee, excluding the cases prescribed in Article 399-13, paragraph (5) or cases where there are provisions of articles of incorporation pursuant to the provisions of paragraph (6) of the that Article), the board of directors may provide to the effect that the resolution of the board of directors meeting on the matters set forth in Article 362, paragraph (4), items (i) and (ii) or Article 399-13, paragraph (4), items (i) and (ii) may be passed, where the majority (if a higher proportion is determined by the board of directors, that proportion or more) of three or more directors appointed in advance (hereinafter in this Chapter referred to as "special directors") who are entitled to participate in the vote are present, by the majority (if a higher proportion is determined by the board of directors, that proportion or more) of relevant directors who are present:

(i) that there are six or more directors; and

(ii) that one or more of the directors are outside directors.

- (2) If there are provisions on the vote by special directors pursuant to the provisions of the preceding paragraph, directors other than the special directors are not required to attend the board of directors meeting that decides the matters set forth in Article 362, paragraph (4), items (i) and (ii) or Article 399-13, paragraph (4), items (i) and (ii). For the purpose of the application of the provisions of the main clause of Article 366, paragraph (1) and Article 368 to those cases, the term "any director" in the main clause of Article 366, paragraph (1) is deemed to be replaced with "any special director (meaning the special director provided for in Article 373, paragraph (1); the same applies in Article 368)", the phrase "in the articles of incorporation" in Article 368, paragraph (1) is deemed to be replaced with "by the board of directors", the term "each director" in the same paragraph is deemed to be replaced with "each special director", the term "directors (" in paragraph (2) of that Article is deemed to be replaced with "special directors (" and the phrase "directors and" in the same paragraph is deemed to be replaced with "special directors and".
- (3) The person who is appointed by special directors from among themselves must report without delay after the resolution of the board of directors meeting under the preceding paragraph the content of relevant resolution to the directors other than the special directors.
- (4) The provisions of Article 366 (excluding the main clause of paragraph (1)), Article 367, Article 369, paragraph (1), Article 370, and Article 399-14 do not apply to the board of directors meeting under paragraph (2).

## **Section 6 Accounting Advisors**

(Authority of Accounting Advisors)

Article 374 (1) Accounting advisors, together with the directors, prepare financial statements (meaning financial statements as provided in Article 435, paragraph (2); hereinafter the same applies in this Chapter) and the annexed detailed statements accompanying them, provisional financial statements (meaning provisional financial statements as provided in Article 441, paragraph (1); hereinafter the same applies in this Chapter), and consolidated financial statements (meaning consolidated financial statements as provided in Article 444, paragraph (1); the same applies in Article 396, paragraph (1)). In these cases, the accounting advisors must prepare accounting advisor's report pursuant to the provisions of Ministry of Justice Order.

- (2) Accounting advisors may at any time inspect or copy the following things or request reports on accounting from directors and managers or other employees:
- (i) if the account books or the materials relating thereto are prepared in writing, relevant documents; and
  - (ii) if an account book or material relating thereto has been prepared as an electronic or magnetic record, anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (3) If it is necessary for the purpose of performing duties of an accounting advisor, an accounting advisor may request reports on accounting from a subsidiary company of the company with accounting advisor, or investigate the status of the operations and financial status of the company with accounting advisor or of its subsidiary company.
- (4) The subsidiary company under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (5) Accounting advisors may not employ a person set forth in Article 333, paragraph (3), item (ii) or item (iii) in performing their duties.
- (6) For the purpose of the application of the provisions of paragraph (1) and paragraph (2) to a company with nominating committee, etc., the term "directors" in paragraph (1) is deemed to be replaced with "executive officers", and the phrase "directors and" in paragraph (2) is deemed to be replaced with "executive officers and directors, and".

(Accounting Advisor's Duty to Report)

Article 375 (1) If an accounting advisor detects, during the performance of their duties, misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the duties of the directors, they must report the same to the shareholders (or, for a company with company auditor, to the company auditors) without delay.

- (2) For the purpose of the application of the provisions of the preceding paragraph to a company with board of company auditors, the phrase

"shareholders (or, for a company with company auditor, to the company auditors)" in that paragraph is deemed to be replaced with "board of company auditors".

- (3) For the purpose of application of the provisions of paragraph (1) to a company with audit and supervisory committee, the phrase "shareholders (or, for a company with company auditor, to the company auditors)" is deemed to be replaced with "audit and supervisory committee".
- (4) For the purpose of the application of the provisions of paragraph (1) to a company with nominating committee, etc., the phrase "directors" in that paragraph is deemed to be replaced with "executive officers or directors" and "shareholders (or, for a company with company auditor, to the company auditors)" in the same paragraph is deemed to be replaced with "audit committee".

(Attendance at Board of Directors Meetings)

Article 376 (1) Accounting advisors (if accounting advisors are audit corporation or tax accountancy corporation, the members who are to perform the duties of the accounting advisors; hereinafter the same applies in this Article) of a company with board of directors must attend the board of directors meetings that effect the approval under Article 436, paragraph (3), Article 441, paragraph (3) or Article 444, paragraph (5). In these cases, accounting advisors must state their opinions if they regard it necessary.

- (2) At a company with accounting advisor, a person who is to call the board of directors meetings under the preceding paragraph must dispatch the notice thereof to each accounting advisor no later than one week (or if a shorter period of time is provided for in the articles of incorporation, that shorter period of time) prior to the day of the board of directors meeting.
- (3) In order to hold a board of directors meeting under paragraph (1) without the calling procedures pursuant to the provisions of Article 368, paragraph (2) at a company with accounting advisor, the consent of all accounting advisors must be obtained.

(Statement of Opinions at Shareholders Meetings)

Article 377 (1) If an accounting advisor's opinion on matters regarding the preparation of the statements provided for in Article 374, paragraph (1) differs from those of the directors, the accounting advisor (if the accounting advisors are audit corporation or tax accountancy corporations, referring to the members who are to perform the duties of the accounting advisors) may state opinions at the shareholders meeting.

- (2) For the purpose of the application of the provisions of the preceding paragraph to a company with nominating committee, etc., the term "directors"

in that paragraph is deemed to be replaced with "executive officers".

(Keeping and Inspection of Financial Statements by Accounting Advisors)

Article 378 (1) Accounting advisors must keep the things set forth in the following items at the place designated by the accounting advisors for the period provided for in each relevant item, pursuant to the provisions of Ministry of Justice Order:

- (i) financial statements and annexed detailed statements accompanying them, and the accounting advisor's report for each business year: five years from the day one week (or, for a company with board of directors, two weeks) prior to the day of the annual shareholders meeting (or, in the case provided for in Article 319, paragraph (1), from the day when the proposal under that paragraph was submitted); and
  - (ii) provisional financial statements and the accounting advisor's report: five years from the day when the provisional financial statement was prepared.
- (2) The shareholders and creditors of a company with accounting advisor may submit the following request to the accounting advisors at any time during the business hours of the company with accounting advisor (except for cases prescribed by Ministry of Justice Order as cases where it is difficult for the accounting advisor to response to the request); provided, however, that the fees designated by relevant accounting advisors are required to be paid in order to submit the requests set forth in item (ii) or item (iv):
- (i) if the statements set forth in each item of the preceding paragraph are prepared in writing, a request to inspect the statements;
  - (ii) a request for a transcript or extract of the statements referred to in the preceding item;
  - (iii) if a statement set forth in one of the items of the preceding paragraph has been prepared as an electronic or magnetic record, a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record; or
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding item by an electronic or magnetic means that the accounting advisor has designated, or a request to be issued a document showing that information.
- (3) If it is necessary for the purpose of exercising the rights of a member of the parent company of a company with accounting advisor, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of the preceding paragraph with respect to the things of relevant company with financial auditor set forth in each item of paragraph (1); provided, however, that in order to make the requests set forth in item (ii) or item (iv) of the preceding paragraph, the fees designated by relevant

accounting advisor are required to be paid.

(Remunerations for Accounting Advisors)

Article 379 (1) The remunerations for accounting advisors are fixed by a resolution at a shareholders meeting if the amount thereof is not prescribed in the articles of incorporation.

(2) If there are two or more accounting advisors, and there are no provisions in the articles of incorporation or no resolution at a shareholders meeting with respect to the remunerations for each accounting advisor, relevant remunerations are fixed by discussion by the accounting advisors within the extent of the remunerations referred to in the preceding paragraph.

(3) Accounting advisors (or, if accounting advisors are audit corporation or tax accountancy corporation, the members who are to perform the duties of accounting advisors) may state their opinions on remunerations for the accounting advisors at a shareholders meeting.

(Requests for Indemnification of Expenses)

Article 380 If accounting advisors make the following requests to a company with accounting advisor with respect to the execution of their duties, relevant company with accounting advisor may not refuse relevant request except if it proves that the expense or debt relating to that request is not necessary for the execution of the duties of the accounting advisors:

(i) requests for advancement of expenses;

(ii) requests for indemnification of the expenses paid and interests thereon from and including the day of the payment; or

(iii) requests for payment (or, if relevant debt is not yet due, the provision of reasonable security) to the creditor of a debt incurred.

## **Section 7 Company Auditors**

(Authority of Company Auditors)

Article 381 (1) Company auditors audit the execution of duties by directors (or directors and accounting advisors for a company with accounting advisor). In these cases, company auditors must prepare audit reports pursuant to the provisions of Ministry of Justice Order.

(2) Company auditors may at any time request reports on the business from the directors and accounting advisors and managers and other employees, or investigate the status of the operations and financial status of the company with company auditor.

(3) Company auditors may, if it is necessary for the purpose of performing duties of the company auditors, request reports on the business from a subsidiary

company of the company with company auditor, or investigate the status of the operations and financial status of its subsidiary company.

(4) The subsidiary company under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.

(Duty to Report to Directors)

Article 382 If company auditors find that directors engage in misconduct, or are likely to engage in the conduct, or that there are facts in violation of laws and regulations or the articles of incorporation or grossly improper facts, they must report the same to the directors (or, for a company with board of directors, to the board of directors) without delay.

(Obligation to Attend Board of Directors Meetings)

Article 383 (1) Company auditors must attend the board of directors meeting, and must state their opinions if they find it necessary; provided, however, that, if there are two or more company auditors, if there are provisions on the vote by special directors pursuant to the provisions of Article 373, paragraph (1), the company auditor who attends the board of directors meeting under paragraph (2) of that Article may be appointed by the company auditors from among the company auditors.

(2) In the case provided for in the preceding Article, if company auditors find it necessary, they may demand that the directors (or a convenor in case provided for in the proviso to Article 366, paragraph (1)) call the board of directors meeting.

(3) If, within five days from the day of the demand made pursuant to the provisions of preceding paragraph, a notice of calling of the board of directors meeting which designates as the day of the board of directors meeting a day falling within the period of two weeks from the day of the demand are not dispatched, the company auditors who made that demand may call the board of directors meeting.

(4) The provisions of the preceding two paragraphs do not apply to the board of directors meeting under Article 373, paragraph (2).

(Duty to Report to Shareholders Meeting)

Article 384 Company auditors must investigate proposals, documents and other items prescribed by Ministry of Justice Order that directors intend to submit to the shareholders meeting. In these cases, if company auditors find that there is a violation of laws and regulations or the articles of incorporation or a grossly improper fact, they must report the results of the investigation to a shareholders meeting.



(Enjoinment of Acts of Directors by Company Auditors)

- Article 385 (1) If a director engages, or is likely to engage in an act outside the scope of the purpose of a stock company, or other acts in violation of laws and regulations or the articles of incorporation, if that act is likely to cause substantial detriment to relevant company with company auditor, company auditors may demand that relevant director cease that act.
- (2) In the cases provided for in the preceding paragraph, if the court orders a director under the preceding paragraph to cease that act by a provisional disposition, the court is not to require the provision of security.

(Representation of in Actions between Company with Company Auditors and Directors)

- Article 386 (1) Notwithstanding the provisions of Article 349, paragraph (4), Article 353 and Article 364, in cases set forth in the following items, the company auditors represent the company with company auditor in actions in those items:
- (i) if a company with company auditor files an action to a director (including a person who was a director; hereinafter the same applies in this Article) or where a director files an action to a company with company auditor;
  - (ii) if a company with company auditor which is a wholly owning parent company resulting from the share exchange, etc. (meaning a wholly owning parent company resulting from the share exchange, etc. as prescribed in Article 849, paragraph (2), item (i); the same applies in item (iii) of the following paragraph) files an action to enforce liabilities (limited to those for which the fact of the cause occurred by the time when the act set forth in items of Article 847-2, paragraph (1) becomes effective) of directors, executive officers (including persons who were executive officers; hereinafter the same applies in this Article), or liquidators (including persons who were liquidators; hereinafter the same applies in this Article) of its wholly owned subsidiary company resulting from the share exchange, etc. (meaning its wholly owned subsidiary company resulting from the share exchange, etc. as prescribed in Article 847-2, paragraph (1); the same applies in item (iii) of the following Article); and
  - (iii) if a company with company auditor which is an ultimate, wholly owning parent company, etc. (meaning an ultimate, wholly owning parent company, etc. as prescribed in Article 847-3, paragraph (1); the same applies in item (iv) of the following paragraph) files an action to enforce specific liabilities (meaning an action to enforce specific liabilities prescribed in paragraph (1) of the same Article) to directors, executive officers, or liquidators of its wholly owned subsidiary company, etc. (meaning a wholly owned subsidiary company, etc. as prescribed in paragraph (2), item (ii) of the same Article and

- including any company that is deemed to be such a wholly owned subsidiary company, etc. pursuant to the provisions of paragraph (3) of the same Article; the same applies in item (iv) of the following paragraph).
- (2) Notwithstanding the provisions of Article 349, paragraph (4), in the following cases, the company auditors represent the company with company auditor:
- (i) if a company with company auditor is requested to file an action under Article 847, paragraph (1), Article 847-2, paragraph (1) or (3) (including the cases where it is applied mutatis mutandis pursuant to paragraphs (4) and (5) of the same Article), or Article 847-3, paragraph (1) (limited to requests for the filing of actions that enforce the liability of directors); or
  - (ii) if a company with company auditor receives a notice of suit under Article 849, paragraph (4) (limited to those related to actions that enforce the liability of directors) and a notice or demand pursuant to the provisions of Article 850, paragraph (2) (limited to those related to the settlement of a suit relating to an action that enforces the liability of directors);
  - (iii) if a company with company auditor which is a wholly owning parent company resulting from the share exchange, etc. makes a request pursuant to the provisions of Article 847, paragraph (1) (limited to a request to file an action prescribed in item (ii) of the preceding paragraph) or receives a notice pursuant to the provisions of Article 849, paragraph (6) (limited to those related to the action to enforce the liability of directors, executive officers, or liquidators of its wholly owned subsidiary company resulting from the share exchange, etc.); or
  - (iv) if a company with company advisor which is an ultimate, wholly owning parent company, etc. makes a request pursuant to the provisions of Article 847, paragraph (1) (limited to the request to file an action to enforce specific liabilities prescribed in item (iii) of the preceding paragraph) or receives a notice pursuant to the provisions of Article 849, paragraph (7) (limited to those related to the action to enforce liabilities of directors, executive officers, or liquidators of a stock company which is its wholly owned subsidiary company, etc.).

(Remunerations for Company Auditors)

- Article 387 (1) The remunerations for company auditors are fixed by a resolution at a shareholders meeting if the amount thereof is not prescribed in the articles of incorporation.
- (2) If there are two or more company auditors, if there are no provisions in the articles of incorporation or no resolution at a shareholders meeting with respect to the remunerations for each company auditor, those remunerations are fixed by discussion by the company auditors within the extent of the remunerations referred to in the preceding paragraph.

- (3) Company auditors may state their opinions on remunerations for the company auditors at a shareholders meeting.

(Requests for Indemnification of Expenses)

Article 388 If company auditors make the following requests to a company with company auditor (including a stock company the articles of incorporation of which provide that the scope of the audit by its company auditors is limited to an audit related to accounting) with respect to the execution of their duties, relevant company with company auditor may not refuse relevant request except if it proves that the expense or debt relating to relevant request is not necessary for the execution of the duties of relevant company auditors:

- (i) requests for advancement of expenses;
- (ii) requests for indemnification of the expenses paid and the interests thereon from and including the day of the payment; or
- (iii) requests for the payment (or, if the debt is not yet due, the provision of reasonable security) to the creditor of a debt incurred.

(Limitation of Scope of Audit by Provisions of Articles of Incorporation)

Article 389 (1) A stock company which is not a public company (excluding a company with board of company auditors and company with financial auditor) may provide in the articles of incorporation that the scope of the audit by its company auditors is limited to an audit related to accounting, notwithstanding the provisions of Article 381, paragraph (1).

- (2) company auditors of a stock company that has the provisions of the articles of incorporation under the provisions of the preceding paragraph must prepare audit reports pursuant to the provisions of Ministry of Justice Order.
- (3) The company auditors under the preceding paragraph must investigate the proposals, documents and other items prescribed by Ministry of Justice Order that are related to accounting which the directors intend to submit to a shareholders meeting, and report the results of that investigation to a shareholders meeting.
- (4) The company auditors under paragraph (2) may at any time inspect or copy the following things, or request reports on accounting from directors and accounting advisors as well as managers or other employees:
  - (i) if the account books or the materials relating thereto are prepared in writing, relevant documents; or
  - (ii) if an account book or material relating thereto has been prepared as an electronic or magnetic record, anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (5) If it is necessary for the purpose of performing duties of a company auditor

under paragraph (2), a company auditor may request reports on accounting from a subsidiary company of the stock company, or investigate the status of the operations and financial status of the stock company or of its subsidiary company.

- (6) The subsidiary company under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (7) The provisions from Article 381 through Article 386 do not apply to a stock company which has provisions of the articles of incorporation pursuant to the provisions of paragraph (1).

## **Section 8 Board of Company Auditors**

### **Subsection 1 Authority**

Article 390 (1) Board of company auditors is composed of all company auditors.

(2) Board of company auditors performs the following duties; provided, however, that the decision in item (iii) may not preclude company auditors from exercising their authority:

(i) preparing audit reports;

(ii) appointing and removing full-time company auditors; and

(iii) deciding audit policy, methods for investigating the status of the operations and financial status of a company with board of company auditors and other matters regarding the execution of the duties of company auditors.

(3) Board of company auditors must appoint full-time company auditors from among the company auditors.

(4) If a board of company auditors requests, company auditors must report the status of the execution of their duties to the board of company auditors at any time.

### **Subsection 2 Operations**

(Convenor)

Article 391 A board of company auditors meeting is called by any company auditor.

(Calling Procedures)

Article 392 (1) To call a board of company auditors meeting, a company auditor must dispatch the notice thereof to each company auditor no later than one week (or if a shorter period of time is prescribed in the articles of incorporation, that shorter period of time) prior to the day of the board of company auditors meeting.

(2) Notwithstanding the provisions of the preceding paragraph, the board of

company auditors meeting may be held without the procedures of calling if the consent of all company auditors is obtained.

(Resolution at Board of Company Auditors Meetings)

Article 393 (1) The resolution at a board of company auditors meeting is passed by a majority of the company auditors.

- (2) With respect to the business of the board of company auditors meeting, minutes must be prepared pursuant to the provisions of Ministry of Justice Order, and if the minutes are prepared in writing, the company auditors present at the meeting must sign or affix the names and seals to it.
- (3) With respect to the matters recorded in an electronic or magnetic record if the minutes under the preceding paragraph are prepared in that electronic or magnetic record, an action in lieu of the signing or the affixing of names and seals prescribed by Ministry of Justice Order must be taken.
- (4) Company auditors who participate in resolutions at the board of company auditors meeting and do not have their objections recorded in the minutes under paragraph (2) are presumed to have agreed to the resolutions.

(Minutes)

Article 394 (1) A company with board of company auditors must keep the minutes referred to in paragraph (2) of the preceding Article at its head office for the period of ten years from the day of the board of company auditors meeting.

- (2) If it is necessary for the purpose of exercising the rights of a shareholder of a company with board of company auditors, the relevant shareholder may, with the permission of the court, make the following requests:
  - (i) if the minutes under the preceding paragraph are prepared in writing, requests for inspection or copying of the documents; and
  - (ii) if the minutes under the preceding paragraph have been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (3) The provisions of the preceding paragraph apply mutatis mutandis to the cases where it is necessary for the purpose of enforcing the liability of officers by a creditor of a company with company auditor and to the cases where it is necessary for the purpose of exercising the rights of a member of the parent company.
- (4) If the court finds that the inspection or copying relating to the requests under paragraph (2) (including the case of the mutatis mutandis application under the preceding paragraph; hereinafter the same applies in this paragraph) is likely to cause substantial detriment to relevant company with board of

company auditors or its parent company or subsidiary company, the court may not grant the permission under paragraph (2).

(Omission of Report to Board of Company Auditors)

Article 395 If the directors, accounting advisors, company auditors or financial auditors have notified all company auditors of matters that are to be reported to a board of company auditors meeting, it is unnecessary to report relevant matters to a board of company auditors meeting.

## **Section 9 Financial Auditors**

(Authority of Financial Auditors)

Article 396 (1) Financial auditors audit the financial statements and the annexed detailed statements thereof, the provisional financial statements as well as the consolidated financial statements of a stock company pursuant to the provisions of the following Chapter. In these cases, financial auditors must prepare financial audit reports pursuant to the provisions of Ministry of Justice Order.

- (2) Financial auditors may at any time inspect and copy the following things or request reports on accounting from directors and accounting advisors as well as managers or other employees:
  - (i) if account books or materials relating thereto are prepared in writing, relevant documents; and
  - (ii) if an account book or material relating thereto has been prepared as an electronic or magnetic record, anything that is used in the manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (3) Financial auditors may, if it is necessary for the purpose of performing duties of the financial auditors, request reports on accounting from a subsidiary company of the company with financial auditor, or investigate the status of the operations and financial status of the company with financial auditor or of its subsidiary company.
- (4) The subsidiary company under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (5) Financial auditors may not employ a person set forth in any of the following items in performing their duties:
  - (i) a person set forth in Article 337, paragraph (3), item (i) or item (ii);
  - (ii) a person who is a director, accounting advisor, company auditor, executive officer or employee, including a manager, of a company with financial auditor or of its subsidiary company; or
  - (iii) a person who is in continuous receipt of remuneration from a company

with financial auditor or its subsidiary company for operations other than the operations of the certified public accountant or audit corporation.

- (6) For the purpose of the application of the provisions of paragraph (2) to a company with nominating committee, etc., the term "directors" in that paragraph is deemed to be replaced with "executive officers, directors".

(Report to Company Auditors)

Article 397 (1) If financial auditors detect, during the performance of their duties, misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the duties of the directors, they must report the same to the company auditors without delay.

- (2) If it is necessary for the purpose of performing their duties, company auditors may request reports on the financial auditors' audits from the financial auditors.

- (3) For the purpose of the application of the provisions of paragraph (1) to a company with board of company auditors, the term "company auditors" in that paragraph is deemed to be replaced with "board of company auditors".

- (4) For the purpose of application of the provisions of paragraphs (1) and (2) to a company with audit and supervisory committee, the term "company auditor" in paragraph (1) is deemed to be replaced with "audit and supervisory committee" and the term "company auditor" in paragraph (2) is deemed to be replaced with "audit and supervisory committee member appointed by the audit and supervisory committee".

- (5) For the purpose of the application of the provisions of paragraph (1) and paragraph (2) to a company with nominating committee, etc., the term "directors" in paragraph (1) is deemed to be replaced with "executive officers or directors", the term "company auditors" in the same paragraph is deemed to be replaced with "audit committee", and the term "company auditors" in paragraph (2) is deemed to be replaced with "committee members of the audit committee who are appointed by the audit committee".

(Statement of Opinions of Financial Auditors at Annual Shareholders Meeting)

Article 398 (1) If a financial auditor's opinion on whether or not the statements provided for in Article 396, paragraph (1) comply with laws and regulations or the articles of incorporation differs from those of the company auditors, the financial auditor (if financial auditors are audit corporation or tax accountancy corporations, referring to the members who are to perform their duties; the same applies in the following paragraph) may attend the annual shareholders meeting and state their opinion.

- (2) If a resolution that requires the attendance of financial auditors is passed at an annual shareholders meeting, the financial auditors must attend the

shareholders meeting and state their opinions.

- (3) For the purpose of the application of the provisions of paragraph (1) to a company with board of company auditors, the term "company auditors" in that paragraph is deemed to be replaced with "board of company auditors or company auditors".
- (4) For the purpose of the application of the provisions of paragraphs (1) to a company with audit and supervisory committee, the term "company auditor" in the same paragraph is deemed to be replaced with "audit and supervisory committee or audit and supervisory committee members".
- (5) For the purpose of the application of the provisions of paragraph (1) to a company with nominating committee, etc., the term "company auditors" in that paragraph is deemed to be replaced with "audit committee or its committee members".

(Involvement of Company Auditors in Decision on Remunerations for Financial Auditors)

- Article 399 (1) Directors must obtain the consent of the company auditor (if there are two or more company auditors, the majority of the company auditors) if the directors fix the remunerations for financial auditors or persons who are to temporarily perform the duties of financial auditors.
- (2) For the purpose of the application of the preceding paragraph to a company with board of company auditors, the phrase "company auditor (if there are two or more company auditors, the majority of the company auditors)" in that paragraph is deemed to be replaced with "board of company auditors".
  - (3) For the purpose of the application of the provisions of paragraphs (1) to a company with audit and supervisory committee, the phrase "company auditor (if there are two or more company auditors, the majority of the company auditors)" in the same paragraph is deemed to be replaced with "audit and supervisory committee".
  - (4) For the purpose of the application of the provisions of paragraph (1) to a company with nominating committee, etc., the phrase "company auditor (if there are two or more company auditors, the majority of the company auditors)" in that paragraph is deemed to be replaced with "audit committee".

## **Section 9-2 Audit and Supervisory Committee**

### **Subsection 1 Authorities**

(Authorities of Audit and Supervisory Committee)

- Article 399-2 (1) The audit and supervisory committee is organized by all audit and supervisory committee members.
- (2) Audit and supervisory committee members must be directors.



- (3) The audit and supervisory committee performs the following duties:
- (i) audit of execution of duties of directors (in cases of a company with accounting advisor, directors and accounting advisors) and preparation of audit report;
  - (ii) determination of the content of proposals regarding the election and dismissal of a financial auditor and the refusal to reelect a financial auditor to be submitted to a shareholders meeting; and
  - (iii) determination of opinions of the audit and supervisory committee prescribed in Article 342-2, paragraph (4) and Article 361, paragraph (6).
- (4) If audit and supervisory committee members make the following requests to a company with audit and supervisory committee with respect to the execution of their duties (limited to those related to the execution of duties of audit and supervisory committee; hereinafter the same applies in this paragraph), the company with audit and supervisory committee may not refuse the request except if it proves that the expense or debt relating to the request is not necessary for the execution of the duties of the audit and supervisory committee members:
- (i) requests for advancement of the expenses;
  - (ii) request for the indemnification of the expenses paid and interests thereon from and including the day of payment; or
  - (iii) requests for payment (or, if relevant debt is not yet due, the provision of reasonable security) to the creditor of a debt incurred.

(Investigations by the Audit and Supervisory Committee)

- Article 399-3 (1) Audit and supervisory committee members appointed by the audit and supervisory committee may request that directors (in cases of a company with accounting advisor, directors and accounting advisors), managers, and other employees report on matters related to the execution of their duties, or may investigate the status of the operations and financial status of the company with audit and supervisory committees at any time.
- (2) If it is necessary for the purpose of performing the duties of the audit and supervisory committee, audit and supervisory committee members appointed by the audit and supervisory committee may request reports on the business from a subsidiary company of the company with audit and supervisory committee, or may investigate the status of the operations and financial status of its subsidiary company.
- (3) The subsidiary company under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (4) Audit and supervisory committee members under paragraph (1) and paragraph (2) must comply with the resolutions of the audit and supervisory committee, if any, on matters regarding the collection of the report or

investigation under relevant respective paragraphs.

(Duty to Report to Board of Directors)

Article 399-4 If audit and supervisory committee members find that directors engage in misconduct, or are likely to engage in relevant act, or that there are facts in violation of laws and regulations or the articles of incorporation or grossly improper facts, they must report to that effect to the board of directors without delay.

(Duty to Report to Shareholders Meeting)

Article 399-5 If audit and supervisory committee members find that there are matters in violation with laws and regulations or the articles of incorporation or grossly improper facts with regard to proposals, documents, and other items prescribed by Ministry of Justice Order that directors intend to submit to the shareholders meeting, they must report to that effect to a shareholders meeting.

(Enjoinment of Acts of Directors by Audit and Supervisory Committee)

Article 399-6 (1) If a director engages or is likely to engage in an act outside the scope of the purpose of a company with audit and supervisory committee, or other acts in violation of laws and regulations or the articles of incorporation, if such an act is likely to cause substantial detriment to the company with audit and supervisory committee, audit and supervisory committee members may demand that the director cease that act.

(2) In the cases provided for in the preceding paragraph, if the court orders a director under the preceding paragraph to cease that act by a provisional disposition, the court is not to require the provision of security.

(Representative of a Company in Actions between a Company with Audit and Supervisory Committee and Directors)

Article 399-7 (1) Notwithstanding the provisions of Article 349, paragraph (4), Article 353, and Article 364, if a company with audit and supervisory committee files an action against its directors (including persons who were directors; hereinafter the same applies in this Article), or the directors file an action against the company with audit and supervisory committee, the person specified in each of those items represents the company with audit and supervisory committee depending on the category of cases set forth in the following items:

(i) if audit and supervisory committee members are party to the suit relating to relevant action: the person designated by the board of directors (if the shareholders meeting designates a person to represent the company with

- audit and supervisory committee with respect to the action, that person); and
- (ii) in cases other than the case set forth in the preceding item: the audit and supervisory committee member appointed by the audit and supervisory committee.
- (2) Notwithstanding the provisions of the preceding paragraph, if directors file an action against the company with audit and supervisory committee, the service of complaint on the audit and supervisory committee members (excluding those filing that action) is effective on the company with audit and supervisory committee.
- (3) Notwithstanding the provisions of Article 349, paragraph (4), Article 353, and Article 364, if a stock company set forth in the following items is a company with audit and supervisory committee, when filing an action specified in those items, audit and supervisory committee members appointed by the audit and supervisory committee represent the company with audit and supervisory committee with respect to the action:
- (i) a wholly owning parent company resulting from the share exchange, etc. (meaning a wholly owning parent company resulting from the share exchange, etc. as prescribed in Article 849, paragraph (2), item (i); the same applies in item (i) of the following paragraph and paragraph (5), item (iii)): an action to enforce liabilities (limited to those for which the fact of the cause occurred by the time when the act set forth in items of Article 847-2, paragraph (1) becomes effective) of directors, executive officers (including a person who was an executive officer; hereinafter the same applies in this Article), or liquidators (including a person who was a liquidator; hereinafter the same applies in this Article) of its wholly owned subsidiary company resulting from the share exchange, etc. (meaning a wholly owned subsidiary company resulting from the share exchange, etc. as prescribed in Article 847-2, paragraph (1); the same applies in paragraph (5), item (iii));
  - (ii) an ultimate, wholly owning parent company, etc. (meaning an ultimate, wholly owning parent company, etc. as prescribed in Article 847-3, paragraph (1); the same applies in item (ii) of the following paragraph and paragraph (5), item (iv)): An action to enforce specific liability (meaning an action to enforce specific liability as prescribed in paragraph (1) of the same Article) of directors, executive officers, or liquidators of a stock company which is its wholly owned subsidiary company, etc. (meaning a wholly owned subsidiary company, etc. as prescribed in paragraph (2), item (ii) of the same Article and including anything that is deemed to be such a wholly owned subsidiary company, etc. pursuant to the provisions of paragraph (3) of the same Article; the same applies in paragraph (5), item (iv)).
- (4) Notwithstanding the provisions of Article 349, paragraph (4), if a stock company set forth in the following items is a company with audit and

supervisory committee, when making a request specified in the following items, an audit and supervisory committee member appointed by the audit and supervisory committee represents the company with audit and supervisory committee:

- (i) a wholly owning parent company resulting from the share exchange, etc.: request pursuant to the provisions of Article 847, paragraph (1) (limited to a request to file an action as prescribed in item (i) of the preceding paragraph); and
  - (ii) an ultimate, wholly owning parent company, etc.: request pursuant to the provisions of Article 847, paragraph (1) (limited to the request to file an action to enforce specific liabilities as prescribed in item (ii) of the preceding paragraph).
- (5) Notwithstanding the provisions of Article 349, paragraph (4), in the following cases, audit and supervisory committee members represent the company with audit and supervisory committee:
- (i) if a company with audit and supervisory committee receives a request (limited to a request to file an action to enforce the liabilities of directors) pursuant to the provisions of Article 847, paragraph (1), Article 847-2, paragraph (1) or (3) (including cases where it is applied mutatis mutandis pursuant to paragraphs (4) and (5) of the same Article), or Article 847-3, paragraph (1) (excluding cases where the audit and supervisory committee members become the party to the suit concerning the action);
  - (ii) if a company with audit and supervisory committee receives a notice of suit under Article 849, paragraph (4) (limited to those related to actions that enforce the liability of directors) and a notice or demand (limited to those related to the settlement of a suit relating to an action that enforces the liability of directors) pursuant to the provisions of Article 850, paragraph (2) (excluding cases where the audit and supervisory committee members are the party to the suit concerning these actions);
  - (iii) if a company with audit and supervisory committee which is a wholly owning parent company resulting from the share exchange, etc. receives a notice (limited to those related to an action to enforce the liabilities of directors, executive officers, or liquidators of its wholly owned subsidiary company resulting from the share exchange, etc.) pursuant to the provisions of Article 849, paragraph (6); and
  - (iv) if a company with audit and supervisory committee which is an ultimate, wholly owning parent company, etc. receives a notice (limited to those related to an action to enforce the liability of directors, executive officers, or liquidators of a stock company that constitutes its wholly owned subsidiary company, etc.) pursuant to the provisions of Article 849, paragraph (7).

## Subsection 2 Operations

### (Convenors)

Article 399-8 An audit and supervisory committee is called by any audit and supervisory committee member.

### (Calling Procedures)

Article 399-9 (1) To call an audit and supervisory committee meeting, an audit and supervisory committee member must dispatch the notice thereof to each audit and supervisory committee member no later than one week (or if a shorter period of time is prescribed by the articles of incorporation, the shorter period of time) prior to the day of the committee meeting.

(2) Notwithstanding the provisions of the preceding paragraph, the audit and supervisory committee meeting may be held without the procedures for calling it if the consent of all audit and supervisory committee members is obtained.

(3) If requested by the audit and supervisory committee, directors (in cases of a company with accounting advisor, directors and accounting advisors) must attend the audit and supervisory committee meeting and provide explanations on the matters requested by the audit and supervisory committee.

### (Resolution at Audit and Supervisory Committee Meetings)

Article 399-10 (1) The resolution at an audit and supervisory committee meeting is passed by a majority of the audit and supervisory committee members present at the meeting where the majority of the audit and supervisory committee members entitled to participate in the vote are present.

(2) Audit and supervisory committee members with a special interest in the resolution under the preceding paragraph may not participate in the vote.

(3) With respect to the proceedings of the audit and supervisory committee meeting, minutes must be prepared pursuant to the provisions of Ministry of Justice Order, and if the minutes are prepared in writing, the audit and supervisory committee members present at the meeting must sign or affix the names and seals to them.

(4) With respect to the matters recorded in an electronic or magnetic record if the minutes under the preceding paragraph are prepared in that electronic or magnetic record, an action in lieu of the signing or the affixing of names and seals prescribed by Ministry of Justice Order must be taken.

(5) Audit and supervisory committee members who participate in resolutions at the audit and supervisory committee meeting and do not have their objections recorded in the minutes under paragraph (3) are presumed to have agreed to the resolutions.

(Minutes)

Article 399-11 (1) A company with audit and supervisory committee must keep the minutes referred to in paragraph (3) of the preceding Article at its head office for a period of ten years from the day of the audit and supervisory committee meeting.

(2) If it is necessary for the purpose of exercising the rights of a shareholder of a company with audit and supervisory committees, the relevant shareholder may, with the permission of the court, make the following requests:

(i) if the minutes under the preceding paragraph are prepared in writing, requests for inspection or copying of those documents; and

(ii) if the minutes under the preceding paragraph have been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.

(3) The provisions of the preceding paragraph apply mutatis mutandis to those cases where it is necessary for the purpose of enforcing the liability of directors or accounting advisors by a creditor of a company with audit and supervisory committee and to the cases where it is necessary for the purpose of exercising the rights of a member of the parent company.

(4) If the court finds that the inspection or copying relating to the requests under paragraph (2) (including the case of the mutatis mutandis application pursuant to the preceding paragraph; hereinafter the same applies in this paragraph) is likely to cause substantial detriment to the company with audit and supervisory committee or its parent company or subsidiary company, the court may not grant the permission under paragraph (2).

(Omission of Report to Audit and Supervisory Committee)

Article 399-12 If the directors, accounting advisors, financial auditors have notified all audit and supervisory committee members of matters that are to be reported to the audit and supervisory committee meeting, it is unnecessary to report relevant matters to the audit and supervisory committee meeting.

### **Subsection 3 Authorities of the Board of Directors of a Company with Audit and Supervisory Committee**

(Authority of the Board of Directors of a Company with Audit and Supervisory Committee)

Article 399-13 (1) The board of directors of a company with audit and supervisory committee performs the following duties notwithstanding of provisions of Article 362:

(i) deciding the following matters and execution of the operations of the

- company with audit and supervisory committee:
- (a) basic management policy;
  - (b) the matters prescribed by Ministry of Justice Order as those necessary for the execution of the duties of the audit and supervisory committee;
  - (c) the development of systems necessary to ensure that the execution of the duties by the directors complies with the laws and regulations and the articles of incorporation, and other systems prescribed by Ministry of Justice Order as systems necessary to ensure the properness of operations of a stock company and of operations of a group of enterprises consisting of the stock company and its subsidiary companies;
  - (ii) supervising the execution of duties by directors; and
  - (iii) appointing and removing representative directors.
- (2) The board of directors of a company with audit and supervisory committee must determine matters set forth in item (i), (a) through (c) of the preceding paragraph.
- (3) The board of directors of a company with audit and supervisory committee must appoint representative directors from among the directors (excluding directors who are audit and supervisory committee members).
- (4) The board of directors of a company with audit and supervisory committee may not delegate the decision on the execution of the following matters and other important operations to directors:
- (i) the disposal of and acceptance of transfer of important assets;
  - (ii) borrowing in a significant amount;
  - (iii) the appointment and dismissal of an important employee including managers;
  - (iv) the establishment, changes or abolition of important structures including branch offices;
  - (v) matters set forth in Article 676, item (i) and other matters prescribed by Ministry of Justice Order as important matters regarding the solicitation of persons who subscribe bonds; and
  - (vi) exemption from liability under Article 423, paragraph (1) pursuant to provisions of the articles of incorporation under the provisions of Article 426, paragraph (1).
- (5) Notwithstanding the provisions of the preceding paragraph, if a majority of directors of a company with audit and supervisory committee are outside directors, the board of directors of the company with audit and supervisory committee may delegate the decision on execution of important operations to directors by its resolution; provided, however, that this does not apply to the following matters:
- (i) decisions under Article 136 or Article 137, paragraph (1), and the designation under the provisions of Article 140, paragraph (4);

- (ii) decisions on the matters set forth in each item of Article 156, paragraph (1) applied pursuant to Article 165, paragraph (3) following the deemed replacement of terms;
- (iii) decisions under Article 262 or Article 263, paragraph (1);
- (iv) decisions on the matters set forth in each item of Article 298, paragraph (1);
- (v) decisions on the content of proposals to be submitted to a shareholders meeting (excluding those regarding the election and dismissal of financial auditors and the refusal to reelect financial auditors);
- (vi) delegation pursuant to the provisions of Article 348-2, paragraph (1);
- (vii) determination of matters specified in Article 361, paragraph (7) pursuant to that paragraph;
- (viii) approval under Article 356, paragraph (1) applied pursuant to Article 365, paragraph (1) following the deemed replacement of terms;
- (ix) designation of the directors to call the board of directors meeting pursuant to the provisions of the proviso to Article 366, paragraph (1);
- (x) designation of a person to represent the company with audit and supervisory committee pursuant to the provisions of Article 399-7, paragraph (1), item (i);
- (xi) matters set forth in item (vi) of the preceding paragraph;
- (xii) decisions on the contents of indemnity agreements (meaning indemnity agreements provided in Article 430-2, paragraph (1); the same applies in Article 416, paragraph 4, item (xiv));
- (xiii) decisions on the contents of officer indemnification insurance policies (meaning officer indemnification insurance policies provided in Article 430-3, paragraph (1); the same applies in Article 416, paragraph (4), item (xv));
- (xiv) approvals under Article 436, paragraph (3), Article 441, paragraph (3) and Article 444, paragraph (5);
- (xv) decisions on the matters to be decided pursuant to the provisions of Article 454, paragraph (1) applied pursuant to paragraph (5) of the same Article following the deemed replacement of terms;
- (xvi) decisions on the contents of contracts relating to the acts set forth in each item of Article 467, paragraph (1) (excluding those which do not require approval by a resolution at a shareholders meeting of the company with audit and supervisory committee);
- (xvii) decisions on the content of merger agreements (excluding those which do not require approval by a resolution at a shareholders meeting of the company with audit and supervisory committee);
- (xviii) decisions on the content of absorption-type company split agreements (excluding those which do not require approval by a resolution at a shareholders meeting of the company with audit and supervisory committee);



- (xix) decisions on the content of incorporation-type company split plans (excluding those which do not require approval by a resolution at a shareholders meeting of the company with audit and supervisory committee);
  - (xx) decisions on the content of share exchange agreements (excluding those which do not require approval by a resolution at a shareholders meeting of the company with audit and supervisory committee);
  - (xxi) decisions on the contents of share transfer plans; and
  - (xxii) decisions on the content of partial share exchange plans (excluding those which do not require approval by a resolution at a shareholders meeting of the company with audit and supervisory committee).
- (6) Notwithstanding the provisions of the preceding two paragraphs, a company with audit and supervisory committee may stipulate in the articles of incorporation that all or part of decisions of execution of important operations (excluding matters set forth in items of the preceding paragraph) to delegate directors by the resolution of the board of directors meeting.

