

# Order for Enforcement of the Secured Bond Trust Act

(Cabinet Order No. 51 of March 20, 2002)

The Cabinet hereby enacts this Cabinet Order pursuant to the provisions of Article 41, paragraph (3) of the Secured Bond Trust Act (Act No. 52 of 1905) (including as applied mutatis mutandis pursuant to Article 62, paragraph (2) of that Act).

## (Other Concurrent Business)

Article 1 The business specified by Cabinet Order as prescribed in Article 5, item (xii) of the Secured Bond Trust Act (hereinafter referred to as the "Act") are business that financial institutions carrying out the business set forth in items (iii) through (viii) of that Article may carry out pursuant to the provisions of laws and regulations other than the laws prescribed in these items.

## (Person Closely Related to Settlor and Trustee)

Article 2 (1) The person specified by Cabinet Order as being closely related to a settlor as prescribed in Article 23, paragraph (2) of the Trust Business Act (Act No. 154 of 2004) as applied mutatis mutandis pursuant to Article 8 of the Act is any of the following:

- (i) an officer (meaning a director, executive officer accounting advisor (if the accounting advisor is a corporation, including a member who is to perform its duties), company auditor, or any other person holding a position similar thereto; hereinafter the same applies in this Article and the following Article) or employee of the settlor;
- (ii) a subsidiary corporation, etc. of the settlor;
- (iii) the parent corporation, etc. that has the settlor as its subsidiary corporation, etc.;
- (iv) a subsidiary corporation, etc. of the parent corporation, etc. that has the settlor as its subsidiary corporation, etc. (excluding the settlor and the persons set forth in the preceding two items);
- (v) an affiliated corporation, etc. of the settlor;
- (vi) an affiliated corporation, etc. of the parent corporation, etc. that has the settlor as its subsidiary corporation, etc. (excluding the person set forth in the preceding item);
- (vii) a specified individual shareholder of the settlor; and
- (viii) the following company, partnership, or any other business entity

- equivalent thereto (including equivalent entities in a foreign country, and excluding the settlor; hereinafter referred to as a "corporation, etc." in this item) that is associated with the person set forth in the preceding item:
- (a) a corporation, etc. (including a subsidiary corporation, etc. and affiliated corporation, etc. of the relevant corporation, etc.) in which the person set forth in the preceding item holds voting rights that constitute more than 50 percent of the voting rights of all shareholders or equity investors (in the case of a stock company, excluding voting rights for shares whose holders are unable to exercise the voting rights for all matters which may be resolved in a shareholders meeting, and including voting rights for shares whose holders are deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); the same applies hereinafter); and
  - (b) a corporation, etc. in which the person set forth in the preceding item holds voting rights that constitute not less than 20 percent but not more than 50 percent of the voting rights of all shareholders or equity investors.
- (2) The person specified by Cabinet Order as being closely related to a trustee as prescribed in Article 23, paragraph (2) of the Trust Business Act as applied mutatis mutandis pursuant to Article 8 of the Act is any of the following:
- (i) an officer or employee of the trustee;
  - (ii) a subsidiary corporation, etc. of the trustee;
  - (iii) the parent corporation, etc. that has the trustee as its subsidiary corporation, etc.;
  - (iv) a subsidiary corporation, etc. of the parent corporation, etc. that has the trustee as its subsidiary corporation (excluding the trustee and the persons set forth in the preceding two items);
  - (v) an affiliated corporation, etc. of the trustee;
  - (vi) an affiliated corporation, etc. of the parent corporation, etc. that has the trustee as its subsidiary corporation, etc. (excluding the person set forth in the preceding item);
  - (vii) a specified individual shareholder of the trustee; and
  - (viii) the following company, partnership, or any other business entity equivalent thereto (including equivalent entities in a foreign country, and excluding the trustee; hereinafter referred to as a "corporation, etc." in this item) that is associated with the person set forth in the preceding item:
    - (a) a corporation, etc. (including a subsidiary corporation, etc. and affiliated corporation, etc. of the relevant corporation, etc.) in which the person set forth in the preceding item holds voting rights that constitute more than 50 percent of the voting rights of all shareholders or equity investors; and
    - (b) a corporation, etc. in which the person set forth in the preceding item holds voting rights that constitute not less than 20 percent but not more

