

Regulation on Security Deposits by Financial Service Intermediaries (Tentative translation)

(Cabinet Office and Ministry of Justice Order No. 4 of June 2, 2021)

Pursuant to the provisions of Article 22, paragraph (12) of the Act on the Provision of Financial Services (Act No. 101 of 2000), the Regulation on Security Deposits by Financial Service Intermediaries is hereby enacted as follows.

(Procedures for Filing a Petition for the Exercise of the Right)

Article 1 A person who intends to file a petition for the exercise of the right prescribed in Article 28, paragraph (1) of the Order for Enforcement of the Act on the Provision of Financial Services (Cabinet Order No. 484 of 2000; hereinafter referred to as the "Order") is to submit to the Commissioner of the Financial Services Agency (if the authority of the Commissioner of the Financial Services Agency has been delegated to the Director General of the Local Finance Bureau or the Director General of the Fukuoka Local Finance Branch Bureau pursuant to the provisions of Article 46, paragraph (1) of the Order, the Director General of the Local Finance Bureau or the Director General of the Fukuoka Local Finance Branch Bureau; the same applies hereinafter) a written petition prepared using Appended Form 1, by attaching a document proving that the person has the right referred to in Article 22, paragraph (6) of the Act on the Provision of Financial Services (hereinafter referred to as the "Act") (such right is hereinafter referred to as the "right").

(Procedures for Reporting the Right)

Article 2 A person who intends to report the right as prescribed in Article 28, paragraph (2) of the Order is to submit to the Commissioner of the Financial Services Agency a written report prepared using Appended Form 2, by attaching a document proving that the person has the right.

(Preparation of Provisional Distribution Table)

Article 3 (1) In order to conduct the investigation of the right under the provisions of Article 28, paragraph (4) of the Order, the Commissioner of the Financial Services Agency must, without delay after the expiration of the period referred to in paragraph (2) of the same Article, prepare a provisional distribution table, give public notice thereof, and notify the financial service intermediary (meaning the financial service intermediary prescribed in Article 11, paragraph (6) of the Act; the same applies hereinafter) pertaining to the security deposit subject to the investigation of the right and a person who has

concluded therewith the contract referred to in Article 22, paragraph (3) of the Act (hereinafter referred to as a "trustee") of the contents thereof.

- (2) If the Commissioner of the Financial Services Agency cannot ascertain the location of the business office or office of the financial service intermediary, the Commissioner is not required to notify the financial service intermediary under the provisions of the preceding paragraph.

(Holding a Hearing Session)

Article 4 (1) The procedures for the investigation of the right under Article 28, paragraph (4) of the Order are conducted through a hearing session over which an official designated by the Commissioner of the Financial Services Agency presides as the chairperson.

- (2) When a person who has filed a petition for the exercise of the right under the provisions of Article 28, paragraph (1) of the Order, a person who has reported the right within the period referred to in paragraph (2) of the same Article, or the financial service intermediary or trustee prescribed in paragraph (1) of the preceding Article (collectively referred to as a "relevant person" in Article 8, item (iv) and Article 9) is unable to attend the hearing session due to illness or any other compelling reasons, the relevant person may submit a written statement, in lieu of making a statement at the hearing session.

Article 5 When the chairperson finds it necessary, the chairperson may request a person with relevant expertise or any other persons of reference to attend the hearing session.

Article 6 (1) When the chairperson finds it necessary for organizing the business of the session, the chairperson may give instructions with regard to the statement of opinions, production of evidence, and any other necessary matters.

- (2) When the chairperson finds it necessary for maintaining order in the hearing session, the chairperson may have a person who is disturbing the order or is acting or behaving in a disturbing manner leave the session.

Article 7 (1) When the chairperson finds it necessary, the chairperson may postpone or continue the hearing session. In this case, the chairperson must determine and give public notice of the date and place of the next session, and notify the financial service intermediary and trustee prescribed in Article 3, paragraph (1) thereof in advance.

