

# Order on Investor Protection Funds

(Ordinance of the Ministry of Finance No. 125 of November 4, 1998)

Pursuant to the provisions of the Securities and Exchange Act (Act No. 25 of 1948) and the Act on Revision, etc. of Related Acts for the Financial System Reform (Act No. 107 of 1998), and for the purpose of enforcing the Securities and Exchange Act, the Ministerial Ordinance on Investor Protection Funds is established as follows.

(Documents to be Attached to Written Application for Authorization, etc.)

- Article 1 (1) Documents to be specified in Cabinet Office Ordinance and Ordinance of the Ministry of Finance prescribed in Article 79-30, paragraph (2) of the Financial Instruments and Exchange Act (Act No. 25 of 1948; hereinafter referred to as the "Act") shall be the resume and extracts of residence certificate (limited to those stating the registered domicile) of officers or other documents in lieu thereof and a document in which each officer pledges that said officer does not fall under any of Article 29-4, paragraph (1), item (ii), sub-items (a) to (g) inclusive of the Act.
- (2) If the Prime Minister and the Minister of Finance finds it necessary for the purpose of conducting the examination referred to in Article 79-31, paragraph (1) of the Act, the Prime Minister and the Minister of Finance may request the founder to submit reports or materials that will be helpful for said examination.

(Where to Submit Written Application for Authorization)

Article 1-2 A person who intends to obtain an authorization under the provisions of Article 79-30, paragraph (1) of the Act shall submit a written application for authorization to the Prime Minister via the Commissioner of the Financial Services Agency.

(Matters to be Specified in Operational Rules)

Article 2 Matters to be specified in Cabinet Office Ordinance and Ordinance of the Ministry of Finance prescribed in Article 79-51, paragraph (1) of the Act shall be the following matters:

- (i) matters related to acquisition of Claims to Be Compensated (meaning Claims to Be Compensated prescribed in Article 79-56, paragraph (1) of the Act; the same shall apply hereinafter) under the provisions of Article 79-57, paragraph (4) of the Act;
- (ii) matters related to loan of funds under the provisions of Article 79-59, paragraph (1) of the Act;

- (iii) matters related to judicial or extra-judicial acts prescribed in Article 79-60 of the Act;
- (iv) matters related to business for contributing to expeditious refunding of Customer Assets prescribed in Article 79-61 of the Act;
- (v) methods of submission of a customer list under the provisions of Chapter IV, Section 5, Chapter V, Section 3 and Chapter VI, Section 3 of the Act on Special Measures, etc. Concerning Reorganization Proceedings of Financial Institutions, etc. (Act No. 95 of 1996) and other business under these provisions;
- (vi) matters related to entrustment of business under the provisions of Article 79-50, paragraph (1) of the Act; and
- (vii) other matters deemed necessary.

(Evaluation Method of Claims to Be Compensated)

Article 3 (1) The amount calculated pursuant to the provisions of Cabinet Office Ordinance and Ordinance of the Ministry of Finance prescribed in Article 79-56, paragraph (1) of the Act shall be the amount specified in the following items for the categories of cases set forth respectively in those items.

- (i) in cases where Customer Assets pertaining to Claims to Be Compensated (meaning Customer Assets prescribed in Article 79-20, paragraph (3) of the Act; the same shall apply hereinafter) are money: the amount of said Customer Assets
- (ii) in cases where Customer Assets pertaining to Claims to Be Compensated are Securities listed on a Financial Instruments Exchange (meaning Financial Instruments Exchange prescribed in Article 2, paragraph (16) of the Act, including similar markets established in foreign states; hereinafter the same shall apply in this item and Article 4-2, paragraph (1), item (i)): the amount calculated based on the closing prices on said Financial Instruments Exchange on the date that the Investor Protection Fund (hereinafter referred to as "Fund") makes a public notice under the provisions of Article 79-55, paragraph (1) of the Act (if said closing prices do not exist, indicative price quotations published by the Authorized Financial Instruments Business Association (meaning Authorized Financial Instruments Business Association prescribed in Article 2, paragraph (13) of the Act; hereinafter the same shall apply in the following item and Article 4-2, paragraph (1), item (ii)) on the date of said public notice, or the closing prices on said Financial Instruments Exchange on the nearest date prior to the date of said public notice, whichever is specified by the Fund; hereinafter the same in Article 4-2, paragraph (1), item (i))
- (iii) in cases where Customer Assets pertaining to Claims to Be Compensated are Over-the-Counter Traded Securities (meaning Over-the-Counter Traded