(Call of the Board of Directors Meeting by Audit and Supervisory Committee)

Article 399-14 At a company with audit and supervisory committee, even if there are provisions for a convenor, the audit and supervisory committee members appointed by the audit and supervisory committee may call the board of directors meeting.

## **Section 10 Nominating Committee and Executive Officers**

### **Subsection 1 Appointment of Committee Members and Election of Executive Officers**

(Appointment of Committee Members)

- Article 400 (1) Each committee, including the nominating committee, audit committee, or remuneration committee (hereinafter collectively referred to as "each committee" in this Article, the following Article, and Article 911, paragraph (3), item (xxiii), (b)) is composed of three or more committee members.
- (2) The committee members of each committee are appointed from among the directors by a resolution at the board of directors meeting.
  - (3) The majority of the committee members of each committee must be outside directors.
  - (4) A committee member of the audit committee (hereinafter referred to as "audit committee member") may not concurrently act as an executive officer or executive directors of a company with nominating committee, etc. or its subsidiary company, or as an accounting advisor (if the accounting advisor is a corporation, the member who is to perform the duties of the accounting

advisor) or employee, including a manager, of a subsidiary company of a company with nominating committee, etc..

(Removal of Committee Members)

Article 401 (1) The committee members of each committee may be removed at any time by a resolution at the board of directors meeting.

(2) Where there is a vacancy which results in a shortfall in the number of committee members of each committee provided for in paragraph (1) of the preceding Article (or, if the number of committee members provided for in the articles of incorporation is four or more, that number), a committee member who retired from office due to expiration of the committee member's term of office or resignation continues to have the rights and obligations of a committee member until a newly appointed committee member (including a person who is to temporarily perform the duties of a committee member under the following paragraph) assumes office.

(3) In the case provided for in the preceding paragraph, if the court finds it necessary, it may appoint a person who is to temporarily perform the duties of a committee member in response to a petition by interested persons.

(4) If the court has appointed the person who is to temporarily perform the duties of a committee member under the preceding paragraph, the court may prescribe the amount of the remuneration that the company with nominating committee, etc. pays to that person.

(Election of Executive Officers)

Article 402 (1) A company with nominating committee, etc. must have one or more executive officers.

(2) An executive officer is elected by a resolution at the board of directors meeting.

(3) The relationship between a company with nominating committee, etc. and its executive officers is governed by the provisions on mandate.

(4) The provisions of Article 331, paragraph (1) and Article 331-2 apply mutatis mutandis to executive officers.

(5) A stock company may not provide in the articles of incorporation that the executive officers must be shareholders; provided, however, that this does not apply to a company with nominating committee, etc. that is not a public company.

(6) An executive officer may act concurrently as a director.

(7) An executive officer's term of office continues until the conclusion of the first board of directors meeting called after the conclusion of the annual shareholders meeting for the last business year ending within one year from the time of their election; provided, however, that this does not preclude the

shortening the executive officer's term of office by the articles of incorporation.

(8) Notwithstanding the provisions of the preceding paragraph, if a company with nominating committee, etc. makes any amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that a nominating committee, etc. is established, the executive officer's term of office expires when the amendment in the articles of incorporation takes effect.

(Dismissal of Executive Officers)

Article 403 (1) Executive officers may be dismissed at any time by a resolution at the board of directors meeting.

(2) An executive officer dismissed pursuant to the provisions of the preceding paragraph is entitled to demand damages arising from the dismissal from the company with nominating committee, etc., except if there are justifiable grounds for the dismissal.

(3) The provisions of Article 401, paragraph (2) through paragraph (4) apply mutatis mutandis to the cases where there are no executive officers in office, or where there is a vacancy which results in a shortfall in the number of executive officers prescribed in the articles of incorporation.

**Subsection 2 Authority of Nominating Committee**

(Authority of Nominating Committee)

Article 404 (1) A nominating committee determines the contents of proposals regarding the election and dismissal of directors (or directors and accounting advisors for a company with accounting advisor) to be submitted to a shareholders meeting.

(2) An audit committee performs the following duties:

(i) auditing the execution of duties by executive officers, etc. (meaning executive officers and directors, or, for a company with accounting advisor, meaning executive officers, directors and accounting advisors; hereinafter the same applies in this Section) and preparing audit reports; and

(ii) determining the contents of proposals regarding the election and dismissal of financial auditors and the refusal to reelect financial auditors to be submitted to a shareholders meeting.

(3) Notwithstanding the provisions of Article 361, paragraph (1) and Article 379, paragraphs (1) and (2), a remuneration committee determines the contents of the remunerations for individual executive officers, etc. If an executive officer acts concurrently as an employee, including a manager, of a company with nominating committee, etc., the same applies to the contents of the remunerations for relevant employee, including a manager.

(4) If committee members make the following requests to a company with nominating committee, etc. with respect to the execution of their duties (limited to that regarding the execution of the duties of the nominating committee, etc. to which relevant committee members belong; hereinafter the same applies in this paragraph), relevant company with nominating committee, etc. may not refuse the request except if it proves that the expense or debt relating to the request is not necessary for the execution of the duties of relevant committee members:

- (i) requests for advancement of the expenses;
- (ii) request for the indemnification of the expenses paid and interests thereon from and including the day of the payment; or
- (iii) requests for the payment (or, if relevant debt is not yet due, the provision of reasonable security) to the creditor of a debt incurred.

(Investigations by Audit Committees)

Article 405 (1) Audit committee members appointed by the audit committee may at any time request reports on the execution of their duties from executive officers, etc. and employees including managers, or investigate the status of the operations and financial status of the company with nominating committee, etc.

(2) Audit committee members appointed by the audit committee may, if it is necessary for the purpose of performing duties of the audit committee, request reports on the business from a subsidiary company of the company with nominating committee, etc., or investigate the status of the operations and financial status of its subsidiary company.

(3) The subsidiary company under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.

(4) audit committee members under paragraph (1) and paragraph (2) must comply with resolutions at the audit committee meeting, if any, on matters regarding the collection of the report or investigation under relevant respective paragraphs.

(Duty to Report to Board of Directors)

Article 406 If audit committee members find that executive officers or directors engage in misconduct, or are likely to engage in relevant conduct, or that there are facts in violation of laws and regulations or the articles of incorporation or grossly improper facts, they must report to that effect to the board of directors without delay.

(Enjoinment of Acts of Executive Officers by Audit Committee Members)

Article 407 (1) If an executive officer or director engages, or is likely to engage,

in any act outside the scope of the purpose of a company with nominating committee, etc., or other acts in violation of laws and regulations or the articles of incorporation, if that act is likely to cause substantial detriment to relevant company with nominating committee, etc., the audit committee members may demand that the executive officer or director cease that act.

- (2) In the cases provided for in the preceding paragraph, if the court orders an executive officer or director under the preceding paragraph to cease that act by a provisional disposition, the court is not to require the provision of security.

(Representation of Company in Actions between a Company with Nominating Committee and Executive Officers or Directors)

Article 408 (1) Notwithstanding the provisions of Article 349, paragraph (4) applied mutatis mutandis under Article 420, paragraph (3), and the provisions of Article 353 and Article 364, if a company with nominating committee, etc. files an action against its executive officers (including persons who were executive officers; hereinafter the same applies in this Article) or directors (including persons who were directors; hereinafter the same applies in this Article), or the executive officers or directors of a company with nominating committee, etc. files an action against that company with committees, the persons specified in each of those items for the case categories set forth in these items represent the company with nominating committee, etc. in these actions:

- (i) if audit committee members are the party to the suit relating to that action: the person designated by the board of directors (or, if the shareholders meeting designates a person to represent the company with nominating committee, etc. with respect to the action, that person); and
- (ii) in cases other than the case set forth in the preceding item: the audit committee member appointed by the audit committee.

(2) Notwithstanding the provisions of the preceding paragraph, if executive officers or directors file an action against the company with nominating committee, etc., the service of complaint on the audit committee members (excluding those filing that action) is effective on relevant company with nominating committee, etc.

(3) Notwithstanding the provisions of Article 349, paragraph (4) applied mutatis mutandis pursuant to Article 420, paragraph (3), and the provisions of Article 353 and Article 364, if a stock company set forth in the following items is a company with nominating committee, etc., when filing an action prescribed in those items, the audit committee members appointed by the audit committee represent the company with nominating committee, etc.:

- (i) a wholly owning parent company resulting from the share exchange, etc. (meaning a wholly owning parent company resulting from the share

- exchange, etc. as prescribed in Article 849, paragraph (2), item (i); the same applies in item (i) of the following paragraph and paragraph (5), item (iii)): an action to enforce liability (limited to those for which the fact of the cause occurred by the time when the act set forth in items of Article 847-2, paragraph (1) becomes effective) of the directors, executive officers or liquidators (including a person who was a liquidator; hereinafter the same applies in this Article) of its wholly owned subsidiary company resulting from the share exchange, etc. (meaning the wholly owned subsidiary company resulting from the share exchange, etc. as prescribed in Article 847-2, paragraph (1); the same applies in paragraph (5), item (iii));
- (ii) an ultimate, wholly owning parent company, etc. (meaning an ultimate, wholly owning parent company, etc. as prescribed in Article 847-3, paragraph (1); the same applies in item (ii) of the following paragraph and paragraph (5), item (iv)): an action to enforce specific liability (meaning an action to enforce specific liability as prescribed in paragraph (1) of the same Article) of directors, executive officers, or liquidators of a stock company which is its wholly owned subsidiary company, etc. (meaning a wholly owned subsidiary company, anything that is deemed to be such a wholly owned subsidiary company, etc., pursuant to the provisions of paragraph (3) of the same Article; the same applies in paragraph (5), item (iv)).
- (4) Notwithstanding the provisions of Article 349, paragraph (4) as applied mutatis mutandis pursuant to Article 420, paragraph (3), if a stock company set forth in the following items is a company with nominating committee, etc., when making a request specified in those items, an audit and supervisory committee member appointed by the audit and supervisory committee represents the company with nominating committee, etc.:
- (i) a wholly owning parent company resulting from a share exchange, etc.: request pursuant to the provisions of Article 847, paragraph (1) (limited to the request of filing an action prescribed in item (i) of the preceding paragraph); and
- (ii) an ultimate, wholly owning parent company, etc.: request pursuant to the provisions of Article 847, paragraph (1) (limited to the request to file an action to enforce the specific liabilities prescribed in item (ii) of the preceding paragraph).
- (5) Notwithstanding the provisions of Article 349, paragraph (4) applied mutatis mutandis under Article 420, paragraph (3), in the following cases, the audit committee members represent the company with nominating committee, etc.:
- (i) if a company with nominating committee, etc. receives a request (limited to requests for the filing of actions that enforce the liability of executive officers or directors) pursuant to the provisions of Article 847, paragraph (1), Article 847-2, paragraph (1) or (3) (including cases applied mutatis mutandis in

- paragraphs (4) and (5) of the same Article), or Article 847-3, paragraph (1) (excluding cases where the audit committee members are the party to the suit relating to the action); or
- (ii) if a company with nominating committee, etc. receives a notice of suit under Article 849, paragraph (4) (limited to those related to actions that enforce the liability of executive officers or directors) and a notice or demand (limited to those related to the settlement of a suit relating to an action that enforces the liability of executive officers or directors) pursuant to the provisions of Article 850, paragraph (2) (excluding cases where the audit committee members are the party to the suit relating to these actions);
  - (iii) if a company with nominating committee, etc. which is a wholly owning parent company resulting from the share exchange, etc. receives a notice (limited to those related to a claim to enforce liabilities of directors, executive officers, or liquidators of its wholly owned subsidiary company resulting from the share exchange, etc.) pursuant to the provisions of Article 849, paragraph (6); and
  - (iv) if a company with nominating committee, etc. which is an ultimate, wholly owning parent company, etc. receives a notice (limited to those related to a claim to enforce the liability of directors, executive officers, or liquidators of the stock company that constitutes its wholly owned subsidiary company, etc.) pursuant to the provisions of Article 849, paragraph (7).

(Methods for Decisions on Remuneration by Remuneration Committee)

- Article 409 (1) The remuneration committee must prescribe the policy on decisions on the content of the remunerations for individual executive officers, etc.
- (2) The remuneration committee must comply with the policy under the preceding paragraph in order to make decisions under the provisions of Article 404, paragraph (3).
  - (3) If the remuneration committee uses what is set forth in the following items as the individual remunerations of executive officers, etc., it must decide the matters provided for in each of the item as the contents thereof; provided, however, that the remunerations for individual accounting advisors must be that set forth in item (i):
    - (i) remunerations in a fixed amount: the amount for each individual person;
    - (ii) remunerations the amount of which is not fixed: the specific method for calculating that amount for each individual person;
    - (iii) remunerations that are shares for subscription of the stock company: the number of the shares for subscription (or, for a company with class shares, the classes of the shares for subscription and the number of shares for subscription for each class) and other matters prescribed by Ministry of

Justice Order;

- (iv) remunerations that are share options for subscription of the stock company: the number of the share options for subscription and other matters prescribed by Ministry of Justice Order;
- (v) remunerations that are monies allotted to payments in exchange for what is set forth in (a) or (b) below: the matters specified in the relevant (a) or (b):
  - (a) shares for subscription of the stock company: the number of shares for subscription subscribed to by the executive officers, etc. (or, for a company with class shares, the classes of the shares for subscription and the number of shares for subscription for each class) and other matters prescribed by Ministry of Justice Order;
  - (b) share options for subscription of the stock company: the number of share options for subscription subscribed to by the executive officers, etc. and other matters prescribed by Ministry of Justice Order
- (vi) remunerations that are not monetary (excluding shares for subscription and share options for subscription of the stock company): the specific contents thereof for each individual person.

### **Subsection 3 Operations of Nominating Committees**

(Convenors)

Article 410 A nominating committee, etc. meeting is called by any committee member of relevant nominating committee, etc.

(Calling Procedures)

Article 411 (1) To call a nominating committee, etc. meeting, a committee member of that nominating committee, etc., must dispatch the notice thereof to each committee member of relevant nominating committee, etc. no later than one week (or if a shorter period of time is prescribed by the board of directors, the shorter period of time) prior to the day of the nominating committee, etc. meeting.

(2) Notwithstanding the provisions of the preceding paragraph, the nominating committee, etc. meeting may be held without the procedures of calling if the consent of all committee members of relevant nominating committee, etc. is obtained.

(3) If requested by the nominating committee, etc., executive officers, etc., must attend relevant nominating committee, etc. meeting and provide explanations on the matters requested by relevant nominating committee, etc.

(Resolution at Nominating Committee Meetings)

Article 412 (1) The resolution at a meeting of a nominating committee, etc. is



passed by a majority (if a higher proportion is prescribed by the board of directors, the proportion or more) of the committee members present at the meeting where the majority (if a higher proportion is prescribed by the board of directors, that proportion or more) of the committee members entitled to participate in the vote are present.

- (2) Committee members with a special interest in the resolution under the preceding paragraph may not participate in the vote.
- (3) With respect to the business of the nominating committee, etc. meeting, minutes must be prepared pursuant to the provisions of Ministry of Justice Order, and if the minutes are prepared in writing, the committee members present at the meeting must sign or affix the names and seals to it.
- (4) With respect to the matters recorded in an electronic or magnetic record if the minutes under the preceding paragraph are prepared in that electronic or magnetic record, an action in lieu of the signing or the affixing of names and seals prescribed by Ministry of Justice Order must be taken.
- (5) Committee members who participate in resolutions at a meeting of the nominating committee, etc. and do not have their objections recorded in the minutes under paragraph (3) are presumed to have agreed to relevant resolutions.

#### (Minutes)

Article 413 (1) A company with nominating committee, etc. must keep the minutes referred to in paragraph (3) of the preceding Article at its head office for the period of ten years from the day of the nominating committee, etc. meeting.

- (2) The directors of a company with nominating committee, etc. may inspect or copy anything set forth in the following items:
  - (i) if the minutes under the preceding paragraph are prepared in writing, relevant documents; and
  - (ii) if the minutes under the preceding paragraph are prepared as an electronic or magnetic record, anything that is used in the manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (3) If it is necessary for the purpose of exercising the rights of a shareholder of a company with nominating committee, etc., the relevant shareholder may make requests for inspection or copying of the things set forth in each item of the preceding paragraph with respect to the minutes under paragraph (1) with the permission of the court.
- (4) The provisions of the preceding paragraph apply *mutatis mutandis* to the cases where it is necessary for the purpose of enforcing the liability of committee members by a creditor of a company with nominating committee, etc.

and where it is necessary for the purpose of exercising the rights of a member of the parent company.

- (5) If the court finds that the inspection or copying relating to the requests under paragraph (3) (including cases of the mutatis mutandis application under the preceding paragraph; hereinafter the same applies in this paragraph) is likely to cause substantial detriment to the company with nominating committee, etc. or its parent company or subsidiary company, the court may not grant the permission under paragraph (3).

(Omission of Report to Nominating Committee Meeting)

Article 414 If the executive officers, directors, accounting advisors or financial auditors have notified all committee members of matters that are to be reported to a nominating committee, etc. meeting, it is unnecessary to report relevant matters to a nominating committee, etc. meeting.

#### **Subsection 4 Authority of Directors of Companies with Nominating Committee**

(Authority of Directors of Companies with Nominating Committee)

Article 415 Directors of a company with nominating committee, etc. may not execute the operations of the company with nominating committee, etc. unless otherwise provided in this Act or any order under this Act.

(Authority of Board of Directors of Companies with a Nominating Committee)

Article 416 (1) The board of directors of a company with nominating committee, etc. performs the following duties notwithstanding the provisions of Article 362:

- (i) deciding on the following matters and on the execution of other operations of the company with nominating committee, etc.:
  - (a) basic management policy;
  - (b) the matters prescribed by Ministry of Justice Order as those necessary for the execution of the duties of the audit committee;
  - (c) if there are two or more executive officers, matters regarding the interrelationship between executive officers including the division of duties between executive officers and hierarchy of commands of executive officers;
  - (d) the directors to receive requests for the calling of board of directors meeting pursuant to the provisions of paragraph (2) of the following Article; or
  - (e) the development of systems necessary to ensure that the execution of duties by executive officers complies with laws and regulations and the articles of incorporation, and other systems prescribed by Ministry of

- Justice Order as systems necessary to ensure the properness of operations of a stock company and of operations of a group of enterprises consisting of the stock company and its subsidiary companies;
- (ii) the supervision of the execution of duties by executive officers, etc.
- (2) The board of directors of a company with nominating committee, etc. must decide the matters set forth in item (i), (a) through item (i), (e) of the preceding paragraph.
- (3) The board of directors of a company with nominating committee, etc. may not delegate the execution of the duties set forth in each item of paragraph (1) to directors.
- (4) The board of directors of a company with nominating committee, etc. may delegate decisions on the execution of the operations of the company with nominating committee, etc. to executive officers by its resolution; provided, however, that this does not apply to the following matters:
- (i) decisions under Article 136 or Article 137, paragraph (1), and the designation under the provisions of Article 140, paragraph (4);
  - (ii) decisions on the matters set forth in each item of Article 156, paragraph (1) applied pursuant to Article 165, paragraph (3) following the deemed replacement of terms;
  - (iii) decisions under Article 262 or Article 263, paragraph (1);
  - (iv) decisions on the matters set forth in each item of Article 298, paragraph (1);
  - (v) decisions on the contents of proposals to be submitted to a shareholders meeting (excluding those regarding the election and dismissal of directors, accounting advisors and financial auditors and the refusal to reelect financial auditors);
  - (vi) delegation pursuant to the provisions of Article 348-2, paragraph (2);
  - (vii) approval under Article 356, paragraph (1) applied pursuant to Article 365, paragraph (1) following the deemed replacement of terms (including as applied mutatis mutandis pursuant to Article 419, paragraph (2) following the deemed replacement of terms);
  - (viii) designation of the directors to call the board of directors meeting pursuant to the provisions of the proviso to Article 366, paragraph (1);
  - (ix) appointment of the committee members pursuant to the provisions of Article 400, paragraph (2) and removal of committee members pursuant to the provisions of Article 401, paragraph (1);
  - (x) election of executive officers pursuant to the provisions of Article 402, paragraph (2) and dismissal of executive officers pursuant to the provisions of Article 403, paragraph (1);
  - (xi) designation of a person to represent the company with nominating committee, etc. pursuant to the provisions of Article 408, paragraph (1), item

- (i);
- (xii) appointment of representative executive officers pursuant to the provisions of the first sentence of Article 420, paragraph (1) and removal of representative executive officers pursuant to the provisions of paragraph (2) of the same Article;
- (xiii) exemption from liability under Article 423, paragraph (1) pursuant to the provisions of the articles of incorporation under the provisions of Article 426, paragraph (1);
- (xiv) decisions on the contents of indemnity agreements;
- (xv) decisions on the contents of officer indemnification insurance policies ;
- (xvi) approvals under Article 436, paragraph (3), Article 441, paragraph (3) and Article 444, paragraph (5);
- (xvii) decisions on the matters to be decided pursuant to the provisions of Article 454, paragraph (1) applied pursuant to paragraph (5) of the same Article following the deemed replacement of terms;
- (xviii) decisions on the contents of contracts relating to the acts set forth in each item of Article 467, paragraph (1) (excluding those which do not require approval by a resolution at a shareholders meeting of the company with nominating committee, etc.);
- (xix) decisions on the contents of merger agreements (excluding those which do not require approval by a resolution at a shareholders meeting of relevant company with nominating committee, etc.);
- (xx) decisions on the contents of absorption-type company split agreements (excluding those which do not require approval by a resolution at a shareholders meeting of relevant company with nominating committee, etc.);
- (xxi) decisions on the contents of incorporation-type company split plans (excluding those which do not require approval by a resolution at a shareholders meeting of relevant company with nominating committee, etc.);
- (xxii) decisions on the contents of share exchange agreements (excluding those which do not require approval by a resolution at a shareholders meeting of relevant company with nominating committee, etc.);
- (xxiii) decisions on the contents of share transfer plans; and
- (xxiv) decisions on the content of partial share exchange plans (excluding those which do not require approval by a resolution at a shareholders meeting of the company with nominating committee, etc.).

(Operations of the Board of Directors of Companies with a Nominating Committee)

Article 417 (1) At a company with nominating committee, etc., even if there are provisions for a convenor, persons appointed by the nominating committee, etc. from among their committee members may call the board of directors meeting.

- (2) Executive officers may demand that the directors under paragraph (1), item (i), (d) of the preceding Article call the board of directors meeting by indicating to those directors the matters that are the purpose of the board of directors meeting. In these cases, if a notice of calling of the board of directors meeting which designates as the day of the board of directors meeting a day falling within two weeks from the day of the demand is not dispatched within five days from the day of relevant demand, relevant executive officers may call the board of directors meeting.
- (3) The persons appointed by the nominating committee, etc. from among the committee members must report the status of the execution of the duties of relevant nominating committee, etc. to the board of directors meeting without delay.
- (4) The executive officers must report the status of the execution of their duties to the board of directors meeting at least once every three months. In these cases, executive officers may submit relevant reports through their agents (limited to other executive officers).
- (5) If requested by the board of directors, executive officers must attend the board of directors meeting and provide explanations on the matters requested by the board of directors.

#### **Subsection 5 Authority of Executive Officers**

(Authority of Executive Officers)

Article 418 Executive officers perform the following duties:

- (i) deciding on the execution of the operations of the company with nominating committee, etc. that were delegated to the executive officers by a resolution at the board of directors meeting pursuant to the provisions of Article 416, paragraph (4); and
- (ii) the execution of the operations of the company with nominating committee, etc.

(Executive Officer's Duty to Report to Audit Committee Members)

Article 419 (1) If executive officers detect any fact likely to cause substantial detriment to the company with nominating committee, etc., they must immediately report that fact to the audit committee members.

- (2) The provisions of Article 355, Article 356 and Article 365, paragraph (2) apply mutatis mutandis to executive officers. In these cases, the term "shareholders meeting" in Article 356, paragraph (1) is deemed to be replaced with "board of directors meeting" and the phrase "At a company with board of directors, a director who has engaged in transactions under each item of Article 356, paragraph (1)" in Article 365, paragraph (2) is deemed to be replaced with "An

executive officer who has engaged in transactions under each item of Article 356, paragraph (1)".

- (3) The provisions of Article 357 do not apply to companies with nominating committee, etc.

(Representative Executive Officers)

Article 420 (1) Board of directors must appoint representative executive officers from among the executive officers. In these cases, if there is only one executive officer, that person is to be regarded as having been appointed as the representative executive officer.

- (2) A representative executive officer may be removed at any time by a resolution at the board of directors meeting.

- (3) The provisions of Article 349, paragraphs (4) and (5) apply mutatis mutandis to representative executive officers, the provisions of Article 352 apply mutatis mutandis to a person appointed by a provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act to perform the duties of executive officers or representative executive officers on behalf of the same, and the provisions of Article 401, paragraphs (2) through (4) apply mutatis mutandis to the cases where there are no representative executive officers in office, or where there is a vacancy which results in a shortfall in the number of executive officers prescribed in the articles of incorporation, respectively.

(Apparent Representative Executive Officers)

Article 421 If a company with nominating committee, etc. gives the title of president, vice president or other title regarded as having authority to represent the company with nominating committee, etc. to an executive officer who is not a representative executive officer, the company with committees is liable to third parties in good faith for the acts of the executive officer.

(Enjoinment of Acts of Executive Officers by Shareholders)

Article 422 (1) If an executive officer engages, or is likely to engage, in an act outside the scope of the purpose of a company with nominating committee, etc., or other acts in violation of laws and regulations or the articles of incorporation, if that act is likely to cause irreparable damage to the company with nominating committee, etc., shareholders having the shares consecutively for the preceding six months or more (or, if a shorter period is prescribed in the articles of incorporation, that period or more) may demand that the executive officer cease that act.

- (2) For the purpose of the application of the provisions of the preceding paragraph to a company with nominating committee, etc. which is not a public company, the phrase "shareholders having the shares consecutively for the

preceding six months or more (or, if a shorter period is prescribed in the articles of incorporation, that period or more)" in that paragraph is deemed to be replaced with "shareholders".

### **Section 11 Liability for Damages of Officers**

(Liability of Officers to Stock Companies for Damages)

- Article 423 (1) If a director, accounting advisor, company auditor, executive officer or financial auditor (hereinafter in this Chapter referred to as "officers, etc.") neglects their duties, they are liable to the stock company for damages arising as a result thereof.
- (2) If a director or executive officer engages in a transaction set forth in Article 356, paragraph (1), item (i) in violation of the provisions of Article 356, paragraph (1) (including cases where applied mutatis mutandis under Article 419, paragraph (2); hereinafter the same applies in this paragraph), the amount of the profits obtained by the director, executive officer or a third party as a result of the transaction is presumed to be the amount of the damages under the preceding paragraph.
- (3) If a stock company incurs damages as a result of the transaction provided for in Article 356, paragraph (1), item (ii) or item (iii) of (including cases where these provisions are applied mutatis mutandis under Article 419, paragraph (2)), the following directors or executive officers are presumed to have neglected their duties:
- (i) directors and executive officers provided for in Article 356, paragraph (1) (including cases where applied mutatis mutandis under Article 419, paragraph (2));
  - (ii) directors and executive officers who decided that the stock company would undertake relevant transaction; or
  - (iii) directors who agreed to the board of directors' resolution approving that transaction (for a company with nominating committee, etc., limited to cases where relevant transaction is a transaction between the company with nominating committee, etc. and the directors or is a transaction that gives rise to a conflict of interests between the company with nominating committee, etc. and the directors).
- (4) In the cases set forth in Article 356, paragraph (1), item (ii) or (iii) of, the provisions of the preceding paragraph do not apply when directors (excluding those who are audit and supervisory committee members) under the same paragraph receive approval of the audit and supervisory committee for the transactions.

(Exemption from Liability for Damages to Stock Companies)

Article 424 An exemption from liability under paragraph (1) of the preceding Article may not be given without the consent of all shareholders.

(Partial Exemption from Liability)

Article 425 (1) Notwithstanding the provisions of the preceding paragraph, if the relevant officers, etc. have acted in good faith and without gross negligence in performing their duties, exemption from liability under Article 423, paragraph (1) may be given by a resolution at a shareholders meeting (if a stock company has an ultimate, wholly owning parent company, etc. (meaning an ultimate, wholly owning parent company, etc. as prescribed in Article 847-3, paragraph (1); hereinafter the same applies in this Section), and the liability is specific liability (meaning specific liabilities as prescribed in Article 847-3, paragraph (4); hereinafter the same applies in this Section), the shareholders meeting of the stock company and the ultimate, wholly owning parent company, etc.; hereinafter the same applies in this Article), to the extent of the amount obtained by subtracting the sum of the following amounts (in Article 427, paragraph (1) referred to as "minimum liability amount") from the amount for which they are liable:

- (i) the amount obtained by multiplying the amount calculated by the method prescribed by Ministry of Justice Order as the amount equivalent to the annual amount of property benefits which relevant officers, etc. have received, or are to receive, from the stock company as consideration for the execution of their duties while they are in the office by the numbers provided for in (a) through (c) for the categories of officers, etc. set forth in the (a) through (c):
    - (a) representative directors or representative executive officers: 6;
    - (b) directors (limited to those who are executive directors, etc.) other than representative directors or executive officers other than representative executive officers: 4;
    - (c) directors (excluding those set forth in (a) and (b)), accounting advisors, company auditors or financial auditors: 2.
  - (ii) if relevant officers, etc. have subscribed for share options of relevant stock company (limited to cases set forth in each item of Article 238, paragraph (3)), the amount calculated by the method prescribed by Ministry of Justice Order as the amount equivalent to the amount of the property benefits regarding the share options.
- (2) In cases under the preceding paragraph, the directors (if a stock company has an ultimate, wholly owning parent company, etc., and the liabilities to be exempted pursuant to the provisions of the same paragraph are specific liabilities, the directors of the stock company and the ultimate, wholly owning parent company, etc.) must disclose the following matters to the shareholders



meeting under that paragraph:

- (i) the facts that cause the liability and the amount of the liability for damages;
  - (ii) the maximum amount for which exemption may be given pursuant to the provisions of the preceding paragraph and the grounds supporting the calculation; and
  - (iii) the reasons for which exemption from the liability is to be given and the amount for which exemption is to be given.
- (3) At a company with company auditor, company with audit and supervisory committee, or company with nominating committee, etc. in order to submit proposals regarding the exemption from liability under Article 423, paragraph (1) (limited to the exemption from liability of directors (excluding those who are audit and supervisory committee members or audit committee members) and executive officers) to a shareholders meeting, directors (if such a company has an ultimate, wholly owning parent company, etc., and the liabilities to be exempted pursuant to the provisions of paragraph (1) are specific liabilities, the directors of those companies and the ultimate, wholly owning parent company, etc.) must obtain the consent of the persons specified in each of those items for the stock company categories set forth in following each items:
- (i) company with company auditor: the company auditor (each company auditors if there are two or more company auditors); and
  - (ii) company with audit and supervisory committee: each audit and supervisory committee;
  - (iii) company with nominating committee, etc.: each audit committee members.
- (4) If a resolution under paragraph (1) is passed, and the stock company gives any property benefits prescribed by Ministry of Justice Order including, but not limited to, retirement allowance to the officers, etc. in that paragraph after relevant resolution, the stock company must obtain the approval of a shareholders meeting. The same applies if relevant officers, etc. exercise or transfer the share options under item (ii) of the same paragraph after the resolution.
- (5) If a resolution under paragraph (1) is passed, and the officers, etc. possess share option certificates that certify the share options under the preceding paragraph, the officers, etc. must deposit relevant share option certificates with the stock company without delay. In these cases, relevant officers, etc. may not demand the return of relevant share option certificates until after the approval under that paragraph is obtained with respect to the transfer under that paragraph.

(Provisions of Articles of Incorporation on Exemption by Directors)

Article 426 (1) Notwithstanding the provisions of Article 424, companies with company auditor (limited to cases where there are two or more directors),

companies with audit and supervisory committee, or companies with nominating committee, etc. may provide in the articles of incorporation that, if the relevant officers, etc. have acted in good faith and without gross negligence in performing their duties, and it is found particularly necessary taking into account the relevant circumstances including, but not limited to, the details of the facts that caused the liability and the status of execution of duties by relevant officers, etc., exemption may be given with respect to the liability under Article 423, paragraph (1) by the consent of a majority of the directors (excluding the directors subject to relevant liability) (or, for companies with board of directors, by a resolution at the board of directors meeting) to the extent of the amount which exemption may be given pursuant to the provisions of paragraph (1) of the preceding Article.

- (2) The provisions of paragraph (3) of the preceding Article apply mutatis mutandis to cases where a proposal to amend the articles of incorporation to create provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph (limited to provisions of the articles of incorporation to the effect that directors (excluding those who are audit and supervisory committee members or audit committee members) and executive officers may be exempted from the liability) is submitted to a shareholders meeting, to cases where the consent of directors with respect to exemption from liability under the provisions of the articles of incorporation pursuant to the provisions of that paragraph (limited to exemption from liability of directors (excluding those who are audit and supervisory committee members or audit committee members) and executive officers) is to be obtained, and to the cases where a proposal regarding the exemption from liability is submitted to the board of directors. In this case, the phrase "directors (if such a company has an ultimate, wholly owning parent company, etc., and the liabilities to be exempted pursuant to the provisions of paragraph (1) are specific liabilities, the directors of those companies and the ultimate, wholly owning parent company, etc.)" in paragraph (3) of the same Article is deemed to be replaced with "directors".
- (3) If consent (or, for a company with board of directors, a resolution at the board of directors meeting) to the effect that officers, etc. are exempted from the liability under the provisions of the articles of incorporation pursuant to the provisions of paragraph (1) has been given, the directors must, without delay, give public notice, or give notice to shareholders, to the effect that any objections to the matters set forth in each item of paragraph (2) of the preceding Article or to the exemption from liability ought to be stated within a specified period of time; provided, however, that that period may not be shorter than one month.
- (4) For the purpose of the application of the provisions of the preceding paragraph to a stock company that is not a public company, "give public notice,

or give notice to shareholders" in that paragraph is deemed to be replaced with "give notice to shareholders".

- (5) If a stock company has an ultimate, wholly owning parent company, etc., when public notice or notice pursuant to the provisions of paragraph (3) (limited to those related to the exemption of specific liabilities) is made, the directors of the ultimate, wholly owning parent company, etc. must make public notice or notify shareholders without delay of the matters set forth in the items of paragraph (2) of the preceding Article and to the effect that any objections to exempt liabilities should be stated within the specified period; provided, however, that that period may not be shorter than one month.
- (6) For the purpose of the application of the provisions of the preceding paragraph to an ultimate, wholly owning parent company, etc. that is not a public company, the phrase "make public notice or notify shareholders" in the same paragraph is deemed to be replaced with "notify shareholders".
- (7) If shareholders having not less than three hundredths (or, if lesser proportion is prescribed in the articles of incorporation, the proportion) of the votes of all shareholders (excluding shareholders who are officers, etc. subject to the liability referred to in paragraph (3)) state objections during the period provided for in that paragraph (if a stock company has an ultimate, wholly owning parent company, etc., when the liabilities to be exempted according to the provisions of the articles of incorporation pursuant to the provisions of paragraph (1), if shareholders having not less than three-hundredths (or, if a lesser proportion is prescribed in the articles of incorporation, the proportion) of voting rights of all shareholders (excluding shareholders who are officers, etc. subject to the liability referred to in paragraph (3)) of the stock company or shareholders having not less than three-hundredths (or, if lesser proportion is prescribed in the articles of incorporation, the proportion) of voting rights of all shareholders (excluding shareholders who are officers, etc. subject to the liability referred to in paragraph (3)) of the ultimate, wholly owning parent company, etc. state objections set forth in paragraph (3) or (5) during the period set forth in the same paragraph respectively), the stock company may not effect the exemption pursuant to the provisions of the articles of incorporation under the provisions of paragraph (1).
- (8) The provisions of paragraph (4) and paragraph (5) of the preceding Article apply mutatis mutandis to cases where exemption from liability is given pursuant to the provisions of the articles of incorporation under the provisions of paragraph (1).

(Agreement Limiting Liability)

Article 427 (1) Notwithstanding the provisions of Article 424, a stock company may provide in the articles of incorporation that the stock company may enter

into agreements with directors (excluding those are executive directors, etc.), accounting advisors, company auditors or financial auditors (hereinafter in this Article and Article 911, paragraph (3), item (xxv) referred to as "non-executive directors, etc.") to the effect that, if relevant non-executive directors, etc. have acted in good faith and without gross negligence in performing their duties, the liability of the non-executive directors, etc. under Article 423, paragraph (1) is limited to either an amount specified by the stock company in advance within the limit of the amount provided for in the articles of incorporation, or the minimum liability amount, whichever is higher.

- (2) If non-executive directors, etc. who have entered into agreements under the preceding paragraph assume the office of executive directors, etc. of the stock company, relevant agreements become ineffective from then on.
- (3) The provisions of Article 425, paragraph (3) apply mutatis mutandis to cases where a proposal to amend the articles of incorporation to create provisions of the articles of incorporation under the provisions of paragraph (1) (limited to the provisions of the articles of incorporation to the effect that agreements may be entered into with directors (excluding those who are audit and supervisory committee members or audit committee members) prescribed in that paragraph) is submitted to a shareholders meeting. In this case, the phrase "directors (if such a company has an ultimate, wholly owning parent company, etc., and the liabilities to be exempted pursuant to the provisions of paragraph (1) are specific liabilities, the directors of those companies and the ultimate, wholly owning parent company, etc.)" in paragraph (3) of that Article is deemed to be replaced with "directors".
- (4) If a stock company that entered into agreements under paragraph (1) has come to know that it has suffered damages as a result of non-executive directors, etc. who were the counterparties to relevant agreements neglecting their duties, the stock company must disclose the following matters at the first shareholders meeting (if the stock company has an ultimate, wholly owning parent company, etc., and the damages are related to specific liabilities, shareholders meeting of the stock company and the ultimate, wholly owning parent company, etc.) called thereafter:
  - (i) matters set forth in Article 425, paragraph (2), items (i) and (ii);
  - (ii) the contents of relevant agreements and reasons for entering into relevant agreements; and
  - (iii) the amount for which it was arranged that relevant non-executive directors, etc. would be exempted from liability for damages in Article 423, paragraph (1).
- (5) The provisions of Article 425, paragraphs (4) and (5) apply mutatis mutandis to cases where it has been arranged pursuant to agreements under paragraph (1) that non-executive directors, etc. are not liable for damages in excess of the

limit provided for in that paragraph.

(Special Provisions on Transactions Carried Out by Director for Themselves)

Article 428 (1) A director or executive officer who has carried out transactions under Article 356, paragraph (1), item (ii) (including cases of mutatis mutandis application under Article 419, paragraph (2)) (limited to transactions carried out for themselves) may not be exempted from the liability under Article 423, paragraph (1) for the reason that the neglect of their duties was due to grounds not attributable to relevant directors or executive officers.

(2) The provisions of the preceding three Articles do not apply to the liability in the preceding paragraph.

(Liability for Damages of Officers to Third Parties)

Article 429 (1) If officers, etc. have acted in bad faith or with gross negligence in performing their duties, relevant officers, etc. are liable to a third party for damages arising as a result thereof.