- (2) The provisions of Article 3, paragraph (2) apply mutatis mutandis to the notice to the financial service intermediary under the provisions of the preceding paragraph.

Article 8 The chairperson must prepare a record stating the following matters with regard to the hearing session:

- (i) indication of the case concerning the hearing session;
- (ii) date and place of the hearing session;
- (iii) job title and name of the chairperson;
- (iv) names and domiciles of the relevant persons who were present;
- (v) names of any other persons present;
- (vi) gist of the opinions stated;
- (vii) if any written statement referred to in Article 4, paragraph (2) has been submitted, a statement to that effect and the gist thereof;
- (viii) if any evidence has been produced, a statement to that effect and a list of the evidence; and
- (ix) other matters found to be necessary by the chairperson.

Article 9 Relevant persons may inspect the record referred to in the preceding Article.

(Order of Distribution)

Article 10 If the security deposit prescribed in Article 3, paragraph (1) includes, beyond the portion deposited by a financial service intermediary, a portion deposited by a trustee, the Commissioner of the Financial Services Agency must first distribute the security deposit deposited by the financial service intermediary.

(Procedures for Distribution)

- Article 11 (1) The Commissioner of the Financial Services Agency must, for the purpose of implementing distribution, send a payment entrustment document prepared using Appended Form 27, Appended Form 28 or Appended Form 28-2 of the Deposit Regulation (Ministry of Justice Order No. 2 of 1959) to the official depository and deliver certificates prepared using Appended Form 29 of the Deposit Regulation to the persons who are to receive the distribution.
- (2) If the Commissioner of the Financial Services Agency has conducted the procedures referred to in the preceding paragraph, the Commissioner must send a copy of the payment entrustment document to the financial service intermediary pertaining to the security deposit subject to the distribution and the trustee who has deposited all or part of the security deposit pursuant to the provisions of Article 22, paragraph (4) of the Act.
- (3) The provisions of Article 3, paragraph (2) apply mutatis mutandis to the sending of a copy of the payment entrustment document to the financial service intermediary under the provisions of the preceding paragraph.

(Recovery of Security Deposit)

Article 12 (1) When a person who has deposited a security deposit pursuant to the provisions of Article 22, paragraph (1), (4) or (8) of the Act (if the provisions of Article 15, paragraph (3) apply, such person includes a financial service intermediary that is deemed to have deposited a security deposit pursuant to the provisions of the same paragraph; such person is referred to as the "depositor" in paragraphs (1) through (3) and paragraph (6) of the following Article) intends to obtain the approval of the Commissioner of the Financial Services Agency for the recovery of the security deposit pursuant to the provisions of Article 22, paragraph (10) of the Act, the person is to submit to the Commissioner of the Financial Services Agency a written application for approval of recovery of security deposit prepared using Appended Form 3, stating the grounds for recovery and the amount of money to be recovered or the name, quantity, total face value, etc. of the securities to be recovered (including Japanese government bonds where the ownership of the right for the bond is based on the entry or record in the book-entry transfer account under the Act on Book-Entry Transfer of Corporate Bonds and Shares (Act No. 75 of 2001) (hereinafter referred to as "book-entry transfer Japanese government bonds"); the same applies hereinafter) (in the case of book-entry transfer Japanese government bonds, the issue, amount, etc. thereof; the same applies in paragraph (8) of the following Article and Article 14, paragraph (2)) by attaching a document proving that the person is entitled to the recovery and a document that provides a reference for the designation referred to in Article 22, paragraph (11) of the Act.

(2) When the Commissioner of the Financial Services Agency intends to grant the approval referred to in the preceding paragraph, the Commissioner must, excluding the case of approving the recovery of security deposit under Article 22, paragraph (10), item (iii) of the Act, give public notice of the fact that the person who has the right to the security deposit referred to in the preceding paragraph must report the right within a certain period of not less than six months, and that the person will be excluded from the distribution procedures if the person fails to make the report within the period, and must notify the financial service intermediary and trustee pertaining to the security deposit to that effect.