Securities prescribed in Article 2, paragraph (8), item (x), sub-item (c) of the Act; hereinafter the same shall apply in this item and Article 4-2, paragraph (1), item (ii)): the amount calculated based on the closing price published by the Authorized Financial Instruments Business Association to which the Over-the-Counter Traded Securities pertaining to said Claims to Be Compensated is registered (when said Over-the-Counter Traded Securities are registered to more than one Authorized Financial Instruments Business Association, the Authorized Financial Instruments Business Association specified by the Fund; hereinafter the same shall apply in this item and Article 4-2, paragraph (1), item (ii)) on the date the Funds makes a public notice under the provisions of Article 79-55, paragraph (1) of the Act (if said closing price does not exist, the closing price published by said Authorized Financial Instruments Business Association on the nearest date prior to the date of said public notice; hereinafter the same shall apply in Article 4-2, paragraph (1), item (ii))

(iv) in cases where Customer Assets pertaining to Claims to Be Compensated are properties other than money and Securities prescribed in the preceding three items: the amount calculated based on the closing price published on the date that the Fund makes a public notice under the provisions of Article 79-55, paragraph (1) of the Act that is deemed as a fair price by the Fund or the equivalent amount calculated by a reasonable method

(2) The amount of money that corresponds to the payment for the sale of Securities pertaining to Margin Transaction prescribed in Article 156-24, paragraph (1) of the Act provided as security for claims pertaining to credit granted to a customer by a Financial Services Provider (meaning Financial Services Provider prescribed in Article 79-20, paragraph (1) of the Act) upon performing said Margin Transaction shall be deducted when calculating the amount of Customer Assets prescribed in item (i) of the preceding paragraph.

(Estimated Amount pertaining to Customer Assets provided as the Subject Matter of Security Interest)

Article 4 The amount estimated pursuant to the provisions of Cabinet Office Ordinance and Ordinance of the Ministry of Finance prescribed in Article 79-57, paragraph (1), item (i) of the Act shall be the amount pertaining to the portion of the amount prescribed in the items of paragraph (1) of the preceding Article that is provided as the subject matter of security interest.

(Estimated Amount of Customer Assets Equivalent to Duplicate Claims to Be Compensated, etc.)

Article 4-2 (1) The amount estimated pursuant to the provisions of Cabinet Office Ordinance and Ordinance of the Ministry of Finance prescribed in

Article 79-57, paragraph (1), item (iii) of the Act shall be the amount specified in the following items for the categories of cases set forth respectively in those items.

- (i) In cases where the Customer Assets pertaining to Claims to Be Compensated include Claims Subject to Compensation prescribed in Article 60, paragraph (1) of the Act on Book-Entry of Company Bonds, Shares, etc. (Act No. 75 of 2001) and Customer Assets equivalent to said Claims to Be Compensated (hereinafter referred to as "Duplicate Claims to Be Compensated" in this Article) are Securities listed on a Financial Instruments Exchange: The amount calculated based on the closing price on said Financial Instruments Exchange on the date that the Fund makes a public notice under the provisions of Article 79-55, paragraph (1) of the Act
  - (ii) In cases where Customer Assets equivalent to Duplicate Claims to Be Compensated are Over-the-Counter Traded Securities: The amount calculated based on the closing price published by the Authorized Financial Instruments Business Association to which the Over-the-Counter Traded Securities pertaining to said Duplicate Claims to Be Compensated is registered on the date that the Fund makes a public notice under the provisions of Article 79-55, paragraph (1) of the Act
  - (iii) In cases where Customer Assets equivalent to Duplicate Claims to Be Compensated are Securities other than the Securities prescribed in the preceding two items: The amount calculated based on the closing price published on the date that the Fund makes a public notice under the provisions of Article 79-55, paragraph (1) of the Act that is deemed as a fair price by the Fund or the equivalent amount calculated by a reasonable method
- (2) The Fund may, when paying the amount payable as prescribed in the case specified in Article 79-57, paragraph (1) of the Act (limited to the case in which the case specified in item (iii) of that paragraph applies), request the trustee of a protective trust contract prescribed in Article 52 of the Act on Book-Entry of Company Bonds, Shares, etc. to provide the following matters after the granting of recognition prescribed in Article 79-54 of the Act:
- (i) When it is found whether Article 60, paragraph (5) of the Act on Book-Entry of Company Bonds, Shares, etc. is applicable, a statement to that effect; and
  - (ii) In cases where Article 60, paragraph (5) of the Act on Book-Entry of Company Bonds, Shares, etc. is applicable, if there is a reduction in the amount of payment pursuant to the provisions of that paragraph, the name and address of the Participant (meaning the Participant prescribed in Article 11, paragraph (2) of that Act) pertaining to said reduction, as well as the amount of said reduction with respect to each of said Participants.