(2) The provisions of the preceding paragraph also apply if the persons set forth in the following items carry out the acts provided for in each item; provided, however, that this does not apply if those persons prove that they did not fail to exercise due care with respect to the performance of their duties:

(i) directors and executive officers: the following acts:

(a) the giving of false notice with respect to important matters, notice of which must be given when soliciting persons to subscribe for shares, share options, bonds or bonds with share option, or the making of false statements or records with respect to materials used for explanations regarding the business of the relevant stock company and other matters for the purpose of that solicitation;

(b) the making of false statements or records with respect to important matters to be specified or recorded in financial statements and business reports as well as the annexed detailed statements thereof and provisional financial statements;

(c) the false registration; and

(d) the false public notice (including the measures provided for in Article 440, paragraph (3));

(ii) accounting advisors: the making of false statements or records with respect to important matters to be specified or recorded in financial statements or in the annexed detailed statements accompanying them, provisional financial statements and accounting advisor's reports;

(iii) company auditors, audit and supervisory committee members, and audit committee members: the making of false statements or records with respect to important matters to be specified or recorded in audit reports;

(iv) financial auditor: the making of false statements or records with respect to important matters to be specified or recorded in financial audit reports.

(Joint and Several Liabilities of Officers)

Article 430 If officers, etc. are liable for damages arising in the stock company or a third party, if other officers, etc. are also liable, those persons will be joint and several obligors.

### **Section 12 Indemnity Agreements and Insurance Policies Concluded for the Benefit of Officers**

(Indemnity Agreements)

Article 430-2 (1) When a stock company makes a decision on the content of an agreement (hereinafter referred to in this Article as an "indemnity agreement") in which the stock company promises to indemnify officers, etc. for all or part of the expenses set forth below, a resolution at the shareholders meeting (or at the board of directors meeting for a company with board of directors) must be adopted.

(i) expenses disbursed by the officers, etc. to address alleged violations of the provisions of laws and regulations concerning the execution of duties or requests received in relation to pursuing liability;

(ii) the losses set forth below when an officers, etc. is liable to pay compensation for damage caused to a third party in relation to the execution of duties:

(a) losses arising as a result of paying compensation for the damage by the relevant officers, etc.; or

(b) if a settlement is reached between the parties in relation to a dispute concerning compensation for damage, losses arising as a result of paying monies pursuant to the settlement by the relevant officers, etc.

(2) Even if a stock company has executed an indemnity agreement, the stock company may not indemnify the expenses, etc. set forth below pursuant to the indemnity agreement:

(i) the portion in excess of the amount of expenses that are ordinarily necessary as the expenses set forth in item (i) of the preceding paragraph;

(ii) if the officers, etc. for which the stock company seeks to pay indemnification for the damages referred to in item (ii) of the preceding paragraph are liable to the stock company under Article 423, paragraph (1), the portion relating to relevant liability of the expenses set forth in that item; and

(iii) if the officers, etc. acted in bad faith or with gross negligence in relation to the performance of their duties and bear liability under item (ii) of the

- preceding paragraph, all of that the losses set forth in that item.
- (3) If a stock company that paid indemnification for the expenses set forth in paragraph (1), item (i) pursuant to an indemnity agreement learns that the relevant officers, etc. sought unlawful gain for the officers or a third party or performed the duties set forth in that item with the intent of causing harm to the stock company, the stock company may make a demand to the relevant officers, etc. for return of monies corresponding to the entire amount of the indemnification.
  - (4) In a company with board of directors, a director who paid indemnification or received indemnification pursuant to an indemnity agreement will report to the board of directors, without delay, any important facts regarding the indemnification.
  - (5) The preceding paragraph applies mutatis mutandis to executive officers. In the case, the phrase "in a company with board of directors, a," in that paragraph is deemed to be replaced with "A."
  - (6) The provisions of Article 356, paragraph (1), Article 365-2, paragraph (2) (including when these provisions are applied mutatis mutandis pursuant to Article 419, paragraph (2)), Article 423, paragraph (3), and Article 428, paragraph (1) do not apply with respect to indemnity agreements between stock companies and directors or executive officers.
  - (7) The provisions of Article 108 of the Civil Code do not apply with respect to the execution of indemnity agreements set forth in the preceding paragraph whose content is specified by a resolution set forth in paragraph (1).

(Insurance Policies Concluded for the Benefit of Officers)

- Article 430-3 (1) When a stock company makes a decision on the content of an insurance policy entered into with an insurer under which the insurer promises to pay compensation for damage arising from officer, etc. bearing liability in relation to the execution of duties or the receipt of a demand pursuing relevant liability where officers, etc. are the insureds (excluding policies specified by the applicable Order of the Ministry of Justice as policies where there is no likelihood of substantial impairment of the appropriateness of the execution of duties by officers, etc. who are insured as a result of the execution of the insurance policies; referred to in the proviso of paragraph (3) as "officers, etc. indemnification insurance policy"), a resolution at the shareholders meeting (or at a board of directors meeting for a company with board of directors) must be adopted.
- (2) The provisions of Article 356, paragraph (1), Article 365, paragraph (2) (including when these provisions are applied mutatis mutandis pursuant to Article 419, paragraph (2)) and Article 423, paragraph (3) do not apply with respect to execution of insurance policies by a stock company with an insurer

under which the insurer promises to pay compensation for damage arising from a director bearing liability in relation to the execution of duties or the receipt of a demand pursuing relevant liability where directors or executive officers are the insureds.

- (3) The provisions of Article 108 of the Civil Code do not apply to the execution of insurance policies under the preceding paragraph; provided, however, that if the policy is officers, etc. indemnification insurance policy, this is limited to times where the content of relevant policy is specified by a resolution set forth in paragraph (1).

## **Chapter V Accounting**

### **Section 1 Accounting Principles**

Article 431 The accounting for a stock company is to be subject to the business accounting practices generally accepted as fair and appropriate.

### **Section 2 Account Books**

#### **Subsection 1 Account Books**

(Preparation and Retention of Account Books)

Article 432 (1) A stock company must prepare accurate account books in a timely manner pursuant to Ministry of Justice Order.

- (2) A stock company must retain its account books and important materials regarding its business for ten years from the time of the closing of the account books.

(Request to Inspect Account Books)

Article 433 (1) Shareholders having not less than three hundredths (or, if lesser proportion is prescribed in the articles of incorporation, the proportion) of the votes of all shareholders (excluding shareholders who may not vote on all matters which may be resolved at a shareholders meeting) or shareholders having not less than three hundredths (or, if lesser proportion is prescribed in the articles of incorporation, the proportion) of the issued shares (excluding treasury shares) may make the following requests at any time during the business hours of the stock company. In these cases, the reasons for relevant requests must be disclosed:

- (i) if the account books or materials relating thereto are prepared in writing, the requests for inspection or copying of relevant documents;
- (ii) if an account book or material relating thereto has been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the



- information recorded in that electronic or magnetic record.
- (2) If a request referred to in the preceding paragraph is made, the stock company may not refuse the request unless it is found that any of the following apply:
- (i) the shareholder who makes relevant request (hereinafter in this paragraph referred to as "requestor") makes the request for other purposes than investigation related to the securing or exercising of the shareholder's rights;
  - (ii) the requestor makes the request for the purpose of interfering with the execution of the operations of relevant stock company and prejudicing the common benefit of the shareholders;
  - (iii) the requestor operates or engages in business which is, in substance, in competition with the operations of relevant stock company;
  - (iv) the requestor makes the request in order to notify the facts learned by inspecting or copying the account books or materials relating thereto to third parties for profit; or
  - (v) the requestor is a person who has notified the facts learned by inspecting or copying the account books or materials relating thereto to third parties for profit during the last two years.
- (3) If it is necessary for the purpose of exercising the rights of a member of the parent company of a stock company, the relevant member of the parent company may, with the permission of the court, make the request set forth in each item of paragraph (1) with respect to the account books or materials relating thereto. In these cases, the reasons for relevant request must be disclosed.
- (4) The court may not grant the permission referred to in the preceding paragraph if there are any of the facts provided for in each item of paragraph (2) with respect to the member of the parent company referred to in the preceding paragraph.

(Order to Submit Account Books)

Article 434 The court may, in response to a petition or ex officio, order the parties to a suit to submit account books, in whole or in part.

## **Subsection 2 Financial Statements**

(Preparation and Retention of Financial Statements)

- Article 435 (1) A stock company must prepare a balance sheet as at the day of its formation pursuant to the provisions of Ministry of Justice Order.
- (2) A stock company must prepare financial statements (meaning balance sheets, profit and loss statements and other statements prescribed by Ministry of Justice Order as necessary and appropriate in order to indicate the status of

the assets and profits and losses of a stock company; hereinafter the same applies in this Chapter) and business reports for each business year and annexed detailed statements accompanying them pursuant to the provisions of Ministry of Justice Order.

- (3) Financial statements and business reports and annexed detailed statements accompanying them may be prepared as electronic or magnetic records.
- (4) A stock company must retain its financial statements and the annexed detailed statements accompanying them for ten years from the time of preparation of the financial statements.

#### (Audit of Financial Statements)

Article 436 (1) At companies with company auditor (including stock companies the articles of incorporation of which provide that the scope of the audit is limited to an audit related to accounting, and excluding the companies with financial auditor), the financial statements, business reports, and annexed detailed statements accompanying them which are referred to in paragraph (2) of the preceding Article must be audited by company auditors pursuant to the provisions of Ministry of Justice Order.

(2) At companies with financial auditor, the documents set forth in the following items must be audited by the persons specified in each of those items pursuant to the provisions of Ministry of Justice Order:

(i) the financial statements and annexed detailed statements accompanying them which are referred to in paragraph (2) of the preceding Article:

company auditors (or audit and supervisory committee for a company with audit and supervisory committee, and audit committees for companies with nominating committee, etc.) and financial auditors;

(ii) the business reports and annexed detailed statements accompanying them which are referred to in paragraph (2) of the preceding Article: company auditors (or audit and supervisory committee for a company with audit and supervisory committee, and audit committees for companies with nominating committee, etc.).

(3) At companies with board of directors, the financial statements, business reports, and annexed detailed statements accompanying them which are referred to in paragraph (2) of the preceding Article (or, if the provisions of paragraph (1) or the preceding paragraph apply, those which have been audited as provided for in paragraph (1) and the preceding paragraph) must be approved by the board of directors.

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

Article 437 At companies with board of directors, directors must, when giving notice to call annual shareholders meetings, provide to shareholders pursuant

to the provisions of Ministry of Justice Order the financial statements and business reports that have been approved as provided for in paragraph (3) of the preceding paragraph (if the provisions of paragraph (1) or paragraph (2) of the same Article apply, including audit reports and financial audit reports).

(Provision of Financial Statements to Annual Shareholders Meetings)

Article 438 (1) At stock companies set forth in the following items, directors must submit or provide the financial statements and business reports provided for in each relevant item to annual shareholders meetings:

- (i) companies with company auditor provided for in Article 436, paragraph (1) (excluding companies with board of directors): financial statements and business reports that have been audited pursuant to Article 436, paragraph (1);
- (ii) companies with financial auditor (excluding companies with board of directors): financial statements and business reports that have been audited pursuant to Article 436, paragraph (2);
- (iii) companies with board of directors: financial statements and business reports that have been approved pursuant to Article 436, paragraph (3); and
- (iv) stock companies other than those set forth in the preceding three items: financial statements and business reports under Article 435, paragraph (2).

(2) Financial statements that have been submitted or provided pursuant to the provisions of the preceding paragraph must be approved by the annual shareholders meeting.

(3) Directors must report the contents of the business reports submitted or provided pursuant to the provisions of paragraph (1) to the annual shareholders meeting.

(Special Provisions on Companies with Financial Auditors)

Article 439 With respect to companies with financial auditor, if the financial statements that have been approved pursuant to Article 436, paragraph (3) satisfy the requirements prescribed by Ministry of Justice Order as statements that accurately indicate the status of the assets and profits and losses of a stock company in compliance with laws and regulations and the articles of incorporation, the provisions of paragraph (2) of the preceding Article do not apply. In these cases, directors must report the contents of relevant financial statements to the annual shareholders meeting.

(Public Notice of Financial Statements)

Article 440 (1) A stock company must give public notice of its balance sheet (or, for a large company, its balance sheet and profit and loss statement) without delay after the conclusion of the annual shareholders meeting pursuant to the

provisions of Ministry of Justice Order.

- (2) Notwithstanding the provisions of the preceding paragraph, with respect to a stock company for which the means of public notice is a method set forth in Article 939, paragraph (1), item (i) or (ii), it is sufficient to give public notice of a summary of the balance sheet provided for in the preceding paragraph.
- (3) A stock company referred to in the preceding paragraph may, without delay after the conclusion of the annual shareholders meeting, pursuant to the provisions of Ministry of Justice Order, take measures to make the information contained in the balance sheet provided for in paragraph (1) available to the general public continually by electronic or magnetic means until the day on which five years have elapsed from the day of the conclusion of the annual shareholders meeting. In these cases, the provisions of the preceding two paragraphs do not apply.
- (4) The provisions of the preceding three paragraphs do not apply to stock companies that must submit their annual securities reports to the Prime Minister pursuant to the provisions of Article 24, paragraph (1) of the Financial Instruments and Exchange Act.

(Provisional Financial Statements)

- Article 441 (1) Stock companies may prepare the following documents (hereinafter referred to as "provisional financial statements") pursuant to the provisions of Ministry of Justice Order in order to grasp the financial status of relevant stock company as at a certain day (hereinafter in this paragraph referred to as "provisional account closing day") included in the business year immediately following the most recent business year:
- (i) a balance sheet as at the provisional account closing day; and
  - (ii) a profit and loss statement for the period from the first day of the business year that includes the provisional account closing day to the provisional account closing day.
- (2) At companies with company auditor or companies with financial auditor provided for in Article 436, paragraph (1), provisional financial statements must be audited by company auditors or financial auditors (or, for companies with audit and supervisory committee, by audit and supervisory committee and financial auditors, and for companies with nominating committee, etc., by the audit committee and financial auditors) pursuant to the provisions of Ministry of Justice Order.
  - (3) At companies with board of directors, provisional financial statements (or, if the provisions of the preceding paragraph apply, the statements audited under that paragraph) must be approved by the board of directors.
  - (4) At stock companies set forth in the following items, the provisional financial statements provided for in relevant item must be approved by a shareholders

meeting; provided, however, that this does not apply if the provisional financial statements satisfy the requirements prescribed by Ministry of Justice Order as statements that accurately indicate the status of the assets and profits and losses of a stock company in compliance with laws and regulations and the articles of incorporation:

- (i) companies with company auditor or companies with financial auditor provided for in Article 436, paragraph (1) (in each case excluding company with board of directors): provisional financial statements that have been audited pursuant to paragraph (2);
- (ii) companies with board of directors: provisional financial statements that have been approved pursuant to the preceding paragraph; and
- (iii) stock companies other than those set forth in the preceding two items: provisional financial statements under paragraph (1).

(Keeping and Inspection of Financial Statements)

Article 442 (1) Stock companies must keep the things set forth in the each of the following items (hereinafter in this Article referred to as "financial statements, etc.") at its head office for the period provided for in each relevant item:

- (i) financial statements and business reports for each business year and annexed detailed statements thereof (if the provisions of Article 436, paragraph (1) or (2) apply, including audit reports or financial audit reports): five years from the day one week (or, for companies with board of directors, two weeks) prior to the day of the annual shareholders meeting (or, in cases provided for in Article 319, paragraph (1), from the day when the proposal under that paragraph is made); and
  - (ii) provisional financial statements (if the provisions of paragraph (2) of the preceding Article apply, including audit reports and financial audit reports): five years from the day when the provisional financial statements are prepared.
- (2) A stock company must keep copies of the financial statements, etc. set forth in the following items at its branch offices for the period provided for in each relevant item; provided, however, that this does not apply to the cases where the financial statements, etc. have been prepared as an electronic or magnetic record and the stock company adopts the measures prescribed by Ministry of Justice Order as measures enabling its branch offices to respond to the request set forth in item (iii) and item (iv) of the following paragraph:
- (i) financial statements, etc. set forth in item (i) of the preceding paragraph: three years from the day one week (or, for a company with board of directors, two weeks) prior to the day of the annual shareholders meeting (or, in cases provided for in Article 319, paragraph (1), from the day when the proposal under that paragraph is made); and

- (ii) financial statements, etc. set forth in item (ii) of the preceding paragraph: three years from the day when the provisional financial statements under that item are prepared.
- (3) The shareholders and creditors may submit the following requests at any time during the business hours of the stock company; provided, however, that the fees designated by relevant stock company are required to be paid in order to submit the requests set forth in item (ii) or (iv):
- (i) if the financial statements, etc. are prepared in writing, requests for inspection of relevant documents or copies of relevant documents;
  - (ii) requests for a transcript or extract of the document referred to in the preceding item;
  - (iii) if the financial statements, etc. have been prepared as an electronic or magnetic record, a request to inspect anything that is used in the manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record; or
  - (iv) a request to be provided with the information recorded in the electronic or magnetic record referred to in the preceding item by an electronic or magnetic means that the stock company has designated, or a request to be issued a document showing that information.
- (4) If it is necessary for the purpose of exercising the rights of a member of the parent company of a stock company, the relevant member of the parent company may, with the permission of the court, make the requests set forth in each item of the preceding paragraph with respect to the financial statements, etc. of relevant stock company; provided, however, that, in order to make the requests set forth in item (ii) or (iv) of that paragraph, the fees designated by relevant stock company are required to be paid.

(Order to Submit Financial Statements)

Article 443 The court may, in response to a petition or ex officio, order the parties to a suit to submit financial statements and the annexed detailed statements accompanying them, in whole or in part.

### **Subsection 3 Consolidated Financial Statements**

Article 444 (1) A company with financial auditor may, pursuant to the provisions of Ministry of Justice Order, prepare consolidated financial statements (meaning statements prescribed by Ministry of Justice Order as necessary and appropriate in order to indicate the status of the assets and profits and losses of a group of enterprises comprised of relevant company with financial auditor and its subsidiary companies; the same applies hereinafter) for each business year.

- (2) Consolidated financial statements may be prepared as an electronic or magnetic record.
- (3) An entity that is a large company as at the last day of a business year and must submit an annual securities report to the Prime Minister pursuant to the provisions of Article 24, paragraph (1) of the Financial Instruments and Exchange Act must prepare consolidated financial statements for relevant business year.
- (4) Consolidated financial statements must be audited by the company auditors (or, audit and supervisory committee for a company with audit and supervisory committee, and for a company with nominating committee, etc., by the audit committee) and financial auditors pursuant to the provisions of Ministry of Justice Order.
- (5) If a company with financial auditor is a company with board of directors, the consolidated financial statements audited as provided for in the preceding paragraph must be approved by the board of directors.
- (6) If a company with financial auditor is a company with board of directors, directors must, when giving notice to call annual shareholders meetings, provide to shareholders, pursuant to the provisions of Ministry of Justice Order, consolidated financial statements that have been approved as provided for in the preceding paragraph.
- (7) At companies with financial auditor set forth in the following items, directors must submit or provide the consolidated financial statements provided for in each relevant item to the annual shareholders meetings. In these cases, the contents of the consolidated financial statements provided for in each relevant item and the results of the audit under paragraph (4) must be reported to the annual shareholders meeting:
  - (i) a company with financial auditor which is a company with board of directors: consolidated financial statements approved as provided for in paragraph (5);
  - (ii) a company with financial auditor other than that set forth in the preceding item: consolidated financial statements audited as provided for in paragraph (4).

### **Section 3 Amounts of Stated Capital**

#### **Subsection 1 General Provisions**

(Amounts of Stated Capital and Amounts of Reserves)

- Article 445 (1) Unless it is otherwise provided for in this Act, the amount of stated capital of a stock company is the amount of properties contributed by persons who become shareholders at the incorporation or share issue.
- (2) The amount not exceeding half of the amount of the contribution under the

preceding paragraph may not be recorded as stated capital.

- (3) The amount not recorded as stated capital pursuant to the provisions of the preceding paragraph must be recorded as capital reserves.
- (4) If a stock company pays dividends of surplus, it must record an amount equivalent to one tenth of the amount of the deduction from surplus as a result of the payment of relevant dividends of surplus as capital reserves or retained earnings reserves (hereinafter referred to as "reserves"), pursuant to the provisions of Ministry of Justice Order.
- (5) The amount to be recorded as stated capital or reserves at mergers, absorption-type company splits, incorporation-type company splits, share exchanges, share transfers or partial share exchanges is prescribed by Ministry of Justice Order.
- (6) The amount to be recorded as stated capital or reserves from issuing shares pursuant provisions on the matters set forth in Article 361, paragraph (1), item (iii), item (iv), or item (v), (b) pursuant to the articles of incorporation or a resolution of the shareholders meeting or pursuant to a decision by the remuneration committee on the matters provided in Article 409, paragraph (3), item (iii), item (iv) or item (v), (b) is prescribed by Ministry of Justice Order.

#### (Amounts of Surplus)

Article 446 The amount of the surplus of a stock company is the amount obtained by subtracting the sum of the amounts set forth in item (v) through (vii) from the sum of the amounts set forth in item (i) through (iv):

- (i) the amount obtained by subtracting the sum of the amounts set forth in (c) through (e) from the sum of the amounts set forth in (a) through (b) as at the last day of the most recent business year:
  - (a) the amount of assets;
  - (b) the sum of the book value of treasury shares;
  - (c) the amount of debt;
  - (d) the sum of the amount of stated capital and reserves;
  - (e) beyond what is set forth in (c) and (d), the sum of the amounts recorded in each account title prescribed by Ministry of Justice Order;
- (ii) if treasury shares are disposed of after the last day of the most recent business year, the amount obtained by subtracting the book value of relevant treasury shares from the amount of the value received in exchange for relevant treasury shares;
- (iii) if the amount of stated capital is reduced after the last day of the most recent business year, the amount of relevant reduction (excluding the amount under paragraph (1), item (ii) of the following Article);
- (iv) if the reserves are reduced after the last day of the most recent business year, the amount of relevant reduction (excluding the amount under Article



- 448, paragraph (1), item (ii));
- (v) if treasury shares are canceled pursuant to the provisions of Article 178, paragraph (1) after the last day of the most recent business year, the amount of the book value of relevant treasury shares;
  - (vi) the sum of the following amounts if dividend of surplus is paid after the last day of the most recent business year:
    - (a) the total book value of the dividend property referred to in Article 454, paragraph (1), item (i) (excluding the book value of relevant dividend property assigned to shareholders who exercised the rights to demand distribution of monies provided for in paragraph (4), item (i) of that Article);
    - (b) the sum of the amounts of the money delivered to shareholders who exercised the rights to demand distribution of monies provided for in Article 454, paragraph (4), item (i); and
    - (c) the sum of the amounts of money paid to shareholders of disqualified shares provided for in Article 456;
  - (vii) beyond what is set forth in the preceding two items, the sum of the amounts recorded in each account title prescribed by Ministry of Justice Order.

**Subsection 2 Reductions in Amount of Stated Capital**  
**Division 1 Reductions in Amount of Stated Capital**

(Reductions in Amount of Stated Capital)

Article 447 (1) A stock company may reduce the amount of its stated capital. In these cases, the following matters must be decided by a resolution at a shareholders meeting:

- (i) the amount by which the stated capital is reduced;
  - (ii) if all or part of the amount by which the stated capital is reduced is to be appropriated to reserves, a statement to that effect and the amount to be appropriated to reserves;
  - (iii) the day on which the reduction in the amount of stated capital takes effect.
- (2) The amount under item (i) of the preceding paragraph may not exceed the amount of stated capital as at the day under item (iii) of that paragraph.
- (3) If a stock company reduces the amount of stated capital concurrently with a share issue, and the amount of stated capital after the day on which relevant reduction in the amount of stated capital takes effect is not less than the amount of stated capital before relevant day, for the purpose of the application of the provisions of paragraph (1), the phrase "resolution at a shareholders meeting" in that paragraph is deemed to be replaced with "decision of the directors (or, for a company with board of directors, a resolution of the board of

directors meeting)".

(Reductions in Amount of Reserves)

Article 448 (1) A stock company may reduce the amount of its reserves. In these cases, the following matters must be decided by a resolution at a shareholders meeting:

- (i) the amount by which the reserves are reduced;
- (ii) if all or part of the amount by which the reserves are reduced is to be appropriated to the stated capital, a statement to that effect and the amount to be appropriated to the stated capital;
- (iii) the day on which the reduction in the amount of the reserves takes effect.

(2) The amount under item (i) of the preceding paragraph may not exceed the amount of the reserves as at the day under item (iii) of that paragraph.

(3) If a stock company reduces the amount of the reserves concurrently with a share issue, and the amount of the reserves after the day on which relevant reduction in the amount of the reserves takes effect is not less than the amount of the reserves before relevant day, for the purpose of the application of the provisions of paragraph (1), the phrase "resolution at a shareholders meeting" in that paragraph is deemed to be replaced with "decision of the directors (or, for a company with board of directors, a resolution of the board of directors meeting)".

(Objection of Creditors)

Article 449 (1) If a stock company reduces the amount of its stated capital or reserves (hereinafter in this Article referred to as "stated capitals, etc.")

(excluding cases where the whole of the amount by which the reserves are reduced is appropriated to the stated capital), creditors of relevant stock company may state their objections to the reduction in the amount of the capitals, etc.; provided, however, that this does not apply to cases where only the amount of the reserves is reduced and all of the following apply:

- (i) that matters set forth in each item of paragraph (1) of the preceding Article are decided at the annual shareholders meeting; and
- (ii) that the amount referred to in paragraph (1), item (i) of the preceding Article does not exceed the amount calculated in a manner prescribed by Ministry of Justice Order as the amount of the deficit as at the day of the annual shareholders meeting referred to in the preceding item (or, in cases provided for in the first sentence of Article 439, the day when the approval under Article 436, paragraph (3) is given).

(2) If creditors of a stock company may state their objections pursuant to the provisions of the preceding paragraph, relevant stock company must give public notice of the matters set forth below in the Official Gazette and must

give notices inviting objections separately to each known creditor, if any; provided, however, that the period under item (iii) may not be less than one month:

- (i) the details of relevant reduction in the amount of capitals, etc.;
  - (ii) the matters prescribed by Ministry of Justice Order as the matters regarding the financial statements of relevant stock company; and
  - (iii) a statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if a stock company gives public notice under that paragraph by means of public notice set forth in Article 939, paragraph (1), item (ii) or (iii) in accordance with the provisions of the articles of incorporation pursuant to the provisions of that paragraph in addition to the Official Gazette, the stock company is not required to give separate notices under the provisions of the preceding paragraph.
- (4) If creditors do not raise any objections within the period under paragraph (2), item (iii), relevant creditors are deemed to have approved relevant reduction in the amount of the capitals, etc.
- (5) If creditors raise objections within the period under paragraph (2), item (iii), the stock company must make payment or provide equivalent security to relevant creditors, or entrust equivalent property to a trust company, etc. (meaning trust companies and financial institutions that engage in trust business (meaning financial institutions approved under Article 1, paragraph (1) of the Act on the Concurrent Undertaking of Trust Business by Financial Institutions (Act No. 43 of 1943)); the same applies hereinafter) for the purpose of making relevant creditors receive the payment; provided, however, that this does not apply if there is no risk of harm to relevant creditors by relevant reduction in the amount of capitals, etc.
- (6) The actions set forth in the following items take effect on the day provided for in each relevant item; provided, however, that this does not apply if the procedures pursuant to the provisions of paragraph (2) through the preceding paragraph have not been completed:
- (i) reduction in the amount of stated capital: the day under Article 447, paragraph (1), item (iii); and
  - (ii) reduction in the amount of the reserves: the day under paragraph (1), item (iii) of the preceding Article.
- (7) A stock company may change the day provided for in each item of the preceding paragraph at any time before relevant day.

## **Division 2 Increases in Amount of Stated Capital**

(Increases in Amount of Stated Capital)

Article 450 (1) A stock company may increase the amount of its stated capital by reducing the amount of its surplus. In these cases, the following matters must be decided:

(i) the amount by which the surplus is reduced;

(ii) the day on which the increase in the amount of stated capital takes effect.

(2) Decisions on the matters set forth in each of the items of the preceding paragraph must be made by a resolution at a shareholders meeting.

(3) The amount under paragraph (1), item (i) may not exceed the amount of surplus as at the day under item (ii) of that paragraph.

(Increase in Amount of Reserves)

Article 451 (1) A stock company may increase the amount of its reserves by reducing the amount of its surplus. In these cases, the following matters must be decided:

(i) the amount by which the surplus is reduced;

(ii) the day on which the increase in the amount of the reserves takes effect.

(2) Decisions on the matters set forth in the items of the preceding paragraph must be made by a resolution at a shareholders meeting.

(3) The amount under paragraph (1), item (i) may not exceed the amount of surplus as at the day under item (ii) of that paragraph.

### **Division 3 Other Appropriation of Surplus**

Article 452 A stock company may, by a resolution at a shareholders meeting, make the appropriation of its surplus, including, but not limited to, the disposition of loss and funding of voluntary reserves (excluding those provided for in the preceding Division and those which dispose of the property of the stock company, including, but not limited to, dividends of surplus). In these cases, the stock company must decide on the amount of relevant appropriation of surplus and other matters prescribed by Ministry of Justice Order.

### **Section 4 Dividends of Surplus**

(Dividends of Surplus to Shareholders)

Article 453 A stock company may distribute dividends of surplus to its shareholders (excluding relevant stock company).

(Decisions on Matters Regarding Dividends of Surplus)

Article 454 (1) Whenever a stock company intends to distribute dividends of surplus pursuant to the provisions of the preceding Article, it must specify the

following matters by a resolution at a shareholders meeting:

- (i) the kind and total book value of the dividend property (excluding the shares, etc. of relevant stock company);
  - (ii) the matters regarding the assignment of the dividend property to shareholders;
  - (iii) the day on which relevant distribution of dividend of surplus takes effect.
- (2) In the cases provided for in the preceding paragraph, if a stock company issues two or more classes of shares with different features as to dividends of surplus, the stock company may decide the following matters as the matters set forth in item (ii) of that paragraph in accordance with the features of relevant classes of shares:
- (i) if there is any arrangement that no dividend property is assigned to the shareholders of a certain class of shares, a statement to that effect and relevant class of shares;
  - (ii) beyond the matters set forth in the preceding item, if there is any arrangement that each class of shares is treated differently with respect to assignment of dividend property, a statement to that effect and the details of relevant different treatment.
- (3) The decisions on the matters set forth in paragraph (1), item (ii) must provide that the dividend property is assigned in proportion to the number of the shares (or, if there are decisions on the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by the shareholders (excluding the relevant stock company and shareholders of the class of shares referred to in item (i) of the preceding paragraph).
- (4) If the dividend property consists of property other than monies, the stock company may decide the following matters by a resolution at a shareholders meeting; provided, however, that the last day of the period referred to in item (i) must be the day that is or precedes the day referred to in paragraph (1), item (iii):
- (i) if right to demand distribution of monies (meaning the right to demand that the stock company deliver monies in lieu of relevant dividend property; hereinafter the same applies in this Chapter) is granted to shareholders, a statement to that effect and the period during which the right to demand distribution of monies may be exercised; and
  - (ii) if there is any arrangement that no dividend property is to be assigned to shareholders who hold less than a certain number of shares, a statement to that effect and that number.
- (5) A company with board of directors may provide in the articles of incorporation that it may distribute a dividend of surplus only once during a business year by a resolution of the board of directors meeting (limited to that where the dividend property consists of monies. It is referred to as "interim dividend"

hereinafter in this Chapter). For the purpose of the application of the provisions of paragraph (1) to the interim dividend in these cases, the term "shareholders meeting" in that paragraph is deemed to be replaced with "board of directors meeting".

(Exercise of Rights to Demand Distribution of Monies)

Article 455 (1) In the cases provided for in paragraph (4), item (i) of the preceding Article, the stock company must notify shareholders of the matters set forth in that item no later than 20 days prior to the last day of the period referred to in that item.

(2) A stock company must pay to shareholders who have exercised the right to demand distribution of monies, in lieu of the dividend property assigned to relevant shareholders, the monies equivalent to the value of relevant dividend property. In cases, the amounts provided for in each of the following items for the case categories set forth in each relevant item are the value of relevant dividend property:

(i) if relevant dividend property consists of property with a market price: the amount calculated in a manner prescribed by Ministry of Justice Order as the market price of relevant dividend property;

(ii) in cases other than those set forth in the preceding item: the amount determined by the court in response to a petition by the stock company.

(Treatment Where Minimum Number of Shares Is Prescribed)

Article 456 If the number referred to in Article 454, paragraph (4), item (ii) (hereinafter in this Article referred to as "minimum number of shares") is prescribed, a stock company must pay to shareholders having shares in a number less than the minimum number of shares (hereinafter in this Article referred to as "disqualified shares") monies equivalent to the amount obtained by multiplying the amount prescribed as the value of the dividend property assigned to shareholders having shares in the minimum number of shares in accordance with the applicable provisions of the second sentence of paragraph (2) of the preceding Article by the ratio of the number of relevant disqualified shares to the minimum number of shares.

(Methods of Delivery of Dividend Property)

Article 457 (1) The dividend property (including monies paid pursuant to the provisions of Article 455, paragraph (2) and monies paid pursuant to the provisions of the preceding Article; hereinafter the same applies in this Article) must be delivered at the address of the shareholders (including registered pledgees of shares; hereinafter the same applies in this Article) which have been entered or recorded in the shareholder register, or at any other place of

which the shareholders have notified the stock company (in paragraph (3) referred to as "address, etc.").

- (2) The cost of the delivery of dividend property pursuant to the provisions of the preceding paragraph is borne by the stock company; provided, however, that, if relevant cost increases due to reasons attributable to shareholders, relevant increased amount is borne by the shareholders.
- (3) The provisions of the preceding two paragraphs do not apply to the delivery of dividend property to shareholders who do not have address, etc. in Japan.

(Exclusion from Application)

Article 458 The provisions of Article 453 through the preceding Article do not apply if the amount of the net assets of the stock company is less than 3,000,000 yen.

## **Section 5 Special Provisions on Organs That Decide Dividends of Surplus**

(Provisions of Articles of Incorporation That Board of Directors Determines Dividends of Surplus)

Article 459 (1) A company with financial auditor (excluding companies for which the last day of the term of office of directors (directors other than directors who are audit and supervisory committee members for a company with company audit and supervisory committee) falls on a day after the day of the conclusion of the annual shareholders meeting for the last business year ending within one year from the time of their election, and companies with company auditor that are not companies with board of company auditors) may provide in the articles of incorporation that the board of directors (for matters set forth in item (ii), limited to the board of directors under Article 436, paragraph (3)) may decide the following matters:

- (i) the matters set forth in each item of Article 156, paragraph (1) in cases other than cases where a decision pursuant to the provisions of Article 160, paragraph (1) is made;
  - (ii) the matters set forth in Article 448, paragraph (1), items (i) and (iii) in cases that fall under Article 449, paragraph (1), item (ii);
  - (iii) the matters set forth in the second sentence of Article 452; and
  - (iv) the matters set forth in each item of Article 454, paragraph (1) and each item of paragraph (4) of that Article; provided, however, that the cases where the dividend property consists of property other than monies and no right to demand distribution of monies are granted to shareholders are excluded.
- (2) The provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph are effective only if the financial statements for the most recent business year satisfy the requirements prescribed by Ministry of

Justice Order as accurately indicating the status of the assets and profits and losses of a stock company in compliance with laws and regulations and the articles of incorporation.

- (3) For the purpose of the application of the provisions of Article 449, paragraph (1), item (i) if there are provisions in the articles of incorporation pursuant to the provisions of paragraph (1), the term "annual shareholders meeting" in that item is deemed to be replaced with "annual shareholders meeting or board of directors under Article 436, paragraph (3)".

(Restriction on Rights of Shareholders)

Article 460 (1) If there are provisions in the articles of incorporation pursuant to the provisions of paragraph (1) of the preceding Article, a stock company may provide in the articles of incorporation that the matters set forth in each item of that paragraph are not decided by a resolution at a shareholders meeting.

- (2) The provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph are effective only if the financial statements for the most recent business year satisfy the requirements prescribed by Ministry of Justice Order as accurately indicating the status of the assets and profits and losses of a stock company in compliance with laws and regulations and the articles of incorporation.

## **Section 6 Liability Related to Dividends of Surplus**

(Restriction on Dividends)

Article 461 (1) The total book value of the monies, etc. (excluding shares of the relevant stock company; hereinafter the same applies in this Section) delivered to shareholders as a result of the following acts may not exceed the distributable amount as at the day on which relevant act takes effect:

- (i) the purchase of shares of relevant stock company in response to a demand under Article 138, item (i), (c) or item (ii), (c) of the same Article;
- (ii) the acquisition of shares of relevant stock company based on a decision pursuant to the provisions of Article 156, paragraph (1) (limited to acquisitions of shares by relevant stock company in the cases provided for in Article 163 or Article 165, paragraph (1));
- (iii) the acquisition of shares of relevant stock company based on a decision pursuant to the provisions of Article 157, paragraph (1);
- (iv) the acquisition of shares of relevant stock company pursuant to the provisions of Article 173, paragraph (1);
- (v) the purchase of shares of relevant stock company based on a request pursuant to the provisions of Article 176, paragraph (1);
- (vi) the purchase of shares of relevant stock company pursuant to the



- provisions of Article 197, paragraph (3);
- (vii) the purchase of shares of relevant stock company pursuant to the provisions of Article 234, paragraph (4) (including the cases where applied mutatis mutandis pursuant to Article 235, paragraph (2)); or
- (viii) dividend of surplus.
- (2) The "distributable amount" provided for in the preceding paragraph means the amount obtained by subtracting the sum of the amounts set forth in items (iii) through (vi) from the sum set forth in item (i) and item (ii) (hereinafter the same applies in this Section):
- (i) the amount of surplus;
- (ii) the amounts set forth below if the approval under Article 441, paragraph (4) (or the approval under paragraph (3) of that Article in the cases provided for in the proviso to that paragraph) is obtained for the provisional financial statements:
- (a) the sum of the amounts recorded in each account title prescribed by Ministry of Justice Order as the amount of profits during the period under Article 441, paragraph (1), item (ii); and
- (b) if treasury shares are disposed of during the period under Article 441, paragraph (1), item (ii), the amount of the value received in exchange for relevant treasury shares;
- (iii) the book value of treasury shares;
- (iv) if treasury shares are disposed of after the last day of the most recent business year, the amount of the value received in exchange for relevant treasury shares;
- (v) in the cases provided for in item (ii), the sum of the amounts recorded in each account title prescribed by Ministry of Justice Order as the amount of losses during the period under Article 441, paragraph (1), item (ii); and
- (vi) beyond what is set forth in the preceding three items, the sum of the amounts recorded in each account title prescribed by Ministry of Justice Order.

(Liability Related to Dividends of Surplus)

Article 462 (1) If a stock company carries out an act set forth in any item of paragraph (1) of the preceding Article in violation of the provisions of that paragraph, persons who received monies, etc. as a result of relevant act, as well as any executives (meaning executive directors (or, for a company with nominating committee, etc., executive officers; hereinafter the same applies in this paragraph) and other persons prescribed by Ministry of Justice Order as persons involved, in performing their duties, in the execution of the operations by relevant executive directors; hereinafter the same applies in this Section) who performed duties regarding relevant act and, if that act is any of the acts

set forth below, the persons specified in each of those items are jointly and severally liable to relevant stock company for payment of monies in an amount equivalent to the book value of the monies, etc. delivered to the persons who were delivered relevant monies, etc.:

- (i) the acts set forth in paragraph (1), item (ii) of the preceding Article: the following persons:
  - (a) if a resolution relating to a decision pursuant to the provisions of Article 156, paragraph (1) is passed at a shareholders meeting (limited to cases where the total amount of the monies, etc. under item (ii) of that paragraph decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at shareholders meeting (meaning persons prescribed by Ministry of Justice Order as directors who submitted proposals to relevant shareholders meeting; hereinafter the same applies in this paragraph) relating to relevant shareholders meeting;
  - (b) if a resolution relating to a decision pursuant to the provisions of Article 156, paragraph (1) is passed at a board of directors meeting (limited to cases where the total amount of the monies, etc. under item (ii) of that paragraph decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at board of directors meeting (meaning persons prescribed by Ministry of Justice Order as directors who submitted proposals to relevant board of directors meeting (or, for a company with nominating committee, etc., directors or executive officers); hereinafter the same applies in this paragraph) relating to relevant board of directors meeting;
- (ii) the acts set forth in paragraph (1), item (iii) of the preceding Article: the following persons:
  - (a) if a resolution relating to a decision pursuant to the provisions of Article 157, paragraph (1) is passed at a shareholders meeting (limited to cases where the total amount under item (iii) of that paragraph decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at shareholders meeting relating to relevant shareholders meeting;
  - (b) if a resolution relating to a decision pursuant to the provisions of Article 157, paragraph (1) is passed at a board of directors meeting (limited to cases where the total amount under item (iii) of that paragraph decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at board of directors meeting relating to relevant board of directors meeting;
- (iii) the acts set forth in paragraph (1), item (iv) of the preceding Article: the proposing directors at shareholders meeting relating to the shareholders

- meeting under Article 171, paragraph (1) (limited to relevant shareholders meeting if the total amount of consideration for acquisition under item (i) of that paragraph decided by a resolution at the relevant shareholders meeting exceeds the distributable amount as at the day of relevant resolution);
- (iv) the acts set forth in paragraph (1), item (vi) of the preceding Article: the following persons:
- (a) if a resolution relating to a decision pursuant to the provisions of the second sentence of Article 197, paragraph (3) is passed at a shareholders meeting (limited to cases where the total amount under item (ii) of that paragraph decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at shareholders meeting relating to relevant shareholders meeting;
- (b) if a resolution relating to a decision pursuant to the provisions of the second sentence of Article 197, paragraph (3) is passed at a board of directors meeting (limited to cases where the total amount under item (ii) of that paragraph decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at board of directors meeting relating to relevant board of directors meeting;
- (v) the acts set forth in paragraph (1), item (vii) of the preceding Article: the following persons:
- (a) if a resolution relating to a decision pursuant to the provisions of the second sentence of Article 234, paragraph (4) (including the cases where applied mutatis mutandis pursuant to Article 235, paragraph (2)) is passed at a shareholders meeting (limited to cases where the total amount under Article 234, paragraph (4), item (ii) (including the cases where applied mutatis mutandis pursuant to Article 235, paragraph (2)) decided by relevant resolution exceeds the distributable amount as at the day of that resolution), the proposing directors at shareholders meeting relating to relevant shareholders meeting;
- (b) if a resolution relating to a decision pursuant to the provisions of the second sentence of Article 234, paragraph (4) (including the cases where applied mutatis mutandis pursuant to Article 235, paragraph (2)) is passed at a board of directors meeting (limited to cases where the total amount under Article 234, paragraph (4), item (ii) (including the cases where applied mutatis mutandis pursuant to Article 235, paragraph (2)) decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at board of directors meeting relating to relevant board of directors meeting;
- (vi) the acts set forth in paragraph (1), item (viii) of the preceding Article: the following persons:
- (a) if a resolution relating to a decision pursuant to the provisions of Article

- 454, paragraph (1) is passed at a shareholders meeting (limited to cases where the book value of the dividend property decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at shareholders meeting relating to relevant shareholders meeting;
- (b) if a resolution relating to a decision pursuant to the provisions of Article 454, paragraph (1) is passed at a board of directors meeting (limited to cases where the book value of the dividend property decided by relevant resolution exceeds the distributable amount as at the day of relevant resolution), the proposing directors at board of directors meeting relating to relevant board of directors meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, executives and the persons specified in each of those items of that paragraph are not liable under relevant paragraph if relevant persons prove that they did not fail to exercise due care with respect to the performance of their duties.
- (3) An exemption from the obligations assumed by executives and the persons specified in each of those items of paragraph (1) pursuant to the provisions of that paragraph may not be given; provided, however, that this does not apply if all shareholders consent to the exemption from relevant obligations to the extent of the distributable amount as at the time of the act set forth in each item of paragraph (1) of the preceding Article.