(3) The provisions of Article 3, paragraph (2) applies mutatis mutandis to the notice to the financial service intermediary under the provisions of the preceding paragraph.

(4) A person who intends to report the right referred to in paragraph (2) is to submit to the Commissioner of the Financial Services Agency a written report prepared using Appended Form 4 by attaching a document proving that the person has the right.

- (5) The provisions of Article 28, paragraphs (4) through (8) of the Order and the provisions of Article 3 through the preceding Article apply mutatis mutandis to the case where the reporting of the right is made within the period referred to in paragraph (2). In this case, the term "paragraph (2)" in Article 28, paragraph (4) of the Order is deemed to be replaced with "Article 12, paragraph (2) of the Regulation on Security Deposits by Financial Service Intermediaries (Cabinet Office and Ministry of Justice Order No. 4 of 2021)," the term "paragraphs (2), (4) and (5)" in paragraph (7) of the same Article is deemed to be replaced with "paragraphs (4) and (5)," the term "when it is necessary for the exercise of the right" in paragraph (8) of the same Article is deemed to be replaced with "when it is necessary for the exercise of the rights if the reporting of the right prescribed in Article 12, paragraph (2) of the Regulation on Security Deposits by Financial Service Intermediaries has been made," the term "Article 28, paragraph (4) of the Order" in Article 3, paragraph (1) is deemed to be replaced with "Article 28, paragraph (4) of the Order as applied mutatis mutandis pursuant to Article 12, paragraph (5)," the term "paragraph (2) of the same Article" in the same paragraph is deemed to be replaced with "Article 12, paragraph (2)," the term "Article 28, paragraph (4) of the Order" in Article 4, paragraph (1) is deemed to be replaced with "Article 28, paragraph (4) of the Order as applied mutatis mutandis pursuant to Article 12, paragraph (5)," the term "person who has filed a petition for the exercise of the right under the provisions of Article 28, paragraph (1) of the Order, a person who has reported the right within the period referred to in paragraph (2) of the same Article" in paragraph (2) of the same Article is deemed to be replaced with "a person who has reported the right within the period referred to in Article 12, paragraph (2)."
- (6) If the Commissioner of the Financial Services Agency has granted the approval referred to in paragraph (1), the Commissioner must deliver a certificate of approval of recovery of security deposit prepared using Appended Form 5 to the person who has filed the application for approval referred to in the same paragraph; provided, however, that if, pursuant to the provisions of Article 22, paragraph (11) of the Act, the Commissioner of the Financial Services Agency has designated the period in which the security deposit may be recovered and the amount of security deposit that may be recovered, the second page of the certificate of approval of recovery of security deposit is delivered when such period has arrived (when the procedures for the exercise of the right prescribed in Article 28 of the Order, the transfer of deposit, etc. referred to in the following Article, or the recovery referred to in Article 14 are still pending, it is delivered when the relevant procedures have been completed).
- (7) It is sufficient for a person who has obtained the approval referred to in

paragraph (1) to attach the certificate of approval of recovery of security deposit that has been delivered pursuant to the provisions of the preceding paragraph as the document to be attached to a written request for paying out of deposited property pursuant to the provisions of Article 25, paragraph (1) of the Deposit Regulation.

