

# **Companies Act (Part V, Part VI, Part VII and Part VIII)**

(Act No. 86 of July 26, 2005)

## **Part V Entity Conversion, Mergers, Company Splits, Share Exchanges, Share Transfers, and Partial Share Exchange Chapter I Entity Conversion Section 1 Common Provisions**

(Preparation of Entity Conversion Plans)

Article 743 A company may effect entity conversion. In these cases, the company must prepare an entity conversion plan.

## **Section 2 Entity Conversion of Stock Companies**

(Entity Conversion Plans of Stock Companies)

Article 744 (1) If a stock company effects entity conversion, the stock company must prescribe the following matters in the entity conversion plan:

- (i) whether a membership company after the entity conversion (hereinafter referred to as the "membership company after entity conversion") is a general partnership company, limited partnership company, or limited liability company;
- (ii) the purpose, trade name, and location of the head office of the membership company after entity conversion;
- (iii) the following matters concerning the members of the membership company after entity conversion:
  - (a) the names and addresses of the members;
  - (b) whether the members are members with unlimited liability or members with limited liability; and
  - (c) the value of contributions by the members;
- (iv) beyond what is set forth in the preceding two items, the matters provided for in the articles of incorporation of the membership company after entity conversion;
- (v) if the membership company after entity conversion is to deliver to shareholders of the stock company effecting the entity conversion monies, etc. (excluding the equity interests of the membership company after entity conversion; hereinafter the same applies in this item and the following item) in lieu of the shares thereof when effecting the entity conversion, the following matters concerning relevant monies, etc.:

- (a) if relevant monies, etc. are bonds of the membership company after entity conversion, the description of the classes of relevant bonds (meaning the classes of bonds prescribed in Article 107, paragraph (2), item (ii), (b); hereinafter the same applies in this Part) and the total amount for each class of bonds, or the method for calculating that total amount;
  - (b) if the monies, etc. are property other than bonds of the membership company after entity conversion, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
  - (vi) in the case prescribed in the preceding item, matters concerning the allotment of monies, etc. referred to in that item to shareholders of the stock company effecting the entity conversion (excluding the stock company effecting the entity conversion);
  - (vii) if the stock company effecting entity conversion has issued share options, the description of the amount of monies, etc. that the membership company after entity conversion will deliver in lieu of relevant share options to holders of the share options at the time of the entity conversion, or the method for calculating relevant amount;
  - (viii) in the case prescribed in the preceding item, matters concerning the allotment of monies, etc. referred to in that item to holders of share options of the stock company effecting the entity conversion; and
  - (ix) the day on which the entity conversion becomes effective (hereinafter referred to as the "effective day" in this Chapter).
- (2) If the membership company after entity conversion is a general partnership company, it must provide that all of the members are members with unlimited liability in prescribing the matter referred to in item (iii), (b) of the preceding paragraph.
- (3) If the membership company after entity conversion is a limited partnership company, it must provide that some of the members are members with unlimited liability and other members are members with limited liability in prescribing the matter set forth in paragraph (1), item (iii), (b).
- (4) If the membership company after entity conversion is a limited liability company, it must provide that all of the members are members with limited liability in prescribing the matter set forth in paragraph (1), item (iii), (b).

(Effectuation of Entity Conversion of Stock Companies)

Article 745 (1) A stock company effecting entity conversion becomes a membership company on the effective day.

- (2) A stock company effecting entity conversion is, in accordance with the provisions on the matters set forth in paragraph (1), items (ii) through (iv) of the preceding Article, deemed to have effected changes to the articles of

incorporation related to relevant matters on the effective day.

- (3) Shareholders of a stock company effecting entity conversion, in accordance with the provisions on the matters set forth in paragraph (1), item (iii) of the preceding Article, become members of the membership company after entity conversion on the effective day.
- (4) If there are provisions on the matter referred to in paragraph (1), item (v), (a) of the preceding Article, shareholders of the stock company effecting entity conversion, in accordance with the provisions on the matter set forth in item (vi) of that paragraph, become holders of the bonds referred to in item (v), (a) of that paragraph on the effective day.
- (5) The share options of a stock company effecting entity conversion are extinguished on the effective day.
- (6) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 779 are not completed yet or where the entity conversion is cancelled.

### **Section 3 Entity Conversion of a Membership Company**

(Entity Conversion Plan of a Membership Company)

Article 746 (1) If a membership company effects entity conversion, the membership company must prescribe the following matters in the entity conversion plan:

- (i) the purpose, trade name, location of the head office, and total number of authorized shares of the stock company after the entity conversion (hereinafter referred to as the "stock company after entity conversion" in this Article);
- (ii) beyond what is set forth in the preceding item, the matters provided for in the articles of incorporation of the stock company after entity conversion;
- (iii) the names of the directors of the stock company after entity conversion;
- (iv) the matters provided for in (a) through (c) below for the categories of cases set forth respectively therein:
  - (a) if the stock company after entity conversion is a company with accounting advisor: the name of the accounting advisor of the stock company after entity conversion;
  - (b) if the stock company after entity conversion is a company with company auditor (including any stock company the articles of incorporation of which provide that the scope of the audit by its company auditor is limited to an audit related to accounting): the name of the company auditor of the stock company after entity conversion; and
  - (c) if the stock company after entity conversion is a company with financial auditor: the name of the financial auditor of the stock company after entity

- conversion;
- (v) the number of shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) of the stock company after entity conversion to be acquired by members of the membership company effecting entity conversion, when effecting the entity conversion, or the method for calculating the numbers;
  - (vi) matters concerning the allotment of the shares set forth in the preceding item to members of the membership company effecting entity conversion;
  - (vii) if the stock company after entity conversion is to deliver to members of the membership company effecting the entity conversion monies, etc. (excluding the shares of the stock company after entity conversion; hereinafter the same applies in this item and the following item) in lieu of the equity interests thereof when effecting the entity conversion, the following matters concerning relevant monies, etc.:
    - (a) if relevant monies, etc. are bonds of the stock company after entity conversion (excluding those concerning bonds with share options), the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
    - (b) if the monies, etc. are share options of the stock company after entity conversion (excluding those attached to bonds with share options), the description of the features and number of relevant share options, or the method for calculating the number;
    - (c) if the monies, etc. are bonds with share options of the stock company after entity conversion, the matters prescribed in (a) concerning relevant bonds with share options and the matters prescribed in (b) concerning the share options attached to the bonds with share options; and
    - (d) if the monies, etc. are property other than bonds, etc. (meaning bonds and share options; hereinafter the same applies in this Part) of the stock company after entity conversion, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
  - (viii) in the case prescribed in the preceding item, matters concerning the allotment of monies, etc. referred to in that item to members of the membership company effecting the entity conversion; and
  - (ix) the effective day.
- (2) If a stock company after entity conversion is a company with audit and supervisory committee, the matters set forth in item (iii) of the preceding paragraph must be prescribed by distinguishing directors who are audit and supervisory committee members and other directors.

(Effectuation of Entity Conversion of a Membership Company)

Article 747 (1) A membership company effecting entity conversion becomes a stock company on the effective day.

(2) A membership company effecting entity conversion is, in accordance with the provisions on the matters set forth in paragraph (1), items (i) and (ii) of the preceding Article, deemed to have effected changes to the articles of incorporation related to the matters on the effective day.

(3) Members of a membership company effecting entity conversion, in accordance with the provisions on the matters set forth in paragraph (1), item (vi) of the preceding Article, become shareholders of the shares set forth in item (v) of the same paragraph on the effective day.

(4) In the cases set forth in the following items, members of a membership company effecting entity conversion become the persons specified in each of those items, in accordance with the provisions on the matters set forth in paragraph (1), item (viii) of the preceding Article, on the effective day:

(i) if there are provisions on the matters set forth paragraph (1), item (vii), (a) of the preceding Article: the holders of the bonds referred to in (a) of that item;

(ii) if there are provisions on the matters set forth in paragraph (1), item (vii), (b) of the preceding Article: holders of the share options referred to in (b) of that item; and

(iii) if there are provisions on the matters set forth in paragraph (1), item (vii), (c) of the preceding Article: the holders of the bonds constituting bonds with share options referred to in (c) of that item, and holders of the share options attached to those bonds.

(5) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 779 (excluding paragraph (2), item (ii)) as applied mutatis mutandis pursuant to Article 781, paragraph (2) are not completed yet or if the entity conversion is cancelled.

## **Chapter II Mergers**

### **Section 1 Common Provisions**

(Conclusion of Merger Agreements)

Article 748 A Company may effect a merger with another company. In these cases, the merging companies must conclude a merger agreement.

### **Section 2 Absorption-Type Mergers**

#### **Subsection 1 Absorption-Type Mergers in Which a Stock Company Survives**

(Absorption-Type Merger Agreement in Which a Stock Company Survives)

Article 749 (1) If a company effects an absorption-type merger, if the company surviving the absorption-type merger (hereinafter referred to as the "company surviving the absorption-type merger") is a stock company, it must prescribe the following matters in the absorption-type merger agreement:

- (i) the trade name and address of the stock company that constitutes the company surviving the Absorption-type merger (hereinafter referred to as the "stock company surviving the absorption-type merger" in this Part) and any company disappearing in the absorption-type merger (hereinafter referred to as the "company disappearing in the absorption-type merger" in this Part);
- (ii) if the stock company surviving the absorption-type merger is to deliver to shareholders of the company disappearing in the absorption-type merger that is a stock company (hereinafter referred to as the "stock company disappearing in the absorption-type merger" in this Part) or to members of the company disappearing in the absorption-type merger that is a membership company (hereinafter referred to as the "membership company disappearing in the absorption-type merger" in this Part) monies, etc. in lieu of the shares or equity interests thereof when effecting the absorption-type merger, the following matters concerning the monies, etc.:
  - (a) if relevant monies, etc. are shares of the stock company surviving the absorption-type merger, the description of the number of relevant shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) or the method for calculating these numbers, and matters concerning the amount of the stated capital and capital reserves of the stock company surviving the absorption-type merger;
  - (b) if relevant monies, etc. are bonds of the stock company surviving the absorption-type merger (excluding those concerning bonds with share options), the description of the classes of the relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
  - (c) if relevant monies, etc. are stock options of the stock company surviving the absorption-type merger (excluding those attached to bonds with share options), the description of the features and number of the relevant share options, or the method for calculating this number;
  - (d) if relevant monies, etc. are bonds with share options of the stock company surviving the absorption-type merger, the matters prescribed in (b) concerning relevant bonds with share options and the matters prescribed in (c) concerning the share options attached to relevant bonds with share options; or
  - (e) if relevant monies, etc. are property other than shares, etc. of the stock

- company surviving the absorption-type merger, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
- (iii) in the case prescribed in the preceding item, matters concerning the allotment of monies, etc. set forth in that item to shareholders of the stock company disappearing in the absorption-type merger (excluding the stock company disappearing in the absorption-type merger and the stock company surviving the absorption-type merger) or to members of the membership company disappearing in the absorption-type merger (excluding the stock company surviving the absorption-type merger);
  - (iv) if the stock company disappearing in the absorption-type merger has issued share options, the following matters concerning the share options of the stock company surviving the absorption-type merger or monies that the stock company surviving the absorption-type merger will deliver in lieu of relevant share options to holders of relevant share options at the time of the absorption-type merger:
    - (a) when delivering share options of the stock company surviving the absorption-type merger to holders of share options of the stock company disappearing in the absorption-type merger, the description of the features and number of relevant share options, or the method for calculating the number;
    - (b) in the case prescribed in (a), if the share options of the stock company disappearing in the absorption-type merger set forth in (a) are share options attached to bonds with share options, a statement to the effect that the stock company surviving the absorption-type merger will succeed to the obligations relating to bonds regarding the bonds with share options and the description of the classes of the bonds subject to the succession and the total amount for each class of bonds, or the method for calculating that total amount; and
    - (c) when delivering monies to holders of share options of the stock company disappearing in the absorption-type merger, the description of the amount of relevant monies or the method for calculating the amount;
  - (v) in the case prescribed in the preceding item, matters concerning allotment of the share options of the stock company surviving the absorption-type merger or monies set forth in that item to holders of share options of the stock company disappearing in the absorption-type merger; and
  - (vi) the day on which the absorption-type merger becomes effective (hereinafter referred to as the "effective day" in this Section).
- (2) In the case prescribed in the preceding paragraph, if the stock company disappearing in the absorption-type merger is a company with class shares, the stock company surviving the absorption-type merger and the stock company

disappearing in the absorption-type merger may provide for the following matters in prescribing the matters set forth in item (iii) of that paragraph in accordance with the features of the classes of shares issued by the stock company disappearing in the absorption-type merger:

- (i) if there is any arrangement that no monies, etc. are allotted to shareholders of a certain class of shares, a statement to that effect and the class of shares; and
  - (ii) beyond the matters set forth in the preceding item, if there is any arrangement that each class of shares is to be treated differently with respect to allotment of monies, etc., a statement to this effect and the details of the relevant different treatment.
- (3) In the case prescribed in paragraph (1), the provisions on the matters set forth in item (iii) of that paragraph must be provisions in which the monies, etc. are delivered in proportion to the number of the shares (or, if there are provisions on the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by the shareholders of the stock company disappearing in the absorption-type merger (excluding the stock company disappearing in the absorption-type merger and the stock company surviving the absorption-type merger and shareholders of the class of shares referred to in item (i) of the preceding paragraph).

(Effectuation of an Absorption-Type Merger in Which a Stock Company Survives)

Article 750 (1) A stock company surviving an absorption-type merger succeeds to the rights and obligations of the company disappearing in the absorption-type merger on the effective day.

- (2) The dissolution, by absorption-type merger, of the company disappearing in an absorption-type merger may not be duly asserted against a third party until the registration of the absorption-type merger has been completed.
- (3) In the cases set forth in the following items, the shareholders of a stock company disappearing in the absorption-type merger or members of a membership company disappearing in the absorption-type merger become the persons specified in each of those items, in accordance with the provisions on the matters set forth in paragraph (1), item (iii) of the preceding Article, on the effective day:
  - (i) if there are provisions on the matters set forth in paragraph (1), item (ii), (a) of the preceding Article: the holders of shares referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth in paragraph (1), item (ii), (b) of the preceding Article: the holders of bonds referred to in (b) of that item;
  - (iii) if there are provisions on the matters set forth in paragraph (1), item (ii),



- (c) of the preceding Article: the holders of share options referred to in (c) of that item; or
- (iv) if there are provisions on the matters set forth in paragraph (1), item (ii), (d) of the preceding Article: the holders of the bonds constituting bonds with share options referred to in (d) of that item, and holders of the share options attached to those bonds.
- (4) The share options of a stock company disappearing in the absorption-type merger are extinguished on the effective day.
- (5) In the case prescribed in paragraph (1), item (iv), (a) of the preceding Article, the holders of share options of a stock company disappearing in the absorption-type merger, in accordance with the provisions on the matters set forth in item (v) of that paragraph, become holders of share options of a stock company surviving the absorption-type merger referred to in item (iv), (a) of that paragraph on the effective day.
- (6) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 789 (excluding paragraph (1), item (iii) and paragraph (2), item (iii), and including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2)) or Article 799 are not completed yet or where the absorption-type merger is cancelled.

### **Subsection 2 Absorption-Type Merger in Which a Membership Company Survives**

(Absorption-Type Merger Agreement in Which a Membership Company Survives)

- Article 751 (1) If a company effects an absorption-type merger, if the company surviving the absorption-type merger is a membership company, it must prescribe the following matters in the absorption-type merger agreement:
- (i) the trade name and address of the company surviving the absorption-type merger that is a membership company (hereinafter referred to as the "membership company surviving the absorption-type merger" in this Section) and the company disappearing in the absorption-type merger;
- (ii) if shareholders of the stock company disappearing in the absorption-type merger or members of the membership company disappearing in the absorption-type merger are to become members of the membership company surviving the absorption-type merger when effecting the absorption-type merger, the matters provided for in (a) through (c) below for the categories of membership company surviving the absorption-type merger set forth respectively therein:
- (a) general partnership company: the names and addresses of the members and the value of contributions by the members;

- (b) limited partnership company: the names and addresses of the members, whether the members are members with unlimited liability or members with limited liability, and the value of contributions by the members; or
  - (c) limited liability company: the names and addresses of the members and the value of contributions by the members;
- (iii) if the membership company surviving the absorption-type merger is to deliver to shareholders of the stock company disappearing in the absorption-type merger or members of the membership company disappearing in the absorption-type merger monies, etc. (excluding the equity interests of the membership company surviving the absorption-type merger) in lieu of the shares or equity interests thereof when effecting the absorption-type merger, the following matters concerning relevant monies, etc.:
- (a) if relevant monies, etc. are bonds of the membership company surviving the absorption-type merger, the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount; or
  - (b) if relevant monies, etc. are property other than bonds of the membership company surviving the absorption-type merger, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
- (iv) in the case prescribed in the preceding item, matters concerning allotment of monies, etc. referred to in that item to shareholders of the stock company disappearing in the absorption-type merger (excluding the stock company disappearing in the absorption-type merger and the membership company surviving the absorption-type merger) or members of the membership company disappearing in the absorption-type merger (excluding the membership company surviving the absorption-type merger);
- (v) if the stock company disappearing in the absorption-type merger has issued share options, the description of the amount of monies, etc. that the membership company surviving the absorption-type merger will deliver in lieu of relevant share options to holders of relevant share options at the time of the absorption-type merger, or the method for calculating the amount;
- (vi) in the case prescribed in the preceding item, matters concerning the allotment of monies, etc. referred to in that item to holders of share options of the stock company disappearing in the absorption-type merger; and
- (vii) the effective day.
- (2) In the case prescribed in the preceding paragraph, if the stock company disappearing in the absorption-type merger is a company with class shares, the membership company surviving the absorption-type merger and the stock company disappearing in the absorption-type merger may provide for the following matters in prescribing the matters set forth in item (iv) of that

paragraph in accordance with the features of the classes of shares issued by the stock company disappearing in the absorption-type merger:

- (i) if there is any arrangement that no monies, etc. are allotted to shareholders of a certain class of shares, a statement to that effect and relevant class of shares; and
  - (ii) beyond the matters set forth in the preceding item, if there is any arrangement that each class of shares is to be treated differently with respect to allotment of monies, etc., a statement to that effect and the details of relevant different treatment.
- (3) In the case prescribed in paragraph (1), the provisions on the matters set forth in item (iv) of that paragraph must be provisions in which the monies, etc. are delivered in proportion to the number of the shares (or, if there are provisions on the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by shareholders of the stock company disappearing in the absorption-type merger (excluding the stock company disappearing in the absorption-type merger and the membership company surviving the absorption-type merger and shareholders of the class of shares referred to in item (i) of the preceding paragraph).

(Effectuation of an Absorption-Type Merger in Which a Membership Company Survives)

- Article 752 (1) A membership company surviving an absorption-type merger succeeds to the rights and obligations of the company disappearing in the absorption-type merger on the effective day.
- (2) The dissolution, by absorption-type merger, of the company disappearing in an absorption-type merger may not be duly asserted against a third party until the registration of the absorption-type merger has been completed.
  - (3) In the case prescribed in paragraph (1), item (ii) of the preceding Article, the shareholders of the stock company disappearing in the absorption-type merger or members of the membership company disappearing in the absorption-type merger, in accordance with the provisions on the matters set forth in that item, become members of the membership company surviving the absorption-type merger on the effective day. In these cases, the membership company surviving the absorption-type merger is deemed to have effected changes to the articles of incorporation relating to the members referred to in that item on the effective day.
  - (4) If there are provisions on the matter set forth in paragraph (1), item (iii), (a) of the preceding Article, the shareholders of the stock company disappearing in the absorption-type merger or members of the membership company disappearing in the absorption-type merger, in accordance with the provisions on the matter set forth in item (iv) of that paragraph, become holders of bonds

referred to in item (iii), (a) of that paragraph on the effective day.

- (5) The share options of a stock company disappearing in an absorption-type merger are extinguished on the effective day.
- (6) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 789 (excluding paragraph (1), item (iii) and paragraph (2), item (iii), and including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2)) or Article 799 (excluding paragraph (2), item (iii)) as applied mutatis mutandis pursuant to Article 802, paragraph (2) are not completed yet or where the absorption-type merger is cancelled.

### **Section 3 Consolidation-Type Mergers**

#### **Subsection 1 Consolidation-Type Mergers by Which a Stock Company Is Incorporated**

(Consolidation-Type Merger Agreements by Which a Stock Company Is Incorporated)

Article 753 (1) If two or more companies effect a consolidation-type merger, if the company that is incorporated in the consolidation-type merger (hereinafter referred to as the "company incorporated in the consolidation-type merger" in this Part) is a stock company, it must prescribe the following matters in the consolidation-type merger agreement:

- (i) the trade names and addresses of the companies disappearing in the consolidation-type merger (hereinafter each such a company is referred to as a "company disappearing in the consolidation-type merger" in this Part);
- (ii) the purpose, trade name, location of the head office, and total number of authorized shares of the stock company that constitutes the company incorporated in the consolidation-type merger (hereinafter referred to as the "stock company incorporated in the consolidation-type merger" in this Part);
- (iii) beyond what is set forth in the preceding item, the matters provided for in the articles of incorporation of the stock company incorporated in the consolidation-type merger;
- (iv) the names of the directors at incorporation of the stock company incorporated in the consolidation-type merger;
- (v) the matters provided for in (a) through (c) below for the categories of cases set forth respectively therein:
  - (a) if the stock company incorporated in the consolidation-type merger is a company with accounting advisor: the name of the accounting advisor at incorporation of the stock company incorporated in the consolidation-type merger;
  - (b) if the stock company incorporated in the consolidation-type merger is a company with company auditor (including any stock company the articles

- of incorporation of which provide that the scope of the audit by its company auditor is limited to an audit related to accounting): the name of the company auditor at incorporation of the stock company incorporated in the consolidation-type merger; or
- (c) if the stock company incorporated in the consolidation-type merger is a company with financial auditor: the name of the financial auditor at incorporation of the stock company incorporated in the consolidation-type merger;
  - (vi) the number of shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) of the stock company incorporated in the consolidation-type merger to be delivered by the stock company incorporated in the consolidation-type merger to shareholders of any company disappearing in the consolidation-type merger that is a stock company (hereinafter referred to as a "stock company disappearing in the consolidation-type merger" in this Part) or to members of any company disappearing in the consolidation-type merger that is a membership company (hereinafter referred to as a "membership company disappearing in the consolidation-type merger" in this Part), when effecting the consolidation-type merger, or the method for calculating the numbers, and matters concerning the amount of the stated capital and capital reserves of the stock company incorporated in the consolidation-type merger;
  - (vii) matters concerning allotment of the shares set forth in the preceding item to shareholders of any stock company disappearing in the consolidation-type merger (excluding the stock company disappearing in the consolidation-type merger) or to members of any membership company disappearing in the consolidation-type merger;
  - (viii) if the stock company incorporated in the consolidation-type merger is to deliver to shareholders of a stock company disappearing in the consolidation-type merger or to members of a membership company disappearing in the consolidation-type merger bonds, etc. of the stock company incorporated in the consolidation-type merger in lieu of the shares or equity interests thereof when effecting the consolidation-type merger, the following matters concerning relevant bonds, etc.:
    - (a) if relevant bonds, etc. are bonds of the stock company incorporated in the consolidation-type merger (excluding those concerning bonds with share options), the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
    - (b) if relevant bonds, etc. are share options of the stock company incorporated in the consolidation-type merger (excluding those attached to bonds with share options), the description of the features and number of relevant

- share options, or the method for calculating that number; or
- (c) if relevant bonds, etc. are bonds with share options of the stock company incorporated in the consolidation-type merger, the matters prescribed in (a) concerning relevant bonds with share options and the matters prescribed in (b) concerning the share options attached to relevant bonds with share options;
  - (ix) in the case prescribed in the preceding item, matters concerning the allotment of bonds, etc. referred to in that item to shareholders of a stock company disappearing in the consolidation-type merger (excluding the stock company disappearing in the consolidation-type merger) or members of a membership company disappearing in the consolidation-type merger;
  - (x) if a stock company disappearing in the consolidation-type merger has issued share options, the following matters concerning the share options of the stock company incorporated in the consolidation-type merger or monies that the stock company incorporated in the consolidation-type merger will deliver in lieu of relevant share options to holders of relevant share options at the time of the consolidation-type merger:
    - (a) when delivering share options in the stock company incorporated in the consolidation-type merger to holders of share options in a stock company disappearing in the consolidation-type merger, the description of the features and number of relevant share options, or the method for calculating that number;
    - (b) in the case prescribed in (a), if the share options in the stock company disappearing in the consolidation-type merger set forth in (a) are share options attached to bonds with share options, a statement to the effect that the stock company incorporated in the consolidation-type merger will succeed to the obligations relating to the bonds with share options and the description of the classes of the bonds subject to the succession and the total amount for each class of bonds, or the method for calculating that total amount; and
    - (c) when delivering monies to holders of share options in a stock company disappearing in the consolidation-type merger, the description of the amount of relevant monies or the method for calculating relevant amount; and
  - (xi) in the case prescribed in the preceding item, matters concerning the allotment of the share options of the stock company incorporated in the consolidation-type merger or monies set forth in that item to holders of share options in the stock company disappearing in the consolidation-type merger.
- (2) If a stock company incorporated in a consolidation-type merger is a company with audit and supervisory committee, the matters set forth in item (iv) of the preceding paragraph must be prescribed by distinguishing directors at

incorporation who are audit and supervisory committee members at incorporation and other directors at incorporation.

- (3) In a case as prescribed in paragraph (1), if all or some of the stock companies disappearing in the consolidation-type merger are companies with class shares, the companies disappearing in the consolidation-type merger may provide for the following matters in prescribing the matters set forth in item (vii) of that paragraph (limited to matters related to shareholders of the stock companies disappearing in the consolidation-type merger; the same applies in the following paragraph) in accordance with the features of the classes of shares issued by the stock companies disappearing in the consolidation-type merger:
- (i) if there is any arrangement that no shares of the stock company incorporated in the consolidation-type merger are allotted to shareholders of a certain class of shares, a statement to that effect and relevant class of shares; and
  - (ii) beyond the matters set forth in the preceding item, if there is any arrangement that each class of shares is to be treated differently with respect to allotment of shares of the stock company incorporated in the consolidation-type merger, a statement to that effect and the details of relevant different treatment.
- (4) In the case prescribed in paragraph (1), the provisions on the matters set forth in item (vii) of that paragraph must be provisions in which the shares of the stock company incorporated in the consolidation-type merger are delivered in proportion to the number of the shares (or, if there are provisions on the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by shareholders in any stock company disappearing in the consolidation-type merger (excluding the companies disappearing in the consolidation-type merger and shareholders of the class of shares referred to in item (i) of the preceding paragraph).
- (5) The provisions of the preceding two paragraphs apply mutatis mutandis to paragraph (1), item (ix). In these cases, the phrase "shares of the stock company incorporated in the consolidation-type merger" in the preceding two paragraphs is deemed to be replaced with "bonds, etc. of the stock company incorporated in the consolidation-type merger".

(Effectuation of Consolidation-Type Merger by Which a Stock Company Is Incorporated)

- Article 754 (1) The stock company incorporated in a consolidation-type merger succeeds to the rights and obligations of the companies disappearing in the consolidation-type merger on the day of its formation.
- (2) In the case prescribed in paragraph (1) of the preceding Article, the shareholders of any stock company disappearing in the consolidation-type

merger or the members of any membership company disappearing in the consolidation-type merger become shareholders of the shares set forth in item (vi) of that paragraph, in accordance with the provisions on the matters set forth in item (vii) of that paragraph, on the day of formation of the stock company incorporated in the consolidation-type merger.

- (3) In the cases set forth in the following items, the shareholders of any stock company disappearing in a consolidation-type merger and the members of any membership company disappearing in that consolidation-type merger become the persons specified in each of those items, in accordance with the provisions on the matters set forth in paragraph (1), item (ix) of the preceding Article, on the day of formation of the stock company incorporated in the consolidation-type merger:
- (i) if there are provisions on the matters set forth in paragraph (1), item (viii), (a) of the preceding Article: the holders of bonds referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth in paragraph (1), item (viii), (b) of the preceding Article: the holders of share options referred to in (b) of that item; or
  - (iii) if there are provisions on the matters set forth in paragraph (1), item (viii), (c) of the preceding Article: the holders of bonds constituting bonds with share options referred to in (c) of that item, and holders of the share options attached to those bonds.
- (4) The share options of a stock company disappearing in a consolidation-type merger are extinguished on the day of formation of the stock company incorporated in the consolidation-type merger.
- (5) In the case prescribed in paragraph (1), item (x), (a) of the preceding Article, the holders of share options in the stock company disappearing in the consolidation-type merger, in accordance with the provisions on the matters set forth in item (xi) of that paragraph, become holders of share options of the stock company incorporated in the consolidation-type merger set forth in item (x), (a) of that paragraph on the day of formation of the stock company incorporated in the consolidation-type merger.

### **Subsection 2 Consolidation-Type Merger by Which a Membership Company Is Incorporated**

(Consolidation-Type Merger Agreement by Which a Membership Company Is Incorporated)

Article 755 (1) If two or more companies effect a consolidation-type merger, if the company incorporated in the consolidation-type merger is a membership company, and must prescribe the following matters in the consolidation-type



merger agreement:

- (i) the trade names and addresses of the companies disappearing in the consolidation-type merger;
- (ii) whether the company incorporated in the consolidation-type merger that is a membership company (hereinafter referred to as the "membership company incorporated in the consolidation-type merger" in this Part) is a general partnership company, a limited partnership company, or a limited liability company;
- (iii) the purpose, trade name, location of the head office of the membership company incorporated in the consolidation-type merger;
- (iv) the following matters concerning the members of the membership company incorporated in the consolidation-type merger:
  - (a) the names and addresses of the members;
  - (b) whether the members are members with unlimited liability or members with limited liability; and
  - (c) the value of contributions by the members;
- (v) beyond what is set forth in the preceding two items, the matters provided for in the articles of incorporation of the membership company incorporated in the consolidation-type merger;
- (vi) if the membership company incorporated in the consolidation-type merger is to deliver to shareholders of any stock company disappearing in the consolidation-type merger or to members of any membership company disappearing in the consolidation-type merger bonds of the membership company incorporated in the consolidation-type merger in lieu of the shares or equity interests thereof when effecting the consolidation-type merger, the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
- (vii) in the case prescribed in the preceding item, matters concerning allotment of bonds set forth in that item to shareholders of any stock company disappearing in the consolidation-type merger (excluding the stock company disappearing in the consolidation-type merger) or to members of any membership company disappearing in the consolidation-type merger;
- (viii) if a stock company disappearing in the consolidation-type merger has issued share options, the description of the amount of monies that the membership company incorporated in the consolidation-type merger delivers in lieu of relevant share options to holders of relevant share options at the time of the consolidation-type merger, or the method for calculating that amount;
- (ix) in the case prescribed in the preceding item, matters concerning allotment of monies set forth in that item to holders of share options in the stock company disappearing in the consolidation-type merger.

- (2) If the membership company incorporated in the consolidation-type merger is a general partnership company, it must provide that all of the members are members with unlimited liability in prescribing the matter set forth in item (iv), (b) of the preceding paragraph.
- (3) If the membership company incorporated in the consolidation-type merger is a limited partnership company, it must provide that some of the members are members with unlimited liability and other members are members with limited liability in prescribing the matter set forth in paragraph (1), item (iv), (b).
- (4) If the membership company incorporated in a consolidation-type merger is a limited liability company, it must provide that all of the members are members with limited liability in prescribing the matter set forth in paragraph (1), item (iv), (b).

(Effectuation of Consolidation-Type Merger by Which a Membership Company  
Is Incorporated)

- Article 756 (1) The membership company incorporated in a consolidation-type merger succeeds to the rights and obligations of the companies disappearing in the consolidation-type merger on the day of its formation.
- (2) In the case prescribed in paragraph (1) of the preceding Article, the shareholders of the stock companies disappearing in the consolidation-type merger and the members of the membership companies disappearing in the consolidation-type merger become members of the membership company incorporated in the consolidation-type merger, in accordance with the provisions on the matters set forth in item (iv) of that paragraph, on the day of formation of the membership company incorporated in the consolidation-type merger.
  - (3) If there are provisions on the matter set forth in paragraph (1), item (vi) of the preceding Article, the shareholders of the stock companies disappearing in the consolidation-type merger and the members of the membership companies disappearing in the consolidation-type merger, in accordance with the provisions on the matter set forth in item (vii) of that paragraph, become holders of bonds set forth in item (vi) of that paragraph on the day of formation of the membership company incorporated in the consolidation-type merger.
  - (4) Share options in a stock company disappearing in a consolidation-type merger are extinguished on the day of formation of the membership company incorporated in the consolidation-type merger.

**Chapter III Company Split**

**Section 1 Absorption-Type Company Split**

**Subsection 1 Common Provisions**

(Conclusion of an Absorption-Type Company Split Agreement)

Article 757 A company (limited to a stock company or a limited liability company) may effect an absorption-type company split. In these cases, the relevant company must conclude an absorption-type company split agreement with the company which succeeds to all or part of the rights and obligations held by relevant company in connection with its business by transfer from relevant company (hereinafter referred to as the "company succeeding in the absorption-type split" in this Part).

### **Subsection 2 Absorption-Type Company Split Which Causes a Stock Company to Succeed to Rights and Obligations**

(Absorption-Type Company Split Agreement Which Causes a Stock Company to Succeed to Rights and Obligations)

Article 758 If a company effects an absorption-type company split, and the company succeeding in the absorption-type split is a stock company, it must prescribe the following matters in the absorption-type company split agreement:

- (i) the trade name and address of the company effecting the absorption-type company split (hereinafter referred to as the "company splitting in the absorption-type split" in this Part) and the stock company that constitutes the company succeeding in the absorption-type split (hereinafter referred to as the "stock company succeeding in the absorption-type split" in this Part);
- (ii) matters concerning the assets, obligations, employment agreements, and any other rights and obligations that the stock company succeeding in the absorption-type split succeeds to by transfer from the company splitting in the absorption-type split through the absorption-type split (excluding obligations related to shares of the company splitting in the absorption-type split that is a stock company (hereinafter referred to as the "stock company splitting in the absorption-type split" in this Part) and of the stock company succeeding in the absorption-type split and to share options of the stock company splitting in the absorption-type split);
- (iii) when the stock company succeeding in the absorption-type split succeeds to shares of the stock company splitting in the absorption-type split or of the stock company succeeding in the absorption-type split through the absorption-type company split, matters concerning relevant shares;
- (iv) if the stock company succeeding in the absorption-type split is to deliver to the company splitting in the absorption-type split monies, etc. in lieu of all or part of the rights and obligations in connection with the business thereof when effecting the absorption-type company split, the following matters concerning relevant monies, etc.:

- (a) if relevant monies, etc. are shares of the stock company succeeding in the absorption-type split, the description of the number of relevant shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) or the method for calculating the numbers, and matters concerning the amount of the stated capital and capital reserves of the stock company succeeding in the absorption-type split;
- (b) if relevant monies, etc. are bonds of the stock company succeeding in the absorption-type split (excluding those concerning bonds with share options), the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
- (c) if relevant monies, etc. are stock options of the stock company succeeding in the absorption-type split (excluding those attached to bonds with share options), the description of the features and number of relevant share options, or the method for calculating the number;
- (d) if relevant monies, etc. are bonds with share options of the stock company succeeding in the absorption-type split, the matters prescribed in (b) concerning relevant bonds with share options and the matters prescribed in (c) concerning the share options attached to relevant bonds with share options; and
- (e) if relevant monies, etc. are property other than shares, etc. of the stock company succeeding in the absorption-type split, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
- (v) if the stock company succeeding in the absorption-type split is to deliver to holders of share options of the stock company splitting in the absorption-type split share options of the stock company succeeding in the absorption-type split in lieu of relevant share options at the time of the absorption-type company split, the following matters concerning relevant share options:
  - (a) the description of the features of the share options (hereinafter referred to as "share options under absorption-type company split agreement" in this Part) held by holders of share options of the stock company splitting in the absorption-type split who receive delivery of share options of the stock company succeeding in the absorption-type split;
  - (b) the description of the features and number of share options of the stock company succeeding in the absorption-type split to be delivered to holders of share options under absorption-type company split agreement, or the method for calculating the number; and
  - (c) if share options under absorption-type company split agreement are share options attached to bonds with share options, a statement to the effect that the stock company succeeding in the absorption-type split will succeed to the obligations relating to bonds regarding the bonds with share options

- and the description of the classes of the bonds subject to relevant succession and the total amount for each class of bonds, or the method for calculating that total amount;
- (vi) in the case prescribed in the preceding item, matters concerning allotment of the share options of the stock company succeeding in the absorption-type split set forth in that item to holders of share options under absorption-type company split agreement;
  - (vii) the day on which the absorption-type company split becomes effective (hereinafter referred to as the "effective day" in this Section);
  - (viii) if the stock company splitting in the absorption-type split conducts any one of the following acts on the effective day, a statement to that effect:
    - (a) acquisition of shares under the provisions of Article 171, paragraph (1) (limited to the case where the consideration for acquisition prescribed in item (i) of that paragraph is only the shares of the stock company succeeding in the absorption-type split (excluding shares that had been held by the stock company splitting in the absorption-type split prior to effecting the absorption-type company split, and including shares prescribed by Ministry of Justice Order as those equivalent to shares of the stock company succeeding in the absorption-type split; the same applies in (b))); or
    - (b) payment of dividends of surplus (limited to the case where the dividend property is only the shares of the stock company succeeding in the absorption-type split).

(Effectuation of an Absorption-Type Company Split Which Causes a Stock Company to Succeed to Rights and Obligations)

Article 759 (1) A stock company succeeding in an absorption-type split succeeds to the rights and obligations of the company splitting in the absorption-type split, in accordance with the provisions of the absorption-type company split agreement, on the effective day.

- (2) Notwithstanding the provisions of the preceding paragraph, if a creditor of the company splitting in the absorption-type split who is able to state an objection pursuant to the provisions of Article 789, paragraph (1), item (ii) (including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2); the same applies in the following paragraph) and who has not received the separate notice set forth in Article 789, paragraph (2) (excluding item (iii) and including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2); the same applies in the following paragraph) (in the cases prescribed in Article 789, paragraph (3) (including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2))), limited to one who is a creditor of the obligation caused by

a tort; the same applies in the following paragraph), may request the company splitting in the absorption-type split to perform the obligations to the extent of the value of property held by the company splitting in the absorption-type split on the effective day, even if relevant creditor is not allowed, under the absorption-type company split agreement, to request the company splitting in the absorption-type split to perform the obligations after the absorption-type company split.

