

# Corporate Reorganization Act (Tentative translation)

(Act No. 154 of December 13, 2002)

The Corporate Reorganization Act (Act No. 172 of 1952) is hereby fully revised.

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## **Chapter I General Provisions**

### (Purpose)

Article 1 The purpose of this Act is to appropriately coordinate the interests of creditors, shareholders, and other interested parties of stock companies in financial difficulty by specifying procedures concerning establishing and implementing reorganization plans, with the aim of enabling the stock companies to reorganize and remain in business.

### (Definitions)

Article 2 (1) The term "reorganization" as used in this Act means the procedure of establishing a reorganization plan for a stock company, and of implementing the reorganization plan once that plan has been established, as prescribed in this Act (including the procedure of conducting proceedings and arriving at a judicial decision as to whether to issue an order commencing a reorganization in response to a petition to commence a reorganization).

(2) The term "reorganization plan" as used in this Act means a plan that establishes provisions for modifying the whole or part of the rights of reorganization creditors, etc. or of shareholders, and which establishes the

- other provisions prescribed in Article 167.
- (3) The term "reorganization case" as used in this Act means a case involving reorganization.
  - (4) The term "reorganization court" as used in this Act means a district court before which a reorganization case is pending.
  - (5) The term "court" as used in this Act (excluding Article 6, Article 41, paragraph (1), item (ii), Article 155, paragraph (2), Article 159, Article 246, paragraph (1) through paragraph (3), Article 248, paragraph (1) through paragraph (3), Article 250, and Article 255, paragraph (1) and paragraph (2)) means the judge or panel of judges handling a reorganization case.
  - (6) The term "company awaiting reorganization" as used in this Act means a stock company that has a reorganization case pending before the reorganization court but for which an order commencing a reorganization has not yet been issued.
  - (7) The term "reorganizing company" as used in this Act means a stock company that has a reorganization case pending before the reorganization court but for which an order commencing a reorganization has been issued.
  - (8) The term "reorganization claim" as used in this Act means a claim on assets arising against a reorganizing company due to a cause occurring prior to the commencement of the reorganization as well as any of the following rights, if this does not fall within under the category of a secured reorganization claim or common-benefit claim:
    - (i) a claim to interest after the commencement of the reorganization;
    - (ii) a claim to damages or a penalty for default after the commencement of the reorganization;
    - (iii) a claim to expenses for participation in the reorganization;
    - (iv) A claim as prescribed in Article 58, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of the same Article);
    - (v) a claim to damages from the other party if a bilateral contract is cancelled pursuant to the provisions of Article 61, paragraph (1);
    - (vi) a claim to damages under the provisions of Article 58, paragraph (2) of the Bankruptcy Act (Act No. 75 of 2004) as applied mutatis mutandis pursuant to Article 63;
    - (vii) a claim under the provisions of Article 59, paragraph (1) as applied mutatis mutandis pursuant to Article 63 (excluding such claim held by the reorganizing company); and
    - (viii) a right prescribed in Article 91-2, paragraph (2), item (ii) or item (iii);
  - (9) The term "reorganization creditor" as used in this Act means a person that has a reorganization claim.
  - (10) The term "secured reorganization claim" as used in this Act means a claim secured under any security right (limited to a special statutory lien, pledge,

mortgage, or a right of retention under the provisions of the Commercial Code (Act No. 48 of 1899) or the Companies Act (Act No. 86 of 2005)) on the assets of a reorganizing company which exists at the time of the commencement of the reorganization, and which has arisen from a cause occurring prior to the commencement of the reorganization or a claim set forth in one of the items of paragraph (8) (other than one which is a common-benefit claim), to the extent that the claim is secured by the security right on the assumption that the assets that are the subject matter of the security right retains the market value thereof as of the time of commencement of reorganization; provided, however, that any claim to interest, or damages or a penalty for default, which forms part of the secured claim (excluding a corporate bond), is limited to claims that have arisen before one year elapses after the commencement of the reorganization (or before an order of confirmation of the reorganization plan is made if that order is made within one-year period).

- (11) The term "secured reorganization creditor" as used in this Act means a person that has a secured reorganization claim.
- (12) The term "reorganization claim, etc." as used in this Act means a reorganization claim or secured reorganization claim; provided, however, that in Section 2 of the following Chapter, the term means any claim that would become a Reorganization Claim or a Secured Reorganization claim if an order commencing reorganization were to be issued for a company awaiting reorganization.
- (13) The term "reorganization creditor, etc." as used in this Act means a reorganization creditor or a secured reorganization creditor; provided, however, that in Section 2 of the following Chapter, the term means any person that would become a reorganization creditor or a secured reorganization creditor if an order commencing reorganization were to be issued for a company awaiting reorganization.
- (14) The term "reorganizing company assets" as used in this Act means all of the assets belonging to a reorganizing company.
- (15) The term "claim for taxes, etc." as used in this Act means a claim that entitles a person to collect monies as prescribed by the National Tax Collection Act (Act No. 147 of 1959) or as is prescribed for the collection of national taxes, which does not fall under the category of a common-benefit claim.

(Status of Foreign Nationals)

Article 3 A foreign national or foreign corporation has the same status as a Japanese national or Japanese corporation with respect to a reorganization.

(Jurisdiction over Reorganization Cases)

Article 4 A petition to commence reorganization under the provisions of this Act

may be filed only if the stock company has a business office in Japan.

Article 5 (1) A reorganization case is subject to the jurisdiction of the district court that has jurisdiction over the location of the stock company's principal business office (if a stock company has a principal business office in a foreign state, the location of its principal business office in Japan).

(2) Notwithstanding the provisions of the preceding paragraph, a petition to commence reorganization may be filed with the district court that has jurisdiction over the location of the stock company's head office.

(3) Notwithstanding the provisions of paragraph (1), where a stock company holds the majority of voting rights (excluding the voting rights of the shares which may not be exercised for all particulars that may be resolved at a shareholders meeting, and including the voting rights of the shares for which the shareholder is deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act; the same applies hereinafter) of all shareholders of another stock company, if a reorganization case is pending against the other stock company (hereinafter referred to as a "subsidiary stock company" in this paragraph and the following paragraph), a petition to commence reorganization against the former stock company (hereinafter referred to as a "parent stock company" in this paragraph and the following paragraph) may also be filed with the district court before which the reorganization case against the subsidiary stock company is pending, and if a reorganization case is pending against the parent stock company, a petition to commence reorganization against the subsidiary stock company may also be filed with the district court before which the reorganization case against the parent stock company is pending.

(4) If a subsidiary stock company independently holds or the parent stock company and the subsidiary stock company jointly hold the majority of voting rights of all shareholders of another stock company, the provisions of the preceding paragraph is applied by deeming that other stock company as a subsidiary stock company of the parent stock company.

(5) Notwithstanding the provisions of paragraph (1), where a stock company, as prescribed by Article 444 of the Companies Act, has prepared consolidated financial statements (meaning consolidated financial statements prescribed in paragraph (1) of the same Article) for the most recent business year with regard to the stock company itself and another stock company, and reported the contents thereof at its annual shareholders meeting, if a reorganization case is pending against the relevant other stock company, a petition to commence reorganization against the stock company may also be filed with the district court before which the reorganization case against the relevant other stock company is pending, and if a reorganization case is pending against the

stock company, a petition to commence reorganization against the relevant other stock company may also be filed with the district court before which the reorganization case against the stock company is pending.

- (6) Notwithstanding the provisions of paragraph (1), a petition to commence reorganization may be filed with the Tokyo District Court or the Osaka District Court.
- (7) If two or more district courts have jurisdiction over a reorganization case pursuant to the provisions of the preceding paragraphs, the reorganization case is subject to the jurisdiction of the district court with which the first petition to commence reorganization is filed.

(Exclusive Jurisdiction)

Article 6 The court jurisdiction prescribed in this Act is exclusive.

(Transfer of Reorganization Cases)

Article 7 The Court, when it finds it necessary in order to avoid substantial detriment or delay, may by its own authority transfer a reorganization case to any of the following district courts:

- (i) the district court that has jurisdiction over the location of the business office of the stock company against which a petition to commence reorganization is filed;
- (ii) the district court that has jurisdiction over the location of the assets of the stock company set forth in the preceding item (in the case of a claim, the place where demand by litigation may be made); and
- (iii) any of the district courts prescribed in Article 5, paragraph (2) to paragraph (6).

(Optional Oral Arguments)

Article 8 (1) A judicial decision concerning reorganization may be made without oral argument.

- (2) The court may by its own authority conduct necessary investigation on a Reorganization Case.
- (3) The court, when it finds it necessary, may request the administrative agency that has jurisdiction over the business of a company awaiting reorganization or a reorganizing company and the person that has the power to collect concerning a claim for taxes, etc. (excluding a claim for a foreign tax subject to mutual assistance prescribed in Article 11, paragraph (1) of the Act on Special Measures of the Income Tax Act, Corporation Tax Act and Local Tax Act upon the Enforcement of Tax Treaties (Act No. 46 of 1969; hereinafter referred to as the "Act on Special Measures for the Enforcement of Tax Treaties") (hereinafter such foreign tax is referred to as a "Foreign Tax Subject to Mutual

Assistance")) to state their opinions concerning the reorganization of the company awaiting reorganization or the reorganizing company.

- (4) The administrative agency or the person that has the power of collection prescribed in the preceding paragraph may state their opinions to the court concerning the reorganization of the company awaiting reorganization or the reorganizing company prescribed in the same paragraph.

#### (Appeals)

Article 9 A person that has an interest in a judicial decision concerning a reorganization, only as specially prescribed in this Act, may file an immediate appeal against the judicial decision. The period for filing, if a public notice of the judicial decision is given, is two weeks from the day on which such public notice becomes effective.

#### (Public Notice)

Article 10 (1) A public notice under the provisions of this Act is effected by publication in the Official Gazette.

- (2) A public notice becomes effective on the day following the day on which it is publicized.
- (3) If service is required to be made pursuant to the provisions of this Act, it may be substituted by a public notice; provided, however, that this does not apply if both public notice and service are required to be given pursuant to the provisions of this Act.
- (4) When a public notice of a judicial decision is given pursuant to the provisions of this Act, it is deemed that all interested parties are notified of the judicial decision.
- (5) The provisions of the preceding two paragraphs do not apply if special provisions exist in this Act.

#### (Inspection of Case Documents)

Article 11 (1) An interested person, pursuant to the provisions of this Act (including other Acts as applied mutatis mutandis pursuant to this Act), may make a request to a court clerk for the inspection of documents and any other objects (hereinafter referred to as "documents and other objects" in this Article and paragraph (1) of the following Article) submitted to the court or prepared by the court.

- (2) An interested person may make a request to a court clerk for the copying of documents and other objects, issuance of an authenticated copy, transcript or extract of documents and other objects, or issuance of a certificate of particulars concerning the case in question.
- (3) The provisions of the preceding paragraph do not apply with respect to



material prepared in the form of audiotapes or videotapes (including objects onto which certain particulars are recorded by any means equivalent thereto). In this case, upon the request of an interested person with regard to these objects, a court clerk must permit reproduction thereof.

(4) Notwithstanding the provisions of the preceding three paragraphs, a person set forth in each of the following items may not make a request under the provisions of the preceding three paragraphs until the order, provisional disposition, or judicial decision specified in the respective items is issued or made; provided, however, that this does not apply when the person in question is a petitioner for commencement of a reorganization:

(i) an interested person other than the company awaiting reorganization: An order to stay under the provisions of Article 24, paragraph (1) or paragraph (2), comprehensive prohibition order prescribed in Article 25, paragraph (2), provisional disposition under the provisions of Article 28, paragraph (1), permission under the provisions of Article 29, paragraph (3), orders for temporary administration prescribed in Article 30, paragraph (2), supervision order prescribed in Article 35, paragraph (2), provisional disposition under the provisions of Article 39-2, paragraph (1) or judicial decision on a petition to commence reorganization; or

(ii) the company awaiting reorganization: A judicial decision to designate the date for oral argument or date for interrogation on which the company awaiting reorganization is to be summoned to appear with respect to a petition to commence reorganization, or any order, provisional disposition, permission or judicial decision specified in the preceding item.

(Restrictions on Inspections of Detrimental Parts of Documents)

Article 12 (1) If, with regard to the following documents, a prima facie showing is made to the effect that the documents in question contain parts likely to hinder the reorganization and the continuation of business of the reorganizing company (including the company awaiting reorganization and any stock company that has been the company awaiting reorganization or reorganizing company; hereinafter the same applies in this Article) or serious damage to the reorganizing company's assets if it is subject to inspection or copying, issuance of an authenticated copy, transcript or extract, or reproduction (hereinafter referred to as "inspection" in this Article) conducted by an interested person (the part of documents is hereinafter referred to as the "detrimental part" in this Article), the Court, upon the petition of the provisional administrator, trustee or examiner that submitted the documents in question, may limit persons that may make a request for inspection of the detrimental part to the person that has filed the petition and the reorganizing company (or a trustee or provisional administrator if any trustee or provisional administrator is

appointed; hereinafter the same applies in the following paragraph):

- (i) documents submitted to the court for the purpose of obtaining permission under the proviso to Article 32, paragraph (1), the first sentence of Article 46, paragraph (2) or Article 72, paragraph (2) (including cases where applied mutatis mutandis pursuant to Article 32, paragraph (3)); and
  - (ii) documents pertaining to the report under the provisions of Article 84, paragraph (2), or an examination or statement of opinions prescribed in Article 125, paragraph (2).
- (2) When the petition set forth in the preceding paragraph is filed, no interested person (excluding the person that filed the petition set forth in the same paragraph and the reorganizing company; the same applies in the following paragraph) may make a request for inspection of the detrimental part until a judicial decision on the petition becomes final and binding.
- (3) An interested person that intends to make a request for inspection of the detrimental part may file a petition to the reorganization court for revocation of the order made under the provisions of paragraph (1), on the grounds that the requirement prescribed in the same paragraph is not met or is no longer met.
- (4) An immediate appeal may be filed against an order to dismiss without prejudice the petition set forth in paragraph (1) and a judicial decision on the petition set forth in the preceding paragraph.
- (5) An order to revoke the order made under the provisions of paragraph (1) does not become effective unless it becomes final and binding.

(Application Mutatis Mutandis of the Code of Civil Procedure)

Article 13 With respect to reorganization, the provisions of the Code of Civil Procedure (Act No. 109 of 1996) apply mutatis mutandis, except as otherwise provided.

(Rules of the Supreme Court)

Article 14 Beyond what is prescribed in this Act, the necessary particulars concerning a reorganization will be specified by the Rules of the Supreme Court.

Article 15 Deleted

Article 16 Deleted

## **Chapter II Petition to Commence Reorganization and Provisional Measures**

### **Section 1 Petition to Commence Reorganization**

(Petition to Commence Reorganization)

Article 17 (1) When there is a fact constituting grounds for commencement of a reorganization (meaning any of the facts listed in the following items) in relation to a stock company, the stock company may file a petition to commence reorganization against itself:

- (i) when there is the risk that a fact constituting grounds for commencement of bankruptcy proceedings would occur; or
- (ii) when the stock company is likely to experience significant hindrance to the continuation of its business if it pays due debts.

(2) When there is a fact that falls under item (i) of the preceding paragraph in relation to a stock company, the following persons may also file a petition to commence reorganization proceedings against the stock company:

- (i) a creditor that has claims that account for one-tenth or more of the amount of the stated capital of the stock company; and
- (ii) a shareholder that has one-tenth or more of the voting rights of all shareholders of the stock company.

(Obligation to File a Petition to Commence Bankruptcy Proceedings and a Petition to Commence Reorganization)

Article 18 Even when a liquidator of a stock company is required to file a petition to commence bankruptcy proceedings or a special liquidation against the stock company pursuant to the provisions of other Acts, this does not preclude the filing of a petition to commence reorganization.

(Petition to Commence Reorganization against a Stock Company after Dissolution)

Article 19 In order for a stock company to file a petition to commence reorganization against itself during liquidation or special liquidation or after the commencement of bankruptcy proceedings, that filing must be approved by a resolution prescribed in Article 309, paragraph (2) of the Companies Act.

(Prima Facie Showing)

Article 20 (1) When filing a petition to commence reorganization, a petitioner must make a prima facie showing of the fact constituting the grounds for commencement of reorganization prescribed in Article 17, paragraph (1).

(2) If a creditor or shareholder files a petition under the provisions of Article 17, paragraph (2), the creditor or shareholder must also make a prima facie showing of the amount of the claim or the number of their voting rights (excluding the voting rights of the shares of stock which may not be exercised for all particulars that may be resolved at a shareholders meeting, and including the voting rights of the shares of stock for which the shareholder is

deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act).

(Prepayment of Expenses)

- Article 21 (1) When filing a petition to commence reorganization, a petitioner must prepay an amount designated by the court as expenses for reorganization.
- (2) An immediate appeal may be filed against an order on prepayment of expenses.

(Hearing of Opinions)

- Article 22 (1) If a petition to commence reorganization is filed under the provisions of Article 17, the court, before making an order on the petition, must hear opinions of the labor union consisting of the majority of the employees of the company awaiting reorganization, if there is any such labor union, or the person representative of the majority of the employees of the company awaiting reorganization, if there is no labor union consisting of the majority of the employees of the company awaiting reorganization, except when it is obvious that the court should dismiss the petition with prejudice on the merits or make an order commencing reorganization .
- (2) If a creditor or shareholder has filed a petition to commence reorganization pursuant to the provisions of Article 17, paragraph (2), the court, when making an order on the petition, must interrogate the representative of the company awaiting reorganization (or its representative for Japan if the company has its head office in a foreign state).

(Restriction on Withdrawal of Petition to Commence Reorganization)

- Article 23 A person that has filed a petition to commence reorganization may withdraw the petition only prior to an order commencing reorganization being made. In this case, after an order to stay under the provisions of paragraph (1) or paragraph (2) of the following Article, comprehensive prohibition order prescribed in Article 25, paragraph (2), provisional disposition under the provisions of Article 28, paragraph (1), permission under the provisions of Article 29, paragraph (3), orders for temporary administration prescribed in Article 30, paragraph (2), supervision order prescribed in Article 35, paragraph (2), or provisional disposition under the provisions of Article 39-2, paragraph (1), permission of the court is required.

**Section 2 Provisional Measures upon Petition to Commence  
Reorganization**

**Subsection 1 Stay Order for Other Procedures and Proceedings  
Relating to a Company Awaiting Reorganization**

(Stay Order for Other Procedures and Proceedings)

Article 24 (1) If a petition to commence reorganization is filed, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may order to stay the following procedures, proceedings or disposition until an order is made on the petition to commence reorganization; provided, however, that this only applies, in the case of the procedure set forth in item (ii) or the disposition set forth in item (vi), if the stay order is not likely to cause undue damage to the reorganization creditor, etc. that filed the petition for the procedure or the person that makes the disposition:

- (i) bankruptcy proceedings, rehabilitation proceedings or special liquidation proceedings against the company awaiting reorganization;
  - (ii) a procedure for compulsory execution, etc. (meaning compulsory execution, provisional seizure, provisional disposition, or exercise of any security right based on a reorganization claim, etc., or auction by reason of a right of retention that is intended to secure a reorganization claim, etc.), which has already been initiated against the assets of the company awaiting reorganization;
  - (iii) a procedure already initiated against the company awaiting reorganization for the exercise of security right on whole company assets;
  - (iv) litigation proceedings relating to the assets of the company awaiting reorganization;
  - (v) a procedure for a case relating to the assets of the company awaiting reorganization that is pending before an administrative agency; or
  - (vi) a disposition of foreign tax delinquency (meaning a disposition made through a procedure for making a disposition of national tax delinquency based on a claim for a foreign tax subject to mutual assistance (excluding a disposition intended to collect a common-benefit claim)), which has already been made against the assets of the company awaiting reorganization.
- (2) If a petition to commence reorganization is filed, the court, when it finds it necessary, may by its own authority, order to stay any disposition of national tax delinquency (excluding a disposition to collect a common-benefit claim, and including any disposition made by the same procedure as that for making a disposition of national tax delinquency (excluding a disposition to collect a common-benefit claim and a claim for a foreign tax subject to mutual assistance)), which has already been made against the assets of the company awaiting reorganization; provided, however, that it must hear opinions from the person that has the power of collection in advance.
- (3) The stay order under the provisions of the preceding paragraph ceases to be effective when an order is made on the petition to commence reorganization or when two months have elapsed since the day on which the stay order was made.

- (4) The court may change or revoke a stay order issued under the provisions of paragraph (1) and paragraph (2).
- (5) The court, when it finds it particularly necessary for the continuation of the business of the company awaiting reorganization, upon the petition of the company awaiting reorganization (or a provisional administrator if any provisional administrator is appointed), may order the revocation of the procedure for compulsory execution, etc. prescribed in paragraph (1), item (ii) which has been stayed pursuant to the provisions of the same item, the disposition of foreign tax delinquency prescribed in item (vi) of paragraph (1) which has been stayed pursuant to the provisions of item (vi) of the same paragraph or the disposition of national tax delinquency prescribed in paragraph (2) which has been stayed pursuant to the provisions of paragraph (2), while requiring the provisions of security; provided, however, that when the court orders the revocation of the disposition of national tax delinquency, it must hear opinions from the person that has the power of collection in advance.
- (6) An immediate appeal may be filed against a stay order under the provisions of paragraph (1) or paragraph (2), order under the provisions of paragraph (4), and revocation order under the provisions of the preceding paragraph.
- (7) The immediate appeal set forth in the preceding paragraph does not have the effect of a stay of execution.
- (8) If a judicial decision prescribed in paragraph (6) or a judicial decision on the immediate appeal set forth in the same paragraph is made, the written judgment must be served upon the parties concerned.

(Comprehensive Prohibition Order)

Article 25 (1) If a petition to commence reorganization is filed, if there are special circumstances where the court finds that the risk that the purpose of the reorganization cannot be achieved satisfactorily exists reorganization by only issuing a stay order under the provisions of paragraph (1), item (ii) or item (vi) of the preceding Article or paragraph (2) of the same Article, the court, upon the petition of an interested person or by its own authority, may issue an order to prohibit all reorganization creditors, etc. from enforcing the compulsory execution, etc. prescribed in paragraph (1), item (ii) of the same Article, disposition of foreign tax delinquency prescribed in item (vi) of the same paragraph and the disposition of national tax delinquency prescribed in paragraph (2) of the same Article, until an order is made on the petition to commence reorganization; provided, however, that this applies only when the court, in advance or simultaneously, issues a provisional disposition under the provisions of Article 28, paragraph (1) with respect to the principal assets of the company awaiting reorganization or issues orders for temporary administration prescribed in Article 30, paragraph (2) or a supervision order

prescribed in Article 35, paragraph (2).

- (2) Upon issuing a prohibition order under the provisions of the preceding paragraph (hereinafter referred to as a "comprehensive prohibition order"), the court, when it finds it appropriate, may exclude a certain range of the compulsory execution, etc. prescribed in paragraph (1), item (ii) of the preceding Article, the disposition of foreign tax delinquency prescribed in item (vi) of the same paragraph or the disposition of national tax delinquency prescribed in paragraph (2) of the same Article from the scope of the subject of the comprehensive prohibitory injunction.
- (3) If a comprehensive prohibition order is issued, any of the procedures set forth in the following items which have already been initiated against the assets of the company awaiting reorganization (limited to a procedure that is to be prohibited by the comprehensive prohibitory injunction will be stayed until the time specified in the respective items:
  - (i) the procedure for compulsory execution, etc. prescribed in paragraph (1), item (ii) of the preceding Article and the disposition of foreign tax delinquency prescribed in item (vi) of the same paragraph: The time when an order is made on the petition to commence reorganization ; and
  - (ii) the disposition of national tax delinquency prescribed in paragraph (2) of the preceding Article: The time specified in the preceding item or the time when two months have elapsed since the date of the comprehensive prohibition order, whichever comes earlier.
- (4) The court may change or revoke a comprehensive prohibition order.
- (5) The court, when it finds it particularly necessary for the continuation of the business of the company awaiting reorganization, upon the petition of the company awaiting reorganization (or a provisional administrator if any provisional administrator is appointed), may order revocation of any of the procedures set forth in the items of paragraph (3) which has been stayed pursuant to the provisions of the same paragraph, while requiring the provision of security; provided, however, that when the court orders the revocation of the disposition of national tax delinquency prescribed in paragraph (2) of the preceding Article, it must hear opinions from the person that has the power of collection in advance.
- (6) An immediate appeal may be filed against a comprehensive prohibition order, an order made under the provisions of paragraph (4) and a revocation order issued under the provisions of the preceding paragraph.
- (7) The immediate appeal set forth in the preceding paragraph does not have the effect of stay of execution.
- (8) When a comprehensive prohibition order is issued, the prescription is not completed with regard to a Reorganization Claim, etc. (limited to the claim for which compulsory execution, etc. prescribed in paragraph (1), item (ii) of the

preceding Article or disposition of national tax delinquency prescribed in paragraph (2) of the same Article is prohibited by the comprehensive prohibitory injunction) until the day on which two months have elapsed since the day following the day on which the comprehensive prohibitory injunction ceases to be effective.

(Public Notices and Service Concerning Comprehensive Prohibition Order)

Article 26 (1) If a comprehensive prohibition order is issued and an order to change or revoke the relevant order is made, public notification must be given to that effect, the written judgment must be served upon the company awaiting reorganization (or a provisional administrator if any provisional administrator is appointed; the same applies in the following paragraph) and the petitioner, and a notice of the main text of the respective order must be given to known reorganization creditors and the company awaiting reorganization (limited to cases where a provisional administrator is appointed).

(2) A comprehensive prohibition order and an order to change or revoke the relevant order will become effective as of the time when the written judgment are served upon the company awaiting reorganization.

(3) If a revocation order under the provisions of paragraph (5) of the preceding Article is issued and a judicial decision on an immediate appeal set forth in paragraph (6) of the same Article (excluding an order to change or revoke a comprehensive prohibition order) is made, the written judgment must be served upon the parties concerned.

(Cancellation of a Comprehensive Prohibition Order)

Article 27 (1) The court, when it finds, after issuing a comprehensive prohibition order, that the order is likely to cause undue damage to a reorganization creditor that filed a petition for compulsory execution, etc. prescribed in Article 24, paragraph (1), item (ii), upon the petition of the reorganization creditor, may make an order that the comprehensive prohibition order will be cancelled only with regard to the creditor. In this case, the creditor may enforce the compulsory execution, etc. against the assets of the company awaiting reorganization, and the procedure for compulsory execution, etc. initiated by the creditor prior to the issuance of the comprehensive prohibition order will be continued.

(2) The provisions of the preceding paragraph apply mutatis mutandis when the court finds that a comprehensive prohibition order is likely to cause undue damage to a person that enforces the disposition of foreign tax delinquency prescribed in Article 24, paragraph (1), item (vi) or the disposition of national tax delinquency prescribed in paragraph (2) of the same Article.

(3) For the purpose of application of the provisions of Article 25, paragraph (8) to



a person that obtains a cancellation order under the provisions of paragraph (1) (including cases where applied mutatis mutandis pursuant to the preceding paragraph; the same applies in the following paragraph and paragraph (6)), the phrase "the day on which the comprehensive prohibition order ceases to be effective" in Article 25, paragraph (8) is deemed to be replaced with "the day on which a cancellation order under the provisions of Article 27, paragraph (1) (including cases where applied mutatis mutandis pursuant to paragraph (2) of the same Article) is made".

- (4) An immediate appeal may be filed against a judicial decision on the petition set forth in paragraph (1).
- (5) The immediate appeal set forth in the preceding paragraph does not have the effect of a stay of execution.
- (6) If a judicial decision on the petition set forth in paragraph (1) and a judicial decision on the immediate appeal set forth in paragraph (4) are made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

### **Subsection 2 Provisional Dispositions and Other Measures Concerning the Business and Assets of a Company Awaiting Reorganization**

(Provisional Dispositions Concerning the Business and Assets of a Company Awaiting Reorganization)

- Article 28 (1) If a petition to commence Reorganization is filed, the court, upon the petition of an interested person or by its own authority, may issue a provisional disposition that prohibits the disposition of the assets of the company awaiting reorganization or any other necessary provisional disposition concerning the business and assets of the company awaiting reorganization until an order is made on the petition to commence reorganization.
- (2) The court may change or revoke a provisional disposition issued under the provisions of the preceding paragraph.
  - (3) An immediate appeal may be filed against a provisional disposition issued under the provisions of paragraph (1) and an order made under the provisions of the preceding paragraph.
  - (4) The immediate appeal set forth in the preceding paragraph does not have the effect of stay of execution.
  - (5) If a judicial decision prescribed in paragraph (3) and a judicial decision on the immediate appeal set forth in the same paragraph are made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
  - (6) Where the court, pursuant to the provisions of paragraph (1), has issued a

provisional disposition to prohibit the company awaiting reorganization from making payment to a reorganization creditor or conducting any other act in order to have its debt extinguished, the reorganization creditor may not, provisional disposition assert as a part of the relationship involved in those reorganization, the validity of that payment or any other action causing the debt to be extinguished that has been effected in violation of that provisional order; provided, however, that this applies only if the reorganization creditor knows, at the time of the act, the fact that the provisional disposition was issued.

(Demand for Extinguishment of a Right of Retention under Commercial Law  
Prior to the Commencement of Reorganization)

- Article 29 (1) Where there exists any right of retention under the provisions of the Commercial Code or the Companies Act on the assets of the company awaiting reorganization, if the assets are indispensable to the continuation of the business of the Company Awaiting Reorganization, the Company Awaiting Reorganization (or a provisional administrator if any provisional administrator is appointed) may make a demand to the holder of the right of retention that the right be extinguished, before an order is made on the petition to commence reorganization .
- (2) In order to make a demand under the provisions of the preceding paragraph, the amount of money equivalent to the value of the assets set forth in the same paragraph must be paid to the holder of the right of retention set forth in the same paragraph.
- (3) In order to make the demand set forth in paragraph (1) and to make payment set forth in the preceding paragraph, the permission of the court must be obtained.
- (4) When the permission set forth in the preceding paragraph is granted, if the amount of payment set forth in paragraph (2) satisfies the value of the assets set forth in paragraph (1), the right of retention set forth in paragraph (1) will be extinguished at whichever occurs later between the time when the payment is made or at the time when the demand is made as set forth in paragraph (1).
- (5) In an action to request return of the assets set forth in paragraph (1) by reason that the right of retention set forth in the same paragraph is extinguished pursuant to the provisions of the preceding paragraph, even if the amount of payment set forth in paragraph (2) does not satisfy the value of the assets, upon the plaintiff's petition and when the court in charge of the action finds it appropriate, the court may order the holder of the right of retention set forth in paragraph (1) to return the assets, on the condition that the amount of any shortage will be paid within a reasonable period of time.

### **Subsection 3 Orders for Temporary Administration**

(Orders for Temporary Administration)

Article 30 (1) If a petition to commence reorganization is filed, when the court finds it necessary in order to achieve the purpose of the reorganization, the court, upon the petition of an interested person or by its own authority, may make a disposition to order that the business and assets of the company awaiting reorganization be administered by a provisional administrator until an order is made on the petition to commence reorganization.

(2) The court, when making a disposition under the provisions of the preceding paragraph (hereinafter referred to as an "order for temporary administration"), must appoint one or more provisional administrators in the orders for temporary administration; provided, however, that the person prescribed in Article 67, paragraph (3) may not be appointed as a provisional administrator.

(3) The court may change or revoke an order for temporary administration.

(4) An immediate appeal may be filed against an order for temporary administration and an order made under the provisions of the preceding paragraph.

(5) The immediate appeal set forth in the preceding paragraph does not have the effect of stay of execution.

(Public Notice and Service Concerning Orders for Temporary Administration)

Article 31 (1) the court, when it has issued an order for temporary administration, must give a public notice to that effect. The same applies when the court makes an order to change or revoke an order for temporary administration.

(2) If an order for temporary administration is issued, an order under the provisions of paragraph (3) of the preceding Article is made, and a judicial decision on the immediate appeal set forth in paragraph (4) of the same Article is made, the written judgment must be served upon the parties concerned.

(3) The provisions of Article 10, paragraph (4) do not apply to the case referred to in paragraph (1).

(Powers of Provisional Administrators)

Article 32 (1) When an order for temporary administration is issued, the right to manage the business of the company awaiting reorganization and to administer and dispose of the company's assets (irrespective of whether or not it exists in Japan) is vested exclusively in a provisional administrator; provided, however, that a provisional administrator must obtain permission of the court in order to conduct any act that does not fall within the scope of the ordinary business of the company awaiting reorganization.

- (2) Any act conducted without the permission set forth in the proviso to the preceding paragraph will be void; provided, however, that this may not be asserted against a third party in good faith.
- (3) The provisions of Article 72, paragraph (2) and paragraph (3) apply mutatis mutandis to a provisional administrator.

(Provisional Administrator Representatives)

- Article 33 (1) A provisional administrator, if necessary, may appoint one or more provisional administrator representatives on their own responsibility, in order to have them carry out their duties; provided, however, that the person prescribed in Article 67, paragraph (3) may not be appointed as a provisional administrator representative .
- (2) The appointment of a provisional administrator representative set forth in the provisions of the preceding paragraph requires permission of the court.

(Application Mutatis Mutandis)

- Article 34 (1) The provisions of Article 54, Article 57, Article 59, Article 67, paragraph (2), Article 68, Article 69, Article 73, Article 74, paragraph (1), Article 76 through Article 80, Article 81, paragraph (1) to paragraph (4), and Article 82, paragraph (1) to paragraph (3) apply mutatis mutandis to a provisional administrator, and the provisions of Article 81, paragraph (1) to paragraph (4) apply mutatis mutandis to a provisional administrator representative. In this case, the phrase "public notice given under the provisions of Article 43, paragraph (1)" in the Article 59 is deemed to be replaced with "public notice given under the provisions of Article 31, paragraph (1) ", the term "successor trustee" in Article 82, paragraph (2) is deemed to be replaced with "successor provisional administrator or trustee" and the term "successor trustee" in Article 82, paragraph (3) is deemed to be replaced with "successor provisional administrator, trustee".
- (2) The provisions of Article 52, paragraph (1) to paragraph (3) apply mutatis mutandis when an order for temporary administration is issued, and the provisions of paragraph (4) to paragraph (6) of the same Article apply mutatis mutandis when an order for temporary administration ceases to be effective (excluding cases where an order commencing reorganization is made).
  - (3) In the cases listed in the following items, the provisions specified in the respective items apply mutatis mutandis to a case relating to the assets of the company awaiting reorganization that is pending before an administrative agency:
    - (i) When an order for temporary administration is issued: Article 52, paragraph (1) to paragraph (3); and
    - (ii) When an order for temporary administration ceases to be effective

(excluding cases where an order commencing reorganization is made): Article 52, paragraph (4) to paragraph (6).

- (4) The provisions of Article 65 apply mutatis mutandis when a director, executive officer, or liquidator of the company awaiting reorganization intends to conduct a transaction that falls within the line of the business of the company for themselves or a third party during the period in which an appointed provisional administrator is in office.
- (5) The provisions of the main clause of Article 66, paragraph (1) apply mutatis mutandis to a director, accounting advisor, auditor, executive officer, and liquidator of the company awaiting reorganization during the period in which an appointed provisional administrator is in office.

#### **Subsection 4 Supervision Orders**

(Supervision Orders)

Article 35 (1) If a petition to commence reorganization is filed, the court, when it finds it necessary in order to achieve the purpose of reorganization, upon the petition of an interested person or by its own authority, may make a disposition to order supervision by a supervisor until an order is made on the petition to commence reorganization .

- (2) The court, when making the disposition set forth in the preceding paragraph (hereinafter referred to as a "supervision order"), in the supervision order, must appoint one or more supervisors and designate acts that the Company Awaiting Reorganization may not conduct without obtaining their consent.
- (3) Any act conducted without the supervisor's consent prescribed in the preceding paragraph will be void; provided, however, that this may not be asserted against a third party in good faith.
- (4) The court may change or revoke a supervision order.
- (5) An immediate appeal may be filed against a supervision order and an order made under the provisions of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph does not have the effect of a stay of execution.

(Public Notices and Service Concerning Supervision Orders)

Article 36 (1) The court, if it issues a supervision order, must give a public notice to that effect. The same applies when the court makes an order to change or revoke a supervision order.

- (2) If a supervision order is issued, an order under the provisions of paragraph (4) of the preceding Article is made, and a judicial decision on the immediate appeal set forth in paragraph (5) of the same Article is made, the written judgment must be served upon the parties concerned.

(3) The provisions of Article 10, paragraph (4) do not apply to the case referred to in paragraph (1).

(Investigation on Qualifications of Directors as Trustees)

Article 37 The court may order a supervisor to investigate whether or not a person designated by the court from among the directors, accounting advisors, auditors, executive officers, financial auditors, or liquidators of the company awaiting reorganization or persons that held those posts is, or the incorporators, directors at incorporation or auditors at incorporation are qualified to perform the duties of a trustee or trustee representative, and to report the results of the investigation to the court within a period specified by the court.

(Application Mutatis Mutandis)

Article 38 The provisions of Article 67, paragraph (2), Article 68, Article 69, paragraph (1), Article 77, Article 80, and Article 81, paragraph (1) to paragraph (4) apply mutatis mutandis to a supervisor.

### **Subsection 5 Ordering an Examination before Commencement of Reorganization**

(Examination Orders Prior to Commencement of Reorganization)

Article 39 Even during the period after a petition to commence reorganization is filed until an order is made on the petition to commence reorganization, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may issue an examination order prescribed in Article 125, paragraph (2), targeting the whole or part of the following:

- (i) whether or not there is a fact constituting any of the grounds for commencement of reorganization prescribed in Article 17, paragraph (1) and there are any of the grounds listed in Article 41, paragraph (1), item (ii) through item (iv), the status of the business and assets of the company awaiting reorganization and other particulars necessary for making finalization on the petition to commence reorganization , and whether or not it is appropriate to commence reorganization;
- (ii) whether or not there are any circumstances requiring a provisional disposition under the provisions of Article 28 paragraph (1), an order for temporary administration, a supervision order, a provisional disposition under the provisions of next Article or Article 40 or an assessment order on the liability of officers prescribed in Article 100, paragraph (1), and whether or not it is necessary to issue any of these orders; and
- (iii) other particulars for which it is necessary for an examiner to conduct an

examination or state their opinions on concerning the Reorganization Case.

(Provisional Disposition for Right of Avoidance)

- Article 39-2 (1) The Court, when it finds it necessary in order to preserve a right of avoidance during the period after a petition to commence reorganization is filed until an order on the petition is made, upon the petition of an interested person (or a provisional administrator if any provisional administrator is appointed) or by its own authority, may issue an order of provisional seizure or provisional disposition or any other necessary provisional disposition.
- (2) The provisional disposition under the provisions of the preceding paragraph may be issued while requiring or not requiring the provision of security.
- (3) The Court, upon petition or by its own authority, may change or revoke a provisional disposition issued under the provisions of paragraph (1).
- (4) An immediate appeal may be filed against a provisional disposition issued under the provisions of paragraph (1) and a judicial decision on the petition set forth in the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph does not have the effect of a stay of execution.
- (6) If a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in the same paragraph are made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Provisional Disposition upon Assets of Officers Prior to the Commencement of Reorganization)

- Article 40 (1) Even during the period after a petition to commence reorganization is filed until an order on the petition is made, the court, when it finds urgent necessity, upon the petition of the company awaiting reorganization (or a provisional administrator if any provisional administrator is appointed) or by its own authority, may issue a provisional disposition set forth in each item of Article 99, paragraph (1).
- (2) The provisions of Article 99, paragraph (2) to paragraph (5) apply mutatis mutandis where a provisional disposition is issued under the provisions of the preceding paragraph.

**Chapter III Order Commencing Reorganization and the Legal Effect  
Thereof Reorganization  
Section 1 Order Commencing Reorganization**

(Order Commencing Reorganization)

- Article 41 (1) If a petition to commence reorganization is filed under the

provisions of Article 17, the court, when it finds a fact constituting the grounds for the commencement of reorganization, makes an order commencing reorganization, except in any of the cases listed in the following items:

- (i) when expenses for reorganization are not prepaid;
  - (ii) when bankruptcy proceedings, rehabilitation proceedings or special liquidation proceedings are pending before the court, and enforcing the proceedings conforms to the common interests of creditors;
  - (iii) when it is obvious that a proposed reorganization plan providing for the continuation of the business is unlikely to be prepared or approved or a reorganization plan providing for the continuation of the business is unlikely to be confirmed; or
  - (iv) when the petition to commence organization is filed for an unjustifiable purpose or it is not filed in good faith.
- (2) The order made under the preceding paragraph will become effective as of the time when it is made.

(Particulars to Be Specified When Making an Order Commencing Reorganization)

- Article 42 (1) The court, upon making an order commencing a reorganization, must appoint one or more trustees and specify a period during which a proof of a reorganization claim, etc. should be filed and a period for conducting an investigation of reorganization claims, etc.
- (2) In the case referred to in the preceding paragraph, the court, if there are one thousand or more known reorganization creditors and it finds it appropriate, may make an order not to give a notice to known reorganization creditors under the provisions of paragraph (3), item (i) of the following Article, as applied mutatis mutandis pursuant to the main clause of paragraph (5) of the same Article, and the provisions of the main clause of Article 44, paragraph (3), and not to summon, on the date of a stakeholders meeting (excluding one aimed for adopting a resolution on a proposed reorganization plan), reorganization creditors that have filed a proof of their reorganization claims, etc. pursuant to the provisions of Article 138 through Article 140 or Article 142 (hereinafter referred to as "holders of filed reorganization claims, etc.").

