

# Act on the Securitization of Assets

(Act No. 105 of June 15, 1998)

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## **Part I General Provisions**

(Purpose)

Article 1 The purpose of this Act is to facilitate investment by general investors, by establishing a system for implementing Asset Securitization through Specific Purpose Companies and Specific Purpose Trusts and by securing the proper implementation of Asset Securitization by Specific Purpose Companies and Specific Purpose Trusts, as well as by ensuring the protection of purchasers of various types of securities issued as a part of Asset Securitization, thereby contributing to the sound development of the national economy.

(Definitions)

- Article 2 (1) The term "Specified Assets" as used in this Act means assets acquired by a Specific Purpose Company or those acquired by a Fiduciary Trust Company, etc. as business pertaining to Asset Securitization.
- (2) The term "Asset Securitization" as used in this Act means a series of acts wherein a Specific Purpose Company acquires assets with the monies obtained through issuance of Asset-Backed Securities or through Specific Borrowings, or wherein a Trust Company (meaning a trust company as defined in Article 2 (2) of the Trust Business Act (Act No. 154 of 2004); the same shall apply hereinafter) or a Bank (meaning a bank as defined in Article 2 (1) of the Banking Act (Act No. 59 of 1981); the same shall apply hereinafter) or any other financial institution carrying out trust business holds assets in trust and issues Beneficiary Certificates, and with the monies obtained through the administration and disposition of such assets, conducts the acts prescribed in the following items with regard to obligations said person has undertaken in relation to Asset-Backed Securities, Specific Borrowings, or Beneficiary Certificates, or with regard to equity, as set forth respectively in those items:
- (i) Specified Bonds, Specified Promissory Notes, Specific Borrowings, or Beneficiary Certificates: performance of the obligations undertaken in relation thereto; or
  - (ii) Preferred Equity: acquisition thereof for distribution of profits or for cancellation thereof, or distribution of residual assets.
- (3) The term "Specific Purpose Company" as used in this Act means an association incorporated under the provisions of Chapter II, Section 2 of the following Part.
- (4) The term "Asset Securitization Plan" as used in this Act means a plan that provides for basic particulars concerning the Asset Securitization that is carried out by a Specific Purpose Company.
- (5) The term "Preferred Equity" as used in this Act means a membership position in a Specific Purpose Company which has been divided into equal units, whereby said member has the right to receive a distribution of profits or distribution of residual assets from the Specific Purpose Company, taking precedence over persons who have Specified Equity (hereinafter referred to as "Specified Equity Members").
- (6) The term "Specified Equity" as used in this Act means a membership position in a Specific Purpose Company that has been divided into equal units, such as is issued at the time of incorporation of a Specific Purpose Company (including that issued pursuant to the provisions of Article 36).
- (7) The term "Specified Bond" as used in this Act means a monetary claim owed by a Specific Purpose Company as a debtor, which arises through allotment effected by said Specific Purpose Company pursuant to the provisions of this Act, and which is redeemed in accordance with the particulars listed in the

items of Article 122 (1).

- (8) The term "Specified Short-Term Bond" as used in this Act means a Specified Bond that satisfies all of the following requirements:
- (i) that the amount of each Specified Bond is not less than one hundred million yen;
  - (ii) that the principal is to be redeemed by a fixed due date that falls within one year from the date of payment of the total amount of the Specified Bonds for Subscription (meaning the Specified Bonds for Subscription as defined in Article 122 (1)), and is not to be redeemed in installment payments;
  - (iii) that the due date for the payment of interest is to be the same date as the due date for the redemption of the principal set forth in the preceding item; and
  - (iv) that the Specified Bond shall not be one that is secured pursuant to the provisions of the Secured Bonds Trust Act (Act No. 52 of 1905).
- (9) The term "Preferred Equity Security" as used in this Act means an investment security issued by a Specific Purpose Company for Preferred Equity pursuant to the provisions of Article 215 (2) of the Companies Act (Act No. 86 of 2005) as applied mutatis mutandis pursuant to Article 48 (1) and Article 48 (3), and the term "Specified Bond Certificate" as used in this Act means a bond certificate issued by a Specific Purpose Company for a Specified Bond pursuant to the provisions of Article 696 of the Companies Act as applied mutatis mutandis pursuant to Article 125 of this Act.
- (10) The term "Specified Promissory Note" as used in this Act means a promissory note as set forth in Article 2 (1) (xv) of the Financial Instruments and Exchange Act (Act No. 25 of 1948), which is issued by a Specific Purpose Company pursuant to the provisions of Article 205.
- (11) The term "Asset-Backed Security" as used in this Act means Preferred Equity, a Specified Bond, or a Specified Promissory Note.
- (12) The term "Specific Borrowing" as used in this Act means the borrowing of funds by a Specific Purpose Company pursuant to the provisions of Article 210.
- (13) The term "Specific Purpose Trust" as used in this Act means a trust that is created pursuant to the provisions of this Act for implementing Asset Securitization and for having more than one person acquire beneficial interest in a trust held by the settlor at the time of conclusion of the trust contract, by dividing the beneficial interest thereof.
- (14) The term "Asset Trust Securitization Plan" as used in this Act means a plan that provides for basic particulars concerning Asset Securitization by a Specific Purpose Trust.
- (15) The term "Beneficiary Certificate" as used in this Act means a security that represents a beneficial interest in a trust under a trust contract for a Specific Purpose Trust and that is issued by the trustee pursuant to the provisions of

this Act.

- (16) The term "Fiduciary Trust Company, etc." as used in this Act means a Trust Company or a Bank or any other financial institution that carries out trust business and which serves as the trustee of a Specific Purpose Trust.
- (17) The term "Representative Beneficiary Certificate Holders" as used in this Act means the persons appointed at a Beneficiary Certificate Holders' Meeting pursuant to the provisions of Article 254 (1).
- (18) The term "Specified Trust Administrator" as used in this Act means a person appointed by a Fiduciary Trust Company, etc. pursuant to the provisions of Article 260 (1).

(Replacement of Terms in Mutatis Mutandis Application of the Provisions of the Companies Act)

Article 3 When applying the provisions of the Companies Act mutatis mutandis pursuant to the provisions of this Act (excluding Article 194 (4)), the term "Electromagnetic Records" in the provisions of the Companies Act shall be deemed to be replaced with "Electromagnetic Records (meaning electromagnetic records as defined in Article 4 (4) of the Asset Securitization Act)," the term "Electromagnetic Means" in the provisions of the Companies Act shall be deemed to be replaced with "Electromagnetic Means (meaning electromagnetic means as defined in Article 40 (3) of the Asset Securitization Act)," and the term "Ordinance of the Ministry of Justice" in the provisions of the Companies Act shall be deemed to be replaced with "Cabinet Office Ordinance."

## **Part II Organization of Specific Purpose Companies**

### **Chapter I Notifications**

(Notifications)

- Article 4 (1) A Specific Purpose Company must, before carrying out business pertaining to Asset Securitization, notify the Prime Minister in advance.
- (2) A Specific Purpose Company making a notification under the provisions of the preceding paragraph (hereinafter referred to as a "Business Commencement Notification") must submit a written notification containing the following particulars to the Prime Minister:
- (i) the trade name;
  - (ii) the names and locations of the business offices;
  - (iii) the names and addresses of the directors and the company auditors, and if there is any employee specified by Cabinet Order, their name and address;
  - (iv) if the company is a Company with Accounting Advisors (meaning a Specific Purpose Company with accounting advisors; the same shall apply

- hereinafter), a statement to that effect and the names and addresses of the accounting advisors;
- (v) the date upon which the approval of all Specified Equity Members under the provisions of Article 6 was obtained; and
  - (vi) other particulars specified by a Cabinet Office Ordinance.
- (3) The following documents must be attached to the written notification set forth in the preceding paragraph:
- (i) the articles of incorporation;
  - (ii) the Asset Securitization Plan;
  - (iii) a duplicate or a copy of the written contract pertaining to a pledge to receive the transfer of Specified Assets (excluding Specified Assets used in association with Real Property or other Specified Assets which are specified by a Cabinet Office Ordinance as those that may have only minor influence on investors' investment decisions in the light of their value and means of use (hereinafter referred to as "Secondary Specified Assets"); the same shall apply in the following item) or any other contract specified by a Cabinet Office Ordinance;
  - (iv) documents specified by a Cabinet Office Ordinance as those concerning a trust created for the purpose of having business carried out pertaining to administration and disposition of Specified Assets, or any other contract;
  - (v) a written document proving that the approval set forth in Article 6 has been obtained; and
  - (vi) other documents specified by a Cabinet Office Ordinance.
- (4) In the case referred to in the preceding paragraph, if the articles of incorporation or the Asset Securitization Plan is prepared in the form of Electromagnetic Records (meaning records used in computer data processing, which are created in electronic form, magnetic form, or any other form that is impossible to perceive through the human senses alone; the same shall apply hereinafter), the Electromagnetic Records may be attached in lieu of such documents.

(Asset Securitization Plan)

Article 5 (1) The following particulars must be stated or recorded in an Asset Securitization Plan:

- (i) the period for the Asset Securitization Plan and the particulars specified by a Cabinet Office Ordinance as those concerning the plan period;
- (ii) the following particulars concerning Asset-Backed Securities and Specific Borrowings:
  - (a) with regard to any Preferred Equity, the upper limit for the total number of units, details of the Preferred Equity (including its precedence in distributions of profits or distributions of residual assets; the same shall

- apply hereinafter), and any other particulars specified by a Cabinet Office Ordinance as those concerning the issuance or cancellation of Preferred Equity;
- (b) with regard to any Specified Bond (excluding Specified Short-Term Bonds; hereinafter the same shall apply in this item, Article 40 (1) (v), Article 67 (1), Article 122 (1) (xix), Article 152 (1) (i), and Article 153 (2)), the total amount, details of the Specified Bond, and any other particulars specified by a Cabinet Office Ordinance as those concerning the issuance and redemption of Specified Bonds;
  - (c) with regard to any convertible Specified Bond, the total amount, conditions for conversion, details of the Preferred Equity to be issued through conversion, the period during which conversion may be requested, and any other particulars specified by a Cabinet Office Ordinance as those concerning the issuance and redemption of convertible Specified Bonds;
  - (d) with regard to any Specified Bond with a right to subscribe for Preferred Equity, the following particulars:
    - 1. the total amount;
    - 2. details on the right to subscribe for Preferred Equity attached to each Specified Bond with a right to subscribe for Preferred Equity (hereinafter referred to as the "Subscription Right" in this item);
    - 3. the period in which the Subscription Right can be exercised;
    - 4. in cases where arrangements are made to allow transfer of the Subscription Right alone, a statement to that effect;
    - 5. a statement to the effect that, where there is a request from a person who intends to exercise a Subscription Right, the payment set forth in Article 145 (2) shall be deemed to have been made by means of the Amount to Be Paid In (meaning the Amount to Be Paid In as defined in Article 122 (1) (xiv)) in lieu of the redemption of the Specified Bond with a right to subscribe for Preferred Equity;
    - 6. a statement to the effect that, with regard to a distribution of profits, new Preferred Equity shall be deemed to have been issued in the business year in which the payment under the provisions of Article 145 (2) was made or on the last day of the previous business year; and
    - 7. other particulars specified by a Cabinet Office Ordinance as those concerning issuance and redemption;
  - (e) with regard to any Specified Short-Term Bond, the limit of said bond and any other particulars specified by a Cabinet Office Ordinance as those concerning the issuance and redemption of Specified Bonds with a right to subscribe for Preferred Equity;
  - (f) with regard to any Specified Promissory Note, the limit amount and any other particulars specified by a Cabinet Office Ordinance as those

- concerning issuance and redemption of Specified Promissory Notes; and
- (g) with regard to Specific Borrowings, the limit amount and any other particulars specified by Cabinet Office Ordinance as those concerning borrowings and payment thereof;
- (iii) details on the Specified Assets, the time of acquisition, the transferor, and any other particulars specified by a Cabinet Office Ordinance as those concerning Specified Assets;
- (iv) the method of administration and disposition of Specified Assets, the trustee of the trust created for the purpose of having business carried out pertaining to the administration and disposition of Specified Assets, and any other particulars specified by a Cabinet Office Ordinance as those concerning the administration and disposition of Specified Assets;
- (v) particulars specified by a Cabinet Office Ordinance as those concerning the borrowing of funds (excluding Specific Borrowings); and
- (vi) other particulars specified by a Cabinet Office Ordinance.
- (2) The period for the Asset Securitization Plan set forth in item (i) of the preceding paragraph must not exceed the period specified by Cabinet Order as one in which a reasonable plan concerning the administration and disposition of Specified Assets can be formulated for the categories of Specified Assets specified by Cabinet Order.
- (3) An Asset Securitization Plan may be prepared in the form of Electromagnetic Records.
- (4) The provisions of Article 31 (excluding paragraph (3)) (Keeping and Inspection of Articles of Incorporation) of the Companies Act shall apply mutatis mutandis to the Asset Securitization Plan set forth in paragraph (1). In this case, the phrase "incorporator(s) (or the Stock Company after the formation of such Stock Company)" in Article 31 (1) and (2) of the Companies Act shall be deemed to be replaced with "Specific Purpose Company," the phrase "the place designated by the incorporator(s) (or at the head office or branch office of the Stock Company after the formation of such Stock Company)" in paragraph (1) of that Article shall be deemed to be replaced with "its head office or branch office," the phrase "incorporator(s) (or, after the formation of such Stock Company, the shareholder(s) and creditor(s) of such Stock Company)" in paragraph (2) of that Article shall be deemed to be replaced with "members (meaning the members prescribed in Article 26 of the Asset Securitization Act) and creditors," the phrase "the hours designated by the incorporator(s) (or, after the formation of such Stock Company, during the business hours of such Stock Company)" in Article 31 (2) of the Companies Act shall be deemed to be replaced with "the business hours of the Specific Purpose Company," and the term "Stock Company" in paragraph (4) of that Article shall be deemed to be replaced with "Specific Purpose Company."



(Specified Equity Members' Approval of Asset Securitization Plans)

Article 6 Before a Specific Purpose Company makes a Business Commencement Notification, it must obtain the approval of all Specified Equity Members in advance with regard to the Asset Securitization Plan.

(Special Provisions on Business Commencement Notifications)

Article 7 (1) When a Specific Purpose Company makes a Business Commencement Notification in cases where it will carry out, from among business pertaining to Asset Securitization, acquisition of Specified Assets or any other act specified by a Cabinet Office Ordinance prior to issuance of Asset-Backed Securities, it may, notwithstanding the provisions of Article 5, omit statements on or records of the particulars set forth in paragraph (1) (ii) of that Article that are specified by a Cabinet Office Ordinance as those whose omission would not jeopardize the protection of the investors (referred to as "Specified Particulars" in the following paragraph). In this case, attachment of documents listed in Article 4 (3) (iii) and (iv) which are specified by Cabinet Office Ordinance may be omitted.

(2) Before a Specific Purpose Company that has made a Business Commencement Notification and has omitted statements on or records of the Specified Particulars pursuant to the provisions of the preceding paragraph, issues Asset-Backed Securities based on an Asset Securitization Plan, it shall in advance, submit to the Prime Minister materials in which said Specified Particulars are stated or recorded and the materials omitted from attachment pursuant to the provisions of the second sentence of the preceding paragraph (if these materials are prepared in the form of Electromagnetic Records, the Electromagnetic Records specified by a Cabinet Office Ordinance or a document(s) containing the particulars recorded in said Electromagnetic Records), pursuant to the provisions of a Cabinet Office Ordinance.

(Specific Purpose Company Registry)

Article 8 (1) The Prime Minister must keep a Specific Purpose Company Registry and make it available for public inspection pursuant to the provisions of a Cabinet Office Ordinance.

(2) The Prime Minister must register the particulars listed in Article 4 (2) (i) to (iii) inclusive, particulars concerning dispositions by the Prime Minister under the provisions of Article 218 or Article 219, and other particulars specified by a Cabinet Office Ordinance in the Special Public Company Registry.

(Changes to the Particulars in a Notification)

Article 9 (1) When there is a change in the particulars listed in the items of

Article 4 (2) (excluding item (v) including the cases where it is applied mutatis mutandis pursuant to Article 11 (5)) or a change in the Asset Securitization Plan, the Specific Purpose Company must notify the Prime Minister within the period specified by a Cabinet Office Ordinance; provided, however, that this shall not apply to a change to the particulars stated or recorded in the Asset Realization Plan, which is specified by a Cabinet Office Ordinance as a change in association with the final determination of the time of acquisition of Specified Assets or any other minor change.

- (2) A Specific Purpose Company, in making a notification under the provisions of the preceding paragraph (hereinafter referred to as a "Notification of a Change"), must submit written notification containing the details of and the reason for said change to the Prime Minister.
- (3) In cases where a Notification of a Change pertains to a change to the Asset Securitization Plan, it must have the following documents attached:
  - (i) the changed Asset Securitization Plan; and
  - (ii) the documents specified by a Cabinet Office Ordinance as proving that the change to the Asset Securitization Plan has been made based on the provisions of this Act.
- (4) The provisions of Article 4 (4) shall apply mutatis mutandis to a changed Asset Securitization Plan as set forth in the preceding paragraph.
- (5) When the Prime Minister receives a Notification of a Change, they must register the following particulars in the Specific Purpose Company Registry:
  - (i) the date on which the Notification of a Change was made;
  - (ii) when the Notification of a Change pertains to a change to any of the particulars listed in the items of Article 4 (2) (excluding item (v) and including the cases where it is applied mutatis mutandis pursuant to Article 11 (5)), the details of said change; and
  - (iii) when the Notification of a Change pertains to a change to the Asset Securitization Plan, a statement to the effect that such a change has been made and the date of said change.

(Notification of Termination of Business Pertaining to Asset Securitization Plans)

Article 10 (1) When a Specific Purpose Company completes the cancellation of Preferred Equity, distribution of residual assets, and performance of obligations undertaken in relation to Specified Bonds, Specified Promissory Notes, and Specific Borrowings in accordance with the Asset Securitization Plan, it must notify the Prime Minister to that effect within thirty days from the date of said cancellation.

- (2) When the Prime Minister receives a notification under the provisions of the preceding paragraph, they must register the fact that business pertaining to

the Asset Securitization Plan set forth in that paragraph has been completed, along with the date on which such notification was made, in the Specific Purpose Company Registry.

(Notification of a New Asset Securitization Plan)

- Article 11 (1) Specific Purpose Companies must, before conducting business pertaining to Asset Securitization based on a new Asset Securitization Plan, notify the Prime Minister in advance pursuant to the provisions of a Cabinet Office Ordinance.
- (2) The notification under the provisions of the preceding paragraph (hereinafter referred to as the "Notification of a New Plan" in this Part) may only be made by a Specific Purpose Company that has made a notification under the provisions of paragraph (1) of the preceding Article.
- (3) In cases where a Specific Purpose Company makes a Notification of a New Plan, it must attach documents proving that approval has been granted at a general meeting of members as set forth in Article 159 (1).
- (4) When the Prime Minister receives a Notification of a New Plan, they must register the date on which such notification was made in the Specific Purpose Company Registry.
- (5) The provisions of Article 4 (2), (3) (excluding item (i)) and (4), Article 6 and Article 7 shall apply mutatis mutandis to the Notification of a New Plan. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Notification of Discontinuance of Business)

- Article 12 (1) When a Specific Purpose Company comes to fall under either of the following items, the person specified in the relevant item must notify the Prime Minister to such effect within thirty days from each respective date:
- (i) when the Specific Purpose Company dissolves due to an order for the commencement of bankruptcy proceedings: the bankruptcy trustee; or
- (ii) when the Specific Purpose Company dissolves due to circumstances other than an order for the commencement of bankruptcy proceedings: the liquidator.
- (2) When the Prime Minister receives a notification under the provisions of the preceding paragraph, they must delete the Specific Purpose Company pertaining to said notification from the Specific Purpose Company Registry.

## **Chapter II Specific Purpose Companies**

### **Section 1 General Provisions**

(Legal Personality and Domicile)

Article 13 (1) A Specific Purpose Company shall have legal personality.  
(2) A Specific Purpose Company shall be domiciled at the location of its head office.

(Commercial Transactions, etc.)

Article 14 (1) Any acts conducted by a Specific Purpose Company as its business and any acts conducted by the Specific Purpose Company for its business shall be commercial transactions.

(2) The provisions of Article 11 to Article 15 inclusive and Article 19 of the Commercial Code (Act No. 48 of 1899) shall not apply to Specific Purpose Companies.

(Trade Name, etc.)

Article 15 (1) The name of a Specific Purpose Company shall be its trade name.

(2) A Specific Purpose Company must use the characters "特定目的会社" (pronounced "tokutei mokuteki kaisha", meaning "Specific Purpose Company") in its trade name.

(3) No person other than a Specific Purpose Company shall use a word that is likely to cause such a person to be mistaken for a Specific Purpose Company in its name or trade name.

(4) No person shall use a name or trade name that is likely to cause such a person to be mistaken for another Specific Purpose Company for an unlawful purpose.

(5) A Specific Purpose Company whose business interests have been infringed or are likely to be infringed by the use of a name or trade name that violates the provisions of the preceding paragraph may demand that the person who is infringing or is likely to infringe on its business interests discontinue or prevent such infringement from occurring.

## **Section 2 Incorporation**

(Articles of Incorporation)

Article 16 (1) In order to incorporate a Specific Purpose Company, an incorporator shall prepare articles of incorporation, and all incorporators must sign or affix their names and seals to them.

(2) The following particulars must be stated or recorded in the articles of incorporation of a Specific Purpose Company:

(i) the purpose;

(ii) the trade name;

(iii) the location of the head office;

(iv) the Amount of Specified Capital (meaning the amount of property that the

- persons who are to become Specified Equity Members have paid or delivered to the Specific Purpose Company at the time of issuance of Specified Equity, unless otherwise provided for by this Act; the same shall apply hereinafter);
- (v) the names and addresses of the incorporators ; and
  - (vi) the term of existence of the Specific Purpose Company or grounds for its dissolution.
- (3) In cases where a Specific Purpose Company is to be incorporated, the following particulars shall not become effective unless they are stated or recorded in the articles of incorporation set forth in paragraph (1):
- (i) the names of the persons who contribute property other than money, a description of such property and the value thereof, and the number of units of Specified Equity Issued at Incorporation (meaning the Specified Equity issued at the time of incorporation of a Specific Purpose Company; hereinafter the same shall apply in this Section) that are to be allotted to such persons;
  - (ii) a description of the property other than Specified Assets that are to be transferred to the Specific Purpose Company in accordance with the Asset Securitization Plan that it is agreed will be transferred to the Specific Purpose Company after the formation thereof, the value of such property, and the name of the transferor;
  - (iii) compensation or other special benefits which the incorporators are to obtain through the formation of the Specific Purpose Company, and the names of said incorporators; and
  - (iv) costs concerning the incorporation that are to be borne by the Specific Purpose Company (excluding fees for the certification of the articles of incorporation, and other costs specified by a Cabinet Office Ordinance as those that are unlikely to cause damage to the Specific Purpose Company).
- (4) In addition to the particulars listed in the items of paragraph (2) and the items of the preceding paragraph, the articles of incorporation of a Specific Purpose Company may contain statements on or records of the particulars that, pursuant to the provisions of this Act, may not become effective unless provided for in the articles of incorporation, or other particulars that do not violate the provisions of this Act.
- (5) The articles of incorporation may be prepared in the form of Electromagnetic Records. In this case, the measures specified by a Cabinet Office Ordinance as those to be taken in lieu of signing or affixing names and seals must be taken with regard to the information recorded in said Electromagnetic Records.
- (6) The provisions of Article 30 (Certification of Articles of Incorporation) and Article 31 (excluding paragraph (3)) (Keeping and Inspection of Articles of Incorporation) of the Companies Act shall apply mutatis mutandis to the articles of incorporation of a Specific Purpose Company. In this case, the

phrase "Article 33 (7) or (9), or Article 37 (1) or (2)" in Article 30 (2) of the Companies Act shall be deemed to be replaced with "Article 33 (7) or (9) as applied mutatis mutandis pursuant to Article 18 (2) of the Act on Securitization of Assets (hereinafter referred to as the 'Asset Securitization Act')," and the term "shareholder(s)" in Article 31 (2) of the Companies Act shall be deemed to be replaced with "members (meaning the members prescribed in Article 26 of the Asset Securitization Act)."

(Determination of Particulars Concerning Specified Equity Issued at Incorporation, etc.)

Article 17 (1) When an incorporator wishes to prescribe the following particulars (excluding particulars provided for in the articles of incorporation) at the time of incorporation of a Specific Purpose Company, they shall obtain the consent of all incorporators:

- (i) the number of units of Specified Equity Issued at Incorporation that is to be allotted to each incorporator; and
- (ii) the amount of monies to be paid in exchange for the Specified Equity Issued at Incorporation set forth in the preceding item.

(2) The incorporators must subscribe for all of the Specified Equity Issued at Incorporation.

(3) Each incorporator must subscribe for one or more units of Specified Equity Issued at Incorporation at the time of incorporation of the Specific Purpose Company.

(Appointment of an Inspector Concerning the Particulars Stated or Recorded in the Articles of Incorporation)

Article 18 (1) If the articles of incorporation contain statements on or records of the particulars listed in the items of Article 16 (3), the incorporators must, without delay after their certification by a notary public as set forth in Article 30 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 16 (6), file a petition with the court for the appointment of an inspector in order to have the inspector investigate such particulars.

(2) The provisions of Article 33 (2) to (11) inclusive (excluding paragraph (10) (ii)) (Election of Inspector of Particulars Specified or Recorded in the Articles of Incorporation), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i) and item (iii)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act) and Article 876 (Supreme Court Rules) of the

Companies Act shall apply mutatis mutandis to a case as set forth in the preceding paragraph. In this case, the term "each item of Article 28" in Article 33 (7) and (8) of the Companies Act shall be deemed to be replaced with "each item of Article 16 (3) of the Asset Securitization Act," the term "Shares Issued at Incorporation" in Article 33 (8) of the Companies Act shall be deemed to be replaced with "Specified Equity Issued at Incorporation," the term "the preceding nine paragraphs" in paragraph (10) of that Article shall be deemed to be replaced with "Article 33 (2) to (9) as applied mutatis mutandis pursuant to Article 18 (1) of the Asset Securitization Act and pursuant to paragraph (2) of that Article," the term "item (ii) and item (iii) of Article 28" in Article 33 (10) (i) of the Companies Act shall be deemed to be replaced with "Article 16 (i) or (ii) of the Asset Securitization Act," the term "item (ii) of Article 28" in Article 33 (11) (ii) of the Companies Act shall be deemed to be replaced with "Article 16 (3) (ii) of the Asset Securitization Act," the term "paragraph (1) of Article 38" in Article 33 (11) (iii) of the Companies Act shall be deemed to be replaced with "Article 21 (1) of the Asset Securitization Act," and the term "item (ii), paragraph (2) of such Article" in Article 33 (11) of the Companies Act shall be deemed to be replaced with "that paragraph."

(Performance of Contribution)

- Article 19 (1) The incorporators must, without delay after subscribing for Specified Equity Issued at Incorporation, pay the full amount of monies to be contributed, or deliver all of the property other than money to be contributed with respect to the Specified Equity Issued at Incorporation for which they have subscribed; provided, however, that, if the consent of all incorporators is obtained, the foregoing provisions shall not preclude them from performing registration or other acts necessary to duly assert the creation or transfer of rights against third parties after the formation of the Specific Purpose Company.
- (2) Payment under the provisions of the preceding paragraph must be made at the Bank, etc. (meaning a bank, trust company, or other organization specified by a Cabinet Office Ordinance as being equivalent thereto; the same shall apply hereinafter) specified as the place for payment by the incorporators.

(Transfer of the Right to Become a Specified Equity Member Given in the Specified Equity Issued at Incorporation)

- Article 20 No incorporator shall transfer the right to become a Specified Equity Member that is given in the Specified Equity Issued at Incorporation by making payment or delivery under the provisions of paragraph (1) of the preceding Article (hereinafter referred to as "Performance of Contribution" in this Section).

(Appointment of Officers at Incorporation, etc.)

Article 21 (1) The incorporators must, without delay after the completion of the Performance of Contribution, appoint Directors at Incorporation (meaning persons who become directors at the time of incorporation of the Specific Purpose Company; the same shall apply hereinafter) and Company Auditors at Incorporation (meaning persons who become a company auditors at the time of incorporation of the Specific Purpose Company; the same shall apply hereinafter).

(2) In the cases listed in either of the following items, the incorporators must, without delay after the completion of the Performance of Contribution, appoint the persons specified in the relevant item:

(i) cases where the Specific Purpose Company to be incorporated is a Company with Accounting Advisors: Accounting Advisors at Incorporation (meaning the persons who become the accounting advisors at the time of incorporation of the Specific Purpose Company; the same shall apply hereinafter); and

(ii) cases where the Specific Purpose Company to be incorporated is a Company with Accounting Auditors (meaning a Specific Purpose Company that has accounting auditors or a Specific Purpose Company that is required to have accounting auditors pursuant to the provisions of this Act; the same shall apply hereinafter): the Accounting Auditors at Incorporation (meaning the persons who become accounting auditors at the time of incorporation of the Specific Purpose Company; the same shall apply hereinafter).

(3) The provisions of Article 38 (3) and Article 39 (3) (Election of Officers at Incorporation), Article 40 (1) and the main clause of Article 40 (2) (Method of Election of Officers at Incorporation), Article 42 (Dismissal of Officers at Incorporation), and Article 43 (1) and the main clause of Article 43 (2) (Method of Dismissal of Officers at Incorporation) of the Companies Act shall apply mutatis mutandis to a Director at Incorporation, an Accounting Advisor at Incorporation, a Company Auditor at Incorporation, or an Accounting Auditor at Incorporation of a Specific Purpose Company. In this case, the phrase "Article 331, paragraph (1) (including the case where it is applied mutatis mutandis pursuant to Article 335 (1)), Article 333 (1) or (3), or Article 337 (1) or (3)" in Article 39 (3) of the Companies Act shall be deemed to be replaced with "Article 70 (1) of the Asset Securitization Act (including the cases where it is applied mutatis mutandis pursuant to Article 72 (2) of the Asset Securitization Act), Article 71 (1) of the Asset Securitization Act, Article 333 (3) as applied mutatis mutandis pursuant to Article 71 (2) of the Asset Securitization Act or Article 73 (1) or (3) of the Asset Securitization Act," and the phrase "each one Share Issued at Incorporation" in the main clause of Article 40 (2) and the main clause of Article 43 (2) of the Companies Act shall



be deemed to be replaced with "each unit of Specified Equity Issued at Incorporation."

- (4) The provisions of Article 46 (1) and (2) (Investigation by Directors at Incorporation) of the Companies Act shall apply mutatis mutandis to a Director at Incorporation and a Company Auditor at Incorporation of a Specific Purpose Company. In this case, the term "item (i) or item (ii) of Article 33 (10)" in Article 46 (1) (i) of the Companies Act shall be deemed to be replaced with "Article 33 (10) (i) as applied mutatis mutandis pursuant to Article 18 (2) of the Asset Securitization Act," the phrase "the Properties Contributed in Kind in the cases listed in item (i) or item (ii) of Article 33 (10) (if listed in such item, limited to the securities under such item)" in Article 46 (1) (i) of the Companies Act shall be deemed to be replaced with "the Properties Contributed in Kind in the cases listed in Article 33 (10) (i) or (ii)," and the phrase "item (iii) of Article 33 (10)" in Article 46 (1) (ii) of the Companies Act shall be deemed to be replaced with "Article 33 (10) (iii) as applied mutatis mutandis pursuant to Article 18 (2) of the Asset Securitization Act."

(Registration of Incorporation, etc.)

Article 22 (1) Registration of the incorporation of a Specific Purpose Company must be made at the location of its head office within two weeks from whichever is later of the following dates:

- (i) the date of termination of the investigation under the provisions of Article 46 (1) of the Companies Act as applied mutatis mutandis pursuant to paragraph (4) of the preceding Article; or
- (ii) the date specified by the incorporators.

(2) The following particulars must be registered in the registration set forth in the preceding paragraph:

- (i) the purpose;
- (ii) the trade name;
- (iii) the addresses of the head office and any branch offices;
- (iv) the term of existence of the Specific Purpose Company or grounds for the dissolution thereof;
- (v) the Amount of Specified Capital;
- (vi) the total number of units of Specified Equity issued;
- (vii) if there is an Administrator for the Specified Equity Member Registry (meaning a person who, on behalf of the Specific Purpose Company, engages in the preparation and keeping of the Specified Equity Member Registry and any other affairs concerning the Specified Equity Member Registry; the same shall apply hereinafter), the name, address, and business office of said Administrator of the Specified Equity Member Registry;
- (viii) the names and addresses of the directors and company auditors;

- (ix) if there is any director who does not represent the Specific Purpose Company, the names of the Representative Directors (meaning the directors who represent the Specific Purpose Company; the same shall apply hereinafter);
  - (x) if the Specific Purpose Company is a Company with Accounting Advisors, a statement to that effect, the names of the accounting advisors, and the place set forth in Article 378 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 86 (2);
  - (xi) if the Specific Purpose Company is a Company with Accounting Auditors, a statement to that effect and the names of the accounting auditors;
  - (xii) if there is a person who is to temporarily perform the duties of an accounting auditor who has been appointed pursuant to the provisions of Article 76 (4), the name of such person;
  - (xiii) if the measures prescribed in Article 104 (7) are to be taken, the particulars which are necessary for making the information contained in the balance sheet and the profit and loss statement prescribed in paragraph (5) of that Article available to a large, non-exclusive group of persons and which are specified by a Cabinet Office Ordinance;
  - (xiv) if there are provisions in the articles of incorporation concerning the Means of Public Notice under the provisions of Article 194 (1) (meaning the means by which the Specific Purpose Company gives public notice (excluding public notice that is required to be given by means of publication in the Official Gazette pursuant to the provisions of this Part or another Act); hereinafter the same shall apply in this Part), said provisions from the articles of incorporation; and
  - (xv) if the provisions in the articles of incorporation set forth in the preceding paragraph specify Electronic Public Notice (meaning the Electronic Public Notice prescribed in Article 194 (1) (iii); the same shall apply in (a)) as the Means of Public Notice, the following particulars:
    - (a) the particulars necessary for making information regarding which public notice should be given through Electronic Public Notice available to many unspecified persons, as prescribed in Article 911 (3) (xxix) (a) of the Companies Act; and
    - (b) if there are provisions in the articles of incorporation stipulated pursuant to the provisions of the second sentence of Article 194 (2), said provisions in the articles of incorporation; and
  - (xvi) if there are no provisions in the articles of incorporation as set forth in item (xiv), a statement to the effect that the method set forth in Article 194 (1) (i) shall be the Means of Public Notice pursuant to the provisions of paragraph (3) of that Article.
- (3) The provisions of Article 915 (1) and (2) (Registration of a Change), Article

916 (limited to the portion pertaining to item (i)) (Registration of Relocation of the Head Office to the Jurisdictional District of Another Registry), Article 917 (limited to the portion pertaining to item (i)) (Registration of a Provisional Disposition, etc. Suspending Execution of Duties) and Article 918 (Registration of a Manager) of the Companies Act shall apply mutatis mutandis to registration of a Specific Purpose Company at the location of its head office. In this case, the phrase "in the items of Article 911 (3) or in the items of the preceding three Articles" in Article 915 (1) of the Companies Act shall be deemed to be replaced with "in the items of Article 22 (2) of the Asset Securitization Act," the term "Article 199 (1) (iv)" and the term "share" in Article 915 (2) of the Companies Act shall be deemed to be replaced with "Article 36 (1) (iv) of the Asset Securitization Act" and "Specified Equity," respectively, the term "the items of Article 911 (3)" in Article 916 (i) of the Companies Act shall be deemed to be replaced with "the items of Article 22 (2) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (4) The provisions of Article 930 (1) (limited to the portion pertaining to item (i) and item (v)), (2) and (3) (Registration at the Location of a Branch Office), Article 931 (Registration of Relocation of a Branch Office to the Jurisdictional District of Another Registry), and the main clause of Article 932 (Registration of a Change, etc. with Regard to a Branch Office) of the Companies Act shall apply mutatis mutandis to registration of a Specific Purpose Company at the location of its branch office. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Formation of a Specific Purpose Company)

Article 23 A Specific Purpose Company shall be formed by making a registration of its incorporation at the location of its head office.

(Liability to Guarantee Subscription for Specified Equity Issued at Incorporation)

Article 24 (1) If any portion of the Specified Equity Issued at Incorporation remains unsubscribed for at the time of the formation of a Specific Purpose Company, the incorporators and the Directors at Incorporation of said Specific Purpose Company shall be deemed to have jointly subscribed for said portion. The same shall apply when any subscriber for Specified Equity rescinds their manifestation of intention to subscribe for Specified Equity Issued at Incorporation after the formation of the Specific Purpose Company.

- (2) If Performance of Contribution for Specified Equity Issued at Incorporation remains incomplete at the time of the formation of a Specific Purpose Company, the incorporators and the Directors at Incorporation of said Specific Purpose

Company shall jointly and severally have an obligation to pay the amount that remains unpaid or the value of the property other than money that remains undelivered.

- (3) The provisions of Article 64 (Certificate of Deposit of Paid Monies of the Companies Act shall apply mutatis mutandis to a Bank, etc. that handles payment under the provisions of Article 19 (1). In this case, the phrase "In cases where solicitation under Article 57 (1) has been carried out, the incorporators" in Article 64 (1) of the Companies Act shall be deemed to be replaced with "The incorporators," and the term "Stock Company" in paragraph (2) of that Article shall be deemed to be replaced with "Specific Purpose Company."

(Application Mutatis Mutandis of the Companies Act, etc.)

Article 25 (1) The provisions of Article 50 (Right of Subscribers of Shares) of the Companies Act shall apply mutatis mutandis to the right of a subscriber of Specified Equity Issued at Incorporation of a Specific Purpose Company, and the provisions of Article 51 (Restrictions on Invalidation or Rescission of Subscription) of the Companies Act shall apply mutatis mutandis to the invalidation or rescission of a subscription for Specified Equity Issued at Incorporation. In this case, the term "shareholder" in Article 50 of the Companies Act shall be deemed to be replaced with "Specified Equity Member."

- (2) The provisions of Part II, Chapter I, Section 8 (Liability of Incorporators) of the Companies Act shall apply mutatis mutandis to a Specific Purpose Company. In this case, the terms "Article 28 (i)" and "Article 33 (2)" in Article 52 (2) of the Companies Act shall be deemed to be replaced with "Article 16 (3) (i) of the Asset Securitization Act" and "Article 33 (2) as applied mutatis mutandis pursuant to Article 18 (2) of the Asset Securitization Act," respectively, the term "Article 33 (10) (iii)" in Article 52 (3) of the Companies Act shall be deemed to be replaced with "Article 33 (10) (iii) as applied mutatis mutandis pursuant to Article 18 (2) of the Asset Securitization Act," and the term "all shareholders" in Article 55 of the Companies Act shall be deemed to be replaced with "all members."

- (3) The provisions of Article 828 (1) (limited to the portion pertaining to item (i)) and paragraph (2) (limited to the portion pertaining to item (i)) (Actions Seeking Invalidation of Acts Concerning the Organization of a Company), Article 834 (limited to the portion pertaining to item (i)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Article 836 (1) and (3) (Order to Provide Security), Article 837 to Article 839 inclusive (Mandatory Consolidation of Oral Arguments, etc.; Persons Affected by an Upholding Judgment; Effects of a Judgment of Invalidation, Revocation or Rescission), Article 846 (Liability for Damages in Cases Where the Plaintiff Is Defeated),

and Article 937 (1) (limited to the portion pertaining to item (i) (a)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action seeking invalidation of the incorporation of a Specific Purpose Company. In this case, the phrase "Shareholder, etc. (meaning a shareholder, director or liquidator (or, for a Company with Company Auditors, it means a shareholder, director, company auditor or liquidator, and for a Company with Committees, it means a shareholder, director, executive officer or liquidator); hereinafter the same shall apply in this Section)" in Article 828 (2) (i) of the Companies Act shall be deemed to be replaced with "member, director, company auditor, or liquidator," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (4) The provisions of Article 97 (3) and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847 (2), Article 849 (2) and (5), and Article 851) (Action for Pursuing the Liability, etc. of a Stock Company) of the Companies Act shall apply mutatis mutandis to an action pursuing the liability of an incorporator, a Director at Incorporation, or a Company Auditor at Incorporation. In this case, the phrase "A shareholder (excluding a Holder of Shares Less than One Unit who is unable to exercise rights pursuant to the provisions of the articles of incorporation as set forth in Article 189 (2)) having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more)" in Article 847 (1) of the Companies Act shall be deemed to be replaced with "A Specified Equity Member or Preferred Equity Member (meaning a preferred equity member as defined in Article 26 of the Asset Securitization Act) who has held Preferred Equity continuously for the preceding six months or longer (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or longer)," the term "shareholder" in Article 847 (3) to (5) inclusive and (7) of the Companies Act shall be deemed to be replaced with "Specified Equity Member or Preferred Equity Member," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Section 3 Rights and Obligations of Members, etc.**

#### **Subsection 1 General Provisions**

(Members)

Article 26 The members of a Specific Purpose Company (limited to a Specific Purpose Company that does not issue Preferred Equity) shall be Specified Equity Members, and the members of a Specific Purpose Company that issues Preferred Equity shall be Specified Equity Members and Preferred Equity

Members (meaning persons who have Preferred Equity; the same shall apply hereinafter).

(Liabilities and Rights, etc. of Members)

- Article 27 (1) A member's liability shall be limited to the amount of the subscription price of the Specified Equity or Preferred Equity they hold.
- (2) A member shall have the following rights and other rights recognized pursuant to the provisions of this Act with respect to the Specified Equity or Preferred Equity they hold:
- (i) the right to receive distributions of profits; and
  - (ii) the right to receive distributions of residual assets.
- (3) A Specified Equity Member shall have a voting right that can be exercised at general meetings of members with regard to the Specified Equity they hold.
- (4) A Preferred Equity Member shall not have a voting right that can be exercised at general meetings of members with regard to the Preferred Equity they hold, unless otherwise provided for in this Act; provided, however, that this shall not apply to cases where it is otherwise provided in the articles of incorporation.
- (5) Any provisions of the articles of incorporation that do not provide the entirety of the rights listed in paragraph (2) (i) and (ii) to members shall not be effective.
- (6) Article 106 (Exercise of Rights by Co-owners) and Article 109 (1) (Equality of Shareholders) of the Companies Act shall apply mutatis mutandis to the Specified Equity or Preferred Equity of a Specific Purpose Company. In this case, the term "shareholders" in that paragraph shall be deemed to be replaced with "members," and the term "number" in that paragraph shall be deemed to be replaced with "number of units."

## **Subsection 2 Specified Equity Members**

(Specified Equity Member Registries)

- Article 28 (1) A Specific Purpose Company must prepare a Specified Equity Member Registry and state or record the following particulars therein:
- (i) the name and address of each Specified Equity Member;
  - (ii) the number of units of Specified Equity held by the Specified Equity Members set forth in the preceding item;
  - (iii) the day on which the Specified Equity Members set forth in item (i) acquired the Specified Equity; and
  - (iv) if a Specified Equity Trust has been created, a statement to that effect, the names and addresses of the trustee and the beneficiaries, and any other particulars specified by a Cabinet Office Ordinance pertaining to the

Specified Equity Trust.

- (2) A Specific Purpose Company may specify a certain date (hereinafter referred to as a "Record Date" in this Subsection) and designate the Specified Equity Members who are stated or recorded in the Specified Equity Member Registry as of the Record Date as the persons who can exercise their rights.
- (3) The provisions of Article 122 (excluding paragraph (4)) (Delivery of Documents Stating Particulars to be Stated in the Shareholder Registry), Article 124 (2) and (3) (Record Date), Article 125 (1) to (3) inclusive (Keeping and Making Available for Inspection of Shareholder Registry) and Article 126 (Notice to Shareholders) of the Companies Act shall apply mutatis mutandis to the Specified Equity Member Registry pertaining to Specified Equity Members of a Specific Purpose Company, the provisions of Article 123 (Administrator of Shareholder Registry) of that Act shall apply mutatis mutandis to the Administrator of a Specified Equity Member Registry of a Specific Purpose Company, and the provisions of Article 196 (1) and (2) (Omission of Notices to Shareholders) of that Act shall apply mutatis mutandis to a notice to a Specified Equity Member of a Specific Purpose Company. In this case, the terms "item (i) of the preceding article" and "Particulars to be Stated in the Shareholder Registry" in Article 122 (1) of the Companies Act shall be deemed to be replaced with "Article 28 (1) (i) of the Asset Securitization Act" and "particulars listed in the items of Article 28 (1) of the Asset Securitization Act," respectively, the phrase "Shareholders as of the Record Date" in Article 124 (2) of the Companies Act shall be deemed to be replaced with "Specified Equity Members stated or recorded in the Specified Equity Member Registry as of the Record Date," the term "Administrator of Shareholder Registry" in Article 125 (1) of the Companies Act shall be deemed to be replaced with "Administrator of the Specified Equity Member Registry," the terms "shareholder" and "shareholders" in paragraph (3) (i) and (ii) of that Article shall be deemed to be replaced with "member" and "members," respectively, the phrase "If a share" in Article 126 (3) of the Companies Act shall be deemed to be replaced with "If Specified Equity," the phrase "of the share" in paragraph (4) of that Article shall be deemed to be replaced with "of the Specified Equity," the phrase "Article 299 (1) (including the case where it is applied mutatis mutandis in Article 325)" in Article 126 (5) of the Companies Act shall be deemed to be replaced with "Article 55 (1) or Article 56 (1) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (4) The provisions of paragraph (2), the provisions of Article 124 (2) and (3) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph, and the provisions of Article 196 (3) of that Act shall apply mutatis mutandis to a pledgee regarding whom the particulars listed in the items of

Article 32 (3) are stated or recorded in the Specified Equity Member Registry (hereinafter referred to as a "Registered Pledgee of Specified Equity").

(Transfer of Specified Equity)

Article 29 (1) A Specified Equity Member may transfer all or part of their Specified Equity to another Specified Equity Member.

(2) The approval of the Specific Purpose Company is required in order for a person other than a Specified Equity Member to acquire Specified Equity through a transfer.

(Perfection of the Transfer of Specified Equity, etc.)

Article 30 (1) A transfer of Specified Equity shall not be perfected against the Specific Purpose Company and other third parties unless the name and address of the person who acquires said Specified Equity are stated or recorded in the Specified Equity Member Registry.

(2) The provisions of Article 132 (1) and (2), Article 133 and Article 134 (Stating or Recording of Particulars to Be Stated in Shareholder Registry Not Requested by Shareholders) of the Companies Act shall apply mutatis mutandis to Specified Equity of a Specific Purpose Company. In this case, the term "shareholders" in these provisions shall be deemed to be replaced with "Specified Equity Members," the term "Particulars to be Stated in the Shareholder Registry" in those provisions shall be deemed to be replaced with "particulars listed in the items of Article 28 (1) of the Asset Securitization Act," the term "shareholder registry" in those provisions shall be deemed to be replaced with "Specified Equity Member Registry," the term "Acquirer of Shares" in those provisions shall be deemed to be replaced with "Acquirer of Specified Equity," the term "Treasury Shares" in Article 132 (1) of the Companies Act shall be deemed to be replaced with "The Company's Own Specified Equity (meaning the Company's Own Specified Equity as defined in Article 59 (2) of the Asset Securitization Act)," the term "Article 136" in Article 134 (i) of the Companies Act shall be deemed to be replaced with "Article 31 (1) of the Asset Securitization Act," the term "Article 137 (1)" in Article 134 (ii) of the Companies Act shall be deemed to be replaced with "Article 31 (2) of the Asset Securitization Act," the term "Article 140 (4)" in Article 134 (iii) of the Companies Act shall be deemed to be replaced with "Article 31 (7) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Procedures for Approval Pertaining to Transfers of Specified Equity)

Article 31 (1) When a Specified Equity Member wishes to transfer Specified Equity they hold to a person other than a Specified Equity Member (excluding



the Specific Purpose Company that has issued said Specified Equity), said Specified Equity Member may request that said Specific Purpose Company decide on whether or not to approve the acquisition of said Specified Equity by such person.

- (2) A person who acquires Specified Equity from a person other than the Specific Purpose Company that has issued said Specified Equity (such a person who acquires Specified Equity shall be limited to a person other than a Specified Equity Member, and shall exclude said Specific Purpose Company; hereinafter referred to as an "Acquirer of Specified Equity" in this Article) may request that the Specific Purpose Company decide on whether or not to approve the acquisition of said Specified Equity by the Acquirer of Specified Equity.
- (3) Except in the cases specified by a Cabinet Office Ordinance as those that are unlikely to harm the interests of interested persons, a request under the provisions of the preceding paragraph must be made jointly with the person stated or recorded in the Specified Equity Member Registry as the Specified Equity Member pertaining to the acquired Specified Equity or an heir or any other general successor of said Specified Equity Member.
- (4) The requests listed in the following items (hereinafter referred to as "Requests for Approval of a Transfer" in this Article) must be accompanied by disclosure of the particulars prescribed in the relevant item:
  - (i) a request under the provisions of paragraph (1)--the following particulars:
    - (a) the number of units of Specified Equity that the Specified Equity Member making such request intends to transfer;
    - (b) the name of the person receiving the transfer of the Specified Equity set forth in (a); and
    - (c) in cases where the Specified Equity Member requests that a Designated Purchaser as defined in paragraph (7) purchase the Specified Equity set forth in (a) in the event that the Specific Purpose Company decides not to grant the approval set forth in paragraph (1), a statement to that effect;
  - (ii) a request under the provisions of paragraph (2)--the following particulars:
    - (a) the number of units of Specified Equity acquired by the Acquirer of Specified Equity making such request;
    - (b) the name of the Acquirer of the Specified Equity set forth in (a); and
    - (c) in cases where the Acquirer of Specified Equity requests that a Designated Purchaser as defined in paragraph (7) purchase the Specified Equity set forth in (a) in the event that the Specific Purpose Company decides not to grant the approval set forth in paragraph (2), a statement to that effect.
- (5) A resolution made at a general meeting of members must be required in order for a Specific Purpose Company to decide whether or not to grant the approval set forth in paragraph (1) or paragraph (2).

- (6) When a Specific Purpose Company makes the decision set forth in the preceding paragraph, it must notify the person who has made the Request for Approval of Transfer (hereinafter referred to as the "Person Requesting Approval of Transfer" in this Article) of the details of said decision.
- (7) In cases where a Specific Purpose Company receives a request set forth in paragraph (4) (i) (c) or paragraph (4) (ii) (c), if it makes the decision not to grant the approval set forth in paragraph (1) or paragraph (2), it must designate, in a resolution made at a general meeting of members, the person who is to purchase the Specified Equity pertaining to the Request for Approval of Transfer (such person shall exclude said Specific Purpose Company; hereinafter referred to as the "Designated Purchaser" in this Article).
- (8) The provisions of Article 142 (1) and (2) (Designated Purchaser's Notice to Purchase) of the Companies Act shall apply mutatis mutandis to a Designated Purchaser, the provisions of Article 143 (2) (Withdrawal of Requests for Approval of Transfer) of that Act shall apply mutatis mutandis to a Requester for Approval of Transfer who makes the request set forth in paragraph (4) (i) (c) or paragraph (4) (ii) (c), and the provisions of Article 144 (1) to (6) inclusive (Determination of Sale Price), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (2) (limited to the portion pertaining to item (iii)) (Hearing of Statements), Article 870-2 (Sending of a Copy of a Written Motion, etc.) the main clause of Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (v)) (Immediate Appeal), Article 872-2 (Sending of a Copy of a Petition for Immediate Appeal, etc.), the main clause of Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of that Act shall apply mutatis mutandis to cases where a notice has been given under the provisions of Article 142 (1) of that Act as applied mutatis mutandis pursuant to this paragraph. In this case, the term "Article 140 (4)" in Article 142 (1) of the Companies Act shall be deemed to be replaced with "Article 31 (7) of the Asset Securitization Act," the terms "per share" and "Stock Company" in Article 142 (2) of the Companies Act shall be deemed to be replaced with "per unit" and "Specific Purpose Company," respectively, the terms "Subject Shares" and "Article 140 (1) (ii)" in Article 144 (1) and (4) to (6) inclusive of the Companies Act shall be deemed to be replaced with "Specified Equity prescribed in Article 31 (7) of the Asset Securitization Act" and "Article 142 (1) (ii)," respectively, the term "Stock Company" in Article 144 (1), (2), and (6) of the Companies Act shall be deemed to be replaced with "Designated Purchaser," the term "per share" in paragraph (5) of that Article shall be deemed to be replaced with "per unit," the term "Article 141 (2)" in Article 144 (6) of that Act shall be deemed to be replaced with "Article 142 (2)," and any

other necessary technical replacement of terms shall be specified by Cabinet Order.

