Electronic Public Notice Rules

(Order of the Ministry of Justice No. 14 of February 7, 2006)

Based on the provisions of the Companies Act (Act No. 86 of 2005) and the provisions relating to those, the Electronic Public Notice Rules are established as follows.

(Purpose)

Article 1 The purpose of this Ministerial Order is, in relation to investigations of electronic public notice (meaning investigations of electronic public notice prescribed in Article 942, paragraph (1) of the Companies Act (Act No. 86 of 2005; hereinafter referred to as the "Act"); the same applies hereinafter) to provide for necessary particulars with respect to the particulars governed by the provisions of other Act and other particulars (including as applied mutatis mutandis pursuant to the provisions of the Electronic Public Notice Rules (meaning the provisions relating to electric public notices provided in Article 943, item (i) of the Act; the same applies hereinafter)).

(Definitions)

Article 2 The meanings of the terms set forth in the following items of this Ministerial Order are provided in the respective items:

(i) an "electronic public notice" is an electronic public notice prescribed in Article 2, item (xxxiv) of the Act (including the cases cited in the Act that prescribes the provisions relating to electronic public notice; the same applies hereinafter);

(ii) the "official announcement period" means the official announcement period prescribed in Article 940, paragraph (3) of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notices; hereinafter the same applies in this Article);

(iii) the "discontinued public notice" means the discontinued public notice prescribed in Article 940, paragraph (3) of the Act;

(iv) the "additional public notice" means the public notice under the provisions of Article 940, paragraph (3), item (iii) of the Act;

(v) the "electronic or magnetic records" mean the electronic or magnetic records prescribed in Article 26, paragraph (2) of the Act;

(vi) the "computer" means the computer prescribed in Article 944, paragraph (1), item (i) of the Act;

(vii) the "program" means the program prescribed in Article 944, paragraph (1), item (i) of the Act;

(viii) the "server" means the device which, when connected to the telecommunication line available for public use, has the function to automatically transmit the data to the public, which is recorded in the part of the recording medium used for automated data transmission for the public, or the data stored in the device;

(ix) the "provider" mean the telecommunications carrier prescribed in Article 5 of the Telecommunications Business Act (Act No. 86 of 1984), Article 2, item (v)) that provides telecommunications services (meaning telecommunications services prescribed in item (iii) of that Article) that enables a person to connect to the Internet;

(x) a "server for public notice" means a server used to post public notice via electronic public notice;

(xi) the "internet protocol (IP) address of electronic public notice" means the code, including characters and marks or combinations thereof, which is assigned to identify the part of the server that is used to post electronic public notice via electronic public notice, which allows a person who receives the information that needs to be announced officially to inspect the relevant information and record it in a file on a computer used by the person (including input/output devices; the same applies hereinafter) by entering the code or combinations in the computer;

(xii) the "public notice website" means the content displayed on a computer display when the URL address of public notice is entered in the computer;

(xiii) the "registered address" means the registered information related to the electronic public notice under the Act or other Acts (limited to registered information set forth in Article 911, paragraph (3), item (xxix) (a) of the Act or other information equivalent thereto);

(xiv) an "investigative body" means an investigation body prescribed in Article 941 of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notice; the same applies hereinafter);

(xv) a "person who entrusts an investigation to others" means a person who entrusts an investigation to others prescribed in Article 946, paragraph (3) of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notice; the same applies hereinafter);

(xvi) a "notice of investigation findings" means a notice informing the investigation findings of electronic public notice prescribed in Article 946, paragraph (4) of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notices);

(xvii) the "operational rules" means the operational rules prescribed in Article 949, paragraph (1) of the Act;

(xviii) the "information provided in public notice" means the information set forth in paragraph (1), item (iii), (c) of the following Article that is provided by the investigation body to the person that entrusts the investigation to the body pursuant to the provisions of paragraph (2) of that Article;

(xix) "additional information provided in public notice" means the details of the investigation that have been or is to be announced in an additional public notice that is provided by the investigation body to the person who entrusts the investigation to the body pursuant to the operational rules of the investigation body;

(xx) "information acquisition task" means a task to receive data from the server for public notices;

(xxi) "received information" means information received from the server for public notices through information acquisition task;