(Public Notice of Commencement of Reorganization)

- Article 43 (1) The court, when it has made an order commencing reorganization, must immediately give a public notice of the following; provided, however, that when there is no bond administrator, etc. prescribed in item (v), a public notice of the particulars set forth in the same item is not required:
- (i) the main text of the order commencing reorganization;
  - (ii) the name of a trustee;



- (iii) the periods specified pursuant to the provisions of paragraph (1) of the preceding Article;
  - (iv) the order to the effect that a possessor of assets, etc. (meaning a person that possesses the assets of the reorganizing company and a person that owes a debt to the reorganizing company) must not deliver the assets or make payment to the reorganizing company; and
  - (v) the statement to the effect that where there is any bond administrator, etc. (meaning a bond administrator or a trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bonds Trust Act (Act No. 52 of 1905)) with regard to corporate bonds issued by the reorganizing company, reorganization creditors may not exercise their voting rights based on such corporate bonds except in any of the cases listed in the items of Article 190, paragraph (1) (excluding the case set forth in paragraph (3) of the same Article).
- (2) When an order set forth in paragraph (2) of the preceding Article is made, the court, beyond the particulars listed in the items of the preceding paragraph, must give a public notice to the effect that it will not give a notice to known reorganization creditors under the provisions of item (i) of the following paragraph, as applied mutatis mutandis pursuant to the main clause of paragraph (5), and the provisions of the main clause of paragraph (3) of the following Article, and also will not summon holders of filed reorganization claims, etc. on the date of a stakeholders meeting (excluding one with the aim of adopting a resolution on a proposed reorganization plan).
- (3) The following persons must be given a notice of the particulars which a public notice must give, pursuant to the provisions of the preceding two paragraphs:
- (i) a trustee, the reorganizing company, and known reorganization creditors;
  - (ii) known shareholders;
  - (iii) known possessors of assets, etc. prescribed in paragraph (1), item (iv); and
  - (iv) a provisional administrator, a supervisor, or an examiner when an order for temporary administration, a supervision order, or an examination order under the provisions of Article 39 is issued, respectively.
- (4) Notwithstanding the provisions of the preceding paragraph, in the cases listed in the following items, the notice specified in the respective items does not be required to be given under the provisions of the same paragraph:
- (i) when it is obvious that the reorganizing company is unable to pay its debts in full with its assets with regard to claims that take precedence over consensually-subordinated reorganization claims (meaning claims for which the reorganization creditor and the reorganizing company, prior to the commencement of reorganization, reach an agreement to the effect that if bankruptcy proceedings are commenced against the reorganizing company, the claim will be subordinated to a subordinate bankruptcy claim prescribed

- in Article 99, paragraph (1) of the Bankruptcy Act in the order of priority for receiving a liquidating distribution in the bankruptcy proceedings; the same applies hereinafter): The holders of such consensually-subordinated reorganization claims if they are known; and
- (ii) when it is obvious that the reorganizing company is unable to pay its debts in full with its assets: Known shareholders.
- (5) The provisions of paragraph (1), item (ii), paragraph (3), item (i) through item (iii), and the preceding paragraph apply mutatis mutandis when there is a change to the particulars set forth in paragraph (1), item (ii), and the provisions of paragraph (1), item (iii), paragraph (3), item (i) and item (ii), and the preceding paragraph apply mutatis mutandis when there is a change to the particulars set forth in paragraph (1), item (iii) (limited to cases where there is a change to the period during which a proof of reorganization claims, etc. should be filed); provided, however, that when the order set forth in paragraph (2) of the preceding Article is made, the notice is not required to be given to known Reorganization Creditors.

#### (Appeals)

- Article 44 (1) An immediate appeal may be filed against a judicial decision on a petition to commence reorganization.
- (2) The provisions of Section 2 of the preceding Chapter apply mutatis mutandis when an immediate appeal set forth in the preceding paragraph is filed against an order to dismiss with prejudice a petition to commence reorganization.
- (3) The court that has made an order commencing reorganization , if an immediate appeal set forth in paragraph (1) is filed and an order to revoke the relevant order becomes final and binding, must immediately give a public notice of the main text of the revocation order and give a notice of the main text thereof to the persons listed in the items of paragraph (3) of the preceding Article (excluding item (iv)) (excluding the persons that are not given a notice under the provisions of paragraph (4) of the same Article); provided, however, that when an order set forth in Article 42, paragraph (2) is made, the notice is not required to be given to known reorganization creditors.

### **Section 2 Legal Effect of an Order Commencing Reorganization**

#### (Prohibition of Change to Basic Particulars Concerning the Structure of a Reorganizing Company)

- Article 45 (1) During the period after the commencement of a reorganization until the close thereof, none of the following acts may be conducted with regard to the reorganizing company unless it is prescribed in a reorganization plan:
- (i) cancellation, acquisition of the shares, etc. subject to the cash-out (meaning

- the shares subject to the cash-out prescribed in Article 179-2, paragraph (1), item (v) of the Companies Act; the same shall apply hereinafter) involved in the demand for share, etc. cash-out (meaning the demand for share, etc. cash-out prescribed in Article 179-3, paragraph (1) of said Act; the same shall apply in Article 174-3 and Article 214-2) with regard to the shares, etc. subject to the cash-out issued by the reorganization company, consolidation or splitting of shares, allotment of shares without contribution, or solicitation of subscribers of shares for subscription (meaning shares for subscription prescribed in Article 199, paragraph (1) of the Act; the same applies hereinafter);
- (ii) solicitation of subscribers of share options for subscription (meaning share options for subscription prescribed in Article 238, paragraph (1) of the Companies Act; the same applies hereinafter), cancellation of share options or allotment of share options without contribution;
  - (iii) reduction of the amount of stated capital or reserves (meaning capital reserves and retained earnings reserves; the same applies hereinafter);
  - (iv) dividend of surplus and other acts listed in the items of Article 461, paragraph (1) of the Companies Act;
  - (v) dissolution, or continuation of the stock company;
  - (vi) solicitation of subscribers of bonds for subscription (meaning bonds for subscription prescribed in Article 676 of the Companies Act; the same applies hereinafter); and
  - (vii) entity conversion into a membership company, or merger, company split, share exchange, or share transfer.
- (2) During the period after the commencement of reorganization until the close thereof, the articles of incorporation of the reorganizing company may not be amended unless it is prescribed in a reorganization plan or it is permitted by the court.

(Transfers of Business, etc.)

- Article 46 (1) During the period after the commencement of reorganization until the close thereof, the acts listed in Article 467, paragraph (1), item (i) to item (ii)-2 of the Companies Act (hereinafter referred to as the "transfer of the business, etc." in this Article) which relate to the reorganization company may not be conducted unless prescribed in a reorganization plan; provided, however, that this does not apply when the transfer of the business, etc. relating to the business of the reorganizing company is conducted pursuant to the provisions of the following paragraph through paragraph (8).
- (2) During the period after the commencement of a reorganization until an order to refer the proposed reorganization plan to a resolution is made, a trustee, with permission of the court, may conduct the transfer of the business, etc.

relating to the reorganizing company. In this case, the court may grant permission only when it finds such transfer of the business, etc. to be necessary for the reorganization of the reorganizing company's business.

- (3) The court, when granting the permission set forth in the preceding paragraph, must hear opinions from the following persons:
  - (i) known reorganization creditors (when the reorganizing company, at the time of commencement of reorganization, is unable to pay its debts in full with its assets with regard to claims that take preference over consensually-subordinated reorganization claims, the holders of the consensually-subordinated reorganization claims will be excluded); provided, however, that if there is a reorganization creditors committee prescribed in Article 117, paragraph (2), it will be sufficient to hear opinions from the committee;
  - (ii) known secured reorganization creditors; provided, however, that if there is a committee of holders of secured reorganization claims prescribed in Article 117, paragraph (6), it will be sufficient to hear opinions from the committee; and
  - (iii) the labor union, etc. (meaning the labor union consisting of the majority of the employees of the reorganizing company, if there is any such labor union, or the person representative of the majority of the employees of the reorganizing company, if there is no labor union consisting of the majority of the employees of the reorganizing company).
- (4) If a trustee intends to conduct the transfer of the business, etc. relating to the reorganizing company pursuant to the provisions of paragraph (2), the trustee must give a public notice or give notice to shareholders of the following in advance:
  - (i) the transferee of the business, etc., the time and value of the transfer of the business, etc., and the content of the business subject to the transfer of the business, etc. (in the case of conducting the act set forth in Article 467, paragraph (1), item (ii)-2 of the Companies Act, the business of the subsidiary referred to in said item); and
  - (ii) a statement to the effect that any shareholder that has an objection to the transfer of the business, etc. should give a notice of such objection in writing to the trustee within two weeks from the day on which the public notice was given or the notice was given to the shareholder.
- (5) The notice to a shareholder under the provisions of the preceding paragraph may be dispatched to the shareholder's address entered or recorded in the shareholder registry or any other place or point of contact which the shareholder has notified the reorganizing company or the trustee of.
- (6) The notice to a shareholder under the provisions of paragraph (4) is deemed to have reached the addressee at the time when the notice should have normally arrived.

- (7) The court may not grant the permission set forth in paragraph (2) in any of the following cases:
- (i) when a petition for the permission set forth in paragraph (2) is filed after one month has elapsed since the day on which the public notice or the notice to shareholders is given under the provisions of paragraph (4); or
  - (ii) when a shareholder that has voting rights which account for more than one-third of the voting rights of all shareholders of the reorganizing company has given a notice in writing to the trustee within the period prescribed in paragraph (4), item (ii) to express that they have an objection to the transfer of the business, etc. under the provision of paragraph (2).
- (8) The provisions of paragraph (4) to the preceding paragraph do not apply when the counterparty to the contract for the transfer of the business, etc. under the provisions of paragraph (2) is a special controlling company (meaning a special controlling company prescribed in Article 468, paragraph (1) of the Companies Act) of the reorganizing company or when the reorganizing company is, at the time of the permission set forth in paragraph (2), unable to pay its debts in full with its assets.
- (9) Any act conducted without the permission set forth in paragraph (2) will be void; provided, however, that this may not be asserted against a third party in good faith.
- (10) The provisions of Chapter VII, Part II of the Companies Act do not apply when the transfer of the business, etc. relating to the reorganizing company is conducted with the permission set forth in paragraph (2).

(Prohibition of Payment of a Reorganization Claim)

Article 47 (1) With regard to a reorganization claim, etc., after the commencement of reorganization, except as otherwise prescribed in this Act, it is not permissible to make or receive payment or conduct any other act which causes the claim to be extinguished (excluding a release) unless it is prescribed in a reorganization plan.

- (2) If a small or medium-sized enterprise of which major trading partner is the reorganizing company is likely to experience significant hindrance to the continuation of their business unless they receive payment of their reorganization claim, etc., the court, even before it makes an order of confirmation of the reorganization plan, may permit payment of the claim in whole or part upon the petition of a trustee or by its own authority,.
- (3) The court, when granting permission under the provisions of the preceding paragraph, must take into consideration the status of transactions between the reorganizing company and the small or medium-sized enterprise set forth in the same paragraph, the reorganizing company's financial condition, the interest of any interested person and all other circumstances concerned.

- (4) A trustee, when requested by a reorganization creditor, etc. to file the petition set forth in paragraph (2), must report to the court to that effect immediately. In this case, if the trustee has decided not to file a petition, the trustee must report the reason for this to the court without delay.
- (5) When it would be possible to make reorganization progress smoothly by paying a small reorganization claim, etc. at an early stage, or significant hindrance would be caused to the continuation of the reorganizing company's business unless a small reorganization claim, etc. is paid at an early stage, the court, even before it makes an order of confirmation of the reorganization plan, may permit payment of such claim upon the petition of a trustee.
- (6) The provisions of paragraph (2) to the preceding paragraph do not apply to a reorganization claim that is a consensually-subordinated reorganization claim.
- (7) The provisions of paragraph (1) do not apply when a claim for taxes, etc. (excluding a claim for a foreign tax subject to mutual assistance) that is a reorganization claim, etc. is extinguished on any of the following grounds:
  - (i) the disposition of national tax delinquency prescribed in Article 24, paragraph (2) (only when the disposition of national tax delinquency or the continuation thereof is permissible);
  - (ii) the payment voluntarily made by the third party debtor of a claim of the reorganizing company that has been seized through the disposition of national tax delinquency prescribed in Article 24, paragraph (2) (including any claim subject to the effect of the seizure), to the person that has the power of collection, during the stay of the disposition of national tax delinquency;
  - (iii) the appropriation of the money refunded or money paid by mistake, which is conducted by the person that has the power of collection; or
  - (iv) the payment made by the trustee with permission of the court.

(Set-off by Trustees)

Article 47-2 If a set-off of a claim that belongs to the reorganizing company assets against a reorganization claim, etc. conforms to the common interests of reorganization creditors, etc., a trustee may effect such a set-off with permission of the court.

(Right to a Set-Off)

Article 48 (1) If a reorganization creditor owes a debt to the reorganizing company at the time of commencement of the reorganization, the reorganization creditor, etc., when their claim and debt become suitable for a set-off prior to the expiration of the period for filing a proof of claims prescribed in Article 138, paragraph (1), may effect a set-off only within the period for filing a proof of claims, even if it is not prescribed in a

reorganization plan. The same applies when the debt of the reorganization creditor is subject to a time limit.

- (2) When the debt owed by a reorganization creditor, etc. to the reorganizing company at the time of commencement of the reorganization is a rent debt, the reorganization creditor, etc. may effect a set-off with regard to any rent debt that is to become due after the commencement of the reorganization (including one that is to become due after the expiration of the period for filing a proof of claims set forth in the preceding paragraph; the same applies in the following paragraph) up to the amount equivalent to the six-month rent as of the time of commencement of the reorganization only within the period for filing a proof of claims set forth in the preceding paragraph, even if it is not prescribed in a reorganization plan.
- (3) In the case referred to in the preceding paragraph, when the reorganization creditor, etc., with regard to their rent debt that is to become due after the commencement of the reorganization, has made payment of the debt after the commencement of the reorganization, the claim of the reorganization creditor to refund the security deposit will be a common-benefit claim up to the amount paid within the amount equivalent to the six-month rent as of the time of commencement of the reorganization (when a set-off is effected under the provisions of the same paragraph, the amount of the rent debt from which the reorganization creditor, etc. is relieved will be deducted).
- (4) The provisions of the preceding two paragraphs apply mutatis mutandis to a debt for payment of ground rent or farmland rent.

#### (Prohibition of a Set-Off)

Article 49 (1) A Reorganization Creditor may not effect a set-off in the following cases:

- (i) when the reorganization creditor has incurred a debt to the reorganizing company after the commencement of reorganization;
- (ii) when the reorganization creditor has incurred a debt to the reorganizing company by, after the reorganizing company became unable to pay debts (the condition in which the reorganizing company, due to the lack of ability to pay, is generally and continuously unable to pay its debts as they become due; the same applies hereinafter), concluding a contract for disposing of the reorganizing company's assets with the reorganizing company with the intent to set off any debt to be assumed by the reorganization creditor under the contract exclusively against reorganization claims, etc., or concluding a contract for assuming any debt owed by another person to the reorganizing company, and the reorganization creditor knew, at the time of conclusion of the contract, that the reorganizing company was unable to pay debts;
- (iii) when the reorganization creditor has incurred a debt to the reorganizing

company after the reorganizing company suspended payments, and the reorganization creditor knew, at the time of assumption of the debt, the fact that the reorganizing company had suspended payments; provided, however, that this does not apply if the reorganizing company was not unable to pay debts at the time when the reorganizing company suspended payments; and (iv) when the reorganization creditor has incurred a debt to the reorganizing company after a petition to commence reorganization , reorganization of bankruptcy proceedings, reorganization of rehabilitation proceedings, or reorganization of special liquidation (hereinafter referred to as a "petition to commence reorganization, etc." in this Article and the following Article) was filed, and the reorganization creditor knew, at the time of assumption of the debt, of the fact that a petition to commence reorganization , etc. had been filed.

(2) The provisions of item (ii) through item (iv) of the preceding paragraph do not apply when the assumption of a debt prescribed in these provisions arose from any of the causes listed in the following items:

(i) a statutory cause;

(ii) a cause that had occurred before the reorganization creditor came to know the fact that the reorganizing company had been unable to pay debts, that the reorganizing company had suspended payments or that a petition to commence reorganization , etc. had been filed; or

(iii) a cause that had occurred not less than one year before a petition to commence reorganization etc. was filed.

Article 49-2 (1) A person that owes a debt to the reorganizing company may not effect a set-off in the following cases:

(i) when the person has acquired another person's reorganization claim, etc. after the commencement of reorganization;

(ii) when the person has acquired a reorganization claim, etc. after the reorganizing company became unable to pay debts, and the person knew, at the time of acquisition of the claim, the fact that the reorganizing company was unable to pay debts;

(iii) when the person has acquired a reorganization claim, etc. after the reorganizing company suspended payments, and the person knew, at the time of acquisition of the claim, the fact that the reorganizing company had suspended payments; provided, however, that this does not apply if the reorganizing company was not unable to pay debts at the time when the reorganizing company suspended payments; and

(iv) when the person has acquired a reorganization claim, etc. after a petition to commence reorganization , etc. was filed, and the person knew, at the time of acquisition of the claim, the fact that a petition to commence



reorganization , etc. had been filed.

(2) The provisions of item (ii) through item (iv) of the preceding paragraph do not apply where the acquisition of a reorganization claim, etc. prescribed in these provisions arose from any of the causes listed in the following items:

(i) a statutory cause;

(ii) a cause that had occurred before the person that owes a debt to the reorganizing company came to know the fact that the reorganizing company had been unable to pay debts, that the reorganizing company had suspended payments or that a petition to commence reorganization , etc. had been filed;

(iii) a cause that had occurred not less than one year before a petition to commence reorganization, etc. was filed; or

(iv) a contract concluded between the reorganizing company and the person that owes a debt to the reorganizing company.

(Stay of Other Procedures and Proceedings)

Article 50 (1) If an order commencing reorganization is made, it is not permissible to file a petition to commence bankruptcy proceedings, commencement of rehabilitation proceedings, commencement of reorganization, or a petition of commencement of special liquidation, enforce compulsory execution, etc. prescribed in Article 24, paragraph (1), item, (ii), exercise of a security right on whole company assets or disposition of foreign tax delinquency prescribed in item (vi) of the same paragraph against the reorganizing company's assets, or file a petition for an asset disclosure procedure based on a reorganization claim, etc., and the bankruptcy proceedings, the rehabilitation proceedings, the procedure for compulsory execution, etc. prescribed in item (ii) of the same paragraph, procedure for the exercise of a security right on whole company assets and the disposition of foreign tax delinquency prescribed in item (vi) of the same paragraph which have already been initiated against the reorganizing company's assets, and the assets disclosure procedure based on a reorganization claim, etc. will be stayed, and the special liquidation proceedings will cease to be effective.

(2) When an order commencing reorganization is made, the disposition of national tax delinquency prescribed in Article 24, paragraph (2) may not be enforced against the reorganizing company's assets for one year from the date of the order (or, if the reorganization is closed with no reorganization plan confirmed or a reorganization plan is confirmed before one year has elapsed from the date of the order, for the period until the proceedings are closed or the plan is confirmed), and the disposition of national tax delinquency already initiated against the reorganizing company's assets will be stayed.

(3) The court, when it finds it necessary, upon the petition of a trustee or by its own authority, may extend the one-year period set forth in the preceding

paragraph; provided, however, that the court must obtain consent from the person that has the power of collection in advance.

- (4) The person that has the power of collection may give consent as set forth in the preceding paragraph.
- (5) The court, when it finds it unlikely to cause hindrance to reorganization, upon the petition of a trustee or the person that has the power to collect a claim for taxes, etc. (excluding a claim for a foreign tax subject to mutual assistance) or by its own authority, may order the continuation of the following procedures:
  - (i) The procedure for compulsory execution, etc. prescribed in Article 24, paragraph (1), item (ii), procedure for the exercise of a security right on whole company assets or disposition of foreign tax delinquency prescribed in item (vi) of the same paragraph, which have been stayed pursuant to the provisions of paragraph (1); and
  - (ii) The disposition of national tax delinquency prescribed in Article 24, paragraph (2), which has been stayed pursuant to the provisions of paragraph (2).
- (6) The Court, when it finds it necessary for reorganization, upon the petition of a trustee or by its own authority, may order the continuation of the procedures listed in the items of the preceding paragraph, while requiring or not requiring the provision of security.
- (7) When the court finds, until an order to refer the proposed reorganization plan to a resolution is made, any assets which is the subject matter of the security right pertaining to a secured reorganization claim and which is obviously unnecessary for the reorganization of the reorganizing company's business, the court, upon the petition of a trustee or by its own authority, may make an order to cancel the prohibition of the exercise of the security right against such assets under the provisions of paragraph (1).
- (8) A trustee, when requested by a secured reorganization creditor to file the petition set forth in the preceding paragraph, must report to the court to that effect immediately. In this case, if the trustee has decided not to file a petition, the trustee must report the reason to the court without delay.
- (9) When an order commencing reorganization is made, the following claims are common-benefit claims:
  - (i) a claim on the estate involved in the bankruptcy proceedings stayed pursuant to the provisions of paragraph (1) (excluding the claim set forth in Article 148, paragraph (1), item (iii) of the Bankruptcy Act, and including the claims prescribed in Article 55, paragraph (2) and Article 148, paragraph (4) of the same Act when bankruptcy proceedings are not commenced) or a common-benefit claim involved in rehabilitation proceedings (including the claims prescribed in Article 50, paragraph (2) and Article 120, paragraph (3) and paragraph (4) of the Civil Rehabilitation Act (Act No. 225 of 1999) if

- rehabilitation proceedings are not commenced));
- (ii) a claim arising against the reorganizing company from the proceedings that cease to be effective pursuant to the provisions of paragraph (1), and a claim for expenses against the reorganizing company with respect to such proceedings;
  - (iii) a claim for expenses against the reorganizing company with respect to the procedures continued pursuant to the provisions of paragraph (5); and
  - (iv) a claim for expenses against the reorganizing company with respect to the procedures for exercising the security right for which a petition may now be filed by reason of a cancellation order set forth in paragraph (7).
- (10) The prescription for a claim for money to be collected through the disposition of national tax delinquency prescribed in Article 24, paragraph (2) will not run during the period in which the disposition of national tax delinquency is prohibited or stayed pursuant to the provisions of paragraph (2) and paragraph (3).
- (11) When an order commencing reorganization is made, the prescription for a fine, petty fine, and collection of equivalent value will not run until the reorganization is closed (when an order of confirmation of the reorganization plan is made, the prescription will not run until the payment period specified in the reorganization plan as prescribed in Article 204, paragraph (2) expires (or until payment based on the reorganization plan is completed if this occurs prior to the expiration of the period)); provided, however, that this does not apply when the claim for the fine, petty fine, or collection of equivalent value in question is a common-benefit claim.

(Handling of Money to Be Appropriated for Liquidating Distribution, etc. in Continued Procedures for Compulsory Execution)

- Article 51 (1) In the procedures continued pursuant to the provisions of paragraph (5) of the preceding Article and the procedure for the execution of the security right for which a petition may now be filed by reason of a cancellation order set forth in paragraph (7) of the same Article, liquidating distribution or delivery of payment (hereinafter referred to as "liquidating distribution, etc." in this Article) may not be implemented; provided, however, that this does not apply to liquidating distribution, etc. in relation to the claim for taxes, etc. involved in the procedure continued pursuant to the provisions of paragraph (5), item (ii) of the preceding Article.
- (2) In the procedures prescribed in the main clause of the preceding paragraph (excluding auction procedures to be conducted by reason of a right of retention that is intended to secure a reorganization claim, etc. under the provisions other than those of the Commercial Code or the Companies Act; the same applies in the following paragraph), when any money to be appropriated for

liquidating distribution, etc. arises (or when an order of confirmation of the reorganization plan is made if no such order has been made by the time when such money arises), an amount of money equivalent to the amount of the money to be appropriated (if liquidating distribution, etc. has been implemented pursuant to the provisions of the proviso to the preceding paragraph, the amount of such liquidating distribution, etc. will be deducted) must be delivered to a trustee (or the reorganizing company where the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4) or where the reorganization is closed).

- (3) When the reorganization has been closed before an order of confirmation of the reorganization plan is made, notwithstanding the provisions of the main clause of paragraph (1), in the procedures prescribed in the main clause of the same paragraph, liquidating distribution, etc. must be implemented with regard to any money to be appropriated for liquidating distribution, etc. (excluding such money appropriated for liquidating distribution, etc. pursuant to the provisions of the proviso to the same paragraph), unless it is not contrary to the nature of the procedure.

(Handling of Actions Relating to the Reorganizing Company's Assets)

Article 52 (1) When an order commencing reorganization is made, any action relating to the reorganizing company's assets are discontinued.

- (2) A trustee may take over the action discontinued under the provisions of the preceding paragraph which does not relate to any reorganization claim, etc. In this case, a petition for taking over of the action may also be filed by the opponent.
- (3) In the case referred to in the preceding paragraph, the opponent's claim for court costs against the reorganizing company is a common-benefit claim.
- (4) When the reorganization is closed, any action relating to the reorganizing company's assets in which a trustee stands as a party will be discontinued.
- (5) A stock company which has been the reorganizing company must take over an action discontinued pursuant to the provisions of the preceding paragraph (excluding an action set forth in Article 97, paragraph (1) when the grounds set forth in Article 234, item (iii) or item (iv) occurred). In this case, a petition for taking over an action may also be filed by the opponent.
- (6) If the reorganization is closed before the action discontinued pursuant to the provisions of paragraph (1) is taken over under the provisions of paragraph (2), the stock company that has been the reorganizing company will automatically take over the action.

(Handling of Actions by the Subrogee, Actions for Rescission of Fraudulent Act)

Article 52-2 (1) If an action filed by a reorganization creditor pursuant to the provisions of Article 423 or Article 424 of the Civil Code (Act No. 89 of 1896), action of avoidance or action of objection to an order upholding a request for avoidance filed under the provisions of the Bankruptcy Act or the Civil Rehabilitation Act is pending at the time of commencement of reorganization, the respective action is discontinued.

(2) A trustee may take over the action discontinued pursuant to the provisions of the preceding paragraph. In this case, a petition for taking over the action may also be filed by the opponent.

(3) In the case referred to in the preceding paragraph, the opponent's claim for court costs against the reorganization creditor, a bankruptcy trustee, or a trustee or supervisor empowered to avoid (meaning a supervisor empowered to avoid prescribed in Article 128, paragraph (2) of the Civil Rehabilitation Act; the same applies in paragraph (5)) in rehabilitation proceedings will be a common-benefit claim.

(4) If the reorganization is closed after the action discontinued pursuant to the provisions of paragraph (1) was taken over under the provisions of paragraph (2), the action will be discontinued.

(5) In the case referred to in the preceding paragraph, the reorganization creditor, a bankruptcy trustee, a trustee or supervisor empowered to avoid in rehabilitation proceedings must take over the action. In this case, a petition for taking over an action may also be filed by the opponent.

(6) If the reorganization is closed before the action discontinued pursuant to the provisions of paragraph (1) is taken over pursuant to the provisions of paragraph (2), any of the persons prescribed in the first sentence of the preceding paragraph will automatically take over the action.

(Handling of Cases Pending before an Administrative Agency)

Article 53 The provisions of Article 52 apply mutatis mutandis to a case relating to the reorganizing company's assets that is pending before an administrative agency.

(Effect of a Juridical Act by a Reorganizing Company)

Article 54 (1) A juridical act conducted by the reorganizing company after the commencement of reorganization with respect to the reorganizing company assets may not be asserted as effective in relation to the reorganization.

(2) A juridical act conducted by a stock company on the date of order commencing reorganization against the stock company itself will be presumed to be conducted after the commencement of reorganization.

(Effect of Acquisition of a Right by a Reorganization Creditor by Means Other

than an Act by a Trustee)

- Article 55 (1) If a reorganization creditor has acquired a right based on a reorganization claim, etc. after the commencement of reorganization with respect to reorganizing company assets, if it is not by way of an act conducted by a trustee or the reorganizing company, the reorganization creditor may not assert such acquisition of the right as effective in relation to the reorganization.
- (2) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis to the acquisition of a right set forth in the preceding paragraph that takes place on the day on which an order commencing reorganization is made.

(Effect of Registration)

- Article 56 (1) A registration or a provisional registration under the provisions of Article 105, item (i) of the Real Property Registration Act (Act No. 123 of 2004), which is made with respect to real property or a vessel after the commencement of reorganization based on a cause of registration that occurred prior to the commencement of reorganization, may not be asserted as effective in relation to the reorganization; provided, however, that this does not apply to a registration or provisional registration made by a person entitled to demand registration, in good faith of the commencement of reorganization .
- (2) The provisions of the preceding paragraph apply mutatis mutandis to a registration or provisional registration with respect to the establishment, transfer or modification of a right, or registration with respect to the establishment, transfer or modification of a security right on whole company assets.

(Effect of Payment to a Reorganizing Company)

- Article 57 (1) Payment made to the reorganizing company in good faith after the commencement of reorganization may also be asserted as effective in relation to the reorganization.
- (2) Payment made to the reorganization debtor after the commencement of reorganization in good faith may be asserted as effective in relation to the reorganization only to the extent that the reorganizing company assets have gained.

(Acceptance or Payment of Bills of Exchange)

- Article 58 (1) If a reorganization is commenced against a stock company which is the drawer or endorser of a bill of exchange, if the drawee or the reserve drawee has accepted or paid the bill in good faith, the drawee or the reserve drawee may exercise their right over a claim arising from the acceptance or payment as a reorganization creditor.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to checks

and to securities issued for the purpose of delivering money or any other items or securities.

(Presumption of the Existence or Absence of Knowledge)

Article 59 For the purpose of application of the provisions of the preceding three Articles, the absence of knowledge of the commencement of reorganization is presumed prior to a public notice given under the provisions of Article 43, paragraph (1), and the existence of knowledge of the commencement of reorganization is presumed after a public notice of the commencement of reorganization.

(Co-ownership)

Article 60 (1) When the reorganizing company holds a property right jointly with another or other persons, if a reorganization has commenced, a trustee may make a claim for division of the property in co-ownership even if there is an agreement between the co-owners to the effect that division is not made.

(2) In the case referred to in the preceding paragraph, other co-owners may acquire the reorganizing company's co-ownership interest in the assets by paying reasonable compensation.

(Bilateral Contracts)

Article 61 (1) If both the reorganizing company and its counterparty under a bilateral contract have not yet completely performed their obligations by the time of commencement of reorganization, a trustee may cancel the contract or may perform the reorganizing company's obligation and request the counterparty to perform their obligation.

(2) In the case referred to in the preceding paragraph, the counterparty may set a reasonable period and make a demand on a trustee that the trustee should give a definite answer within that period with regard to whether they will cancel the contract or request the performance of the obligation. In this case, if the trustee fails to give a definite answer within that period, it is deemed that the trustee waives their right to cancel under the provisions of the same paragraph.

(3) The provisions of the preceding two paragraphs do not apply to a collective agreement.

(4) Where the reorganizing company's obligation is to be performed pursuant to the provisions of paragraph (1), the claim held by the counterparty is a common-benefit claim.

(5) The provisions of Article 54 of the Bankruptcy Act apply mutatis mutandis when a contract is cancelled under the provisions of paragraph (1). In this case, in paragraph (1) of the same Article, the term "bankruptcy creditor" is deemed to be replaced with "reorganization creditor"; in paragraph (2) of the same

Article, the term "bankrupt" is deemed to be replaced with "reorganizing company"; the term "bankruptcy estate" is deemed to be replaced with "reorganizing company assets"; and the term "holder of a claim on the estate" is deemed to be replaced with "holder of a common-benefit claim".

(Bilateral Contracts for Continuous Performance)

Article 62 (1) The counterparty to a bilateral contract that has an obligation to provide continuous performance to the reorganizing company, after the commencement of reorganization, may not refuse to perform the obligation on the grounds that no payment is made with regard to the reorganization claim, etc. arising from the performance provided prior to the filing of a petition to commence reorganization.

(2) A claim arising from the performance that is provided by the counterparty to a bilateral contract set forth in the preceding paragraph after the filing of a petition to commence reorganization and prior to the commencement of reorganization (in the case of continuous performance for which the amount of claim should be calculated for each specific period of time, the claim arising from the performance provided within the period that includes the date of filing of the petition will be included) will be a common-benefit claim.

(3) The provisions of the preceding two paragraphs do not apply to a labor contract.

(Application Mutatis Mutandis of the Bankruptcy Act to Bilateral Contracts)

Article 63 The provisions of Article 56, Article 58, and Article 59 of the Bankruptcy Act apply mutatis mutandis when a reorganization has commenced. In this case, in Article 56, paragraph (1) of the same Act, the phrase "Article 53, paragraph (1) and paragraph (2)" is deemed to be replaced with "Article 61, paragraph (1) and paragraph (2) of the Corporate Reorganization Act", and the term "bankrupt" is deemed to be replaced with "reorganizing company"; in Article 56, paragraph (2) of the same Act, the term "claim on the estate" is deemed to be replaced with "common-benefit claim"; in Article 58, paragraph (1) of the same Act, the phrase "commencement of bankruptcy proceedings" is deemed to be replaced with "commencement of Reorganization"; in Article 54, paragraph (1) of the same Act as applied mutatis mutandis pursuant to Article 58, paragraph (3) of the same Act, the term "bankruptcy creditor" is deemed to be replaced with "reorganization creditor"; in Article 59, paragraph (1) of the same Act, the term "bankruptcy proceedings" is deemed to be replaced with "reorganization"; in Article 59, paragraph (2) of the same Act, the phrase "The claim under the provisions of the preceding paragraph will belong to the bankruptcy estate if it is held by the bankrupt or is a bankruptcy claim if it is held by the counterparty." is deemed to be replaced with "The claim under the



provisions of the preceding paragraph is a reorganization claim if it is held by the counterparty".

(Right of Recovery)

Article 64 (1) The commencement of reorganization does not affect a right to recover, from the reorganizing company, assets that does not belong to the Reorganizing Company.

(2) The provisions of Article 63 and Article 64 of the Bankruptcy Act apply mutatis mutandis where a reorganization has commenced. In this case, in Article 63, paragraph (1) of the same Act, the phrase "order commencing bankruptcy proceedings" is deemed to be replaced with "order commencing reorganization proceedings"; in the proviso to Article 63, paragraph (1) and Article 64 of the same Act, the term "a bankruptcy trustee" is deemed to be replaced with "a trustee"; in Article 63, paragraph (2) of the same Act, the phrase "Article 53, paragraph (1) and paragraph (2)" is deemed to be replaced with "Article 61, paragraph (1) and paragraph (2) of the Corporate Reorganization Act"; in Article 63, paragraph (3) of the same Act, the term "paragraph (1)" is deemed to be replaced with "the preceding two paragraphs", and the term "the same paragraph" is deemed to be replaced with "paragraph (1)"; in Article 64, paragraph (1) of the same Act, the term "bankrupt" is deemed to be replaced with "stock company", and the phrase "reorganization of bankruptcy proceedings" is deemed to be replaced with "commencement of reorganization".

(Restriction on Competition by Directors)

Article 65 (1) When a director, executive officer or liquidator of a reorganizing company intends to conduct a transaction that falls within the line of the business of the reorganizing company for themselves or a third party during the period after the commencement of reorganization until the close thereof, notwithstanding the provisions of Article 356, paragraph (1) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 419, paragraph (2) or Article 482, paragraph (4) of the same Act), the person must disclose the important facts concerning the transaction to a trustee and obtain approval; provided, however, that this does not apply for the period in which the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4).

(2) The director, executive office, or liquidator that has conducted the transaction set forth in the main clause of the preceding paragraph, must report the important facts concerning the transaction to a trustee without delay after the transaction.

(3) When a director, executive officer or liquidator of the reorganizing company

has conducted the transaction set forth in the main clause of paragraph (1) in violation of the provisions of the main clause of the same paragraph, the amount of the profit obtained by the director, executive officer, liquidator, or third party as a result of the transaction will be presumed to be the amount of damage suffered by the reorganizing company.

(Remuneration for Directors)

- Article 66 (1) No director, accounting advisor, auditor, executive officer, or liquidator of the reorganizing company may claim remuneration, etc. (meaning remuneration, etc. prescribed in Article 361, paragraph (1) of the Companies Act; the same applies in the following paragraph) from the reorganizing company for the period after the commencement of reorganization until the close thereof; provided, however, that this does not apply for the period in which the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4).
- (2) The content of remuneration, etc. that an individual director, accounting advisor, auditor, executive officer, and liquidator are to receive in the case referred to in the proviso to the preceding paragraph will be, notwithstanding the provisions of Article 361, paragraph (1) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 482, paragraph (4) of the same Act) and paragraph (3) of the Article, and Article 379, paragraph (1) and paragraph (2), Article 387, paragraph (1) and paragraph (2), and Article 404, paragraph (3) of the same Act, determined by a trustee with permission of the court.

### **Section 3 Trustees**

#### **Subsection 1 Appointment and Supervision of Trustees**

(Appointment of Trustees)

- Article 67 (1) A trustee is appointed by the court.
- (2) A corporation may serve as a trustee.
- (3) The court may not appoint, as a trustee, a person that is likely to receive an assessment order on the liability of officers prescribed in Article 100, paragraph (1).

(Supervision of Trustees)

- Article 68 (1) A trustee is supervised by the court.
- (2) The court, upon the petition of an interested person or by its own authority, may dismiss a trustee if the trustee does not appropriately perform the administration of the reorganizing company's business and assets, or there are any other material reasons. In this case, the court must interrogate the trustee.

(Performance of Duties by Two or More Trustees)

Article 69 (1) If there are two or more trustees, they perform their duties jointly; provided, however, that with permission of the court, they may perform their duties independently or divide duties among themselves.

(2) If there are two or more trustees, it is sufficient that a manifestation of intention by a third party is made to any one of them.

(Trustee Representatives)

Article 70 (1) A trustee, if necessary, may appoint one or more trustee representatives on their own responsibility, in order to have the representative perform duties; provided, however, that the person prescribed in Article 67, paragraph (3) may not be appointed as a trustee representative.

(2) The appointment of a trustee representative set forth in the preceding paragraph requires the permission of the court.

(Legal Advisors)

Article 71 A trustee must obtain permission of the court in order to appoint a person as their advisor on legal issues that may arise in reorganization (excluding those concerning legal cases) (hereinafter referred to as a "legal advisor").

## **Subsection 2 Authority of Trustees**

(Authority of Trustees)

Article 72 (1) If an order commencing reorganization is made, the right to manage the reorganizing company's business and to administer and dispose of the company's assets (irrespective of whether or not it exists in Japan; the same applies in paragraph (4)) will be vested exclusively in a trustee appointed by the court.

(2) The court, when it finds it necessary after the commencement of reorganization, may require a trustee to obtain permission of the court in order to conduct the following acts:

(i) disposal of assets;

(ii) acceptance of the transfer of assets;

(iii) borrowing of money;

(iv) cancellation of contracts under the provisions of Article 61, paragraph (1);

(v) filing of actions;

(vi) settlement or arbitration agreement (meaning an arbitration agreement prescribed in Article 2, paragraph (1) of the Arbitration Act (Act No. 138 of 2003));

- (vii) waiver of rights;
  - (viii) admittance of common-benefit claims or rights prescribed in Article 64, paragraph (1);
  - (ix) substitution of the security pertaining to a secured reorganization claim; and
  - (x) any other act designated by the court.
- (3) Any act conducted without the permission set forth in the preceding paragraph will be void; provided, however, that this may not be asserted against a third party in good faith.
- (4) It may be provided in the reorganization plan or ordered by the court that the provisions of the preceding three paragraphs do not apply to the reorganizing company for which an order of confirmation of the reorganization plan has been made. In this case, a trustee supervises the management of the reorganizing company's business and the administration and disposition of the company's assets.
- (5) Where the reorganization plan does not contain the provisions as set forth in the first sentence of the preceding paragraph, the court, when it finds it necessary, upon the petition of a trustee or by its own authority, makes an order as prescribed in the first sentence of the same paragraph.
- (6) The court, upon the petition of a trustee or by its own authority, may revoke an order made under the provisions of the preceding paragraph.
- (7) When an order is made under the provisions of the preceding two paragraphs, a public notice must be given to that effect and the written judgment will be served upon a trustee and the reorganizing company. In this case, the provisions of Article 10, paragraph (4) do not apply.

(Administration of Reorganization Company's Business and Assets)

Article 73 A trustee must commence the administration of the Reorganizing Company's business and assets immediately after assuming office.

(Standing to Sue or to Be Sued)

- Article 74 (1) In an action relating to a reorganizing company's assets, a trustee is to stand as a plaintiff or defendant.
- (2) The provisions of the preceding paragraph do not apply to an action relating to the reorganizing company's assets filed during the period in which the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4).
- (3) The provisions of Article 52, paragraph (1), paragraph (2) and paragraph (6) apply mutatis mutandis to an action set forth in the preceding paragraph in cases where provisions of a reorganization plan or an order of the court under the provisions of the first sentence of Article 72, paragraph (4) is revoked.