- (9) The provisions of Article 145 (excluding item (ii)) (Cases Where a Stock Company is Deemed to Have Approved) of the Companies Act shall apply mutatis mutandis to the approval set forth in paragraph (1) or paragraph (2) by a Specific Purpose Company. In this case, the term "Article 139 (2)" in Article 145 (i) of that Act shall be deemed to be replaced with "Article 31 (6) of the Asset Securitization Act."

(Pledge of Specified Equity)

Article 32 (1) A Specified Equity Member may create a pledge over the Specified Equity they hold.

- (2) A pledge of Specified Equity shall not be perfected against a Specific Purpose Company or other third parties unless the name and address of the pledgee are stated or recorded in the Specified Equity Member Registry.

(3) A person who creates a pledge over Specified Equity may request the Specific Purpose Company to state or record the following particulars in the Specified Equity Member Registry:

- (i) the name and address of the pledgee; and
- (ii) the Specified Equity which is the subject of the pledge.

(4) In cases where a Specific Purpose Company carries out any of the following acts, the pledge over Specified Equity shall be effective with respect to the Monies, etc. (meaning monies and any other property; the same shall apply hereinafter) which the Specified Equity Member pertaining to said Specified Equity is entitled to receive as a result of said act:

- (i) consolidation of Specified Equity;
- (ii) distribution of profits;
- (iii) distribution of residual assets; or
- (iv) acquisition of Specified Equity.

(5) A Registered Pledgee of Specified Equity may receive the Monies, etc. (limited to monies) set forth in the preceding paragraph and appropriate it as payment to satisfy their own claims prior to other creditors.

(6) The provisions of Article 147 (3) (Perfection of Pledges of Shares) of the Companies Act shall apply mutatis mutandis to Specified Equity, and the provisions of Article 149 (1) to (3) inclusive (Delivery of Documents Stating Particulars to be Stated in Shareholder Registry), Article 150 (Notices to Registered Pledgees of Shares), Article 152 (2), and Article 154 (2) (Effect of Pledge of Shares) of that Act shall apply mutatis mutandis to a Registered Pledgee of Specified Equity pertaining to Specified Equity of a Specific Purpose Company. In this case, the term "shareholder registry" in these provisions shall be deemed to be replaced with "Specified Equity Member Registry," the

phrases "the items of the preceding Article" and "the items of that Article" in Article 149 (1) of that Act shall be deemed to be replaced with "the items of Article 32 (3) of the Asset Securitization Act" and "the items of that paragraph," respectively, the term "the preceding Article" in Article 152 (2) of the Companies Act shall be deemed to be replaced with "Article 32 (4) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Specified Equity Trusts)

Article 33 (1) Notwithstanding the provisions of Article 29 (2), Specified Equity may be placed in trust with a Trust Company, etc. (meaning a trust company or a bank or any other financial institution that carries out trust services; the same shall apply hereinafter) without obtaining approval therefore at a general meeting of members.

- (2) The following conditions must be attached to the contract related to a trust for Specified Equity (hereinafter referred to as a "Specified Equity Trust"):
- (i) the purpose of the trust shall be to administer the Specified Equity so that business pertaining to Asset Securitization based on the Asset Securitization Plan of a Specific Purpose Company is conducted smoothly;
  - (ii) the period of the Asset Securitization Plan shall be the trust period;
  - (iii) no instructions may be given to the trustee with regard to administration of the trust property;
  - (iv) neither the settlor nor a beneficiary shall terminate the trust by agreement during the trust period; and
  - (v) neither the settlor nor a beneficiary shall change the administration method of the trust property during the trust period except in the case of making a change under the provisions of Article 150 (Judicial Decision Ordering Changes to a Trust Due to Special Circumstances) of the Trust Act (Act No. 108 of 2006).
- (3) The provisions of Article 30 (1) and the preceding Article and the provisions of Article 133 (Stating or Recording of Particulars to Be Stated in Shareholder Registry at the Request of Shareholders) of the Companies Act shall apply mutatis mutandis to cases of placing Specified Equity in trust based on the provisions of paragraph (1). In this case, the phrase "the name and address of the person who acquires" in Article 30 (1) shall be deemed to be replaced with "the names and addresses of the trustee and the beneficiaries and any other particulars specified by a Cabinet Office Ordinance pertaining to the Specified Equity Trust as well as the fact that the Specified Equity Trust has been created," the term "Specified Equity" in the provisions of paragraphs (1) to (3) inclusive of the preceding Article shall be deemed to be replaced with "the beneficial interest of a Specified Equity Trust," the phrase "over Specified

Equity" and the term "said Specified Equity" in paragraph (4) of that Article shall be deemed to be replaced with "over the beneficial interest of a Specified Equity Trust" and "said beneficial interest of the Specified Equity Trust," respectively, the term "Stock Company" in Article 133 (1) of the Companies Act shall be deemed to be replaced with "Specific Purpose Company," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Prohibition on a Specific Purpose Company's Acquisition of Its Own Specified Equity and Receipt Thereof as the Subject of a Pledge, etc.)

Article 34 (1) No Specific Purpose Company may, except in cases where it is necessary for achieving the purpose thereof through the exercise of its rights, acquire its own Specified Equity, nor shall it receive the same as the subject of a pledge.

(2) The provisions of the preceding paragraph shall not apply in cases where a Specific Purpose Company acquires its own Specified Equity for the purpose of purchasing, from an heir of a Specified Equity Member within one year of the commencement of the inheritance, the Specified Equity of said Specific Purpose Company which the heir has acquired through inheritance from said Specified Member; provided, however, that this shall not apply to a case that falls under any of the following items:

(i) when the number of units of the Specific Purpose Company's own Specified Equity (meaning Specified Equity in a Specific Purpose Company held by that same Specific Purpose Company itself, excluding that acquired for achieving the purpose of the Specific Purpose Company through the exercise of its rights) exceeds one-fifth of the total number of units of Specified Equity;

(ii) when the purchase price for the Specified Equity of the Specific Purpose Company exceeds the amount obtained by deducting the total sum of the amounts listed in items (ii) to (v) inclusive of Article 115 (3) and the total sum of the amounts of monies distributed pursuant to the provisions of paragraph (1) of that Article from the amount set forth in paragraph (3) (i) of that Article; or

(iii) when the total sum of the amounts listed in Article 114 (1) (ii) to (iv) inclusive is found likely to exceed the amount set forth in item (i) of that paragraph on the last day of the Specific Purpose Company's business year.

(3) A resolution made at a general meeting of members shall be required in order for a Specific Purpose Company to purchase the Specified Equity set forth in the preceding paragraph. In this case, the Specified Member who is the seller of said Specified Equity may not exercise their voting right.

(4) In cases where a Specific Purpose Company acquires the Specified Equity set forth in paragraph (2), if the total sum of the amounts listed in Article 114 (1)

(ii) to (iv) inclusive as of the time when the approval set forth in Article 104 (2) has been obtained (in the case prescribed in the first sentence of paragraph (4) of that Article, the time when the report set forth in the second sentence of that paragraph has been made) with respect to the financial statements prescribed in Article 102 (2) pertaining to the business year that contains the date of said acquisition (if the business year immediately preceding such business year is not the Most Recent Business Year (the latest of the business years for which approval under Article 104 (2) has been obtained (in the case prescribed in the first sentence of paragraph (4) of that Article, the time when the report set forth in the second sentence of that paragraph has been made) with respect to the financial statements prescribed in Article 435 (2) relating to each business year; the same shall apply hereinafter), the business year immediately preceding such business year) exceeds the amount set forth in Article 114 (1) (i), the directors who performed duties in relation to the acquisition shall jointly and severally have an obligation to pay such excess amount (in cases where such excess amount exceeds the total amount of monies delivered to Specified Members as a result of the acquisition of said Specified Equity, the total amount of such monies) to said Specific Purpose Company; provided, however, that this shall not apply to any director who proves that they did not fail to exercise due care with respect to the performance of their duties.

(5) The provisions of Article 94 (4) shall apply mutatis mutandis to the liability of directors as set forth in the preceding paragraph.

(6) A Specific Purpose Company must dispose of any Specified Equity or pledge acquired in the cases prescribed in paragraph (1) or the main clause of paragraph (2) at an appropriate time.

(Prohibition on Cancellation of Specified Equity)

Article 35 Specified Equity may not be cancelled except in cases where the Amount of Specified Capital is reduced pursuant to the provisions of Article 108.

(Issuance of Specified Equity for Subscription, etc.)

Article 36 (1) Whenever a Specific Purpose Company intends to solicit persons to subscribe for the Specified Equity it issues, the Specific Purpose Company must determine the following particulars with respect to the Specified Equity for Subscription (meaning the Specified Equity that will be allotted to persons who file an application to subscribe for the Specified Equity in response to such solicitation; hereinafter the same shall apply in this Article):

(i) the number of units of Specified Equity for Subscription;

(ii) the Amount To Be Paid In (meaning the amount of monies to be paid in or

- the amount of any property other than money to be delivered in exchange for one unit of Specified Equity for Subscription; hereinafter the same shall apply in this Article) for the Specified Equity for Subscription or the method for calculating such amount;
- (iii) if property other than money will be the subject of contribution, a statement to that effect and the details and value of said property; and
  - (iv) the date or period for the payment of monies in exchange for the Specified Equity for Subscription or the date or period for the delivery of the property set forth in the preceding item.
- (2) A determination on particulars listed in the items of the preceding paragraph (hereinafter referred to as "Subscription Requirements" in this Article) must be made by resolution at a general meeting of members.
- (3) In cases where the Amount To Be Paid In set forth in paragraph (1) (ii) is particularly favorable to subscribers being solicited for Specified Equity for Subscription, the directors must, at the general meeting of members set forth in the preceding paragraph, disclose the reason for the need to solicit such persons at such an offered Amount To Be Paid In.
- (4) The Subscription Requirements must be uniform for each solicitation set forth in paragraph (1).
- (5) The provisions of Articles 202 to 213 inclusive (excluding Article 202 (3), Article 207 (9) (iii) and (v) and Article 213 (1) (iii)) (Cases Where Entitlement to Allotment of Shares Is Granted to Shareholders; Applications for Shares for Subscription; Allotment of Shares for Subscription; Special Provisions on Subscription and Allotment of Shares for Subscription; Subscription for Shares for Subscription; Contribution of Property Other Than Monies; Performance of Contributions; Timing of Shareholder Status; Demanding Cessation of the Issuing of Shares for Subscription; Restrictions on Invalidation or Rescission of Subscription; Liabilities of Persons Who Subscribed for Shares with Unfair Amount To Be Paid In; Liabilities of Directors in Case of Shortfall in Value of Property Contributed), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i) and item (iv)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to the Specified Equity for Subscription of a Specific Purpose Company set forth in paragraph (1). In this case, the term "shareholder" in these provisions shall be deemed to be replaced with "Specified Equity Member," the term "shares" in these provisions shall be deemed to be replaced with "Specified Equity," the term "number" in these

provisions shall be deemed to be replaced with "number of units," the term "Article 199 (1) (iii)" in these provisions shall be deemed to be replaced with "Article 36 (1) (iii) of the Asset Securitization Act," the term "Article 199 (1) (iv)" in these provisions shall be deemed to be replaced with "Article 36 (1) (iv) of the Asset Securitization Act," the term "Subscription Requirements" in Article 202 (1) of the Companies Act shall be deemed to be replaced with "Subscription Requirements determined by resolution at a general meeting of members," the term "one share" in paragraph (2) of that Article shall be deemed to be replaced with "one unit," the phrase "paragraphs (2) to (4) inclusive of Article 199 and the preceding two Articles" in Article 202 (5) of the Companies Act shall be deemed to be replaced with "Article 36 (2) and (3) of the Asset Securitization Act," the term "shareholders meeting" in Article 204 (2) of that Act shall be deemed to be replaced with "general meeting of members," the phrase "total number of Issued Shares" in Article 207 (9) (i) of the Companies Act shall be deemed to be replaced with "total number of units of Specified Equity," the term "Treasury Shares" in Article 210 of the Companies Act shall be deemed to be replaced with "The Company's Own Specified Equity (meaning a Company's Own Specified Equity as defined in Article 59 (2) of the Asset Securitization Act)," the phrase "laws and regulations or articles of incorporation" in Article 210 (i) of the Companies Act shall be deemed to be replaced with "laws and regulations, Asset Securitization Plan, or articles of incorporation," the phrase "Executive directors who carried out duties regarding the solicitation of subscribers for such Shares for Subscription (or, for a Company with Committees, executive officers; the same shall apply hereinafter in this item) and other persons prescribed by the applicable Ordinance of the Ministry of Justice as persons who were involved, in the performance of their duties, in the execution of the business of such executive directors" in Article 213 (1) (i) of that Act shall be deemed to be replaced with "Directors who carried out duties regarding the solicitation of subscribers for such Shares for Subscription and other persons prescribed by an Ordinance of the Ministry of Justice as persons who were involved, in the performance of their duties, in the execution of the business of such directors," the term "shareholders meeting" in item (ii) of said paragraph shall be deemed to be replaced with "general meeting of members," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (6) A Specific Purpose Company shall be deemed to have effected a change in the articles of incorporation to the effect that the Amount of Specified Capital is to be increased by an amount equivalent to the amount of property paid in or delivered on the date set forth in paragraph (1) (iv) (in cases where the period set forth in that paragraph has been determined, the last day of such period).
- (7) The provisions of Article 64 (Certificate of Deposit of Paid Monies) of the



Companies Act shall apply mutatis mutandis to a Bank, etc. that handles payment under the provisions of Article 208 (1) of that Act as applied mutatis mutandis pursuant to paragraph (5). In this case, the term "Article 57 (1)" in Article 64 (1) of the Companies Act shall be deemed to be replaced with "Article 36 (1) of the Asset Securitization Act," the term "incorporators" in Article 64 (1) of the Companies Act shall be deemed to be replaced with "directors," and the phrase "Stock Company after formation" in paragraph (2) of that Article shall be deemed to be replaced with "Specific Purpose Company."

- (8) The provisions of Article 828 (1) (limited to the portion pertaining to item (ii)) and (2) (limited to the portion pertaining to item (ii)) (Actions Seeking Invalidity of Acts Concerning the Organization of a Company), Article 834 (limited to the portion pertaining to item (ii)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Article 836 (1) and (3) (Order to Provide Security), Articles 837 to 840 inclusive (Mandatory Consolidation of Oral Arguments, etc.; Persons Affected by an Upholding Judgment; Effects of a Judgment of Invalidity, Revocation or Rescission; Effects of a Judgment of Invalidity of New Share Issue), Article 846 (Liability for Damages in Cases Where the Plaintiff Is Defeated), and Article 937 (1) (limited to the portion pertaining to item (i) (b)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action seeking invalidity of issuance of Specified Equity by a Specific Purpose Company after the formation thereof, and the provisions of Article 868 (1) (Jurisdiction over Non-Contentious Cases), the main clause of Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (ii)) (Immediate Appeal), the main clause of Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Articles 875 to 877 inclusive (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act; Supreme Court Rules; Mandatory Consolidation of Hearings, etc.) and Article 878 (1) (Effects of a Judicial Decision) of the Companies Act shall apply mutatis mutandis to a petition under Article 840 (2) of that Act as applied mutatis mutandis pursuant to this paragraph. In this case, the phrase "within six months from the day on which the share issue became effective (or, for a Stock Company which is not a Public Company, within one year from the day on which the share issue became effective)" in Article 828 (1) (ii) of the Companies Act shall be deemed to be replaced with "within one year," the term "Shareholder, etc." in paragraph (2) (ii) of that Article shall be deemed to be replaced with "member, director, company auditor, or liquidator," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (9) The provisions of Article 829 (limited to the portion pertaining to item (i)) (Action for Declaratory Judgment of Absence of a New Share Issue, etc.),

Article 834 (limited to the portion pertaining to item (xiii)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Articles 836 to 838 inclusive (Order to Provide Security; Mandatory Consolidation of Oral Arguments, etc.; Persons Affected by an Upholding Judgment), Article 846 (Liability for Damages in Cases Where the Plaintiff Is Defeated), and Article 937 (1) (limited to the portion pertaining to item (i) (e)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action for a declaratory judgment of non-issuance of Specified Equity by a Specific Purpose Company after the formation thereof. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

- (10) The provisions of Article 97 (3) and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847 (2), Article 849 (2) and (5) and Article 851) (Action for Pursuing the Liability, etc. of a Stock Company) of the Companies Act shall apply mutatis mutandis to an action seeking payment under the provisions of Article 212 (1) of the Companies Act as applied mutatis mutandis pursuant to paragraph (5), and to an action for pursuing, under the provisions of Article 213 (1) of the Companies Act as applied mutatis mutandis pursuant to paragraph (5), the liability of directors, etc. defined in Article 213 (1) of the Companies Act. In this case, the phrase "shareholder (excluding a Holder of Shares Less than One Unit who is unable to exercise rights pursuant to the provisions of the articles of incorporation) having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such a period or more)" in Article 847 (1) of the Companies Act shall be deemed to be replaced with "Specified Equity Member, or a Preferred Equity Member who has held Preferred Equity continuously for the preceding six months or longer (or, in cases where a shorter period is prescribed in the articles of incorporation, such a period or longer)," the term "shareholder" in paragraphs (3) to (5) inclusive and (7) of that Article shall be deemed to be replaced with "Specified Equity Member or Preferred Equity Member," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Prohibition on the Issuance of Securities Pertaining to Specified Equity)  
Article 37 No Specific Purpose Company may issue either securities that are payable to order or those in bearer form with regard to Specified Equity.

(Application Mutatis Mutandis of the Companies Act to Specified Equity)  
Article 38 The provisions of Article 180 (excluding paragraph (2) (iii) and paragraph (3)) (Consolidation of Shares), Article 181 (Notices to Shareholders), Article 182 (Effectuation), Article 234 (2) and Article 235 (1) (Treatment of

Fractions), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 871 (Appending of the Reason), Article 874 (limited to the portion pertaining to item (iv)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to consolidation of a Specific Purpose Company's Specified Equity. In this case, the term "shareholders meeting" in Article 180 (2) of the Companies Act shall be deemed to be replaced with "general meeting of members," the term "Registered Pledges of the Shares" in Article 181 of that Act shall be deemed to be replaced with "Registered Pledges of Specified Equity," the term "shareholders" in Article 182 and Article 235 (1) of that Act shall be deemed to be replaced with "Specified Equity Members," the term "number" in those provisions shall be deemed to be replaced with "number of units," the term "the preceding paragraph" in Article 234 (2) of that Act shall be deemed to be replaced with "Article 235 (1) as applied mutatis mutandis pursuant to Article 38 of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Subsection 3 Preferred Equity Members**

(Issuance of Preferred Equity)

- Article 39 (1) A Specific Purpose Company may, in accordance with the provisions of an Asset Securitization Plan and the decision of the director (if there are multiple directors, a decision made by a majority thereof), solicit persons to subscribe for Preferred Equity.
- (2) For a Type 2 Specific Purpose Company as set forth in Article 51 (1) (ii), in cases where the Amount To Be Paid In (meaning the amount of monies to be paid in exchange for one unit of Preferred Equity for Subscription; hereinafter the same shall apply in this Subsection) for Preferred Equity for Subscription (meaning Preferred Equity that will be allotted to persons who have filed an application to subscribe for Preferred Equity in response to the solicitation set forth in the preceding paragraph; hereinafter the same shall apply in this Subsection) is particularly favorable to subscribers being solicited for Preferred Equity for Subscription, the director shall, at a general meeting of members, explain the reason for the need to solicit such persons at such an offered Amount To Be Paid In, and the class, number of units, and the Amount To Be Paid In with regard to said Preferred Equity for Subscription must be determined by resolution at a general meeting of members.
- (3) Each Preferred Equity Member shall have a voting right for the resolution set forth in the preceding paragraph.

(4) The provisions of Article 199 (5) (Determination of Subscription Requirements) of the Companies Act shall apply mutatis mutandis to the Amount To Be Paid In for Preferred Equity for Subscription.

(Applications for Preferred Equity for Subscription)

Article 40 (1) A Specific Purpose Company must notify persons who intend to file an application to subscribe for Preferred Equity for Subscription in response to the solicitation set forth in paragraph (1) of the preceding Article of the following particulars:

- (i) the trade name and the date of the Business Commencement Notification (in cases where a Specific Purpose Company makes a Notification of a New Plan, the date of said Notification of the New Plan);
- (ii) the details (including preferential conditions with regard to the distribution of profits or distribution of residual assets) and the total number of units of Preferred Equity for Subscription;
- (iii) the Amount To Be Paid In for Preferred Equity for Subscription or the method for calculating such amount;
- (iv) if the Asset Securitization Plan provides for issuance of any other Preferred Equity, the particulars listed in the preceding two items with regard to said other Preferred Equity and the status of issuance thereof;
- (v) if the Asset Securitization Plan provides for issuance of Specified Bonds, Specified Short-Term Bonds, or Specified Promissory Notes, in the case of Specified Bonds, the particulars listed in Article 122 (1) (iv) to (viii) and (xiv) with regard to such bonds and the status of issuance thereof, and in the case of Specified Short-Term Bonds or Specified Promissory Notes, the limit amount of the issuance, and any other particulars specified by a Cabinet Office Ordinance with regard to such bonds or promissory notes and the status of issuance thereof;
- (vi) if the Asset Securitization Plan provides for Specific Borrowings, the limit of such borrowings and any other particulars specified by a Cabinet Office Ordinance with regard to such borrowings and the status thereof;
- (vii) an outline of the types of Specified Assets (excluding Secondary Specified Assets), particulars sufficient for specifying the Specified Assets, the rights on the Specified Assets which may be asserted against the Specific Purpose Company, and any other particulars necessary for learning the value of the Specified Assets as provided by the Asset Securitization Plan;
- (viii) the particulars pertaining to the Specified Assets set forth in the preceding item as specified in the following items for the categories set forth in the respective items:
  - (a) land or buildings, or rights or assets related thereto, which are specified by Cabinet Order: the appraised value determined through a real property

- appraisal performed by a real property appraiser specified by Cabinet Order pertaining to these assets
- (b) assets other than the assets listed in (a): the results of an investigation performed by a person other than the Specific Purpose Company who is specified by Cabinet Order with regard to the value of said assets
  - (ix) the place for payment;
  - (x) if a person has promised to subscribe for any shortfall in the number of units of Preferred Equity in the case that the number of units of Preferred Equity for which applications are filed for subscription fails to reach the total number of units of Preferred Equity set forth in item (ii), the name of such person;
  - (xi) if applicants are to be allowed to rescind their subscriptions for the Preferred Equity for Subscription in cases where the Preferred Equity is not issued by a specific date, a statement to that effect along with that specific date; and
  - (xii) in addition to what is listed in the preceding items, particulars specified by a Cabinet Office Ordinance.
- (2) A person who intends to file an application to subscribe for Preferred Equity for Subscription in response to the solicitation set forth in paragraph (1) of the preceding Article must deliver a document containing the following particulars to the Specific Purpose Company:
- (i) the name and address of the person who intends to file the application; and
  - (ii) the number of units of Preferred Equity for Subscription for which the person intends to subscribe.
- (3) A person who files the application set forth in the preceding paragraph may, in lieu of delivering the document set forth in that paragraph, provide the particulars to be stated in the document set forth in that paragraph by Electromagnetic Means (which means any method using an electronic data processing system or other type of information processing technology, which is specified by a Cabinet Office Ordinance; hereinafter the same shall apply except in Article 194 (1) (iii)) with the consent of the Specific Purpose Company, pursuant to Cabinet Order provisions. In this case, said person who files the application shall be deemed to have delivered the document under the preceding paragraph.
- (4) The provisions of paragraph (1) shall not apply to cases where the Specific Purpose Company has delivered a prospectus as prescribed in Article 2 (10) of the Financial Instruments and Exchange Act which contains the particulars listed in the items of that paragraph to the person who intends to file the application set forth in paragraph (1) and to other cases specified by a Cabinet Office Ordinance as having no risk of failing to protect the person who intends to make an application to subscribe for Preferred Equity for Subscription.

- (5) When there are any changes in the particulars listed in the items of paragraph (1), a Specific Purpose Company must immediately notify any person who has filed an application set forth in paragraph (2) (hereinafter such person shall be referred to as an "Applicant" in this Subsection) to that effect and of the particulars that changed.
- (6) It shall be sufficient for a notice or demand made to an Applicant by a Specific Purpose Company to be sent to the address set forth in paragraph (2) (i) (in cases where the Applicant has notified the Specific Purpose Company of another place or contact address to receive such notice or demand, such place or contact address).
- (7) The notice or demand set forth in the preceding paragraph shall be deemed to have arrived when such notice or demand should have normally arrived.
- (8) The director must respond to any request for inspection of the Asset Securitization Plan or delivery of a copy or extract of said Asset Securitization Plan made by an Applicant.
- (9) The director may, in lieu of delivering a copy or extract of the Asset Securitization Plan under the provisions of the preceding paragraph, provide the particulars to be stated in the copy or extract of said Asset Securitization Plan by Electromagnetic Means with the consent of the Applicant, pursuant to Cabinet Order provisions. In this case, said director shall be deemed to have delivered the copy or extract of said Asset Securitization Plan.
- (10) With regard to Preferred Equity, no property other than money may be the subject of contribution.

(Allotment of and Payment for Preferred Equity for Subscription)

- Article 41 (1) A Specific Purpose Company must, from among Applicants, specify the persons to whom Preferred Equity for Subscription shall be allotted and the number of units of Preferred Equity for Subscription to be allotted to such persons. In this case the Specific Purpose Company may reduce the number of units of Preferred Equity for Subscription to be allotted to said Applicants to a number below that set forth in paragraph (2) (ii) of the preceding Article.
- (2) The provisions of paragraphs (1) to (7) inclusive of the preceding Article and the preceding paragraph shall not apply to cases where a person who intends to subscribe for Preferred Equity for Subscription concludes a contract to subscribe for the total number of units thereof.
  - (3) The persons listed in the following items shall be the subscriber for the numbers of units of Preferred Equity for Subscription prescribed respectively in those items with regard to Preferred Equity for Subscription:
    - (i) an Applicant: the number of units of Preferred Equity for Subscription allotted by the Specific Purpose Company; and
    - (ii) a person who subscribed for the total number of units of Preferred Equity

for Subscription under the contract set forth in the preceding paragraph: the number of units of Preferred Equity for Subscription for which said person subscribed.

- (4) When the total number of units of Preferred Equity for Subscription have been subscribed for, the director must, without delay, require each subscriber to make payment, in full, of the Amount To Be Paid In for Preferred Equity for Subscription (hereinafter referred to as "Performance of Contribution" in this Subsection) with regard to the Preferred Equity for Subscription for which they have subscribed, at the Bank, etc. specified as the place for payment by the Specific Purpose Company.
- (5) The provisions of Article 208 (4) and (5) (Performance of Contributions) of the Companies Act shall apply mutatis mutandis to Preferred Equity for Subscription of a Specific Purpose Company. In this case, the term "shareholder" in paragraphs (4) and (5) of that Article shall be deemed to be replaced with "Preferred Equity Member."
- (6) The provisions of Article 64 (Certificate of Deposit of Paid Monies) of the Companies Act shall apply mutatis mutandis to a Bank, etc. handling Performance of Contribution as set forth in paragraph (4), and the provisions of Article 211 (Restrictions on Invalidation or Rescission of Subscription) of that Act shall apply mutatis mutandis to Preferred Equity for Subscription. In this case, the term "Article 57 (1)" in Article 64 (1) of the Companies Act shall be deemed to be replaced with "Article 39 (1) of the Asset Securitization Act," the term "incorporators" in Article 64 (1) of the Companies Act shall be deemed to be replaced with "directors," the phrase "Stock Company after formation" in paragraph (2) of that Article shall be deemed to be replaced with "Specific Purpose Company," the term "Article 205" in Article 211 (1) of the Companies Act shall be deemed to be replaced with "Article 41 (2) of the Asset Securitization Act," the term "Article 209" in Article 211 (2) of the Companies Act shall be deemed to be replaced with "Article 42 (2) of the Asset Securitization Act," the term "shareholder" in Article 211 (2) of the Companies Act shall be deemed to be replaced with "Preferred Equity Member," and the term "shares" in that paragraph shall be deemed to be replaced with "Preferred Equity."

(Registration of Issuance of Preferred Equity, Timing of Obtaining Preferred Equity Member Status, etc.)

Article 42 (1) A Specific Purpose Company must register the following particulars as particulars pertaining to issuance of Preferred Equity at the location of its head office within two weeks from the date on which payment has been made in full for the total number of units of Preferred Equity it has issued:

- (i) the Amount of Preferred Capital (meaning the amount of property that has been paid to the Specific Purpose Company by persons who are to become Preferred Equity Members at the time of issuance of Preferred Equity, unless otherwise provided for in this Act; the same shall apply hereinafter);
  - (ii) when the Specific Purpose Company issues two or more classes of Preferred Equity with different features, the total number of units of Preferred Equity, the number of units by class of Preferred Equity, preferential conditions with regard to the distribution of profits or distribution of residual assets, and provisions on cancellation; and
  - (iii) when there is an Administrator for the Preferred Equity Member Registry (meaning a person who, on behalf of the Specific Purpose Company, engages in preparation and keeping of the Preferred Equity Member Registry and any other affairs concerning the Preferred Equity Member Registry; the same shall apply hereinafter), the name, address, and business office of the Administrator of the Preferred Equity Member Registry.
- (2) A subscriber for Preferred Equity for Subscription shall be a Preferred Equity Member with regard to the Preferred Equity for Subscription for which they have made payment under the provisions of paragraph (4) of the preceding Article.
- (3) If any portion of the Preferred Equity issued by a Specific Purpose Company remains unsubscribed for at the time of the registration set forth in paragraph (1), the directors shall be deemed to have jointly subscribed for said portion. The same shall apply when any subscriber for Preferred Equity rescinds their manifestation of intention to subscribe for Preferred Equity for Subscription after the registration set forth in paragraph (1) with regard to the Preferred Equity issued by the Specific Purpose Company.
- (4) If payment under the provisions of paragraph (4) of the preceding Article remains incomplete for the Preferred Equity issued by a Specific Purpose Company at the time of the registration set forth in paragraph (1), the incorporators and the directors shall jointly and severally have an obligation to pay the amount that remains unpaid.
- (5) The provisions of Article 210 (Demanding Cessation of the Issuing of Shares for Subscription) of the Companies Act shall apply mutatis mutandis to issuance of Preferred Equity pertaining to the solicitation set forth in Article 39 (1) by a Specific Purpose Company, and the provisions of Article 212 (1) (Liabilities of Persons who Subscribed for Shares with Unfair Amount To Be Paid In) (limited to the portion pertaining to item (i)) of that Act shall apply mutatis mutandis to a subscriber for a Specific Purpose Company's Preferred Equity for Subscription of. In this case, the term "shareholders" in Article 210 of the Companies Act shall be deemed to be replaced with "members," the phrase "the applicable laws and regulations or articles of incorporation" in item



- (i) of that Article shall be deemed to be replaced with "any law or regulation, the Asset Securitization Plan, or the articles of incorporation," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (6) The provisions of Article 828 (1) (limited to the portion pertaining to item (ii)) and (2) (limited to the portion pertaining to item (ii)) (Actions Seeking Invalidation of Acts Concerning the Organization of a Company), Article 834 (limited to the portion pertaining to item (ii)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Article 836 (1) and (3) (Order to Provide Security), Articles 837 to 840 inclusive (Mandatory Consolidation of Oral Arguments, etc.; Persons Affected by an Upholding Judgment; Effects of a Judgment of Invalidation, Revocation or Rescission; Effects of a Judgment of Invalidation of New Share Issue), Article 846 (Liability for Damages in Cases Where the Plaintiff Is Defeated), and Article 937 (1) (limited to the portion pertaining to item (i) (b)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action seeking invalidation of issuance of Preferred Equity by a Specific Purpose Company, and the provisions of Article 868 (1) (Jurisdiction over Non-Contentious Cases), the main clause of Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (ii)) (Immediate Appeal), the main clause of Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Articles 875 to 877 inclusive (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act; Supreme Court Rules; Mandatory Consolidation of Hearings, etc.), and Article 878 (1) (Effects of a Judicial Decision) of that Act shall apply mutatis mutandis to a petition under Article 840 (2) of that Act as applied mutatis mutandis pursuant to this paragraph. In this case, the phrase "within six months from the day on which the share issue became effective (or, for a Stock Company which is not a Public Company, within one year from the day on which the share issue became effective)" in Article 828 (1) (ii) of the Companies Act shall be deemed to be replaced with "within one year," the term "Shareholder, etc." in paragraph 2 (ii) of that Article shall be deemed to be replaced with "member, director, company auditor, or liquidator," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (7) The provisions of Article 829 (limited to the portion pertaining to item (i)) (Action for Declaratory Judgment of Absence of a New Share Issue, etc.), Article 834 (limited to the portion pertaining to item (xiii)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Articles 836 to 838 inclusive (Order to Provide Security; Mandatory Consolidation of Oral Arguments, etc.; Persons Affected by an Upholding Judgment), Article 846 (Liability for Damages in Cases Where the Plaintiff Is Defeated) and Article 937 (1) (limited to the portion pertaining to item (i) (e)) (Commissioning of

Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action for a declaratory judgment of non-issuance of Preferred Equity by a Specific Purpose Company. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

- (8) The provisions of Article 97 (3) and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847 (2), Article 849 (2) and (5), and Article 851) (Action for Pursuing the Liability, etc. of a Stock Company) of the Companies Act shall apply mutatis mutandis to an action seeking payment under the provisions of Article 212 (1) of the Companies Act as applied mutatis mutandis pursuant to paragraph (5). In this case, the phrase "shareholder (excluding a Holder of Shares Less than One Unit who is unable to exercise rights pursuant to the provisions of the articles of incorporation) having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such a period or more)" in Article 847 (1) of the Companies Act shall be deemed to be replaced with "Specified Equity Member, or a Preferred Equity Member who has held Preferred Equity continuously for the preceding six months or longer (or, in cases where a shorter period is prescribed in the articles of incorporation, such a period or longer)," the term "shareholder" in paragraphs (3) to (5) and (7) of that Article shall be deemed to be replaced with "Specified Equity Member or Preferred Equity Member," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (9) The provisions of Article 915 (1) (Registration of a Change) of the Companies Act shall apply mutatis mutandis to a Specific Purpose Company. In this case, the phrase "in the items of Article 911 (3) or in the items of the preceding three Articles" in said paragraph shall be deemed to be replaced with "in the items of Article 42 (1) of the Asset Securitization Act."

(Preferred Equity Member Registry)

Article 43 (1) A Specific Purpose Company must prepare a Preferred Equity Member Registry and state or record the following particulars therein:

- (i) the name and address of each Preferred Equity Member;
  - (ii) the class and the number of units of Preferred Equity held by the Preferred Equity Member set forth in the preceding item;
  - (iii) the day on which the Preferred Equity Member set forth in item (i) acquired the Preferred Equity; and
  - (iv) the serial numbers of the Preferred Equity Securities pertaining to the Preferred Equity set forth in item (ii) (limited to that for which Preferred Equity Securities are issued).
- (2) A Specific Purpose Company may specify a certain date (hereinafter referred to as a "Record Date" in this Subsection) and designate the Preferred Equity

Members who are stated or recorded in the Preferred Equity Member Registry as of the Record Date as the persons who can exercise their rights.

- (3) The provisions of Article 123 (Administrator of Shareholder Registry), Article 124 (2) and (3) (Record Date), Article 125 (1) to (3) inclusive (Keeping and Making Available for Inspection of Shareholder Registry) and Article 126 (Notice to Shareholders) of the Companies Act shall apply mutatis mutandis to the Preferred Equity Member Registry pertaining to Preferred Equity Members of a Specific Purpose Company, and the provisions of Article 196 (1) and (2) (Omission of Notices to Shareholders) of the Companies Act shall apply mutatis mutandis to a notice to a Preferred Equity Member. In this case, the term "Administrator of Shareholder Registry" in these provisions shall be deemed to be replaced with "Administrator of the Preferred Equity Member Registry," the phrase "Shareholders as of the Record Date" in these provisions shall be deemed to be replaced with "Preferred Equity Members Stated or Recorded in the Preferred Equity Member Registry as of the Record Date," the term "shares" in these provisions shall be deemed to be replaced with "Preferred Equity," the terms "shareholder" and "shareholders" in Article 125 (2) and (3) of that Act shall be deemed to be replaced with "member" and "members," respectively, the phrase "Article 299 (1) (including the case where it is applied mutatis mutandis in Article 325)" in Article 126 (5) of that Act shall be deemed to be replaced with "Article 56 (1) of the Asset Securitization Act (including the cases where it is applied mutatis mutandis pursuant to Article 66 (3)) of that Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (4) The provisions of paragraph (2), the provisions of Article 124 (2) and (3) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph, and the provisions of Article 196 (3) (Omission of Notices to Shareholders) of the Companies Act shall apply mutatis mutandis to a pledgee for whom the particulars listed in the items of Article 148 of the Companies Act as applied mutatis mutandis pursuant to Article 45 (4) are stated or recorded in the Preferred Equity Member Registry (hereinafter referred to as a "Registered Pledgee of Preferred Equity").
- (5) In cases where a Specific Purpose Company has not issued Preferred Equity Securities pursuant to the provisions of Article 217 (4) of the Companies Act as applied mutatis mutandis pursuant to Article 49 (2) for all of the Preferred Equity, it may, in lieu of the public notice set forth in Article 124 (3) of said Act as applied mutatis mutandis pursuant to paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph), notify the Preferred Equity Members, the Registered Pledgees of Preferred Equity, and persons holding convertible Specified Bonds or rights to subscribe for Preferred Equity of the particulars regarding which public notice should be

given.

(Transfer of Preferred Equity)

- Article 44 (1) A Preferred Equity Member may transfer the Preferred Equity they hold.
- (2) A Specific Purpose Company must not restrict the transfer of Preferred Equity.
- (3) A transfer of Preferred Equity shall not become effective unless the Preferred Equity Securities pertaining to said Preferred Equity are delivered.
- (4) A transfer of Preferred Equity that is carried out prior to the issuance of Preferred Equity Securities shall not be effective against the Specific Purpose Company.

(Perfection of a Transfer of Preferred Equity, etc.)

- Article 45 (1) A transfer of Preferred Equity shall not be perfected against the Specific Purpose Company unless the name and address of the person who acquires said Preferred Equity are stated or recorded in the Preferred Equity Member Registry.
- (2) The possessor of a Preferred Equity Security shall be presumed to be the lawful owner of rights in relation to the Preferred Equity pertaining to said Preferred Equity Security.
- (3) The provisions of Article 131 (2) (Presumption of Rights) of the Companies Act shall apply mutatis mutandis to a Preferred Equity Security, and the provisions of Article 132 (1) and (2) (Stating or Recording of Particulars to Be Stated in Shareholder Registry Not Requested by Shareholders) and Article 133 (Stating or Recording of Particulars to Be Stated in Shareholder Registry at Request of Shareholders) of that Act shall apply mutatis mutandis to Preferred Equity of a Specific Purpose Company. In this case, the terms "shareholder" and "shareholders" in these provisions shall be deemed to be replaced with "Preferred Equity Member" and "Preferred Equity Members" respectively, the phrase "Particulars to be Stated in the Shareholder Registry" in these provisions shall be deemed to be replaced with "particulars listed in the items of Article 43 (1) of the Asset Securitization Act," the term "shareholder registry" in these provisions shall be deemed to be replaced with "Preferred Equity Member Registry," the term "shares" in Article 131 (2) of the Companies Act shall be deemed to be replaced with "Preferred Equity," and the term "Treasury Shares" in Article 132 (1) (iii) of that Act shall be deemed to be replaced with "The Company's Own Specified Equity (meaning a Company's Own Specified Equity as defined in Article 59 (2) of the Asset Securitization Act)."
- (4) The provisions of Article 146 (Pledge of Shares), Article 147 (2) and (3)

(Perfection of Pledges of Shares), Article 148 (Entries in Shareholder Registry), and Article 151 (limited to the portions pertaining to items (iv), (viii), (ix), and (xiv)), Article 153 (2), and Article 154 (Effect of Pledge of Shares) of the Companies Act shall apply mutatis mutandis to the Preferred Equity of a Specific Purpose Company. In this case, the term "shareholders" in these provisions shall be deemed to be replaced with "Preferred Equity Members," the term "share certificates" in these provisions shall be deemed to be replaced with "Preferred Equity Securities," the term "Registered Pledgees of Shares" in these provisions shall be deemed to be replaced with "Registered Pledgees of Preferred Equity," the term "shareholder registry" in Article 148 of the Companies Act shall be deemed to be replaced with "Preferred Equity Member Registry," the term "surplus" in Article 151 (viii) of that Act shall be deemed to be replaced with "profits," the phrase "the cases provided for in paragraph (2) of the preceding Article" in Article 153 (2) of that Act shall be deemed to be replaced with "the cases where Preferred Equity has been consolidated," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(A Specific Purpose Company's Acquisition of Its Own Preferred Equity, etc.)

Article 46 (1) No Specific Purpose Company shall acquire its own Preferred Equity, nor shall it receive a number of units of its own Preferred Equity exceeding one-twentieth of the total number of units of the issued Preferred Equity as the subject of a pledge, except in the following cases:

- (i) when intending to cancel its Preferred Equity;
- (ii) when it is necessary for achieving the purpose of said Specific Purpose Company through the exercise of its rights; or
- (iii) when purchasing Preferred Equity pursuant to the provisions of Article 153.

(2) A Specific Purpose Company shall implement procedures for any Preferred Equity acquired in the case set forth in item (i) of the preceding paragraph to lose its effect without delay and must dispose of any Preferred Equity or pledge acquired in the cases set forth in item (ii) and item (iii) of that paragraph at an appropriate time.

(Cancellation of Preferred Equity)

Article 47 (1) No Specific Purpose Company may cancel Preferred Equity except under the provisions of the following paragraph, Article 109 and Article 110 or after obtaining approval at a general meeting of members as set forth in Article 159 (1).

(2) A Specific Purpose Company may, pursuant to the provisions of the Asset Securitization Plan, cancel Preferred Equity by purchasing the same using the

profits to be distributed to Preferred Equity Members. In this case, the director must determine the date on which said cancellation becomes effective.

- (3) In cases where a Specific Purpose Company cancels Preferred Equity, the Specific Purpose Company must give public notice, by one month prior to the date that has been determined by the director as the date on which said cancellation is to become effective (referred to as the "Effective Day" in the following paragraph) to the effect that Preferred Equity Securities pertaining to said Preferred Equity must be submitted to the Specific Purpose Company by said date, and shall give separate notice thereof to each Preferred Equity Member and Registered Pledgee of Preferred Equity pertaining to said Preferred Equity.
- (4) Notwithstanding the provisions of the preceding paragraph, in cases where a Specific Purpose Company has not issued Preferred Equity Securities pursuant to the provisions of Article 217 (4) of the Companies Act as applied mutatis mutandis pursuant to Article 49 (2) for all of the Preferred Equity, it must give public notice, by two weeks prior to the Effective Day, to the effect that it will cancel Preferred Equity pursuant to the provisions of paragraph (1) and that the cancellation of said Preferred Equity shall become effective on said Effective Day.
- (5) The provisions of Article 43 (5) shall apply mutatis mutandis to the public notice set forth in the preceding paragraph.
- (6) The provisions of Article 219 (2) and (3) (Public Notice in relation to Submission of Share Certificate) and Article 220 (Cases where Share Certificates cannot be Submitted) of the Companies Act shall apply mutatis mutandis to submission of Preferred Equity Securities pertaining to cancellation of Preferred Equity of a Specific Purpose Company. In this case, the term "shareholders" in Article 219 (2) of the Companies Act shall be deemed to be replaced with "Preferred Equity Members" and the phrase "the shares provided for in each item of paragraph (1)" in paragraph (3) of that Article shall be deemed to be replaced with "the Preferred Equity to be cancelled."

(Issuance of Preferred Equity Securities, etc.)

- Article 48 (1) A Specific Purpose Company must issue Preferred Equity Securities without delay on or after the date on which it makes the registration under the provisions of Article 42 (1).
- (2) No Preferred Equity Security may be issued until after the registration set forth in the preceding paragraph.
  - (3) The provisions of Article 215 (2) (Issuing of Share Certificate) of the Companies Act shall apply mutatis mutandis to a Preferred Equity Security of a Specific Purpose Company. In this case, the term "shares" in that paragraph

shall be deemed to be replaced with "Preferred Equity" and the term "Article 180 (2) (ii)" in that paragraph shall be deemed to be replaced with "Article 180 (2) (ii) as applied mutatis mutandis pursuant to Article 50 (1) of the Asset Securitization Act."

(Particulars to Be Stated on a Preferred Equity Security, etc.)

Article 49 (1) A Specific Purpose Company shall state the following particulars and the serial number on a Preferred Equity Security, and the Representative Director of the Specific Purpose Company must sign it or affix their name and seal thereto:

- (i) the trade name of the Specific Purpose Company and the date of the Business Commencement Notification (in cases where the Specific Purpose Company has made a Notification of a New Plan, the date of said Notification of the New Plan);
- (ii) the number of units of Preferred Equity pertaining to said Preferred Equity Security; and
- (iii) the details of the Preferred Equity.

(2) The provisions of Article 217 (Offer Not to Possess Share Certificates) and Article 291 (Loss of Share Option Certificates) of the Companies Act shall apply mutatis mutandis to a Preferred Equity Security pertaining to Preferred Equity held by a Preferred Equity Member of a Specific Purpose Company. In this case, the terms "number" and "Company with Class Shares" in Article 217 (2) of the Companies Act shall be deemed to be replaced with "number of units" and "Specific Purpose Company issuing two or more classes of Preferred Equity" respectively, and the term "shareholder registry" in paragraph (3) of that Article shall be deemed to be replaced with "Preferred Equity Member Registry."

(Application Mutatis Mutandis of the Companies Act to Preferred Equity)

Article 50 (1) The provisions of Article 180 (excluding paragraph (3)) (Consolidation of Shares), Article 181 (Notices to Shareholders), and Article 182 (Effectuation) of the Companies Act shall apply mutatis mutandis to consolidation of Preferred Equity of a Specific Purpose Company. In this case, the term "shareholders meeting" in Article 180 (2) of the Companies Act shall be deemed to be replaced with "general meeting of members," the phrase "shareholders (or, for a Company with Class Shares, referring to the Class Shareholders of the classes of shares under item (iii) of that paragraph" in Article 181 (1) of that Act shall be deemed to be replaced with "Preferred Equity Members (or, for a Specific Purpose Company issuing two or more classes of Preferred Equity, referring to the Preferred Equity Members pertaining to the classes of Preferred Equity under item (iii) of that

paragraph," the term "Registered Pledges of the Shares" in that Article shall be deemed to be replaced with "Registered Pledges of Preferred Equity," the term "shareholders" in Article 182 of that Act shall be deemed to be replaced with "Preferred Equity Members," the phrase "shares (or, for a Company with Class Shares, shares of the classes provided for in item (iii) of that paragraph. The same shall apply hereinafter in this Article.)" in that Article shall be deemed to be replaced with "Preferred Equity (or, for a Specific Purpose Company issuing two or more classes of Preferred Equity, Preferred Equity of the classes provided for in item (iii) of that paragraph; hereinafter the same shall apply in this Article)," the term "number" in that Article shall be deemed to be replaced with "number of units," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(2) The provisions of Article 219 (1) (limited to the portion pertaining to item (ii)), (2) and (3) (Public Notice in Relation to Submission of Share Certificate) and Article 220 (Cases Where Share Certificates Cannot Be Submitted) of the Companies Act shall apply mutatis mutandis to submission of Preferred Equity Securities pertaining to the consolidation of a Specific Purpose Company's Preferred Equity. In this case, the term "shareholder" in Article 219 (1) of the Companies Act shall be deemed to be replaced with "Preferred Equity Member," the term "Registered Pledgee of Shares" in that paragraph shall be deemed to be replaced with "Registered Pledgee of Preferred Equity," the phrase "shares (or, for a Company with Class Shares, the class shares under Article 180 (2) (iii))" in item (ii) of that paragraph shall be deemed to be replaced with "Preferred Equity (or, for a Specific Purpose Company issuing two or more classes of Preferred Equity, Preferred Equity of the classes under Article 180 (2) (iii) as applied mutatis mutandis pursuant to Article 50 (1) of the Asset Securitization Act)," the term "shareholders" in Article 219 (2) of the Companies Act shall be deemed to be replaced with "Preferred Equity Members," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(3) The provisions of Article 234 (2) and Article 235 (1) (Treatment of Fractions), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 871 (Appending of the Reason), Article 874 (limited to the portion pertaining to item (iv)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to the cancellation and consolidation of a Specific Purpose Company's Preferred Equity. In this case, the term "the preceding paragraph" in Article 234 (2) of the Companies Act shall be deemed to be replaced with "Article 235 (1) as applied mutatis mutandis pursuant to Article 50 (3) of the Asset Securitization Act," the phrase "one share in the number" in



Article 235 (1) of Companies Act shall be deemed to be replaced with "one unit in the number of units," the term "shareholders" in that paragraph shall be deemed to be replaced with "Preferred Equity Members," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

**Section 4 Administrative Instruments of a Specific Purpose Company**  
**Subsection 1 General Meetings of Members**

(Types of General Meetings of Members and the Authority Thereof)

Article 51 (1) In the provisions of this Section to Section 7 inclusive, Section 10, and Section 11, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:

- (i) Type 1 Specific Purpose Company: a Specific Purpose Company with no Preferred Equity Members;
  - (ii) Type 2 Specific Purpose Company: a Specific Purpose Company with Preferred Equity Members;
  - (iii) Particulars to Be Voted Upon by Specified Equity Members Alone: any of the following particulars:
    - (a) any particular that should be made the subject of a Type 1 Specific Purpose Company's general meeting of members; and
    - (b) any particular that should be made the subject of a Type 2 Specific Purpose Company's general meeting of members, other than a particular on that Preferred Equity Members hold voting rights pursuant to the provisions of this Act or the articles of incorporation; and
  - (iv) Particulars to Be Voted Upon by Both Specified and Preferred Equity Members: any particular that should be made the subject of a Type 2 Specific Purpose Company's general meeting of members and on which Preferred Equity Members hold voting rights under the provisions of this Act or the articles of incorporation.
- (2) At a general meeting of members, members may effect resolutions on the particulars set forth in this Act, on the organization, operations, and administration of the Specific Purpose Company, and on any and all particulars regarding the Specific Purpose Company.
- (3) Provisions of the articles of incorporation providing to the effect that directors and administrative instruments other than a general meeting of members may determine particulars which require a resolution made at a general meeting of members pursuant to the provisions of this Act, shall not be effective.