(Transfer of Deposit of Security Deposit)

- Article 13 (1) A depositor who has deposited a security deposit in the form of money alone is to notify the Commissioner of the Financial Services Agency without delay of any change of the official depository nearest the principal business office or office of the financial service intermediary pertaining to the security deposit due to a change in location of such office (or the Tokyo Legal Affairs Bureau if the financial services intermediary has no business office or office in Japan; hereinafter the same applies in this Article).
- (2) If the notification referred to in the preceding paragraph has been given, the Commissioner of the Financial Services Agency must, excluding cases where the procedures for the exercise of the right prescribed in Article 28 of the Order or the recovery referred to in the preceding Article or the following Article are still pending, deliver an authenticated copy of the deposit certificate for the security deposit to the depositor.
- (3) A depositor who has given the notification referred to in paragraph (1) is to, without delay after receiving delivery of the authenticated copy of the deposit certificate pursuant to the provisions of the preceding paragraph, and upon prepaying the costs, request the official depository with which the depositor has deposited the security deposit to transfer the deposit of the security deposit to the official depository nearest to the principal business office or office after relocation.
- (4) A person who has requested the transfer of deposit referred to in the preceding paragraph is to, without delay after completing the procedures for the transfer of deposit, submit to the Commissioner of the Financial Services Agency a written notification prepared using Appended Form 6 by attaching an authenticated copy of the deposit certificate that has been delivered pursuant to the provisions of Article 21-5, paragraph (3) of the Deposit Regulation and a statement of security deposit, etc. prescribed in Article 26, paragraph (3) of the Cabinet Office Order on Financial Service Intermediaries (Cabinet Office Order No. 35 of 2021).
- (5) If the Commissioner of the Financial Services Agency has received an authenticated copy of the deposit certificate attached to the written notification referred to in the preceding paragraph, the Commissioner must deliver a custody certificate for the authenticated copy of the deposit certificate to the person who has requested the transfer of deposit.

- (6) A depositor who has deposited a security deposit in the form of securities or in the form of money and securities pursuant to the provisions of Article 22, paragraph (9) of the Act is to, if, due to a change in the location of the principal business office or office of the financial service intermediary pertaining to the security deposit, the official depository nearest thereto has changed, make a security deposit in the same amount as the security deposit with the official depository nearest to the principal business office or office as of after the change of the location without delay.
- (7) A person who has made the deposit pursuant to the provisions of the preceding paragraph may file with the Commissioner of the Financial Services Agency an application for approval for the recovery of the security deposit deposited with the official depository nearest to the principal business office or office as of before the change of the location.
- (8) When a person who has made the deposit pursuant to the provisions of paragraph (6) intends to file the application for approval of recovery of security deposit referred to in the preceding paragraph, the person is to submit to the Commissioner of the Financial Services Agency a written application for approval of recovery of security deposit prepared using Appended Form 7, stating the grounds for the recovery and the amount of money to be recovered or the name, quantity, total face value, etc. of the securities to be recovered.
- (9) The provisions of the main clause of paragraph (6) and paragraph (7) of the preceding Article apply mutatis mutandis to the procedures for recovery referred to in paragraph (7). In this case, the term "has granted the approval referred to in paragraph (1)" in the main clause of paragraph (6) of the same Article is deemed to be replaced with "has granted the approval for the recovery of the security deposit pertaining to the application for approval referred to in paragraph (7) of the following Article," the term "Appended Form 5" in the same clause is deemed to be replaced with "Appended Form 8," and the term "person who has obtained the approval referred to in paragraph (1)" in paragraph (7) of the same Article is deemed to be replaced with "person who has obtained the approval pertaining to the application referred to in paragraph (7) of the following Article."

(Replacement of Security Deposit)

- Article 14 (1) A person who has deposited securities pursuant to the provisions of Article 22, paragraph (9) of the Act may, if the maturity date of the securities has arrived, if the person has deposited a security deposit in lieu of the securities in advance, file with the Commissioner of the Financial Services Agency an application for approval for the recovery of the securities.
- (2) A person who intends to file the application for approval referred to in the preceding paragraph is to submit to the Commissioner of the Financial

Services Agency a written application for approval of recovery of security deposit prepared using Appended Form 9, stating the contents of the deposited property deposited in lieu of the securities and the name, quantity, total face value, etc. of the securities to be recovered.

