

# **Cabinet Office Order on Limitation on Shareholding by Banks and Other Financial Institutions**

(Cabinet Office Order No. 4 of January 31, 2002)

Pursuant to the provisions of the Act on Limitation on Shareholding by Banks and Other Financial Institutions (Act No. 131 of 2001) and the provisions of the Order for Enforcement of the Act on Limitation on Shareholding by Banks and Other Financial Institutions (Cabinet Order No. 426 of 2001), and in order to enforce the relevant Act and Cabinet Order, the Cabinet Office Order on Limitation on Shareholding by Banks and Other Financial Institutions is established as follows.

(Companies That Have a Special Relationship with Banks)

Article 1 (1) Companies that have a special relationship specified by order of the competent ministry with the banks, etc. prescribed in Article 3, paragraph (1) of the Act on Limitation on Shareholding by Banks and Other Financial Institutions (hereinafter referred to the "Act") (meaning the banks, etc. set forth in Article 2, items (i), (ii) and (iv) of the Act; the same applies hereinafter) are as follows:

- (i) subsidiary corporations, etc. of the relevant bank, etc. (meaning the subsidiary corporations, etc. prescribed in Article 4-2, paragraph (2) of the Order for Enforcement of the Banking Act (Cabinet Order No. 40 of 1982); the same applies hereinafter) that do not fall under the category of specified subsidiary companies, etc.;
  - (ii) affiliated corporations, etc. of the relevant bank, etc. (meaning the affiliated corporations, etc. prescribed in Article 4-2, paragraph (3) of the Order for Enforcement of the Banking Act; the same applies hereinafter) that do not fall under the category of specified subsidiary companies, etc.
- (2) The "specified subsidiary companies, etc." prescribed in the preceding paragraph refer to the following out of the subsidiary corporations, etc. or affiliated corporations, etc. of the relevant bank, etc.:
- (i) the financial instruments business operator prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (Act No. 25 of 1948);
  - (ii) the insurance company prescribed in Article 2, paragraph (2) of the Insurance Business Act (Act No. 105 of 1995);
  - (iii) a person engaged in the services of providing other stock companies with funds necessary for their business by performing the following acts (excluding the services falling under those engaged in by a person set forth

in item (i)):

- (a) to acquire shares issued by the relevant company with the aim of receiving dividends for shares or gaining profit from a sale pertaining to shares;
- (b) to acquire corporate bonds issued by the relevant company;
- (c) to conclude a partnership contract prescribed in Article 667 of the Civil Code (Act No. 89 of 1896) or a limited partnership agreement for investment prescribed in Article 3, paragraph (1) of the Limited Partnership Act for Investment (Act No. 90 of 1998) with the aim of performing acts set forth in (a) or (b) above;
- (iv) a foreign company engaged in services equivalent or similar to the services engaged in by persons set forth in the preceding three items.

(Shares Excluded from the Limitation on Shareholding)

Article 2 (1) The shares excluded from the limitation on shareholding specified by order of the competent ministry as prescribed in Article 3, paragraph (1) of the Act are as follows:

- (i) shares issued by the relevant bank, etc. or its subsidiary companies, etc. (meaning the subsidiary companies, etc. prescribed in Article 3, paragraph (1) of the Act; the same applies hereinafter) or its specified subsidiary companies, etc. (meaning the specified subsidiary companies, etc. prescribed in paragraph (2) of the preceding Article; the same applies hereinafter);
- (ii) shares held by the relevant bank, etc. or its subsidiary companies, etc. in the form of trust property pertaining to a monetary or securities trust (excluding shares pertaining to a trust with a contract for compensation of principal, etc.);
- (iii) shares issued by a company other than companies that are issuers of the shares listed on the financial instruments exchange (meaning the financial instruments exchange prescribed in Article 2, paragraph (16) of the Financial Instruments and Exchange Act; the same applies in item (i) of the following Article) or others similar thereto located in foreign countries, or companies that are issuers of the shares registered in the registry of over-the-counter traded securities prescribed in Article 67-11, paragraph (1) of the relevant Act or others similar thereto kept in foreign countries;
- (iv) shares issued by a customer company of the relevant bank, etc. or its subsidiary companies, etc. that are acquired in accordance with a streamlined business improvement plan between them (only for shares that are acquired for the purpose of eliminating the obligations of the company against the relevant bank, etc. or its subsidiary companies, etc. and the acquisition of which is expected to improve the management of the company in a reasonable period of time, excluding these shares after the elapse of the