(Management of Postal Items)

- Article 75 (1) The court, when it finds it necessary in order for a trustee to perform their duties, may commission a person engaged in the delivery of correspondence to deliver, to a trustee, a postal item or letter prescribed in Article 2, paragraph (3) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) (referred to as a "postal item, etc.") that is addressed to the reorganizing company.
- (2) The court, upon the petition of the reorganizing company or by its own authority, may cancel or change the commission prescribed in the preceding paragraph, after hearing opinions from a trustee.
- (3) Upon the end of reorganization, the court must cancel the commission prescribed in paragraph (1). The same applies when the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4).
- (4) The reorganizing company or a trustee may file an immediate appeal against an order made under the provisions of paragraph (1) or paragraph (2) and a judicial decision to dismiss without prejudice the petition set forth in paragraph (2).
- (5) The immediate appeal set forth in the preceding paragraph filed against an order made under the provisions of paragraph (1) does not have the effect of stay of execution.

Article 76 (1) A trustee, upon receiving a postal item, etc. addressed to the reorganizing company, may open it and view its contents.

- (2) The reorganizing company may request a trustee to let the company inspect the postal item, etc. set forth in the preceding paragraph, received by the trustee, or deliver it to the company, if such postal item, etc. does not relate to the reorganizing company assets.

(Investigation of a Reorganizing Company and its Subsidiary Company)

- Article 77 (1) A trustee may request any of directors, accounting advisors, auditors, executive officers, financial auditors, liquidators, and employees and other workers of the reorganizing company and persons that held those posts as well as the incorporators, directors at incorporation or auditors at incorporation, to report on the status of the reorganizing company's business and assets, or may inspect the reorganizing company's books, documents, and any other articles.
- (2) A trustee, when necessary in order to perform their duties, may request a subsidiary company (meaning a subsidiary company prescribed in Article 2, item (iii) of the Companies Act) of the Reorganizing Company, to report on the

status of its business and assets, or may inspect its books, documents and any other articles.

(Transactions Conducted by a Trustee with a Reorganizing Company)

Article 78 (1) A trustee, without permission of the court, may not accept the reorganizing company's assets or assign their own assets to the reorganizing company, or conduct any other transaction with the reorganizing company for themselves or a third party.

(2) Any act conducted without the permission set forth in the preceding paragraph will be void; provided, however, that this may not be asserted against a third party in good faith.

(Restrictions on Competition by Trustees)

Article 79 (1) When a trustee intends to conduct a transaction that falls within the line of the business of the reorganizing company for themselves or a third party, the trustee must disclose the important facts concerning the transaction to the court and obtain approval.

(2) The trustee that has conducted the transaction set forth in the preceding paragraph, without delay after the transaction, must report the important facts concerning the transaction to the court.

(3) When a trustee has conducted the transaction set forth in paragraph (1) in violation of the provisions of the same paragraph, the amount of profit obtained by the trustee or a third party as a result of the transaction will be presumed to be the amount of damages suffered by the reorganizing company.

(Trustee's Duty of Care)

Article 80 (1) A trustee must perform their duties with the due care of a prudent manager.

(2) If a trustee fails to take the due care set forth in the preceding paragraph, the trustee will be jointly and severally liable to compensate damages to any interested person.

(Trustee's Duty to Strive to Provide Information)

Article 80-2 A trustee must strive to provide a person that has a claim for salary or a claim for severance pay, both of which are reorganization claims, etc., with information necessary for their participation in the reorganization.

(Remuneration for Trustees)

Article 81 (1) A trustee may receive advance payments of expenses as well as remuneration determined by the court.

(2) A trustee must, after assuming office, obtain permission of the court in order

to accept or assign any claims against the reorganizing company or a company incorporated pursuant to the provisions of the reorganization plan, or shares or equity of the reorganizing company or the company thus incorporated.

- (3) A trustee may not receive payment of expenses and remuneration if they have conducted any act prescribed in the preceding paragraph without obtaining the permission set forth in the same paragraph.
- (4) An immediate appeal may be filed against an order made pursuant to the provisions of paragraph (1).
- (5) The provisions of the preceding paragraphs apply mutatis mutandis to a trustee representative and a legal advisor.

(Trustee's Duty to Report upon Termination of Office)

Article 82 (1) A trustee, upon the termination of their office, must submit a report of account to the Court without delay.

- (2) In the case referred to in the preceding paragraph, if there is a vacancy in the office of trustee, the report of account set forth in the same paragraph, notwithstanding the provisions of the same paragraph, must be submitted by a successor trustee.
- (3) Upon the termination of a trustee's office, if there are pressing circumstances, the trustee or their successor must take necessary measures until a successor trustee or the reorganizing company is able to administer assets.
- (4) If any of the grounds listed in Article 234, item (ii) through item (iv) have occurred, a trustee must pay common-benefit claims, except in the cases prescribed in Article 254, paragraph (6) or Article 257; provided, however, that with regard to a common-benefit claim which is in dispute in terms of its existence or nonexistence or its amount, a trustee must make a statutory deposit of such payment in the interest of the person that has the claim.

### **Subsection 3 Investigation into the State of the Reorganizing Company's Assets**

(Evaluation of Assets)

Article 83 (1) A trustee, without delay after the commencement of reorganization, must evaluate the value of any and all assets that belongs to the reorganizing company.

- (2) The evaluation under the provisions of the preceding paragraph will be made on the basis of the market value as of the time of commencement of reorganization proceedings.
- (3) A trustee, when they have completed the evaluation under the provisions of paragraph (1), must immediately prepare a balance sheet and an inventory of assets as of the time of commencement of reorganization and submit these to

the court.

- (4) When an order of confirmation of the reorganization plan is made, a trustee must prepare a balance sheet and an inventory of assets as of the time of the order of confirmation of the reorganization plan and submit these to the court.
- (5) The evaluation of the assets to be stated or recorded in the balance sheet and inventory of assets set forth in the preceding paragraph will be governed by the provisions of Ministry of Justice Order.

(Reports to the Court)

Article 84 (1) A trustee, without delay after the commencement of Reorganization, must submit to the court a written report stating the following:

- (i) The circumstances that have resulted in the commencement of Reorganization;
  - (ii) The past and existing status of the reorganizing company's business and assets;
  - (iii) whether or not there are circumstances that require a provisional disposition under the provisions of Article 99, paragraph (1) or an assessment order on the liability of officers prescribed in Article 100, paragraph (1); and
  - (iv) other necessary particulars concerning reorganization.
- (2) Beyond what is prescribed in the preceding paragraph, a trustee, as prescribed by the court, must report to the court the status of the administration of the reorganizing company's business and assets and any other particulars as ordered by the court.

(Reports to Meetings for Reporting the Status of Assets)

Article 85 (1) At a stakeholders meeting convoked to report the status of the reorganizing company's assets, a trustee must report the outline of the particulars listed in the items of paragraph (1) of the preceding Article.

- (2) At a stakeholders meeting set forth in the preceding paragraph, the court must hear opinions from a trustee, the reorganizing company, holders of filed reorganization claims, etc. or shareholders with regard to the appointment of a trustee as well as the particulars concerning the administration of the reorganizing company's business and assets.
- (3) At a stakeholders meeting set forth in paragraph (1), the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) may state its opinions with regard to the particulars prescribed in the preceding paragraph.
- (4) The court, when it has decided not to convoke a stakeholders meeting set forth in paragraph (1), must give a notice to the persons prescribed in the preceding two paragraphs (excluding a trustee) to the effect that they may



state their opinions in writing concerning the appointment of a trustee within a period specified by the court.

#### **Section 4 Right of Avoidance**

(Avoidance of Acts Prejudicial to Reorganization Creditors)

Article 86 (1) The following acts (excluding acts concerning the provision of security or extinguishment of debt) may be avoided in the interest of the reorganizing company assets after the commencement of reorganization proceedings:

- (i) an act conducted by the reorganizing company while knowing that it would prejudice reorganization creditors; provided, however, that this does not apply when the person that has benefited from the act did not know, at the time of the act, the fact that it would prejudice any reorganization creditor; and
  - (ii) an act that would prejudice reorganization creditors, conducted by the reorganizing company after the suspension of payments or the filing of a petition to commence reorganization proceedings, reorganization of bankruptcy proceedings, reorganization of rehabilitation proceedings or reorganization of special liquidation (hereinafter referred to as "suspension of payments, etc." in this Section) took place; provided, however, that this does not apply where the person that has benefited from the act did not know, at the time of the act, the fact that suspension of payments, etc. had taken place nor the fact that the act would prejudice any reorganization creditor.
- (2) With respect to an act concerning the extinguishment of debt conducted by the reorganizing company, if the value of the performance received by the creditor exceeds the amount of debt extinguished by the act, and the act satisfies any of the requirements listed in the items of the preceding paragraph, such act may be avoided in the interest of the reorganizing company assets after the commencement of reorganization only with regard to the part other than the part equivalent to the amount of debt extinguished.
- (3) Any gratuitous act, or any onerous act that should be deemed to be equal to such an act, conducted by the reorganizing company after or within six months prior to suspension of payments, etc. may be avoided in the interest of the reorganizing company assets after the commencement of reorganization.

(Avoidance of Acts of Disposing of Assets Conducted While Receiving Reasonable Consideration)

Article 86-2 (1) When the reorganizing company, after conducting an act of disposing of its assets, has received reasonable consideration from the other party to the act, the act may be avoided in the interest of the reorganizing

company assets after the commencement of reorganization, if it satisfies all of the following requirements:

- (i) the act carries the actual risk that the reorganizing company would conceal, gratuitously convey or otherwise dispose of the assets in a manner prejudicial to reorganization creditors (hereinafter referred to as "concealing or similarly disposing" in this Article and Article 91-2, paragraph (2) and paragraph (3)) by realization of assets or otherwise changing the type of assets by way of such disposal;
  - (ii) the reorganizing company, at the time of the act, had the intention of concealing or similarly disposing of the money or any other assets that it received as consideration for the act; and
  - (iii) the other party, at the time of the act, knew that the reorganizing company had the intention of concealing or similarly disposing as set forth in the preceding item.
- (2) For the purpose of application of the provisions of the preceding paragraph, if the other party to the act in question is any of the following persons, the other party will be presumed to have known, at the time of the act, that the reorganizing company had the intention of concealing or similarly disposing as set forth in item (ii) of said the same paragraph:
- (i) a director, accounting advisor (if an accounting advisor is a corporation, its employees that are to perform its duties are included), auditor, executive officer, financial auditor (if a financial auditor is a corporation, its employees who are to perform its duties are included) or liquidator of the Reorganizing Company;
  - (ii) a person that has the majority of voting rights of all shareholders of the reorganizing company; or
  - (iii) a parent company (meaning a corporation which holds the majority of voting rights of all shareholders of a stock company that is its subsidiary stock company), when the majority of voting rights of all shareholders of the reorganizing company are held independently by its subsidiary stock company (meaning a stock company in which a corporation holds the majority of voting rights of all shareholders; hereinafter the same applies in this item) or parent company and its subsidiary stock company.

(Avoidance of Provision of Security to Specific Creditors)

Article 86-3 (1) The following acts (limited to acts concerning the provision of security or extinguishment of debt conducted with regard to an existing debt) may be avoided in the interest of the reorganizing company assets after the commencement of reorganization:

- (i) an act conducted by the reorganizing company after it became unable to pay debts or a petition to commence reorganization, commencement of

bankruptcy proceedings, commencement of rehabilitation proceedings, or commencement of special liquidation was filed (hereinafter referred to as the "filing of a petition to commence Reorganization Proceedings, etc." in this Section); provided, however, that this applies only if the creditor, at the time of the act, knew either of the facts set forth in (a) or (b) below for the cases listed in (a) or (b), respectively:

- (a) When the act was conducted after the reorganizing company became unable to pay debts: the fact that the reorganizing company was unable to pay debts or suspended payments; or
  - (b) Where the act was conducted after a petition to commence Reorganization Proceedings, etc. was filed: the fact that a petition to commence reorganization, etc. was filed; and
  - (ii) an act that is not included in the scope of the reorganizing company's obligation in terms of the act itself or the time of performance of the act, which was conducted within 30 days before the reorganizing company became unable to pay debts; provided, however, that this does not apply if the creditor did not know, at the time of the act, the fact that it would prejudice other reorganization creditors, etc..
- (2) For the purpose of application of the provisions of item (i) of the preceding paragraph, in the following cases, the creditor is presumed to have known, at the time of the act set forth in the same item, either of the facts set forth in (a) or (b) below for the cases listed in (a) or (b), respectively (in the case set forth in (a) of the same item, both the fact that the reorganizing company was unable to pay debts and that the reorganizing company suspended payments):
- (i) when the creditor is any of the persons listed in the items of paragraph (2) of the preceding Article; and
  - (ii) when the act set forth in item (i) of the preceding paragraph is not included in the scope of the reorganizing company's obligation in terms of the act itself or the method or time of performance of the act.
- (3) For the purpose of application of the provisions of the items of paragraph (1), after suspension of payments took place (limited to suspension that took place within one year prior to the filing of a petition to commence reorganization, etc.), the reorganizing company is presumed to have been unable to pay debts.

(Exceptions to Payment of Debts on Negotiable Instruments)

Article 87 (1) The provisions of paragraph (1), item (i) of the preceding Article do not apply when a person that has received payment of a negotiable instrument from the reorganizing company would lose their right on the negotiable instrument against one or more debtors on the negotiable instrument unless they receive the payment.

- (2) In the case referred to in the preceding paragraph, if the final obligor for

redemption or the person that had entrusted the drawing of the negotiable instrument knew or was negligent in not knowing, at the time of drawing, the fact that suspension of payments, etc. had taken place, a trustee may have these persons redeem the money paid by the reorganizing company to them.

- (3) The provisions of paragraph (1) of the preceding Article do not apply to any act concerning the provision of security or extinguishment of debt, which is conducted by the reorganizing company with regard to claim for taxes, etc. (excluding a claim for a foreign tax subject to mutual assistance) or a claim for a fine, etc. arising prior to the commencement of reorganization as prescribed in Article 142, item (ii), for the person that has the power to collect the claim.

(Avoidance of Requirements of Perfection of Changes in Rights)

Article 88 (1) If an act necessary for duly asserting the establishment, transfer, or modification of a right against a third party (including a provisional registration) was conducted after suspension of payments, etc. took place, the act may be avoided if it was conducted after 15 days had elapsed since the date of establishment, transfer, or modification of the right, while knowing that suspension of payments, etc. had taken place; provided, however, that this does not apply to a definitive registration based on prior unavoidable provisional registration.

- (2) The provisions of the preceding paragraph apply *mutatis mutandis* to a registration based on which the acquisition of a right will become effective.

(Avoidance of Acts of Execution)

Article 89 Exercising a right of avoidance is not precluded even when an act to be avoided is accompanied by an enforceable title of obligation or based on an act of execution.

(Restriction on Avoidance by Reason of Suspension of Payments)

Article 90 Any act conducted not less than one year before the date of filing of a petition to commence reorganization, etc. (excluding the act prescribed in Article 86, paragraph (3)) may not be avoided on the grounds that the act was conducted after suspension of payments had taken place or while knowing the fact of suspension of payments.

(Effect of the Exercise of a Right of Avoidance)

Article 91 (1) The exercise of a right of avoidance restores the reorganizing company assets to the original state thereof.

- (2) If an act prescribed in Article 86, paragraph (3) is avoided, if the other party did not know the fact that suspension of payments, etc. had taken place nor the fact that the act would prejudice any reorganization creditor at the time of the

act, it will be sufficient for the other party to return the actual gains that they enjoy.

(Rights held by the Other Party over Counter-Performance Received by the Reorganization Company)

Article 91-2 (1) When an act prescribed in Article 86, paragraph (1) or paragraph (3) or Article 86-2, paragraph (1) is avoided, the other party may exercise a right set forth in each of the following items for the categories listed in the respective items:

- (i) when the counter-performance received by the reorganizing company actually exists within the reorganizing company assets: A right to claim return of the counter-performance; and
- (ii) when the counter-performance received by the reorganizing company does not actually exist within the reorganizing company assets: A right to claim, as a holder of common-benefit claim, reimbursement of the value of the counter-performance.

(2) Notwithstanding the provisions of item (ii) of the preceding paragraph, in the cases listed in the item, if the reorganizing company, at the time of the act in question, had the intention of concealing or similarly disposing of the assets that it received as consideration for the act and the other party knew that the reorganizing company had the intention, the other party may exercise a right set forth in each of the following items for the categories listed in the respective items:

- (i) if the gains arising from the counter-performance received by the reorganizing company actually exists in whole within the reorganizing company assets: A right to claim, as a holder of common-benefit claim, return of the actual gains;
- (ii) if the gains arising from the counter-performance received by the reorganizing company does not actually exist within the reorganizing company assets: A right to claim, as a reorganization creditor, reimbursement of the value of the counter-performance; and
- (iii) if the gains arising from the counter-performance received by the reorganizing company actually exists in part within the reorganizing company assets: A right to claim, as a holder of common-benefit claim, return of the actual gains, and a right to claim, as a reorganization creditor, reimbursement of any difference between the counter-performance and the actual gains.

(3) For the purpose of application of the provisions of the preceding paragraph, if the other party to the act in question is any of the persons listed in the items of Article 86-2, paragraph (2), the other party will be presumed to have known, at the time of the act, that the reorganizing company had the intention of

concealing or similarly disposing set forth in the preceding paragraph.

- (4) When a trustee intends to avoid an act prescribed in Article 86, paragraph (1) or paragraph (3) or Article 86-2, paragraph (1), in lieu of requesting return of the assets that should be returned to the reorganizing company assets pursuant to the provisions of paragraph (1) of the preceding Article, the trustee may request the other party to reimburse the amount obtained by deducting the amount that will be included in the scope of common-benefit claims pursuant to the provisions of the preceding three paragraphs (in the case set forth in paragraph (1), item (i), the value of the counter-performance received by the reorganizing company) from the value of the assets to be returned.

(Restoration of the Other Party's Claim)

Article 92 If an act prescribed in Article 86-3, paragraph (1) is avoided, if the other party returns the performance that they have received or reimburses the value of such performance, this restores the other party's claim to its original state.

(Right of Avoidance against Subsequent Acquirers)

Article 93 (1) In the following cases, a right of avoidance may also be exercised against any subsequent acquirers:

- (i) when the subsequent acquirers knew, at the time of acquisition, that there were grounds for avoidance against their respective predecessors;
  - (ii) when each of the subsequent acquirers is any of the persons listed in the items of Article 86-2, paragraph (2); provided, however, that this does not apply if the subsequent acquirers did not know, at the time of acquisition, that there were grounds for avoidance against their respective predecessors; and
  - (iii) when the subsequent acquirers acquired the subject matter by any gratuitous act or by any onerous act that should be deemed to be equal to such an act, and there were grounds for avoidance against their respective predecessors.
- (2) The provisions of Article 91, paragraph (2) apply mutatis mutandis when a right of avoidance is exercised pursuant to the provisions of item (iii) of the preceding paragraph.

(Handling of the Continuation of Procedures Pertaining to Provisional Disposition and Handling of Security)

Article 94 (1) If a provisional disposition under the provisions of Article 39-2, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 44, paragraph (2)) is issued, if an order commencing reorganization is made, a trustee may continue the procedure pertaining to the provisional

disposition.

- (2) If a trustee does not continue the procedure pertaining to a provisional disposition set forth in the preceding paragraph pursuant to the provisions of the same paragraph within one month after an order commencing Reorganization Proceedings is made, the provisional disposition ceases to be effective.
- (3) If a trustee intends to continue the procedure pertaining to a provisional disposition set forth in paragraph (1) pursuant to the provisions of the same paragraph, if the whole or part of the security prescribed in Article 39-2, paragraph (2) (including when applied mutatis mutandis pursuant to Article 44, paragraph (2)) does not belong to the reorganizing company assets, the trustee must substitute, for the whole or part of such security, another security by way of assets that belong to the reorganizing company assets.
- (4) The provisions of Article 18 of the Civil Provisional Remedies Act (Act No. 91 of 1989) and Chapter II, Section 4 (excluding Article 37, paragraph (5) through paragraph (7)) and Section 5 of the same Act apply mutatis mutandis to a provisional disposition for the procedure to be continued by a trustee pursuant to the provisions of paragraph (1).

(Exercise of a Right of Avoidance)

- Article 95 (1) A right of avoidance will be exercised by a trustee by filing an action, making a request for avoidance, or filing a defense.
- (2) Cases of the action and request for avoidance set forth in the preceding paragraph will be subject to the jurisdiction of the reorganization court.

(Requests for Avoidance and Orders Thereon)

- Article 96 (1) When making a request for avoidance, the requester must make a prima facie showing of the facts constituting grounds for the avoidance.
- (2) A judicial decision to uphold a request for avoidance or dismiss it with prejudice on the merits must be made by an order with reasons attached thereto.
  - (3) The court, when making an order set forth in the preceding paragraph, must interrogate the other party or any subsequent acquirers.
  - (4) If an order upholding a request for avoidance is made, the written judgment will be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
  - (5) The proceedings for a request for avoidance will be closed upon the end of reorganization.

(Action to Oppose an Order Upholding a Request for Avoidance)

- Article 97 (1) A person that disagrees with an order upholding a request for

avoidance may file an action to oppose within an unextendable period of one month after the day on which the person was served with the order.

- (2) The action set forth in the preceding paragraph will be subject to the jurisdiction of the reorganization court.
- (3) A judgment rendered with regard to the action set forth in paragraph (1), except where the action is dismissed without prejudice as unlawful, approves, changes, or revokes an order upholding a request for avoidance.
- (4) When a judgment which approves the whole or part of an order upholding a request for avoidance becomes final and binding, the order (limited to the part approved by the judgment) has the same effect as a final and binding judgment. The same applies to an order upholding a request for avoidance when the action set forth in the preceding paragraph is not filed within the period prescribed in the same paragraph, is withdrawn or is dismissed without prejudice.
- (5) With regard to a judgment to approve or change the order set forth in paragraph (1), the court in charge of the case may declare provisional execution, as prescribed by Article 259, paragraph (1) of the Code of Civil Procedure.
- (6) The action set forth in paragraph (1), notwithstanding the provisions of Article 52, paragraph (4), will be concluded if any of the grounds listed in Article 234, item (ii) or item (v) have occurred.

(Period for Exercising a Right of Avoidance)

Article 98 A right of avoidance may not be exercised if two years have elapsed since the date of commencement of Reorganization (when bankruptcy proceedings or rehabilitation proceedings have been commenced prior to the date of commencement of reorganization, this period starts from the date of commencement of bankruptcy proceedings or rehabilitation proceedings). The same applies when 20 years have elapsed since the date of the act to be avoided.

## **Section 5 Pursuing the Liability of Officers of Reorganizing Company**

(Provisional Disposition upon the Assets of Officers)

Article 99 (1) If an order commencing reorganization is made, the court, when it finds it necessary, upon the petition of a trustee or by its own authority, may issue the following provisional dispositions:

- (i) a provisional disposition to preserve a claim for damages based on the liabilities of the reorganizing company's incorporator, director at incorporation or auditor at incorporation, director, accounting advisor, auditor, executive officer, financial auditor, or liquidator (hereinafter referred to as "officer, etc." in this Section), which may be issued upon the



assets of the officers; and

- (ii) a provisional disposition to preserve a claim for payment against the reorganizing company's officer (excluding its auditor at incorporation, accounting advisor, financial auditor, and liquidator) under the provisions of Article 52, paragraph (1), Article 52-2, paragraph (1) or paragraph (2), Article 103, paragraph (2), Article 213, paragraph (1), Article 213-3, paragraph (1), Article 286, paragraph (1) or Article 286-3, paragraph (1) of the Companies Act, which may be issued upon the assets of the officers.
- (2) The court may change or revoke a provisional disposition issued under the provisions of the preceding paragraph.
- (3) An immediate appeal may be filed against a provisional disposition issued under the provisions of paragraph (1) or an order made under the provisions of the preceding paragraph.
- (4) The immediate appeal set forth in the preceding paragraph does not have the effect of a stay of execution.
- (5) If a judicial decision prescribed in paragraph (3) and a judicial decision on the immediate appeal set forth in the same paragraph are made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Petition for Assessment on the Liability of Officers)

- Article 100 (1) If an order commencing reorganization is made, when any of the claims prescribed in the items of paragraph (1) of the preceding Article exist and the court finds it necessary, the court, upon the petition of a trustee or by its own authority, may make a judicial decision, by an order, to assess the amount of the claim and other particulars (hereinafter referred to as an "assessment order on the liability of officers" in this Section).
- (2) When filing the petition set forth in the preceding paragraph, the petitioner must make a prima facie showing of the fact constituting the cause of the claim.
  - (3) When the court commences proceedings for an assessment order on the liability of officers by its own authority, it must make an order to that effect.
  - (4) When a petition set forth in paragraph (1) is filed or an order set forth in the preceding paragraph is made, for the purpose of interruption of prescription, it is deemed that demand by litigation is made.
  - (5) The proceedings for an assessment order on liability of officers will be closed upon the end of a reorganization (excluding the case where an assessment order on the liability of officers is already made prior to the end of reorganization).

(Assessment Order on the Liability of Officers)

- Article 101 (1) An assessment order on the liability of officers and an order to

dismiss with prejudice the petition set forth in paragraph (1) of the preceding Article must state the reasons therefor.

- (2) The court, when making an order set forth in the preceding paragraph, must interrogate the officer, etc. in question.
- (3) If an assessment order on the liability of officers is made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Action to Oppose an Assessment Order on the Liability of Officers)

Article 102 (1) A person that disagrees with an assessment order on the liability of officers may file an action to oppose within an unextendable period of one month after the day on which the person was served the order.

- (2) The action set forth in the preceding paragraph will be subject to the jurisdiction of the reorganization court.
- (3) In an action set forth in paragraph (1), a trustee must stand as a defendant if it is filed by an officer, etc., and an officer, etc. must stand as a defendant if it is filed by a trustee.
- (4) A judgment rendered with regard to the action set forth in paragraph (1), except where the action is dismissed as unlawful without prejudice, approves, changes, or revokes the assessment order on the liability of officers.
- (5) A judgment that approves or changes an assessment order on the liability of officers, for the purpose of compulsory execution, has the same effect as a judgment to order performance.
- (6) With regard to a judgment that approves or changes an assessment order on the liability of officers, the court in charge of the case may declare provisional execution, as prescribed by Article 259, paragraph (1) of the Code of Civil Procedure.

(Effect of an Assessment Order on the Liability of Officers)

Article 103 If an action set forth in paragraph (1) of the preceding Article is not filed within the period set forth in the same paragraph, is withdrawn, or is dismissed without prejudice, the assessment order on the liability of officers has the same effect as a final and binding judgment to order performance.

## **Section 6 Requests to Extinguish a Security Right**

### **Subsection 1 Requests to Extinguish a Security Right**

(Order of Permission of Extinguishment of Security Rights)

Article 104 (1) When there exists a special statutory lien, pledge, mortgage, or a right of retention under the provisions of the Commercial Code or the Companies Act (hereinafter referred to as a "security right" in this Subsection)

on the reorganizing company's assets as of the time of commencement of Reorganization Proceedings, the court, when it finds it necessary for the reorganization of the reorganizing company's business, upon the petition of a trustee, may make an order to permit causing all security rights that exist on the assets to be extinguished by paying to the court the amount of money equivalent to the value of the assets.

- (2) The order set forth in the preceding paragraph may not be made after an order to refer the proposed reorganization plan to a resolution is made.
- (3) The petition set forth in paragraph (1) must be filed by means of a document stating the following:
  - (i) an indication of the assets that is the subject matter of the security right;
  - (ii) the value of the assets set forth in the preceding item; and
  - (iii) an indication of the security right to be extinguished.
- (4) If an order set forth in paragraph (1) is made, the written judgment must be served, with the document set forth in the preceding paragraph (hereinafter referred to as a "written petition" in this Article and the following Article), upon the person that has the security right set forth in item (iii) of the same paragraph as stated in the written petition (hereinafter referred to as the "designated security right holders" in this Subsection). In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (5) A designated security right holder may file an immediate appeal against an order set forth in the provisions of paragraph (1).
- (6) If a judicial decision on the immediate appeal set forth in the preceding paragraph is made, the written judgment will be served upon the designated security right holder. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (7) When the security right set forth in paragraph (3), item (iii), which is stated in a written petition, is a revolving mortgage, if two weeks have elapsed since the day on which the revolving mortgagee was served under the provisions of paragraph (4), the principal to be secured by the revolving mortgage will be fixed.
- (8) The provisions of Article 398-20, paragraph (2) of the Civil Code apply *mutatis mutandis* if a petition set forth in paragraph (1) is withdrawn or an order set forth in the same paragraph is revoked.

(Requests for Valuation)

Article 105 (1) A designated security right holder, if they have an objection to the value set forth in paragraph (3), item (ii) of the preceding Article as stated in the written petition (hereinafter referred to as the "offered price" in Article 107 and Article 108), may make a request, within one month from the day on which they were served the written petition, for the valuation of the assets

that is the subject matter of the security right concerned (hereinafter referred to as the "assets" in the following Article).

- (2) The court that has granted the permission set forth in paragraph (1) of the preceding Article, upon the petition of the designated security right holder, may extend the period set forth in the preceding paragraph only if there are unavoidable grounds for doing so.
- (3) A case pertaining to a request under the provisions of paragraph (1) (hereinafter referred to as a "request for valuation" in this Article through Article 108) will be subject to the jurisdiction of the reorganization court.
- (4) A person that makes a request for valuation must prepay an amount designated by the reorganization court as expenses for proceedings for the request.
- (5) If prepayment of expenses prescribed in the preceding paragraph is not made, the reorganization court must dismiss without prejudice the request for valuation.

#### (Valuation of Assets)

Article 106 (1) If a request for valuation is made, the reorganization court, except where it dismisses the request without prejudice, must appoint a valuator and order the person to value the assets.

- (2) In the case referred to in the preceding paragraph, the reorganization court, by an order, must value the assets as of the time of the order based on the valuation made by a valuator.
- (3) When there are two or more designated security right holders, the order set forth in the preceding paragraph must be made after the period set forth in paragraph (1) of the preceding Article (if the period has been extended pursuant to the provisions of paragraph (2) of the same Article, the period as extended; hereinafter referred to as the "period of request" in Article 108, paragraph (1), item (i)) has expired for all designated security right holders. In this case, if two or more cases of requests for valuation are pending concurrently, the judicial decisions of these cases must be made in a consolidated manner.
- (4) The order set forth in paragraph (2) is also effective against a designated security right holder that has not made a request for valuation.
- (5) A trustee and any designated security right holder may file an immediate appeal against an order on the request for valuation.
- (6) If an order on the request for valuation or a judicial decision on the immediate appeal set forth in the preceding paragraph is made, the written judgment must be served upon a trustee and the designated security right holder. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Burden of Expenses)

- Article 107 (1) The expenses incurred for the proceedings for a request for valuation will be borne by the reorganizing company if the value determined by an order set forth in paragraph (2) of the preceding Article exceeds the offered price, and borne by the person that made a request for valuation if the value does not exceed the offered price; provided, however, that if the amount in excess of the offered price is less than the amount of expenses, the part of the amount of expenses which is equivalent to the amount of excess will be borne by the reorganizing company, and the remaining part will be borne by the person that made a request for valuation.
- (2) The expenses incurred for the proceedings for an immediate appeal set forth in paragraph (5) of the preceding Article will be borne by the person that filed the immediate appeal.
- (3) A person that has a claim for expenses against the reorganizing company pursuant to the provisions of paragraph (1) has a right to receive payment of the expenses in preference to other designated security right holders from the money paid under the provisions of paragraph (1) of the following Article or Article 112, paragraph (2).
- (4) In the case referred to in paragraph (5) of the following Article, the expenses set forth in paragraph (1) and paragraph (2), notwithstanding these provisions, will be borne by the reorganizing company. In this case, a claim for expenses against the reorganizing company is a common-benefit claim.

(Payment of Money Equivalent to Value)

- Article 108 (1) A trustee must pay to the court, by the time limit set by the court, the money specified in each of the following items for the categories listed in the respective items:
- (i) if no request for valuation is made within the period of request, or all requests for valuation are withdrawn or dismissed without prejudice: Money equivalent to the offered price; or
- (ii) if the order set forth in Article 106, paragraph (2) becomes final and binding: Money equivalent to the value determined by the order.
- (2) The court may change the time limit set forth in the preceding paragraph before the time limit comes.
- (3) The security right held by a designated security right holder will be extinguished at the time when money is paid under the provisions of paragraph (1) or Article 112, paragraph (2).
- (4) When money is paid under the provisions of paragraph (1) or Article 112, paragraph (2), a court clerk must commission cancellation of the registration of the security right extinguished.

(5) If a trustee fails to pay money under the provisions of paragraph (1) or Article 112, paragraph (2), or an order of confirmation of the reorganization plan is made before a trustee pays money under these provisions, the court must rescind the order set forth in Article 104, paragraph (1).

(Handling Paid Money When an Order of Confirmation of a Reorganization Plan is Made)

Article 109 When an order of confirmation of the reorganization plan is made, the court must deliver to a trustee (or the reorganizing company if the organs of the reorganizing Company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4)) the amount of money equivalent to the money paid pursuant to the provisions of paragraph (1) of the preceding Article (if money has been delivered under the provisions of Article 111, paragraph (6), the amount thus delivered will be deducted) or the amount of money equivalent to the money paid pursuant to the provisions of Article 112, paragraph (2).

(Handling of Paid Money When Reorganization are Closed Prior to Confirmation of a Reorganizing Plan)

Article 110 (1) When reorganization is closed before an order of confirmation of the reorganization plan is made, the court, according to a distribution list, must implement liquidating distribution of the money paid pursuant to the provisions of Article 108, paragraph (1) or Article 112, paragraph (2), to designated security right holders, except in the case prescribed in the following paragraph.

(2) When there is only one designated security right holder or when there are two or more designated security right holders and the money paid pursuant to the provisions of Article 108, paragraph (1) or Article 112, paragraph (2) is sufficient for paying the claims secured by the security rights held by the designated respective holders and the expenses borne by the reorganizing company pursuant to the provisions of Article 117, paragraph (1), the court prepares a statement of delivery of the money, and deliver payment to the designated security right holder and deliver any surplus to the reorganizing company.

(3) The provisions of Article 85 and Article 88 through Article 92 of the Civil Execution Act (Act No. 4 of 1979) apply mutatis mutandis to the procedure for a liquidating distribution set forth in paragraph (1), and the provisions of Article 88, Article 91, and Article 92 of the same Act apply mutatis mutandis to the procedure for delivery of payment under the provisions of the preceding paragraph.

(Delivery of Surplus to a Trustee Prior to Confirmation of a Reorganization Plan)

Article 111 (1) Before an order of confirmation of the reorganization plan is made, the court, in any of the cases listed in the following items, upon the petition of a trustee, may make an order to deliver the amount specified in the respective items to the trustee:

- (i) when there is any surplus after deducting the amount that is likely to be distributed (or delivered as payment) to the designated security right holders pursuant to the provisions of the preceding Article (hereinafter referred to as the "estimated amount of distribution, etc." in the following paragraph), from the amount of money equivalent to the money to be paid pursuant to the provisions of Article 108, paragraph (1): The amount of such surplus; or
  - (ii) when all designated security right holders consent to delivery of the whole or part of the amount of money equivalent to the money to be paid pursuant to the provisions of Article 108, paragraph (1) to the trustee: The amount to which they consent.
- (2) The estimated amount of distribution, etc. prescribed in item (i) of the preceding paragraph will be the sum of the following amounts:
- (i) the amount of the reorganization claim, etc. filed by each designated security right holder (excluding the claim that has been determined), and which falls within both categories set forth in (a) and (b) below:
    - (a) A claim that proves to be, in light of the content of the proof, a claim secured by the security right held by each designated security right holder (in the case of a secured claim for interest or for damages or a penalty for a default, limited to such claim that arises within two years after the commencement of reorganization; the same applies in (b) of the following item); and
    - (b) The claim to the extent that it is secured by the security right set forth in (a);
  - (ii) the determined amount of the reorganization claim, etc. filed by each designated security right holder, and which falls within both categories set forth in (a) and (b) below:
    - (a) A claim that proves to be, in light of the content of the determined reorganization claim, etc., a claim secured by the security right held by each designated security right holder; and
    - (b) The claim to the extent that it is secured by the security right set forth in (a); and
  - (iii) the amount prepaid pursuant to the provisions of Article 105, paragraph (4).
- (3) The court may not make an order set forth in paragraph (1) until after the period for filing a proof of claims prescribed in Article 138, paragraph (1) has

expired and the case now falls under any of the items of Article 108, paragraph (1).

- (4) A trustee and a designated security right holder may file an immediate appeal against an order on the petition set forth in paragraph (1).
- (5) If a judicial decision on the petition set forth in paragraph (1) or on the immediate appeal set forth in the preceding paragraph is made, the written judgment must be served upon a trustee and designated security right holder. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (6) When the order set forth in paragraph (1) has become final and binding, the court, except where money has been delivered under the provisions of paragraph (2) of the following Article, must deliver money equivalent to the amount specified by the order to a trustee (or the reorganizing company if the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4)).

(Payment of a Balance)

Article 112 (1) The court may make an order set forth in paragraph (1) of the preceding Article even before a trustee pays money under the provisions of Article 108, paragraph (1).

- (2) When an order set forth in paragraph (1) of the preceding Article becomes final and binding before a trustee pays money under the provisions of Article 108, paragraph (1), it will be sufficient for the trustee, notwithstanding the provisions of Article 108, paragraph (1), to pay to the court the amount of money payable pursuant to Article 108, paragraph (1) after deducting therefrom the amount specified by the order, by the time limit prescribed in Article 108, paragraph (1).

### **Subsection 2 Deposit by the Third-Party Debtor of a Pledge on a Claim**

Article 113 (1) The debtor of a monetary claim that is the subject matter of a pledge for a secured reorganization claim may be released from the debt by making a statutory deposit of money equivalent to the full amount of the monetary claim.

- (2) When a statutory deposit is made under the provisions of the preceding paragraph, the secured reorganization creditor that has held the pledge set forth in the same paragraph has the same right as the pledgee to the deposited money.

## **Section 7 Stakeholder Meetings**



(Convocation of Stakeholder Meetings)

Article 114 (1) The court must convoke a stakeholders meeting upon the petition of any of the persons listed in the following items. The court may convoke a stakeholders meeting without these petitions when it finds it appropriate:

- (i) a trustee;
  - (ii) the reorganization creditors committee prescribed in Article 117, paragraph (2);
  - (iii) the secured reorganization creditors committee prescribed in Article 117, paragraph (6);
  - (iv) the shareholders committee prescribed in Article 117, paragraph (7);
  - (v) a reorganization creditor, etc. that has a reorganization claim, etc. that accounts for one-tenth or more of the value of all filed reorganization claim, etc. as estimated by the court; or
  - (vi) a shareholder that has one-tenth or more of the voting rights of all shareholders of the reorganizing company.
- (2) Notwithstanding the provisions of the first sentence of the preceding paragraph, when the reorganizing company is unable to pay its debts in full with its assets at the time of commencement of reorganization, the persons set forth in item (iv) and item (vi) of the same paragraph may not file a petition set forth in the first sentence of the same paragraph.

(Summoning on the Date of Stakeholders Meeting)

Article 115 (1) On the date of a stakeholders meeting, a trustee, the reorganization company, Holders of Filed reorganization claims, etc., shareholders, and any person that has incurred a debt or provided security for the reorganization of the reorganizing company's business must be summoned; provided, however, that when the order set forth in Article 42, paragraph (2) is made, holders of filed reorganization claims, etc. are not required to be summoned, except on the date of a stakeholders meeting aimed for adopting a resolution on a proposed reorganization plan.

- (2) Notwithstanding the provisions of the main clause of the preceding paragraph, not summoning holders of filed reorganization claims, etc. or shareholders that may not exercise their voting rights is allowed.
- (3) A notice of the date of a stakeholders meeting must be given to the labor union, etc. prescribed in Article 46, paragraph (3), item (iii).
- (4) The court must give a public notice of the date of a stakeholders meeting and the particulars that are the subject of the meeting.
- (5) If it is rendered, on the date of a stakeholders meeting, that the meeting will be postponed or continued, the provisions of paragraph (1) and the preceding two paragraphs do not apply.

(Direction of Stakeholder Meetings)

Article 116 Stakeholder Meetings are directed by the court.