(Calling of General Meetings of Members)

Article 52 (1) An annual general meeting of members must be called for within a defined period of time after the end of each business year.

- (2) A general meeting of members may be called whenever necessary.
- (3) A general meeting of members shall be called by the director except in cases where called under the provisions of Article 297 (4) of the Companies Act as applied mutatis mutandis pursuant to paragraph (5) of the following Article.

(Request by Members for a Meeting to Be Called)

- Article 53 (1) A Specified Equity Member who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the voting rights of all Specified Equity Members may request that the director call a general meeting of members by pointing out a particular which is a subject for a general meeting of members (limited to particulars on which said Specified Equity Members may exercise their voting rights) and showing the reason for such a meeting to be called.
- (2) In addition to cases under the preceding paragraph in cases of a general meeting of Members wherein a Particular to Be Voted Upon by Both Specified and Preferred Equity Members has been made the subject of the general meeting of members, a Preferred Equity Member who has held not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the voting rights of all Preferred Equity Members continuously for the preceding six months (if a shorter period is provided for in the articles of incorporation, such a period) may request that the director call a general meeting of members by pointing out a particular which is a subject for a general meeting of members (limited to a particular on which said Preferred Equity Member may exercise their voting rights) and showing the reason for such a meeting to be called.
  - (3) The number of voting rights held by the Specified Equity Members or Preferred Equity Members who may not exercise their voting rights on a particular that is the subject of a general meeting of members as set forth in paragraph (1) or the preceding paragraph shall not be included in the number of voting rights of all Specified Equity Members prescribed in paragraph (1) or of all Preferred Equity Members prescribed in the preceding paragraph.
  - (4) Notwithstanding the provisions of the preceding three paragraphs, the articles of incorporation may provide to the effect that no request may be made with regard to the calling of a general meeting of members of which the appointment or dismissal of directors would be the subject.
  - (5) The provisions of Article 297 (4) (Demand for Calling of Meeting by Shareholders), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 871 (Appending of the Reason), Article 874 (limited to the portion pertaining to item (iv)) (Restrictions of Appeal), Article 875 (Exclusion from the Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court

Rules) of the Companies Act shall apply mutatis mutandis to cases where the request that a general meeting of members be called is made pursuant to paragraph (1) or paragraph (2). In this case, the phrase "the shareholders who made the request pursuant to the provisions of paragraph (1)" in Article 297 (4) of that Act shall be deemed to be replaced with "the Specified Equity Members who made the request pursuant to Article 53 (1) of the Asset Securitization Act or the Preferred Equity Members who made the request pursuant to paragraph (2) of that Article" and the phrase "the request pursuant to the provisions of paragraph (1)" in Article 297 (4) (i) and (ii) of the Companies Act shall be deemed to be replaced with "the request pursuant to the provisions of Article 53 (1) or (2) of the Asset Securitization Act."

(Decision to Call a General Meeting of Members)

Article 54 (1) A director (in cases where the members call a general meeting of members pursuant to the provisions of Article 297 (4) of the Companies Act as applied mutatis mutandis pursuant to paragraph (5) of the preceding Article, such members; the same shall apply in the following Article and Article 56) must decide the following particulars in cases where a general meeting of members is to be called:

- (i) the date, time, and place of the general meeting of members;
  - (ii) the subject of the general meeting of members;
  - (iii) if Specified Equity Members who do not attend the general meeting of members are to be allowed to exercise their voting rights in writing, a statement to that effect;
  - (iv) if members who do not attend the general meeting of members are to be allowed to exercise their voting rights (for Preferred Equity Members, voting rights pertaining to Particulars to Be Voted Upon by Both Specified and Preferred Equity Members) by Electromagnetic Means, a statement to that effect; and
  - (v) in addition to what is listed in the preceding items, particulars specified by a Cabinet Office Ordinance.
- (2) Preferred Equity Members who do not attend a general meeting of members may exercise their voting rights in writing on Particulars to Be Voted Upon by Both Specified and Preferred Equity Members.
- (3) In cases where there are two or more directors, the decision on the particulars listed in the items of paragraph (1) must be made by a majority of such directors.

(Notice of a General Meeting of Members, etc.)

Article 55 (1) In calling a general meeting of members of a Type 1 Specific Purpose Company or a general meeting of members of a Type 2 Specific

Purpose Company for which a Particular to Be Voted Upon by Specified Equity Members Alone has been made the subject, the director must send a notice to each of the Specified Equity Members (excluding Specified Equity Members who may not exercise their voting rights on all of the particulars on which a resolution may be effected at the general meeting of members; hereinafter the same shall apply in this Article) by two weeks prior (in cases other than those where the particulars listed in Article 54 (1) (iii) or (iv) are prescribed, one week prior (if a shorter period is provided for in the articles of incorporation, such a period)) to the day of the general meeting of members.

- (2) In cases where the particulars listed in Article 54 (1) (iii) or (iv) are prescribed, the notice set forth in the preceding paragraph must be given in writing.
- (3) A director may, pursuant to the provisions of a Cabinet Order, send the notice by Electromagnetic Means with the consent of the Specified Equity Members in lieu of sending the written notice referred to in the preceding paragraph. In this case, said director shall be deemed to have sent the written notice set forth in that paragraph.
- (4) The notice set forth in the preceding two paragraphs shall contain statements on or records of the particulars listed in the items of Article 54 (1).
- (5) Notwithstanding the provisions of the preceding paragraphs, a general meeting of members as referred to in paragraph (1) may be held without following the procedures for calling such a meeting if the consent of all Specified Equity Members is obtained; provided, however, that this shall not apply to cases where the particulars listed in Article 54 (1) (iii) or (iv) are prescribed.
- (6) The provisions of Article 301 (Giving of Reference Documents for Shareholder Meeting and Voting Forms) of the Companies Act shall apply mutatis mutandis to cases where the notice set forth in paragraph (1) is to be sent when the particulars listed in Article 54 (1) (iii) have been provided, and the provisions of Article 302 (Giving of Reference Documents for Shareholder Meeting and Voting Forms) of that Act shall apply mutatis mutandis to cases where the notice set forth in paragraph (1) is to be sent when the particulars listed in Article 54 (1) (iv) have been provided. In this case, the terms "shareholder," "Reference Document for Shareholder Meeting," and "Article 299 (3)" in Article 301 and Article 302 of that Act shall be deemed to be replaced with "Specified Equity Members," "Reference Documents for a general meeting of members," and "Article 55 (3) of the Asset Securitization Act" respectively, and the term "the shareholders meeting" in Article 302 (4) of the Companies Act shall be deemed to be replaced with "the general meeting of members."

(Special Provisions on Notices of General Meetings of Members)

- Article 56 (1) In calling a general meeting of members which includes a Particular to Be Voted Upon by Both Specified and Preferred Equity Members in the subject matter of said meeting, the director must send notice of said meeting in writing to each member (excluding any member who may not exercise their voting rights on all of the particulars on which a resolution may be effected at the general meeting of members; hereinafter the same shall apply in this Article) by two weeks prior to the day of the general meeting of members.
- (2) The notice set forth in the preceding paragraph must contain statements on or records of the particulars listed in the items of Article 54 (1).
- (3) The provisions of paragraph (3) of the preceding Article and Article 301 (Giving of Reference Documents for Shareholder Meeting and Voting Forms) of the Companies Act shall apply mutatis mutandis to the notice referred to in paragraph (1) and the provisions of Article 302 (Giving of Reference Documents for Shareholder Meeting and Voting Forms) of that Act shall apply mutatis mutandis to cases where the notice referred to in paragraph (1) shall be sent when the particulars listed in Article 54 (1) (iv) are prescribed. In this case, the term "the Specified Equity Members" in paragraph (3) of the preceding Article shall be deemed to be replaced with "the members," the terms "shareholder," "Reference Documents for Shareholders Meeting," and "Article 299 (3)" in Article 301 and Article 302 of the Companies Act shall be deemed to be replaced with "members," "Reference Documents for a general meeting of members," and "Article 55 (3) of the Asset Securitization Act as applied mutatis mutandis pursuant to Article 56 (3) of the Asset Securitization Act," respectively, and the term "shareholders meeting" in Article 302 (4) of the Companies Act shall be deemed to be replaced with "general meeting of members."

(Members' Right to Make Proposals)

- Article 57 (1) A Specified Equity Member or Preferred Equity Member of a Type 2 Specific Purpose Company may request that the director make a certain particular (limited to a Particular to Be Voted Upon by Both Specified and Preferred Equity Members (limited to a particular on which said Preferred Equity Member may exercise their voting rights; the same shall apply in the following paragraph and paragraph (3)) the subject matter of a general meeting of members.
- (2) A Specified Equity Member or Preferred Equity Member of a Type 2 Specific Purpose Company may, at a general meeting of members, submit a proposal with regard to a Particular to Be Voted Upon by Both Specified and Preferred Equity Members which is a subject for a general meeting of members; provided, however, that this shall not apply to cases where said proposal is in violation of

laws and regulations, the Asset Securitization Plan, or the articles of incorporation, or cases where three years have yet to elapse from the date on which, with respect to a proposal which was essentially identical to such proposal, affirmative votes from members holding at least one-tenth of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such proportion) of all members (excluding members who could not exercise their voting rights on said proposal) were not obtained at a general meeting of members.

- (3) A member may request that the director notify the other members (in cases where the notice set forth in Article 55 (2) or (3) is given (including cases where it is applied mutatis mutandis pursuant to paragraph (3) of the preceding Article), that the directors state or record in such notice) of the outline of the proposal which said member intends to submit with regard to a Particular to Be Voted Upon by Both Specified and Preferred Equity Members which is a subject particular for a general meeting of members by eight weeks prior (if a shorter period has been provided for in the articles of incorporation, such a period) to the day of the general meeting of members; provided, however, that this shall not apply to cases where said proposal is in violation of laws and regulations, the Asset Securitization Plan, or the articles of incorporation, or cases where three years have yet to elapse from the date on which, with regard to a proposal which was essentially identical to said proposal, affirmative votes from members holding at least one-tenth of the voting rights (if a smaller proportion has been provided for in the articles of incorporation, such proportion) of all members (excluding members who could not exercise their voting rights on said proposal) were not obtained at a general meeting of members.
- (4) The preceding three paragraphs must not be construed to preclude a Specified Equity Member from requesting that a certain particular (limited to a Particular to Be Voted Upon by Specified Equity Members Alone) be made the subject of a meeting or from submitting a proposal with regard to said particular at a general meeting of members.
- (5) The provisions of the preceding paragraphs shall, with regard to a particular concerning the appointment or dismissal of directors, not preclude the articles of incorporation from providing otherwise.

(Appointment of an Inspector of the Procedures for Calling a General Meeting of Members, etc.)

Article 58 (1) A Specific Purpose Company, a Specified Equity Member who holds not less than one-hundredth of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Specified Equity Members (excluding members who may not exercise their

voting rights on all of the particulars on which a resolution may be effected at a general meeting of members) or a Preferred Equity Member who holds not less than one-hundredth of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Preferred Equity Members (excluding Preferred Equity Members who may not exercise their voting rights on all of the particulars on which a resolution may be effected at a general meeting of members) may, prior to a general meeting of members, file a petition with the court to appoint an inspector to investigate the procedures for calling the meeting and the method of effecting resolutions at the general meeting of members.

- (2) The provisions of Article 306 (3) to (7) inclusive (Election of Inspector on Calling Procedures of Shareholders Meeting), Article 307 (Determination by the Court of the Calling of Shareholders Meeting), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to cases where the petition set forth in the preceding paragraph has been filed. In this case, the term "the Stock Company" in Article 306 (4) and (7) of that Act shall be deemed to be replaced with "the Specific Purpose Company," the term "a shareholders meeting" in Article 307 (1) (i), (2), and (3) of that Act shall be deemed to be replaced with "a general meeting of members," the term "the shareholders" in Article 307 (1) (ii) of that Act shall be deemed to be replaced with "the members," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (3) In cases where the petition set forth in the preceding paragraph has been filed with regard to a general meeting of members whose subject is a Particular to Be Voted Upon by Both Specified and Preferred Equity Members, the general meeting of members set forth in Article 307 (2) and (3) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph shall be deemed to be the general meeting of members whose subject is a Particular to Be Voted Upon by Both Specified and Preferred Equity Members.

(Number of Voting Rights)

Article 59 (1) Among the matters that are the subject of a meeting, a Specified Equity Member (excluding a Specified Equity Member specified by a Cabinet Office Ordinance as an entity in a relationship that may allow the Specific

Purpose Company substantial control over its operations due to the fact that one quarter or more of the voting rights of all of its shareholders are held by the Specific Purpose Company or for any other reason) shall be entitled to one vote for each unit of Specified Equity they hold in regard to Particulars to Be Voted Upon by Specified Equity Members Alone, and a member (excluding a member specified by a Cabinet Office Ordinance as an entity in a relationship that may allow the Specific Purpose Company substantial control over its operations due to the fact that one quarter or more of the voting rights of all of its shareholders are held by the Specific Purpose Company or for any other reason) shall be entitled to one vote for each unit of Specified Equity or Preferred Equity they hold in regard to Particulars to Be Voted Upon by Both Specified and Preferred Equity Members at a general meeting of members; provided, however, that special provisions regarding the number of voting rights of Specified Equity Members for Particulars to Be Voted Upon by Specified Equity Members Alone may be stipulated in the articles of incorporation.

- (2) Notwithstanding the provisions of the preceding paragraph, a Specific Purpose Company shall have no voting rights with regard to said Company's Own Specified Equity (meaning Specified Equity in a Specific Purpose Company owned by that same Specific Purpose Company itself; the same shall apply hereinafter) or its own Preferred Equity (meaning Preferred Equity in a Specific Purpose Company owned by that same Specific Purpose Company itself; the same shall apply hereinafter).

(Resolution at a General Meeting of Members)

Article 60 (1) Resolutions at a general meeting of members on Particulars to Be Voted Upon by Specified Equity Members Alone shall be made, unless otherwise provided for in the articles of incorporation, by a majority of the votes of Specified Equity Members attending said meeting, where those Specified Equity Members who are in attendance hold the majority of the voting rights of all the Specified Equity Members who are entitled to exercise their voting rights.

- (2) Resolutions at a general meeting of members on Particulars to Be Voted Upon by Both Specified and Preferred Equity Members shall be made, unless otherwise provided for in the articles of incorporation, by a majority of the votes of members attending said meeting, where those members who are in attendance hold the majority of the voting rights of all the members who are entitled to exercise their voting rights.

- (3) Notwithstanding the provisions of the preceding two paragraphs, resolutions at any of the following general meetings of members shall be made by at least a two-thirds majority (if a higher proportion is provided for in the articles of



incorporation, such a proportion) of the votes of members attending the meeting, where those members who are in attendance hold the majority of the voting rights of all of the members who are entitled to exercise their voting rights at said general meeting of members. In this case, it shall not be precluded for the articles of incorporation to provide to the effect that the assent of at least a certain number of members is required, nor shall it be precluded for them to provide any other conditions in addition to the relevant conditions for a resolution:

- (i) the general meeting of members set forth in Article 31 (7);
  - (ii) the general meeting of members set forth in Article 39 (2);
  - (iii) the general meeting of members set forth in Article 74 (1) (limited to one on the dismissal of a director (limited to a director appointed under Article 342 (3) to (5) inclusive of the Companies Act as applied mutatis mutandis pursuant to Article 77 (2)) or company auditor);
  - (iv) the general meeting of members set forth in Article 109 (1) (excluding cases which fall under both of the following conditions):
    - (a) that the resolution set forth in Article 109 (1) is to be made at an annual general meeting of members; and
    - (b) that the Amount of Preferred Capital to be reduced does not exceed the amount calculated by the method specified by a Cabinet Office Ordinance as the amount of deficit on the day of the annual general meeting of members referred to in sub-item (a);
  - (v) the general meeting of members set forth in Article 131 (2);
  - (vi) the general meeting of members set forth in Article 139 (4);
  - (vii) the general meeting of members set forth in Article 152 (1); and
  - (viii) the general meeting of members listed in Article 160 (1) (iii) of a Type 2 Specific Purpose Company.
- (4) Notwithstanding the provisions of the preceding three paragraphs, a resolution made at any of the following general meetings of members must be decided by at least half (if a higher proportion is provided for in the articles of incorporation, such a proportion) of all Specified Equity Members and by three-fourths or more (if a higher proportion is provided for in the articles of incorporation, such a proportion) of the votes of all Specified Equity Members:
- (i) the general meeting of members set forth in Article 34 (3);
  - (ii) the general meeting of members set forth in Article 36 (2) of this Act and Article 204 (2) of the Companies Act as applied mutatis mutandis by replacing certain terms pursuant to Article 36 (5) of this Act;
  - (iii) the general meeting of members set forth in Article 180 (2) of the Companies Act as applied mutatis mutandis by replacing certain terms pursuant to Article 38 and Article 50 (1);
  - (iv) the general meeting of members set forth in Article 150; and

(v) the general meeting of members listed in Article 160 (1) (iii) of a Type 1 Specific Purpose Company.

(Voting in Writing by Preferred Equity Members)

Article 61 The provisions of Article 311 of the Companies Act (Voting in Writing) shall apply mutatis mutandis to the exercise of voting rights in writing by Preferred Equity Members of a Specific Purpose Company. In this case, the term "the shareholders meeting" in Article 311 (3) of that Act shall be deemed to be replaced with "the general meeting of members."

(Deemed Assent of Preferred Equity Members)

Article 62 (1) A Specific Purpose Company may provide in its articles of incorporation to the effect that in cases where a Preferred Equity Member who neither attends a general meeting of members nor exercises their voting right, said Preferred Equity Member shall be deemed to have assented to a proposal pertaining to a Particular to Be Voted Upon by Both Specified and Preferred Equity Members that has been submitted to a general meeting of members (in cases where multiple proposals have been submitted including conflicting proposals, said conflicting proposals shall all be excluded).

(2) A Specific Purpose Company that has provided as prescribed in the preceding paragraph must state or record such a provision in the notice set forth in Article 56 (1).

(3) The number of voting rights of Preferred Equity Members who have been deemed to have assented to the proposal under the provisions of paragraph (1) shall be included in the number of voting rights of the Preferred Equity Members who attended the general meeting of members.

(Omission, etc. of Resolutions on Particulars to Be Voted Upon by Specified Equity Members Alone)

Article 63 (1) In cases where a director or a Specified Equity Member has made a proposal on a Particular to Be Voted Upon by Specified Equity Members Alone from among the subjects of a general meeting of members, if all of the Specified Equity Members (limited to those who may exercise their voting rights on such a particular) have shown the common consensus, either in writing or in the form of Electromagnetic Records, that said proposal should be adopted, it shall be deemed that a resolution approving said proposal has been made at a general meeting of members.

(2) A Specific Purpose Company must keep the documents or Electromagnetic Records set forth in the preceding paragraph for one year from the day on which the resolution at the general meeting of members is deemed to have been made pursuant to the preceding paragraph.

- (3) Specified Equity Members and Preferred Equity Members may make the following requests at any time during the business hours of the Specific Purpose Company:
  - (i) a request to inspect or copy the documents prescribed in the preceding paragraph; and
  - (ii) a request to inspect or copy the particulars recorded in the Electromagnetic Records set forth in the preceding paragraph which have been indicated by the means specified by a Cabinet Office Ordinance.
- (4) In cases where a resolution is deemed to have been made at a general meeting of members to approve proposals on all of the subjects for the annual general meeting of members, said annual general meeting of members shall be deemed to have been concluded at that time.
- (5) The provisions of Article 320 (Omission of Reports to Shareholders Meetings) of the Companies Act shall apply mutatis mutandis to the general meeting of members of a Specific Purpose Company. In this case, the term "shareholders" in that Article shall be deemed to be replaced with "members."

(Action Seeking Rescission of a Resolution Made at a General Meeting of Members That Is in Violation of the Asset Securitization Plan)

Article 64 (1) If the details of a resolution made at a general meeting of members are in violation of the Asset Securitization Plan, a member, director, company auditor, liquidator, Specified Bondholder, holder of a Specified Promissory Note, or creditor pertaining to Specific Borrowings may request the rescission of said resolution by filing an action within three months from the date that the resolution was made at the general meeting of members. The same shall apply to a person who is to become a director, company auditor, or liquidator (including a person who holds the rights and obligations of a director, company auditor, or liquidator under Article 76 (1) (including cases where it is applied mutatis mutandis pursuant to Article 168 (5))) as a result of the rescission of said resolution.

- (2) The provisions of Article 834 (limited to the portion pertaining to item (xvii) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Article 836 (1) and (3) (Order to Provide Security), Article 837 (Mandatory Consolidation of Oral Arguments, etc.), Article 838 (Persons Affected by an Upholding Judgment), Article 846 (Liabilities for Damages in Cases Where the Plaintiff Is Defeated), and Article 937 (1) (limited to the portion pertaining to item (i) (g)-2) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action seeking rescission of a resolution set forth in the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Application Mutatis Mutandis of the Companies Act)

Article 65 (1) The main clause of Article 300 (Omission of Calling Procedures) of the Companies Act shall apply mutatis mutandis to the general meeting of members set forth in Article 56 (1) (excluding a general meeting of members which adopts a Resolution for Changing the Plan set forth in Article 152 (1)) and the provisions of Article 310 (Proxy Voting), and Article 313 (1) and (3) (Diverse Exercise of Votes) of the Companies Act shall apply mutatis mutandis to the exercise of voting rights of the members of a Specific Purpose Company. In this case, the term "shareholders" in Article 300 of that Act shall be deemed to be replaced with "members (excluding members who may not exercise their voting rights on all of the particulars on which a resolution may be effected at the general meeting of members)," the term "shareholders meeting" in Article 310 (2) and (5) to (7) inclusive of that Act shall be deemed to be replaced with "general meeting of members," the term "Article 299 (3)" in Article 310 (4) of that Act shall be deemed to be replaced with "Article 55 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 56 (3) of the Asset Securitization Act) of the Asset Securitization Act," the term "the shares" in Article 313 (3) of the Companies Act shall be deemed to be replaced with "the Specified Equity or Preferred Equity," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(2) The provisions of Article 311 (Voting in Writing) of the Companies Act shall apply mutatis mutandis to the general meeting of members of a Specific Purpose Company that has provided for the particulars listed in Article 54 (1) (iii), and the provisions of Article 312 (Voting by Electromagnetic Method) of that Act shall apply mutatis mutandis to the general meeting of members of a Specific Purpose Company that has stipulated the particulars listed in Article 54 (1) (iv). In this case, the term "shareholders" in Article 311 (2) of that Act shall be deemed to be replaced with "Specified Equity Members," the term "shareholders" in Article 311 (4) and Article 312 (2), (3), and (5) of that Act shall be deemed to be replaced with "members," and the term "Article 299 (3)" in Article 312 (2) of that Act shall be deemed to be replaced with "Article 55 (3) of the Asset Securitization Act (including the cases where it is applied mutatis mutandis pursuant to Article 56 (3) of the Asset Securitization Act) ."

(3) The provisions of Article 314 to Article 317 inclusive (Accountability of Directors, etc.; Authority of Chairperson; Investigation of Material Submitted to the Shareholders Meeting; Resolution for Postponement or Adjournment) and Article 318 (1) to (4) inclusive (Minutes) of the Companies Act shall apply mutatis mutandis to a Specific Purpose Company's general meetings of members of. In this case, the phrase "by the shareholders" in Article 314 of that Act shall be deemed to be replaced with "by the members," the term "Article 297" in Article 316 (2) of that Act shall be deemed to be replaced with

"Article 53 of the Asset Securitization Act," the phrase "Article 298 and Article 299" in Article 317 of the Companies Act shall be deemed to be replaced with "Article 54 to Article 56 inclusive (excluding Article 55 (5)) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (4) The provisions of Article 830 (Action for Declaratory Judgment of Non-existence or Invalidation of a Resolution of a Shareholders Meeting, etc.), Article 831 (Action Seeking Revocation of a Resolution of a Shareholders Meeting, etc.), Article 834 (limited to the portion pertaining to item (xvi) and item (xvii)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Article 836 (1) and (3) (Order to Provide Security), Article 837 (Mandatory Consolidation of Oral Arguments, etc.), Article 838 (Persons Affected by an Upholding Judgment), Article 846 (Liability for Damage in Cases Where the Plaintiff is Defeated), and Article 937 (1) (limited to the portion pertaining to item (i), sub-item (g), 2.) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action for a declaratory judgment of the non-existence or invalidity of a resolution made at a general meeting of members of a Specific Purpose Company or an action seeking the rescission of such a resolution. In this case, the phrases "a Shareholder, etc. (or, in cases where the Shareholders Meeting, etc., set forth respectively in each such items is an Organizational Meeting or a Class Organizational Meeting, a Shareholder, etc., a Shareholder at Incorporation, a Director at Incorporation or a Company Auditor at Incorporation" and "a director, company auditor or liquidator (or, in cases where such resolution is a resolution of shareholders meeting or a Class Meeting, it shall include a person who has the rights and obligations of a director, company auditor or liquidator pursuant to the provisions of Article 346 (1) (including cases where it is applied mutatis mutandis pursuant to Article 479 (4)), and in cases where such resolution is a resolution of an Organizational Meeting or Class Organizational Meeting, it shall include a Director at Incorporation or a Company Auditor at Incorporation)" in Article 831 (1) of the Companies Act shall be deemed to be replaced with "members, directors, company auditors, and liquidators" and "a director, company auditor, or liquidator (including a person who has the rights and obligations of a director, company auditor, or liquidator pursuant to the provisions of Article 76 (1) of the Asset Securitization Act (including the cases where it is applied mutatis mutandis pursuant to Article 168 (5) of the Asset Securitization Act))" respectively, and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Voting Rights of Preferred Equity Members)

- Article 66 (1) In cases where a Type 2 Specific Purpose Company changes its articles of incorporation, if any damages are likely to be caused to the Preferred Equity Members, said change to the articles of incorporation shall not become effective unless approved at a general meeting of said Preferred Equity Members (in cases where there are two or more classes of Preferred Equity pertaining to Preferred Equity Members who are likely to incur damages as a result of the changes to the articles of incorporation, the general meeting for each such class of Preferred Equity pertaining to such Preferred Equity Members) in addition to the resolution under Article 150; provided, however, that this shall not apply to cases where there are no Preferred Equity Members who may exercise their voting rights at said general meeting.
- (2) The resolution for approval under the preceding paragraph must be made by at least a two-thirds majority of the votes of Preferred Equity Members attending the general meeting, where those Preferred Equity Members who are in attendance hold the majority of the total number of units of issued Preferred Equity pertaining to Preferred Equity Members who are likely to incur damages as a result of the changes to the articles of incorporation as referred to in that paragraph (in cases where said resolution is to be made at each general meeting for Preferred Equity Members who hold Preferred Equity which is categorized into two or more classes, the total number of units of issued Preferred Equity pertaining to Preferred Equity Members who are the members of the relevant general meeting of each such class). In this case, it shall not be precluded for the articles of incorporation to provide to the effect that the assent of at least a certain number of Preferred Equity Members is required, nor shall it be precluded for them to provide any other conditions in addition to the relevant conditions for a resolution.
- (3) The provisions concerning a general meeting of members of which the subject particular is a Particular to Be Voted Upon by Both Specified and Preferred Equity Members shall apply mutatis mutandis to the general meeting prescribed in paragraph (1).
- (4) A summary of the proposal for a change to the articles of incorporation as prescribed in paragraph (1) must be stated or recorded in the notice of the general meeting prescribed in that paragraph.

### **Subsection 2 Establishment of Administrative Instruments Other Than General Meetings of Members**

Article 67 (1) A Specific Purpose Company shall have the following administrative instruments; provided, however, that this shall not apply to the administrative instruments listed in item (iii) if it is a Specific Purpose Company that issues only Specified Bonds as Asset-Backed Securities and for

which the sum of the total amount of issuance of Specified Bonds and the total amount of Specific Borrowings is less than the amount specified by Cabinet Order:

- (i) one or more directors;
  - (ii) one or more company auditors; and
  - (iii) an accounting auditor.
- (2) A Specific Purpose Company may have an accounting advisor pursuant to the provisions of the articles of incorporation.
- (3) The provisions of the proviso to paragraph (1) must not be construed as precluding the Specific Purpose Company set forth in the proviso to that paragraph from having accounting auditors.

### **Subsection 3 Appointment and Dismissal of Officers and Accounting Auditors**

(Appointment)

- Article 68 (1) Officers (meaning directors, accounting advisors, and company auditors; hereinafter the same shall apply in this Subsection (excluding Article 70 (1) (vii) to (x) inclusive (including cases where it is applied mutatis mutandis pursuant to Article 72 (2)))) and accounting auditors shall be appointed by resolution at general meetings of members.
- (2) The provisions of Article 329 (2) (Election) of the Companies Act shall apply mutatis mutandis to the resolution referred to in the preceding paragraph.

(Relationship Between Specific Purpose Companies and Officers, etc.)

Article 69 The relationship between a Specific Purpose Company and its Officers and accounting auditors shall be governed by the provisions on mandate.

(Qualification of Directors)

- Article 70 (1) The following persons shall not act as director:
- (i) a corporation;
  - (ii) a person who is an adult ward or person under curatorship or a person who is treated in the same manner under the laws and regulations of a foreign state;
  - (iii) a person who has received a ruling for the commencement of bankruptcy proceedings and who has not had their rights restored or a person who is treated in the same manner under the laws and regulations of a foreign state;
  - (iv) a person who has been sentenced to imprisonment without work or a more severe punishment (including a punishment under the laws and regulations of a foreign state equivalent thereto), and for whom three years have yet to

elapse since the date on which the execution of the sentence was completed or since the date on which they ceased to be subject to the execution of such sentence;

- (v) a person who has been sentenced to a fine (including a punishment under the laws and regulations of a foreign state equivalent thereto) for having violated the provisions of this Act, the Financial Instruments and Exchange Act, the Companies Act, the Act on General Incorporated Associations and General Incorporated Foundations (Act No. 48 of 2006), the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951), the Building Lots and Building Transactions Business Act (Act No. 176 of 1952), the Act Regulating the Receipt of Contributions, Receipt of Deposits and Interest Rates (Act No. 195 of 1954), the Installment Sales Act (Act No. 159 of 1961), the Money Lending Business Act (Act No. 32 of 1983), the Act on Deposit, etc. Transaction Agreements of Specified Commodities, etc. (Act No.62 of 1986), the Act on Regulation of Business Pertaining to Commodity Investment (Act No. 66 of 1991), the Real Estate Specified Joint Enterprise Act (Act No. 77 of 1994), the Act on Issuance, etc. of Bonds for Financial Corporations' Loan Business (Act No. 32 of 1999), the Trust Business Act, or the laws and regulations of a foreign state equivalent to these Acts, or for having committed a crime prescribed in Article 255, Article 256, Article 258 to Article 260 inclusive, or Article 262 of the Civil Rehabilitation Act (Act No. 225 of 1999), Article 65, Article 66, Article 68, or Article 69 of the Act on Recognition of and Assistance for Foreign Insolvency Procedures (Act No. 129 of 2000), Article 265, Article 266, Article 268 to Article 272 inclusive or Article 274 of the Bankruptcy Act (Act No. 75 of 2004), Article 204, Article 206, Article 208, Article 208-3, Article 222, or Article 247 of the Penal Code (Act No. 45 of 1907), the Act on Punishment of Violent Acts (Act No. 60 of 1926), or Article 46, Article 47, Article 49, or Article 50 of the Act on Prevention of Illegal Acts by Organized Crime Group Members (Act No. 77 of 1991), and for whom three years have yet to elapse since the date on which the execution of the sentence was completed or since the date on which they ceased to be subject to the execution of such sentence;
- (vi) a person who was an Officer or an employee, as specified by Cabinet Order, of a Specific Purpose Company which was ordered to dissolve pursuant to the dissolution order issued under Article 220, within the thirty days prior to such dissolution order and for whom three years have yet to elapse from the date of said dissolution order;
- (vii) the transferor of Specified Assets set forth in the Asset Securitization Plan (in cases where said transferor is a corporation, its Officer);
- (viii) an Officer of a corporation who is the trustee of a trust created for having business conducted pertaining to the administration and disposition of the



Specified Assets (excluding beneficial interest in a trust) specified in the Asset Securitization Plan (in cases where business pertaining to administration and disposition of Specified Assets is entrusted under Article 200 (2), the Entrustee of said business (in cases where said Entrustee is a corporation, its Officer);

(ix) in cases where the Specified Assets provided in the Asset Securitization Plan are beneficial interests in a trust, Officers of the corporation which is the trustee of said trust; and

(x) Officers of the corporation which is the trustee of a Specified Equity Trust.

(2) The main clause of Article 331 (2) (Qualifications of Directors) of the Companies Act shall apply mutatis mutandis to the director of a Specific Purpose Company. In this case, the term "shareholders" in the main clause of that Article shall be deemed to be replaced with "members."

(Qualifications, etc. of Accounting Advisors)

Article 71 (1) The accounting advisor must be a certified public accountant (including a foreign certified public accountant as prescribed in Article 16-2 (5) of the Certified Public Accountants Act (Act No. 103 of 1948); the same shall apply hereinafter), auditing firm, certified tax accountant, or tax accountant corporation.

(2) The provisions of Article 333 (2) and (3) (Qualifications of Accounting Advisors) of the Companies Act shall apply mutatis mutandis to the accounting advisors of a Specific Purpose Company. In this case, the phrase "a Stock Company or its Subsidiary" in Article 333 (3) (i) of that Act shall be deemed to be replaced with "a Specific Purpose Company" and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Qualifications of Company Auditors)

Article 72 (1) No company auditor may concurrently act as a director or employee of a Specific Purpose Company.

(2) The provisions of Article 70 shall apply mutatis mutandis to company auditors.

(Qualifications, etc. of Accounting Auditors)

Article 73 (1) Accounting auditors must be a certified public accountant or auditing firm.

(2) Auditing firms appointed as accounting auditors must select a person to perform the duties of an accounting auditor from among its members and notify the Specific Purpose Company to that effect. In this case, the person set forth in item (ii) of the following paragraph shall not be selected.

(3) The following persons may not act as an accounting auditor:

- (i) a person who may not audit the Financial Statements of a Specific Purpose Company prescribed in Article 102 (2) pursuant to the provisions of the Certified Public Accountant Act;
  - (ii) a person who is a transferor of the Specified Assets, a Trust Company, etc. who is the trustee of a trust which has been created for having business conducted pertaining to the administration and disposition of said Specified Assets (in cases where business pertaining to the administration and disposition of property set forth in the items of Article 200 (2) is entrusted under Article 200 (2), its Entrustee) or the trustee of a trust in cases where said Specified Assets are beneficial interests in a trust (hereinafter such persons shall collectively be referred to as "Transferor of Specified Assets, etc." in this item and Article 91 (4) (ii) and (iii)), who is provided for in the Asset Securitization Plan, any person who continuously receives remuneration from the director, accounting advisor, auditing firm, or executive officer of the Transferor of Specified Assets, etc. for operations other than those of a certified public accountant or auditing firm, or any person who is the spouse of such person; and
  - (iii) an auditing firm of which more than half of its members are such persons as those listed in the preceding item.
- (4) The provisions of Article 338 (Accounting Auditors' Terms of Office) of the Companies Act shall apply mutatis mutandis to the accounting auditors of a Specific Purpose Company. In this case, the term "annual shareholders meeting" in Article 338 (1) and (2) of that Act shall be deemed to be replaced with "annual general meeting of members."

(Dismissal)

- Article 74 (1) Any officer or accounting auditor may be dismissed at any time by a resolution made at a general meeting of members.
- (2) Any person dismissed pursuant to the preceding paragraph may, except in cases where there are justifiable grounds for such dismissal, claim damages arising from their dismissal from the Specific Purpose Company.
  - (3) If, notwithstanding the presence of misconduct or material facts in violation of laws and regulations, the Asset Securitization Plan or the articles of incorporation in connection with the execution of duties as an Officer, the proposal to dismiss said Officer is rejected at a general meeting of members, any of the following members may file an action within thirty days from the date of said general meeting of members demanding the dismissal of said Officer:
    - (i) a Specified Equity Member (excluding the Specified Equity Members prescribed in the following sub-items) who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of

incorporation, such a proportion) of the voting rights of all Specified Equity Members (excluding the Specified Equity Members prescribed in the following sub-items), or a Preferred Equity Member (excluding the Preferred Equity Members prescribed in the following sub-items) who has continuously held not less than three-hundredths of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Preferred Equity Members (excluding the Preferred Equity Members prescribed in the following sub-items) for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such period):

- (a) a Specified Equity Member or Preferred Equity Member who may not exercise their voting rights on the proposal to dismiss the Officer; and
  - (b) a Specified Equity Officer or Preferred Equity Officer who is the Officer related to the demand;
- (ii) a Specified Equity Member (excluding the Specified Equity Members prescribed in the following sub-items) who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such proportion) of the total number of units of Specified Equity (excluding Specified Equity held by the Specified Equity Members prescribed in the following sub-items) or a Preferred Equity Member (excluding the Preferred Equity Members prescribed in the following sub-items) who has continuously held not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of issued Preferred Equity (excluding the Preferred Equity held by the Preferred Equity Members prescribed in the following sub-items) for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such a period):
- (a) a Specified Equity Member or Preferred Equity Member who is such Specific Purpose Company; and
  - (b) a Specified Equity Member or Preferred Equity Member who is the Officer concerned with the demand.
- (4) The provisions of Article 855 (Defendant), Article 856 (Jurisdiction over an Action) and Article 937 (1) (limited to the portion pertaining to item (i) (j)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action seeking the dismissal of an Officer set forth in the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Dismissal of an Accounting Auditor by a Company Auditor)

Article 75 (1) A company auditor may dismiss an accounting auditor when such accounting auditor falls under any of the following items:

- (i) when an accounting auditor has breached their obligations in the course of their duties or has neglected their duties;
  - (ii) when an accounting auditor has engaged in conduct unbecoming an accounting auditor; or
  - (iii) when an accounting auditor has difficulty in, or is unable to cope with the execution of their duties due to mental or physical disorder.
- (2) In cases where there are two or more company auditors, the dismissal prescribed in the preceding paragraph must be effected by the unanimous consent of all company auditors.
- (3) When an accounting auditor has been dismissed pursuant to paragraph (1), a company auditor must report to that effect and the reason for the dismissal at the first general meeting of members called after such dismissal.

(Measures for When a Vacancy Arises among Officers)

- Article 76 (1) When there is any vacancy among the Officers or a shortfall in the number of Officers specified by this Act or the articles of incorporation, an Officer who has retired from office due to expiration of their term of office or resignation shall still have the rights and duties of an Officer until a newly appointed Officer (including a person to temporarily perform the duties of an Officer prescribed in the following paragraph) assumes office.
- (2) In the case referred to in the preceding paragraph, the court may, when it finds it necessary, appoint a person to temporarily perform the duties of an Officer in response to a petition filed by an interested party.
- (3) When the court has appointed the person to temporarily perform the duties of an Officer as prescribed in the preceding paragraph, the court shall fix the amount of remuneration a Specific Purpose Company is to pay to such person.
- (4) In cases where there is any vacancy among the accounting auditors, or a shortfall in the number of accounting auditors specified by the articles of incorporation, unless a new accounting auditor is appointed without delay, a company auditor must appoint a person to temporarily perform the duties of accounting auditor.
- (5) The provisions of Article 73 (1) to (3) inclusive and the preceding Article shall apply mutatis mutandis to a person who is to temporarily perform the duties of accounting auditor as prescribed in the preceding paragraph.
- (6) The provisions of Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item(iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), Article 876 (Supreme Court Rule), and Article 937 (1) (limited to the

portion pertaining to item (ii) (a) and (c)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to cases where a petition has been filed as prescribed in paragraph (2).

(Application Mutatis Mutandis of the Companies Act)

- Article 77 (1) The provisions of Article 341 (Resolution at Shareholders Meeting for Election and Dismissal of Officers) of the Companies Act shall apply mutatis mutandis to a resolution on the appointment of a director. In this case, the terms "Article 309 (1)," "the meeting," and "shareholder" in that Article shall be deemed to be replaced with "Article 60 (1) of the Asset Securitization Act," "the general meeting of members," and "members" respectively.
- (2) The provisions of Article 342 (Election of Directors by Cumulative Vote) of the Companies Act shall apply mutatis mutandis to cases where the members appoint the director of a Specific Purpose Company and Article 344 (1) and (2) (Consent of Company Auditors to the Election of Accounting Auditors) of that Act shall apply mutatis mutandis to a Specific Purpose Company. In this case, the term "shareholders meeting" in these provisions shall be deemed to be replaced with "general meeting of members," and the phrases "Article 308 (1)" and "for each one share the shareholder holds (or, in cases where the Share Units provided for in the articles of incorporation for each one unit of the shares the shareholder holds)" in Article 342 (3) of that Act shall be deemed to be replaced with "Article 59 (1) of the Asset Securitization Act" and "for each one unit of Specified Equity or Preferred Equity."
- (3) The provisions of Article 345 (Statement of Opinions on Election of Accounting Advisors, etc.) of the Companies Act shall apply mutatis mutandis to a Specific Purpose Company. In this case, the term "the shareholders meeting" in that Article shall be deemed to be replaced with "the general meeting of members," the phrase "item (i) of Article 298 (1)" in Article 345 (3) of that Act shall be deemed to be replaced with "Article 54 (1) (i) of the Asset Securitization Act," and the term "Article 340 (1)" in Article 345 (5) of the Companies Act shall be deemed to be replaced with "Article 75 (1) of the Asset Securitization Act."

#### **Subsection 4 Directors**

(Execution of Business)

- Article 78 (1) The director shall execute the business of a Specific Purpose Company unless otherwise provided for in the articles of incorporation.
- (2) In cases where there are two or more directors, the business of a Specific Purpose Company shall be decided by a majority of the directors unless otherwise provided for in the articles of incorporation.

(Representatives of a Specific Purpose Company)

- Article 79 (1) The director shall represent a Specific Purpose Company; provided, however, that this shall not apply to cases where a Representative Director or other person is designated to represent the Specific Purpose Company.
- (2) In cases where there are two or more directors as set forth in the main clause of the preceding paragraph, each director shall represent the Specific Purpose Company individually.
- (3) A Specific Purpose Company may designate Representative Directors from among the directors pursuant to the articles of incorporation, through appointment by the directors from among themselves pursuant to the provisions of the articles of incorporation, or by a resolution made at a general meeting of members.
- (4) The provisions of Article 349 (4) and (5) (Representatives of Companies) of the Companies Act shall apply mutatis mutandis to a Representative Director of a Specific Purpose Company and the provisions of Article 350 (Liability for Damages Caused by Acts of Directors) of that Act shall apply mutatis mutandis to a Specific Purpose Company.

(Restrictions on Competition and Conflict of Interest Transactions)

- Article 80 (1) In the following cases, the director must disclose the material facts regarding the relevant transactions at a general meeting of members and obtain approval therefor:
- (i) when a director wishes to carry out, for personal benefit or for a third party, any transaction in the line of business of the Specific Purpose Company;
  - (ii) when a director wishes to carry out any transaction with the Specific Purpose Company for personal benefit or for a third party; or
  - (iii) when the Specific Purpose Company is to carry out any transaction with any person other than a director that results in a conflict of interests between the Specific Purpose Company and the director.
- (2) The provisions of Article 108 (Self-Contract and Representation of both Parties) of the Civil Code (Act No. 89 of 1896) shall not apply to transactions as set forth in item (ii) of the preceding paragraph which have been approved under that paragraph.

(Appointment of Inspectors of Business Execution)

- Article 81 (1) With regard to a Specific Purpose Company's execution of business, if there are sufficient grounds for suspecting misconduct or there are material facts in violation of laws and regulations, the Asset Securitization Plan, or the articles of incorporation, any of the following members may file a petition with the court for the appointment of an inspector, for the purpose of having an

inspector investigate the business and financial condition of said Specific Purpose Company:

- (i) a Specified Equity Member who holds not less than three-hundredths of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Specified Equity Members (excluding Specified Equity Members who may not exercise their voting rights on all of the particulars on which a resolution may be effected at a general meeting of members);
  - (ii) a Preferred Equity Member who holds not less than three-hundredths of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Preferred Equity Members (excluding Preferred Equity Members who may not exercise their voting rights on all of the particulars on which a resolution may be effected at a general meeting of members);
  - (iii) a Specified Equity Member who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the total number of units of Specified Equity (excluding the Company's Own Specified Equity); and
  - (iv) a Preferred Equity Member who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the units of issued Preferred Equity (excluding the Company's Own Preferred Equity).
- (2) The provisions of Article 358 (2), (3), and (5) to (7) inclusive (Election of Inspector of Execution of Business), Article 359 (Decision by Court to Call Shareholders Meeting), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rule) of the Companies Act shall apply mutatis mutandis to an inspector where the petition set forth in the preceding paragraph has been filed or to cases where the inspectors report has been given. In this case, the term "the Stock Company" in Article 358 (3) and (7) of the Companies Act shall be deemed to be replaced with "the Specific Purpose Company," the term "the shareholders" in Article 358 (7) of that Act shall be deemed to be replaced with "members," the term "shareholders meeting" in Article 359 (1) (i), (2), and (3) of that Act shall be deemed to be replaced with "general meeting of members," the term "shareholders" in Article 359 (1) (ii) of that Act shall be deemed to be replaced with "members," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(3) For a Type 2 Specific Purpose Company, the general meeting of members prescribed in Article 359 of the Companies Act as applied mutatis mutandis by replacing certain terms pursuant to the preceding paragraph shall be deemed to be a general meeting of members of which the subject is a Particular to Be Voted Upon by Both Specified and Preferred Equity Members.

(Prevention of a Director's Actions by Members, etc.)

Article 82 In cases where a director is committing, or is likely to commit, any act in violation of laws and regulations or the Asset Securitization Plan, a member, Specified Bondholder, holder of a Specified Promissory Note, or a creditor pertaining to Specific Borrowings may demand that said director cease said act.

Article 83 In cases where a director engages, or is likely to engage, in an act outside the scope of the purpose of a Specific Purpose Company or any other act in violation of the articles of incorporation, if said act is likely to cause substantial detriment to said Specified Purpose Company, a Specified Equity Member or a Preferred Equity Member who has held Preferred Equity continuously for the preceding six months may demand that said director cease said act.

(Remuneration Paid to Directors)

Article 84 (1) The following particulars concerning remuneration and bonuses paid to the director and any other financial benefits that the director receives from a Specific Purpose Company as the consideration for execution of duties (hereinafter referred to as "Remuneration" in this Section) shall be determined by a resolution made at a general meeting of members if said particulars are not provided for in the articles of incorporation:

(i) for Remuneration of a fixed amount, such amount;

(ii) for Remuneration of an amount that is not fixed, the specific method for calculating such amount; and

(iii) for Remuneration other than money, the specific content thereof.

(2) The provisions of Article 361 (2) (Remuneration for Directors) of the Companies Act shall apply mutatis mutandis to the resolution set forth in the preceding paragraph. In this case, the phrases "item (ii) or item (iii) of the preceding paragraph" and "shareholders meeting" shall be deemed to be replaced with "Article 84 (1) (ii) and (iii) of the Asset Securitization Act" and "general meeting of members," respectively.

(Application Mutatis Mutandis of the Companies Act to Directors, etc.)

Article 85 The provisions of Article 351 (Measures When a Vacancy Arises in an Office of a Representative Director), Article 868 (1) (Jurisdiction over Non-



Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), Article 876 (Supreme Court Rule), and Article 937 (1) (limited to the portion pertaining to item(ii) (a) and (c)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to the Representative Director of a Specific Purpose Company, the provisions of Article 352 (Authority of Persons Who Perform Duties on Behalf of Directors), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rule) of that Act shall apply mutatis mutandis to an acting representative for a Specific Purpose Company, the provisions of Article 354 (Apparent Representative Directors) of that Act shall apply mutatis mutandis to a Specific Purpose Company, and the provisions of Article 355 (Duty of Loyalty) and Article 357 (1) (Director's Duty to Report) of that Act shall apply mutatis mutandis to the director of a Specific Purpose Company. In this case, the phrases "laws and regulations, the articles of incorporation" and "shareholders meeting" in Article 355 of that Act shall be deemed to be replaced with "laws and regulations, the Asset Securitization Plan, the articles of incorporation" and "general meeting of members," respectively, and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Subsection 5 Accounting Advisors**

(Authority, etc. of Accounting Advisors)

Article 86 (1) An accounting advisor shall, jointly with the directors, prepare Financial Statements (meaning the financial statements prescribed in Article 102 (2); hereinafter the same shall apply in this Section) and the annexed detailed statements thereof. In this case, the accounting advisor must prepare an accounting advisor's report pursuant to the provisions of a Cabinet Office Ordinance.

(2) The provisions of Article 374 (2), (3), and (5) (Authority of Accounting Advisors), Article 375 (1) (Accounting Advisor's Duty to Report), Article 377 (1) (Statement of Opinions at Shareholders Meeting), and Article 378, paragraph

- (1) (limited to the portion pertaining to item (i)) and paragraph (2) (Keeping and Inspection of Financial Statements by Accounting Advisors) of the Companies Act shall apply mutatis mutandis to a Company with Accounting Advisors. In this case, the phrase "may request reports on accounting from a Subsidiary of the Company with Accounting Advisors, or investigate the status of the operations and financial status of the Company with Accounting Advisors or of its Subsidiary" in Article 374 (3) of that Act shall be deemed to be replaced with "may investigate the status of operations and the financial status of the Company with Accounting Advisors," the phrase "item (ii) or item (iii) of Article 333 (3)" in paragraph (5) of that Article shall be deemed to be replaced with "Article 333 (3) (ii) or (iii) of the Companies Act as applied mutatis mutandis pursuant to Article 71 (2) of the Asset Securitization Act," the phrase "laws and regulations or the articles of incorporation" in Article 375 (1) of the Companies Act shall be deemed to be replaced with "laws and regulations, the Asset Securitization Plan, or the articles of incorporation" the terms "Article 374 (1)" and "the shareholders meeting" in Article 377 (1) of the Companies Act shall be deemed to be replaced with "Article 86 (1) of the Asset Securitization Act," and "the general meeting of members," respectively, the term "the annual shareholders meeting" in Article 378 (1) (i) of the Companies Act shall be deemed to be replaced with "the annual general meeting of members," the term "shareholders" in Article 378 (2) of that Act shall be deemed to be replaced with "members," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (3) The provisions of Article 379 (Remunerations for Accounting Advisors) and Article 380 (Requests for Indemnification of Expenses) of the Companies Act shall apply mutatis mutandis to the accounting advisors of a Specific Purpose Company. In this case, the term "shareholders meeting" in Article 379 of that Act shall be deemed to be replaced with "general meeting of members," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Subsection 6 Company Auditors**

(Authority of Company Auditors)

- Article 87 (1) Company auditors shall audit directors' execution of their duties (for a Company with Accounting Advisors, the directors' and accounting advisors' execution of their duties). In this case the company auditors must prepare audit reports pursuant to the provisions of a Cabinet Office Ordinance.
- (2) Company auditors may request reports on business from the directors and accounting advisors as well as the employees, may investigate the business and financial condition of a Specific Purpose Company, and may state their opinion

to the directors at any time.