- period deemed necessary for the streamlined business improvement of the company as specified in the plan);
- (v) shares subject to the acquisition, etc. under the agreement prescribed in Article 22, paragraph (1) of the Supplementary Provisions of the Deposit Insurance Act (Act No. 34 of 1971) (referred to as the "acquisition, etc. under the agreement" in the following Article) (limited to those shares that are held by a partner bank prescribed in Article 7, paragraph (1), item (i) of the Supplementary Provisions of the relevant Act (hereinafter referred to as a "partner bank" in this Article and the following Article));
  - (vi) shares subject to the consignment of asset purchase under Article 77, paragraph (1) of the Agricultural and Fishery Cooperation Savings Insurance Act (Act No. 53 of 1973) (referred to as the "consignment of asset purchase" in the following Article) (limited to those shares that are held by an agreement claim servicing company (limited to a bank; referred to as an "agreement claim servicing company" in the following Article));
  - (vii) shares subject to the issuance of shares, etc. prescribed in Article 4, paragraph (2) of the Act on Emergency Measures for Early Strengthening of Financial Functions (Act No. 143 of 1998) (referred to as the "issuance of shares, etc." in the following Article) (limited to those shares held by a partner bank);
  - (viii) shares pertaining to the issuance of preferred shares, etc. prescribed in Article 4, paragraph (1), item (i) of the former Act on Emergency Measures for Stabilization of Financial Functions (Act No. 5 of 1998) which remains in effect pursuant to the provisions of Article 5 of the Supplementary Provisions of the Act on Emergency Measures for the Revitalization of Financial Functions (Act No. 132 of 1998) (limited to those shares held by a partner bank);
  - (ix) shares that fall under the category of the acquired shares, etc. prescribed in Article 35, paragraph (2), item (vi) of the Act on Special Measures for Strengthening Financial Functions (Act No. 128 of 2004) (referred to as the "acquired shares, etc." in the following Article) (limited to those shares held by a partner bank).
- (2) The shares excluded from the limitation on shareholding specified by order of the competent ministry as prescribed in Article 3, paragraph (1) of the Act as applied following the deemed replacement of terms pursuant to the provisions of Article 2 of the Order for Enforcement of the Act on Limitation on Shareholding by Banks and Other Financial Institutions (hereinafter referred to as the "Order") are as follows:
- (i) shares issued by a foreign bank, etc. to which the relevant foreign bank branch belongs or its subsidiary companies, etc. or specified subsidiary companies, etc.;

- (ii) shares held by the relevant foreign bank branch in the form of trust property pertaining to a monetary or securities trust (excluding shares pertaining to a trust with a contract for compensation of principal, etc.);
  - (iii) shares issued by a customer company of the relevant foreign bank branch that are acquired in accordance with the streamlined business improvement plan between them (only for shares that are acquired for the purpose of eliminating obligations of the company against the relevant foreign bank branch and the acquisition of which is expected to improve to the management of the company in a reasonable period of time, excluding those shares after the elapse of the period deemed necessary for the streamlined business improvement of the company as specified in the plan);
  - (iv) the shares set forth in item (iii) of the preceding paragraph.
- (3) A contract for compensation of principal, etc. prescribed in the preceding two paragraphs refers to the contract based on the provisions of Article 6 of the Act on Engagement in Trust Business Activities by Financial Institutions (Act No. 43 of 1943).

#### (Equivalents of Shares)

Article 3 Those specified by order of the competent ministry as being equivalent to the shares prescribed in Article 3, paragraph (1) of the Act are as follows:

- (i) preferred equity investments prescribed in the Act on Preferred Equity Investment by Cooperative Structured Financial Institutions (Act No. 44 of 1993) that are listed on the financial instruments exchange (excluding those pertaining to the acquisition, etc. under the agreement or the issuance of shares, etc. (limited to those held by a partner bank), those pertaining to the consignment of asset purchase (limited to those held by an agreement claim servicing company), or those pertaining to the acquired shares, etc. (limited to those held by a partner bank));
- (ii) trust property falling under all of the following (limited to trust property pertaining to shares (limited to the shares set forth in paragraph (1), item (i), (iii) or (iv) of the preceding Article) or preferred equity investments set forth in the preceding item):
  - (a) the relevant bank, etc. or its subsidiary companies, etc. are the beneficiaries and at the same time are the settlors;
  - (b) the trust property is not jointly invested with other trust property of another settlor that is not invested in concert;
  - (c) the trust property is invested based on instructions from the relevant bank, etc. or its subsidiary companies, etc., which are the settlors;
  - (d) the trust property does not pertain to a trust with a contract for compensation of principal, etc. (meaning the contract for compensation of principal, etc. prescribed in paragraph (3) of the preceding Article; the

same applies in Article 7).