(Restrictions on Remedy against Shareholders)

- Article 463 (1) In the cases provided for in paragraph (1) of the preceding Article, shareholders without knowledge with respect to the fact that the total book value of the monies, etc. delivered to shareholders as a result of the acts set forth in each item of Article 461, paragraph (1) exceeds the distributable amount as at the day when relevant act takes effect are not obligated to respond to the remedy that the executives who made the payment of monies under paragraph (1) of the preceding Article or the persons specified in each of those items of that paragraph have against relevant shareholders, with respect to the monies, etc. which relevant shareholders received.
- (2) In the cases provided for in paragraph (1) of the preceding Article, creditors of a stock company may have the shareholders who are liable pursuant to the provisions of that paragraph pay monies equivalent to the book value of the monies, etc. they have received (or, if relevant value exceeds the amount that the stock company owes to relevant creditors, the amount).

(Liability Where Shares Are Acquired in Response to Exercise of Appraisal Rights)

- Article 464 (1) If a stock company acquires shares in response to a demand for

appraisal pursuant to the provisions of Article 116, paragraph (1) or Article 182-4, paragraph (1), if the amount of the monies paid to the shareholders who made relevant demands exceeds the distributable amount as at the day when relevant payment is made, the executives who performed duties in relation to the acquisition of relevant shares are jointly and severally liable to the stock company for payment of relevant excess amount; provided, however, that this does not apply if relevant persons prove that they did not fail to exercise due care with respect to the performance of their duties.

(2) Exemption from the obligations under the preceding paragraph may not be given without the consent of all shareholders.

(Liability in Cases of Deficit)

Article 465 (1) If a stock company carries out the acts set forth in any of the following items, if the sum of the amounts set forth in Article 461, paragraph (2), items (iii), (iv) and (vi) when approval under Article 438, paragraph (2) (or, in cases provided for in the first sentence of Article 439, approval under Article 436, paragraph (3)) is obtained with respect to the financial statements for the business year that contains the day on which relevant act is carried out (or, if the business year immediately preceding relevant business year is not the most recent business year, the business year immediately preceding the business year) exceeds the amount set forth in item (i) of that paragraph, the executives who performed duties in relation to the acts set forth in each relevant item are jointly and severally liable to relevant stock company for payment of the excess amount (or, if relevant excess amount exceeds the amount set forth in each relevant item, the amount set forth in each relevant item); provided, however, that this does not apply if relevant executives prove that they did not fail to exercise due care with respect to the performance of their duties:

- (i) the purchase of shares of relevant stock company in response to a demand under Article 138, item (i), (c) or item (ii), (c) of the same Article: the total book value of the monies, etc. delivered to shareholders as a result of the purchase of relevant shares;
- (ii) the acquisition of shares of relevant stock company based on a decision pursuant to the provisions of Article 156, paragraph (1) (limited to acquisitions of shares by relevant stock company in cases provided for in Article 163 or Article 165, paragraph (1)): the total book value of the monies, etc. delivered to shareholders as a result of the acquisition of relevant shares;
- (iii) the acquisition of shares of relevant stock company based on a decision pursuant to the provisions of Article 157, paragraph (1): the total book value of the monies, etc. delivered to shareholders as a result of the acquisition of relevant shares;

- (iv) the acquisition of shares of relevant stock company pursuant to the provisions of Article 167, paragraph (1): the total book value of the monies, etc. delivered to shareholders as a result of the acquisition of relevant shares;
- (v) the acquisition of shares of relevant stock company pursuant to the provisions of Article 170, paragraph (1): the total book value of the monies, etc. delivered to shareholders as a result of the acquisition of relevant shares;
- (vi) the acquisition of shares of relevant stock company pursuant to the provisions of Article 173, paragraph (1): the total book value of the monies, etc. delivered to shareholders as a result of the acquisition of relevant shares;
- (vii) the purchase of shares of relevant stock company based on a demand pursuant to the provisions of Article 176, paragraph (1): the total book value of the monies, etc. delivered to shareholders as a result of the purchase of relevant shares;
- (viii) the purchase of shares of relevant stock company pursuant to the provisions of Article 197, paragraph (3): the total book value of the monies, etc. delivered to shareholders as a result of the purchase of relevant shares;
- (ix) the purchase of shares of relevant stock company pursuant to the provisions set forth in the following (a) or (b): the total book value of the monies, etc. delivered to the persons specified in the relevant (a) or (b) as a result of the purchase of relevant shares:
  - (a) Article 234, paragraph (4): the persons specified in each of those items of paragraph (1) of the same Article;
  - (b) Article 234, paragraph (4) applied mutatis mutandis pursuant to Article 235, paragraph (2): the shareholders;
- (x) distribution of dividends of surplus (excluding those set forth in (a) through (c) below): the sum of the amounts set forth in Article 446, item (vi), (a) through (c) with respect to relevant distribution of dividend of surplus:
  - (a) distribution of dividends of surplus if the matters set forth in each item of Article 454, paragraph (1) are decided at an annual shareholders meeting (or, in cases provided for in the first sentence of Article 439, an annual shareholders meeting or a board of directors meeting under Article 436, paragraph (3));
  - (b) distribution of dividends of surplus if the matters set forth in each item of Article 454, paragraph (1) are decided at a shareholders meeting for the purpose of deciding the matters set forth in each item of Article 447, paragraph (1) (limited to the cases where the amount under item (i) of that paragraph (or, if there are monies to be paid to shareholders of disqualified shares pursuant to the provisions of Article 456, the aggregate amount

- thereof) does not exceed the amount under Article 447, paragraph (1), item (i) and there are no provisions with respect to the matters set forth in item (ii) of that paragraph);
- (c) distribution of dividends of surplus if the matters set forth in each item of Article 454, paragraph (1) are decided at a shareholders meeting for the purpose of deciding the matters set forth in each item of Article 448, paragraph (1) (limited to the cases where the amount under item (i) of that paragraph (or, if there are monies to be paid to shareholders of disqualified shares pursuant to the provisions of Article 456, the aggregate amount thereof) does not exceed the amount under Article 448, paragraph (1), item (i) and there are no provisions with respect to the matters set forth in item (ii) of that paragraph).
- (2) Exemption from the obligations under the preceding paragraph may not be given without the consent of all shareholders.

## **Chapter VI Changes in Articles of Incorporation**

Article 466 A stock company may change the articles of incorporation by the resolution at a shareholders meeting after its incorporation.

## **Chapter VII Transfers of Business**

(Approval of Transfers of Business)

Article 467 (1) If a stock company intends to commit any of the following acts, it must obtain the approval of the contracts relating to the acts by the resolution at the shareholders meeting no later than the day immediately preceding the day when relevant act takes effect (hereinafter in this Chapter referred to as "effective "ay"):

- (i) the transfer of the entire business;
- (ii) the transfer of significant part of the business (excluding the transfer in which the book value of the assets to be transferred to others by relevant transfer does not exceed one fifth (or, if any proportion less than that is provided for in the articles of incorporation, the proportion) of the amount calculated by the method prescribed by Ministry of Justice Order as the total assets of relevant stock company);
- (ii)-2 the transfer of all or part of shares or equity interests of the subsidiary company (limited to transfers in cases corresponding to all of the following):
- (a) if the book value of shares or equity interests to be transferred by the transfer exceeds one fifth (if any proportion less than that is provided for in the articles of incorporation, the proportion) of the amount calculated by the method prescribed by Ministry of Justice Order as the total assets of

- the stock company; and
- (b) if the stock company does not have the majority of the total votes of the subsidiary company on the effective day;
- (iii) the acceptance of transfer of entire business of another company (including foreign corporations and other corporations; the same applies in the following Article);
- (iv) the entering into, changing or termination of contracts for the lease of the entire business, contracts for the entrustment of the management of the entire business, contracts for sharing with others the entirety of profit and loss of business and other contracts equivalent to the above;
- (v) the acquisition at any time within two years after the incorporation of relevant stock company (limited to the stock company that was incorporated by the method set forth in each item of Article 25, paragraph (1); hereinafter the same applies in this item) of assets of relevant stock company that existed prior to relevant incorporation and continues to be used for its business; provided, however, that the cases where the proportion of the amount set forth in (a) to the amount set forth in (b) does not exceed one fifth (or, if any lower proportion is provided for in the articles of incorporation, the proportion) are excluded:
  - (a) the total book value of the assets that are issued as the consideration for relevant assets;
  - (b) the amount calculated by the method prescribed by Ministry of Justice Order as the net assets of relevant stock company.
- (2) If the act set forth in item (iii) of the preceding paragraph is committed, if the assets transferred to the stock company which commits relevant act include shares of relevant stock company, directors must explain the matters regarding relevant shares at a shareholders meeting under that paragraph.

(Cases Where Approval of Business Transfer Is Not Required)

- Article 468 (1) The provisions of the preceding Article do not apply if other party to the contracts relating to the acts set forth in paragraph (1), items (i) through (iv) of that Article (hereinafter in this Chapter referred to as "business transfer, etc.") is the special controlling company (meaning the relevant other company if nine tenths (or, if any proportion higher than that is provided for in the articles of incorporation, the proportion) or more of the voting rights of all shareholders of a stock company are held by other company, and by stock companies all of the issued shares in which are held by relevant other company and other corporations prescribed by Ministry of Justice Order as entities equivalent to the above; the same applies hereinafter) of the stock company that effects relevant business transfer, etc.
- (2) The provisions of the preceding Article do not apply if the act set forth in



paragraph (1), item (iii) of that Article is carried out, and the proportion of the amount set forth in item (i) to the amount set forth in item (ii) does not exceed one fifth (or, if any lower proportion is provided for in the articles of incorporation, relevant proportion):

(i) the total book value of the assets that are issued as the consideration for all business of relevant other company;

(ii) the amount calculated by the method prescribed by Ministry of Justice Order as the amount of the net assets of relevant stock company.

(3) In the cases provided for in the preceding paragraph, if shareholders that hold the shares (limited to those that entitle the shareholders to exercise voting rights at a shareholders meeting under paragraph (1) of the preceding Article) in the number prescribed by Ministry of Justice Order notify the stock company that carries out the act set forth in paragraph (1), item (iii) of the preceding Article to the effect that relevant shareholders dissent from relevant act, within two weeks from the day of the notice under the provisions of paragraph (3) of the following Article or the public notice under paragraph (4) of that Article, relevant stock company must obtain the approval of the contract relating to relevant act by a resolution at a shareholders meeting no later than the day immediately preceding the effective day.

#### (Dissenting Shareholders' Appraisal Rights)

Article 469 (1) If business transfer, etc. is to be effected (excluding the following cases), dissenting shareholders may demand that the stock company effecting the business transfer, etc. purchase, at a fair price, the shares that they hold:

(i) if the act set forth in Article 467, paragraph (1), item (i) is performed, and the resolution at a shareholders meeting under Article 471, item (iii) is passed simultaneously with the resolution at a shareholders meeting under the same paragraph; and

(ii) cases prescribed in paragraph (2) of the preceding Article (excluding the cases prescribed in paragraph (3) of the same Article).

(2) The dissenting shareholders provided for in the preceding paragraph means the shareholders provided for in each of the following items in the cases set forth in the same items:

(i) if a resolution at a shareholders meeting (including a general meeting of class shareholders) is required to effect the business transfer, etc.: the following shareholders:

(a) shareholders who gave notice to relevant stock company to the effect that they dissented from relevant business transfer, etc. prior to relevant shareholders meeting and who dissented from relevant business transfer, etc. at relevant shareholders meeting (limited to those who can exercise voting rights at relevant shareholders meetings);

- (b) shareholders who cannot exercise voting rights at relevant shareholders meetings:
  - (ii) in cases other than those prescribed in the preceding item: all shareholders (excluding the special controlling company in the cases prescribed in paragraph (1) of the preceding Article).
- (3) A stock company that intends to effect the business transfer, etc. must give notice to its shareholders (excluding the special controlling company in the cases prescribed in paragraph (1) of the preceding Article) to the effect that it intends to effect the business transfer, etc. (or, in the cases provided for in Article 467, paragraph (2), to the effect that the stock company will carry out the act set forth in paragraph (1), item (iii) of that Article and of the matters regarding shares under paragraph (2) of that Article), no later than twenty days prior to the effective day.
- (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph in the following cases:
  - (i) if the stock company which effects the business transfer, etc. is a public company;
  - (ii) if the stock company which effects the business transfer, etc. receives the approval of the contract relating to the business transfer, etc. by the resolution at a shareholders meeting under Article 467, paragraph (1).
- (5) To make a demand under the provisions of paragraph (1) (hereinafter in this Chapter referred to as the "exercise of appraisal rights"), a dissenting shareholder must indicate the number of shares with regard to which the shareholder is exercising appraisal rights (or, for a company with classes of shares, the classes of the shares and the number of shares for each class), between twenty days prior to the effective day and the day immediately preceding the effective day.
- (6) When intending to exercise appraisal rights concerning shares for which share certificates have been issued, shareholders of those shares must submit share certificates representing those shares to the stock company that effects the business transfer, etc.; provided, however, that this does not apply to a person who makes a request pursuant to the provisions of Article 223 with regard to those share certificates.
- (7) Shareholders exercising appraisal rights may withdraw their demands for appraisal only with the approval of the stock company that effects the business transfer, etc.
- (8) The demands of the shareholders exercising appraisal rights lose effect if the business transfer, etc. is canceled.
- (9) The provisions of Article 133 do not apply to shares that are the subject of the exercise of appraisal rights.

(Determination of the Price of Shares)

- Article 470 (1) If a shareholder exercises appraisal rights and an agreement determining the price of shares is reached between the shareholder and the stock company effecting the business transfer, etc., the stock company must pay that price within sixty days from the effective day.
- (2) If no agreement deciding the price of shares is reached within thirty days from the effective day, the shareholders or the stock company under the preceding paragraph may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (7) of the preceding Article, in the cases provided for in the preceding paragraph, if the petition under that paragraph is not made within sixty days after the effective day, shareholders exercising appraisal rights may withdraw their demands for appraisal at any time after the expiration of that period.
- (4) Stock companies under paragraph (1) must also pay interest on the price determined by the court at the statutory interest rate from and including the day of the expiration of the period referred to in that paragraph.
- (5) The stock company under paragraph (1) may pay to shareholders the amount that the stock company considers to be a fair price until the determination of the share price.
- (6) A share purchase for the exercise of appraisal rights becomes effective on the effective day.
- (7) If a shareholder exercises appraisal rights with respect to shares for which share certificates are issued, the share certificate-issuing company must pay the price of the shares relating to the exercise of the appraisal rights in exchange for the share certificates.

## **Chapter VIII Dissolution**

(Grounds for Dissolution)

- Article 471 A stock company dissolves on the grounds set forth below:
- (i) the expiration of the duration provided for in the articles of incorporation;
  - (ii) the grounds for dissolution provided for in the articles of incorporation;
  - (iii) a resolution at a shareholders meeting;
  - (iv) merger (but only if the stock company disappears in the merger);
  - (v) a ruling to commence bankruptcy proceedings; or
  - (vi) judgment that orders the dissolution pursuant to the provisions of Article 824, paragraph (1) or Article 833, paragraph (1).

(Deemed Dissolution of Dormant Companies)

- Article 472 (1) If the Minister of Justice gives a public notice to a dormant

company (meaning a stock company for which twelve years have elapsed from the day when a registration regarding relevant stock company was last effected; hereinafter the same applies in this Article) in Official Gazette to the effect that the dormant company should submit a notice to the effect that it has not abolished its business pursuant to the provisions of Ministry of Justice Order to the register office that has jurisdiction over the area where dormant company's head office is located within two months, if that dormant company fails to submit that notice, the dormant company is deemed to have dissolved upon expiration of that two month period; provided, however, that this does not apply if any registration regarding relevant dormant company is effected during relevant period.

(2) If the public notice has been given under the provisions of the preceding paragraph, the register office must issue a notice to that effect to dormant companies.

(Continuation of Companies)

Article 473 If a stock company dissolves on the grounds set forth in Article 471, item (i) through item (iii) (including the cases where stock companies are deemed to have dissolved under the provisions of paragraph (1) of the preceding Article), the stock company may continue in existence by a resolution at a shareholders meeting until the completion of the liquidation under the provisions of the following Chapter (if the stock company is deemed to have dissolved pursuant to the provisions of that paragraph, limited to the completion within three years from the time of the deemed dissolution).

(Restrictions on Mergers and Other Transactions of Dissolved Stock Companies)

Article 474 If a stock company has dissolved, relevant stock company may not carry out the following acts:

- (i) merger (but only if the stock company survives the merger);
- (ii) succession by absorption-type company split to some or all of the rights and obligations held by another company with respect to relevant company's business.

## **Chapter IX Liquidation**

### **Section 1 General Provisions**

#### **Subsection 1 Commencement of Liquidation**

(Causes of Commencement of Liquidation)

Article 475 A stock company must go into liquidation in the cases set forth below, subject to the provisions of this Chapter:

- (i) if the stock company has dissolved (excluding the cases where stock companies have dissolved on the grounds set forth in Article 471, item (iv) and cases where it dissolved as a result of the ruling to commence bankruptcy proceedings and relevant bankruptcy proceedings have not ended);
- (ii) if a judgment allowing a claim seeking invalidation of the incorporation of a stock company has become final and binding; or
- (iii) if a judgment allowing a claim seeking invalidation of the share transfer has become final and binding.

(Capacity of liquidating Stock Companies)

Article 476 Stock companies that go into liquidation under the provisions of the preceding Article (hereinafter referred to as "liquidating stock companies") are deemed to remain in existence until the liquidation is completed, to the extent of the purpose of the liquidation.

## **Subsection 2 Structures for Liquidating Stock Companies**

### **Division 1 Establishment of Structures Other than Shareholders Meetings**

- Article 477 (1) A liquidating stock company must have one or more liquidators.
- (2) A liquidating stock company may have a board of liquidators, a company auditor, a board of company auditors or a board of company auditors as prescribed by the articles of incorporation.
  - (3) A liquidating stock company the articles of incorporation of which provide that a board of company auditors must be established must establish a board of liquidators.
  - (4) A liquidating stock company that was a public company or a large company when it fell under a case set forth in each item of Article 475 must establish a company auditor.
  - (5) A liquidating stock company that was a company with audit and supervisory committee when it fell under a case set forth in each item of Article 475 and to which the provisions of the preceding paragraph apply, a director who is an audit and supervisory committee member will be the company auditor.
  - (6) A liquidating stock company that was a company with nominating committee, etc. when it fell under a case set forth in each item of Article 475 and to which the provisions of paragraph (4) apply, an audit committee member will be the company auditor.
  - (7) The provisions of Chapter IV, Section 2 do not apply to liquidating stock companies.

## **Division 2 Assumption of Office and Dismissal of Liquidators and Resignation of Company Auditors**

(Assumption of Office of Liquidators)

Article 478 (1) The following persons become liquidators of a liquidating stock company:

- (i) a director (excluding cases where persons set forth in the following item or in item (iii) exist);
- (ii) a person prescribed by the articles of incorporation;
- (iii) a person who is appointed by a resolution at a shareholders meeting.

(2) In the absence of a liquidator under the provisions of the preceding paragraph, the court appoints the liquidator in response to the petition by the interested parties.

(3) Notwithstanding the provisions of the preceding two paragraphs, with respect to a liquidating stock company that has dissolved on the grounds set forth in Article 471, item (vi), the court appoints the liquidator in response to a petition by the interested parties or the Minister of Justice or ex officio.

(4) Notwithstanding the provisions of paragraphs (1) and (2), with respect to a liquidating stock company that has fallen under the cases set forth in Article 475, item (ii) or item (iii), the court appoints the liquidator in response to a petition by the interested parties.

(5) For the purpose of application of the provisions of paragraph (1), item (i) to a liquidating stock company that was a company with audit and supervisory committee when it fell under a case set forth in each item of Article 475, the term "director" in the same item is deemed to be replaced with "director other than a director who is an audit and supervisory committee member".

(6) For the purpose of the application of the provisions of paragraph (1), item (i) to a liquidating stock company that was a company with nominating committee, etc. when it fell under a case set forth in each item of Article 475, the term "director" in the same item is deemed to be replaced with "director who is not an Audit committee member".

(7) Notwithstanding the provisions of Article 335, paragraph (3), at a company with board of company auditors that is a liquidating stock company, which was a company with audit and supervisory committee or a company with nominating committee, etc. when it fell under the case set forth in each item of Article 475, company auditors must be three or more and half or more of them must correspond to all of the following requirements:

- (i) a person who has not been a director (excluding outside director), accounting advisor (if the accounting advisor is a corporation, the member who is in charge of its affairs; the same applies in the following item) or executive officer, manager, or other employee of the company with audit and

- supervisory committee or company with nominating committee, etc. or its subsidiary company for ten years before assuming the office;
- (ii) if a person who has been an outside director or company auditor of a company with audit and supervisory committee or company with nominating committee, etc. or its subsidiary company at the time within ten years before assuming the office, the person has not been a director (excluding outside director), accounting advisor or executive officer, manager, or other employee of the company with audit and supervisory committee or company with nominating committee, etc. or its subsidiary company for ten years before assuming the office of the outside director or company auditor; and
  - (iii) requirements set forth in Article 2, item (xvi), (c) through (e).
- (8) The provisions of Article 330, Article 331, paragraph (1), and Article 331-2 apply mutatis mutandis to liquidators, and the provisions of paragraph (5) of Article 331 apply mutatis mutandis to companies with board of liquidators (meaning liquidating stock companies that establish a board of liquidators or liquidating stock companies that must establish a board of liquidators under the provisions of this Act; the same applies hereinafter), respectively. In these cases, "directors" in that paragraph is deemed to be replaced with "liquidators".

(Dismissal of Liquidators)

- Article 479 (1) Liquidators (excluding those appointed by the court pursuant to the provisions of paragraphs (2) through (4) of the preceding Article) may be dismissed at any time by a resolution at a shareholders meeting.
- (2) If there are substantial grounds, the court may dismiss a liquidator in response to the petition by the following shareholders:
- (i) shareholders (excluding the following shareholders) who have held, for the consecutive period of past six months or more (or, if a shorter period is provided for in the articles of incorporation, that period), not less than three hundredths of the voting rights of all shareholders (excluding the following shareholders) (or, if a lower proportion is provided for in the articles of incorporation, the proportion):
    - (a) shareholders who cannot exercise voting rights on proposals to the effect that liquidators be dismissed; or
    - (b) shareholders that are the liquidators related to relevant petition;
  - (ii) shareholders (excluding the following shareholders) who have held, for the consecutive period of six months or more (or, if a shorter period is provided for in the articles of incorporation, that period), not less than three hundredths of the issued shares (excluding the shares held by the following shareholders) (or, if a lower proportion is provided for in the articles of incorporation, the proportion):
    - (a) a shareholder who is the relevant liquidating stock company; or

- (b) shareholders that are the liquidators relating to relevant petition.
- (3) For the purpose of the application of the provisions of the items of the preceding paragraph to liquidating stock companies that are not public companies, the phrase "have held, for the consecutive period of past six months or more (or, if a shorter period is provided for in the articles of incorporation, the period)", in those provisions is deemed to be replaced with "hold".
- (4) The provisions of Article 346, paragraphs (1) through (3) apply mutatis mutandis to liquidators.

(Resignation of Company Auditors)

Article 480 (1) If liquidating stock companies effect any of the following changes in the articles of incorporation, company auditors of relevant liquidating stock companies resign when relevant change in the articles of incorporation takes effect:

- (i) any change in the articles of incorporation to abolish the provisions of the articles of incorporation to the effect that company auditors are established;  
or
  - (ii) any change in the articles of incorporation to abolish the provisions of the articles of incorporation to the effect that the scope of the audit by the company auditors is limited to accounting audit.
- (2) The provisions of 336 do not apply to company auditors of liquidating stock companies.

### **Division 3 Liquidators' Duties**

(Liquidators' Duties)

Article 481 Liquidators perform the following duties:

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

(Execution of Business)

Article 482 (1) A liquidator executes the business of the liquidating stock companies (excluding companies with board of liquidators; hereinafter the same applies in this Article).

- (2) If there are two or more liquidators, the business of the liquidating stock company is determined by a majority of the liquidators, unless otherwise provided for in the articles of incorporation.
- (3) In the cases provided for in the preceding paragraph, the liquidators cannot delegate the determination on the following matters to individual liquidators:
  - (i) the appointment or dismissal of a manager;



- (ii) the establishment, relocation and abolition of branch offices;
  - (iii) the matters set forth in each item of Article 298, paragraph (1) (including the case where that items are applied mutatis mutandis under Article 325);  
or
  - (iv) the development of the system necessary to ensure that the execution of the duties by the liquidators comply with the laws and regulations and the articles of incorporation, and other systems prescribed by Ministry of Justice Order as the systems that are necessary to ensure the proper operations of a liquidating stock company.
- (4) The provisions of Articles 353 through 357 (excluding paragraph (3)), Article 360 and Article 361, paragraphs (1) and (4) apply mutatis mutandis to liquidators (as to the provisions of these Articles, excluding liquidators appointed by the court under the provisions of Article 478, paragraphs (2) through (4)). In these cases, the phrase "Article 349, paragraph (4)" in Article 353 is deemed to be replaced with "Article 349, paragraph (4) applied mutatis mutandis under Article 483, paragraph (6)", the term "representative director" in Article 354 is deemed to be replaced with "representative liquidator (referring to the representative liquidator provided for in Article 483, paragraph (1))", and the phrase "a company with company auditor or a company with audit and supervisory committee or a company with nominating committee, etc." in Article 360, paragraph (3) is deemed to be replaced with "a company with company auditor".

(Representatives of Liquidating Stock Companies)

- Article 483 (1) A liquidator represents the liquidating stock company; provided, however, that this does not apply if representative liquidators (meaning liquidators who represent the liquidating stock company; the same applies hereinafter) or other persons who represent the liquidating stock company are otherwise prescribed.
- (2) If there are two or more liquidators referred to in the main clause of the preceding paragraph, each liquidator represents the liquidating stock company individually.
  - (3) A liquidating stock company (excluding a company with board of liquidators) may appoint representative liquidators from among the liquidators under the articles of incorporation, or through the appointment by the liquidators (excluding those that are appointed by the court pursuant to the provisions of Article 478, paragraphs (2) through (4); hereinafter the same applies in this paragraph) from among themselves pursuant to the applicable provisions of the articles of incorporation, or by the resolution at the shareholders meeting.
  - (4) If directors become liquidators pursuant to the provisions of Article 478, paragraph (1), item (i), if representative directors are already specified,

relevant representative directors will be the representative liquidators.

- (5) If the court appoints liquidators pursuant to the provisions of Article 478, paragraphs (2) through (4), it may prescribe representative liquidators from among those liquidators.
- (6) The provisions of Article 349, paragraphs (4) and (5) and Article 351 apply mutatis mutandis to representative liquidators, and the provisions of Article 352 apply mutatis mutandis to persons who are appointed by the provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act to perform the duties of liquidators or representative liquidators on behalf of them, respectively.

(Commencement of Bankruptcy Proceedings for Liquidating Stock Companies)

- Article 484 (1) If it has become clear that the assets of a liquidating stock company are not sufficient to fully discharge its debts, liquidators must immediately file a petition for the commencement of bankruptcy proceedings.
- (2) If a liquidating stock company has become subject to the ruling for the commencement of bankruptcy proceedings, if liquidators have transferred their administration to the trustee in bankruptcy, they are deemed to have completed their duties.
  - (3) In the cases provided for in the preceding paragraph, if the liquidating stock company has already made payments to creditors or distributions to shareholders, the trustee in bankruptcy may retrieve the same.

(Remuneration for Liquidators Appointed by the Court)

- Article 485 If the court has appointed the liquidator under the provisions of Article 478, paragraphs (2) through (4), the court may prescribe the amount of the remuneration that the liquidating stock companies pay to relevant liquidator.

(Liquidators' Liability to Liquidating Stock Companies for Damages)

- Article 486 (1) If a liquidator fails to discharge the liquidator's duties, the liquidator is liable to compensate these liquidating stock companies for any losses arising as a result.
- (2) If a liquidator engages in any transaction set forth in Article 356, paragraph (1), item (i) in violation of the provisions of Article 356, paragraph (1) applied mutatis mutandis under Article 482, paragraph (4), the amount of the profit obtained by the liquidator or a third party as a result of relevant transaction is presumed to be amount of the losses under the preceding paragraph.
  - (3) If a liquidating stock company suffers loss as a result of the transaction provided for in Article 356, paragraph (1), item (ii) or (iii) applied mutatis mutandis under Article 482, paragraph (4), the following liquidators are

presumed to have failed to discharge their duties:

- (i) liquidators provided for in Article 356, paragraph (1) applied *mutatis mutandis* under Article 482, paragraph (4);
  - (ii) liquidators who decided that the liquidating stock companies would undertake relevant transaction; or
  - (iii) liquidators who agreed to the board of liquidators' resolution to approve relevant transaction.
- (4) The provisions of Article 424 and Article 428, paragraph (1) apply *mutatis mutandis* to liquidators' liability under paragraph (1). In these cases, the phrase "Article 356, paragraph (1), item (ii) (including the cases where that item is applied *mutatis mutandis* under Article 419, paragraph (2))" in Article 428, paragraph (1) is deemed to be replaced with "Article 356, paragraph (1), item (ii) applied *mutatis mutandis* under Article 482, paragraph (4)".

#### (Liquidators' Liability to Third Parties)

Article 487 (1) If liquidators have acted in bad faith or with gross negligence in discharging their duties, relevant liquidators are liable to compensate losses arising in a third party as a result thereof.

- (2) The provisions of the preceding paragraph also apply if the liquidators commit the acts provided for in the following items; provided, however, that this does not apply if relevant liquidators have proven that they did not fail to exercise due care with respect to the performance of their duties:
- (i) the giving of false notice with respect to important matters, the notice of which must be given when soliciting persons to subscribe for shares, share options, bonds or bonds with share options or making of false statement or records with respect to materials used for the explanation regarding the business of relevant liquidating stock company and other matters for the purpose of relevant solicitation;
  - (ii) the making of false statements or records with respect to important matters to be stated or recorded in the property inventory of provided for in Article 492, paragraph (1) as well as the balance sheet and administration report in Article 494, paragraph (1) and the annexed detailed statements accompanying them;
  - (iii) registering a false registration; or
  - (iv) giving false public notice.

#### (Joint and Several Liabilities of and Company Auditors)

Article 488 (1) If liquidators or company auditors are liable to compensate losses arising in the liquidating stock companies or a third party, if other liquidators or company auditors are also liable, these persons will be joint and several obligors.

- (2) In the cases provided for in the preceding paragraph, the provisions of Article 430 do not apply.

#### **Division 4 Board of Liquidators**

(Authority of Board of Liquidators)

Article 489 (1) Board of liquidators is organized by all liquidators.

(2) Board of liquidators performs the following duties:

- (i) deciding the execution of the business of the company with board of liquidators;
- (ii) supervising the execution of the duties by liquidators; and
- (iii) appointing and removing representative liquidators.

(3) Board of liquidators must appoint representative liquidators from among the liquidators; provided, however, that this does not apply if there are other representative liquidators.

(4) Board of liquidators may remove representative liquidators it appointed and persons who became representative liquidators pursuant to the provisions of Article 483, paragraph (4).

(5) If the court has prescribed representative liquidators under the provisions of Article 483, paragraph (5), the board of liquidators cannot select or remove the representative liquidators.

(6) Board of liquidators cannot delegate the decisions on the execution of important business such as the following matters to the liquidators:

- (i) the disposal and acceptance of transfer of important assets;
- (ii) borrowing in a significant amount;
- (iii) the appointment and dismissal of managers or other important employees;
- (iv) the establishment, change or closure of branch offices and other important structures;
- (v) the matters set forth in Article 676, item (i) and other matters prescribed by Ministry of Justice Order as important matters regarding the solicitation of persons to subscribe for bonds; or
- (vi) the development of systems necessary to ensure that the execution of the duties by the liquidators comply with the laws and regulations and the articles of incorporation, and other systems prescribed by Ministry of Justice Order as the systems necessary to ensure the proper business of a liquidating stock company.

(7) The following liquidators execute the business of the company with board of liquidators:

- (i) a representative liquidator; and
- (ii) a liquidator other than a representative liquidator who is appointed by the resolution of the board of liquidators as the liquidator who is to execute the

business of a company with board of liquidators.

- (8) The provisions of Article 363, paragraph (2), Article 364 and Article 365 apply mutatis mutandis to a company with board of liquidators. In these cases, in Article 363, paragraph (2), the phrase "each item of the preceding paragraph" is deemed to be replaced with "each item of Article 489, paragraph (7)", the term "director" is deemed to be replaced with "liquidator", the term "board of directors" is deemed to be replaced with as "board of liquidators"; in Article 364, the term "Article 353" is deemed to be replaced with "Article 353 applied mutatis mutandis under Article 482, paragraph (4)", the term "board of directors" is deemed to be replaced with "board of liquidators"; in Article 365, paragraph (1), the term "Article 356" is deemed to be replaced with "Article 356 applied mutatis mutandis under Article 482, paragraph (4)", the term "board of directors" is deemed to be replaced with "board of liquidators"; and in Article 365, paragraph (2), the phrase "each item of Article 356, paragraph (1)" is deemed to be replaced with "each item of Article 356, paragraph (1) applied mutatis mutandis under Article 482, paragraph (4)", the term "director" is deemed to be replaced with as "liquidator", and the phrase "to the board of directors" is deemed to be replaced with "to the board of liquidators".

#### (Operations of Boards of Liquidators)

- Article 490 (1) A board of liquidators meeting is convened by each liquidator; provided, however, that, if the liquidator who convenes the board of liquidators meeting is prescribed by the articles of incorporation or the board of liquidators, relevant liquidator convenes the meeting.
- (2) In the case provided for in the proviso to the preceding paragraph, liquidators other than the liquidator prescribed under the provisions of the proviso to that paragraph (hereinafter in this paragraph referred to as "convener") may request the convener that the convener convene the board of liquidators meeting by indicating to the convener the matters that are the purpose of the board of liquidators meeting.
- (3) If the convener fails to send, within five days from the day of the request under the provisions of preceding paragraph, any notice of convocation of a board of liquidators meeting that specifies a day falling within two weeks from the day of that request as the day of the board of liquidators meeting, the liquidators who made that request may convene the board of liquidators meeting.
- (4) The provisions of Article 367 and Article 368 apply mutatis mutandis to the convocation of the board of liquidators meeting at a company with board of liquidators. In these cases, in Article 367, paragraph (1), the phrase "a company with company auditor, company with audit and supervisory committee and company with nominating committee, etc." is deemed to be

replaced with "a company with company auditor, the phrase "any director" is deemed to be replaced with "any liquidator"; in paragraph (2) of the same Article, the phrase "to the directors (or to the convener in the case provided for in the proviso to paragraph (1) of the preceding Article)" is deemed to be replaced with "to the liquidators (or to the convener provided for in Article 490, paragraph (2) in the case provided for in the proviso to paragraph (1) of that Article)"; in paragraph (3) and paragraph (4) of the same Article, the phrase "paragraph (3) of the preceding Article" is deemed to be replaced with "Article 490, paragraph (3)"; in Article 368, paragraph (1), the term "each director" is deemed to be replaced with "each liquidator"; and in paragraph (2) of the same Article, the phrase "directors (or" is deemed to be replaced with "liquidators (or", and "directors and" is deemed to be replaced with "liquidators and".

(5) The provisions of Article 369 through Article 371 apply mutatis mutandis to the resolution of board of liquidators in companies with board of liquidators. In these cases, in Article 369, paragraph (1), the term "of the directors" is deemed to be replaced with "of the liquidators"; in paragraph (2) of the same Article, the term "directors" is deemed to be replaced with "liquidators"; in paragraph (3) of the same Article, the phrase "directors and" is deemed to be replaced with "liquidators and"; in paragraph (5) of the same Article, the phrase "directors who" is deemed to be replaced with "liquidators who"; in Article 370, the phrase "directors submit" is deemed to be replaced with "liquidators submit and the phrase "directors (" is deemed to be replaced with as "liquidators ("; in Article 371, paragraph (3), the phrase "a company with company auditor, company with audit and supervisory committee, and company with nominating committee etc." is deemed to be replaced with "a company with company auditor"; and in paragraph (4) of the same Article, the phrase "officers or executive officers" is deemed to be replaced with "liquidators or company auditors".

(6) The provisions of Article 372, paragraph (1) and paragraph (2) apply mutatis mutandis to the report to board of liquidators at a company with board of liquidators. In these cases, in Article 372, paragraph (1), the phrase "the directors, accounting advisors, company auditors or financial auditors" is deemed to be replaced with "liquidators or company auditors", the phrase "directors (" is deemed to be replaced with "liquidators (", and "directors and" is deemed to be replaced with "liquidators and"; and in Article 372, paragraph (2), and the term "Article 363, paragraph (2)" is deemed to be replaced with "Article 363, paragraph (2) applied mutatis mutandis under Article 489, paragraph (8)";

#### **Division 5 Application of Provisions Regarding Directors and Others**

Article 491 With respect to liquidating stock companies, out of the provisions in Chapter II (excluding Article 155), Chapter III, Section 1 of Chapter IV, Article 335, paragraph (2), Article 343, paragraph (1) and paragraph (2), Article 345, paragraph (4) applied mutatis mutandis under paragraph (4) of that Article, Article 359, Section 7 and Section 8 of Chapter IV and Chapter VII, provisions regarding directors, representative directors, board of directors or company with board of directors apply to liquidators, representative liquidators, board of liquidators or company with board of liquidators as provisions regarding liquidators, representative liquidators, board of liquidators or company with board of liquidators, respectively.

### **Subsection 3 Property Inventories**

#### **(Preparation of Inventory of Property)**

- Article 492 (1) Liquidators (or, for companies with board of liquidators, liquidators set forth in each item of Article 489, paragraph (7)) must investigate the current status of the assets of the liquidating stock companies and prepare, pursuant to the provisions of Ministry of Justice Order, the inventory of property and the balance sheet as of the day when the liquidating stock companies has fallen under any of the cases set forth in each item of Article 475 (hereinafter in this Article and following Article referred to as "inventory of property"), without delay after assuming the office.
- (2) At a company with board of liquidators, the inventory of property must be approved by the board of liquidators.
- (3) Liquidators must submit or provide the inventory of property (or, if the provisions of the preceding paragraph apply, the inventory of property approved under that paragraph) to the shareholders meeting and obtain the approval of the same.
- (4) A liquidating stock company must retain its inventory of property from the time of the preparation of relevant inventory of property until the registration completion of the liquidation at the location of its head office.