(Duty to Report to Directors)

- Article 88 (1) If a company auditor finds that a director is engaging in, or is likely to engage, in any misconduct (hereinafter referred to as the "Delinquent Director" in this paragraph and paragraph (4)) or that there is any fact in violation of laws and regulations, the Asset Securitization Plan, or the articles of incorporation or any fact of gross impropriety, the company auditor must report to that effect to the other directors if there are any directors other than the Delinquent Director, or must report to that effect at a general meeting of members (limited to one composed of Specified Equity Members) when there is no director other than the Delinquent Director.
- (2) In cases where a company auditor finds it necessary in the case referred to in the preceding paragraph, they may request that a director call a general meeting of members.
- (3) In cases where the request referred to in the preceding paragraph has been made, if within one week from the date of said request no notice has been issued of the requested general meeting of members having been called for a date within two weeks from the date on which said request was made, the company auditor who made said request may call a general meeting of members.
- (4) A company auditor may submit a proposal concerning the dismissal of the Delinquent Director at a general meeting of members.

(Remuneration Paid to Company Auditors)

- Article 89 (1) The Remuneration paid to company auditors shall be determined by a resolution made at a general meeting of members if the amount thereof is not provided for in the articles of incorporation.
- (2) The provisions of Article 387 (2) and (3) (Remunerations for Company Auditors) of the Companies Act shall apply mutatis mutandis to the Remunerations, etc. paid to the company auditor of a Specific Purpose Company. In this case, the term "shareholders meeting" in that Article shall be deemed to be replaced with "general meeting of members" and the term "the preceding paragraph" in Article 387 (2) of that Act shall be deemed to be replaced with "Article 89 (1) of the Asset Securitization Act."

(Application Mutatis Mutandis of the Companies Act to Company Auditors)

Article 90 The provisions of Article 384 to Article 386 inclusive (Duty to Report to Shareholders Meeting; Enjoinment of Acts of Directors by Company Auditors; Representation of Company in Actions between Company Auditors and Directors), and Article 388 (Requests for Indemnification of Expenses) of

the Companies Act shall apply mutatis mutandis to the company auditor of a Specific Purpose Company. In this case, the term "shareholders meeting" in Article 384 of that Act shall be deemed to be replaced with "general meeting of members," the phrase "laws and regulations or the articles of incorporation" in Article 384 and Article 385 (1) of that Act shall be deemed to be replaced with "laws and regulations, the Asset Securitization Plan, or the articles of incorporation," the phrases "Article 349 (4), Article 353 and Article 364" in Article 386 (1) of that Act and "Article 349 (4)" in Article 386 (2) of that Act shall be deemed to be replaced with "Article 349 (4) of the Companies Act as applied mutatis mutandis pursuant to Article 79 (4) of the Asset Securitization Act," the term "Article 847 (1)" in Article 386 (2) (i) of the Companies Act shall be deemed to be replaced with "Article 97 (1) of the Asset Securitization Act," and the terms "Article 849 (3)" and "Article 850 (2)" in Article 386 (2) (ii) of the Companies Act shall be deemed to be replaced with "Article 849 (3) of the Companies Act as applied mutatis mutandis pursuant to Article 97 (2) of the Asset Securitization Act" and "Article 850 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 97 (2) of the Asset Securitization Act."

#### **Subsection 7 Accounting Auditors**

(Authority, etc. of Accounting Auditors)

- Article 91 (1) An accounting auditor shall audit the Financial Statements of a Specific Purpose Company and the annexed detailed statements thereof pursuant to the provisions of Subsection 3 of the following Section. In this case, the accounting auditor must prepare accounting audit reports pursuant to the provisions of a Cabinet Office Ordinance.
- (2) An accounting auditor may, at any time, inspect and copy the following items or request reports on accounting from directors and accounting advisors as well the employees:
- (i) if accounting books and materials related thereto are prepared in writing, such documents; and
  - (ii) if accounting books and materials related thereto are prepared in the form of Electromagnetic Records, the particulars recorded in the Electromagnetic Records that have been indicated by means specified by a Cabinet Office Ordinance.
- (3) An accounting auditor may, when it is necessary to perform their duties, investigate the business and financial condition of the Specific Purpose Company.
- (4) An accounting auditor must not employ a person falling under any of the following items in performing their duties:
- (i) any person set forth in Article 73 (3) (i) or (ii);

- (ii) any person who is a director, accounting advisor, company auditor, executive officer, or employee of a Specific Purpose Company or Transferor of Specified Assets, etc.; or
- (iii) any person who continuously receives remuneration from a Specific Purpose Company or Transferor of Specified Assets, etc. for the execution of duties other than those of a certified public accountant or auditing firm.

(Reports to Company Auditors)

Article 92 (1) When an accounting auditor has found, in performing their duties, any misconduct or material fact in violation of laws and regulations, the Asset Securitization Plan, or the articles of incorporation with regard to the execution of duties of a director, the accounting auditor must report to this effect to the company auditor.

(2) A company auditor may, when it is necessary for performing their duties, request that the accounting auditor report on their auditing.

(Application Mutatis Mutandis of the Companies Act to Accounting Auditors, etc.)

Article 93 The provisions of Article 398 (1) and (2) (Statement of Opinions at Annual Shareholders Meeting) of the Companies Act shall apply mutatis mutandis to the accounting auditors of a Specific Purpose Company, and Article 399 (1) (Involvement of Company Auditors in Decision on Remuneration for Accounting Auditors) of that Act shall apply mutatis mutandis to the accounting auditors and the persons who temporarily perform the duties of accounting auditors of a Specific Purpose Company. In this case, the terms "Article 396 (1)" and "laws and regulations or the articles of incorporation" in Article 398 (1) of that Act shall be deemed to be replaced with "Article 91 (1) of the Asset Securitization Act" and "laws and regulations, the Asset Securitization Plan, or the articles of incorporation," and the term "annual shareholders meeting" in Article 398 (1) and (2) of the Companies Act shall be deemed to be replaced with "annual general meeting of members."

### **Subsection 8 Officer Liability for Damages**

(Officer Liability for Damages to a Specific Purpose Company)

Article 94 (1) If a director, accounting advisor, company auditor, or accounting auditor (hereinafter collectively referred to as an "Officer, etc." in this Subsection) has neglected their duties, they shall be liable to the Specific Purpose Company for damages resulting therefrom.

(2) If a director has carried out a transaction set forth in Article 80 (1) (i) in violation of Article 80 (1), the amount of profit obtained by the director or a

third party as a result of said transaction shall be extrapolated as the amount for damages under the preceding paragraph.

- (3) If a Specific Purpose Company incurs damages as a result of a transaction set forth in Article 80 (1) (ii) or (iii), the following directors shall be those assumed to have neglected their duties:
  - (i) the director set forth in Article 80 (1); and
  - (ii) the director who decided that the Specific Purpose Company should carry out the transaction.
- (4) Exemptions from the liability set forth in paragraph (1) shall not be granted without the consent of all members.
- (5) The fact that a director's neglect of their duties was due to grounds not attributable to them shall not be used to exempt a director who carried out a transaction set forth in Article 80 (1) (ii) (limited to a transaction carried out for personal benefit) from the liability set forth in paragraph (1).

(Officer Liability for Damages to a Third Party)

Article 95 (1) When an Officer, etc. has performed their duties in bad faith or with gross negligence, said Officer, etc. shall be liable to a third party for the damages resulting therefrom.

- (2) The provisions of the preceding paragraph shall also apply when the persons listed in the following items have conducted the acts prescribed respectively in those items; provided, however, that this shall not apply to cases where any such person has proved that they did not fail to pay due care in conducting said act:
  - (i) a director: the following acts:
    - (a) giving false notice on important particulars of which notification should be given in soliciting persons to subscribe for Specified Equity, Preferred Equity, or Specified Bonds, or making false statements or records in the materials used for explanations concerning business of the Specific Purpose Company and any other particulars thereon in said solicitation;
    - (b) making false statements or records on important particulars which should be stated or recorded in the Financial Statements and business reports and the annexed detailed statements thereof;
    - (c) making a false registration; or
    - (d) giving false public notice (including the measures prescribed in Article 104 (7));
  - (ii) an accounting advisor: making false statements or records on important particulars which should be stated or recorded in the Financial Statements and their annexed detailed statements and in the accounting advisor's reports;
  - (iii) a company auditor: making false statements or records on important

particulars which should be stated or recorded in audit reports; and  
(iv) an accounting auditor: making false statements or records on important  
particulars which should be stated or recorded in accounting audit reports.

(Joint and Several Liability of Officers, etc.)

Article 96 In cases where an Officer, etc. is liable to a Specific Purpose Company or a third party for damages, if another Officer, etc. is also liable for such damages, these persons shall be joint and several obligors.

(Actions Seeking Liability)

Article 97 (1) A Specified Equity Member or Preferred Equity Member who has held Preferred Equity continuously for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such a period) may request that the Specific Purpose Company file an action seeking liability against an Officer, etc. (hereinafter referred to as an "Action Seeking Liability" in this Article) in writing or by any other means specified by a Cabinet Office Ordinance; provided, however, that this shall not apply to Actions Seeking Liability which have as their purpose the pursuit of unlawful gains for the member or a third party or infliction of damages on said Specific Purpose Company.

(2) The provisions of Article 847 (3) to (8) inclusive (Action for Pursuing Liability, etc.) and Article 848 to Article 853 inclusive (excluding Article 849 (2) and (5) and Article 851) (Jurisdiction of an Action, Intervention, Settlement, Claim for Costs, etc., Action for Retrial) of the Companies Act shall apply mutatis mutandis to Actions Seeking Liability filed by a Specific Purpose Company. In this case, the term "shareholder" in Article 847 (3) to (5) inclusive and (7) of that Act shall be deemed to be replaced with "Specified Equity Member or Preferred Equity Member," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(3) In order for a Specific Purpose Company to participate in an action related to the Action Seeking Liability in order to assist a director or liquidator, or a person who was formerly in such a position, it shall obtain the unanimous consent of all Specified Equity Members.

## **Section 5 Accounting, etc.**

### **Subsection 1 Accounting Principles**

Article 98 The accounting of a Specific Purpose Company shall be subject to the business accounting practices that are generally accepted as fair and appropriate.

## Subsection 2 Accounting Books

### (Preparation and Archiving of Accounting Books)

Article 99 (1) Specific Purpose Companies must, pursuant to the provisions of a Cabinet Office Ordinance, prepare accurate accounting books in a timely manner.

(2) Specific Purpose Companies must hold their accounting books and important materials concerning its business for ten years from the time of the closing of said accounting books.

### (Requests for Inspection, etc. of Accounting Books)

Article 100 (1) A Specified Equity Member who holds not less than three-hundredths of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Specified Equity Members (excluding Specified Equity Members who may not exercise their voting rights on all of the particulars on which a resolution may be effected at a general meeting of members) or a Preferred Equity Member who holds not less than three-hundredths of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Preferred Equity Members (excluding Specified Equity Members who may not exercise their voting rights on all of the particulars on which a resolution may be effected at a general meeting of members), or a Specified Equity Member who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the total number of units of Specified Equity (excluding the Company's Own Specified Equity) or a Preferred Equity Member who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the units of issued Preferred Equity (excluding the Company's Own Preferred Equity) may make the following requests at any time during the business hours of the Specific Purpose Company. In this case the reasons for said requests must be disclosed:

- (i) if the accounting books or materials related thereto have been prepared in writing, requests to inspect or copy such documents; or
- (ii) if the accounting books or materials related thereto have been prepared in the form of Electromagnetic Records, requests to inspect or copy the particulars recorded in those Electromagnetic Records which have been displayed by the means specified by a Cabinet Office Ordinance.

(2) The provisions of Article 433 (2) (Request to Inspect Account Books) of the Companies Act shall apply mutatis mutandis to a Specific Purpose Company. In this case, the term "shareholder" in Article 433 (2) (i) and (ii) of that Act shall be deemed to be replaced with "member."



(Order to Submit Accounting Books)

Article 101 The court may, in response to a petition or ex officio, order the parties to an action to submit their accounting books in whole or in part.

### **Subsection 3 Financial Statements, etc.**

(Preparation, Archiving, and Auditing of Financial Statements, etc.)

Article 102 (1) Specific Purpose Companies must, pursuant to the provisions of a Cabinet Office Ordinance, prepare a balance sheet as of the date of its formation.

(2) Specific Purpose Companies must, pursuant to the provisions of a Cabinet Office Ordinance, prepare Financial Statements (meaning balance sheets, profit and loss statements, and any other statements specified by a Cabinet Office Ordinance as being necessary and appropriate for indicating the status of the property and profits and losses of the Specific Purpose Company; hereinafter the same shall apply in this Subsection, Article 111 (2) (ii) and Article 118) and a business report pertaining to each business year and a proposal concerning the appropriation of profits or disposition of losses (hereinafter collectively referred to as "Proposal for Appropriation of Profits" in this Subsection), as well as the annexed detailed statements thereof.

(3) Financial Statements, business reports, and Proposals for Appropriation of Profits, as well as the annexed detailed statements thereof, may be prepared in the form of Electromagnetic Records.

(4) Specific Purpose Companies must archive its Financial Statements and the annexed detailed statements thereof for ten years from the date on which said Financial Statements were prepared.

(5) For a Company with Accounting Auditors, the documents listed in the following items must be audited by the persons specified respectively in those items pursuant to the provisions of a Cabinet Office Ordinance:

(i) the Financial Statements and the annexed detailed statements thereof set forth in paragraph (2): the company auditors and accounting auditors; and

(ii) the business report and the annexed detailed statements thereof set forth in paragraph (2): the company auditors.

(6) For a Specific Purpose Company that is not a Company with Accounting Auditors, the Financial Statements and the business report, as well as the annexed detailed statements thereof set forth in paragraph (2), must be audited by the company auditors pursuant to the provisions of a Cabinet Office Ordinance.

(Provision of Financial Statements, etc. to Members)

Article 103 (1) A director of a Company with Accounting Auditors shall, when issuing notice of an annual general meeting of members, provide the members with Financial Statements, a business report, and the Proposal for Appropriation of Profits that have been audited under paragraph (5) of the preceding Article as well as the audit report and accounting audit report pursuant to the provisions of a Cabinet Office Ordinance; provided, however, that this shall not apply to a notice of such a meeting which is issued under Article 56 (1) to persons who do not have voting rights on the approval set forth in paragraph (2) of the following Article.

(2) The main clause of the preceding paragraph shall apply mutatis mutandis to a Specific Purpose Company that is not a Company with Accounting Auditors. In this case, the phrases "paragraph (5) of the preceding Article" and "as well as the audit report and accounting audit report" in the main clause of the preceding paragraph shall be deemed to be replaced with "paragraph (6) of the preceding Article" and "as well as the audit report," respectively.

(Submission, etc. of Financial Statements, etc. to Annual General Meetings of Members)

Article 104 (1) The director must submit or provide the Financial Statements and the business report and the Proposal for Appropriation of Profits which have been audited under Article 102 (5) or (6) at the annual general meeting of members.

(2) The Financial Statements and the Proposal for Appropriation of Profits submitted or provided under the preceding paragraph shall require approval by resolution at an annual general meeting of members.

(3) The director must report the details of the business reports submitted or provided pursuant to paragraph (1) at the annual general meeting of members.

(4) With regard to a Company with Accounting Auditors, in cases where the Financial Statements audited under Article 102 (5) satisfy the requirements specified by a Cabinet Office Ordinance as those that accurately indicate the status of the property and the profits and losses of a Specific Purpose Company in compliance with laws and regulations, the Asset Securitization Plan, and the articles of incorporation, the provisions of paragraph (2) shall not apply to said Financial Statements. In this case, the director must report on the details of the respective Financial Statements at the annual general meeting of members.

(5) A Specific Purpose Company must, pursuant to the provisions of a Cabinet Office Ordinance, give public notice of the balance sheet and profit and loss statement (for a Specific Purpose Company that is not a Company with Accounting Auditors, only a balance sheet) without delay after the conclusion of the annual general meeting of members.

- (6) Notwithstanding the provisions of the preceding paragraph, with regard to a Specific Purpose Company for which the Means of Public Notice is a method set forth in Article 194 (1) (i) or (ii), it shall be sufficient to give public notice of an overview of the balance sheet and profit and loss statement prescribed in the preceding paragraph.
- (7) A Specific Purpose Company as set forth in the preceding paragraph may, pursuant to the provisions of a Cabinet Office Ordinance, without delay after the conclusion of the annual general meeting of members, take measures to make the information contained in the balance sheet and profit and loss statement set forth in paragraph (5) continuously available to a large, non-exclusive group of persons by Electromagnetic Means until the date on which five years have elapsed from the date of conclusion of the annual general meeting of members. In this case, the preceding two paragraphs shall not apply.
- (8) The provisions of the preceding three paragraphs shall not apply to a Specific Purpose Company that is to submit an Annual Securities Report to the Prime Minister pursuant to the provisions of Article 24 (5) of the Financial Instruments and Exchange Act.

(Keeping and Inspection, etc. of Financial Statements, etc.)

Article 105 (1) Companies with Accounting Auditors must keep each business year's Financial Statements, business report, and Proposal for Appropriation of Profits, as well as the annexed detailed statements thereof (including the audit report and accounting audit report; such documents shall be collectively referred to as "Financial Statements, etc." in the following paragraph), at its head office for five years from the date one week prior to the date of the annual general meeting of members (in the case referred to in Article 63 (1), the date on which the proposal set forth in Article 63 (1) was made).

- (2) A Company with Accounting Auditors shall keep a copy of the Financial Statements, etc. at its branch office for three years from the date one week prior to the date of the annual general meeting of members (in the case referred to in Article 63 (1), the date on which the proposal set forth in Article 63 (1) was made); provided, however, that this shall not apply to cases where the Financial Statements, etc. have been prepared in the form of Electromagnetic Records and the Company with Accounting Auditors has taken the measures specified by Cabinet Office Ordinance as measures that enable the branch office to respond to requests listed in Article 442 (3) (iii) and (iv) of the Companies Act as applied mutatis mutandis pursuant to paragraph (4).
- (3) The preceding two paragraphs shall apply mutatis mutandis to Financial Statements, business reports, Proposals for Appropriation of Profits, and the annexed detailed statements thereof, as well as audit reports pertaining to a Specific Purpose Company that is not a Company with Accounting Auditors. In

this case, the phrase "the audit report and accounting audit report" in paragraph (1) shall be deemed to be replaced with "the audit report."

(4) The provisions of Article 442 (3) (Keeping and Inspection of Financial Statements, etc.) of the Companies Act shall apply mutatis mutandis to the members and creditors of a Specific Purpose Company.

(Order to Submit Financial Statements, etc.)

Article 106 The court may, in response to a petition or ex officio, order the parties to an action to submit their Financial Statements and the annexed detailed statements thereof in whole or in part.

#### **Subsection 4 Amount of Stated Capital, etc.**

(Amount of Stated Capital)

Article 107 The amount of stated capital of a Specific Purpose Company shall be the Amount of Specified Capital, or in cases where the Asset Securitization Plan provides for the issuance of Preferred Equity, the total amount of the Amount of Specified Capital and the Amount of Preferred Capital.

(Reduction in the Amount of Specified Capital)

Article 108 (1) A Specific Purpose Company may reduce the Amount of Specified Capital by changing the articles of incorporation only for the purpose of compensating for losses.

(2) In changing the articles of incorporation under the preceding paragraph, the following particulars must be specified by resolution at a general meeting of members as set forth in Article 150:

(i) the Amount of Specified Capital to be reduced; and

(ii) the date on which the reduction of the Amount of Specified Capital is to become effective.

(3) The amount set forth in item (i) of the preceding paragraph shall not exceed the Amount of Specified Capital on the date set forth in item (ii) of that paragraph.

(4) The amount set forth in paragraph (2) (i) shall not exceed the amount calculated by the method specified by a Cabinet Office Ordinance as the amount of losses.

(Reduction of the Amount of Preferred Capital)

Article 109 (1) A Specific Purpose Company may reduce the Amount of Preferred Capital by resolution at a general meeting of members, in addition to the case referred to in the following Article and the case where said amount is reduced by approval at a general meeting of members as prescribed in Article 159 (1).

- (2) The following particulars shall be specified in the resolution under the preceding paragraph. In this case, the total amount of the amounts prescribed in item (iii) and item (iv) must not exceed the amount set forth in item (i):
  - (i) the Amount of Preferred Capital to be reduced;
  - (ii) the date on which the reduction of the Amount of Preferred Capital is to become effective;
  - (iii) when Preferred Equity is to be cancelled, the class and number of units of Preferred Equity subject to cancellation, the method of cancellation, and the amount necessary for the cancellation; and
  - (iv) when Preferred Equity is to be appropriated to compensate for losses, the amount to be appropriated as compensation for losses.
- (3) The amount set forth in item (i) of the preceding paragraph shall not exceed the Amount of Preferred Capital on the day prescribed in item (ii) of that paragraph.
- (4) In the case prescribed in paragraph (2) (iv), the amount under item (i) of that paragraph shall not exceed the amount calculated by the method specified by a Cabinet Office Ordinance as the amount of losses.
- (5) The provisions of Article 39 (3) shall apply mutatis mutandis to the resolution set forth in paragraph (1).
- (6) The provisions of paragraph (1) shall not preclude the Asset Securitization Plan from providing to the effect that the Amount of Preferred Capital shall not be reduced.

Article 110 (1) Only in cases where the Asset Securitization Plan provides for the following particulars may a Specific Purpose Company reduce the Amount of Preferred Capital by a decision of the director (in cases where there are two or more directors, a decision made by a majority thereof; hereinafter the same shall apply in this Article). In this case, the amount necessary for the cancellation of Preferred Equity must not exceed the Amount of Preferred Capital that is to be reduced on the date prescribed in paragraph (3):

- (i) the purpose, requirements, and timing of reducing each Amount of Preferred Capital;
  - (ii) each Amount of Preferred Capital to be reduced or the method of calculation thereof;
  - (iii) when Preferred Equity is to be cancelled in reducing each Amount of Preferred Capital, the class and number of units of Preferred Equity to be cancelled or the method of calculation thereof, and the method of cancellation, as well as the amount necessary for cancellation or the method of calculation thereof; and
  - (iv) other particulars specified by a Cabinet Office Ordinance.
- (2) In the case referred to in the preceding paragraph, a Specific Purpose

Company must give public notice of the particulars listed in the items of the preceding paragraph pertaining to the reduction of Amount of Preferred Capital two weeks prior to the decision of the director.

- (3) In cases where the Amount of Preferred Capital is to be reduced under paragraph (1), the director must specify the date on which said reduction of the Amount of Preferred Capital is to become effective.
- (4) The provisions of Article 64 shall apply mutatis mutandis to cases where the Amount of Preferred Capital is to be reduced under paragraph (1). In this case, the phrases "resolution made at a general meeting of members" and "rescission of said resolution" in paragraph (1) of that Article shall be deemed to be replaced with "decision of the director" and "rescission of said decision," respectively, and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Objections by Creditors)

- Article 111 (1) In cases where a Specific Purpose Company reduces the Amount of Specified Capital or the Amount of Preferred Capital under the preceding three Articles, the creditors (in cases where the Specific Purpose Company reduces the Amount of Preferred Capital pursuant to the preceding Article, Specified Company Bondholders, holders of Specified Promissory Notes, and creditors pertaining to Specific Borrowings shall be excluded; hereinafter the same shall apply in this Article) of said Specific Purpose Company may state their objections to the reduction of the Amount of Specified Capital or the Amount of Preferred Capital to said Specific Purpose Company.
- (2) In cases where a creditor of a Specific Purpose Company is entitled to state their objection pursuant to the preceding paragraph, said Specific Purpose Company must give public notice in the Official Gazette, and separate notice to each known creditor, of the following particulars; provided, however, that the period set forth in item (iii) shall not be shorter than one month:
    - (i) the details of the reduction of the Amount of Specified Capital or the Amount of Preferred Capital;
    - (ii) the particulars specified by a Cabinet Office Ordinance as being related to the Financial Statements of the Specific Purpose Company; and
    - (iii) a statement to the effect that creditors may state their objections within a certain period of time.
  - (3) When creditors do not state their objections within the period prescribed in item (iii) of the preceding paragraph, said creditors shall be deemed to approve of the reduction of the Amount of Specified Capital or the Amount of Preferred Capital.
  - (4) If a creditor states their objection within the period specified under paragraph (2) (iii), a Specific Purpose Company must make payment or provide

reasonable collateral to said creditor or entrust reasonable property to a Trust Company, etc. for the purpose of having said creditor receive payment; provided, however, that this shall not apply when the reduction of the Amount of Specified Capital or the Amount of Preferred Capital is unlikely to harm said creditor.

- (5) The reduction of the amounts listed in the following items shall become effective on the dates specified respectively in those items; provided, however, that this shall not apply when the procedures under the preceding three paragraphs have yet to be completed:
- (i) the reduction of the Amount of Specified Capital: the date set forth in Article 108 (2) (ii);
  - (ii) the reduction of the Amount of Preferred Capital under Article 109 (1): the date set forth in Article 109 (2) (ii); or
  - (iii) the reduction of the Amount of Preferred Capital under paragraph (1) of the preceding Article: the date set forth in paragraph (3) of the preceding Article.
- (6) A Specific Purpose Company may change the date provided for in the items of the preceding paragraph at any time before such date.

(Application Mutatis Mutandis of the Companies Act)

Article 112 The provisions of Article 828 (1) (limited to the portion pertaining to item (v)) and (2) (limited to the portion pertaining to item (v)) (Actions Seeking Invalidation of Acts Concerning the Organization of a Company), Article 834 (limited to the portion pertaining to item (v)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Article 836 to Article 839 inclusive (Order to Provide Security, Mandatory Consolidation of Oral Arguments etc., Persons Affected by an Upholding Judgment, Effect of a Judgment of Invalidation, Revocation or Rescission), Article 846 (Liability for Damages in Cases Where the Plaintiff Is Defeated), and Article 937 (1) (limited to the portion pertaining to item (i) (d)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to an action seeking invalidation of the reduction to the Amount of Specified Capital or the Amount of Preferred Capital. In this case, the phrase "a Shareholder, etc." in Article 828 (2) (v) of that Act shall be deemed to be replaced with "Members, director, company auditor, liquidator," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Incorporating Reduction Surplus into Preferred Capital)

Article 113 In cases where the Amount of Preferred Capital reduced under Article 109 or Article 110 exceeds the amount used for cancellation of Preferred Equity or the amount appropriated for the compensation of losses, a Specific

Purpose Company must incorporate such excess amount (referred to as "Reduction Surplus" in Article 190) into Preferred Capital.

### **Subsection 5 Distribution of Profits**

(Distribution of Profits to Members)

Article 114 (1) A Specific Purpose Company may effect the distribution of profits to its members (excluding the Specific Purpose Company) with the amount obtained by subtracting the sum of the amounts listed in items (ii) to (iv) inclusive from the amount set forth in item (i) as of the last day of the most recent business year as the limit:

(i) the amount of assets;

(ii) the amount of debts;

(iii) the amount of stated capital; and

(iv) in addition to what is listed in the preceding two items, the amount specified by a Cabinet Office Ordinance.

(2) The distribution of profits must, in addition to being governed by the provisions on preferred distribution to Preferred Equity Members provided for in the Asset Securitization Plan, be effected according to the number of units of Preferred Equity or Specified Equity held by each member (excluding the Specific Purpose Company).

(Payments of Interim Dividends)

Article 115 (1) A Specific Purpose Company whose business year is one year in length may provide in its articles of incorporation to the effect that it may distribute monies to its members (excluding the Specific Purpose Company) on only one specific date per business year on the director's decision (in cases where there are two or more directors, when so decided by a majority thereof) (hereinafter such distribution of monies shall be referred to as "Payments of Interim Dividends" in this Subsection).

(2) The decision referred to in the preceding paragraph must be made within three months from the specific date prescribed in that paragraph.

(3) Payments of Interim Dividends may be made up to the amount obtained by subtracting the sum of the amounts listed in items (ii) to (v) inclusive from the amount set forth in item (i):

(i) the amount of assets as of the last day of the most recent business year;

(ii) the amount of debts as of the last day of the most recent business year;

(iii) the amount of stated capital as of the last day of the most recent business year;

(iv) the amount to distribute or to pay from the profits as specified at an annual general meeting of members concerning the most recent business



- year; and
- (v) in addition to what is listed in the preceding three items, the amount specified by a Cabinet Office Ordinance.
- (4) When the director finds that the sum of the amounts listed in Article 114 (1) (ii) to (iv) inclusive is likely to exceed the amount set forth in Article 114 (1) (i) on the last day of the business year of a Specific Purpose Company, they must not decide in favor of Payments of Interim Dividends for said business year.
- (5) Payments of Interim Dividends shall be deemed as distributions of profits and Article 32 (4) (limited to the portion pertaining to item (ii)) of this Act, Article 151 (limited to the portion pertaining to item (viii)) of the Companies Act as applied mutatis mutandis pursuant to Article 45 (4) and Article 114 (2) of this Act shall apply.

(Application Mutatis Mutandis of the Companies Act to Distributions of Profits and Payments of Interim Dividends)

Article 116 The provisions of Article 457 (Methods of Delivery of Dividend Property) of the Companies Act shall apply mutatis mutandis to the cases where distributions of profits or Payments of Interim Dividends of a Specific Purpose Company are implemented. In this case, the phrases "The Dividend Property (including monies paid pursuant to the provisions of Article 455 (2) and monies paid pursuant to the provisions of the preceding Article," "the shareholder registry," "the shareholders (including Registered Pledgees of Shares," and "the shareholders" in Article 457 (1) of the Companies Act shall be deemed to be replaced with "Monies to be distributed pursuant to the provisions of Article 114 (1) of the Asset Securitization Act (when there are to be Payments of Interim Dividends, the monies to be distributed," "Specified Equity Member Registry or Preferred Equity Member Registry," "the members (including Registered Pledgees of Specified Equity and Registered Pledgees of Preferred Equity," and "the members," respectively, and the terms "Dividend Surplus" and "shareholders" in Article 457 (2) and (3) of the Companies Act shall be deemed to be replaced with "monies" and "members," respectively.

(Liability for Distribution of Profits, etc.)

Article 117 In cases where a Specific Purpose Company has distributed profits pursuant to Article 114 (1) in violation of Article 114 (1) or made Payments of Interim Dividends in violation of Article 115 (3), the persons who have received monies distributed as dividends by such an act (hereinafter such monies shall be referred to as "Cash Dividends" in this Subsection) (in cases where the Payments of Interim Dividends are made in violation of Article 115 (3), monies distributed (hereinafter such monies shall be referred to as "Cash Distributions" in this Subsection); hereinafter the same shall apply in this

Article) and the director who performed the duties related to the distribution of profits or Payment of Interim Dividends (including any person specified by a Cabinet Office Ordinance as having been involved, in the course of their duties, in the distribution of profits or Payment of Interim Dividends effected by said director) as well as the following persons shall jointly and severally have an obligation to pay monies equivalent to the amount of Cash Dividends received by the persons who have received monies distributed as dividends:

- (i) in cases where the distribution or payment was approved by resolution at an annual general meeting of members under Article 104 (limited to cases where the amount of Cash Dividends determined by said resolution exceeds the amount prescribed in Article 114 (1) (excluding the items of that paragraph) as of the last day of the business year), the director who submitted the proposal at the relevant Annual General Meeting of Members (meaning the director who submitted a proposal at the annual general meeting of members as specified by a Cabinet Office Ordinance);
- (ii) in cases where distribution or payment was made at the director's decision under Article 115 (1) (limited to cases where the amount of Cash Distribution under said decision exceeds the amount prescribed in Article 115 (3)), the director who submitted the proposal for decision (meaning the director who submitted a proposal pertaining to the decision as specified by a Cabinet Office Ordinance) concerned with said director's decision.

(Liability in Cases of Deficit)

Article 118 In cases where a Specific Purpose Company makes Payments of Interim Dividends, when the sum of the amounts listed in Article 114 (1) (ii) to (iv) inclusive exceeds the amount listed in Article 114 (1) (i) as of the time when the Specific Purpose Company has obtained approval under Article 104 (2) for the Financial Statements pertaining to the business year (if the business year immediately preceding such business year is not the most recent business year, the business year immediately preceding such business year) (in the case referred to in the first sentence of Article 104 (2), the time when the report under the second sentence of that Article has been made) that contains the date on which said Payments of Interim Dividends were made, the director who performed the duties related to said Payments of Interim Dividends shall jointly and severally have an obligation to pay such excess amount (in cases where said excess amount exceeds the amount of Cash Distributions of said Payments of Interim Dividends, said amount of Cash Distributions) to said Specific Purpose Company; provided, however, that this shall not apply to cases where said director has proved that they did not fail to exercise due diligence in performing their duties.

(Application Mutatis Mutandis of the Companies Act to Director Liability, etc.)

Article 119 (1) The provisions of Article 462 (2) and (3) (Liability Related to Dividends of Surplus) of the Companies Act shall apply mutatis mutandis to the liability of the directors of a Specific Purpose Company pursuant to Article 117 of this Act, Article 463 (Restrictions on Remedy Over Against Shareholders) of that Act shall apply mutatis mutandis to the members of a Specific Purpose Company, Article 464 (Liability Where Shares Are Acquired in Response to Demand for Purchase) of that Act shall apply mutatis mutandis to the liability of the director of a Specific Purpose Company who has responded to a request under Article 153 of this Act and Article 465 (2) (Liability in Cases of Damage) of the Companies Act shall apply mutatis mutandis to the liability of the director of a Specific Purpose Company under the preceding Article. In this case, the term "Executing Persons" in Article 462 (2) and (3) of the Companies Act shall be deemed to be replaced with "director prescribed in that Article," the phrase "the Distributable Amount as at the time of the act listed in each item of paragraph (1) of the preceding Article" in Article 462 (3) of that Act shall be deemed to be replaced with "the amount provided in Article 114 (1) or Article 115 (3) of the Asset Securitization Act," the phrases "the acts listed in each item of Article 461 (1)," "the total book value of the Monies, Etc.," and "the Distributable Amount as at the day when such act takes effect" in Article 463 (1) of the Companies Act shall be deemed to be replaced with "the distribution of profits or Payment of Interim Dividends under the provisions of Article 114 of the Asset Securitization Act," "the amount of Dividends or the amount of Distribution," and "the amount prescribed in paragraph (1) of that Article or Article 115 (3) of the Asset Securitization Act," respectively, the phrase "the book value of the Monies, etc." in Article 463 (2) shall be deemed to be replaced with "the amount of Cash Dividends or the amount of Cash Distributions," the phrase "the Distributable Amount as at the day when such payment is made" in Article 464 (1) of the Companies Act shall be deemed to be replaced with "the amount set forth in Article 114 (1) of the Asset Securitization Act pertaining to the business year that contains such payment (in cases where the business year immediately preceding such business year is not the most recent business year, the business year immediately preceding such business year)," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(2) The provisions of Article 97 (3) of this Act and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847 (2), Article 849 (2) and (5) and Article 851) (Action for Pursuing the Liability, etc. of a Stock Company) of the Companies Act shall apply mutatis mutandis to an action seeking liability filed against the director of a Specific Purpose Company under the provisions of Article 117 and to an action seeking liability filed against the director of a

Specific Purpose Company under the provisions of the preceding Article and Article 464 of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph. In this case, the phrase "A shareholder (excluding a Holder of Shares Less than One Unit who is unable to exercise right pursuant to the provisions of the articles of incorporation under Article 189 (2)) having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more)" in Article 847 (1) of the Companies Act shall be deemed to be replaced with "A Specified Equity Member or a Preferred Equity Member who has held Preferred Equity continuously for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such a period or longer)," the term "shareholder" in Article 847 (3) to (5) inclusive and (7) of the Companies Act shall be deemed to be replaced with "Specified Equity Member or Preferred Equity Member," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Provision of Benefits for the Exercise of a Right by a Member, etc.)

Article 120 (1) No Specific Purpose Company may give property benefits (limited to those given on the account of said Specific Purpose Company; hereinafter the same shall apply in this Article) to any person in connection with the exercise of a right by a member, a Specified Bondholder, a holder of Specified Promissory Notes, or a creditor pertaining to Specific Borrowings (such persons shall collectively be referred to as a "Member, etc.," in the following paragraph and paragraph (5)).

(2) In cases where a Specific Purpose Company has given property benefits to a particular Member, etc. free of charge, said Specific Purpose Company shall be presumed to have given property benefits to said Member, etc. for their exercise of a right. The same shall apply where a Specific Purpose Company has given property benefits to a particular Member, etc. in return for compensation, if the benefits received by said Specific Purpose Company are significantly less than said property benefits.

(3) When a Specific Purpose Company has given property benefits in violation of paragraph (1), the person who has received such benefits shall return the same to said Specific Purpose Company. In this case, if the person has made any payment or delivery to the Specific Purpose Company in exchange for said benefits, said person may receive the return of the same.

(4) When a Specific Purpose Company has given property benefits in violation of paragraph (1), any director who has participated in giving such benefits as specified by a Cabinet Office Ordinance shall jointly and severally have an obligation to pay the amount equivalent to the value of given benefits; provided, however, that this shall not apply when such person (excluding the director

who has given property benefits) has proved that they did not fail to exercise due diligence in performing their duties.

(5) Exemptions from the obligation set forth in the preceding paragraph shall not be granted without the consent of all Members, etc.

(6) Article 97 (3) of this Act and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847 (2), Article 849 (2) and (5), and Article 851) (Action for Pursuing the Liability, etc. of a Stock Company) of the Companies Act shall apply mutatis mutandis to actions for the return of benefits under paragraph (3). In this case, the phrase "A shareholder (excluding a Holder of Shares Less than One Unit who is unable to exercise right pursuant to the provisions of the articles of incorporation under Article 189 (2)) having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more)" in Article 848 (1) of the Companies Act shall be deemed to be replaced with "A Specified Equity Member or a Preferred Equity Member who has held Preferred Equity continuously for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such a period or longer)," the term "shareholder" in Article 847 (3) to (5) inclusive and (7) of the Companies Act shall be deemed to be replaced with "Specified Equity Member or Preferred Equity Member," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

## **Section 6 Specified Bonds**

### **Subsection 1 General Rules**

(Solicitation of Persons to Subscribe for Specified Bonds)

Article 121 (1) A Specific Purpose Company may solicit persons to subscribe for Specified Bonds as decided by the director (in cases where there are two or more directors, as decided by a majority thereof) in accordance with the Asset Securitization Plan.

(2) A Specific Purpose Company may not issue Specified Bonds jointly with another Specific Purpose Company.

(Applications for Specified Bonds for Subscription)

Article 122 (1) Specific Purpose Companies must notify persons who, in response to the solicitation under paragraph (1) of the preceding Article, intend to file an application to subscribe for Specified Bonds for Subscription (meaning the Specified Bonds allotted to persons who have filed an application to subscribe for said Specified Bonds in response to such solicitation; hereinafter the same shall apply in this Section) of the following particulars:

(i) the trade name and date of the Business Commencement Notification

- (where a Notification of a New Plan has been made, the date of said Notification of a New Plan);
- (ii) the fact that Specified Bonds are the subject of the application;
  - (iii) the type of Specified Assets (excluding Secondary Specified Assets) pertaining to the Specified Bonds for Subscription;
  - (iv) the total amount of Specified Bonds for Subscription;
  - (v) the amount of each Specified Bond for Subscription;
  - (vi) the interest rate for Specified Bonds for Subscription;
  - (vii) the means and due date of the redemption of Specified Bonds for Subscription;
  - (viii) the means and due date of the payment of interest;
  - (ix) when Specified Bond Certificates are to be issued, to that effect
  - (x) if Specified Bondholders are not to be allowed to make the demand set forth in Article 698 of the Companies Act as applied mutatis mutandis pursuant to Article 125 in whole or in part, to that effect;
  - (xi) if the Specified Bond Administrator is to be allowed to carry out the acts listed in Article 127 (4) (ii) without a resolution being made at a Specified Bondholders Meeting, to that effect;
  - (xii) the time limit for specifying the persons to whom the Specified Bonds for Subscription are to be allotted;
  - (xiii) if there is any person who has promised to subscribe for the remaining amount in cases where the persons to whom the Specified Bonds for Subscription are to be allotted are not specified for the total amount by the time limit referred to in the preceding item, their name;
  - (xiv) the Amount To Be Paid In for each Specified Bond for Subscription (meaning the amount of monies to be paid in exchange for each Specified Bond for Subscription; hereinafter the same shall apply in this Section (excluding Article 139 (2) and (3), Article 144 (1) (ii), and Article 145 (1) (i) and (2)) or the minimum amount thereof or the method for calculating such amounts;
  - (xv) the due date for the payment of monies to be made in exchange for the Specified Bond for Subscription;
  - (xvi) the Bank, etc. specified as the place for payment;
  - (xvii) the outlines of particulars sufficient to specify the Specified Assets (excluding Secondary Specified Assets) set forth in the Asset Securitization Plan, the rights existing on Specified Assets which may be duly asserted against the Specific Purpose Company, and any other particulars necessary for allowing a person to know the value of Specified Assets;
  - (xviii) the particulars pertaining to the Specified Assets set forth in the preceding item as specified in the following items for the categories set forth in the respective items:

- (a) land or buildings, or rights or assets related thereto, which are specified by Cabinet Order: the appraised value determined through a real property appraisal performed by a real property appraiser specified by Cabinet Order pertaining to these assets
  - (b) assets other than the assets listed in (a): the results of an investigation performed by a person other than the Specific Purpose Company who is specified by Cabinet Order with regard to the value of said assets
  - (xix) if the Asset Securitization Plan provides for the issuance of any other Specified Bonds, the particulars listed in items (iv) to (viii) inclusive and item (xiv) with regard to said other Specified Bonds and the status of issuance thereof;
  - (xx) if the Asset Securitization Plan provides for the issuance of Specified Short-Term Bonds, the maximum amount and any other particulars specified by a Cabinet Office Ordinance with regard to such Specified Short-Term Bonds and the status of issuance thereof;
  - (xxi) if the Asset Securitization Plan provides for the issuance of Specified Promissory Notes, the maximum amount and any other particulars specified by a Cabinet Office Ordinance with regard to such Specified Promissory Notes and the status of issuance thereof;
  - (xxii) if the Asset Securitization Plan provides for Specific Borrowings, the maximum amount and any other particulars specified by a Cabinet Office Ordinance with regard to such borrowings and the status of such borrowings; and
  - (xxiii) in addition to what is listed in the preceding items, particulars specified by a Cabinet Office Ordinance.
- (2) A person who intends to file an application to subscribe for Specified Bonds for Subscription in response to the solicitation set forth in paragraph (1) of the preceding Article must deliver a document containing the following particulars to the Specific Purpose Company:
- (i) the name and address of the person who is filing the application;
  - (ii) the amount of Specified Bonds for Subscription for which the person intends to subscribe and the number of Specified Bonds for each amount; and
  - (iii) in cases where the Specific Purpose Company has fixed the minimum amount set forth in item (xiv) of the preceding paragraph, the desired Amount To Be Paid In.
- (3) A person who files the application set forth in the preceding paragraph may, in lieu of delivering the document set forth in that paragraph, provide the particulars to be stated in the document set forth in that paragraph by Electromagnetic Means with the consent of the Specific Purpose Company, pursuant to Cabinet Order provisions. In this case, said person who files the application shall be deemed to have delivered the document under the

preceding paragraph.

- (4) The provisions of paragraph (1) shall not apply to cases where the Specific Purpose Company has delivered a prospectus prescribed in Article 2 (10) of the Financial Instruments and Exchange Act which contains the particulars listed in the items of that paragraph to the person who intends to file the application set forth in paragraph (1), and to other cases specified by a Cabinet Office Ordinance as those that are unlikely to prejudice the protection of the person applying to subscribe for the Specified Bond for Subscription.
- (5) When there are any changes to the particulars listed in the items of paragraph (1), Specific Purpose Companies must immediately notify the person who has filed the application set forth in paragraph (2) (hereinafter such person shall be referred to as the "Applicant" in this Subsection) to that effect and of the changed particulars.
- (6) It shall be sufficient for a notice or notification that is to be made to an Applicant by a Specific Purpose Company to be sent to the address set forth in paragraph (2) (i) (in cases where the Applicant has notified the Specific Purpose Company of another place or contact address for receiving such notice or notification, such place or contact address).
- (7) The notice or notification set forth in the preceding paragraph shall be deemed to have arrived when such notice or notification should have normally arrived.
- (8) Except in cases where there is a person as set forth in paragraph (1) (xiii), if a Specific Purpose Company has not specified the persons to whom it will allot the total amount of Specified Bonds for Subscription by the time limit set forth in item (xii) of that paragraph, it must not issue all of its Specified Bonds for Subscription.
- (9) A director must respond to any Applicant's request to inspect the Asset Securitization Plan or to be delivered copies or extracts of said Asset Securitization Plan.
- (10) The provisions of Article 40 (9) shall apply mutatis mutandis to cases where an Applicant has requested to be delivered a copy or extract of the Asset Securitization Plan and the provisions of Article 64 (Certificate of Deposit of Paid Money) of the Companies Act shall apply mutatis mutandis to the Bank, etc. that handled the payment as prescribed in item (xvi) of paragraph (1). In this case, the term "the preceding paragraph" in Article 40 (9) shall be deemed to be replaced with "Article 122 (9)," the phrases "Article 57 (1)," "the incorporators," and "pursuant to such provisions" in Article 64 (1) of the Companies Act shall be deemed to be replaced with "Article 121 (1) of the Asset Securitization Act," "the directors" and "in exchange for the Specified Bonds for Subscription," respectively, and the phrases "pursuant to the provisions of Article 34 (1) or paragraph (1) of the preceding Article" and "the Stock



Company after formation" in Article 64 (2) of the Companies Act shall be deemed to be replaced with "in exchange for the Specified Bond for Subscription" and "the Specific Purpose Company," respectively.

(Allotment of Specified Bonds for Subscription)

- Article 123 (1) Specific Purpose Companies must, from among Applicants, specify the persons to whom the Specified Bonds for Subscription shall be allotted and the amount of Specified Bonds for Subscription and the number of Specified Bonds for Subscription for each amount to be allotted to such persons. In this case, the Specific Purpose Company may reduce the number of Specified Bonds for Subscription for each amount to be allotted to said Applicants to a number below that set forth in paragraph (2) (ii) of the preceding Article.
- (2) Specific Purpose Companies must notify the Applicants of the amount of Specified Bonds for Subscription and the number of Specified Bonds for Subscription for each amount to be allotted to said Applicants by the day before the due date prescribed in paragraph (1) (xv) of the preceding Article.

(Special Provisions on Subscription for and Allotment of Specified Bonds for Subscription)

- Article 124 The provisions of the preceding two Articles shall not apply to cases where a person who intends to subscribe for Specified Bonds for Subscription concludes a contract for subscription for the total amount of Specified Bonds for Subscription.

(Application Mutatis Mutandis of the Companies Act)

- Article 125 The provisions of Article 680 to Article 701 (excluding Article 684 (4) and (5)) (Bondholders of Bonds for Subscription; Bond Registry; Delivery of Documents Stating Particulars to Be Stated in Bond Registry; Manager of Bond Registry; Keeping and Making Available for Inspection of Bond Registry; Notices to Bondholders; Exercise of Rights by Co-owners; Perfection of Assignment of Bonds; Presumption of Rights; Stating or Recording Particulars to be Stated in Bond Registry without Request from Bondholders; Stating or Recording Particulars to Be Stated in Bond Registry as Requested by Bondholders; Pledges of Bonds with Issued Certificates; Perfection of Pledge of Bonds; Entries in Bond Registry Regarding Pledges; Delivery of Documents Stating Particulars to Be Stated in Bond Registry Regarding Pledges; Issuing of Bond Certificates; Particulars to Be Stated on Bond Certificates, Conversions Between Registered Bonds and Bearer Bonds; Loss of Bond Certificates; Redemption of Bonds Where Coupons Missing; Extinctive Prescription of Right to Claim Redemption of Bonds) of the Companies Act shall apply mutatis mutandis to the Specified Bonds, Specified Bondholders,

Specified Bond Certificates, or the Specified Bond Registry in cases where a Specific Purpose Company issues Specified Bonds. In this case, the phrases "Particulars to Be Specified in Bond Registry," "Bond-issuing Company," and "bearer bonds" in said provisions shall be deemed to be replaced with "Particulars to Be Stated in the Specified Bond Registry," "Company Issuing Specified Bonds," and "Specified Bonds in bearer form," respectively, the phrase "Bonds for subscription" in Article 680 of the Companies Act shall be deemed to be replaced with "Specified Bonds for Subscription," the phrase "the preceding Article" in Article 680 (ii) of that Act shall be deemed to be replaced with "Article 124 of the Asset Securitization Act," the phrase "items (iii) through (viii) of Article 676" in Article 681 (i) of the Companies Act shall be deemed to be replaced with "Article 122 (1) (vi) to (xi) inclusive of the Asset Securitization Act," the phrase "a manager of Bond Registry" in Article 683 and Article 684 (1) of the Companies Act shall be deemed to be replaced with "an Administrator of the Specified Bond Registry," the phrase "paragraph (1) of Article 720" in Article 685 (5) of the Companies Act shall be deemed to be replaced with "Article 720 (1) as applied mutatis mutandis pursuant to Article 129 (2) of the Asset Securitization Act," the phrase "item (vii) of Article 676" in Article 698 of the Companies Act shall be deemed to be replaced with "Article 122 (1) (x)" of the Asset Securitization Act, and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Establishment of a Specified Bond Administrator)

Article 126 In cases where a Specific Purpose Company issues Specified Bonds, it shall specify a Specified Bond Administrator and entrust them with the receipt of payments, the preservation of rights of claims, and any other administration of the Specified Bonds on behalf of the Specified Bondholders; provided, however, that this shall not apply to cases where the amount of each Specified Bond for Subscription pertaining to the solicitation is 100 million yen or more, or to other cases specified by a Cabinet Office Ordinance as those that are unlikely to prejudice the protection of Specified Bondholders.

(Authority, etc. of the Specified Bond Administrator)

Article 127 (1) A Specified Bond Administrator shall have the authority to carry out any and all judicial and extra-judicial acts on behalf of the Specified Bondholders that are necessary in order to receive the payment of claims pertaining to Specified Bonds or to archive the realization of claims pertaining to the Specified Bonds.

(2) In cases where a Specified Bond Administrator receives the payment referred to in the preceding paragraph, Specified Bond Holders may claim payment of the redemption amount for the Specified Bonds or the interest thereon from

such Specified Bond Administrator. In this case, if there are any provisions to the effect that Specified Bond Certificates shall be issued, Specified Bondholders shall claim the payment of said redemption amount in exchange for the Specified Bond Certificate and the payment of said interest in exchange for coupons.