### **Section 8 Reorganization Creditors Committees and Reorganization Creditors' Representatives**

(Reorganization Creditors Committees)

Article 117 (1) If there is a committee consisting of reorganization creditors, the court, upon the petition of an interested person, may give approval to the participation of the committee in reorganization as prescribed in this Act; provided, however, that this applies only if all of the following requirements are met:

- (i) the number of committee members is not less than three and not more than the number specified by the Rules of the Supreme Court;
  - (ii) it is found that the majority of reorganization creditors consent to the committee's participation in reorganization; and
  - (iii) it is found that the committee will properly represent the interest of reorganization creditors as a whole.
- (2) The court, when it finds it necessary, may request the committee approved pursuant to the provisions of the preceding paragraph (hereinafter referred to as the "reorganization creditors committee") to state its opinions in reorganization.
- (3) The reorganization creditors committee may state its opinions to the court or a trustee (or a trustee or the reorganizing company if the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4)) in reorganization.
- (4) When it is found that the reorganization creditors committee has carried out activities that contribute to ensuring the reorganization of the reorganizing company's business, the court, upon the petition of a reorganization creditor that has incurred necessary expenses for the activities, may permit reimbursement of the amount of expenses, which it finds reasonable, to the reorganization creditor from the reorganizing company assets.
- (5) The court, upon the petition of an interested person or by its own authority, may rescind the approval given pursuant to the provisions of paragraph (1) at any time.
- (6) The provisions of paragraph (1) apply mutatis mutandis when there is a committee consisting of secured reorganization creditors, and the provisions of paragraph (2) to the preceding paragraph apply mutatis mutandis when there is a committee approved under the provisions of paragraph (1) as applied mutatis mutandis pursuant to this paragraph (hereinafter referred to as the "secured reorganization creditors committee").

(7) The provisions of paragraph (1) apply mutatis mutandis when there is a committee consisting of shareholders, and the provisions of paragraph (2) to paragraph (5) apply mutatis mutandis when there is a committee approved under the provisions of paragraph (1) as applied mutatis mutandis pursuant to this paragraph (referred to as the "shareholders committee" in Article 121).

(Hearing of Opinions of a Reorganization Creditors Committee)

Article 118 (1) A court clerk, when approval is given pursuant to the provisions of paragraph (1) of the preceding Article, without delay, must give a notice to a trustee (or the reorganizing company if the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4)) to that effect.

(2) A trustee, upon receiving the notice under the provisions of the preceding paragraph, without delay, must hear opinions from the reorganization creditors committee with regard to the particulars concerning the administration of the reorganization company's business and assets.

(Duty of Trustees to Report to the Reorganization Creditors Committee)

Article 119 (1) A trustee, when having submitted written reports, etc. (meaning written reports, inventory of assets or balance sheets; hereinafter the same applies in this Article) to the court pursuant to the provisions of Article 83, paragraph (3) or paragraph (4) or Article 84, without delay, must also submit the written reports, etc. to the reorganization creditors committee.

(2) When a trustee, in the case referred to in the preceding paragraph, has filed a petition set forth in Article 12, paragraph (1), alleging that the written reports, etc. in question contain a detrimental part prescribed in Article 12, paragraph (1), it will be sufficient for the trustee to submit the written reports, etc. excluding the part to the reorganization creditors committee.

(Report Orders to Trustees)

Article 120 (1) The reorganization creditors committee, when it is necessary for the interest of reorganization creditors as a whole, may request the court to order that a trustee make a report under the provisions of Article 84, paragraph (2) with regard to the status of the administration of the reorganizing company's business and assets and other necessary particulars concerning the reorganization of the reorganizing company's business.

(2) The court that has received a request made under the provisions of the preceding paragraph, when it finds the request appropriate, must order that a trustee make a report under the provisions of Article 84, paragraph (2).

(Application Mutatis Mutandis)

Article 121 The provisions of the preceding three Articles apply mutatis mutandis when there is a secured reorganization creditors committee or a shareholders committee.

(Representatives)

- Article 122 (1) Reorganization creditors, etc. or shareholders, with permission of the court, may jointly or independently appoint one or more representatives.
- (2) The court, when it finds it necessary in order to ensure smooth progress in reorganization, may specify a reasonable timeframe and recommend that reorganization creditors, etc. or shareholders appoint a representative.
- (3) A representative may perform any and all acts involved in reorganization in the interest of the reorganization creditors, etc. or shareholders that appoint them.
- (4) If there are two or more representatives for one reorganization creditor, etc. or one shareholder, they exercise their powers jointly; provided, however, that it is sufficient that a manifestation of intention by a third party is made to any one of them.
- (5) The court may revoke an order of permission set forth in paragraph (1) or an order of appointment set forth in paragraph (1) of the following Article when it finds the exercise of powers by the representative to be particularly unfair.
- (6) Reorganization creditors, etc. or shareholders may dismiss at any time the representative that they have appointed.

(Appointment of Representatives by the Court)

- Article 123 (1) When there are an extremely large number of reorganization creditors, etc. or shareholders that have common interest, if any of these reorganization creditors, etc. or shareholders, despite the recommendation made under paragraph (2) of the preceding Article, does not appoint a representative within the period set forth in the same paragraph, and the court finds that the progress of reorganization would be hindered unless a representative is appointed, the court, on behalf of the reorganization creditors, etc. or shareholders, may appoint a representative that it considers suitable.
- (2) When appointing a representative under the provisions of the preceding paragraph, the court must obtain consent of the representative in question.
- (3) If a representative is appointed under the provisions of paragraph (1), the representative is deemed to be appointed by the principal (the person for which the representative is appointed under the provisions of the same paragraph; the same applies in paragraph (6)) under the provisions of paragraph (1) of the preceding Article.
- (4) A representative appointed under the provisions of paragraph (1) may resign with permission of the court if there are justifiable grounds.

- (5) A representative appointed under the provisions of paragraph (1) may receive payment of the following from the reorganizing company assets:
- (i) prepayment of necessary expenses for conducting the acts prescribed in paragraph (3) of the preceding Article, or reimbursement of the amount of any payment or expenses already paid; and
  - (ii) the amount of remuneration that the court finds reasonable.
- (6) With regard to the relationships between a representative appointed under the provisions of paragraph (1) and the principal, the provisions of Article 644 through Article 647 and Article 654 of the Civil Code apply mutatis mutandis.

(Compensation)

Article 124 (1) The court, if it is found that a reorganization creditor, etc., shareholder, or representative or their agent has contributed to ensuring the reorganization of the reorganizing company's business, upon the petition of a trustee or by its own authority, may grant permission to the effect that the expenses incurred by these persons for the administration of processes concerned will be reimbursed or compensation will be paid to them from the reorganizing company assets.

- (2) An immediate appeal may be filed against an order made under the provisions of the preceding paragraph.

### **Section 9 Examination Orders**

(Examination Orders)

Article 125 (1) After the commencement of reorganization, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may make a disposition ordering that an examiner conducts an examination or states their opinions, targeting the whole or part of the following particulars:

- (i) whether or not there are any circumstances requiring a provisional disposition under the provisions of Article 99, paragraph (1) or an assessment order on the liability of officers prescribed in Article 100, paragraph (1), and whether or not it is necessary to issue any of these orders;
- (ii) whether or not the balance sheet and inventory of assets prepared by a trustee are appropriate, as well as whether or not a trustee's report on the status of the administration of the reorganizing company's business and assets and any other particulars as ordered by the court are appropriate;
- (iii) whether or not the proposed reorganization plan or the reorganization plan is appropriate; and
- (iv) other particulars for which it is necessary for an examiner to conduct an examination or state opinions concerning the reorganization case.

- (2) The court, when making the disposition set forth in the preceding paragraph (hereinafter referred to as an "examination order"), in the examination order, must appoint one or more examiners and specify the particulars for which the examiner or examiners should conduct an examination or state their opinions, and the period during which they should submit the report or state their opinions to the court.
- (3) The court may change or revoke an examination order.
- (4) An immediate appeal may be filed against an examination order and an order made under the provisions of the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph does not have the effect of a stay of execution.
- (6) If a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in the same paragraph are made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Applications Mutatis Mutandis)

Article 126 The provisions of Article 67, paragraph (2), Article 68, the main clause of Article 69, paragraph (1), Article 77, Article 80, and Article 81, paragraph (1) through paragraph (4) apply mutatis mutandis to an examiner.

## **Chapter IV Common-Benefit Claims and Post-Commencement Claims**

### **Section 1 Common-Benefit Claims**

(Claims Constituting Common-Benefit Claims)

Article 127 The following claims are common-benefit claims:

- (i) a claim for expenses for court proceedings performed for the common interest of Reorganization Creditors and shareholders;
- (ii) a claim for expenses for the management of the reorganizing company's business and the administration and disposition of the company's assets after the commencement of reorganization;
- (iii) a claim for expenses for the implementation of a Reorganization Plan (excluding one arising after the end of Reorganization Proceedings);
- (iv) a claim for expenses, remuneration, and compensation payable under the provisions of Article 81, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38, Article 81, paragraph (5) and the preceding Article), Article 117, paragraph (4) (including cases where applied mutatis mutandis pursuant to paragraph (6) and paragraph (7) of the same Article), Article 123, paragraph (5), Article 124, paragraph (1), and Article 162;
- (v) a claim arising from the borrowing of funds or any other act conducted by a

trustee or the reorganizing company (limited to cases where the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4)) with respect to the reorganizing company's business and assets based on the trustee's or its authority;

- (vi) a claim arising against the reorganizing company after the commencement of reorganization from benevolent intervention in another's processes or unjust gains; and
- (vii) a claim for unavoidable expenses that should be paid for the interest of the reorganizing company, which has arisen after the commencement of reorganization (excluding those listed in the preceding items).

#### (Borrowings Prior to Reorganization)

Article 128 (1) A claim arising from the borrowing of funds or any other act conducted by a provisional administrator with respect to the business and assets of the company awaiting reorganization based on their authority will be a common-benefit claim.

(2) When the company awaiting reorganization (excluding cases where a provisional administrator is appointed; hereinafter the same applies in this paragraph and paragraph (4)), after a petition to commence reorganization is filed and before reorganization is commenced, borrows funds, purchasing raw materials or conducting any other act indispensable for the continuation of the business of the company awaiting reorganization, the court may grant permission to the effect that the other party's claim arising from the act is common-benefit claim.

(3) The court may empower a supervisor to give approval in lieu of the permission set forth in the preceding paragraph.

(4) When the company awaiting reorganization has conducted any of the acts prescribed in paragraph (2) with permission set forth in paragraph (2) or approval set forth in the preceding paragraph, the other party's claim arising from the act is a common-benefit claim.

#### (Withholding Income Tax and Other Taxes)

Article 129 Claims for withholding income tax, consumption tax, liquor tax, tobacco tax, gasoline tax, local road tax, petroleum gas tax, petroleum and coal tax, local consumption tax, prefectural tobacco tax (including metropolitan tobacco tax) and municipal tobacco tax (including special ward tobacco tax) collected by the filing and payment of taxes, and for local tax payable through collection by a person in charge of special collection, which arise against the reorganizing company from causes occurring prior to the commencement of reorganization, will be common-benefit claims if they are not yet due at the

time of commencement of reorganization.

(Salaries for Employees)

- Article 130 (1) If an order commencing reorganization is made against a stock company, a claim for the salary of an employee of the stock company for the six months preceding the commencement of reorganization and a claim for a refund of a fidelity guarantee deposit of an employee of the stock company which arises from a cause occurring prior to the commencement of reorganization will be common-benefit claims.
- (2) In the case prescribed in the preceding paragraph, a claim for severance pay of an employee of the stock company who has retired before an order of confirmation of the reorganization plan is made will be a common-benefit claim for an amount equivalent to the total amount of the employee's salary for the six months preceding retirement or one-third of the amount of the severance pay, whichever is larger.
- (3) Notwithstanding the provisions of the preceding paragraph, a claim for severance pay set forth in the same paragraph, if it is a claim for periodic payments, is a common-benefit claim for an amount equivalent to one-third of the amount of each periodic payment.
- (4) The provisions of the preceding two paragraphs do not apply to a claim for a severance pay which is a common-benefit claim pursuant to the provisions of Article 127.
- (5) In the case prescribed in paragraph (1), a claim for refund of any deposit of an employee of a stock company which arises from a cause occurring prior to the commencement of reorganization is a common-benefit claim for an amount equivalent to the total amount of the employee's salaries for the six months preceding the commencement of reorganization or one-third of the amount of the deposit, whichever is larger.

(Expenses and Remuneration for Bond Administrators)

- Article 131 (1) If a bond administrator, etc. prescribed in Article 43, paragraph (1), item (v) intends to administer the processes concerning the administration of corporate bonds that are reorganization claims, etc., the court, when it finds it necessary in order to achieve the purpose of reorganization proceedings, may grant permission to the effect that the claim of the bond administrator, etc. for expenses to be incurred for the administration of the processes against the reorganizing company is a common-benefit claim.
- (2) Even when a bond administrator, etc. set forth in the preceding paragraph has administered the processes concerning the administration of corporate bonds that are reorganization claims, etc. without the permission set forth in the same paragraph, the court, if it is found that the bond administrator, etc.



has contributed to ensuring the reorganization of the reorganizing company's business, may grant permission to the effect that a claim for reimbursement of the expenses incurred for the administration of the processes will be a common-benefit claim for an amount that the court finds reasonable by taking into consideration the degree of their contribution.

- (3) The court may grant permission to the effect that a claim of a bond administrator, etc. set forth in paragraph (1) for remuneration arising from an occurrence after the commencement of reorganization will be a common-benefit claim for an amount that the court finds reasonable.
- (4) A claim for which permission is obtained under the provisions of the preceding three paragraphs will be a common-benefit claim.
- (5) An immediate appeal may be filed against an order of permission under the provisions of paragraph (1) through paragraph (3).

#### (Handling of Common-Benefit Claims)

Article 132 (1) Common-benefit claims may be paid at any time even if it is not prescribed in a reorganization plan.

- (2) Common-benefit claims will be paid in preference to reorganization claims, etc.
- (3) When compulsory execution or provisional seizure is enforced against the reorganizing company's assets based on a common-benefit claim, if the compulsory execution or provisional seizure would cause significant hindrance to the reorganization of the reorganizing company's business and the reorganizing company additionally has adequate assets that are easy to realize, the court, after the commencement of reorganization, upon the petition of a trustee (or the Reorganizing Company if the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4); the same applies in paragraph (3) of the following Article) or by its own authority, may order the stay or revocation of the procedure for compulsory execution or provisional seizure, while requiring or not requiring the provision of security. The same applies to the stay or revocation of a disposition made by the same procedure as that for making a disposition of national tax delinquency, based on a claim for a foreign tax subject to mutual assistance that is a common-benefit claim against the reorganizing company's assets.
- (4) The court may change or revoke an order to stay issued under the provisions of the preceding paragraph.
- (5) An immediate appeal may be filed against an order to stay or revocation order issued under the provisions of paragraph (3) and an order made under the provisions of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph does not have the

effect of a stay of execution.

(Method of Payment from Insufficient Reorganizing Company Assets)

Article 133 (1) Common-benefit claims, when it has become obvious that the reorganizing company assets are insufficient for payment of the total amount of common-benefit claims, will be paid from the reorganizing company assets, notwithstanding any priorities specified in laws and regulations, in proportion to the amount of each claim; provided, however, that this does not preclude the effect of any right of retention, special statutory lien, pledge and mortgage that exists for common-benefit claims.

- (2) In the case prescribed in the main clause of the preceding paragraph, the provisions of paragraph (1) of the preceding Article do not apply.
- (3) In the case prescribed in the main clause of paragraph (1), the court, upon the petition of a trustee or by its own authority, may order revocation of the procedure for compulsory execution or provisional seizure that has already been initiated against the reorganizing company's assets based on a common-benefit claim. The same applies to the revocation of a disposition made by the same procedure as that for making a disposition of national tax delinquency, based on a claim for a foreign tax subject to mutual assistance that is a common-benefit claim against the reorganizing company's assets.
- (4) An immediate appeal may be filed against a revocation order issued under the provisions of the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph does not have the effect of a stay of execution.

## **Section 2 Post-Commencement Claims**

Article 134 (1) A claim on assets arising from causes occurring after the commencement of reorganization a (excluding one that is a common-benefit claim or reorganization claim, etc.) is a post-commencement claim.

- (2) With regard to a post-commencement claim, during the period after reorganization commences until the payment period specified in a reorganization plan expires (or until reorganization is closed if the end of reorganization a occurs before an order of confirmation of the reorganization plan, or until payment based on the reorganization plan is completed if this occurs prior to the expiration of the period), it is not permissible to make or receive a payment or carry out other act that causes the claim to be extinguished (excluding a release).
- (3) During the period prescribed in the preceding paragraph, it is not permissible to enforce compulsory execution, provisional seizure or provisional disposition, exercise any security right or exercise any security right on whole company

assets against the reorganizing company's assets, or file a petition for an assets disclosure procedure based on a post-commencement claim. The same applies to a disposition to be made by the same procedure as that for making a disposition of national tax delinquency, based on a claim for a foreign tax subject to mutual assistance that is a post-commencement claim against the reorganizing company's assets.

**Chapter V Reorganization Creditors and Secured Reorganization Creditors**  
**Section 1 Participation of Reorganization Creditors and Secured**  
**Reorganization Creditors in the Reorganization Process**

(Participation of Reorganization Creditors in the Process)

- Article 135 (1) A reorganization creditor, etc. may participate in reorganization on the basis of a reorganization claim, etc. that the creditor holds.
- (2) The provisions of Article 104 and Article 105 of the Bankruptcy Act applies mutatis mutandis to the exercise of rights by a reorganization creditor, etc. when reorganization has commenced. In this case, in the provisions of Article 104 and Article 105 of the same Act, the phrase "commencement of a bankruptcy proceeding" is deemed to be replaced with "commencement of reorganization"; in Article 104, paragraph (1), paragraph (3), and paragraph (4), and Article 105 of the same Act, the term "bankruptcy proceeding" is deemed to be replaced with "reorganization"; the term "bankrupt" in the provisions of Article 104, paragraph (3) through paragraph (5) of the same Act is deemed to be replaced with "reorganizing company"; and in Article 104, paragraph (4) of the same Act, the term "bankruptcy creditor" is deemed to be replaced with "reorganization creditor or secured reorganization creditor".
- (3) Notwithstanding the provisions of paragraph (1), in order to participate in reorganization due to a claim for a foreign tax subject to mutual assistance, a decision of implementation of mutual assistance (meaning a decision of implementation of mutual assistance prescribed in Article 11, paragraph (1) of the Act on Special Measures for the Implementation of Tax Treaties; the same applies in Article 164, paragraph (2)) will be required.

(Voting Rights of Reorganization Creditors)

- Article 136 (1) A reorganization creditor, etc. has a voting right for their reorganization claim, etc. according to the amount specified in each of the following items for the categories listed in the respective items:
- (i) a claim with a fixed due date that is to become due after the commencement of the reorganization and bears no interest: The amount obtained by deducting, from the amount of the claim, the amount of statutory interest for the claim to be accrued according to the number of years during the period

- from the time of commencement of the reorganization until the due date (only full years are to be counted in the calculation of the period);
- (ii) a claim for periodic payments the amount and duration of which are fixed: The total of the amounts calculated with regard to the respective periodic payments in the same manner as the provisions of the preceding item (when the total exceeds the amount of principal which would accrue interest equivalent to the periodic payments when calculating at a statutory interest rate, the amount of principal); and
  - (iii) the following claims: The amount of the claim estimated as of the time of commencement of the reorganization:
    - (a) A claim with an uncertain due date that is to become due after the commencement of the reorganization and bears no interest;
    - (b) A claim for periodic payments the amount and duration of which are not fixed;
    - (c) A claim not intended for payment of money;
    - (d) A monetary claim the amount of which is not fixed or the amount of which is fixed in a foreign currency;
    - (e) A claim with condition; and
    - (f) A claim which may arise in the future and be exercised against the reorganizing company;
  - (iv) a claim other than those listed in the preceding three items: The amount of the claim.
- (2) Notwithstanding the provisions of the preceding paragraph, a reorganization creditor, etc. do not have any voting right for a reorganization claim, etc. which falls under any of the following:
- (i) a claim for interest arising after the commencement of the reorganization;
  - (ii) a claim for damages or a penalty for a default arising after the commencement of the reorganization;
  - (iii) a claim for expenses for participation in the reorganization;
  - (iv) Claim for Taxes, etc.; or
  - (v) a claim for a fine, etc. arising prior to the commencement of the reorganization prescribed in Article 142, item (ii).
- (3) Notwithstanding the provisions of paragraph (1), where the Reorganizing Company, at the time of commencement of the reorganization, is unable to pay its debts in full with its assets with regard to claims that take preference over consensually-subordinated reorganization claims, the holders of the consensually-subordinated reorganization claims do not have any voting right.

(Payment Received by Reorganization Creditors in Foreign States)

Article 137 (1) A reorganization creditor, etc., even when they, by exercising their right against the reorganization company's assets that exists in a foreign

state, has received payment of their reorganization claim, etc. after an order commencing reorganization is made, may participate in the reorganization with regard to the amount of all reorganization claims, etc. that they hold as of the time before receiving the payment.

- (2) The reorganization creditor, etc. set forth in the preceding paragraph may not receive payment as prescribed in a reorganization plan until any other reorganization creditor, etc. with the same priority as theirs receives payment at the same proportion as they have received payment.
- (3) The reorganization creditor, etc. set forth in paragraph (1) may not exercise their voting right with regard to the part of the reorganization claims, etc. for which they have received payment in the foreign state.

## **Section 2 Reporting Reorganization Claims and Secured Reorganization Claims**

(Reporting Reorganization Claims)

Article 138 (1) A reorganization creditor that intends to participate in reorganization must file a proof of the following particulars to the court within a period for filing a proof of claims (meaning a period during which a proof of reorganization claims, etc. should be filed as specified pursuant to the provisions of Article 42, paragraph (1)):

- (i) the content and cause of each reorganization claim;
- (ii) if the claim in question is a claim with general priority or a consensually-subordinated reorganization claim, a statement to that effect;
- (iii) the amount of the voting right for each reorganization claim; and
- (iv) particulars other than those listed in the preceding three items specified by the Rules of the Supreme Court.

(2) A secured reorganization creditor that intends to participate in reorganization must file a proof of the following particulars to the court within a period for filing a proof of claims:

- (i) the content and cause of each secured reorganization claim;
- (ii) the assets that are the subject matter of the security right and the value thereof;
- (iii) the amount of the voting right for each secured reorganization claim; and
- (iv) any other particulars specified by the Rules of the Supreme Court.

(Filing of a Proof after Expiration of the Period for Filing a Proof of Claims)

Article 139 (1) If a reorganization creditor, etc. was unable to file a proof of their reorganization claim, etc. within the period for filing a proof of claims prescribed in paragraph (1) of the preceding Article due to grounds not attributable thereto, the creditor, etc. may file a proof only within one month

after the grounds cease to exist.

- (2) The one-month period prescribed in the preceding paragraph may not be extended or shortened.
- (3) With regard to a reorganization claim, etc. arising after the expiration of the period for filing a proof of claims prescribed in paragraph (1) of the preceding Article, a proof must be filed within an unextendable period of one month after the claim arose.
- (4) The filing of a proof set forth in paragraph (1) and paragraph (3) may not be made after an order to refer a proposed reorganization plan to a resolution is made.
- (5) The provisions of paragraph (1), paragraph (2), and the preceding paragraph apply mutatis mutandis when a Reorganization Creditor makes a change to any filed matter, which is prejudicial to the interest of other reorganization creditors, etc., due to grounds not attributable thereto.

(Special Provisions for Reporting Claims for Severance Pay)

Article 140 (1) A proof of a reorganization claim, etc. with regard to a claim for a severance pay of an employee of the reorganizing company will be filed after the employee's retirement.

- (2) When an employee of the reorganizing company has retired after the period for reporting claims prescribed in Article 138, paragraph (1) expired and before an order of confirmation of the reorganization plan is made, the employee may file a proof of a reorganization claim, etc. with regard to their claim for severance pay only within an unextendable period of one month after their retirement.
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis to a claim for a severance pay of a director, accounting advisor, auditor, representative director, executive officer, representative executive officer, liquidator, or representative liquidator of the reorganizing company.

(Change of the Name of Holders of Filed Claims)

Article 141 A person that has acquired a filed reorganization claim, etc. may receive a change of the name of the holder of the filed claim even after the expiration of the period for filing a proof of claims prescribed in Article 138, paragraph (1).

(Reporting Claims for Taxes)

Article 142 A person that has any of the following claims must without delay file with the court a proof of the amount and cause of the claim and the content of the security right, and if the claim in question is a claim for a foreign tax subject to mutual assistance, a statement to that effect:

- (i) a claim for Taxes; or
- (ii) a claim for a fine, etc. arising prior to the commencement of reorganization (meaning a claim for a fine, petty fine, court costs for a criminal case, collection of equivalent value or a non-penal fine which has arisen prior to the commencement of reorganization; excluding a claim that is a common-benefit claim).

Article 143 Deleted

**Section 3 Investigation and Finalization of Reorganization Claims and Secured Reorganization Claims**  
**Subsection 1 Investigation of Reorganization Claims and Secured Reorganization Claims**

(Preparation of Schedule of Reorganization Creditors and Schedule of Secured Reorganization Creditors)

Article 144 (1) A court clerk must prepare a schedule of reorganization creditors and schedule of secured reorganization creditors with regard to filed reorganization claims, etc.

(2) In the schedule of reorganization creditors set forth in the preceding paragraph, for each reorganization claim, the particulars listed in Article 138, paragraph (1), item (i) through item (iii) and any other particulars specified by the Rules of the Supreme Court must be entered.

(3) In the schedule of secured reorganization creditors set forth in paragraph (1), for each secured reorganization claim, the particulars listed in Article 138, paragraph (2), item (i) through item (iii) and any other particulars specified by the Rules of the Supreme Court must be entered.

(4) If there are any errors in the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors, a court clerk, upon petition or by their own authority, may make a disposition to correct the entries at any time.

(Investigation of Reorganization Claims)

Article 145 An investigation of reorganization claims, etc. by the court will be conducted, with regard to the particulars prescribed in paragraph (2) and paragraph (3) of the preceding Article, based on a statement of approval or disapproval prepared by a trustee, as well as written objections made by reorganization creditors, etc., shareholders, and the reorganizing company.

(Preparation and Submission of Statements of Approval or Disapproval)

Article 146 (1) A trustee must prepare a statement of approval or disapproval to

state, with regard to each reorganization claim, etc. filed during the period for filing a proof of claims prescribed in Article 138, paragraph (1), their approval or disapproval of the particulars specified in the following items for the categories listed in the respective items:

- (i) a reorganization claim: The content thereof, a general priority claim or consensually-subordinated reorganization claim, and the amount of voting rights; or
  - (ii) a secured reorganization claim: The content thereof, the value of the assets that is the subject matter of the security right, and the amount of voting rights.
- (2) A trustee, with regard to a reorganization claim, etc. which is filed pursuant to the provisions of Article 139, paragraph (1) or paragraph (3) or for which a change is made to any filed matter pursuant to the provisions of paragraph (5) of the same Article, may also state the trustee's approval or disapproval of the particulars specified in the following items for the categories listed in the respective items, in the statement of approval or disapproval set forth in the preceding paragraph:
- (i) a reorganization claim: The particulars specified in item (i) of the preceding paragraph (if there is a change to any filed particular, the particular set forth in the same item as changed); or
  - (ii) a secured reorganization claim: The particulars specified in item (ii) of the preceding paragraph (if there is a change to any filed particular, the particular set forth in the item as changed).
- (3) A trustee must submit a statement of approval or disapproval prepared pursuant to the provisions of the preceding two paragraphs by the time limit set by the court prior to the ordinary period for investigation (meaning the period for conducting an investigation of reorganization claims, etc. prescribed in Article 42, paragraph (1)).
- (4) If no statement is given with regard to any matter for which approval or disapproval should be stated in a statement of approval or disapproval set forth in paragraph (1) pursuant to the provisions of the same paragraph, it will be deemed that the trustee approves of the matter.
- (5) With regard to a reorganization claim, etc. for which approval or disapproval of the particulars specified in the items of paragraph (2) may be stated in a statement of approval or disapproval pursuant to the provisions of the same paragraph, if the statement submitted pursuant to the provisions of paragraph (3) states approval or disapproval of part of the particulars, it will be deemed that the trustee approves of the particulars for which neither approval nor disapproval has been stated in the statement.

(Investigation during the Ordinary Period for Investigation)



Article 147 (1) Holders of filed reorganization claims, etc. and shareholders may make an objection in writing to the court, within the ordinary period for investigation prescribed in paragraph (3) of the preceding Article, with regard to the particulars specified in the items of paragraph (1) or the items of paragraph (2) of the same Article for the categories listed in the respective items concerning a reorganization claim, etc. prescribed in paragraph (1) or paragraph (2) of the Article.

(2) The reorganizing company may make an objection in writing to the court, within the ordinary period for investigation set forth in the preceding paragraph, with regard to the content of the reorganization claim, etc. prescribed in the same paragraph.

(3) When an order is made to change the ordinary period for investigation prescribed in paragraph (1), the written judgment must be served upon a trustee, the reorganizing company, and holders of filed reorganization claims, etc. and shareholders (prior to the expiration of the period for filing a proof of claims prescribed in Article 138, paragraph (1), a trustee, the reorganizing company, and known reorganization creditors, etc. and shareholders).

(4) The service of a written judgment under the provisions of the preceding paragraph may be made by sending the necessary documents by mail or by using the correspondence delivery services prescribed in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Business Operators that are provided by a general correspondence delivery operator prescribed in paragraph (6) of the same Article or specified correspondence delivery operator prescribed in paragraph (9) of said the same Article.

(5) When service of a written judgment has been made under the provisions of the preceding paragraph, the service is deemed to have been made at the time when the postal item, etc. sent thereby should have normally reached the addressee.

(Investigation during Special Periods for Investigation)

Article 148 (1) The court, with regard to a reorganization claim, etc. which is filed pursuant to the provisions of Article 139, paragraph (1) or paragraph (3) or for which a change is made to any filed matter under the provisions of paragraph (5) of the same Article, must specify a period for conducting an investigation of such claim (hereinafter referred to as a "special period for investigation" in this Article); provided, however, that, with regard to the reorganization claim, etc., this does not apply when a trustee states, in a statement of approval or disapproval submitted pursuant to the provisions of Article 146, paragraph (3), their approval or disapproval of any of the particulars specified in the items of paragraph (2) of the same Article for the categories listed in the respective items pursuant to the provisions of the same

paragraph.

- (2) In the case referred to in the main clause of the preceding paragraph, the expenses for the special period for investigation will be borne by the person that has the reorganization claim, etc. investigated.
- (3) A trustee, with regard to a reorganization claim, etc. to be investigated during the special period for investigation, must prepare a statement of approval or disapproval of the particulars specified in the items of Article 146, paragraph (2) for the categories listed in the respective items, and submit it to the court by the time limit set by the court prior to the special period for investigation. In this case, the provisions of paragraph (4) of the same Article apply *mutatis mutandis*.
- (4) A holder of a filed reorganization claim, etc. and a shareholder, as well as the reorganizing company may make an objection in writing to the court within the special period for investigation, with regard to the particulars concerning the Reorganization Claim, etc. specified in the items of Article 146, paragraph (2) for the categories listed in the respective items, or the content of the reorganization claim, etc., respectively.
- (5) The provisions of paragraph (3) through paragraph (5) of the preceding Article apply *mutatis mutandis* to the service of a written judgment when an order to specify or change the special period for investigation is made.

(Prepayment of Expenses for the Special Period for Investigation)

- Article 148-2 (1) In the case referred to in the main clause of paragraph (1) of the preceding Article, a court clerk must specify a reasonable period and order the person that has the reorganization claim, etc. set forth in paragraph (2) of the same Article to prepay the expenses set forth in the same paragraph.
- (2) The disposition made under the provisions of the preceding paragraph will become effective when a notice thereof is given by means that are considered to be appropriate.
  - (3) An objection may be filed against a disposition made under the provisions of paragraph (1) within an unextendable period of one week from the day on which a notice thereof is received.
  - (4) The objection set forth in the preceding paragraph has the effect of stay of execution.
  - (5) In the case referred to in paragraph (1), if the person that has the reorganization claim, etc. set forth in the same paragraph does not prepay the expenses set forth in the same paragraph, the court, by an order, must dismiss without prejudice the person's filing of a proof of the reorganization claim, etc. or filing of the change of any filed matter.
  - (6) An immediate appeal may be filed against an order of dismissal made under the provisions of the preceding paragraph.

(Special Provisions for Investigation of Claims for Severance Pay Arising from Retirement after Expiration of the Period for Filing a Proof of Claims)

Article 149 (1) The provisions of Article 145 through the preceding Article do not apply to the investigation of a reorganization claim, etc. filed under the provisions of Article 140, paragraph (2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of the same Article). The same applies when a change is made to any filed matter of such reorganization claim, etc. under the provisions of Article 139, paragraph (5).

(2) If a proof of a claim or change of any filed matter is filed as set forth in the preceding paragraph, the court must immediately give a notice of such filing to a trustee and the reorganizing company in order to conduct an investigation of the reorganization claim, etc. set forth in the same paragraph.

(3) A trustee, within three days from the day on which they receive a notice under the provisions of the preceding paragraph, may make an objection in writing to the court with regard to the particulars specified in the items of Article 146, paragraph (2) for the categories listed in the respective items concerning the reorganization claim, etc. set forth in paragraph (1). The same applies when the reorganizing company makes an objection with regard to the content of the reorganization claim, etc.

(4) When an objection is made under the provisions of the first sentence of the preceding paragraph, a court clerk must immediately give a notice of such objection to the reorganization creditor, etc. that has filed a proof of a claim or change of any filed matter as set forth in paragraph (1).

(Finalization of a Reorganization Claim without Objection)

Article 150 (1) The particulars specified in the items of Article 146, paragraph (2) will be determined if, in the investigation of reorganization claims, etc., they are approved by a trustee and no objection is made by any holder of a filed reorganization claim, etc. or shareholder during the period for investigation (or no objection is made by a trustee under the provisions of the first sentence of paragraph (3) of the preceding Article during the period for the investigation of reorganization claims, etc. set forth in paragraph (1) of the same Article).

(2) A court clerk must make an entry of the results of the investigation of reorganization claims, etc. in the schedule of reorganization creditors and schedule of secured reorganization creditors.

(3) The entries in the schedule of reorganization creditors and schedule of secured reorganization creditors with regard to the particulars that are determined pursuant to the provisions of paragraph (1) have the same effect as a final and binding judgment against all reorganization creditors, etc. and shareholders.

## **Subsection 2 Court Proceedings to Finalize Reorganization Claims and Secured Reorganization Claims**

(Assessment Order on a Reorganization Claim)

- Article 151 (1) A reorganization creditor, etc. that has a disputed reorganization claim, etc. (meaning a reorganization claim, etc. for which, in the investigation thereof, a trustee has disapproved the content thereof (including whether it is a claim with general priority or consensually-subordinated reorganization claim) or made an objection to it under the provisions of the first sentence of Article 149, paragraph (3), or an objection has been made by any holders of filed reorganization claims, etc. or shareholders with regard to the content) may file a petition for assessment with the court against all disputing parties, etc. (meaning the trustee and the reorganization creditor and shareholder that made the objection) with regard to the content of the denied Reorganization Claim, etc. (including whether it is a claim with general priority or consensually-subordinated reorganization claim) (hereinafter referred to as a "petition for assessment of reorganization claim, etc." in this Subsection); provided, however, that this does not apply in the cases referred to in Article 156, paragraph (1) and Article 158, paragraph (1) and paragraph (2).
- (2) The petition for assessment of a reorganization claim, etc. must be filed within an unextendable period of one month from the last day of the period for investigation for the disputed reorganization claim, etc. prescribed in the main clause of the preceding paragraph or from the day on which the notice set forth in Article 149, paragraph (4) is given.
- (3) If a petition for assessment of a reorganization claim, etc. is filed, the court, by an order, must make a judicial decision to assess the existence or nonexistence of the disputed reorganization claim, etc. prescribed in the main clause of paragraph (1) and the content thereof (including whether it is a claim with general priority or consensually-subordinated reorganization claim) (hereinafter referred to as an "assessment order on a reorganization claim, etc." in this Subsection), except when it dismisses the petition as unlawful without prejudice.
- (4) The court, when making an assessment order on reorganization claim, etc., must interrogate the disputing parties, etc. prescribed in the main clause of paragraph (1).
- (5) If an order is made on a petition for assessment of a reorganization claim, etc., the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (6) If, with regard to a disputed reorganization claim, etc. prescribed in the main clause of paragraph (1) (excluding one prescribed in Article 158, paragraph (1)),

a petition for assessment of a reorganization claim, etc. or a petition for the taking over of action under the provisions of Article 156, paragraph (1) has not been filed within the period set forth in paragraph (2) (including cases where applied mutatis mutandis pursuant to Article 156, paragraph (2)), it is deemed that no proof is filed with regard to the disputed reorganization claim, etc.

(Actions to Oppose Orders on Petitions for Assessment of Reorganization Claims)

- Article 152 (1) A person that disagrees with an order on a petition for assessment of a reorganization claim, etc. may file an action to oppose (hereinafter referred to as an "action to oppose assessment of a reorganization claim, etc." in this Subsection) within an unextendable period of one month after the day on which the person was served the order.
- (2) An action to oppose assessment of a reorganization claim, etc. is subject to the jurisdiction of the reorganization court.
- (3) The court of the first instance with which an action to oppose assessment of a reorganization claim, etc. is filed, when it finds it necessary in order to avoid substantial detriment or delay when the reorganization court's jurisdiction over the reorganization case is based on no provisions of laws or regulations other than the provisions of Article 5, paragraph (6) (including cases where the reorganization court has accepted the reorganization case transferred thereto pursuant to the provisions of Article 7, item (iii) and the acceptance of the transferred case is based on no provisions other than the provisions of Article 5, paragraph (6) among the provisions prescribed in Article 7, item (iii)), by its own authority, may transfer the suit pertaining to the action to oppose assessment of a reorganization claim, etc. to the district court prescribed in Article 5, paragraph (1), notwithstanding the provisions of the preceding paragraph.
- (4) In an action to oppose assessment of a reorganization claim, etc., all of the disputing parties, etc. prescribed in the main clause of paragraph (1) of the preceding Article must stand as defendants if it is filed by the reorganization creditor, etc. that has the disputed reorganization claim, etc. prescribed in the main clause of the same paragraph, and the reorganization creditor, etc. must stand as a defendant if it is filed by the disputing party, etc.
- (5) Oral argument for an action to oppose assessment of a reorganization claim, etc. may not commence until the period set forth in paragraph (1) has expired.
- (6) If two or more actions to oppose assessment of a reorganization claim, etc. are pending with respect to the same reorganization Claim, etc. concurrently, oral arguments and judicial decisions of these actions must be made in a consolidated manner. In this case, the provisions of Article 40, paragraph (1) to paragraph (3) of the Code of Civil Procedure apply mutatis mutandis.

- (7) A judgment rendered with regard to an action to oppose assessment of a reorganization claim, etc., except when the action is dismissed as unlawful without prejudice, approves or changes the order on the petition for assessment of a reorganization claim, etc.

(Petitions for Valuation of Assets That Is the Subject Matter of Security Right)

- Article 153 (1) If a secured reorganization creditor has filed a petition for assessment of a reorganization claim, etc. in order to determine the content of their secured reorganization claim, if any disputing party, etc. prescribed in the main clause of Article 151, paragraph (1) disapproves or makes an objection to the value of the assets that is the subject matter of their security right in the investigation for the secured reorganization claim, the secured reorganization creditor may file a petition for valuation of the assets (hereinafter referred to as a "petition for valuation" in this Subsection) with the court against all of such disputing parties, etc. within two weeks from the day on which they filed the petition for assessment of the reorganization claim, etc.
- (2) The court, upon the petition of the secured reorganization creditor set forth in the preceding paragraph, may extend the period set forth in the same paragraph, only if there are any unavoidable grounds for doing so.
- (3) A secured reorganization creditor that files a petition for valuation must prepay an amount designated by the court as expenses for valuation proceedings.
- (4) If prepayment of expenses prescribed in the preceding paragraph is not made, the court must dismiss without prejudice the petition for valuation.

(Valuation of Assets That Are the Subject Matter of Security Right)

- Article 154 (1) If a petition for valuation is filed, the court, except when it dismisses the petition without prejudice, must appoint a valuator and order them to value the assets set forth in paragraph (1) of the preceding Article.
- (2) In the case referred to in the preceding paragraph, the court, by an order, must value the assets set forth in the same paragraph based on the valuation made by a valuator.
- (3) A party to a valuation case may file an immediate appeal against an order on the petition for valuation.
- (4) If an order on the petition for valuation or a judicial decision on the immediate appeal set forth in the preceding paragraph is made, the written judgment must be served upon the party prescribed in the same paragraph. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (5) The expenses incurred for the proceedings for a petition for valuation will be

borne as specified in the following items for the categories listed in the respective items:

- (i) when the value based on the order (meaning the value determined by an order set forth in paragraph (2)) is equal to or larger than the value based on the filed proof (meaning the value set forth in Article 138, paragraph (2), item (ii) concerning a secured reorganization claim set forth in paragraph (1) of the preceding Article): The expenses will be borne by the disputing party, etc. prescribed in the main clause of Article 151, paragraph (1) that is the opponent to the petition for valuation;
  - (ii) when the value based on the order set forth in the preceding item is equal to or smaller than the undisputed value (meaning the smallest value of the assets set forth in paragraph (1) that the disputing party, etc. set forth in the preceding item has indicated in the investigation of the secured reorganization claim): The expenses will be borne by the secured reorganization creditor set forth in paragraph (1) of the preceding Article; or
  - (iii) Cases other than those listed in the preceding two items: The expenses will be borne by some or all of the persons prescribed in the preceding two items at the amounts determined by the discretion of the court.
- (6) The expenses incurred for the proceedings for an immediate appeal set forth in paragraph (3) will be borne by the person that filed the immediate appeal.