- (3) Notwithstanding the provisions of paragraph (1), if a creditor of the company splitting in the absorption-type split who is able to state an objection pursuant to the provisions of Article 789, paragraph (1), item (ii) of and who has not received the separate notice set forth in paragraph (2) of that Article, may request the stock company succeeding in the absorption-type split to perform the obligations to the extent of the value of property to which it has succeeded, even if relevant creditor is not allowed, under the absorption-type company split agreement, to request the stock company succeeding in the absorption-type split to perform the obligations after the absorption-type company split.
- (4) Notwithstanding the provisions of paragraph (1), if a company splitting in the absorption-type split implemented the absorption-type company split with the knowledge that it would harm creditors (hereinafter in this Article referred to as "remaining creditors") of the obligation that would not be succeeded to a stock company succeeding in the absorption-type split, the remaining creditors may request the performance of the obligation from the stock company succeeding in the absorption-type split to the extent of the value of property to which it has succeeded; provided, however, that this does not apply if the stock company succeeding in the absorption-type split did not know that it would harm remaining creditors when the absorption-type split became effective.
- (5) The provisions of the preceding paragraph do not apply to cases where there are provisions on the matters set forth in item (viii) of the preceding Article.
- (6) If a stock company succeeding in the absorption-type split is liable to perform the obligation set forth in paragraph (4) pursuant to the provisions of the same paragraph, the liabilities are extinguished in relation to a remaining creditor who does not demand the performance or does not give an advance notice of the demand within two years from when the remaining creditor comes to know that the company splitting in the absorption-type split implemented the absorption-type company split with the knowledge that it would harm remaining creditors, when that period elapses. The same applies when ten years elapses from the effective day.
- (7) When an order of commencement of bankruptcy proceedings, order of commencement of rehabilitation proceedings, or order of commencement of reorganization proceedings is made with regard to a company splitting in the absorption-type split, remaining creditors may not exercise the right to make a

request pursuant to the provisions of paragraph (4) from a stock company succeeding in the absorption-type split.

- (8) In the cases set forth in the following items, the company splitting in an absorption-type split becomes the persons specified in each of those items, in accordance with the provisions of the absorption-type company split agreement, on the effective day:
- (i) if there are provisions on the matters set forth in item (iv), (a) of the preceding Article: the holders of shares referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth in item (iv), (b) of the preceding Article: the holders of bonds referred to in (b) of that item;
  - (iii) if there are provisions on the matters set forth in item (iv), (c) of the preceding Article: the holders of share options referred to in (c) of that item;
- or
- (iv) if there are provisions on the matters set forth in item (iv), (d) of the preceding Article: the holders of bonds constituting bonds with share options referred to in (d) of that item, and holders of the share options attached to those bonds.
- (9) In the case prescribed in item (v) of the preceding Article, the share options under absorption-type company split agreement are extinguished and holders of the share options under absorption-type company split agreement become holders of the share options of the stock company succeeding in the absorption-type split set forth in item (v), (b) of that Article, in accordance with the provisions on the matters set forth in item (vi) of that Article, on the effective day.
- (10) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 789 (excluding paragraph (1), item (iii) and paragraph (2), item (iii), and including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2)) or Article 799 are not completed yet or where the absorption-type company split is cancelled.

### **Subsection 3 Absorption-Type Company Split Which Causes a Membership Company to Succeed to Rights and Obligations**

(Absorption-Type Company Split Agreement Which Causes a Membership Company to Succeed to Rights and Obligations)

Article 760 If a company effects an absorption-type company split, if the company succeeding in the absorption-type split is a membership company, it must prescribe the following matters in the absorption-type company split agreement:

- (i) the trade name and address of the company splitting in the absorption-type split and the membership company that constitutes the company succeeding

- in the absorption-type split (hereinafter referred to as the "membership company succeeding in the absorption-type split" in this Section);
- (ii) matters concerning the assets, obligations, employment agreements, and any other rights and obligations that the membership company succeeding in the absorption-type split succeeds to by transfer from the company splitting in the absorption-type split through the absorption-type company split (excluding obligations related to shares of the stock company splitting in the absorption-type split);
  - (iii) when the membership company succeeding in the absorption-type split succeeds to shares of the stock company splitting in the absorption-type split through the absorption-type company split, matters concerning relevant shares;
  - (iv) if the company splitting in the absorption-type split is to become a member of the membership company succeeding in the absorption-type split when effecting the absorption-type company split, the matters provided for in (a) through (c) below for the categories of membership company succeeding in the absorption-type split set forth respectively therein:
    - (a) general partnership company: the name and address of the member and the value of the contribution by the member;
    - (b) limited partnership company: the name and address of the member, whether the member is a member with unlimited liability or a member with limited liability, and the value of the contribution by the member; or
    - (c) limited liability company: the name and address of the member and the value of the contribution by the member;
  - (v) if the membership company succeeding in the absorption-type split is to deliver to the company splitting in the absorption-type split monies, etc. (excluding the equity interests of the membership company succeeding in the absorption-type split) in lieu of all or part of the rights and obligations in connection with the business thereof when effecting the absorption-type company split, the following matters concerning relevant monies, etc.:
    - (a) if relevant monies, etc. are bonds of the membership company succeeding in the absorption-type split, the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount; or
    - (b) if relevant monies, etc. are property other than bonds of the membership company succeeding in the absorption-type split, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
  - (vi) the effective day;
  - (vii) if the stock company splitting in the absorption-type split conducts any one of the following acts on the effective day, a statement to that effect:



- (a) acquisition of shares under the provisions of Article 171, paragraph (1) (limited to the case where the consideration for acquisition prescribed in item (i) of that paragraph is only equity interests of the membership company succeeding in the absorption-type split (excluding equity interests that had been held by the stock company splitting in the absorption-type split prior to effecting the absorption-type company split, and including shares prescribed by Ministry of Justice Order as those equivalent to equity interests of the membership company succeeding in the absorption-type split; the same applies in (b))); or
- (b) payment of dividends of surplus (limited to the case where the dividend property is only equity interests of the membership company succeeding in the absorption-type split).

(Effectuation of an Absorption-Type Company Split Which Causes a Membership Company to Succeed to Rights and Obligations)

- Article 761 (1) A membership company succeeding in an absorption-type split succeeds to the rights and obligations of the company splitting in the absorption-type split, in accordance with the provisions of the absorption-type company split agreement, on the effective day.
- (2) Notwithstanding the provisions of the preceding paragraph, if a creditor of the company splitting in an absorption-type split who is able to state an objection pursuant to the provisions of Article 789, paragraph (1), item (ii) (including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2); the same applies in the following paragraph) and who has not received the separate notice set forth in Article 789, paragraph (2) (excluding item (iii) and including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2); the same applies in the following paragraph) (in the cases prescribed in Article 789, paragraph (3) (including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2)), limited to one who is a creditor of the obligation caused by a tort; the same applies in the following paragraph), may request the company splitting in the absorption-type split to perform the obligations to the extent of the value of property held by the company splitting in the absorption-type split on the effective day, even if that creditor is not allowed, under the Absorption-type company split agreement, to request the company splitting in the absorption-type split to perform the obligations after the Absorption-type company split.
- (3) Notwithstanding the provisions of paragraph (1), if a creditor of the company splitting in the absorption-type split who is able to state an objection pursuant to the provisions of Article 789, paragraph (1), item (ii) and who has not received the separate notice set forth in paragraph (2) of that Article, may

request the membership company succeeding in the absorption-type split to perform the obligations to the extent of the value of property to which it has succeeded, even if that creditor is not allowed, under the absorption-type company split agreement, to request the membership company succeeding in the absorption-type split to perform the obligations after the absorption-type company split.

- (4) Notwithstanding the provisions of paragraph (1), if a company splitting in the absorption-type split implemented an absorption-type company split with the knowledge that it would harm creditors (hereinafter referred to as "remaining creditors") of the obligation that would not be succeeded to a membership company succeeding in the absorption-type split, the remaining creditors may request the performance of the obligation from the membership company succeeding in the absorption-type split to the extent of the value of property to which it has succeeded; provided, however, that this does not apply if the membership company succeeding in the absorption-type split did not know that it would harm remaining creditors when the absorption-type company split became effective.
- (5) The provisions of the preceding paragraph do not apply to cases where there are provisions on the matters set forth in item (vii) of the preceding Article.
- (6) If a membership company succeeding in the absorption-type split is liable to perform the obligation set forth in paragraph (4) pursuant to the provisions of the same paragraph, the liabilities are extinguished in relation to a remaining creditor who does not demand the performance or does not give advance notice of the demand within two years from when the remaining creditor comes to know that the company splitting in the absorption-type split implemented the absorption-type company split with the knowledge that it would harm remaining creditors, when that period elapses. The same applies to when ten years elapses from the effective day.
- (7) When an order of commencement of bankruptcy proceedings, order of commencement of rehabilitation proceedings, or order of commencement of reorganization proceedings is made with regard to a company splitting in the absorption-type split, remaining creditors may not exercise the right to make a request pursuant to the provisions of paragraph (4) from a membership company succeeding in the absorption-type split.
- (8) In the case prescribed in item (iv) of the preceding Article, the company splitting in the absorption-type split, in accordance with the provisions on the matters set forth in that item, becomes a member of the membership company succeeding in the absorption-type split on the effective day. In these cases, the membership company succeeding in the absorption-type split is deemed to have effected changes to the articles of incorporation relating to the member set forth in that item on the effective day.

- (9) If there are provisions on the matter set forth in item (v), (a) of the preceding Article, the company splitting in the absorption-type split, in accordance with the provisions of the absorption-type company split agreement, becomes holders of bonds referred to in (a) of that item on the effective day.
- (10) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 789 (excluding paragraph (1), item (iii) and paragraph (2), item (iii), and including the case where it is applied mutatis mutandis pursuant to Article 793, paragraph (2)) or Article 799 (excluding paragraph (2), item (iii)) as applied mutatis mutandis pursuant to Article 802, paragraph (2) are not completed yet or where the absorption-type merger is cancelled.

## **Section 2 Incorporation-Type Company Split**

### **Subsection 1 Common Provisions**

(Preparation of an Incorporation-Type Company Split Plan)

- Article 762 (1) One or multiple stock companies or limited liability companies may effect an incorporation-type company split. In these cases, those companies must prepare an incorporation-type company split plan.
- (2) If two or more stock companies or limited liability companies jointly effect an incorporation-type company split, those two or more stock companies or limited liability companies must prepare an incorporation-type company split plan jointly.

### **Subsection 2 Incorporation-Type Company Split by Which a Stock Company Is Incorporated**

(Incorporation-Type Company Split Plan by Which a Stock Company Is Incorporated)

Article 763 (1) If one or multiple stock companies or limited liability companies effect an incorporation-type company split, if the company that is incorporated in the incorporation-type company split (hereinafter referred to as the "company incorporated in the incorporation-type split" in this Part) is a stock company, those companies must prescribe the following matters in the incorporation-type company split plan:

- (i) the purpose, trade name, location of the head office, and the total number of authorized shares of the stock company that constitutes the company incorporated in the incorporation-type split (hereinafter referred to as the "stock company incorporated in the incorporation-type split" in this Part);
- (ii) beyond what is set forth in the preceding item, the matters provided for in the articles of incorporation of the stock company incorporated in the incorporation-type split;

- (iii) the names of the directors at incorporation of the stock company incorporated in the incorporation-type split;
- (iv) the matters provided for in (a) through (c) below for the categories of cases set forth respectively therein:
  - (a) if the stock company incorporated in the incorporation-type split is a company with accounting advisor: the name of the accounting advisor at incorporation of the stock company incorporated in the incorporation-type split;
  - (b) if the stock company incorporated in the incorporation-type split is a company with company auditor (including any stock company the articles of incorporation of which provide that the scope of the audit by its company auditor is limited to an audit related to accounting): the name of the company auditor at incorporation of the stock company incorporated in the incorporation-type split; and
  - (c) if the stock company incorporated in the incorporation-type split is a company with financial auditor: the name of the financial auditor at incorporation of the stock company incorporated in the incorporation-type split;
- (v) matters concerning the assets, obligations, employment agreements, and any other rights and obligations that the stock company incorporated in the incorporation-type split succeeds to by transfer from the company effecting the incorporation-type company split (hereinafter referred to as the "company splitting in the incorporation-type split" in this Part) through the incorporation-type company split (excluding obligations regarding shares and share options of the company splitting in the incorporation-type split that is a stock company (hereinafter referred to as the "stock company splitting in the Incorporation-type split" in this Part));
- (vi) the number of shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) of the stock company incorporated in the incorporation-type split to be delivered by the stock company incorporated in the incorporation-type split to the company splitting in the incorporation-type split in lieu of all or part of the rights and obligations in connection with the business thereof when effecting the incorporation-type company split, or the method for calculating the numbers, and matters concerning the amount of the stated capital and capital reserves of the stock company incorporated in the incorporation-type split;
- (vii) if two or more stock companies or limited liability companies are to jointly effect the incorporation-type company split, matters concerning allotment of the shares set forth in the preceding item to the company splitting in the incorporation-type split;
- (viii) if the stock company incorporated in the incorporation-type split is to

deliver to shareholders of a company splitting in the incorporation-type split bonds, etc. of the stock company incorporated in the incorporation-type split in lieu of all or part of the rights and obligations in connection with the business thereof when effecting the incorporation-type company split, the following matters concerning the relevant bonds, etc.:

- (a) if relevant bonds, etc. are bonds of the stock company incorporated in the incorporation-type split (excluding those concerning bonds with share options), the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
  - (b) if relevant bonds, etc. are share options of the stock company incorporated in the incorporation-type split (excluding those attached to bonds with share options), the description of the features and number of relevant share options, or the method for calculating the number; or
  - (c) if relevant bonds, etc. are bonds with share options of the stock company incorporated in the incorporation-type split, the matters prescribed in (a) concerning relevant bonds with share options and the matters prescribed in (b) concerning the share options attached to relevant bonds with share options;
- (ix) in the case prescribed in the preceding item, if two or more stock companies or limited liability companies are to jointly effect the incorporation-type company split, matters concerning allotment of bonds, etc. set forth in that item to the company splitting in the incorporation-type split;
- (x) if the stock company incorporated in the incorporation-type split is to deliver to holders of share options of the stock company splitting in the incorporation-type split share options of the stock company incorporated in the incorporation-type split in lieu of relevant share options at the time of the incorporation-type company split, the following matters concerning relevant share options:
- (a) the description of the features of the share options (hereinafter referred to as the "share options in the incorporation-type split plan" in this Part) held by holders of share options of the stock company splitting in the incorporation-type split who will receive delivery of share options of the stock company incorporated in the incorporation-type split;
  - (b) the description of the features and number of the share options of the stock company incorporated in the incorporation-type split to be delivered to holders of share options in the incorporation-type split plan, or the method for calculating the number; and
  - (c) if the share options in the incorporation-type split plan are share options attached to bonds with share options, a statement to the effect that the stock company incorporated in the incorporation-type split will succeed to

the obligations relating to bonds regarding to the bonds with share options and the description of the classes of the bonds subject to that succession and the total amount for each class of bonds, or the method for calculating that total amount;

- (xi) in the case prescribed in the preceding item, matters concerning allotment of the share options of the stock company incorporated in the incorporation-type split set forth in that item to holders of share options in the incorporation-type split plan; and
  - (xii) if the stock company splitting in the incorporation-type split conducts any one of the following acts on the day of formation of the stock company incorporated in the incorporation-type split, a statement to that effect:
    - (a) acquisition of shares under the provisions of Article 171, paragraph (1) (limited to the case where the consideration for acquisition prescribed in item (i) of that paragraph is only shares of the stock company incorporated in the incorporation-type split (including shares prescribed by Ministry of Justice Order as those equivalent thereto; the same applies in (b))); or
    - (b) payment of dividends of surplus (limited to the case where the dividend property is only shares of the stock company incorporated in the incorporation-type split).
- (2) If a stock company incorporated in the incorporation-type split is a company with audit and supervisory committee, the matters set forth in item (iii) of the preceding paragraph must be determined by distinguishing directors at incorporation who are audit and supervisory committee members at incorporation and other directors at incorporation.

(Effectuation of an Incorporation-Type Company Split by Which a Stock Company Is Incorporated)

- Article 764 (1) A stock company incorporated in the incorporation-type split succeeds to the rights and obligations of the company splitting in the incorporation-type split, in accordance with the provisions of the incorporation-type company split plan, on the day of its formation.
- (2) Notwithstanding the provisions of the preceding paragraph, if a creditor of the company splitting in the incorporation-type split who is able to state an objection pursuant to the provisions of Article 811, paragraph (1), item (ii) (including the case where it is applied mutatis mutandis pursuant to Article 813, paragraph (2); the same applies in the following paragraph) and who has not received the separate notice set forth in Article 810, paragraph (2) (excluding item (iii) and including the case where it is applied mutatis mutandis pursuant to Article 813, paragraph (2); the same applies in the following paragraph) (in the cases prescribed in Article 810, paragraph (3) (including the case where it is applied mutatis mutandis pursuant to Article

813, paragraph (2)), limited to one who is a creditor of the obligation caused by a tort; the same applies in the following paragraph), may request the company splitting in the incorporation-type split to perform the obligations to the extent of the value of property held by the company splitting in the incorporation-type split on the day of formation of the stock company incorporated in the incorporation-type split, even if that creditor is not allowed, under the incorporation-type company split plan, to request the company splitting in the incorporation-type split plan to perform the obligations after the incorporation-type company split.

- (3) Notwithstanding the provisions of paragraph (1), if a creditor of the company splitting in the incorporation-type split who is able to state an objection pursuant to the provisions of Article 810, paragraph (1), item (ii) and who has not received the separate notice set forth in paragraph (2) of that Article, may request the stock company incorporated in the incorporation-type split to perform the obligations to the extent of the value of property to which it has succeeded, even if that creditor is not allowed, under the incorporation-type company split plan, to request the stock company incorporated in the incorporation-type split to perform the obligations after the incorporation-type company split.
- (4) Notwithstanding the provisions of paragraph (1), if a company splitting in the incorporation-type split implemented the incorporation-type company split with the knowledge that it would harm creditors (hereinafter in this Article referred to as "remaining creditors") of the obligation that will not be succeeded to a stock company incorporated in the incorporation-type split, the remaining creditors may request performance of the obligation from the stock company incorporated in the incorporation-type split to the extent of the value of property to which it has succeeded.
- (5) The provisions of the preceding paragraph do not apply to cases where there are provisions on the matters set forth in paragraph (1), item (xii) of the preceding Article.
- (6) If a stock company incorporated in the incorporation-type split is liable to perform the obligation set forth in paragraph (4), the liabilities are extinguished in relation to remaining creditors who do not demand the performance or do not give advance notice of their demand within two years from when they come to know that the company splitting in the incorporation-type split implemented the incorporation-type split with the knowledge that it would harm remaining creditors, when that period elapses. The same applies when ten years elapses from the day of the formation of the stock company incorporated in the incorporation-type split.
- (7) When an order of commencement of bankruptcy proceedings, order of commencement of rehabilitation proceedings, or order of commencement of

reorganization proceedings is made with regard to a company splitting in the incorporation-type split, remaining creditors may not exercise the right to make a request pursuant to the provisions of paragraph (4) from a stock company incorporated in the incorporation-type split.

- (8) In the case prescribed in paragraph (1) of the preceding Article, the company splitting in the incorporation-type split becomes a shareholder of shares set forth in item (vi) of the same paragraph, in accordance with the provisions of the incorporation-type company split plan, on the day of formation of the stock company incorporated in the incorporation-type split.
- (9) In the cases set forth in the following items, the company splitting in the incorporation-type split becomes the person specified in each of those items, in accordance with the provisions on the incorporation-type company split plan, on the day of formation of the stock company incorporated in the incorporation-type split:
- (i) if there are provisions on the matters set forth paragraph (1), item (viii), (a) of the preceding Article: the holders of bonds referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth paragraph (1), item (viii), (b) of the preceding Article: the holders of share options referred to in (b) of that item; or
  - (iii) if there are provisions on the matters set forth in paragraph (1), item (viii), (c) of the preceding Article: the holders of bonds constituting bonds with share options referred to in (c) of that item, and holders of the share options attached to those bonds.
- (10) With regard to the application of the provisions of the preceding two paragraphs if two or more stock companies or limited liability companies are to jointly effect an incorporation-type company split, the phrase "provisions of the incorporation-type company split plan" in paragraph (8) is deemed to be replaced with "provisions on the matters set forth in item (vii) of the same paragraph", and the phrase "provisions of the incorporation-type company split plan" in the preceding paragraph is deemed to be replaced with "provisions on the matters set forth in paragraph (1), item (ix) of the preceding Article".
- (11) In the case prescribed in paragraph (1), item (x) of the preceding Article, the share options in the incorporation-type split plan are extinguished and holders of the share options in the incorporation-type split plan become holders of the share options of the stock company incorporated in the incorporation-type split set forth in item (x), (b) of that paragraph, in accordance with the provisions on the matters set forth in item (xi) of that paragraph, on the day of formation of the stock company incorporated in the incorporation-type split.

### **Subsection 3 Incorporation-Type Company Split by Which a Membership Company Is Incorporated**



(Incorporation-Type Company Split Plan by Which a Membership Company Is Incorporated)

- Article 765 (1) If one or multiple stock companies or limited liability companies effect an incorporation-type company split, if the company incorporated in the incorporation-type split is a membership company, those companies must prescribe the following matters in the incorporation-type company split plan:
- (i) whether the company incorporated in the incorporation-type split which is a membership company (hereinafter referred to as the "membership company incorporated in the incorporation-type split" in this Part) is a general partnership company, limited partnership company, or limited liability company;
  - (ii) the purpose, trade name, and location of the head office of the membership company incorporated in the incorporation-type split;
  - (iii) the following matters concerning the members of the membership company incorporated in the incorporation-type split:
    - (a) the names and addresses of the members;
    - (b) whether the members are members with unlimited liability or members with limited liability; and
    - (c) the value of contributions by the members;
  - (iv) beyond what is set forth in the preceding two items, the matters provided for in the articles of incorporation of the membership company incorporated in the incorporation-type split;
  - (v) matters concerning the assets, obligations, employment agreements, and any other rights and obligations that the membership company incorporated in the incorporation-type split succeeds to by transfer from the company splitting in the incorporation-type split through the incorporation-type company split (excluding obligations related to shares and share options of the stock company splitting in the incorporation-type split);
  - (vi) if the membership company incorporated in the incorporation-type split is to deliver to the company splitting in the incorporation-type split bonds of the membership company incorporated in the incorporation-type split in lieu of all or part of the rights and obligations in connection with the business thereof when effecting the incorporation-type company split, the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
  - (vii) in the case prescribed in the preceding item, if two or more stock companies and/or limited liability companies are to jointly effect the incorporation-type company split, matters concerning allotment of bonds set forth in that item to the company splitting in the incorporation-type split;
- and

- (viii) if the stock company splitting in the incorporation-type split conducts any one of the following acts on the day of formation of the membership company incorporated in the incorporation-type split, a statement to that effect:
  - (a) acquisition of shares under the provisions of Article 171, paragraph (1) (limited to the case where the consideration for acquisition prescribed in item (i) of that paragraph is only shares of the membership company incorporated in the incorporation-type split (including shares prescribed by Ministry of Justice Order as those equivalent thereto; the same applies in (b))); or
  - (b) payment of dividends of surplus (limited to the case where the dividend property is only shares of the membership company incorporated in the incorporation-type split).
- (2) If the membership company incorporated in the incorporation-type split is a general partnership company, it must provide that all of the members are members with unlimited liability in prescribing the matter set forth in item (iii), (b) of the preceding paragraph.
- (3) If the membership company incorporated in the incorporation-type split is a limited partnership company, it must provide that some of the members are members with unlimited liability and other members are members with limited liability in prescribing the matter set forth in paragraph (1), item (iii), (b).
- (4) If the membership company incorporated in the incorporation-type split is a limited liability company, it must provide that all of the members are members with limited liability in prescribing the matter set forth in paragraph (1), item (iii), (b).

(Effectuation of an Incorporation-Type Company Split by Which a Membership Company Is Incorporated)

- Article 766 (1) A membership company incorporated in the incorporation-type split succeeds to the rights and obligations of the company splitting in the incorporation-type split, in accordance with the provisions of the incorporation-type company split plan, on the day of its formation.
- (2) Notwithstanding the provisions of the preceding paragraph, if a creditor of the company splitting in the incorporation-type split who is able to state an objection pursuant to the provisions of Article 810, paragraph (1), item (ii) (including the case where it is applied mutatis mutandis pursuant to Article 813, paragraph (2); the same applies in the following paragraph) and who has not received the separate notice set forth in Article 810, paragraph (2) (excluding item (iii) and including the case where it is applied mutatis mutandis pursuant to Article 813, paragraph (2); the same applies in the following paragraph) (in the cases prescribed in Article 810, paragraph (3) (including the case where it is applied mutatis mutandis pursuant to Article

813, paragraph (2)), limited to one who is a creditor of the obligation caused by a tort; the same applies in the following paragraph), may request the company splitting in the incorporation-type split to perform the obligations to the extent of the value of property held by the company splitting in the incorporation-type split on the day of formation of the membership company incorporated in the incorporation-type split, even if the creditor is not allowed, under the incorporation-type company split plan, to request the company splitting in the incorporation-type split to perform the obligations after the incorporation-type company split.

- (3) Notwithstanding the provisions of paragraph (1), if a creditor of the company splitting in the incorporation-type split who is able to state an objection pursuant to the provisions of Article 810, paragraph (1), item (ii) and who has not received the separate notice set forth in paragraph (2) of that Article, may request the membership company incorporated in the incorporation-type split to perform the obligations to the extent of the value of property to which it has succeeded, even if the creditor is not allowed, under the incorporation-type company split plan, to request the membership company incorporated in the incorporation-type split to perform the obligations after the incorporation-type company split.
- (4) Notwithstanding the provisions of paragraph (1), if a company splitting in the incorporation-type split implemented the incorporation-type company split with the knowledge that it would harm creditors (hereinafter in this Article referred to as "remaining creditors") of the obligation that will not be succeeded to a membership company incorporated in the incorporation-type split, the remaining creditors may request performance of the obligation from the membership company incorporated in the incorporation-type split to the extent of the value of property to which it has succeeded.
- (5) The provisions of the preceding paragraph do not apply to cases where there are provisions on the matters set forth in paragraph (1), item (xiii) of the preceding Article.
- (6) If a membership company incorporated in the incorporation-type split is liable to perform the obligation set forth in paragraph (4), the liabilities are extinguished in relation to remaining creditors who do not demand the performance or do not give an advance notice of their demand within two years from when they come to know that the company splitting in the incorporation-type split implemented the incorporation-type company split with the knowledge that it would harm remaining creditors, when that period elapses. The same applies to when ten years elapses from the day of formation of the stock company incorporated in the incorporation-type split is incorporated.
- (7) When an order of commencement of bankruptcy proceedings, order of commencement of rehabilitation proceedings, or order of commencement of

reorganization proceedings is made with regard to a company splitting in the incorporation-type split, remaining creditors may not exercise the right to make a request pursuant to the provisions of paragraph (4) from a membership company incorporated in the incorporation-type split.

(8) In the case prescribed in paragraph (1) of the preceding Article, the company splitting in the incorporation-type split becomes a member of the membership company incorporated in the incorporation-type split, in accordance with the provisions on the matter set forth in item (iii) of that paragraph, on the day of formation of the membership company incorporated in the incorporation-type split.

(9) If there are provisions on the matter set forth in paragraph (1), item (vi) of the preceding Article, a company splitting in the incorporation-type split, in accordance with the provisions of the incorporation-type company split plan, becomes a holder of bonds referred to in that item on the day of formation of the membership company incorporated in the incorporation-type split.

(10) With regard to the application of the provisions of the preceding paragraph if two or more stock companies or limited liability companies are to jointly effect an incorporation-type company split, the phrase "in accordance with the provisions of the incorporation-type company split plan, become a holder of bonds referred to in that item" in that paragraph is deemed to be replaced with "in accordance with the provisions on the matter set forth in item (vii) of that paragraph, become holders of bonds referred to in item (vi) of that paragraph".

## **Chapter IV Share Exchanges and Share Transfers**

### **Section 1 Share Exchanges**

#### **Subsection 1 Common Provisions**

(Conclusion of a Share Exchange Agreement)

Article 767 A stock company may effect a share exchange. In these cases, the stock company must conclude a stock exchange agreement with the company acquiring all of its issued shares (limited to a stock company or a limited liability company; hereinafter referred to as the "wholly owning parent company resulting from the share exchange" in this Part).

#### **Subsection 2 Share Exchange Which Causes a Stock Company to Acquire the Issued Shares**

(Share Exchange Agreement Which Causes a Stock Company to Acquire the Issued Shares)

Article 768 (1) If a stock company effects a share exchange, and the wholly owning parent company resulting from the share exchange is a stock company,

it must prescribe the following matters in the share exchange agreement:

- (i) the trade name and address of the stock company effecting the share exchange (hereinafter referred to as the "wholly owned subsidiary company resulting from the share exchange" in this Part) and the stock company that constitutes the wholly owning parent company resulting from the share exchange (hereinafter referred to as the "wholly owning parent stock company resulting from the share exchange" in this Part);
- (ii) if the wholly owning parent stock company resulting from the share exchange is to deliver to shareholders of the wholly owned subsidiary company resulting from the share exchange monies, etc. in lieu of the shares thereof when effecting the share exchange, the following matters concerning relevant monies, etc.:
  - (a) if the relevant monies, etc. are shares in the wholly owning parent stock company resulting from the share exchange, the description of the number of the relevant shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) or the method for calculating the numbers, and matters concerning the amount of the stated capital and capital reserves of the wholly owning parent stock company resulting from the share exchange;
  - (b) if relevant monies, etc. are bonds of the wholly owning parent stock company resulting from the share exchange (excluding those concerning bonds with share options), the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
  - (c) if relevant monies, etc. are stock options of the wholly owning parent stock company resulting from the share exchange (excluding those attached to bonds with share options), the description of the features and number of relevant share options, or the method for calculating the number;
  - (d) if relevant monies, etc. are bonds with share options of the wholly owning parent stock company resulting from the share exchange, the matters prescribed in (b) concerning relevant bonds with share options and the matters prescribed in (c) concerning the share options attached to relevant bonds with share options; or
  - (e) if relevant monies, etc. are property other than shares, etc. in the wholly owning parent stock company resulting from the share exchange, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
- (iii) in the case prescribed in the preceding item, matters concerning the allotment of monies, etc. set forth in that item to shareholders of the wholly owned subsidiary company resulting from the share exchange (excluding the

- wholly owning parent stock company resulting from the share exchange);
- (iv) if the wholly owning parent stock company resulting from the share exchange is to deliver to holders of share options in the wholly owned subsidiary company resulting from the share exchange share options in the wholly owning parent stock company resulting from the share exchange in lieu of the relevant share options at the time of the share exchange, the following matters concerning relevant share options:
    - (a) the description of the features of the share options (hereinafter referred to as "share options under share exchange agreement" in this Part) held by holders of share options in the wholly owned subsidiary company resulting from the share exchange who will receive delivery of share options in the wholly owning parent stock company resulting from the share exchange;
    - (b) the description of the features and number of share options in the wholly owning parent stock company resulting from the share exchange to be delivered to holders of share options under share exchange agreement, or the method for calculating the number; and
    - (c) if share options under share exchange agreement are share options attached to bonds with share options, a statement to the effect that the wholly owning parent stock company resulting from the share exchange will succeed to the obligations relating to bonds regarding to the bonds with share options and the description of the classes of the bonds subject to relevant succession and the total amount for each class of bonds, or the method for calculating that total amount;
    - (v) in the case prescribed in the preceding item, matters concerning the allotment of the share options of the wholly owning parent stock company resulting from the share exchange set forth in that item to holders of share options under share exchange agreement; and
    - (vi) the day on which the share exchange becomes effective (hereinafter referred to as the "effective day" in this section).
  - (2) In the case prescribed in the preceding paragraph, if the wholly owned subsidiary company resulting from the share exchange is a company with class shares, the wholly owned subsidiary company resulting from the share exchange and the wholly owning parent stock company resulting from the share exchange may provide for the following matters in prescribing the matters set forth in item (iii) of that paragraph in accordance with the features of the classes of shares issued by the wholly owned subsidiary company resulting from the share exchange:
    - (i) if there is any arrangement that no monies, etc. are allotted to shareholders of a certain class of shares, a statement to that effect and relevant class of shares; and
    - (ii) beyond the matters set forth in the preceding item, if there is any

arrangement that each class of shares is to be treated differently with respect to allotment of monies, etc., a statement to that effect and the details of relevant different treatment.

- (3) In the case prescribed in paragraph (1), the provisions on the matters set forth in item (iii) of that paragraph must be provisions in which the monies, etc. are delivered in proportion to the number of the shares (or, if there are provisions on the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by shareholders of the wholly owned subsidiary company resulting from the share exchange (excluding the wholly owning parent stock company resulting from the share exchange and shareholders of the class of shares referred to in item (i) of the preceding paragraph).

(Effectuation of a Share Exchange Which Causes a Stock Company to Acquire the Issued Shares)

Article 769 (1) The wholly owning parent stock company resulting from a share exchange acquires all of the issued shares of the wholly owned subsidiary company resulting from the share exchange (excluding shares of the wholly owned subsidiary company resulting from the share exchange already held by the wholly owning parent stock company resulting from the share exchange) on the effective day.

- (2) In the case set forth in the preceding paragraph, the wholly owned subsidiary company resulting from the share exchange is deemed to have given the approval set forth in Article 137, paragraph (1) with regard to the acquisition of shares of the wholly owned subsidiary company resulting from the share exchange (limited to shares with a restriction on transfer, and excluding those already held by the wholly owning parent stock company resulting from the share exchange prior to the effective day) by the wholly owning parent stock company resulting from the share exchange.
- (3) In the cases set forth in the following items, shareholders of the wholly owned subsidiary company resulting from a share exchange become the persons specified in each of those items, in accordance with the provisions on the matters set forth in paragraph (1), item (iii) of the preceding Article, on the effective day:
- (i) if there are provisions on the matters set forth in paragraph (1), item (ii), (a) of the preceding Article: the holders of shares referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth in paragraph (1), item (ii), (b) of the preceding Article: the holders of bonds referred to in (b) of that item;
  - (iii) if there are provisions on the matters set forth in paragraph (1), item (ii), (c) of the preceding Article: the holders of share options referred to in (c) of

- that item; or
- (iv) if there are provisions on the matters set forth in paragraph (1), item (ii), (d) of the preceding Article: the holders of bonds constituting bonds with share options referred to in (d) of that item, and holders of the share options attached to those bonds.
- (4) In the case prescribed in paragraph (1), item (iv) of the preceding Article, the share options under share exchange agreement are extinguished and holders of the share options under share exchange agreement become holders of the share options of the wholly owning parent stock company resulting from the share exchange set forth in item (iv), (b) of that paragraph, in accordance with the provisions on the matters set forth in item (v) of that Article, on the effective day.
- (5) In the case prescribed in paragraph (1), item (iv), (c) of the preceding Article, the wholly owning parent stock company resulting from the share exchange succeeds to the obligations relating to bonds regarding the bonds with share options set forth in (c) of that item on the effective day.
- (6) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 789 or Article 799 are not completed yet or where the share exchange is cancelled.

### **Subsection 3 Share Exchange Which Causes a Limited Liability Company to Acquire the Issued Shares**

(Share Exchange Which Causes a Limited Liability Company to Acquire the Issued Shares)

Article 770 (1) If a stock company effects a share exchange, if the wholly owning parent company resulting from the share exchange is a limited liability company, it must prescribe the following matters in the share exchange agreement:

- (i) the trade name and address of the wholly owned subsidiary company resulting from the share exchange and the limited liability company that constitutes the wholly owning parent company resulting from the share exchange (hereinafter referred to as the "wholly owning parent limited liability company resulting from the share exchange" in this Part);
- (ii) if shareholders of the wholly owned subsidiary company resulting from the share exchange are to become members of the wholly owning parent limited liability company resulting from the share exchange when effecting the share exchange, the names and addresses of the members and the value of contributions by the members;
- (iii) if the wholly owning parent limited liability company resulting from the share exchange is to deliver to shareholders of the wholly owned subsidiary



company resulting from the share exchange monies, etc. (excluding the equity interests of the wholly owning parent limited liability company resulting from the share exchange) in lieu of the shares thereof when effecting the share exchange, the following matters concerning relevant monies, etc.:

- (a) if relevant monies, etc. are bonds of the wholly owning parent limited liability company resulting from the share exchange, the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount; or
  - (b) if relevant monies, etc. are property other than bonds of the wholly owning parent limited liability company resulting from the share exchange, the description of the features and number or amount of relevant property, or the method for calculating the number or amount;
  - (iv) in the case prescribed in the preceding item, matters concerning the allotment of monies, etc. set forth in that item to shareholders of the wholly owned subsidiary company resulting from the share exchange (excluding the wholly owning parent limited liability company resulting from the share exchange); and
  - (v) the effective day.
- (2) In the case prescribed in the preceding paragraph, if the wholly owned subsidiary company resulting from the share exchange is a company with class shares, the wholly owned subsidiary company resulting from the share exchange and the wholly owning parent limited liability company resulting from the share exchange may provide for the following matters in prescribing the matters set forth in item (iv) of that paragraph in accordance with the features of the classes of shares issued by the wholly owned subsidiary company resulting from the share exchange:
- (i) if there is any arrangement that no monies, etc. are allotted to shareholders of a certain class of shares, a statement to that effect and relevant class of shares; and
  - (ii) beyond the matters set forth in the preceding item, if there is any arrangement that each class of shares is to be treated differently with respect to allotment of monies, etc., a statement to that effect and the details of relevant different treatment.
- (3) In the case prescribed in paragraph (1), the provisions on the matters set forth in item (iv) of that paragraph must be provisions in which the monies, etc. are delivered in proportion to the number of the shares (or, if there are provisions on the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by shareholders of the wholly owned subsidiary company resulting from the share exchange (excluding the wholly owning parent limited liability company resulting from the share exchange and

shareholders of the class of shares referred to in item (i) of the preceding paragraph).

(Effectuation of a Share Exchange Which Causes a Limited Liability Company to Acquire the Issued Shares)

Article 771 (1) The wholly owning parent limited liability company resulting from a share exchange acquires all of the issued shares of the wholly owned subsidiary company resulting from the share exchange (excluding shares of the wholly owned subsidiary company resulting from the share exchange already held by the wholly owning parent limited liability company resulting from the share exchange) on the effective day.

(2) In the case set forth in the preceding paragraph, the wholly owned subsidiary company resulting from the share exchange is deemed to have given the approval set forth in Article 137, paragraph (1) with regard to the acquisition of shares of the wholly owned subsidiary company resulting from the share exchange (limited to shares with a restriction on transfer, and excluding those already held by the wholly owning parent limited liability company resulting from the share exchange prior to the effective day) by the wholly owning parent limited liability company resulting from the share exchange.

(3) In the case prescribed in paragraph (1), item (ii) of the preceding Article, the shareholders of the wholly owned subsidiary company resulting from the share exchange, in accordance with the provisions on the matters set forth in that item, become members of the wholly owning parent limited liability company resulting from the share exchange on the effective day. In these cases, the wholly owning parent limited liability company resulting from the share exchange is deemed to have effected changes to the articles of incorporation relating to the members set forth in that item on the effective day.

(4) If there are provisions on the matter set forth in paragraph (1), item (iii), (a) of the preceding Article, the shareholders of the wholly owned subsidiary company resulting from the share exchange, in accordance with the provisions on the matter set forth in item (iv) of that paragraph, become holders of bonds relevant in item (iii), (a) of that paragraph on the effective day.

(5) The provisions of the preceding paragraphs do not apply if procedures under the provisions of Article 799 (excluding paragraph (2), item (iii)) as applied mutatis mutandis pursuant to Article 802, paragraph (2) are not completed yet or where the share exchange is cancelled.

## **Section 2 Share Transfers**

(Preparation of a Share Transfer Plan)

Article 772 (1) One or multiple stock companies may effect a share transfer. In

these cases, relevant companies must prepare a share transfer plan.

- (2) If two or more stock companies jointly effect a share transfer, those two or more stock companies must prepare the share transfer plan jointly.