- (3) The provisions of the main clause of paragraph (6) and paragraph (7) of Article 12 apply mutatis mutandis to the procedures for recovery referred to in paragraph (1). In this case, the term "has granted the approval referred to in paragraph (1)" in the main clause of paragraph (6) of the same Article is deemed to be replaced with "has granted the approval for the recovery of the security deposit pertaining to the application for approval referred to in Article 14, paragraph (1)," the term "Appended Form 5" in the same clause is deemed to be replaced with "Appended Form 10," and the term "person who has obtained the approval referred to in paragraph (1)" in paragraph (7) of the same Article is deemed to be replaced with "person who has obtained the approval pertaining to the application referred to in Article 14, paragraph (1)."

(Realization of Securities)

Article 15 (1) When the Commissioner of the Financial Services Agency intends to receive the return of securities in order to realize them pursuant to the provisions of Article 28, paragraph (8) of the Order (including as applied mutatis mutandis pursuant to Article 12, paragraph (5)), the Commissioner must submit to the official depository two copies of the written request for paying out of deposited property.

- (2) If the Commissioner of the Financial Services Agency has realized securities into cash, the Commissioner must deposit the amount of the realization value less the expense for the realization, as a deposit in lieu of the securities.
- (3) The deposit deposited pursuant to the provisions of the preceding paragraph is deemed to have been deposited by the financial service intermediary who has deposited the securities that were returned pursuant to the provisions of paragraph (1).
- (4) If the Commissioner of the Financial Services Agency has made the deposit pursuant to the provisions of paragraph (2), the Commissioner must notify the financial service intermediary prescribed in the preceding paragraph to that effect.

(Public Notice)

Article 16 (1) The public notice prescribed in Article 28, paragraphs (2), (4) and (5) of the Order (including the case where these provisions are applied mutatis mutandis pursuant to Article 12, paragraph (5)) and Article 3, paragraphs (1) and Article 7, paragraph (1) (including cases where these provisions are applied mutatis mutandis pursuant to Article 12, paragraph (5)) and Article 12,

paragraph (2) is given through publication in an official gazette.

(2) The expense for the public notice under the preceding paragraph and any other expenses necessary for the procedures for the paying out of security deposit (excluding the expense for realization referred to in Article 28, paragraph (8) of the Order (including as applied mutatis mutandis pursuant to Article 12, paragraph (5))) are borne by the person to whom the security deposit will be paid out, with the amount being in accordance with the amount to be paid out through the procedures for return or recovery and not more than the amount.

(Application of the Deposit Regulation)

Article 17 Beyond what is provided for in this Regulation, the procedures under the Deposit Regulation apply to a deposit and the paying out of security deposit pertaining to a financial service intermediary.

Supplementary Provisions

This Order comes into effect as of the day on which the Act Partially Amending the Act on the Provision of Financial Services, etc. for Improvement of Convenience for and Protection of Users of Financial Services (Act No. 50 of 2020) come into effect (November 1, 2021).

Supplementary Provisions [Cabinet Office and Ministry of Justice Order No. 5 of June 30, 2021]

This Order comes into effect as of the date of promulgation; provided, however, that the provisions of Article 13 come into effect as of the day on which the Act Partially Amending the Act on the Provision of Financial Services, etc. for Improvement of Convenience for and Protection of Users of Financial Services (Act No. 50 of 2020) come into effect (November 1, 2021).

Appended Form 1 (Re: Article 1)

Appended Form 2 (Re: Article 2)

Appended Form 3 (Re: Article 12, paragraph (1))

Appended Form 4 (Re: Article 12, paragraph (4))

Appended Form 5 (Re: Article 12, paragraphs (6) and (7))

Appended Form 6 (Re: Article 13, paragraph (4))

Appended Form 7 (Re: Article 13, paragraph (8))

Appended Form 8 (Re: Article 13, paragraph (9))

Appended Form 9 (Re: Article 14, paragraph (2))

Appended Form 10 (Re: Article 14, paragraph (3))