(Relationship between Proceedings for Valuation and Proceedings for Assessment Order on Reorganization Claim)

Article 155 (1) No order may be made with regard to a petition for assessment of a reorganization claim, etc. filed by a secured reorganization creditor until after the period set forth in Article 153, paragraph (1) (when the period has been extended pursuant to the provisions of paragraph (2) of the same Article, the period as extended) expires (or if a petition for valuation is filed, until after the petition for valuation is withdrawn or is dismissed without prejudice or an order set forth in paragraph (2) of the preceding Article becomes final and binding).

- (2) The value of the assets that are the subject matter of a secured reorganization claim as specified in each of the following items in the cases listed in the respective items are binding on the court before which the petition for assessment of reorganization claim, etc. filed by the secured reorganization creditor that has the secured reorganization claim is pending or the action to oppose assessment of the reorganization claim, etc. against the order on such petition is pending:
- (i) when there is a final and binding order set forth in paragraph (2) of the preceding Article: The value determined by the order; or
  - (ii) when there is no order prescribed in the preceding item: The undisputed

value prescribed in paragraph (5), item (ii) of the preceding Article.

(Actions of Taking Over Relating to Disputed Reorganization Claims)

- Article 156 (1) If an action is pending in relation to a disputed reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) at the time of commencement of reorganization proceedings, when a reorganization creditor, etc. intends to determine the content of the claim (including whether it is a claim with general priority or consensually-subordinated reorganization claim), the creditor must file a petition for taking over of the action, designating all of the disputing parties, etc. prescribed in the main clause of the same paragraph as the opponents to the action.
- (2) The provisions of Article 151, paragraph (2) apply mutatis mutandis to the petition set forth in the preceding paragraph.

(Limitations to Assertion)

- Article 157 In the proceedings for a petition for assessment of a reorganization claim, etc., an action to oppose assessment of a reorganization claim, etc., and an action taken over under the provisions of paragraph (1) of the preceding Article, a reorganization creditor, etc. may assert the particulars listed in Article 138, paragraph (1), item (i) and item (ii) and paragraph (2), item (i) and item (ii), only as entered in the schedule of reorganization creditors or schedule of secured reorganization creditors.

(Assertion of Objections to Claims with an Enforceable Title of Obligation or Final Judgment)

- Article 158 (1) With regard to a disputed reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) which is accompanied by an enforceable title of obligation or final judgment, the disputing party prescribed in the main clause of the same paragraph may assert an objection only through the litigation proceedings that the reorganization company may carry out.
- (2) If an action is pending in relation to a disputed Reorganization Claim, etc. prescribed in the preceding paragraph at the time of commencement of reorganization, when the disputing party, etc. prescribed in the same paragraph intends to assert an objection under the provisions of the same paragraph, the disputing party, etc. must take over the action in which the reorganization creditor, etc. that has the reorganization claim, etc. in question stands as the opponent.
- (3) The provisions of Article 151, paragraph (2) apply mutatis mutandis to the assertion of an objection under the provisions of paragraph (1) or the taking over of an action under the provisions of the preceding paragraph, and the provisions of Article 152, paragraph (5) and paragraph (6) and the preceding



Article apply mutatis mutandis to the cases referred to in the preceding two paragraphs. In these cases, the phrase "the period set forth in paragraph (1)" in Article 152, paragraph (5) is deemed to be replaced with "an unextendable period of one month from the last day of the period for investigation for the disputed reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) or the day on which the notice set forth in Article 149, paragraph (4) is given".

- (4) When the assertion of an objection under the provisions of paragraph (1) or the taking over of action under the provisions of paragraph (2) has not taken place within the period prescribed in Article 151, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph, if the disputing party, etc. prescribed in the main clause of paragraph (1) of the same Article is a reorganization creditor, etc. or shareholder, it is deemed that no objection set forth in Article 147, paragraph (1) or Article 148, paragraph (4) has been made, and if such disputing party, etc. is a trustee, it is deemed that the trustee has approved the reorganization claim, etc. in question.

(Special Provisions for Multiple Secured Reorganization Claims with the Same Assets as the Subject Matter of a Security Right)

Article 159 When there are two or more secured reorganization claims that have the same assets as the subject matter of the security right, the following particulars concerning any one of these claims that has been determined are not binding on the court before which a petition for assessment of reorganization claim, etc. or action for determining a reorganization claim, etc. (meaning an action to oppose assessment of reorganization claim, etc., action taken over under the provisions of Article 156, paragraph (1) or paragraph (2) of the preceding Article, and an action to assert an objection under the provisions of paragraph (1) of the preceding Article; hereinafter the same applies in this Subsection) is pending with regard to one or more other secured reorganization claims:

- (i) the content of the secured reorganization claim;
- (ii) the value of the assets that is the subject matter of the security right; and
- (iii) when the secured reorganization claim has been determined by a judicial decision, the particulars stated in the reasons attached to the judicial decision, beyond the particulars listed in the preceding two items.

(Entry of the Outcome of Actions concerning the Finalization of Reorganization Claims)

Article 160 A court clerk, upon the petition of a trustee, a reorganization creditor, etc. or shareholder, must make an entry, in the schedule of reorganization creditors or schedule of secured reorganization creditors, of the

outcome of an action concerning the finalization of a reorganization claim, etc. (when an action to oppose assessment of a reorganization claim, etc. against the order on a petition for assessment of a reorganization claim, etc. is not filed within the period prescribed in Article 152, paragraph (1), is withdrawn, or is dismissed without prejudice, the content of the order).

(Effect of Judgments on Actions concerning the Finalization of Reorganization Claims)

Article 161 (1) A judgment made upon an action concerning the finalization of a reorganization claim, etc. is effective against all reorganization creditors, etc. and shareholders.

(2) If an action to oppose assessment of a reorganization claim, etc. against the order on a petition for assessment of a reorganization claim, etc. is not filed within the period prescribed in Article 152, paragraph (1), is withdrawn, or is dismissed without prejudice, the order has the same effect as a final and binding judgment against all reorganization creditors, etc. and shareholders.

(Reimbursement of Court Costs)

Article 162 When the reorganizing company assets have gained from an action concerning the finalization of a reorganization claim, etc. (including an order on a petition for assessment of a reorganization claim, etc.), the reorganization creditor, etc. or shareholder that asserted an objection may claim reimbursement of court costs from the reorganizing company assets to the extent that the reorganizing company assets have gained.

(Handling Proceedings for Finalization of Reorganization Claims upon the End of Reorganization)

Article 163 (1) The proceedings for a petition for assessment of a reorganization claim, etc. and proceedings for a petition for valuation which are pending at the time of the end of reorganization proceedings are closed if the reorganization proceedings are closed before an order of confirmation of the reorganization plan is made, and is to continue to be pending if the reorganization proceedings are closed after an order of confirmation of the reorganization plan is made.

(2) The provisions of Article 52, paragraph (4) and paragraph (5) apply mutatis mutandis to proceedings for a petition for assessment of a reorganization Claim, etc. and proceedings for a petition for valuation in which a trustee stands as a party when reorganization proceedings are closed after an order of confirmation of the reorganization plan is made.

(3) When reorganization is closed after an order of confirmation of the reorganization plan is made, if an order is made on a petition for assessment of

the reorganization claim, etc. after the end of reorganization, an action to oppose assessment of the reorganization claim, etc. may be filed pursuant to the provisions of Article 152, paragraph (1).

- (4) An action to oppose assessment of a reorganization claim, etc. which is pending at the time of the end of reorganization and in which a trustee does not stand as a party will be discontinued if the reorganization is closed before an order of confirmation of the reorganization plan is made, and is to continue to be pending if the reorganization is closed after an order of confirmation of the reorganization plan is made.
- (5) An action pending at the time of the end of reorganization (excluding an action prescribed in Article 52, paragraph (4)), which is taken over under the provisions of Article 156, paragraph (1) or Article 158, paragraph (2), will be discontinued if the end of reorganization occurs before an order of confirmation of the reorganization plan is made, and will not be discontinued if the end of reorganization occurs after an order of confirmation of the reorganization plan is made.
- (6) If an action is discontinued pursuant to the provisions of the preceding paragraph, the provisions of Article 52, paragraph (5) apply *mutatis mutandis*.

### **Subsection 3 Special Provisions on Claim for Taxes**

Article 164 (1) With regard to claim for taxes, etc. and a claim for a fine, etc. arising prior to the commencement of reorganization prescribed in Article 142, item (ii), the provisions of the preceding two Subsections (excluding Article 144) do not apply.

- (2) When the cause of a claim (excluding claims for a fine, petty fine, and court costs for a criminal case) filed under the provisions of Article 142 (in the case of a claim for a foreign tax subject to mutual assistance, a decision of implementation of mutual assistance) is a disposition against which a request for administrative review, action (excluding a criminal action; the same applies in the following paragraph) or any other appeal may be filed, a trustee may assert an objection with regard to the filed claim by means of filing the appeal.
- (3) In the case referred to in the preceding paragraph, if an action is pending in relation to the filed claim at the time of commencement of reorganization, a trustee that intends to assert an objection prescribed in the same paragraph takes over the action in which the reorganization creditor, etc. that has the filed claim stands as the opponent. The same applies when a case relating to the reorganization company's assets is pending before an administrative agency with regard to the filed claim at the time of commencement of reorganization.
- (4) The assertion of an objection under the provisions of paragraph (2) or the

taking over of an action under the provisions of the preceding paragraph must be performed within an unextendable period of one month after the day on which the trustee came to know of the filing of a claim prescribed in paragraph (2).

- (5) The provisions of Article 150, paragraph (2) apply mutatis mutandis to a claim filed under the provisions of Article 142, and the provisions of Article 157, Article 160, and Article 161, paragraph (1) apply mutatis mutandis to cases where the objection under the provisions of paragraph (2) or the taking over of an action under the provisions of paragraph (3) has taken place.

## **Chapter VI Shareholders**

(Participation in Proceedings by Shareholders)

Article 165 (1) A shareholder may participate in reorganization by virtue of holding shares.

- (2) The scope of persons that may participate in reorganization as shareholders will be determined based on the entries or records in the shareholder registry.
- (3) The court, upon the petition of a shareholder that is not entered or recorded in the shareholder registry, may permit the shareholder to participate in reorganization. In this case, notwithstanding the provisions of the preceding paragraph, no person other than the person that has obtained the permission may participate in reorganization as the shareholder with respect to the share for which the permission is granted.
- (4) The court, upon the petition of an interested person or by its own authority, may change or revoke the order of permission made under the provisions of the first sentence of the preceding paragraph.
- (5) An immediate appeal may be filed against a judicial decision on the petition set forth in the first sentence of paragraph (3) and an order under the provisions of the preceding paragraph.
- (6) If a judicial decision prescribed in the preceding paragraph and a judicial decision on the immediate appeal set forth in the paragraph are made, the written judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Voting Rights of Shareholders)

Article 166 (1) Shareholders have one voting right for each one share they hold; provided, however, that if the reorganizing company provides for a share of share unit in its articles of incorporation, they will be entitled to one voting right for each one unit of shares.

- (2) Notwithstanding the provisions of the preceding paragraph, when the reorganizing company is unable to pay its debts in full with its assets at the

time of commencement of reorganization, shareholders do not have any voting right.

## **Chapter VII Preparation and Confirmation of Reorganization Plans**

### **Section 1 Clauses of Reorganization Plans**

(Particulars Specified by Reorganization Plans)

Article 167 (1) A Reorganization Plan must specify clauses concerning the following:

- (i) modification of the rights of some or all of reorganization creditors, etc. or shareholders;
- (ii) the directors, accounting advisors, auditors, executive officers, financial auditors, and liquidators of the reorganizing company;
- (iii) payment of common-benefit claims;
- (iv) the method for procuring funds to repay debts;
- (v) the use of earnings beyond the amount expected in the reorganization plan;
- (vi) the amount or estimated amount of money listed in (a) and (b) below and the use thereof;
  - (a) The amount or estimated amount of money to be appropriated for liquidating distribution, etc. in the procedures prescribed in the main clause of Article 51, paragraph (1); and
  - (b) The amount of money paid to the court pursuant to the provisions of Article 108, paragraph (1) (in the case referred to in Article 112, paragraph (2), the sum of the amount of money paid to the court pursuant to the provisions of paragraph (2) of the same Article and the amount determined by an order set forth in Article 111, paragraph (1)); and
- (vii) the content of known post-commencement claims, if there are any.

(2) Beyond the particulars specified in the first sentence of Article 72, paragraph (4), a reorganization plan may specify clauses concerning the acts listed in the items of Article 45, paragraph (1), the amendment of the articles of incorporation, business transfers, etc. (meaning business transfers, etc. prescribed in Article 468, paragraph (1) of the Companies Act; the same applies in Article 174, item (vi) and Article 213-2), the incorporation of a stock company and other particulars necessary for reorganization.

(Modification of Rights Based on Reorganization Plans)

Article 168 (1) The content of a reorganization plan concerning the persons holding the following types of rights will be equal between the persons that hold the same type of rights; provided, however, that this does not apply when any person that will suffer detriment has given consent or when equity will not be undermined even if the plan otherwise provides for a small reorganization

claim, etc. or any of the claims listed in Article 136, paragraph (2), item (i) through item (iii) or when equity will not be undermined even if any other difference is set in the handling of the persons that hold the same type of rights:

- (i) a secured reorganization claim;
  - (ii) a reorganization claim with a general statutory lien or any other general priority;
  - (iii) a reorganization claim other than those listed in the preceding item and the following item;
  - (iv) a consensually-subordinated reorganization claim;
  - (v) a share the class of which is preferred in terms of the distribution of residual assets; and
  - (vi) a share other than the one set forth in the preceding item.
- (2) In the case of a reorganization claim set forth in item (ii) of the preceding paragraph, when a priority exists with regard to the amount of claim arising within a specific period of time, the period is calculated from the time of commencement of reorganization retroactively.
- (3) In a reorganization plan, a fair and equitable difference must be provided with respect to the content of the reorganization plan between persons that hold different types of rights, while taking into consideration the order of priority for the types of rights listed in the items of paragraph (1). In this case, the order of priority for those rights will be the order of those items.
- (4) The provisions of the preceding paragraph do not apply to claim for taxes, etc. (excluding a claim for a foreign tax subject to mutual assistance) or a claim for a fine, etc. arising prior to the commencement of reorganization prescribed in Article 142, item (ii).
- (5) If a debt is to be assumed or the term of a debt is to be extended based on a reorganization plan, the term of the debt does not exceed the following periods:
- (i) when there is any collateral (limited to collateral the serviceable life of which can be ascertained), the serviceable life thereof or a period of 15 years (or 20 years when the content of the reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances), whichever is shorter; and
  - (ii) in cases other than the case prescribed in the preceding item, 15 years (or 20 years where the content of the reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances).
- (6) The provisions of the preceding paragraph do not apply when corporate bonds are issued pursuant to the provisions of a reorganization plan.
- (7) A reorganization plan may not provide for reduction and release of debts or any other measures that would affect a claim for a fine, etc. arising prior to the

commencement of the reorganization prescribed in Article 142, item (ii).

(Handling Claims for Taxes)

Article 169 (1) When providing for any measures that may affect a claim for Taxes, etc. in a reorganization plan, consent is required from the person that has the power of collection of the claim; provided, however, that if the reorganization plan provides for a grace period for payment of not more than three years or provides for a grace period for realization of assets through measures to collect arrears with regard to the claim or if it provides for any measures that may affect any rights with regard to the claims for the following taxes and charges, it is sufficient to hear opinions from the person that has the power of collection:

- (i) delinquent tax, interest tax or delinquent charges arising before one year elapses after the date of the order commencing reorganization (or before the date of the order of confirmation of the reorganization plan if the order is made within that one-year period); and
  - (ii) delinquent tax or delinquent charges arising during the grace period if a grace period is prescribed for the payment of tax or for the realization of assets through the measures to collect arrears.
- (2) The person that has the power of collection may give consent as set forth in the main clause of the preceding paragraph.
- (3) Notwithstanding the provisions of the preceding two paragraphs, when the reorganization plan provides for any measures that would affect rights with regard to a claim for a foreign tax subject to mutual assistance, it is sufficient to hear opinions of the person that has the power to collect the claim.

(Modification of Rights of Reorganization Creditors)

Article 170 (1) Clauses for modifying the rights of some or all of the reorganization creditors, etc. or shareholders must clearly indicate rights held by holders of filed reorganization claims, etc. and shareholders which are to be modified, and also establish the content of rights as modified; provided, however, that this does not apply to reorganization claims, etc. prescribed in Article 172.

- (2) If there is a right held by a holder of a filed reorganization claim, etc. or shareholder which will not be affected by a reorganization plan, the right must be clearly indicated.

(Owing of Debts and Provision of Security)

Article 171 (1) If a person other than the reorganizing Company owes a debt or provides security for the reorganization of the reorganizing company's business, the reorganization plan must clearly indicate the person and establish the

details of the debt and security right. The same applies when providing security from the reorganizing company's assets.

- (2) In order to establish the details in a reorganization plan under the provisions of the preceding paragraph, consent is required from the person that owes the debt or provides the security.

(Handling Reorganization Claims Not Yet Determined)

Article 172 If there is a disputed reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) for which finalization proceedings have not yet been closed, a reorganization plan must establish appropriate measures for the claim, while taking into consideration the possible outcome of the finalization of the claim.

(Directors of Reorganizing Companies)

Article 173 (1) The clauses listed in the following items must establish the particulars specified in the respective items:

- (i) the clauses on directors of the reorganizing company (excluding the clauses listed in the following item to item (iv)): The names of the directors or the means of election and term of office thereof;
- (ii) the clauses on directors of the reorganizing company when the reorganizing company appoints representative directors at the time of an order of confirmation of the reorganization plan (excluding the clauses set forth in the following item): The names of the directors and the representative directors or the means of election or appointment and terms of office thereof;
- (iii) the clauses on directors of the reorganization company in cases where the reorganization company becomes a company with supervisory committee at the time of an order of confirmation of the reorganization plan: The names of the directors who are supervisory committee members (meaning the supervisory committee members prescribed in Article 38, paragraph (2) of the Companies Act; the same shall apply in Article 183, item (x) and Article 211, paragraph (1)), other directors and the representative director or the methods for election or appointment and terms of office thereof;
- (iv) the clauses on directors of the reorganizing company when the reorganizing company becomes a company with nominating committees, etc. at the time of an order of confirmation of the reorganization plan: The names of the directors and the members of the respective committees (meaning each committee prescribed in Article 400, paragraph (1) of the Companies Act; the same applies hereinafter) or the means of election or appointment and terms of office thereof;
- (v) the clauses on accounting advisors of the reorganizing company when the reorganizing company becomes a company with company accounting advisors



- at the time of an order of confirmation of the reorganization plan: The names of the accounting advisors or the means of election and term of office thereof;
- (vi) the clauses on company auditors of the reorganizing company when the reorganizing company becomes a company with company auditors (including a stock company, the articles of incorporation of which determine that the scope of the audit is limited to accounting; The same applies in item (iii) of the following paragraph) at the time of an order of confirmation of the reorganization plan: the names of the company auditors or the means of election and term of office thereof;
  - (vii) the clauses on financial auditors of the reorganizing company when the reorganizing company becomes a company with financial auditors at the time of an order of confirmation of the reorganization plan: The names of the financial auditors or the means of election and term of office thereof; and
  - (viii) the clauses on executive officers of the reorganizing company when the reorganizing company becomes a company with nominating committee, etc. at the time of an order of confirmation of the reorganization plan: the names of the executive officers and the representative executive officers or the means of election or appointment and terms of office thereof.
- (2) When the reorganizing company becomes a liquidating stock company at the time of an order of confirmation of the reorganization plan, the clauses listed in the following items must determine the particulars specified in the respective items:
- (i) the clauses on liquidators of the reorganizing company (excluding the clauses set forth in the following item): The names of the liquidators or the means of election or term of office thereof;
  - (ii) the clauses on liquidators of the reorganizing company when the reorganizing company appoints representative liquidators at the time of an order commencing the reorganization plan: The names of the liquidators and the representative liquidators or the means of election or appointment and terms of office thereof; and
  - (iii) the clauses on auditors of the reorganizing company when the reorganizing company becomes a company with company auditors at the time of an order of confirmation of the reorganization plan: The names of the company auditors or the means of election and term of office thereof.

(Cancellation, Consolidation, or Splitting of Shares)

Article 174 Clauses concerning the following acts must determine the particulars which would require a resolution of a shareholders meeting or any other institutional decision of a stock company in order to conduct the acts if the company were not subject to reorganization:

- (i) cancellation, consolidation, or splitting of shares, or allotment of shares

- without contribution;
- (ii) cancellation of share options or allotment of share options without contribution;
- (iii) reduction of the amount of the stated capital or reserves;
- (iv) dividends of surplus and other acts listed in the items of Article 461, paragraph (1) of the Companies Act;
- (v) amendment of the articles of incorporation;
- (vi) business transfers, etc.; and
- (vii) continuation of the stock company.

(Reorganization Company's Acquisition of its Shares)

Article 174-2 Clauses concerning the acquisition by the reorganizing company of its shares must determine the following:

- (i) the number of shares to be acquired by the reorganizing company (in the case of a company with class shares, the classes of shares and the number of shares of each class); and
- (ii) the date on which the reorganizing company is to acquire the shares set forth in the preceding item.

(Acquisition of Shares, etc. Subject to Cash-out Involved in Demand for Share, etc. Cash-out)

Article 174-3 Clauses concerning the acquisition of shares, etc. subject to the cash-out involved in the demand for share, etc. cash-out with regard to the shares, etc. subject to the cash-out issued by the reorganization company shall provide for the following matters:

- (i) the name and address of the special controlling shareholder (meaning the special controlling shareholder prescribed in Article 179, paragraph (1) of the Companies Act; the same shall apply in item (iii) and Article 214-2);
- (ii) the matters listed in the items of Article 179-2, paragraph (1) of the Companies Act;
- (iii) if the special controlling shareholder delivers money to reorganization creditors, etc. upon the acquisition of the shares, etc. subject to the cash-out involved in the demand for share, etc. cash-out, the amount of such money or the method of calculating such amount; and
- (iv) in the case prescribed in the preceding item, the matters concerning the allotment of the money set forth in said item to reorganization creditors, etc.

(Solicitation of Subscribers for Shares for Subscription)

Article 175 Clauses concerning the solicitation of subscribers for shares for subscription must determine the following:

- (i) the subscription requirements prescribed in Article 199, paragraph (2) of the

Companies Act;

- (ii) when the whole or part of the rights of reorganization creditors, etc. or shareholders have been extinguished as prescribed in the reorganization plan pursuant to the provisions of Article 205, paragraph (1), if it is provided that when the person has filed an application set forth in Article 203, paragraph (2) of the Companies Act, the person is deemed to have paid the whole or part of the amount to be paid in for shares for subscription, an indication of this;
- (iii) if it is provided that if reorganization creditors, etc. or shareholders are granted entitlement to the allotment of shares for subscription of the reorganizing company by filing an application set forth in Article 203, paragraph (2) of the Companies Act, an indication of this and the due date for application for subscription of the shares for subscription; and
- (iv) in the case prescribed in the preceding item, the particulars concerning the allotment of shares for subscription to reorganization creditors, etc. or shareholders.

(Solicitation of Subscribers for Share Options for Subscription)

Article 176 Clauses concerning the solicitation of subscribers for share options for subscription (when the share options for subscription are attached to bonds with share options, the bonds with respect to such bonds with share options will be included; the same applies hereinafter) must determine the following:

- (i) the subscription requirements prescribed in Article 238, paragraph (1) of the Companies Act;
- (ii) if the whole or part of the rights of reorganization creditors, etc. or shareholders have been extinguished as prescribed in the reorganization plan pursuant to the provisions of Article 205, paragraph (1), if it is provided that when those persons have filed an application set forth in Article 242, paragraph (2) of the Companies Act, they are deemed to have paid the whole or part of the amount to be paid in for share options for subscription, an indication of this ;
- (iii) if it is provided that if reorganization creditors, etc. or shareholders are granted entitlement to the allotment of share options for subscription of the reorganizing company by filing an application set forth in Article 242, paragraph (2) of the Companies Act, an indication of this and the due date for application for subscription of the share options for subscription;
- (iv) in the case prescribed in the preceding item, the particulars concerning the allotment of share options for subscription to reorganization creditors, etc. or shareholders; and
- (v) when share options for subscription are attached to bonds with share options, if the bonds are secured bonds, the content of the security right and

the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bond Trust Act.

(Solicitation of Subscribers for Bonds for Subscription)

Article 177 Clauses concerning the solicitation of subscribers for bonds for subscription (excluding bonds with share options; the same applies hereinafter) must specify the following:

- (i) the particulars listed in the items of Article 676 of the Companies Act;
- (ii) if the bonds for subscription are secured bonds, the content of the security right and the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bond Trust Act;
- (iii) when the whole or part of the rights of reorganization creditors, etc. or shareholders have been extinguished as prescribed in the reorganization plan pursuant to the provisions of Article 205, paragraph (1), if it is provided that when those persons have filed an application set forth in Article 677, paragraph (2) of the Companies Act, the persons are deemed to have paid the whole or part of the amount to be paid in for bonds for subscription, an indication of this ;
- (iv) if it is provided that if reorganization creditors, etc. or shareholders are granted entitlement to the allotment of bonds for subscription of the reorganizing company by filing an application set forth in Article 677, paragraph (2) of the Companies Act, an indication of this and the due date for application for subscription of the bonds; and
- (v) in the case prescribed in the preceding item, the particulars concerning the allotment of bonds for subscription to reorganization creditors, etc. or shareholders.

(Issuing of Shares in Exchange for Extinguishment of Rights of Reorganization Creditors or Shareholders)

Article 177-2 (1) The following must be set forth in clauses concerning the issuing of shares in exchange for the extinguishment of the whole or part of the rights of reorganization creditors, etc. or shareholders:

- (i) the number of the shares to be issued (in the case of a company with class shares, the classes of shares and the number of shares of each class);
  - (ii) particulars concerning the stated capital and capital reserves to be increased; and
  - (iii) particulars concerning the allotment of the shares to be issued to reorganization creditors, etc. or shareholders.
- (2) The following must be set forth in clauses concerning the issuing of share options (when the share options are attached to bonds with share options, the bonds with respect to the bonds with share options are included; hereinafter

the same applies in this Article, Article 183, item (xiii) and Article 225, paragraph (5)) in exchange for the extinguishment of the whole or part of the rights of reorganization creditors, etc. or shareholders:

- (i) the content and the number of the share options to be issued;
  - (ii) the day on which the share options to be issued are to be allotted;
  - (iii) if the share options to be issued are attached to bonds with share options, the particulars listed in the items of Article 676 of the Companies Act;
  - (iv) in the case prescribed in the preceding item, if the reorganization plan otherwise provides for the means of making demand with regard to the share options attached to bonds with share options set forth in the same item under the provisions of Article 118, paragraph (1), Article 179, paragraph (2), Article 777, paragraph (1), Article 787, paragraph (1), or Article 808, paragraph (1) of the Companies Act, an indication of this;
  - (v) in the case prescribed in item (iii), if the bonds with respect to the bonds with share options are secured bonds, the content of the security right and the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bond Trust Act; and
  - (vi) the particulars concerning the allotment of share options to be issued to reorganization creditors, etc. or shareholders.
- (3) Clauses concerning the issuing of bonds (excluding those with respect to bonds with share options; hereinafter the same applies in this Article, Article 183, item (xiii), and Article 225, paragraph (5)) in exchange for the extinguishment of the whole or part of the rights of reorganization creditors, etc. or shareholders must establish the following:
- (i) the total amount of the bonds to be issued;
  - (ii) the amount of each bond to be issued;
  - (iii) the interest rate for the bonds to be issued;
  - (iv) the means and due date for the redemption of the bonds to be issued;
  - (v) the particulars listed in Article 676, item (v) through item (viii) and item (xii) of the Companies Act;
  - (vi) if the bonds to be issued are secured bonds, the content of the security right and the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bond Trust Act; and
  - (vii) the particulars concerning the allotment of the bonds to be issued to reorganization creditors, etc. or shareholders.

(Dissolution)

Article 178 Clauses concerning dissolution must determine dissolution and its scheduled time; provided, however, that this does not apply in the case of dissolution as a result of a merger.

(Entity Conversion)

Article 179 Clauses concerning the entity conversion into a membership company must define the particulars that should be prescribed in an entity conversion plan.

(Absorption-Type Mergers)

Article 180 (1) The following must be set forth in clauses concerning an absorption-type merger (limited to an absorption-type merger in which the reorganizing company becomes extinct and the company that survives the absorption-type merger (hereinafter referred to as the "company surviving the absorption-type merger") is a stock company; hereinafter the same applies in this paragraph):

- (i) particulars that should be prescribed in an absorption-type merger agreement;
- (ii) if the company surviving the absorption-type merger delivers money or other assets (hereinafter referred to as "money, etc.") to reorganization creditors, etc. upon the absorption-type merger, the following particulars concerning the money, etc.:
  - (a) If such money, etc. includes shares of the company surviving the absorption-type merger, the number of the shares (in the case of a company with different classes of shares, the classes of shares and the number of shares of each class) or the means for calculating the number, and the particulars concerning the amount of the stated capital and reserves of the company surviving the absorption-type merger;
  - (b) If the money, etc. includes bonds of the company surviving the absorption-type merger (excluding those with respect to bonds with share options), the classes of the bonds and the total amount for each class of bonds, or the means of calculating the total amount;
  - (c) If the money, etc. includes share options of the company surviving the absorption-type merger (excluding those attached to bonds with share options), the content and number of the share options, or the means of calculating the number;
  - (d) If the money, etc. includes bonds with share options of the company surviving the absorption-type merger, the particulars prescribed in (b) concerning the bonds with share options and the particulars prescribed in (c) concerning the share options attached to the bonds with share options;  
or
  - (e) If the money, etc. includes assets other than shares, etc. (meaning shares, bonds, and share options; the same applies hereinafter) of the company surviving the absorption-type merger, the content and number or amount of the assets, or the means of calculating the number or amount;

- (iii) in the case prescribed in the preceding item, the particulars concerning the allotment of the money, etc. set forth in the same item to reorganization creditors, etc.
- (2) The following must be set forth in clauses concerning an absorption-type merger (limited to an absorption-type merger in which the reorganizing company becomes extinct and the company surviving the absorption-type merger is a membership company; hereinafter the same applies in this paragraph):
  - (i) particulars that should be prescribed in an absorption-type merger agreement;
  - (ii) if reorganization creditors, etc. become partners of the company surviving the absorption-type merger upon the conclusion of the merger, the particulars specified in (a) through (c) below for the categories of the company surviving the absorption-type merger listed in (a) through (c), respectively:
    - (a) General partnership company: the names and addresses of the partners and the value of their contributions;
    - (b) Limited partnership company: the names and addresses of the partners, whether the partners have unlimited liability or limited liability, and the value of their contributions; or
    - (c) Limited liability company: the names and addresses of the partners and the value of their contributions;
  - (iii) if the company surviving the absorption-type merger delivers money, etc. (excluding the equity interests of the company surviving the absorption-type merger) to reorganization creditors, etc. upon the absorption-type merger, the following particulars concerning the money, etc.:
    - (a) If the money, etc. includes bonds of the company surviving the absorption-type merger, the classes of the bonds and the total amount for each class of bonds, or the means of calculating the total amount;
    - (b) If the money, etc. includes assets other than bonds of the company surviving the absorption-type merger, the content and number or amount of the assets, or the means of calculating the number or amount; and
  - (iv) in the case prescribed in the preceding item, the particulars concerning the allotment of the money, etc. set forth in the same item to reorganization creditors, etc.
- (3) Particulars that should be prescribed in an absorption-type merger agreement must be set forth in clauses concerning an absorption-type merger (limited to a merger in which the reorganizing company becomes the company surviving the absorption-type merger).

(Consolidation-Type Mergers)

Article 181 (1) The following must be set forth in clauses concerning a consolidation-type merger (limited to a consolidation-type merger in which the reorganizing company becomes extinct and the company that is incorporated in the consolidation-type merger (hereinafter referred to as the "company incorporated in the consolidation-type merger") is a stock company; hereinafter the same applies in this paragraph):

- (i) particulars that should be prescribed in a consolidation-type merger agreement;
- (ii) if the company incorporated in a consolidation-type merger delivers shares, etc. to reorganization creditors, etc. upon the consolidation-type merger, the following particulars concerning the shares, etc.:
  - (a) If the shares, etc. are shares of the company incorporated in the consolidation-type merger, the number of such shares (in the case of a company with different classes of shares, the classes of shares and the number of shares of each class), or the means of calculating the number, and the particulars concerning the amount of the stated capital and reserves of the company incorporated in the consolidation-type merger;
  - (b) If such shares, etc. are bonds of the company incorporated in the consolidation-type merger (excluding those with respect to bonds with share options), the classes of the bonds and the total amount for each class of bonds, or the means of calculating the total amount;
  - (c) If such shares, etc. are share options of the company incorporated in the consolidation-type merger (excluding those attached to bonds with share options), the content and number of the share options, or the means of calculating the number;
  - (d) If the shares, etc. are bonds with share options of the company incorporated in the consolidation-type merger, the particulars prescribed in (b) concerning the bonds with share options and the particulars prescribed in (c) concerning the share options attached to the bonds with share options; or
- (iii) in the case prescribed in the preceding item, the particulars concerning the allotment of the shares, etc. set forth in the same item to reorganization creditors, etc.

(2) The following must be set forth in clauses concerning a consolidation-type merger (limited to a consolidation-type merger in which the reorganizing company becomes extinct and the company incorporated in the consolidation-type merger is a membership company; hereinafter the same applies in this paragraph):

- (i) the particulars that should be prescribed in a consolidation-type agreement;
- (ii) if reorganization creditors, etc. become partners of the company incorporated in the consolidation-type merger, the particulars listed in



Article 755, paragraph (1), item (iv) of the Companies Act;

- (iii) if the company incorporated in the consolidation-type merger delivers bonds to reorganization creditors, etc. upon the conclusion of the merger, the classes of such bonds and the total amount for each class of bonds, or the means of calculating such total amount; and
- (iv) in the case prescribed in the preceding item, the particulars concerning the allotment of the bonds set forth in the same item to reorganization creditors, etc.

(Absorption-Type Company Splits)

Article 182 Particulars that should be prescribed in an absorption-type company split agreement must be set forth in clauses concerning an absorption-type company split.

(Incorporation-Type Company Splits)

Article 182-2 Clauses concerning an incorporation-type company split must establish the particulars that should be prescribed in an incorporation-type company split plan.

(Share Exchanges)

Article 182-3 (1) The following must be set forth in clauses concerning a share exchange (limited to a share exchange in which the reorganizing company is the stock company that effects the share exchange (hereinafter referred to as the "wholly owned subsidiary company in share exchange") and the company that acquires all of its issued shares (hereinafter referred to as the "wholly owning parent company in share exchange") is a stock company; hereinafter the same applies in this paragraph):

- (i) the particulars that should be prescribed in a share exchange agreement;
- (ii) if the wholly-owning parent company in the share exchange delivers money, etc. to reorganization creditors, etc. upon the share exchange, the following particulars concerning the money, etc.:
  - (a) If the money, etc. includes shares of the wholly-owning parent company in the share exchange, the number of the shares (in the case of a company with different classes of shares, the classes of shares and the number of shares of each class) or the means of calculating the number, and the particulars concerning the amount of stated capital and reserves of the wholly-owning parent company in the share exchange;
  - (b) If the money, etc. includes bonds of the wholly-owning parent company in the share exchange (excluding those with respect to bonds with share options), the classes of the bonds and the total amount for each class of bonds, or the means of calculating the total amount;

- (c) If the money, etc. includes share options of the wholly-owning parent company in the share exchange (excluding those attached to bonds with share options), the content and number of the share options, or the means of calculating the number;
  - (d) If the money, etc. includes bonds with share options of the wholly-owning parent company in the share exchange, the particulars prescribed in (b) concerning the bonds with share options and the particulars prescribed in (c) concerning the share options attached to the bonds with share options; or
  - (e) If the money, etc. includes assets other than shares, etc. of the wholly-owning parent company in the share exchange, the content and number or amount of the assets, or the means of calculating the number or amount;
  - (iii) in the case prescribed in the preceding item, the particulars concerning the allotment of the money, etc. set forth in the same item to reorganization creditors, etc.
- (2) The following must be set forth in clauses concerning a share exchange (limited to a share exchange in which the reorganizing company becomes the wholly owned subsidiary company in the share exchange and the wholly owning parent company in the share exchange is a limited liability company; hereinafter the same applies in this paragraph):
- (i) particulars that should be prescribed in a share exchange agreement;
  - (ii) if reorganization creditors, etc. become, upon the share exchange, partners of the wholly owning parent company in share exchange, the names and addresses of the partners and the value of their contributions;
  - (iii) if the wholly owning parent company in share exchange delivers money, etc. (excluding the equity interests of the wholly owning parent company in share exchange) to reorganization creditors, etc. upon the share exchange, the following particulars concerning the money, etc.:
    - (a) If the money, etc. includes bonds of the wholly owning parent company in the share exchange, the classes of the bonds and the total amount for each class of bonds, or the means of calculating the total amount;
    - (b) If the money, etc. includes assets other than bonds of the wholly owning parent company in the share exchange, the content and number or amount of the assets, or the means of calculating the number or amount; and
  - (iv) in the case prescribed in the preceding item, the particulars concerning the allotment of the money, etc. set forth in the same item to reorganization creditors, etc.
- (3) Particulars that should be prescribed in a share exchange agreement must be set forth in clauses concerning a share exchange (limited to the share exchanges in which the reorganizing company becomes the wholly owning parent company in the share exchange).

(Share Transfers)

Article 182-4 The following must be set forth in clauses concerning a share transfer:

- (i) the particulars that should be prescribed in a share transfer plan;
- (ii) if the company that is incorporated through the share transfer (hereinafter referred to as the "wholly-owning parent company incorporated through the share transfer") delivers shares, etc. of the wholly-owning parent company incorporated through the share transfer to reorganization creditors, etc. upon the share transfer, the following particulars concerning the shares, etc.:
  - (a) If the shares, etc. include shares of the wholly-owning parent company incorporated through the share transfer, the number of the shares (in the case of a company with different classes of shares, the classes of shares and the number of shares of each class), or the means of calculating the number, and the particulars concerning the amount of the stated capital and reserves of the wholly-owning parent company incorporated through the share transfer;
  - (b) If the shares, etc. include bonds of the wholly-owning parent company incorporated through the share transfer (excluding those with respect to bonds with share options), the classes of the bonds and the total amount for each class of bonds, or the means of calculating the total amount;
  - (c) If the shares, etc. include share options of the wholly-owning parent company incorporated through the share transfer (excluding those attached to bonds with share options), the content and number of the share options, or the means of calculating the number;
  - (d) If the shares, etc. include bonds with share options of the wholly-owning parent company incorporated through the share transfer, the particulars prescribed in (b) concerning the bonds with share options and the particulars prescribed in (c) concerning the share options attached to the bonds with share options; or
- (iii) in the case prescribed in the preceding item, the particulars concerning the allotment of the shares, etc. set forth in the same item to reorganization creditors, etc.