(Share Transfer Plans)

Article 773 (1) If one or multiple stock companies effect a share transfer, those companies must prescribe the following matters in the share transfer plan:

- (i) the purpose, trade name, location of the head office, and the total number of authorized shares of the stock company incorporated in the share transfer (hereinafter referred to as the "wholly owning parent company incorporated in a share transfer" in this Part);
- (ii) beyond what is set forth in the preceding item, the matters provided for in the articles of incorporation of the wholly owning parent company incorporated in a share transfer;
- (iii) the names of the directors at incorporation of the wholly owning parent company incorporated in a share transfer;
- (iv) the matters provided for in (a) through (c) below for the categories of cases set forth respectively therein:
  - (a) if the wholly owning parent company incorporated in a share transfer is a company with accounting advisor: the name of the accounting advisor at incorporation of the wholly owning parent company incorporated in a share transfer;
  - (b) if the wholly owning parent company incorporated in a share transfer is a company with company auditor (including a stock company the articles of incorporation of which provide that the scope of the audit by its company auditor is limited to an audit related to accounting): the name of the company auditor at incorporation of the wholly owning parent company incorporated in a share transfer; or
  - (c) if the wholly owning parent company incorporated in a share transfer is a company with financial auditor: the name of the financial Auditor at incorporation of the wholly owning parent company incorporated in a share transfer;
- (v) the number of shares (or, for a company with class shares, the classes of the shares and the number of the shares for each class) of the wholly owning parent company incorporated in a share transfer to be delivered by the wholly owning parent company incorporated in a share transfer to shareholders of the stock company effecting the share transfer (hereinafter referred to as the "wholly owned subsidiary company resulting from a share transfer" in this Part) in lieu of the shares thereof, when effecting the share transfer, or the method for calculating the numbers, and matters concerning the amount of the stated capital and capital reserves of the wholly owning

- parent company incorporated in a share transfer;
- (vi) matters concerning allotment of the shares set forth in the preceding item to shareholders of the wholly owned subsidiary company resulting from a share transfer;
  - (vii) if the wholly owning parent company incorporated in a share transfer is to deliver to shareholders of the wholly owned subsidiary company resulting from a share transfer bonds, etc. of the wholly owning parent company incorporated in a share transfer in lieu of the shares thereof when effecting the share transfer, the following matters concerning relevant bonds, etc.:
    - (a) if relevant bonds, etc. are bonds of the wholly owning parent company incorporated in a share transfer (excluding those concerning bonds with share options), the description of the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating that total amount;
    - (b) if the relevant bonds, etc. are share options of the wholly owning parent company incorporated in a share transfer (excluding those attached to bonds with share options), the description of the features and number of relevant share options, or the method for calculating the number; or
    - (c) if relevant bonds, etc. are bonds with share options of the wholly owning parent company incorporated in a share transfer, the matters prescribed in (a) concerning relevant bonds with share options and the matters prescribed in (b) concerning the share options attached to relevant bonds with share options;
  - (viii) in the case prescribed in the preceding item, matters concerning allotment of bonds, etc. set forth in that item to shareholders of the wholly owned subsidiary company resulting from a share transfer;
  - (ix) if the wholly owning parent company incorporated in a share transfer is to deliver to holders of share options of the wholly owned subsidiary company resulting from a share transfer share options of the wholly owning parent company incorporated in a share transfer in lieu of relevant share options at the time of the share transfer, the following matters concerning relevant share options:
    - (a) the description of the features of the share options held by holders of share options of the wholly owned subsidiary company resulting from a share transfer who will receive delivery of share options of the wholly owning parent company incorporated in a share transfer (hereinafter referred to as "share options under share transfer plan" in this Part);
    - (b) the description of the features and number of share options of the wholly owning parent company incorporated in a share transfer to be delivered to holders of share options under share transfer plan, or the method for calculating the number; and

- (c) if share options under share transfer plan are share options attached to bonds with share options, a statement to the effect that the wholly owning parent company incorporated in a share transfer will succeed to the obligations relating to bonds regarding to the bonds with share options and the description of the classes of the bonds subject to relevant succession and the total amount for each class of bonds, or the method for calculating that total amount; and
- (x) in the case prescribed in the preceding item, matters concerning allotment of the share options of the wholly owning parent company incorporated in a share transfer referred to in that item to holders of share options under share transfer plan.
- (2) If a wholly owning parent company incorporated in a share transfer is a company with audit and supervisory committee, the matters set forth in item (iii) of the preceding paragraph must be prescribed by distinguishing directors at incorporation who are audit and supervisory committee member at incorporation and other directors at incorporation.
- (3) In the case prescribed in paragraph (1), if the wholly owned subsidiary company resulting from a share transfer is a company with class shares, the wholly owned subsidiary company resulting from a share transfer may provide for the following matters in prescribing the matters set forth in item (vi) of that paragraph in accordance with the features of the classes of shares issued by the stock company disappearing in the absorption-type merger:
  - (i) if there is any arrangement that no shares of the wholly owning parent company incorporated in a share transfer are allotted to shareholders of a certain class of shares, a statement to that effect and relevant class of shares; and
  - (ii) beyond the matters set forth in the preceding item, if there is any arrangement that each class of shares is to be treated differently with respect to allotment of shares of the wholly owning parent company incorporated in a share transfer, a statement to that effect and the details of relevant different treatment.
- (4) In the case prescribed in paragraph (1), the provisions on the matters set forth in item (vi) of that paragraph must be provisions in which the shares of the wholly owning parent company incorporated in a share transfer are delivered in proportion to the number of the shares (or, if there are provisions on the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) held by the shareholders of the wholly owned subsidiary company resulting from a share transfer (excluding the shareholders of the class of shares referred to in item (i) of the preceding paragraph).
- (5) The provisions of the preceding two paragraphs apply mutatis mutandis to

the matters mentioned in paragraph (1), item (viii). In these cases, the term "shares of the wholly owning parent company incorporated in a share transfer" in the preceding two paragraphs is deemed to be replaced with "bonds, etc. of the wholly owning parent company incorporated in a share transfer".

(Effectuation of a Share Transfer)

- Article 774 (1) The wholly owning parent company incorporated in a share transfer acquires all of the issued shares of the wholly owned subsidiary company resulting from a share transfer on the day of its formation.
- (2) The shareholders of the wholly owned subsidiary company resulting from a share transfer, in accordance with the provisions on the matters set forth in paragraph (1), item (vi) of the preceding Article, become shareholders of the shares set forth in item (v) of that paragraph on the day of formation of the wholly owning parent company incorporated in a share transfer.
- (3) In the cases set forth in the following items, the shareholders of the wholly owned subsidiary company resulting from a share transfer become the persons specified in each of those items, in accordance with the provisions on the matters set forth in paragraph (1), item (viii) of the preceding Article, on the day of formation of the wholly owning parent company incorporated in a share transfer:
- (i) if there are provisions on the matters set forth in paragraph (1), item (vii), (a) of the preceding Article: the holders of bonds referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth in paragraph (1), item (vii), (b) of the preceding Article: the holders of share options referred to in (b) of that item; or
  - (iii) if there are provisions on the matters set forth in paragraph (1), item (vii), (c) of the preceding Article: the holders of bonds constituting bonds with share options referred to in (c) of that item, and holders of the share options attached to those bonds.
- (4) In the case prescribed in paragraph (1), item (ix) of the preceding Article, the share options under share transfer plan are extinguished and the holders of the share options under share transfer plan become holders of the share options of the wholly owning parent company incorporated in a share transfer referred to in item (ix), (b) of that paragraph, in accordance with the provisions on the matters set forth in item (x) of that paragraph, on the day of formation of the wholly owning parent company incorporated in a share transfer.
- (5) In the case prescribed in paragraph (1), item (ix), (c) of the preceding Article, the wholly owning parent company incorporated in a share transfer succeeds to the obligations relating to bonds regarding to the bonds with share options set forth in (c) of that item on the day of its formation.

## Chapter IV-2 Partial Share Exchange

(Preparation of Partial Share Exchange Plans)

Article 774-2 A stock company may effect a partial share exchange. In these cases, the stock company must prepare a partial share exchange plan.

(Partial Share Exchange Plans)

Article 774-3 (1) If a stock company effects a partial share exchange, the partial share exchange plan must provide for the following matters:

- (i) the trade name and address of the subsidiary company resulting from a partial share exchange; (meaning the stock company that issued the shares to be acquired by the parent company resulting from a partial share exchange (meaning the stock company effecting the partial share exchange; the same applies hereinafter) through the partial share exchange; the same applies hereinafter);
- (ii) the minimum number of shares of the subsidiary company resulting from a partial share exchange to be acquired by the parent company resulting from a partial share exchange through the partial share exchange (in the case of a company with class shares, the classes of shares and the number of each class);
- (iii) the number of shares of the parent company resulting from a partial share exchange to be delivered as consideration for shares of the subsidiary company resulting from a partial share exchange to be delivered to the transferors of the shares of the subsidiary company resulting from a partial share exchange (in the case of a company with class shares, the classes of shares and the number of shares of each class) or the method for calculating that number and the matters concerning the amount of the stated capital and reserves of the parent company resulting from a partial share exchange;
- (iv) matters concerning the allotment of the shares of the parent company resulting from a partial share exchange set forth in the preceding item to the transferors of the shares of the subsidiary company resulting from a partial share exchange;
- (v) if the parent company resulting from a partial share exchange is to deliver monies, etc. (excluding shares of the parent company resulting from a partial share exchange; the same applies hereinafter in this item and the following item) to the transferors of the shares of the subsidiary company resulting from a partial share exchange as consideration for the shares when effecting the partial share exchange, the following matters concerning the monies, etc.:
  - (a) if relevant monies, etc. are bonds of the parent company resulting from a

- partial share exchange (excluding those with respect to bonds with share options), the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating the total amount;
- (b) if relevant monies, etc. are share options of the parent company resulting from a partial share exchange (excluding those attached to bonds with share options), the content and number of relevant share options, or the method for calculating the number;
  - (c) if relevant monies, etc. are bonds with share options of the parent company resulting from a partial share exchange, the matters prescribed in (a) concerning relevant bonds with share options and the matters prescribed in (b) concerning the share options attached to relevant bonds with share options; or
  - (d) if relevant monies, etc. are property other than bonds or share options of the parent company resulting from a partial share exchange, the content and number or amount of relevant property, or the method for calculating the number or amount; and
- (vi) matters concerning the allotment of the monies, etc. referred in the preceding item to the transferors of the shares of the subsidiary company resulting from a partial share exchange;
- (vii) if the parent company resulting from a partial share exchange is to acquire share options of the subsidiary company resulting from a partial share exchange (other than those attached to bonds with share options) or bonds with share options of the subsidiary company resulting from a partial share exchange (hereinafter collectively referred to as "share options, etc.") with the shares of the subsidiary company resulting from a partial share exchange when effecting the partial share exchange, the features and number of relevant share options, etc. or the method for calculating that number;
- (viii) in the cases prescribed in the preceding item, if the parent company resulting from a partial share exchange is to deliver monies, etc. to the transferors of the share options, etc. of the subsidiary company resulting from a partial share exchange as consideration for the share options, etc. when effecting the partial share exchange, the following matters concerning the monies, etc.:
- (a) if the monies, etc. are shares of the parent company resulting from a partial share exchange, the number of the relevant shares (in the case of a company with class shares, the classes of shares and the number of shares of each class) or the method for calculating number, and the matters concerning the amount of the stated capital and reserves of the parent company resulting from a partial share exchange;
  - (b) if the monies, etc. are bonds of the parent company resulting from a



- partial share exchange (excluding those with respect to bonds with share options), the classes of relevant bonds and the total amount for each class of bonds, or the method for calculating the total amount;
- (c) if the monies, etc. are share options of the parent company resulting from a partial share exchange (excluding those attached to bonds with share options), the content and number of relevant share options, or the method for calculating the number;
  - (d) if the monies, etc. are bonds with share options of the parent company resulting from a partial share exchange, the matters prescribed in (b) concerning relevant bonds with share options and the matters prescribed in (c) concerning the share options attached to the bonds with share options; or
  - (e) if the monies, etc. are property other than shares, etc. of the parent company resulting from a partial share exchange, the content and number or amount of the property, or the method for calculating the number or amount;
- (ix) in the case prescribed in the preceding item, the matters concerning the allotment of the monies, etc. referred to in that item to the transferors of the share options, etc. of the subsidiary company resulting from a partial share exchange;
- (x) the date of the offer for transfer of the shares and share options, etc. of the subsidiary company resulting from a partial share exchange; and (xi) the day on which the partial share exchange becomes effective (hereinafter referred to as the "effective day" in this Chapter).
- (2) In the cases prescribed in the preceding paragraph, the provisions on the matters set forth in item (ii) of that paragraph must be provisions in which that the number of shares of the subsidiary company resulting from a partial share exchange is causes that the subsidiary company resulting from a partial share exchange to become a subsidiary of the parent company resulting from a partial share exchange on the effective day.
- (3) In the cases prescribed in paragraph (1), if a subsidiary company resulting from a partial share exchange is a company with class shares, the parent company resulting from a partial share exchange may decide the following matters as the matters set forth in item (iv) of that paragraph in accordance with the features of the classes of shares issued by the subsidiary company resulting from a partial share exchange:
- (i) if there is any arrangement that no shares of the parent company resulting from a partial share exchange will be allotted to the transferors of a certain class of shares, a statement to that effect and the class of shares; and
  - (ii) beyond the matter set forth in the preceding item, if there is an arrangement that each class of shares is to be treated differently with

respect to allotment of shares of the parent company resulting from a partial share exchange, a statement to that effect and the details of the different treatment.

- (4) In the cases prescribed in paragraph (1), the provisions regarding the matters set forth in item (iv) of that paragraph must stipulate that the shares of the parent company resulting from a partial share exchange will be delivered in proportion to the number of the shares of the subsidiary company resulting from a partial share exchange (or, if there are provisions with respect to the matters set forth in item (ii) of the preceding paragraph, the number of the shares of each class) transferred by the transferors of the shares of the subsidiary company resulting from a partial share exchange (excluding the relevant transferors of the class of shares referred to in item (i) of the preceding paragraph) to the parent company resulting from a partial share exchange.
- (5) The provisions of the preceding two paragraphs apply mutatis mutandis to the matters set forth in paragraph (1), item (vi). In those cases, the term "shares of the parent company resulting from a partial share exchange" in the preceding two paragraphs is deemed to be replaced with "monies, etc. (excluding the shares of the parent company resulting from a partial share exchange)."

(Offer to Delivery Shares of the Subsidiary Company Resulting from a Partial Share Exchange)

Article 774-4 (1) A parent company resulting from a partial share exchange must notify persons who intend to offer to deliver shares issued by the subsidiary company resulting from the partial share exchange of the matters set forth in the following items:

- (i) the trade name of the parent company resulting from a partial share exchange;
  - (ii) the content of the partial share exchange plan; and
  - (iii) beyond the matters provided in the preceding two items, matters provided in the Ministry of Justice Order.
- (2) A person who submits an offer to deliver shares of the subsidiary company resulting from a partial share exchange must deliver a document giving the following information to the parent company resulting from a partial share exchange by the date provided in paragraph (1), item (x) of the preceding Article:
- (i) the name and address of the person making the offer; and
  - (ii) the number of shares of the subsidiary company resulting from a partial share exchange to be delivered (in the case of a company with class shares, the classes of the shares and the number of shares for each class).

- (3) A person who makes an offer referred to in the preceding paragraph may, in lieu of delivering a document as referred to in that paragraph, provide the information that is required to be detailed in the document referred to in that paragraph by electronic or magnetic means, with the approval of the parent company resulting from a partial share exchange and pursuant to the provisions of cabinet order. In those cases, the person offering is deemed to have delivered the document under that paragraph.
- (4) The provisions of paragraph (1) do not apply if the parent company resulting from a partial share exchange has issued a prospectus provided for in Article 2, paragraph (10) of the Financial Instruments and Exchange Act that states the matters set forth in each item of that paragraph to a person who intends to submit the application in paragraph (1), and in other cases prescribed by Ministry of Justice Order as cases where it is unlikely that the protection of persons who intend to submit offers to deliver shares of the subsidiary company resulting from a partial share exchange is compromised.
- (5) If there are changes in the matters set forth in any item of paragraph (1) (including change of the effective day pursuant to the provisions of Article 816-9, paragraph (1) and change of the day provided in paragraph (1), item (x) of the preceding Article pursuant to the provisions of Article 816, paragraph (5)), the parent company resulting from a partial share exchange must immediately notify persons who have submitted offers provided in paragraph (2) (hereinafter in this Chapter referred to as "offerors") thereof and of the matters so changed.
- (6) It is sufficient for a notice or demand to an offeror to be sent by the parent company resulting from a partial share exchange to the address under paragraph (2), item (i) (or, if the offeror notifies the parent company resulting from a partial share exchange of a different place or contact address for the receipt of notices or demands, to the place or contact address).
- (7) The notice or demand referred to in the preceding paragraph is deemed to have reached the addressee at the time when the notice or demand must have normally arrived.

(Allotment of Shares of the Subsidiary Company Resulting from a Partial Share Exchange Acquired by the Parent Company Resulting from a Partial Share Exchange)

Article 774-5 (1) The parent company resulting from a partial share exchange must designate from which offerors it will acquire shares of the subsidiary company resulting from a partial share exchange and the number of shares of the subsidiary company resulting from a partial share exchange that it will acquire from those offerors (if the subsidiary company resulting from a partial share exchange is a company with class shares, the classes of shares and the

number of each class; the same applies hereinafter in this Article). In those cases, the parent company resulting from a partial share exchange may acquire a number of the shares less than the number provided in paragraph (2), item (ii) of the preceding Article to the extent that the aggregate number of the shares allocated among the offerors is not less than the minimum number provided in Article 774-3, paragraph (1), item (ii).

- (2) The parent company resulting from a partial share exchange must notify offerors regarding the number of shares of the subsidiary company resulting from a partial share exchange that it will acquire from the offerors by the day before the effective day.

(Special Provisions on Offers to Transfer Shares of the Subsidiary Company Resulting from a Partial Share Exchange and Allotment of Shares of the Subsidiary Company resulting from a Partial Share Exchange to Be Acquired by the Parent Company Resulting from a Partial Share Exchange)

Article 774-6 The provisions of the preceding two paragraphs do not apply if a person who intends to transfer shares of the subsidiary company resulting from a partial share exchange concludes an agreement to transfer all of their shares of the subsidiary company resulting from a partial share exchange to be acquired when the parent company resulting from a partial share exchange effects the partial share exchange.

(Transferring Shares of the Subsidiary Company Resulting from a Partial Share Exchange)

Article 774-7 (1) The persons set forth in the following items are the transferors of the shares issued by the subsidiary company resulting from the partial share exchange of the partial share exchange with respect to the number of shares of the subsidiary company resulting from a partial share exchange provided in those items:

- (i) offerors: the number of shares of the subsidiary company resulting from a partial share exchange for which notice was received pursuant to the provisions of Article 774-5, paragraph (2); and
- (ii) persons who promised pursuant to an agreement provided in the preceding Article to transfer all of their shares of the subsidiary company resulting from a partial share exchange to be acquired when the parent company resulting from a partial share exchange effects the partial share exchange: the number of shares of the subsidiary company resulting from a partial share exchange that these persons promised to transfer.

- (2) Persons who became transferors of the shares of the subsidiary company resulting from a partial share exchange pursuant to the provisions of each item of the preceding paragraph must deliver the number of shares of the subsidiary

company resulting from a partial share exchange provided in each item to the parent company resulting from a partial share exchange on the effective day.

(Restrictions on Invalidation or Rescission of Transfers of Shares of the  
Subsidiary Company Resulting from a Partial Share Exchange)

Article 774-8 (1) The provisions of the proviso to Article 93, paragraph (1) and the provisions of Article 94, paragraph (1) of the Civil Code do not apply to offers under Article 774-4, paragraph (2), allotments under Article 774-5, paragraph (1), and the manifestation of intention relating to agreements under Article 774-6.

(2) If one year has elapsed from the day on which a transferor of the shares issued by the subsidiary company resulting from the partial share exchange of the partial share exchange became a shareholder of the parent company resulting from a partial share exchange pursuant to the provisions of Article 774-11, paragraph (2) or if the transferor has exercised rights in relation to the shares, the transferor may not thereafter rescind the transfer of the shares of the subsidiary company resulting from a partial share exchange on the grounds of mistake, fraud, or duress.

(Application Mutatis Mutandis of the Provisions on Transfer of Shares of  
Subsidiary Company Resulting from a Partial Share Exchange)

Article 774-9 In the case provided in Article 774-3, paragraph (1), item (vii), the provisions of Article 774-4 through the preceding Article apply mutatis mutandis to the transfer of the share options, etc. of the subsidiary company resulting from a partial share exchange. In those cases, the phrase "number of shares of the subsidiary company resulting from a partial share exchange to be delivered (in the case of a company with class shares, the classes of the shares and the number of shares for each class)" in Article 774-4, paragraph (2), item (ii) is deemed to be replaced with "features and number of the subsidiary company resulting from a partial share exchange to be delivered," the phrase "number of shares of the subsidiary company resulting from a partial share exchange that it will acquire from those offerors (if the subsidiary company resulting from a partial share exchange is a company with class shares, the classes of shares and the number of each class; the same applies hereinafter in this Article)" in Article 774-5, paragraph (1) is deemed to be replaced with "number of shares of the subsidiary company resulting from a partial share exchange that it will acquire from those offerors," the phrase "the shares less than the number provided in paragraph (2), item (ii) of the preceding Article to the extent that the aggregate number of the shares allocated among the offerors is not less than the minimum number provided in Article 774-3, paragraph (1), item (ii)" in the same paragraph is deemed to be replaced with

"the share options, etc., less than the number provided in paragraph (2), item (ii) of the preceding Article" and the phrase "Article 774-11, paragraph (2)" in paragraph (2) of the preceding Article is deemed to be replaced with "Article 774-11, paragraph (4), item (i)."

(Cases Where the Number of Offered Shares of the Subsidiary Company Resulting from a Partial Share Exchange Is Less than the Minimum)

Article 774-10 The provisions of Article 774-5 and Article 774-7 (excluding the part related to paragraph (1), item (ii)) (including cases where these provisions apply mutatis mutandis pursuant to the preceding Article) do not apply if, on the day provided in Article 774-3, paragraph (1), item (x), the aggregate number of shares issued by the subsidiary company resulting from the partial share exchange offered to be transferred by offerors is less than the minimum provided in item (ii) of that paragraph. In these cases, the parent company resulting from a partial share exchange must without delay notify offerors to the effect that it does not effect the partial share exchange.

(Effectuation of a Partial Share Exchange)

Article 774-11 (1) The parent company resulting from a partial share exchange acquires the shares and share options, etc. of the subsidiary company resulting from a partial share exchange delivered pursuant to the provisions of Article 774-7, paragraph (2) (including application mutatis mutandis pursuant to Article 774-9) on the effective day.

(2) The transferors of the shares of the subsidiary company resulting from a partial share exchange delivered pursuant to the provisions of Article 774-7, paragraph (2), in accordance with the provisions on the matters referred to in Article 774-3, paragraph (1), item (iv), becomes shareholders of the shares of the parent company resulting from a partial share exchange provided in item (iii) of that paragraph on the effective day.

(3) In the cases set forth in the following items, the transferors of the shares of the subsidiary company resulting from a partial share exchange delivered pursuant to the provisions of Article 774-7, paragraph (2), in accordance with the provisions on the matters referred to in Article 774-3, paragraph (1), item (vi), becomes the persons specified in each of those items.

(i) if there are provisions on the matters set forth in Article 774-3, paragraph (1), item (v), (a): the holders of bonds referred to in (a) of that item;

(ii) if there are provisions on the matters set forth in Article 774-3, paragraph (1), item (v), (b): the holders of the share options referred to in (b) of that item; and

(iii) if there are provisions on the matters set forth in Article 774-3, paragraph (1), item (v), (c): the holders of bonds constituting the bonds with share

- options set forth in (c) of that item and holders of the share options attached to those bonds.
- (4) In the cases set forth in the following items, the transferors of the share options, etc. of the subsidiary company resulting from a partial share exchange delivered pursuant to the provisions of Article 774-7, paragraph (2) applied mutatis mutandis pursuant to Article 774-9, in accordance with the provisions on the matters set forth in Article 774-3, paragraph (1), item (ix), becomes the persons specified in each of those items.
- (i) if there are provisions on the matters set forth in Article 774-3, paragraph (1), item (viii), (a): the holders of the shares referred to in (a) of that item;
  - (ii) if there are provisions on the matters set forth in Article 774-3, paragraph (1), item (viii), (b): the holders of the bonds referred to in (b) of that item;
  - (iii) if there are provisions on the matters set forth in Article 774-3, paragraph (1), item (viii), (c): the holders of the share options referred to in (c) of that item; and
  - (iv) if there are provisions on the matters set forth in Article 774-3, paragraph (1), item (viii), (d): the holders of bonds constituting the bonds with share options referred to in (d) of that item and holders of the share options attached to those bonds.
- (5) The provisions of the preceding paragraph do not apply in the cases set forth below:
- (i) if the procedures provided in Article 816-8 are not completed on the effect of day;
  - (ii) if the partial share exchange is canceled;
  - (iii) if the aggregate number of shares of the subsidiary company resulting from a partial share exchange delivered to the parent company resulting from a partial share exchange pursuant to the provisions of Article 774-7, paragraph (2) on the effective day is less than the minimum provided in Article 774-3, paragraph (1), item (ii); and
  - (iv) if there are no persons who become shareholders of the shares of the parent company resulting from a partial share exchange provided in Article 774-3, paragraph (1), item (iii) on the effective day pursuant to the provisions of paragraph (2).
- (6) In the cases set forth in the items of the preceding paragraph, the parent company resulting from a partial share exchange must without delay provide notice to the persons set forth in each item of Article 774-7, paragraph (1) (including cases were applied mutatis mutandis pursuant to Article 774-9) that it will not effect the partial share exchange. In these cases, if there are shares or share options, etc. of the subsidiary company resulting from a partial share exchange that were delivered pursuant to the provisions of Article 774-7, paragraph (2) (including where applied mutatis mutandis pursuant to Article

774-9), the parent company resulting from a partial share exchange must without delay return the shares or share options, etc. to the transferors.

**Chapter V Procedures of Entity Conversion, Merger, Company Split, Share Exchange, Share Transfer, and Partial Share Exchange**  
**Section 1 Procedures of Entity Conversion**  
**Subsection 1 Procedures for a Stock Company**

(Keeping and Inspection of Documents Concerning an Entity Conversion Plan)

Article 775 (1) A stock company effecting entity conversion must, from the day on which the entity conversion plan began to be kept until the day on which the entity conversion becomes effective (hereinafter referred to as the "effective day" in this Section), keep documents detailing the contents of the entity conversion plan and other information prescribed by Ministry of Justice Order, or electronic or magnetic records in which the information has been recorded, at its head office.

(2) The "day on which the entity conversion plan began to be kept" prescribed in the preceding paragraph means the earliest of the following days:

- (i) the day on which the consent of all shareholders of the stock company effecting the entity conversion has been gained with regard to the entity conversion plan;
- (ii) if the stock company effecting the entity conversion has issued share options, the day of the notice under the provisions of Article 777, paragraph (3) or the day of the public notice referred to in paragraph (4) of that Article, whichever is earlier; or
- (iii) the day of the public notice under the provisions of Article 779, paragraph (2) or the day of the demand under the provisions of that paragraph, whichever is earlier.

(3) Shareholders and creditors of a stock company effecting entity conversion may make the following requests to the stock company at any time during its business hours; provided, however, that the fees designated by the stock company are required to be paid in order to make the requests set forth in item (ii) or item (iv):

- (i) requests for inspection of the documents referred to in paragraph (1);
- (ii) requests for delivery of a transcript or extract of the documents referred to in paragraph (1);
- (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in paragraph (1); and
- (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in paragraph (1) by an electronic or magnetic



means that the stock company has designated, or a request to be issued a document showing that information.

(Approval of the Entity Conversion Plan of a Stock Company)

- Article 776 (1) A stock company effecting entity conversion must obtain the consent of all shareholders of the stock company with regard to the entity conversion plan by the day immediately preceding the effective day.
- (2) A stock company effecting entity conversion must notify its registered pledgees of shares and registered pledgees of share options thereof that it will effect entity conversion, by twenty days prior to the effective day.
- (3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

(Exercise of Appraisal Rights on Share Options)

- Article 777 (1) If a stock company effects entity conversion, holders of share options of the stock company effecting entity conversion may demand that the stock company purchase, at a fair price, the share options that they hold.
- (2) If holders of the share options attached to bonds with share options intend to make the demand under the preceding paragraph (hereinafter referred to as "the "exercise of appraisal rights on share options" in this Section), they must also demand that the stock company purchase the bonds concerning bonds with share options; provided, however, that this does not apply if it is otherwise provided for with respect to the share options attached to the bonds with share options.
- (3) A stock company which intends to effect entity conversion must notify the holders of share options thereof that it will effect entity conversion, by twenty days prior to the effective day.
- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.
- (5) To exercise appraisal rights on share options, the share option holder must indicate the features and number of the share options with respect to which the holder is exercising appraisal rights, between twenty days prior to the effective day and the day immediately preceding the effective day.
- (6) When intending to exercise appraisal rights on share options in respect of share options for which share option certificates have been issued, the holder of those share options must submit to a stock company effecting the entity conversion the share option certificates; provided, however, that this does not apply to a person who files a petition for public notice prescribed in Article 114 of the Non-Contentious Cases Procedure Act with respect to those share option certificates.
- (7) When intending to exercise appraisal rights on share options in respect of

share options attached to bonds with share option for which certificate representing the bond with share options have been issued, the holder of those share options must submit to the stock company effective entity conversion the certificate representing the bond with share options; provided, however, that this does not apply to a person who files a petition for public notice prescribed in Article 114 of the Non-Contentious Cases Procedure Act with respect to that certificate representing the bond with share options.

- (8) Share option holders exercising appraisal rights on share options may withdraw their demands for appraisal of the share options only with the approval of the stock company effecting the entity conversion.
- (9) The demands of the share option holders exercising appraisal rights on share options lose effect if the entity conversion is cancelled.
- (10) The provisions of Article 260 do not apply to share options for the exercise of appraisal rights on share options.

(Determination of the Price of Share Options)

Article 778 (1) If a share option holder exercises appraisal rights on the share options, if an agreement on the determination of the price of the share options (if relevant share options are attached to bonds with share options, if a holder thereof demands that the stock company effecting the entity conversion purchase the bonds constituting those bonds with share options, including the relevant bonds; hereinafter the same applies in this Article) is reached between the share option holder and the stock company effecting entity conversion (after the effective day, the membership company after entity conversion; hereinafter the same applies in this Article), the stock company must make payment within sixty days from the effective day.

- (2) If no agreement on the determination of the price of the share options is reached within thirty days from the effective day, share option holders or the membership company after entity conversion may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (8) of the preceding Article, in the cases prescribed in the preceding paragraph, if the petition under that paragraph is not filed within sixty days from the effective day, share option holders exercising appraisal rights on the share options may withdraw their demands for appraisal of the share options at any time after the expiration of that period.
- (4) The membership company after entity conversion must also pay interest on the price determined by the court at the statutory rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) A stock company effecting an entity conversion may pay the amount that the stock company considers to be a fair price to share option holders by the

determination of price of share options.

- (6) The purchase of share options relating to the exercise of appraisal rights on share options becomes effective on the effective day.
- (7) If a share option holder exercises appraisal rights on share options with respect to share options for which share option certificates are issued, the stock company effecting the entity conversion must pay the price of the share options relating to the exercise of appraisal rights on the share options in exchange for the share option certificates.
- (8) If a share option holder exercises appraisal rights on share options with respect to share options attached to a bond with share options for which a certificate for a bond with share options is issued, the stock company effecting the entity conversion must pay the price of the share options relating to the exercise of appraisal rights on the share options in exchange for the certificate for the bond with share options.

(Objections of Creditors)

Article 779 (1) Creditors of a stock company effecting entity conversion may state their objections to the entity conversion to the stock company.

- (2) A stock company effecting entity conversion must give public notice of the matters set forth below in Official Gazette and must give notices separately to each known creditor, if any; provided, however, that the period under item (iii) may not be less than one month:
  - (i) a statement that entity conversion will be effected;
  - (ii) the matters prescribed by Ministry of Justice Order as the matters regarding the financial statements (meaning the financial statements prescribed in Article 435, paragraph (2); hereinafter the same applies in this Chapter) of the stock company effecting entity conversion; and
  - (iii) a statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if a stock company effecting entity conversion gives public notice under that paragraph by the method of public notice set forth in Article 939, paragraph (1), item (ii) or item (iii) in accordance with the provisions of the articles of incorporation under the provisions of that paragraph in addition to Official Gazette, the stock company is not required to give separate notices under the provisions of the preceding paragraph.
- (4) If creditors do not raise any objections within the period under paragraph (2), item (iii), the creditors are deemed to have approved the entity conversion.
- (5) If creditors raise objections within the period under paragraph (2), item (iii), the stock company effecting entity conversion must make payment or provide reasonable security to the creditors, or entrust equivalent property to a trust

company, etc. for the purpose of having the creditors receive the payment; provided, however, that this does not apply if there is no risk of harm to the creditors by the entity conversion.

(Change of the Effective Day of Entity Conversion)

Article 780 (1) A stock company effecting entity conversion may change the effective day.

(2) In the cases prescribed in the preceding paragraph, the stock company effecting entity conversion must give public notice of the changed effective day by the day immediately preceding the original effective day (or, immediately preceding the changed effective day, if the changed effective day comes before the original effective day).

(3) When the effective day is changed pursuant to the provisions of paragraph (1), the provisions of this subsection and Article 745 apply by deeming the changed effective day to be the effective day.

### **Subsection 2 Procedures for a Membership Company**

Article 781 (1) A membership company effecting entity conversion must obtain the consent of all members of the membership company with regard to the entity conversion plan by the day immediately preceding the effective day; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation.

(2) The provisions of Article 779 (excluding paragraph (2), item (ii)) and the preceding Article apply mutatis mutandis to a membership company effecting entity conversion. In those cases, the term "stock company effecting entity conversion" in Article 779, paragraph (3) is deemed to be replaced with "membership company (limited to a limited liability company) effecting entity conversion", and the term "and Article 745" in paragraph (3) of the preceding Article is deemed to be replaced with "and Article 747 and paragraph (1) of the following Article".

## **Section 2 Procedures of an Absorption-Type Merger**

### **Subsection 1 Procedures for a Company Disappearing in an Absorption-Type Merger, a Company Splitting in an Absorption-Type Split, and a Wholly Owned Subsidiary Company Resulting from a Share Exchange**

#### **Division 1 Procedures for a Stock Company**

(Keeping and Inspection of Documents Concerning an Absorption-Type Merger Agreement)

Article 782 (1) Each of the stock companies set forth in the following items (hereinafter referred to as an "disappearing stock company, etc." in this division) must, from the day on which the absorption-type merger agreement, etc. began to be kept until the day on which six months have elapsed from the day on which the absorption-type merger, absorption-type company split or share exchange (hereinafter referred to as an "absorption-type merger, etc." in this Section) becomes effective (hereinafter referred to as the "effective day" in this Section) (or, in the case of a stock company disappearing in an absorption-type merger, until the effective day), keep documents detailing the particulars specified respectively in those items (hereinafter referred to as the "absorption-type merger agreement, etc." in this Section) and other information prescribed by Ministry of Justice Order, or electronic or magnetic records in which the information has been recorded, at its head office:

- (i) stock company disappearing in an absorption-type merger: the absorption-type merger agreement;
- (ii) stock company splitting in an absorption-type split: the absorption-type company split agreement; and
- (iii) wholly owned subsidiary company resulting from a share exchange: the share exchange agreement.

(2) The "day on which the absorption-type merger agreement, etc. began to be kept" prescribed in the preceding paragraph means the earliest of the following days:

- (i) if the absorption-type merger agreement, etc. is required to be approved by a resolution at a shareholders meeting (including a general meeting of class shareholders), the day two weeks prior to the day of the shareholders meeting (or, in the cases prescribed in Article 319, paragraph (1), the day when the proposal under that paragraph is submitted);
- (ii) if there are shareholders who are to receive the notice under the provisions of Article 785, paragraph (3), the day of the notice under the provisions of that paragraph or the day of the public notice under paragraph (4) of that Article, whichever is earlier;
- (iii) if there are share option holders who are to receive the notice under the provisions of Article 787, paragraph (3), the day of the notice under the provisions of that paragraph or the day of the public notice under paragraph (4) of that Article, whichever is earlier;
- (iv) if the procedures under the provisions of Article 789 are required to be carried out, the day of the public notice under the provisions of paragraph (2) of that Article or the day of the notice under the provisions of that paragraph, whichever is earlier; or
- (v) in cases other than those prescribed in the preceding items, the day on which two weeks have elapsed from the day of conclusion of the absorption-

type company split agreement or the share exchange agreement.

- (3) Shareholders and creditors of a disappearing stock company, etc. (or, in the case of a wholly owned subsidiary company resulting from a share exchange, shareholders and share option holders) may make the following requests to the disappearing stock company, etc. at any time during its business hours; provided, however, that the fees designated by the disappearing stock company, etc. are required to be paid in order to make the requests set forth in item (ii) or item (iv):
- (i) requests for inspection of the documents referred to in paragraph (1);
  - (ii) requests for delivery of a transcript or extract of the documents referred to in paragraph (1);
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in paragraph (1); and
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in paragraph (1) by the electronic or magnetic means that the disappearing stock company, etc. has designated, or a request to be issued a document showing that information.

(Approval of the Absorption-Type Merger Agreement)

- Article 783 (1) A disappearing stock company, etc. must obtain the approval of the absorption-type merger agreement, etc. by a resolution at a shareholders meeting by the day immediately preceding the effective day.
- (2) Notwithstanding the provisions of the preceding paragraph, if a stock company disappearing in an absorption-type merger or a wholly owned subsidiary company resulting from a share exchange is not a company with classes shares, if all or part of the monies, etc. to be delivered to shareholders of the stock company disappearing in the absorption-type merger or the wholly owned subsidiary company resulting from the share exchange (hereinafter referred to as the "consideration for the merger, etc." in this Article and paragraph (1) of the following Article) are equity interests, etc. (meaning equity interests of a membership company or those prescribed by Ministry of Justice Order as being equivalent thereto; hereinafter the same applies in this Article), the consent of all shareholders of the stock company disappearing in the absorption-type merger or the wholly owned subsidiary company resulting from the share exchange must be obtained with regard to the absorption-type merger agreement or the share exchange agreement.
- (3) If a stock company disappearing in an absorption-type merger or a wholly owned subsidiary company resulting from a share exchange is a company with classes shares, if all or part of the consideration for the merger, etc. are shares with a restriction on transfer, etc. (meaning shares with a restriction on

transfer and those prescribed by Ministry of Justice Order as being equivalent thereto; hereinafter the same applies in this Chapter), the absorption-type merger or the share exchange does not become effective without a resolution at a general meeting of class shareholders constituted by the class shareholders of the class of shares subject to the allotment of the shares with a restriction on transfer, etc. (excluding shares with a restriction on transfer) (if there are two or more classes of shares relating to the class shareholders, the respective general meetings of class shareholders constituted by class shareholders categorized by the class of relevant two or more classes of shares); provided, however, that this does not apply to cases where there is no class shareholder who is able to exercise a voting right at relevant general meeting of class shareholders.