#### **(Order to Submit Inventory of Property)**

Article 493 The court may, in response to a petition or ex officio, order the parties to a lawsuit to submit the inventory of property, in whole or in part.

#### **(Preparation and Retention of Balance Sheet)**

Article 494 (1) A liquidating stock company must prepare a balance sheet and administration report for each liquidation year (referring to each one year period starting on the day immediately following the day when the liquidating stock company has fallen under any of the cases set forth in each item of

Article 475 or the corresponding day of that day of the subsequent years (or, if relevant corresponding day does not exist, the immediately preceding day)) as well as annexed detailed statements to accompany them, as prescribed by Ministry of Justice Order.

- (2) The balance sheet, administration reports, and annexed detailed statements accompanying them which are referred to in the preceding paragraph may be prepared as electronic or magnetic records.
- (3) A liquidating stock company must retain its balance sheet under paragraph (1) and the annexed detailed statements accompanying it from the time of the preparation of relevant balance sheet until the registration of the completion of the liquidation at the location of its head office.

#### (Audit of Balance Sheet)

Article 495 (1) Companies with company auditors (including liquidating stock companies which have the provisions of the articles of incorporation to the effect that the scope of the audit is limited to accounting audit) must have the balance sheet, administration reports, and annexed detailed statements accompanying them which are referred to in paragraph (1) of the preceding Article audited by company auditors pursuant to the provisions of Ministry of Justice Order.

- (2) Companies with board of liquidators must have the balance sheet, administration report, and annexed detailed statements accompanying them which are referred to in paragraph (1) of the preceding Article (or, if the provisions of the preceding paragraph apply, those which have been audited as provided for in the preceding paragraph) approved by the board of liquidators.

#### (Keeping and Inspection of Balance Sheet)

Article 496 (1) liquidating stock companies must keep the balance sheet and administration report regarding each liquidating administrative year provided for in Article 494, paragraph (1), as well as annexed detailed statements accompanying them (including, if the provisions of paragraph (1) of the preceding Article apply, audit reports, hereinafter in this Article referred to as "balance sheet") at its head office from the day preceding the day of the annual shareholders meeting (or, in the cases provided for in Article 319, paragraph (1), from the day when the proposal under that paragraph is submitted) until the registration of the completion of the liquidation at the location of its head office.

- (2) Shareholders and creditors may make the following request at any time during the business hours of the liquidating stock company; provided, however, that the expense prescribed by relevant liquidating stock company must be paid in order to make the request set forth in item (ii) or item (iv):



- (i) if the balance sheet is prepared in writing, request to inspect relevant documents;
  - (ii) a request for the issuance of a transcript or extract of the documents referred to in the preceding item;
  - (iii) if the balance sheet has been prepared as an electronic or magnetic record, a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record; or
  - (iv) a request to be provided with the information recorded in the electronic or magnetic record referred to in the preceding item by an electronic or magnetic means that the liquidating stock company has designated, or a request to be issued a document showing that information.
- (3) If it is necessary for the purpose of exercising the rights of a member of the parent company of a liquidating stock company, the relevant member of the parent company may, with the permission of the court, make the requests relevant in each item of the preceding paragraph with respect to the balance sheet of relevant liquidating stock company; provided, however, that the expenses prescribed by relevant liquidating stock company must be paid in order to make the requests set forth in item (ii) or item (iv) of that paragraph.

(Provision of Balance Sheet to Annual Shareholders Meeting)

- Article 497 (1) At liquidating stock company set forth in the following items, liquidators must submit or provide the balance sheet and administration reports provided for in each relevant item to the annual shareholders meeting:
- (i) companies with company auditors (excluding companies with board of liquidators) provided for in Article 495, paragraph (1): the balance sheets and administration reports that have been audited under that paragraph;
  - (ii) companies with board of liquidators: the balance sheets and administration reports that have been approved pursuant to Article 495, paragraph (2); and
  - (iii) liquidating stock companies other than those set forth in the preceding two items: the balance sheets and administration reports under Article 494, paragraph (1).
- (2) Balance sheets that have been submitted or provided pursuant to the provisions of the preceding paragraph must be approved by the annual shareholders meeting.
- (3) Directors must report the contents of the administration reports submitted or provided pursuant to the provisions of paragraph (1) to the annual shareholders meeting.

(Order to Submit Balance Sheet)

Article 498 The court may, in response to a petition or ex officio, order the

parties to a lawsuit to submit balance sheets under Article 194, paragraph (1) and the annexed detailed statements accompanying them, in whole or in part.

#### **Subsection 4 Performance of Obligations**

(Public Notices to Creditors)

Article 499 (1) A liquidating stock company must, without delay after having fallen under each item of Article 475, give public notice in Official Gazette to the creditors of relevant liquidating stock companies to the effect that creditors should state their claims during a certain period of time and must give the notices separately to each known creditor, if any; provided, however, that relevant period cannot be less than two months.

(2) The public notice pursuant to the provisions of the preceding paragraph must contain a notation to the effect that relevant creditors are excluded from the liquidation unless they state their claims during the period of time.

(Restrictions on Performance of Obligations)

Article 500 (1) A liquidating stock company cannot perform its obligations during the period of time under paragraph (1) of the preceding Article. In these cases, a liquidating stock company cannot be exempted from the liability arising from its failure to perform.

(2) Notwithstanding the provisions of the preceding paragraph, even during the period of time under paragraph (1) of the preceding Article, a liquidating stock company may, with the permission of the court, perform its obligations relating to claims of minor claims, claims secured by security interests over the assets of the liquidating stock company, or other claims unlikely to be detrimental to other creditors even if performed. In these cases, if there are two or more liquidators, the petition for relevant permission must be made with the consent of all of the liquidators.

(Performance of Obligations Relating to Conditional Claims)

Article 501 (1) A liquidating stock company may perform its obligations relating to conditional claims, claims of indeterminate duration or other claims of indeterminable amount. In these cases, a petition for the appointment of an appraiser must be filed to the court in order to have these claims evaluated.

(2) In the cases provided for in the preceding paragraph, a liquidating stock company must perform its obligations relating to the claims under that paragraph in accordance with the evaluations by the appraiser under that paragraph.

(3) Any expense for the procedures for the appointment of the appraiser under paragraph (1) is borne by the liquidating stock company. The same applies to

the expense for the summonses and questions for the purpose of the appraiser's appraisal.

(Restrictions on Distribution of Residual Assets before Performance of Obligations)

Article 502 A liquidating stock company cannot distribute its property to its shareholders until after performance of the obligations of relevant liquidating stock company; provided, however, that this does not apply if assets regarded as necessary for the performance of obligations relating to a claim that is the subject of dispute as to its existence or otherwise or as to its amount have been withheld.

(Exclusion from Liquidation)

- Article 503 (1) Creditors of a liquidating stock company (excluding known creditors) who fail to state their claims during the period under Article 499, paragraph (1) are excluded from the liquidation.
- (2) Creditors who are excluded from the liquidation pursuant to the provisions of the preceding paragraph may demand the performance with respect to the residual assets that are not distributed.
- (3) If residual assets of a liquidating stock company have been distributed to some shareholders, the assets necessary for the distribution to shareholders other than relevant shareholders in the same proportion as that applied for the distribution received by relevant shareholders are deducted from the residual assets under the preceding paragraph.

### **Subsection 5 Distribution of Residual Assets**

(Determination of Matters Regarding Distribution of Residual Assets)

- Article 504 (1) If a liquidating stock company intends to distribute its residual assets, it must prescribe the following matters by decision of liquidators (or, for a company with board of liquidators, by a resolution of the board of liquidators):
- (i) kind of residual assets; and
  - (ii) matters regarding the allotment of residual assets to shareholders.
- (2) In the cases provided for in the preceding paragraph, if two or more classes of shares with different features as to the distribution of residual assets are issued, the liquidating stock company may prescribe the following matters as the matters set forth in item (ii) of that paragraph in accordance with the features of relevant classes of shares:
- (i) if there is any arrangement that no residual assets will be allotted to the shareholders of a certain class of shares, a statement to that effect and

- relevant class of shares;
- (ii) beyond the matter set forth in the preceding item, if there is an arrangement that each class of shares is to be treated differently with respect to allotment of residual assets, a statement to that effect and the details of relevant different treatment.
- (3) The provisions regarding the matters set forth in paragraph (1), item (ii) must stipulate that the residual assets will be allotted in proportion to the number of the shares (or, if there are provisions with respect to the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by the shareholders (excluding the relevant liquidating stock company and shareholders of the class of shares referred to in item (i) of the preceding paragraph).

(Cases Where Residual Assets Consist of Property Other than Monies)

Article 505 (1) If residual assets consist of property other than monies, shareholders have the right to demand distribution of monies (meaning the rights to demand that the liquidating stock company deliver monies in lieu of relevant residual assets; hereinafter the same applies in this Article). In these cases, the liquidating stock company must prescribe the following matters by a resolution of liquidators (or, for a company with board of liquidators, by a resolution of board of liquidators):

- (i) the period during which rights to demand distribution of monies can be exercised; and
  - (ii) if there is any arrangement that no residual assets are to be allotted to shareholders who hold less than certain number of shares, a statement to that effect and that number.
- (2) In the cases provided for in the preceding paragraph, the liquidating stock company must notify the shareholders of the matters set forth in item (i) of that paragraph no later than 20 days prior to the last day of the period referred to that item.
- (3) A liquidating stock company must pay to shareholders who exercised rights to demand distribution of monies, in lieu of the residual assets allotted to relevant shareholders, monies equivalent to the value of relevant residual assets. In these cases, the amount provided for in each of the following items for the case categories set forth in each the item is the value of relevant residual assets:
- (i) if relevant residual assets consist of property with a market price: the amount calculated in a manner prescribed by Ministry of Justice Order as the market price of relevant residual assets;
  - (ii) in cases other than those set forth in the preceding item: the amount determined by the court in response to the petition by the liquidating stock

company.

(Treatment in Case Base Number of Shares Is Provided)

Article 506 If the number in paragraph (1), item (ii) of the preceding Article (hereinafter in this Article referred to as "minimum number of shares") is prescribed, a liquidating stock company must pay to the shareholders who hold shares in a number less than the minimum number of shares (hereinafter in this Article referred to as "below minimum shareholding") the monies equivalent to the amount which is obtained by multiplying the amount prescribed as the value of the residual assets allotted to the shareholders who hold shares in the minimum number of shares in accordance with the applicable provisions of the second sentence of paragraph (3) of the preceding Article by the ratio of the number shares in relevant below minimum shareholding to the minimum number of shares.

#### **Subsection 6 Conclusion of Liquidation**

Article 507 (1) If the administration of a liquidation has concluded, the liquidating stock company must prepare the settlement of accounts pursuant to the provisions of Ministry of Justice Order without delay.

(2) At a company with board of liquidators, the settlement of accounts must be approved by the board of liquidators.

(3) Liquidators must submit or provide the settlement of accounts (or, if the provisions of the preceding paragraph apply, the settlement of accounts approved under that paragraph) to the shareholders meeting and obtain the approval of the same.

(4) If the approval is given under the preceding paragraph, an exemption is deemed to have been given for the liquidators' liability for failure to perform their duties; provided, however, that this does not apply if there has been misconduct regarding the execution of the liquidators' duties.

#### **Subsection 7 Retention of Accounting Materials**

Article 508 (1) A liquidator (or, for a company with board of liquidators, the liquidators set forth in each item of Article 489, paragraph (7)) must retain the books of the liquidating stock company as well as any material data regarding the business and liquidation of the same (hereinafter in this Article referred to as "accounting materials") for a period of ten years from the time of the registration of the completion of the liquidation at the location of head office of the liquidating stock company.

(2) The court may, in response to the petition by the interested parties, appoint a

person to act on behalf of the liquidator in the preceding paragraph in retaining the accounting materials. In these cases, the provisions of that paragraph do not apply.

- (3) The person appointed pursuant to the provisions of the preceding paragraph must retain the accounting materials for a period of ten years from the time of the registration of the completion of the liquidation at the location of head office of the liquidating stock company.
- (4) Expenses regarding the procedures for the appointment under the provisions of paragraph (2) are borne by the liquidating stock company.

### **Subsection 8 Exceptions to Application**

Article 509 (1) The provisions set forth below do not apply to liquidating stock companies:

- (i) Article 155;
  - (ii) in Chapter V, Section 2, Subsection 2 (excluding Article 435, paragraph (4), Article 440, paragraph (3), Article 442 and Article 443) and Subsection 3 as well as Section 3 through Section 5; and
  - (iii) in Part V, Chapter IV, Chapter IV-2 and the portion relating to the procedures of share exchange, share transfer and partial share exchange in Chapter V of the same Part.
- (2) The provisions of Chapter II, Section 4-2 do not apply to cases where a subject company is a liquidating stock company.
  - (3) A liquidating stock company may acquire the shares of relevant liquidating stock company, limited to cases where acquisition is effected without consideration or in other cases prescribed by Ministry of Justice Order.

## **Section 2 Special Liquidations**

### **Subsection 1 Commencement of Special Liquidations**

(Cause of Commencement of Special Liquidation)

Article 510 If the court finds that the grounds set forth below exist with respect to a liquidating stock company, it orders relevant liquidating stock company to commence special liquidation in response to the filing under the provisions of Article 514:

- (i) the existence of circumstances prejudicial to the implementation of the liquidation; or
- (ii) the suspicion that the liquidating stock company is insolvent (meaning the status where the assets of the liquidating stock company is not sufficient to fully discharge its debts; the same applies in paragraph (2) of the following Article).

(Petition for Commencement of Special Liquidation)

Article 511 (1) Creditors, liquidators, company auditors or shareholders may file a petition for the commencement of special liquidation.

(2) If it is suspected that a liquidating stock company is insolvent, liquidators must file a petition for the commencement of the special liquidation.

(Order to Suspend Other Procedures)

Article 512 (1) If a petition is filed for the commencement of a special liquidation, if the court finds it necessary, it may, at the petition of the creditors, liquidators, company auditors, or shareholders, or ex officio, order that the following procedures or process be suspended until a decision is reached with respect to the petition for the commencement of special liquidation; provided, however, that, with respect to the bankruptcy procedures set forth in item (i), this is limited to cases where the ruling to commence bankruptcy procedures has not yet been issued, and with respect to the procedures set forth in item (ii) or the disposition set forth in item (iii), this is limited to cases where the creditors petitioning for relevant procedures or the persons carrying out the process are not likely to suffer undue loss:

(i) bankruptcy procedures in respect of the liquidating stock company; or

(ii) procedures for a judicial enforcement, provisional attachment or provisional disposition (excluding those based on general liens or other claims that have general priority) that is already being effected in respect of the assets of the liquidating stock company;

(iii) a disposition effected in the same way as a disposition to collect national tax arrears, which is based on a claim in respect of foreign taxes subject to mutual assistance (meaning foreign taxes subject to mutual assistance as prescribed in Article 11, paragraph (1) of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act, and the Local Tax Act Attendant upon the Enforcement of Tax Treaties (Act No. 46 of 1969; in Articles 518-2 and 571, paragraph (4) referred to as the "Act on Special Provisions for the Enforcement of Tax Treaties"); the same applies hereinafter), and which is already being effected against the assets of the liquidating stock company (in Article 515, paragraph (1) referred to as a "disposition to collect foreign tax arrears").

(2) The provisions of the preceding paragraph also apply if an immediate appeal as referred to in Article 890, paragraph (5) is filed against a ruling to dismiss the petition for the commencement of special liquidation.

(Restrictions on Withdrawal of Petition for Commencement of Special Liquidation)

Article 513 A person who filed a petition for the commencement of special liquidation may withdraw relevant petition limited to if it is before the order to commence special liquidation. In these cases, the permission of the court must be obtained if it is after an order to suspend has been issued pursuant to the provisions of the preceding paragraph, a provisional order has been issued pursuant to the provisions of Article 540, paragraph (2) or a disposition has been effected pursuant to the provisions of Article 541, paragraph (2).

(Order to Commence Special Liquidation)

Article 514 If a petition for the commencement of special liquidation has been filed, if the court finds that there are grounds that warrant the commencement of special liquidation, the court orders the commencement of special liquidation, except in cases falling under any of the following:

- (i) if no advance has been made for the expense for the special liquidation procedures;
- (ii) if it is clear that there is no expectation of the completion of the liquidation, even by special liquidation;
- (iii) if it is clear that invoking the special liquidation is contrary to the general interest of creditors; or
- (iv) if the petition for the commencement of special liquidation has been filed with improper purpose, or the petition was otherwise not filed in good faith.

(Suspension of Other Procedures)

Article 515 (1) If an order to commence special liquidation is issued, a petition may not be filed for commencement of bankruptcy procedures, a judicial enforcement, provisional attachment, provisional disposition or disposition to collect foreign tax arrears, against the assets of a liquidating stock company, nor for property disclosure procedures (limited to those in response to a petition under Article 197, paragraph (1) of the Civil Execution Act (Act No. 4 of 1979); hereinafter the same applies in this paragraph) or procedures for acquiring information from a third party (limited to those pursuant to a petition under Article 205, paragraph (1), item (i), Article 206, paragraph (1), or Article 207, paragraph (1); hereinafter the same applies in this paragraph), and any bankruptcy procedures (limited to those in respect of which a ruling to commence bankruptcy procedures has not yet been issued), judicial enforcement, provisional attachment, or provisional disposition procedures, or disposition to collect foreign tax arrears already being effected against the assets of the liquidating stock company, as well as any property disclosure procedures and procedures for acquiring information from a third party, are suspended; provided, however, that this does not apply with respect to a judicial enforcement, provisional attachment, provisional disposition, property



disclosure procedures, or procedures for acquiring information from a third party pursuant to general liens or other claims that have general priority.

- (2) If an order to commence special liquidation has become final and binding, any procedures or dispositions suspended pursuant to the provisions of the preceding paragraph become ineffective in relation to the proceedings for the special liquidation.
- (3) If an order to commence special liquidation is issued, the period of prescription is not completed with respect to the claims of creditors of the liquidating stock company (excluding general liens and other claims that have general priority, claims arising against the liquidating stock company due to special liquidation proceedings, and claims against the liquidating stock company for expenses in connection with special liquidation proceedings; hereinafter in this Section referred to as "agreement claims") until the day on which two months have elapsed since the day of the registration of the rescission of the commencement of special liquidation or since the day of the registration of conclusion of special liquidation provided for in Article 938, paragraph (1), item (ii) or item (iii).

(Order to Suspend Procedures to Enforce Security Interests)

Article 516 If the court issues an order to commence special liquidation, the court may, in response to a petition by the liquidators, company auditors, creditors or shareholders or ex officio, prescribing a reasonable period of time, order the suspension of procedures to enforce a security interest if the court finds that it suits the general interests of the creditors and those who petitioned for the procedures to enforce the security interest (meaning procedures to enforce the security interest the assets of the liquidating stock company, procedures to enforce charge on whole company assets or judicial enforcement procedures based on the general liens and other claims that have general priority that have already been enforced against the assets of the liquidating stock company; hereinafter the same applies in this Article) are not likely to suffer undue loss.

(Prohibition of Set-Offs)

Article 517 (1) Creditors who hold agreement claims (hereinafter in this Section referred to as "agreement claim creditors") may not effect set-offs in the cases set forth below:

- (i) if the creditors assumed debts owed to the liquidating stock company after the commencement of special liquidation;
- (ii) if the creditor assumed debts owed to the liquidating stock company after the liquidating stock company became unable to pay its debts (meaning the status under which, due to its lack of capacity to pay, the liquidating stock

- company is generally and continuously unable to pay debts that are due; hereinafter the same applies in this Subsection) by entering into contracts with the liquidating stock company under which assets of the liquidating stock company are to be disposed of for the purpose of offsetting obligations the creditors assume under the contract exclusively against the agreement claims or by entering into contracts under which the creditors assume obligations of a person who owes the obligations to the liquidating stock company, and creditors had the knowledge at the time of executing relevant contracts that the liquidating stock company was unable to pay debts;
- (iii) if they assumed debts after suspension of payment, and they had the knowledge at the time of relevant assumption of debt that payments had been suspended; provided, however, that this does not apply if the liquidating stock company was not insolvent at the time of relevant suspension of payments; or
  - (iv) if the creditors assumed debts after the commencement of special liquidation, and they had the knowledge at the time of the assumption that the petition for commencement of special liquidation had been filed.
- (2) The provisions of item (ii) through item (iv) of the preceding paragraph do not apply if the assumption of debt pursuant to the provisions of those provisions is based on any of the causes set forth below:
- (i) statutory causes;
  - (ii) causes in existence before the agreement claim creditors acquired the knowledge that the liquidating stock company was unable to pay debts, or the petition for suspension of payments or commencement of special liquidation had been filed; or
  - (iii) causes that accrued one year or more before the petition for the commencement of special liquidation was filed.

Article 518 (1) Creditors who owe debts to a liquidating stock company cannot effect the set-off in the cases set forth below:

- (i) if the creditors acquired agreement claims of others after the commencement of special liquidation;
- (ii) if the creditors acquired agreement claims after liquidating stock company became unable to pay debts, and they had the knowledge that the liquidating stock company was unable to pay debts at the time of the acquisition of the agreement claims;
- (iii) if the creditors acquired agreement claims after the suspension of payment, and they had the knowledge that there was suspension of payment at the time of the acquisition of the same; provided, however, that this does not apply if the liquidating stock company was not unable to pay debts at the time of relevant suspension of payment;

- (iv) if the creditors acquired agreement claims after the petition for commencement of special liquidation, and they had the knowledge that the commencement of special liquidation had been filed at the time of the acquisition of the agreement claims.
- (2) The provisions under items (ii) through (iv) of the preceding paragraph do not apply if the acquisition of the agreement claims provided for in those provisions is based on any of the causes set forth below:
  - (i) statutory causes;
  - (ii) causes in existence before the persons who assumed debts owed to the liquidating stock company acquired the knowledge that the liquidating stock company was unable to pay debts, or that a petition for suspension of payments or commencement of special liquidation was filed; or
  - (iii) causes that accrued one year or more before the petition for the commencement of special liquidation was filed; or
  - (iv) contracts between the persons who assume debts owed to the liquidating stock company and the liquidating stock company.

(Participation in Procedures by Parties with a Claim in Respect of Foreign Taxes Subject to Mutual Assistance)

Article 518-2 In order to participate in special liquidation procedures based on a claim in respect of foreign taxes subject to mutual assistance, an agreement claim creditor holding such a claim must obtain a decision to implement mutual assistance as prescribed in Article 11, paragraph (1) of the Act on Special Provisions for the Enforcement of Tax Treaties.

**Subsection 2 Supervision and Investigations by the Court**

(Supervision by the Court)

- Article 519 (1) If an order to commence special liquidation is issued, the liquidation of the liquidating stock company is subject to supervisions by the court.
- (2) If the court finds it necessary, it may seek a statement of opinion with respect to procedures for the special liquidation of relevant liquidating stock company from the government agency that supervises the business of the liquidating stock company, or entrust the investigations to the same.
  - (3) The government agency under the preceding paragraph may state its opinion with respect to the procedures for special liquidation of relevant liquidating stock company to the court.

(Investigations by the Court)

Article 520 The court may at any time order a liquidating stock company to

report the status of its administration of the liquidation and assets, or otherwise conduct investigations that are necessary for the supervision of the liquidation.

(Submission of Inventory of Property to the Court)

Article 521 If an order to commence special liquidation is issued, the liquidating stock company must, without delay after the approval under Article 492, paragraph (3) is given, submit the inventory of property (meaning the inventory of property provided for in that paragraph; hereinafter the same applies in this Article); provided, however, that, if the inventory of property has been prepared as an electronic or magnetic record, a document showing the information recorded in that electronic or magnetic record must be submitted to the court.

(Order to Investigate)

Article 522 (1) If the court finds it necessary after the commencement of special liquidation considering the status of the assets of a liquidating stock company, it may effect the disposition ordering that the matters set forth below be investigated by investigators (hereinafter in Article 533 referred to as "investigation order") in response to a petition by liquidators, company auditors, creditors who have claims equivalent to one tenth or more of the total amount of the claims of creditors that have stated their claims and other creditors known to the liquidating stock company, or shareholders who have held, for the consecutive period of past six months or more (or, if a shorter period is provided for in the articles of incorporation, that period), not less than three hundredths of the voting rights of all shareholders (excluding the shareholders that cannot exercise voting rights on all matters on which resolutions can be passed at the shareholders meeting; or, if any proportion less than that is provided for in the articles of incorporation, that proportion) or shareholders who have held, for the consecutive period of past six months or more (or, if a shorter period is provided for in the articles of incorporation, that period), not less than three hundredths of the issued shares (excluding treasury shares; or, if a lower proportion is provided for in the articles of incorporation, the proportion) or ex officio:

- (i) circumstances that resulted in the commencement of special liquidation;
- (ii) status of the business and assets of the liquidating stock company;
- (iii) whether or not it is necessary to issue the provisional order pursuant to the provisions of Article 540, paragraph (1); or
- (iv) whether or not it is necessary to issue the provisional order pursuant to the provisions of Article 542, paragraph (1);
- (v) whether or not it is necessary to make the ruling evaluating subject officers'

- liability provided for in Article 545, paragraph (1); or
- (vi) other matters necessary for special liquidation specified by the court.
- (2) The amounts of the claims in relation to which creditors who hold security interest (limited to special liens, pledges, mortgages or rights of retention provided for in the provisions of this Act or Commercial Code) with respect to the assets of a liquidating stock company are entitled to payment by exercising those security interests are not included in the amount of the claims under the preceding paragraph.
- (3) For the purpose of the application of the provisions of paragraph (1) to liquidating stock companies that are not public companies, the phrase "have held, for the consecutive period of six months or more (or, if a shorter period is provided for in the articles of incorporation, that period)", in that paragraph is deemed to be replaced with "hold".

### **Subsection 3 Liquidators**

#### (Liquidators' Duty of Fairness and Good Faith)

Article 523 If special liquidation is commenced, liquidators assume the duty to perform the liquidation administration in fairness and good faith in relation to creditors, the liquidating stock company and shareholders.

#### (Dismissal of Liquidators)

Article 524 (1) The court may dismiss liquidators in response to the petition by creditors or shareholders or ex officio if the liquidators do not perform the liquidation administration properly or there otherwise are significant grounds to do so.

(2) The court appoints liquidators if there is any vacancy in the office of liquidator.

(3) Even if there are liquidators in office, the court may appoint additional liquidators if the court finds it necessary.

#### (Liquidators' Agents)

Article 525 (1) If necessary, liquidators may appoint one or more liquidators' agents at their own responsibility to cause them perform the duties of the liquidators.

(2) Permission of the court must be obtained with respect to the appointment of agents of liquidators under the preceding paragraph.

#### (Remuneration of Liquidators)

Article 526 (1) Liquidators may receive advance payment of the expense, and remuneration determined by the court.

- (2) The provisions of the preceding paragraph apply mutatis mutandis to liquidators' agents.

#### **Subsection 4 Supervisor**

##### (Appointment of Supervisors)

Article 527 (1) The court may appoint one or more supervisors and grant to relevant supervisors the authority to give consent in lieu of the permission under Article 535, paragraph (1).

- (2) Corporations may act as supervisors.

##### (Supervision over Supervisors)

Article 528 (1) The court supervises supervisors.

- (2) The court may dismiss supervisors in response to the petition by interested parties or ex officio if the supervisors fail to supervise the management of the business and assets of the liquidating stock company properly or there otherwise are significant grounds to do so.

##### (Performance of Duties by Two or More Supervisors)

Article 529 If there are two or more supervisors, they perform their duties jointly; provided, however, that they may perform their duties individually or divide their duties, with the permission of the court.

##### (Investigations by Supervisors)

Article 530 (1) Supervisors may at any time ask liquidators and company auditors of a liquidating stock company and employees, including managers, to provide a report on the business, or investigate the status of the business and property of the liquidating stock company.

- (2) When it is necessary to perform their duties supervisors may ask subsidiary companies of a liquidating stock company to provide reports on the business, or investigate the status of the business and assets of subsidiary companies of the liquidating stock company.

##### (Supervisors' Duty of Care)

Article 531 (1) Supervisors must perform their duties with due care of a prudent manager.

- (2) If supervisors fail to exercise the due care under the preceding paragraph, those supervisors are jointly and severally liable to compensate losses arising in interested parties.

##### (Remunerations of Supervisors)

- Article 532 (1) Supervisors may receive advance payment of the expense, and remunerations determined by the court.
- (2) Supervisors must obtain the permission of the court if, after their appointment, they transfer, or transferred claims owed by the liquidating stock company or shares in the liquidating stock company.
- (3) Supervisors cannot receive payment of expense or remuneration if they engage in the acts provided for in the preceding paragraph without the permission under the preceding paragraph.

### **Subsection 5 Investigators**

(Appointment of Investigators)

Article 533 If the court issues an investigation order, it must appoint one or more investigating members in investigation order, and prescribe the matters that the investigators ought to investigate and the period in which the investigators are to report the outcome of the investigation to the court.

(Mutatis Mutandis Application of Provisions on Supervisors)

Article 534 The provisions of the preceding Subsection (excluding Article 527, paragraph (1) and proviso to Article 529) apply mutatis mutandis to supervisors.

### **Subsection 6 Restrictions on Acts of Liquidating Stock Companies**

(Restrictions on Acts of Liquidating Stock Companies)

Article 535 (1) If an order is issued for the commencement of special liquidation, a liquidating stock company must obtain the permission of the court in order to carry out the acts set forth below; provided, however, that, if supervisors are appointed under the provisions of Article 527, paragraph (1), consent of the supervisors must be obtained in lieu of that permission:

- (i) the disposal of an asset (excluding the act set forth in each item of paragraph (1) of the following Article);
  - (ii) borrowing money;
  - (iii) the filing of an action;
  - (iv) a settlement or the entering in an arbitration agreement (referring to the arbitration agreement provided for in Article 2, paragraph (1) of the Arbitration Act (Act No. 138 of 2003));
  - (v) a waiver of rights; or
  - (vi) other acts designated by the court.
- (2) Notwithstanding the provisions of the preceding paragraph, the permission under that paragraph is not required with respect to the act set forth in items

- (i) through (v) of that paragraph in the cases set forth below:
  - (i) if the act is related to an act that involves the amount equivalent to or less than the amount provided for in the Supreme Court Rules; or
  - (ii) beyond what is set forth in the preceding item, if the act relates to an act for which the court has held that the permission under the preceding paragraph is not required.
- (3) Any act committed without the permission under paragraph (1) or consent of supervisors in lieu thereof is ineffective; provided, however, that the above provision may not be asserted against a third party in good faith.

(Restrictions on the Transfer of Business)

Article 536 (1) If an order for commencement of special liquidation is issued, if a liquidating stock company intends to carry out any act set forth below, it must obtain the permission of the court:

- (i) transfer of the entire business; or
  - (ii) transfer of significant part of the business (excluding the transfer in which the book value of the assets to be transferred by relevant transfer does not exceed one fifth (or, if any lower proportion is provided for in the articles of incorporation, the proportion) of the amount calculated by the method prescribed by Ministry of Justice Order as the total amount of the assets of relevant stock company);
  - (iii) transfer of all or part of shares or equity interests of the subsidiary company (limited to transfer in cases falling under all of the following):
    - (a) if the book value of shares or equity interests to be transferred by the transfer exceeds one-fifth (if any proportion less than that is provided for in the articles of incorporation, the proportion) of the amount calculated by the method prescribed by Ministry of Justice Order as the total assets of the liquidating stock company; and
    - (b) if the liquidating stock company does not have a majority of the total votes of the subsidiary company on the effective day.
- (2) The provisions of paragraph (3) of the preceding Article apply mutatis mutandis to the acts committed without the permission under the preceding paragraph.
- (3) The provisions of Chapter VII (excluding Article 467, paragraph (1), item (v)) do not apply to the cases of special liquidation.

(Restrictions on Performance of Obligations)

Article 537 (1) If an order is issued for commencement of special liquidation, a liquidating stock company must perform obligations to agreement claim creditors in proportion to the amount of their claims.

- (2) Notwithstanding the provisions of the preceding paragraph, a liquidating



stock company may, with the permission of the court, perform its obligations relating to minor claims, claims secured by security interests, or other claims that are unlikely to be detrimental to other creditors even if performed in excess of the proportion of the amount of the claims.

(Method of Conversion into Cash)

Article 538 (1) A liquidating stock company may convert its assets into cash pursuant to the provisions of the Civil Execution Act and other laws and regulations on judicial enforcement procedures. In these cases, the provisions of Article 535, paragraph (1), item (i) do not apply.

(2) A liquidating stock company may convert the assets that underlie the security interest provided for in Article 522, paragraph (2) (hereinafter in this Article and in the following Article simply referred to as "security interest") into cash pursuant to the provisions of the Civil Execution Act and other laws and regulations on judicial enforcement procedures. In these cases, a person who holds relevant security interest (hereinafter in this Article and in the following Article simply referred to as "security interest holder") may not refuse the conversion into cash.

(3) In the cases of the preceding two paragraphs, the provisions of Article 63 and Article 129 of the Civil Execution Act (including the cases where those provisions are applied mutatis mutandis under that act and other laws and regulations on judicial enforcement procedures) do not apply.

(4) If, in the case of paragraph (2), the amount that the security interest holder is to receive is not fixed yet, the liquidating stock company must deposit the proceeds separately. In these cases, the security interest exists with respect to the proceeds so deposited.

(Designating Periods for Disposition by Security Interest Holders)

Article 539 (1) If security interest holders have the right to dispose of the assets that underlie the security interest without relying on the method prescribed by the Act, the court may, in response to the petition by the liquidating stock company, specify the period during which the security interest holders ought to effect the disposition.

(2) Security interest holders will lose their right under the preceding paragraph if they do not effect disposition during the period under the preceding paragraph.

### **Subsection 7 Dispositions Necessary to Supervise Liquidation**

(Provisional Order Regarding Assets of Liquidating Stock Company)

Article 540 (1) If an order is issued for commencement of special liquidation, if

the court finds it necessary to supervise the liquidation, the court may, in response to a petition by the creditors, liquidators, company auditors or shareholders or ex officio, order a provisional disposition prohibiting the disposal of the property of the liquidating stock company, or issue any other necessary provisional orders.

- (2) Even during the period from the time when a petition for commencement of special liquidation is filed to the time when a ruling is handed down on relevant petition, if the court finds it necessary, the court may, at the petition of the creditors, liquidators, company auditors or shareholders or ex officio, issue a provisional orders under the provisions of the preceding paragraph. The same applies if an immediate appeal in Article 890, paragraph (5) is filed against the ruling to dismiss the petition for the commencement of special liquidation.
- (3) If the court issues a provisional order under the provisions of the preceding two paragraphs that prohibits the liquidating stock company from paying its creditors or taking any other action to extinguish its obligations to them, the creditors may not, in relation to the special liquidation, assert the validity of any payment or other action extinguishing those obligations which is in contravention of that provisional order; provided, however, that this is limited to if the creditor knows that the provisional order has been issued at the time of that action.

#### (No Entry in Shareholder Register)

Article 541 (1) If an order is issued for commencement of special liquidation, if the court finds that it is necessary to supervise the liquidation, the court, at the petition of the creditors, liquidators, company auditors or shareholders or ex officio, may prohibit a liquidating stock company from entering or recording in the shareholder register any information that is required to be entered in the shareholder register.

- (2) Even during the period from the time when a petition for commencement of special liquidation is filed to the time when a ruling is handed down on relevant petition, if the court finds it necessary, the court may, in response to the petitions by the creditors, liquidators, company auditors or shareholders or ex officio, effect the disposition under the provisions of the preceding paragraph. The same applies if immediate appeal under Article 890, paragraph (5) is filed against the ruling to dismiss the petition for the commencement of special liquidation.

#### (Provisional Order on Property of Officers)

Article 542 (1) If an order for commencement of special liquidation is issued, if the court finds it necessary to supervise the liquidation, the court may, with

respect to rights to seek damages pursuant to the liability of the incorporators, directors at incorporation, company auditors at incorporation, officers, etc. provided for in Article 423, paragraph (1) or liquidators (hereinafter in this subsection referred to as "subject officers"), in response to the petition by the liquidating stock company or ex officio, effect provisional orders against the assets of relevant subject officers.

- (2) Even during the period from the time when a petition for commencement of special liquidation is filed to the time when a ruling is made with respect to relevant petition, if the court finds it urgently necessary, the court may, at the petition of the liquidating stock company or ex officio, issue a provisional order under the provisions of the preceding paragraph. The same applies if immediate appeal in Article 890, paragraph (5) is filed against the ruling to dismiss a petition for the commencement of special liquidation.

(Prohibition of Exemptions from Liability of Officers)

Article 543 If an order is issued for commencement of special liquidation, if the court finds it necessary to supervise the liquidation, the court may, in response to the petitions by the creditors, liquidators, company auditors or shareholders or ex officio, effect the disposition that prohibits the exemption of liability of the subject officers.

(Rescission of Exemption from Liability of Officers)

Article 544 (1) If an order is issued for commencement of special liquidation, a liquidating stock company may rescind the exemption of liability of subject officers effected within one year prior to or after the time when the petition for commencement of special liquidation was filed. The same applies with respect to the exemption from the liability of subject officers that effected for improper purpose.

- (2) The rights of rescission under the provisions of the preceding paragraph are exercised by filing an action or defense.
- (3) The rights of rescission under the provisions of paragraph (1) cannot be exercised when two years have lapsed from the day when the order was issued for the commencement of special liquidation. The same applies if twenty years have elapsed from the day when subject officers were exempted from liability.

(Ruling Evaluating Subject Officers' Liability)

Article 545 (1) If an order is issued for commencement of special liquidation, if the court finds it necessary, the court may, in response to the petition by the liquidating stock company or ex officio, pass judgment evaluating the rights to seek damages pursuant to the liability of the subject officers (hereinafter in this Article referred to as "ruling evaluating subject officers' liability")

- (2) If the court commences procedures of the ruling evaluating subject officers' liability ex officio, it must make the determination to that effect.
- (3) If the petition under paragraph (1) is filed or the ruling in the preceding paragraph is made, a judicial claim is deemed to have been made in connection with postponement of expiration of the prescription period and renewal of the prescription period, it is deemed that a judicial claim has been made.
- (4) The procedures for the ruling evaluating subject officers' liability (excluding those after the ruling evaluating subject officers' liability) will end if the special liquidation is ended.

### **Subsection 8 Creditors Meetings**

#### (Convocation of Creditors Meetings)

- Article 546 (1) Creditors meetings may be convened whenever it is required to implement special liquidation.
- (2) A creditors meeting is convened by the liquidating stock company, except if convened pursuant to the provisions of paragraph (3) of the following Article.

#### (Demand for Convocation of Meeting by Creditors)

- Article 547 (1) Agreement claim creditors who have agreement claims equivalent to one tenth or more of the total amount of the agreement claims of agreement claim creditors that have stated their claims and other agreement claim creditors known to the liquidating stock company may demand, by disclosing the matters that are the purpose of the creditors meeting and the reasons of the convocation, that the liquidating stock company convene a creditors meeting.
- (2) The amount of the agreement claims in relation to which agreement claim creditors who hold security interest provided for in Article 522, paragraph (2) with respect to the assets of a liquidating stock company are entitled by exercising their security interest is not included in the amount of the agreement claims under the preceding paragraph.
  - (3) In the following cases, agreement claim creditors who made the demand pursuant under the provisions of paragraph (1) may convene the creditors meeting with the permission of the court:
    - (i) if the convocation procedure is not effected without delay after the demand pursuant to the provisions of paragraph (1); or
    - (ii) if a notice for the convocation of the creditors meeting that specifies a day falling within six weeks from the day of the demand under the provisions of paragraph (1) as the day of the creditors meeting, is not sent.

#### (Determination to Call Creditors Meetings)

- Article 548 (1) A person calling a creditors meeting (hereinafter in this Subsection referred to as "convener") must decide the following matters if the person calls a creditors meeting:
- (i) the date, time and place of the creditors meeting;
  - (ii) the matters that are the purpose of the creditors meeting;
  - (iii) if it is to be arranged that agreement claim creditors who do not attend the creditors meeting may exercise their voting rights by electronic or magnetic means, a statement to that effect;
  - (iv) beyond what is set forth in the preceding three items, any matters prescribed by Ministry of Justice Order.
- (2) If a liquidating stock company calls a creditors meeting, relevant liquidating stock company must decide with respect to each agreement claim whether or not voting rights can be exercised at the creditors meeting and the amount of the same.
- (3) If a person other than a liquidating stock company calls a creditors meeting, relevant convener must demand that the liquidating stock company decide the matters provided for in the preceding paragraph. In such a case, if that demand is made, the liquidating stock company must decide the matters provided for in that paragraph.
- (4) An agreement claim creditor holding a security interest provided for in Article 522, paragraph (2) with respect to the property of a liquidating stock company has no voting rights as regards the amount of the agreement claim for which it is entitled to receive payment upon the exercise of its security interest.
- (5) An agreement claim creditor has no voting rights as regards a claim in respect of foreign taxes subject to mutual assistance.