(Incorporation of New Companies)

Article 183 The following must be provided for in clauses concerning the incorporation of a stock company; provided, however, that this does not apply to the incorporation of a stock company through a consolidation-type merger, incorporation-type company split, or share transfer:

- (i) the particulars listed in Article 27, item (i) through item (iv) of the Companies Act concerning the stock company to be incorporated (hereinafter

- referred to as the "new company" in this Article), the total number of shares that may be issued by the new company, and the particulars concerning the amount of stated capital and capital reserves of the new company;
- (ii) the particulars prescribed in the articles of incorporation of the new company (excluding those pertaining to the particulars listed in the preceding item);
  - (iii) if subscribers for shares solicited at incorporation (meaning shares solicited at incorporation prescribed in Article 58, paragraph (1) of the Companies Act; the same applies hereinafter) of the new company are solicited, the particulars listed in the items of the same paragraph;
  - (iv) when the whole or part of the rights of reorganization creditors, etc. or shareholders have been extinguished as prescribed in the reorganization plan pursuant to the provisions of Article 205, paragraph (1), if it is provided that when the person has filed an application set forth in Article 59, paragraph (3) of the Companies Act, the person is deemed to have paid the whole or part of the amount to be paid for shares solicited at incorporation of the new company, an indication of this ;
  - (v) if it is provided that if reorganization creditors, etc. or shareholders are granted entitlement to the allotment of shares solicited at incorporation of the new company by filing an application set forth in Article 59, paragraph (3) of the Companies Act, an indication of this and the due date for application for subscription of the shares solicited at incorporation;
  - (vi) in the case prescribed in the preceding item, the particulars concerning the allotment of shares solicited at incorporation to reorganization creditors, etc. or shareholders;
  - (vii) the assets to be transferred from the reorganizing company to the new company and the value thereof;
  - (viii) the names of directors at incorporation of the new company or the means of election thereof, and if the reorganization company is a company with supervisory committee, whether or not each director at incorporation is a supervisory committee member at incorporation (meaning the supervisory committee member at incorporation prescribed in Article 38, paragraph (2) of the Companies Act; the same shall apply in item (x));
  - (ix) the particulars specified in (a) through (e) below for the cases listed in (a) through (e), respectively:
    - (a) When the new company appoints representative directors: the names of the representative directors at incorporation or the means of appointment thereof;
    - (b) When the new company is a company with accounting advisors: the names of the accounting advisors at incorporation or the means of election thereof;

- (c) Where the new company is a company with company auditors (including a stock company the articles of incorporation of which provide that the scope of the audit by its auditors will be limited to an audit related to accounting): the names of the company auditors at incorporation or the means of election thereof;
- (d) Where the new company is a company with financial auditors: the names of the financial auditors at incorporation or the means of election thereof; or
- (e) When the new company is a company with nominating committee, etc.: the names of the committee members at incorporation, executive officers at incorporation and representative executive officers at incorporation or the methods for election or appointment thereof;
- (x) when the new company's directors at incorporation (if the new company is a company with supervisory committee, directors at incorporation who are supervisory committee member at incorporation or other directors), accounting advisors at incorporation, auditors at incorporation, representative directors at incorporation, committee members at incorporation, executive officers at incorporation, representative executive officers at incorporation or financial auditors at incorporation (referred to as "directors, etc. at incorporation" in Article 225, paragraph (5)) become, after the incorporation of the new company, its directors, accounting advisors, auditors, representative directors (if the new company is a company with supervisory committee, directors who are supervisory committee members or other directors), members of respective committees, executive officers, representative executive officers, or financial auditors (referred to as "new company's directors, etc." in the same paragraph), the respective terms of office of the new company's directors, etc.;
- (xi) if the new company solicits subscribers for share options for subscription, the particulars listed in the items of Article 176;
- (xii) If the new company solicits subscribers for bonds for subscription, the particulars listed in the items of Article 177; and
- (xiii) if the new company issues shares issued at incorporation, share options or bonds of the new company in exchange for the extinguishment of the whole or part of the rights of reorganization creditors, etc. or shareholders, the particulars specified in Article 177-2.

## **Section 2 Submission of Proposed Reorganization Plans**

(Period for Submission of Proposed Reorganization Plans)

Article 184 (1) A trustee, within the period specified by the court after the expiration of the period for filing a proof of claims prescribed in Article 138,

paragraph (1), must prepare a proposed reorganization plan and submit it to the court.

- (2) The reorganizing company, a holder of a filed reorganization claim, etc., or a shareholder may prepare a proposed reorganization plan and submit to the court within the period specified by the court.
- (3) The last day of each of the periods set forth in the preceding two paragraphs (excluding any period as extended under the provisions of the following paragraph) must be within one year from the date of the order commencing reorganization.
- (4) If there are special circumstances, the court, upon petition or by its own authority, may extend the period specified thereby pursuant to the provisions of paragraph (1) or paragraph (2).

(Proposed Reorganization Plan Aiming for Discontinuation of All Business)

Article 185 (1) If it becomes obvious, after the commencement of reorganization, that it is difficult for the reorganizing company itself, or for any other person through the transfer of business, or the merging, split or incorporation of a stock company, to prepare a proposed reorganization plan aiming for the continuation of the reorganizing company's business, the court, upon the petition of any of the persons prescribed in paragraph (1) or paragraph (2) of the preceding Article, may permit preparation of a proposed reorganization plan for the discontinuation of all of the reorganizing company's business; provided, however, that this does not apply if this will harm the common interests of creditors.

- (2) The court may rescind the permission set forth in the main clause of the preceding paragraph at any time until it makes an order to refer the proposed reorganization plan to a resolution.

(Revision of Proposed Reorganization Plans)

Article 186 The person that has submitted a proposed reorganization plan may revise the proposed reorganization plan with permission of the court; provided, however, that this does not apply after an order is made to refer a proposed reorganization plan to a resolution.

(Opinions of Administrative Agencies)

Article 187 In the case of a proposed reorganization plan which provides for the particulars that require permission, authorization, license, or any other disposition by an administrative agency, the court must hear opinions from the administrative agency concerned with regard to the particulars. The same applies to a proposed reorganization plan as revised under the provisions of the preceding Article.

(Opinions of the Reorganizing Company's Labor Union)

Article 188 The court must hear opinions from the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) with regard to a proposed reorganization plan. The same applies to a proposed reorganization plan as revised under the provisions of Article 186.

### **Section 3 Resolution on Proposed Reorganization Plans**

(Order to Refer to Resolution)

Article 189 (1) If a proposed reorganization plan is submitted, the court makes an order to refer the proposed reorganization plan to a resolution, except in any of the cases listed in the following items:

- (i) when the general period for investigation prescribed in Article 146, paragraph (3) has not yet expired;
- (ii) when a trustee has not submitted a written report under the provisions of Article 84, paragraph (1) or made a report at a stakeholders meeting under the provisions of Article 85, paragraph (1);
- (iii) if the court finds that the proposed reorganization plan fails to satisfy any of the requirements listed in the items of Article 199, paragraph (2) (excluding item (iv)); and
- (iv) if the court discontinues reorganization pursuant to the provisions of Article 236, item (ii).

(2) The court, when making an order to refer to a resolution set forth in the preceding paragraph, must specify the means available to reorganization creditors, etc. or shareholders that may exercise voting rights (hereinafter referred to as "voting right holders" in this Section) for exercising their voting rights, and set a time limit for giving a notice to the court in the case of diverse exercise of a voting right under the provisions of Article 193, paragraph (2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of the same Article). In this case, any of the following means must be designated as that for exercising a voting right:

- (i) the means of exercising a voting right on the date of a stakeholders meeting;
- (ii) the means of exercising a voting right by voting by document, etc. (meaning voting by document or any other means specified by the Rules of the Supreme Court) within a period specified by the Court; or
- (iii) the means of exercising a voting right by either of the means listed in the preceding two items as chosen by voting right holders. In this case, the last day of the period set forth in the preceding item must precede the date of a stakeholders meeting set forth in item (i).

(3) The court, when it has made an order to refer to a resolution set forth in

paragraph (1), must give a public notice of the time limit prescribed in the first sentence of the preceding paragraph and give a notice of the time limit and the content of the proposed Reorganization Plan or the outline thereof to the persons prescribed in the main clause of Article 115, paragraph (1) (excluding those prescribed in paragraph (2) of the same Article).

- (4) The court, when it has designated either of the means set forth in paragraph (2), item (ii) or item (iii) as the means of exercising a voting right, must give a public notice to that effect, and must give a notice to voting right holders to the effect that voting by document, etc. prescribed in item (ii) of the same paragraph will be allowed only within a period specified by the court.
- (5) When the court has designated the means set forth in paragraph (2), item (ii) as the means of exercising a voting right, if any of the persons listed in the items of Article 114, paragraph (1) (excluding the person that may not file a petition set forth in the first sentence of paragraph (1) of the same Article pursuant to the provisions of paragraph (2) of the same Article) has filed, within the period set forth in the preceding paragraph, a petition for convocation of a stakeholders meeting aimed for adopting a resolution on a proposed reorganization plan, the court must rescind the designation of the means of exercising a voting right, and designate the means set forth in paragraph (2), item (i) or item (iii) instead.

(Restriction on Exercise of Voting Rights by Bondholders)

Article 190 (1) A bondholder that has a corporate bond which is a reorganization claim, etc., if there is any bond administrator, etc. prescribed in Article 43, paragraph (1), item (v) for the corporate bond, may exercise voting rights based on the corporate bond, only in any of the cases listed in the following items:

- (i) when the bondholder has filed a proof of reorganization claim, etc. or received a change of the name of the holder of a filed claim with regard to the corporate bond in question;
  - (ii) when the bond administration company, etc. has filed a proof of a Reorganization Claim, etc. with regard to the corporate bond in question, and before an order is made to refer a proposed reorganization plan to a resolution, has made an offer to the court to the effect that the company has the intention of exercising its voting right based on the corporate bond (including when the bond administration company, etc., with regard to a corporate bond which is a Reorganization Claim, etc. and for which such an offer is made, has received a change of the name of the potential voter under the provisions of the following paragraph).
- (2) A person that has acquired a corporate bond which is a reorganization claim, etc. and for which an offer prescribed in item (ii) of the preceding paragraph is made may receive a change of the name of the potential voter.



(3) A bondholder set forth in paragraph (1) (limited to one that falls under any of the items of the same paragraph), notwithstanding the provisions of the same paragraph, may not exercise their voting right for a resolution of the proposed reorganization plan when, with regard to the exercise of a voting right for a resolution on a proposed reorganization plan based on a corporate bond which is a reorganization claim, etc. , a resolution at a bondholders meeting set forth in Article 706, paragraph (1) of the Companies Act is adopted or there exists a provisions set forth in the proviso to Article 706, paragraph (1) of the same Act.

(Determining the Amount or Number of Voting Rights If a Stakeholders Meeting is Held)

Article 191 (1) When the court designates either of the means set forth in Article 189, paragraph (2), item (i) or item (iii) as the that of exercising a voting right, a trustee, a holder of filed reorganization claims, etc., or a shareholder may make an objection on the date of a stakeholders meeting with regard to the voting rights of holders of filed reorganization claims, etc. or shareholders; provided, however, that this does not apply to a voting right held by a holder of filed reorganization claims, etc. the amount of which has been determined pursuant to the provisions of Article 150, paragraph (1).

(2) In the case prescribed in the main clause of the preceding paragraph, voting right holders may exercise their voting rights in accordance with the amount or number specified in each of the following items for the categories listed in the respective items:

(i) a holder of filed reorganization claims, etc. that has a voting right the amount of which has been determined pursuant to the provisions of Article 150, paragraph (1): The amount thus determined;

(ii) a holder of filed reorganization claims, etc. that has a voting right without objection set forth in the main clause of the preceding paragraph: The amount filed;

(iii) a shareholder that has a voting right without objection set forth in the main clause of the preceding paragraph: The number entered or recorded in the shareholder registry or specified by the permission set forth in Article 165, paragraph (3); and

(iv) a holder of filed reorganization claims, etc. or a shareholder that has a voting right subject to objection set forth in the main clause of the preceding paragraph: The amount or number specified by the court; provided, however, that the holder of filed reorganization claims, etc. or shareholder may not exercise their voting right if the court has decided not to allow them to exercise the voting right.

(3) The court, upon the petition of an interested person or by its own authority, may change the order made under the provisions of item (iv) of the preceding

paragraph at any time.

(Means for Determining of the Amount or Number of Voting Rights if a Stakeholders Meeting is Not Held)

Article 192 (1) When the court designates the means set forth in Article 189, paragraph (2), item (ii) as that for exercising a voting right, voting right holders may exercise their voting rights in accordance with the amount or number specified in each of the following items for the categories listed in the respective items:

- (i) a holder of filed reorganization claims, etc. that has a voting right the amount of which has been determined pursuant to the provisions of Article 150, paragraph (1): The amount thus determined;
- (ii) a holder of filed reorganization claims, etc. (excluding one set forth in the preceding item): The amount specified by the court; provided, however, that such a holder of filed reorganization claims, etc. may not exercise their voting right if the court has decided not to allow them to exercise the voting right; and
- (iii) a shareholder: The number entered or recorded in the shareholder registry or specified by the permission set forth in Article 165, paragraph (3).

(2) The court, upon the petition of an interested person or by its own authority, may change the order made under item (ii) of the preceding paragraph at any time.

(Means of Exercising Voting Rights)

Article 193 (1) Voting right holders may exercise their voting rights by proxy.

(2) Each voting right holder may exercise their voting right diversely. In this case, they must give a notice to the court in writing to that effect by the time limit prescribed in the first sentence of Article 189, paragraph (2).

(3) The provisions of the preceding paragraph apply mutatis mutandis when the proxy prescribed in paragraph (1) diversely exercises voting rights vested therein (if the proxy has their own voting right, the voting right is included).

(Determining Voting Right Holders as of a Record Date)

Article 194 (1) The court, when it finds it appropriate, upon making an order to refer a proposed reorganization plan to a resolution, may designate a certain day (hereinafter referred to as the "record date" in this Article) and determine the reorganization creditors, etc. or shareholders recorded in the schedule of reorganization creditors or schedule of secured reorganization creditors or the shareholder registry as of the record date as voting right holders.

(2) The court must give a public notice of the record date. In this case, the record date will be on or after the day on which two weeks elapsed since the date of

public notice.

(Persons That May Not Exercise Voting Rights)

Article 195 Persons that hold rights that will not be affected by a reorganization plan or rights that are protected pursuant to the provisions of Article 200, paragraph (2) may not exercise their voting rights.

(Requirements for Approval of Proposed Reorganization Plans)

Article 196 (1) A resolution on a proposed reorganization plan will be adopted separately by the persons that hold the types of rights listed in the items of Article 168, paragraph (1) or by the persons that hold the types of rights specified under the provisions of the following paragraph.

- (2) The court, when it finds it appropriate, may categorize two or more types of rights listed in the items of Article 168, paragraph (1) as one type of right, or categorize each of the types of rights listed in those items into two or more types of rights; provided, however, that reorganization claims, secured reorganization claims, or shares must be treated as separate types of rights.
- (3) The court may modify or revoke the order set forth in the main clause of the preceding paragraph until it makes an order to refer the proposed reorganization plan to a resolution.
- (4) If an order is made under the provisions of the preceding two paragraphs, the written judgment must be served upon the voting right holders; provided, that this does not apply where the order is rendered on the date of a stakeholders meeting.
- (5) In order to approve a proposed reorganization plan, consent is required from the persons specified in the following items for the categories listed in the respective items for each of the types of rights prescribed in paragraph (1)
  - (i) reorganization claims: Persons that hold voting rights that account for more than half of the total amount of voting rights held by reorganization creditors that may exercise their voting rights;
  - (ii) secured reorganization claims: The persons specified in (a) through (c) below for the categories listed in (a) through (c) respectively:
    - (a) Proposed reorganization plans which provide for the extension of the terms of secured reorganization claims: Persons that hold voting rights that account for not less than two-thirds of the total amount of voting rights held by secured reorganization creditors that may exercise their voting rights;
    - (b) Proposed reorganization plans which provide for the reduction and release of debts for secured reorganization claims or provide for measures that may affect the rights of secured reorganization creditors other than the extension of terms: Persons that hold voting rights that account for not

- less than three-fourths of the total amount of voting rights held by secured reorganization creditors that may exercise their voting rights; and
- (c) Proposed reorganization plans which aim for the discontinuation of the entire business of the reorganizing company: Persons that hold voting rights that account for not less than nine-tenths of the total amount of voting rights held by secured reorganization creditors that may exercise their voting rights; and
- (iii) shares: persons that hold voting rights that account for the majority of the total number of voting rights held by shareholders that may exercise their voting rights.

(Modification of a Reorganization Plan)

Article 197 When either of the means set forth in Article 189, paragraph (2), item (i) or item (iii) is designated as that for exercising a voting right, the person that has submitted a proposed reorganization plan, with permission of the court, may modify the proposed reorganization plan at a stakeholders meeting as long as it does not adversely affect reorganization creditors, etc. and shareholders.

(Continuance of the Date of a Stakeholders Meeting)

Article 198 (1) When either of the means set forth in Article 189, paragraph (2), item (i) or item (iii) has been designated as those for exercising a voting right on a proposed reorganization plan, and the proposed reorganization plan has not been approved, if consents for the continuation of the stakeholders meeting are obtained from the persons specified in the following items for the categories listed in the respective items for each of the types of rights prescribed in Article 196, paragraph (1), the court, upon the petition of a trustee, the reorganizing company or a voting right holder or by its own authority, must designate and render the further date; provided, however, that this does not apply when it is obvious that the proposed reorganization plan is unlikely to be approved on the further date:

- (i) Reorganization claims: Persons that hold voting rights that account for not less than one-third of the total amount of voting rights held by reorganization creditors that may exercise their voting rights;
- (ii) Secured reorganization claims: Persons that hold voting rights that account for more than half of the total amount of voting rights held by secured reorganization creditors that may exercise their voting rights; or
- (iii) shares: persons that hold voting rights that account for not less than one-third of the total number of voting rights held by shareholders entitled to vote.
- (2) In the case referred to in the main clause of the preceding paragraph,

approval of a proposed reorganization plan set forth in the main clause of the same paragraph must be made within two months from the date of the first stakeholders meeting to which the proposed reorganization plan has been referred for a resolution.

- (3) The court, when it finds it necessary, upon the petition of the person who has submitted a proposed reorganization plan or by its own authority, may extend the period set forth in the preceding paragraph; provided, however, that an extension must not exceed one month.

#### **Section 4 Order Confirming or Disconfirming Reorganization Plans**

(Requirements for Confirmation of a Reorganization Plan)

- Article 199 (1) If a proposed reorganization plan is approved, the court must make an order of confirmation or disconfirmation of the reorganization plan.
- (2) The court must make an order of confirmation of the reorganization plan if all of the following requirements are met:
- (i) the reorganization or the reorganization plan comply with provisions of laws and regulations as well as the Rules of the Supreme Court;
  - (ii) the content of the reorganization plan is fair and equitable;
  - (iii) the reorganization plan is feasible for implementation;
  - (iv) the resolution on the reorganization plan has been adopted in a fair and sincere manner;
  - (v) in the case of a reorganization plan which aims for conducting the act set forth in Article 45, paragraph (1), item (vii) jointly with another company, the other company is able to conduct the act at the time when the order is made under the provisions of the preceding paragraph; and
  - (vi) in the case of a reorganization plan which provides for the particulars that require permission, authorization, license, or any other disposition by an administrative agency, the Reorganization Plan is not in conflict with the opinions on important points heard from the administrative agency concerned under the provisions of Article 187.
- (3) Even if the reorganization contravenes provisions of laws and regulations or the Rules of the Supreme Court, the court may make an order of confirmation of the reorganization plan when it finds it inappropriate not to confirm the reorganization plan, while taking into consideration the degree of the contravention, the current status of the reorganizing company and any other circumstances concerned.
- (4) The court must make an order of disconfirmation of the reorganization plan except where it makes an order of confirmation of the reorganization plan pursuant to the provisions of the preceding two paragraphs or paragraph (1) of the following Article.

- (5) The persons prescribed in the main clause of Article 115, paragraph (1) and the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) may state their opinions with regard to whether or not the reorganization plan should be confirmed.
- (6) If an order of confirmation or disconfirmation of the reorganization plan is made, a public notice must be given with regard to the main text of the order and the outline of the reasons attached thereto, and the reorganization plan or the outline thereof.
- (7) In the case prescribed in the preceding paragraphs, the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) must be given a notice to the effect that the order set forth in the preceding paragraph is made.

(Confirmation by Holders of a Certain Type of Rights without Consent)

Article 200 (1) Even if a proposed reorganization plan is not approved due to the fact that consent has not been obtained as required under Article 196, paragraph (5) among holders of any of the types of rights prescribed in paragraph (1) of the same Article, the court may make an order of confirmation of the reorganization plan by modifying the proposed reorganization plan and specifying, in the interest of the holders of the type of rights among whom consent has not been obtained, a clause to protect the rights by any of the following means:

- (i) in the interest of Secured Reorganization Creditors, by having the whole of each Secured Reorganization Claim continue to exist as a claim to be secured by the security right, or by selling the assets that is the subject matter of the security right at a fair market price determined by the Court (evaluated as if there were no security right) or higher price, and paying the Secured Reorganization Claim with the money that remains after deducting the expenses for the sale from the proceeds or making a statutory deposit of the remaining money;
  - (ii) in the interest of Reorganization Creditors, by paying the amount of distribution that they are expected to receive if bankruptcy proceedings are commenced; in the interest of shareholders, by paying the amount of profit that they are expected to obtain from the distribution of the residual assets upon liquidation;
  - (iii) by paying the persons that hold the type of rights in question a fair market price of the rights determined by the Court; or
  - (iv) by taking other measures to protect the persons that hold the type of rights in question in a fair and equitable manner in line with the preceding three items.
- (2) When it is obvious that for a proposed reorganization plan, consent will not be obtained as required under Article 196, paragraph (5) among holders of any of

the types of rights prescribed in paragraph (1) of the same Article, the court, upon the petition of the person that is to prepare a proposed reorganization plan, may permit that a proposed reorganization plan will be prepared by specifying, in advance, in the interest of the holders of the type of rights among which consent will not be obtained, a clause to protect the rights by any of the methods listed in the items of the preceding paragraph.

- (3) When the petition set forth in the preceding paragraph is filed, the court must hear opinions from the petitioner and at least one of the holders of the type of rights among whom consent obviously will not be obtained.

(Time When a Reorganization Plan becomes Effective)

Article 201 A reorganization plan becomes effective as of the time when an order confirming the plan is made.

(Immediate Appeals against Orders Confirming Reorganization Plans)

Article 202 (1) An immediate appeal may be filed against an order of confirmation or disconfirmation of a reorganization plan.

- (2) Notwithstanding the provisions of the preceding paragraph, in the cases listed in the following items, the persons specified in the respective items may not file an immediate appeal except on the grounds that the content of the reorganization plan is in violation of Article 168, paragraph (1), item (iv) through item (vi):

- (i) when the reorganizing company, at the time of commencement of reorganization, is unable to pay its debts in full with its assets with regard to claims that take preference over consensually-subordinated reorganization claims: Holders of consensually-subordinated reorganization claims; or  
(ii) when the reorganizing company, at the time of commencement of reorganization, is unable to pay its debts in full with its assets: Shareholders.

- (3) A reorganization creditor, etc. or shareholder that held no voting right, when filing an immediate appeal set forth in paragraph (1), must make a prima facie showing to the effect that they are a reorganization creditor, etc. or shareholder.

- (4) The immediate appeal set forth in paragraph (1) does not affect the implementation of the reorganization plan; provided, however, that if a prima facie showing is made with regard to the obvious circumstances under which the order set forth in the same paragraph should be revoked as well as the urgent necessity to avoid any damage which may be caused by the implementation of the reorganization plan to the extent that compensation cannot be made, the appellate court or the court that made the order of confirmation of the reorganization plan, upon the petition of the appellant, may stay the implementation of the whole or part of the reorganization plan or

make any other necessary disposition, while requiring or not requiring the provision of security, until an order is made on the immediate appeal.

- (5) The provisions of the preceding two paragraphs apply mutatis mutandis to an appeal under the provisions of Article 336 of the Code of Civil Procedure and to a petition for permission for appeal under the provisions of Article 337 of the Code, both provisions applied mutatis mutandis pursuant to Article 13, which are filed against a judicial decision on the immediate appeal set forth in paragraph (1).

## **Chapter VIII Procedures after the Confirmation of Reorganization Plans**

### **Section 1 Effect of an Order Confirming Reorganization Plans**

(Scope of the Effect of a Reorganization Plan)

Article 203 (1) A reorganization plan will be effective in the interest of and against the following persons:

- (i) the reorganizing company;
  - (ii) all reorganization creditors, etc. and shareholders;
  - (iii) any person that has incurred a debt or provided security for the reorganization of the reorganizing company's business;
  - (iv) the membership company into which the reorganizing company has been converted pursuant to the provisions of the reorganization plan; and
  - (v) the company to be incorporated through an incorporation-type company split (excluding one conducted jointly with another company), share transfer (excluding one conducted jointly with another stock company) or under the clauses prescribed in Article 183, pursuant to the provisions of the Reorganization Plan.
- (2) A reorganization plan does not affect any rights held by reorganization creditors, etc. against the reorganizing company's guarantor or any other person that owes debts jointly with the reorganizing company, and any security provided by persons other than the reorganizing company in the interest of reorganization creditors, etc.

(Discharge from Reorganization Claims)

Article 204 (1) When an order of confirmation of a reorganization plan is made, the reorganizing company will be discharged from its liabilities for all reorganization claims, etc., except for the following rights, and all of the shareholders' rights and security rights existing on the reorganizing company's assets will be extinguished:

- (i) rights approved pursuant to the provisions of the Reorganization Plan or provisions of this Act;
- (ii) claims for severance pay held by persons who were, as of the time after the



- commencement of reorganization, the reorganizing company's directors, etc. (meaning directors, accounting advisors, auditors, representative directors, executive officers, representative executive officers, liquidators, or representative liquidators ) or employees, and who continue to hold these posts after the order of confirmation of the reorganization plan;
- (iii) claims for a fine, etc. arising prior to the commencement of reorganization prescribed in Article 142, item (ii); and
- (iv) Claims for taxes, etc. (excluding a claim for foreign taxes subject to mutual assistance), for which the reorganizing company has been punished by imprisonment or a fine after the commencement of reorganization for avoiding or attempting to avoid payment of the claim, receiving a refund or collecting and paying the claim by wrongful conduct, or failing to pay the claim which is to be paid, or the reorganizing company, when it received notice under the provisions of Article 14, paragraph (1) of the National Tax Violations Control Act (Act No. 67 of 1900) (including cases where applied mutatis under the Local Tax Act (Act No. 226 of 1950)), has avoided or attempted to avoid payment of the claim, received refund or failed to pay the claim, if the claims have not been filed.
- (2) When an order for confirmation of the reorganization plan is made, with regard to the claims listed in item (iii) and item (iv) of the preceding paragraph, it is not permissible to make or receive payment or conduct any other act to cause the claim to be extinguished (excluding a release) until the payment period specified in the reorganization plan expires (or until payment based on the reorganization plan is completed if this occurs prior to the expiration of the period).
- (3) Notwithstanding the provisions of paragraph (1), the effect of discharge and extinguishment of security rights under the provisions of the same paragraph with regard to a claim for a foreign tax subject to mutual assistance may be asserted only in relation to the mutual assistance under the provisions of Article 11, paragraph (1) of the Act on Special Provisions for the Enforcement of Tax Treaties.

(Modification of Rights of Holders of Filed Reorganization Claims)

- Article 205 (1) When an order of confirmation of the reorganization plan is made, the rights of holders of filed reorganization claims, etc. and those of shareholders will be modified as prescribed in the reorganization plan.
- (2) Holders of filed reorganization claims, etc., only where their claims have been determined, may exercise their rights approved pursuant to the provisions of the reorganization plan.
- (3) When rights of shareholders are approved pursuant to the provisions of the reorganization plan, shareholders that did not participate in the reorganization

may also exercise their rights approved pursuant to the provisions of the reorganization plan.

- (4) The provisions of Article 151 through Article 153 of the Companies Act apply *mutatis mutandis* to money, etc. to be received by shareholders as a result of the modification of rights as set forth in paragraph (1).
- (5) Notwithstanding the provisions of paragraph (1), the effect of modification of rights under the provisions of the same paragraph with regard to a claim for a foreign tax subject to mutual assistance may be asserted only in relation to the mutual assistance under the provisions of Article 11, paragraph (1) of the Act on Special Provisions for the Enforcement of Tax Treaties, etc.

(Entry of Clauses of Reorganization Plans in the Schedule of Reorganization Creditors)

Article 206 (1) When an order of confirmation of the reorganization plan becomes final and binding, a court clerk must make an entry of the clauses of the reorganization plan in the schedule of reorganization creditors and the schedule of secured reorganization creditors.

- (2) In the case referred to in the preceding paragraph, with regard to the rights approved pursuant to the provisions of the reorganization plan based on reorganization claims, etc., the relevant entries in the schedule of reorganization creditors or the schedule of secured reorganization creditors have the same effect as a final and binding judgment against the reorganizing company, the membership company set forth in Article 203, paragraph (1), item (iv), the company set forth in item (v) of the same paragraph, reorganization creditors, etc., the reorganizing company's shareholders, and any person that assumes a debt or provides security for the reorganization of the reorganizing company's business.

(Suspension of Prescription for Tax)

Article 207 When an order of confirmation of the reorganization plan is made, the prescription for a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance) does not run during the grace period for payment of the claim or for realization of assets through the disposition of delinquency pursuant to the provisions of Article 169, paragraph (1).

(Expiration of Stayed Procedures or Proceedings)

Article 208 When an order of confirmation of the reorganization plan is made, the bankruptcy proceedings, the rehabilitation proceedings (including the bankruptcy proceedings, the procedure for compulsory execution, etc. based on a rehabilitation claim prescribed in Article 26, paragraph (1), item (ii) of the Civil Rehabilitation Act and the disposition of foreign tax delinquency based on

a rehabilitation claim prescribed in item (v) of the same paragraph, which have been stayed during the rehabilitation proceedings pursuant to the provisions of Article 39, paragraph (1) of the same Act), the procedure for compulsory execution, etc. prescribed in Article 24, paragraph (1), item (ii), the procedure for the exercise of a security right on whole company assets, the disposition of foreign tax delinquency prescribed in item (vi) of the same paragraph, and the assets disclosure procedure, all of which are stayed pursuant to the provisions of Article 50, paragraph (1), cease to be effective; provided, however, that this does not apply to the procedures or disposition continued pursuant to the provisions of Article 50, paragraph (5).

## **Section 2 Implementation of the Reorganization Plans**

(Implementation of the Reorganization Plans)

- Article 209 (1) When an order of confirmation of the reorganization plan is made, a trustee must promptly commence the implementation of the reorganization plan or the supervision of the management of the reorganizing company's business and the administration and disposition of the company's assets.
- (2) A trustee supervises the execution of the reorganization plan by the company set forth in Article 203, paragraph (1), item (v).
- (3) A trustee may request any of directors at incorporation, auditors at incorporation, directors, accounting advisors, auditors, executive officers, financial auditors, partners who execute the business, liquidators, and employees and other workers of the company prescribed in the preceding paragraph, and persons who held those posts, to report on the status of the company's business and assets, or may inspect the company's books, documents and any other objects.
- (4) The court, when it finds it necessary in order to ensure the implementation of the reorganization plan, may order a trustee (or the reorganizing company if the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4)) or any person that assumes a debt or provides security for the reorganization of the reorganizing company's business, to provide reasonable security in the interest of the following persons:
- (i) persons that hold the rights approved pursuant to the provisions of the reorganization plan or provisions of this Act; and
  - (ii) persons that hold the disputed reorganization claims, etc. prescribed in the main clause of Article 151, paragraph (1) for which finalization proceedings have not yet been closed.
- (5) The provisions of Article 76, Article 77, Article 79 and Article 80 of the Code of Civil Procedure apply mutatis mutandis to the security set forth in the

preceding paragraph.

(Exclusion of Provisions of Laws and Regulations on Resolutions of Shareholders Meetings)

Article 210 (1) In the course of the implementation of a reorganization plan, notwithstanding the provisions of the Companies Act and other laws and regulations or the articles of incorporation, neither a resolution of the shareholders meeting nor a decision of any other organ of the reorganizing company or the stock company to be incorporated under the clauses prescribed in Article 183 will be required.

(2) In the course of the implementation of a reorganization plan, notwithstanding the provisions of the Companies Act and other laws and regulations, no shareholders or holders of share options of the reorganizing company or the stock company to be incorporated under the clauses prescribed in Article 183 may demand that the reorganizing company or the stock company to be incorporated under the clauses prescribed in the same Article purchases their shares or share options.

(3) In the course of the implementation of a reorganization plan, notwithstanding the provisions of Article 828, Article 829 and Article 846-2 of the Companies Act, no shareholders, etc. (meaning shareholders, etc. prescribed in Article 828, paragraph (2), item (i) of the same Act), holders of share options, bankruptcy trustee or creditors of the reorganizing company or the stock company to be incorporated under the clauses prescribed in Article 183 may file an action seeking invalidation of any of the acts listed in the items of Article 828, paragraph (1) of the same Act or an action for declaratory judgment of absence of any of the acts listed in the items of Article 829 of the same Act or an action seeking invalidation of the acquisition of the shares, etc. subject to the cash-out prescribed in Article 846-2, paragraph (2) of said Act.

(Special Provisions for Directors of Reorganization Company)

Article 211 (1) If a reorganization plan, pursuant to the provisions of Article 173, provides for the names of the directors (if the reorganization company is a company with supervisory committee, directors who are supervisory committee members or other directors; hereinafter the same shall apply in this paragraph and the following paragraph), accounting advisors, auditors, representative directors, members of respective committees, executive officers, representative executive officers, financial auditors, liquidators, or representative liquidators, these persons, at the time of the order of confirmation of the reorganization plan, become directors, accounting advisors, auditors, representative directors, members of respective committees, executive officers, representative executive officers, financial auditors, liquidators, or representative liquidators,

respectively.

- (2) If a reorganization plan, pursuant to the provisions of Article 173, provides for the methods for election of directors, accounting advisors, auditors, executive officers, financial auditors, or liquidators, the election of these persons will be carried out by the means prescribed in the reorganization plan.
- (3) If a reorganization plan, pursuant to the provisions of Article 173, paragraph (1), item (ii) to item (iv) or item (viii) or paragraph (2), item (ii), provides for the means for appointment of representative directors, members of respective committees, representative executive officers or representative liquidators, the appointment of these persons will be carried out by the means prescribed in the reorganization plan.
- (4) The former directors, accounting advisors, auditors, executive officers, financial auditors, or liquidators of the reorganizing company resign at the time of the order of confirmation of the reorganization plan; provided, however, that this does not preclude these persons from continuing to serve as directors, accounting advisors, auditors, executive officers, financial auditors, or liquidators pursuant to the provisions of paragraph (1).
- (5) The provisions of the preceding paragraph apply mutatis mutandis to the former representative directors, members of respective committees, representative executive officers, or representative liquidators of the reorganizing company.
- (6) The terms of office of the persons elected as directors, accounting advisors, auditors, executive officers, financial auditors, or liquidators pursuant to the provisions of paragraph (1) through paragraph (3) and the terms of office of the persons appointed as representative directors, members of respective committees, representative executive officers, or representative liquidators pursuant to these provisions will be set as prescribed in the reorganization plan.

(Special Provision for Consolidation of Shares)

Article 211-2 Where a reorganization plan, pursuant to the provision of Article 174, item (i), provides that the reorganization company will consolidate its shares, the provisions of Article 182-2 and Article 182-3 of the Companies Act shall not apply.

(Special Provisions for Reduction of Amounts of Stated Capital or Reserves)

Article 212 If a reorganization plan, pursuant to the provisions of Article 174, item (iii), establishes that the amount of the reorganizing company's stated capital or reserves will be reduced, the provisions of Article 449 and Article 740 of the Companies Act do not apply.

(Special Provisions for Amendment of Articles of Incorporation)

Article 213 If a reorganization plan, pursuant to the provisions of Article 174, item (v), provides that the reorganizing company's articles of incorporation will be amended, the amendment of the articles of incorporation will become effective at the time of the order of confirmation of the reorganization plan; provided, however, that if the reorganization plan otherwise provides for the time of the amendment taking effect, the provisions prevail.

(Special Provision for Business Transfer, etc.)

Article 213-2 Where a reorganization plan, pursuant to the provision of Article 174, item (vi), provides that the business transfer, etc. (limited to the acts listed in Article 467, paragraph (1), item (i) or item (ii) of the Companies Act) will be conducted, the provisions of Article 23-2 of said Act and of Article 18-2 of the Commercial Code as applied pursuant to the provision of Article 24, paragraph (1) of said Act after deemed replacement shall not apply to creditors of the reorganization company.

(Special Provision for a Reorganization Company's Acquisition of Its Shares)

Article 214 If a reorganization plan, pursuant to the provisions of Article 174-2, provides that the reorganizing company will acquire its shares, the reorganizing company acquires the shares set forth in item (i) of the same Article on the day set forth in item (ii) of the same Article.

(Special Provision for Acquisition of Shares, etc. Subject to Cash-out Involved in Demand for Share, etc. Cash-out)

Article 214-2 Where a reorganization plan, pursuant to the provision of Article 174-3, provides that the special controlling shareholder of the reorganization company will acquire the shares, etc. subject to the cash-out involved in the demand for share, etc. cash-out, the provisions of Article 179-5, Article 179-7 and Article 179-8 of the Companies Act shall not apply.

(Special Provisions for Solicitation of Subscribers for Shares for Subscription)

Article 215 (1) If a reorganization plan, pursuant to the provisions of Article 175, provides that the reorganizing company will solicit subscribers for shares for subscription, the reorganizing company may issue shares for subscription without granting entitlement to the allotment of shares for subscription set forth in Article 202, paragraph (1), item (i) of the Companies Act to shareholders, even when there is a provision in the articles of incorporation that shareholders will be granted the entitlement.

(2) If a reorganization plan, pursuant to the provisions of Article 175, item (iii), provides that reorganization creditors, etc. or shareholders will be granted

entitlement to the allotment of shares for subscription set forth in the same item, the reorganizing company must give a notice of the following particulars to these persons, and if bearer share option certificates or bearer bond certificates are issued for the reorganization claims, etc. held by those entitled reorganization creditors, etc. or the provisions of Chapter IV of the Act on Book-Entry Transfer of Corporate Bonds and Shares (Act No. 75 of 2001) (including cases where applied mutatis mutandis pursuant to the same Act and other laws and regulations) apply to the reorganization claims, etc., the reorganizing company must also give a public notice of the following particulars:

- (i) the number of the shares for subscription to be allotted to the reorganization creditors, etc. or shareholders (in the case of a company with different classes of shares, the class and number of shares for subscription);
  - (ii) the due date set forth in Article 175, item (iii); and
  - (iii) the statement that entitlement to the allotment of shares for subscription set forth in Article 175, item (iii) may be assigned to others.
- (3) The notice or public notice given under the provisions of the preceding paragraph must be given two weeks prior to the due date set forth in item (ii) of the paragraph.
- (4) Persons that have entitlement to the allotment of shares for subscription set forth in Article 175, item (iii) lose their entitlement if, despite the notice or public notice given by the reorganizing company under the provisions of paragraph (2), they have not applied for subscription for shares for subscription by the due date set forth in item (ii) of the same paragraph.
- (5) In the case prescribed in paragraph (2), if the number of the shares for subscription to be allotted to the reorganization creditors, etc. or shareholders that have entitlement to the allotment of shares for subscription set forth in Article 175, item (iii) includes a fractional share, that fractional share is to be disregarded
- (6) In the case prescribed in paragraph (1), the provisions of Article 199, item (v), Article 207, Article 210, and Part II, Chapter II, Section 8, Subsection 6 of the Companies Act do not apply.

(Special Provisions for Solicitation of Subscribers for Share Options for Subscription)

- Article 216 (1) The provisions of paragraph (1) of the preceding Article apply mutatis mutandis when there are provisions in the articles of incorporation that shareholders will be granted entitlement to the allotment of share options for subscription set forth in Article 241, paragraph (1), item (i) of the Companies Act.
- (2) If a reorganization plan, pursuant to the provisions of Article 176, item (iii),

provides that reorganization creditors, etc. or shareholders will be granted entitlement to the allotment of share options for subscription set forth in the same item, the reorganizing company must give a notice of the following particulars to these persons, and if bearer share option certificates or bearer bond certificates are issued for the reorganization claims, etc. held by those entitled reorganization creditors, etc. or the provisions of Chapter IV of the Act on Book-Entry Transfer of Corporate Bonds and Shares (including cases where applied mutatis mutandis pursuant to the Act and other laws and regulations) apply to the reorganization claims, etc., the reorganizing company must also give a public notice of the following particulars:

- (i) the content and number of the share options for subscription to be allotted to the reorganization creditors, etc. or shareholders;
  - (ii) the due date set forth in Article 176, item (iii); and
  - (iii) the statement that entitlement to the allotment of share options for subscription set forth in Article 176, item (iii) may be assigned to others.
- (3) The notice or public notice given under the provisions of the preceding paragraph must be given two weeks prior to the due date set forth in item (ii) of the preceding paragraph.
- (4) Persons that have entitlement to the allotment of share options for subscription set forth in Article 176, item (iii) lose their entitlement if, despite the notice or public notice given by the reorganizing company under the provisions of paragraph (2), they have not applied for subscription for share options for subscription by the due date set forth in item (ii) of the same paragraph.
- (5) In the case prescribed in paragraph (2), if the number of the share options for subscription to be allotted to the reorganization creditors, etc. or shareholders that have entitlement to the allotment of share options for subscription set forth in Article 176, item (iii) includes a fractional share, that fractional share is to be disregarded.
- (6) If a reorganization plan, pursuant to the provisions of Article 176, provides that the reorganizing company will solicit subscribers for share options for subscription, the provisions of Article 238, paragraph (5), Article 247, Article 285, paragraph (1), item (i) and item (ii), Article 286, Article 286-2, paragraph (1), item (i) and Article 286-3 of the Companies Act do not apply.
- (7) In the case prescribed in the preceding paragraph, when share options, for which the particulars set forth in Article 236, paragraph (1), item (iii) of the Companies Act are prescribed, are exercised prior to the end of a reorganization, the provisions of Article 284 of the Act do not apply.