- (3) The right to claim payment under the first sentence of the preceding paragraph shall be extinguished by prescription when such right is not exercised for ten years.
- (4) Specified Bond Administrators must not carry out the following acts in absence of a resolution having been made at a Specified Bondholders Meeting; provided, however, that this shall not apply with regard to the acts listed in item (ii), if there has been notice of the particulars set forth in Article 122 (1) (xi) pursuant to the provisions of that paragraph:
  - (i) granting grace periods on payment, granting exemptions from liability arising from failure to perform on obligations to pay, or accepting settlements on payments (excluding the acts listed in the following item) for all of the Specified Bonds, and
  - (ii) carrying out procedural acts or carrying out acts pertaining to bankruptcy, rehabilitation, or special liquidation proceedings (excluding the acts listed in paragraph (1)) for all of the Specified Bonds.
- (5) When a Specified Bond Administrator has carried out the acts listed in item (ii) of the preceding paragraph without a resolution having been made at a Specified Bondholders Meeting pursuant to the proviso to the preceding paragraph, they must give public notice and a separate notice to each known Specified Bondholder to that effect without delay.
- (6) The public notice referred to in the preceding paragraph must be given by the means used by the Specific Purpose Company which has issued Specified Bonds (hereinafter referred to as "Company Issuing Specified Bonds" in this Section); provided, however, that in cases where such method is an Electronic Public Notice (meaning electronic public notice as prescribed in Article 194 (1) (iii)), the public notice shall be effected by publication in the Official Gazette.
- (7) When it is necessary for the Specified Bond Administrator to carry out the acts listed in paragraph (1) or the acts listed in the items of paragraph (4) with regard to the Specified Bonds with whose administration the Specified Bond Administrator has been entrusted, they may investigate the business and financial condition of the Company Issuing Specified Bonds.
- (8) The provisions of Article 703 (Qualifications of Bond Managers), Article 704 (Obligations of Bond Managers), Article 707 to Article 714 inclusive (Appointment of Special Agent; Method of Acts of Bond Managers; Special Provisions for Multiple Bond Managers; Liability of Bond Managers; Resignation of Bond Managers; Liability of Bond Managers after Resignation;

Dismissal of Bond Managers), Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 870 (1) (limited to the portion pertaining to item (ii)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 874 (limited to the portion pertaining to item (i) and item (iv)) (Restrictions on Appeal), Article 875 (Exclusion from the Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rule) of the Companies Act shall apply mutatis mutandis to the Specified Bond Administrator. In this case, the terms "Bonds," "bondholder," "Bond-issuing Company," and "bondholders meeting" in said provisions shall be deemed to be replaced with "Specified Bonds," "Specified Bond Holders," "Company Issuing Specified Bonds," and "Specified Bond Holders' Meeting" respectively, the term "paragraph (1) of Article 705" in Article 709 (2) of the Companies Act shall be deemed to be replaced with "Article 127 (1) of the Asset Securitization Act," the phrase "this Act" in Article 710 (1) of the Companies Act shall be deemed to be replaced with "the Asset Securitization Act," the term "Article 702" in Article 711 (2) of the Companies Act shall be deemed to be replaced with "Article 126 of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Ordinary Collateral)

- Article 128 (1) Specified Bondholders of a Specific Purpose Company shall have the right to receive the payment of claims pertaining to their own Specified Bonds in preference to other creditors with regard to the property of said Specific Purpose Company; provided, however, that this shall not preclude the Asset Securitization Plan from providing otherwise.
- (2) Precedence of a statutory lien under the preceding paragraph shall be after that of a general statutory lien under the provisions of the Civil Code.

(Specified Bondholders Meeting)

- Article 129 (1) Specified Bondholders shall organize a Specified Bondholders Meeting for each Class (meaning a class as prescribed in Article 681 (i) of the Companies Act as applied mutatis mutandis pursuant to Article 125) of Specified Bonds.
- (2) The provisions of Part IV, Chapter III (excluding Article 715) (Bondholders' Meeting), the provisions of Part VII, Chapter II, Section 7 (Action Seeking Rescission of Performance, etc. of a Bond-issuing Company), Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 870 (1) (limited to the portion pertaining to item (vii) to item (ix) inclusive) (Hearing of Statements), Article 871 (Appending of the Reason),

Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Article 874 (limited to the portion pertaining to item (iv)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rule) of the Companies Act shall apply mutatis mutandis to Specified Bonds, Specified Bondholders, Specified Bond Certificates, Specified Bond Administrators, Specified Bonds registries, and Specified Bondholders Meetings in cases where a Specific Purpose Company issues Specified Bonds. In this case, the terms "Bond-issuing Company," "bearer bonds," and "representative bondholder" in said provisions shall be deemed to be replaced with "Company Issuing Specified Bonds," "Specified Bonds in bearer form," and "representative Specified Bondholder," the phrase "this Act" in Article 716 of the Companies Act shall be deemed to be replaced with "the Asset Securitization Act or the Asset Securitization Plan," the term "electromagnetic public notice" in Article 720 (5) of the Companies Act shall be deemed to be replaced with "Electronic Public Notice (meaning electronic public notice as prescribed in Article 194 (1) (iii) of the Asset Securitization Act)," the phrase "Bondholders' Meeting Reference Documents" in Article 721 of the Companies Act shall be deemed to be replaced with "Reference Documents for a Specified Bondholders Meeting," the phrase "each item of Article 706 (1)" in Article 724 (2) (i) of the Companies Act shall be deemed to be replaced with "the items of Article 127 (4) of the Asset Securitization Act," the phrase "paragraph (1) of Article 706" in Article 724 (2) (ii) of the Companies Act shall be deemed to be replaced with "Article 127 (4) of the Asset Securitization Act," the term "Article 707" in Article 729 (1) of the Companies Act shall be deemed to be replaced with "Article 707 as applied mutatis mutandis pursuant to Article 127 (8) of the Asset Securitization Act," the term "Article 676" in Article 733 (i) of the Companies Act shall be deemed to be replaced with "Article 122 (1) of the Asset Securitization Act," the phrase "paragraphs (1) through (3) of Article 705, and under Articles 708 and 709" in Article 737 (2) of the Companies Act shall be deemed to be replaced with "Article 127 (1) to (3) inclusive of the Asset Securitization Act and the provisions of Article 708 and Article 709 of the Companies Act as applied mutatis mutandis pursuant to Article 127 (8) of the Asset Securitization Act," the term "Article 449" in Article 740 (1) of the Companies Act shall be deemed to be replaced with "Article 111 of the Asset Securitization Act," the term "Article 702" in Article 740 (2) of the Companies Act shall be deemed to be replaced with "Article 126 of the Asset Securitization Act," the phrase "paragraph (1) of Article 705 (including cases where that paragraph is applied mutatis mutandis under paragraph (2) of Article 737)" in Article 741 (3) of the Companies Act shall be deemed to be replaced with

"Article 127 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 737 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 129 (2) of the Asset Securitization Act) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Applications of the Secured Bonds Trust Act, etc.)

Article 130 With regard to the application of the Secured Bonds Trust Act and other laws and regulations specified by Cabinet Order, Specified Bonds shall be deemed to be corporate bonds pursuant to Cabinet Order provisions.

### **Subsection 2 Convertible Specified Bonds**

(Issuance of Convertible Specified Bonds)

Article 131 (1) A Specific Purpose Company may issue convertible Specified Bonds in accordance with the provisions of an Asset Securitization Plan.

(2) In cases where a Type 2 Specific Purpose Company issues convertible Specified Bonds with conditions for conversion that are particularly favorable to persons other than Preferred Equity Members, the total amount of convertible Specified Bonds that may be issued to such persons, the Amount to Be Paid In, the conditions for conversion, the details of the Preferred Equity to be issued upon conversion, and the period during which conversion may be demanded shall be fixed by resolution at a general meeting of members, even when the Asset Securitization Plan provides for such particulars. In this case, the director shall, at said general meeting of members, explain the reason for the need to issue convertible Specified Bonds in an Amount to Be Paid In that is particularly favorable to persons other than Preferred Equity Members.

(3) The resolution set forth in the preceding paragraph shall be effective only on the first convertible Specified Bonds issued after said resolution, which are to be issued within six months from the date of said resolution.

(4) The provisions of Article 39 (3) shall apply mutatis mutandis to the resolution set forth in paragraph (2).

(Public Notice of Particulars Related to Issuance of Convertible Specified Bonds)

Article 132 (1) In cases where a Specific Purpose Company issues convertible Specified Bonds (excluding those on which a resolution as set forth in paragraph (2) of the preceding Article has been made), it must give public notice or notify the members of the total amount of convertible Specified Bonds, the Amount to Be Paid In, conditions for conversions, details of the Preferred Equity to be issued upon conversion, the period during which conversion may

be demanded and the method of subscription.

- (2) In cases where a Specific Purpose Company gives the notice set forth in the preceding paragraph by means of an electronic data processing system or by means of utilizing any other information and communications technology, such Specific Purpose Company shall, pursuant to Cabinet Order provisions, give said notice by the method specified by a Cabinet Office Ordinance with the consent of the members.
- (3) A Specific Purpose Company shall not allot the convertible Specified Bonds until after two weeks have elapsed from the date on which the public notice or notice under paragraph (1) was given.

(Procedures for Issuance of Convertible Specified Bonds)

Article 133 (1) With regard to convertible Specified Bonds, in addition to the particulars of which to notify persons who intend to file an application pursuant to Article 122 (1), notice of the following particulars must be given to any person who intends to file an application to subscribe for Specified Bonds for Subscription in response to solicitation under Article 121 (1):

- (i) the fact that convertible Specified Bonds may be converted into Preferred Equity;
  - (ii) the conditions for conversion;
  - (iii) the details of the Preferred Equity to be issued upon conversion; and
  - (iv) the period during which conversion may be demanded.
- (2) With regard to convertible Specified Bond, the particulars listed in the items of the preceding paragraph shall be stated or recorded in the Specified Bond Registry and in cases where a convertible Specified Bond Certificates have been issued, such particulars must be stated on said convertible Specified Bond Certificates.

(Registration of Convertible Specified Bonds)

Article 134 (1) Where a Specific Purpose Company issues convertible Specified Bonds, such convertible Specified Bonds must be registered at the location of said Specific Purpose Company's head office within two weeks from the due date prescribed in Article 122 (1) (xv).

- (2) The following particulars must be registered in the registration set forth in the preceding paragraph:
  - (i) the total amount of convertible Specified Bonds;
  - (ii) the amount of each convertible Specified Bond;
  - (iii) the amount paid in for each convertible Specified Bond; and
  - (iv) the particulars listed in the items of paragraph (1) of the preceding Article.
- (3) The provisions of Article 915 (1) (Registration of a Change) of the Companies Act shall apply mutatis mutandis to cases where a change arises in the

particulars listed in the items of the preceding paragraph.

- (4) In cases where persons to subscribe for convertible Specified Bonds are solicited in a foreign state, when any matters to be registered arise in a foreign state, the period for registration shall be counted from the date on which the notice thereof has arrived.

(Request for Conversion)

Article 135 (1) The following particulars must be clarified in a request for the conversion of convertible Specified Bonds:

- (i) the Specified Bonds to be converted; and
- (ii) the date of the request.

- (2) Any person who requests conversion must submit the convertible Specified Bond Certificate to a Specific Purpose Company; provided, however, that this shall not apply to cases where Specified Bond Certificates are not issued.

(Voting Rights for Preferred Equity Issued upon Conversion After the Record Date)

Article 136 In cases where a Specific Purpose Company has specified a certain date pursuant to the provisions of Article 43 (2) in order to designate the Preferred Equity Members who may exercise their voting rights at general meetings of members, Preferred Equity Members who hold Preferred Equity issued in response to requests for conversion after such date shall not hold voting rights.

(Timing of Preferred Equity Member Status)

Article 137 Any person who has made the request for conversion pursuant to the provisions of Article 135 (1) shall become a Preferred Equity Member on the date set forth in item (ii) of that paragraph.

(Application Mutatis Mutandis of the Companies Act, etc.)

Article 138 (1) The provisions of Article 151 (excluding the items) (Effect of Pledge of Shares), Article 210 (Demanding Cessation of Issuance of Shares for Subscription), Article 212 (1) (limited to the portion pertaining to item (i)) (Liabilities of Persons Who Subscribed for Shares with Unfair Amount To Be Paid In), and Article 915 (3) (limited to the portion pertaining to item (i)) (Registration of a Change) of the Companies Act shall apply mutatis mutandis to a Specific Purpose Company's convertible Specified Bonds. In this case, the phrases "In cases where a Stock Company carries out any of the acts listed below," "such act," and "shareholders" in Article 151 of the Companies Act shall be deemed to be replaced with "In cases where the conversion of convertible Specified Bonds has been effected," "such conversion," and "convertible



Specified Bondholders," respectively, the terms "shareholders" and "Article 199 (1)" in Article 210 of the Companies Act shall be deemed to be replaced with "members" and "Article 121 (1) of the Asset Securitization Act," respectively, the phrase "laws and regulations or articles of incorporation" in Article 210 (i) of the Companies Act shall be deemed to be replaced with "laws and regulations, articles of incorporation, or the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (2) Article 97 (3) of this Act and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847 (2), Article 849 (2), and (5) and Article 851) (Action for Pursuing the Liability, etc. of a Stock Company) of the Companies Act shall apply mutatis mutandis to an action demanding payment under Article 212 (1) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph. In this case, the phrase "A shareholder (excluding a Holder of Shares Less Than One Unit who is unable to exercise rights pursuant to the provisions of the articles of incorporation) having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more)" in Article 847 (1) of the Companies Act shall be deemed to be replaced with "A Specified Equity Member or a Preferred Equity Member who has held Preferred Equity continuously for the preceding six months (if a shorter period is provided for in the articles of incorporation, such a period)," the term "shareholder" in Article 847 (3) to (5) inclusive and (7) of the Companies Act shall be deemed to be replaced with "Specified or Preferred Equity Member," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Subsection 3 Specified Bonds with Preferred Equity Subscription Rights**

(Issuance of Specified Bonds with Rights to Subscribe for Preferred Equity)  
Article 139 (1) A Specific Purpose Company may issue Specified Bonds with Preferred Equity Subscription Rights in accordance with the provisions of the Asset Securitization Plan.

- (2) The total amount contributed upon exercise of the subscription right that is attached to each Specified Bond with a Preferred Equity Subscription Right (hereinafter such amount shall be referred to as "Amount to Be Paid In" in the following paragraph, Article 144 (1) (ii), and Article 145 (1) (i) and (ii)) shall not exceed the amount of each Specified Bond with a Preferred Equity Subscription Right.
- (3) In cases where Specified Bonds with Preferred Equity Subscription Rights are issued for which the subscription rights for Preferred Equity may be

transferred independently, the total amount of Specified Bonds with Preferred Equity Subscription Rights, the total Amount to Be Paid In for Preferred Equity issued upon exercise of the subscription right, and the period during which the subscription rights may be exercised shall be fixed by resolution at a general meeting of members, even when the Asset Securitization Plan provides for such particulars; provided, however, that this shall not apply to cases where Specified Bonds with Preferred Equity Subscription Rights are issued that are only to be redeemed or cancelled when the total Amount to Be Paid In for Preferred Equity pertaining to unexercised subscription rights does not exceed the total amount of the existing Specified Bonds with Preferred Equity Subscription Rights.

- (4) In cases where a Type 2 Specific Purpose Company issues Specified Bonds with Preferred Equity Subscription Rights wherein the details of the Preferred Equity Subscription Rights are particularly favorable to persons other than Preferred Equity Members, the amount of Specified Bonds with Preferred Equity Subscription Rights that may be issued to such persons, the Amount to Be Paid In, the details of the subscription rights, and the period during which the subscription rights may be exercised must be specified by resolution at a general meeting of members, even when the Asset Securitization Plan provides for such particulars. In this case, the directors must, at the relevant general meeting of members, explain the reason for the need to issue the Specified Bonds with Preferred Equity Subscription Rights at an Amount to Be Paid In that is particularly favorable for persons other than Preferred Equity Members.
- (5) The provisions of Article 131 (3) and (4) shall apply mutatis mutandis to the resolutions made at a general meeting of members under the preceding two paragraphs. In this case, the phrase "convertible Specified Bonds" in Article 131 (3) shall be deemed to be replaced with "Specified Bonds with Preferred Equity Subscription Rights."

(Public Notice of Particulars Related to Issuance of Specified Bonds with Preferred Equity Subscription Rights)

- Article 140 (1) In cases where a Specific Purpose Company issues Specified Bonds with Preferred Equity Subscription Rights (excluding those on which a resolution as set forth in paragraph (4) of the preceding Article has been made), it must give public notice or notify the members of the total amount of Specified Bonds with Preferred Equity Subscription Rights, the Amount to Be Paid In, the details of the subscription rights, the period during which the subscription rights may be exercised, and the method of subscription.
- (2) The provisions of Article 132 (2) shall apply mutatis mutandis to the notice referred to in the preceding paragraph.
  - (3) A Specific Purpose Company shall not allot Specified Bonds with Preferred

Equity Subscription Rights until after two weeks have elapsed from the date on which the public notice or notice under paragraph (1) was given.

(Procedures for the Issuance of Specified Bonds with Preferred Equity Subscription Rights)

Article 141 (1) With regard to Specified Bonds with Preferred Equity

Subscription Rights, in addition to the particulars of which to notify a person who intends to file an application pursuant to Article 122 (1), a notice of the following particulars must be given to any person who intends to file an application to subscribe for Specified Bonds for Subscription in response to the solicitation made under Article 121 (1):

- (i) the fact that Specified Bonds with Preferred Equity Subscription Rights are being offered;
- (ii) the particulars listed in Article 5 (1) (ii) (d)2. to 5. inclusive; and
- (iii) the Bank, etc. that handles the payment prescribed in Article 145 (2) and the place for handling such payments.

(2) With regard to Specified Bonds with Preferred Equity Subscription Rights, the particulars listed in the items of the preceding paragraph must be stated on the Specified Bond Certificate in cases where one has been issued; provided, however, that this shall not apply to cases where a Preferred Equity Subscription Warrant as set forth in paragraph (1) of the following Article is issued.

(3) With regard to Specified Bonds with Preferred Equity Subscription Rights, the particulars listed in the items of paragraph (1) must be stated or recorded in the Specified Bond Registry.

(Issuance of Preferred Equity Subscription Warrants and the Format Thereof)

Article 142 (1) In cases where the Asset Securitization Plan provides to the effect that subscription rights for Preferred Equity may be transferred independently, Specific Purpose Companies must issue Preferred Equity Subscription Warrants.

(2) Specific Purpose Companies shall state the following particulars and the serial numbers on Preferred Equity Subscription Warrants, and the Representative Director must sign them, or affix their name and seal thereto:

- (i) the indication that it is a Preferred Equity Subscription Warrant;
- (ii) the trade name;
- (iii) the particulars listed in Article 5 (1) (ii) (d)2., 3. and 5.; and
- (iv) the particulars set forth in Article 141 (1) (iii).

(Method of Transferring a Preferred Equity Subscription Warrant)

Article 143 (1) In cases where Preferred Equity Subscription Warrants are

issued, subscription rights for Preferred Equity must be transferred by delivering the relevant Preferred Equity Subscription Warrants.

- (2) The provisions of Article 258 (1) and (2) (Presumption of Rights) and Article 291 (Loss of Share Option Certificates) of the Companies Act shall apply mutatis mutandis to Preferred Equity Subscription Warrants. In this case the term "Share Options with Issued Certificate" in Article 258 of that Act shall be deemed to be replaced with "Preferred Equity Subscription Rights."

(Registration of Specified Bonds with Preferred Equity Subscription Rights)

Article 144 (1) The following particulars must be registered upon registration of a Specified Bond with Preferred Equity Subscription Rights:

- (i) the fact that it is a Specified Bond with Preferred Equity Subscription Rights;
  - (ii) the total Amount to Be Paid In for Preferred Equity issued upon exercise of the subscription right;
  - (iii) the amount of each Specified Bond with Preferred Equity Subscription Rights;
  - (iv) the amount paid in for each Specified Bond with Preferred Equity Subscription Rights; and
  - (v) the particulars listed in Article 5 (1) (ii) (d) 1. to 3. inclusive.
- (2) The provisions of Article 134 (1), (3), and (4) shall apply mutatis mutandis to the registration of a Specified Bond with Preferred Equity Subscription Rights.

(Exercise, etc. of Subscription Rights for Preferred Equity)

Article 145 (1) The following particulars must be disclosed in exercising subscription rights for Preferred Equity:

- (i) the Amount to Be Paid In for the Preferred Equity issued upon the exercise of subscription rights;
  - (ii) the address of the person exercising the subscription rights for Preferred Equity; and
  - (iii) the date on which the subscription rights for Preferred Equity are exercised.
- (2) A person who exercises a subscription right for Preferred Equity shall pay the entire Amount to Be Paid In for the new Preferred Equity and in cases where Preferred Equity Subscription Warrants are issued, they shall submit the Preferred Equity Subscription Warrant to the Specific Purpose Company, and in cases where Preferred Equity Subscription Warrants are not issued (excluding cases where Specified Bond Certificates with Preferred Equity Subscription Rights are not issued), they must present the Bond Certificate for their Specified Bond with Preferred Equity Subscription Rights.
- (3) The payment set forth in the preceding paragraph must be made at the Bank,

etc. specified as the place for payment as prescribed in Article 141 (1) (iii).

(Timing of Becoming a Preferred Equity Member)

Article 146 Any person who has exercised subscription rights for Preferred Equity pursuant to paragraph (1) of the preceding Article shall become a Preferred Equity Member at the time of the payment set forth in paragraph (2) of that Article.

(Application Mutatis Mutandis of the Companies Act, etc.)

Article 147 (1) The provisions of Article 210 (Demanding Cessation of the Issuing of Shares for Subscriptions) and Article 212 (1) (limited to the portion pertaining to item (i)) (Liabilities of Persons who Subscribed for Shares with Unfair Amount To Be Paid In) of the Companies Act shall apply mutatis mutandis to Specified Bonds with Preferred Equity Subscription Rights, and Article 136 of this Act and Article 915 (3) (limited to the portion pertaining to item (i)) (Registration of a Change) of the Companies Act shall apply mutatis mutandis to the exercise of subscription rights for Preferred Equity. In this case the terms "shareholders" and "Article 199 (1)" in Article 210 of the Companies Act shall be deemed to be replaced with "members" and "Article 121 (1) of the Asset Securitization Act," respectively, the phrase "laws and regulations or articles of incorporation" in Article 210 (i) of the Companies Act shall be deemed to be replaced with "laws and regulations, the Asset Securitization Plan, or articles of incorporation," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(2) Article 97 (3) of this Act and the provisions of Part VII, Chapter II, Section 2 (excluding Article 847 (2), Article 849 (2) and (5), and Article 851) (Action for Pursuing Liability, etc. of a Stock Company) of the Companies Act shall apply mutatis mutandis to an action seeking payment under Article 212 (1) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph. In this case, the phrase "A shareholder (excluding a Holder of Shares of Less than One Unit who is unable to exercise their right pursuant to the provisions of the articles of incorporation under Article 189 (2)) having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more)" in Article 848 (1) of the Companies Act shall be deemed to be replaced with "A Specified Equity Member or a Preferred Equity Member who has held Preferred Equity continuously for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such a period or longer)," the term "shareholder" in Article 847 (3) to (5) inclusive and (7) of the Companies Act shall be deemed to be replaced with "Specified Equity Member or Preferred Equity Member" and any other necessary technical replacement of

terms shall be specified by Cabinet Order.

#### **Subsection 4 Specified Short-Term Bonds**

(Issuance of Specified Short-Term Bonds)

Article 148 A Specific Purpose Company may issue Specified Short-Term Bonds only in the following cases:

- (i) in cases where all of the following requirements are satisfied:
  - (a) that the purpose of issuing the Specified Short-Term Bonds is to procure the funds necessary to acquire Specified Assets;
  - (b) that the limit amount for the issuance of the Specified Short-Term Bonds is specified in the Asset Securitization Plan; and
  - (c) requirements specified by a Cabinet Office Ordinance as being necessary for the protection of investors;
- (ii) in cases where they are issued for the purpose of procuring funds for the redemption of Specified Short-Term Bonds issued under the provisions of this Article.

(Exemption, etc. from Application of Provisions Related to Specified Equity)

Article 149 (1) Preparation of a Specified Equity Registry shall not be required with regard to Specified Short-Term Bonds.

(2) The provisions of Article 121 (1), Article 129, Article 131 to Article 147 inclusive, and Article 154 shall not apply to Specified Short-Term Bonds.

#### **Section 7 Changes to the Articles of Incorporation**

Article 150 A Specific Purpose Company may change its articles of incorporation by resolution at a general meeting of members after its formation.

#### **Section 8 Changes to Asset Securitization Plans**

(Changes to Asset Securitization Plans)

Article 151 (1) Specific Purpose Companies may not change their Asset Securitization Plan without a resolution having been made at a general meeting of members.

- (2) Notwithstanding the provisions of the preceding paragraph, the Asset Securitization Plan shall not be changed with regard to the following particulars:
- (i) of the particulars listed in Article 5 (1) (iii), those which are specified by a Cabinet Office Ordinance;
  - (ii) of the particulars listed in Article 5 (1) (ii), (iv), and (v), those which are

- specified by a Cabinet Office Ordinance (excluding cases where the conditions for changing such particulars have been provided for in the Asset Securitization Plan in advance); and
- (iii) the particulars that are provided for in the Asset Securitization Plan as those that may not be changed.
- (3) Notwithstanding the provisions of the preceding two paragraphs, a Specific Purpose Company may change the Asset Securitization Plan in the following cases:
- (i) in cases where the details of the change are among those specified by a Cabinet Office Ordinance as being minor;
- (ii) in cases where the consent of all of the members, Specified Bondholders, holders of Specified Promissory Notes, and creditors pertaining to Specific Borrowings (such persons shall be collectively referred to as "Interested Persons" in the following paragraph) to the change has been obtained in advance; or
- (iii) in other cases specified by a Cabinet Office Ordinance as those in which it is evident that such change will not jeopardize the protection of the investors.
- (4) When a Specific Purpose Company has changed its Asset Securitization Plan (limited to the case referred to in the preceding paragraph), it must notify each Interested Person or give public notice to that effect without delay.
- (5) The provisions of Article 132 (2) shall apply mutatis mutandis to the notice set forth in the preceding paragraph. In this case, the term "members" in paragraph (2) of that Article shall be deemed to be replaced with "members, Specified Bondholders, holders of Specified Promissory Notes, and creditors pertaining to Specific Borrowings."

(Resolution for Changing the Plan)

Article 152 (1) Specific Purpose Companies listed in the following items must deliver documents stating the particulars listed in the respective items when giving notice under Article 56 (1) of a general meeting of members which is to adopt a resolution to change the Asset Securitization Plan (hereinafter referred to as a "Resolution for Changing the Plan" in this Section):

- (i) a Specific Purpose Company issuing Specified Equity: the total amount of Specified Equity held by Specified Equity Members who have notified the Specific Purpose Company of their dissent to the changes to the Asset Securitization Plan pursuant to Article 154 (5);
- (ii) a Specific Purpose Company issuing Specified Short-Term Bonds: the total amount of Specified Short-Term Bonds held by the Specified Short-Term Bondholders who have notified the Specific Purpose Company of their dissent to the changes to the Asset Securitization Plan pursuant to Article 155 (4);
- (iii) a Specific Purpose Company issuing Specified Promissory Notes: the total

amount of obligations undertaken in relation to Specified Promissory Notes pertaining to the holders of Specified Promissory Notes who have notified the Specific Purpose Company of their dissent to the changes to the Asset Securitization Plan pursuant to Article 155 (4) as applied mutatis mutandis pursuant to Article 156 (3); and

- (iv) a Specific Purpose Company who has Specific Borrowings: the total amount of Specific Borrowings from creditors pertaining to Specific Borrowings who have notified the Specific Purpose Company of their dissent to the changes to the Asset Securitization Plan pursuant to Article 155 (4) as applied mutatis mutandis pursuant to Article 157 (2).
- (2) When a Specific Purpose Company set forth in the preceding paragraph gives notice of a meeting as set forth in the preceding paragraph by Electromagnetic Means to the members who have given their consent as set forth in Article 55 (3) as applied mutatis mutandis pursuant to Article 56 (3), such Specific Purpose Company may provide the particulars to be stated in the documents prescribed in Article 55 (3) by Electromagnetic Means, together with said notice; provided, however, that the Specific Purpose Company must provide the documents set forth in Article 55 (3) to a member when requested thereby.
- (3) The provisions of Article 39 (3) shall apply mutatis mutandis to the Resolution for Changing Plans.

(Dissenting Preferred Equity Members' Right to Demand the Purchase of Their Preferred Equity)

Article 153 (1) A Preferred Equity Member (limited to a Preferred Equity Member who may exercise their voting right at the relevant general meeting of members) who has notified a Specific Purpose Company of their dissent to the changes prior to a general meeting of members where the Resolution for Changing the Plan is to be adopted and who has dissented from said change at said general meeting of members may demand that said Specific Purpose Company purchase their Preferred Equity at a fair price.

- (2) The demand set forth in the preceding paragraph (hereinafter referred to as the "Demand for the Purchase of Preferred Equity" in this Article) must, within the period from the date twenty days prior to the date of the Resolution for Changing the Plan (for a Specific Purpose Company that issues Specified Bonds, the date of the resolution of approval made at the Specified Bondholders Meeting set forth in paragraph (1) of the following Article; the same shall apply in the following paragraph) until the day immediately preceding the date of the Resolution for Changing the Plan, clarify the class and number of units of the Preferred Equity related to said Demand for the Purchase of Preferred Equity.
- (3) In cases where a Demand for the Purchase of Preferred Equity is made, if an



agreement is reached between the Preferred Equity Member and the Specific Purpose Company in determining the price of the Preferred Equity, the Specific Purpose Company must effect the payment of said price within sixty days from the date of the Resolution for Changing the Plan; provided, however, that such Specific Purpose Company may effect such payment only after the performance of obligations or entrustment of reasonable property is completed with regard to the obligations undertaken in relation to Specified Bonds, Specified Promissory Notes, and Specific Borrowings under paragraph (5) of the following Article, Article 155 (4), or Article 155 (4) as applied mutatis mutandis pursuant to Article 156 (3) or Article 157 (2).

(4) The provisions of Article 116 (3), (4), (6), and (7) (Dissenting Shareholders' Share Purchase Demand), Article 117 (2) to (6) inclusive (Determination of Price of Shares), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (2) (limited to the portion pertaining to item (ii)) (Hearing of Statements), Article 870-2 (Sending a Copy of a Written Motion, etc.), the main clause of Article 871 (Appending of a Reason), Article 872 (limited to the portion pertaining to item (v)) (Immediate Appeal), Article 872-2 (Sending of a Copy of a Petition for Immediate Appeal, etc.), the main clause of Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rule) of the Companies Act shall apply mutatis mutandis to the Demands for the Purchase of Preferred Equity made by the Preferred Equity Members of a Specific Purpose Company. In this case, the phrase "act in any item of paragraph (1)" in Article 116 (3) and (7) of that Act shall be deemed to be replaced with "change to the Asset Securitization Plan," the phrases "the day when such act becomes effective," "of the shares provided for in each item of that paragraph," and "such act" in Article 116 (3) of that Act shall be deemed to be replaced with "the day of the Resolution for Changing the Plan set forth in Article 153 (2) of the Asset Securitization Act," "thereof," and "changes to the Asset Securitization Plan," respectively, the phrases "of the shares" in Article 117 (2) and (6) of the Companies Act and "for such shares" in paragraph (5) of that Article shall be deemed to be replaced with "of the Preferred Equity," the term "share certificates" in Article 117 (5) of that Act shall be deemed to be replaced with "Preferred Equity Securities," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Approval at a Specified Bondholders Meeting)

Article 154 (1) Before a Specific Purpose Company Issuing Specified Bonds changes its Asset Securitization Plan in accordance with a Resolution for Changing the Plan, it must obtain approval to do so at a Specified Bond

Holders' Meeting in addition to said Resolution for Changing the Plan.

- (2) In cases where a Specific Purpose Company calls a Specified Bondholders Meeting pursuant to the preceding paragraph, notwithstanding the provisions of Article 720 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 129 (2), such a Specific Purpose Company must send a notice of such a meeting to each Specified Bondholder in writing or by Electromagnetic Means more than one month prior to the date of the general meeting of members that is to adopt the Resolution for Changing the Plan.
- (3) When a Specific Purpose Company calls a Specified Bondholders Meeting under paragraph (1), it must fix a period longer than two weeks and require each Specified Bondholder to give notice of their dissent to the changes, if any, in writing or by Electromagnetic Means within said period. In this case, the Specific Purpose Company must state or record said period in the notice of the meeting referred to in the preceding paragraph.
- (4) In cases where the Specific Purpose Company that calls the Specified Bondholders Meeting under paragraph (1) has issued Specified Bond Certificates in bearer form, notwithstanding the provisions of Article 720 (4) of the Companies Act as applied mutatis mutandis pursuant to Article 129 (2), such Specific Purpose Company must give public notice that a Specified Bondholders Meeting is being called and shall include in such notice the subject particular thereof, by more than one month prior to the date of the general meeting of members that is to adopt the Resolution for Changing the Plan. In this case, the period fixed under the preceding paragraph must also be given by public notice.
- (5) In the case referred to in paragraph (3), when a Specified Bondholder has notified a Specific Purpose Company of their dissent to the changing of the Asset Securitization Plan within the period fixed under that paragraph and has dissented to the changing of the Asset Securitization Plan at the Specified Bondholders Meeting, the Specific Purpose Company must make payments or entrust equivalent property to a Trust Company, etc. for the purpose of having such Trust Company, etc. make payments for the Specified Equity held by said Specified Bondholder.
- (6) The provisions of Article 62 shall apply mutatis mutandis to the resolution of approval made at the Specified Bondholders Meeting under paragraph (1). In this case, the term "Article 56 (1)" in Article 62 (2) shall be deemed to be replaced with "Article 154 (2)," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Dissent of Specified Short-Term Bondholders)

Article 155 (1) Before a Specific Purpose Company issuing Specified Short-Term Bonds changes its Asset Securitization Plan through a Resolution for Changing

the Plan, such Specific Purpose Company must fix a period longer than two weeks and give public notice to the effect that notice of any dissent to the changes must be given within said period, by more than one month prior to the date of the general meeting of members that is to adopt said Resolution for Changing the Plan.

- (2) A Specified Short-Term Bondholder who intends to dissent pursuant to the provisions of the preceding paragraph must present their Specified Bond Certificate to the Specific Purpose Company (limited to those pertaining to Specified Short-Term Bonds) or take other measures specified by a Cabinet Office Ordinance.
- (3) When a Specified Short-Term Bondholder fails to give notice of their dissent within the period fixed under the provisions of paragraph (1), they shall be deemed to have assented to the changes to the Asset Securitization Plan.
- (4) When a Specified Short-Term Bondholder has given notice of their dissent, the Specific Purpose Company must entrust reasonable property to a Trust Company, etc. for the purpose of having such Trust Company, etc. perform the obligations undertaken in relation to the Specified Short-Term Bonds pertaining to said Specified Short-Term Bondholder without delay after the changes to the Asset Securitization Plan have been made.

(Dissent of Holders of Specified Promissory Notes)

Article 156 (1) Before a Specific Purpose Company issuing Specified Promissory Notes changes its Asset Securitization Plan through a Resolution for Changing the Plan, such a Specific Purpose Company must fix a period longer than two weeks and give public notice to the effect that notice of any dissent to such changes must be given within said period, by one month prior to the date of the general meeting of members that is to adopt said Resolution for Changing the Plan.

- (2) A holder of a Specified Promissory Note who intends to dissent pursuant to the provisions of the preceding paragraph must present their Specified Promissory Note to the Specific Purpose Company.
- (3) The provisions of paragraph (3) and paragraph (4) of the preceding Article shall apply mutatis mutandis to the holder of a Specified Promissory Note.

(Objections of Creditors Pertaining to Specific Borrowings)

Article 157 (1) Before a Specific Purpose Company that has Specific Borrowings changes its Asset Securitization Plan through a Resolution for Changing the Plan, such Specific Purpose Company must fix a period longer than two weeks and give notice to each creditor pertaining to Specific Borrowings to the effect that any objections to such changes must be stated within said period, by more than one month prior to the date of the general meeting of members that is to

adopt said Resolution for Changing the Plan.

- (2) Article 132 (2) shall apply mutatis mutandis to the notice set forth in the preceding paragraph, and Article 155 (3) and (4) shall apply mutatis mutandis to creditors pertaining to Specific Borrowings. In this case, the term "members" in Article 132 (2) shall be deemed to be replaced with "creditors pertaining to Specific Borrowings" and the term "paragraph (1)" in Article 155 (3) shall be deemed to be replaced with "Article 157 (1)."

### **Section 9 Post Formation**

Article 158 In cases where a Specific Purpose Company is to acquire, within two years of its incorporation, property that has existed since before its incorporation and which it will use continuously in its business, it must obtain approval for the contract of such acquisition through a resolution made at a general meeting of members by the day prior to the day when said acquisition takes effect; provided, however that this shall not apply to cases where the ratio of the amount listed in item (i) to the amount listed in item (ii) does not exceed one-fifth (if a smaller ratio is provided for in the articles of incorporation, such a ratio) or where the property acquired under said contract is a Specified Asset prescribed in the Asset Securitization Plan:

- (i) the total amount of the book value of the property delivered as the consideration for said property;
- (ii) the amount calculated by the method specified by a Cabinet Office Ordinance as the amount of net assets of the Specific Purpose Company.

### **Section 10 Provisional Liquidation Incidental to Completion of Business under the Asset Securitization Plan**

(Preparation, etc. of Balance Sheets)

Article 159 (1) In cases where the administration and disposition of Specified Assets under the provisions of an Asset Securitization Plan are completed and Specified Bonds and Specified Promissory Notes are issued or Specific Borrowings are made, if a Specific Purpose Company that has completed the redemption, payment or the performance thereof carries out business pertaining to Asset Securitization under a new Asset Securitization Plan, the directors of said Specific Purpose Company must prepare a balance sheet for said Specific Purpose Company and obtain approval at a general meeting of members, without delay in the case of a Type 1 Specific Purpose Company and before canceling the Preferred Equity pursuant to the Asset Securitization Plan in the case of a Type 2 Specific Purpose Company.

- (2) The provisions of Article 21 (2) (limited to the portion pertaining to item (ii)),

Article 68 (1), Article 73 to Article 75 inclusive, Article 91 to Article 93 inclusive, and Article 102 to Article 104 (excluding paragraphs (4) and (7)) inclusive of this Act, Article 43 (1) and the main clause of paragraph (2) of that Article of the Companies Act as applied mutatis mutandis pursuant to Article 21 (3) of this Act, and Article 344 (1) and (2) (limited to the part pertaining to balance sheets) of the Companies Act as applied mutatis mutandis pursuant to Article 77 (2) shall apply mutatis mutandis to the balance sheet referred to in the preceding paragraph.

- (3) In cases where the amount of net assets stated on the balance sheet of a Type 2 Specific Purpose Company that prepares said balance sheet pursuant to the provisions of paragraph (1) is less than the amount necessary to cancel the Preferred Equity in accordance with the provisions of the Asset Securitization Plan set forth in that paragraph, the Preferred Equity Members shall hold the voting rights regarding the approval of said balance sheet.
- (4) In the case referred to in the preceding paragraph, if a resolution approving the balance sheet set forth in that paragraph has been made, it shall be deemed that a resolution for dissolution has been adopted.

## **Section 11 Dissolution**

(Grounds for Dissolution)

Article 160 (1) A Specific Purpose Company shall dissolve on the following grounds:

- (i) the expiration of the term of existence provided for in the articles of incorporation;
  - (ii) the occurrence of grounds for dissolution as provided for in the articles of incorporation;
  - (iii) a resolution at a general meeting of members;
  - (iv) a ruling for the commencement of bankruptcy proceedings;
  - (v) a judicial decision ordering dissolution under Article 162 (2) of this Act or Article 824 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 163;
  - (vi) a dissolution order issued by the Prime Minister pursuant to the provisions of Article 220;
  - (vii) the incapability to accept Specified Assets (excluding Secondary Specified Assets) to be stated or recorded in the Asset Securitization Plan, to issue Asset-Backed Securities, or to make Specific Borrowings; or
  - (viii) the occurrence of other grounds specified by Cabinet Order.
- (2) The provisions of Article 926 (Registration of Dissolution) of the Companies Act shall apply mutatis mutandis to the cases where a Specific Purpose Company has dissolved pursuant to the provisions of the preceding paragraph

(excluding item (iv) and item (v)).

(Resolution for Dissolution)

Article 161 (1) Preferred Equity Members shall hold voting rights regarding the resolution for dissolution set forth in Article 160 (1) (iii).

(2) The resolution set forth in the preceding paragraph shall be adopted only after the redemption of Specified Equity, payment of Specified Promissory Notes, and repayment of Specific Borrowings specified in an Asset Securitization Plan of a Specific Purpose Company are completed.

(Action Seeking the Dissolution of a Specific Purpose Company)

Article 162 (1) In the following cases, where there are unavoidable reasons, Specified Equity Members or Preferred Equity Members who hold not less than one-tenth (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the voting rights of all Specified Equity Members or all Preferred Equity Members (excluding Specified Equity Members and Preferred Equity Members who may not exercise their voting rights on all the particulars on which a resolution may be effected at the general meeting of members) respectively, or Specified Equity Members or Preferred Equity Members who hold not less than one-tenth (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the total number of units of Specified Equity (excluding the Company's Own Specified Equity) or the issued Preferred Equity (excluding the Company's Own Preferred Equity) may demand the dissolution of a Specific Purpose Company by filing an action:

- (i) in cases where a Specific Purpose Company faces extreme difficulty in the execution of its business and said Specific Purpose Company has suffered or is likely to suffer irreparable harm; or
- (ii) in cases where the administration or disposition of property by a Specific Purpose Company is extremely unreasonable and puts the existence of said Specific Purpose Company at risk.

(2) The provisions of Article 834 (limited to the portion pertaining to item (xx)) (Defendant), Article 835 (1) (Jurisdiction over and Transfer of an Action), Article 836 (1) and (3) (Order to Provide Security), Article 837 (Mandatory Consolidation of Oral Arguments, etc.), Article 838 (Persons Affected by an Upholding Judgment), Article 846 (Liability for Damages in Cases Where the Plaintiff Is Defeated), and Article 937 (1) (limited to the portion pertaining to item (i), sub-item (i)) (Commissioning of Registration by Juridical Decision) of the Companies Act shall apply mutatis mutandis to an action seeking the dissolution of a Specific Purpose Company. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Application Mutatis Mutandis of the Companies Act)

Article 163 The provisions of Article 824 (Dissolution Order for a Company), Article 826 (Duty of a Government Agency, etc. to Give Notice to the Minister of Justice), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (x)) (Hearing of Statements), the main clause of Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), the main clause of Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Act), Article 876 (Supreme Court Rule), Article 904 (Participation of the Minister of Justice), and Article 937 (1) (limited to the portion pertaining to item (iii) (b)) (Commissioning of Registration by Juridical Decision) of the Companies Act shall apply mutatis mutandis to the dissolution order for a Specific Purpose Company, and the provisions of Article 825 (Temporary Restraining Order Concerning Property of a Company), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (i)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (i) and item (iv)) (Immediate Appeal), Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Article 874 (limited to the portion pertaining to item (ii) and item (iii)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Act), Article 876 (Supreme Court Rule), Article 905 (Special Provisions on a Temporary Restraining Order Concerning Property of a Company), and Article 906 of the Companies Act shall apply mutatis mutandis to the preservation of properties of a Specific Purpose Company in cases where a petition under Article 824 (1) of that Act as applied mutatis mutandis pursuant to this Article has been filed. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

## **Section 12 Liquidation**

### **Subsection 1 General Rules**

(Causes for Commencement of Liquidation)

Article 164 In the following cases, a Specific Purpose Company must go into liquidation pursuant to the provisions of this Subsection:

- (i) in cases where a Specific Purpose Company has dissolved (excluding cases where the Specific Purpose Company has dissolved as a result of a ruling for the commencement of bankruptcy proceedings and such bankruptcy proceedings have yet to be closed); or
- (ii) in cases where a judgment upholding a claim relating to an action to seek

invalidation of its incorporation has become final and binding.

(Capacity of a Specific Purpose Company in Liquidation)

Article 165 A Specific Purpose Company that goes into liquidation pursuant to the provisions of the preceding Article (hereinafter referred to as "Specific Purpose Company in Liquidation") shall be deemed to continue to exist to the extent of the purpose of liquidation, until such liquidation is completed.

(Establishment of Administrative Instruments Other Than General Meetings of Members)

Article 166 (1) A Specific Purpose Company in Liquidation must have the following administrative instruments:

- (i) one or more liquidators; and
- (ii) one or more company auditors.

(2) The provisions of Article 67 shall not apply to a Specific Purpose Company in Liquidation.

(Assumption of Office, etc. of Liquidators)

Article 167 (1) The following persons shall become the liquidator(s) of a Specific Purpose Company in Liquidation:

- (i) the directors (excluding cases where there are persons specified in the following item or item (iii));
- (ii) the persons specified by the articles of incorporation; or
- (iii) the persons appointed by a resolution made at a general meeting of members.

(2) Preferred Equity Members shall hold a voting right for the resolution prescribed in item (iii) of the preceding paragraph.

(3) When there are no persons to become a liquidator under paragraph (1), the court shall appoint the liquidator in response to a petition filed by an interested party.

(4) Notwithstanding the provisions of paragraph (1) or the preceding paragraph, with regard to a Specific Purpose Company in Liquidation that has dissolved on the grounds listed in Article 160 (1) (v), the court shall appoint the liquidator in response to a petition filed by an interested party or the Minister of Justice, or on its own authority.

(5) Notwithstanding the provisions of paragraph (1) and paragraph (3), with regard to a Specific Purpose Company in Liquidation that has come to fall under the cases listed in Article 164 (ii), the court shall appoint the liquidator in response to a petition filed by an interested party.

(6) Notwithstanding the provisions of paragraph (1) and paragraph (3), with regard to a Specific Purpose Company in Liquidation that has dissolved on the



grounds listed in Article 160 (1) (vi), the court shall appoint the liquidator in response to a petition filed by an interested party or the Prime Minister, or on its own authority.

(7) The provisions of Article 69 and Article 70 shall apply mutatis mutandis to the liquidator of a Specific Purpose Company in Liquidation.

(Dismissal of Liquidators)

Article 168 (1) A liquidator (excluding those appointed by the court pursuant to the provisions of paragraph (3) to paragraph (6) inclusive of the preceding Article) may be dismissed at any time by resolution at a general meeting of members.

(2) Preferred Equity Members shall hold voting rights regarding the dismissal of liquidators under the preceding paragraph.

(3) The court may, in response to a petition filed by an interested party or the Prime Minister, or on its own authority, dismiss the liquidator appointed under paragraph (6) of the preceding Article.

(4) When there are material grounds, the court may dismiss the liquidator in response to a petition filed by any of the following members:

(i) a Specified Equity Member or a Preferred Equity Member (excluding the Specified Equity Members or Preferred Equity Members prescribed in the following sub-items) who holds not less than three-hundredths of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Specified Equity Members (excluding the Specified Equity Members prescribed in the following sub-items) or of all Preferred Equity Members (excluding the Preferred Equity Members prescribed in the following sub-items):

(a) Specified Equity Members or Preferred Equity Members who may not exercise their voting rights on the proposal to dismiss a liquidator; or

(b) a Specified Equity Member or Preferred Equity Member who is the liquidator concerned with the petition;

(ii) a Specified Equity Member or a Preferred Equity Member who holds not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the total number of units of Specified Equity (excluding Specified Equity held by the Specified Equity Members prescribed in the following sub-items) or the issued Preferred Equity (excluding Preferred Equity held by the Preferred Equity Members prescribed in the following sub-items):

(a) a Specified Equity Member or Preferred Equity Member who is the Specific Purpose Company in Liquidation; or

(b) a Specified Equity Member or Preferred Equity Member who is the liquidator concerned with the petition.

(5) The provisions of Article 76 (1) to (3) inclusive and (6) of this Act and Article 937 (1) (limited to the portion pertaining to item (ii) (e) and item (iii) (a)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to a liquidator. In this case, the term "the number of Officers" in Article 76 (1) shall be deemed to be replaced with "the number of liquidators," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Duties of a Liquidator)

Article 169 A liquidator shall perform the following duties:

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

(Execution of Business)

Article 170 (1) A liquidator shall execute the business of a Specific Purpose Company in Liquidation.

(2) In cases where there are two or more liquidators, the business of a Specific Purpose Company in Liquidation shall be decided by a majority of the liquidators, unless otherwise provided for in the articles of incorporation.

(3) The provisions of Article 80 and Article 82 to Article 84 inclusive of this Act and Article 354 (Apparent Representative Director), Article 355 (Duty of Loyalty), Article 357 (1) (Director's Duty to Report), Article 484 (Commencement of Bankruptcy Procedures for Liquidating Stock Companies), and Article 485 (Remuneration for Liquidators Appointed by the Court) of the Companies Act shall apply mutatis mutandis to the liquidators (with regard to the provisions of Article 84, liquidators appointed by the court pursuant to the provisions of Article 167 (3) to (6) inclusive shall be excluded) of a Specific Purpose Company in Liquidation. In this case, the phrase "the title of president, vice president or other title regarded as having authority to represent the Stock Company" in Article 354 of the Companies Act shall be deemed to be replaced with "the title of the person who is found to have the authority to represent the Specific Purpose Company in Liquidation," the term "shareholders meeting" in Article 355 of that Act shall be deemed to be replaced with "general meeting of members," the phrase "the shareholders (or, for a Company with Auditors, the company auditors)" in Article 357 (1) of that Act shall be deemed to be replaced with "the company auditors," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Representatives of a Specific Purpose Company in Liquidation)

Article 171 (1) A liquidator shall represent the Specific Purpose Company in

Liquidation; provided, however, that this shall not apply to cases where any other Representative Liquidator (meaning a liquidator representing the Specific Purpose Company in Liquidation; the same shall apply hereinafter) or any other person who represents the Specific Purpose Company in Liquidation has been specified.

- (2) In cases where there are two or more persons serving as the liquidators set forth in the main clause of the preceding paragraph, each liquidator shall represent the Specific Purpose Company in Liquidation individually.
- (3) A Specific Purpose Company in Liquidation may appoint the Representative Liquidator from among the liquidators pursuant to the articles of incorporation, through appointment by the liquidators themselves (excluding those who have been appointed by the court pursuant to Article 167 (3) to (6) inclusive; hereinafter the same shall apply in this paragraph) under the provisions of the articles of incorporation, or by resolution at a general meeting of members.
- (4) In cases where the director becomes the liquidator pursuant to the provisions of Article 167 (1) (i), when a representative director has been specified, said representative director shall become the Representative Liquidator.
- (5) In cases where the court appoints liquidators pursuant to the provisions of Article 167 (3) to (6) inclusive, the court may appoint the Representative Liquidator from among such liquidators.
- (6) The provisions of Article 349 (4) and (5) (Representatives of Companies), Article 351 (Measures When Vacancy Arises in Office of Representative Director), and Article 937 (1) (limited to the portion pertaining to item (ii) (a) and (b)) (Commissioning of Registration by a Judicial Decision) of the Companies Act shall apply mutatis mutandis to the Representative Liquidator of a Specific Purpose Company in Liquidation and Article 352 (Authority of Persons Who Perform Duties on Behalf of Directors) of that Act shall apply mutatis mutandis to a person who is to perform the duties of a liquidator or Representative Liquidator of a Specific Purpose Company in Liquidation on behalf of them. In this case, the term "the number" in Article 351 (1) of that Act shall be deemed to be replaced with "the number of persons" and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Liquidator Liability for Damages to a Specific Purpose Company in Liquidation)

- Article 172 (1) If a liquidator has neglected their duties, they shall be liable to a Specific Purpose Company in Liquidation for damages resulting therefrom.
- (2) When a liquidator has carried out the transaction prescribed in Article 80 (1) (i) in violation of Article 80 (1) as applied mutatis mutandis pursuant to Article 170 (3), the amount of profits obtained by the liquidator or a third party as a result of such a transaction shall be presumed to be the amount of damages

referred to in the preceding paragraph.

(3) When a Specific Purpose Company in Liquidation incurs damages as a result of a transaction prescribed in Article 80 (1) (ii) or (iii) as applied mutatis mutandis pursuant to Article 170 (3), the following liquidators shall be presumed to have neglected their duties:

(i) liquidators under Article 80 (1) as applied mutatis mutandis pursuant to Article 170 (3); and

(ii) liquidators with whom the Specific Purpose Company in Liquidation has decided to carry out the transaction.