(Accounting Principles)

Article 5 In order to clarify its financial status, the Fund shall account for increases and decreases in its properties and acquisition and transfer thereof as well as its income and expenditure on an accrual basis.

(Establishment of Account Items)

Article 6 The Fund shall conduct accounting by establishing balance sheet account items and profit and loss account items, and if necessary, establishing account items to clarify the calculation process.

(Contents of Budget)

Article 7 The budget of the Fund shall consist of the general budget provisions and an income and expenditure budget.

(General Budget Provisions)

Article 8 General budget provisions shall include comprehensive provisions pertaining to an income and expenditure budget and the provisions related to the matters listed below:

- (i) with regard to acts to assume debt under the provisions of Article 12, a maximum amount of debt associated with each of said acts and the term of payment of each debt as well as necessary reasons therefor;
- (ii) the designation of expenses under the provisions of Article 13, paragraph (2); and
- (iii) in addition to the matters set forth in the preceding items, other matters necessary for the implementation of the budget.

(Income and Expenditure Budget)

Article 9 An income and expenditure budget shall be classified in accordance with the nature of income and the purpose of expenditure.

(Attached Documentation to Budget)

Article 10 When submitting a budget pursuant to the provisions of Article 79-69 of the Act, the Fund shall attach and submit the following documents to the Commissioner of the Financial Services Agency and the Minister of Finance; provided, however, that when the Fund changes the budget pursuant to the provisions of the second sentence of the same Article, the document prescribed in item (i) is not required to be attached:

- (i) a projected balance sheet and projected income statement for the previous business year;
- (ii) a projected balance sheet and projected income statement for the current business year; and

(iii) in addition to those set forth in the preceding two items, any documents that serve as a reference for said budget.

(Contingency Fund)

Article 11 The Fund may provide contingency funds within an income and expenditure budget in order to compensate for possible deficiency in expenditure budget for unforeseeable reasons.

(Act to Assume Debts)

Article 12 The Fund may act to assume debts within the scope of the expenditure budget and, if it is necessary to conduct its business, may act to assume debts within the scope of the amount of budget submitted to the Commissioner of the Financial Services Agency and the Minister of Finance for every business year.

(Diversion of Budgeted Funds, etc.)

Article 13 (1) The Fund shall not use the funds in the expenditure budget for any purpose other than those specified in the budget; provided, however, that if it is appropriate and necessary to implement the budget, it may divert the budget funds to other budget items regardless of classifications made under Article 9.

(2) If the amount of expense is designated by the general budget provisions, the Fund is not allowed to divert it among other expenses designated by said provisions or to other expenses not designated by said provisions, or use it for the contingency funds, without obtaining the resolutions of the General Meeting.

(Financial Plan)

Article 14 (1) A financial plan referred to in Article 79-69 of the Act shall be set forth a plan related to the following matters:

- (i) sources and methods of raising funds;
- (ii) uses of funds; and
- (iii) other necessary matters.

(2) When a financial plan is changed pursuant to the provisions of the second sentence of Article 79-69 of the Act, the Fund shall submit a document including the matters pertaining to said change and the reasons therefor to the Commissioner of the Financial Services Agency and the Minister of Finance.

(Report of Income and Expenditure, etc.)

Article 15 The Fund shall report quarterly to the Commissioner of the Financial Services Agency and the Minister of Finance the income and expenditure by

preparing a trial balance of totals and the debts assumed pursuant to the provisions of Article 12 by preparing a written report of the amount of debt for each action within one month after the end of each quarter of the business year.