(Special Provisions for Solicitation of Subscribers for Bonds for Subscription)  
Article 217 (1) If a reorganization plan, pursuant to the provisions of Article 177,



item (iv), provides that reorganization creditors, etc. or shareholders will be granted entitlement to the allotment of bonds for subscription set forth in the same item, the reorganizing company must give a notice of the following particulars to these persons, and if bearer share option certificates or bear bond certificates are issued for the reorganization claims, etc. held by those entitled reorganization creditors, etc. or the provisions of Chapter IV of the Act on Book-Entry Transfer of Corporate Bonds and Shares (including cases where applied mutatis mutandis pursuant to the same Act and other laws and regulations) apply to the reorganization claims, etc., the reorganizing company must also give a public notice of the following particulars:

- (i) the classes of the bonds to be allotted to the reorganization creditors, etc. or shareholders and the total amount for each class of bonds;
  - (ii) the due date set forth in Article 177, item (iv); and
  - (iii) a statement that entitlement to the allotment of bonds for subscription set forth in Article 177, item (iv) may be assigned to others.
- (2) The notice or public notice given under the provisions of the preceding paragraph must be given two weeks prior to the due date set forth in item (ii) of the preceding paragraph.
- (3) Persons that have entitlement to the allotment of bonds for subscription set forth in Article 177, item (iv) lose their entitlement if, despite the notice or public notice given by the reorganizing company under the provisions of paragraph (1), they have not applied for subscription for bonds for subscription by the due date set forth in item (ii) of the same paragraph.
- (4) In the case prescribed in paragraph (1), if the number of the bonds for subscription to be allotted to the reorganization creditors, etc. or shareholders that have entitlement to the allotment of bonds for subscription set forth in Article 177, item (iv) includes a fractional share, that fractional share is to be disregarded.

(Special Provisions for Issue of Shares in Exchange for Extinguishment of Rights of Reorganization Creditors or Shareholders)

- Article 217-2 (1) If a reorganization plan, pursuant to the provisions of Article 177-2, paragraph (1), provides that shares will be issued in exchange for the extinguishment of the whole or part of the rights of reorganization creditors, etc. or shareholders, reorganization creditors, etc. or shareholders, at the time of the order of confirmation of the reorganization plan, become shareholders set forth in item (iii) of the same paragraph pursuant to the provisions on the particulars set forth in the same item.
- (2) If a reorganization plan, pursuant to the provisions of Article 177-2, paragraph (2), provides that share options will be issued in exchange for the extinguishment of the whole or part of the rights of reorganization creditors,

etc. or shareholders, reorganization creditors, etc. or shareholders, at the time of the order of confirmation of the reorganization plan, become subscribers for share options set forth in item (vi) of the same paragraph (if the share options to be issued are attached to bonds with share options, holders of bonds with respect to the bonds with share options and holders of the share options attached to the bonds with share options) pursuant to the provisions on the particulars set forth in the same item.

(3) If a reorganization plan, pursuant to the provisions of Article 177-2, paragraph (3), provides that bonds will be issued in exchange for the extinguishment of the whole or part of the rights of reorganization creditors, etc. or shareholders, reorganization creditors, etc. or shareholders, at the time of the order of confirmation of the reorganization plan, become bondholders of the bonds set forth in item (vii) of the same paragraph pursuant to the provisions on the particulars set forth in the same item.

(Special Provisions for Dissolution)

Article 218 If a reorganization plan, pursuant to the provisions of the main clause of Article 178, provides that the reorganizing company will be dissolved, the reorganizing company will be dissolved at the scheduled time specified in the reorganization plan.

(Special Provisions for Entity Conversion)

Article 219 If a reorganization plan, pursuant to the provisions of Article 179, provides that the Reorganizing Company will effect an entity conversion, the provisions of Article 740, Article 775, and Article 779 of the Companies Act do not apply.

(Special Provisions for Absorption-Type Mergers)

Article 220 (1) If a reorganization plan, pursuant to the provisions of Article 180, paragraph (1), provides that the reorganizing company will effect an absorption-type merger set forth in the same paragraph, in the cases listed in the following items, reorganization creditors, etc. will become the persons specified in the respective items on the day on which the absorption-type merger becomes effective (hereinafter referred to as the "effective date" in this Article) pursuant to the provisions on the particulars set forth in item (iii) of the same paragraph:

- (i) when there are provisions on the particulars set forth in Article 180, paragraph (1), item (ii)(a): The shareholders of the shares set forth in item (ii)(a);
- (ii) when there are provisions on the particulars set forth in Article 180, paragraph (1), item (ii)(b): The bondholders of the bonds set forth in item

- (ii)(b);
  - (iii) when there are provisions on the particulars set forth in Article 180, paragraph (1), item (ii)(c): The holders of the share options set forth in item (ii)(c); and
  - (iv) when there are provisions on the particulars set forth in Article 180, paragraph (1), item (ii)(d): The holders of bonds with respect to the bonds with share options set forth in item (ii)(d) and holders of the share options attached to the bonds with share options.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article 740, Article 782, Article 784-2 and Article 789 of the Companies Act do not apply to the reorganizing company.
- (3) If a reorganization plan, pursuant to the provisions of Article 180, paragraph (2), provides that the reorganizing company will effect an absorption-type merger set forth in the same paragraph, if there are provisions on the particulars set forth in item (ii) of the same paragraph, reorganization creditors, etc. will become partners of the company surviving the absorption-type merger on the effective date pursuant to the provisions on the particulars set forth in the same item. In this case, the company surviving the absorption-type merger is deemed to have amended its articles of incorporation with regard to the partners set forth in the same item.
- (4) If a reorganization plan, pursuant to the provisions of Article 180, paragraph (2), provides that the reorganization company will effect an absorption-type merger set forth in the same paragraph, if there are provisions on the particulars set forth in item (iii)(a) of the same paragraph, reorganization creditors, etc. will become bondholders of the bonds set forth in item (iii)(a) of the same paragraph on the effective date pursuant to the provisions on the particulars set forth in item (iv) of the same paragraph.
- (5) If a reorganization plan, pursuant to the provisions of Article 180, paragraph (2), provides that the reorganizing company will effect an absorption-type merger set forth in the same paragraph, the provisions of Article 740, Article 782, Article 784-2 and Article 789 of the Companies Act do not apply to the reorganizing company.
- (6) If a reorganization plan, pursuant to the provisions of Article 180, paragraph (3), provides that the reorganizing company will effect an absorption-type merger set forth in the same paragraph, the provisions of Article 740, Article 794, Article 796-2 and Article 799 of the Companies Act do not apply to the reorganizing company.

(Special Provisions for Consolidation-Type Mergers)

Article 221 (1) If a reorganization plan, pursuant to the provisions of Article 181, paragraph (1), provides that the reorganizing company will effect a

consolidation-type merger set forth in the same paragraph, in the cases listed in the following items, reorganization creditors, etc. will become the persons specified in the respective items on the date of incorporation of the company incorporated in the consolidation-type merger pursuant to the provisions on the particulars set forth in item (iii) of the same paragraph:

- (i) when there are provisions on the particulars set forth in Article 181, paragraph (1), item (ii)(a): The shareholders of the shares set forth in item (ii)(a);
  - (ii) when there are provisions on the particulars set forth in Article 181, paragraph (1), item (ii)(b): The bondholders of the bonds set forth in item (ii)(b);
  - (iii) when there are provisions on the particulars set forth in Article 181, paragraph (1), item (ii)(c): The holders of the share options set forth in item (ii)(c); and
  - (iv) when there are provisions on the particulars set forth in Article 181, paragraph (1), item (ii)(d): The holders of bonds with share options set forth in item (ii)(d) and holders of the share options attached to the bonds.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article 740, Article 803, Article 805-2 and Article 810 of the Companies Act do not apply to the reorganizing company.
  - (3) If a reorganization plan, pursuant to the provisions of Article 181, paragraph (2), provides that the reorganizing company will effect a consolidation-type merger set forth in the same paragraph, if there are provisions on the particulars set forth in item (ii) of the same paragraph, reorganization creditors, etc. will become partners of the company incorporated in the consolidation-type merger on the date of incorporation of the company pursuant to the provisions on the particulars set forth in the same item.
  - (4) If a reorganization plan, pursuant to the provisions of Article 181, paragraph (2), provides that the reorganizing company will effect a consolidation-type merger set forth in the same paragraph, if there are provisions on the particulars set forth in item (iii) of the same paragraph, reorganization creditors, etc. will become bondholders of the bonds set forth in the same item on the date of incorporation of the company incorporated in the consolidation-type merger pursuant to the provisions on the particulars set forth in item (iv) of the same paragraph.
  - (5) If a reorganization plan, pursuant to the provisions of Article 181, paragraph (2), provides that the reorganizing company will effect a consolidation-type merger set forth in the same paragraph, the provisions of Article 740, Article 803, Article 805-2 and Article 810 of the Companies Act do not apply to the reorganizing company.

(Special Provisions for Absorption-Type Company Splits)

Article 222 (1) If a reorganization plan, pursuant to the provisions of Article 182, provides that the reorganizing company will effect an absorption-type company split (limited to a split in which the reorganizing company becomes the company effecting the absorption-type company split), the provisions of Article 740, Article 782, Article 784-2 and Article 789 of the Companies Act do not apply to the reorganizing company.

(2) In the case prescribed in the preceding paragraph, the provisions of Article 759, paragraph (2) to paragraph (4) and Article 761, paragraph (2) to paragraph (4) of the Companies Act shall not apply to creditors of the reorganization company.

(3) If a reorganization plan, pursuant to the provisions of Article 182, provides that the reorganizing company will effect an absorption-type company split (limited to a split in which the reorganizing company becomes the company succeeding to the whole or part of the rights and obligations held by the company effecting the absorption-type company split in connection with its business by transfer from the company), the provisions of Article 740, Article 794, Article 796-2 and Article 799 of the Companies Act do not apply to the reorganizing company.

(Special Provisions for Incorporation-Type Company Splits)

Article 223 (1) If a reorganization plan, pursuant to the provisions of Article 182-2, provides that the reorganizing company will effect an incorporation-type company split, the provisions of Article 740, Article 803, Article 805-2 and Article 810 of the Companies Act do not apply to the reorganization company.

(2) In the case prescribed in the preceding paragraph, the provisions of Article 764 paragraph (2) to paragraph (4) and Article 766, paragraph (2) to paragraph (4) of the Companies Act do not apply to creditors of the reorganizing company.

(Special Provisions for Share Exchanges)

Article 224 (1) If a reorganization plan, pursuant to the provisions of Article 182-3, paragraph (1), provides that the reorganizing company will effect a share exchange set forth in the same paragraph, in the cases listed in the following items, reorganization creditors, etc. will become the persons specified in the respective items on the day on which the share exchange becomes effective (hereinafter referred to as the "effective date" in this Article) pursuant to the provisions on the particulars set forth in item (iii) of the same paragraph:

- (i) when there are provisions on the particulars set forth in Article 182-3, paragraph (1), item (ii)(a): The holders of the shares set forth in item (ii)(a);
- (ii) when there are provisions on the particulars set forth in Article 182-3,

- paragraph (1), item (ii)(b): The holders of the bonds set forth in item (ii)(b);  
(iii) when there are provisions on the particulars set forth in Article 182-3,  
paragraph (1), item (ii)(c): The holders of the share options set forth in item  
(ii)(c); and  
(iv) when there are provisions on the particulars set forth in Article 182-3,  
paragraph (1), item (ii)(d): The holders of bonds with respect to the bonds  
with share options set forth in item (ii)(d) and holders of the share options  
attached to the bonds with share options.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article  
740, Article 782, Article 784-2 and Article 789 of the Companies Act do not  
apply to the reorganizing company.
- (3) If a reorganization plan, pursuant to the provisions of Article 182-3,  
paragraph (2), provides that the reorganizing company will effect a share  
exchange set forth in the same paragraph, if there are provisions on the  
particulars set forth in item (ii) of the same paragraph, reorganization  
creditors, etc. will become partners of the wholly owning parent company in the  
share exchange on the effective date pursuant to the provisions on the  
particulars set forth in the same item. In this case, the wholly owning parent  
company in the share exchange is deemed to have amended its articles of  
incorporation with regard to the partners set forth in the same item.
- (4) If a reorganization plan, pursuant to the provisions of Article 182-3,  
paragraph (2), provides that the reorganizing company will effect a share  
exchange set forth in the same paragraph, if there are provisions on the  
particulars set forth in item (iii)(a) of the same paragraph, reorganization  
creditors, etc. will become bondholders of the bonds set forth in item (iii)(a) on  
the effective date pursuant to the provisions on the particulars set forth in  
item (iv) of the same paragraph.
- (5) If a reorganization plan, pursuant to the provisions of Article 182-3,  
paragraph (2), provides that the reorganization company will effect a share  
exchange set forth in the same paragraph, the provisions of Article 740, Article  
782, Article 784-2 and Article 789 of the Companies Act do not apply to the  
reorganizing company.
- (6) If a reorganization plan, pursuant to the provisions of Article 182-3,  
paragraph (3), provides that the reorganizing company will effect a share  
exchange set forth in the same paragraph, the provisions of Article 740, Article  
794, Article 796-2 and Article 799 of the Companies Act do not apply to the  
reorganizing company.

(Special Provisions for Share Transfers)

- Article 224-2 (1) If a reorganization plan, pursuant to the provisions of Article  
182-4, provides that the reorganizing company will effect a share transfer, in

the cases listed in the following items, reorganization creditors, etc. will become the persons specified in the respective items on the date of incorporation of the wholly-owning parent company in the share transfer pursuant to the provisions on the particulars set forth in item (iii) of the same Article:

- (i) when there are provisions on the particulars set forth in Article 182-4, item (ii) (a): The shareholders of the shares set forth in item (ii) (a);
  - (ii) when there are provisions on the particulars set forth in Article 182-4, item (ii) (b): The bondholders of the bonds set forth in item (ii) (b);
  - (iii) when there are provisions on the particulars set forth in Article 182-4, item (ii)(c): The holders of the share options set forth in item (ii)(c); and
  - (iv) when there are provisions on the particulars set forth in Article 182-4, item (ii)(d): The holders of bonds with respect to the bonds with share options set forth in item (ii)(d) and holders of the share options attached to the bonds with share options.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article 740, Article 803, Article 805-2 and Article 810 of the Companies Act do not apply to the reorganizing company.

(Special Provisions of the Incorporation of New Companies)

Article 225 (1) If a reorganization plan, pursuant to the provisions of the main clause of Article 183, provides that a stock company will be incorporated, a trustee performs the duties of the incorporators of the stock company (hereinafter referred to as the "new company" in this Article).

- (2) In the case prescribed in the preceding paragraph, the articles of incorporation of the new company are not effective unless certified by the court.
- (3) In the case prescribed in paragraph (1), a resolution may be adopted at the organizational meeting of the new company as long as its content is not contrary to the purport of the reorganization plan.
- (4) In the case prescribed in paragraph (1), when the incorporation of the new company has failed, the reorganization company is responsible for the acts conducted by a trustee for the incorporation of the new company pursuant to the provisions of the same paragraph, and bears expenses incurred for the incorporation of the new company.
- (5) The provisions of Article 211, paragraph (1) to paragraph (3) apply mutatis mutandis to the election or appointment of directors at incorporation, etc. in the case of the incorporation of the new company; the provisions of Article 211, paragraph (6) apply mutatis mutandis to the terms of office of the new company's directors, etc. in the case where the directors at incorporation, etc. of the new company become the new company's directors, etc. after the incorporation of the new company; the provisions of Article 215, paragraph (2)

to paragraph (5) apply mutatis mutandis where reorganization creditors, etc. or shareholders will be granted entitlement to the allotment of shares solicited at incorporation of the new company set forth in Article 183, item (v); the provisions of Article 216 and Article 217 apply mutatis mutandis to the solicitation of subscribers for share options for subscription or bonds for subscription of the new company; and the provisions of Article 217-2 apply mutatis mutandis to the issue of shares issued at incorporation, share options or bonds of the new company in exchange for the extinguishment of rights of reorganization creditors, etc. or shareholders.

(6) In the case prescribed in paragraph (1), the following provisions of the Companies Act do not apply: Article 25, paragraph (1), item (i) and paragraph (2), Article 26, paragraph (2), Article 27, item (v), Article 30, Part II, Chapter I, Section 3 (excluding Article 37, paragraph (3)), Section 4 (excluding Article 39), Section 5 and Section 6, Article 50, Article 51, Chapter I, Section 8, Article 58, Article 59, paragraph (1), item (i) (limited to the part pertaining to the name of the notary), item (ii) (limited to the part pertaining to the particulars listed in Article 27, item (v) and the items of Article 32, paragraph (1)) and item (iii), Article 65, paragraph (1), Article 88 through Article 90, Article 93, and Article 94 (limited to parts pertaining to the particulars listed in Article 93, paragraph (1), item (i) and item (ii)), Article 102-2 and Article 103.

(Handling Severance Pay for Persons Who Moved to a New Company)

Article 226 (1) A person who was any of the reorganizing company's directors, etc. or the company's employees prescribed in Article 204, paragraph (1), item (ii) as of the time after the commencement of Reorganization, and then separated from employment at the reorganizing company upon the incorporation of the new company prescribed in paragraph (1) of the preceding Article and has remained to serve as any of the new company's directors, etc. or the company's employee prescribed in the same item may not receive payment of severance pay from the reorganizing company.

(2) The period of service of the person prescribed in the preceding paragraph at the reorganizing company is deemed to be their period of service at the new company prescribed in the same paragraph in calculating their severance pay.

(Special Provisions for Jurisdictions)

Article 227 If a reorganization plan provides for the splitting or consolidation of shares of the reorganizing company or the allotment of shares without contribution, a case pertaining to the petition for permission under the provisions of Article 234, paragraph (2) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 235, paragraph (2) of the same Act) will be subject to the jurisdiction of the reorganization court until



reorganization is closed, notwithstanding the provisions of Article 868, paragraph (1) of the same Act.

(Assignment of Entitlement to Allotment of Shares for Subscription)

Article 228 When reorganization creditors, etc. or shareholders are granted, pursuant to the provisions of a reorganization plan, entitlement to the allotment of shares for subscription or shares solicited at incorporation, share options for subscription, or bonds for subscription of the reorganization company or the new company prescribed in Article 225, paragraph (1), the entitlement may be assigned to others.

(Special Provisions of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade)

Article 229 When reorganization creditors, etc. or shareholders acquire, pursuant to the provisions of a reorganization plan, shares of the reorganizing company or the stock company to be incorporated pursuant to the provisions of the reorganization plan, the acquisition of shares, for the purpose of application of Article 11 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947), is deemed to be acquisition as a result of substitute performance.

(Special Provisions for Restrictions on Handling of the Assets of Foundations)

Article 230 The provisions of the laws and regulations concerning restrictions on the handling of mortgageable factory assets and any other bodies of assets, or any assets that belongs to a body of assets do not apply when a reorganizing company's assets are handled pursuant to the provisions of a reorganization plan.

(Succession to Rights Based on Permission and Authorization)

Article 231 If a reorganization plan provides that rights and obligations based on permission, authorization, license, or any other disposition that the reorganization company obtained from an administrative agency will be transferred to the new company prescribed in Article 225, paragraph (1), the new company succeeds to the rights and obligations, notwithstanding the provisions of other laws and regulations.

(Special Provisions of the Corporation Tax Act)

Article 232 (1) If a reorganization plan provides that the new company prescribed in Article 225, paragraph (1) will succeed to the reorganization company's debts arising from the claims for taxes, etc., the new company will be obliged to pay the debts and the reorganizing company will be released from

the debts.

- (2) When an order commencing reorganization is made, the reorganization company's business year ends at the time of the commencement, and the business year that follows ends at the time of confirmation of the reorganization plan (or the date of the end of reorganization if this occurs prior to the time of confirmation); provided, however, that this does not preclude the application of the provisions of the proviso to Article 13, paragraph (1) of the Corporation Tax Act (Act No. 34 of 1965) and Article 72-13, paragraph (4) of the Local Tax Act.
- (3) With regard to the corporation tax, prefectural inhabitants tax, enterprise tax, and municipal inhabitants tax for the reorganizing company's business year or consolidated business year that follows the time of commencement of reorganization, the provisions of Article 71 of the Corporation Tax Act, Article 81-19 or Article 144-3 of the same Act, and the provisions of Article 53, paragraph (2), Article 72-26 or Article 321-8, paragraph (2) of the Local Tax Act do not apply.

### **Section 3 Modification of Reorganization Plans**

Article 233 (1) If, after an order of confirmation of the reorganization plan is made, the need to modify any particulars specified in the reorganization plan arises due to unavoidable grounds, the court, only prior to the end of reorganization, upon the petition of a trustee, the reorganizing company, a holder of filed reorganization claims, etc., or a shareholder, may modify the reorganization plan.

- (2) If a petition is filed pursuant to the provisions of the preceding paragraph for any modification of a reorganization plan that is found to adversely affect reorganization creditors, etc. or shareholders, the provisions concerning the procedure to be performed upon the submission of a proposed reorganization plan apply *mutatis mutandis*; provided, however, that it is not required to have reorganization creditors, etc. or shareholders that will not be adversely affected by the modification of the reorganization plan participate in the modification procedure, and those that do not exercise their voting rights on the proposed modification (excluding those that attended the stakeholders meeting aimed for adopting a resolution on the proposed modification) and have consented to the initial reorganization plan is deemed to consent to the proposed modification.
- (3) If a debt is to be assumed or the term of a debt is to be extended based on the modified reorganization plan, the term of the debt must not exceed the following periods:
  - (i) when there is any collateral (limited to collateral the useful life of which can

- be ascertained), the useful life thereof or a period of 15 years (or 20 years when the content of the modified reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances) from the time of the initial order of confirmation of the reorganization plan, whichever is shorter; or
- (ii) in cases other than the case prescribed in the preceding item, 15 years (or 20 years where the content of the modified reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances) from the time of the initial order of confirmation of the reorganization plan.
- (4) The provisions of the preceding paragraph do not apply when, pursuant to the provisions of the modified reorganization plan, corporate bonds are issued or the terms of the corporate bonds already issued pursuant to the provisions of the reorganization plan are extended.
- (5) The modified reorganization plan will become effective as of the time when an order of modification under the provisions of paragraph (1) or an order of confirmation under the provisions of paragraph (2) is made.
- (6) An immediate appeal may be filed against the order prescribed in the preceding paragraph. In this case, the provisions of Article 202, paragraph (2) through paragraph (5) apply mutatis mutandis.
- (7) The provisions of Article 72, paragraph (7) apply mutatis mutandis when the provisions of the reorganization plan under the provisions of the first sentence of Article 72, paragraph (4) are rescinded as a result of the modification of the reorganization plan.

## **Chapter IX End of Reorganization**

### **Section 1 Grounds to End Reorganization**

Article 234 Reorganization ends when any of the following events occur:

- (i) an order to dismiss with prejudice a petition to commence reorganization becomes final and binding;
- (ii) an order to revoke the order commencing reorganization becomes final and binding when an immediate appeal is filed under the provisions of Article 44, paragraph (1);
- (iii) an order of disconfirmation of the reorganization plan becomes final and binding;
- (iv) an order of discontinuance of reorganization becomes final and binding; or
- (v) an order of termination of reorganization is made.

### **Section 2 Ending Reorganization before Confirmation of Reorganization Plans**

### **Subsection 1 Orders Disconfirming the Reorganization Plan**

(Effect of Entries in the Schedule of Reorganization Creditors upon an Order of Disconfirmation Becoming Final and Binding)

- Article 235 (1) When an order of disconfirmation of the reorganization plan becomes final and binding, the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors with regard to reorganization claims, etc. determined have the same effect as a final and binding judgment against the stock company that has been the reorganizing company. In this case, reorganization creditors, etc. may enforce compulsory execution against the stock company with regard to the determined reorganization claims, etc. based on the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors.
- (2) The provisions of the preceding paragraph do not apply when the stock company prescribed in the same paragraph has made an objection under the provisions of Article 147, paragraph (2), Article 148, paragraph (4) or the second sentence of Article 149, paragraph (3).

### **Subsection 2 Discontinuing Reorganization before Confirmation of the Reorganization Plan**

(Discontinuance of Reorganization due to Difficulty of Reorganization)

- Article 236 In any of the cases listed in the following items, the court, by its own authority, must make an order of discontinuance of reorganization:
- (i) if it has become evident that there is no prospect of a reorganization plan worth putting to a resolution being prepared;
  - (ii) when no proposed reorganization plan is submitted within the period specified by the court or any extension thereof, or all proposed reorganization plans submitted within the period or extension are not worth putting to a resolution; or
  - (iii) when a proposed reorganization plan is rejected, or where a further date for a stakeholders meeting is designated pursuant to the provisions of the main clause of Article 198, paragraph (1), and the proposed reorganization plan is not approved within the period that conforms to the provisions of paragraph (2) and paragraph (3) of the same Article.

(Discontinuance of Reorganization due to Extinction of Grounds for Commencement of Reorganization)

- Article 237 (1) If, after the period for filing a proof of claims prescribed in Article 138, paragraph (1) has expired and before an order of confirmation of the reorganization plan is made, it has become obvious that none of the facts

constituting grounds for commencement of reorganization prescribed in Article 17, paragraph (1) exist, the court, upon the petition of a trustee, the reorganizing company, or a holder of filed reorganization claims, etc., must make an order of discontinuance of reorganization.

- (2) When filing a petition set forth in the preceding paragraph, the petitioner must make a prima facie showing of the absence of any fact constituting the grounds for commencement of reorganization.

(Public Notice of Discontinuance of Reorganization)

Article 238 (1) The court, when it has made an order of discontinuance of reorganization under the provisions of the preceding two Articles, must immediately give a public notice of the main text of the order and the outline of the reasons attached thereto.

- (2) An immediate appeal may be filed against an order set forth in the preceding paragraph.

- (3) The provisions of Article 202, paragraph (3) apply mutatis mutandis to an immediate appeal set forth in the preceding paragraph, and to an appeal against a judicial decision on the immediate appeal under the provisions of Article 336 of the Code of Civil Procedure and a petition for permission for appeal against a judicial decision on the immediate appeal under the provisions of Article 337 of the Code, both provisions applied mutatis mutandis pursuant to Article 13.

- (4) When an order to revoke the order of discontinuance of reorganization made under the provisions of the preceding two Articles becomes final and binding, the court that made the order of discontinuance of reorganization must immediately give a public notice to that effect.

- (5) An order set forth in paragraph (1) does not become effective unless it becomes final and binding.

- (6) The provisions of Article 235 apply mutatis mutandis if an order of discontinuance of reorganization made under the provisions of the preceding two Articles becomes final and binding.

### **Section 3 Ending Reorganization after Confirmation of the Reorganization Plan**

#### **Subsection 1 Conclusion of Reorganization**

(Order of Termination of Reorganization)

Article 239 (1) In the following cases, the court, upon the petition of a trustee or by its own authority, must make an order of termination of reorganization:

- (i) when the reorganization plan has been implemented;
- (ii) when there is no default in terms of the reorganization plan at the time

- when payment is made for not less than two-thirds of the total amount of monetary claims approved pursuant to the provisions of the reorganization plan; provided, however, that this does not apply when the court finds that the reorganization plan is unlikely to be implemented; and
- (iii) when it is found that the reorganization plan will definitely be implemented (excluding the case that falls under the preceding item).
- (2) The court, when it has made an order of termination of reorganization proceedings, must give a public notice of the main text of the order and an outline of the reasons attached thereto.

(Effect of Entries in the Schedule of Reorganization Creditors after Termination of Reorganization)

Article 240 After the termination of reorganization, a reorganization creditor, etc. may enforce compulsory execution, with regard to their rights approved based on their reorganization claim, etc. pursuant to the provisions of the reorganization plan, against the stock company that has been the reorganization company and any person that has incurred a debt for the reorganization of the reorganizing company's business, based on the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors; provided, however, that this does not preclude the application of the provisions of Article 452 and Article 453 of the Civil Code.

**Subsection 2 Discontinuing Reorganization after Confirmation of the Reorganization Plan**

- Article 241 (1) If, after an order of confirmation of the reorganization plan is made, it has become obvious that the reorganization plan is unlikely to be implemented, the court, upon the petition of a trustee or by its own authority, must make an order of discontinuance of reorganization.
- (2) An order of discontinuance of reorganization made under the provisions of the preceding paragraph does not become effective unless it becomes final and binding.
- (3) The discontinuance of reorganization under the provisions of paragraph (1) does not affect any effects arising from the implementation of the reorganization plan and the provisions of this Act.
- (4) The provisions of Article 238, paragraph (1) through paragraph (3) apply mutatis mutandis where an order of discontinuance of reorganization is made under the provisions of paragraph (1), the provisions of paragraph (4) of the same Article apply mutatis mutandis when an order to revoke the order of discontinuance of reorganization set forth in paragraph (1) becomes final and binding, and the provisions of the preceding Article apply mutatis mutandis

when an order of discontinuance of reorganization made under the provisions of paragraph (1) becomes final and binding, respectively.

## **Chapter X Special Provisions if Foreign Insolvency Proceedings are Underway**

(Cooperation with Foreign Trustees)

- Article 242 (1) A trustee, when foreign insolvency proceedings exist (meaning proceedings commenced in a foreign state, which are equivalent to bankruptcy proceedings or rehabilitation proceedings; the same applies hereinafter) enforced against the reorganizing company, may request a foreign trustee (meaning a person that has a right to administer and dispose of the stock company's assets in foreign insolvency proceedings; the same applies hereinafter) in the foreign insolvency proceedings to provide cooperation and information necessary for the reorganization of the reorganizing company.
- (2) In the case prescribed in the preceding paragraph, a trustee is to endeavor to provide a foreign trustee set forth in the same paragraph with cooperation and information necessary for the reorganization of the reorganizing company.

(Presumption of the Grounds for Commencement of Reorganization Proceedings)

- Article 243 When foreign insolvency proceedings are enforced against a stock company, a fact constituting the grounds for the commencement of reorganization prescribed in Article 17, paragraph (1) will be presumed to exist with regard to the stock company.

(Powers of Foreign Trustees)

- Article 244 (1) If a fact that falls under the case set forth in Article 17, paragraph (1), item (i) exists with regard to a stock company, a foreign trustee may file a petition to commence reorganization against the stock company.
- (2) In the case prescribed in Article 242, paragraph (1), a foreign trustee prescribed in the same paragraph may attend a stakeholders meeting and state their opinion in reorganization against the reorganizing company.
- (3) In the case prescribed in Article 242, paragraph (1), in reorganization against the reorganizing company, a foreign trustee prescribed in the same paragraph may prepare a proposed reorganization plan and submit it to the court within the period prescribed in Article 184, paragraph (1) (in cases where it is extended pursuant to the provisions of paragraph (4) of the same Article, within the period as extended).
- (4) If a foreign trustee has filed a petition to commence reorganization pursuant to the provisions of paragraph (1), a notice must be given to the foreign trustee

with regard to: when a comprehensive prohibition order is issued or an order to change or revoke the order is made, the main text of the respective order; when an order commencing reorganization proceedings is made, the particulars for which a public notice will be given pursuant to the provisions of Article 43, paragraph (1); when there is a change to the particulars listed in item (ii) or item (iii) of the same paragraph, a statement to that effect; when an order to revoke the order commencing reorganization becomes final and binding, the main text of the order.

(Mutual Participation in Proceedings)

- Article 245 (1) A foreign trustee, while representing a reorganization creditor, etc. that has not filed a proof of a claim but has participated in foreign insolvency proceedings against the reorganization company, may participate in reorganization against the reorganizing company; provided, however, that this only applies when the foreign trustee has the power to do so pursuant to laws and regulations of the foreign state concerned.
- (2) A trustee, while representing a holder of filed reorganization claims, etc. that has not participated in foreign insolvency proceedings, may participate in the foreign insolvency proceedings.
- (3) A trustee, when they have participated in foreign insolvency proceedings under the provisions of the preceding paragraph, may perform any and all acts involved in the foreign insolvency proceedings in the interest of the reorganization creditors, etc. that they represent; provided, however, that delegation of powers from the reorganization creditors, etc. are required in order to withdraw a proof of a claim filed, seek a settlement or perform any other act that is likely to prejudice the rights of the reorganization creditors, etc.

**Chapter XI Transfers Between Reorganization and Other Insolvency Proceedings**

**Section 1 Transfer from Bankruptcy Proceedings to Reorganization**

(Petition to Commence Reorganization filed by Bankruptcy Trustees)

- Article 246 (1) A bankruptcy trustee, when a fact constituting the grounds for commencement of reorganization prescribed in Article 17, paragraph (1) exists with regard to the stock company that is the bankrupt, may file a petition to commence reorganization against the stock company, with permission of the court (meaning a judge or panel of judges in charge of the bankruptcy case; hereinafter the same applies in this Article).
- (2) The court may grant the permission set forth in the preceding paragraph only where it finds that enforcing reorganization conforms to the common interests



of creditors.

- (3) If a petition for the permission set forth in paragraph (1) is filed, the court, except where it is obvious that the petition should be dismissed without prejudice or the permission should be granted, must hear opinions from the labor union, etc. (meaning the labor union consisting of the majority of the stock company's employees, if there is any such labor union, or the person representative of the majority of the stock company's employees, if there is no labor union consisting of the majority of the stock company's employees), before making an order on the petition.
- (4) The provisions of Article 20, paragraph (1) do not apply to a petition to commence reorganization filed under the provisions of paragraph (1).

(Order for Not Requiring Reporting Reorganization Claims)

Article 247 (1) Where the court makes an order commencing reorganization, when it finds it appropriate while taking into consideration the content and cause of each bankruptcy claim filed in the bankruptcy proceedings to be stayed pursuant to the provisions of Article 50, paragraph (1), the number of disputed bankruptcy claims prescribed in the main clause of Article 125, paragraph (1) of the Bankruptcy Act, whether or not any liquidating distribution will be made through the bankruptcy proceedings, and any other circumstances concerned, it may make an order, upon making the order commencing reorganization, to the effect that reorganization creditors that hold reorganization claims that have been filed as bankruptcy claims in the bankruptcy proceedings (excluding claims for taxes, etc. prescribed in Article 97, item (iv) of the same Act and claims for a fine, etc. prescribed in item (vi) of the same Article; hereinafter the same applies in this Article) are not required to file a proof of the reorganization claims.

- (2) The Court, when it has made an order pursuant to the provisions of the preceding paragraph, must indicate, in the public notice to be given under the provisions of Article 43, paragraph (1), that reorganization creditors that hold reorganization claims that have been filed as bankruptcy claims in the bankruptcy proceedings set forth in the preceding paragraph are not required to file a proof of the reorganization claims, and must give a notice to known reorganization creditors to that effect.
- (3) If an order under the provisions of paragraph (1) is made, with regard to claims that have been filed as bankruptcy claims in the bankruptcy proceedings set forth in the same paragraph, it is deemed that the persons that have filed a proof of the bankruptcy claims (or persons that have received a change of the name of the holder of filed claims with regard to the claims filed in the bankruptcy proceedings, if there is any such person; the same applies in paragraph (5)) have filed a proof of reorganization claims on the first day of the

- period for filing a proof prescribed in Article 138, paragraph (1).
- (4) In the case referred to in the preceding paragraph, for each of the categories of filing a proof of particulars listed in the following items regarding the claim that has been filed as a bankruptcy claim, it is deemed that persons set forth in the preceding paragraph have filed a proof of the particulars specified in the respective items as filing a proof of reorganization claims:
- (i) with regard to a claim that has been filed with a statement that the claim is a subordinate bankruptcy claim prescribed in Article 99, paragraph (1) of the Bankruptcy Act, filing a proof of the amount of the bankruptcy claim set forth in Article 111, paragraph (1), item (i) of the same Act (or the amount of the bankruptcy claim for which payment is not expected to be received by exercising the right of separate satisfaction set forth in paragraph (2), item (ii) of the same Article, if a proof of the amount is filed; the same applies in the following item) and the cause of the bankruptcy claim: Filing a proof of the amount of the reorganization claim, as an element of the content of the reorganization claim set forth in Article 138, (1) item (i), and the cause of the reorganization claim set forth in the same item;
  - (ii) with regard to the claim that has been filed as a bankruptcy claim, except for the claim set forth in the preceding item, filing a proof of the amount and cause of the bankruptcy claim set forth in Article 111, paragraph (1), item (i) of the Bankruptcy Act: Filing a proof of the amount of the reorganization claim, as an element of the content of the reorganization claim set forth in Article 138, paragraph (1), item (i), the amount of the voting right for the reorganization claim set forth in item (iii) of the same paragraph, and the cause of the reorganization claim set forth in item (i) of the same paragraph;
  - (iii) with regard to a claim that has been filed with a statement that the claim is a preferred bankruptcy claim prescribed in Article 98, paragraph (1) of the Bankruptcy Act, filing a proof of the statement set forth in Article 111, paragraph (1), item (ii) of the same Act: Filing a proof of the statement that the claim is a claim with general priority set forth in Article 138, paragraph (1), item (ii); or
  - (iv) with regard to a claim that has been filed with a statement that the claim is a consensually-subordinated bankruptcy claim prescribed in Article 99, paragraph (2) of the Bankruptcy Act, filing a proof of the statement set forth in Article 111, paragraph (1), item (iii) of the same Act: Filing a proof of the statement that the claim is a consensually-subordinated reorganization claim set forth in Article 138, paragraph (1), item (ii).
- (5) When the person that filed a proof of a claim as a bankruptcy claim has filed a proof of a reorganization claim within the period for filing a proof of the claims prescribed in Article 138, paragraph (1), the provisions of the preceding two paragraphs do not apply to any claim filed as a bankruptcy claim set forth

in paragraph (3), which is held by the person that has filed a proof of a claim as a bankruptcy claim.

## **Section 2 Transfer from Rehabilitation Proceedings to Reorganization**

(Petition to Commence Reorganization Filed by a Trustee in Charge of Rehabilitation Proceedings)

- Article 248 (1) A trustee in charge of rehabilitation proceedings, when a fact constituting the grounds for commencement of reorganization prescribed in Article 17, paragraph (1) exists with regard to the stock company that is the rehabilitation debtor, may file a petition to commence reorganization against the stock company, with permission of the court (meaning a judge or panel of judges in charge of the rehabilitation case; hereinafter the same applies in this Article).
- (2) The court may grant the permission set forth in the preceding paragraph only when it finds that enforcing reorganization conforms to the common interests of creditors.
- (3) If a petition for the permission set forth in paragraph (1) is filed, the court, except where it is obvious that the petition should be dismissed without prejudice or permission should be granted, must hear opinions from the labor union, etc. prescribed in Article 246, paragraph (3), before making an order on the petition.
- (4) The provisions of Article 20, paragraph (1) do not apply to a petition to commence reorganization filed under the provisions of paragraph (1).

(Order for Not Requiring Reporting Reorganization Claims)

- Article 249 (1) Where the court makes an order commencing reorganization, when it finds it appropriate while taking into consideration the content and cause of each rehabilitation claim that has been filed in the rehabilitation proceedings to be stayed pursuant to the provisions of Article 50, paragraph (1), the number of disputed rehabilitation claims prescribed in the main clause of Article 105, paragraph (1) of the Civil Rehabilitation Act, whether or not any right will be modified by a rehabilitation plan and the content of the modification, and any other circumstances concerned, it may make an order, upon making the order commencing reorganization, to the effect that reorganization creditors that hold reorganization claims that have been filed as rehabilitation claims in the rehabilitation proceedings (excluding claims for a fine, etc. arising prior to the commencement of rehabilitation proceedings prescribed in Article 97, item (i) of the same Act; hereinafter the same applies in this Article) are not required to file a proof of the reorganization claims.
- (2) The court, when it has made an order pursuant to the provisions of the

preceding paragraph, must indicate, in the public notice to be given under the provisions of Article 43, paragraph (1), that reorganization creditors that hold reorganization claims that have been filed as rehabilitation claims in the rehabilitation proceedings set forth in the preceding paragraph are not required to file a proof of the reorganization claims, and must give a notice to known reorganization creditors to that effect.

- (3) If an order under the provisions of paragraph (1) is made, with regard to claims that have been filed as rehabilitation claims in the rehabilitation proceedings set forth in the same paragraph, it is deemed that the persons that have filed a proof of the rehabilitation claims (or persons that have received a change of the name of the holder of filed claims with regard to the claims filed in the rehabilitation proceedings, if there is any such person; the same applies in paragraph (5)) have filed a proof of reorganization claims on the first day of the period for filing a proof prescribed in Article 138, paragraph (1).
- (4) In the case referred to in the preceding paragraph, for each of the categories of filing a proof of particulars listed in the following items regarding the claim that has been filed as a rehabilitation claim, it is deemed that persons set forth in the preceding paragraph have filed a proof of particulars specified in the respective items as reporting a reorganization claim:
  - (i) with regard to a claim that has been filed with a proof of the amount of the claim for which payment is not expected to be received by exercising the right of separate satisfaction prescribed in Article 94, paragraph (2) of the Civil Rehabilitation Act, filing a proof of the amount of the claim, and the cause of the rehabilitation claim and the amount of the voting right prescribed in paragraph (1) of the same Article: Filing a proof of the amount of the reorganization claim, as an element of the content of the reorganization claim set forth in Article 138, (1) item (i), the cause of the reorganization claim set forth in the same item, and the amount of the voting right for the reorganization claim set forth in item (iii);
  - (ii) with regard to the claim that has been filed as a rehabilitation claim, except for the claim set forth in the preceding item, filing a proof of the content and cause of the rehabilitation claim and the amount of the voting right prescribed in Article 94, paragraph (1) of the Civil Rehabilitation Act: Filing a proof of the content and cause of the reorganization claim set forth in Article 138, paragraph (1), item (i), and the amount of the voting right for the reorganization claim set forth in item (iii) of the same paragraph; and
  - (iii) with regard to a claim filed with a statement that the claim is a consensually-subordinated rehabilitation claim prescribed in Article 35, paragraph (4) of the Civil Rehabilitation Act, filing a proof of the statement prescribed in Article 94, paragraph (1) of the same Act: Filing a proof of the statement that the claim is a consensually-subordinated reorganization claim

set forth in Article 138, paragraph (1), item (ii).