(Totaling Method)

Article 4 (1) The totaling of shares, etc. (meaning the shares, etc. prescribed in Article 3, paragraph (1) of the Act; the same applies hereinafter) as specified in the relevant paragraph is to be conducted by summing up the value of shares held by the persons set forth in the following items, deeming that they hold the shares, etc. at the amount specified respectively therein:

- (i) the relevant bank, etc. and its subsidiary corporations, etc. that do not fall under the category of specified subsidiary companies, etc.: the value of the shares, etc. held thereby;
- (ii) subsidiary companies, etc. of the relevant bank, etc. (excluding those set forth in the preceding item): the amount obtained by multiplying the value of the shares, etc. held thereby by the number obtained by dividing the portion of the value of profit or loss of the subsidiary companies, etc. calculated using the equity method (meaning the equity method prescribed in Article 2, item (viii) of the Regulation on Terminology, Forms, and Preparation Methods of Consolidated Financial Statements (Order of the Ministry of Finance No. 28 of 1976); the same applies in Article 7) that belongs to the relevant bank, etc. by the value of profit or loss.

(2) In the case referred to in the preceding paragraph, the value of shares, etc. held is to be based on the current market value; provided, however, that when the total amount calculated pursuant to that paragraph exceeds the sum of the values at the time of acquisition of those shares, etc. (when any decline in the value of the shares, etc. has been recorded as a loss as a result of settlement of profits and losses, the amount after subtracting the amount recorded as a loss), that sum is to be deemed as the total value of shares, etc. held by the relevant bank, etc. and its subsidiary companies, etc.

(Amount Equivalent to the Equity Capital)

Article 5 The amount equivalent to the equity capital prescribed in Article 3, paragraph (1) of the Act for banks, etc. other than foreign bank branches (meaning the foreign bank branches prescribed in Article 3, paragraph (3) of the Act; hereinafter the same applies in this Article) is to be the amount of the equity capital calculated in accordance with the criteria set forth in Article 14-2, item (ii) of the Banking Act (Act No. 59 of 1981) (including the cases as applied *mutatis mutandis* pursuant to Article 17 of the Long-Term Credit Bank Act (Act No. 187 of 1952) and Article 89, paragraph (1) of the Shinkin Bank Act (Act No. 238 of 1951)) after the necessary adjustment having been made as specified by the Commissioner of the Financial Services Agency, and the amount equivalent to the equity capital prescribed in Article 3, paragraph (1)

of the Act for foreign bank branches is to be the amount specified by the Commissioner of the Financial Services Agency as their equity capital.

(Grounds for Approval for Holding Shares at an Amount Exceeding the Maximum Limit of Shareholding)

- Article 6 (1) The ground specified by order of the competent ministry as prescribed in Article 1, item (iv) of the Order is that the relevant bank, etc. or its subsidiary corporations, etc. makes another company, partnership, or any other business entity equivalent to the former two (including equivalents to these in foreign countries; the same applies in Article 7, paragraph (7)) into their subsidiary corporation, etc. or affiliated corporation, etc.
- (2) When a bank, etc. intends to obtain approval for holding shares, etc. at the amount exceeding the maximum limit of shareholding (meaning the maximum limit of shareholding prescribed in Article 3, paragraph (1) of the Act; the same applies hereinafter) under the provisions of paragraph (2) of the relevant Article, the bank, etc. must submit to the Commissioner of the Financial Services Agency the following documents together with a written application:
- (i) a written statement of reasons;
  - (ii) a document concerning the holder of the shares, etc. pertaining to the approval, the issuer of major shares, etc. and other circumstances concerning the shares, etc. pertaining to that approval;
  - (iii) a document stating the method and the time limit of disposing of the portion of the shares, etc. pertaining to the approval that is to be held by exceeding the maximum limit of shareholding, and other policies concerning the disposal of that portion;
  - (iv) a document stating other matters to be referred to in the examination prescribed in the following paragraph.
- (3) When an application for the approval is filed under the provisions of the preceding paragraph, the Commissioner of the Financial Services Agency is to examine whether there are any grounds found unavoidable for the bank, etc. that filed the application and its subsidiary companies, etc. to hold shares, etc. at an amount exceeding the maximum limit of shareholding.

(Matters Necessary for the Application of the Provisions of Laws on Bank Holding Companies and Long-Term Credit Bank Holding Companies)

- Article 7 (1) Companies that have a special relationship specified by order of the competent ministry as prescribed in Article 3, paragraph (1) of the Act as applied *mutatis mutandis* pursuant to paragraph (6) of the relevant Article are deemed to be subsidiary corporations, etc. and affiliated corporations, etc. (excluding those set forth in the items of Article 1, paragraph (2)) of bank holding companies and long-term credit bank holding companies (hereinafter

referred to as "bank holding companies, etc.").