(4) The provisions of Article 94 (4) and (5) shall apply mutatis mutandis to the liability of liquidators prescribed in paragraph (1). In this case, the term "Article 80 (1) (ii)" in Article 94 (5) shall be deemed to be replaced with "Article 80 (1) (ii) as applied mutatis mutandis pursuant to Article 170 (3)."

(Liquidator Liability for Damages to a Third Party)

Article 173 (1) When a liquidator has performed their duties in bad faith or with gross negligence, said liquidator shall be liable to a third party for the damages resulting therefrom.

(2) The preceding paragraph shall also apply when a liquidator has carried out the following acts; provided, however, that this shall not apply when said liquidator has proved that they did not fail to exercise due care in conducting said acts:

(i) making false statements or records on important particulars which should be stated or recorded in the Inventory of Property prescribed in Article 176 (1) or in the balance sheet and administrative report and the annexed detailed statements thereof prescribed in Article 177 (1);

(ii) making a false registration; or

(iii) giving false public notice.

(Joint and Several Liability of Liquidators and Company Auditors)

Article 174 (1) In cases where a liquidator or company auditor is liable for damages incurred by a Specific Purpose Company in Liquidation or a third party, if other liquidators or company auditors are also liable for such damages, such persons shall be joint and several obligors.

(2) In the case referred to in the preceding paragraph, the provisions of Article 96 shall not apply.

(3) The provisions of Article 97 shall apply mutatis mutandis to an action seeking liability filed against a liquidator of a Specific Purpose Company in Liquidation. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Application of Provisions Regarding Directors, etc.)

Article 175 With regard to a Specific Purpose Company in Liquidation, among the provisions of Section 3 (excluding Article 34 (excluding paragraph (4) and paragraph (5)) and Article 46); the provisions of Section 4, Subsection 1; Article 72 (1); the provisions of Article 345 (3) of the Companies Act as applied mutatis mutandis pursuant to Article 345 (4) of that Act as applied mutatis mutandis pursuant to Article 77 (3), the provisions of Article 35 of that Act as applied mutatis mutandis pursuant to Article 81 (2); and the provisions of Section 4, Subsection 6; the provisions regarding directors or a representative director shall apply to liquidators and the Representative Liquidator as provisions set forth in regarding the same .

(Preparation, etc. of an Inventory of Property)

Article 176 (1) A liquidator shall, without delay after assuming office, investigate the current status of the property of the Specific Purpose Company in Liquidation and, pursuant to the provisions of a Cabinet Office Ordinance, prepare an inventory of assets and a balance sheet (hereinafter collectively referred to as "Inventory of Property" in this Article) as of the date on which the Specific Purpose Company in Liquidation has come to fall under the cases listed in the items of Article 164, and must submit or provide them at a general meeting of members and obtain approval thereon.

(2) Preferred Equity Members shall have voting rights for the approval of the Inventory of Property.

(3) A Specific Purpose Company in Liquidation must archive its Inventory of Property for the duration of the period from the time of its preparation until the time that the liquidation has been registered as completed at the location of its head office.

(4) The court may, in response to a petition or of its own authority, order a party to a lawsuit to submit their Inventory of Assets in whole or in part.

(Preparation, Preservation, and Auditing, etc. of Balance Sheets)

Article 177 (1) Specific Purpose Companies in Liquidation must, pursuant to the provisions of a Cabinet Office Ordinance, prepare a balance sheet and an administrative report, as well as the annexed detailed statements thereof, for each Liquidation Year (meaning each one year period starting on the date immediately following the date on which the Specific Purpose Company in Liquidation has come to fall under the cases listed in the items of Article 164 or the anniversary of that date in subsequent years (in cases where such anniversary does not exist, the date immediately preceding)).

(2) The balance sheet and administrative report as well as the annexed detailed statements referred to in the preceding paragraph must be audited by company

auditors pursuant to the provisions of a Cabinet Office Ordinance.

- (3) The provisions of Article 494 (2) and (3) (Preparation and Retention of Balance Sheets), Article 496 (1) and (2) (Keeping and Inspection of Balance Sheets), Article 497 (excluding the items of paragraph (1)) (Provision of Balance Sheets to Annual Shareholders Meeting), and Article 498 (Order to Submit Balance Sheet) of the Companies Act shall apply mutatis mutandis to the balance sheet and administrative report and the annexed detailed statements thereof set forth in paragraph (1). In this case, the phrase "(including, in cases where the provisions of paragraph (1) of the preceding Article apply, audit reports," in Article 496 (1) of the Companies Act shall be deemed to be replaced with "(including audit reports audited under Article 177 (2) of the Asset Securitization Act," the term "annual shareholders meeting" in Article 496 (1) and Article 497 of the Companies Act shall be deemed to be replaced with "annual general meeting of members," the phrase "the Balance Sheet and administrative reports provided for in each such item" in Article 497 (1) of the Companies Act shall be deemed to be replaced with "the balance sheet and administrative reports audited under Article 177 (2) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (4) Preferred Equity Members shall have voting rights for the approval of the balance sheet under Article 497 (2) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph.

(Distribution of Residual Assets)

Article 178 (1) When a Specific Purpose Company in Liquidation intends to make a distribution of residual assets, it must specify the following particulars by decision of the liquidators:

- (i) the types of residual assets; and
  - (ii) particulars concerning the allotment of residual assets to members.
- (2) In the case provided for in the preceding paragraph, if Preferred Equity has been issued, a Specific Purpose Company in Liquidation may specify the following particulars as the particulars listed in item (ii) of that paragraph in accordance with the details of said Preferred Equity:
- (i) in cases where two or more classes of Preferred Equity are issued which differ in features from that issued to Specified Equity Members or in the distribution of residual assets, if no residual assets are to be allotted to the Preferred Equity Members who hold a certain class of Preferred Equity, a statement to that effect and the class of such Preferred Equity; and
  - (ii) in addition to the particulars listed in the preceding items, if Specified Equity and Preferred Equity are to be handled differently with regard to the allotment of residual assets, or if each class of Preferred Equity is to be

handled differently with regard to allotment of residual assets in cases where two or more classes of Preferred Equity with different features are issued, a statement to that effect and the details of such different handling.

- (3) Provisions regarding the particulars listed in item (ii) of paragraph (1) shall stipulate that the residual assets are to be allotted in accordance with the number of units of Specified Equity or Preferred Equity (in cases where there are any provisions with regard to the particulars listed in item (ii) of the preceding paragraph, the number of units of Specified Equity or each Preferred Equity) held by the members (excluding the Specific Purpose Company in Liquidation and the Specified Equity Members and Preferred Equity Members set forth in item (i) of the preceding paragraph).
- (4) The provisions of Article 505 (Cases Where Residual Assets Consist of Property Other Than Monies) and Article 506 (Treatment in Cases Where a Base Number of Shares Is Provided) of the Companies Act shall apply mutatis mutandis to Specific Purpose Companies in Liquidation. In this case, the term "shares" in Article 505 (1) (ii) and Article 506 of that Act shall be deemed to be replaced with "of units of Specified Equity or Preferred Equity," the terms "shares," "Minimum Number of Shares," and "Below Minimum Shareholding" in Article 506 of that Act shall be deemed to be replaced with "units of Specified Equity or Preferred Equity," "Minimum Number of Units of Specified Equity or Minimum Number of Units of Preferred Equity," and "Below the Minimum Specified Equity Holding Threshold or Below the Minimum Preferred Equity Holding Threshold," respectively, and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Application Mutatis Mutandis, etc. of the Companies Act Regarding Liquidation, etc. of a Specific Purpose Company)

Article 179 (1) The provisions of Article 499 to Article 503 inclusive (Public Notices to Creditors; Restrictions on Performance of Obligations; Performance of Obligations Relating to Conditional Claims; Restrictions on Distribution of Residual Assets Before Performance of Obligations; Exclusion from Liquidation), Article 507 (1), (3), and (4) (Conclusion of Liquidation), Article 508 (Retention of Accounting Materials), Article 868 (1) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 870 (1) (limited to the portion pertaining to items (i), (ii), (v), and (vi)) (Hearing of Statements), Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Article 874 (limited to the portion pertaining to items (i) and (iv)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Act), Article 876 (Supreme Court Rule), Article 928 (1) and (3) (Registration of a liquidator),

and Article 929 (limited to the portion pertaining to item (i)) (Registration of Completion of Liquidation) of the Companies Act shall apply mutatis mutandis to the liquidation of a Specific Purpose Company. In this case, the phrase "the settlement of accounts (or, in cases where the provisions of the preceding paragraph apply, the settlement of accounts approved under that paragraph) to the shareholders meeting" in Article 507 (3) of the Companies Act shall be deemed to be replaced with "the settlement of accounts (those audited as prescribed in Article 177 (2) of the Asset Securitization Act) at the general meeting of members," the phrase "A Liquidator (or, for a Company with Board of Liquidators, the liquidators listed in each item of paragraph (7) of Article 489)" in Article 508 (1) of the Companies Act shall be deemed to be replaced with "A liquidator," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (2) Preferred Equity Members shall hold voting rights regarding approval of the settlement of accounts under Article 507 (3) of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph.

### **Subsection 2 Special Liquidation**

(Causes for Commencement of Special Liquidation and Application Mutatis Mutandis of the Companies Act Regarding Special Liquidation)

Article 180 (1) If the court finds the following grounds in regard to a Specific Purpose Company in Liquidation, the court may, in response to a petition, order said Specific Purpose Company in Liquidation to commence special liquidation under the provisions of Article 514 of the Companies Act as applied mutatis mutandis pursuant to paragraph (4):

- (i) the existence of circumstances that would substantially interfere with the execution of liquidation; or
  - (ii) the suspicion that the Specific Purpose Company in Liquidation is in insolvency (meaning a status wherein the assets of the Specific Purpose Company in Liquidation are insufficient to complete the repayment of its debts; the same shall apply in paragraph (3)).
- (2) Creditors, liquidators, company auditors, and members may file petitions for the commencement of special liquidation.
- (3) If the Specific Purpose Company in Liquidation is suspected to be in insolvency, the liquidators must file a petition for the commencement of bankruptcy proceedings.
- (4) The provisions of Article 512 to Article 518 inclusive (Order to Suspend Other Procedures; Restrictions on Withdrawal of Petition for Commencement of Special Liquidation; Order to Commence Special Liquidation; Suspension of Other Procedures; Order to Suspend Procedures to Enforce Security Interest;



Prohibition of Set-offs); the provisions of Part II, Chapter IX, Section 2, Subsection 2 to Subsection 10 inclusive (excluding Article 522 (3), Article 530 (2), and Article 536) (Supervision and Investigation by the Court; Liquidators; Supervisor; Investigators; Restrictions on Acts of Liquidating Stock Companies; Dispositions Necessary); the provisions of Part VII, Chapter II, Section 4 (Action Concerning Special Liquidation); the provisions of Part VII, Chapter III, Section 1 (excluding Article 868 (2) to (5) inclusive and Article 870 to Article 874 inclusive) (General Provisions); the provisions of Part VII, Chapter III, Section 3 (excluding Article 879, Article 882 (2), and Article 896) (Special Provisions on the Procedures of Special Liquidation); and Article 938 (excluding paragraph (6)) (Commissioning of Registration by a Juridical Decision Concerning Special Liquidation) of the Companies Act shall apply mutatis mutandis to the special liquidation of a Specific Purpose Company in Liquidation. In this case, the phrase "procedures to enforce the security interest that exists in the assets of the Liquidating Stock Company, procedures to enforce charge on whole company assets or compulsory execution 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" in Article 516 of the Companies Act shall be deemed to be replaced with "procedures to exercise the security interest that exists in the property of the Specific Purpose Company in Liquidation or compulsory execution procedures based on claims for which there exists a general statutory lien or any other general priority that have already been enforced against the property of the Specific Purpose Company in Liquidation," the phrase "or shareholders who have held, for the consecutive period of past six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period), not less than three hundredths (3/100) of the voting rights of all shareholders (excluding the shareholders that cannot exercise voting rights on all particulars on which resolutions can be passed at the shareholders meeting; or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) or shareholders who have held, for the consecutive period of past six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period), not less than three hundredths (3/100) of the issued shares (excluding treasury shares; or, in cases where a lower proportion is provided for in the articles of incorporation, such proportion)" in Article 522 (1) of the Companies Act shall be deemed to be replaced with "or Specified Equity Members who hold not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such proportion) of the voting rights of all Specified Equity Members (excluding Specified Equity Members who may not exercise their voting rights on all particulars on which a

resolution may be effected at a general meeting of members) or Preferred Equity Members who have continuously held for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such a period) not less than three-hundredths of the voting rights (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of all Preferred Equity Members (excluding Preferred Equity Members who may not exercise their voting rights on all particulars on which a resolution may be effected at a general meeting of members), or Specified Equity Members who hold not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the total number of units of Specified Equity (excluding the Company's Own Specified Equity) or Preferred Equity Members who have continuously held for the preceding six months or longer (if a shorter period is provided for in the articles of incorporation, such a period) not less than three-hundredths (if a smaller proportion is provided for in the articles of incorporation, such a proportion) of the units of issued Preferred Equity (excluding the Company's Own Preferred Equity)," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Section 13 Miscellaneous Provisions**

(Application of the Provisions of the Banking Act, etc.)

Article 181 (1) With regard to the application of the provisions of the Banking Act and other laws and regulations specified by Cabinet Order, a Specific Purpose Company and its Specified Equity and Preferred Equity shall be deemed as the company and its equity respectively as provided for in said provisions of laws and regulations specified by Cabinet Order, pursuant to the provisions of Cabinet Order.

(2) With regard to the application of the provisions of Article 19 (2), Article 41 (4), Article 122 (1) (xvi), Article 141 (1) (iii), Article 145 (3), Article 184 (1) (iv), Article 185 (iii), Article 186 (iii), and Article 193 (ii) of this Act, Article 64 of the Companies Act as applied mutatis mutandis pursuant to Article 24 (3) of this Act, Article 208 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 36 (5) of this Act, and Article 64 of the Companies Act as applied mutatis mutandis pursuant to Article 36 (7), Article 41 (6), and Article 122 (10) of this Act, in cases where the financial institutions listed in the following items carry out business specified in the respective items, such financial institutions shall be deemed to be banks:

- (i) Shinkin Bank or federations of Shinkin Banks: business listed in Article 53 (3) (viii) or Article 54 (4) (viii) of the Shinkin Bank Act (Act No. 238 of 1951);
- (ii) labor banks or federations of labor banks: business listed in Article 58 (2)

- (xiv) or Article 58-2 (1) (xii) of the Labor Bank Act (Act No. 227 of 1953);
- (iii) credit cooperatives or federations of credit cooperatives that carry out the business set forth in Article 9-9 (1) (i) of the Small and Medium Sized Enterprise, etc., Cooperatives Act (Act No. 181 of 1949): business listed in Article 9-8 (2) (xiii) or Article 9-9 (6) (i) (limited to the portion pertaining to Article 9-8 (2) (xiii) of that Act) of that Act;
- (iv) agricultural cooperatives or federations of agricultural cooperatives that carry out business set forth in Article 10 (1) (iii) of the Agricultural Cooperatives Act (Act No. 132 of 1947): business listed in Article 10 (6) (ix) of that Act;
- (v) fisheries cooperatives, federations of fisheries cooperatives, fishery processing cooperatives, or federations of fishery processing cooperatives that carry out business set forth in Article 11 (1) (iv), Article 87 (1) (iv), Article 93 (1) (ii), or Article 97 (1) (ii) of the Fisheries Cooperatives Act (Act No. 242 of 1948): business listed in Article 11 (3) (viii), Article 87 (4) (viii), Article 93 (2) (viii), or Article 97 (3) (viii);
- (vi) Norinchukin Bank: business listed in Article 54 (4) (xi) of the Norinchukin Bank Act (Act No. 93 of 2001); or
- (vii) Shoko Chukin Bank, Ltd.: business listed in Article 21 (4) (xii) of the Stock Company Shoko Chukin Bank Act (Act No. 74 of 2007).

(Registries)

Article 182 Specific Purpose Company Registries shall be kept at a registry office.

(Application Mutatis Mutandis of the Commercial Registration Act, etc.)

Article 183 (1) The provisions of Article 1-3 to Article 5 inclusive (Registry Office; Delegation of Affairs; Suspension of Affairs; Registrar; Disqualification of Registrar), Article 7 to Article 15 inclusive (Prohibition on Carrying Out of Registries and Other Documents; Loss and Restoration of Registries; Prevention of Loss of Registry, etc.; Issuance of Certificate of Registered Particulars; Issuance of Documents Specifying Extract of Particulars Registered; Inspection of Annexed Documents; Certificate of Seal Impression; Certification of Particulars Required for Verification of Measures to Identify the Creator of Electromagnetic Records and Other Particulars; Fees; Registration Upon Application by Party; Registration upon Commission), Article 17 to Article 27 inclusive (Method of Application for Registration; Document to Be Attached to Written Application; Electromagnetic Records to Be Attached to Written Application; Submission of Seal Impression; Acceptance of Applications; Receipt; Order of Registration; Identity Confirmation by Registrar; Dismissal of Application; Registration to Be Made

After Lapse of Period for Filing Action; Change in Administrative Zone, etc.; Prohibition on Registration of Identical Trade Name at Same Location), Article 33 (Cancellation of Registration of Trade Name), Article 34 (Registration of Trade Name of Company), Article 44 and Article 45 (Registration of Company's Manager), Article 47 (1) (Registration of Incorporation), Article 48 to Article 55 inclusive (Registration to Be Made at Location of Branch Office; Registration of Relocation of Head Office; Registration of Change of Directors and Other Officers; Registration of Change of Person Who is to Temporarily Perform Duties of Accounting Auditors), Article 64 (Registration of Change Due to Share Option Issue), Article 71 (Registration of Dissolution), Article 73 to Article 75 inclusive (Registration of Liquidator; Registration of Change Related to Liquidator; Registration of Completion of Liquidation), and Article 132 to Article 148 inclusive (Correction; Application for Cancellation; Ex Officio Cancellation; Exclusion from Application of the Administrative Procedure Act; Exclusion from Application of the Act on Access Information Held by Administrative Organs; Exclusion from the Application of the Act on the Protection of Personal Information Held by Administrative Organs; Request for Review; Handling of Request for Review Case; Exclusion from Application of the Administrative Appeal Act; Delegation to Ordinance of the Ministry) of the Commercial Registration Act (Act No. 125 of 1963) shall apply mutatis mutandis to the registration of a Specific Purpose Company. In this case, the phrases "to Article 50 inclusive (including the cases where they are applied mutatis mutandis pursuant to Article 95, Article 111 and Article 118)" and "Article 51, paragraphs (1) and (2), Article 52, Article 78, paragraphs (1) and (3), Article 82, paragraphs (2) and (3), Article 83, Article 87, paragraphs (1) and (2), Article 88, Article 91, paragraphs (1) and (2), Article 92, Article 132" in Article 15 of that Act shall be deemed to be replaced with "to Article 50 inclusive" and "Article 132," respectively, the phrase "a document evidencing authority delegated to a privately appointed agent or a transferor's written approval prescribed in Article 30, paragraph (2) or Article 31, paragraph (2)" in Article 24 (vii) of that Act shall be deemed to be replaced with "a document evidencing authority delegated to a privately appointed agent," the term "company registry" in Article 34 (1) of that Act shall be deemed to be replaced with "Specific Purpose Company Registry," the phrase "the items of Article 930, paragraph (2) of the Companies Act" in Article 48 (2) of the Commercial Registration Act shall be deemed to be replaced with "the items of Article 930 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 22 (4) of the Act on Securitization of Assets (hereinafter referred to as the 'Asset Securitization Act')," the phrase ", representative director or special director (in the case of a company with committees, a director, committee member, executive officer or representative executive officer)" in Article 54 (1) of the

Commercial Registration Act shall be deemed to be replaced with "or representative director," the phrases "Article 333, paragraph (1) of the Companies Act" and "Article 337, paragraph (1) of said Act" in Article 54 (2) (iii) of the Commercial Registration Act shall be deemed to be replaced with "Article 71 (1) of the Asset Securitization Act" and "Article 73 (1) of the Asset Securitization Act," respectively, the phrase "Article 346, paragraph (4) of the Companies Act" in Article 55 (1) of the Commercial Registration Act shall be deemed to be replaced with "Article 76 (4) of the Asset Securitization Act," the phrases "Article 478, paragraph (1), item (i) of the Companies Act" and "Article 483, paragraph (4) of said Act" in Article 71 (3) of the Commercial Registration Act shall be deemed to be replaced with "Article 167 (1) (i) of the Asset Securitization Act" and "Article 171 (4) of the Asset Securitization Act," respectively, the phrase "Article 478, paragraph (1), item (ii) or (iii) of the Companies Act" in Article 73 (2) of the Commercial Registration Act shall be deemed to be replaced with "Article 167 (1) (ii) or (iii) of the Asset Securitization Act," the phrase "Article 928, paragraph (1), item (ii) of the Companies Act" in Article 73 (3) and Article 74 (1) of the Commercial Registration Act shall be deemed to be replaced with "Article 928 (1) (ii) of the Companies Act as applied mutatis mutandis pursuant to Article 179 (1) of the Asset Securitization Act," the phrase "Article 507, paragraph (3) of the Companies Act" in Article 75 of the Commercial Registration Act shall be deemed to be replaced with "Article 507 (3) of the Companies Act as applied mutatis mutandis pursuant to Article 179 (1) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (2) The provisions of Part VII, Chapter IV, Section 1 (excluding Article 907) (General Provisions) of the Companies Act shall apply mutatis mutandis to the registration of a Specific Purpose Company. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Attachments for Registration of Incorporation)

Article 184 (1) The following documents must be attached to written applications to register incorporation unless otherwise provided for in laws and regulations:

- (i) the articles of incorporation;
- (ii) if the particulars listed in the items of Article 16 (3) are stated or recorded in the articles of incorporation, the following documents:
  - (a) documents containing the investigation report prepared by an inspector or Director at Incorporation or Company Auditor at Incorporation and its annexed documents; and
  - (b) in the case referred to in Article 33 (10) (iii) of the Companies Act as applied mutatis mutandis pursuant to Article 18 (2), documents containing

the verification prescribed in Article 33 (10) (iii) of that Act and its annexed documents;

- (iii) in the case where any judicial decision has been rendered with regard to the inspector's report, a copy of such decision;
- (iv) a certificate of deposit for monies equivalent to the monies paid in to the Bank, etc. which handled the payment prescribed in Article 19 (1);
- (v) in cases where there is an Administrator of the Specified Equity Member Registry, a document proving that there is a contract concluded with such person;
- (vi) documents proving that the Directors at Incorporation, Company Auditors at Incorporation, and Representative Directors at Incorporation (meaning the persons who become Representative Directors upon the incorporation of a Specific Purpose Company) who have been appointed or selected pursuant to the provisions of this Act have accepted the appointments;
- (vii) if Accounting Advisors at Incorporation or Accounting Auditors at Incorporation are appointed, the following documents:
  - (a) documents proving that the Accounting Advisors at Incorporation or Accounting Auditors at Incorporation have consented to their appointment;
  - (b) if the Accounting Advisor at Incorporation or Accounting Auditor at Incorporation is a corporation, a certificate of registered particulars of said corporation; provided, however, that this shall not apply to cases where the principal office of said corporation is located within the jurisdictional district of the registry office; and
  - (c) if the Accounting Advisor at Incorporation or Accounting Auditor at Incorporation is not a corporation, a document proving that the Accounting Advisor at Incorporation is a person as set forth in Article 71 (1) or a document proving that the Accounting Auditor at Incorporation is a person as set forth in Article 73 (1).
- (2) In cases where any particulars to be registered require the consent of all incorporators or the unanimous consent of specific incorporators, a document in witness of such consent or unanimous consent must be attached to the written application for registration set forth in the preceding paragraph.

(Registration of Changes Due to Issuance of Specified Equity for Subscription)  
Article 185 The following documents must be attached to written applications to register changes due to the issuance of Specified Equity for Subscription:

- (i) documents in witness of the applications to subscribe for Specified Equity for Subscription or contracts as set forth in Article 205 of the Companies Act as applied mutatis mutandis pursuant to Article 36 (5);
- (ii) the documents listed in Article 84 (1) (iii);
- (iii) in cases where monies are the subject of contribution, a certificate of the

- deposit of monies equivalent to monies paid in to the Bank, etc., which handled the payment set forth in Article 208 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 36 (5);
- (iv) in cases where property other than money is the subject of contribution, the following documents:
- (a) if an inspector has been appointed, documents containing the investigation report prepared by the inspector and its annexed documents; or
  - (b) in the case set forth in Article 207 (9) (iv) of the Companies Act as applied mutatis mutandis pursuant to Article 36 (5), documents containing the verification prescribed in Article 207 (9) (iv) of that Act and its annexed documents.

(Registration of the Issuance of Preferred Equity for Subscription)

Article 186 The following documents must be attached to written applications for the registration of the issuance of Preferred Equity for Subscription:

- (i) documents in witness of the applications to subscribe for Preferred Equity for Subscription or of contracts set forth in Article 41 (2);
- (ii) in cases where there is an Administrator of the Preferred Equity Members Registry, the articles of incorporation and documents in witness of the contract concluded with such person; and
- (iii) the certificate of deposit for monies equivalent to the monies paid in to the Bank, etc., that handled the payment prescribed in Article 41 (4).

(Registration of Changes Due to Cancellation or Consolidation of Preferred Equity)

Article 187 (1) Documents proving that public notice under Article 47 (3) of this Act or Article 219 (1) (limited to the portion pertaining to item (ii)) of the Companies Act as applied mutatis mutandis pursuant to Article 50 (2) has been given or documents proving that Preferred Equity Securities have not issued for all of the Preferred Equity must be attached to written applications to register changes due to cancellation or consolidation of Preferred Equity.

- (2) In addition to the documents set forth in the preceding paragraph, documents proving the existence of profits must be attached to written applications to register changes due to the cancellation of Preferred Equity with profits which should be distributed to Preferred Equity Members.

(Registration of Changes Due to a Reduction in the Amount of Specified Capital)

Article 188 In cases where public notice or notice is given under Article 111 (2) or a creditor has stated their objections, documents proving that payment has

been made to said creditor that reasonable collateral has been provided thereto, that reasonable property has been entrusted for the purpose of having said creditor receive payment, or that the reduction in the Amount of Specified Capital is not likely to harm said creditor must be attached to the written application to register a change due to a reduction in the Amount of Specified Capital.

(Registration of Changes Due to a Reduction in the Amount of Preferred Capital)

Article 189 The documents specified in the following items must be attached to written applications to register changes due to a reduction in the Amount of Preferred Capital pursuant to the provisions listed in the respective items:

- (i) Article 109: in cases where public notice or notice under Article 111 (2) has been given or a creditor has stated their objection, documents proving that payment has been made to said creditor, that reasonable collateral has been provided thereto, that reasonable property has been entrusted for the purpose of having said creditor receive payment, or that the reduction in the Amount of Preferred Capital is not likely to harm said creditor;
- (ii) Article 110: documents proving that public notice has been given under Article 110 (2) and in cases where public notice or notice under Article 111 (2) has been given and a creditor has stated their objection, documents proving that payment has been made to said creditor, that reasonable collateral has been provided thereto, that reasonable property has been entrusted for the purpose of having said creditor receive payment, or that the reduction in the Amount of Preferred Capital is not likely to harm said creditor;
- (iii) Article 159: the Asset Securitization Plan as well as documents in witness of the redemption of Specified Equity, payment of Specified Promissory Notes, and payment of Specific Purpose Borrowings.

(Registration of Changes Due to Incorporation of Reduction Surplus into Preferred Capital)

Article 190 Documents proving the existence of Reduction Surplus must be attached to written applications to register changes due to the incorporation of Reduction Surplus (limited to that related to a reduction in the Amount of Preferred Capital for the cancellation of Preferred Equity) into the Preferred Capital.

(Registration of Changes Due to Issuance of Convertible Specified Bonds, etc.)

Article 191 The following documents must be attached to written applications to register changes due to the issuance of convertible Specified Bonds or Specified



Bonds with Preferred Equity Subscription Rights, unless otherwise provided for in laws and regulations:

- (i) documents in witness of the applications to subscribe for convertible Specified Bonds or Specified Bonds with Preferred Equity Subscription Rights or of contracts set forth in Article 124; and
- (ii) documents proving that full payment has been completed for the Amount to Be Paid In (meaning the Amount to Be Paid In set forth in Article 122 (1) (xiv)) for convertible Specified Bonds or Specified Bonds with Preferred Equity Subscription Rights.

(Registration of Changes Due to Conversion of Convertible Specified Bonds)

Article 192 Written applications to register changes due to the conversion of convertible Specified Bonds must be accompanied by documents proving that a request for such conversion has been made.

(Registration of Changes Due to the Exercise of Subscription Rights for Preferred Equity that Are Attached to Specified Bonds with Preferred Equity Subscription Rights)

Article 193 The following documents must be attached to written applications to register changes due to the exercise of subscription rights for Preferred Equity that are attached to Specified Bonds with Preferred Equity Subscription Rights:

- (i) documents proving that Preferred Equity Subscription Rights attached to Specified Bonds with Preferred Equity Subscription Rights have been exercised; and
- (ii) a certificate of deposit for monies equivalent to the monies paid in to the Bank, etc. that handled the payment prescribed in Article 145 (3).

(Public Notice)

Article 194 (1) A Specific Purpose Company may specify any of the following as the Means of Public Notice in its articles of incorporation:

- (i) publication in the Official Gazette;
  - (ii) publication in a daily newspaper that publishes particulars on current affairs; or
  - (iii) Electronic Public Notice (meaning, among the Methods of Public Notice, a method whereby measures are implemented that make the information which should be given in a public notice available to a large, non-exclusive group of persons by Electromagnetic Means (meaning electromagnetic means as set forth in Article 2 (xxxiv) of the Companies Act) and which is stipulated in Article 2 (xxxiv) of that Act; hereinafter the same shall apply in this Part).
- (2) In cases where a Specific Purpose Company specifies the method set forth in

item (iii) of the preceding paragraph as the Means of Public Notice, it shall be sufficient for the articles of incorporation to provide to the effect that Electronic Public Notice is to be the Means of Public Notice. In this case, either the method listed in item (i) or item (ii) of the preceding paragraph may be specified as the Means of Public Notice in cases where said Specific Purpose Company is unable to give public notice by way of Electronic Public Notice due to an accident or other unavoidable reason.

- (3) The Means of Public Notice of a Specific Purpose Company that does not have the provisions under paragraph (1) or the preceding paragraph shall be the method set forth in item (i) of paragraph (1).
- (4) The provisions of Article 940 (1) and (3) (Public Notice Period, etc. of Electronic Public Notice), Article 941 (Electronic Public Notice Investigation), Article 946 (Obligation, etc. of Investigation), Article 947 (Cases Where an Electronic Public Notice Investigation Is Unable to Be Carried Out), Article 951 (2) (Keeping and Inspection, etc. of Financial Statements, etc.), Article 953 (Order for Improvement), and Article 955 (Statements, etc. in an Investigation Record Book, etc.) of the Companies Act shall apply mutatis mutandis to cases where a Specific Purpose Company gives a public notice under the provisions of this Act or other Acts by way of Electronic Public Notice. In this case, the phrase "this Act" in Article 940 (1) (i) of the Companies Act shall be deemed to be replaced with "the provisions of Part II of the Asset Securitization Act," the phrases "Article 440 (1)" and "annual shareholders meeting" in Article 940 (1) (ii) of the Companies Act shall be deemed to be replaced with "Article 104 (5) of the Asset Securitization Act" and "annual general meeting of members," respectively, the phrase "the preceding two paragraphs" in Article 940 (3) of the Companies Act shall be deemed to be replaced with "paragraph (1)," the phrase "public notice under the provisions of this Act or another Act (excluding the public notice under the provisions of Article 440 (1))" in Article 941 of the Companies Act shall be deemed to be replaced with "public notice under the provisions of Part II of the Asset Securitization Act or the provisions of other Acts (excluding public notice under the provisions of Article 104 (5) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Chapter III Business**

(Prohibition of Other Business, etc.)

- Article 195 (1) Specific Purpose Companies shall not engage in any business other than that pertaining to Asset Securitization carried out in accordance with the Asset Securitization Plan and business incidental thereto (excluding business such as receiving consideration for transferring or loaning assets

other than the Specified Assets stated or recorded in the Asset Securitization Plan or for providing service).

(2) Specific Purpose Companies may not become a general partnership company or a member with unlimited liability of a general partnership company.

(Prohibition on Name Lending)

Article 196 Specific Purpose Companies must not have another person engage in business pertaining to Asset Securitization under the name of said Specific Purpose Company.

(Liability of a Specific Purpose Company That Has Permitted Others to Use Its Trade Name)

Article 197 A Specific Purpose Company that has permitted another person to engage in business or operations using the Specific Purpose Company's own trade name shall be jointly and severally liable, with such other person, to any person who has carried out transactions with such other person based on the misunderstanding that said Specific Purpose Company was carrying out such business, for the performance of any obligations that have arisen from such transactions.

(Restriction on Employees)

Article 198 Specific Purpose Companies must not have any of the persons listed in the items of Article 70 (1) as its employee (limited to those specified by Cabinet Order).

(Requirements etc., for Contracts for Receiving the Transfer of Specified Assets)

Article 199 Deleted

(Entrustment of Business)

Article 200 (1) Specific Purpose Companies must, for the purpose of having a Trust Company, etc. carry out business pertaining to the administration and disposition of Specified Assets (excluding beneficial interest of a trust; hereinafter the same shall apply in this Article), entrust the Specified Assets to the Trust Company, etc.

(2) Notwithstanding the provisions of the preceding paragraph, with regard to the following assets among the Specified Assets, a Specific Purpose Company may entrust business pertaining to the administration and disposition of the assets to the transferor of said assets or to a person who has a sufficient financial basis and personnel structure for administering and disposing of said assets appropriately:

- (i) Real Property (meaning land and buildings or rights other than the ownership pertaining thereto);
  - (ii) a nominative claim;
  - (iii) Electronically Recorded Monetary Claims (meaning Electronically Recorded Monetary Claims as prescribed in Article 2 (1) of the Electronically Recorded Monetary Claims Act (Act No. 102 of 2007); the same shall apply in Article 202);
  - (iv) among the assets specified by a Cabinet Office Ordinance as those for which a transfer of rights can be perfected against a third party by registration or other means, assets for which the transfer of rights to the Specific Purpose Company is perfected against a third party; and
  - (v) Secondary Specified Assets (excluding those falling under the assets listed in the preceding items).
- (3) With regard to a contract for entrustment of business pertaining to administration and disposition of Specified Assets (excluding Secondary Specified Assets) as prescribed in the preceding paragraph, a Specific Purpose Company shall attach the conditions that the counterparty who has been entrusted with said business (hereinafter such person shall be referred to as the "Entrustee" in this paragraph) must bear the following obligations:
- (i) the Entrustee shall administer the committed assets separately from their own property and other properties;
  - (ii) the Entrustee must explain the status of the administration and disposition of the committed assets in response to requests made by the Specific Purpose Company that entrusted business pertaining to the administration and disposition of assets (hereinafter referred to as the "Entrustor" in this paragraph);
  - (iii) the Entrustee shall keep documents stating the status of the administration and disposition of the committed assets and allow the Entrustor inspect them upon request;
  - (iv) the Entrustee shall not further entrust the entrusted business without the consent of the Entrustor.

Article 201 Deleted

(Restrictions on Entrustment of Collection of Claims)

Article 202 In addition to what is provided for in Article 200 (2) and (3), in cases where a Specific Purpose Company, with regard to nominative claims (limited to claims for payment of monies) or Electronically Recorded Monetary Claims for which the Specific Purpose Company has received a transfer made in accordance with the Asset Securitization Plan, intends to entrust the collection of such claims (hereinafter collectively referred to as "Transferred Claims" in

this Article) or to give the consent set forth in Article 200 (3) (iv) for the re-entrustment of the collection of such claims, when the Specific Purpose Company comes to know or is able to know that the other party of such entrustment or re-entrustment is a person who is clearly likely to violate the provisions of Article 21 (2) of the Money Lending Business Act or the provisions of this Act, or to commit crimes set forth in the Penal Code or the Act on the Punishment of Physical Violence, etc. in collecting the Transferred Claims, the Specific Purpose Company must not entrust or give its consent to the re-entrustment of the collection of claims to such other party.

(Restrictions on Entrustment of Real Property Transactions)

Article 203 With regard to business related to the sale and purchase, exchange, or leasing of Real Property (meaning buildings or the building lots prescribed in Article 2 (i) of the Building Lots and Buildings Transaction Business Act) of which the Specific Purpose Company has received transfer in accordance with the Asset Securitization Plan, in addition to what is provided for in Article 200 (2) and (3), the Specific Purpose Company must entrust such business to a person who does not fall under any of the items of Article 6 of the Real Estate Specified Joint Enterprise Act.

(Exclusion from Application of the Building Lots and Buildings Transaction Business Act)

Article 204 The provisions of the Building Lots and Buildings Transaction Business Act shall not apply to a Specific Purpose Company that has made a Business Commencement Notification.

(Issuance of Promissory Notes)

Article 205 A Specific Purpose Company may issue the promissory notes referred to in Article 2 (1) (xv) of the Financial Instruments and Exchange Act (referred to as "Specified Notes" in item (ii)) only in the following cases:

- (i) in cases where all of the following requirements are satisfied:
  - (a) that the purpose of the issuance of a Specified Notes is to procure the funds necessary to acquire Specified Assets;
  - (b) that the limit amount for the issuance of the Specified Notes is specified in the Asset Securitization Plan; and
  - (c) the requirements specified by a Cabinet Office Ordinance as being necessary for the protection of investors;
- (ii) in cases where the Specified Notes are issued for the purpose of procuring funds for the payment of Specified Notes issued under the provisions of this Article.

(Issuance of Different Classes, etc. of Preferred Equity or Specified Equity)

Article 206 Only in the cases specified by a Cabinet Office Ordinance as those wherein the protection of investors will not be jeopardized, may a Specific Purpose Company issue Preferred Equity or Specified Equity differing in class or time of issuance under a single Asset Securitization Plan.

(Restrictions on Public Offerings, etc. of Asset-Backed Securities)

Article 207 In cases where a notification under paragraph (2) of the following Article has been made with regard to the handling of a Public Offering, etc. (meaning a Public Offering of Securities or Private Placement of Securities as prescribed in Article 2 (3) of the Financial Instruments and Exchange Act; hereinafter the same shall apply in this Part) of Asset-Backed Securities issued by a Specific Purpose Company, neither the director nor the employees of the Specific Purpose Company shall administer the affairs related to the Public Offering, etc. of Asset-Backed Securities.

Article 208 (1) With regard to the application of the Financial Instruments and Exchange Act in cases where the transferor of Specified Assets (excluding Secondary Specified Assets) set forth in the Asset Securitization Plan (in cases where the transferor is a corporation, including its officers and employees; hereinafter referred to as the "Specified Transferor") is the person who has been entrusted with the affairs related to the Public Offering, etc. of Asset-Backed Securities (excluding Specified Short-Term Bonds and Specified Promissory Notes; hereinafter the same shall apply in this Article and the following Article) which the Specific Purpose Company issues, the handling of a Public Offering, etc. of Asset-Backed Securities issued by the Specific Purpose Company which has been made by the Specified Transferor shall be deemed not to fall under the acts listed in Article 2 (8) (ix) of that Act.

(2) In the case referred to in the preceding paragraph, if the Specified Transferor is to handle the Public Offering, etc. of Asset-Backed Securities, they must notify the Prime Minister in advance pursuant to the provisions of a Cabinet Office Ordinance.

(Application Mutatis Mutandis of the Financial Instruments and Exchange Act, etc. to the Public Offering, etc. of Asset-Backed Securities)

Article 209 (1) The provisions of Article 36 (1) (Duty of Good Faith to Customers), Article 37 (1) (excluding item (ii)) and (2) (Regulation of Advertising, etc.), Article 37-3 (1) (excluding item (ii) and item (vi)) and (2) (Delivery of Document Prior to Conclusion of Contract), Article 37-4 (Delivery of Document upon Conclusion of Contract, etc.), Article 38 (Prohibited Acts), Article 39 (Prohibition of Compensation of Loss, etc.), Article 40 (Principle of Suitability),

Article 44-3 (1) (excluding item (iii)) (Restriction on Acts Involving Parent Corporations, etc. or Subsidiary Corporations, etc.), and Article 45 (excluding item (iii) and item (iv)) of the Financial Instruments and Exchange Act shall apply mutatis mutandis to a Specific Purpose Company making a Public Offering, etc. of Asset-Backed Securities and a Specified Transferor handling the Public Offering, etc. of Asset-Backed Securities. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(2) The provisions of Article 217 to Article 219 inclusive shall apply mutatis mutandis to Specified Transferors handling Public Offerings, etc. of Asset-Backed Securities. In this case the phrases "this Act" and "business or property thereof" in Article 217 (1) shall be deemed to be replaced with "this Act or the provisions of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 209 (1)" and "handling the Public Offering, etc. of Asset-Backed Securities," respectively, and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Borrowing of Funds)

Article 210 In cases where all of the following requirements are satisfied, may a Specific Purpose Company borrow funds necessary for the acquisition of Specified Assets by decision of the director (in cases where there are two or more directors, by decision of the majority thereof):

- (i) that the limit amount for such borrowings is provided for in the Asset Securitization Plan; and
- (ii) that the person from whom the Specific Purpose Company is to borrow funds is a bank or other person specified by a Cabinet Office Ordinance.

Article 211 Borrowings of funds by a Specific Purpose Company, except borrowings of funds made in accordance with the provisions of the preceding Article, shall be permitted only in the cases as specified in the following items for the categories of borrowings of funds set forth in the respective items:

- (i) Borrowings of funds to allot them for the performance of obligations related to Specified Bonds, Specified Promissory Notes, or Specific Borrowings (including the cases where additional funds are borrowed to allot them for the performance of obligations related to the borrowing of such funds): cases where funds are borrowed for a period not exceeding one (1) year; or
- (ii) Borrowings of funds other than the borrowings of funds listed in the preceding item: cases where funds are borrowed to temporarily manage a cash flow when issuing Asset-Backed Securities or making Specific Borrowings or other cases specified by a Cabinet Office Ordinance as those wherein the protection of investors will not be jeopardized.

(Restriction on the Acquisition, etc. of Assets)

Article 212 (1) Specific Purpose Companies must not acquire the following assets:

- (i) an equity investment in a Partnership Contract (meaning a partnership contract as set forth in Article 667 of the Civil Code) (excluding those specified by a Cabinet Office Ordinance);
  - (ii) an equity investment in an Silent Partnership Agreement (meaning a silent partnership agreement under Article 535 of the Commercial Code) (excluding those specified by a Cabinet Office Ordinance);
  - (iii) a beneficial interest in trust that consists of money (excluding those specified by a Cabinet Office Ordinance); and
  - (iv) the assets specified by a Cabinet Office Ordinance as those whose acquisition by a Specific Purpose Company is likely to hinder said Specific Purpose Company in executing its business pertaining to Asset Securitization.
- (2) Specific Purpose Companies must not acquire or hold voting rights (excluding voting rights from shares which may not be exercised on all the particulars on which a resolution may be effected at a shareholders' meeting and including voting rights from shares which are deemed to have voting rights under the provisions of Article 879 (3) of the Companies Act; hereinafter the same shall apply in this paragraph) pertaining to Issued Shares or equity investment (hereinafter collectively referred to as "Shares, etc." in this paragraph and the following paragraph) of a single corporation in a number that exceeds the number obtained by multiplying the rate specified by a Cabinet Office Ordinance by the total amount of voting rights pertaining to said Shares, etc.
- (3) In the case referred to in the preceding paragraph, the Shares, etc. acquired or held by a Specific Purpose Company shall include Shares, etc. which are trust property and for which the Specific Purpose Company may exercise voting rights as the settlor or beneficiary, or give instructions with regard to the exercise of voting rights.
- (4) A Specific Purpose Company must not acquire Issued Shares of a corporation who holds the majority of units of Specified Equity or Preferred Equity for which the Specific Purpose Company holds voting rights.

(Restrictions on Disposition, etc. of Specified Assets)

Article 213 Except in cases where provided for in the Asset Securitization Plan, a Specific Purpose Company must not lend, transfer, or exchange Specified Assets (excluding Secondary Specified Assets) or furnish them as collateral.

(Restrictions on the Utilization of Surplus Funds)

Article 214 Specific Purpose Companies must not utilize surplus funds that arise



in the course of business in any ways other than the following:

- (i) the utilization of surplus funds to hold national government bonds and other securities designated by the Prime Minister;
- (ii) the depositing of surplus funds in a bank or other financial institution designated by the Prime Minister; or
- (iii) any other way of utilizing surplus funds specified by a Cabinet Office Ordinance.

#### **Chapter IV Supervision**

(Books and Materials Concerning Business)

Article 215 Specific Purpose Companies must, pursuant to the provisions of a Cabinet Office Ordinance, prepare and archive books and materials related to its business.

(Submission of Business Reports)

Article 216 A Specific Purpose Company must, pursuant to the provisions of a Cabinet Office Ordinance, prepare business reports for every business year and submit them to the Prime Minister within three months after each business year has concluded.

(On-Site Inspections, etc.)

Article 217 (1) In cases where the Prime Minister finds that the business operations of a Specific Purpose Company are or are likely to be in violation of this Act or any order issued under this Act, they may order a Specific Purpose Company to submit reports or materials concerning its business or property and may have the relevant official enter the business office or office of the Specific Purpose Company and inspect the status of its business, property, books, documents, and any other article, or question the relevant parties.

(2) An official who conducts an on-site inspection under the preceding paragraph, must carry an identification card and present it when requested to do so by any relevant party.

(3) The authority to conduct the on-site inspection under paragraph (1) must not be construed as being for criminal investigation.

(Order for Rectification of Illegal Acts, etc.)

Article 218 When the Prime Minister finds that the business operations of a Specific Purpose Company are or are likely to be in violation of the provisions of this Act or any order issued under this Act, they may order the Specific Purpose Company to take the necessary measures to rectify said business operations.

(Business Suspension Orders)

Article 219 In cases where a Specific Purpose Company that has made a Business Commencement Notification falls under any of the following items, the Prime Minister may order the suspension of its business in whole or in part for a fixed period of no longer than six months:

- (i) when the Specific Purpose Company has made a false statement or record in the Business Commencement Notification, Notification of a Change, the notification under Article 10 (1), Notification of a New Plan, written notification pertaining to the notification under Article 12 (1), or the attached documents thereof or the materials prescribed in Article 7 (2), or when the Specific Purpose Company has omitted statements or records on important particulars that should be stated or recorded or facts that are necessary for preventing a misunderstanding; or
- (ii) when the Specific Purpose Company has violated the provisions of this Act, an order issued under this Act, or a disposition made thereunder.

(Order of Dissolution)

Article 220 In cases where a Specific Purpose Company has violated the provisions of this Act, an order issued under this Act, or a disposition given under either, and said Specific Purpose Company cannot be supervised by any other method, or when the Specific Purpose Company has failed to make a Notification of a New Plan within three years from the day on which it made the notification under Article 10 (1), the Prime Minister may order the Specific Purpose Company's dissolution.

(Public Notice of Supervisory Dispositions)

Article 221 When the Prime Minister has made a disposition under the preceding three Articles, they shall give public notice to that effect pursuant to the provisions of a Cabinet Office Ordinance, and when they have made a disposition under Article 218 or Article 219, they must record to that effect and the date on which they made said disposition in the Specific Purpose Company Registry.

### **Part III Organization of Specific Purpose Trusts**

#### **Chapter I General Provisions**

(General Rules)

Article 222 In addition to what is provided for in this Part, the provisions of the Trust Act, the Trust Business Act, and the Act on Concurrent Operation of Trust Business by Financial Institutions (Act No. 43 of 1943) shall also apply

to Specific Purpose Trusts.

(Trustees of Specific Purpose Trusts)

Article 223 No trust contract pertaining to a Specific Purpose Trust (hereinafter referred to as a "Specific Purpose Trust Contract") may be concluded other than one under which a Trust Company, etc. is to serve as the trustee.

(Specific Purpose Trust Property)

Article 224 The provisions of Article 212 (excluding paragraph (4)) shall apply mutatis mutandis to assets that the Trust Company, etc. serving as the trustee of a Specific Purpose Trust acquires from the Originator (meaning the person who concluded the Specific Purpose Trust Contract with the Trust Company, etc.; hereinafter the same shall apply in this Part) as the trust property of the Specific Purpose Trust, and to assets acquired or possessed by a Fiduciary Trust Company, etc. as the trust property of said Specific Purpose Trust. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

## **Chapter II Notification**

(Notification)

Article 225 (1) When a Trust Company, etc. is to conclude a Specific Purpose Trust Contract as the trustee, it must notify the Prime Minister in advance pursuant to the provisions of a Cabinet Office Ordinance.

(2) When making a notification under the provisions of the preceding paragraph, Trust Company, etc. must attach the following documents:

- (i) a draft of the Specific Purpose Trust Contract;
- (ii) the Asset Trust Securitization Plan;
- (iii) when entrusting business pertaining to the administration and disposition of Specified Assets (excluding Secondary Specified Assets) to another person, a draft of the contract for said entrustment; and
- (iv) any other documents specified by a Cabinet Office Ordinance.

(Asset Trust Securitization Plan)

Article 226 (1) The following particulars must be stated or recorded in an Asset Trust Securitization Plan:

- (i) the period of the Specific Purpose Trust Contract and the particulars specified by a Cabinet Office Ordinance as those concerning the period of the Specific Purpose Trust Contract;
- (ii) the details and value of Specified Assets and any other particulars specified by a Cabinet Office Ordinance as those concerning Specified Assets;

- (iii) the following particulars concerning beneficial interest:
    - (a) the particulars specified by Cabinet Office Ordinance as those concerning the method of distributing monies during the trust period;
    - (b) where providing for multiple classes of beneficial interest that confer a share in the Specified Assets (hereinafter referred to as a "Share of Principal"), the Share of Principle relating to each class of beneficial interest, and where providing for the beneficial interest of any class that confers no Share of Principal, the share in the interest to be acquired through the administration and disposition of Specified Assets during the period of the Specific Purpose Trust Contract (hereinafter referred to a "Share of Interest"); and
    - (c) any other particulars specified by a Cabinet Office Ordinance;
  - (iv) the method of the administration and disposition of Specified Assets and any other particulars specified by a Cabinet Office Ordinance as those concerning the administration and disposition of Specified Assets;
  - (v) the particulars specified by a Cabinet Office Ordinance as those concerning the borrowing of funds or the bearing of costs by the Fiduciary Trust Company, etc. for processing the trust affairs relating to the Specific Purpose Trust; and
  - (vi) any other particulars specified by a Cabinet Office Ordinance.
- (2) The period of the Specific Purpose Trust Contract set forth in item (i) of the preceding paragraph shall not exceed the period specified by Cabinet Order as one in which a reasonable plan concerning the administration and disposition of the Specified Assets can be formulated for the categories of Specified Assets specified by Cabinet Order.
- (3) An Asset Trust Securitization Plan may be prepared in the form of Electromagnetic Records.