(xxii) the "details of information provided in public notice" mean the contents that can be understood by inspecting the details of public notice displayed on the investigation body's computer monitor;

(xxiii) the "details of information provided in additional public notice" mean the contents that can be understood by inspecting the additional details of public notice displayed on the investigation body's computer monitor;

(xxiv) the "details of received information" mean the contents that can be understood by inspecting the received information displayed on the investigation body's computer monitor;

(xxv) the "identification codes" mean the identification codes prescribed in Article 2, paragraph (2) of the Act on Prohibition of Unauthorized Computer Access (Act No. 128 of 1999);

(xxvi) the "financial statements, etc." mean the financial statements, etc., prescribed in Article 951, paragraph (1) of the Act;

(xxvii) the "investigation register book, etc." means the investigation register book, etc., prescribed in Article 955, paragraph (1) of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notices).

(Procedure to Request Investigation of Electronic Public Notice)

Article 3 (1) A person who intends to request an investigation of electronic public notice pursuant to the provisions of Article 941 of the Act (hereinafter referred to as the "person who requests an investigation" in this Article) must request the investigation body to carry out an investigation of electronic public notice, providing the particulars set forth below, no later than two business days prior to the date on which the investigation body must submit a report to the Minister of Justice, pursuant to the provisions of Article 6, paragraph (2), as prescribed in their operational rules:

(i) the name or trade name of the person who requests investigation, their address or the address of the head office or main office and the name of the representative (in cases where the representative is a juridical person, the name of the juridical person and the name of the person who is to carry out the duties thereof);

(ii) the IP address of the person who requests an investigation provided in the register; provided, however, that the IP addresses of the public notices pursuant to the provisions of Article 440, paragraph (1) of the Act are excluded;

(iii) the particulars of electronic public notice pertaining to the request for investigation of electronic public notice, which are set forth below:

(a) the IP address of the public notice;

(b) the official announcement period;

(c) the details of information that is to be announced;

(d) the provisions of the Acts that prescribe the particulars to be announced.

(2) The information set forth in item (iii), (c) of the preceding paragraph must be provided using the electronic or magnetic means prescribed in the operational rules of the investigative body (meaning the electronic or magnetic means prescribed in Article 2, item (xxxiv) of the Act).

(Procedure for Registration)

Article 4 (1) A person who intends to be registered pursuant to the provisions of Article 941 of the Act must submit an application using the attached Form 1 to the Minister of Justice.

(2) The documents set forth below must be attached to the application referred to in the preceding paragraph:

(i) a certificate of registered information or a document equivalent thereto;

(ii) a document explaining that the person intending to be registered does not fall under any of the items of Article 943 of the Act;

(iii) a document explaining that the computer and the program are capable of performing investigations of electronic public notice according to the methods prescribed in the following Article;

(iv) a document explaining that the person intending to be registered has taken the information security measures necessary to provide the electronic public notice investigation services properly;

(v) a document explaining that the computers and the programs are capable of storing the information and commands that have been entered in the computers and the information obtained via the Internet during the investigation of electronic public notice;

(vi) a document explaining that the person intending to be registered has the personnel structure necessary to provide the electronic public notice investigation services;

(vii) a document providing the particulars set forth below pertaining to the implementation method referred to in Article 944, paragraph (1), item (ii) of the Act:

(a) particulars relating to the procedure for investigating electronic public notices;

(b) particulars relating to the responsibilities, authority, and the lines of reporting and responsibilities of persons engaged in electronic public notice investigation services;

(c) particulars relating to the education and training provided to the persons engaged in electronic public notice investigation services;

(d) particulars relating to audits of electronic public notice investigation services;

(e) other necessary particulars relating to the method to provide the electronic public notice investigation services.

(3) The fees referred to in Article 942, paragraph (2) of the Act must be paid with revenue stamps equivalent to the amount of the relevant fees added to the application form referred to in paragraph (1); provided however, that when a person is filing an application using the electronic data processing system prescribed in Article 3, paragraph (1) of the Act on Use of Information and Communications Technology in Administrative Procedure (Act No. 151 of 2002; hereinafter referred to as "Act on Use of Information and Communications Technology"), pursuant to the provisions of that paragraph and when a payment is made based on the payment information acquired by filing an application, the fee may be paid in cash.