(2) The shares excluded from the limitation on shareholding specified by order of the competent ministry as prescribed in Article 3, paragraph (1) of the Act as applied *mutatis mutandis* pursuant to paragraph (6) of that Article are as follows:

- (i) shares issued by the relevant bank holding company, etc. or its subsidiary companies, etc. or specified subsidiary companies, etc.;
- (ii) shares held by the relevant bank holding company, etc. or its subsidiary companies, etc. in the form of trust property pertaining to a monetary or securities trust (excluding shares pertaining to a trust with a contract for compensation of principal, etc.);
- (iii) shares issued by a customer company of the relevant bank holding company, etc. or its subsidiary companies, etc. that are acquired in accordance with the streamlined business improvement plan between them (only for shares that are acquired for the purpose of eliminating obligations of the company against the relevant bank holding company, etc. or its subsidiary companies, etc. and the acquisition of which is expected to improve the management of the company in a reasonable period of time, excluding the shares after the elapse of the period deemed necessary for the streamlined business improvement of the company as specified in the plan);
- (iv) the shares set forth in Article 2, paragraph (1), item (iii).

(3) Those specified by order of the competent ministry as being equivalent to the shares prescribed in Article 3, paragraph (1) of the Act as applied *mutatis mutandis* pursuant to paragraph (6) of that Article are as follows:

- (i) the preferred equity investments set forth in Article 3, item (i);
- (ii) trust property falling under all of the following (limited trust property pertaining to shares (limited to the shares set forth in item (i), (iii) or (iv) of the preceding paragraph) or preferred equity investments set forth in the preceding item):
  - (a) the relevant bank holding company, etc. or its subsidiary companies, etc. are the beneficiaries and at the same time are the settlors;
  - (b) the trust property is not jointly invested with other trust property of another settlor that is not invested in concert;
  - (c) the trust property is invested based on instructions from the relevant bank holding company, etc. or its subsidiary companies, etc., which are the settlors;
  - (d) the trust property does not pertain to a trust with a contract for compensation of principal, etc.

(4) The totaling of shares, etc. set forth in Article 3, paragraph (1) of the Act as applied *mutatis mutandis* pursuant to paragraph (6) of that Article is to be conducted through summing up the value of shares held by the persons set

forth in the following items by deeming that they hold the shares, etc. at the amount specified respectively therein:

- (i) the relevant bank holding company, etc. and its subsidiary corporations, etc. that do not fall under the category of specified subsidiary companies, etc.: the value of the shares, etc. held thereby;
  - (ii) subsidiary companies, etc. of the relevant bank holding company, etc. (excluding those set forth in the preceding item): the amount obtained by multiplying the value of the shares, etc. held thereby by the number which is obtained by dividing the portion of the value of profit or loss of the subsidiary companies, etc. calculated using the equity method that belongs to the relevant bank holding company, etc. by the value of profit or loss.
- (5) In the case referred to in the preceding paragraph, the value of the shares, etc. held is to be based on the current market value; provided, however, that when the total amount calculated pursuant to the relevant paragraph exceeds the sum of the values at the time of acquiring those shares, etc. (when any decline in the value of the shares, etc. has been recorded as a loss as a result of settlement of profits and losses, the amount after subtracting the amount recorded as a loss), that sum is to be deemed as the total value of shares, etc. held by the relevant bank holding company, etc. and its subsidiary companies, etc.
- (6) The amount equivalent to the equity capital prescribed in Article 3, paragraph (1) of the Act as applied mutatis mutandis pursuant to paragraph (6) of that Article is to be the amount of the equity capital calculated in accordance with the criteria set forth in Article 52-25 of the Banking Act (including the cases as applied mutatis mutandis pursuant to Article 17 of the Long-Term Credit Bank Act) after the necessary adjustment having been made as specified by the Commissioner of the Financial Services Agency.
- (7) The ground specified by order of the competent ministry as prescribed in Article 1, item (iv) of the Order is that the relevant bank holding company, etc. or its subsidiary corporations, etc. makes another company, partnership, or any other business entity equivalent to the former two into their subsidiary corporation, etc. or affiliated corporation, etc.
- (8) When a bank holding company, etc. intends to obtain approval for holding shares, etc. at the amount exceeding the maximum limit of shareholding under the provisions of Article 3, paragraph (2) of the Act, the bank holding company, etc. must submit the following documents together with a written application to the Commissioner of the Financial Services Agency:
- (i) a written statement of reasons;
  - (ii) a document concerning the holder of the shares, etc. pertaining to the approval, the issuer of major shares, etc. and other circumstances concerning the shares, etc. pertaining to that approval;



- (iii) a document stating the method and the time limit of disposing of the portion of the shares, etc. pertaining to the approval that is to be held by exceeding the maximum limit of shareholding, and other policies concerning the disposal of that portion;
  - (iv) a document stating other matters to be referred to in the examination prescribed in the following paragraph.
- (9) When an application for the approval is filed under the provisions of the preceding paragraph, the Commissioner of the Financial Services Agency examines whether there are any grounds found unavoidable for the bank holding company, etc. that filed the application and its subsidiary companies, etc. to hold shares, etc. at the amount exceeding the maximum limit of shareholding.