(Notice of Convocation of Creditors Meetings)

- Article 549 (1) In order to convene a creditors meeting, the convener must give the written notice thereof to agreement claim creditors who stated their claims and other agreement claim creditors known to the liquidating stock company and the liquidating stock company, no later than two weeks prior to the day of the creditors meeting.
- (2) In lieu of the sending of the written notice referred to in the preceding paragraph, the convener may send the notice by electronic or magnetic means with the approval of the agreement claim creditors in accordance with the provisions of Cabinet Order. In these cases, relevant convener is deemed to have sent the written notice under that paragraph.
- (3) The notice under the preceding two paragraphs must state or record the matters set forth in each item of paragraph (1) of the preceding Article.
- (4) The provisions of the preceding three paragraphs apply mutatis mutandis to agreement claim creditors that stated their claims and other agreement claim

creditors known to the liquidating stock company that hold general liens and other claims that have general priority, claims that have arisen in relation to the liquidating stock company for procedures for special liquidation or rights to seek reimbursement of expenses of procedures for special liquidation from the liquidating stock company.

(Issuance of Reference Documents for Creditors Meetings and Voting Form)

Article 550 (1) The convener must, when giving a notice under paragraph (1) of the preceding Article, issue to the agreement claim creditors that stated their claims and other agreement claim creditors known to the liquidating stock company, documents stating the matters provided for under the provisions of Article 548, paragraph (2) or paragraph (3) with respect to the agreement claims held by relevant agreement claim creditors and matters of reference for the exercising the voting rights (in the following paragraph referred to as "Reference documents for creditors meeting") as well as the document to be used by the agreement claim creditors to exercise the voting rights (hereinafter in this Subsection referred to as "voting form") as prescribed by Ministry of Justice Order.

(2) If the convener issues notices by electronic or magnetic means as referred to in paragraph (2) of the preceding Article to the agreement claim creditors that have given the consent referred to in that paragraph, the convener may use electronic or magnetic means to provide the information that is required to be detailed in that document, in lieu of delivering the creditors meeting reference documents and voting form under the provisions of the preceding paragraph; provided, however, that, if requested by an agreement claim creditor, the convener must deliver these documents to relevant agreement claim creditor.

Article 551 (1) If the matters set forth in Article 548, paragraph (1), item (iii) are prescribed, when using electronic or magnetic means to notify the agreement claim creditors that have given the consent referred to in Article 549, paragraph (2), the convener must use that electronic or magnetic means to provide the agreement claim creditors with the information that is required to be detailed in the voting form, pursuant to the provisions of Ministry of Justice Order.

(2) If the matters set forth in Article 548, paragraph (1), item (iii) are prescribed, if an agreement claim creditor who has not given the consent under Article 549, paragraph (2) makes a request, no later than one week prior to the day of the creditors meeting, to be provided with the information that is required to be detailed in the voting form by electronic or magnetic means, the convener must use electronic or magnetic means to immediately provide that agreement claim creditor with that information, pursuant to the provisions of Ministry of

Justice Order.

(Direction of Creditors Meetings)

Article 552 (1) Creditors meetings are directed by the court.

(2) If a convener intends to call a creditors meeting, the convener must notify the court in advance of the matters set forth in each item of Article 548, paragraph (1) and the matters provided for under the provisions of paragraph (2) or paragraph (3) of that Article.

(Treatment of Voting Rights under Objections)

Article 553 If, with respect to matters prescribed for each agreement claim pursuant to the provisions of Article 548, paragraph (2) or paragraph (3), persons who hold relevant agreement claims or other agreement claim creditors state their objections at a creditors meeting, the court prescribes the same.

(Resolutions at Creditors Meetings)

Article 554 (1) In order to adopt a matter to be resolved at a creditors meeting, all of the following consents must be obtained:

(i) the consent of a majority of the voting rights holders present at the meeting (meaning the agreement claim creditors that can exercise voting rights; hereinafter the same applies in this Subsection and following Subsection); and

(ii) the consent of persons who hold the voting rights in excess of half of the total voting rights of the voting rights holders present at the meeting.

(2) For the purpose of the application of the provisions of Article 558, paragraph (1), if any voting rights holder exercised only some of the voting rights the voting right holder holds as a consent to the matters under the preceding paragraph under the provisions of paragraph (1) of that Article (excluding the cases where the voting right holder's remaining voting rights were not exercised), for each the voting rights holder, "one" is to be added to the number of the voting rights holders who attended the meeting, and "one" is to be added to the number of the voting rights holders who gave their consent, respectively.

(3) At creditors meetings, matters other than the matters set forth in Article 548, paragraph (1), item (ii) may not be resolved.

(Proxy Voting)

Article 555 (1) Agreement claim creditors may exercise voting rights by proxy. In these cases, relevant agreement claim creditors or proxy must submit to the convener a document which certifies the power of representation.

(2) The grant of the power of representation under the preceding paragraph must

be made for each creditors meeting.

- (3) Agreement claim creditors or proxy referred to in paragraph (1) may, in lieu of submitting a document which certifies the power of representation, use electronic or magnetic means to provide the information that is required to be detailed in that document, with the approval of the convener and pursuant to the provisions of Cabinet Order. In these cases, relevant agreement claim creditors or proxies are deemed to have submitted relevant document.
- (4) If the agreement claim creditors are the persons who gave consent under Article 549, paragraph (2), the convener may not refuse providing the approval under the preceding paragraph without a justifiable ground.

(Voting in Writing)

Article 556 (1) Agreement claim creditors who do not attend the creditors meeting may exercise their voting rights in writing.

- (2) The exercise of voting rights in writing is effected by entering necessary matters on the voting form and submitting it to the convener by the time prescribed by Ministry of Justice Order.
- (3) Voting rights holders who exercised the voting rights in writing pursuant to the provisions of the preceding paragraph are deemed to have been present at the creditors meeting for the purpose of the provisions of Article 554, paragraph (1) and Article 567, paragraph (1).

(Voting by Electronic or Magnetic Means)

Article 557 (1) The exercise of voting rights by electronic or magnetic means is effected by using electronic or magnetic means to provide the convener with the information that is required to be entered in the voting form no later than the time prescribed by Ministry of Justice Order, with the approval of the convener and pursuant to the provisions of Cabinet Order.

- (2) If the agreement claim creditors are the persons who gave consent under Article 549, paragraph (2), the convener may not refuse providing the approval under the preceding paragraph without justifiable grounds.
- (3) Voting rights holders who exercised the voting rights by electronic or magnetic means pursuant to the provisions of paragraph (1) are deemed to have been present at the creditors meeting for the purpose of the application of the provisions of Article 554, paragraph (1) and Article 567, paragraph (1).

(Inconsistent Voting)

Article 558 (1) Agreement claim creditors may exercise the voting rights they hold without maintaining consistency. In these cases, the agreement claim creditors must notify the convener to that effect and of the reason thereof no later than three days prior to the day of the creditors meeting.



(2) If an agreement claim creditor referred to in the preceding paragraph is not a person who holds the agreement claims on behalf of others, the convener may reject the inconsistent exercise of the voting rights held by relevant agreement claim creditor under the provisions of that paragraph.

(Attendance of Creditors who Hold Security Interest)

Article 559 Creditors meetings or conveners may demand that the following creditors are present at the meeting and hear their opinions. In these cases, a resolution must be passed to that effect at a creditors meeting:

(i) creditors that hold security interest provided for in Article 522, paragraph

(2); and

(ii) creditors who hold general liens and other claims that have general priority, claims that have arisen in relation to the liquidating stock company for the procedures for special liquidation or rights to seek from the liquidating stock company reimbursement of expense for the procedures for special liquidation.

(Resolution for Postponement or Continuation)

Article 560 If a resolution for the postponement or continuation is passed at the creditors meeting, the provisions of Article 548 (excluding paragraph (4)) and Article 549 do not apply.

(Minutes)

Article 561 The convener must prepare minutes with respect to the business of the creditors meeting, pursuant to the provisions of Ministry of Justice Order.

(Report to Creditors Meetings of the Outcome of Liquidators' Investigations)

Article 562 If an order is issued for the commencement of special liquidation, if the liquidators provided for in Article 492, paragraph (1) have completed the investigations of the current status of the property of the liquidating stock companies and have prepared the inventory of property (meaning the inventory of property provided for in that paragraph; hereinafter the same applies in this Article), the liquidating stock company must, without delay, convene the creditors meeting and report to relevant creditors meeting the outcome of the investigations of the status of the operations and assets of the liquidating stock companies as well as the summary of the inventory of property, and state its opinions regarding the policy and prospect of the implementation of the liquidation; provided, however, that this does not apply if the liquidating stock company regards it as appropriate to make the creditors aware of the content of the matters to be reported and relevant opinions by means other than the statement of the report and opinions to the creditors meeting.

## Subsection 9 Agreements

### (Offer of Agreements)

Article 563 A liquidating stock company may offer an agreement to the creditors meeting.

### (Terms and Conditions of Agreements)

Article 564 (1) Terms and conditions regarding the change of some or all of the rights of agreement claim creditors (excluding the security interest provided for in Article 522, paragraph (2)) must be provided for in the agreements.

(2) The terms and conditions that change some or all of the rights of agreement claim creditors must prescribe reductions of debts and extensions of terms and other general standards for the change in rights.

### (Change in Rights under Agreements)

Article 565 Any changes of rights under an agreement must be equal as between Agreement claim creditors; provided, however, that this does not apply if agreement claim creditors that will suffer detriment have given consent, if the equality will not be compromised even if it is otherwise provided with respect to minor agreement claims, or in other cases where the equality will not be compromised even if there are differences as between agreement claim creditors.

### (Participation of Creditors Holding Security Interest)

Article 566 If a liquidating stock company regards it as necessary in preparing a draft agreement, it may seek the participation of the following creditors:

(i) creditors that hold security interest provided for in Article 522, paragraph (2); and

(ii) creditors that hold general liens and other claims that have general priority.

### (Requirements for Adoption of Agreements)

Article 567 (1) Notwithstanding the provisions of Article 554, paragraph (1), in order to adopt an agreement at a creditors meeting, all of the following consents must be obtained:

(i) the consent of a majority of the voting rights holders present at the meeting; and

(ii) the consent of persons who hold the voting rights in excess of two thirds of the total voting rights of the voting rights holders.

(2) The provisions of Article 554, paragraph (2) apply mutatis mutandis to the application of the provisions of item (i) of the preceding paragraph.

(Petition Seeking Approval of Agreements)

Article 568 If an agreement is adopted, the liquidating stock company must petition the court for approval of the agreement without delay.

(Ruling Approving or Rejecting Agreements)

Article 569 (1) If a petition under the preceding Article is filed, the court hands down the ruling approving the agreement except for the cases under the following paragraph.

(2) The court hands down a ruling rejecting the agreement in cases falling under any of the following:

- (i) if the procedures for special liquidation or the agreement violates any provisions of the act, and that deficiency cannot be remedied; provided, however, that this does not apply if, if the procedures for special liquidation violates provisions of the acts, the degree of relevant violation is minor;
- (ii) if there is no prospect that the agreement will be fulfilled;
- (iii) if the agreement was established by unlawful means; or
- (iv) if the agreement is contrary to the general interest of the creditors.

(Time of Effectuation of Agreements)

Article 570 Agreements take effect upon becoming final and binding of the rulings to approve.

(Scope of Effectiveness of Agreements)

Article 571 (1) An agreement is effective on behalf of the liquidating stock company and all agreement claim creditors, and binds them.

(2) An agreement does not affect security interests provided for in Article 522, paragraph (2) held by creditors provided for in that paragraph, rights that agreement claim creditors hold jointly with guarantors of the liquidating stock company or otherwise with the liquidating stock company, against persons owing obligations, or collateral provided by persons other than the liquidating stock company for the benefit of the agreement claim creditors.

(3) When a ruling approving an agreement becomes final and binding, rights of agreement claim creditors are changed pursuant to the provisions of the agreement.

(4) Notwithstanding the provisions of the preceding paragraph, the effect of a change of rights under the provisions of the agreement as regards a claim in respect of foreign taxes subject to mutual assistance may be asserted only in relation to the mutual assistance under the provisions of Article 11, paragraph (1) of the Act on Special Provisions for Enforcement of Tax Treaties.

(Change of Details of Agreements)

Article 572 The details of an agreement may be changed if it is necessary for the implantation of the agreement. In these cases, the provisions of Article 563 through the preceding Article apply *mutatis mutandis*.

### **Subsection 10 Completion of Special Liquidation**

(Rulings on Conclusion of Special Liquidation)

Article 573 After the commencement of special liquidation, the court hands down a ruling on the conclusion of the special liquidation in response to petitions by liquidators, company auditors, creditors, shareholders, or investigators in the cases set forth below:

- (i) if the special liquidation has been completed; or
- (ii) if the special liquidation is no longer necessary.

(Ruling for Commencement of Bankruptcy Procedures)

Article 574 (1) After the commencement of special liquidation, if the court finds, in the cases set forth below, facts on the part of the liquidating stock company that constitute cause for the commencement of bankruptcy proceedings, the court must make *ex officio* the ruling for commencement of bankruptcy proceedings in accordance with the Bankruptcy Act:

- (i) if there is no prospect of an agreement;
- (ii) if there is no prospect that the agreement will be implemented; or
- (iii) if reliance on the special liquidation is contrary to the general interest of the creditors.

(2) After the commencement of special liquidation, if the court finds, in the cases set forth below, facts on the part of the liquidating stock company that constitute cause for the commencement of bankruptcy proceedings, the court may make an *ex officio* ruling for commencement of bankruptcy proceedings in accordance with the Bankruptcy Act:

- (i) if an agreement is not adopted; or
- (ii) if a ruling to reject an agreement has become final and binding.

(3) For the purpose of the application of the provisions of Article 71, paragraph (1), item (iv) and paragraph (2), items (ii) and (iii), Article 72, paragraph (1), item (iv) and paragraph (2), items (ii) and (iii), Article 160 (excluding paragraph (1), item (i)), Article 162 (excluding paragraph (1), item (ii)), Article 163, paragraph (2), Article 164, paragraph (1) (including the cases where that paragraph is applied *mutatis mutandis* under paragraph (2) of that Article), Article 166, and Article 167, paragraph (2) (including the cases where that paragraph is applied *mutatis mutandis* under Article 170, paragraph (2)) of the Bankruptcy Act if a ruling to commence bankruptcy proceedings has been made under the provisions of the preceding two paragraphs, the petition for the

commencement of bankruptcy proceedings is deemed to have been filed at the time when the petition in each of the following items for the case categories set forth in each of relevant items were filed:

- (i) if there was a petition for the commencement of bankruptcy proceedings before the petition for the commencement of special liquidation in bankruptcy proceedings that became ineffective because the order to commence special liquidation becoming final and binding: relevant petition for the commencement of bankruptcy proceedings;
  - (ii) in cases other than the cases set forth in the preceding item: the petition for the commencement of special liquidation.
- (4) If a ruling to commence bankruptcy proceedings is handed down under the provisions of paragraph (1) or paragraph (2), claims that have arisen in relation to the liquidating stock company for the proceedings for special liquidation and rights to seek reimbursement of expense regarding the procedures for special liquidation from the liquidating stock company constitute preferred claims against the bankrupt's estate.

### **Part III Membership Companies**

#### **Chapter I Incorporation**

(Preparation of Articles of Incorporation)

Article 575 (1) In order to incorporate an general partnership company, limited partnership company or limited liability company (hereinafter collectively referred to as "membership company"), persons who intend to be its members must prepare articles of incorporation which must be signed by or record the names of and be affixed with the seals, of all members.

(2) The articles of incorporation in the preceding paragraph may be prepared as an electronic or magnetic record. In these cases, measures prescribed by Ministry of Justice Order must be taken in lieu of signing, or the recording of names and affixing of seals, with respect to the data recorded in that electronic or magnetic record.

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

Article 576 (1) Articles of incorporation of membership companies must specify or record the following matters:

- (i) purposes;
- (ii) trade name;
- (iii) location of the head office;
- (iv) names and addresses of the members;
- (v) whether the members are members with unlimited liability or members with limited liability; and

- (vi) subject matter invested by the members (limited to the monies, etc. if they are members with limited liability) and the value and standard of evaluation of the same.
- (2) If the membership company to be incorporated is a general partnership company, a statement that all of the members are members with unlimited liability must be specified or recorded as the matter set forth in item (v) of the preceding paragraph.
- (3) If the membership company to be incorporated is a limited partnership company, a statement that some of the members are members with unlimited liability and other members are members with limited liability must be stated or recorded as the matter set forth in paragraph (1), item (v).
- (4) If the membership company to be incorporated is a limited liability company, a statement that all of the members are members with limited liability must be stated or recorded as the matter set forth in paragraph (1), item (v).

Article 577 Beyond what is provided for in the preceding Article, articles of incorporation of a membership company may state or record matters which, under the provisions of this Act, will not become effective unless provided for in the articles of incorporation, or other matters which do not violate any provisions of this Act.

(Performance of Contributions as at Incorporation of Limited Liability Companies)

Article 578 If a membership company to be incorporated is a limited liability company, persons who intend to be members of relevant limited liability company must pay in the entire sum of monies relating to their partnership contribution or deliver the entire property, other than monies, relating to their contribution after the preparation of the articles of incorporation but before the registration of the incorporation of the limited liability company; provided, however, that, if the consent of all persons who intend to be members of the limited liability company is obtained, this does not preclude them from carrying out registration, recording or other acts necessary to assert the creation or transfer of rights against third parties after the incorporation of the limited liability company.

(Incorporation of Membership Companies)

Article 579 A membership company is incorporated by the registration of the incorporation at the location of its head office.

## **Chapter II Members**

### **Section 1 Responsibility of Members**

(Responsibility of Members)

Article 580 (1) Members are jointly and severally liable for the performance of obligations of the membership company in the cases set forth below:

- (i) if the obligations of relevant membership company cannot be fully performed with the assets of the same; or
  - (ii) if judicial enforcement against the assets of relevant membership company has not been successful (except for the cases where the members have proven that relevant membership company has financial resources to pay and that the enforcement can be effected at ease).
- (2) Members with limited liability are liable for the performance of the obligations of the membership company to the extent of the value of their investment (excluding the value of the contributions already performed to the membership company).

(Members' Defenses)

Article 581 (1) If members are liable for the performance of the obligations of a membership company, the members may assert defenses against the creditors of relevant membership company that the membership company may raise against creditors.

- (2) In the cases provided for in the preceding paragraph, if a membership company has a right to set-off, right to rescind or right to terminate against its creditors, the members may refuse the performance of obligations to relevant creditors, up to the amount of the membership company's obligations that are to be released as a result of the exercise of those rights.

(Members' Liability in Relation to Contributions)

Article 582 (1) If a member provides monies as the subject matter of a contribution, if the member fails to effect that contribution, relevant member must compensate the loss in addition to the payment of interest on that contribution.

- (2) If a member provides claims as the subject matter of a contribution, if the obligor of relevant claims fails to perform the obligations when they become due, relevant member must be liable for the performance of the same. In these cases, relevant member must compensate the loss in addition to the payment of interest on the obligations.

(Special Provisions in Case of Members' Liability Change)

Article 583 (1) If a member with limited liability has become a member with unlimited liability, the person who has become relevant member with unlimited liability is also liable as a member with unlimited liability for the

performance of the obligations of the membership company that arose before relevant person became a member with unlimited liability.

- (2) Even if a member with limited liability (excluding members of limited liability company) reduce the value of the contributions, relevant member with limited liability is liable to the extent of the member's pre-existing liability for the obligations of the membership company that arose before the registration to that effect.
- (3) Even if a member with unlimited liability has become a member with limited liability, the person who has become such a member with limited liability is liable as a member with unlimited liability for the performance of the obligations of the membership company that arose before the registration to that effect.
- (4) The liability under the preceding two paragraphs to the creditors of the membership company who do not make their claims, or do not give an advance notice of their claims, within two years from the day of relevant registration is extinguished when two years have elapsed from the day of the registration in the preceding two paragraphs.

(Capacity to Act of Minors Permitted to Become Members with Unlimited Liability)

Article 584 A minor who is permitted to become a member with unlimited liability of a membership company is deemed to be a person with capacity to act regarding any act committed in the minor's capacity as a member.

## **Section 2 Transfers of Equity Interests**

(Transfers of Equity Interest)

- Article 585 (1) A member cannot transfer all or part of the member's own equity interests to others without the approval of all other members.
- (2) Notwithstanding the provisions of the preceding paragraph, a member with limited liability who does not execute business may transfer some or all of the member's own equity interests to others if the approval of all other members who execute the business is obtained.
  - (3) Notwithstanding the provisions of Article 637, if a change in the articles of incorporation arises in conjunction with the transfer of equity interests of any member with limited liability who does not execute the business, the change in the articles of incorporation due to the transfer of that equity interest may be effected with the consent of all members who execute the business.
  - (4) The provisions of the preceding three paragraphs do not preclude the provisions to the contrary in the articles of incorporation.



(Liability of Members Who Transfer Entire Equity Interests)

Article 586 (1) A member who transferred all of the member's own equity interests to others is liable to the extent of the member's pre-existing liability for the obligations of the membership company that arose before the registration to that effect.

(2) Liability in the preceding paragraph to the creditors of the membership company who do not state their claims or do not give an advance notice of their claims, within two years from the day of relevant registration is extinguished when two years have elapsed from the day of the registration in that paragraph.

Article 587 (1) membership companies may not accept the transfer of some or all of their own equity interests.

(2) If a membership company has acquired any equity interest in relevant membership company, relevant equity interest is extinguished when relevant membership company acquires the same.

### **Section 3 Liability for Mistaken Acts**

(Liability of Members with Limited Liability for Acts Mistaken as Acts of Members with Unlimited Liability)

Article 588 (1) If a member with limited liability of a limited partnership company engages in an act that causes relevant member with limited liability to be mistaken as a member with unlimited liability, relevant member with limited liability assumes the same liability as that assumed by a member with unlimited liability in relation to persons who transact with the limited partnership company based on that mistaken belief.

(2) If a member with limited liability of a limited partnership company or limited liability company engages in an act that causes mistake as to the extent of the liability of relevant member with limited liability(excluding that in the preceding paragraph), relevant member with limited liability assumes the liability to perform the obligations of relevant limited partnership company or limited liability company in relation to persons who transact with the limited partnership company or limited liability company on the bases of that mistaken belief, to the extent of the liability so mistaken.

(Responsibility for Acts Mistaken as Acts of Members)

Article 589 (1) If a person who is neither a member of a general partnership company nor limited partnership company engages in an act that causes relevant person to be mistaken as a member with unlimited liability, relevant person assumes the same liability as that assumed by a member with

unlimited liability in relation to persons who transact with the general partnership company or limited partnership company on the bases of that mistaken belief.

- (2) If a person who is a member in neither a limited partnership company nor limited liability company engages in an act that causes relevant person to be mistaken as a member with limited liability, relevant person assumes liability to perform the obligations of relevant limited partnership company or limited liability company in relation to persons who transact with the limited partnership company or limited liability company on the bases of that mistaken belief the to the extent of the liability so mistaken.

### **Chapter III Administration**

#### **Section 1 General Provisions**

(Execution of Business)

- Article 590 (1) A member executes the business of the membership company, unless otherwise provided for in the articles of incorporation.
- (2) If there are two or more members, the business of the membership company is determined by a majority of the members, unless otherwise provided for in the articles of incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, each member may perform the ordinary business of the membership company individually; provided, however, that this does not apply if other members raise objections before the completion of the same.

(Where Articles of Incorporation Provide for Members Who Execute Business)

- Article 591 (1) If members who execute the business are provided for in the articles of incorporation, and there are two or more members who execute the business, the business of the membership company is determined by a majority of the members who execute the operations, unless otherwise provided for in the articles of incorporation. For the purpose of the application of the provisions of paragraph (3) of the preceding Article to these cases, "member" in that paragraph is deemed to be replaced with "member who executes the business".
- (2) Notwithstanding the provisions of the preceding paragraph, in the cases provided for in that paragraph, the appointment and dismissal of managers are determined by a majority of the members; provided, however, that this does not preclude the provisions to the contrary in the articles of incorporation.
- (3) If members who execute the business are provided for in the articles of incorporation, and all members who execute the operations leave the company, relevant provisions of the articles of incorporation become ineffective.

- (4) If members who execute the business are provided for in the articles of incorporation, members who execute the business may not resign without justifiable grounds.
- (5) Members who execute the business under the preceding paragraph may be dismissed with the unanimous consent of other members, limited to cases where there are justifiable grounds.
- (6) The provisions of the preceding two paragraphs do not preclude the provisions to the contrary in the articles of incorporation.

(Members' Investigations Regarding Status of Business and Assets of Membership Companies)

- Article 592 (1) If members who execute the business are provided for in the articles of incorporation, each member may investigate the status of the business and assets of the membership company even if the member does not have the rights to execute the business of the same.
- (2) The provisions of the preceding paragraph do not preclude provisions to the contrary in the articles of incorporation; provided, however, that even the articles of incorporation may not provide to the effect of restricting the carrying out of investigations by members provided for in that paragraph at the end of the business year or if there are significant grounds to do so.

## **Section 2 Members Who Execute Business**

(Relationship between Members Executing Business and Membership Companies)

- Article 593 (1) Members who execute the business have the obligation to perform their duties with due care of a prudent manager.
- (2) Members who execute the business must perform their duties for the membership company in a loyal manner in compliance with the laws and regulations and articles of incorporation.
  - (3) Members who execute the business must report the status of the execution of their duties whenever there are requests by the membership company or other members, and must report the progress and outcome of their duties without delay after those duties end.
  - (4) The provisions of Articles 646 through 650 of the Civil Code apply mutatis mutandis to the relationship between members who execute the business and the membership company. In these cases, the term "mandated business" in Article 646, paragraph (1), Article 648, paragraph (2), Article 648-2, Article 649 and Article 650 is deemed to be replaced with "their duties", and the terms "mandated business" in Article 648, paragraph (3), item (i) and the term "mandate" in item (ii) of the paragraph of the same Code are deemed to be

replaced with "duties in the preceding paragraph".

- (5) The provisions of the preceding two paragraphs do not preclude provisions to the contrary in the articles of incorporation.

(Non-Competition)

Article 594 (1) Members who execute the business may not carry out the following acts without the approval of all members other than relevant members; provided, however, that this does not apply if the articles of incorporation provide otherwise:

- (i) carrying out, for themselves or for a third party, any transaction which is in the line of business of the membership company; or
  - (ii) becoming directors, executive officers or members who execute the business of a company the purpose of which is a business that is similar to the business of the membership company.
- (2) If members who execute the business carry out any act set forth in item (i) of the preceding paragraph in violation of the provisions of that paragraph, the amount of the profit obtained by the members who execute relevant business or any third party as a result of relevant act is presumed to be amount of the loss suffered by the membership company.

(Restrictions on Transactions Involving Conflict of Interest)

Article 595 (1) In the following cases, members who execute the business must obtain the approval of a majority of the members other than relevant members with respect to relevant transactions; provided, however, that this does not apply if the articles of incorporation provide otherwise:

- (i) if members who execute the business intend to engage in a transaction with the membership company for themselves or on behalf of a third party; or
  - (ii) if a membership company intends to guarantee the debt of members who execute the business or otherwise to engage in a transaction with any person other than members that will result in the conflict of interest between the membership company and relevant members.
- (2) The provisions of Article 108 of the Civil Code do not apply to transactions under each item of the preceding paragraph that have received the approval under that paragraph.

(Liability of Members Who Execute Operations to Membership Companies for Damages)

Article 596 If members who execute the business fail to perform their duties, they are jointly and severally liable to the membership company for losses arising as a result.

(Liability of Members with Limited Liability who Execute Business to Membership Companies for Damages)

Article 597 If members with limited liability who execute the business have acted in bad faith or with gross negligence in discharging their duties, relevant members with limited liability are jointly and severally liable to compensate losses arising in a third party as a result.

(Special Provisions Where Corporations Are Members Executing Business)

Article 598 (1) If corporations act as members who execute the business, relevant corporations must appoint persons who are to perform the duties of members who execute relevant business and notify other members of the names and addresses of these persons.

(2) The provisions from Article 593 through the preceding Article apply mutatis mutandis to the persons who are to perform the duties of members appointed under the provisions of the preceding paragraph.

(Representatives of Membership Companies)

Article 599 (1) A member who executes the business represents the membership company; provided, however, that this does not apply if members or other persons who represent the membership companies are otherwise designated.

(2) If there are two or more members who execute the business referred to in the main clause of the preceding paragraph, each member who executes the business represents the membership company individually.

(3) A membership company may appoint members who represent the membership company from among the members who execute the business pursuant to the articles of incorporation, or through the appointment by the members themselves pursuant to the provisions of the articles of incorporation.

(4) Members who represent the membership company have authority to do all judicial and non-judicial acts in connection with the operations of the membership company.

(5) No limitation on the authority under the preceding paragraph may be asserted against a third party in good faith.

(Liability for Damages Caused by Acts of Members Who Represent Membership Companies)

Article 600 A membership company is liable to compensate losses that members who represent the membership company or other representatives caused to third parties in the performance of their duties.

(Representation of Companies in Claims between Membership Companies without Share and Members)

Article 601 Notwithstanding the provisions of Article 599, paragraph (4), if a membership company files an action against any of its members, or any of the members files an action against that membership company, if there is no representative of the membership company with respect to relevant action (excluding the relevant member), the representative of the membership company in relevant action may be determined by a majority of the members other than relevant member.

Article 602 Notwithstanding the provisions of Article 599, paragraph (1), if a member requests that the membership company file an action to enforce the liability of a member, if the membership company fails to file relevant action within 60 days after the day of relevant request, relevant member making the request may represent the membership company with respect to relevant action; provided, however, that this does not apply if the purpose of relevant action is to seek unlawful gains of relevant member or a third party or to inflict losses on relevant membership company.

### **Section 3 Persons Who Perform Duties on Behalf of Members Executing Business**

Article 603 (1) A person who is appointed by a provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act to act on behalf of members who execute the business or members who represent the membership company, in carrying out of the duties of the same, must obtain the permission of the court in order to engage in any act which does not belong to the ordinary business of the membership company, unless otherwise provided for in the provisional disposition order.

(2) An act of a person who acts on behalf of members who execute the business or members who represent the membership company in carrying out duties of the same that is performed in violation of the provisions of the preceding paragraph is ineffective; provided, however, that the membership company may not assert that ineffectiveness against a third party in good faith.

## **Chapter IV Admission and Withdrawal of Members**

### **Section 1 Admission of Members**

(Admission of Members)

Article 604 (1) A membership company may admit a new member.

(2) Admission of members of a membership company takes effect when a change relating to relevant member is effected in the articles of incorporation.

(3) Notwithstanding the provisions of the preceding paragraph, if a limited

liability company admits a new member, if the person who intends to become the new member has not performed all or a part of the payment or delivery relating to the contribution at the time of the change in the articles of incorporation in that paragraph, the person becomes a member of the limited liability company when relevant payment or delivery has been completed.

(Responsibility of Admitted Members)

Article 605 A member that is admitted after the incorporation of a membership company is also liable for the performance of obligations of the membership company that arose before the admission.

## **Section 2 Withdrawal of Members**

(Voluntary Withdrawal)

Article 606 (1) If the duration of a membership company is not provided by the articles of incorporation, or the articles of incorporation provide that the membership company continues to exist for the life of a particular member, each member may withdraw at the end of the business year. In these cases, each member must give advance notice of withdrawal to the membership company more than six months in advance.

(2) The provisions of the preceding paragraph do not preclude the membership company from provisions to the contrary in the articles of incorporation.

(3) Notwithstanding the provisions of the preceding two paragraphs, if there are any unavoidable grounds, any member may withdraw at any time.

(Statutory Withdrawal)

Article 607 (1) Beyond the cases provided for in the preceding Article, Article 609, paragraph (1), Article 642, paragraph (2) and Article 845, members withdraw on the grounds set forth below:

(i) grounds provided for in the articles of incorporation having arisen;

(ii) the consent of all members;

(iii) death;

(iv) merger (but only if the member that is a corporation disappears in the merger);

(v) a ruling to commence bankruptcy procedures;

(vi) dissolution (excluding that resulting from the grounds set forth in the preceding two items);

(vii) being subject to a decision for commencement of guardianship; or

(viii) removal.

(2) A membership company can provide to the effect that no member withdraws due to some or all of the grounds set forth in items (v) through (vii) of the

preceding paragraph.

(Special Provisions in Case of Inheritances and Mergers)

- Article 608 (1) A membership company may provide in its articles of incorporation that if one of its members dies or disappears as a result of a merger, the heirs or other general successors of relevant member may succeed to the equity interest of relevant member.
- (2) Notwithstanding the provisions of Article 604, paragraph (2), if the provisions in the preceding paragraph are prescribed in the articles of incorporation, a general successor in that paragraph (limited to general successors that are not a member) becomes a member holding equity interest in that paragraph at the time when the general successor succeeds to relevant equity interest.
- (3) If there are provisions in paragraph (1) referred to in the articles of incorporation, the membership company is deemed to have effected the change in the articles of incorporation relating to the general successor in that paragraph when relevant general successor has succeeded to the equity interest under that paragraph.
- (4) If there are two or more general successors (limited to general successors that have succeeded to a partnership interest by inheritance and have not performed all or part of the payment in or delivery relating to the partnership contribution) in paragraph (1), each general successor is jointly and severally liable for the performance of relevant payment in or delivery relating to the contribution.
- (5) If there are two or more general successors (limited to those who have succeeded to equity interest by inheritance) under paragraph (1), each general successor may not exercise the rights with respect to the interest which the general successor has succeeded to unless the general successor designates one person who exercises the rights with respect to relevant equity interest; provided, however, that this does not apply if the membership company gives its consent to the exercise of relevant rights.

(Forcing of Members to Withdraw by Creditors That Have Attached Equity Interest)

- Article 609 (1) A creditor that has attached the equity interest of a member may force relevant member to withdraw at the end of the business year. In these cases, relevant creditor must give advance notice thereof to the membership company and relevant member more than 6 months in advance.
- (2) The advance notice under the second sentence of the preceding paragraph becomes ineffective if the member in that paragraph performs the 'ember's obligations to the creditor in that paragraph or has provided appropriate security.



- (3) A creditor who gives the advance notice under the second sentence of paragraph (1) may petition the court for the disposition necessary to preserve the rights to claim the refund of the equity interest.

(Deemed Changes of Articles of Incorporation upon Withdrawal of Members)

Article 610 If a member withdraws pursuant to the provisions of Article 606, Article 607, paragraph (1), paragraph (1) of the preceding Article or Article 642, paragraph (2) (including the cases where a member is deemed to have withdrawn under the provisions of Article 845), a membership company is deemed to have effected a change in the articles of incorporation to abolish the provisions of the articles of incorporation relating to relevant member.

(Refund of Equity Interest in Conjunction with Withdrawal)

- Article 611 (1) A member that has withdrawn may receive the refund of the member's equity interest; provided, however, that this does not apply if a general successor of relevant member becomes a member under the provisions of Article 608, paragraph (1) and paragraph (2).
- (2) Accounting as between a member that has withdrawn and the membership company must be effected in accordance with the status of the assets of the membership company as at the time of the withdrawal.
- (3) The equity interest of a withdrawn member may be refunded in monies regardless of the kind of the withdrawn member's contribution.
- (4) With respect to matters not completed yet as at the time of the withdrawal, accounting may be effected after the completion of the same.
- (5) For the purpose of the application of the provisions of paragraph (2) and the preceding paragraph if a member withdraws due to removal, the phrase "the time of the withdrawal" in those provisions is deemed to be replaced with "the time of the filing of an action seeking removal".
- (6) In the cases provided for in the preceding paragraph, the membership company must also pay interest at the statutory interest rate from and including the day of the time of the filing of an action seeking removal.
- (7) Attachment on the equity interest of a member is also effective to the rights seeking the refund of the equity interest.

(Liability of Withdrawn Members)

- Article 612 (1) A member that has withdrawn is liable for the obligations of the membership company that arose before the registration of the withdrawal to the extent of the member's pre-existing liability.
- (2) The liability under the preceding paragraph is extinguished when two years have elapsed from the day of the registration under the preceding paragraph in relation to the creditors of the membership company who do not state their

claims, or do not give an advance notice of their claims within two years from the day of relevant registration.

(Demand for Change of Trade Names)

Article 613 If a membership company uses the family name or first and family names, or the corporate name, of a member in its trade name, relevant member that has withdrawn may demand that relevant membership company discontinue the use of their family name or first name and family names, or corporate name.

## **Chapter V Accounting**

### **Section 1 Accounting Principles**

Article 614 Accounting of a membership company is to be subject to the corporate accounting practices that are generally accepted as fair and appropriate.

### **Section 2 Accounting Books**

(Preparation and Retention of Accounting Books)

Article 615 (1) A membership company must prepare accurate accounting books in a timely manner as prescribed by Ministry of Justice Order.

(2) A membership company must retain its accounting books and important materials regarding its business for ten years from the time of the closing of the accounting books.

(Order to Submit Accounting Books)

Article 616 The court may, in response to a petition or ex officio, order the parties to a lawsuit to submit the accounting books, in whole or in part.

### **Section 3 Financial Statements**

(Preparation and Retention of Financial Statements)

Article 617 (1) A membership company must prepare a balance sheet as of the day of its incorporation pursuant to the provisions of Ministry of Justice Order.

(2) A membership company must prepare financial statements (meaning balance sheet and other statements that are prescribed by Ministry of Justice Order to be necessary and appropriate in order to indicate the status of the property of a membership company; hereinafter the same applies in this Chapter) for each business year pursuant to the provisions of Ministry of Justice Order.

(3) Financial statements may be prepared as electronic or magnetic records.

(4) A membership company must retain its financial statements for ten years from the time of the preparation of the same.

(Inspection of Financial Statements)

Article 618 (1) Members of a membership company may submit the following requests at any time during the business hours of relevant membership company:

(i) if the financial statements are prepared in writing, request for inspection or copying of relevant documents; or

(ii) if the financial statements have been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.

(2) The provisions of the preceding paragraph do not preclude provisions to the contrary in the articles of incorporation; provided, however, that even the articles of incorporation may not provide to the effect of restricting the submission of requests set forth in each item of that paragraph at the end of the business year by members.

(Order to Submit Financial Statements)

Article 619 The court may, in response to a petition or ex officio, order the parties to a lawsuit to submit financial statements, in whole or in part.

#### **Section 4 Reductions in Stated Capital**

Article 620 (1) A membership company may reduce the amount of its stated capital to compensate for losses.

(2) The amount by which the stated capital will be reduced under the provisions of the preceding paragraph cannot exceed the amount calculated in a manner prescribed by Ministry of Justice Order as the amount of the losses.

#### **Section 5 Distribution of Profit**

(Distribution of Profits)

Article 621 (1) Members may demand that the membership company distribute its profit.

(2) A membership company may prescribe matters regarding the method for demanding the distribution of the profit and other matters on the distribution of profit in the articles of incorporation.

(3) Attachment on the equity interest of a member is also effective against the right to demand the distribution of the profits.

(Proportion of Distribution of Profits and Losses among Members)

Article 622 (1) If there are no provisions in the articles of incorporation with respect to the proportion of the distribution of profits and losses, those proportions are determined in accordance with the value of each member's contribution.

(2) If provisions with respect to the proportions of the distribution of either profit or loss alone are provided in the articles of incorporation, it is presumed that relevant proportion is common to distributions of profits and distributions of losses.

(Responsibility of Members with Limited Liability Regarding Distribution of Profit)

Article 623 (1) If the book value of the monies, etc. delivered by a membership company to a member with limited liability by the distribution of profit (hereinafter in this paragraph referred to as "distributed amount") exceeds the amount of the profit as at the day when relevant distribution of profit takes place (meaning the amount calculated in a manner prescribed by Ministry of Justice Order as the profit of a membership company; hereinafter the same applies in this Chapter), members with limited liability who received relevant distribution of profit are jointly and severally liable to relevant membership company for the payment of monies equivalent to relevant distributed amount.

(2) For the purpose of the application of the provisions of Article 580, paragraph (2) to the members that received the distribution of profit under the preceding paragraph in the cases provided for in that paragraph, the phrase "to the extent of the value of their investment (excluding the value of the contributions to the membership company already performed)" in that Article 580, paragraph (2) is deemed to be replaced with "to the extent of the sum of the value of their investment (excluding the value of the contributions to the membership company already performed) and the amount by which the distributed amount under Article 623, paragraph (1) exceeds the amount of the profit under that paragraph".

## **Section 6 Contribution Refunds**

Article 624 (1) Members may demand that the membership company refund the monies, etc. that members have already paid in or delivered as contributions (hereinafter in this Part referred to as "contribution refunds"). In these cases, if relevant monies, etc. consist of any property other than monies, they are not precluded from demanding the refund of monies in an amount equivalent to the value of relevant property.

- (2) Membership company may prescribe matters regarding the method for demanding the contribution refunds and other matters on contribution refunds in its articles of incorporation.
- (3) Attachment of the equity interest of a member is also effective against the rights to demand a contribution refunds.