(4) The provisions of the preceding three paragraphs apply mutatis mutandis to the renewal of the registration referred to in Article 945, paragraph (1) of the Act.

(Method to Investigate Electronic Public Notices)

Article 5 (1) The methods prescribed in Order of the Ministry of Justice prescribed in Article 946, paragraph (2) of the Act (including as applied mutatis mutandis pursuant to the provisions of electronic public notices) are set forth as follows:

(i) computer may automatically perform the following tasks:

(a) it performs the tasks prescribed below, upon completing the information acquisition task pursuant to the provisions of the following paragraph at least once every six hours during the official announcement period, pertaining to the request for investigation of electronic public notice:

1. In cases where it was able to receive the information from the server for public notices, it records the date and time, received information, and the IP address of public notice entered in the computer to perform the information acquisition task, in the form of electronic or magnetic record;

2. In cases where it was unable to receive the information from the server for public notices, it records the relevant fact, the date and time and the IP address of the public notice entered in the computer to acquire information in the form of electronic or magnetic record.

(b) In the case prescribed in (a) 1.,upon determining whether the received information and the information provided in the public notice are identical or not by making a comparison between the two, it records the decision, the date and time in the form of electronic or magnetic record.

(ii) In cases where the decision under the provisions of (b) of the preceding item is made by the computer that the received information and the information provided in the public notice are different, or in a case where the computer was unable to make the decision, the employee of the investigation body records their decision and the date and time in the form of magnetic or electronic record upon determining whether the details of received information and the details of information provided in public notice are identical or not;

(iii) In the case prescribed in item (i), (a) 2. or the case where the computer is unable to perform the information acquisition task automatically as specified in the following item, the employee of the investigation body performs the tasks set forth in that item (i), (a) and in the preceding item, by manually operating a computer;

(iv) In cases where the IP address provided in the register and the IP address of the public notice are different, upon investigating the same IP address of the public notice at least once during the official announcement period, as to whether or not the public notice website can be displayed on a computer monitor by operating the computer following the instructions (excluding the instructions pertaining to the collection of fees and entry of identification codes) which are displayed on the computer monitor by entering the IP address provided in the register in the computer, the employee records the investigation findings and the date and time;

(v) In cases where the task set forth in item (ii) or item (iii) is carried out or the case where the task set forth in the preceding item is carried out by an employee of the investigation body by manually operating a computer, the name of the employee of the investigation body who carried out the task must be recorded in the form of electronic or magnetic record.

(2) Information acquisition task must be accomplished by entering the IP address of public notice provided by a person who entrusts the investigation to others in a computer pursuant to the provisions of Article 3, paragraph (1), item (iii) (a), and the person requests that the information is sent to the server for public notices via a provider (different providers if the more than two data sets of information are sent) three times (the relevant number of times if one or two data sets of information can be received). In this case, if the person who entrusts the investigation to others notifies the investigation body of the change of the IP address of the public notice and the new IP address thereof is provided, pursuant to the provisions of the operational rules of the investigation body, with respect to the investigation of electronic public notice to be conducted from that point onwards (if the person who entrusts investigation to others notifies the investigation body of the change of the scheduled date and time, the relevant scheduled date and time), the investigation body must enter the new IP address of the public notice in the computer.

(3) In cases where public notice is discontinued during the official announcement period for electronic public notice pertaining to a request for investigation of electronic public notice, and the person who entrusts investigation to others provides the information that have been or to be announced in an additional public notice to the investigation body pursuant to the provisions of the operational rules of the investigation body, with regard to the application of the provisions of paragraph (1), item (i) (b) and item (ii) concerning investigation of electronic public notice to be conducted after that date (if the person who entrusts the investigation to others notifies the investigation body of the change of the starting date and time of the additional public notice, the scheduled starting date and time), the term the " information provided in public notice and" in item (i) (b) and item (ii) of that paragraph is deemed to be replaced with the"information provided in the public notice and the information provided in the additional public notice and" and the term the "details of information provided in public notice" in that item is deemed to be replaced with the "details of information provided in public notice and the details of information provided in the additional public notice."