- (4) If a stock company disappearing in an absorption-type merger or a wholly owned subsidiary company resulting from a share exchange is a company with classes shares, and all or part of the consideration for the merger, etc. are equity interests, etc., the absorption-type merger or the share exchange does not become effective without the consent of all shareholders of the class subject to the allotment of the equity interests, etc.
- (5) An disappearing stock company, etc. must notify its registered pledgees of shares (excluding the registered pledgees of shares in the cases prescribed in paragraph (2) of the following Article) and registered pledgees of share options concerning the share options specified in the items of Article 787, paragraph (3) that it will effect the absorption-type merger, etc. by twenty days prior to the effective day.
- (6) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

(Cases Where Approval of the Absorption-Type Merger Agreement Is Not Required)

- Article 784 (1) The provisions of paragraph (1) of the preceding Article do not apply if the company surviving the absorption-type merger, the company succeeding in the absorption-type split or the wholly owning parent company resulting from the share exchange (hereinafter referred to as the "surviving company, etc." in this division) is the special controlling company of the disappearing stock company, etc.; provided, however, that this does not apply if all or part of the value of the merger, etc. in the absorption-type merger or share exchange is shares with a restriction on transfer, etc., and the disappearing stock company, etc. is a public company and not a company with class shares.
- (2) The provisions of the preceding Article do not apply if the sum of the book value of the assets that the company succeeding in the absorption-type split

succeeds to through the absorption-type company split does not exceed one-fifth (or, if a lesser proportion is prescribed in the articles of incorporation of the stock company splitting in the absorption-type split, that proportion) of the amount calculated by the method specified by Ministry of Justice Order as the total assets of the stock company splitting in the absorption-type split.

(Demanding Cessation of Absorption-Type Merger)

Article 784-2 In the following cases, if shareholders of a disappearing stock company, etc. are likely to suffer disadvantages, shareholders of a disappearing stock company, etc. may demand the disappearing stock company, etc. to cease an absorption-type merger, etc.; provided, however, that this does not apply to cases prescribed in paragraph (2) of the preceding Article:

- (i) if the absorption-type merger, etc. violates laws and regulations or the articles of incorporation; or
- (ii) in the cases prescribed in the main clause of paragraph (1) of the preceding Article, when the matters set forth in Article 749, paragraph (1), item (ii) or (iii), Article 751, paragraph (1), item (iii) or (iv), Article 758, item (iv), Article 760, item (iv) or (v), Article 768, paragraph (1), item (ii) or (iii), or Article 770, paragraph (1), item (iii) or (iv) are extremely improper in light of the financial status of the disappearing stock company, etc. or surviving company, etc.

(Dissenting Shareholders' Appraisal Rights)

Article 785 (1) In cases of effecting an absorption-type merger, etc. (excluding the following cases), dissenting shareholders may demand that the disappearing stock company, etc. purchase, at a fair price, the shares that they hold:

- (i) in cases prescribed in Article 783, paragraph (2); or
  - (ii) in cases prescribed in Article 784, paragraph (2).
- (2) The "dissenting shareholders" provided for in the preceding paragraph means the shareholders provided for in the following items in the cases set forth in the same items (excluding shareholders entitled to allotment of equity interests, etc. prescribed in Article 783, paragraph (4) in the cases prescribed in that paragraph):
- (i) if a resolution at a shareholders meeting (including a general meeting of class shareholders) is required to effect the absorption-type merger, etc.: the following shareholders:
    - (a) shareholders who gave notice to relevant disappearing stock company, etc. to the effect that they dissented from relevant absorption-type merger, etc. prior to relevant shareholders meeting and who dissented from relevant absorption-type merger, etc. at relevant shareholders meeting (limited to



- those who can exercise voting rights at relevant shareholders meeting);
- (b) shareholders who are unable to exercise voting rights at relevant shareholders meeting; and
- (ii) in cases other than those prescribed in the preceding item: all shareholders (excluding the special controlling company in the cases prescribed in the main clause of Article 784, paragraph (1)).
- (3) A disappearing stock company, etc. must notify its shareholders (excluding shareholders entitled to allotment of equity interests, etc. prescribed in Article 783, paragraph (4) in the cases prescribed in that paragraph and the special controlling company in the cases prescribed in the main clause of Article 784, paragraph (1)) that it will effect an absorption-type merger, etc. and the trade name and address of the surviving company, etc., by twenty days prior to the effective day; provided, however, that this does not apply in the cases set forth in the items of paragraph (1).
- (4) In the following cases, a public notice may be substituted for the notice under the provisions of the preceding paragraph:
- (i) if the disappearing stock company, etc. is a public company; or
- (ii) if the disappearing stock company, etc. obtains the approval of the absorption-type merger agreement, etc. by the resolution at a shareholders meeting set forth in Article 783, paragraph (1).
- (5) To make a demand under the provisions of paragraph (1) (hereinafter referred to as the "exercise of appraisal rights" in this division), a dissenting shareholder must indicate the number of shares with regard to which the shareholder is exercising appraisal rights (or, for a company with classes shares, the classes of the shares and the number of shares for each class), between twenty days prior to the effective day and the day immediately preceding the effective day.
- (6) When intending to exercise appraisal rights on shares for which share certificates have been issued, shareholders of those shares must submit the share certificates representing those shares to the disappearing stock company, etc.; provided, however, that this does not apply to a person who makes a demand pursuant to the provisions of Article 223 with respect to those share certificates.
- (7) Shareholders exercising appraisal rights may withdraw their demands for appraisal only with the approval of the disappearing stock company, etc.
- (8) The demands of the shareholders exercising appraisal rights lose effect if the absorption-type merger, etc. is cancelled.
- (9) The provisions of Article 133 do not apply to shares for the exercise of appraisal rights.

(Determination of the Price of Shares)

Article 786 (1) If a shareholder exercises appraisal rights and an agreement determining the price of the shares is reached between the shareholder and the disappearing stock company, etc. (or between the shareholder and the company surviving the absorption-type merger, if an absorption-type merger is effected and it is after the effective day; hereinafter the same applies in this Article), the disappearing stock company, etc. must pay that price within sixty days from the effective day.

(2) If no agreement on the determination of the price of the shares is reached within thirty days from the effective day, shareholders or the disappearing stock company, etc. may file a petition for the court to determine the price within thirty days after the expiration of that period.

(3) Notwithstanding the provisions of paragraph (7) of the preceding Article, in the cases prescribed in the preceding paragraph, if the petition under that paragraph is not filed within sixty days from the effective day, shareholders exercising appraisal rights may withdraw their demands for appraisal at any time after the expiration of that period.

(4) A disappearing stock company, etc. must also pay interest on the price determined by the court at the statutory rate from and including the day of the expiration of the period referred to in paragraph (1).

(5) A disappearing stock company, etc. may pay the amount that the disappearing stock company, etc. considers to be a fair price to shareholders until the determination of the price of shares.

(6) A share purchase connected with the exercise of appraisal rights becomes effective on the effective day.

(7) If a shareholder exercises appraisal rights with respect to shares for which share certificates are issued, the share certificate-issuing company must pay the price of the shares relating to the exercise of the appraisal rights in exchange for the share certificates.

#### (Exercise of Appraisal Rights on Share Options)

Article 787 (1) In cases of carrying out any one of the acts set forth in the following items, holders of share options of the disappearing stock company, etc. provided for in those items may demand that the disappearing stock company, etc. purchase, at a fair price, the share options that they hold:

(i) absorption-type merger: share options other than those for which provisions on the matters set forth in Article 749, paragraph (1), item (iv) or (v) meet the conditions set forth in Article 236, paragraph (1), item (viii) (limited to those related to (a) of that item);

(ii) absorption-type company split (limited to cases where the company succeeding in the absorption-type split is a stock company): among the following share options, share options other than those for which provisions

on the matters set forth in Article 758, item (v) or (vi) meet the conditions referred to in Article 236, paragraph (1), item (viii) (limited to those related to (b) of that item):

- (a) the share options in the absorption-type company split agreement; and
- (b) share options other than the share options in the absorption-type company split agreement, for which there are provisions to the effect that, in the case of effecting an absorption-type company split, share options of the stock company succeeding in the absorption-type split are to be delivered to holders of relevant share options; or

(iii) share exchange (limited to cases where the wholly owning parent company resulting from the share exchange is a stock company): among the following share options, share options other than those for which provisions on the matters set forth in Article 768, paragraph (1), item (iv) or item (v) meet the conditions set forth in Article 236, paragraph (1), item (viii) (limited to those related to (d) of that item):

- (a) share options under share exchange agreement; and
- (b) share options other than share options under share exchange agreement and for which there are provisions to the effect that, in the case of effecting a share exchange, share options of the wholly owning parent stock company resulting from the share exchange are to be delivered to holders of the share options.

(2) If of share options attached to bonds with share options intend to make the demand under the preceding paragraph (hereinafter referred to as the "exercise of appraisal rights on share options" in this Division), they must also demand that the disappearing stock company, etc. purchase the bonds for bonds with share options; provided, however, that this does not apply if it is otherwise provided for with respect to the share options attached to relevant bonds with share options.

(3) The disappearing stock companies, etc. set forth in the following items must notify holders of share options provided for in those items that they will effect an absorption-type merger, etc. and the trade name and address of the surviving company, etc., by twenty days prior to the effective day:

- (i) stock company disappearing in the absorption-type merger: all share options;
- (ii) the stock company splitting in the absorption-type split if the company succeeding in the absorption-type split is a stock company: the following share options:
  - (a) the share options in the absorption-type company split agreement; and
  - (b) share options other than the share options in the absorption-type company split agreement and for which there are provisions to the effect that, in the case of effecting an absorption-type company split, share

- options of the stock company succeeding in the absorption-type split are to be delivered to holders of relevant share options;
- (iii) the wholly owned subsidiary company resulting from a share exchange if the wholly owning parent company resulting from the share exchange is a stock company: the following share options:
    - (a) share options under share exchange agreement; and
    - (b) share options other than share options under share exchange agreement and for which there are provisions to the effect that, in the case of effecting a share exchange, share options of the wholly owning parent stock company resulting from the share exchange are to be delivered to holders of relevant share options.
  - (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.
  - (5) To exercise appraisal rights on share options, the share option holder must indicate the features and number of the share options with respect to which the holder is exercising those appraisal rights, between twenty days prior to the effective day and the day immediately preceding the effective day.
  - (6) When intending to exercise appraisal rights on share options in respect of share options for which share option certificates have been issued, the holder of those share options must submit to disappearing stock company, etc. the share option certificates; provided, however, that this does not apply to a person who files a public petition as prescribed in Article 114 of the Non-Contentious Cases Procedure Act with respect to those share option certificates.
  - (7) When intending to exercise appraisal rights on share options in respect of share options attached to bonds with share options for which certificate representing the bond with share options have been issued, the holder of those share options must submit to the disappearing stock company, etc. the certificate representing the bond with share options; provided, however, that this does not apply to a person who files a petition for public notice as prescribed in Article 114 of the Non-Contentious Cases Procedure Act with respect to that certificate representing the bond with share options.
  - (8) Share option holders exercising appraisal rights on share options may withdraw their demands for appraisal of the share options only with the approval of the disappearing stock company, etc.
  - (9) The demands of the share option holders exercising appraisal rights on share options lose effect if the absorption-type merger, etc. is cancelled.
  - (10) The provisions of Article 260 do not apply to share options for the exercise of appraisal rights on share options.

(Determination of the Price of Share Options)

Article 788 (1) If a holder of share options exercises appraisal rights on the

share options, if an agreement on the determination of the price of the share options (if relevant share options are attached to bonds with share options, if a holder thereof demands the disappearing stock company, etc. to purchase the bonds constituting those bonds with share options, including relevant bonds; hereinafter the same applies in this Article) is reached between the share option holder and the disappearing stock company, etc. (or, after the effective day in cases of effecting an absorption-type merger, the company surviving the absorption-type merger; hereinafter the same applies in this Article), the disappearing stock company, etc. must make payment within sixty days from the effective day.

- (2) If no agreement on the determination of the price of the share options is reached within thirty days from the effective day, the share option holder or the disappearing stock company, etc. may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (8) of the preceding Article, in the cases prescribed in the preceding paragraph, if the petition under that paragraph is not filed within sixty days from the effective day, the share option holders exercising appraisal rights on the share options may withdraw their demands for appraisal of the share options at any time after the expiration of that period.
- (4) The disappearing stock company, etc. must also pay interest on the price determined by the court at the statutory rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) A disappearing stock company may pay the amount that the disappearing stock company considers to be a fair price to share option holders by the determination of price of share options.
- (6) The purchase of share options relating to the exercise of appraisal rights on share options becomes effective on the effective day.
- (7) If a share option holder exercises appraisal rights on share options with respect to share options for which share option certificates are issued, the disappearing stock company, etc. must pay the price of the share options relating to the exercise of appraisal rights on the share options in exchange for the share option certificates.
- (8) If a share option holder exercises appraisal rights on share options with respect to share options attached to a bond with share options for which a certificate for a bond with share options is issued, the disappearing stock company, etc. must pay the price of the share options relating to the exercise of appraisal rights on the share options in exchange for the certificate for the bond with share options.

(Creditor Objections)

- Article 789 (1) In the cases set forth in the following items, the creditors provided for in those items may state their objections to the absorption-type merger, etc. to the disappearing stock company, etc.:
- (i) in cases of effecting an absorption-type merger: creditors of the stock company disappearing in the absorption-type merger;
  - (ii) in cases of effecting an absorption-type company split: creditors of the stock company splitting in the absorption-type split who are unable to request the stock company splitting in the absorption-type split to perform the obligations (including performance of the guarantee obligations that the stock company splitting in the absorption-type split jointly and severally assumes with the company succeeding in the absorption-type split as a guarantor) (or, if there are provisions on the matter set forth in Article 758, item (viii) or Article 760, item (vii), creditors of the stock company splitting in the absorption-type split); and
  - (iii) if the share options under share exchange agreement are share options attached to those bonds with share options: the holders constituting bonds with share options.
- (2) If all or part of the creditors of the disappearing stock company, etc. are able to state their objection pursuant to the provisions of the preceding paragraph, the disappearing stock company, etc. must give public notice of the matters set forth below in Official Gazette and must give notices separately to each known creditor (limited to one who is able to state an objection pursuant to the provisions of that paragraph), if any; provided, however, that the period stated in item (iv) may not be less than one month:
- (i) a statement that an absorption-type merger, etc. will be effected;
  - (ii) the trade name and address of the surviving company, etc.;
  - (iii) the matters prescribed by Ministry of Justice Order as the matters regarding the financial statements of the disappearing stock company, etc. and the surviving company, etc. (limited to a stock company); and
  - (iv) a statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if the disappearing stock company, etc. gives public notice under that paragraph by the method of public notice set forth in Article 939, paragraph (1), item (ii) or item (iii) in accordance with the provisions of the articles of incorporation under the provisions of that paragraph in addition to Official Gazette, the disappearing stock company, etc. is not required to give separate notices under the provisions of the preceding paragraph (excluding the notices to creditors of the obligations of the stock company splitting in an absorption-type split that have arisen due to a tort in the case of effecting an absorption-type company split).

- (4) If creditors do not raise any objections within the period under paragraph (2), item (iv), relevant creditors are deemed to have approved the absorption-type merger, etc.
- (5) If creditors raise objections within the period under paragraph (2), item (iv), the disappearing stock company, etc. must make payment or provide reasonable security to relevant creditors, or entrust equivalent property to a trust company, etc. for the purpose of having relevant creditors receive the payment; provided, however, that this does not apply if there is no risk of harm to relevant creditors by relevant absorption-type merger, etc.

(Change in the Effective Day of Absorption-Type Mergers)

Article 790 (1) A disappearing stock company, etc. may change the effective day by agreement with the surviving company, etc.

- (2) In the cases prescribed in the preceding paragraph, the disappearing stock company, etc. must give public notice of the changed effective day by the day immediately preceding the original effective day (or, immediately preceding the changed effective day, if the changed effective day comes before the original effective day).
- (3) When the effective day is changed pursuant to the provisions of paragraph (1), the provisions of this Section and Article 750, Article 752, Article 759, Article 761, Article 769, and Article 771 apply by deeming the changed effective day to be the effective day.

(Keeping and Inspection of Documents Concerning Absorption-Type Company Splits or Share Exchanges)

Article 791 (1) The stock company splitting in an absorption-type split or the wholly owned subsidiary company resulting from a share exchange must, without delay after the effective day, prepare what are provided for in the following items for the categories set forth respectively in those items, jointly with the company succeeding in the absorption-type split or the wholly owning parent company resulting from the share exchange:

- (i) stock company splitting in the absorption-type split: documents detailing the rights and obligations that the company succeeding in the absorption-type split succeeded to by transfer from the stock company splitting in the absorption-type split through the absorption-type company split and any other information prescribed by Ministry of Justice Order as concerning an absorption-type company split, or electronic or magnetic records in which the information has been recorded; and
- (ii) wholly owned subsidiary company resulting from the share exchange: documents detailing the number of shares of the wholly owned subsidiary company resulting from the share exchange acquired by the wholly owning

- parent company resulting from the share exchange and any other information prescribed by Ministry of Justice Order as concerning a share exchange, or electronic or magnetic records in which the information has been recorded.
- (2) A stock company splitting in an absorption-type split or a wholly owned subsidiary company resulting from a share exchange must, for a period of six months from the effective day, keep the documents or electronic or magnetic records referred to in the items of the preceding paragraph at its head office.
- (3) Shareholders, creditors and any other interested parties of a stock company splitting in an absorption-type split may make the following requests to the stock company splitting in the absorption-type split at any time during its business hours; provided, however, that the fees designated by the stock company splitting in the absorption-type split are required to be paid in order to make the requests set forth in item (ii) or item (iv):
- (i) requests for inspection of the documents referred to in the preceding paragraph;
  - (ii) requests for delivery of a transcript or extract of the documents referred to in the preceding paragraph;
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the stock company splitting in the absorption-type split has designated, or a request to be issued a document showing that information.
- (4) The provisions of the preceding paragraph apply mutatis mutandis to a wholly owned subsidiary company resulting from a share exchange. In these cases, the phrase "shareholders, creditors and any other interested parties of a stock company splitting in the absorption-type split" is deemed to be replaced with "persons who were shareholders or holders of share option in the wholly owned subsidiary company resulting from the share exchange as of the effective day".

(Special Provisions on Dividends of Surplus)

Article 792 The provisions of Article 445, paragraph (4), Article 458 and Part II, Chapter V, Section 6 do not apply to the acts set forth below:

- (i) acquisition of shares referred to in Article 758, item (viii), (a) or Article 760, item (vii), (a); and
- (ii) distribution of dividends of surplus referred to in Article 758, item (viii), (b) or Article 760, item (vii), (b).



## **Division 2 Procedures for a Membership Company**

Article 793 (1) A membership company conducting any one of the acts below must obtain the consent of all members of the membership company with regard to the absorption-type merger agreement, etc. by the day immediately preceding the effective day; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation:

- (i) absorption-type merger (but only if the membership company disappears in the absorption-type merger); or
- (ii) absorption-type company split (limited to cases where another company succeeds to all of the rights and obligations held by relevant membership company (limited to a limited liability company) in connection with its business).

(2) The provisions of Article 789 (excluding paragraph (1), item (iii) and paragraph (2), item (iii)) and Article 790 apply mutatis mutandis to a membership company disappearing in an absorption-type merger or a company splitting in an absorption-type split, which is a limited liability company (hereinafter referred to as the "limited liability company splitting in the absorption-type split" in this Section). In these cases, the phrase "creditors of the stock company splitting in the absorption-type split who are unable to request the stock company splitting in the absorption-type split to perform the obligations (including performance of the guarantee obligations that the stock company splitting in the absorption-type split jointly and severally assumes with the company succeeding in the absorption-type split as a guarantor) (or, if there are provisions on the matter set forth in Article 758, item (viii) or Article 760, item (vii), creditors of the stock company splitting in the absorption-type split)" in Article 789, paragraph (1), item (ii) is deemed to be replaced with "creditors of the stock company splitting in the absorption-type split who are unable to request the stock company splitting in the absorption-type split to perform the obligations (including performance of the guarantee obligations that the stock company splitting in the absorption-type split jointly and severally assumes with the company succeeding in the absorption-type split as a guarantor)" and the term "disappearing stock company, etc." in paragraph (3) of that Article is deemed to be replaced with "membership company disappearing in the absorption-type merger (limited to a limited liability company if the company surviving the absorption-type merger is a stock company or a limited liability company) or the limited liability company splitting in the absorption-type split".

## **Subsection 2 Procedures for the Company Surviving an Absorption-**

**Type Merger, the Company Succeeding in an Absorption-Type Split,  
and the Wholly Owning Parent Company Resulting from a Share  
Exchange  
Division 1 Procedures for a Stock Company**

(Keeping and Inspection of Documents Concerning an Absorption-Type Merger Agreement)

- Article 794 (1) A stock company surviving an absorption-type merger, a stock company succeeding in an absorption-type split, or the wholly owning parent stock company resulting from a share exchange (hereinafter referred to as the "surviving stock company, etc." in this division) must, from the day on which the absorption-type merger agreement, etc. began to be kept until the day on which six months have elapsed from the effective day, keep documents detailing the absorption-type merger agreement, etc. and other information prescribed by Ministry of Justice Order, or electronic or magnetic records in which the information has been recorded, at its head office.
- (2) The "day on which the absorption-type merger agreement, etc. began to be kept" prescribed in the preceding paragraph means the earliest of the following days:
- (i) if the absorption-type merger agreement, etc. is required to be approved by a resolution at a shareholders meeting (including a general meeting of class shareholders), the day two weeks prior to the day of the shareholders meeting (or, in the cases prescribed in Article 319, paragraph (1), the day when the proposal under that paragraph is submitted);
  - (ii) the day of the notice under the provisions of Article 797, paragraph (3) or the day of the public notice under paragraph (4) of that Article, whichever is earlier; or
  - (iii) if the procedures under the provisions of Article 799 are required to be carried out, the day of the public notice under the provisions of paragraph (2) of that Article or the day of the notice under the provisions of that paragraph, whichever is earlier.
- (3) Shareholders and creditors of a surviving stock company, etc. (or, if the monies, etc. to be delivered to shareholders of the wholly owned subsidiary company resulting from a share exchange are limited to shares of the wholly owning parent stock company resulting from the share exchange or those prescribed by Ministry of Justice Order as being equivalent thereto (excluding the case prescribed in Article 768, paragraph (1), item (iv), (c)), shareholders) may make the following requests to the surviving stock company, etc. at any time during its business hours; provided, however, that the fees designated by the surviving stock company, etc. are required to be paid in order to make the requests set forth in item (ii) or item (iv):

- (i) requests for inspection of the documents referred to in paragraph (1);
- (ii) requests for delivery of a transcript or extract of the documents referred to in paragraph (1);
- (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in paragraph (1); and
- (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in paragraph (1) by an electronic or magnetic means that the surviving stock company, etc. has designated, or a request to be issued a document showing that information.

(Approval of the Absorption-Type Merger Agreement)

Article 795 (1) A surviving stock company, etc. must obtain the approval of the absorption-type merger agreement, etc. by a resolution at a shareholders meeting by the day immediately preceding the effective day.

(2) In the cases set forth below, a director must explain to that effect at the shareholders meeting referred to in the preceding paragraph:

- (i) if the amount prescribed by Ministry of Justice Order as the amount of obligations that the stock company surviving an absorption-type merger or the stock company succeeding in an absorption-type split succeeds to by transfer from the company disappearing in the absorption-type merger or the company splitting in the absorption-type split (referred to as the "amount of succeeded obligations" in the following item) exceeds the amount prescribed by Ministry of Justice Order as the amount of assets that the stock company surviving the absorption-type merger or the stock company succeeding in the absorption-type split succeeds to by transfer from the company disappearing in the absorption-type merger or the company splitting in the absorption-type split (referred to as the "amount of succeeded assets" in the following item);
- (ii) if the book value of the monies, etc. (excluding shares, etc. of the stock company surviving an absorption-type merger or the stock company succeeding in an absorption-type split) delivered by the stock company surviving the absorption-type merger or the stock company succeeding in the absorption-type split to shareholders of the stock company disappearing in the absorption-type merger, to members of the membership company disappearing in the absorption-type merger or to the company splitting in the absorption-type split exceeds the amount obtained by deducting the amount of succeeded obligations from the amount of succeeded assets; or
- (iii) if the book value of the monies, etc. (excluding shares, etc. of the wholly owning parent stock company resulting from a share exchange) delivered by the wholly owning parent stock company resulting from a share exchange to

shareholders of the wholly owned subsidiary company resulting from the share exchange exceeds the amount prescribed by Ministry of Justice Order as the amount of shares in the wholly owned subsidiary company resulting from the share exchange to be acquired by the wholly owning parent stock company resulting from the share exchange.

- (3) If the assets of a company disappearing in an absorption-type merger or a company splitting in an absorption-type split include shares of the stock company surviving the absorption-type merger or the stock company succeeding in the absorption-type split, a director must explain the matters concerning relevant shares at the shareholders meeting referred to in paragraph (1).
- (4) Where the surviving stock company, etc. is a company with class shares, in the cases set forth in the following items, an absorption-type merger, etc. does not become effective without a resolution at a general meeting of class shareholders constituted by class shareholders of the class of shares provided for respectively in those items (limited to shares with a restriction on transfer and for which the provisions of the articles of incorporation referred to in Article 199, paragraph (4) do not exist) (if there are two or more classes of shares relating to relevant class shareholders, the respective general meetings of class shareholders constituted by class shareholders categorized by the class of relevant two or more classes of shares); provided, however, that this does not apply to cases where there is no class shareholder who is able to exercise a voting right at relevant general meeting of class shareholders:
- (i) if the monies, etc. delivered to shareholders of the stock company disappearing in an absorption-type merger or to members of the membership company disappearing in an absorption-type merger are shares of the stock company surviving the absorption-type merger: the class of shares referred to in Article 749, paragraph (1), item (ii), (a);
  - (ii) if the monies, etc. delivered to the company splitting in an absorption-type split are shares of the stock company succeeding in the absorption-type split: the class of shares referred to in Article 758, item (iv), (a); or
  - (iii) if the monies, etc. delivered to shareholders of the wholly owned subsidiary company resulting from a share exchange are shares in the wholly owning parent stock company resulting from the share exchange: the class of shares referred to in Article 768, paragraph (1), item (ii), (a).

(Cases Where Approval of the Absorption-Type Merger Agreement Is Not Required)

Article 796 (1) The provisions of paragraphs (1) through (3) of the preceding Article do not apply if a company disappearing in an absorption-type merger, the company splitting in an absorption-type split or the wholly owned

subsidiary company resulting from a share exchange (hereinafter referred to as the "disappearing company, etc." in this division) is the special controlling company of the surviving stock company, etc.; provided, however, that this does not apply if all or part of the monies, etc. to be delivered to shareholders of the stock company disappearing in the absorption-type merger or the wholly owned subsidiary company resulting from the share exchange, to members of the membership company disappearing in the absorption-type merger or to the company splitting in the absorption-type split are shares with a restriction on transfer, etc. of the surviving stock company, etc., and the surviving stock company, etc. is not a public company.

(2) The provisions of paragraphs (1) through (3) of the preceding Article do not apply if the amount set forth in item (i) does not exceed one-fifth (or, if a lesser proportion is prescribed in the articles of incorporation of the surviving stock company, etc., the proportion) of the amount set forth in item (ii); provided, however, that this does not apply in the cases set forth in the items of paragraph (2) of that Article or the cases prescribed in the proviso to the preceding paragraph:

(i) the total amount of the amounts set forth below:

(a) the amount obtained by multiplying the number of shares of the surviving stock company, etc. to be delivered to shareholders of the stock company disappearing in an absorption-type merger or the wholly owned subsidiary company resulting from a share exchange, to members of the membership company disappearing in the absorption-type merger or to the company splitting in the absorption-type split (hereinafter referred to as "shareholders, etc. of the disappearing company, etc." in this item) by the amount of net assets per share;

(b) the total amount of the book value of bonds, share options or bonds with share options of the surviving stock company, etc. to be delivered to shareholders, etc. of the disappearing company, etc.; and

(c) the total amount of the book value of property other than shares, etc. of the surviving stock company, etc. to be delivered to shareholders, etc. of the disappearing company, etc.; and

(ii) the amount calculated by the method specified by Ministry of Justice Order as the total assets of the surviving stock company, etc.

(3) In the cases prescribed in the main clause of the preceding paragraph, if shareholders that hold the shares (limited to those that entitle the shareholders to exercise voting rights at a shareholders meeting under paragraph (1) of the preceding Article) in the number prescribed by Ministry of Justice Order notify the surviving stock company, etc. to the effect that relevant shareholders dissent from the absorption-type merger, etc., within two weeks from the day of the notice under the provisions of Article 797, paragraph

(3) or the public notice under paragraph (4) of that Article, the relevant surviving stock company, etc. must obtain the approval of the absorption-type merger agreement, etc. by a resolution at a shareholders meeting no later than the day immediately preceding the effective day.

(Demanding Cessation of Absorption-Type Merger)

Article 796-2 In the following cases, if shareholders of the surviving stock company, etc. are likely to suffer disadvantages, shareholders of the surviving stock company, etc. may demand the surviving stock company, etc. to cease an absorption-type merger, etc.; provided, however, that this does not apply to cases prescribed in the main clause of paragraph (2) of the preceding Article (excluding the cases set forth in the items of Article 795, paragraph (2) and the cases prescribed in the proviso to paragraph (1) or paragraph (3) of the preceding Article):

- (i) if the absorption-type merger, etc. violates laws and regulations or the articles of incorporation; or
- (ii) if prescribed in the main clause of paragraph (1) of the preceding Article, when the matters set forth in Article 749, paragraph (1), item (ii) or (iii), Article 758, item (iv), or Article 768, paragraph (1), item (ii) or (iii) are extremely improper in light of the financial status of the surviving stock company, etc. or disappearing company, etc.

(Dissenting Shareholders' Appraisal Rights)

Article 797 (1) In cases of effecting an absorption-type merger, etc., dissenting shareholders may demand that the surviving stock company, etc. purchase, at a fair price, the shares that they hold; provided, however, that this does not apply to the cases prescribed in the main clause of Article 796, paragraph (2) (excluding the cases set forth in the items of Article 795, paragraph (2) and the cases prescribed in the proviso to Article 796, paragraph (1), or (3)).

(2) The "dissenting shareholders" provided for in the preceding paragraph means the shareholders provided for in the following items in the cases set forth in the same items:

- (i) if a resolution at a shareholders meeting (including a general meeting of class shareholders) is required to effect the absorption-type merger, etc.: the following shareholders:
  - (a) shareholders who gave notice to relevant surviving stock company, etc. to the effect that they dissented from relevant absorption-type merger, etc. prior to relevant shareholders meeting and who dissented from relevant absorption-type merger, etc. at relevant shareholders meeting (limited to those who can exercise voting rights at relevant shareholders meeting);
  - (b) shareholders who are unable to exercise voting rights at relevant

- shareholders meeting; and
- (ii) in cases other than those prescribed in the preceding item: all shareholders (excluding the special controlling company in the cases prescribed in the main clause of Article 796, paragraph (1)).
- (3) A surviving stock company, etc. must notify its shareholders (excluding the special controlling company in the cases prescribed in the main clause of Article 796, paragraph (1)) that it will effect an absorption-type merger, etc. and the trade name and address of the disappearing company, etc. (or, in the cases prescribed in Article 795, paragraph (3), the fact that it will effect an absorption-type merger, etc., the trade name and address of the disappearing company, etc. and the matters concerning shares set forth in that paragraph), by twenty days prior to the effective day.
  - (4) In the following cases, a public notice may be substituted for the notice under the provisions of the preceding paragraph:
    - (i) if the surviving stock company, etc. is a public company; or
    - (ii) if the surviving stock company, etc. obtains the approval of the absorption-type merger agreement, etc. by the resolution at a shareholders meeting set forth in Article 795, paragraph (1).
  - (5) To make a demand under the provisions of paragraph (1) (hereinafter referred to as the "exercise of appraisal rights" in this Division) a dissenting shareholder must indicate the number of shares with regard to which the shareholder is exercising those appraisal rights (or, for a company with classes shares, the classes of the shares and the number of shares for each class), between twenty days prior to the effective day and the day immediately preceding the effective day.
  - (6) When intending to exercise appraisal rights on shares for which share certificates have been issued, shareholders of those shares must submit the share certificates representing those shares to the surviving company, etc.; provided, however, that this does not apply to a person who makes a demand pursuant to the provisions of Article 223 with respect to those share certificates.
  - (7) Shareholders exercising appraisal rights may withdraw their demands for appraisal only with the approval of the surviving stock company, etc.
  - (8) The demands of the shareholders exercising appraisal rights lose effect if the absorption-type merger, etc. is cancelled.
  - (9) The provisions of Article 133 do not apply to shares for the exercise of appraisal rights.

(Determination of the Price of Shares)

Article 798 (1) If a shareholder exercises appraisal rights and an agreement determining the price of the shares is reached between the shareholder and the

surviving stock company, etc., the surviving stock company, etc. must pay that price within sixty days from the effective day.

- (2) If no agreement on the determination of the price of the shares is reached within thirty days from the effective day, shareholders or the surviving stock company, etc. may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (7) of the preceding Article, in the cases prescribed in the preceding paragraph, if the petition under that paragraph is not filed within sixty days from the effective day, shareholders exercising appraisal rights may withdraw their demands for appraisal at any time after the expiration of the period.
- (4) The surviving stock company, etc. must also pay interest on the price determined by the court at the statutory rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) The surviving stock company, etc. may pay the amount that the surviving company, etc. considers as fair price to shareholders until the determination of the price of shares.
- (6) A share purchase connected with the exercise of appraisal rights becomes effective on the effective day.
- (7) If a shareholder exercises appraisal rights with respect to shares for which share certificates are issued, the share certificate-issuing company must pay the price of the shares relating to the exercise of the appraisal rights in exchange for the share certificates.

#### (Objections of Creditors)

- Article 799 (1) In the cases set forth in the following items, the creditors provided for in those items may state their objections to the absorption-type merger, etc. to the surviving stock company, etc.:
- (i) in cases of effecting an absorption-type merger: creditors of the stock company surviving the absorption-type merger;
  - (ii) in cases of effecting an absorption-type company split: creditors of the stock company succeeding in the absorption-type split; or
  - (iii) in cases of effecting a share exchange other than where the monies, etc. to be delivered to shareholders of the wholly owned subsidiary company resulting from the share exchange are only shares in the wholly owning parent stock company resulting from the share exchange or those prescribed by Ministry of Justice Order as being equivalent thereto, or in the cases prescribed in Article 768, paragraph (1), item (iv), (c): creditors of the wholly owning parent stock company resulting from the share exchange.
- (2) If the creditors of the surviving stock company, etc. are able to state their objection pursuant to the provisions of the preceding paragraph, the surviving



stock company, etc. must give public notice of the matters set forth below in Official Gazette and must give notices separately to each known creditor, if any; provided, however, that the period under item (iv) may not be less than one month:

- (i) a statement that an absorption-type merger, etc. will be effected;
  - (ii) the trade name and address of the disappearing company, etc.;
  - (iii) the matters prescribed by Ministry of Justice Order as the matters regarding the financial statements of the surviving stock company, etc. and the disappearing company, etc. (limited to a stock company); and
  - (iv) a statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if the surviving stock company, etc. gives public notice under that paragraph by method of public notice set forth in Article 939, paragraph (1), item (ii) or item (iii) in accordance with the provisions of the articles of incorporation under the provisions of that paragraph beyond Official Gazette, the surviving stock company, etc. is not required to give separate notices under the provisions of the preceding paragraph.
- (4) If creditors do not raise any objections within the period under paragraph (2), item (iv), relevant creditors are deemed to have approved the absorption-type merger, etc.
- (5) If creditors raise objections within the period under paragraph (2), item (iv), the surviving stock company, etc. must make payment or provide reasonable security to relevant creditors, or entrust equivalent property to a trust company, etc. for the purpose of having relevant creditors receive the payment; provided, however, that this does not apply if there is no risk of harm to relevant creditors by relevant absorption-type merger, etc.

(Special Provisions on Cases Where the Monies to Be Delivered to Shareholders of the Disappearing Company Are the Parent Company's Shares of the Surviving Stock Company)

Article 800 (1) Notwithstanding the provisions of Article 135, paragraph (1), if all or part of the monies, etc. to be delivered to shareholders of the stock company disappearing in an absorption-type merger or the wholly owned subsidiary company resulting from a share exchange, to members of the membership company disappearing in the absorption-type merger or to the company splitting in the absorption-type split (hereinafter referred to as "shareholders, etc. of the disappearing company, etc." in this paragraph) are the parent company's shares (meaning the parent company's shares prescribed in paragraph (1) of that Article; hereinafter the same applies in this Article) of the surviving stock company, etc., the surviving stock company, etc. may

acquire relevant parent company's shares in a number not exceeding the total number of relevant parent company's shares to be delivered to the shareholders, etc. of the disappearing company, etc. at the time of the absorption-type merger, etc.

- (2) Notwithstanding the provisions of Article 135, paragraph (3), the surviving stock company, etc. referred to in the preceding paragraph may hold the parent company's shares of the surviving stock company, etc. until the effective day; provided, however, that this does not apply when the absorption-type merger, etc. is cancelled.

(Keeping and Inspection of Documents Concerning Absorption-Type Mergers)

Article 801 (1) A stock company surviving an absorption-type merger must, without delay after the effective day, prepare documents detailing the rights and obligations that the stock company surviving the absorption-type merger succeeded to by transfer from the company disappearing in the absorption-type merger through the absorption-type merger and any other information prescribed by Ministry of Justice Order as concerning an absorption-type merger, or electronic or magnetic records in which the information has been recorded.

- (2) The stock company succeeding in an absorption-type split (limited to the stock company succeeding in the absorption-type split where the limited liability company effects the absorption-type company split) must, without delay after the effective day, prepare, jointly with the limited liability company splitting in the absorption-type split, documents detailing the rights and obligations that the stock company succeeding in the absorption-type split succeeded to by transfer from the limited liability company splitting in the absorption-type split through the absorption-type company split and any other information prescribed by Ministry of Justice Order as concerning an absorption-type company split, or electronic or magnetic records in which the information has been recorded.

- (3) Each of the surviving stock companies, etc. set forth in the following items must, for a period of six months from the effective day, keep what are specified respectively in those items at its head office:
- (i) stock company surviving an absorption-type merger: documents or electronic or magnetic records referred to in paragraph (1);
  - (ii) stock company succeeding in an absorption-type split: documents or electronic or magnetic records referred to in the preceding paragraph or Article 791, paragraph (1), item (i); and
  - (iii) wholly owning parent stock company resulting from a share exchange: documents or electronic or magnetic records referred to in Article 791, paragraph (1), item (ii).