(Business Report)

Article 16 The Business Report referred to in Article 79-70, paragraph (1) of the Act shall specify the business results and the results of the financial plan.

(Statement of Accounts)

Article 17 (1) The statement of accounts referred to in Article 79-70, paragraph (1) of the Act shall consist of a financial statement of income and expenditure and an account statement of debts.

(2) The statement of accounts set forth in the preceding paragraph shall indicate the actual results of budget pertaining to each matter prescribed in the general budget provisions pursuant to the provisions of Article 8.

(Financial Statements, etc.)

Article 18 (1) A financial statement of income and expenditure prescribed in paragraph (1) of the preceding Article shall be prepared in accordance with the classifications adopted in the income and expenditure budget, and shall state the following matters set forth below:

(i) Income:

- (a) the amount of budgeted income;
- (b) the determined amount of income; and
- (c) the difference between the amount of budgeted income and the determined amount of income.

(ii) Expenditure:

- (a) the amount of the budgeted expenditure;
- (b) the amount of used contingency funds if any, and the reasons for said usage;
- (c) the amount of diversion if any, and the reasons for said diversion;
- (d) the actual budget for expenditure;
- (e) the determined amount of expenditure; and
- (f) the amount of unused budget.

(2) An account statement of debts prescribed in paragraph (1) of the preceding Article shall state the amount of debt for each action pursuant to the provisions of Article 12.

(Designation of Financial Institutions)

Article 19 Persons to be specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance prescribed in Article 79-72 of the Act shall be as

follows:

- (i) Securities Finance Company prescribed in Article 2, paragraph (30) of the Act;
- (ii) Insurance Company prescribed in Article 2, paragraph (4) of the Insurance Business Act (Act No. 105 of 1995) and Foreign Insurance Company, etc. prescribed in paragraph (7) of that Article; and
- (iii) Other financial institutions, etc. designated by the Commissioner of the Financial Services Agency and the Minister of Finance.

(Application for Authorization of Borrowings)

Article 20 The Fund shall, when it intends to obtain authorization to borrow funds pursuant to the provisions of Article 79-72 of the Act, submit a written application containing the following matters to the Commissioner of the Financial Services Agency and the Minister of Finance:

- (i) the reason why borrowing is necessary;
- (ii) the lender;
- (iii) an amount of borrowing;
- (iv) an interest rate on borrowing;
- (v) the repayment method and due date of borrowing;
- (vi) the payment method and due date of interest: and
- (vii) other necessary matters.

(Ways of Investment of Surplus Funds)

Article 21 The ways to be specified by Cabinet Office Ordinance and Ordinance of the Ministry of Finance prescribed in Article 79-73, item (iii) of the Act shall be cash in trust.

(Accounting Rules)

Article 22 (1) The Fund shall adopt accounting rules with regard to its finance and accounting.

(2) When adopting accounting rules prescribed in the preceding paragraph, the Fund shall obtain an approval of the Commissioner of the Financial Services Agency and the Minister of Finance. The same applies when it intends to amend said rules.

(Assignment of Residual Assets)

Article 22-2 The liquidator shall cause the residual assets of the Fund to vest in other funds which the members of the Fund will join pursuant to the provisions of Article 79-80, paragraph (1) of the Act, in proportion to the accumulated amount of dues paid by said members pursuant to the provisions of Article 79-65, paragraph (1) of the Act.

(Travel Expenses and Other Expenses paid to Witnesses, etc.)

Article 23 (1) Pursuant to the provisions of Article 191 of the Act, a witness or an expert witness shall be paid travel expenses equivalent to the travel expenses paid to officials who are at the second grade in the service of the Administrative Service (I) Salary Schedule prescribed in Article 6, paragraph (1), item (i), sub-item (a) of the Act on Remuneration of Officials in the Regular Service (Act No. 95 of 1950) pursuant to the provisions of the Act concerning Travel Expenses of National Public Servants, etc. (Act No. 114 of 1950).

(2) For an expert witness, reasonable travel expenses may be paid in addition to the travel expenses under the preceding paragraph, if the Commissioner of the Financial Services Agency and the Minister of Finance find it necessary.