(4) In cases where the investigation body, due to a computer failure or other reason, is unable to perform any of the tasks set forth in paragraph (1) (excluding item (iv)), it must record the relevant fact and the date and time thereof in the form of electronic or magnetic record (or, it must keep a written record if it is unable to keep the electronic or magnetic record).

(Particulars that Need to be Reported to the Minister of Justice and the Methods of Reporting)

Article 6 (1) The particulars prescribed in Order of the Ministry of Justice referred to in Article 946, paragraph (3) of the Act are the particulars set forth in Article 3, paragraph (1) item (i) and item (iii) (a), (b) and (d) (in regards to particulars set forth in item (i) of that paragraph, the name of the representative is excluded (if the representative is a juridical person, the name of the juridical person and the name of the person who is to carry out the duties thereof)).

(2) The investigation body must, no later than two days prior to the starting date of the official announcement of electronic public notice pertaining to a request for investigation of electronic public notice (the number of days set forth in items of Article 1, paragraph (1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988) is not included), report the particulars prescribed in the preceding paragraph to the Minister of Justice using an electronic data processing system prescribed in Article 3 paragraph (1) of the Act on Use of Information and Communications Technology.

(3) During the official announcement period for public notice via an electronic public notice pertaining to a request for investigation of electronic public notice, if the person who entrusts investigation to others notifies the investigative body that the person will amend any of the particulars prescribed in paragraph (1), the investigation body must promptly report the date and details of the amendments pertaining to the notice to the Minister of Justice using an electronic data processing system prescribed in Article 3, paragraph (1) of the Act on Use of Information and Communications Technology.

(4) The provisions of Article 4, paragraph (1) and paragraph (4) of the Rules for the Use of Information and Communications Technology in Administrative Procedure under the provisions of Acts under the Jurisdiction of the Ministry of Justice (Order of the Ministry of Justice No. 11 of 2003) apply mutatis mutandis to the investigation body making the report pursuant to the provisions of the preceding two paragraphs.

(Method to Issue Notices of Investigation Findings)

Article 7 (1) A notice of investigation findings must be notified by issuing a written document including the particulars set forth below or by providing the details of the relevant information (hereinafter referred to as "information of investigation findings") via electronic or magnetic means; provided, however, that if the person who has entrusted the investigation to others requests that the notice of investigation findings must be issued using any of these methods, the requested method must be used:

(i) the particulars set forth in Article 3, paragraph (1), item (i), item (ii) and item (iii) (a), (b) and (d) (if the notice stating that the investigation body amends any of these particulars pursuant to the operational rules prescribed by the investigation body is issued, including the particulars pertaining to the notice that are amended and the date and time of the change);

(ii) the details of information provided in public notice (in cases prescribed in Article 5, paragraph (3), the details of information provided in public notice and the details of information provided in additional public notice);

(iii) the particulars set forth below, among those recorded or entered pursuant to the provisions of Article 5:

(a) the date and time when the received information is received, the IP address of public notice that was entered in the computer to perform the information acquisition task and the particulars set forth below:

1. In cases where the decision is made pursuant to the provisions of Article 5, paragraph (1), item (i), (b) that the received information and the information provided in public notice are identical (in the cases prescribed in paragraph (3) of that Article, the information provided in the public notice and the information provided in the additional public notice); the date and time of the findings and the decision;

2. In cases where the decision made pursuant to the provisions of Article 5, paragraph (1), item (i), (b) is different from the decision prescribed in 1. the decision pursuant to the provisions of item (ii) of that paragraph and the date and time thereof.

(b) In cases where the investigation body is unable to receive the information from the server for public notices even though the information acquisition task under the provisions of Article 5, paragraph (1), item (i), (a) is performed pursuant to the provisions of Article 5, paragraph (1), item (iii); the relevant fact, the date and time thereof, and the IP address of public notice entered in the computer to perform the information acquisition task;

(c) the particulars recorded pursuant to the provisions of Article 5, paragraph (1), item (iv) and item (v).