- (4) Shareholders and creditors of the stock company surviving an absorption-type merger may make the following requests to the stock company surviving the absorption-type merger at any time during its business hours; provided, however, that the fees designated by the stock company surviving the absorption-type merger are required to be paid in order to make the requests referred to in item (ii) or item (iv):
- (i) requests for inspection of the documents referred to in item (i) of the preceding paragraph;
  - (ii) requests for delivery of a transcript or extract of the documents referred to in item (i) of the preceding paragraph;
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in item (i) of the preceding paragraph; and
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in item (i) of the preceding paragraph by an electronic or magnetic means that the stock company surviving the absorption-type merger, or requests has designated, or a request to be issued a document showing that information.
- (5) The provisions of the preceding paragraph apply mutatis mutandis to the stock company succeeding in an absorption-type split. In these cases, the phrase "shareholders and creditors" in that paragraph is deemed to be replaced with "shareholders, creditors and any other interested parties", and the term "item (i) of the preceding paragraph" in the items of that paragraph is deemed to be replaced with "item (ii) of the preceding paragraph".
- (6) The provisions of paragraph (4) apply mutatis mutandis to the wholly owning parent stock company resulting from a share exchange. In these cases, the phrase "shareholders and creditors" in that paragraph is deemed to be replaced with "shareholders and creditors (or, if monies, etc. to be delivered to shareholders of the wholly owned subsidiary company resulting from a share exchange are limited to shares in the wholly owning parent stock company resulting from the share exchange or those prescribed by Ministry of Justice Order as being equivalent thereto (excluding the case prescribed in Article 768, paragraph (1), item (iv), (c)), shareholders of the wholly owning parent stock company resulting from the share exchange)", and the term "item (i) of the preceding paragraph" in the items of that paragraph is deemed to be replaced with "item (iii) of the preceding paragraph".

## **Division 2 Procedures for a Membership Company**

Article 802 (1) A membership company conducting any one of the acts set forth in the following items (hereinafter referred to as the "surviving membership

company, etc." in this Article) must, in the cases specified respectively in those items, obtain the consent of all members of the surviving membership company, etc. with regard to the absorption-type merger agreement, etc. by the day immediately preceding the effective day; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation:

- (i) absorption-type merger (limited to cases where the membership company survives in the absorption-type merger): the cases prescribed in Article 751, paragraph (1), item (ii);
  - (ii) succession of all or part of the rights and obligations held by another company in connection with its business through an absorption-type company split: the cases prescribed in Article 760, item (iv); or
  - (iii) acquisition of all of the issued shares of a stock company through a share exchange: the cases prescribed in Article 770, paragraph (1), item (ii).
- (2) The provisions of Article 799 (excluding paragraph (2), item (iii)) and Article 800 apply mutatis mutandis to a surviving membership company, etc. In these cases, the term "shares in the wholly owning parent stock company resulting from the share exchange" in Article 799, paragraph (1), item (iii) is deemed to be replaced with "equity interest in the wholly owning parent limited liability company resulting from the share exchange", and the phrase "thereto, or in the cases prescribed in Article 768, paragraph (1), item (iv), (c)" in that item is deemed to be replaced with "thereto".

### **Section 3 Procedures of a Consolidation-Type Merger**

#### **Subsection 1 Procedures for Companies Disappearing in a Consolidation-Type Merger, the Company Splitting in an Incorporation-Type Split, or the Wholly Owned Subsidiary Company Resulting from a Share Transfer**

##### **Division 1 Procedures for a Stock Company**

(Keeping and Inspection of Documents Concerning a Consolidation-Type Merger Agreement)

Article 803 (1) Each of the stock companies set forth in the following items (hereinafter referred to as a "disappearing stock company, etc." in this Division) must, from the day on which the consolidation-type merger agreement, etc. began to be kept until the day on which six months have elapsed from the day of formation of the company incorporated in the consolidation-type merger, the company incorporated in the incorporation-type split, or the wholly owning parent company incorporated in a share transfer (hereinafter referred to as an "incorporated company" in this division) (or, for any stock company disappearing in a consolidation-type merger, the day of formation of the company incorporated in the consolidation-type merger), keep

documents detailing what is specified in those items (hereinafter referred to as the "consolidation-type merger agreement, etc." in this Section) and other information prescribed by Ministry of Justice Order, or electronic or magnetic records in which the information has been recorded, at its head office:

- (i) stock company disappearing in a consolidation-type merger: the consolidation-type merger agreement;
  - (ii) stock company splitting in an incorporation-type split: the incorporation-type company split plan; and
  - (iii) wholly owned subsidiary company resulting from a share transfer: the share transfer plan.
- (2) The "day on which the consolidation-type merger agreement, etc. began to be kept" prescribed in the preceding paragraph means the earliest of the following days:
- (i) if the consolidation-type merger agreement, etc. is required to be approved by a resolution at a shareholders meeting (including a general meeting of class shareholders), the day two weeks prior to the day of the shareholders meeting (or, in the cases prescribed in Article 319, paragraph (1), the day when the proposal under that paragraph is submitted);
  - (ii) if there are shareholders who are to receive the notice under the provisions of Article 806, paragraph (3), the day of the notice under the provisions of that paragraph or the day of the public notice under paragraph (4) of that Article, whichever is earlier;
  - (iii) if there are share option holders who are to receive the notice under the provisions of Article 808, paragraph (3), the day of the notice under the provisions of that paragraph or the day of the public notice under paragraph (4) of that Article, whichever is earlier;
  - (iv) if the procedures under the provisions of Article 810 are required to be carried out, the day of the public notice under the provisions of paragraph (2) of that Article or the day of the notice under the provisions of that paragraph, whichever is earlier; or
  - (v) in cases other than those prescribed in the preceding items, the day on which two weeks have elapsed from the day of preparation of the incorporation-type company split plan.
- (3) Shareholders and creditors of a disappearing stock company, etc. (or, in the case of a wholly owned subsidiary company resulting from a share transfer, shareholders and share option holders) may make the following requests to the disappearing stock company, etc. at any time during its business hours; provided, however, that the fees designated by the disappearing stock company, etc. are required to be paid in order to make the requests set forth in item (ii) or item (iv):
- (i) requests for inspection of the documents set forth in paragraph (1);

- (ii) requests for delivery of a transcript or extract of the documents set forth in paragraph (1);
- (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in paragraph (1); and
- (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in paragraph (1) by an electronic or magnetic means that the disappearing stock company, etc. has designated, or a request to be issued a document showing that information.

(Approval of the Consolidation-Type Merger Agreement)

Article 804 (1) A disappearing stock company, etc. must obtain the approval of the consolidation-type merger agreement, etc. by a resolution at a shareholders meeting.

- (2) Notwithstanding the provisions of the preceding paragraph, if the company incorporated in the consolidation-type merger is a membership company, consent of all shareholders of the stock companies disappearing in the consolidation-type merger must be obtained with regard to the consolidation-type merger agreement.
- (3) If a stock company disappearing in a consolidation-type merger or the wholly owned subsidiary company resulting from a share transfer is a company with classes shares, if all or part of the shares, etc. of the stock company incorporated in the consolidation-type merger or the wholly owning parent company incorporated in a share transfer to be delivered to shareholders of the stock company disappearing in the consolidation-type merger or the wholly owned subsidiary company resulting from a share transfer are shares with a restriction on transfer, etc., the consolidation-type merger or the share transfer does not become effective without a resolution at a general meeting of class shareholders constituted by class shareholders of the class of shares subject to the allotment of the shares with a restriction on transfer, etc. (excluding shares with a restriction on transfer) (if there are two or more classes of shares relating to relevant class shareholders, the respective general meetings of class shareholders constituted by class shareholders categorized by the class of relevant two or more classes of shares); provided, however, that this does not apply to cases where there is no class shareholder able to exercise a voting right at relevant general meeting of class shareholders.
- (4) A disappearing stock company, etc. must notify its registered pledgees of shares (excluding the registered pledgees of shares in the cases prescribed in the following Article) and registered pledgees of share options concerning the share options specified in the items of Article 808, paragraph (3) that it will effect the consolidation-type merger, the incorporation-type company split or

the share transfer (hereinafter referred to as a "consolidation-type merger, etc." in this Section) within two weeks from the day of the resolution at the shareholders meeting set forth in paragraph (1) (or, in the cases prescribed in paragraph (2), the day of obtainment of the consent of all shareholders set forth in that paragraph).

(5) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

(Cases Where Approval of the Incorporation-Type Company Split Plan Is Not Required)

Article 805 The provisions of paragraph (1) of the preceding Article do not apply if the sum of the book value of the assets that the company incorporated in an incorporation-type split succeeds to through the incorporation-type company split does not exceed one-fifth (or, if a lesser proportion is prescribed in the articles of incorporation of the stock company splitting in the incorporation-type split, relevant proportion) of the amount calculated by the method specified by Ministry of Justice Order as the total assets of the stock company splitting in the incorporation-type split.

(Demanding Cessation of a Consolidation-Type Merger)

Article 805-2 If a consolidation-type merger, etc. violates laws and regulations or the articles of incorporations, if shareholders of a disappearing stock company, etc. are likely to suffer disadvantages, shareholders of the disappearing stock company, etc. may demand the disappearing stock company, etc. to cease the consolidation-type merger, etc.; provided, however, that this does not apply to cases prescribed in the preceding Article.

(Dissenting Shareholders' Appraisal Rights)

Article 806 (1) In cases of effecting a consolidation-type merger, etc. (excluding the following cases), dissenting shareholders may demand that the disappearing stock company, etc. purchase, at a fair price, the shares that they hold:

- (i) in cases prescribed in Article 804, paragraph (2); and
- (ii) in cases prescribed in Article 805.

(2) The "dissenting shareholders" provided for in the preceding paragraph means the shareholders provided for in the following items:

- (i) shareholders who gave notice to relevant disappearing stock company, etc. to the effect that they dissented from relevant consolidation-type merger, etc. prior to the shareholders meeting set forth in Article 804, paragraph (1) (if a resolution at a general meeting of class shareholders is required to effect the consolidation-type merger, etc., including relevant general meeting of class

- shareholders) and who dissented from relevant consolidation-type merger, etc. at the relevant shareholders meeting (limited to those who can exercise voting rights at relevant shareholders meeting); and
- (ii) shareholders who are unable to exercise voting rights at the relevant shareholders meeting.
- (3) A disappearing stock company, etc. must notify its shareholders that it will effect a consolidation-type merger, etc. and the trade names and addresses of the companies disappearing in the consolidation-type merger, the company splitting in the incorporation-type split, or the wholly owned subsidiary company resulting from a share transfer (hereinafter referred to as the "disappearing company, etc." in this Section) and the incorporated company, within two weeks from the day of the resolution at the shareholders meeting referred to in Article 804, paragraph (1); provided, however, that this does not apply in the cases set forth in the items of paragraph (1).
- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.
- (5) To make a demand under the provisions of paragraph (1) (hereinafter referred to as the "exercise of appraisal rights" in this division) a dissenting shareholder must indicate the number of shares with regard to which the shareholder is exercising the appraisal rights (or, for a company with classes shares, the classes of the shares and the number of shares for each class), within twenty days from the day of the notice under the provisions of paragraph (3) or the public notice under the preceding paragraph.
- (6) When intending to exercise appraisal rights on shares for which share certificates have been issued, shareholders of those shares must submit the share certificates representing those shares to the disappearing stock company, etc.; provided, however, that this does not apply to a person who makes a demand pursuant to the provisions of Article 223 with respect to those share certificates.
- (7) Shareholders exercising appraisal rights may withdraw their demands for appraisal only with the approval of the disappearing stock company, etc.
- (8) The demands of the shareholders exercising appraisal rights lose effect if the consolidation-type merger, etc. is cancelled.
- (9) The provisions of Article 133 do not apply to shares for the exercise of appraisal rights.

#### (Determination of the Price of Shares)

Article 807 (1) If a shareholder exercises appraisal rights and an agreement determining the price of the shares is reached between the shareholder and the disappearing stock company, etc. (or between the shareholder and the company incorporated in the consolidation-type merger, if a consolidation-type merger is



effected and it is after the day of formation of the company incorporated in the consolidation-type merger; hereinafter the same applies in this Article), the disappearing stock company, etc. must pay that price within sixty days from the day of formation of the incorporated company.

- (2) If no agreement on the determination of the price of the shares is reached within thirty days from the day of formation of the incorporated company, shareholders or the disappearing stock company, etc. may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (7) of the preceding Article, in the cases prescribed in the preceding paragraph, if the petition under that paragraph is not filed within sixty days from the day of formation of the incorporated company, shareholders exercising appraisal rights may withdraw their demands for appraisal at any time after the expiration of the period.
- (4) The disappearing stock company, etc. must also pay interest on the price determined by the court at the statutory rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) A disappearing stock company, etc. may pay the amount that the disappearing stock company, etc. considers to be a fair price to shareholders until determination of the price of shares.
- (6) A share purchase connected with the exercise of appraisal rights becomes effective on the day of formation of the incorporated company.
- (7) If a shareholder exercises appraisal rights with respect to shares for which share certificates are issued, the share certificate-issuing company must pay the price of the shares relating to the exercise of the appraisal rights in exchange for the share certificates.

(Exercise of Appraisal Rights on Share Options)

Article 808 (1) In cases of carrying out any one of the acts set forth in the following items, holders of share options of the disappearing stock company, etc. provided for in those items may demand that the disappearing stock company, etc. purchase, at a fair price, the share options that they hold:

- (i) consolidation-type merger: share options other than those for which provisions on the matters set forth in Article 753, paragraph (1), item (x) or (xi) meet the conditions set forth in Article 236, paragraph (1), item (viii) (limited to those related to (a) of that item);
- (ii) incorporation-type company split (limited to cases where the company incorporated in the incorporation-type split is a stock company): among the following share options, share options other than those for which provisions on the matters set forth in Article 763, paragraph (1), item (x) or (xi) meet the conditions set forth in Article 236, paragraph (1), item (viii) (limited to

- those related to (c) of that item):
- (a) share options in the incorporation-type split plan; and
  - (b) share options other than share options in the incorporation-type split plan and for which there are provisions to the effect that, in the case of effecting an incorporation-type company split, share options of the stock company incorporated in the incorporation-type split are to be delivered to holders of the share options; or
  - (iii) share exchange: among the following share options, share options other than those for which provisions on the matters set forth in Article 773, paragraph (1), item (ix) or (x) meet the conditions set forth in Article 236, paragraph (1), item (viii) (limited to those related to (e) of that item):
    - (a) share options under share transfer plan; and
    - (b) share options other than share options under share transfer plan and for which there are provisions to the effect that, in the case of effecting a share transfer, share options in the wholly owning parent company incorporated in a share transfer are to be delivered to holders of relevant share options.
- (2) If holders of the share options attached to bonds with share options intend to make the demand under the preceding paragraph (hereinafter referred to as the "exercise of appraisal rights on share options" in this Division), they must also demand that the disappearing stock company purchase the bonds concerning bonds with share options; provided, however, that this does not apply if it is otherwise provided for with respect to the share options attached to relevant bonds with share options.
- (3) The disappearing stock company, etc. set forth in the following items must notify holders of share options provided for in those items that they will effect a consolidation-type merger, etc. and the trade names and address of the disappearing company, etc. and the incorporated company, within two weeks from the day of the resolution at the shareholders meeting referred to in Article 804, paragraph (1) (or, in the cases prescribed in paragraph (2) of that Article, the day of obtainment of the consent of all shareholders referred to in that paragraph, and in the cases prescribed in Article 805, the day of preparation of the incorporation-type company split plan):
- (i) stock company disappearing in the consolidation-type merger: all share options;
  - (ii) stock company splitting in the incorporation-type split if the company incorporated in the incorporation-type split is a stock company: the following share options:
    - (a) share options in the incorporation-type split plan; and
    - (b) share options other than share options in the incorporation-type split plan and for which there are provisions to the effect that, in the case of effecting an incorporation-type company split, share options of the stock

- company incorporated in the incorporation-type split are to be delivered to holders of relevant share options; and
- (iii) wholly owned subsidiary company resulting from a share transfer: the following share options:
- (a) share options under share transfer plan; and
  - (b) share options other than the share options in the share transfer plan, for which there are provisions to the effect that, in the case of effecting a share transfer, share options in the wholly owning parent company incorporated in a share transfer are to be delivered to holders of relevant share options.
- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.
- (5) To exercise appraisal rights on share options, the share option holder must indicate the number of share options with regard to which the holder is exercising appraisal rights, within twenty days from the day of the notice under the provisions of paragraph (3) or the public notice under the preceding paragraph.
- (6) When intending to exercise appraisal rights on share options in respect of share options for which share option certificates have been issued, the holder of those share options must submit to a disappearing stock company, etc. the share option certificates; provided, however, that this does not apply to a person who files a petition for public notice as prescribed in Article 114 of the Non-Contentious Cases Procedure Act with respect to those share option certificates.
- (7) When intending to exercise appraisal rights on share options in respect of share options attached to bonds with share options for which certificate representing the bond with share options have been issued, the holder of those share options must submit to the disappearing stock company, etc. the certificate representing the bond with share options; provided, however, that this does not apply to a person who files a petition for public notice as prescribed in Article 114 of the Non-Contentious Cases Procedure Act with respect to that certificate representing the bond with share options.
- (8) Share option holders exercising appraisal rights on share options may withdraw their demands for appraisal of the share options only with the approval of the disappearing stock company, etc.
- (9) The demands of the share option holders exercising appraisal rights on share options lose effect if the consolidation-type merger, etc. is cancelled.
- (10) The provisions of Article 260 do not apply to share options for exercise of appraisal rights on share options.

(Determination of the Price of Share Options)

Article 809 (1) If a share option holder exercises appraisal rights on the share

options, if an agreement on the determination of the price of the share options (if the share options are attached to bonds with share options, and there a holder thereof demands that the disappearing stock company, etc. purchase the bonds constituting those bonds with share options, including relevant bonds; hereinafter the same applies in this Article) is reached between the share option holder and the disappearing stock company, etc. (after the day of formation of the company incorporated in the consolidation-type merger in cases of effecting a consolidation-type merger, the company incorporated in the consolidation-type merger; hereinafter the same applies in this Article), the disappearing stock company, etc. must make payment within sixty days from the day of formation of the incorporated company.

- (2) If no agreement on the determination of the price of the share options is reached within thirty days from the day of formation of the incorporated company, share option holders or the disappearing stock company, etc. may file a petition for the court to determine the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (8) of the preceding Article, in the cases prescribed in the preceding paragraph, if the petition under that paragraph is not filed within sixty days from the day of formation of the incorporated company, share option holders exercising appraisal rights on the share options may withdraw their demands for appraisal of the share options at any time after the expiration of the period.
- (4) The disappearing stock company, etc. must also pay interest on the price determined by the court at the statutory rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) A disappearing stock company, etc. may pay the amount that the disappearing stock company, etc. considers to be a fair price to share option holders by the determination of price of share options.
- (6) The purchase of share options relating to the exercise of appraisal rights on share option becomes effective on the day of formation of the incorporated company.
- (7) If a share option holder exercises appraisal rights on share options with respect to share options for which share option certificates are issued, the disappearing stock company, etc. must pay the price of the share options relating to the exercise of appraisal rights on the share options in exchange for the share option certificates.
- (8) If a share option holder exercises appraisal rights on share options with respect to share options attached to a bond with share options for which a certificate for a bond with share options is issued, the disappearing stock company, etc. must pay the price of the share options relating to the exercise of appraisal rights on the share options in exchange for the certificate for the

bond with share options.

(Objections of Creditors)

- Article 810 (1) In the cases set forth in the following items, the creditors provided for in those items may state their objections to the consolidation-type merger, etc. to the disappearing stock company, etc.:
- (i) in cases of effecting a consolidation-type merger: creditors of any stock company disappearing in the consolidation-type merger;
  - (ii) in cases of effecting an incorporation-type company split: creditors of the stock company splitting in the incorporation-type split who are unable to request the stock company splitting in the incorporation-type split to perform the obligations (including performance of the guarantee obligations that the stock company splitting in the incorporation-type split jointly and severally assumes with the company incorporated in the incorporation-type split as a guarantor) (or, if there are provisions on the matter set forth in Article 763, paragraph (1), item (xii) or Article 765, paragraph (1), item (viii), creditors of the stock company splitting in the incorporation-type split); or
  - (iii) if the share options under share transfer plan are share options attached to bonds with share options: bond holders regarding relevant bonds with share options.
- (2) If all or part of the creditors of the disappearing stock company, etc. are able to state their objection pursuant to the provisions of the preceding paragraph, the disappearing stock company, etc. must give public notice of the matters set forth below in Official Gazette and must give notices separately to each known creditor (limited to one who is able to state an objection pursuant to the provisions of that paragraph), if any; provided, however, that the period under item (iv) may not be less than one month:
- (i) a statement that a consolidation-type merger, etc. will be effected;
  - (ii) the trade name and address of the other consolidated company, etc. and the incorporated company;
  - (iii) the matters prescribed by Ministry of Justice Order as the matters regarding the financial statements of the disappearing stock company, etc.; and
  - (iv) a statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if the disappearing stock company, etc. gives public notice under that paragraph by the method of public notice set forth in Article 939, paragraph (1), item (ii) or item (iii) in accordance with the provisions of the articles of incorporation under the provisions of that paragraph in addition to Official Gazette, the disappearing stock company, etc. is not required to give separate notices under

the provisions of the preceding paragraph (excluding the notices to creditors of the obligations of the stock company splitting in the incorporation-type split that have arisen due to a tort in the case of effecting an incorporation-type company split).

- (4) If creditors do not raise any objections within the period under paragraph (2), item (iv), these creditors are deemed to have approved the consolidation-type merger, etc.
- (5) If creditors raise objections within the period under paragraph (2), item (iv), the disappearing stock company, etc. must make payment or provide reasonable security to these creditors, or entrust equivalent property to a trust company, etc. for the purpose of having these creditors receive the payment; provided, however, that this does not apply if there is no risk of harm to relevant creditors by relevant consolidation-type merger, etc.

(Keeping and Inspection of Documents Concerning an Incorporation-Type Company Split or Share Transfer)

Article 811 (1) The stock company splitting in an incorporation-type split or the wholly owned subsidiary company resulting from a share transfer must, without delay after the day of formation of the company incorporated in the incorporation-type split or the wholly owning parent company incorporated in a share transfer, prepare what are provided for in the following items for the categories set forth respectively in those items, jointly with the company incorporated in the incorporation-type split or the wholly owning parent company incorporated in a share transfer:

- (i) stock company splitting in the incorporation-type split: documents detailing the rights and obligations that the company incorporated in the incorporation-type split succeeded to by transfer from the stock company splitting in the incorporation-type split through the incorporation-type company split and any other information prescribed by Ministry of Justice Order as concerning an incorporation-type company split, or electronic or magnetic records in which the information has been recorded; and
  - (ii) wholly owned subsidiary company resulting from a share transfer: documents detailing the number of shares of the wholly owned subsidiary company resulting from a share transfer acquired by the wholly owning parent company incorporated in a share transfer and any other information prescribed by Ministry of Justice Order as concerning a share transfer, or electronic or magnetic records in which the information has been recorded.
- (2) The stock company splitting in an incorporation-type split or the wholly owned subsidiary company resulting from a share transfer must, for a period of six months from the day of formation of the company incorporated in the incorporation-type split or the wholly owning parent company incorporated in a

share transfer, keep the documents or electronic or magnetic records set forth in the items of the preceding paragraph at its head office.

- (3) Shareholders, creditors and any other interested parties of a stock company splitting in the incorporation-type split may make the following requests to the stock company splitting in the incorporation-type split at any time during its business hours; provided, however, that the fees designated by the stock company splitting in the incorporation-type split are required to be paid in order to make the requests set forth in item (ii) or item (iv):
- (i) requests for inspection of the documents set forth in the preceding paragraph;
  - (ii) requests for delivery of a transcript or extract of the documents referred to in the preceding paragraph;
  - (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in the preceding paragraph; and
  - (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the stock company splitting in the incorporation-type split has designated, or a request to be issued a document showing that information.
- (4) The provisions of the preceding paragraph apply mutatis mutandis to a wholly owned subsidiary company resulting from a share transfer. In these cases, the phrase "shareholders, creditors and any other interested parties of a stock company splitting in the incorporation-type split" is deemed to be replaced with "persons who were shareholders or holders of share options of the wholly owned subsidiary company resulting from a share transfer as of the day of formation of the wholly owning parent company incorporated in a share transfer".

(Special Provisions on Dividends of Surplus)

Article 812 The provisions of Article 445, paragraph (4), Article 458 and Part II, Chapter V, Section 6 do not apply to the acts set forth below:

- (i) acquisition of shares referred to in Article 763, paragraph (1), item (xii), (a) or Article 765, paragraph (1), item (viii), (a); and
- (ii) distribution of dividends of surplus referred to in Article 763, paragraph (1), item (xii), (b) or Article 765, paragraph (1), item (viii), (b).

## **Division 2 Procedure for a Membership Company**

Article 813 (1) A membership company conducting any one of the acts below must obtain the consent of all members of the membership company with

regard to the consolidation-type merger agreement, etc.; provided, however, that this does not apply if it is otherwise provided for in the articles of incorporation:

(i) consolidation-type merger; or

(ii) incorporation-type company split (limited to cases where another company succeeds to all of the rights and obligations held by relevant membership company (limited to a limited liability company) in connection with its business).

(2) The provisions of Article 810 (excluding paragraph (1), item (iii) and paragraph (2), item (iii)) apply mutatis mutandis to a membership company disappearing in a consolidation-type merger and to a company splitting in an incorporation-type split that is a limited liability company (hereinafter referred to as the "limited liability company splitting in the incorporation-type split" in this Section). In these cases, the phrase "creditors of the stock company splitting in the incorporation-type split who are unable to request the stock company splitting in the incorporation-type split to perform the obligations (including performance of the guarantee obligations that the stock company splitting in the incorporation-type split jointly and severally assumes with the company incorporated in the incorporation-type split as a guarantor) (or, if there are provisions on the matter set forth in Article 763, paragraph (1), item (xii) or Article 765, paragraph (1), item (viii), creditors of the stock company splitting in the incorporation-type split)" in Article 810, paragraph (1), item (ii) is deemed to be replaced with "creditors of the stock company splitting in the incorporation-type split who are unable to request the stock company splitting in the incorporation-type split to perform the obligations (including performance of the guarantee obligations that the stock company splitting in the incorporation-type split jointly and severally assumes with the company incorporated in the incorporation-type split as a guarantor)" and the term "disappearing stock company, etc." in paragraph (3) of that Article is deemed to be replaced with "membership company disappearing in the consolidation-type merger (limited to a limited liability company if the company incorporated in the consolidation-type merger is a stock company or a limited liability company) or the limited liability company splitting in the incorporation-type split".

**Subsection 2 Procedures for the Company Incorporated in a  
Consolidation-Type Merger, the Company Incorporated in an  
Incorporation-Type Split, and the Wholly Owing Parent Company  
Incorporated in a Share Transfer  
Division 1 Procedures for a Stock Company**



(Special Provisions on Incorporation of a Stock Company)

- Article 814 (1) The provisions of Part II, Chapter I (excluding Article 27 (excluding items (iv) and (v)), Article 29, Article 31, Article 37, paragraph (3), Article 39, Section 6 and Article 49) do not apply to incorporation of the stock company incorporated in a consolidation-type merger, the stock company incorporated in an incorporation-type split, or a wholly owning parent company incorporated in a share transfer (hereinafter referred to as an "incorporated stock company to be incorporated" in this Division).
- (2) The articles of incorporation of an incorporated stock company to be incorporated are prepared by the consolidated company, etc.

(Keeping and Inspection of Documents Concerning a Consolidation-Type Merger Agreement)

- Article 815 (1) The stock company incorporated in a consolidation-type merger must, without delay after the day of its formation, prepare documents detailing the rights and obligations that the stock company incorporated in the consolidation-type merger succeeded to by transfer from the companies disappearing in the consolidation-type merger and any other information prescribed by Ministry of Justice Order as concerning a consolidation-type merger, or electronic or magnetic records in which the information has been recorded.
- (2) The stock company incorporated in an incorporation-type split (limited to the stock company incorporated in the incorporation-type split where only one or multiple limited liability companies effect an incorporation-type company split) must, without delay after the day of its formation, prepare, jointly with the limited liability company splitting in the incorporation-type split, documents detailing the rights and obligations that the stock company incorporated in the incorporation-type split succeeded to by transfer from the limited liability company splitting in the incorporation-type split through the incorporation-type company split and any other information prescribed by Ministry of Justice Order as concerning an incorporation-type company split, or electronic or magnetic records in which the information has been recorded.
- (3) Each of the stock companies to be incorporated set forth in the following items must, for a period of six months from the day of its formation, keep what is specified respectively in those items at its head office:
- (i) stock company incorporated in a consolidation-type merger: the documents or electronic or magnetic records referred to in paragraph (1), and documents detailing the contents of the consolidation-type merger agreement and other information prescribed by Ministry of Justice Order, or electronic or magnetic records in which the information has been recorded;
  - (ii) stock company incorporated in an incorporation-type split: the documents

- or electronic or magnetic records referred to in the preceding paragraph or Article 811, paragraph (1), item (i); and
- (iii) wholly owning parent company incorporated in a share transfer: the documents or electronic or magnetic records referred to in Article 811, paragraph (1), item (ii).
- (4) Shareholders and creditors of the stock company incorporated in a consolidation-type merger may make the following requests to the stock company incorporated in the consolidation-type merger at any time during its business hours; provided, however, that the fees designated by the stock company incorporated in the consolidation-type merger are required to be paid in order to make the requests set forth in item (ii) or item (iv):
- (i) requests for inspection of the documents set forth in item (i) of the preceding paragraph;
- (ii) requests for delivery of a transcript or extract of the documents referred to in item (i) of the preceding paragraph;
- (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in item (i) of the preceding paragraph; and
- (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in item (i) of the preceding paragraph by an electronic or magnetic means that the stock company incorporated in the consolidation-type merger has designated, or a request to be issued a document showing that information.
- (5) The provisions of the preceding paragraph apply mutatis mutandis to the stock company incorporated in the incorporation-type split. In these cases, the phrase "shareholders and creditors" in that paragraph is deemed to be replaced with "shareholders, creditors and any other interested parties", and the term "item (i) of the preceding paragraph" in the items of that paragraph is deemed to be replaced with "item (ii) of the preceding paragraph".
- (6) The provisions of paragraph (4) apply mutatis mutandis to the wholly owning parent company incorporated in a share transfer. In these cases, the phrase "shareholders and creditors" in that paragraph is deemed to be replaced with "shareholders and share option holders", and the term "item (i) of the preceding paragraph" in the items of that paragraph is deemed to be replaced with "item (iii) of the preceding paragraph".

## **Division 2 Procedures for a Membership Company**

(Special Provisions on Incorporation of a Membership Company)

Article 816 (1) The provisions of Article 575 and Article 578 do not apply to incorporation of a membership company incorporated in a consolidation-type

merger or a membership company incorporated in an incorporation-type split (referred to as an "incorporated membership company" in the following paragraph).

- (2) The articles of incorporation of an incorporated membership company are prepared by the consolidated company, etc.

#### **Section 4 Proceedings for Partial Share Exchange**

(Keeping and Inspection of Documents Related to a Partial Share Exchange Plan)

Article 816-2 (1) A parent company resulting from a partial share exchange must keep documents detailing the content of the partial share exchange plan and matters otherwise prescribed by Ministry of Justice Order or electronic or magnetic records in which the information has been recorded at its head office from the day on which the partial share exchange plan began to be kept until six months after the partial share exchange takes effect (hereinafter referred to in this Section as the "effective day").

- (2) "The day on which the partial share exchange plan began to be kept" prescribed in the preceding paragraph is the earliest of the following dates:
- (i) if the partial share exchange plan is required to be approved by a resolution at a shareholders meeting (including a general meeting of class shareholders), the day two weeks prior to the day of the shareholders meeting (or, in the cases prescribed in Article 319, paragraph (1), the day when the proposal under that paragraph is submitted);
  - (ii) the day of notice pursuant to the provisions of Article 816-6, paragraph (3) or the day of the public notice under paragraph (4) of that Article, whichever comes first; or
  - (iii) if the procedures under the provisions of Article 816-8 are required to be carried out, the day of the public notice under the provisions of paragraph (2) of that Article or the day of the notice under the provisions of that paragraph, whichever is earlier.
- (3) The shareholders of the parent company resulting from a partial share exchange (in cases other than cases where the monies, etc. (excluding the shares of the parent company resulting from a partial share exchange) to be delivered to the transferors of shares and share options, etc. of the subsidiary company resulting from a partial share exchange from the partial share exchange are limited to shares in the parent company resulting from a partial share exchange or those prescribed by Ministry of Justice Order as being equivalent to shares in the parent company resulting from a partial share exchange, shareholders and creditors) may make the following requests to the parent company resulting from a partial share exchange at any time during its

business hours; provided, however, that the fees designated by relevant parent company resulting from a partial share exchange are required to be paid in order to submit the requests set forth in items (ii) or (iv):

- (i) a request for inspection of the documents referred to in paragraph (1);
- (ii) a request for delivery of a transcript or extract of the documents referred to in paragraph (1);
- (iii) a request to inspect anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in an electronic or magnetic record as referred to in paragraph (1); and
- (iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in paragraph (1) by an electronic or magnetic means that the parent company resulting from a partial share exchange has designated, or a request to be issued a document showing that information.

#### (Approval of Partial Share Exchange Plans)

Article 816-3 (1) A parent company resulting from a partial share exchange must receive approval for the partial share exchange plan by resolution at a general meeting of members by the day immediately prior to the effective day.

- (2) If the book value of the monies, etc. (excluding shares, etc. of the parent company resulting from a partial share exchange) delivered to transferors of shares and share options, etc. of the subsidiary company resulting from a partial share exchange by the parent company resulting from a partial share exchange exceeds the amount prescribed by Ministry of Justice Order as the amount of shares and share options, etc. of the subsidiary company resulting from a partial share exchange to be acquired by the parent company resulting from a partial share exchange, a director must explain to that effect at the shareholders meeting referred to in the preceding paragraph.
- (3) If a parent company resulting from a partial share exchange is a company with class shares, in the cases set forth in the following items, a partial share exchange does not become effective without a resolution at a general meeting of class shareholders constituted by class shareholders of the class of shares provided for respectively in those items (limited to shares with a restriction on transfer and for which the provisions of the articles of incorporation referred to in Article 199, paragraph (4) do not exist) (if there are two or more classes of shares relating to the relevant class shareholders, the respective general meetings of class shareholders constituted by class shareholders categorized by the class of the relevant two or more classes of shares); provided, however, that this does not apply to cases where there is no class shareholder who is able to exercise a voting right at the relevant general meeting of class shareholders:
  - (i) if the monies, etc. delivered to transferors of shares of the subsidiary company resulting from a partial share exchange are shares of the parent

- company resulting from a partial share exchange: the class of shares set forth in Article 774-3, paragraph (1), item (iii);
- (ii) if the monies, etc. delivered to transferors of share options, etc. of the subsidiary company resulting from a partial share exchange are shares of the parent company resulting from a partial share exchange: the class of shares referred to in Article 774-3, paragraph (1), item (viii), (a).

(Cases Where Approval of a Partial Share Exchange Plan Is Not Required)

Article 816-4 (1) The provisions of paragraphs (1) and (2) of preceding Article do not apply if, the proportion of the amount set forth in item (i) to the amount set forth in item (ii) does not exceed one fifth (or, if any lower proportion is provided for in the articles of incorporation of the parent company resulting from a partial share exchange, that proportion); provided, however, that this does not apply in the cases set forth in that paragraph or the cases where the parent company resulting from a partial share exchange is not a public company:

- (i) the total of the amounts set forth below:
- (a) the amount obtained by multiplying the number of shares of the parent company resulting from a partial share exchange to be delivered to resulting from a partial share exchange transferors of shares and share options, etc. of the subsidiary company by the amount of net assets per share;
  - (b) the total amount of the book value of bonds, share options or bonds with share options of the parent company resulting from a partial share exchange to be delivered to transferors of shares and share options, etc. of the subsidiary company resulting from a partial share exchange; and
  - (c) the total amount of the book value of property other than shares, etc. of the parent company resulting from a partial share exchange to be delivered to transferors of shares and share options, etc. of the subsidiary company resulting from a partial share exchange; and
- (ii) the amount calculated by the method prescribed by Ministry of Justice Order as the amount of the net assets of the parent company resulting from a partial share exchange.
- (2) In the cases prescribed in the main clause of the preceding paragraph, if shareholders that hold the shares (limited to those that entitle the shareholders to exercise voting rights at a shareholders meeting under paragraph (1) of the preceding Article) in the number prescribed by Ministry of Justice Order notify the parent company resulting from a partial share exchange to the effect that relevant shareholders dissent from relevant partial share exchange, within two weeks from the day of the notice under the provisions of Article 816-6, paragraph (3) or the public notice under paragraph

(4) of that Article, relevant parent company resulting from a partial share exchange must obtain the approval of the partial share exchange plan by a resolution at a shareholders meeting no later than the day immediately preceding the effective day.

(Demand to Cease Partial Share Exchange)

Article 816-5 If a partial share exchange violates laws and regulations or the articles of incorporation, when shareholders of the parent company resulting from a partial share exchange are likely to suffer disadvantage, the shareholders of the parent company resulting from a partial share exchange may demand that the parent company resulting from a partial share exchange cease the partial share exchange; provided, however, that this does not apply in the cases prescribed in the main clause of paragraph (1) of the preceding Article (excluding the cases prescribed in the proviso to the same paragraph or the provisions of paragraph (2) of that Article).

(Dissenting Shareholders' Appraisal Rights)

Article 816-6 (1) In the case of a partial share exchange, dissenting shareholders may demand that the parent company resulting from a partial share exchange purchase, at a fair price, the shares that they hold; provided, however, that this does not apply in the cases prescribed in the main clause of Article 816-4, paragraph (1) (excluding the cases prescribed in the proviso to the same paragraph or the provisions of paragraph (2) of that Article).

(2) The dissenting shareholders provided for in the preceding paragraph means the shareholders provided for in each of the following items in the cases set forth in the same items:

(i) if a resolution at a shareholders meeting (including a general meeting of class shareholders) is required to effect the partial share exchange: the following shareholders:

(a) shareholders who gave notice to relevant parent company resulting from a partial share exchange to the effect that they dissented from relevant partial share exchange prior to relevant shareholders meeting and who dissented from relevant partial share exchange at relevant shareholders meeting (limited to those who can exercise voting rights at relevant shareholders meetings);

(b) shareholders who cannot exercise voting rights at relevant shareholders meetings.

(ii) cases other than the one set forth in the preceding item: all shareholders.

(3) A parent company resulting from a partial share exchange must notify shareholders that it will effect a partial share exchange and the trade name and address of the subsidiary company resulting from a partial share exchange

by twenty days before the effective day.

- (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph in the following cases:
  - (i) if the parent company resulting from a partial share exchange is a public company; or
  - (ii) if the parent company resulting from a partial share exchange receives approval for the partial share exchange by resolution at a shareholders meeting under Article 816-3, paragraph (1).
- (5) To make a demand under the provisions of paragraph (1) (hereinafter in this Section referred to as the "exercise of appraisal rights"), a dissenting shareholder must indicate the number of shares with regard to which the shareholder is exercising appraisal rights (or, for a company with class shares, the classes of the shares and the number of shares for each class), between twenty days prior to the effective day and the day immediately preceding the effective day.
- (6) When intending to exercise appraisal rights related to the shares for which share certificates have been issued, a shareholder of relevant shares must submit the share certificates representing those shares to the parent company resulting from a partial share exchange; provided, however, that this does not apply to a person who makes a request pursuant to the provisions of Article 223 concerning relevant share certificates.
- (7) Shareholders exercising appraisal rights may withdraw their demands for appraisal only with the approval of the parent company resulting from a partial share exchange.
- (8) The demands of the shareholders exercising appraisal rights lose effect if the partial share exchange is canceled.
- (9) The provisions of Article 133 do not apply to shares for the exercise of appraisal rights.