- (5) When the person that filed a proof of a claim as a rehabilitation claim has filed a proof of a reorganization claim within the period for filing a proof of claims prescribed in Article 138, paragraph (1), the provisions of the preceding two paragraphs do not apply to any claim filed as a rehabilitation claim set forth in paragraph (3), which is held by the person that has filed a proof of a claim as a rehabilitation claim.

### **Section 3 Transfer from Reorganization to Bankruptcy Proceedings**

(Transfer of a Bankruptcy Case Where an Order Commencing Reorganization Has Been Made)

Article 250 Where, before or after the commencement of bankruptcy proceedings, an order commencing reorganization has been made against the same debtor, the court (meaning a judge or panel of judges in charge of the bankruptcy case), when it finds it appropriate in order to handle the bankruptcy case, by its own authority, may transfer the bankruptcy case to the reorganization court.

(Petition for Commencement of Bankruptcy Proceedings prior to the End of Reorganization)

Article 251 (1) When, with regard to the reorganizing company against which bankruptcy proceedings have not yet been commenced, an order of revocation of the order commencing reorganization, an order of discontinuance of reorganization, or an order of disconfirmation of the reorganization plan is made, notwithstanding the provisions of Article 50, paragraph (1), a petition to commence bankruptcy proceedings may be filed with the reorganization court against the reorganizing company even before the respective order becomes final and binding. The same applies when, with regard to the reorganizing company against which bankruptcy proceedings have been commenced, an order of discontinuance of reorganization under the provisions of Article 241, paragraph (1) is made after the bankruptcy proceedings have ceased to be effective as a result of an order of confirmation of the reorganization plan being made.

- (2) The provisions of the first sentence of the preceding paragraph do not apply where rehabilitation proceedings have already been commenced against the reorganization company prescribed in the first sentence of the same paragraph.
- (3) An order commencing bankruptcy proceedings based on the petition to commence bankruptcy proceedings filed under the provisions of paragraph (1) may not be made unless an order prescribed in the first sentence of the same paragraph or an order of discontinuance of reorganization set forth in the second sentence of the same paragraph becomes final and binding.

(Order Commencing Bankruptcy Proceedings by Court's Authority upon the  
End of Reorganization)

Article 252 (1) If any of the grounds listed in Article 234, item (i) through item (iv) occur with regard to a stock company against which bankruptcy proceedings have not yet been commenced, the court, when it finds that a fact constituting the grounds for commencement of bankruptcy proceedings exists with regard to the stock company, by its own authority, may make an order commencing bankruptcy proceedings in accordance with the Bankruptcy Act; provided, however, that this does not apply where rehabilitation proceedings have already been commenced against the stock company.

(2) Where, after the bankruptcy proceedings commenced against the reorganizing company have ceased to be effective as a result of an order of confirmation of the reorganization plan being made, an order of discontinuance of reorganization under the provisions of Article 241, paragraph (1) becomes final and binding, the court, by its own authority, must make an order commencing bankruptcy proceedings in accordance with the Bankruptcy Act; provided, however, that this does not apply when the court makes an order commencing bankruptcy proceedings based on a petition to commence bankruptcy proceedings under the provisions of the second sentence of paragraph (1) of the preceding Article.

(Provisional Dispositions and Other Measures Prior to Commencement of  
Bankruptcy Proceedings upon Closing of Reorganization)

Article 253 (1) In the following cases, the court, when it finds it necessary, by its own authority, may issue an order to stay under the provisions of Article 24, paragraph (1) of the Bankruptcy Act, comprehensive prohibition order prescribed in Article 25, paragraph (2) of the same Act, provisional disposition under the provisions of Article 28, paragraph (1) of the same Act, order for temporary administration prescribed in Article 91, paragraph (2) of the same Act or provisional disposition under the provisions of Article 171, paragraph (1) of the same Act (hereinafter referred to as "provisional disposition and other measures" in this Article and Article 256, paragraph (4)):

- (i) when, with regard to a stock company against which bankruptcy proceedings have not yet been commenced, an order of dismissal with prejudice on the merits of a petition to commence of reorganization is made;
- (ii) when, with regard to the reorganizing company against which bankruptcy proceedings have not yet been commenced, an order of revocation of the order commencing reorganization, an order of discontinuance of reorganization or an order of disconfirmation of the reorganization plan becomes final and binding; or

- (iii) when, after the bankruptcy proceedings commenced against the reorganizing company have ceased to be effective as a result of an order of confirmation of the reorganization plan being made, an order of discontinuance of reorganization under the provisions of Article 241, paragraph (1) becomes final and binding.
- (2) If the court, after issuing provisional dispositions or other measure under the provisions of item (i) or item (ii) of the preceding paragraph, has decided not to make an order commencing bankruptcy proceedings under the provisions of the main clause of paragraph (1) of the preceding Article, it must revoke the provisional disposition or other measure without delay.
- (3) The provisional disposition or other measures issued under the provisions of paragraph (1), item (i) will cease to be effective when an order to revoke the order prescribed in the same item is made.
- (4) Notwithstanding the provisions of Article 24, paragraph (4), Article 25, paragraph (6), Article 28, paragraph (3), Article 91, paragraph (5), and Article 171, paragraph (4) of the Bankruptcy Act, no immediate appeal may be filed against an order made under the provisions of paragraph (2).

(Application of the Bankruptcy Act in Bankruptcy Proceedings upon the End of Reorganization)

Article 254 (1) In the following cases concerning a stock company against which bankruptcy proceedings have not yet been commenced, for the purpose of application of the relevant provisions of the Bankruptcy Act (meaning the provisions of the Bankruptcy Act, Article 71, paragraph (1), item (iv) and paragraph (2), item (ii) and item (iii), Article 72, paragraph (1), item (iv) and paragraph (2), item (ii) and item (iii), Article 160 (excluding paragraph (1), item (i)), Article 162 (excluding paragraph (1), item (ii)), Article 163, paragraph (2), Article 164, paragraph (1) (including cases where applied mutatis mutandis pursuant to paragraph (2) of the same Article), Article 166, and Article 167, paragraph (2) (including cases where applied mutatis mutandis pursuant to Article 170, paragraph (2)); the same applies in paragraph (3)), a petition to commence reorganization, etc. (meaning a petition to commence reorganization, a petition to commence special liquidation in the proceedings for special liquidation that have ceased to be effective as a result of the commencement of reorganization, a petition to commence rehabilitation proceedings in the rehabilitation proceedings that have ceased to be effective as a result of the order of confirmation of the reorganization plan, or any act conducted by the stock company's director, executive officer, or any other person equivalent thereto, which constitutes the crime set forth in Article 265 of the Bankruptcy Act; hereinafter the same applies in this paragraph) is deemed to be a petition to commence bankruptcy proceedings only when no

petition to commence bankruptcy proceedings has been filed prior to the petition to commence reorganization, etc.:

- (i) when an order commencing bankruptcy proceedings is made under the provisions of the main clause of Article 252, paragraph (1);
  - (ii) when, based on a petition to commence bankruptcy proceedings filed before an order of dismissal with prejudice on the merits of a petition to commence reorganization becomes final and binding, an order commencing bankruptcy proceedings is made after the order of dismissal becomes final and binding;
  - (iii) when, based on a petition to commence bankruptcy proceedings filed before an order commencing reorganization is made, an order commencing bankruptcy proceedings is made after any of the grounds listed in Article 234, item (ii) or item (iii) occur or after an order of discontinuance of reorganization made under the provisions of Article 236 or Article 237, paragraph (1) becomes final and binding; or
  - (iv) when, based on a petition to commence bankruptcy filed under the provisions of the first sentence of Article 251, paragraph (1), an order commencing bankruptcy proceedings is made.
- (2) For the purpose of application of the provisions of the first sentence of Article 176 of the Bankruptcy Act when an order commencing bankruptcy proceedings prescribed in the items of the preceding paragraph is made upon the end of reorganization as a result of an order of disconfirmation of the reorganization plan or order of discontinuance of reorganization becoming final and binding, the date of any of the following orders is deemed to be the date of commencement of bankruptcy proceedings set forth in the first sentence of the same Article:
- (i) the order commencing reorganization; or
  - (ii) the order commencing rehabilitation proceedings in the rehabilitation proceedings that have ceased to be effective as a result of the order of confirmation of the reorganization plan.
- (3) For the purpose of application of the relevant provisions of the Bankruptcy Act where, with regard to the reorganizing company against which bankruptcy proceedings have already been commenced, an order commencing bankruptcy proceedings is made based on a petition to commence bankruptcy proceedings filed under the provisions of the second sentence of Article 251, paragraph (1) or an order commencing bankruptcy proceedings is made under the provisions of Article 252, paragraph (2), it is deemed that a petition to commence bankruptcy proceedings is filed at the time when the petition to commence bankruptcy proceedings is filed in the bankruptcy proceedings that have ceased to be effective as a result of an order of confirmation of the reorganization plan being made.
- (4) For the purpose of application of the provisions of the first sentence of Article



176 of the Bankruptcy Act in cases where an order commencing bankruptcy proceedings prescribed in the preceding paragraph is made, the date of commencement of bankruptcy proceedings in the bankruptcy proceedings that have ceased to be effective as a result of an order of confirmation of the reorganization plan being made is deemed to be the date of commencement of bankruptcy proceedings set forth in the first sentence of the same Article.

- (5) For the purpose of application of the provisions of Article 148, paragraph (1), item (iii) of the Bankruptcy Act when an order commencing bankruptcy proceedings prescribed in the items of paragraph (1) or in paragraph (3) is made, the phrase "comprehensive prohibition order" is replaced with a "comprehensive prohibition order or a comprehensive prohibition order prescribed in Article 25, paragraph (2) of the Corporate Reorganization Act", and "for a certain part of the one-year period" is replaced with "a certain part of the one-year period or a disposition of national tax delinquency may not be enforced for a certain part of the one-year period under Article 50, paragraph (2) of the same Act".
- (6) If an order commencing bankruptcy proceedings prescribed in the preceding paragraph is made, common-benefit claims (including the claims prescribed in Article 62, paragraph (2) and Article 128, paragraph (1) and paragraph (4) when reorganization is not commenced; the same applies in Article 257) will be claims on the estate. The same applies when bankruptcy proceedings commenced against a stock company are continued as a result of the occurrence of any of the grounds listed in Article 234, item (i) through item (iii) or an order of discontinuance of reorganization under the provisions of Article 236 or Article 237, paragraph (1) becoming final and binding.

(Order for Not Requiring Reporting Bankruptcy Claims)

Article 255 (1) Where the court (meaning a judge or panel of judges in charge of the bankruptcy case; the same applies in the following paragraph) makes an order commencing bankruptcy proceedings prescribed in the items of paragraph (1) of the preceding Article or in paragraph (3) of the same Article, when it finds it appropriate while taking into consideration the content and cause of each reorganization claim, etc. as well as the amount of the voting right as filed in the reorganization that have been closed, the number of disputed reorganization claims, etc. prescribed in the main clause of Article 151, paragraph (1), whether or not any right will be modified by a reorganization plan and the content of the modification, and any other circumstances concerned, it may make an order, upon making the order commencing bankruptcy proceedings, to the effect that bankruptcy creditors that hold bankruptcy claims, a proof of which has been filed as reorganization claims, etc. in the reorganization (excluding claims for taxes, etc. and claims

for fine, etc. arising prior to the commencement of reorganization prescribed in Article 142, item (ii); hereinafter the same applies in this Article) are not required to file a proof of the bankruptcy claims.

- (2) The court, when it has made an order pursuant to the provisions of the preceding paragraph, must indicate, in the public notice to be given under the provisions of Article 32, paragraph (1) of the Bankruptcy Act, that bankruptcy creditors that hold bankruptcy claims, the proof of which have been filed as reorganization claims, etc. in the reorganization set forth in the preceding paragraph, are not required to file a proof of the bankruptcy claims, and must give a notice to known bankruptcy creditors to that effect.
- (3) If an order under the provisions of paragraph (1) is made, with regard to claims the proof of which has been filed as Reorganization Claims, etc. in the reorganization set forth in the same paragraph, it is deemed that the persons that have filed a proof of the reorganization claims, etc. (or persons that have received a change of the name of the holder of the filed claims with regard to the claims filed in the reorganization, if there is any such person; the same applies in paragraph (6)) have filed a proof of bankruptcy claims (including a proof of the particulars set forth in Article 111, paragraph (1), item (iv) of the Bankruptcy Act) on the first day of the period for filing a proof of claims prescribed in Article 111, paragraph (1) of the same Act.
- (4) In the case referred to in the preceding paragraph, for each of the categories of filing a proof of particulars listed in the following items regarding the claims that have been filed as a reorganization claim, etc., it is deemed that a person set forth in the preceding paragraph has filed the particulars specified in the respective items as filing a proof of a bankruptcy claim:
  - (i) with regard to any of the claims listed in Article 136, paragraph (1), item (iii)(b) through (d), filing a proof of the amount of the voting right for the reorganization claim, etc. set forth in Article 138, paragraph (1), item (iii) or paragraph (2), item (iii), and the cause of the reorganization claim, etc. set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i): Filing a proof of the amount and cause of the bankruptcy claim set forth in Article 111, paragraph (1), item (i) of the Bankruptcy Act;
  - (ii) with regard to the claim that has been filed as a reorganization claim, etc., except for the claim set forth in the preceding item, filing a proof of the amount of the reorganization claim, etc., as an element of the content of the reorganization claim, etc., set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i), and the cause of the reorganization claim, etc. set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i): Filing a proof of the amount and cause of the bankruptcy claim set forth in Article 111, paragraph (1), item (i);
  - (iii) with regard to any of the claims listed in Article 136, paragraph (1), item

- (i), item (ii), or item (iii)(a), filing a proof of the amount of the reorganization claim, etc., as an element of the content of the reorganization claim, etc., set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i), and the amount of the voting right for the reorganization claim, etc. set forth in Article 138, paragraph (1), item (iii) or paragraph (2), item (iii): Filing a proof of the statement that the claim in question is a subordinate bankruptcy claim set forth in Article 111, paragraph (1), item (iii) of the Bankruptcy Act for its part corresponding to the amount obtained by deducting the amount of the voting right for the filed reorganization claim, etc. from the amount of the filed reorganization claim, etc., which is an element of the content thereof;
- (iv) with regard to any of the claims listed in Article 136, paragraph (2), item (i) through item (iii), filing a proof of the content of the reorganization claim, etc. listed in Article 138, paragraph (1), item (i) or paragraph (2), item (i): Filing a proof of the statement that the claim is a subordinated bankruptcy claim prescribed in Article 111, paragraph (1), item (iii) of the Bankruptcy Act;
- (v) with regard to a claim that has been filed with a statement that the claim is a claim with general priority, filing a proof of the statement set forth in Article 138, paragraph (1), item (ii): Filing a proof of the statement that the claim is a preferred bankruptcy claim prescribed in Article 111, paragraph (1), item (ii) of the Bankruptcy Act;
- (vi) with regard to a claim that has been filed with a statement that the claim is a consensually-subordinated reorganization claim, filing a proof of the statement set forth in Article 138, paragraph (1), item (ii): Filing a proof of the statement that the claim is a consensually-subordinated bankruptcy claim prescribed in Article 111, paragraph (1), item (iii) of the Bankruptcy Act; or
- (vii) with regard to a reorganization claim secured by any security right (limited to a special statutory lien, pledge, mortgage, and right of retention under the provisions of the Commercial Code or the Companies Act; the same applies in the following paragraph) that exists on the reorganizing company's assets as of the time of commencement of reorganization, filing a proof of the amount of the voting right set forth in Article 138, paragraph (1), item (iii): Filing a proof of the amount of the claim for which payment is not expected to be received by exercising the right of separate satisfaction set forth in Article 111, paragraph (2), item (ii) of the Bankruptcy Act.
- (5) In the cases referred to in the preceding two paragraphs, the amount of the bankruptcy claim, which is secured by any security right that exists on the reorganizing company's assets as of the time of commencement of reorganization and which is deemed to have been filed both as a reorganization

claim and a secured reorganization claim, will be the sum of the amount of the reorganization claim and the amount of the secured reorganization claim each of which is deemed to have been filed as the amount of the bankruptcy claim pursuant to the provisions of the preceding paragraph.

- (6) When the person that filed a proof of a claim as a reorganization claim, etc. has filed a proof of a bankruptcy claim within the period for filing a proof of claims prescribed in Article 111, paragraph (1) of the Bankruptcy Act, the provisions of the preceding three paragraphs do not apply to any claim filed as a reorganization claim, etc. set forth in paragraph (3), which is held by the person that filed a proof of a claim as a reorganization claim, etc.

(Handling Actions to Oppose Orders Upholding a Request for Avoidance)

Article 256 (1) If any of the grounds listed in Article 234, item (iii) or item (iv) occur, if an order commencing bankruptcy proceedings prescribed in the items of Article 254, paragraph (1) or in paragraph (3) of the same Article is made, a bankruptcy trustee may take over an action set forth in Article 97, paragraph (1) that is discontinued pursuant to the provisions of Article 52, paragraph (4). In this case, a petition for taking over the action may also be filed by the opponent.

- (2) In the case referred to in the preceding paragraph, the opponent's claim for court costs against a trustee will be a claim on the estate.

(3) In the case referred to in paragraph (1), if the bankruptcy proceedings are closed before the action set forth in Article 97, paragraph (1) discontinued pursuant to the provisions of Article 52, paragraph (4) is taken over under the provisions of paragraph (1), the action will be closed.

(4) An action set forth in Article 97, paragraph (1), which is discontinued pursuant to the provisions of Article 52, paragraph (4) and pertains to a reorganization case involving the stock company against which bankruptcy proceedings have not yet been commenced, will be closed if an order commencing bankruptcy proceedings prescribed in the items of Article 254, paragraph (1) is not made within one month from the date of discontinuance of the action (if, for a certain part of the one-month period, provisional dispositions and other measures are issued under the provisions of Article 253, paragraph (1), item (i) or item (ii) or a provisional disposition, etc. is issued in bankruptcy proceedings based on a petition to commence bankruptcy proceedings set forth in the items of Article 254, paragraph (2), the part of the period will be excluded).

(5) The proceedings for a petition for assessment of reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) and the proceedings for a petition for valuation prescribed in Article 153, paragraph (1), both of which continue to be pending pursuant to the provisions of Article 163,

paragraph(1), is to be closed when an order commencing bankruptcy proceedings prescribed in the items of Article 254, paragraph (1) or in paragraph (3) of the same Article is made. In this case, the provisions of Article 163, paragraph (3) do not apply.

- (6) The provisions of paragraph (4) apply mutatis mutandis to an action to oppose assessment of reorganization claim, etc. prescribed in Article 152, paragraph (1), which is discontinued pursuant to the provisions of Article 163, paragraph (4) and pertains to a reorganization case involving the stock company against which bankruptcy proceedings have not yet been commenced.

#### **Section 4 Continuation of Rehabilitation Proceedings after the Reorganization**

Article 257 If a rehabilitation case is pending against a stock company, when the rehabilitation proceedings are continued as a result of the occurrence of any of the grounds listed in Article 234, item (i) through item (iii) or an order of discontinuance of reorganization under the provisions of Article 236 or Article 237, paragraph (1) becoming final and binding, common-benefits claims in the reorganization will be common benefit claims in the rehabilitation proceedings.

#### **Chapter XII Miscellaneous Provisions**

(Commission of Registration on a Reorganizing Company)

- Article 258 (1) If an order commencing reorganization is made, a court clerk, by their own authority, without delay, must commission the registry office having jurisdiction over the location of the head office of the reorganizing company (if the company has its head office in a foreign state, its business office in Japan; the same applies in paragraph (4), and paragraph (1) of the following Article) to make a registration of the commencement of reorganization.
- (2) When making the registration set forth in the preceding paragraph, the name and address of each trustee, if permission set forth in the proviso to Article 69, paragraph (1) is granted for independent performance of duties by each trustee, a statement to that effect, and if permission set forth in the proviso of the same paragraph is granted for division of duties among trustees, a statement to that effect and the contents of the duties assigned to each trustee must also be registered.
- (3) The provisions of paragraph (1) apply mutatis mutandis when there is a change to any of the particulars prescribed in the preceding paragraph.
- (4) When an order for temporary administration or supervision order is issued against the company awaiting reorganization, a court clerk, by their own authority, without delay, must commission the registry office having

jurisdiction over the head office of the company awaiting reorganization to make a registration of the order.

- (5) When making the registration set forth in the preceding paragraph, the particulars specified in each of the following items must also be registered for the categories of registrations listed in the respective items:
  - (i) registration of an order for temporary administration prescribed in the preceding paragraph: The names and addresses of the provisional administrators, if permission set forth in the proviso to Article 69, paragraph (1), as applied mutatis mutandis pursuant to Article 34, paragraph (1), is granted for independent performance of duties by each provisional administrator, a statement to that effect, and if permission set forth in the proviso of Article 69, paragraph (1), as applied mutatis mutandis pursuant to Article 34, paragraph (1), is granted for division of duties among provisional administrators, a statement to that effect and the contents of the duties assigned to each provisional administrator; and
  - (ii) registration of a supervision order prescribed in the preceding paragraph: The names and addresses of supervisors, and the acts designated pursuant to the provisions of Article 35, paragraph (2).
- (6) The provisions of paragraph (4) apply mutatis mutandis when a judicial decision prescribed in the same paragraph is changed or revoked or there is a change to any of the particulars prescribed in the preceding paragraph.
- (7) The provisions of paragraph (1) apply mutatis mutandis when an order of confirmation of the reorganization plan is made or when any of the grounds listed in Article 234, item (ii) through item (v) occur.
- (8) A registrar, when making a registration of the commencement of reorganization pursuant to the provisions of paragraph (1), by their own authority, must cancel a registration of the commencement of special liquidation against the reorganizing company, if there is any such registration.
- (9) A registrar, when making a registration of the revocation of an order commencing reorganization pursuant to the provisions of paragraph (7), by their own authority, must restore a registration cancelled under the provisions of the preceding paragraph, if there is any such registration.
- (10) The provisions of paragraph (8) apply mutatis mutandis to a registration of the commencement of bankruptcy proceedings or commencement of rehabilitation proceedings in the case of making a registration of the confirmation of the reorganization plan, and the provisions of the preceding paragraph apply mutatis mutandis to a registration cancelled pursuant to the provisions of paragraph (8), as applied mutatis mutandis pursuant to this paragraph, if an order to revoke the order of confirmation of the reorganization plan becomes respectively final and binding.

Article 259 (1) When the organs of the reorganizing company have restored their powers pursuant to the provisions of the first sentence of Article 72, paragraph (4), a court clerk, by their own authority, without delay, must commission the registry office having jurisdiction over the location of the reorganizing company's head office to make a registration to that effect.

(2) The provisions of the preceding paragraph apply mutatis mutandis when provisions of a reorganization plan or an order of the court under the provisions of the first sentence of Article 72, paragraph (4) is revoked.

(Commission of Registration on Registered Rights)

Article 260 (1) In the following cases, a court clerk, by their own authority, without delay, must commission a registration of the provisional disposition concerned:

(i) when a provisional disposition under the provisions of Article 28, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 44, paragraph (2)) is issued with respect to any registered right that belongs to the company awaiting reorganization; or

(ii) when a provisional disposition under the provisions of Article 39-2, paragraph (1) or Article 40, paragraph (1) (including cases where these provisions are applied mutatis mutandis pursuant to Article 44, paragraph (2)) or Article 99, paragraph (1) is issued with respect to any registered right.

(2) The provisions of the preceding paragraph apply mutatis mutandis when the provisional disposition prescribed in the same paragraph is changed or revoked or the provisional disposition ceases to be effective.

(3) If an order commencing reorganization is made, a court clerk, when they become aware that there is a registration under the provisions of Article 938, paragraph (3) of the Companies Act (including cases where applied mutatis mutandis pursuant to paragraph (4) of the same Article) with regard to any registered right that belongs to the reorganizing company must commission cancellation of the registration by their own authority without delay.

(4) If a registration is cancelled under the provisions of the preceding paragraph, when an order to revoke the order commencing reorganization has become final and binding, a court clerk, by their own authority, without delay, must commission restoration of the registration cancelled under the provisions of the same paragraph.

(Commission of Registration on Implementation of a Reorganization Plan)

Article 261 (1) The provisions of Article 258, paragraph (1) apply mutatis mutandis when any matter to be registered has arisen from the implementation of the reorganization plan or the provisions of this Act, before the end of reorganization, with regard to the reorganizing company or the

company to be incorporated pursuant to the provisions of the reorganization plan. In this case, when any matter to be registered has arisen with regard to the particulars listed in the items of Article 930, paragraph (2) of the Companies Act, the term "the head office" in Article 258, paragraph (1) is deemed to be replaced with "the head office and the branch offices".

- (2) When the reorganizing company effects a merger with another company, when a court clerk commissions the following registrations, they must also commission a registration of the dissolution of the other company that is the partner of the merger:
  - (i) a registration of change due to an absorption-type merger, in relation to the reorganizing company that survives the absorption-type merger; or
  - (ii) a registration of incorporation due to a consolidation-type merger, in relation to the company that is incorporated in the consolidation-type merger.
- (3) The provisions of paragraph (1) do not apply to a registration of dissolution of the reorganizing company when another company effects an absorption-type merger with the reorganizing company and survives the absorption-type merger.
- (4) When the reorganizing company effects an absorption-type company split with another company, when a court clerk commissions a registration of change due to an absorption-type split in relation to the reorganizing company, they must also commission a registration of change due to an absorption-type company split in relation to the other company.
- (5) When the reorganizing company effects an incorporation-type company split jointly with another company, when a court clerk commissions a registration of incorporation due to an incorporation-type company split, they must also commission a registration of change due to an incorporation-type company split in relation to the other company.
- (6) The provisions of paragraph (1) of the preceding Article apply *mutatis mutandis* when acquisition, loss, or modification of any registered right occurs prior to the end of reorganization as a result of the implementation of the reorganization plan; provided, however, that this does not apply to a registration of any right if the right holder is a person other than the reorganizing company, reorganization creditors, etc., shareholders, or the company to be incorporated pursuant to the provisions of the reorganization plan.

(Registration of Avoidance)

- Article 262 (1) If any act constituting the cause of registration is avoided, a trustee must apply for a registration of avoidance. The same applies where a registration is avoided.
- (2) A registrar, when making a registration of a right pertaining to the



registration of avoidance set forth in the preceding paragraph, by their own authority, must cancel the following registrations:

- (i) the registration of avoidance in question;
  - (ii) the registration the cause of which is the avoided act, or the avoided registration; and
  - (iii) any subsequent registration made after the registration set forth in the preceding item.
- (3) In the case prescribed in the preceding paragraph, if, after any act which is avoided was conducted until a registration of avoidance is made, a registration of a third party's right (limited to the registration the effect of which may be asserted in relation to reorganization; the same applies in paragraph (5)), the subject matter of which is the right pertaining to the registration set forth in item (ii) of the same paragraph, is made, a registrar, notwithstanding the provisions of the same paragraph, by their own authority, must cancel the registration of avoidance and make a registration of the transfer of the right pertaining to the registration set forth in the same item to the reorganizing company.
- (4) If a registration of avoidance set forth in paragraph (1) is made, if, with regard to the reorganizing company, an order of confirmation of the reorganization plan becomes final and binding, a court clerk, by their own authority, without delay, must commission cancellation of the registration of avoidance.
- (5) In the case prescribed in the preceding paragraph, a registrar, when commissioned by a court clerk to cancel the registration of avoidance, must cancel the registration listed in paragraph (2), item (ii) and item (iii) by their own authority. In this case, during the period between an avoided act being conducted and registration of avoidance, if a registration of a third party's right, the subject matter of which is the right pertaining to the registration set forth in item (ii) of the same paragraph is made, a registrar, by their own authority, must make a registration of the transfer of the right pertaining to the registration set forth in item (ii) of the same paragraph to the reorganizing company, instead of canceling the registration listed in item (ii) and item (iii) of the same paragraph.
- (6) If a registration of avoidance set forth in paragraph (1) is made, if, with regard to the reorganizing company, the grounds listed in Article 234, item (ii) or item (iii) occur or an order of discontinuance of reorganization under the provisions of Article 236 or Article 237, paragraph (1) becomes final and binding, a court clerk, by their own authority, without delay, must commission cancellation of the registration of avoidance.

(Documents to Be Attached to Written Commissions)

Article 263 The necessary information to be provided along with the commission information or application information regarding registrations under the provisions of this Act or the documents and other objects that should be attached to written commissions or written applications will be prescribed by Cabinet Order.

(Special Provisions for Registration and License Tax)

Article 264 (1) Registration and license tax is not imposed on the registrations under the provisions of Article 258 through Article 260 and Article 262.

(2) The rates for registration and license taxes when registering an increase of stated capital when a reorganization plan determines that the reorganizing company will issue shares (excluding cases that fall under the following paragraph, paragraph (5), and paragraph (6)) is 1/1000 (or 3.5/1000 for the section of stated increase in capital separate from the amount equivalent to that derived by issuing shares to reorganization creditors for which they make further payment or performance for), notwithstanding the provisions of Article 9 of the Registration and License Tax Act (Act No. 35 of 1967).

(3) The rates for registration and license taxes when registering an increase of stated capital through a share exchange, when a reorganization plan determines that the reorganizing company will effect a share exchange is 1/1000 (or 3.5/1000 for the section of stated increase in capital through the share exchange separate from the amount equivalent to that derived by issuing shares or equity interest to reorganization creditors), notwithstanding the provisions of Article 9 of the Registration and License Tax Act.

(4) The rates for registration and license taxes when registering the incorporation of a stock company through a share transfer, when a reorganization plan determines that the reorganizing company will effect a share transfer is 1/1000 (or 3.5/1000 for the section of stated capital separate from the amount equivalent to that derived by delivering shares to reorganization creditors or shareholders), notwithstanding the provisions of Article 9 of the Registration and License Tax Act.

(5) The rates for registration and license taxes applied to registration of the incorporation of a stock company or limited liability company, or of the increase of stated capital through an incorporation-type company split or absorption-type company split, when a Reorganization Plan determines that the Reorganization Company will effect a company split, is 1/1000 (or 3.5/1000 for the section of stated capital or the amount of increase of stated capital through the absorption-type company split, which is equivalent to the part prescribed in Appended Table 1 of the Act, item (xxiv)-(1)(g) or (h) in the tax rate column), notwithstanding the provisions of Article 9 of the Registration and License Tax Act.

- (6) The rates for registration and license taxes applied to registration of the incorporation of a stock company or limited liability company, through a consolidation-type merger or entity conversion or of the increase of stated capital through an absorption-type merger, when a reorganization plan determines that the reorganizing company will effect a consolidation-type merger or absorption-type merger or entity conversion, is 1/1000 (or 3.5/1000 for the section of stated capital or the amount of increase of stated capital through the absorption-type merger, which is equivalent to the part prescribed in Appended Table 1 of the same Act, item (xxiv)-(1)(e) or (f) in the tax rate column (excluding the amount equivalent to that derived by issuing shares or equity interests to reorganization creditors)).
- (7) The rates for registration and license taxes when registering the incorporation of a new company, when a reorganization plan determines that the new company prescribed in Article 225, paragraph (1) will be incorporated, is 1/1000 (or 3.5/1000 for the section of stated capital separate from the amount equivalent to that derived by issuing shares to reorganization creditors or shareholders), notwithstanding the provisions of Article 9 of the Registration and License Tax Act.
- (8) If a reorganization plan determines that a stock company incorporated based on its provisions will receive the transfer or establishment of any right relating to real assets or a vessel from the reorganization company, the rates for registration and license taxes when registering a transfer or establishment of the right is 1.5/1000 in the case of registration of a right relating to real assets (or 4/1000 in the case of any of the registrations listed in Appended Table 1 of the Registration and License Tax Act, item (i)-(5) to (7)), or 4/1000 in the case of registration of a right relating to a vessel; provided, however, that this does not apply if the amount of registration and license taxes calculated by applying this rate to the respective registrations exceeds the amount of registration and license tax calculated by applying the provisions (notwithstanding the provisions of Article 9 of the Registration and License Tax Act and Article 72 of the Act of Special Measures Concerning Taxation (Act No. 26 of 1957)).

(Applications Mutatis Mutandis)

Article 265 The provisions of Article 260, Article 261, paragraph (6), Article 262, Article 263, and paragraph (1) of the preceding Article apply mutatis mutandis to registered rights.

### **Chapter XIII Penal Provisions**

(Crime of Fraudulent Reorganization)

Article 266 (1) A person that, before or after the commencement of

reorganization, for the purpose of harming creditors, security right holders (meaning holders of a special statutory lien, pledge, mortgage, or right of retention under the provisions of the Commercial Code or the Companies Act; hereinafter the same applies in this Chapter) or shareholders, has conducted any of the acts listed in the following items is subject to punishment by imprisonment for not more than ten years or a fine of not more than ten million yen, or both, when an order commencing reorganization against the stock company becomes final and binding. The same applies to a person that has served as the other party to the act set forth in item (iv) while knowing the purpose, when an order commencing reorganization becomes final and binding:

(i) an act of concealing or damaging the stock company's assets;

(ii) an act of faking the transfer of the stock company's assets or assumption of debts;

(iii) an act of altering the existing status of the stock company's assets, thereby reducing its value; or

(iv) an act of disposing of the stock company's assets in a manner disadvantageous to creditors, security right holders or shareholders, or an act, committed by the stock company, of assuming debts disadvantageous to creditors, security right holders or shareholders.

(2) Beyond what is prescribed in the preceding paragraph, the same paragraph also applies to a person that, knowing that an order commencing reorganization is made or an order for temporary administration is issued against a stock company, for the purpose of harming creditors, security right holders or shareholders, has acquired the stock company's assets or has had a third party acquire it, without consent of a trustee or any other justifiable grounds.

(Crime of Providing Security to a Specific Creditor)

Article 267 If a representative person, agent, employee, or other worker of a stock company, before or after the commencement of reorganization, in connection with the stock company's business, with regard to the stock company's debt to a specific creditor or security right holder, for the purpose of harming other creditors or security right holder, has conducted an act concerning the provision of security or extinguishment of debt that is not included in the scope of the stock company's obligation in terms of the act itself or the means or time of performance of the act, and an order commencing reorganization has become final and binding, the person is subject to punishment by imprisonment for not more than five years or a fine of not more than five million yen, or both.

(Crime of a Special Breach of Trust by a Trustee)

Article 268 (1) If a trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor, or examiner, for the purpose of promoting their own interest or the interest of a third party, or inflicting damage on creditors, security right holders, or shareholders, has committed an act in breach of their duty and caused financial loss to creditors, security right holders or shareholders, the person is subject to punishment by imprisonment for not more than ten years or a fine of not more than ten million yen, or both.

(2) If a trustee, provisional administrator, supervisor, or examiner (hereinafter referred to as a "trustee, etc." in this paragraph) is a corporation, the provisions of the preceding paragraph apply to the officer or employee who performs the duties of a trustee, etc.

(Crime of Refusal of Reports and Inspections)

Article 269 (1) If any of the persons prescribed in Article 77, paragraph (1) or Article 209, paragraph (3) has refused to make a report under the provisions of Article 77, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38, or Article 126) or Article 209, paragraph (3) or made a false report, the person is subject to punishment by imprisonment for not more than three years or a fine of not more than three million yen, or both

(2) The provisions of the preceding paragraph also apply when a representative, agent, employee, or other worker (hereinafter referred to as a "representative, etc." in paragraph (4)) of any of the persons prescribed in Article 77, paragraph (1) or Article 209, paragraph (3), in connection with the business of a person prescribed in Article 77, paragraph (1) or Article 209, paragraph (3), has refused to make a report under the provisions of Article 77, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38 or Article 126) or Article 209, paragraph (3) or made a false report.

(3) The provisions of paragraph (1) also apply when any of the persons prescribed in Article 77, paragraph (1) (excluding persons that held those posts prescribed in the same paragraph) or Article 209, paragraph (3) (excluding persons that held those posts prescribed in the same paragraph), in connection with the reorganizing company's business, has refused an inspection under the provisions of Article 77, paragraph (1) (including cases when applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38 or Article 126) or Article 209, paragraph (3).

(4) The provisions of paragraph (1) also apply when a representative, etc. of the reorganizing company's subsidiary company prescribed in Article 77, paragraph (2), in connection with the business of the reorganizing company's

subsidiary company, has refused to make a report or refused an inspection under the provisions of the same paragraph (including cases when applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38 or Article 126) or made a false report.

(Crime of Spoliation of Objects Concerning the Status of Business and Property)

Article 270 A person that, before or after the commencement of reorganization, for the purpose of harming creditors, security right holders or shareholders, has spoliated, forged, or altered books, documents or any other objects concerning the status of a stock company's business and assets is subject to punishment by imprisonment for not more than three years or a fine of not more than three million yen, or both, when an order commencing reorganization against the stock company becomes final and binding.

(Crime of Obstruction of Duties against a Trustee)

Article 271 A person that, by the use of fraudulent means or force, has obstructed the performance of duties of a trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor, or examiner is subject to punishment by imprisonment for not more than three years or a fine of not more than three million yen, or both.

(Crime of Acceptance of Bribes)

Article 272 (1) If a trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor, examiner, or legal advisor, in connection with their duties, has accepted, solicited or promised to accept a bribe, they are subject to punishment by imprisonment for not more than three years or a fine of not more than three million yen, or both.

(2) In the case referred to in the preceding paragraph, when the trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor, examiner, or legal advisor accedes to an unlawful request, they are subject to punishment by imprisonment for not more than five years or a fine of not more than five million yen, or both.

(3) If a trustee, provisional administrator, supervisor, or examiner (hereinafter referred to as a "trustee, etc." in this Article) is a corporation, if its officer or employee who performs the duties of a trustee, etc. has accepted, solicited or promised to accept a bribe, they are subject to punishment by imprisonment for not more than three years or a fine of not more than three million yen, or both. The same applies when a trustee, etc. is a corporation, and its officer or official, in connection with the duties of a trustee, etc., has caused the trustee, etc. to accept a bribe, or solicit or promise to accept a bribe.

- (4) In the case referred to in the preceding paragraph, when the officer or employee has acceded to an unlawful request, they are subject to punishment by imprisonment for not more than five years or a fine of not more than five million yen, or both.
- (5) If a reorganization creditor, etc., shareholder, or representative or an agent, officer, or employee thereof has accepted a bribe in response to an unlawful request to exercise a voting right on the date of a stakeholders meeting, or vote in writing, as prescribed in Article 189, paragraph (2), item (ii), or solicited or agreed to such a bribe, they are subject to punishment by imprisonment for not more than five years or a fine of not more than five million yen, or both.
- (6) In the cases referred to in the preceding paragraphs, a bribe accepted by the offender or by the trustee, etc. that is a corporation, is subject to confiscation. When the whole or part of the bribe cannot be confiscated, an equivalent value thereof will be collected.

(Crime of Offering a Bribe)

- Article 273 (1) A person that has given, offered or promised to offer a bribe prescribed in paragraph (1) or paragraph (3) of the preceding Article is subject to punishment by imprisonment for not more than three years or a fine of not more than three million yen, or both.
- (2) A person that has given, offered or promised to offer a bribe prescribed in paragraph (2), paragraph (4) or paragraph (5) of the preceding Article is subject to punishment by imprisonment for not more than five years or a fine of not more than five million yen, or both.

(Crimes Committed Outside Japan)

- Article 274 (1) The crimes set forth in Article 266, Article 267, Article 270, Article 271, and the preceding Article will be governed by the provisions of Article 2 of the Penal Code (Act No. 45 of 1907).
- (2) The crimes set forth in Article 268 and Article 272 (excluding paragraph (5)) will be governed by the provisions of Article 4 of the Penal Code.
- (3) The crime set forth in Article 272, paragraph (5) also applies to a person that has committed the crime set forth in the same paragraph outside Japan.

(Provisions for Dual Criminal Liability)

Article 275 When the representative of a corporation, or an agent, employee, or any other worker of a corporation or individual, in connection with the business or assets of the corporation or individual, has committed violation of Article 266, Article 267, Article 269 (excluding paragraph(1)), Article 270, Article 271, or Article 273, not only the offender, but also the corporation or individual is subject to punishment by a fine prescribed in the respective

Articles.

(Non-Criminal Fines)

Article 276 When the reorganizing company or a person that owes a debt or provides security for the purpose of reorganization of the reorganizing company's business has violated an order issued by the court under the provisions of Article 209, paragraph (4), the company or the person is subject to punishment by a non-criminal fine of not more than one million yen.

### **Supplementary Provisions**

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

(Transitional Measures Concerning Reorganization Cases)

Article 2 Prior laws continue to govern stock company reorganization cases based on petitions to commence reorganization filed before this Act comes into effect.

(Transitional Measures Concerning the Application of Penal Provisions)

Article 3 The prior laws continue to govern the applicability of penal provisions to conduct that a person engages in before this Act, is to continue to be governed by prior laws.