(Notification of Changes to the Asset Trust Securitization Plan)

- Article 227 (1) When a Fiduciary Trust Company, etc. makes any change to the Asset Trust Securitization Plan, it must notify the Prime Minister without delay; provided, however, that this shall not apply to a change to the particulars stated or recorded in the Asset Realization Plan, which is specified by a Cabinet Office Ordinance as a change in association with the final determination of the time of acquisition of Specified Assets or any other minor change.
- (2) The provisions of Article 9 (2) and (3) shall apply mutatis mutandis to a notification under the provisions of the preceding paragraph (referred to as a "Notification of Changes" in the following Article). In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Notification of the Termination of a Specific Purpose Trust)

Article 228 When a Fiduciary Trust Company, etc. completes the performance of its obligations pertaining to a Specific Purpose Trust in accordance with the Asset Trust Securitization Plan, it must notify the Prime Minister to that effect within thirty days from that date.

### **Chapter III Specific Purpose Trust**

#### **Section 1 Specific Purpose Trust Contract**

(Specific Purpose Trust Contract)

Article 229 A Specific Purpose Trust Contract must provide for the following particulars:

- (i) the fact that the trust is a Specific Purpose Trust;
- (ii) the Asset Trust Securitization Plan;
- (iii) particulars concerning the obligations of the Originator;
- (iv) particulars concerning reimbursement of costs and compensation for damages to the Fiduciary Trust Company, etc.;
- (v) particulars concerning the method of calculation of the trust fee and the method and time of payment thereof; and
- (vi) any other particulars specified by a Cabinet Office Ordinance.

Article 230 (1) The following conditions must be attached to a Specific Purpose Trust Contract:

- (i) no instructions may be given to the Fiduciary Trust Company, etc. with regard to the administration and disposition of the Specified Assets;
- (ii) where providing for a class of beneficial interest (hereinafter referred to as "Bond-Type Beneficial Interest" in this paragraph) for which a predetermined amount (including an amount that is calculated by a method specified by a Cabinet Order for obtaining a predetermined amount) is to be distributed with regard to the distribution of monies during the trust period, the facts that the principal of said Bond-Type Beneficial Interest is to be redeemed at a pre-determined time and that the Beneficiary Certificate Holders of said Bond-Type Beneficial Interest do not have voting rights with regard to resolutions (excluding those listed in the following items) at a Beneficiary Certificate Holders' Meeting and any other conditions specified by Cabinet Order:
  - (a) a resolution at a Beneficiary Certificate Holders' Meeting to approve the particulars set forth in Article 269 (1) (i);
  - (b) a resolution at a Beneficiary Certificate Holders' Meeting set forth in Article 273 (1);
  - (c) a resolution at a Beneficiary Certificate Holders' Meeting set forth in

- Article 274 (1);
- (d) a resolution at a Beneficiary Certificate Holders' Meeting to approve the particulars set forth in Article 275 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 279 (3);
  - (e) a resolution at a Beneficiary Certificate Holders' Meeting set forth in Article 276 (1); and
  - (f) a resolution at a Beneficiary Certificate Holders' Meeting to approve the particulars set forth in Article 132-2 (1) of the Deposit Insurance Act (Act No. 34 of 1971).
- (iii) where providing for Bond-Type Beneficial Interest subject to the condition to the effect that the Originator must re-purchase the Specified Assets under the Specific Purpose Trust Contract pertaining to said Bond-Type Beneficial Interest or any other Bond-Type Beneficial Interest specified by a Cabinet Office Ordinance as those the credit status of the Originator of which may have material influence on investors' investment decisions (referred to as "Special Bond-Type Beneficial Interest" in Article 234 (5) (i)), the Originator is required to notify the Fiduciary Trust Company, etc. of the occurrence or possible occurrence of an event related to its credit status without delay.
- (2) The provisions of Chapter IX (Special Provisions on Limited Liability Trusts) of the Trust Act shall not apply to Specific Purpose Trusts.

(Borrowing of Funds and Bearing of Costs)

Article 231 A Fiduciary Trust Company, etc. must not borrow funds nor bear the costs for processing the trust affairs relating to Specific Purpose Trust, except in cases where the maximum amount of funds that may be borrowed or the total amount of costs that may be borne (excluding the costs borne by the Fiduciary Trust Company, etc. as costs to be borne in relation to the trust property pursuant to the provisions of Article 247, Article 248 (including cases where it is applied mutatis mutandis pursuant to Article 253), Article 258 (including cases where it is applied mutatis mutandis pursuant to Article 260 (5) where such costs have been provided under the Specific Purpose Trust Contract in advance as those to be borne in relation to the trust property) and Article 271 (2)) is provided for in the Asset Trust Securitization Plan or in any other cases specified by a Cabinet Office Ordinance as those wherein the protection of the Beneficiary Certificate Holders will not be jeopardized.

(Ways in which Monies Shall Be Utilized)

Article 232 Monies that are among the trust property of a Specific Purpose Company must be utilized in the following ways:

- (i) for the possession of national government bonds and/or any other securities designated by the Prime Minister; and

(ii) in any other ways specified by a Cabinet Office Ordinance.

## **Section 2 Transfer of Beneficial Interest, etc.**

(Transfer of Beneficial Interest)

Article 233 Beneficial interest in a Specific Purpose Trust may be transferred; provided, however, that this shall not preclude a Specific Purpose Trust Contract from restricting a transfer of beneficial interest represented by a registered Beneficiary Certificate to a person other than a Qualified Institutional Investor (meaning a qualified institutional investor as defined in Article 2 (3) (i) of the Financial Instruments and Exchange Act).

(Beneficiary Certificates)

Article 234 (1) Beneficial interest in a Specific Purpose Trust must be represented by Beneficiary Certificates.

- (2) A transfer of beneficial interest in a Specific Purpose Trust must be carried out based on Beneficiary Certificates.
- (3) Beneficiary Certificates shall be in bearer form; provided, however, that they may be converted into registered form upon request of the Beneficiary Certificate Holder.
- (4) Beneficiary Certificates in registered form may be converted into bearer form upon request of the Beneficiary Certificate Holder; provided, however, that this shall not preclude a Specific Purpose Trust Contract from providing otherwise.
- (5) A Beneficiary Certificate must state the serial number, the date of issuance, and the following particulars, and an officer representing the Fiduciary Trust Company, etc. must sign it, or affix their name and seal thereto:
  - (i) the fact that it is a Beneficiary Certificate relating to a Specific Purpose Trust (if said Beneficial Certificate is pertaining to Special Bond-Type Beneficial Interest, including such fact);
  - (ii) the names and addresses of the Originator and the Fiduciary Trust Company, etc.;
  - (iii) in the case of a Beneficiary Certificate in registered form, the name of the Beneficiary Certificate Holder;
  - (iv) The Share of Principal or Share of Interest relating to the beneficial interest or the provisions of the Specific Purpose Trust Contract concerning calculation of such Share of Principal or Share of Interest;
  - (v) details of the beneficial interest other than the particulars set forth in the preceding item;
  - (vi) the period of the Specific Purpose Trust Contract;
  - (vii) the provisions of the Specific Purpose Trust Contract concerning reimbursement of costs and compensation for damages to the Fiduciary Trust

Company, etc.;

- (viii) particulars concerning the method of calculation of the trust fee and the method and time of payment thereof;
  - (ix) if there is a restriction on the transfer of beneficial interest that is represented by Beneficiary Certificates in registered form, a statement to that effect and details thereof;
  - (x) the provisions of the Specific Purpose Trust Contract concerning exercise of rights (including particulars pertaining to the Representative Beneficiary Certificate Holder and the Specified Trust Administrator); and
  - (xi) any other particulars specified by a Cabinet Office Ordinance.
- (6) A person in possession of a Beneficiary Certificate shall be presumed to be the lawful owner of said Beneficiary Certificate.

(Perfection of the Transfer of Beneficial Interest)

- Article 235 (1) A transfer of beneficial interest shall not be perfected against the Fiduciary Trust Company, etc. unless the name and address of the acquirer of the Beneficiary Certificate and the class of the beneficial interest are stated or recorded in the Beneficiary Certificate Holder Registry.
- (2) A transfer of beneficial interest represented by a Beneficiary Certificate in registered form shall not be perfected against third parties (excluding the Fiduciary Trust Company, etc.) unless the name of the acquirer of the Beneficiary Certificate is stated on the Beneficiary Certificate.
- (3) A Fiduciary Trust Company, etc. may provide for appointment of an Administrator of the Beneficiary Certificate Holder Registry (meaning a person who, on behalf of the Fiduciary Trust Company, etc., engages in preparation and keeping of the Beneficiary Certificate Holder Registry and any other affairs concerning the Beneficiary Certificate Holder Registry; the same shall apply hereinafter) under the Specific Purpose Trust Contract, and may entrust such affairs to the Administrator of the Beneficiary Certificate Holder Registry.

(Particulars to Be Stated in the Beneficiary Certificate Holder Registry)

- Article 236 (1) A Fiduciary Trust Company, etc. must state or record the following particulars in the Beneficiary Certificate Holder Registry:
- (i) the names and addresses of the Beneficiary Certificate Holders;
  - (ii) the class of and the Share of Principal or Share of Interest relating to the beneficial interest held by each Beneficiary Certificate Holder;
  - (iii) the serial number of the Beneficiary Certificate held by each Beneficiary Certificate Holder;
  - (iv) the date of acquisition of each Beneficiary Certificate; and
  - (v) any other particulars specified by a Cabinet Office Ordinance.
- (2) The provisions of Article 189 (excluding paragraphs (2) and (5)) (Record Date),



Article 191 (excluding paragraph (5)) (Notices to Beneficiaries, etc.), Article 197 (excluding paragraph (4)) (Statement or Recording of Particulars to Be Stated in the Beneficial Interest Registry Independent of a Request from a Beneficiary), Article 198 (excluding paragraph (3)) (Statement or Recording of Particulars to Be Stated in the Beneficial Interest Registry at the Request of a Beneficiary), and Article 203 (Notices to Registered Pledgeses of a Beneficial Interest, etc.) of the Trust Act and the provisions of Article 124 (4) (Record Date) of the Companies Act shall apply mutatis mutandis to a Beneficiary Certificate Holder. In this case, the term "Beneficiaries on the Record Date" in Article 189 (1) and (3) and the proviso to Article 189 (4) of the Trust Act shall be deemed to be replaced with "Right Holders on the Record Date," the phrase "give public notice in an official gazette" in that paragraph shall be deemed to be replaced with "give public notice," the term "Trust Deed" in the proviso to that paragraph shall be deemed to be replaced with "Specific Purpose Trust Contract," the phrase "to Registered Pledgeses of Beneficial Interest" in Article 203 (1) of that Act shall be deemed to be replaced with "the pledgeses for whom the particulars listed in the items of Article 201 (1) as applied mutatis mutandis pursuant to Article 239 (1) of the Asset Securitization Act are stated or recorded in the Beneficiary Certificate Holder Registry," the term "said Registered Pledgeses of Beneficial Interest" in that paragraph shall be deemed to be replaced with "said pledges," the term "Shareholders on the Record Date" in Article 124 (4) of the Companies Act shall be deemed to be replaced with "Right Holders on the Record Date," the phrase "shareholders meeting or Class Meeting" in that paragraph shall be deemed to be replaced with "Beneficiary Certificate Holders' Meeting or Class Beneficiary Certificate Holders' Meeting," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (3) The provisions of Article 189 (excluding paragraphs (2) and (5)) of the Trust Act as applied mutatis mutandis pursuant to the preceding paragraph shall apply mutatis mutandis to pledgeses for whom the particulars listed in the items of Article 201 (1) of said Act as applied mutatis mutandis pursuant to Article 239 (1) are stated or recorded in the Beneficiary Certificate Holder Registry.

(Succession to the Status of Settlor)

Article 237 A person who acquires a Beneficiary Certificate shall, through such acquisition, assume the status of settlor under the Specific Purpose Trust Contract pertaining to said Beneficiary Certificate, according to the proportion of the Share of Principal pertaining to the beneficial interest represented by said Beneficiary Certificate; provided, however, that this shall not apply to the obligations of the Originator under the Specific Purpose Trust Contract in

cases where the Specific Purpose Trust Contract provides otherwise with regard to such obligations.

(Loss of a Beneficiary Certificate)

Article 238 (1) A Beneficiary Certificate may be invalidated through the public notification process prescribed in Article 100 of the Non-Contentious Cases Procedures Act (Act No. 51 of 2011).

(2) A person who has lost a Beneficiary Certificate may not request the reissuance of their Beneficiary Certificate until after obtaining an order of nullification as prescribed in Article 106 (1) of the Non-Contentious Cases Procedures Act.

(3) When a person who has lost a Beneficiary Certificate files a petition for public notification as prescribed in Article 114 of the Non-Contentious Cases Procedures Act, the person who has lost a Beneficiary Certificate may, by providing reasonable collateral, have the Fiduciary Trust Company, etc. perform the obligations pertaining to said Beneficiary Certificate.

(Application Mutatis Mutandis of the Trust Act to Beneficial Interest, etc.)

Article 239 (1) The provisions of Article 193 (Exercise of Rights by Co-owners), Article 196 (2) (Presumption of Rights), Article 199 (Pledge of a Beneficial Interest for which Beneficiary Securities Have Been Issued), Article 200 (1) (Perfection of Pledges of a Beneficial Interest in Trust for which Beneficiary Securities Have Been Issued), Article 201 (1) (Statements in the Beneficial Interest Registry Concerning Pledges, etc.), Article 204 (Statements in Beneficial Interest Registry Pertaining to the Consolidation or Division of Beneficial Interest, etc.), and Article 208 (excluding paragraph (7)) (Offers Not to Hold Beneficiary Securities) of the Trust Act shall apply mutatis mutandis to beneficial interest in a Specific Purpose Trust. In this case, the phrase "beneficial interest in a Trust for which Beneficiary Securities Have Been Issued (excluding beneficial interest under the provisions set forth in Article 185 (2))" in Article 199 and Article 200 (1) of the Trust Act shall be deemed to be replaced with "beneficial interest in a Specific Purpose Trust," the phrase "beneficial interest in a Trust for which Beneficiary Securities Have Been Issued" in Article 201 (1) of that Act shall be deemed to be replaced with "beneficial interest in a Specific Purpose Trust," the phrase "beneficiaries of a Trust for which Beneficiary Securities Have Been Issued" in Article 208 (1) of that Act shall be deemed to be replaced with "Beneficiary Certificate Holders," the phrase "details of the beneficial interest" in paragraph (2) of that Article shall be deemed to be replaced with "Share of Principal relating to the beneficial interest in the Specific Purpose Trust (in cases where multiple classes of beneficial interest are provided for, the classes of beneficial interest

and the Share of Principal or Share of Interest relating to each class)," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (2) In cases where any Beneficiary Certificate will not be issued pursuant to the provisions of Article 208 (1) to (5) inclusive of the Trust Act as applied mutatis mutandis pursuant to the preceding paragraph, when applying the provisions of this Act, the holder of the beneficial interest in the Specific Purpose Trust to be represented by said Beneficiary Certificate shall be deemed to be the holder of the Beneficiary Certificate, and when applying the provisions of Article 286, the beneficial interest in the Specific Purpose Trust to be represented by said Beneficiary Certificate shall be deemed to be the Beneficiary Certificate.

### **Section 3 Rights of Beneficiary Certificate Holders**

#### **Subsection 1 Beneficiary Certificate Holders' Meetings**

(Beneficiary Certificate Holders' Meetings)

Article 240 (1) The rights of beneficiaries and the settlor of a Specific Purpose Trust (excluding the right to receive payment of the obligations that the Fiduciary Trust Company, etc. bears against the beneficiaries under the Specific Purpose Trust Contract) may be exercised only at a Beneficiary Certificate Holders' Meeting.

- (2) The exercise of a right set forth in the preceding paragraph shall require a resolution for the exercise thereof.
- (3) The provisions of Chapter IV, Section 3 (Special Provisions on Decision-Making Methods Involving Two or More Beneficiaries) of the Trust Act shall not apply to a Specific Purpose Trust.

Article 241 Particulars other than those that are specified under laws and regulations or under a Specific Purpose Trust Contract as particulars requiring a resolution to be made at a Beneficiary Certificate Holders' Meeting may not be resolved at a Beneficiary Certificate Holders' Meeting.

(Convener)

Article 242 (1) A Beneficiary Certificate Holders' Meeting shall be called by the Fiduciary Trust Company, etc., a Representative Beneficiary Certificate Holder, or a Specified Trust Administrator.

- (2) In calling a Beneficiary Certificate Holders' Meeting, a written notice of said meeting must be sent to each Beneficiary Certificate Holder (limited to those who have voting rights) two weeks prior to the date of the meeting.
- (3) A convener may, in lieu of sending the written notice set forth in the preceding paragraph, send the notice by Electromagnetic Means with the

consent of the persons who are to receive the notice set forth in the preceding paragraph, pursuant to Cabinet Order provisions. In this case, the convener shall be deemed to have sent the written notice set forth in the preceding paragraph.

- (4) The subject matter of the meeting and the number of voting rights held by each Beneficiary Certificate Holder must be stated or recorded in the notice set forth in the preceding two paragraphs, as well as the total number of voting rights or the proportion of voting rights held by each Beneficiary Certificate Holder.
- (5) The provisions of Article 108 (Decision to Call a Beneficiaries Meeting) and Article 191 (excluding paragraph (5)) (Notice to Beneficiaries, etc.) of the Trust Act and the provisions of Article 718 (1) and (3) (Demand for Calling Meeting by Bondholders) of the Companies Act shall apply mutatis mutandis to the calling of a Beneficiary Certificate Holders' Meeting. In this case, the phrase "the total amount of bonds of a certain Class (excluding bonds that have been redeemed)" in Article 718 (1) of the Companies Act shall be deemed to be replaced with "the total Share of Principal," the phrase "the bond-issuing Company or bond manager" in that paragraph shall be deemed to be replaced with "the Fiduciary Trust Company, etc., a Representative Beneficiary Certificate Holder, or a Specified Trust Administrator," and any other necessary technical replacement of terms shall be specified by Cabinet Order.
- (6) The provisions of Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 871 (Appending of the Reason), Article 874 (limited to the portion pertaining to item (iv)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to the calling of a Beneficiary Certificate Holders' Meeting under the provisions of Article 718 (3) of that Act as applied mutatis mutandis pursuant to the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Method of Resolution)

- Article 243 (1) Resolutions at a Beneficiary Certificate Holders' Meeting must be made, unless otherwise provided for in this Act or the Specific Purpose Trust Contract, by a majority of the votes of Beneficiary Certificate Holders attending the meeting, where those Beneficiary Certificate Holders who are in attendance hold more than half of the total Share of Principal.
- (3) The Share of Principal held by Beneficiary Certificate Holders who may not exercise their voting rights with regard to certain resolutions at a Beneficiary Certificate Holders' Meeting shall not be included in the total Share of

Principal of Beneficiary Certificate Holders set forth in the preceding paragraph.

- (3) The provisions of Article 62 shall apply mutatis mutandis to the method of resolution at a Beneficiary Certificate Holders' Meeting. In this case, the term "articles of incorporation" in paragraph (1) of that Article shall be deemed to be replaced with "Specific Purpose Trust Contract," the phrase "the proposals pertaining to the Particulars to Be Voted Upon by Both Specified and Preferred Equity Members" in that paragraph shall be deemed to be replaced with "the proposals," the term "Article 56 (1)" in paragraph (2) of that Article shall be deemed to be replaced with "Article 242 (2) or (3)," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Number of Voting Rights)

- Article 244 (1) Each Beneficiary Certificate Holder shall have voting rights in proportion to the Share of Principal of the beneficial interest they hold.
- (2) Notwithstanding the provisions of the preceding paragraph, a Fiduciary Trust Company, etc. shall have no voting rights for the beneficial interest it holds as its own assets.
- (3) The provisions of paragraph (1) shall not preclude the Specific Purpose Trust Contract from providing otherwise.

(Voting in Writing or by Electromagnetic Means)

- Article 245 (1) A Beneficiary Certificate Holder who does not attend a Beneficiary Certificate Holders' Meeting may exercise their voting rights in writing.
- (2) The provisions of Article 110 (1) and (2) (Provision of Voting Forms and Reference Documents for a Beneficiaries Meeting), Article 115 (2) and (3) (Voting in Writing), and Article 116 (Voting by Electromagnetic Means) of the Trust Act, and the provisions of Article 311 (3) and (4) (Voting in Writing) of the Companies Act shall apply mutatis mutandis to the exercise of voting rights in writing set forth in the preceding paragraph. In this case, the phrase "The convener shall, when giving the notice set forth in paragraph (1) of the preceding Article" in Article 110 (1) of the Trust Act shall be deemed to be replaced with "In the case of a Specific Purpose Trust, the convener shall, when giving notice of a Beneficiary Certificate Holders' Meeting," the phrase "paragraph (2) of the preceding Article" in paragraph (2) of that Article shall be deemed to be replaced with "Article 242 (3) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Execution of Resolutions)

Article 246 (1) Resolutions made at Beneficiary Certificate Holders' Meetings shall be executed by a Representative Beneficiary Certificate Holder or a Specified Trust Administrator if there is such a person, and shall be executed by the person specified by resolution at a Beneficiary Certificate Holders' Meeting if there is no such Representative Beneficiary Certificate Holder or Specified Trust Administrator.

(2) The provisions of Article 708 (Method of Acts of Bond Managers) and Article 709 (1) (Special Provisions for Multiple Bond Managers) of the Companies Act shall apply mutatis mutandis to the person specified by resolution at a Beneficiary Certificate Holders' Meeting as set forth in the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Remuneration of Persons Who Execute Resolutions Made at Beneficiary Certificate Holders' Meetings, and Costs, Interest, and Damages Borne in Relation Thereto)

Article 247 Any remuneration to be paid to the person specified by resolution at a Beneficiary Certificate Holders' Meeting as set forth in paragraph (1) of the preceding Article, the costs required for such person to process affairs, the interest that accrues on and after the day of the payment of such costs, and compensation for damages incurred by such person for processing affairs in the absence of negligence shall be borne by the Fiduciary Trust Company, etc. as costs borne in relation to the trust property.

(Costs Borne)

Article 248 (1) Costs relating to a Beneficiary Certificate Holders' Meeting shall be borne by the Fiduciary Trust Company, etc. as costs borne in relation to the trust property.

(2) The costs relating to the petitions set forth in Article 732 of the Companies Act as applied mutatis mutandis pursuant to the following Article shall be borne by the Fiduciary Trust Company, etc. as costs borne in relation to the trust property; provided, however, that the court may, when petitioned by an interested person or ex officio, specify another person to bear such costs in whole or in part.

(Application Mutatis Mutandis of the Trust Act and the Companies Act to Beneficiary Certificate Holders' Meetings)

Article 249 (1) The provisions of Article 114 (Proxy Voting), Article 117 (Inconsistent Voting), Article 118 (2) (Attendance of Beneficiaries, etc.), Article 119 (Resolutions for Postponement or Continuation), and Article 120 (Minutes of a Meeting) of the Trust Act and the provisions of Article 314 (Accountability

of the Directors, etc.), Article 315 (Authority of the Chairperson), Article 731 (excluding paragraph (1)) (Minutes of a Meeting), Articles 732 to 735 inclusive (Petitions for Approval of Resolutions Made at Bondholders' Meetings; Rejection of Resolutions Made at Bondholders' Meetings; Effectiveness of Resolutions Made at Bondholders' Meetings; Public Notice of Rulings Approving or Rejecting Resolutions Made at Bondholders' Meetings), and Article 738 (Dismissal of Representative Bondholders) of the Companies Act shall apply mutatis mutandis to Beneficiary Certificate Holders' Meetings. In this case, the phrase "Article 108 and Article 109" in Article 119 of the Trust Act shall be deemed to be replaced with "Article 242 of the Asset Securitization Act," the phrase "a director, an accounting advisor, a company auditor or an executive officer" in Article 314 of the Companies Act shall be deemed to be replaced with "a Fiduciary Trust Company, etc.," the term "bond-issuing Company" in Article 731 (2) of that Act shall be deemed to be replaced with "Fiduciary Trust Company, etc.," the phrase "The bond manager and bondholders" in paragraph (3) of that Article shall be deemed to be replaced with "The Representative Beneficiary Certificate Holder, the Specified Trust Administrator, and each Beneficiary Certificate Holder," the term "Bond-issuing Company" in that paragraph shall be deemed to be replaced with "Fiduciary Trust Company, etc.," the phrase "the solicitation in Article 676" in Article 733 (i) of that Act shall be deemed to be replaced with "the solicitation for Beneficiary Certificates," the term "such bond-issuing Company" in that item shall be deemed to be replaced with "the Fiduciary Trust Company, etc.," the term "bond-issuing Company" in Article 735 of that Act shall be deemed to be replaced with "Fiduciary Trust Company, etc.," the phrase "the representative bondholders or Resolution Administrator" in Article 738 of that Act shall be deemed to be replaced with "the person specified by the resolution set forth in Article 246 (1) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(2) The provisions of Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article 870 (1) (limited to the portion pertaining to item (vii)) (Hearing of Statements), the main clause of Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), the main clause of Article 873 (Stay of Execution of the Judicial Decision of the Prior Instance), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to the petitions for approval of resolutions set forth in Article 732 of that Act as applied mutatis mutandis pursuant to the preceding paragraph.

(Written Resolutions)

Article 250 (1) When a resolution is to be made at a Beneficiary Certificate Holders' Meeting, if it has been provided for in the Specific Purpose Trust Contract in advance or with the consent of all the Beneficiary Certificate Holders (limited to those who have voting rights), the resolution may be made in writing.

(2) Written resolutions shall have the same effect as resolutions that are made at Beneficiary Certificate Holders' Meetings.

(3) The provisions of Article 63 (1) to (3) and the provisions concerning Beneficiary Certificate Holders' Meetings (excluding Article 243 (3) and Article 245) shall apply mutatis mutandis to cases where a written resolution is made. In this case, the phrase "In cases where a director or a Specified Equity Member has made a proposal on the Particulars to Be Voted Upon by Specified Equity Members Alone from among the subjects of a general meeting of members, if all of the Specified Equity Members (limited to those who may exercise their voting rights on such a particular) have shown the common consensus, either in writing or in the form of Electromagnetic Records, that said proposal should be adopted" in Article 63 (1) shall be deemed to be replaced with "If all of the Beneficiary Certificate Holders (limited to those who have voting rights) have shown a common consensus, either in writing or in the form of Electromagnetic Records, that the particulars subject to resolution should be adopted," the phrase "approving said proposal" in that paragraph shall be deemed to be replaced with "approving said particular," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Class Beneficiary Certificate Holders' Meetings)

Article 251 (1) In cases where the beneficial interest pertaining to a Specific Purpose Trust has been divided into multiple classes of beneficial interest with different features under an Asset Trust Securitization Plan, if any damages are likely to occur to holders of Beneficiary Certificates representing a certain class of beneficial interest as a result of a resolution at a Beneficiary Certificate Holders' Meeting (limited to a resolution for approval set forth in Article 269 (1) (i), the resolution set forth in Article 273 (1), Article 274 (1), or Article 276 (1), or a resolution for approval set forth in Article 275 (1)), approval must be obtained at a meeting of the Beneficiary Certificate Holders pertaining to the relevant class of beneficial interest (hereinafter referred to as a "Class Beneficiary Certificate Holders' Meeting") (in cases where there are two or more classes of beneficial interest for which damages are likely to occur as a result of the resolution of the Beneficiary Certificate Holders' Meeting, the approval of each Class Beneficiary Certificate Holders' Meeting composed of the Beneficiary Certificate Holders categorized by the class of such two or more classes of beneficial interest), in addition to the resolution that was made at



the Beneficiary Certificate Holders' Meeting.

- (2) The resolution for approval under the preceding paragraph must be made at each Class Beneficiary Certificate Holders' Meeting by a two-thirds or greater majority (if a higher proportion is provided for in the Specific Purpose Trust Contract, such a proportion) of the votes of Beneficiary Certificate Holders attending the meeting, where those Beneficiary Certificate Holders in attendance hold more than half (if a proportion of one-third or more is provided for in the Specific Purpose Trust Contract, such a proportion) of the total Share of Principal of the beneficial interest pertaining to said Class Beneficiary Certificate Holders' Meeting.
- (3) With regard to application of the provisions of the preceding paragraph to a resolution for approval made at a Class Beneficiary Certificate Holders' Meeting composed of Beneficiary Certificate Holders pertaining to a class of beneficial interest with no Share of Principal, the term "Share of Principal" in said paragraph shall be deemed to be replaced with "Share of Interest."

(Attendance of a Representative Beneficiary Certificate Holder, etc.)

Article 252 (1) A Representative Beneficiary Certificate Holder or a Specified Trust Administrator may attend a Class Beneficiary Certificate Holders' Meeting and state their opinion in writing.

- (2) The provisions of Article 109 (1) to (3) inclusive (Notice of a Beneficiaries' Meeting) of the Trust Act shall apply mutatis mutandis to a Class Beneficiary Certificate Holders' Meeting. In this case, the phrase "known beneficiaries and the trustee (in cases where there is a trust supervisor, known beneficiaries, the trustee, and the trust supervisor)" in paragraph (1) of that Article shall be deemed to be replaced with "the Representative Beneficiary Certificate Holder and the Specified Trust Administrator," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Application Mutatis Mutandis of Provisions Pertaining to Beneficiary Certificate Holders' Meetings)

Article 253 The provisions of Articles 242 to 245 inclusive, Article 248, and Article 249 shall apply mutatis mutandis to Class Beneficiary Certificate Holders' Meetings. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

### **Subsection 2 Representative Beneficiary Certificate Holders, etc.**

(Appointment of a Representative Beneficiary Certificate Holder)

Article 254 (1) The Beneficiary Certificate Holders' Meeting may appoint one or multiple Representative Beneficiary Certificate Holders from among

Beneficiary Certificate Holders with one-thousandths or more of a Share of Principal, and delegate the exercise of the rights of the beneficiaries and of the settlor of the Specific Purpose Trust (excluding the following rights) to such person(s) for the benefit of the Beneficiary Certificate Holders:

- (i) the right to decide on the following particulars:
  - (a) exemption of the Fiduciary Trust Company, etc. from liability;
  - (b) termination of the Specific Purpose Trust Contract;
  - (c) approval of changes to the Specific Purpose Trust Contract;
  - (d) approval of the resignation of or requests for dismissal of the trustee of the Specific Purpose Trust;
  - (e) approval of the inventory of assets and balance sheet pertaining to the trust property in cases where the Fiduciary Trust Company, etc. is replaced or where the Specific Purpose Trust Contract terminates; and
  - (f) appointment, dismissal, and consent to the resignation of a Representative Beneficiary Certificate Holder; and
- (ii) any other rights that are provided for under the Specific Purpose Trust Contract as those that are not to be delegated to a Representative Beneficiary Certificate Holder.

(2) In cases where there are multiple Representative Beneficiary Certificate Holders, unless otherwise decided at a Beneficiary Certificate Holders' Meeting, the exercising of a right set forth in the preceding paragraph shall be carried on the decision of the majority of the Representative Beneficiary Certificate Holders.

(Grounds for Disqualification as a Representative Beneficiary Certificate Holder)

Article 255 The Fiduciary Trust Company, etc. of a Specific Purpose Trust or any officer or employee thereof may not become a Representative Beneficiary Certificate Holder with regard to said Specific Purpose Trust.

(Exercise of the Rights of Beneficiaries and the Settlor of a Specific Purpose Trust in Cases Where a Representative Beneficiary Certificate Holder Has Been Appointed)

Article 256 (1) In cases where a Representative Beneficiary Certificate Holder has been appointed at a Beneficiary Certificate Holders' Meeting, only the Representative Beneficiary Certificate Holder may exercise the rights of the beneficiaries and of the settlor of the Specific Purpose Trust.

(2) In the cases set forth in the preceding paragraph, each Beneficiary Certificate Holder may make a request of the Representative Beneficiary Certificate Holder, in writing, for the exercise of their right (excluding rights pertaining to calling a Beneficiary Certificate Holders' meeting and the rights set forth in

Article 36 (Duty to Report on the Processing Status of Trust Affairs), Article 38 (Request for Inspection, etc. of Books, etc.) and Article 39 (Request for Disclosure of the Name, etc. of Another Beneficiary) of the Trust Act).

(3) In cases where the request set forth in the preceding paragraph has been made, the Representative Beneficiary Certificate Holder may not refuse such a request except where the Beneficiary Certificate Holder who made said request is found to have done so with the intention of obstructing the implementation of affairs pertaining to the Specific Purpose Trust or of harming the common interests of the Beneficiary Certificate Holders, or where there are any other justifiable grounds.

(Resignation of a Representative Beneficiary Certificate Holder)

Article 257 (1) A Representative Beneficiary Certificate Holder may resign upon obtaining consent to do so at a Beneficiary Certificate Holders' Meeting.

(2) The provisions of Article 57 (excluding paragraph (1) and paragraph (6)) (Resignation of the Trustee), Article 262 (excluding paragraph (5)) (Jurisdiction over Non-Contentious Cases Concerning Trusts), Article 263 (Special Provisions on the Proceedings in Non-Contentious Cases Concerning Trusts), and Article 264 (Supreme Court Rules) of the Trust Act shall apply mutatis mutandis pursuant to the resignation of a Representative Beneficiary Certificate Holder as set forth in the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

(Remuneration of Representative Beneficiary Certificate Holders and Costs, Interest, and Damages Borne in Relation thereto)

Article 258 Any remuneration to be paid to Representative Beneficiary Certificate Holders, the costs required for such person to process affairs, the interest that accrues on and after the date of the payment of such costs, and compensation for damages incurred by such persons for processing affairs in the absence of negligence shall be borne by the Fiduciary Trust Company, etc., as costs borne in relation to the trust property.

(Application Mutatis Mutandis of the Trust Act and the Companies Act to Representative Beneficiary Certificate Holders)

Article 259 (1) The provisions of Article 44 (Cessation of Acts of the Trustee at the Demand of the Beneficiaries) and Article 85 (4) (Special Provisions on Trustee Liability, etc.) of the Trust Act and the provisions of Article 385 (2) (Enjoinment of Acts of Directors by Company Auditors) of the Companies Act shall apply mutatis mutandis to enjoinment against a Fiduciary Trust Company, etc., by a Representative Beneficiary Certificate Holder, the provisions of Article 707 (Appointment of Special Agent), Article 708 (Method

of Acts of Bond Managers), and Article 710 (1) (Liability of Bond Manager) of the Companies Act shall apply mutatis mutandis to a Representative Beneficiary Certificate Holder, and the provisions of Article 738 (Dismissal of Representative Bondholders) of the Companies Act shall apply mutatis mutandis to the dismissal of a Representative Beneficiary Certificate Holder. In this case, the term "trust deed" in Article 44 (1) of the Trust Act shall be deemed to be replaced with "Specific Purpose Trust Contract," the term "this Act" in Article 710 (1) of the Companies Act shall be deemed to be replaced with "this Act, the Specific Purpose Trust Contract," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(2) The provisions of Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article 871 (Appending of the Reason), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to the appointment of a special agent as set forth in Article 707 of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph.

(Specified Trust Administrator)

Article 260 (1) When there is no Representative Beneficiary Certificate Holder, the Fiduciary Trust Company, etc. may appoint a Specified Trust Administrator.

(2) Appointment of a Specified Trust Administrator must be done in accordance with the provisions of the Specific Purpose Trust Contract.

(3) Notwithstanding the provisions of Article 240 (1), a Specified Trust Administrator has the authority to conduct, in their own name, any and all of the judicial and extra-judicial acts concerning the rights of beneficiaries and of the settlor of a Specific Purpose Trust (excluding the right to receive payment of the obligations which the Fiduciary Trust Company, etc. bears against the beneficiaries under the Specific Purpose Trust Contract and the rights listed in the items of Article 254 (1)) on behalf of the Beneficiary Certificate Holders.

(4) When the Fiduciary Trust Company, etc. has appointed a Specified Trust Administrator, it must notify the Beneficiary Certificate Holders thereof without delay.

(5) The provisions of Article 255, Article 256 and Article 258 of this Act, and the provisions of Article 44 (Cessation of a Trustee's Acts at the Demand of the Beneficiaries) and Article 85 (4) (Special Provisions on Trustee Liability, etc.) of the Trust Act and the provisions of Article 385 (2) (Enjoinment of Acts of Directors by Company Auditors), Article 704 (Obligations of Bond Managers), Article 707 (Appointment of Special Agent), Article 709 (1) (Special Provisions

for Multiple Bond Managers), Article 710 (1) (Liability of Bond Manager), the first sentence of Article 711 (1) and (3) (Resignation of Bond Managers), and Article 713 (Dismissal of Bond Managers) of the Companies Act shall apply mutatis mutandis to a Specified Trust Administrator. In this case, the phrase "In cases where a Representative Beneficiary Certificate Holder has been appointed at a Beneficiary Certificate Holders' Meeting," in Article 256 (1) shall be deemed to be replaced with "In cases where the Fiduciary Trust Company, etc. has appointed a Specified Trust Administrator," the phrase "as costs borne in relation to the trust property" in Article 258 shall be deemed to be replaced with "unless it has been provided under the Specific Purpose Trust Contract in advance that they shall be costs to be borne in relation to the trust property," the phrase "the purpose of the Company with Auditors" in Article 385 (1) of the Companies Act shall be deemed to be replaced with "the purpose of the Specific Purpose Trust," the term "articles of incorporation" in that paragraph shall be deemed to be replaced with "Specific Purpose Trust Contract," the phrase "substantial detriment to such Company with Auditors" in that paragraph shall be deemed to be replaced with "substantial detriment to the trust property," the term "trust deed" in Article 44 (1) of the Trust Act shall be deemed to be replaced with "Specific Purpose Trust Contract," the term "this Act" in Article 710 (1) of the Companies Act shall be deemed to be replaced with "this Act, the Specific Purpose Trust Contract," the term "bond-issuing Company" in the first sentence of Article 711 (1) and Article 713 of that Act shall be deemed to be replaced with "Fiduciary Trust Company, etc.," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (6) The provisions of Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article 871 (Appending of the Reason), Article 874 (limited to the portion pertaining to item (i)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of the Companies Act shall apply mutatis mutandis to appointment of a special agent set forth in Article 707 of the Companies Act as applied mutatis mutandis pursuant to the preceding paragraph, the provisions of Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article 869 (Prima Facie Showing), Article 871 (Appending of the Reason), Article 874 (limited to the portion pertaining to item (iv)) (Restrictions on Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of that Act shall apply mutatis mutandis to the resignation of a Specified Trust Administrator under Article 711 (3) of that Act as applied mutatis mutandis pursuant to the preceding paragraph, and the provisions of Article 868 (3) (Jurisdiction over Non-Contentious Cases), Article

870 (1) (limited to the portion pertaining to item (ii)) (Hearing of Statements), the main clause of Article 871 (Appending of the Reason), Article 872 (limited to the portion pertaining to item (iv)) (Immediate Appeal), Article 875 (Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act), and Article 876 (Supreme Court Rules) of that Act shall apply mutatis mutandis to the dismissal of a Specified Trust Administrator under Article 713 of that Act as applied mutatis mutandis pursuant to the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

- (7) In cases where there is a Specified Trust Administrator, if a resolution is made at a Beneficiary Certificate Holders' Meeting to appoint a Representative Beneficiary Certificate Holder, the Specified Trust Administrator may not exercise the rights of beneficiaries and of the settlor of the Specific Purpose Trust.
- (8) The provisions of Chapter IV, Section 4 (Trust Administrator, etc.) of the Trust Act shall not apply to a Specific Purpose Trust.

(Exercise of the Rights of Beneficiaries and of the Settlor of a Specific Purpose Trust in Cases Where There Is No Representative Beneficiary Certificate Holder, etc.)

Article 261 If there is neither a Representative Beneficiary Certificate Holder nor a Specified Trust Administrator, each Beneficiary Certificate Holder may, notwithstanding the provisions of Article 240 (1), exercise the rights of beneficiaries and of the settlor of the Specific Purpose Trust, except for the particulars that are provided for under this Act as those that require a resolution to be made at a Beneficiary Certificate Holders' Meeting and particulars pertaining to the calling of a Beneficiary Certificate Holders' Meeting.

(Beneficiary Certificate Holders' Right to Demand Cessation of an Act)

- Article 262 (1) In cases where the Fiduciary Trust Company, etc. engages, or is likely to engage, in any act in violation of laws and regulations or of the Specific Purpose Trust Contract, if such act is likely to cause irreparable harm to the trust property, each Beneficiary Certificate Holder may, notwithstanding the provisions of Article 240 (1), demand that the Fiduciary Trust Company, etc. cease said act.
- (2) In cases where the Fiduciary Trust Company, etc. engages, or is likely to engage, in any act in violation of Article 33 (Duty of Impartiality) of the Trust Act, if such act is likely to cause irreparable harm to some Beneficiary Certificate Holders, such Beneficiary Certificate Holder may, notwithstanding the provisions of Article 240 (1), demand that the Fiduciary Trust Company,

etc. cease said act.

(Judicial Decision Ordering Changes to a Specific Purpose Trust)

Article 263 Each Beneficiary Certificate Holder may, notwithstanding the provisions of Article 240 (1), request the court for a change to be made to the Specific Purpose Trust pursuant to the provisions of Article 150 (Judicial Decision Ordering Changes to a Trust Due to Special Circumstances) of the Trust Act.

#### **Section 4 Accounting, etc.**

(Preparation of Financial Statements, etc.)

Article 264 (1) Fiduciary Trust Companies, etc. must prepare the following materials and annexed detailed statements thereof for the trust property once every year on a certain date, pursuant to the provisions of a Cabinet Office Ordinance:

(i) a balance sheet;

(ii) a profit and loss statement; and

(iii) a report on the administration and operation of the trust property.

(2) The materials set forth in the preceding paragraph may be prepared in the form of Electromagnetic Records.

(3) Fiduciary Trust Companies, etc. must keep the materials set forth in paragraph (1) at its head office for five years from the date on which they were prepared pursuant to the provisions of that paragraph or the preceding paragraph.

(4) Fiduciary Trust Companies, etc. must keep a copy of the materials set forth in paragraph (1) at its branch offices for three years from the date prescribed in the preceding paragraph; provided, however, that this shall not apply when the materials set forth in paragraph (1) are prepared in the form of Electromagnetic Records, in which case measures specified by a Cabinet Office Ordinance as those which make it possible to respond to the requests set forth in Article 442 (3) (iii) and (iv) of the Companies Act as applied mutatis mutandis pursuant to the following paragraph shall be taken at the branch offices.

(5) The provisions of Article 442 (3) (Keeping and Inspection of Financial Statements, etc.) of the Companies Act shall apply mutatis mutandis to the materials set forth in paragraph (1). In this case, the term "creditors" in paragraph (3) of that Article shall be deemed to be replaced with "creditors pertaining to any borrowing of funds made by the Fiduciary Trust Company, etc. of the Specific Purpose Trust for the purpose of processing trust affairs," and any other necessary technical replacement of terms shall be specified by

Cabinet Order.

- (6) The provisions of Article 27 of the Trust Act shall not apply to the trust property pertaining to a Specific Purpose Trust.

(Standard for Distribution of Monies)

Article 265 Distribution of monies to Beneficiary Certificate Holders must be carried out in proportion to the Share of Principal held by each Beneficiary Certificate Holder; provided, however, that this shall not preclude the Asset Trust Securitization Plan from providing otherwise.

(Incorporation of Profits into Specified Assets)

Article 266 Any profits gained through the administration or disposition of Specified Assets during the trust period may be incorporated into Specified Assets pursuant to the provisions of Cabinet Order.

(Beneficiary Certificate Holders' Right to Request Inspection, etc.)

Article 267 (1) A Beneficiary Certificate Holder holding one-hundredth or more (if a smaller proportion is provided for in the Specific Purpose Trust Contract, such a proportion) of the Share of Principal may, notwithstanding the provisions of Article 240 (1), make the following requests to the Fiduciary Trust Company, etc.:

- (i) a request to inspect or copy the documents set forth in Article 37 (1) or (5) of the Trust Act;
  - (ii) a request to inspect or copy the particulars recorded in the Electromagnetic Records set forth in Article 37 (1) or (5) of the Trust Act which have been indicated by the means specified by a Cabinet Office Ordinance; and
  - (iii) a request for a report on the processing status of trust affairs.
- (2) The requests set forth in the preceding paragraph must be made in writing and the reason for making such a request shall be attached thereto.
- (3) When a request under paragraph (1) is made, the Fiduciary Trust Company, etc. may not refuse the request except in a case that is found to fall under any of the following items:
- (i) when the Beneficiary Certificate Holder has made such a request for a purpose other than an investigation relating to securing their rights or the exercise of their rights;
  - (ii) when the Beneficiary Certificate Holder has made such a request with the intention of obstructing the implementation of affairs pertaining to the Specific Purpose Trust or harming the common interests of the Beneficiary Certificate Holders;
  - (iii) when the Beneficiary Certificate Holder making said request is a person who carries out or engages in business that is, substantively, in a



- competitive relationship with business pertaining to the Securitization of Assets through the Specific Purpose Trust;
- (iv) when the Beneficiary Certificate Holder has made the request for a profit, in order to notify a third party of facts learned through the inspection, copying, or report under the provisions of paragraph (1);
  - (v) when the Beneficiary Certificate Holder making said request is a person who has, for profit, notified a third party of facts learned through the inspection, copying, or report under the provisions of paragraph (1) within the past two years; or
  - (vi) when the Beneficiary Certificate Holder has made a request to inspect, copy, or for a report under the provisions of paragraph (1) at an inappropriate time.
- (4) The provisions of Article 36 (Duty to Report on the Processing Status of Trust Affairs), Article 38 (Request to Inspect, etc. the Books, etc.) and Article 39 (Request for Disclosure of the Name, etc. of Another Beneficiary) of the Trust Act shall not apply to a Beneficiary Certificate Holder.

(Provision of Benefits for the Exercise of a Beneficiary Certificate Holder's Rights)

- Article 268 (1) No Fiduciary Trust Company, etc. shall give property benefits to any person in relation to the exercise of a Beneficiary Certificate Holder's rights.
- (2) When a Fiduciary Trust Company, etc. has given property benefits to a person in violation of the provisions of the preceding paragraph, a Representative Beneficiary Certificate Holder, a Specified Trust Administrator, or each Beneficiary Certificate Holder may demand that the Fiduciary Trust Company, etc. compensate for their losses or restore the trust property.
  - (3) The provisions of Article 120 (2) and (3) (Giving Benefits on the Exercising of Shareholder's Rights) of the Companies Act shall apply mutatis mutandis to benefits being given for the exercise of a Beneficiary Certificate Holder's rights. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

**Section 5 Changes to a Trust Contract, etc.**

(Changes to a Specific Purpose Trust Contract)

- Article 269 (1) No change may be made to a Specific Purpose Trust Contract except in a case that falls under any of the following items:
- (i) cases where the Fiduciary Trust Company, etc. proposes the change at a Beneficiary Certificate Holders' Meeting and obtains approval therefor;
  - (ii) cases where the court has ordered changes to the Specific Purpose Trust;

- (iii) cases where the details of the change are those specified by a Cabinet Office Ordinance as being minor; or
  - (iv) other cases specified by a Cabinet Office Ordinance as those in which it is evident that such change will not jeopardize the protection of the investors.
- (2) Notwithstanding the provisions of item (i) of the preceding paragraph, no changes may be made to the Specific Purpose Trust Contract with regard to any particulars stated or recorded in the Asset Trust Securitization Plan which are listed in the following items:
- (i) of the particulars set forth in Article 226 (1) (ii), those which are specified by a Cabinet Office Ordinance;
  - (ii) of the particulars listed in Article 226 (1) (iii) to (v) inclusive, those which are specified by a Cabinet Office Ordinance (except for cases where the conditions for making a change have been provided for in the Asset Trust Securitization Plan in advance); and
  - (iii) the particulars that are provided for in the Asset Trust Securitization Plan as those that may not be changed pertaining to a notification under the provisions of Article 225 (1).
- (3) In the case set forth in paragraph (1) (i), the Fiduciary Trust Company, etc. must include an outline of the proposal concerning changes to the Specific Purpose Trust Contract in the notice under the provisions of Article 242 (2) or (3).
- (4) A resolution made at a Beneficiary Certificate Holders' Meeting to grant the approval set forth in paragraph (1) (i) must be made by a two-thirds or greater majority (if a higher proportion is provided for in the Specific Purpose Trust Contract, such a proportion) of the votes of Beneficiary Certificate Holders attending the meeting, where those Beneficiary Certificate Holders in attendance hold at least one half (if a proportion of one-third or more is provided for in the Specific Purpose Trust Contract, such a proportion) of the total Share of Principal. In this case, the provisions of Article 244 (3) shall not apply.
- (5) Any changes to a Specific Purpose Trust Contract in the cases set forth in paragraph (1) (iii) and (iv) shall be made by the Fiduciary Trust Company, etc.
- (6) The provisions of Article 149 (excluding paragraph (1)) (Agreement, etc. among the Relevant Parties) and Chapter VI, Section 2 (Consolidation of Trusts) and Section 3 (Division of a Trust) of the Trust Act shall not apply to a Specific Purpose Trust.

(Notice of Changes, etc.)

Article 270 In the cases set forth in paragraph (5) of the preceding Article, if the Fiduciary Trust Company, etc. has made a change to the Specific Purpose Trust Contract with regard to particulars stated or recorded in the Asset Trust

Securitization Plan, it must, without delay, notify each Beneficiary Certificate Holder to that effect or, pursuant to the provisions of a Cabinet Office Ordinance, give public notice thereof.

(Dissenting Beneficiary Certificate Holders' Right to Demand Purchase)

- Article 271 (1) In cases where a change is made to the Specific Purpose Trust Contract with regard to particulars stated or recorded in the Asset Trust Securitization Plan pursuant to the provisions of Article 269 (1) (limited to the case set forth in item (i)), a Beneficiary Certificate Holder who notifies the Fiduciary Trust Company, etc. of their dissent to the change prior to the Beneficiary Certificate Holders' Meeting where the resolution to approve the change is to be adopted and who dissents to said change at said Beneficiary Certificate Holders' Meeting may demand that said Fiduciary Trust Company, etc. purchase their beneficial interest at a fair price which would have been given for said beneficial interest if the relevant change had not been made.
- (2) When a Fiduciary Trust Company, etc. purchases a beneficial interest pursuant to the provisions of the preceding paragraph, the consideration for the purchase and any other costs required for the purchase shall be borne by the Fiduciary Trust Company, etc. as costs to be borne in relation to the trust property.
- (3) In the case set forth in the preceding paragraph, if neither a provision under the Specific Purpose Trust Contract nor a resolution at a Beneficiary Certificate Holders' Meeting has been made in advance with regard to the method of disposition of the beneficial interest purchased, the beneficial interest purchased shall be extinguished.
- (4) The provisions of Article 103 (4) to (8) inclusive (Demand for the Acquisition of a Beneficial Interest), Article 104 (Valuation of a Beneficial Interest, etc.), Article 262 (excluding paragraph (5)) (Jurisdiction over Non-Contentious Cases Concerning Trusts), Article 263 (Special Provisions on Procedure in Non-Contentious Cases Concerning Trusts), and Article 264 (Supreme Court Rules) of the Trust Act shall apply mutatis mutandis to the demand that a beneficial interest be purchased as set forth in paragraph (1). In this case, the term "Material Change to the Trust, etc." in Article 103 (4) of that Act shall be deemed to be replaced with "a change to the Specific Purpose Trust Contract with regard to particulars stated or recorded in the Asset Trust Securitization Plan pursuant to the provisions of Article 269 (1) (limited to the case set forth in item (i)) of the Act on Securitization of Assets (hereinafter referred to as the "Asset Securitization Act")," the term "beneficiaries" in that paragraph shall be deemed to be replaced with "Beneficiary Certificate Holder prescribed in Article 271 (1) of the Asset Securitization Act," the phrase "public notice in an official gazette" in paragraph (5) of that Article shall be deemed to be replaced

with "public notice," the phrase "paragraph (1) or paragraph (2)" in paragraph (5) of that Article shall be deemed to be replaced with "Article 271 (1) of the Asset Securitization Act," the phrase "details of the beneficial interest" in that paragraph shall be deemed to be replaced with "Share of Principal (in cases where multiple classes of beneficial interest are provided for, the classes of beneficial interest and the Share of Principal relating to each class)," the term "Material Change to the Trust, etc." in paragraph (8) of that Article shall be deemed to be replaced with "a change to the Specific Purpose Trust Contract with regard to particulars stated or recorded in the Asset Trust Securitization Plan pursuant to the provisions of Article 269 (1) (limited to the case set forth in item (i)) of the Asset Securitization Act," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (5) The provisions of Chapter IV, Section 2, Subsection 4 (Right to Demand the Acquisition of a Beneficial Interest) of the Trust Act shall not apply to Specific Purpose Trusts.