- than 50 percent of the voting rights of all shareholders or equity investors.
- (3) The term "parent corporation, etc." prescribed in the preceding two paragraphs means a corporation, etc. (meaning a company, partnership, or any other business entity equivalent thereto (including equivalent entities in a foreign country); hereinafter the same applies in this paragraph and the following paragraph) specified by Cabinet Office Order as a corporation, etc. which controls an organ that makes decisions on the financial and operational or business policies (meaning a shareholders meeting or any other organ equivalent thereto; hereinafter referred to as "decision-making organ" in this paragraph) of another corporation, etc., and the term "subsidiary corporation, etc." prescribed in the preceding two paragraphs and the following paragraph means such other corporation, etc. whose decision-making organ is controlled by the parent corporation, etc. In this case, if a parent corporation, etc. and its subsidiary corporation, etc. jointly control, or if a subsidiary corporation, etc. solely controls, the decision-making organ of another corporation, etc., such other corporation, etc. is deemed to be a subsidiary corporation, etc. of the parent corporation, etc.
- (4) The term "affiliated corporation, etc." prescribed in paragraphs (1) and (2) means a corporation, etc. specified by Cabinet Office Order as another corporation, etc. (excluding a subsidiary corporation, etc.) in the case where a corporation, etc. (including a subsidiary corporation, etc. of the relevant corporation, etc.) has a material influence on decisions on financial and operational or business policies of another corporation, etc. (excluding a subsidiary corporation, etc.) through contribution, assumption of the office of a director or any other equivalent position by a person who is or was an officer or employee of the relevant corporation, etc., financing, guarantee of obligations, provision of collateral, provision of technology, or operational or business transactions, etc.
- (5) The term "specified individual shareholder" prescribed in paragraphs (1) and (2) means an individual who holds subject voting rights (meaning the subject voting rights prescribed in Article 5, paragraph (5) of the Trust Business Act) which constitute more than 50 percent of the voting rights of all shareholders or equity investors.
- (6) In the case referred to in paragraph (1), item (viii) or paragraph (2), item (viii), the voting rights held by the person set forth in paragraph (1), item (vii) or the person set forth in paragraph (2), item (vii) include voting rights for the shares or contributions that cannot be asserted against the issuer pursuant to the provisions of Article 147, paragraph (1) or Article 148, paragraph (1) of the Act on Book-Entry Transfer of Corporate Bonds and Shares (Act No. 75 of 2001) (including cases where these provisions are applied *mutatis mutandis* pursuant to Article 228, paragraph (1), Article 235, paragraph (1), Article 239,

paragraph (1) and Article 276 (limited to the part concerning item (ii)) of that Act).

(Scope of Persons Closely Related to Trust Company)

Article 3 (1) The person specified by Cabinet Order as prescribed in Article 29, paragraph (2), item (i) of the Trust Business Act as applied mutatis mutandis pursuant to Article 8 of the Act is any of the following:

- (i) an officer or employee of the trust company (meaning the trust company prescribed in Article 1 of the Act; the same applies hereinafter);
- (ii) a subsidiary corporation, etc. (meaning the subsidiary corporation prescribed in paragraph (3) of the preceding Article; hereinafter the same applies in this paragraph) of the trust company;
- (iii) the parent corporation, etc. (meaning the parent corporation, etc. prescribed in paragraph (3) of the preceding Article; hereinafter the same applies in this paragraph) that has the trust company as its subsidiary corporation, etc.;
- (iv) a subsidiary corporation, etc. of the parent corporation, etc. that has the trust company as its subsidiary corporation, etc. (excluding the trust company and the persons set forth in the preceding two items);
- (v) an affiliated corporation, etc. (meaning the affiliated corporation, etc. prescribed in paragraph (4) of the preceding Article; hereinafter the same applies in this paragraph) of the trust company;
- (vi) an affiliated corporation, etc. of the parent corporation, etc. that has the trust company as its subsidiary corporation, etc. (excluding the person set forth in the preceding item);
- (vii) a specified individual shareholder (meaning the specified individual shareholder prescribed in paragraph (5) of the preceding Article) of the trust company; and
- (viii) the following company, partnership, or any other business entity equivalent thereto (including equivalent entities in a foreign country, and excluding the trust company; hereinafter referred to as a "corporation, etc." in this item) that is associated with the person set forth in the preceding item:
  - (a) a corporation, etc. (including a subsidiary corporation, etc. and affiliated corporation, etc. of the relevant corporation, etc.) in which the person set forth in the preceding item holds voting rights that constitute more than 50 percent of the voting rights of all shareholders or equity investors; and
  - (b) a corporation, etc. in which the person set forth in the preceding item holds voting rights that constitute not less than 20 percent but not more than 50 percent of the voting rights of all shareholders or equity investors.