**Section 7 Special Provisions on Accounting of Limited Liability  
Companies**

**Subsection 1 Special Provisions on Inspection of Financial Statements**

Article 625 Creditors of a limited liability company may make the requests set forth in each item of Article 618, paragraph (1) with respect to its financial statements (limited to those prepared within the preceding five years) at any time during the business hours of the limited liability company.

**Subsection 2 Special Provisions on Reduction in Stated Capital**

(Reductions in Stated Capital Where Contribution Refund or Partnership  
Interest Refund Is Effected)

- Article 626 (1) Beyond the cases under Article 620, paragraph (1), a limited liability company may reduce the amount of its stated capital to effect a contribution refund or partnership interest refund.
- (2) The amount of the stated capital to be reduced pursuant to the provisions of the preceding paragraph may not exceed the amount obtained by subtracting the surplus amount as of the day when the contribution refund is effected from contribution refund amount provided for in Article 632, paragraph (2).
  - (3) The amount of the stated capital to be reduced by partnership interest refund amount pursuant to the provisions of the paragraph (1) may not exceed the amount obtained by subtracting the surplus amount as of the day when the refund of equity interests is effected from equity interest refund amount provided for in Article 635, paragraph (1).
  - (4) The term "surplus amount" provided for in the preceding two paragraphs means the amount obtained by subtracting the total sum of the amounts set forth in item (ii) through item (iv) from the amount set forth in item (i) (the same applies in Subsection 4 and Subsection 5):
    - (i) amount of assets;
    - (ii) amount of debt;
    - (iii) amount of stated capital; and
    - (iv) beyond what is set forth in the preceding two items, the total sum of the amounts accounted for in each line item prescribed by Ministry of Justice Order.

(Objection of Creditors)

- Article 627 (1) If a limited liability company reduces the amount of stated capital, creditors of relevant limited liability company may state their objections to the reduction in the stated capital to relevant limited liability company.
- (2) In cases provided for in the preceding paragraph, the limited liability company must give public notice of the matters set forth below in Official Gazette and must give notice of the same separately to each known creditor; provided, however, that the period under item (ii) cannot be less than one month:
- (i) the details of relevant reduction in stated capital; and
  - (ii) a statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if, in addition to a notice in Official Gazette, a limited liability company effects the public notice under that paragraph in a manner set forth in Article 939, paragraph (1), item (ii) or item (iii) in accordance with the provisions of the articles of incorporation under the provisions of that paragraph, the limited liability company is no longer required to give separate notices under the provisions of the preceding paragraph.
- (4) If the creditors do not raise any objection within the period under paragraph (2), item (ii), relevant creditors are deemed to have approved relevant reduction of the stated capital.
- (5) If the creditors raise any objection within the period under paragraph (2), item (ii), the limited liability company must make the payment or provide appropriate security to relevant creditors, or entrust equivalent assets to a qualified trust company for the purpose of assuring the payment to relevant creditors; provided, however, that this does not apply if relevant reduction in the stated capital is unlikely to be detrimental to the relevant creditors.
- (6) The reduction in stated capital takes effect on the day when the procedures in each of the preceding paragraphs has ended.

**Subsection 3 Special Provisions Concerning Distribution of Profits**

(Restriction on Distribution of Profits)

Article 628 If the book value of the monies, etc. delivered to members of a limited liability company through the distribution of profits (hereinafter in this Subsection referred to as "distributed amount") exceeds the amount of the profit as at the day when relevant distribution of profit takes place, relevant distribution of profit cannot be effected. In these cases, the limited liability

company may reject demands under the provisions of Article 621, paragraph (1).

(Liability for Distribution of Profits)

Article 629 (1) If a limited liability company effects the distribution of profit in violation of the provisions of the preceding paragraph, the members that executed the operations in connection with relevant distribution of profits are jointly and severally liable to relevant limited liability company, together with the members that received relevant distribution of profits, for payment of the monies in an amount equivalent to relevant distributed amount; provided, however, that this does not apply if relevant members who executed relevant operations have proven that they did not fail to exercise due care with respect to the performance of their duties:

(2) Exemption from the obligations in the preceding paragraph cannot be given; provided, however, that this does not apply if consent of all members is obtained with respect to the exemption of relevant obligations, to the extent of the amount of profits at the day when the distribution of profits takes place.

(Restrictions on Right to Obtain Reimbursement from Members)

Article 630 (1) In the cases provided for in paragraph (1) of the preceding Article, if members that received the distribution of profits are without knowledge with respect to the fact that the distributed amount exceeds the amount of the profit at the day when relevant distribution of profit takes place, the members are not obliged to respond to a demand for reimbursement by the members who executed the operations in connection with relevant distribution of profit with respect to relevant distributed amount.

(2) In the cases provided for in paragraph (1) of the preceding Article, creditors of a limited liability company may have the members that received the distribution of profits pay monies equivalent to the distributed amount (or, if relevant distributed amount exceeds the amount which the limited liability company owes to relevant creditors, relevant amount owed).

(3) The provisions of Article 623, paragraph (2) do not apply to members in a limited liability company.

(Liability in Cases of Deficit)

Article 631 (1) If a limited liability company effects the distribution of profits, if a deficit (meaning the amount calculated by the method prescribed by Ministry of Justice Order as the amount of the deficit of the limited liability company; hereinafter the same applies in this paragraph) occurs at the end of the business year that contains the day on which relevant distribution of profit takes place, members that executed the operations in connection with relevant

distribution of profit with respect to relevant distributed amount are jointly and severally liable to relevant limited liability company, together with the members who received relevant distribution of profit, for payment of the amount of that deficit (or, if the amount of relevant deficit exceeds the distributed amount, relevant distributed amount); provided, however, that this does not apply if relevant members who executed relevant operations have proven that they did not fail to exercise due care with respect to the performance of their duties:

- (2) Exemption from the obligations in the preceding paragraph cannot be given without the consent of all members.

#### **Subsection 4 Special Provisions on Contribution Refunds**

(Restrictions on Contribution Refunds)

Article 632 (1) Notwithstanding the provisions of Article 624, paragraph (1), members in a limited liability company may not make the demand under the provisions of the first sentence of that paragraph except if the value of member's contributions will be reduced by changes in the articles of incorporation.

- (2) If the book value of the monies, etc. delivered by a limited liability company to a member by contribution refunds (hereinafter in this Subsection referred to as "amount of contribution refunds") exceeds the amount of surplus as of the day when a demand is made under the provisions of the first sentence of Article 624, paragraph (1) (if the reduction in the stated capital under Article 626, paragraph (1) is effected, the amount of surplus after relevant reduction; hereinafter the same applies in this Subsection), or the reduction in the value of member's contributions in the preceding paragraph, whichever is lower, relevant contribution refunds cannot be effected. In these cases, the limited liability company may reject the demand under the provisions of the first sentence of Article 624, paragraph (1).

(Member's Liability for Contribution Refunds)

Article 633 (1) If a limited liability company effects the contribution refunds in violation of the provisions of the preceding paragraph, the members who executed the operations in connection with relevant contribution refunds are jointly and severally liable to relevant limited liability company, together with the members who received relevant contribution refunds, for payment of the monies in an amount equivalent to relevant amount of contribution refunds; provided, however, that this does not apply if relevant members who executed relevant operations have proven that they did not fail to exercise due care with respect to the performance of their duties:



- (2) Exemption from the obligations under the preceding paragraph may not be given; provided, however, that this does not apply if consent of all members is obtained with respect to the exemption of relevant obligations to the extent of the surplus as at the day when the contribution refunds take place.

(Restrictions on Rights to Obtain Reimbursement from Members)

Article 634 (1) In the cases provided for in paragraph (1) of the preceding Article, if members who received the contribution refund are without knowledge with respect to the fact that the amount of contribution refunds exceeds the amount of surplus at the day when relevant contribution refunds takes place, relevant members do not have the obligation to respond to the demand for reimbursement by the members that executed the operations in connection with relevant contribution refunds with respect to relevant amount of contribution refunds.

- (2) In the cases provided for in paragraph (1) of the preceding Article, creditors of a limited liability company may have the members that received the contribution refunds pay the monies equivalent to the amount of contribution refunds (or, if relevant amount of contribution refunds exceeds the amount that the limited liability company owes to relevant creditors, relevant amount owed).

#### **Subsection 5 Special Provisions on Refund of Equity Interest in Conjunction with Withdrawals**

(Objection of Creditors)

Article 635 (1) If the book value of the monies, etc. delivered by a limited liability company to members through equity interest refund (hereinafter in this Subsection referred to as "partnership interest refund amount") exceeds the surplus as of the day when relevant equity interest refund takes place, creditors of relevant limited liability company may state their objections as to the equity interest refund to relevant limited liability company.

- (2) In cases provided for in the preceding paragraph, the limited liability company must make the public notice of the matters set forth below in Official Gazette and must give notice of the same separately to each known creditor, if any; provided, however, that the period in item (ii) cannot be less than one month (or, if the partnership interest refund amount exceeds the amount calculated by the method prescribed by Ministry of Justice Order as the amount of the net assets of relevant limited liability company, two months):
- (i) the details of the equity interest refund that exceeds relevant surplus; and
  - (ii) a statement to the effect that creditors may state their objections within a certain period of time.

- (3) Notwithstanding the provisions of the preceding paragraph, if, in addition to using Official Gazette, a limited liability company effects the public notice in that paragraph in a manner set forth in Article 939, paragraph (1), item (ii) or (iii) in accordance with the provisions of the articles of incorporation under the provisions of that paragraph, the limited liability company is no longer required to give separate notices under the provisions of the preceding paragraph; provided, however, that this does not apply if the partnership interest refund amount exceeds the amount calculated by the method prescribed by Ministry of Justice Order as the amount of the net assets of relevant limited liability company.
- (4) If the creditors do not raise any objection within the period under paragraph (2), item (ii), relevant creditors are deemed to have approved relevant equity interest refund.
- (5) If the creditors raise objections within the period under paragraph (2), item (ii), the limited liability company must make the payment or provide appropriate security to relevant creditors, or entrust appropriate assets to a qualified trust company with the purpose of assuring the payment to relevant creditors; provided, however, that this does not apply if, if the partnership interest refund amount does not exceed the amount calculated by the method prescribed by Ministry of Justice Order as the net assets of relevant limited liability company, relevant equity interest refund is unlikely to be detrimental to relevant creditors.

(Responsibility of Members Who Execute Operations)

Article 636 (1) If a limited liability company effects an equity interest refund in violation of the provisions of the preceding paragraph, the members who executed the operations in connection with relevant equity interest refund are jointly and severally liable to relevant limited liability company, together with the members who received relevant equity interest refund, for payment of the monies in the amount equivalent to relevant partnership interest refund amount; provided, however, that this does not apply if relevant members who executed the operations regarding the refund of equity interest have proven that they did not fail to exercise due care with respect to the performance of their duties:

- (2) Exemptions from the obligations under the preceding paragraph cannot be given; provided, however, that this does not apply if consent of all members is obtained with respect to the exemption of relevant obligations to the extent of the surplus as at the day when the equity interest refund takes place.

## **Chapter VI Change in Articles of Incorporation**

(Change in Articles of Incorporation)

Article 637 A membership company may change its articles of incorporation with the consent of all members, unless otherwise provided for in the articles of incorporation.

(Change in Kind of Membership Companies by Change in Articles of Incorporation)

Article 638 (1) A general partnership company, by effecting the change in the articles of incorporation set forth in each of the following items, becomes a membership company of the kind specified in each item:

(i) changes in the articles of incorporation that admits members with limited liability: limited partnership company;

(ii) changes of the articles of incorporation to convert some of its members into members with limited liability: limited partnership company;

(iii) changes of the articles of incorporation to convert all of its members into members with limited liability: limited liability company.

(2) A limited partnership company, by effecting the change in the articles of incorporation set forth in each of the following items, becomes a membership company of the kind specified in each of relevant items:

(i) changes in the articles of incorporation to convert all of its members into members with unlimited liability: general partnership company; and

(ii) changes in the articles of incorporation to convert all of its members into members with limited liability: limited liability company.

(3) A limited liability company, by effecting the change in the articles of incorporation set forth in each of the following items, becomes a membership company of the kind specified in each of relevant items:

(i) changes in the articles of incorporation to convert all of its members into members with unlimited liability: general partnership company;

(ii) changes in the articles of incorporation to admit members with unlimited liability: limited partnership company; and

(iii) changes in the articles of incorporation to convert some of its members into members with unlimited liability: limited partnership company.

(Deemed Changes in Articles of Incorporation on Withdrawal of Members of a Limited Partnership Company)

Article 639 (1) If, due to withdrawal of members with limited liability, members of a limited partnership company consist only of members with unlimited liability, relevant limited partnership company is deemed to have effected a change in the articles of incorporation to become an general partnership company.

(2) If, due to withdrawal of members with unlimited liability, members of a

limited partnership company consist only of members with limited liability, relevant limited partnership company is deemed to have effected changes in the articles of incorporation to become a limited liability company.

(Performance of Contributions in Changing Articles of Incorporation)

Article 640 (1) If changes in the articles of incorporation set forth in Article 638, paragraph (1), item (iii) or paragraph (2), item (ii) of the same Article is to be effected, if members of the membership company that effects relevant changes in the articles of incorporation have not performed all or part of the payment in or delivery relating to the contributions to the limited liability company after relevant changes in the articles of incorporation, relevant changes in the articles of incorporation take effect on the day when relevant payment in and delivery have been completed.

(2) If changes in the articles of incorporation to become a limited liability company are deemed to have been effected pursuant to the provisions of paragraph (2) of the preceding Article, if the members have not performed all or part of the payment in or delivery relating to the members' contributions, the payment in or delivery must be completed within one month of the day when relevant changes in the articles of incorporation are deemed to have been effected; provided, however, that this does not apply if changes in the articles of incorporation to become a general partnership company or limited partnership company are effected within relevant period.

## **Chapter VII Dissolution**

(Grounds for Dissolution)

Article 641 A membership company dissolves on the grounds set forth below:

- (i) the expiration of the duration provided for in the articles of incorporation;
- (ii) the grounds for dissolution provided for in the articles of incorporation having arisen;
- (iii) the consent of all members;
- (iv) the absence of all members;
- (v) merger (but only if the membership company disappears in the merger);
- (vi) a ruling for commencement of bankruptcy procedures; or
- (vii) a judgment ordering the dissolution under the provisions of Article 824, paragraph (1) or Article 833, paragraph (2).

(Continuation of membership Companies)

Article 642 (1) If a membership company dissolves on the grounds set forth in items (i) through (iii) of the preceding Article, the membership company may continue in existence by the consent of some or all members until the

completion of the liquidation under the provisions of the following Chapter.

(2) In the case provided for in the preceding paragraph, members who have not given consent to the continuation of the membership company withdraw on the day when it is determined that the membership company will continue in existence.

(Restrictions on Mergers of Dissolved Membership Companies)

Article 643 If a membership company has dissolved, relevant membership company cannot engage in the following acts:

- (i) merger (but only if the membership company survives the merger);
- (ii) succession by absorption-type company split to some or all of the rights and obligations held by another company with respect to that company's business.

## **Chapter VIII Liquidation**

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

(Causes of Commencement of Liquidation)

Article 644 A membership company must go into liquidation in the cases set forth below subject to the provisions of this Chapter:

- (i) if the membership company has dissolved (excluding the cases where membership companies have dissolved on the grounds set forth in Article 641, item (v) and cases where membership companies have dissolved as a result of a ruling for commencement of bankruptcy procedures and relevant bankruptcy procedures have not ended);
- (ii) if a judgment allowing a claim seeking invalidation of the incorporation has become final and binding; or
- (iii) if a judgment which permits a claim seeking rescission of the incorporation has become final and binding.

(Capacity of Liquidating Membership Companies)

Article 645 membership companies that go into liquidation themselves under the provisions of the preceding Article (hereinafter referred to as "liquidating membership companies") are deemed to remain in existence until the completion of liquidation to the extent of the purpose of the liquidation.

### **Section 2 Liquidators**

(Establishment of Liquidators)

Article 646 A liquidating membership company must have one or more liquidators.

(Assumption of Office of Liquidators)

Article 647 (1) The following persons become liquidators of a liquidating membership company:

- (i) a member who executes the operations (excluding the cases where persons set forth in the following item or in item (iii) exist);
  - (ii) a person prescribed by the articles of incorporation; or
  - (iii) a person prescribed by the consent of a majority of members (or, if members who execute the operations are provided for in the articles of incorporation, those members).
- (2) In the absence of a liquidator under the provisions of the preceding paragraph, the court appoints a liquidator in response to the petition by the interested parties.
- (3) Notwithstanding the provisions of the preceding two paragraphs, with respect to a liquidating membership company that has dissolved on the grounds set forth in Article 641, item (iv) or item (vii), the court appoints a liquidator in response to a petition by interested parties or the Minister of Justice or ex officio.
- (4) Notwithstanding the provisions of paragraphs (1) and (2), with respect to a liquidating membership company that has fallen under the cases set forth in Article 644, item (ii) or (iii), the court appoints a liquidator in response to a petition by the interested parties.

(Dismissal of Liquidators)

Article 648 (1) Liquidators (excluding those appointed by the court under the provisions of paragraphs (2) through (4) of the preceding Article) may be dismissed at any time.

- (2) Dismissals under the provisions of the preceding paragraph are determined by a majority of the members unless otherwise provided for in the articles of incorporation.
- (3) If there are significant grounds, the court may dismiss a liquidator in response to a petition by the members or other interested parties.

(Liquidators' Duties)

Article 649 Liquidators perform the following duties:

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

(Execution of Business)

Article 650 (1) A liquidator executes the operations of the liquidating membership company.

- (2) If there are two or more liquidators, the operations of the liquidating membership company are decided by a majority of the liquidators, unless otherwise provided for in the articles of incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, if there are two or more members, transfer of some or all of the business of a liquidating membership company is decided by a majority of the members.

(Relationship between Liquidators and Liquidating Membership Companies)

Article 651 (1) The relationship between a liquidating membership company and its liquidators is governed by the applicable provisions on mandate.

- (2) The provisions of Article 593, paragraph (2), Article 594 and Article 595 apply mutatis mutandis to liquidators. In these cases, "members other than relevant members" in Article 594, paragraph (1) and Article 595, paragraph (1) is deemed to be read as "members (or, if relevant liquidators are members, members other than relevant liquidators)".

(Liquidators' Liability for Damages to Liquidating Membership Companies)

Article 652 If liquidators fail to discharge their duties, the liquidators are jointly and severally liable to compensate the liquidating membership company for losses arising as a result.

(Liquidators' Liability for Damages to Third Parties)

Article 653 If liquidators have acted in bad faith or with gross negligence in discharging their duties, relevant liquidators are jointly and severally liable to compensate losses arising in a third party as a result.

(Special Provisions Where Corporations Are Liquidators)

Article 654 (1) If corporations act as liquidators, relevant corporations must appoint persons who are to perform the duties of relevant liquidators and notify the members of the names and addresses of the persons.

- (2) The provisions of the preceding three articles apply mutatis mutandis to the persons who are to perform the duties of liquidators appointed under the provisions of the preceding paragraph.

(Representatives of Liquidating Membership Companies)

Article 655 (1) A liquidator represents the liquidating membership company; provided, however, that this does not apply if liquidators or other persons who represent the liquidating membership company are otherwise prescribed.

- (2) If there are two or more liquidators referred to in the main clause of the preceding paragraph, each liquidator represents the liquidating membership company individually.

- (3) A liquidating membership company may appoint liquidators who represent the liquidating membership company from among the liquidators pursuant to the articles of incorporation, or through the appointment by the liquidators (excluding those appointed by the court under the provisions of Article 647, paragraph (2) through paragraph (4); hereinafter the same applies in this paragraph) from among themselves pursuant to the provisions of the articles of incorporation.
- (4) If members who execute the operations become liquidators pursuant to the provisions of Article 647, paragraph (1), item (i), if the members that represent the membership company are already prescribed, relevant members that represent the membership company become the liquidators that represent the liquidating membership company.
- (5) If the court appoints liquidators under the provisions of Article 647, paragraph (2) through paragraph (4), the court may prescribe liquidators that represent the liquidating membership company from among those liquidators.
- (6) The provisions of Article 599, paragraph (4) and paragraph (5) apply mutatis mutandis to liquidators that represent the liquidating membership company, and the provisions of Article 603 apply mutatis mutandis to persons that are appointed by a provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act to perform the duties of liquidators or liquidators who represent the liquidating membership company on behalf of them, respectively.

(Commencement of Bankruptcy Procedures with Respect to Liquidating Membership Companies)

- Article 656 (1) If it has become clear that the assets of a liquidating membership company are not sufficient to fully discharge its debts, liquidators must immediately file a petition for the commencement of bankruptcy procedures.
- (2) If a liquidating membership company is subject to a ruling for the commencement of bankruptcy procedures, if liquidators have transferred the administration of the same to the trustee in bankruptcy, liquidators are deemed to have completed their duties.
  - (3) In the cases provided for in the preceding paragraph, if the liquidating membership company has already made payments to creditors or distributions to members, the trustee in bankruptcy may retrieve the same.

(Remuneration for Liquidators Appointed by the Court)

Article 657 If the court has appointed a liquidator under the provisions of Article 647, paragraphs (2) through (4), the court may prescribe the amount of the remuneration that the liquidating membership company pays to relevant liquidator.



### **Section 3 Inventory of Property**

#### **(Preparation of Inventory of Property)**

Article 658 (1) Liquidators must investigate the current status of the property of the liquidating membership companies and prepare, pursuant to the provisions of Ministry of Justice Order, an inventory of property and the balance sheet as of the day when the liquidating membership companies fell under cases set forth in any of the items of Article 644 (hereinafter in this Section referred to as "inventory of property") and notify each member of the details of the same, without delay after assuming office.

(2) liquidating membership companies must retain its inventory of property from the time of the preparation of relevant inventory of property until the registration completion of the liquidation at the location of its head office.

(3) liquidating membership companies must report every month the current status of the liquidation at the request of the members.

#### **(Orders to Submit Inventory of Property)**

Article 659 The court may, in response to a petition or ex officio, order parties to a lawsuit to submit the inventory of property, in whole or in part.

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

#### **(Public Notices to Creditors)**

Article 660 (1) A liquidating membership company (limited to limited liability companies; hereinafter the same applies in this paragraph and the following Article) must, without delay after having fallen under a case set forth in any item of Article 644, give public notice in Official Gazette to the creditors of relevant liquidating membership companies to the effect that creditors should state their claims during a certain period of time and must give notice of the same separately to each known creditor, if any; provided, however, that the period cannot be less than two months.

(2) The public notice pursuant to the provisions of the preceding paragraph must contain a notation to the effect that relevant creditors will be excluded from the liquidation unless they state their claims during that period of time.

#### **(Restrictions on Performance of Obligations)**

Article 661 (1) A liquidating membership company cannot perform its obligations during the period of time under paragraph (1) of the preceding Article. In these cases, a liquidating membership company cannot be exempted from the liability arising from its failure to perform.

(2) Notwithstanding the provisions of the preceding paragraph, even during the period of time under paragraph (1) of the preceding Article, a liquidating membership company may, with the permission of the court, perform its obligations relating to minor claims, claims secured by security interests over the assets of the liquidating membership company, or other claims unlikely to be detrimental to other creditors even if performed. In these cases, if there are two or more liquidators, the petition for relevant permission must be made with the consent of all of them.

(Performance of Obligations Relating to Conditional Claims)

Article 662 (1) A liquidating membership company may perform obligations relating to conditional claims, claims the duration of indeterminate duration or other claims of indeterminate amount. In these cases, a petition for the appointment of an appraiser must be filed with the court in order to have the claims evaluated.

(2) In the cases provided for in the preceding paragraph, a liquidating membership company must perform its obligations relating to the claims under that paragraph in accordance with the evaluation by the appraiser under that paragraph.

(3) The expenses of the procedures for the appointment of the appraiser under paragraph (1) are borne by the liquidating membership company. The same applies to the expense of summonses and questions for the purpose of appraiser's evaluation.

(Demand for Performance of Contributions)

Article 663 If the current assets of a liquidating membership company are not sufficient to fully discharge its debts, if there are members who have not performed all or part of their contributions, relevant liquidating membership company may have the members make their contributions, notwithstanding the provisions of the articles of incorporation relating to those contributions.

(Restrictions on Distribution of Residual Assets before Performance of Obligations)

Article 664 A liquidating membership company cannot distribute its assets to its members until after performance of the obligations of relevant liquidating membership company; provided, however, that this does not apply if assets regarded as necessary for the performance of obligations relating to a claim that is the subject of dispute as to its existence or otherwise or as to its amount have been withheld.

(Exclusion from Liquidation)

- Article 665 (1) Creditors (excluding known creditors) of a liquidating membership company; (limited to limited liability companies; hereinafter the same applies in this Article) who fail to state their claims during the period under Article 660, paragraph (1) are excluded from the liquidation.
- (2) Creditors who are excluded from the liquidation pursuant to the provisions of the preceding paragraph may demand the performance solely with respect to the residual assets that are not distributed.
- (3) If residual assets of a liquidating membership company have been distributed to some members, the assets necessary for the distribution to members other than those members in the same proportion as that applied for the distribution received by relevant members are deducted from the residual assets under the preceding paragraph.

### **Section 5 Distribution of Residual Assets**

(Proportion of Distribution of Residual Assets)

Article 666 If there are no provisions in the articles of incorporation with respect to the proportions of the distribution of residual assets, the proportions are prescribed in accordance with the value of each member's contribution.

### **Section 6 End of Liquidation Administrations**

- Article 667 (1) If the administration of a liquidation has ended, the liquidating membership company must carry out the accounting relating to the liquidation and obtain the approval of the members without delay.
- (2) If members do not raise objections to the accounting under the preceding paragraph within one month, the members are deemed to have approved the accounting; provided, however, that this does not apply if there is any misconduct regarding the execution of the liquidators' duties.

### **Section 7 Voluntary Liquidation**

(Method to Dispose of Assets)

- Article 668 (1) A membership company (limited to a general partnership company and a limited partnership company; hereinafter the same applies in this Section) may prescribe, by the articles of incorporation or by the consent of all members, the method of the disposition of the assets of relevant membership company if relevant membership company is dissolved on the grounds set forth in Article 641, items (i) through (iii).
- (2) The provisions of Section 2 through the immediately preceding Section do not apply to membership companies that have prescribed the method of the

disposition of assets under the preceding paragraph.

(Preparation of Inventory of Property)

Article 669 (1) If a membership company that determines the method of the disposition of assets under paragraph (1) of the preceding Article is dissolved on the grounds set forth in Article 641, items (i) through (iii), the liquidating membership company (limited to a general partnership company and a limited partnership company; hereinafter the same applies in this Section) must prepare, pursuant to the provisions of Ministry of Justice Order, the inventory of property and the balance sheet as of the day of the dissolution within two weeks after the day of the dissolution.

(2) If a membership company that has not prescribed the method of the disposition of assets under paragraph (1) of the preceding Article is dissolved on the grounds set forth in Article 641, items (i) through (iii), if it prescribes the method of the disposition of assets in that paragraph after the dissolution, the liquidating membership company must prepare, pursuant to the provisions of Ministry of Justice Order, an inventory of property and the balance sheet as of the day of the dissolution within two weeks of the day of the prescribing of the method of the disposition of assets.

(Objection of Creditors)

Article 670 (1) If a membership company has prescribed the method of the disposition of assets under Article 668, paragraph (1), creditors of the liquidating membership company after the dissolution thereof may state their objections to the method of the disposition of assets to relevant liquidating membership company.

(2) In cases provided for in the preceding paragraph, the liquidating membership company must, within two weeks from the day of the dissolution (or, in the cases provided for in paragraph (2) of the preceding Article, of the day when relevant method of disposition of the assets is prescribed), give public notice of the matters set forth below in Official Gazette and must give notice of the same separately to each known creditor, if any; provided, however, that the period under item (ii) cannot be less than one month:

- (i) a statement that liquidation will be effected in accordance with the method of the disposition of assets under Article 668, paragraph (1); and
- (ii) a statement to the effect that creditors may state their objections within a certain period of time.

(3) Notwithstanding the provisions of the preceding paragraph, if in addition to using Official Gazette, a liquidating membership company effects public notice under that paragraph in a manner set forth in Article 939, paragraph (1), item (ii) or (iii) in accordance with the provisions of the articles of incorporation

under the provisions of that paragraph, the liquidating membership company is longer be required to give separate notices under the provisions of the preceding paragraph.

- (4) If the creditors do not raise objections within the period under paragraph (2), item (ii), relevant creditors are deemed to have approved relevant disposition of assets.
- (5) If the creditors raise objections within the period under paragraph (2), item (ii), the liquidating membership company must make payment to or provide appropriate security to relevant creditors, or entrust appropriate assets to a qualified trust company for the purpose of assuring the payment to relevant creditors.

(Consents of Creditors That Have Attached Equity Interest)

Article 671 (1) If a membership company prescribes the method of the disposition of assets under Article 668, paragraph (1), if there are creditors that have attached the equity interest of members, consent of those creditors must be obtained if the liquidating membership company after the dissolution intends to dispose of its assets.

- (2) If the liquidating membership company under the preceding paragraph disposes of its assets in violation of the provisions of that paragraph, creditors that attached the equity interests of members may demand that relevant liquidating membership company pay an amount equivalent to those equity interests.

### **Section 8 Retention of Accounting Materials**

Article 672 (1) A liquidator (or, if the method of the disposition of assets in Article 668, paragraph (1) is prescribed, a member that represents the liquidating membership company) must retain the books of the liquidating membership company as well as any material data regarding the business and liquidation of the same (hereinafter in this Article referred to as "accounting materials") for a period of ten years from the time of the registration of completion of the liquidation at the location of head office of the liquidating membership company.

- (2) Notwithstanding the provisions of the preceding paragraph, if a person who retains the accounting materials has been prescribed by the articles of incorporation or by a majority of the members, that person must retain the accounting materials for a period of ten years from the time of registration of the completion of the liquidation at the location of head office of the liquidating membership company.
- (3) The court may, in response to a petition by interested parties, appoint a

person to act on behalf of the liquidator in paragraph (1) or the person who retains the accounting materials under the provisions of the preceding paragraph in the retaining the accounting materials. In these cases, the provisions of the preceding two paragraphs do not apply.

- (4) The person appointed pursuant to the provisions of the preceding paragraph must retain the accounting materials for a period of ten years from the time of the registration of the completion of the liquidation at the location of head office of the liquidating membership company.
- (5) The expenses regarding the procedures for the appointment under the provisions of paragraph (3) are borne by the liquidating membership company.

### **Section 9 Extinctive Prescription of Member's Liability**

Article 673 (1) The liability of the member in Article 580 is extinguished in relation to the creditors of the liquidating membership company who do not state their claims, or do not give advance notice of their claims within five years from the day of the registration of the dissolution at the location of head office of the liquidating membership company, when five years have elapsed from the day of the registration.

- (2) Creditors of the liquidating membership company may demand that the liquidating membership company make the payment, even after the lapse of the period under the preceding paragraph, if there are residual assets not distributed to members.

### **Section 10 Exceptions to Application**

(Exceptions to Application)

Article 674 The provisions set forth below do not apply to liquidating membership company:

- (i) Chapter IV, Section 1;
- (ii) Article 606, Article 607, paragraph (1) (excluding items (iii) and (iv)) and Article 609;
- (iii) Chapter V, Section 3 (excluding Article 617, paragraph (4), Article 618 and Article 619) through Section 6 and Section 7, Subsection 2; and
- (iv) Article 638, paragraph (1), item (iii) and paragraph (2), item (ii) of the same Article.

(Special Provisions on Withdrawal of Members Due to Inheritances and Mergers)

Article 675 If a member in a liquidating membership company dies or disappears as a result of the merger, the heirs or other general successors of the member

may succeed to the equity interest of relevant member even in the absence of the provisions of the articles of incorporation under Article 608, paragraph (1). In these cases, the provisions of paragraphs (4) and (5) of that Article apply mutatis mutandis.

## **Part IV Bonds**

### **Chapter I General Provisions**

(Determination of Matters on Bonds for Subscription)

Article 676 Whenever a company intends to solicit persons who subscribe for the bonds it issues, the company must determine the following matters with respect to the bonds for subscription (meaning the bonds that will be allotted to the persons who subscribed for those bonds in response to relevant solicitation; hereinafter the same applies in this Part):

- (i) the total amount of bonds for subscription;
- (ii) the amount of each bond for subscription;
- (iii) the interest rate for the bonds for subscription;
- (iv) the method and due date for the redemption of the bonds for subscription;
- (v) the method and due date for payment of the interest;
- (vi) if bond certificates are to be issued, the statement to that effect;
- (vii) if it is to be arranged that bondholders may not make the demand under the provisions of Article 698, in whole or in part, the statement to that effect;
- (vii)-2 if a bond administrator is not to be designated, the statement to that effect;
- (viii) if it is to be arranged that bond administrator may perform the act set forth in Article 706, paragraph (1), item (ii) in the absence of the resolution at the bondholders meeting, the statement to that effect;
- (viii)-2 if a bond administration assistant is to be appointed, the statement to that effect;
- (ix) the amount to be paid in for each bond for subscription (meaning the amount of monies to be paid in in exchange for each bond for subscription; hereinafter the same applies in this Chapter) or the minimum amount thereof, or the method for calculating those amounts;
- (x) the due date for payment in of the monies in exchange for the bond for subscription;
- (xi) if it is to be arranged that the issue of the bonds for subscription will not be carried out in their entirety if the persons to whom the bonds for subscription will be allotted are not prescribed for the total amount of the bonds by a certain day, the statement to that effect and that certain day; and
- (xii) beyond what is set forth in each of the preceding items, matters prescribed by Ministry of Justice Order.

(Applications for Bonds for Subscription)

Article 677 (1) A company must notify persons who intend to subscribe for bonds for subscription in response to the solicitation under the preceding paragraph of the matters set forth in the following items:

- (i) the trade name of the company;
  - (ii) the matters set forth in each item of the preceding Article relating to relevant solicitation;
  - (iii) beyond what is set forth in the preceding two items, matters prescribed by Ministry of Justice Order.
- (2) A person who intends to apply the subscription for the bonds for subscription in response to the solicitation in the preceding paragraph must deliver a document that gives the following information:
- (i) the name and address of the person applying;
  - (ii) the amount of the bonds for subscription for which the person intends to subscribe and the number of bonds for each amount; and
  - (iii) if the company has prescribed the minimum amount under item (ix) of the preceding Article, the preferred amount for payment.
- (3) A person who submits an application in paragraph (1) may, in lieu of delivering a document as referred to in that paragraph, provide the information that is required to be detailed in the document referred to in that paragraph by electronic or magnetic means, with the approval of the company and pursuant to the provisions of Cabinet Order. In these cases, the person who submitted the application is deemed to have delivered the document in that paragraph.
- (4) The provisions of paragraph (1) do not apply if the company has issued the prospectus prescribed in Article 2, paragraph (10) of the Financial Instruments and Exchange Act that states the matters set forth in each item of that paragraph to a person who intends to submit the application under paragraph (1), and in other cases that are prescribed by Ministry of Justice Order as the cases where it is unlikely that the protection of persons who intend to submit the application for the subscription for bonds for subscription will be compromised.
- (5) If there are changes in the matters set forth in any item of paragraph (1), the company must immediately notify persons who have submitted applications in paragraph (2) (hereinafter in this Subsection referred to as "applicants") thereof and of the matters so changed.
- (6) It is sufficient for a notice or letters of demand to an applicant to be sent by the company to the address under paragraph (2), item (i) (or, if the applicant notifies the company of a different place or contact address for the receipt of notices or letters of demand, to the place or contact address).



(7) The notice or letters of demand referred to in the preceding paragraph are deemed to have arrived at the time when the notice or letter of demand should normally have arrived.

(Allotment of Bonds for Subscription)

Article 678 (1) A company must specify the persons to whom bonds for subscription will be allotted from among the applicants, and the amount, and the number for each amount, of the bonds for subscription to be allotted to those persons. In these cases, the company may reduce the number for each amount of bonds for subscription that are to be allotted to relevant applicants below the number under item (ii), paragraph (2) of the preceding Article.

(2) The company must notify the applicants, no later than the day immediately preceding the date referred to in Article 676, item (x) of the amount, and the number for each amount, of the bonds for subscription that will be allotted to the applicant.

(Special Provisions on Subscription and Allotment of Bonds for Subscription)

Article 679 The provisions of the preceding two Articles do not apply if a person who intends to subscribe for the bonds for subscription executes a contract for the subscription for the total amount of those bonds.

(Holders of Bonds for Subscription)

Article 680 The person set forth in the following items is to be the holders of the bonds for subscription provided for in each of items:

- (i) applicants: the bonds for subscription allotted by the company; or
- (ii) a person who subscribed for all amount of the bonds for subscription under the contract referred to in the preceding Article: the bonds for subscription which the person has subscribed.

(Bond Register)

Article 681 A company must, without delay after the day when bonds are issued, prepare a bond register and enter or record the following information (hereinafter referred to as "information required to be entered in the bond register") in that register:

- (i) the matters set forth in Article 676, items (iii) through (xiii)-2 and other matters prescribed by Ministry of Justice Order as the matters that specify the features of the bonds (hereinafter in this Part referred to as "class");
- (ii) for each class, the total amount of the bonds and the amount of each bond;
- (iii) the amount of the monies paid in in exchange for each bond, and the day of the payment in;
- (iv) the name and address of the bondholders (excluding the holders of bearer

- bonds (meaning bonds for which bearer form bond certificates are issued; hereinafter the same applies in this Part));
- (v) the days when the bondholders in the preceding item acquired each bond;
  - (vi) if bond certificates are issued, the serial number of the bond certificates, the days of issue, whether the bond certificates are registered certificates or bearer certificates, and the number of the bearer bond certificates;
  - (vii) beyond what is set forth in the preceding items, matters prescribed by Ministry of Justice Order.

(Delivery of Documents Showing Information Required to Be Entered in the Bond Register)

- Article 682 (1) A bondholder (excluding the holders of bearer bonds) may file a request with the company that issued the bonds (hereinafter in this Part referred to as "bond-issuing company") to be issued a document showing the information required to be entered in the bond register which has been entered or recorded in the bond register with respect to that bondholder, or to be provided with an electronic or magnetic record in which the information required to be entered in the bond register has been recorded.
- (2) The document referred to in the preceding paragraph must be affixed with the signature, or name and seal, of the representative of the bond-issuing company.
  - (3) With respect to an electronic or magnetic record referred to in paragraph (1), the representative of the bond-issuing company must implement measures in lieu of the affixation of signature, or name and seal prescribed by Ministry of Justice Order.
  - (4) The provisions of the preceding three paragraphs do not apply if there are provisions to the effect that bond certificates are issued for the bonds.

(Bond Register Administrator)

Article 683 A company may appoint a bond register administrator (meaning a person to prepare, keep, and otherwise administer the bond register on behalf of the company; the same applies hereinafter), and may entrust that administrator with administering the same.

(Keeping and Making Available for Inspection of the Bond Register)

- Article 684 (1) A bond-issuing company must keep the bond register at its head office (or, if it has a bond register administrator, at its business office).
- (2) The bondholders and other persons prescribed by Ministry of Justice Order may make the following requests at any time during the business hours of the bond-issuing company. In these cases, the reasons for relevant request must be disclosed:
    - (i) if the bond register is prepared in writing, the request for the inspection or

- copying of the document;
- (ii) if the bond register has been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.
- (3) If the request referred to in the preceding paragraph is made, the bond-issuing company may not refuse the request unless:
- (i) the person who made the request for other purposes than the research on securing or exercising the person's rights;
  - (ii) the person who made the request in order to notify the fact learned by inspecting or copying the bond register to third parties for profit; or
  - (iii) the person who makes the request is a person who has notified the facts learned by inspecting or copying the bond register, to third parties for profit in the immediately preceding two years.
- (4) If a bond-issuing company is a stock company, if it is necessary for the purpose of exercising the rights of a member of the parent company of relevant bond-issuing company, the relevant member of the parent company may, with the permission of the court, make the request in each item of paragraph (2) with respect to the bond register of the bond-issuing company. In these cases, the reasons of relevant request must be disclosed.
- (5) The court may not grant the permission in the preceding paragraph if grounds provided for in any item of paragraph (3) apply to the member of the parent company in the preceding paragraph.

(Notices to Bondholders)

- Article 685 (1) It is sufficient for a notice or demand letter to bondholders to be sent by a bond-issuing company to the address of relevant bondholders which has been entered or recorded in the bond register (or, if relevant bondholders notify the bond-issuing company of a different place or contact address for receipt of notices or demand letters, to the place or contact address).
- (2) The notices or demand letters referred to in the preceding paragraph are deemed to have arrived at the time when the notice or demand letter should normally have arrived.
- (3) If a bond is co-owned by two or more persons, the co-owners must specify one person to receive the notices or demand letters sent by the bond-issuing company to bondholders and notify relevant bond-issuing company of the name of that person. In these cases, that person is deemed to be the bondholder and the provisions of the preceding two paragraphs apply *mutatis mutandis*.
- (4) If there is no notice by co-owners under the provisions of the preceding paragraph, it is sufficient for a notice or demand letter sent by a bond-issuing company to the co-owners of the bondholders if it is sent to one of them.