#### (Determination of the Price of Shares)

- Article 816-7 (1) If a shareholder exercises appraisal rights and an agreement determining the price of the shares is reached between the shareholder and parent company resulting from a partial share exchange, the parent company resulting from a partial share exchange must pay that price within sixty days from the effective day.
- (2) If no agreement deciding the price of shares is reached within thirty days from the effective day, the shareholders or the parent company resulting from a partial share exchange may file a petition for the court to determine the price within thirty days after the expiration of that period.
  - (3) Notwithstanding the provisions of paragraph (7) of the preceding Article, in the cases provided for in the preceding paragraph, if the petition under that

paragraph is not made within sixty days after the effective day, shareholders exercising appraisal rights may withdraw their demands for appraisal at any time after the expiration of that period.

- (4) The parent company resulting from a partial share exchange must also pay interest on the price determined by the court at the statutory rate from and including the day of the expiration of the period referred to in paragraph (1).
- (5) The parent company resulting from a partial share exchange may pay to shareholders the amount that the parent company resulting from a partial share exchange considers to be a fair price until the determination of the share price.
- (6) A share purchase connected with the exercise of appraisal rights becomes effective on the effective day.
- (7) If a shareholder exercises appraisal rights with respect to shares for which share certificates are issued, the share certificate-issuing company must pay the price of the shares relating to the exercise of the appraisal rights in exchange for the share certificates.

#### (Objections by Creditors)

Article 816-8 (1) In cases other than cases where the monies, etc. (excluding the shares of the parent company resulting from a partial share exchange) to be delivered to the transferors of shares and share options, etc. of the subsidiary company resulting from a partial share exchange from the partial share exchange are limited to those prescribed by Ministry of Justice Order as being equivalent to shares in the parent company resulting from a partial share exchange, the creditors of the parent company resulting from a partial share exchange may state their objections to the partial share exchange to the parent company resulting from a partial share exchange.

- (2) If creditors of a parent company resulting from a partial share exchange may state their objections pursuant to the provisions of the preceding paragraph, relevant parent company resulting from a partial share exchange must give public notice of the matters set forth below in Official Gazette and must give notices inviting objections separately to each known creditor, if any; provided, however, that the period provided in item (iv) must be at least one month:
  - (i) intent to effect a partial share exchange ;
  - (ii) trade name and address of the subsidiary company resulting from a partial share exchange;
  - (iii) the matters prescribed by Ministry of Justice Order as the matters regarding the financial statements of the parent company resulting from a partial share exchange and subsidiary company resulting from a partial share exchange; and
  - (iv) the fact that creditors may state objections within a certain period of time.



- (3) Notwithstanding the provisions of the preceding paragraph, if a parent company resulting from a partial share exchange gives public notice under that paragraph by method of public notice set forth in Article 939, paragraph (1), item (ii) or (iii) in accordance with the provisions of the articles of incorporation pursuant to the provisions of that paragraph beyond Official Gazette, the stock company is not required to give separate notices under the provisions of the preceding paragraph.
- (4) If a creditor has not stated an objection within the period of time specified under the terms of paragraph (2) item (iv), the creditor is deemed to have approved the partial share exchange .
- (5) If the creditors raise objections within the period under paragraph (2), item (iv), the parent company resulting from a partial share exchange must make payment to or provide appropriate security to relevant creditors, or entrust appropriate assets to a qualified trust company for the purpose of assuring the payment to relevant creditors; provided, however, that this does not apply if there is no risk of harm to that creditors by relevant partial share exchange .

(Changes to the Effective Day of a Partial Share Exchange)

Article 816-9 (1) A parent company resulting from a partial share exchange may change the effective day.

- (2) The effective day changed pursuant to the provisions of the preceding paragraph must be a day within three months for the original effective day under the resulting from a partial share exchange plan.
- (3) In cases described in paragraph (1), the parent company resulting from a partial share exchange must provide public notice of the post-change effective day by the day immediately prior to the pre-change effective day (if the post-change effective day is a date prior to the pre-change effective date, the post-change effective day).
- (4) When the effective day is changed according to the provisions of paragraph (1), the post-change effective day is treated as the effective date, and the provisions of this Section (excluding paragraph (2)) and the preceding Chapter (excluding Article 774-3, paragraph (1), item (xi)) apply.
- (5) If the parent company resulting from a partial share exchange changes the effective day pursuant to the provisions of paragraph (1), the day provided in Article 774-3, paragraph (1), item (x) may be changed simultaneously with relevant change.
- (6) The provisions of paragraphs (3) and (4) apply mutatis mutandis to changes of the day provided in Article 774-3, paragraph (1), item (x) made pursuant to the provisions of the preceding paragraph. In these cases, the phrases "this Section (excluding paragraph (2)) and the preceding Chapter (excluding Article 774-3, paragraph (1), item (xi))" in paragraph (4) is replaced with "Article 774-4,

Article 774-10, and the preceding paragraph."

(Keeping and Inspection of Documents Related to Partial Share Exchange)

Article 816-10 (1) A parent company resulting from a partial share exchange must prepare a document or electronic or magnetic record in which it details or records the number of shares of the subsidiary company resulting from a partial share exchange acquired by the parent company resulting from a partial share exchange as a result of the partial share exchange and other information prescribed by Ministry of Justice Order as information related to the partial share exchange , after the effective day without delay.

(2) A parent company resulting from a partial share exchange must keep the document or electronic or magnetic record referred to in the preceding paragraph at its head office for six months from the effective day.

(3) The shareholders of the parent company resulting from a partial share exchange (in cases other than cases where the monies, etc. (excluding the shares of the parent company resulting from a partial share exchange) to be delivered to the transferors of shares and share options, etc. of the subsidiary company resulting from a partial share exchange from the partial share exchange are limited to those prescribed by Ministry of Justice Order as being equivalent to shares in the parent company resulting from a partial share exchange, shareholders and creditors) may make the following requests to the parent company resulting from a partial share exchange at any time during its business hours; provided, however, that the fees designated by relevant parent company resulting from a partial share exchange are required to be paid in order to submit the requests set forth in items (ii) or (iv):

(i) a request to inspect the documents referred to in the preceding paragraph;

(ii) a request to receive a transcript or extract of the documents referred to in the preceding paragraph;

(iii) a request to inspect anything recorded pursuant to the preceding paragraph in electronic or magnetic records, in accordance with methods prescribed by Ministry of Justice Order;

(iv) a request to be provided with the information recorded in an electronic or magnetic record as referred to in the preceding paragraph by an electronic or magnetic means that the parent company resulting from a partial share exchange has designated, or a request to be issued a document showing that information.

## **Part VI Foreign Companies**

(Foreign Company Representatives in Japan)

Article 817 (1) When a foreign company intends to carry out transactions

continuously in Japan, it must specify its representatives in Japan. In these cases, one or more of the representatives in Japan must be those whose addresses are in Japan.

- (2) A foreign company's representative in Japan has the authority to do any and all judicial and extra-judicial acts on behalf of relevant foreign company in connection with its business.
- (3) No limitation on the authority under the preceding paragraph may be asserted against a third party in good faith.
- (4) A foreign company is liable for damage caused to third parties by its representatives in Japan during the course of the performance of their duties.

(Prohibition of Continuous Transactions Prior to Registration)

Article 818 (1) A foreign company may not carry out transactions continuously in Japan before completing registration of a foreign company.

- (2) A person who has carried out transactions in violation of the provisions of the preceding paragraph is liable, jointly and severally with the foreign company, to perform any obligations that have arisen from relevant transactions to the counterparty.

(Public Notice of What Is Equivalent to a Balance Sheet)

Article 819 (1) A foreign company (limited to one for which the same kind of company or the most similar company in Japan is a stock company) that has completed registration of a foreign company must, pursuant to the provisions of Ministry of Justice Order, give public notice in Japan of what is equivalent to a balance sheet without delay after the conclusion of the same kind of procedure as the approval set forth in Article 438, paragraph (2) or a procedure similar thereto.

- (2) Notwithstanding the provisions of the preceding paragraph, with respect to a foreign company for which the method of public notice is a method set forth in Article 939, paragraph (1), item (i) or (ii), it is sufficient to give public notice of a summary of what is equivalent to a balance sheet provided for in the preceding paragraph.
- (3) A foreign company referred to in the preceding paragraph may, without delay after the conclusion of the procedure set forth in paragraph (1), pursuant to the provisions of Ministry of Justice Order, take measures to make the information contained in what is equivalent to the balance sheet provided for in that paragraph available to the general public continually by the electronic or magnetic means until the day on which five years have elapsed from the day of the conclusion of the procedure. In these cases, the provisions of the preceding two paragraphs do not apply.
- (4) The provisions of the preceding three paragraphs do not apply to foreign

companies that must submit their annual securities reports to the Prime Minister pursuant to the provisions of Article 24, paragraph (1) of the Financial Instruments and Exchange Act.

(Resignation of Representatives in Japan Whose Addresses Are in Japan)

- Article 820 (1) A foreign company that has completed registration of a foreign company may, when all of its representatives in Japan (limited to those whose addresses are in Japan) intend to resign, give public notice to creditors of the foreign company to the effect that they are able to state their objections, if any, during a certain period of time and must give notice separately to each known creditor, if any; provided, however, that relevant period may not be less than one month.
- (2) If creditors raise objections within the period under the preceding paragraph, the foreign company set forth in that paragraph must make payment or provide reasonable security to relevant creditors, or entrust equivalent property to a trust company, etc. for the purpose of having relevant creditors receive the payment; provided, however, that this does not apply if there is no risk of harm to relevant creditors by the resignation set forth in that paragraph.
- (3) The resignation set forth in paragraph (1) becomes effective by completing the registration thereof after the completion of the procedures set forth in the preceding two paragraphs.

(Pseudo-Foreign Company)

- Article 821 (1) A foreign company that has its head office in Japan or whose main purpose is to conduct business in Japan may not carry out transactions continuously in Japan.
- (2) A person who has carried out transactions in violation of the provisions of the preceding paragraph is liable, jointly and severally with the foreign company, to perform obligations that have arisen from relevant transactions to the counterparty.

(Liquidation of a Foreign Company's Property in Japan)

- Article 822 (1) The court may, in response to a petition by interested persons or ex officio, order commencement of the liquidation of all of a foreign company's property in Japan in the cases set forth below:
- (i) if the foreign company receives the order under the provisions of Article 827, paragraph (1); or
  - (ii) if the foreign company stops carrying out transactions continuously in Japan.
- (2) In the cases referred to in the preceding paragraph, the court appoints the

liquidator.

- (3) The provisions of Article 476, the provisions of Part II, Chapter IX, Section 1, Subsection 2, the provisions of Article 492, the provisions of Subsection 4 of that Section, the provisions of Article 508, and the provisions of Section 2 of that Chapter (excluding Article 510, Article 511 and Article 514) apply *mutatis mutandis* to the liquidation of a foreign company's property in Japan under the provisions of paragraph (1), excluding those that are not applicable by their nature.
- (4) The provisions of Article 820 do not apply if a foreign company is ordered to commence the liquidation referred to in paragraph (1) and where all of the foreign company's representatives in Japan (limited to those whose addresses are in Japan) intend to resign.

(Application of Other Acts)

Article 823 With regard to application of other Acts, a foreign company is deemed to be the same kind of company or the most similar kind of company in Japan; provided, however, that this does not apply when it is otherwise provided by other Acts.

## **Part VII Miscellaneous Provisions**

### **Chapter I Dissolution Order for a Company**

#### **Section 1 Dissolution Order for a Company**

(Dissolution Order for a Company)

Article 824 (1) In the cases set forth below, if the court finds that the existence of a company is unallowable for securing public interests, it may, in response to a petition by the Minister of Justice, shareholders, members, creditors or any other interested parties, order the dissolution of the company:

- (i) when the company is incorporated for an illegal purpose;
- (ii) when the company fails to commence its business within one year from the day of its formation or suspends its business continuously for one year or more, without justifiable grounds; or
- (iii) if an executive director, an executive officer or a member who executes the business has committed an act that goes beyond or abuses the authority of the company prescribed by laws and regulations or the articles of incorporation or that violates criminal laws and regulations, if that person commits relevant act continuously or repeatedly despite receiving a written warning from the Minister of Justice.

- (2) When a shareholder, a member, a creditor or any other interested party files the petition set forth in the preceding paragraph, the court may, in response to a petition by the company, order the person who filed the petition set forth in

that paragraph to provide reasonable security.

- (3) When a company intends to file the petition under the provisions of the preceding paragraph, it must make a prima facie showing that the petition set forth in paragraph (1) has been filed in bad faith.
- (4) The provisions of Article 75, paragraphs (5) and (7) and Articles 76 through 80 of the Code of Civil Procedure (Act No. 109 of 1996) apply mutatis mutandis to the security to be provided with respect to the petition set forth in paragraph (1) pursuant to the provisions of paragraph (2).

(Provisional Order Concerning Property of a Company)

Article 825 (1) If the petition set forth in paragraph (1) of the preceding Article is filed, the court may, at the petition of the Minister of Justice or shareholders, members, creditors or any other interested parties or ex officio, issue a disposition ordering administration by an administrator (referred to as an "administration order" in the following paragraph) or issue any other necessary provisional order with respect to the property of the company until a ruling is handed down on the petition set forth in that paragraph.

- (2) When the court issues an administration order, it must appoint an administrator in relevant administration order.
- (3) The court may, in response to a petition by the Minister of Justice or shareholders, members, creditors or any other interested parties or ex officio, dismiss the administrator set forth in the preceding paragraph.
- (4) When the court appoints the administrator referred to in paragraph (2), it may specify the amount of remuneration to be paid by the company to relevant administrator.
- (5) The administrator set forth in paragraph (2) is supervised by the court.
- (6) The court may order the administrator referred to in paragraph (2) to report the status of the property of the company and to account for the administration thereof.
- (7) The provisions of Article 644, Article 646, Article 647 and Article 650 of the Civil Code apply mutatis mutandis to the administrator set forth in paragraph (2). In these cases, the term "mandator" in Article 646, Article 647 and Article 650 of that Act is deemed to be replaced with "company".

(Government Agencies' Obligation to Give Notice to the Minister of Justice)

Article 826 If a court or any other government agency, a public prosecutor or an official comes to know in the course of their duties that there are grounds for filing the petition referred to in Article 824, paragraph (1) or giving the warning referred to in item (iii) of that paragraph, the entity or person must give notice to that effect to the Minister of Justice.

## **Section 2 Order of Prohibition of Continuous Transactions or Closure of a Business Office of a Foreign Company**

Article 827 (1) In the cases set forth below, the court may, in response to a petition by the Minister of Justice, shareholders, members, creditors or any other interested parties, order the prohibition of a foreign company to carry out transactions continuously in Japan or the closure of its business office established in Japan:

- (i) when the foreign company conducts business for an illegal purpose;
- (ii) when the foreign company fails to commence its business within one year from the day of registration of the foreign company or suspends its business continuously for one year or more, without justifiable grounds;
- (iii) when the foreign company stops payment without justifiable grounds; or
- (iv) if the foreign company's representative in Japan or any other person who executes its business has committed an act that goes beyond or abuses the authority of the foreign company prescribed by laws and regulations or that violates criminal laws and regulations, and that person continuously or repeatedly commits relevant act despite receiving a written warning from the Minister of Justice.

(2) The provisions of Article 824, paragraphs (2) through (4), and the preceding two Articles apply mutatis mutandis to the cases set forth in the preceding paragraph. In these cases, the term "preceding paragraph" in Article 824, paragraph (2), the term "paragraph (1)" in paragraph (3) and paragraph (4) of that Article, and the term "paragraph (1) of the preceding Article" in Article 825, paragraph (1) is deemed to be replaced with "Article 827, paragraph (1)", the term "Article 824, paragraph (1)" in the preceding Article is deemed to be replaced with "paragraph (1) of the following Article" and the term "item (iii) of that paragraph" in that Article is deemed to be replaced with "item (iv) of that paragraph".

### **Chapter II Suits**

#### **Section 1 Action Concerning the Organization of a Company**

(Actions Seeking Invalidation of Acts Concerning the Organization of a Company)

Article 828 (1) Invalidation of the acts set forth in the following items may only be asserted by filing an action during the periods specified respectively in those items:

- (i) incorporation of a company: within two years from the day of formation of the company;
- (ii) share issue after the formation of a stock company: within six months from

- the day on which the share issue became effective (or, for a stock company which is not a public company, within one year from the day on which the share issue became effective);
- (iii) disposition of treasury shares: within six months from the day on which the disposition of treasury shares became effective (or, for a stock company which is not a public company, within one year from the day on which the disposition of treasury shares became effective);
  - (iv) share option (if the share options are those attached to bonds with share options, it includes the bonds concerning bonds with share options; hereinafter the same applies in this Chapter) issue: within six months from the day on which the issuance of share options came into effect (or, for a stock company which is not a public company, within one year from the day on which the issuance of share options came into effect);
  - (v) reduction in the amount of stated capital of a stock company: within six months from the day on which the reduction in the amount of stated capital became effective;
  - (vi) entity conversion of a company: within six months from the day on which the entity conversion became effective;
  - (vii) absorption-type merger of a company: within six months from the day on which the absorption-type merger became effective;
  - (viii) consolidation-type merger of a company: within six months from the day on which the consolidation-type merger became effective;
  - (ix) absorption-type company split: within six months from the day on which the absorption-type company split became effective;
  - (x) incorporation-type company split: within six months from the day on which the incorporation-type company split became effective;
  - (xi) share exchange of a stock company: within six months from the day on which the share exchange became effective;
  - (xii) share transfer of a stock company: within six months from the day on which the share transfer became effective; and
  - (xiii) partial share exchange of a stock company: within six months from the day in which the partial share exchange became effective.
- (2) An action seeking invalidation of the acts set forth in the following items may be filed only by the persons specified in each of those items:
- (i) the act set forth in item (i) of the preceding paragraph: a shareholder, etc. (meaning a shareholder, director or liquidator (or, for a company with company auditor(s), it means a shareholder, director, company auditor or liquidator, and for a company with nominating committee, etc., it means a shareholder, director, executive officer or liquidator); hereinafter the same applies in this Section) of the incorporated stock company or a member, etc. (meaning a member or liquidator; hereinafter the same applies in this



- paragraph) of the incorporated membership company;
- (ii) the act set forth in item (ii) of the preceding paragraph: a shareholder, etc. of the relevant stock company;
  - (iii) the act set forth in item (iii) of the preceding paragraph: a shareholder, etc. of the relevant stock company;
  - (iv) the act set forth in item (iv) of the preceding paragraph: a shareholder, etc. or a share option holder of the relevant stock company;
  - (v) the act set forth in item (v) of the preceding paragraph: a shareholder, etc., the trustee in bankruptcy or a creditor, who did not give approval to the reduction in the amount of stated capital, of the relevant stock company;
  - (vi) the act set forth in item (vi) of the preceding paragraph: a person who was a shareholder, etc. or a member, etc. of the company effecting the entity conversion as of the day on which relevant act became effective or a shareholder, etc., a member, etc., the trustee in bankruptcy or a creditor, who did not give approval to the entity conversion, of the company after the entity conversion;
  - (vii) the act set forth in item (vii) of the preceding paragraph: a person who was a shareholder, etc. or a member, etc. of the company effecting the absorption-type merger as of the day on which relevant act became effective or a shareholder, etc., a member, etc., the trustee in bankruptcy or a creditor, who did not give approval to the absorption-type merger of the company surviving the absorption-type merger;
  - (viii) the act set forth in item (viii) of the preceding paragraph: a person who was a shareholder, etc. or a member, etc. of the company effecting the consolidation-type merger as of the day on which relevant act became effective or a shareholder, etc., a member, etc., the trustee in bankruptcy or a creditor, who did not give approval to the consolidation-type merger, of the company that is incorporated in the consolidation-type merger;
  - (ix) the act set forth in item (ix) of the preceding paragraph: a person who was a shareholder, etc. or a member, etc. of the company that has concluded the absorption-type company split agreement as of the day on which relevant act became effective or a shareholder, etc., a member, etc., the trustee in bankruptcy or a creditor, who did not give approval to the absorption-type company split, of the company that has concluded the absorption-type company split agreement;
  - (x) the act set forth in item (x) of the preceding paragraph: a person who was a shareholder, etc. or a member, etc. of the company effecting the incorporation-type company split as of the day on which relevant act became effective or a shareholder, etc., a member, etc., the trustee in bankruptcy or a creditor, who did not give approval to the incorporation-type company split, of the company effecting the incorporation-type company split or the

- company that is incorporated in the incorporation-type company split;
- (xi) the act set forth in item (xi) of the preceding paragraph: a person who was a shareholder, etc. or a member, etc. of the company that has concluded the share exchange agreement as of the day on which relevant act became effective or a shareholder, etc., a member, etc., the trustee in bankruptcy or a creditor, who did not give approval to the share exchange, of the company that has concluded the share exchange agreement; and
  - (xii) the act set forth in item (xii) of the preceding paragraph: a person who was a shareholder, etc. of the stock company transferring the shares as of the day on which relevant act became effective; a shareholder, etc. or the trustee in bankruptcy of the stock company incorporated in the share transfer; or a creditor of the stock company incorporated in the share transfer who did not give approval to the share transfer.
  - (xiii) the act set forth in item (xiii) of the preceding paragraph: a person who was a shareholder, etc. of the parent company resulting from a partial share exchange as of the day on which relevant act became effective; a person who delivered shares or share options, etc. of the subsidiary company resulting from a partial share exchange when the partial share exchange is effected; or a shareholder, etc. of the parent company resulting from a partial share exchange or a trustee in bankruptcy or creditor who did not approve the partial share exchange .

(Action for Declaratory Judgment of Absence of a New Share Issue)

Article 829 With regard to the acts below, confirmation of the absence of the acts may be claimed by filing an action:

- (i) share issue after the formation of a stock company;
- (ii) disposition of treasury shares; and
- (iii) issuance of share options.

(Action for Declaratory Judgment of Absence or Invalidation of a Resolution at a Shareholders Meeting)

Article 830 (1) With regard to a resolution at a shareholders meeting, general meeting of class shareholders, organizational meeting or organizational meeting of class shareholders (hereinafter referred to as a "shareholders meeting, etc." in this Section and Article 937, paragraph (1), item (i), (g)), confirmation of the absence of the resolution may be claimed by filing an action.

(2) With regard to a resolution at a shareholders meeting, etc., confirmation of invalidation of the resolution may be claimed by filing an action based on the reason that the contents of the resolution violate laws and regulations.

(Action Seeking Revocation of a Resolution at a Shareholders Meeting)

Article 831 (1) In the cases set forth in the following items, a shareholder, etc. (or, if the shareholders meeting, etc. set forth respectively in each the item is an organizational meeting or an organizational meeting of class shareholders, a shareholder, etc., a shareholder at incorporation, a director at incorporation or a company auditor at incorporation) may, within three months from the day of resolution at the shareholders meeting, etc., claim revocation of the resolution by filing an action. The same applies to a person who becomes a shareholder (or, if that resolution is the resolution at an organizational meeting, shareholders at incorporation) or director (or, in cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors; hereinafter the same applies in this paragraph), company auditor or liquidator (or, if relevant resolution is a resolution at a shareholders meeting or general meeting of class shareholders, it includes a person who has the rights and obligations of a director, company auditor or liquidator pursuant to the provisions of Article 346, paragraph (1) (including cases where it is applied mutatis mutandis pursuant to Article 479, paragraph (4)), and if relevant resolution is a resolution at an organizational meeting or organizational meeting of class shareholders, a director at incorporation (if a stock company to be incorporated is a company with audit and supervisory committee, directors at incorporation who are audit and supervisory committee members at incorporation or other directors at incorporation) or company auditor at incorporation) by rescission of relevant resolution:

- (i) when the calling procedures or the methods of a resolution at the shareholders meeting, etc. violate laws and regulations or the articles of incorporation or are grossly improper;
  - (ii) when the contents of the resolution at the shareholders meeting, etc. violate the articles of incorporation; or
  - (iii) when a grossly improper resolution is passed as a result of a person with a special interest in the resolution at the shareholders meeting, etc. exercising a voting right.
- (2) If an action referred to in the preceding paragraph is filed, even if the calling procedures or the methods of a resolution at the shareholders meeting, etc. are in violation of laws and regulations or the articles of incorporation, the court may dismiss the claim prescribed in that paragraph if it finds that the facts in violation are not serious and will not affect the resolution.

(Action Seeking Rescission of the Incorporation of a Membership Company)  
Article 832 In the cases set forth in the following items, the persons specified in each of those items may claim rescission of the incorporation of the membership company within two years from the day of formation of the

membership company:

- (i) when a member is able to rescind relevant member's manifestation of intention relating to the incorporation pursuant to the provisions of the Civil Code or any other acts: relevant member; or
- (ii) when a member incorporates a membership company having the knowledge that it will be detrimental to its creditor: relevant creditor.

(Action Seeking Dissolution of a Company)

Article 833 (1) In the cases set forth below, if there are unavoidable circumstances, a shareholder having not less than one-tenths (or, if a lesser proportion is prescribed in the articles of incorporation, the proportion) of the voting rights of all shareholders (excluding shareholders who are unable to exercise voting rights on all matters which may be resolved at the shareholders meeting) or a shareholder having not less than one-tenth (or, if a lesser proportion is prescribed in the articles of incorporation, the proportion) of the issued shares (excluding treasury shares) may claim dissolution of the stock company by filing an action:

- (i) when a stock company faces an extreme difficulty in executing business and the stock company suffers or is likely to suffer irreparable harm; or
  - (ii) when the management or disposition of property of a stock company is extremely unreasonable and puts the existence of the stock company at risk.
- (2) If there are unavoidable circumstances, members of a membership company may claim dissolution of the membership company by filing an action.

(Defendant)

Article 834 With regard to the actions set forth in the following items (hereinafter collectively referred to as an "action concerning organization of company" in this Section), the persons specified in each of those items are to be the defendant:

- (i) an action seeking invalidation of the incorporation of a company: the incorporated company;
- (ii) an action seeking invalidation of a share issue after the formation of a stock company (referred to as an "action seeking invalidation of new share issue" in Article 840, paragraph (1)): the stock company that has issued the shares;
- (iii) an action seeking invalidation of a disposition of treasury shares: the stock company that has disposed of the treasury shares;
- (iv) an action seeking invalidation of an issuance of share options: the stock company that has issued the share options;
- (v) an action seeking invalidation of a reduction in the amount of stated capital of a stock company: the relevant stock company;
- (vi) an action seeking invalidation of an entity conversion of a company: the

- company after the entity conversion;
- (vii) an action seeking invalidation of an absorption-type merger of a company: the company surviving the absorption-type merger;
  - (viii) an action seeking invalidation of a consolidation-type merger of a company: the company that is incorporated in the consolidation-type merger;
  - (ix) an action seeking invalidation of an absorption-type company split: the company that has concluded the absorption-type company split agreement;
  - (x) an action seeking invalidation of an incorporation-type company split: the company effecting the incorporation-type company split and the company that is incorporated in the incorporation-type company split;
  - (xi) an action seeking invalidation of a share exchange of a stock company: the company that has concluded the share exchange agreement;
  - (xii) an action seeking invalidation of a share transfer of a stock company: the stock company effecting the share transfer and the stock company that is incorporated in the share transfer;
  - (xii)-2 an action seeking invalidation of a partial share exchange of a stock company: the parent company resulting from a partial share exchange;
  - (xiii) an action for declaratory judgment of absence of a share issue after the formation of a stock company: the stock company that has issued the shares;
  - (xiv) an action for declaratory judgment of absence of a disposition of treasury shares: the stock company that has disposed of the treasury shares;
  - (xv) an action for declaratory judgment of absence of an issuance of share options: the stock company that has issued the share options;
  - (xvi) an action for declaratory judgment of absence of a resolution at a shareholders meeting, etc. or invalidation of a resolution at a shareholders meeting, etc. based on a reason that the contents of relevant resolution violate laws and regulations: the relevant stock company;
  - (xvii) an action seeking revocation of a resolution at a shareholders meeting, etc.: the relevant stock company;
  - (xviii) an action seeking rescission of the incorporation of a membership company under the provisions of Article 832, item (i): relevant membership company;
  - (xix) an action seeking rescission of the incorporation of a membership company under the provisions of Article 832, item (ii): relevant membership company and the member referred to in that item;
  - (xx) an action seeking dissolution of a stock company: the relevant stock company; and
  - (xxi) an action seeking dissolution of a membership company: relevant membership company.

(Jurisdiction over and Transfer of an Action)

- Article 835 (1) An action concerning organization of company is under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of the company which is the defendant.
- (2) When two or more district courts have jurisdiction pursuant to the provisions of items (ix) through (xii) of the preceding Article, the actions set forth in those items are under the jurisdiction of the district court with which an action was filed first.
- (3) In cases referred to in the preceding paragraph, a court may, even when the suit concerning relevant action is under its jurisdiction, transfer the suit to another court with jurisdiction, in response to a petition or ex officio, if it finds it necessary for avoiding substantial detriment or delay.

(Order to Provide Security)

- Article 836 (1) With regard to an action concerning organization of company which may be filed by a shareholder or a shareholder at incorporation, the court may, in response to a petition by the defendant, order the shareholder or the shareholder at incorporation who has filed relevant action concerning organization of company to provide reasonable security; provided, however, that this does not apply when relevant shareholder is a director, company auditor, executive officer or liquidator or when relevant shareholder at incorporation is a director at incorporation or a company auditor at incorporation.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to actions concerning the organization of a company which may be filed by a creditor or person who delivered shares or share options, etc. of the subsidiary company resulting from a partial share exchange to the parent company resulting from a partial share exchange when the partial share exchange was effected.
- (3) In order for a defendant to file the petition referred to in paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph), the defendant must make a prima facie showing that the plaintiff filed the action in bad faith.

(Mandatory Consolidation of Oral Arguments)

Article 837 When several suits relating to an action concerning organization of company for the same claim are pending simultaneously, the oral arguments and judicial decisions thereof must be made in consolidation.

(Persons Affected by an Upholding Judgment)

Article 838 A final and binding judgment upholding a claim relating to an action concerning organization of company is also effective against third parties.

(Effects of a Judgment of Invalidation, Revocation or Rescission)

Article 839 When a judgment upholding a claim relating to an action concerning organization of company (limited to any one of the actions set forth in Article 834, items (i) through (xii)-2, (xviii) and (xix)) becomes final and binding, the act that is held to be invalid or revoked or rescinded by relevant judgment (if a company was incorporated by relevant act, it includes relevant incorporation, and if shares or share options were delivered at the time of relevant act, it includes relevant shares or share options) will become ineffective from then on.

(Effects of a Judgment of Invalidation of New Share Issue)

Article 840 (1) When a judgment upholding a claim relating to an action seeking invalidation of a new share issue becomes final and binding, the relevant stock company must pay, to the shareholders of relevant shares as of the time relevant judgment became final and binding, monies equivalent to the amount of payment received from them or the value of the property delivered by them as of the time of the delivery. In these cases, when relevant stock company is a share certificate-issuing company, the stock company may request relevant shareholders to return the old share certificates representing relevant shares (meaning the share certificates representing the shares that became ineffective pursuant to the provisions of the preceding Article; hereinafter the same applies in this Section) in exchange for the payment of relevant monies.

(2) When the amount of the monies referred to in the preceding paragraph is extremely unreasonable in light of the status of the company property as of the time the judgment referred to in that paragraph became final and binding, the court may, in response to a petition by the stock company or shareholders referred to in the first sentence of that paragraph, order an increase or decrease of relevant amount.

(3) The petition referred to in the preceding paragraph must be filed within six months from the day the judgment set forth in that paragraph became final and binding.

(4) In the cases prescribed in the first sentence of paragraph (1), the pledges on the shares set forth in the first sentence of that paragraph are effective with respect to the monies set forth in that paragraph.

(5) In the cases prescribed in the first sentence of paragraph (1), registered pledgees of shares with respect to the pledges set forth in the preceding paragraph may receive the monies set forth in paragraph (1) from the stock company set forth in the first sentence of that paragraph, and appropriate them as payment to satisfy their own claims in priority to other creditors.

(6) If the claims under the preceding paragraph are not yet due and payable, the registered pledgees of share options may have the stock company set forth in the first sentence of paragraph (1) deposit an amount equivalent to the value of

the monies provided for in that paragraph. In these cases, the pledges are effective with respect to the monies so deposited.

(Effects of a Judgment of Invalidation of Disposition of Treasury Shares)

Article 841 (1) When a judgment upholding a claim relating to an action seeking invalidation of a disposition of treasury shares becomes final and binding, the relevant stock company must pay, to shareholders of relevant treasury shares as of the time relevant judgment became final and binding, monies equivalent to the amount of payment received from them or the value of the property delivered by them as of the time of the delivery. In these cases, when relevant stock company is a share certificate-issuing company, the stock company may request relevant shareholders to return the old share certificates representing relevant treasury shares in exchange for the payment of relevant monies.

(2) The provisions of paragraphs (2) through (6) of the preceding Article apply mutatis mutandis to the cases set forth in the preceding paragraph. In these cases, the term "shares" in paragraph (4) of that Article is deemed to be replaced with "treasury shares".

(Effects of a Judgment of Invalidation of the Issuance of Share Options)

Article 842 (1) When a judgment upholding a claim relating to an action seeking invalidation of an issuance of share options becomes final and binding, the relevant stock company must pay, to the share option holders as of the time relevant judgment became final and binding, monies equivalent to the amount of payment received from them or the value of the property delivered by them as of the time of the delivery. In these cases, when relevant stock company has issued share option certificates representing relevant share options (or, if relevant share options are those attached to bonds with share options, certificate representing the bond with share options for relevant bonds with share options; hereinafter the same applies in this paragraph), the stock company may request share option holders to return the share option certificates representing the share options that became ineffective pursuant to the provisions of Article 839 in exchange for the payment of relevant monies.

(2) The provisions of Article 840, paragraphs (2) through (6) apply mutatis mutandis to the cases referred to in the preceding paragraph. In these cases, the term "shareholders" in paragraph (2) of that Article is deemed to be replaced with "share option holders", the term "shares" in paragraph (4) of that Article is deemed to be replaced with "share options", and the term "registered pledgees of shares" stated in paragraphs (5) and (6) of that Article is deemed to be replaced with "registered pledgees of share options".

(Effects of a Judgment of Invalidation of a Merger or Company Split)



Article 843 (1) When a judgment upholding a claim relating to an action seeking invalidation of any one of the acts set forth in the following items becomes final and binding, the company that carried out relevant act is liable jointly and severally to perform the obligations assumed by the companies specified respectively in those items after the day on which relevant act became effective:

(i) absorption-type merger: the company surviving the absorption-type merger;

(ii) consolidation-type merger: the company that is incorporated in the consolidation-type merger;

(iii) absorption-type company split: the company succeeding to all 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 relevant company; or

(iv) incorporation-type company split: the company that is incorporated in the incorporation-type company split.

(2) In the cases prescribed in the preceding paragraph, the property acquired, after the day on which the acts set forth in the items of that paragraph became effective, by the companies specified respectively in those items is co-owned by the companies that carried out relevant acts; provided, however, that if the act set forth in item (iv) of that paragraph has been carried out by a single company, the property acquired by the company specified in that item is owned by the single company that carried out relevant act.

(3) In the cases prescribed in paragraph (1) and the main clause of the preceding paragraph, each company's portion of the obligations to be assumed referred to in paragraph (1) and share of co-ownership of property referred to in the main clause of the preceding paragraph are decided through discussion among the companies.

(4) If no agreement is reached in the discussion set forth in the preceding paragraph with regard to each company's portion of the obligations to be assumed referred to in paragraph (1) and share of co-ownership of property set forth in the main clause of the preceding paragraph, the court comes to a decision, in response to a petition by the companies, by taking into account the amount of property of each company as of the time the act set forth in any one of the items of paragraph (1) became effective and all other circumstances.

(Effects of a Judgment of Invalidation of a Share Exchange or Share Transfer)

Article 844 (1) If a judgment upholding a claim relating to an action seeking invalidation of a share exchange or share transfer of a stock company has become final and binding, if the stock company acquiring all of the issued shares (hereinafter referred to as the "former wholly owning parent company" in this Article) of the stock company effecting the share exchange or share

- transfer (hereinafter referred to as the "former wholly owned subsidiary company" in this Article) has delivered the shares of the former wholly owning parent company (hereinafter referred to as the "shares of the former wholly owning parent company" in this Article) at the time of the share exchange or share transfer, the former wholly owning parent company must deliver to holders of the shares of the former wholly owning parent company as of the time relevant judgment became final and conclusive the shares of the former wholly owned subsidiary company (hereinafter referred to as the "shares of the former wholly owned subsidiary company" in this Article) that had been held, at the time of the share exchange or share transfer, by the persons who received delivery of the shares of the former wholly owning parent company. In these cases, when relevant former wholly owning parent company is a share certificate-issuing company, the former wholly owning parent company may request relevant shareholders to return the old share certificates representing relevant shares of the former wholly owning parent company in exchange for the delivery of relevant shares of the former wholly owned subsidiary company.
- (2) In the cases prescribed in the first sentence of the preceding paragraph, pledges on the shares of the former wholly owning parent company are effective with respect to the shares of the former wholly owned subsidiary company.
- (3) When the pledgees with respect to the pledges set forth in the preceding paragraph are registered pledgees of shares, the former wholly owning parent company must, without delay after the judgment set forth in paragraph (1) became final and binding, notify the former wholly owned subsidiary company of the matters set forth in the items of Article 148 regarding relevant registered pledgees of shares.
- (4) A former wholly owned subsidiary company that has received a notice under the provisions of the preceding paragraph must, when it enters or records in the shareholder register the information required to be entered in the shareholder register in connection with the shares underlying the pledges of the registered pledgees of shares referred to in that paragraph, immediately enter or record in the shareholder register the information set forth in the items of Article 148 regarding relevant registered pledgees of shares.
- (5) In the cases prescribed in paragraph (3), when the former wholly owned subsidiary company set forth in that paragraph is a share certificate-issuing company, the former wholly owning parent company must deliver the share certificates representing the shares of the former wholly owned subsidiary company referred to in paragraph (2) to its registered pledgees of shares; provided, however, that this does not apply until the old share certificates representing the former wholly owning subsidiary company are submitted if the shareholders referred to in the first sentence of paragraph (1) must submit

relevant old share certifications in order to acquire the shares of the former wholly owned subsidiary company.

(Effects of Judgment of Invalidation of Partial Share Exchange)

Article 844-2 (1) If a judgment upholding a claim relating to an action seeking invalidation of a partial share exchange becomes final and binding, if the parent company resulting from a partial share exchange delivered shares of the parent company resulting from a partial share exchange (hereinafter referred to in this Article as "shares of the former parent company resulting from a partial share exchange") when effecting the partial share exchange, the parent company resulting from a partial share exchange must return the shares and share options, etc. of the subsidiary company resulting from a partial share exchange (hereinafter referred to in this Article as the "shares, etc. of the former subsidiary company resulting from a partial share exchange") received from persons who received delivery of the shares of the former parent company resulting from a partial share exchange when the partial share exchange was effected. In these cases, if the parent company resulting from a partial share exchange is a share certificate-issuing company, relevant parent company resulting from a partial share exchange may demand that the shareholders return of the former share certificates relating to relevant shares of the former parent company resulting from a partial share exchange in exchange for return of the shares, etc. of the former subsidiary company resulting from a partial share exchange.