(iv) If the notice of investigation findings must include the statement or record that the details of received information are differ from the details of information provided in public notice (in the cases prescribed in Article 5, paragraph (3); the details of information provided in public notice and the details of information provided in additional public notice) or include the statement or record pursuant to the provisions of preceding item, (b); the total number of hours that can be estimated based on these statements or records during which the public notice was discontinued;

(v) In cases where the investigation body was unable to conduct information acquisition task pursuant to the provisions of Article 5, paragraph (2) at the same frequency as prescribed in paragraph (1), item (i) (a) of that Article; the relevant fact, the duration, and the reason.

(2) The electronic or magnetic means prescribed in the preceding paragraph are the means set forth below; provided, however, that when the person who has entrusted investigation to others requests the investigation body to provide the notice of investigation findings using any of these methods, the requested method must be used:

(i) the methods prescribed in Article 222, paragraph (1), item (i) (a) or (b) of the Regulation for Enforcement of the Companies Act (Order of the Ministry of Justice No. 12 of 2006);

(ii) the method to provide information recorded in a file on a magnetic disk that falls under any of the items of Article 33-6 paragraph (4) of the Regulation on Commercial Registrations (Order of the Ministry of Justice No. 23 of 1964).

(3) When the investigation body is requested by the person who entrust investigation, the investigative body must, in response to the request, provide the information of investigation findings, the contents of which can be recorded in the electronic or magnetic record to be attached to the application for registration prescribed in Article 19-2 of the Commercial Registration Act (Act No. 125 of 1963) or the information of investigation findings that can be transmitted pursuant to the provisions of Article 102, paragraph (2) and paragraph (5), item (ii) of the Regulation on Commercial Registrations.

(Cases where Investigation of Electronic Public Notice May not be Conducted)

Article 8 The cases prescribed in Order of the Ministry of Justice referred to in Article 947 of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notices; hereinafter the same applies in this Article) are the cases set forth below:

(i) if persons specified in the respective items of Article 947 of the Act or their directors, etc., (meaning the company directors, directors, executive officers, members executing business, inspectors, company auditors or persons equivalent thereto; hereinafter the same applies in this Article) are requested by the person posting the public notice via an electronic public notice to use the server they're using as the server for public notices;

(ii) in cases where the person posting the public notice via an electronic public notice, in posting the relevant public notice, requests a third party to use the server they're using as the server for public notices, if persons specified in the respective items of Article 947 of the Act or their directors, etc. acts as an agent or intermediary that concludes the outsourcing contract;

(iii) if persons specified in the relevant items of Article 947 of the Act or their directors, etc. are the lessors of the server for public notices (excluding the case prescribed in item (i));

(iv) if persons specified in the respective items of Article 947 of the Act or their directors, etc. who are requested by the person posting the public notice via an electronic public notice create the information provided in public notice.

(Notice of Change of Place of Business)

Article 9 If the investigation body intends to submit a notice under the provisions of Article 948 of the Act, the investigation body must submit a written notice using the attached Form 2 to the Minister of Justice.

(Operational Rules)

Article 10 (1) If the investigation body intends to post a notice under the provisions of Article 949, paragraph (1) of the Act, the investigation body must submit a written notice using the attached Form 3 to the Minister of Justice.

(2) The particulars prescribed in Order of the Ministry of Justice referred to in Article 949, paragraph (2) of the Act are the particulars set forth below:

(i) particulars relating to the business hours to accept the requests for investigation of electronic public notice, and the holidays;

(ii) particulars relating to the methods to request investigation of electronic public notice;

(iii) particulars relating to the place of business pertaining to the electronic public notice investigation services (if the investing body has facilities in which the computers are installed other than the relevant place of business, the relevant facilities are included);

(iv) particulars relating to the fees required for investigation of electronic public notices;

(v) particulars relating to the costs prescribed in Article 951, paragraph (2) of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notices) and Article 955, paragraph (2) of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notices);

(vi) particulars relating to information security measures pertaining to the electronic public notice investigation services;

(vii) the particulars set forth below pertaining to the methods to conduct investigations of electronic public notices:

(a) particulars relating to the procedures for electronic public notice investigation services;

(b) particulars relating to the responsibilities and authority, and the lines of reporting and responsibilities of persons engaged in electronic public notice investigation services;

(c) particulars relating to the education and training provided to persons engaged in the electronic public notice investigation services;

(d) particulars relating to audits of electronic public notice investigation services;

(e) other necessary particulars relating to the method to provide the electronic public notice investigation services.