(5) The provisions of the preceding paragraphs apply mutatis mutandis to the cases where, when the notice in Article 720, paragraph (1) is given, a document is delivered or matters to be stated in relevant document are provided to the bondholders by an electronic or magnetic means. In these cases, the phrase "to have arrived" in paragraph (2) is deemed to be replaced with "to have been effected by delivery of relevant documents or the provision of relevant matters by electronic or magnetic means".

(Exercise of Rights by Co-Owners)

Article 686 If a bond is co-owned by two or more persons, the co-owners may not exercise their rights in relation to relevant bond unless they specify one person to exercise the rights in relation to relevant bond, and notify the company of the name of that person; provided, however, that this does not apply if the company has agreed to the exercise of relevant rights.

(Transfer of bonds with Issued Certificates)

Article 687 Transfer of bonds for which there are provisions to the effect that bond certificates are issued does not become effective unless bond certificates relating to relevant bonds are delivered.

(Perfection of the Transfer of bonds)

Article 688 (1) The transfer of bonds cannot be asserted against the bond-issuing company and other third parties unless the name and addresses of the persons who acquire those bonds is stated or recorded in the bond register.

(2) For the purpose of the application of the provisions of the preceding paragraph if there are provisions to the effect that bond certificates are issued with respect to relevant bonds, the term "the bond-issuing company and other third parties" in that paragraph is deemed to be replaced with "the bond-issuing company".

(3) The provisions of the preceding two paragraphs do not apply to bearer bonds.

(Presumption of Rights)

Article 689 (1) A possessor of bond certificates is presumed to be the lawful owner of the right in relation to the bonds for relevant bond certificates.

(2) A person who takes the delivery of bond certificates acquires the rights in relation to the bonds for relevant bond certificates; provided, however, that this does not apply if that person has acted in bad faith or with gross negligence.

(Entering or Recording Information Required to Be Entered in the Bond Register without a Request from Bondholders)

Article 690 (1) In a case as provided in one of the following items, a bond-issuing company must enter or record in the bond register the information that is required to be entered in the bond register with respect to the bondholder referred to in that item:

- (i) if the bondholders have acquired the bonds of relevant bond-issuing company;
- (ii) if the bondholders have disposed of own bonds held by the bond-issuing company.

(2) The provisions of the preceding paragraph do not apply to any bearer bond.

(Entering or Recording Information Required to Be Entered in the Bond Register as Requested by Bondholders)

Article 691 (1) A person (other than the bond-issuing company in question) that has acquired bonds from any person other than the bond-issuing company may request that relevant bond-issuing company enter or record in the bond register the information that is required to be entered in the bond register with respect to relevant bonds.

(2) Except for the cases prescribed by Ministry of Justice Order as the case of no likelihood of harm to interested parties, requests under the provisions of the preceding paragraph must be made jointly with the person entered or recorded in the bond register as the holder of the bonds so acquired, or the person's general successor including the person's heir.

(3) The provisions of the preceding two paragraphs do not apply to any bearer bond.

(Pledging bonds with Issued Certificates)

Article 692 Pledging bonds for which there are provisions to the effect that bond certificates are issued does not become effective, unless bond certificates relating to relevant bonds are delivered.

(Perfection of Pledging bonds)

Article 693 (1) Pledging bonds cannot be asserted against the bond-issuing company and other third parties unless the names and addresses of the pledgees are entered or recorded in the bond register.

(2) Notwithstanding the provisions of the preceding paragraph, a pledgee of bonds for which there are provisions to the effect that bond certificates are issued may not assert the pledge against the bond-issuing company and other third parties unless the pledgee is in continuous possession of the bond certificates relating to relevant bonds.

(Entries in the Bond Register Regarding Pledges)

Article 694 (1) A person pledging bonds may request the bond-issuing company to enter or record the following information in the bond register:

- (i) the name and address of the pledgee;
- (ii) the bond underlying the pledge.

(2) The provisions of the preceding paragraph do not apply if there are provisions to the effect that bond certificates will be issued.

(Delivery of Documents Showing Information That Has Been Entered in the Bond Register Regarding Pledges)

Article 695 (1) A pledgee whose information as set forth in each of the items of paragraph (1) of the preceding Article has been entered or recorded in the bond register may file a request with the bond-issuing company to be issued a document showing the information set forth in each of the items of that paragraph which has been entered or recorded in the bond register with respect to that pledgee, or to be provided with the electronic or magnetic record in which that information has been recorded.

(2) The documents in the preceding paragraph must be affixed with the signature, or name and seal, of a representative of the bond-issuing company.

(3) With respect to the electronic or magnetic record in paragraph (1), the representative of the bond-issuing company must implement measures in lieu of the affixation of signature, or name and seal prescribed by Ministry of Justice Order.

(Perfection Requirements for Bonds Belonging to Trust Properties)

Article 695-2 (1) With regard to bonds, it may not be asserted against a bond-issuing company or other third party that the bonds belong to the trust property unless it is entered or recorded in the bond register that the bonds belong to the trust property.

(2) If bonds held by bondholders under Article 681, item (iv) belong to the trust property, the bondholders may request the bond-issuing company to enter or record this in the bond register.

(3) For the purpose of application of the provisions of Article 682, paragraph (1) and Article 690, paragraph (1) to cases where entry or record is made in the bond register pursuant to the provisions of the provisions of the preceding paragraph, "the information required to be entered in the bond register which has been entered or recorded in the bond register with respect to that bondholder" in Article 682, paragraph (1) is deemed to be replaced with "the information required to be entered in the bond register which has been entered or recorded in the bond register with respect to that bondholder (including the fact that bonds held by the bondholder belong to the trust property) and "information that is required to be entered in the bond register with respect to

the bondholder referred to in that item" in Article 690, paragraph (1) is deemed to be replaced with "information that is required to be entered in the bond register with respect to the bondholder referred to in that item register (including the fact that bonds held by the bondholder belong to the trust property)".

(4) The provisions of the preceding three paragraphs do not apply to bonds for which there are provisions to the effect that bond certificates are not issued.

(Issuing of Bond Certificates)

Article 696 A bond-issuing company must, without delay after the day of a bond issue for which there are provisions to the effect that bond certificates are issued, issue bond certificates to represent those bonds.

(Matters to Be Stated on Bond Certificates)

Article 697 (1) A bond-issuing company must state the following matters and the serial number on a bond certificate, and the representative of the bond-issuing company must affix the representative's signature, or name and seal:

- (i) the trade name of the bond-issuing company;
- (ii) the amount of bonds relating to relevant bond certificates;
- (iii) the class of bonds relating to relevant bond certificates.

(2) Coupons may be attached to bond certificates.

(Conversions between Registered Bonds and Bearer Bonds)

Article 698 Holders of bonds for which bond certificates are issued may demand at any time that the bond-issuing company convert their registered bond certificates into bearer bond certificates, or convert their bearer bond certificates into registered bond certificates, except if there is an arrangement under provisions with respect to the matters set forth in Article 676, item (vii) that relevant conversion is not possible.

(Loss of Bond Certificates)

Article 699 (1) Bond certificates may be invalidated pursuant to the public notification procedures under Article 100 of the Non-Contentious Cases Procedures Act.

(2) Persons who have lost bond certificates may not request the reissuing of their bond certificates until after they obtain the invalidation provided for in Article 106, paragraph (1) of the Non-Contentious Cases Procedures Act.

(Redemption of Bonds Where Coupons Missing)

Article 700 (1) If a bond-issuing company redeems a bond for which a bond certificate is issued before it matures, if a coupon attached to the bond is

missing, the bond-issuing company must deduct the amount of the claim for interest on the bond indicated on coupon from the redemption amount; provided, however, that this does not apply if relevant claim has fallen due.

- (2) The possessor of the coupon in the preceding paragraph may demand at any time that the bond-issuing company pay the amount that must be deducted under the provisions of that paragraph in exchange for the coupon.

(Extinctive Prescription of Right to Claim Redemption of Bonds)

Article 701 (1) The right to claim the redemption of bonds will be extinguished by prescription if not exercised for ten years from the time that this right can be exercised.

- (2) The right to claim interest on bonds and the right to claim under the provisions of paragraph (2) of the preceding Article will be extinguished by prescription if not exercised for five years from the time that these rights can be exercised.

## **Chapter II Bond Administrators**

(Establishment of Bond Administrators)

Article 702 If a company will issue bonds, the company must specify a bond administrator and entrust the receipt of payments, the preservation of rights of claim on behalf of the bondholders and other administration of the bonds to that manager; provided, however, that this does not apply if the amount of each bond is 100,000,000 yen or more, and other cases prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of bondholders will be compromised.

(Qualifications of Bond Administrators)

Article 703 A bond administrator must be a person set forth as follows:

- (i) a bank;
- (ii) a trust company; and
- (iii) beyond what is set forth in the preceding two items, a person prescribed by Ministry of Justice Order as a person equivalent to the above.

(Obligations of Bond Administrators)

Article 704 (1) Bond administrators must perform the administration of bonds in a fair and sincere manner on behalf of the bondholders.

- (2) Bond administrators must manage the bonds with due care of a prudent manager to the bondholders.

(Bond Administrator's Power of Representation)



Article 705 (1) A manager has authority to do all judicial and non-judicial acts on behalf of bondholders that are necessary to receive payment of claims relating to the bonds or to preserve the realization of claims relating to the bonds.

- (2) If a bond administrator has received payment under the preceding paragraph, the bondholders may claim payment of the redeemed amount of bonds and interest from the bond administrator. In these cases, if there are provisions to the effect that bond certificates are issued, the bondholders must claim the payment of relevant redeemed amount in exchange for the bond certificates, and the payment of relevant interest in exchange for the coupons.
- (3) The right to claim under the provisions of the first sentence of the preceding paragraph will be extinguished by prescription if not exercised for ten years from the time that this right can be exercised.
- (4) If it is necessary for a bond administrator to carry out the acts under paragraph (1) with respect to bonds that the bond administrator has been entrusted to administer, the bond administrator may, with the permission of the court, investigate the status of the business and assets of the bond-issuing company.

Article 706 (1) A bond administrator may not carry out the following acts without a resolution at a bondholders meeting; provided, however, that this does not apply with respect to the act set forth in item (ii) if there are provisions with respect to the matters set forth in Article 676, item (viii):

- (i) with respect to all of the bonds, granting extension for the payment of those bonds, or releasing, or settling those obligations or liability arising from the failure to perform the obligations of those bonds (excluding the acts set forth in the following item);
  - (ii) carrying out procedural actions with respect to the all of the bonds, or any action involved in bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or proceedings for special liquidation (excluding the act under paragraph (1) of the preceding Article).
- (2) If a bond administrator carries out the acts set forth in item (ii) of the preceding paragraph without a resolution at a bondholders meeting under the provisions of the proviso to that paragraph, the bond administrator must, without delay, give public notice to that effect and separate notice thereof to each known bondholder.
  - (3) The public notice under the provisions of the preceding paragraph must be made in accordance with the means of public notice used by the bond-issuing company; provided, however, that, if that method is electronic public notice, relevant public notice must be effected by publication in Official Gazette.
  - (4) If it is necessary for a bond administrator to carry out the acts set forth in

each item of paragraph (1) with respect to bonds that the bond administrator has been entrusted to administer, the bond administrator may, with the permission of the court, investigate the status of the business and assets of the bond-issuing company.

(Appointment of Special Agent)

Article 707 If there is conflict between the interests of the bondholders and those of the bond administrator, if it is necessary to carry out judicial and non-judicial acts on behalf of bondholders, the court must, in response to a petition by the bondholders meeting, appoint a special agent.

(Method of Acts of bond Administrators)

Article 708 If a bond administrator or a special agent under the preceding Article performs judicial or non-judicial acts on behalf of bondholders, they need not identify individual bondholders.

(Special Provisions for Multiple Bond Administrators)

Article 709 (1) If there are two or more bond administrators, these persons must perform the acts within their authority jointly.

(2) In the cases provided for in the preceding paragraph, if bond administrators have accepted payments referred to in Article 705, paragraph (1), the bond administrators are jointly and severally liable for payment of the amount so tendered.

(Liability of Bond Administrator)

Article 710 (1) If bond administrators commit acts in violation of this Act or resolutions at the bondholders meeting, they are jointly and severally liable to compensate bondholders for losses arising as a result.

(2) A bond administrator is liable to compensate bondholders for losses if the bond administrator commits any of the following acts after, or within three months prior to, the bond-issuing company's having failed to redeem bonds or pay interest on the same, or having suspended payments; provided, however, that this does not apply if relevant bond administrator has proven that the bond administrator did not fail to manage the bonds with due diligence, or that relevant losses were not caused by relevant acts:

- (i) accepting, with respect to an obligation relating to a claim of relevant bond administrator, the tender of a security or an act regarding the extinguishment of the obligation from the bond-issuing company;
- (ii) transferring a claim of relevant bond administrator to a person who has a special relationship prescribed by Ministry of Justice Order with relevant bond administrator (limited to cases where the person who has relevant

- special relationship has accepted with respect to an obligation relating to relevant claim, the tender of a security or an act regarding the extinguishment of the obligation, from the bond-issuing company); or
- (iii) if relevant bond administrator has a claim against the bond-issuing company, entering into a contract with the bond-issuing company for disposal of assets of the bond-issuing company, or entering into a contract under which the bond administrator assumes the obligations that a person owes to the bond-issuing company, in each case for the sole purpose of setting off obligations to the bond-issuing company that the bond administrator assumes under the contract against the bond administrator's claim against the bond-issuing company;
  - (iv) if relevant bond administrator has an obligation to the bond-issuing company, accepting the transfer of a claim against the bond-issuing company and setting off relevant obligation against relevant claim.

#### (Resignation of Bond Administrators)

- Article 711 (1) A bond administrator may resign with the consent of the bond-issuing company and the bondholders meeting. In these cases, if there is no other bond administrator, relevant bond administrator must specify a bond administrator to succeed to the administration of the bonds in advance.
- (2) Notwithstanding the provisions of the preceding paragraph, a bond administrator may resign on any ground provided for in the entrustment contract under the provisions of Article 702; provided, however, that this does not apply if the contract does not have provisions regarding bond administrators to succeed to the administration of the bonds.
  - (3) Notwithstanding the provisions of paragraph (1), a bond administrator may resign with the permission of the court if there are unavoidable reasons.

#### (Liability of Bond Administrators after Resignation)

Article 712 The provisions of Article 710, paragraph (2) apply mutatis mutandis to a person who resigned as bond administrator under the provisions of paragraph (2) of the preceding Article after, or within three months prior to, the bond-issuing company's having failed to redeem bonds or pay interest, or having suspended payments.

#### (Dismissal of Bond Administrators)

Article 713 The court may dismiss a bond administrator in response to a petition by the bond-issuing company or a bondholders meeting if the bond administrator has violated the bond administrator's obligations, if the bond administrator is not fit to handle the administration for which the bond administrator is responsible, or if there are other justifiable grounds.

(Succession to Bond Administrator's Administration of Bonds)

Article 714 (1) If a bond administrator has fallen under any of the following circumstances, if there is no other bond administrator, the bond-issuing company must specify a bond administrator to succeed to the administration of the bonds, and entrust the administration of the bonds to the person on behalf of the bondholders. In these cases, the bond-issuing company must convene a bondholders meeting without delay in order to obtain the consent of the same, and if the consent cannot be obtained, must file a petition for the permission of the court in lieu of that consent:

(i) if the bond administrator is no longer a person set forth in any item of Article 703;

(ii) if the bond administrator has resigned under the provisions of Article 711, paragraph (3);

(iii) if the bond administrator has been dismissed under the provisions of the preceding paragraph; or

(iv) if the bond administrator has been dissolved.

(2) In the cases provided for in the first sentence of the preceding paragraph, if a bond-issuing company does not convene a meeting under the provisions of the second sentence of that paragraph or file a petition under the second sentence of that paragraph within two months of the day on which the bond-issuing company fell under any of the circumstances in each item of that paragraph, the bond-issuing company will forfeit the benefit of time in relation to the total amount of relevant bonds.

(3) In the cases provided for in the first sentence of paragraph (1), if there are unavoidable reasons, interested parties may petition the court for the appointment of a bond administrator to succeed to the administration of the bonds.

(4) If a bond-issuing company has specified the bond administrator to succeed to the administration of the bonds pursuant to the provisions of the first sentence of paragraph (1) (excluding cases where the consent of a bondholders meeting has been obtained), or if a bond administrator has been appointed to succeed to the administration of the bonds under the provisions of the preceding paragraph, the bond-issuing company must, without delay, give public notice to that effect and separate notice thereof to each known bondholder.

## **Chapter II-2 Bond Administration Assistant**

(Establishment of Bond Administration Assistant)

Article 714-2 In the case of the proviso of Article 702, a company may specify a bond administration assistant and entrust that bond administration assistant

to assist bond administration for the benefit of the bondholders; provided, however, that this does not apply if the relevant bonds are secured bonds.

(Qualifications of Bond Administration Assistant)

Article 714-3 A bond administration assistant must be a person set forth in each item of Article 703 or specified in a Ministry of Justice Order.

(Bond Administration Assistant's Power of Representation)

Article 714-4 (1) Bond administration assistants have the authority to engage in the acts set forth below on behalf of bondholders.

- (i) participate in bankruptcy proceedings, participate in rehabilitation proceedings, or participate in reorganization proceedings;
- (ii) request distributions in procedures for judicial enforcement or in procedures for enforcement procedures of a security right; and
- (iii) state claims during the period provided in Article 499, paragraph (1).

(2) Bond administration assistants have the authority to engage in the acts set forth below on behalf of bondholders within the scope provided in an agreement relating to entrustment pursuant to Article 714-2:

- (i) receive payment of claims relating to bonds;
- (ii) the acts provided in Article 705, paragraph (1) (excluding the conduct set forth in each of the items of the preceding paragraph and the preceding item);
- (iii) the acts set forth in each item of Article 706, paragraph (1); and
- (iv) conduct that will forfeit the benefit of time in relation to the total amount of the bonds by the bond-issuing company.

(3) In the cases provided for in the preceding paragraph, bond administrators assistant may not carry out the acts set forth below unless pursuant to a resolution at the bondholders meeting:

- (i) the acts set forth in item (ii) of the preceding paragraph that are set forth below:
  - (a) requesting payment of all of the bonds;
  - (b) judicial enforcement, provisional attachment or provisional disposition based on claims relating to all of the bonds; and
  - (c) carrying out procedural actions with respect to the entirety of the bonds, or any action involved in bankruptcy proceedings, rehabilitation proceedings, reorganization proceedings or proceedings for special liquidation(excluding the acts set forth in (a) and (b)).
- (ii) the acts set forth in items (iii) and (iv) of the preceding paragraph.

(4) Bond administration assistants will report on matters relating to the administration of bonds to the bondholders or take measures to enable the bondholders to learn these matters in accordance with an agreement on

entrustment pursuant to the provisions of Article 714-2.

- (5) The provisions Article 705, paragraph (2) and paragraph (3) apply mutatis mutandis to bond administration assistants who have the authority to perform the acts set forth in paragraph (2), item (1).

(Special Provisions for Multiple Assistant Bond Administrators)

Article 714-5 (1) If there are two or more assistant bond administrators, the assistant bond administrators must each perform the acts within their own authority.

- (2) If an assistant bond administrator is liable to the bondholders for damages arising if other assistant bond administrators are also liable, these persons will be joint and several obligors.

(Relationship with Bond Administrators)

Article 714-6 If an agreement relating to entrustment pursuant to the provisions of Article 702 or a trust agreement provided in Article 2, paragraph (1) of the Secured Bonds Trust Act (Act No. 52 of 1905) becomes effective, an agreement relating to entrustment pursuant to the provisions of Article 714-2 will terminate.

(Application Mutatis Mutandis of Provisions on Bond Administrators)

Article 714-7 The provisions of Article 704, Article 707, Article 708, Article 710, paragraph (1), Article 711, Article 713, and Article 714 apply mutatis mutandis to assistant bond administrators. In these case, "the administration of "bonds" in Article 704 is deemed to be replaced with "assistance with the administration of "bonds," "jointly and severally liable to compensate bondholders" in that paragraph is deemed to be replaced with "liable to compensate bondholders," "if there is no other bond administrator," in Article 711, paragraph (1) is deemed to be replaced with, "Article 702" in paragraph (2) of that Article is deemed to be replaced with "Article 714-2," "if there is no other bond administrator," in Article 714, paragraph (1) is deemed to be replaced with if deleted, "the administration of the bonds" in that paragraph is deemed to be replaced with "assistance with the administration of the bonds," "set forth in any item of Article 703" in that paragraph is deemed to be replaced with "provided in Article 714-3, and "has been dissolved" in that paragraph is deemed to be replaced with "died or has been dissolved."

### **Chapter III Bondholders Meetings**

(Constitution of Bondholders Meetings)

Article 715 bondholders meetings for each class of bonds are constituted by

bondholders.

(Authority of Bondholders Meetings)

Article 716 At bondholders meetings, matters provided for in this Act and matters in relation to the interests of the bondholders may be resolved.

(Convocation of Bondholders Meetings)

Article 717 (1) Bondholders meetings may, where necessary, be convened at any time.

(2) Bondholders meetings are convened by the bond-issuing company or bond administrator, except if a bondholders meeting is convened pursuant to the provisions of the following paragraph or paragraph (3) of the following Article.

(3) In the cases set forth below, the assistant bond administrator may convene a bondholders meeting.

(i) if a request is made pursuant to the provisions of paragraph (1) of the following Article; or

(ii) if it is necessary to obtain the consent of the bondholders meeting provided in Article 711, paragraph (1) applicable mutatis mutandis pursuant to Article 714-7.

(Demand for Convocation of Meeting by Bondholders)

Article 718 (1) Bondholders who hold not less than one tenth of the total amount of bonds of a certain Class (excluding bonds that have been redeemed) may demand that the bond-issuing company, bond administrator, or assistant bond administrator convene a bondholders meeting, by disclosing the matters that form the purpose of the bondholders meeting and the reasons for the convocation.

(2) The sum of the amount of bonds in the class in question which are held by the bond-issuing company itself is not included in the calculation of the total amount of the bonds prescribed in the preceding paragraph.

(3) In the following cases, the bondholders who made the demand under the provisions of paragraph (1) may convene a bondholders meeting with the permission of the court:

(i) if the convocation procedure is not effected without delay after the demand pursuant to the provisions of paragraph (1); or

(ii) if notice of the convocation of a bondholders meeting stating a day falling within an eight-week period after the day of the demand under the provisions of paragraph (1) as the day of the bondholders meeting, is not sent.

(4) Bondholders of bearer bonds who intend to make a demand pursuant to the provisions of paragraph (1) or to effect the convocation pursuant to the provisions of the preceding paragraph must present their bond certificates to

the bond-issuing company, bond administrator or assistant bond administrator.

(Determination of Convocation of Bondholders Meetings)

Article 719 A person who convenes a bondholders meeting (hereinafter in this Chapter referred to as "convener") must specify the following matters when convening a bondholders meeting:

- (i) the date, time and place of the bondholders meeting;
- (ii) the matters that form the purpose of the bondholders meeting;
- (iii) if it is to be arranged that bondholders who do not attend the bondholders meeting may exercise voting rights by electronic or magnetic means, a statement to that effect;
- (iv) beyond what is set forth in the preceding three items, matters prescribed by Ministry of Justice Order.

(Notice of Convocation of Bondholders Meetings)

Article 720 (1) In order to convene a bondholders meeting, the convener must give written notice thereof to known bondholders and the bond-issuing company, as well as to the bond administrator or assistant bond administrator if appointed, no later than two weeks prior to the day of the bondholders meeting.

- (2) In lieu of sending the written notice referred to in the preceding paragraph, the convener may send a notice by electronic or magnetic means with the consent of bondholders, pursuant to the provisions of Cabinet Order. In these cases, relevant convener is deemed to have sent the written notice under that paragraph.
- (3) The notice referred to in the preceding two paragraphs must state or record the matters set forth in each item of the preceding Article.
- (4) If a bond-issuing company issues bearer bond certificates, in order to convene a bondholders meeting, the convener must give public notice to the effect that a bondholders meeting will be convened and of the matters set forth in each item of the preceding Article no later than three weeks prior to the day of the bondholders meeting.
- (5) The public notice pursuant to the provisions of the preceding paragraph must be given in accordance with the means of public notice used by the bond-issuing company; provided, however, that, if the convener is a person other than the bond-issuing company, and that method is electronic public notice, that public notice must be effected by publication in Official Gazette.

(Delivery of Reference Documents for Bondholders Meetings and Voting Forms)

Article 721 (1) When giving notice referred to in paragraph (1) of the preceding Article, the convener must deliver documents containing reference materials



for exercising voting rights (hereinafter in this Article referred to as "reference documents for bondholders meetings") and the documents to be used by bondholders to exercise voting rights (hereinafter in this Chapter referred to as "voting form") to known bondholders, pursuant to the provisions of Ministry of Justice Order.

- (2) If the convener issues notice by electronic or magnetic means as referred to in paragraph (2) of the preceding Article to bondholders who have given consent referred to in the same paragraph, in lieu of delivering the reference documents for bondholders meetings and voting forms under the provisions of the preceding paragraph, the convener may use electronic or magnetic means to provide the information that is required to be detailed in those documents; provided, however, that if there is a request from a bondholder, the convener must deliver these documents to relevant bondholder.
- (3) If public notice is given pursuant to the provisions of paragraph (4) of the preceding Article, if there is a request by a holder of bearer bonds no later than one week prior to the day of the bondholders meeting, the convener must immediately deliver the reference documents for bondholders meetings and voting forms to relevant bondholder.
- (4) In lieu of delivering the reference documents for bondholders meetings and voting form under the provisions of the preceding paragraph, a convener may use electronic or magnetic means to provide the information that is required to be detailed in these documents, with the consent of the bondholders and pursuant to the provisions of Cabinet Order. In these cases, relevant convener is deemed to have delivered those documents under the provisions of that paragraph.

Article 722 (1) If the particulars referred set forth in Article 719, item (iii) have been specified, when using electronic or magnetic means to notify bondholders that have given the consent referred to in Article 720, paragraph (2), the convener must use that electronic or magnetic means to provide the bondholders with the information that is required to be detailed in the voting form, pursuant to the provisions of Ministry of Justice Order.

- (2) If the matters set forth in Article 719, item (iii) are specified, if there is a request from a bondholder who did not give consent under Article 720, paragraph (2) no later than one week prior to the day of the bondholders meeting to be provided with the information that is required to be detailed in the voting form by electronic or magnetic means, the convener must use electronic or magnetic means to immediately provide the bondholder with that information, pursuant to the provisions of Ministry of Justice Order.

(Amount of Voting Rights)

Article 723 (1) Bondholders have voting rights at bondholders meetings in proportion to the total amounts of bonds of the relevant classes they hold (excluding amounts already redeemed).

(2) Notwithstanding the provisions of the preceding paragraph, a bond-issuing company does not have voting rights with respect to its own bonds that it holds.

(3) Holders of bearer bonds who intend to exercise voting rights must present their bond certificates to the convener no later than one week prior to the day of a bondholders meeting.

(Resolutions at Bondholders Meetings)

Article 724 (1) In order to pass a matter to be resolved at a bondholders meeting, the consent of persons who hold more than half of the total amount of voting rights of voting rights holders (meaning the bondholders who can exercise voting rights; hereinafter the same applies in this Chapter) present at the meeting must be obtained.

(2) Notwithstanding the provisions of the preceding paragraph, in order to pass the following matters at a bondholders meeting, the consent of persons who hold not less than one fifth of the total amount of voting rights of voting rights holders, being not less than two thirds of the total amount of voting rights of voting rights holders present at the meeting, must be obtained:

(i) matters regarding the acts set forth in each item of Article 706; and

(ii) matters for which a resolution at a bondholders meeting is required under the provisions of Article 706, paragraph (1), Article 714-4, paragraph (3) (limited to the portion relating to the conduct set forth in paragraph (2), item (iii) of the Article), Article 736, paragraph (1), the proviso to Article 737, paragraph (1) and Article 738.

(3) At bondholders meetings, matters other than those set forth in Article 719, item (ii) may not be resolved.

(Proxy Voting)

Article 725 (1) Bondholders may exercise voting rights by proxy. In these cases, relevant bondholders or proxies must submit to the convener a document certifying the power of representation.

(2) The grant of the power of representation under the preceding paragraph must be made for each bondholders meeting.

(3) Bondholders or proxies referred to in paragraph (1) may, in lieu of submitting a document certifying the power of representation, use electronic or magnetic means to provide the information that is required to be detailed in relevant document, with the approval of the convener and pursuant to the provisions of Cabinet Order. In these cases, relevant bondholders or proxies are deemed to have submitted relevant document.

- (4) If the bondholders are persons who gave consent under Article 720, paragraph (2), the convener may not refuse to grant approval under the preceding paragraph without reasonable grounds.

(Voting in Writing)

Article 726 (1) Bondholders who do not attend a bondholders meeting may exercise voting rights in writing.

- (2) The exercise of voting rights in writing is effected by entering the necessary matters on the voting form and submitting it to the convener by the time prescribed by Ministry of Justice Order.
- (3) The amount of voting rights exercised in writing under the provisions of the preceding paragraph is included in the amount of the voting rights of the bondholders present at the meeting.

(Voting by Electronic or Magnetic Means)

Article 727 (1) The exercise of voting rights by electronic or magnetic means is effected by using electronic or magnetic means to provide the convener with the information that is required to be entered in the voting form no later than the time prescribed by Ministry of Justice Order, with the approval of the convener and pursuant to the provisions of Cabinet Order.

- (2) If the bondholders are persons who have given consent under Article 720, paragraph (2), the convener may not refuse to grant approval under the preceding paragraph without justifiable grounds.
- (3) The amount of the voting rights exercised by electronic or magnetic means under the provisions of paragraph (1) is included in the amount of the voting rights of the bondholders present at the meeting.

(Inconsistent Voting)

Article 728 (1) Bondholders may exercise the voting rights they hold without maintaining consistency. In these cases, the bondholders must notify the convener to that effect and of the reasons for the same no later than three days prior to the day of the bondholders meeting.

- (2) If a bondholder in the preceding paragraph is not a person who holds bonds on behalf of others, the convener may reject the inconsistent exercise of the voting rights held by relevant bondholder under the provisions of that paragraph.

(Attendance of Representative of Bond-Issuing Company)

Article 729 (1) A bond-issuing company, bond administrator or assistant bond administrator may state an opinion by having a representative or agent attend the bondholders meeting, or in writing; provided, however, that for bond

administrators or assistant bond administrators, this does not apply if that bondholders meeting is convened for the appointment of a special agent under Article 707 (including cases applicable mutatis mutandis under Article 714-7).

- (2) Bondholders or conveners may, when they regard it as necessary, demand that the bond-issuing company's representative or agent attend a meeting. For attendance at a bondholders meeting, if a resolution must be passed to the effect that the demand will be made.

(Resolution for Postponement or Continuation)

Article 730 If a resolution for the postponement or continuation is passed at the bondholders meeting, the provisions of Articles 719 and 720 do not apply.

(Minutes)

Article 731 (1) Minutes must be prepared with respect to the business of the bondholders meeting, pursuant to the provisions of Ministry of Justice Order.

- (2) A bond-issuing company must keep the minutes referred to in the preceding paragraph at its head office for a period of ten years from the day of a bondholders meeting.

(3) The bond administrator, assistant bond administrator and bondholders may make the following requests at any time during the business hours of the bond-issuing company:

- (i) if the minutes in paragraph (1) are prepared in writing, requests for the inspection or copying of relevant documents; and
- (ii) if the minutes in paragraph (1) have been prepared as an electronic or magnetic record, request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record.

(Petitions for Approval of Resolutions at Bondholders Meetings)

Article 732 When a resolution is passed at a bondholders meeting, the convener must file a petition with the court for the approval of relevant resolution within one week of the day of relevant resolution.

(Rejection of Resolutions at Bondholders Meetings)

Article 733 The court cannot approve a resolution at a bondholders meeting in cases falling under any of the following:

- (i) if the procedures for the convocation of the bondholders meeting or the methods of the resolution at the bondholders meeting violates laws and regulations or the matters stated or recorded in materials used for explaining the business of the bond-issuing company or other matters regarding the solicitation in Article 676;

- (ii) if the resolution was adopted by an unlawful method;
- (iii) if the resolution is extremely unfair; or
- (iv) if the resolution is contrary to the general interests of bondholders.

(Effectiveness of Resolutions at Bondholders Meetings)

Article 734 (1) A resolution at a bondholders meeting does not become effective unless the approval of the court is obtained.

- (2) A resolution at a bondholders meeting is effective against all bondholders who hold bonds of the relevant class.

(Public Notice of Rulings Approving or Rejecting Resolutions at Bondholders Meetings)

Article 735 If a ruling has been given approving or rejecting a resolution at a bondholders meeting, the bond-issuing company must give public notice to that effect without delay.

(Omission of Resolutions at Bondholders Meetings)

Article 735-2 (1) If a bond-issuing company, bond administrator, assistant bond administrator or bondholder submits a proposal with respect to any matter that is the purpose of a bondholders meeting (in the case of an assistant bond administrator, concerning the consent of the bondholders meeting provided in Article 711, paragraph (1) applied mutatis mutandis pursuant to Article 714-7), if all persons who may vote with respect to the matter manifest their intention to agree to relevant proposal in writing or using an electronic or magnetic record, it is deemed that a resolution to approve relevant proposal has been passed at the bondholders meeting.

- (2) The bond-issuing company must keep the document or electronic or magnetic record referred to in the preceding paragraph at its head office for a period of ten years from the day when the resolution at the bondholders meeting is deemed to have been passed pursuant to the provisions of the preceding paragraph.
- (3) The bond administrator, assistant bond administrator and bondholders may make the following requests at any time during the business hours of the bond-issuing company:
  - (i) a request to inspect a copy of the document of the preceding paragraph or to copy the document;
  - (ii) a request to inspect or copy anything which displays matters recorded in electronic or magnetic records referred to in the preceding paragraph in accordance with methods prescribed by the applicable Order of the Ministry of Justice.
- (4) If a resolution at the bondholders meeting is deemed to have been approved

pursuant to the provisions of paragraph (1), the provisions of Article 732 through the preceding Article (excluding Article 734, paragraph (2)) does not apply.

(Appointment of Representative Bondholders)

Article 736 (1) By a resolution at a bondholders meeting, one or more representative bondholders from among bondholders who hold bonds representing not less than one thousandth of the total amount of bonds of the relevant class (excluding amounts already redeemed) may be appointed, and decisions on the matters on which resolutions are to be passed at bondholders meetings may be entrusted to the representative bondholders.

(2) The provisions of Article 718, paragraph (2) apply mutatis mutandis to the total amount of the bonds provided for in the preceding paragraph.

(3) If there are two or more representative bondholders, unless otherwise provided for at a bondholders meeting, the decisions on the matters provided for in paragraph (1) are made by a majority of those representative bondholders.

(Execution of Resolutions at Bondholders Meetings)

Article 737 (1) Resolutions at bondholders meetings are executed in accordance with the categories of the cases set forth in the following items by the person specified in each of those items; provided, however, that this does not apply if the person who executes resolutions at bondholders meetings is separately prescribed by a resolution at a bondholders meeting.

(i) if there is a bond administrator: the bond administrator;

(ii) if there is an assistant bond administrator, if there is a resolution of the bondholders meeting to the effect that matters relating to conduct within the assistant bond administrator's authority are to be resolved by the bondholders meeting: the assistant bond administrator;

(iii) in cases other than the cases set forth in the preceding two items: the representative bondholders.

(2) The provisions under Article 705, paragraphs (1) through (3), and under Articles 708 and 709 apply mutatis mutandis to cases where a representative bondholder or person responsible for the execution of resolutions at bondholders meetings prescribed under the provisions of the proviso to the preceding paragraph (hereinafter in this Chapter referred to as "resolution administrator") executes the resolutions at bondholders meetings.

(Dismissal of Representative Bondholders)

Article 738 By a resolution at a bondholders meeting, at any time, the representative bondholders or resolution administrators may be dismissed, or

the matters entrusted to them may be changed.

(Forfeiture of the Benefit of Time for Failure to Pay Interest on Bonds)

Article 739 (1) If a bond-issuing company fails to pay interest on bonds, or fails to periodically partially redeem bonds if it must carry out that redemption, pursuant to a resolution at a bondholders meeting, the person executing the resolution may give written notice to the bond-issuing company to the effect that it must make payment within a defined period of time, and to the effect that, if payment is not made within relevant period of time, the bond-issuing company will forfeit the benefit of time as to the total amount of relevant bonds; provided, however, that relevant period may not be less than two months.

(2) A person who executes a resolution under the preceding paragraph may, in lieu of the written notice under the provisions of that paragraph, provide the matters to be notified under the provisions of that paragraph by electronic or magnetic means, with the approval of the bond-issuing company, pursuant to the provisions of Cabinet Order. In these cases, the person who executes relevant resolution is deemed to have given relevant written notice.

(3) If a bond-issuing company fails to make the payment in paragraph (1) within the period in that paragraph, it will forfeit the benefit of time with respect to the total amount of relevant bonds.

(Special Provisions on Procedures for Objection of Creditors)

Article 740 (1) In order for a bondholder to raise an objection under the provisions of Article 449, Article 627, Article 635, Article 670, Article 779 (including cases where applied mutatis mutandis under Article 781, paragraph (2)), Article 789 (including cases where applied mutatis mutandis under Article 793, paragraph (2)), Article 799 (including cases where applied mutatis mutandis under Article 802, paragraph (2)), Article 810 (including cases where applied mutatis mutandis in Article 813, paragraph (2)) or Article 816-8, the objection must be raised by a resolution at a bondholders meeting. In these cases, the court may, in response to a petition by interested parties, extend the period during which objections can be raised on behalf of bondholders.

(2) Notwithstanding the provisions of the preceding paragraph, a bond administrator may raise objections on behalf of bondholders; provided, however, that this does not apply if there are provisions to the contrary in a contract relating to entrustment under the provisions of Article 702.

(3) For the purpose of the application of the provisions of Article 449, paragraph (2), Article 627, paragraph (2), Article 635, paragraph (2), Article 670, paragraph (2), Article 779, paragraph (2) (including cases where applied mutatis mutandis under Article 781, paragraph (2)); hereinafter the same

applies in this paragraph), Article 789, paragraph (2) (including cases where applied mutatis mutandis under Article 793, paragraph (2); hereinafter the same applies in this paragraph), Article 799, paragraph (2) (including cases where applied mutatis mutandis under Article 802, paragraph (2); hereinafter the same applies in this paragraph), Article 810, paragraph (2) (including cases where applied mutatis mutandis under Article 813, paragraph (2); hereinafter the same applies in this paragraph), and Article 816-8, paragraph (2) to a bond-issuing company, the term "known creditors" in Article 449, paragraph (2), Article 627, paragraph (2), Article 635, paragraph (2), Article 670, paragraph (2), Article 779, paragraph (2), Article 799, paragraph (2), and Article 816-8, paragraph (2) is deemed to be replaced with "known creditors (if there is a bond administrator or assistant bond administrator, including relevant bond administrator or assistant bond administrator)" and the phrase "known creditors (limited to those who can raise objections under the provisions of that paragraph)" in Article 789, paragraph (2) and Article 810, paragraph (2) is deemed to be replaced with "known creditors (limited to those who can raise objections under the provisions of that paragraph, and, if there is a bond administrator or assistant bond administrator, including relevant bond administrator or assistant bond administrator)".

(Remuneration for Bond Administrators)

- Article 741 (1) With the permission of the court, a bond-issuing company may be made to bear the cost of the remuneration to be paid to the bond administrator, assistant bond administrator, representative bondholders or resolution administrator, the costs necessary for handling the administration of the bond-issuing company, and the interest that accrues from and including the day of disbursement of the remuneration and costs, as well as amounts of compensation for losses suffered by those persons for handling the administration of the bond-issuing company in the absence of negligence, unless this is provided for in the contract with the bond-issuing company.
- (2) The petition for permission referred to in the preceding paragraph is made by the bond administrators, assistant bond administrators, representative bondholders or resolution administrator.
- (3) With respect to the remuneration, costs and interest as well as amounts of compensation in paragraph (1), the bond administrators, assistant bond administrators, representative bondholders or resolution administrator have the right to obtain reimbursement, before the bondholders, from the proceeds of payments received under Article 705, paragraph (1) (including cases where that paragraph is applied mutatis mutandis under Article 737, paragraph (2)) or Article 714-4, paragraph (2), item (i).



(Burden of Costs of Bondholders Meetings)

Article 742 (1) The costs of bondholders meetings are borne by the bond-issuing company.

(2) The costs of the petition in Article 732 are borne by the bond-issuing company; provided, however, that the court may in response to the petition by the bond-issuing company or other interested parties or ex officio, separately prescribe a person from among the convener and other interested parties to bear some or all of the costs.