(2) In the cases prescribed in the first sentence of the preceding paragraph, the pledges on the shares of the former parent company resulting from a partial share exchange are effective with respect to the shares, etc. of the former subsidiary company resulting from a partial share exchange.

(Effects of a Judgment of Invalidation or Rescission of the Incorporation of a Membership Company)

Article 845 If a judgment upholding a claim relating to an action seeking invalidation or rescission of the incorporation of a membership company becomes final and binding, if the cause of the invalidation or rescission is attributable only to part of the members, the membership company may continue in existence with the consent of all of the other members. In these cases, the members attributable to the cause are deemed to have withdrawn.

(Liability for Damages If the Plaintiff Is Defeated)

Article 846 If the plaintiffs who filed actions concerning the organization of a company are defeated, if the plaintiffs have acted in bad faith or with gross negligence, they are jointly and severally liable to compensate the defendant

for damages.

### **Section 1-2 Action Seeking Invalidation of Acquisition of Shares Subject to the Cash-Out**

(Action Seeking Invalidation of Acquisition of Shares Subject to the Cash-Out)

Article 846-2 (1) Invalidation of acquisition of all shares, etc. subject to the cash-out related to the demand for shares, etc. cash-out may only be asserted in an action filed within six months of the acquisition day (meaning the acquisition day prescribed in Article 179-2, paragraph (1), item (v); hereinafter the same applies in this Article) (if a subject company is not a public company, within one year from the acquisition day).

(2) The action referred to in the preceding paragraph (hereinafter referred to as "action seeking invalidation of acquisition of shares, etc. subject to the cash-out" in this Section) may be filed only by the following persons:

(i) a person who was a shareholder subject to the cash-out (if demand for share option cash-out is made along with demand for share cash-out, shareholders subject to the cash-out and share option holders subject to the cash-out; the same applies in Article 846-5, paragraph (1)) on the acquisition day; and

(ii) a person who was a director (in cases of a company with company auditor, a director or company auditor; in cases of a company with nominating committee, etc., a director or executive officer; hereinafter the same applies in this item) of the subject company on the acquisition day, or a director or liquidator of the subject company.

(Defendant)

Article 846-3 With regard to an action seeking invalidation of acquisition of shares, etc. subject to the cash-out, the special controlling shareholder is to be the defendant.

(Jurisdiction over an Action)

Article 846-4 An action seeking invalidation of acquisition of shares, etc. subject to the cash-out is under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of the subject company.

(Order to Provide Security)

Article 846-5 (1) With regard to an action seeking invalidation of acquisition of shares, etc. subject to the cash-out, the court may order the shareholder subject to the cash-out who has filed the action seeking invalidation of acquisition of shares, etc. subject to the cash-out to provide reasonable security in response to a petition by the defendant; provided, however, that this does not apply

when the shareholder subject to the cash-out is a director, company auditor, executive officer, or liquidator of the subject company.

(2) In order for a defendant to file the petition referred to in the preceding paragraph, the defendant must make a prima facie showing that the plaintiff filed the action in bad faith.

(Mandatory Consolidation of Oral Arguments)

Article 846-6 When several suits relating to an action seeking invalidation of acquisition of shares, etc. subject to the cash-out for the same claim are simultaneously pending, the oral arguments and judicial decisions thereof must be made in consolidation.

(Persons Affected by an Upholding Judgment)

Article 846-7 A final and binding judgment upholding a claim relating to an action seeking invalidation of acquisition of shares, etc. subject to the cash-out is also effective against third parties.

(Effects of a Judgment of Invalidation)

Article 846-8 When a judgment upholding a claim relating to an action seeking invalidation of acquisition of shares, etc. subject to the cash-out becomes final and binding, the acquisition of all shares, etc. subject to the cash-out that is held to be invalid by the judgment will become ineffective from then on.

(Liability for Damages If the Plaintiff Is Defeated)

Article 846-9 If the plaintiffs who filed the action seeking invalidation of Acquisition of shares, etc. subject to the cash-out are defeated, if the plaintiffs have acted in bad faith or with gross negligence, they are jointly and severally liable to compensate the defendant for damages.

## **Section 2 Action to Enforce Liability to a Stock Company**

(Action to Enforce Liability by Shareholders)

Article 847 (1) A shareholder (excluding a holder of shares less than one unit who is unable to exercise rights pursuant to the provisions of the articles of incorporation) having the shares consecutively for the preceding six months or more (or, if a shorter period is prescribed in the articles of incorporation, the period or more) may demand the stock company, in writing or by any other method prescribed by Ministry of Justice Order, to file an action to enforce the liability of an incorporator, director at incorporation, company auditor at incorporation, officers, etc. (meaning the officers, etc. prescribed in Article 423, paragraph (1)) or liquidator (hereinafter referred to as "incorporator, etc." in

this Section), and an action to demand payment pursuant to the provisions of Article 102-2, paragraph (1), Article 212, paragraph (1), or Article 285, paragraph (1), an action seeking the return of the benefits referred to in Article 120, paragraph (3) or an action seeking payment or delivery under the provisions of Article 213-2, paragraph (1) or Article 286-2, paragraph (1) (hereinafter referred to as an "action to enforce liability" in this Section); provided, however, that this does not apply if the purpose of the action to enforce liability is to seek unlawful benefits of relevant shareholder or a third party or to inflict damages on relevant stock company.

- (2) With regard to application of the provisions of the preceding paragraph to a stock company that is not a public company, the phrase "a shareholder (excluding a holder of shares less than one unit who is unable to exercise rights pursuant to the provisions of the articles of incorporation)" in that paragraph is deemed to be replaced with "a shareholder".
- (3) When the stock company does not file an action to enforce liability within sixty days from the day of the demand under the provisions of paragraph (1), the shareholder who has made relevant demand may file an action to enforce liability on behalf of the stock company.
- (4) If the stock company does not file an action to enforce liability within sixty days from the day of the demand under the provisions of paragraph (1), if there is a request by the shareholder who made relevant demand or the incorporator, etc. set forth in that paragraph, it must, without delay, notify the person who made such a request of the reason for not filing an action to enforce liability in writing or by any other method prescribed by Ministry of Justice Order.
- (5) Notwithstanding the provisions of paragraphs (1) and (3), if the stock company is likely to suffer irreparable harm through the elapse of the period set forth in those paragraphs, the shareholder set forth in paragraph (1) may immediately file an action to enforce liability on behalf of the stock company; provided, however, that this does not apply in the cases prescribed in the proviso to that paragraph.

#### (Action to Enforce Liability by Former Shareholders)

Article 847-2 (1) A person who had been a shareholder of a stock company continuously for six months or more (or, if a shorter period is prescribed in the articles of incorporation, the period or more) before the day when the acts set forth in the following items became effective until that day (excluding a holder of shares of less than one unit who was unable to exercise rights pursuant to the provisions of the articles of incorporation set forth in Article 189, paragraph (2); hereinafter referred to as "former shareholder" in this Article) may demand the stock company (in the case prescribed in item (ii), a stock company surviving after the absorption-type merger set forth in the same item;

hereinafter referred to as "wholly owned subsidiary company resulting from the share exchange, etc." in this Section), in writing or by any other method prescribed by Ministry of Justice Order, to file an action to enforce liability (limited to those related to liabilities or obligations for which the facts causing them occurred by the time when the acts set forth in the following items became effective; hereinafter the same applies in this Article) in the cases specified in those items even if the person is no longer a shareholder of the stock company; provided, however, that this does not apply if the purpose of the action to enforce liability is to seek unlawful benefits of the former shareholder or a third party or to inflict damages on the wholly owned subsidiary company resulting from the share exchange, etc. or wholly owning parent company set forth in the following items (meaning a stock company having all of the issued shares of a specific stock company or other stock companies specified by Ministry of Justice Order as equivalent thereto; hereinafter the same applies in this Section):

- (i) share exchange or share transfer of the stock company: when acquiring shares in the wholly owning parent company of the stock company through that share exchange or share transfer and continuing to hold those shares; and
  - (ii) absorption-type merger in which the stock company is the company that disappears: when acquiring shares in the wholly owning parent company of the stock company surviving after the absorption-type merger by the absorption-type merger and continuing to hold those shares.
- (2) For the purpose of the application of the provisions of the preceding paragraph to a stock company that is not a public company, "continuously from six months or more (or, if a shorter period is prescribed in the articles of incorporation, that period or more) before the day when the acts set forth in the following items until that day" in the same paragraph is read as "on the day when the acts set forth in the following items became effective".
- (3) A former shareholder may demand the wholly owned subsidiary company resulting from a share exchange, etc. to file an action to enforce liability in writing or by any other method prescribed by Ministry of Justice Order in the following cases even if the former shareholder is no longer a shareholder of the wholly owning parent company referred to in the items of paragraph (1); provided, however, that this does not apply if the purpose of the action to enforce liability is to seek unlawful benefits of the former shareholder or a third party or to inflict damages on the wholly owned subsidiary company resulting from the share exchange, etc. or a stock company issuing shares as referred to in the following items:
- (i) when, through a share exchange or share transfer by that wholly owning parent company, that person acquires shares in the wholly owning parent

- company and continues to hold those shares; and
- (ii) when, through a merger in which the wholly owning parent company is the company that disappears, that person acquires shares in the stock company incorporated as a result of the merger or acquires shares in the stock company surviving after the merger or in its wholly owning parent company, and continues to hold those shares.
- (4) The provisions of the preceding paragraph apply mutatis mutandis to when a former shareholder is no longer a shareholder of shares referred to in item (i) of the same paragraph in the cases set forth in the same item (including cases where it is applied mutatis mutandis pursuant to this paragraph or the following paragraph; hereinafter the same applies in this paragraph).
- (5) The provisions of paragraph (3) apply mutatis mutandis to when a former shareholder is no longer a shareholder of shares as referred to in item (ii) of the same paragraph in cases set forth in the same item (including cases where it is applied mutatis mutandis pursuant to the preceding paragraph or this paragraph; hereinafter the same applies in this paragraph). In this case, "the wholly owning parent company" in paragraph (3) (including cases where it is applied mutatis mutandis pursuant to the preceding paragraph or this paragraph) is deemed to be replaced with "a stock company incorporated as a result of a merger or a stock company surviving after the merger or its wholly owning parent company".
- (6) When a wholly owned subsidiary company resulting from a share exchange, etc. does not file an action to enforce liability within sixty days from the day of demand (hereinafter referred to as "demand for filing an action" in this Article) pursuant to the provisions of paragraph (1) or paragraph (3) (including cases as applied mutatis mutandis pursuant to the preceding two paragraphs; hereinafter the same applies in this Article), a former shareholder who makes the demand for filing an action may file an action to enforce liability for the wholly owned subsidiary company resulting from the share exchange, etc.
- (7) If a wholly owned subsidiary company resulting from a share exchange, etc. does not file an action to enforce liability within sixty days from the day of the demand for filing an action, when it receives a demand from a former shareholder who makes the demand for filing an action or an incorporator, etc. who becomes a defendant of an action to enforce liability related to the demand for filing an action, it must notify the person who made the demand of the reason not to file an action to enforce liability in writing or other method prescribed by Ministry of Justice Order without delay.
- (8) Notwithstanding the provisions of paragraphs (1), (3), and (6), if a wholly owned subsidiary company resulting from a share exchange, etc. is likely to suffer irreparable harm through the elapsing of the period set forth in those paragraphs, a former shareholder who can make a demand for filing an action



may immediately file an action to enforce liability for a wholly owned subsidiary company resulting from the share exchange, etc.

- (9) For the purpose of the application of the provisions of Article 55, Article 102-2, paragraph (2), Article 103, paragraph (3), Article 120, paragraph (5), Article 213-2, paragraph (2), Article 286-2, paragraph (2), Article 424 (including cases as applied mutatis mutandis pursuant to Article 486, paragraph (4)), proviso to Article 462, paragraph (3), Article 464, paragraph (2), and Article 465, paragraph (2) to when exempting a liability or obligations whose causative fact occurred by the time when the acts set forth in the following items of paragraph (1) became effective if there are qualified former shareholders (meaning former shareholders who become able to make a demand for filing an action pursuant to the provisions of main clause of paragraph (1) or main clause of paragraph (3); hereinafter the same applies in this Section) related to a wholly owned subsidiary company resulting from a share exchange, etc., "all shareholders" in these provisions is read as "all shareholders and all qualified former shareholders prescribed in Article 847-2, paragraph (9)".

(Action to Enforce Specific Liability by Shareholders of Ultimate, Wholly Owing Parent Company)

- Article 847-3 (1) A shareholder who holds votes of one-hundredths (or, if a lesser proportion is prescribed in the articles of incorporation, that proportion) or more of the votes of all shareholders (excluding shareholders who cannot exercise voting rights for all of matters that can be resolved at the shareholders meeting) of the ultimate, wholly owning parent company, etc. of a stock company (meaning the wholly owning parent company, etc. of the stock company which itself has no wholly owning parent company, etc.; hereinafter the same applies in this Section) continuously over six months (or, if a shorter period is prescribed in the articles of incorporation, that period or more) or a shareholder who holds shares at or more than one-hundredths (or, if a shorter period is prescribed in the articles of incorporation, that period or more) of issued shares (excluding treasury shares) of the ultimate, wholly owning parent company, etc. may demand the stock company to file an action to enforce specific liability (hereinafter referred to as "action to enforce specific liability" hereinafter in this Section) in writing or by any other methods specified by Ministry of Justice Order; provided, however, that this does not apply to cases corresponding to any of the following:
- (i) if the action to enforce specific liability is to seek unlawful benefits of the shareholder or a third party or to inflict damages on the stock company or the ultimate, wholly owning parent company, etc.; and
  - (ii) if the ultimate, wholly owning parent company, etc. does not suffer damages by the fact of causing the specific liability.

- (2) An "ultimate, wholly owning parent company, etc." as prescribed in the preceding paragraph means the stock companies set forth in the following:
- (i) a wholly owning parent company; and
  - (ii) if all of the issued shares of a stock company are held by another stock company and its wholly owned subsidiary companies, etc. (meaning a corporation all of the shares or equity interests of which are held by a stock company; hereinafter the same applies in this Article and Article 849, paragraph (3)) or by the wholly owned subsidiary companies, etc. of another stock company, that other stock company (other than a wholly owning parent company).
- (3) In the cases set forth in item (ii) of the preceding paragraph, when another stock company and its wholly owned subsidiary companies, etc. as referred to in that item, or the wholly owned subsidiary companies, etc. of another stock company as referred to in the same item, hold all of the shares or equity interests of another corporation, the relevant other corporation is deemed to be the wholly owned subsidiary company, etc. of that other stock company.
- (4) "Specific liability" as prescribed in paragraph (1) means the liability of the incorporator, etc. of a stock company, if the book value of the stock company's shares at the ultimate, wholly owning parent company, etc. and its wholly owned subsidiary companies, etc. (including anything deemed to be the wholly owned subsidiary company, etc. thereof pursuant to the provisions of the preceding paragraph; the same applies in the following paragraph and Article 849, paragraph (3)) exceeds one-fifth (or, if a lesser proportion is prescribed in the articles of incorporation, the proportion) of the value calculated by the method prescribed by Ministry of Justice Order as the total assets of the ultimate, wholly owning parent company, etc. on the day when the fact giving rise to the liability of the incorporator, etc. occurred (the same applies in paragraph (10) and paragraph (7) of the same Article).
- (5) If an ultimate, wholly owning parent company, etc. takes, as its wholly owned subsidiary company, etc., a stock company that, on the day when the fact giving rise to the liability of the incorporator, etc. occurred, was an ultimate, wholly owning parent company, etc., the stock company that was formerly an ultimate, wholly owning parent company, etc. is deemed to be the ultimate, wholly owning parent company, etc. set forth in the preceding paragraph and the provisions of that paragraph apply.
- (6) For the purpose of the application of the provisions of paragraph (1) to an ultimate, wholly owning parent company, etc. that is not a public company, "a stock company continuously over six months (or, if a shorter period is prescribed in the articles of incorporation, that period or more)" in the same paragraph is read as "stock company".
- (7) If a stock company does not file an action to enforce specific liability within

sixty days from the day of demand pursuant to the provisions of paragraph (1), shareholders of the ultimate, wholly owning parent company, etc. that made the demand may file an action to enforce specific liability for the stock company.

- (8) If a stock company does not file an action to enforce specific liability within sixty days from the day of demand pursuant to the provisions of paragraph (1), when receiving a demand from a shareholder of an ultimate, wholly owning parent company, etc. which has made the demand or an incorporator, etc. who will become a defendant of the action to enforce specific liability related to the demand, the stock company must notify the person who made the demand the reason for not filing an action to enforce specific liability in writing or other method prescribed by Ministry of Justice Order without delay.
- (9) Notwithstanding the provisions of paragraphs (1) and (7), if a stock company is likely to suffer irreparable damages due to the elapsing of the period set forth in the same paragraph, the shareholder prescribed in paragraph (1) may file an action to enforce specific liability immediately for the stock company; provided, however, that this does not apply to cases where it is prescribed in the proviso to the same paragraph.
- (10) If there is an ultimate, wholly owning parent company, etc. with a stock company, for the purpose of the application of the provisions of Article 55, Article 103, paragraph (3), Article 120, paragraph (5), Article 424 (including cases where it is applied mutatis mutandis pursuant to Article 486, paragraph (4)), proviso to Article 462, paragraph (3), Article 464, paragraph (2), and Article 465, paragraph (2) to cases of exempting specific liability, "all shareholders" in these provisions is read as "all shareholders and all shareholders of an ultimate, wholly owning parent company, etc. as prescribed in Article 847-3, paragraph (1)".

(Court Costs for an Action to Enforce Liability)

- Article 847-4 (1) An action to enforce liability set forth in Article 847, paragraph (3) or (5), Article 847-2, paragraph (6) or (8), or paragraph (7) or (9) of the preceding Article is deemed as an action bringing a claim that is not on a property right as to the calculation of value of the subject matter of the suit.
- (2) When a shareholder, etc. (meaning a qualified former shareholder or a shareholder of an ultimate, wholly owning parent company, etc.; hereinafter the same applies in this Section) files an action to enforce liability, a court may order the shareholder, etc. to provide reasonable security in response to a petition by the defendant.
- (3) When a defendant intends to file the petition set forth in the preceding paragraph, the defendant must make a prima facie showing that the plaintiff filed the action to enforce liability in bad faith.

(Jurisdiction of an Action)

Article 848 An Action to enforce liability is under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of the stock company or of the wholly owned subsidiary company resulting from a share exchange, etc. (hereinafter referred to as a "stock company, etc." in this Section).

(Intervention)

Article 849 (1) A shareholder, etc. or a stock company, etc. may intervene in a suit relating to an action to enforce liability (in cases of a qualified former shareholder, limited to one related to the liabilities or obligations for which the fact causing them occurred by the time when the act set forth in the items of Article 847-2, paragraph (1) became effective; in cases of a shareholder of an ultimate, wholly owning parent company, etc., limited to the action to enforce specific liability) either as a co-party or for assisting either of the parties; provided, however, that this does not apply when it will unduly delay the court proceedings or impose an excessive administrative burden on the court.

(2) Persons set forth in the following items, even if the person is not a shareholder of a stock company, etc., may intervene in a suit related to an action to enforce liability filed by the person prescribed in each of those items for assisting either of the parties; provided, however, that this does not apply in cases prescribed in the proviso to the preceding paragraph:

(i) the wholly owning parent company resulting from a share exchange, etc.

(meaning the wholly owning parent company of a wholly owned subsidiary company resulting from a share exchange, etc. (excluding one that has a wholly owning parent company at the time when the act set forth in the items of Article 847-2, paragraph (1), share exchange or share transfer set forth in paragraph (3), item (i) of the same Article, or the merger set forth in item (ii) of the same paragraph becomes effective) in the cases prescribed in the items of Article 847-2, paragraph (1) or the cases set forth in paragraph (3), item (i) of the same Article (including cases where it is applied mutatis mutandis pursuant to paragraphs (4) and (5) of the same Article; hereinafter the same applies in this item) or item (ii) (including cases where it is applied mutatis mutandis pursuant to paragraphs (4) and (5) of the same Article; hereinafter the same applies in this item), which is not subject to a stock company becoming its wholly owning parent company through a share exchange or share transfer by that wholly owning parent company or through a merger in which the wholly owning parent company is the company that disappears; hereinafter the same applies in this Article): qualified former shareholder; and

- (ii) ultimate, wholly owning parent company, etc.: shareholder of the ultimate, wholly owning parent company, etc.
- (3) In order for a stock company, etc., wholly owning parent company resulting from a share exchange, etc., or ultimate, wholly owning parent company, etc. to intervene in a suit relating to an action to enforce liability to assist a director (excluding an audit and supervisory committee member and audit committee member), executive officer, liquidator or a person who was formerly in such a position of the stock company that constitutes that stock company, etc., the wholly owned subsidiary company resulting from the share exchange, etc. as regards the wholly owning parent company resulting from the share exchange, etc., or the wholly owned subsidiary company, etc. of the ultimate, wholly owning parent company, etc., it must obtain the consent of the persons specified in each of the following items for the categories set forth respectively in those items:
  - (i) company with company auditor: the company auditor (if there are two or more company auditors, each of relevant company auditors); or
  - (ii) company with audit and supervisory committee: each audit and supervisory committee member; and
  - (iii) company with nominating committee, etc.: each audit committee member.
- (4) When a shareholder, etc. files an action to enforce liability, the shareholder, etc. must give notice of suit to the stock company, etc. without delay.
- (5) When a stock company, etc. files an action to enforce liability or receives the notice of suit set forth in the preceding paragraph, it must give public notice to that effect or give notice thereof to its shareholders without delay.
- (6) If a stock company, etc. has a wholly owning parent company resulting from a share exchange, etc., and an action to enforce liability set forth in the preceding paragraph or notice of suit is related to liability or an obligation whose causative fact has occurred by the time when the acts set forth in the items of Article 847-2, paragraph (1) became effective, the stock company, etc. must file the action to enforce liability or give notice that the notice of suit was received to the wholly owning parent company resulting from the share exchange, etc. without delay in addition to the public notice or notice pursuant to the provisions of the preceding paragraph.
- (7) If a stock company, etc. has an ultimate, wholly owning parent company, etc., and the action to enforce liability set forth in paragraph (5) or notice of suit are related to specific liability, the stock company, etc. must file the action to enforce liability or notify that the notice of suit was received to the ultimate, wholly owning parent company, etc. without delay in addition to the public notice or notice pursuant to the provisions of the same paragraph.
- (8) As regards the application of the provisions of paragraph (6) if the wholly owning parent company resulting from a share exchange, etc. as referred to in

paragraph (6) holds all of the issued shares of the wholly owned subsidiary company resulting from the share exchange, etc. and as regards the application of the provisions of the preceding paragraph if the ultimate, wholly owning parent company referred to in that paragraph holds all of the issued shares in the stock company, the phrase "in addition to" in these provisions is read as "in lieu of".

- (9) With regard to application of the provisions of paragraphs (5) through (7) to a stock company, etc. that is not a public company, the phrase "give public notice to that effect or give notice thereof to its shareholders" in paragraph (5) is read as "give notice to that effect to its shareholders", and "public notice or notice" in paragraphs (6) and (7) is read as "notice" respectively.
- (10) In the cases set forth in the following items, the stock company prescribed in each of those items must make a public notice to that effect or make a notice to a person prescribed in those items without delay:
- (i) if a wholly owning parent company resulting from a share exchange, etc. receives a notice pursuant to the provisions of paragraph (6): a qualified former shareholder; and
  - (ii) if an ultimate, wholly owning parent company, etc. receives a notice pursuant to the provisions of paragraph (7): shareholders of the ultimate, wholly owning parent company, etc.
- (11) For application of the provisions of the preceding paragraph if a stock company prescribed in the items of the same paragraph is not a public company, "make public notice or make notice to the person prescribed in each of those items" in the same paragraph is read as "make notice to the person prescribed in each of those items".

(Settlement)

Article 849-2 When a stock company, etc. settles an action to enforce the liability of a director (excluding an audit and supervisory committee member and audit committee member), executive officer, liquidator or a person who was formerly in such a position of that stock company, etc., it must obtain the consent of the persons specified in each of those items for the categories set forth respectively in those items:

- (i) company with company auditor: the company auditor (if there are two or more company auditors, each of the company auditors);
- (ii) company with audit and supervisory committee: each audit and supervisory committee member; and
- (iii) company with nominating committee, etc.: each audit committee member.

Article 850 (1) The provisions of Article 267 of the Code of Civil Procedure do not apply to the subject-matter of a suit relating to an action for to enforce liability

if a stock company, etc. is not a party to settlement in relevant suit; provided, however, that this does not apply when relevant stock company, etc. has given approval.

- (2) In the case prescribed in the preceding paragraph, the court must notify the stock company, etc. of the contents of the settlement and give the stock company notice to the effect that it should state its objection to relevant settlement, if any, within two weeks.
- (3) If the stock company, etc. does not raise any objections in writing within the period referred to in the preceding paragraph, it is deemed to have given the approval for shareholders, etc. to effect a settlement with the contents of the notice under the provisions of that paragraph.
- (4) The provisions of Article 55, Article 102-2, paragraph (2), Article 103, paragraph (3), Article 120, paragraph (5), Article 213-2, paragraph (2), Article 286-2, paragraph (2), Article 424 (including the cases where it is applied *mutatis mutandis* pursuant to Article 486, paragraph (4)), Article 462, paragraph (3) (limited to the portion relating to the obligations assumed for the portion not exceeding the distributable amount prescribed in the proviso to that paragraph), Article 464, paragraph (2) and Article 465, paragraph (2) do not apply in cases of effecting a settlement in a suit relating to an action to enforce liability.

(Conduct of a Suit of a Person Who Is No Longer a Shareholder)

- Article 851 (1) Even if a shareholder who has filed an action to enforce liability or a shareholder who has intervened in a suit relating to the action to enforce liability as a co-party ceases to be a shareholder during the pendency of relevant suit, that person may conduct the suit in the following cases:
- (i) when that person acquires shares in the wholly owning parent company of the relevant stock company through a share exchange or share transfer by that stock company; or
  - (ii) when, through a merger in which the relevant stock company is the company that disappears, that person acquires shares in the stock company incorporated as a result of the merger or acquires shares in the stock company surviving the merger or in its wholly owning parent company.
- (2) The provisions of the preceding paragraph apply *mutatis mutandis* when, in the case set forth in item (i) of that paragraph (including the cases where it is applied *mutatis mutandis* pursuant to this paragraph or the following paragraph), the shareholder referred to in the preceding paragraph ceases to be a shareholder of shares in the wholly owning parent company of the relevant stock company during the pendency of the suit referred to in that paragraph. In these cases, the term "the relevant stock company" in that paragraph (including the cases where it is applied *mutatis mutandis* pursuant

to this paragraph or the following paragraph) is deemed to be replaced with "the relevant wholly owning parent company".

- (3) The provisions of paragraph (1) apply mutatis mutandis when, in the case set forth in item (ii) of that paragraph (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph or this paragraph), the shareholder referred to in paragraph (1) ceases to be a shareholder of shares of the stock company that is incorporated in the merger or the stock company surviving a merger, or the wholly owning parent company thereof, during the pendency of the suit referred to in that paragraph. In these cases, the term "the relevant stock company" in that paragraph (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph and this paragraph) is deemed to be replaced with "the stock company that is incorporated in the merger or the stock company surviving a merger, or the wholly owning parent company thereof".

#### (Demand for Costs)

Article 852 (1) If a shareholder, etc. who has filed an action to enforce liability wins the suit (including cases of partially winning the suit), and the shareholder has paid the necessary costs (excluding court costs) or is to pay a fee to an attorney, a legal professional corporation, or an attorney and registered foreign joint corporation with respect to the suit relating to the action to enforce liability, the shareholder may demand the relevant stock company, etc. to pay an amount that is found to be reasonable, not exceeding the amount of that costs or the amount of that fee.

- (2) Even if a shareholder, etc. who has filed an action to enforce liability loses the case, the shareholder, etc. is not obligated to compensate the relevant stock company, etc. for the damages arising as a result thereof, except when the shareholder, etc. was in bad faith.

- (3) The provisions of the preceding two paragraphs apply mutatis mutandis to any shareholder, etc. who intervened in the suit referred to in Article 849, paragraph (1) pursuant to the provisions of that paragraph.

#### (Actions for a Retrial)

Article 853 (1) If an action to enforce liability has been filed, and the plaintiff and the defendant, in conspiracy, caused the court to render a judgment for the purpose of prejudicing the rights of the stock company, etc., which are the subject-matter of the suit relating to the action to enforce liability, the person set forth in the following items may enter an appeal against the final judgment that became final and binding concerning the action prescribed in those items, by filing an action for a retrial:

- (i) a shareholder or stock company, etc.: an action to enforce liability;



- (ii) a qualified former shareholder: an action to enforce liability (limited to a liability or obligation for which the fact causing them occurred by the time when the acts set forth in the items of Article 847-2, paragraph (1) became effective); and
  - (iii) a shareholder of an ultimate, wholly owning parent company, etc.: an action to enforce specific liability.
- (2) The provisions of the preceding Article apply mutatis mutandis to the appeal for a retrial referred to in the preceding paragraph.

### **Section 3 Actions Seeking Dismissal of an Officer of a Stock Company**

(Actions Seeking Dismissal of an Officer of a Stock Company)

Article 854 (1) If, notwithstanding the presence of misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the duties of an officer (meaning the officer prescribed in Article 329, paragraph (1); hereinafter the same applies in this Section), a proposal to dismiss relevant officer is rejected at the shareholders meeting or a resolution at the shareholders meeting to dismiss relevant officer fails to become effective pursuant to the provisions of Article 323, the following shareholders may demand dismissal of relevant officer by filing an action within thirty days from the day of relevant shareholders meeting:

- (i) a shareholder (excluding the following shareholders) holding consecutively for the preceding six months or more (or, if a shorter period is prescribed in the articles of incorporation, the period or more) not less than three-hundredths (or, if a lesser proportion is prescribed in the articles of incorporation, the proportion) of the voting rights of all shareholders (excluding the following shareholders):
    - (a) a shareholder who is unable to exercise a voting right with respect to the proposal to dismiss relevant officer; and
    - (b) a shareholder who is the officer related to relevant demand; and
  - (ii) a shareholder (excluding the following shareholders) holding consecutively for the preceding six months or more (or, if a shorter period is prescribed in the articles of incorporation, the period or more) not less than three-hundredths (or, if a lesser proportion is prescribed in the articles of incorporation, the proportion) of the issued shares (excluding the shares held by the following shareholders):
    - (a) a shareholder who is relevant stock company; and
    - (b) a shareholder who is the officer related to relevant demand.
- (2) With regard to application of the provisions of the items of the preceding paragraph to a stock company that is not a public company, the phrase "holding consecutively for the preceding six months or more (or, if a shorter

period is prescribed in the articles of incorporation, that period or more)" in those provisions is deemed to be replaced with "holding".

- (3) With regard to application of the provisions of paragraph (1) if the class of shares for which there are provisions on the matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to directors (in cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors)) have been issued, the term "shareholders meeting" in that paragraph is deemed to be replaced with "shareholders meeting (including the general meeting of class shareholders referred to in Article 339, paragraph (1) as applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (1))".
- (4) With regard to application of the provisions of paragraph (1) if the class of shares for which there are provisions on the matters set forth in Article 108, paragraph (1), item (ix) (limited to those relating to company auditors) have been issued, the term "shareholders meeting" in that paragraph is deemed to be replaced with "shareholders meeting (including the general meeting of class shareholders set forth in Article 339, paragraph (1) as applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (2))".

(Defendants)

Article 855 With regard to the action referred to in paragraph (1) of the preceding Article (referred to as an "action seeking dismissal of an officer of a stock company" in the following Article and Article 937, paragraph (1), item (i), (j)), the relevant stock company and the officer referred to in paragraph (1) of the preceding Article are to be the defendants.

(Jurisdiction over Actions)

Article 856 An action seeking dismissal of an officer of a stock company is under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of the relevant stock company.

#### **Section 4 Actions Concerning Special Liquidation**

(Jurisdiction over an Action Seeking Rescission of Exemption from Liability of an Officer)

Article 857 The action referred to in Article 544, paragraph (2) is under the exclusive jurisdiction of the special liquidation court (meaning the special liquidation court prescribed in Article 880, paragraph (1); the same applies in paragraph (3) of the following Article).

- (Action for Objection to a Ruling Evaluating a Subject Officer's Liability)
- Article 858 (1) A person who is dissatisfied with a ruling evaluating a subject officer's liability (meaning the ruling evaluating a subject officer's liability prescribed in Article 545, paragraph (1); hereinafter the same applies in this Article) may file an action for objection within the unextendable period of one month from the day of receiving the service under the provisions of Article 899, paragraph (4).
- (2) With regard to the action set forth in the preceding paragraph, the liquidating stock company must be the defendant if the person filing the action is the subject officer (meaning the subject officer prescribed in Article 542, paragraph (1); hereinafter the same applies in this paragraph), and the subject officer must be the defendant if that person is the liquidating stock company.
- (3) The action set forth in paragraph (1) is under the exclusive jurisdiction of the special liquidation court.
- (4) A judgment for the action set forth in paragraph (1) approves, changes or revokes the ruling evaluating the subject officer's liability, except in cases of dismissing the action as being unlawful.
- (5) A judgment that has approved or changed the ruling evaluating the subject officer's liability has the same effect as a judgment ordering performance, with regard to judicial enforcement.
- (6) With regard to a judgment that has approved or changed the ruling evaluating the subject officer's liability, the court in charge of the case may make a declaration of provisional execution pursuant to the provisions of Article 259, paragraph (1) of the Code of Civil Procedure.

### **Section 5 Action Seeking Removal of a Member of a Membership Company**

- (Action Seeking Removal of a Member of a Membership Company)
- Article 859 If any one of the following grounds applies to a member of a membership company (hereinafter referred to as the "subject member" in this Article and Article 861, item (i)), relevant membership company may demand removal of the subject member by filing an action, based on a resolution adopted by a majority of the members other than the subject member:
- (i) a failure to perform the obligation of contribution;
  - (ii) a violation of the provisions of Article 594, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 598, paragraph (2));
  - (iii) engagement in misconduct in executing duties or involvement in execution of duties when having no right to execute the duties;
  - (iv) engagement in misconduct in representing the membership company or

- conducting an act by representing the membership company when having no authority of representation; or
- (v) beyond what is set forth in the preceding items, a failure to fulfill an important obligation.

(Action Seeking Extinguishment of Right to Execute Business or Authority of Representation of Member Executing Business of a Membership Company)

Article 860 If any one of the following grounds apply to a member executing the business of a membership company (hereinafter referred to as the "subject managing member" in this Article and item (ii) of the following Article), relevant membership company may demand extinguishment of the right to execute business or the authority of representation of the subject managing member by filing an action, based on a resolution adopted by a majority of the members other than the subject managing member:

- (i) when there are any of the grounds set forth in the items of the preceding Article; or
- (ii) when the member is too incompetent to execute the business of the membership company or to represent the membership company.

(Defendants)

Article 861 With regard to the actions set forth in the following items, the persons specified in each of those items are to be the defendants:

- (i) the action referred to in Article 859 (referred to as an "action seeking removal of a member of a membership company" in the following Article and Article 937, paragraph (1), item (i), (k)): the subject member; and
- (ii) the action referred to in the preceding Article (referred to as an "action seeking extinguishment of a right to execute business or authority of representation of a member executing business of a membership company" in the following Article and Article 937, paragraph (1), item (i), (l)): the subject managing member.

(Jurisdiction over an Action)

Article 862 An action seeking removal of a member of a membership company and an action seeking extinguishment of a right to execute business or authority of representation of member executing business of a membership company are under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of the relevant membership company.

## **Section 6 Action Seeking Rescission of Disposition of Property of a Liquidating Membership Company**

(Action Seeking Rescission of Disposition of Property of a Liquidating Membership Company)

Article 863 (1) When a liquidating membership company (limited to a general partnership company or a limited partnership company; hereinafter the same applies in this paragraph) commits any one of the acts set forth in the following items, the persons specified in each of those items may demand rescission of relevant act by filing an action; provided, however, that this does not apply if there is no risk of harm to these persons by relevant acts:

(i) disposition of property of the liquidating membership company in violation of the provisions of Article 670: a creditor of the liquidating membership company; or

(ii) disposition of property of the liquidating membership company in violation of the provisions of Article 671, paragraph (1): a creditor who has attached the equity interest of a member of the liquidating membership company.

(2) The provisions of the proviso to Article 424, paragraph (1), Article 424-5, Article 424-7, paragraph (2), and Article 425 through Article 426 of the Civil Code apply mutatis mutandis to the cases set forth in the preceding paragraph. In these cases, the phrase "from relevant act" in the proviso to Article 424, paragraph (1) of the Civil Code is deemed to be replaced with "from any one of the acts set forth in the items of Article 863 of the Companies Act (Act No. 86 of 2005), " the term "creditor" in Article 424-5, item (i) of the Civil Code is deemed to be replaced with "liquidating membership company(meaning a liquidating membership company provided in Article 645 of the Companies Act, limited to a general partnership company or a limited partnership company; hereinafter the same applies), and the term "creditor" in item (ii) of the Article, Article 424-7, paragraph (2) and Article 425 through Article 426 of the Civil Code is deemed to be replaced with "liquidating membership company."

(Defendants)

Article 864 With regard to the action set forth in paragraph (1) of the preceding Article, the counterparties to the acts set forth in the items of that paragraph or the subsequent purchasers are to be the defendants.

**Section 7 Action Seeking Rescission of Performance of a Bond-Issuing Company**

(Action Seeking Rescission of Performance of a Bond-Issuing Company)

Article 865 (1) When a bond-issuing company's payment to a bondholder, settlement effected with a bondholder, or other act conducted against or with a bondholder is grossly improper, the bond administrator may demand rescission

of relevant act by filing an action.

- (2) The action referred to in the preceding paragraph may not be filed when six months have elapsed from the time when the bond administrator learned about the fact that serves as the cause for the rescission of the act referred to in that paragraph. The same applies when one year has elapsed from the time of the act referred to in that paragraph.
- (3) In the cases prescribed in paragraph (1), if there is a resolution at a bondholders meeting, a representative bondholder or a resolution administrator (meaning the resolution administrator prescribed in Article 737, paragraph (2)) may also demand rescission of the act referred to in paragraph (1) by filing an action; provided, however, that this does not apply when one year has elapsed from the time of the act referred to in that paragraph.
- (4) The provisions of the proviso to Article 424, paragraph (1), Article 424-5, Article 424-7, paragraph (2), and Article 425 through Article 425-4 of the Civil Code apply mutatis mutandis to the cases referred to in paragraph (1) and the main clause of the preceding paragraph. In these cases, the phrase "from relevant act" in the proviso to Article 424, paragraph (1) of that Act is deemed to be replaced with "from the act prescribed in Article 865, paragraph (1) of the Companies Act", the phrase "that the obligee is prejudiced" in that paragraph is deemed to be replaced with "that relevant act is grossly improper", the phrase "the obligee is prejudiced" in each item of Article 424-5 of the Civil Code is deemed to be replaced with "that relevant act is grossly improper," and the term "obligees" in Article 425 is deemed to be replaced with "bondholders".

(Defendants)

Article 866 With regard to the action set forth in paragraph (1) or paragraph (3) of the preceding Article, the counterparty to the act referred to in paragraph (1) of that Article or the subsequent purchaser is to be the defendant.