(2) With regard to the application of the provisions of the preceding paragraph to

a person to whom a trust company has entrusted the trust business relating to a secured bond trust pursuant to the provisions of Article 22, paragraph (1) of the Trust Business Act as applied mutatis mutandis pursuant to Article 8 of the Act, the term "trust company" in the preceding paragraph is deemed to be replaced with "a person to whom a trust company has entrusted the trust business regarding a secured bond trust."

- (3) The provisions of paragraph (6) of the preceding Article apply mutatis mutandis to the voting rights held by the person set forth in paragraph (1), item (vii) in the case referred to in paragraph (1), item (viii).

(Methods That Use Information and Communications Technology)

Article 4 (1) If a trust company intends to provide the matters prescribed in Article 26, paragraph (2) of the Trust Business Act as applied mutatis mutandis pursuant to Article 29, paragraph (4) of that Act as applied mutatis mutandis pursuant to Article 8 of the Act in accordance with the provisions of Article 26, paragraph (2) of that Act, the trust company must, in advance and pursuant to the provisions of Cabinet Office Order, indicate to the settlor the type and details of the electronic or magnetic means prescribed in Article 26, paragraph (2) of that Act (hereinafter referred to as "electronic or magnetic means" in this Article) that it intends to use, and obtain the settlor's consent in writing or by electronic or magnetic means.

- (2) If a trust company that has obtained a settlor's consent under the provisions of the preceding paragraph is notified by the settlor, in writing or by electronic or magnetic means, that the settlor refuses to be provided with information by electronic or magnetic means, the trust company must not provide the settlor with the matters prescribed in Article 26, paragraph (2) of the Trust Business Act as applied mutatis mutandis pursuant to Article 29, paragraph (4) of that Act as applied mutatis mutandis pursuant to Article 8 of the Act, by electronic or magnetic means; provided, however, that this does not apply to cases where the settlor has reaffirmed its consent under the provisions of the preceding paragraph.

(Delegation of Authority over Trust Companies to the Director-General of Local Finance Bureau)

Article 5 (1) Within the scope of the authority delegated to the Commissioner of the Financial Services Agency pursuant to the provisions of Article 66, paragraph (1) of the Act, the authority to perform the following functions (excluding those concerning a trust company designated by the Commissioner of the Financial Services Agency) is delegated to the Director-General of the Local Finance Bureau who has jurisdiction over the location of the head office, etc. of a trust company (in the case prescribed in Article 57, paragraph (2) of

the Act, the "trust company" means the former trustee company and the new trustee company prescribed in Article 53, paragraph (1) of the Act; hereinafter the same applies in this Article) (if the trust company has obtained the license referred to in Article 3 of the Act, the "head office, etc." means the head office or principal office; and if the trust company is deemed to have obtained the license referred to in Article 3 of the Act pursuant to the provisions of Article 4 of the Act, the "head office, etc." means the head office, the principal office, or the main branch office prescribed in Article 53, paragraph (1) of the Trust Business Act; hereinafter the same applies in this Article); provided, however, that this does not preclude the Commissioner of the Financial Services Agency from personally exercising the authority:

- (i) to order the submission of reports and materials and to conduct questioning and on-site inspections under the provisions of Article 10, paragraph (1) of the Act;
  - (ii) to issue an order under the provisions of Article 11 of the Act (excluding an order to suspend all or part of business);
  - (iii) to conduct questioning and on-site inspections under the provisions of Article 16, paragraph (2) and Article 57, paragraph (2) of the Act; and
  - (iv) to accept notification under the provisions of the Act (including orders based on the Act).
- (2) The authority to perform the functions set forth in items (i) through (iii) of the preceding paragraph regarding a trust company's branch office or any other business office or office other than its head office, etc. (hereinafter referred to as a "branch office, etc." in this Article) may also be exercised by the Director-General of the Local Finance Bureau who has jurisdiction over the location of the branch office, etc., in addition to the Director-General of the Local Finance Bureau prescribed in that paragraph.
- (3) If the Director-General of a Local Finance Bureau who has ordered a branch office, etc. to submit reports or materials or has conducted questioning or an on-site inspection at a branch office, etc. pursuant to the provisions of the preceding paragraph (hereinafter referred to as an "inspection, etc." in this paragraph) finds, as a result of the inspection, etc., that it is necessary to conduct an inspection, etc. at the head office, etc. of the trust company, etc. or at another branch office, etc., the Director-General may conduct an inspection, etc. at the head office, etc. or the other branch office, etc.