(viii) particulars relating to notices of investigation findings;

(ix) particulars relating to the management and storage of the investigation register book, etc.;

(x) the particulars relating to the creation and storage of records set forth below:

(a) records of changes to the documents specified in Article 4, paragraph (2), item (iv);

(b) records relating to the persons entering the area(s) where the computers are installed (excluding video recordings);

(c) records relating to authorization to operate the computers and the identification codes pertaining to the authorization;

(d) records relating to computer operations;

(e) records of unauthorized access when unauthorized access to the computers and the programs occurs, (meaning unauthorized access prescribed in Article 3 of the Act on Prohibition of Unauthorized Computer Access);

(f) records relating to the maintenance of the computers and other facilities;

(g) records relating to the results of the education and training provided to the persons engaged in electronic public notice investigation services;

(h) records relating to failures in the electronic public notice investigation services;

(i) records relating to the results of audits of electronic public notice investigation services;

(j) records relating to the management of the records specified in (a) through (i).

(xi) other necessary particulars relating to the provision of electronic public notice investigation services.

(3) The particulars prescribed in item (x) of the preceding paragraph must include a statement, that the records specified in (a) and (c) and (e) through (j) are to be kept for three years from the date on which the records were created and that the records specified in (b) and (d) of that item are to be kept for one year from the date on which the records were created.

(Notification of Suspension or Discontinuation of Electronic Public Notice Investigation Services)

Article 11 (1) If the investigation body intends to provide the notification under the provisions of Article 950 of the Act, the investigation body must submit a written notice using the attached Form 4 to the Minister of Justice.

(2) When the investigation body intends to discontinue its electronic public notice investigation services in whole, the investigation body must attach a document certifying that the investigation register book has been handed over to another investigation body, to the written notice set forth in the preceding paragraph.

(Method to Disclose Financial Statements)

Article 12 The method prescribed in Order of the Ministry of Justice referred to in Article 951, paragraph (2), item (iii) of the Act (including as applied mutatis mutandis pursuant to the provisions relating to electronic public notices) are the method to display the particulars saved in an electronic or magnetic record referred to in that item on a paper or a screen image.

(Entries Made in the Investigation Register Book)

Article 13 (1) A magnetic disk (including the means capable of recording predetermined particulars using the means equivalent to magnetic disks) is prescribed by Order of the Ministry of Justice as those equivalent to the investigation record set forth in Article 955, paragraph (1) of the Act.

(2) The particulars prescribed in Order of the Ministry of Justice in relation to investigations of electronic public notices referred to in Article 955, paragraph (1) of the Act are the particulars set forth below:

(i) the particulars set forth in the respective items of Article 3, paragraph (1) (including the amended particulars and the amendment date, pursuant to the operational rules prescribed by the Investigative body, in cases where the notice stating that any of these particulars have been amended is posted);

(ii) the date (month and year) on which the investigation of the electronic public notice was requested;

(iii) The address of the place of business that provides the electronic public notice investigation services;

(iv) the name(s) of the employee(s) who investigates the electronic public notice (excluding those who prescribed in Article 5, paragraph (1), item (v));

(v) the particulars recorded as the electronic or magnetic records pursuant to the provisions of the respective items of Article 5, paragraph (1);

(vi) the particulars recorded as the electronic or magnetic records pursuant to the provisions of Article 5, paragraph (4) (particulars stated in a paper document in cases where the relevant records may not be saved).

(3) The particulars set forth in the preceding paragraph must be entered or recorded in the investigation register book, etc., in each case, if a request for investigation of electronic public notice is filed.

(4) The investigation body must keep the investigation register book, etc., in which the particulars set forth in paragraph (2) have been entered or recorded for ten years from the date on which the official announcement period of electronic public notice pertaining to the request for investigation of electronic public notice ends. The same apply to any investigation body that has taken over the investigation register book, etc. pursuant to the provisions of Article 956, paragraph (1) of the Act.

(Certificate for On-Site Inspections)

Article 14 The attached Form 5 must be used to issue the certificate referred to in Article 958, paragraph (2) of the Act.