(Special Provisions on Beneficial Interest of Any Class with No Share of Principal)

Article 272 (1) In cases where beneficial interest is divided into beneficial interest including a class(es) with no Share of Principal under the Specific Purpose Trust Contract, when making a change to the Specific Purpose Trust Contract with regard to particulars stated or recorded in the Asset Trust Securitization Plan pursuant to the provisions of Article 269 (1) (limited to the case set forth in item (i)), approval must be obtained at the Class Beneficiary Certificate Holders' Meeting (limited to those pertaining to beneficial interest of classes with no Share of Principal) in addition to the resolution for approval made at the Beneficiary Certificate Holders' Meeting.

- (2) The provisions of Article 269 (3) and (4) and the preceding Article shall apply mutatis mutandis to a Beneficiary Certificate Holders' Meeting in which the resolution for approval set forth in the preceding paragraph is made. In this case, the term "Share of Principal" in Article 269 (4) shall be deemed to be replaced with "Share of Interest" and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Fiduciary Trust Company, etc. Exemption from Liability)

Article 273 (1) Exemption from Liability in regard to the Fiduciary Trust Company, etc., its director or executive officer, or any person equivalent thereto shall be made by resolution at a Beneficiary Certificate Holders' Meeting.

- (2) The resolution at a Beneficiary Certificate Holders' Meeting set forth in the preceding paragraph shall be made by the unanimous consent of the

Beneficiary Certificate Holders. In this case, the provisions of Article 244 (3) shall not apply.

(Resignation and Dismissal of a Fiduciary Trust Company, etc.)

Article 274 (1) Consent to the resignation of a Fiduciary Trust Company, etc. shall be given by resolution at a Beneficiary Certificate Holders' Meeting.

(2) If there is any misconduct or material facts in violation of laws and regulations or the Specific Purpose Trust Contract on the part of a Fiduciary Trust Company, etc. in connection with the execution of its duties, the court may dismiss said Fiduciary Trust Company, etc. upon receiving a request issued by resolution at a Beneficiary Certificate Holders' Meeting.

(3) With regard to application of the provisions of the preceding paragraph in cases where a Fiduciary Trust Company, etc. fails to renew the registration set forth in Article 7 (3) of the Trust Business Act (including the cases where it is applied mutatis mutandis pursuant to Article 54 (2) of that Act), in cases where the license set forth in Article 3 of that Act is rescinded pursuant to the provisions of Article 44 (1) of that Act, in cases where the registration set forth in Article 7 (1) of that Act is rescinded pursuant to the provisions of Article 45 (1) of that Act, in cases where the license set forth in Article 53 (1) of that Act is rescinded pursuant to the provisions of Article 59 (1) of that Act, in cases where the registration set forth in Article 54 (1) of said Act is rescinded pursuant to the provisions of Article 60 (1) of that Act, or in cases where the authorization set forth in Article 1 (1) of the Act on Provision of Trust Business by Financial Institutions is rescinded pursuant to the provisions of Article 10 of that Act, the phrase "resolution at a Beneficiary Certificate Holders' Meeting" in the preceding paragraph shall be deemed to be replaced with "resolution at a Beneficiary Certificate Holders' Meeting or by the Prime Minister."

(4) The provisions of Article 49 (excluding paragraph (1)) of the Trust Business Act shall apply mutatis mutandis to the cases set forth in the preceding paragraph.

(5) The provisions of Article 269 (4) shall apply mutatis mutandis to the resolution made at a Beneficiary Certificate Holders' Meeting set forth in paragraph (1), and the provisions of Article 262 (excluding paragraph (5)) (Jurisdiction over Non-Contentious Cases Concerning Trusts) of the Trust Act shall apply mutatis mutandis to cases of dismissal under the provisions of paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to paragraph (3)). In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

Article 275 (1) In cases where a Fiduciary Trust Company, etc. resigns or is

dismissed, the Trust Company, etc. that served as said Fiduciary Trust Company, etc. (hereinafter referred to as the "Former Fiduciary Trust Company, etc." in this Article) shall, without delay, prepare an inventory of assets and a balance sheet pertaining to the trust property, and shall gain approval thereof at a Beneficiary Certificate Holders' Meeting. In this case, with regard to application of the provisions of Article 77 (2) of the Trust Act, the phrase "a beneficiary (in cases where there is a trust administrator, the trust administrator; the same shall apply in the following paragraph) approves the Accounting set forth in the preceding paragraph" in that paragraph shall be deemed to be replaced with "approval of the inventory of assets and balance sheet set forth in Article 275 (1) of the Act on Securitization of Assets is gained at the Beneficiary Certificate Holders' Meeting."

- (2) The training of a successor to trust affairs by a Former Fiduciary Trust Company, etc. must be carried out in the presence of a Representative Beneficiary Certificate Holder if there is a Representative Beneficiary Certificate Holder, and in the presence of a person specified by resolution at a Beneficiary Certificate Holders' Meeting if there is no Representative Beneficiary Certificate Holder.
- (3) A Former Fiduciary Trust Company, etc. must keep the documents set forth in paragraph (1) at its head office from one week prior to the date of a Beneficiary Certificate Holders' Meeting on the approval set forth in that paragraph.
- (4) The provisions of Article 244 (3) shall not apply to a Beneficiary Certificate Holders' Meeting on the approval set forth in paragraph (1).
- (5) The provisions of Article 442 (3) (Keeping and Inspection of Financial Statements, etc.) of the Companies Act shall apply mutatis mutandis to the inventory of assets and the balance sheet set forth in paragraph (1). In this case, the phrase "The shareholders and creditors" in paragraph (3) of that Article shall be deemed to be replaced with "The Beneficiary Certificate Holders and creditors pertaining to the borrowing of funds made by the Trust Company, etc. which served as the Fiduciary Trust Company, etc. for processing affairs relating to the Specific Purpose Trust," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Resolution to Terminate a Specific Purpose Trust Contract)

- Article 276 (1) A Specific Purpose Trust Contract may be terminated by resolution at a Beneficiary Certificate Holders' Meeting.
- (2) The provisions of Article 269 (4) shall apply mutatis mutandis to the resolution set forth in the preceding paragraph.
  - (3) The provisions of Article 164 (Termination of a Trust by Agreement between the Settlor and Beneficiaries, etc.) of the Trust Act shall not apply to a Specific

## Purpose Trust.

### (Judicial Decision Ordering Termination of a Specific Purpose Trust)

Article 277 (1) In the following cases, where there are unavoidable reasons, a Beneficiary Certificate Holder holding one-tenth or more of a Share of Principal may, notwithstanding the provisions of paragraph (1) of the preceding Article, file a claim with the court for the termination of the Specific Purpose Trust:

- (i) in cases where the Fiduciary Trust Company, etc. faces extreme difficulty in the implementation of trust affairs and is causing or is likely to cause irreparable harm to the trust property; or
  - (ii) in cases where the administration or disposition of the trust property by the Fiduciary Trust Company, etc. is extremely inappropriate and is causing or is likely to cause irreparable harm to the trust property.
- (2) The provisions of Article 835 (1) (Jurisdiction over and Transfer of an Action) and Article 846 (Order to Provide Security) of the Companies Act shall apply mutatis mutandis to the claim set forth in the preceding paragraph. In this case, any necessary technical replacement of terms shall be specified by Cabinet Order.

### (Causes for the Termination of a Specific Purpose Trust Contract)

Article 278 Specific Purpose Trust Contracts shall be terminated on any of the following grounds:

- (i) the occurrence of any of the grounds listed in the items of Article 163 (Grounds for Termination of a Trust) of the Trust Act;
- (ii) a resolution at a Beneficiary Certificate Holders' Meeting as set forth in Article 276;
- (iii) a judicial decision ordering the termination of the Specific Purpose Trust under paragraph (1) of the preceding Article; or
- (iv) the occurrence of any other grounds specified by Cabinet Order.

### (Distribution of Trust Property on the Termination of a Specific Purpose Trust Contract)

- Article 279 (1) In cases where a Specific Purpose Trust Contract is terminated, the Fiduciary Trust Company, etc. must, without delay, dispose of the trust property and distribute the monies gained through said disposition in accordance with the provisions of the Asset Trust Securitization Plan.
- (2) In the cases set forth in the preceding paragraph, the provisions of Article 31 (Restrictions on Acts Involving Conflicts of Interest) of the Trust Act shall not apply.
- (3) The provisions of Article 275 (1), (3), and (4) of this Act and the provisions of

Article 442 (3) (Keeping and Inspection of Financial Statements, Etc.) of the Companies Act shall apply mutatis mutandis to the cases set forth in paragraph (1). In this case, the phrase "the Trust Company, etc. that served as said Fiduciary Trust Company, etc. (hereinafter referred to as the "Former Fiduciary Trust Company, etc." in this Article)" in Article 275 (1) shall be deemed to be replaced with "the Former Fiduciary Trust Company, etc.," the phrase "The shareholders and creditors" in Article 442 (3) of the Companies Act shall be deemed to be replaced with "The Beneficiary Certificate Holders," and any other necessary technical replacement of terms shall be specified by Cabinet Order.

### **Section 6 Rights and Obligations, etc. of a Fiduciary Trust Company, etc.**

(Duty of Loyalty to the Beneficiary Certificate Holders, etc.)

Article 280 (1) A Fiduciary Trust Company, etc. must process trust affairs for the Beneficiary Certificate Holders in a loyal manner in accordance with laws and regulations and the Specific Purpose Trust Contract.

(2) A Fiduciary Trust Company, etc. must process trust affairs with the due care of a prudent manager in accordance with the Specific Purpose Trust Contract.

(Right of a Fiduciary Trust Company, etc. to Claim Reimbursement of Costs)

Article 281 A Fiduciary Trust Company, etc. may, with regard to taxes and other public charges borne in relation to the trust property, obligations pertaining to borrowings of funds made pursuant to the provisions of Article 231, or any other costs, or with regard to compensation for damages incurred while processing trust affairs in the absence of negligence, sell the trust property and exercise its right in preference to other right holders; provided, however, that it may not exercise the right in cases where the exercise of said right would run counter to the purpose of the trust.

(Remuneration of the Fiduciary Trust Company, etc.)

Article 282 (1) A Fiduciary Trust Company, etc. may receive remuneration from the trust property based on the provisions of the Specific Purpose Trust Contract.

(2) The provisions of the preceding Article shall apply mutatis mutandis to the case set forth in the preceding paragraph.

(Public Notice of the Specific Purpose Trust Contract and the Beneficiary Certificate Holder Registry, etc.)

Article 283 (1) A Fiduciary Trust Company, etc. must keep a duplicate or copy of the written contract pertaining to the Specific Purpose Trust Contract at its



head office and at its branch office, and must keep the Beneficiary Certificate Holder Registry at its head office.

- (2) Notwithstanding the provisions of the preceding paragraph, if there is an Administrator of the Beneficiary Certificate Holder Registry, the Administrator of the Beneficiary Certificate Holder Registry must keep the Beneficiary Certificate Holder Registry at their business office.
- (3) A creditor pertaining to the borrowing of funds which the Fiduciary Trust Company, etc. has made in processing trust affairs related to the Specific Purpose Trust, each Beneficiary Certificate Holder, a Representative Beneficiary Certificate Holder, or a Specified Trust Administrator may request to inspect or copy the documents set forth in the preceding two paragraphs at any time during the business hours of the Fiduciary Trust Company, etc. or of the Administrator of the Beneficiary Certificate Holder Registry.

(Entrustment of Business)

- Article 284 (1) In cases where business pertaining to the administration and disposition of the trust property is entrusted, the Fiduciary Trust Company, etc. must entrust such business to the Originator or to a person who has a sufficient financial basis and personnel structure to appropriately carry out the administration and disposition of the trust property.
- (2) In the cases referred to in the preceding paragraph, if the Fiduciary Trust Company, etc. wishes to entrust business pertaining to the sale and purchase, exchange or leasing of Real Property (meaning buildings or building lots prescribed in Article 2 (i) of the Building Lots and Buildings Transaction Business Act) that is trust property, it must entrust such business to a person who does not fall under any of the items of Article 6 of the Real Estate Specified Joint Enterprise Act.
  - (3) The provisions of Article 200 (3) and Article 202 shall apply *mutatis mutandis* to the entrustment set forth in paragraph (1). In this case, any other necessary technical replacement of terms shall be specified by Cabinet Order.

(Subscription for Beneficiary Certificates)

Article 285 In cases where a Fiduciary Trust Company, etc. has conducted an act set forth in Article 2 (8) (vi) of the Financial Instruments and Exchange Act, it must, if it has acquired all of the Beneficiary Certificates, dispose of them at an appropriate time.

(Public Offerings, etc. of Beneficiary Certificates)

Article 286 (1) The provisions of Article 208 (2) and Article 209 shall apply *mutatis mutandis* to a Public Offering, etc. (meaning a Public Offering of Securities or Private Placement of Securities prescribed in Article 2 (3) of the

Financial Instruments and Exchange Act; the same shall apply in the following paragraph) of Beneficiary Certificates by the Originator. In this case, any other necessary technical replacement of terms shall be specified by Cabinet Order.

- (2) Any counterparty to a Public Offering, etc. of Beneficiary Certificates may pay the cost specified under the Specific Purpose Trust Contract and request that the Fiduciary Trust Company, etc. deliver a copy or extract of the written Specific Purpose Trust Contract or any other document specified by a Cabinet Office Ordinance.
- (3) If the request set forth in the preceding paragraph is made, the Fiduciary Trust Company, etc. must respond.
- (4) The provisions of Article 40 (9) shall apply mutatis mutandis to delivery of a transcript or extract of the written contract pertaining to the Specific Purpose Trust Contract or any other document specified by a Cabinet Office Ordinance. In this case, the term "director," "the preceding paragraph," "the Applicant," and "the particulars to be stated in the copy or extract of said Asset Securitization Plan" in that paragraph shall be deemed to be replaced with "Fiduciary Trust Company, etc.," "Article 286 (2) and (3)," "the person to whom Public Offering, etc. of Beneficiary Certificates is made," and "the particulars to be stated in the copy or extract of the written Specific Purpose Trust Contract and any other particulars specified by a Cabinet Office Ordinance," respectively.

## **Section 7 Miscellaneous Provisions**

(Special Provisions on the Real Property Registration Act)

Article 287 With regard to application of the provisions of Article 97 (1) (Particulars to be Registered for Registration of Trust) of the Real Property Registration Act (Act No. 123 of 2004) to Specific Purpose Trusts, the term "a trust administrator" in item (iii) of that paragraph shall be deemed to be replaced with "a Representative Beneficiary Certificate Holder or a Specified Trust Administrator."

(Means of Public Notice)

Article 288 A public notice concerning a Specific Purpose Trust to be made pursuant to the provisions of this Act must be made by the Means of Public Notice (including the period of public notice) used by the Fiduciary Trust Company, etc. (in the case of a public notice made after the termination of duties of the Fiduciary Trust Company, etc. and prior to assumption of duties by a new Fiduciary Trust Company, etc. the former Fiduciary Trust Company, etc.) of said Specific Purpose Trust.

## Part IV Miscellaneous Provisions

(Submission of Materials, etc. to the Minister of Finance)

Article 289 (1) The Minister of Finance may, if they find it necessary for planning or drafting a system pertaining to Asset Securitization in connection with the financial failure resolution system or financial crisis management under their jurisdiction, request that the Prime Minister submit the necessary materials and explanations.

(2) The Minister of Finance may, if they find it particularly necessary for planning or drafting a system pertaining to Asset Securitization in connection with the financial failure resolution system or financial crisis management under their jurisdiction, request that a Specific Purpose Company submit materials, explanations, or provide any other cooperation to the extent necessary.

(Delegation of Authority, etc.)

Article 290 (1) The Prime Minister shall delegate their authority under this Act (excluding that specified by Cabinet Order) to the Commissioner of the Financial Services Agency.

(2) The Commissioner of the Financial Services Agency shall, out of the authority delegated pursuant to the provisions of the preceding paragraph, delegate the following authority to the Securities and Exchange Surveillance Commission (hereinafter referred to as the "Commission"); provided, however, that this shall not preclude the Commissioner of the Financial Services Agency from personally exercising the authority to order reporting or submission of materials:

(i) the authority under the provisions of Article 217 (1) as applied mutatis mutandis pursuant to Article 209 (2) (limited to the authority relating to the provisions specified by Cabinet Order as those for securing fairness in transactions pertaining to handling of Public Offerings, etc. of Asset-Backed Securities); and

(ii) the authority prescribed in Article 217 (1) as applied mutatis mutandis pursuant to Article 209 (2) as applied mutatis mutandis pursuant to Article 286 (1) (limited to the authority relating to the provisions specified by Cabinet Order as those for securing fairness in transactions pertaining to Public Offerings, etc. of Beneficiary Certificates).

(3) The Commissioner of the Financial Services Agency may, out of the authority delegated pursuant to the provisions of paragraph (1) (excluding that delegated by the Commission pursuant to the provisions of the preceding paragraph), delegate the authority under the provisions of Article 217 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 209 (2)

(including the cases where it is applied mutatis mutandis pursuant to Article 286 (1))) to the Commission, pursuant to Cabinet Order provisions.

(4) The Commission shall, when it exercises the authority delegated pursuant to the provisions of the preceding paragraph, promptly report to the Commissioner of the Financial Services Agency on the results thereof.

(5) The Commissioner of the Financial Services Agency may, pursuant to Cabinet Order provisions, delegate a part of the authority delegated pursuant to the provisions of paragraph (1) (excluding the authority delegated by the Commission pursuant to the provisions of paragraph (2) and paragraph (3)) to the Director-General of a Local Finance Bureau or the Director-General of a Local Finance Branch Bureau.

(6) The Commission may, pursuant to Cabinet Order provisions, delegate a part of the authority delegated pursuant to the provisions of paragraph (2) and paragraph (3) to the Director-General of a Local Finance Bureau or the Director-General of a Local Finance Branch Bureau.

(7) The Commissioner shall direct and supervise the Director-General of the Local Finance Bureau or the Director-General of the Local Finance Branch Bureau with regard to affairs pertaining to the authority delegated to the Director-General of the Local Finance Bureau or the Director-General of the Local Finance Branch Bureau pursuant to the provisions of the preceding paragraphs.

(Appeal against an Order by the Commission)

Article 291 An appeal under the Administrative Appeal Act (Act No. 160 of 1962) against an order to report or to submit materials issued by the Commission pursuant to the provisions of paragraph (2) or paragraph (3) of the preceding Article (including the case where such an order is issued by the Director-General of a Local Finance Bureau or the Director-General of a Local Finance Branch Bureau pursuant to the provisions of paragraph (6) of that Article) may only be made against the Commission.

(Delegation to Cabinet Office Ordinance)

Article 292 In addition to what is provided for in this Act, procedures concerning notification under this Act and any other necessary particulars for the enforcement of this Act shall be specified by a Cabinet Office Ordinance.

(Transitional Measures)

Article 293 In cases where an order is enacted or revised based on the provisions of this Act, necessary transitional measures (including transitional measures concerning penal provisions) may be provided for by that order to the extent considered reasonably necessary for such enactment or revision.

## Part V Penal Provisions

Article 294 When any of the violations listed in the following items have occurred, the person who has committed such a violation shall be punished by imprisonment with required labor for up to three years, a fine of up to three million yen, or both:

- (i) when the person has, in violation of Article 4 (1) or Article 11 (1), carried out business pertaining to Asset Securitization without making the relevant notification;
- (ii) when the person has, in violation of Article 7 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 11 (5); hereinafter the same shall apply in this item), issued Asset-Backed Securities without submitting the materials set forth in Article 7 (2) (including Electromagnetic Records specified by a Cabinet Office Ordinance or documents containing the particulars recorded in said Electromagnetic Records in cases where such materials are prepared in the form of Electromagnetic Records);
- (iii) when the person has failed to make a notification, in violation of Article 9 (1);
- (iv) when the person has violated the provisions of Article 195 (1);
- (v) when the person has violated the provisions of Article 196;
- (vi) when the person has, in violation of Article 203, failed to entrust the business prescribed in Article 203 to the person set forth in that Article and has instead personally carried out such business;
- (vii) when the person has administered the affairs related to a Public Offering, etc., in violation of Article 207;
- (viii) when the person has, in violation of Article 208 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 286 (1)), handled a Public Offering, etc. without making a notification;
- (ix) when the person has violated the provisions of Article 39 (1) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 209 (1) (including cases where it is applied mutatis mutandis pursuant to Article 286 (1));
- (x) when the person has, in violation of Article 225 (1), concluded a Specific Purpose Trust Contract without making a notification, or when the person has made a false notification;
- (xi) when the person has failed to make a notification, in violation of Article 227 (1); or
- (xii) when the person has made a false statement or record in the written notification set forth in Article 4 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 11 (5)), the materials listed in the

items of Article 4 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 11 (5)), the Electromagnetic Records set forth in Article 4 (4) (including the cases where it is applied mutatis mutandis pursuant to Article 11 (5)), the materials prescribed in Article 7 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 11 (5)), the written notification set forth in Article 9 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 227 (2)), the documents listed in the items of Article 9 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 227 (2)), the documents set forth in Article 11 (3), or the documents listed in the items of Article 225 (2), and submitted them.

Article 295 When any of the violations listed in the following items have occurred, the person who has committed such violations shall be punished by imprisonment with required labor for up to two years, a fine of up to three million yen, or both:

- (i) when the person has violated the provisions of Article 213 (excluding cases which fall under item (i) or item (iv) of the preceding Article); or
- (ii) when the person has violated the order for suspension of the business in whole or in part issued under Article 219 (including the cases where it is applied mutatis mutandis pursuant to Article 209 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 286 (1))).

Article 296 When any of the violations listed in the following items have occurred, the person who has committed such violation shall be punished by imprisonment with required labor for up to one year, a fine of up to three million yen, or both:

- (i) when the person has failed to prepare or archive books and materials under Article 215, or when the person has prepared false books or materials;
- (ii) when the person has failed to submit business reports under Article 216, or when the person has submitted false business reports; or
- (iii) when the person has failed to submit reports or materials under Article 217 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 298 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 286 (1)); hereinafter the same shall apply in this item), when the person has submitted false reports or materials, or when the person has refused, hindered, or avoided the inspection under Article 217 (1), has failed to answer the questions asked under that paragraph, or has given a false answer.

Article 297 When any of the violations listed in the following item have occurred,

the person who has committed such violation shall be punished by imprisonment with required labor for up to one year, a fine of up to one million yen, or both:

- (i) when the person has violated the provisions of Article 39 (2) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 209 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 286 (1); the same shall apply in the following item); or
- (ii) when the person has made a false statement in the written application or documents set forth in Article 39 (5) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 209 (1) and submitted them.

Article 298 When an order issued under Article 218 has been violated (including the cases where it is applied mutatis mutandis pursuant to Article 209 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 286 (1)), any person who has committed such violation shall be punished by imprisonment with required labor for up to six months or a fine of up to one million yen.

Article 299 When any of the violations listed in the following items have occurred, the person who has committed such violation shall be punished by a fine of up to 500,000 yen:

- (i) when the person has failed to make the notification under Article 10 (1) or Article 228, or when the person has made a false notification;
- (ii) when the person has violated the provisions of Article 211 or Article 214; or
- (iii) when the person has violated the provisions of Article 231 or Article 232.

Article 300 Any person who has failed to deliver documents under Article 37-4 (1) of the Financial Instruments and Exchange Act as applied mutatis mutandis pursuant to Article 209 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 286 (1)) or who has delivered documents containing false statements shall be punished by a fine of up to 300,000 yen.

Article 301 When a representative person of a corporation or an agent, employee, or other worker of a corporation or of an individual has committed any of the violations set forth in Article 294 to the preceding Article inclusive in relation to the business of the corporation or the individual, not only shall the offender be punished but also such corporation or individual shall be punished by the fine prescribed in the respective Articles.

(Crime of Aggravated Breach of Trust by a Director, etc.)

Article 302 (1) When any of the following persons, in the service of their own interests or the interests of a third party or with the aim of inflicting damages on a Specific Purpose Company, commits an act in breach of such persons' duties and causes financial damages to the Specific Purpose Company, such person shall be punished by imprisonment with required labor for up to ten years, a fine of up to 10 million yen, or both:

- (i) an incorporator of a Specific Purpose Company;
- (ii) a Director at Incorporation or Company Auditor at Incorporation of a Specific Purpose Company;
- (iii) a director, accounting advisor, or company auditor of a Specific Purpose Company;
- (iv) a person who is to perform duties on behalf of the director or company auditor of a Specific Purpose Company who was appointed by provisional disposition order under Article 56 of the Civil Provisional Remedies Act (Act No. 91 of 1989);
- (v) a person who is to temporarily perform the duties of an Officer (meaning an officer prescribed in Article 68 (1)) of a Specific Purpose Company who was appointed under Article 76 (2) or a person who is to temporarily perform the duties of a representative director of a Specific Purpose Company who was appointed under Article 351 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 85;
- (vi) a manager of a Specific Purpose Company;
- (vii) an employee who has received a delegation for a certain kind of particular or a specific particular concerning the business of a Specific Purpose Company; or
- (viii) an inspector of a Specific Purpose Company.

(2) The preceding paragraph shall also apply when any of the following persons, in the service of their own interests or the interests of a third party or with the aim of inflicting damages on a Specific Purpose Company in Liquidation, commits an act in breach of such persons' duties and causes financial damages to the Specific Purpose Company in Liquidation:

- (i) a liquidator of a Specific Purpose Company in Liquidation;
- (ii) a person who is to perform duties on behalf of the liquidator of a Specific Purpose Company in Liquidation who was appointed by a provisional disposition order as prescribed in Article 56 of the Civil Provisional Remedies Act;
- (iii) a person who is to temporarily perform the duties of a liquidator or a Representative Liquidator of a Specific Purpose Company in Liquidation who was appointed pursuant to Article 76 (2) as applied mutatis mutandis pursuant to Article 168 (5) or Article 351 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 171 (6);



- (iv) a liquidators' agent of a Specific Purpose Company in Liquidation;
  - (v) a supervisor of a Specific Purpose Company in Liquidation; or
  - (vi) an examiner of a Specific Purpose Company in Liquidation.
- (3) The provisions of paragraph (1) shall also apply when any of the following persons, in the service of their own interests or the interests of a third party or with the aim of inflicting damages on Beneficiary Certificate Holders of a Specific Purpose Trust, commits an act in breach of such persons' duties and causes financial damages to the Beneficiary Certificate Holder:
- (i) a director or executive officer of a Fiduciary Trust Company, etc.;
  - (ii) a manager of a Fiduciary Trust Company, etc.;
  - (iii) an employee who has received a delegation for a certain kind of particular or a specific particular concerning the business of a Fiduciary Trust Company, etc.; or
  - (iv) a person who has been entrusted with business pursuant to the provisions of Article 284 (in cases where such person is a corporation, its director, executive officer, manager, or other employee who has been entrusted with a certain kind of particular or a specific particular concerning business).
- (4) Any attempt to commit the crimes set forth in the preceding three paragraphs shall be punished.

(Crime of Aggravated Breach of Trust by a Representative Specified Bondholder, etc.)

- Article 303 (1) In cases where a representative Specified Bondholder or Resolution Administrator (meaning a Resolution Administrator as set forth in Article 737 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 129 (2); the same shall apply hereinafter) of a Specific Purpose Company, in the service of their own interests or the interests of a third party or with the aim of inflicting damages on Specified Bondholders, commits an act in breach of their duties and causes financial damages to Specified Bondholders, they shall be punished by imprisonment with required labor for up to five years, a fine of up to five million yen, or both.
- (2) The preceding paragraph shall also apply when the Representative Beneficiary Certificate Holder or a Specified Trust Administrator of a Specific Purpose Trust or the person specified by a resolution made at a Beneficiary Certificate Holders' Meeting under Article 246 (1), in the service of their own interests or the interests of a third party or with the aim of inflicting damages on the Beneficiary Certificate Holder of a Specific Purpose Trust, commits an act in breach of their duties and causes financial damages to the Beneficiary Certificate Holder.
- (3) Any attempt to commit the crimes set forth in the preceding two paragraphs shall be punished.

(Crimes that Put the Property, etc. of a Specific Purpose Company at Risk)

Article 304 (1) When the person set forth in Article 302 (1) (i) or (ii) makes a false statement or conceals facts from the court with regard to the particulars listed in the items of Article 16 (3) or the payment or delivery under Article 19 (1), such person shall be punished by imprisonment with required labor for up to five years, a fine of up to five million yen, or both.

(2) The preceding paragraph shall also apply when the persons set forth in Article 302 (1) (iii) to (v) inclusive make a false statement or conceal facts from the court or a general meeting of members with regard to the particulars listed in Article 36 (1) (iii).

(3) The provision of paragraph (1) shall also apply when an inspector makes a false statement or conceals facts from the court with regard to the particulars listed in the items of Article 16 (3) or Article 36 (1) (iii).

(4) The provisions of paragraph (1) shall also apply when the persons set forth in Article 302 (1) (iii) to (vii) inclusive fall under any of the following cases:

(i) in cases where a reduction in the Amount of Preferred Capital or cancellation of Preferred Equity is effected by approval granted at a general meeting of members under Article 159, when the person makes a false statement or conceals facts at the general meeting of members of a Specific Purpose Company with regard to the amount of net assets stated on the balance sheet set forth in paragraph (1) of that Article;

(ii) when the person, under any name, unlawfully acquires Specified Equity or Preferred Equity from a Specific Purpose Company on the account of such Specific Purpose Company or receives such Specified Equity or Preferred Equity as the subject of a pledge;

(iii) when the person, in violation of laws and regulations, the provisions of the articles of incorporation, or the Asset Securitization Plan, effects a distribution of profits, a distribution of monies under Article 115 (1), or the cancellation of Specified Equity or Preferred Equity; or

(iv) when the person disposes of the property of the Specific Purpose Company for the purpose of speculative trading outside the scope of purpose of the Specific Purpose Company.

(5) The provisions of paragraph (1) shall also apply when the director, executive officer, or manager of a Fiduciary Trust Company, etc. or other employee who has received a delegation for certain kinds of particulars or for specific particulars concerning the business thereof falls under any of the following items:

(i) when such person has distributed monies in violation of the provisions of laws and regulations or the Asset Trust Securitization Plan; or

(ii) when such person has disposed of Specific Purpose Trust property for the

purpose of speculative trading outside the scope of the Specific Purpose Trust Contract.

(Crime of Use of False Documents, etc.)

Article 305 (1) When any of the following persons, in soliciting persons to subscribe for Asset-Backed Securities, uses materials containing explanations about the business of a Specific Purpose Company or other particulars, advertisements for such solicitation, or any other documents concerning such solicitation that contain false statements on important particulars, or in cases where Electromagnetic Records have been prepared in lieu of the preparation of such documents, uses such Electromagnetic Records that contain false statements on important particulars for the administration of such solicitation, such person shall be punished by imprisonment with required labor for up to five years, a fine of up to five million yen, or both:

- (i) the persons listed in Article 302 (1) (iii) to (vii) inclusive; or
- (ii) the person who has been entrusted with the solicitation of persons to subscribe for Asset-Backed Securities.

(2) The provisions of the preceding paragraph shall also apply when the person who engages in the secondary distribution of Asset-Backed Securities uses documents concerning such secondary distribution that contain false statements on important particulars, or in cases where Electromagnetic Records are prepared in lieu of the preparation of such documents, uses such Electromagnetic Records that contain false statements on important particulars for the administration of such secondary distribution.

(Crime of the Borrowing and Depositing of Monies)

Article 306 When any of the persons listed in Article 302 (1) (i) to (vii) inclusive borrow and deposit monies for disguising a payment related to the issuance of Specified Equity or Preferred Equity, such person shall be punished by imprisonment with required labor for up to five years, a fine of up to five million yen, or both. The same shall apply to any persons who accept the borrowing and depositing of monies.

(Crime of Excessive Issuance, etc.)

Article 307 When any of the following persons issues Asset-Backed Securities other than those stated or recorded in the Asset Securitization Plan related to the notification under Article 4 (1) or Article 11 (1), or issues Asset-Backed Securities exceeding the total number of units, the total amount or the limit amount for the issuance of Asset-Backed Securities stated or recorded in the Asset Securitization Plan, such person shall be punished by imprisonment with required labor for up to five years or a fine of up to five million yen:

- (i) a director of a Specific Purpose Company or a liquidator of a Specific Purpose Company in Liquidation;
- (ii) the person who is to perform duties on behalf of the director of a Specific Purpose Company or the liquidator of a Specific Purpose Company in Liquidation who was appointed by a provisional disposition order under Article 56 of the Civil Provisional Remedies Act; or
- (iii) the person who is to temporarily perform the duties of an Officer of a Specific Purpose Company or the person who is to perform the duties of a liquidator of a Specific Purpose Company in Liquidation who was appointed under Article 76 (2) (including cases where it is applied mutatis mutandis pursuant to Article 168 (5)).

(Crime of Bribery of the Directors, etc.)

Article 308 (1) When any of the following persons accepts, solicits, or promises to accept property benefits in connection with their duties in response to a wrongful request, such person shall be punished by imprisonment with required labor for up to five years or a fine of up to five million yen:

- (i) the persons listed in the items of Article 302 (1) or the items of Article 302 (2);
  - (ii) the person prescribed in Article 303 (1); or
  - (iii) an accounting auditor of a Specific Purpose Company, or a person who is to temporarily perform the duties of accounting auditor appointed under the provisions of Article 76 (4).
- (3) Any person who has given, offered, or promised the benefit set forth in the preceding paragraph shall be punished by imprisonment with required labor for up to three years or a fine of not more than three million yen.

(Crime of Bribery in Relation to the Exercising of a Right of a Member, etc.)

Article 309 (1) Any person who has received, solicited, or promised to receive property benefits in connection with the following particulars in response to a wrongful request shall be punished with imprisonment with required labor for up to five years or a fine of up to five million yen:

- (i) a statement of opinions or exercise of voting rights at a general meeting of members, Specified Bondholders Meeting or Creditors' Meeting of a Specific Purpose Company;
- (ii) exercise of the rights of members prescribed in Article 36 (5), Article 42 (5), Article 210 of the Companies Act as applied mutatis mutandis pursuant to Article 138 (1) or Article 147 (1), Article 53 (1) or (2), Article 297 (4) of the Companies Act as applied mutatis mutandis pursuant to Article 53 (5), Article 57 (1) to (3) inclusive, Article 58 (1), Article 81 (1), Article 82 (including the cases where it is applied mutatis mutandis pursuant to Article

- 170 (3)), Article 83 (including the cases where it is applied mutatis mutandis pursuant to Article 170 (3)), Article 100 (1), or Article 168 (4), exercise of a right of a member or creditor prescribed in Article 180 (2) of this Act or in Article 522 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 180 (4) or exercise of a right of a creditor prescribed in Article 547 (1) or (3) of the Companies Act as applied mutatis mutandis pursuant to Article 180 (4);
- (iii) exercise of a right of a Specified Company Bondholder who holds Specified Equity of not less than one-tenth of the total amount of Specified Equity (excluding the amount of Specified Equity that has been redeemed);
  - (iv) filing an action prescribed in this Act or the Companies Act as applied mutatis mutandis pursuant to this Act (limited to an action filed by the members, creditors, or persons who hold convertible Specified Bonds or Specified Bonds with Preferred Equity Subscription Rights of a Specific Purpose Company);
  - (v) a member's intervention in an action under the provisions of Article 849 (1) of the Companies Act as applied mutatis mutandis pursuant to this Act;
  - (vi) statement of opinions or exercise of voting rights at a Beneficiary Certificate Holders' Meeting or Class Beneficiary Certificate Holders' Meeting of a Specific Purpose Trust;
  - (vii) exercise of a right of a Beneficiary Certificate Holder who holds a Share of Principal of not less than one-tenth of the beneficial interest of a Specific Purpose Trust;
  - (viii) exercise of the right prescribed in Article 44 of the Trust Act as applied mutatis mutandis pursuant to Article 260 (5); or
  - (ix) exercise of the right set forth in Article 262.
- (2) The provisions of the preceding paragraph shall also apply to a person who has given, offered, or promised to give the benefits set forth in that paragraph.

(Confiscation and Collection of Equivalent Value)

Article 310 In the case referred to in Article 308 (1) or paragraph (1) of the preceding Article, the benefits accepted by the offender shall be confiscated. When it is impossible to confiscate such benefits in whole or in part, an amount of equivalent value thereto shall be collected.

(Crime of the Giving of Benefits in Relation to the Exercising of the Rights, etc. of Members, etc.)

Article 311 (1) When any of the persons listed in Article 302 (1) (iii) to (vi) inclusive or any other employee of a Specific Purpose Company gives property benefits on the account of said Specific Purpose Company in connection to a member of a Specific Purpose Company exercising their rights or in connection

to a holder of a Specified Promissory Note or a creditor pertaining to Specific Borrowings exercising their rights (limited to the exercise of a right prescribed in Article 64 (1) or Article 82 of this Act, or Article 828, paragraph (1) (limited to the portion pertaining to item (v)) and paragraph (2) (limited to the portion pertaining to item (v)) of the Companies Act as applied mutatis mutandis pursuant to Article 112; such exercise of a right shall be referred to as the "Exercise of a Right of a Member, etc." in paragraph (4)), such persons shall be punished by imprisonment with required labor for up to three years or a fine of up to three million yen.

- (2) The provisions of the preceding paragraph shall also apply when any of the persons listed in Article 302 (3) (i) or (ii) or any other employee of a Fiduciary Trust Company, etc. gives property benefits on the account of a Specific Purpose trust property in relation to exercise of a right of a Beneficiary Certificate Holder.
- (3) The provision of paragraph (1) shall also apply to a person who has knowingly accepted the benefits set forth in the preceding two paragraphs or caused such benefits to be given to a third party.
- (4) The provisions of paragraph (1) shall also apply to a person who has requested that any of the persons listed in paragraph (1) give them or a third party the benefits set forth in that paragraph on the account of a Specific Purpose Company in relation to the Exercise of a Right of a Member, etc. of a Specific Purpose Company.
- (5) The provisions of paragraph (1) shall also apply to a person who has requested that the person set forth in paragraph (2) give them or a third party the benefits set forth in paragraph (2) on the account of Specific Purpose trust property in relation to exercise of a right of a Beneficiary Certificate Holder.
- (6) When a person who has committed the crimes set forth in the preceding three paragraphs has intimidated the persons listed in paragraph (1) or paragraph (2) with regard to committing such crimes, the former shall be punished by imprisonment with required labor for up to five years or a fine of up to five million yen.
- (7) A person who has committed the crimes set forth in paragraph (3) to the preceding paragraph may be punished by the cumulative imposition of both imprisonment with required labor and a fine in light of the circumstances.
- (8) When a person who has committed the crimes set forth in paragraph (1) or paragraph (2) has personally surrendered to the authorities, their punishment may be reduced or they may be exempted from such punishment.

(Crime Committed Outside Japan)

Article 312 (1) The crimes set forth in Article 302 to Article 304 inclusive, Article 306, Article 307, Article 308 (1), Article 309 (1), and paragraphs (1) and

(2) of the preceding Article shall also apply to persons who have committed those crimes outside Japan.

(2) The crimes set forth in Article 308 (2), Article 309 (2) and paragraphs (3) to (6) inclusive of the preceding Article shall be governed by Article 2 of the Penal Code.

(Application of the Penal Provisions to Corporations)

Article 313 In cases where the person prescribed in Article 302 (1) or (2), Article 303 (1), Article 304 (1) to (4) inclusive, Article 305 to Article 307 inclusive, or Article 308 (1) is a corporation, these provisions and the provisions of Article 302 (4) and Article 303 (3) shall apply to the director, executive officer, or any other officer executing business, or to the manager who has committed such acts.

(Crime of Making False Statements, etc.)

Article 314 Any person who has, in violation of the provisions of Article 955 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 194 (4), failed to state or record the particulars specified by an Ordinance of the Ministry of Justice with regard to the Electronic Public Notice Investigation prescribed in Article 955 (1) of that Act in the Investigation Record Book, etc. (meaning the Investigation Record Book as prescribed in Article 955 (1) of that Act; hereinafter the same shall apply in this Article) or who has made a false statement or record therein, or has failed to archive the Investigation Record Book, etc., in violation of Article 955 (1) of that Act, shall be punished by a fine of up to 300,000 yen.

(Dual Liability)

Article 315 When a representative person of a corporation or an agent, employee, or other worker of a corporation or of an individual has committed the violations set forth in the preceding Article in relation to the business of such corporation or individual, not only the offender but also the corporation or individual shall be subject to the punishment set forth in the preceding Article.

(Acts Subject to a Non-Criminal Fine)

Article 316 (1) When an incorporator, a Director at Establishment, a Company Auditor at Establishment, a director, an accounting advisor or member who is to perform the duties thereof, a company auditor, an accounting auditor or member who is to perform the duties thereof, a liquidator, a liquidator's agent, a director appointed by a provisional disposition order under Article 56 of the Civil Provisional Remedies Act, a person to perform the duties on behalf of a company auditor or representative director, a person to temporarily perform

the duties of director, accounting advisor, company auditor or representative director as prescribed in Article 302 (1) (v), a person to temporarily perform the duties of liquidator or Representative Liquidator as prescribed in Article 302 (2) (iii), a person to temporarily perform the duties of accounting auditor as prescribed in Article 308 (1) (iii), an inspector, a supervisor, an examiner, the Administrator of a Specified Equity Member Registry or Administrator of a Preferred Equity Member Registry, the Administrator of the Specified Bond Registry, the Specified Bond Administrator, the Specified Bond Administrator to succeed to the administration of Specified Bonds, the Representative Specified Bondholder or Resolution Administrator, the trustee of a Specific Purpose Trust, the Representative Beneficiary Certificate Holder for a Beneficiary Certificate Holders' Meeting, the Specified Trust Administrator or person specified by a resolution made at a Beneficiary Security Holders' Meeting under the provisions of Article 246 (1) of a Specific Purpose Company falls under any of the following items, such person shall be subject to a non-criminal fine of up to one million yen; provided, however that this shall not apply when such acts should be made subject to a criminal punishment:

- (i) when the person fails to complete the registration under the provisions of Part II, Chapter II (including the provisions of the Companies Act as applied mutatis mutandis pursuant to the provisions of that Chapter; hereinafter the same shall apply in this Article);
- (ii) when the person fails to give the public notice or notice under the provisions of Part II, Chapter II or under Part III, Chapter III (including the provisions of the Companies Act as applied mutatis mutandis pursuant to the provisions of Part III, Chapter III; hereinafter the same shall apply in this Article) or gives improper public notice or notice;
- (iii) when the person fails to disclose the particulars under the provisions of Part II, Chapter II;
- (iv) when the person, in violation of the provisions of Part II, Chapter II or of Part III, Chapter III, refuses to allow the inspection or copying of the documents or anything that indicates the particulars recorded in the Electromagnetic Records by the method specified by a Cabinet Office Ordinance, to deliver a copy thereof, to provide particulars recorded in the Electromagnetic Records by Electromagnetic Means, or to deliver documents stating such particulars, without justifiable grounds;
- (v) when the person obstructs an investigation carried out under the provisions of Part II, Chapter II;
- (vi) when the person, with regard to the particulars specified by the provisions of Part II, Chapter II or Chapter IV or the provisions of Part III, Chapter III, makes a false statement or conceals facts from a government agency, or does so at a general meeting of members or general meeting referred to in Article



- 66 (1), at a Specified Company Bondholders Meeting, at a Beneficiary Certificate Holders' Meeting, or at a Class Beneficiary Certificate Holders' Meeting;
- (vii) when the person fails to state or record the particulars to be stated or recorded in the articles of incorporation, the Specified Equity Member Registry, the Preferred Equity Member Registry, the Beneficiary Certificate Holder Registry, the minutes, the inventory of assets, the accounting books, the balance sheet, the profit and loss statement, the business report, the administrative report, the annexed detailed statements prescribed in Article 102 (2) or Article 177 (1), the accounting advisor's report, the audit report, the accounting audit report, the statement of accounts, the proposal concerning the appropriation of profits or disposition of losses, the annexed detailed statements set forth in Article 264 (1), the reports set forth in Article 264 (iii), the documents set forth in Article 122 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 28 (3), Article 149 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 32 (6) or the provisions of Article 682 (1) or Article 695 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 125;
- (viii) when the person fails to keep books, documents, or Electromagnetic Records, in violation of the provisions of Article 63 (2), Article 105 (1) or (2) (including the cases where it is applied mutatis mutandis pursuant to Article 105 (3)), Article 264 (3) or (4), Article 275 (3) (including the cases where it is applied mutatis mutandis pursuant to Article 279 (3)) or Article 283 (1) or (2) of this Act or the provisions of Article 31 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 16 (6), Article 125 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 28 (3) or Article 43 (3), Article 311 (3) of the Companies Act as applied mutatis mutandis pursuant to Article 61, Article 65 (2), or Article 245 (2) (including the cases where it is applied mutatis mutandis pursuant to Article 253), Article 310 (6) of the Companies Act as applied mutatis mutandis pursuant to Article 65 (1), Article 312 (4) of the Companies Act as applied mutatis mutandis pursuant to Article 65 (2), Article 318 (2) or (3) of the Companies Act as applied mutatis mutandis pursuant to Article 65 (3), Article 378 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 86 (2), Article 731 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 129 (2) or Article 249 (including the cases where it is applied mutatis mutandis pursuant to Article 253), Article 496 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 177 (3), Article 684 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 125;
- (ix) when the person transfers the right to become a Specified Equity Member of a Specified Equity Issued at Incorporation in violation of Article 20;

- (x) when the person, in violation of Article 34 (6) or Article 46 (2), fails to dispose of Specified Equity or the pledge thereof, to take procedures for loss of effect of Preferred Equity or to dispose of Preferred Equity or the pledge thereof;
- (xi) when the person issues securities payable to order or those in bearer form with regard to Specified Equity, in violation of Article 37;
- (xii) when the person, in violation of Article 40 (1), Article 122 (1), Article 133 (1) or Article 141 (1), fails to notify or gives false notice of the particulars set forth in those provisions to the person who intends to apply to subscribe for Preferred Equity for Subscription or Specified Bonds for Subscription;
- (xiii) when the person fails to issue Preferred Equity Securities or Specified Bond Certificates without delay, in violation of Article 48 (1) of this Act, Article 215 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 48 (3), or Article 696 of the Companies Act as applied mutatis mutandis pursuant to Article 125;
- (xiv) when the person issues Preferred Equity Securities in violation of Article 48 (2);
- (xv) when the person fails to state the particulars to be stated on Preferred Equity Securities, Specified Bond Certificates, Preferred Equity Subscription Warrants, or Beneficiary Certificates, or makes a false statement thereon;
- (xvi) when the person fails to call a general meeting of members, in violation of the order issued by the court under the provisions of Article 52 (1) of this Act, Article 307 (1) (i) of the Companies Act as applied mutatis mutandis pursuant to Article 58 (2), Article 359 (1) (i) of the Companies Act as applied mutatis mutandis pursuant to Article 81 (2);
- (xvii) when, in cases where a request has been made under Article 57 (1) (including the cases where it is applied mutatis mutandis pursuant to Article 66 (3)), the person fails to include the particulars pertaining to such request as a subject for the general meeting of members or the general meeting set forth in Article 66 (1);
- (xviii) when the person fails to explain the particulars on which the members or Beneficiary Certificate Holders have requested an explanation at a general meeting of members, a general meeting set forth in Article 66 (1), a Beneficiary Certificate Holders' Meeting or Class Beneficiary Certificate Holders' Meeting, without justifiable grounds;
- (xix) when, in cases where there is a shortfall in the number of directors, accounting advisors, company auditors, or accounting auditors specified in this Act or the articles of incorporation, the person fails to carry out the procedures for appointing a person to assume such position (including the appointment of a person to temporarily perform the duties of accounting auditor);

- (xx) when, in cases where a request under Article 344 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 77 (2) has been made, the person fails to include the particulars pertaining to such request or to submit proposals pertaining to such request at a general meeting of members;
  - (xxi) when the person reduces the Amount of Specified Capital or the Amount of Preferred Capital in violation of Article 111 (2) or (4);
  - (xxii) when the person fails to incorporate the Reduction Surplus set forth in Article 113 into the Preferred Capital in violation of Article 113;
  - (xxiii) when the person issues Specified Equity in violation of Article 126 or fails to designate the Specified Bond Administrator to succeed to the administration of Specified Bonds, in violation of Article 714 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 127 (8);
  - (xxiv) when the person fails to file a petition for the commencement of bankruptcy proceedings, in violation of Article 484 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 170 (3), or fails to file a petition for the commencement of special liquidation, in violation of Article 180 (3);
  - (xxv) when the person inappropriately fixes the period set forth in Article 499 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 179 (1) for the purpose of delaying the completion of liquidation;
  - (xxvi) when the person's performance of obligations is in violation of Article 500 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 179 (1) or Article 537 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 180 (4);
  - (xxvii) when the person distributes the property of a Specific Purpose Company in Liquidation in violation of Article 502 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 179 (1);
  - (xxviii) when the person violates the provisions of Article 535 (1) or Article 536 (1) of the Companies Act as applied mutatis mutandis pursuant to Article 180 (4)
  - (xxix) when the person violates a temporary restraining order issued under the provisions of Article 540 (1) or (2) or Article 542 of the Companies Act as applied mutatis mutandis pursuant to Article 180 (4);
  - (xxx) when the person fails to request an investigation under Article 941 of the Companies Act, in violation of that Article as applied mutatis mutandis pursuant to Article 194 (4); or
  - (xxxi) when the person distributes monies in violation of Article 265 or Article 279.
- (2) The provisions of the preceding paragraph shall also apply to persons who became directors or company auditors of a Specific Purpose Company in violation of Article 70 (1) (including the cases where it is applied mutatis

mutandis pursuant to Article 72 (2); hereinafter the same shall apply in this paragraph) and to directors or company auditors of a Specific Purpose Company who became a person listed in Article 70 (1) (vii) to (x) inclusive.

Article 317 A person falling under any of the following items shall be subject to a non-criminal fine of up to one million yen:

- (i) a person who fails to make a report, in violation of Article 946 of the Companies Act as applied mutatis mutandis pursuant to Article 194 (4), or who makes a false report;
- (ii) a person who refuses a request listed in the items of Article 951 (2) or the items of Article 955 (2) of the Companies Act as applied mutatis mutandis pursuant to Article 194 (4) without justifiable grounds.

Article 318 A person falling under any of the following items shall be subject to a non-criminal fine of up to one million yen:

- (i) a person who fails to make a notification under Article 12 (1) or who makes a false notification;
- (ii) a person who uses in its name or trade name any term which is likely to mislead people to believe that the person is a Specific Purpose Company, in violation of Article 15 (3); or
- (iii) a person who uses any name or trade name that is likely to mislead people to believe that said person is another Specific Purpose Company, in violation of Article 15 (4).