(Jurisdiction over an Action)

Article 867 The action referred to in Article 865, paragraph (1) or paragraph (3) is under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of the bond-issuing company.

### **Chapter III Non-Contentious Cases**

#### **Section 1 General Provisions**

(Jurisdiction over Non-Contentious Cases)

Article 868 (1) A non-contentious case under the provisions of this Act (excluding the cases prescribed in the following paragraph to paragraph (6)) is under the exclusive jurisdiction of the district court having jurisdiction over the location

of the head office of the company.

- (2) A case relating to a petition, filed by a member of the parent company (limited to a shareholder or member of the parent company, which is a company), for permission to inspect or otherwise access, as follows, a document or electronic or magnetic record prepared or kept by a stock company pursuant to the provisions of this Act (meaning to inspect, copy, or be issued a transcript or extract, of it, or to be provided with information or issued a document showing information with regard to it; the same applies in Article 870, paragraph (2), item (i)) is under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of relevant stock company:
  - (i) to inspect, copy, or be delivered a transcript or extract of the documents; and
  - (ii) to inspect or copy something that presents the information recorded in an electronic or magnetic record, to be provided with that information by electronic or magnetic means, or to be issued a document showing that information.
- (3) The case related to the petition to determine the sale price of shares, etc. subject to the cash-out pursuant to the provisions of Article 179-8, paragraph (1) is under the jurisdiction of the district court having jurisdiction over the location of the head office of the subject company.
- (4) A case relating to a petition for a judicial decision under the provisions of Article 705, paragraph (4) and Article 706, paragraph (4), the provisions of Article 707, Article 711, paragraph (3), Article 713, and Article 714, paragraphs (1) and (3) (including cases where these provisions apply *mutatis mutandis* pursuant to Article 714-7), and the provisions of Article 718, paragraph (3), Article 732, Article 740, paragraph (1) and Article 741, paragraph (1) is under the exclusive jurisdiction of the district court having jurisdiction over the location of the head office of the bond-issuing company.
- (5) A case relating to liquidation of a foreign company under the provisions of Article 822, paragraph (1) and a case relating to a judicial decision under the provisions of Article 827, paragraph (1) or a provisional order under the provisions of Article 825, paragraph (1) as applied *mutatis mutandis* pursuant to Article 827, paragraph (2) is under the exclusive jurisdiction of the district court having jurisdiction over the location of relevant foreign company's business office in Japan (or, if no business office is established in Japan, the address of the representative in Japan).
- (6) A case in relation to the petition referred to in Article 843, paragraph (4) is under the exclusive jurisdiction of the court in charge of the first instance of an action seeking invalidation of any one of the acts set forth in the items of paragraph (1) of that Article.

(Prima Facie Showing)

Article 869 In cases of filing a petition for permission under the provisions of this Act, a prima facie showing must be made with regard to the fact that serves as the cause thereof.

(Hearing of Statements)

Article 870 (1) When the court makes the judicial decisions set forth in the following items from among judicial decisions relating to non-contentious cases under the provisions of this Act (excluding Part II, Chapter IX, Section 2), it must hear statements by the persons specified in each of those items; provided, however, that this does not apply to cases of making a judicial decision to dismiss the petition as non-conforming or on the grounds that it is obvious that there are no reasons:

- (i) a determination of the amount of remuneration for a person who is temporarily to perform the duties of a director (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory committee member or other director), accounting advisor, company auditor, representative director, committee member (meaning members of a nominating committee, audit committee, or remuneration committee; the same applies in Article 874, item (i)), executive officer or representative executive officer appointed pursuant to the provisions of Article 346, paragraph (2), Article 351, paragraph (2) or Article 401, paragraph (3) (including cases where it is applied mutatis mutandis pursuant to Article 403, paragraph (3) or Article 420, paragraph (3)), a liquidator, a person who is temporarily to perform the duties of a liquidator or representative liquidator appointed pursuant to the provisions of Article 346, paragraph (2) as applied mutatis mutandis pursuant to Article 479, paragraph (4) or the provisions of Article 351, paragraph (2) as applied mutatis mutandis pursuant to Article 483, paragraph (6), an inspector, or the administrator set forth in Article 825, paragraph (2) (including cases where it is applied mutatis mutandis pursuant to Article 827, paragraph (2)): the relevant company (in cases of determination of the remuneration amount of the administrator set forth in Article 825, paragraph (2) as applied mutatis mutandis pursuant to Article 827, paragraph (2), the relevant foreign company) and the person receiving the remuneration;
- (ii) a judicial decision on dismissal of a liquidator, a bond administrator or an assistant bond administrator: relevant liquidator, bond administrator or assistant bond administrator;
- (iii) a judicial decision under the provisions of Article 33, paragraph (7): a director at incorporation, the person who contributes property other than monies referred to in Article 28, item (i) and the transferor referred to in



- item (ii) of that Article;
  - (iv) a judicial decision under the provisions of Article 207, paragraph (7) or Article 284, paragraph (7): the relevant stock company and a person who contributes property other than monies pursuant to the provisions of Article 199, paragraph (1), item (iii) or Article 236, paragraph (1), item (iii);
  - (v) a judicial decision under the provisions of Article 455, paragraph (2), item (ii) or Article 505, paragraph (3), item (ii): the relevant shareholder;
  - (vi) a judicial decision under the provisions of Article 456 or Article 506: the relevant shareholder;
  - (vii) a judicial decision under the provisions of Article 732: an interested party;
  - (viii) a judicial decision upholding a petition under the provisions of Article 740, paragraph (1): the bond-issuing company;
  - (ix) a judicial decision on the petition for permission referred to in Article 741, paragraph (1): the bond-issuing company;
  - (x) a judicial decision under the provisions of Article 824, paragraph (1): the relevant company; and
  - (xi) a judicial decision under the provisions of Article 827, paragraph (1): the relevant foreign company.
- (2) In cases of making the judicial decision prescribed in the following items, the court must set a hearing date and hear statements by the petitioner and the person specified in each of those items; provided, however, that this does not apply when making a judicial decision to dismiss the petition as non-conforming or on the grounds that it is obvious that there are no reasons:
- (i) a judicial decision on the petition for permission to inspect, etc. a document or electronic or magnetic record that a stock company prepared or kept pursuant to the provisions of this Act: that stock company;
  - (ii) determination of the price of shares or share options (if the share options are attached to bonds with share options, if a holder thereof demands that the relevant company purchase the bonds constituting those bonds with share options, including those bonds) pursuant to the provisions of Article 117, paragraph (2), Article 119, paragraph (2), Article 182-5, paragraph (2), Article 193, paragraph (2) (including cases as applied mutatis mutandis pursuant to Article 194, paragraph (4)), Article 470, paragraph (2), Article 778, paragraph (2), Article 786, paragraph (2), Article 788, paragraph (2), Article 798, paragraph (2), Article 807, paragraph (2), Article 809, paragraph (2) or Article 816-7, paragraph (2): A person who can file a petition to determine the price (excluding the petitioner);
  - (iii) determination of the sale price of shares pursuant to the provisions of Article 144, paragraph (2) (including cases as applied mutatis mutandis pursuant to paragraph (7) of the same Article) or Article 177, paragraph (2): A person who can file a petition to determine the sale price (excluding the

- petitioner);
- (iv) determination of the price of shares pursuant to the provisions of Article 172, paragraph (1): that stock company;
- (v) determination of the sale price of shares, etc. subject to the cash-out pursuant to the provisions of Article 179-8, paragraph (1): a special controlling shareholder; and
- (vi) a judicial decision on the petition referred to in Article 843, paragraph (4): a company who committed the act prescribed in the same paragraph.

(Sending a Copy of the Written Petition)

- Article 870-2 (1) When sending a petition for a judicial decision set forth in the items of paragraph (2) of the preceding Article, the court must send a copy of the written petition to the person specified in each of those items.
- (2) If it is not possible to send a copy of a written petition pursuant to the provisions of the preceding paragraph, the presiding judge must specify a reasonable period and order to correct defects within the period. The same applies to cases where the cost necessary for sending a copy of a written petition is not prepaid.
  - (3) In the case referred to in the preceding paragraph, when a petitioner does not correct defects, the presiding judge must dismiss the written petition by an order.
  - (4) An immediate appeal may be filed against the order referred to in the preceding paragraph.
  - (5) If a petition referred to in paragraph (1) is filed, when making a judicial decision on the petition, the court must specify the day when proceedings are to be concluded by giving a reasonable grace period, and must notify the petitioner and the person specified in each of those items of paragraph (2) of the preceding Article; provided, however, that the court may declare that the proceedings are concluded immediately on the day when these persons may attend.
  - (6) When the court concludes proceedings pursuant to the provisions of the preceding paragraph, it must specify the day to make a judicial decision and notify the persons referred to in the same paragraph to that effect.
  - (7) When the petition referred to in paragraph (1) is non-conforming or when it is obvious that there are no reasons for the petition, the court may dismiss the petition immediately notwithstanding the provisions of the same paragraph and the preceding two paragraphs.
  - (8) The provisions of the preceding paragraph apply *mutatis mutandis* to cases where the court to which a petition for judicial decision set forth in items of paragraph (2) of the preceding Article is made, ordered the petition to prepay the costs necessary for issuing a summons for the appearance date to the

persons specified in each of those items pursuant to the provisions of the Act on Costs of Civil Procedure (Act No. 40 of 1971) and when the prepayment is not made.

(Appending of the Reason)

Article 871 A judicial decision for a non-contentious case under the provisions of this Act must append the reason thereof; provided, however, that this does not apply to the following judicial decisions:

- (i) the judicial decision set forth in Article 870, paragraph (1), item (i); and
- (ii) the judicial decisions set forth in the items of Article 874.

(Immediate Appeals)

Article 872 An immediate appeal may be entered against the judicial decisions set forth in the following items only by the persons specified in each of those items:

- (i) a judicial decision on a provisional order under the provisions of Article 609, paragraph (3) or Article 825, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 827, paragraph (2)): an interested party;
- (ii) a judicial decision on a petition under the provisions of Article 840, paragraph (2) (including the cases where it is applied *mutatis mutandis* pursuant to Article 841, paragraph (2)): the petitioner, shareholders and the stock company;
- (iii) a judicial decision on a petition under the provisions of Article 840, paragraph (2) as applied *mutatis mutandis* pursuant to Article 842, paragraph (2): the petitioner, share option holders and the stock company;
- (iv) the judicial decisions set forth in the items of Article 870, paragraph (1): the petitioner and the persons specified in each of those items (or, for the judicial decisions set forth in items (i), (iii) and (iv) of the same paragraph, only the persons specified in each of those items); and
- (v) judicial decisions set forth in the items of Article 870, paragraph (2): a petitioner and the person specified in each of those items.

(Sending of a Copy of Petition for Appeal)

Article 872-2 (1) When an immediate appeal against the judicial decision set forth in the items of Article 870, paragraph (2) is made, the court must send a copy of the petition for appeal to the petitioner and the persons specified in each of those items (excluding the appellant). In this case, the provisions of Article 870-2, paragraphs (2) and (3) apply *mutatis mutandis*.

(2) The provisions of Article 870-2, paragraphs (5) through (8) apply *mutatis mutandis* to cases where an immediate appeal referred to in the preceding

paragraph is made.

(Stay of Execution of the Judicial Decision of the Prior Instance)

Article 873 The immediate appeal referred to in Article 872 has the effect of staying execution; provided, however, that this does not apply to an immediate appeal against the following judicial decisions set forth in Article 870, paragraph (1), items (i) through (iv) and (viii).

(Restrictions on Appeal)

Article 874 No appeal may be entered against the following judicial decisions:

- (i) a judicial decision on the appointment or selection of a person who is temporarily to perform the duties of a director, accounting advisor, company auditor, representative director, committee member, executive officer or representative executive officer prescribed in Article 870, paragraph (1), item (i), a liquidator, a representative liquidator, a liquidator who represents a liquidating membership company, a person who is temporarily to perform the duties of a liquidator or representative liquidator prescribed in that item, an inspector, the appraiser set forth in Article 501, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 822, paragraph (3)) or Article 662, paragraph (1), the person who retains accounting materials set forth in Article 508, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 822, paragraph (3)) or Article 672, paragraph (3), a special agent of a bond administrator or an assistant bond administrator or the bond administrator or an assistant bond administrator to succeed to the administration of bonds set forth in Article 714, paragraph (3) (including cases where it is applied mutatis mutandis pursuant to Article 714-7);
- (ii) a judicial decision on appointment or dismissal of the administrator referred to in Article 825, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 827, paragraph (2));
- (iii) a judicial decision under the provisions of Article 825, paragraph (6) (including the cases where it is applied mutatis mutandis pursuant to Article 827, paragraph (2)); and
- (iv) a judicial decision upholding a petition for permission under the provisions of this Act (excluding the judicial decisions set forth in Article 870, paragraph (1), item (ix) and paragraph (2), item (i) of the same Article).

(Exclusion from Application of the Provisions of the Non-Contentious Cases Procedures Act)

Article 875 The provisions of Article 40 and Article 57, paragraph (2), item (ii) of the non-contentious cases procedures Act do not apply to non-contentious cases

under the provisions of this Act.

(Supreme Court Rules)

Article 876 Beyond what is specified in this Act, necessary matters concerning the procedures of non-contentious cases under the provisions of this Act are specified by the Supreme Court Rules.

## **Section 2 Special Provisions on the Procedures of Increasing or Decreasing the Refund after a Judgment of Invalidation of a New Share Issue**

(Mandatory Consolidation of Hearings)

Article 877 When several cases relating to the petition referred to in Article 840, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 841, paragraph (2) and Article 842, paragraph (2)) are pending simultaneously, the hearings and judicial decisions thereof must be made in consolidation.

(Effects of a Judicial Decision)

Article 878 (1) A judicial decision on the petition referred to in Article 840, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 841, paragraph (2)) is effective against all of the shareholders.

(2) A judicial decision on the petition referred to in Article 840, paragraph (2) as applied mutatis mutandis pursuant to Article 842, paragraph (2) is effective against all of the share option holders.

## **Section 3 Special Provisions on the Proceedings of Special Liquidation**

### **Subsection 1 Common Provisions**

(Jurisdiction over a Special Liquidation Case)

Article 879 (1) Notwithstanding the provisions of Article 868, paragraph (1), if a corporation has a majority of the voting rights of all shareholders of a stock company (excluding shareholders who are unable to exercise voting rights on all the matters which may be resolved at the shareholders meeting; the same applies in the following paragraph), if a special liquidation case, a bankruptcy case, a rehabilitation case or a reorganization case (hereinafter referred to as a "special liquidation case, etc." in this Article) is pending with regard to relevant corporation (hereinafter referred to as the "parent corporation" in this Article), a petition for commencement of special liquidation relating to relevant stock company may be filed alternatively with the district court before which

the special liquidation case, etc. of the parent corporation is pending.

- (2) If the stock company prescribed in the preceding paragraph, or the parent corporation and the stock company prescribed in that paragraph have a majority of the voting rights of all shareholders of another stock company, a petition for commencement of special liquidation relating to relevant other stock company may be filed alternatively with the district court before which the special liquidation case, etc. of the parent corporation is pending.
- (3) With regard to application of the preceding two paragraphs, the shareholder prescribed by Ministry of Justice Order referred to in Article 308, paragraph (1) is deemed to have voting rights with respect to the shares which the shareholder holds.
- (4) Notwithstanding the provisions of Article 868, paragraph (1), if a stock company has, pursuant to the provisions of Article 444, prepared consolidated financial statements of that stock company or another stock company for the most recent business year and the contents thereof have been reported to the annual shareholders meeting of that stock company, if a special liquidation case, etc. is pending with regard to that stock company, a petition for commencement of special liquidation relating to relevant other stock company may be filed alternatively with the district court before which the special liquidation case, etc. of that stock company is pending.

(Jurisdiction over and Transfer of an Ordinary Liquidation Case after Commencement of Special Liquidation)

- Article 880 (1) Notwithstanding the provisions of Article 868, paragraph (1), if an order to commence special liquidation is issued with regard to a liquidating stock company, a case relating to a petition under the provisions of Part II, Chapter IX, Section 1 (excluding Article 508) (referred to as an "ordinary liquidation case" in the following paragraph) relating to relevant liquidating stock company is under the jurisdiction of the district court (hereinafter referred to as the "special liquidation court" in this Section) before which the special liquidation case of relevant liquidating stock company is pending.
- (2) If a special liquidation case relating to a liquidating stock company is pending before a district court other than the district court before which an ordinary liquidation case relating to the same liquidating stock company is pending and an order to commence special liquidation has been issued, if it is found reasonable for processing relevant ordinary liquidation case, the court (meaning a judge or a panel of judges handling the ordinary liquidation case) may transfer relevant ordinary liquidation case to the special liquidation court ex officio.

(Prima Facie Showing)

Article 881 The provisions of Article 869 do not apply to a petition for permission under the provisions of Part II, Chapter IX, Section 2 (excluding Article 547, paragraph (3)).

(Appending of Reasons)

Article 882 (1) A ruling concerning proceedings of special liquidation against which an immediate appeal may be entered must append the reason thereof; provided, however, that this does not apply to a ruling under the provisions of Article 526, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to paragraph (2) of that Article) and Article 532, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 534).

(2) The provisions of Article 871 do not apply to a ruling concerning proceedings of special liquidation.

(Service of a Written Judgment)

Article 883 The provisions of Part I, Chapter V, Section 4 of the Code of Civil Procedure (excluding Article 104) apply mutatis mutandis to the service of a written judgment under the provisions of this Section.

(Appeal)

Article 884 (1) A person who has an interest in a judicial decision concerning proceedings of special liquidation may enter an immediate appeal against relevant judicial decision only if there are special provisions in this Section.

(2) The immediate appeal referred to in the preceding paragraph has the effect of staying execution except as otherwise provided by this Section.

(Public Notice)

Article 885 (1) A public notice under the provisions of this Section is effected by publication in Official Gazette.

(2) The public notice referred to in the preceding paragraph becomes effective on the day immediately following the day of publication.

(Inspection of Case Documents)

Article 886 (1) An interested party may make a request to a court clerk for inspection of the documents or any other articles (hereinafter referred to as the "documents, etc." in this Article and paragraph (1) of the following Article) submitted to the court or prepared by the court based on the provisions of Part II, Chapter IX, Section 2 or this Section or Part II of the Non-Contentious Cases Procedures Act (or, if an order to commence special liquidation has been issued, Part II, Chapter IX, Section 1 or Section 2, or Section 1 of this Chapter

(limited to the portion relating to a case relating to a petition under the provisions of Part II, Chapter IX, Section 1) or this Section, or Part II of the Non-Contentious Cases Procedures Act) (including the provisions of this Act or any other Acts applied mutatis mutandis under these provisions).

- (2) An interested party may make a request to a court clerk for copying of the documents, etc., delivery of the original, a transcript or an extract thereof, or delivery of a certificate of matters concerning the case.
- (3) The provisions of the preceding paragraph do not apply to sound recording tapes or video tapes (including objects on which certain matters are recorded by a method equivalent thereto) among the documents, etc. In these cases, a court clerk must permit reproduction of these objects if there is a request from an interested party for these objects.
- (4) Notwithstanding the provisions of the preceding three paragraphs, the persons set forth in the following items may not make a request under the provisions of the preceding three paragraphs until any one of the orders, provisional orders, dispositions or judicial decisions specified respectively in those items has been issued; provided, however, that this does not apply if any that person is a petitioner with respect to commencement of special liquidation:
  - (i) an interested party other than the liquidating stock company: an order to suspend under the provisions of Article 512, a provisional order under the provisions of Article 540, paragraph (2), a disposition under the provisions of Article 541, paragraph (2), or a judicial decision relating to a petition for commencement of special liquidation; or
  - (ii) the liquidating stock company: a judicial decision designating the date of the hearing on which the liquidating stock company is to be summoned concerning a petition for commencement of special liquidation or the order, provisional order, disposition or judicial decision specified in the preceding item.
- (5) The provisions of Article 32, paragraphs (1) through (4) of the Non-Contentious Cases Procedures Act do not apply to the special liquidation proceedings.

(Restrictions on Inspection of Detrimental Parts)

Article 887 (1) If a prima facie showing is made that any one of the following documents, etc. include a part (hereinafter referred to as a "detrimental part") where inspection or copying thereof, delivery of the original or a transcript or an extract thereof, or reproduction thereof (hereinafter referred to as "inspection, etc." in this Article) by interested parties is likely to cause considerable detriment to the implementation of liquidation of the liquidating stock company, the court may, in response to a petition from the liquidating



stock company that submitted relevant documents, etc. or by an investigator, limit the persons who are able to request inspection, etc. of the detrimental part to the person who has filed relevant petition and the liquidating stock company:

- (i) documents, etc. relating to a report under the provisions of Article 520 or a report of the results of the investigation prescribed in Article 522, paragraph (1); or
  - (ii) documents, etc. submitted to the court for obtaining the permission set forth in Article 535, paragraph (1) or Article 536, paragraph (1).
- (2) When the petition referred to in the preceding paragraph is filed, interested parties (excluding the person who has filed the petition referred to in that paragraph and the liquidating stock company; the same applies in the following paragraph) may not request inspection, etc. of the detrimental part until the judicial decision on the petition becomes final and binding.
- (3) An interested party who intends to request inspection, etc. of the detrimental part may file a petition for revocation of the ruling under the provisions of paragraph (1) with the special liquidation court on the basis that the requirements prescribed in that paragraph are not satisfied or are no longer satisfied.
- (4) An immediate appeal may be entered against a ruling to dismiss the petition referred to in paragraph (1) or against a judicial decision relating to the petition referred to in the preceding paragraph.
- (5) A ruling to revoke the ruling under the provisions of paragraph (1) does not become effective until it is final and binding.

### **Subsection 2 Special Provisions on Procedures for Commencement of Special Liquidation**

(Petition for Commencement of Special Liquidation)

- Article 888 (1) When a creditor or shareholder files a petition for commencement of special liquidation, the creditor or shareholder must make a prima facie showing of the grounds that serve as the cause for commencement of special liquidation.
- (2) When a creditor files a petition for commencement of special liquidation, the creditor must also make a prima facie showing of the presence of the claims the creditor holds.
- (3) When filing a petition for commencement of special liquidation, the petitioner must prepay the amount specified by the court as expenses for the proceedings of special liquidation prescribed in Article 514, item (i).
- (4) An immediate appeal may be entered against a ruling concerning the prepayment of expenses referred to in the preceding paragraph.

(Order to Suspend Other Procedures)

Article 889 (1) The court may change or revoke an order to suspend under the provisions of Article 512.

- (2) An immediate appeal may be entered against the order to suspend referred to in the preceding paragraph and a ruling under the provisions of that paragraph.
- (3) The immediate appeal referred to in the preceding paragraph does not have the effect of staying execution.
- (4) If the judicial decision prescribed in paragraph (2) or a judicial decision relating to the immediate appeal referred to in that paragraph is made, the written judgment thereof must be served on the parties.

(Order to Commence Special Liquidation)

Article 890 (1) When the court issues an order to commence special liquidation, it must immediately give public notice to that effect and serve the written judgment of the order to commence special liquidation on the liquidating stock company.

- (2) An order to commence special liquidation becomes effective when the written judgment thereof is served on the liquidating stock company.
- (3) When an order to commence special liquidation is issued, the expenses for the proceedings of special liquidation are borne by the liquidating stock company.
- (4) Only the liquidating stock company may enter an immediate appeal against an order to commence special liquidation.
- (5) Only the petitioner may enter an immediate appeal against a judicial decision that dismissed a petition for commencement of special liquidation.
- (6) The court that has issued an order to commence special liquidation must, if the immediate appeal set forth in paragraph (4) has been entered, if a ruling to revoke relevant order becomes final and binding, immediately give public notice to that effect.

(Order to Suspend Procedures to Enforce Security Interests)

Article 891 (1) The court must, when issuing an order to suspend under the provisions of Article 516, hear statements by the petitioner of the procedures to enforce security interests prescribed in that Article.

- (2) The court may change or revoke the order to suspend referred to in the preceding paragraph.
- (3) Only the petitioner referred to in paragraph (1) may enter an immediate appeal against the order to suspend referred to in paragraph (1) and a ruling to change under the provisions of the preceding paragraph.
- (4) The immediate appeal referred to in the preceding paragraph does not have

the effect of staying execution.

- (5) If the judicial decision prescribed in paragraph (3) or a judicial decision on the immediate appeal referred to in that paragraph is made, the written judgment thereof must be served on the parties.

### **Subsection 3 Special Provisions on Proceedings of Implementation of Special Liquidation**

(Investigation Orders)

Article 892 (1) The court may change or revoke an investigation order (meaning an investigation order prescribed in Article 522, paragraph (1); the same applies in the following paragraph).

- (2) An immediate appeal may be entered against an order to investigate and a ruling under the provisions of the preceding paragraph.
- (3) The immediate appeal set forth in the preceding paragraph does not have the effect of staying execution.
- (4) If the judicial decision prescribed in paragraph (2) or a judicial decision on the immediate appeal referred to in that paragraph is made, the written judgment thereof must be served on the parties.

(Dismissal and Remuneration of Liquidators)

Article 893 (1) The court must, in cases of dismissing a liquidator pursuant to the provisions of Article 524, paragraph (1), hear statements from relevant liquidator.

- (2) An immediate appeal may be filed against a judicial decision on dismissal under the provisions of Article 524, paragraph (1).
- (3) The immediate appeal referred to in the preceding paragraph does not have the effect of staying execution.
- (4) An immediate appeal may be filed against a ruling under the provisions of Article 526, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to paragraph (2) of that Article).

(Dismissal and Remuneration of Supervisors)

Article 894 (1) The court must, in cases of dismissing a supervisor, hear statements from relevant supervisor.

- (2) An immediate appeal may be filed against a ruling under the provisions of Article 532, paragraph (1).

(Dismissal and Remuneration of Investigators)

Article 895 The provisions of the preceding Article apply *mutatis mutandis* pursuant to investigators.

(Petition for Permission to Transfer Business)

Article 896 (1) A liquidator must, in cases of filing a petition for the permission referred to in Article 536, paragraph (1), hear the opinions of the known creditors and report the contents thereof to the court.

(2) The court must, in cases of issuing the permission set forth in Article 536, paragraph (1), hear the opinions of the labor union, etc. (meaning the labor union if there is a labor union consisting of a majority of the employees and any other workers of the liquidating stock company, and the person representing a majority of the employees and any other workers of the liquidating stock company if there is no labor union consisting of a majority of the employees and any other workers of the liquidating stock company).

(Designating Periods for Disposition by Security Interest Holders)

Article 897 (1) An immediate appeal may be entered against a judicial decision relating to the petition referred to in Article 539, paragraph (1).

(2) If the judicial decision referred to in the preceding paragraph or a judicial decision relating to the immediate appeal in that paragraph is made, the written judgment thereof must be served on the parties.

(Provisional Orders Regarding the Property of a Liquidating Stock Company)

Article 898 (1) The court may change or revoke any one of the following judicial decisions:

- (i) a provisional order under the provisions of Article 540, paragraph (1) or (2);
- (ii) a disposition under the provisions of Article 541, paragraph (1) or (2);
- (iii) a provisional order under the provisions of Article 542, paragraph (1) or (2); or
- (iv) a disposition under the provisions of Article 543.

(2) An immediate appeal may be entered against the judicial decisions set forth in the items of the preceding paragraph and a ruling under the provisions of that paragraph.

(3) The immediate appeal referred to in the preceding paragraph does not have the effect of staying execution.

(4) If the judicial decision prescribed in paragraph (2) or a judicial decision relating to the immediate appeal referred to in that paragraph is made, the written judgment thereof must be served on the parties.

(5) When the court makes the judicial decision set forth in paragraph (1), item (ii), it must immediately give public notice to that effect. The same applies when it makes a ruling to change or revoke relevant judicial decision.

(Rulings Evaluating Subject Officer's Liability)

- Article 899 (1) When a liquidating stock company intends to file the petition referred to in Article 545, paragraph (1), it must make a prima facie showing with regard to the fact that serves as the cause thereof.
- (2) A ruling evaluating the subject officer's liability (meaning the ruling evaluating the subject officer's liability prescribed in Article 545, paragraph (1); hereinafter the same applies in this Article) and a ruling to dismiss the petition referred to in the preceding paragraph must append the reason therefor.
- (3) The court must, when making the judicial decision prescribed in the preceding paragraph, hear statements from the subject officers (meaning the subject officers prescribed in Article 542, paragraph (1)).
- (4) If a ruling evaluating the subject officers' liability is made, the written judgment thereof must be served on the parties.
- (5) When the action referred to in Article 858, paragraph (1) is not filed within the period referred to in that paragraph or is dismissed, the ruling evaluating the subject officers' liability has the same effect as a final and binding judgment ordering performance.

(Judicial Decisions on Petitions for Permission to Call a Bondholders Meeting)  
Article 900 An immediate appeal may be entered against a ruling to dismiss the petition for permission referred to in Article 547, paragraph (3).

(Rulings Approving or Rejecting Agreements)

- Article 901 (1) An interested party may state an opinion on whether the agreement under a petition as referred to in Article 568 should be approved.
- (2) Where an agreement provides for a reduction of or release from a debt or any other measures that would affect rights as regards a claim in respect of foreign taxes subject to mutual assistance, the opinion of the person with the authority to collect on the claim must be heard.
- (3) When the court reaches a ruling approving the agreement referred to in Article 569, paragraph (1), it must immediately give public notice to that effect.
- (4) An immediate appeal may be entered against a judicial decision relating to a petition referred to in Article 568. In such a case, the period for entering an immediate appeal against the ruling approving the agreement referred to in the preceding paragraph is the two weeks after the day on which the public notice under the provisions of that paragraph becomes effective.
- (5) The provisions of the preceding paragraphs apply mutatis mutandis to cases in which the details of an agreement are changed pursuant to the provisions of Article 572.

#### **Subsection 4 Special Provisions on Proceedings of Completion of**

## **Special Liquidation**

(Judicial Decisions on Petitions for the Conclusion of Special Liquidation)

- Article 902 (1) When the court makes a ruling to conclude special liquidation, it must immediately give public notice to that effect.
- (2) An immediate appeal may be entered against a judicial decision relating to a petition for the conclusion of special liquidation. In these cases, the period for entering an immediate appeal against a ruling to conclude special liquidation is two weeks from the day on which the public notice under the provisions of the preceding paragraph has become effective.
- (3) A ruling to conclude special liquidation does not become effective until it is final and binding.
- (4) The court that has made a ruling to conclude special liquidation must, if the immediate appeal set forth in paragraph (2) has been entered, if a ruling to revoke relevant ruling becomes final and binding, immediately give public notice to that effect.

### **Section 4 Special Provisions on Procedures of Liquidation of Foreign Companies**

(Application Mutatis Mutandis of the Provisions on Proceeding of Special Liquidation)

- Article 903 The provisions of the preceding Section apply mutatis mutandis to liquidation of a foreign company's property in Japan under the provisions of Article 822, paragraph (1), excluding those that are not applicable by their nature.

### **Section 5 Special Provisions on Procedures of Dissolution Orders for Companies**

(Participation of the Minister of Justice)

- Article 904 (1) When the court makes a judicial decision relating to the petition referred to in Article 824, paragraph (1) or Article 827, paragraph (1), it must seek the opinion of the Minister of Justice.
- (2) The Minister of Justice may, when the court carries out a hearing concerning the case relating to the petition referred to in the preceding paragraph, attend relevant hearing.
- (3) The court must notify the Minister of Justice that a case relating to the petition referred to in paragraph (1) became pending and of the date of the hearing referred to in the preceding paragraph.
- (4) The Minister of Justice may also enter an immediate appeal against a judicial

decision to dismiss the petition referred to in paragraph (1) in addition to the persons prescribed in Article 872, item (iv).

(Special Provisions on Provisional Orders Regarding the Property of a Company)

Article 905 (1) If the court issues a provisional order referred to in Article 825, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 827, paragraph (2)), the expenses for procedures in non-contentious cases are borne by the company or foreign company. The same applies to the necessary expenses with regard to the provisional order.

(2) If an immediate appeal has been entered against a provisional order as referred to in the preceding paragraph or against a judicial decision dismissing a petition under the provisions of Article 825, paragraph (1) (including the cases where it is applied *mutatis mutandis* pursuant to Article 827, paragraph (2)), and the court of the appeal revokes the judicial decision of the prior instance by finding that relevant immediate appeal has grounds, the court costs required for the procedures in the appeal instance and the court costs required for the procedures in the prior instance, which had been borne by the appellant, are borne by the company or foreign company.

Article 906 (1) An interested party may make a request to a court clerk for inspection of documents relating to the report or account referred to in Article 825, paragraph (6) (including the cases where it is applied *mutatis mutandis* pursuant to Article 827, paragraph (2)).

(2) An interested party may make a request to a court clerk for the copying of the documents referred to in the preceding paragraph or delivery of the original, transcript or an extract thereof.

(3) The provisions of the preceding paragraph do not apply to sound recording tapes or video tapes (including objects on which certain matters are recorded by a method equivalent thereto) among the documents referred to in paragraph (1). In these cases, a court clerk must permit reproduction of these objects if there is such a request from an interested party for these objects.

(4) The Minister of Justice may make a request to a court clerk for inspection of the documents referred to in paragraph (1).

(5) The provisions of Article 91, paragraph (5) of the Code of Civil Procedure apply *mutatis mutandis* to the documents referred to in paragraph (1).

## **Chapter IV Registration**

### **Section 1 General Provisions**

(Common Provisions)

Article 907 The matters to be registered pursuant to the provisions of this Act (excluding the matters related to the registration of a provisional order as referred to in Article 938, paragraph (3)) are registered in the commercial register through application by a party or commission of a court clerk, in accordance with the provisions of the Commercial Registration Act (Act No. 125 of 1963).

(Effects of Registration)

Article 908 (1) The matters to be registered pursuant to the provisions of this Act may not be duly asserted against a third party in good faith until after their registration. The same applies after the registration, if a third party did not know that the matters were registered based on justifiable grounds.  
(2) A person who has registered false matters intentionally or by negligence may not duly assert the falsity of the matters against a third party in good faith.

(Registration of Changes and Registration of Extinctions)

Article 909 When there is a change to the matters registered pursuant to the provisions of this Act or when the matters becomes extinct, the party must have the registration of the change or the registration of the extinction completed without delay.

(Period for Registration)

Article 910 The period for the registration of those matters to be registered pursuant to the provisions of this Act which require the permission of a government agency is counted from the day of the arrival of the written permission.

## **Section 2 Registration of Companies**

### **Subsection 1 Registration at the Location of the Head Office**

(Registration of Incorporation of a Stock Company)

Article 911 (1) The registration of incorporation of a stock company must be completed at the location of the head office within two weeks from whichever of the following days that is later:

- (i) the day on which the investigation under the provisions of Article 46, paragraph (1) ended (or, if the stock company to be incorporated is a company with nominating committee, etc., the day on which the representative executive officer at incorporation received the notice under the provisions of paragraph (3) of that Article); or
- (ii) the day specified by the incorporator.

(2) Notwithstanding the provisions of the preceding paragraph, if the solicitation



referred to in Article 57, paragraph (1) is carried out, the registration referred to in the preceding paragraph must be completed within two weeks from whichever of the following days that is the latest:

- (i) the day of the conclusion of an organizational meeting;
  - (ii) if the resolution at an organizational meeting of class shareholders referred to in Article 84 is passed, the day of relevant resolution;
  - (iii) if the resolution at the organizational meeting referred to in Article 97 is passed, the day on which two weeks have elapsed from the day of relevant resolution;
  - (iv) if the resolution at an organizational meeting of class shareholders referred to in Article 100, paragraph (1) is passed, the day on which two weeks have elapsed from the day of relevant resolution; or
  - (v) if the resolution at an organizational meeting of class shareholders referred to in Article 101, paragraph (1) is passed, the day of relevant resolution.
- (3) The following matters must be registered upon the registration referred to in paragraph (1):
- (i) the purpose;
  - (ii) the trade name;
  - (iii) the addresses of the head office and branch offices;
  - (iv) if there are provisions in the articles of incorporation with regard to the duration or the grounds for dissolution of the stock company, the provisions;
  - (v) the amount of stated capital;
  - (vi) the total number of authorized shares;
  - (vii) the details of the shares it issues (or, for a company with class shares, the total number of authorized shares in a class and the details of the shares of each class);
  - (viii) if there are provisions in the articles of incorporation with regard to the share unit, the share unit;
  - (ix) the total number of the issued shares and the class and the number of each class of the issued shares;
  - (x) if the stock company is a share certificate-issuing company, a statement to that effect;
  - (xi) if there is a shareholder register administrator, the name, address and business office thereof;
  - (xii) if the stock company has issued share options, the following matters:
    - (a) the number of the share options;
    - (b) the matters set forth in Article 236, paragraph (1), items (i) through (iv) (in the cases provided in (c), excluding item (ii));
    - (c) if the matters set forth in each item of Article 236, paragraph (3) are provided, those matters;
    - (d) beyond the matters set forth in (b) and (c), if conditions on the exercise of

- the share options have been prescribed, the conditions;
- (e) the matters set forth in Article 236, paragraph (1), item (vii) and Article 238, paragraph (1), items (ii); and
  - (f) if the matters set forth in each item of Article 238, paragraph (1), item (iii) are provided, the subscriber share option (meaning subscriber share options provided in that paragraph; hereinafter the same applies in (f)) pay-in amount (meaning the pay-in amount provided in that item; hereinafter the same applies in (f)) (if the method of calculating the pay-in amount for the subscriber share options is provided as a matter set forth in that item and the pay-in amount for the subscriber share options has not been finalized by the time of application for registration, the calculation method).
  - (xii)-2 if the articles of incorporation contain provisions to the effect that measures for electronic provision set forth in Article 325-2 are to be taken, those provisions.
  - (xiii) the names of the directors (excluding directors of a company with audit and supervisory committee);
  - (xiv) the name and address of the representative director (excluding the cases prescribed in item (xxiii));
  - (xv) if the stock company is a company with board of directors, a statement to that effect;
  - (xvi) if the stock company is a company with accounting advisor, a statement to that effect, the name of the accounting advisor and the place referred to in Article 378, paragraph (1);
  - (xvii) if the stock company is a company with company auditor (including a stock company the articles of incorporation of which provide that the scope of the audit by its company auditors is limited to an audit related to accounting), a statement to that effect and the matters set forth in the following:
    - (a) if there is a stock company having provisions of the articles of incorporation to limit the audit range of company auditors to those related to accounting, to that effect; and
    - (b) the name of company auditor;
  - (xviii) if the stock company is a company with board of company auditors, a statement to that effect and the fact that those among the company auditors who are outside company auditors are outside company auditors;
  - (xix) if the stock company is a company with financial auditor, a statement to that effect and the name of the financial auditor;
  - (xx) if the stock company has a person who is temporarily to perform the duties of a financial auditor who has been appointed pursuant to the provisions of Article 346, paragraph (4), the person's name;

- (xxi) if there are provisions on the vote by special directors under the provisions of Article 373, paragraph (1), the following matters:
  - (a) a statement to the effect that there are provisions on the vote by special directors under the provisions of Article 373, paragraph (1);
  - (b) the names of the special directors; and
  - (c) a statement to the effect that those among the directors who are outside directors are outside directors;
- (xxii) if it is a company with audit and supervisory committee, to that effect and the following matters:
  - (a) the names of directors who are audit and supervisory committee members and other directors;
  - (b) with regard to directors who are outside directors, the fact they are outside directors; and
  - (c) if there are provisions in the articles of incorporation with respect to delegating the determination on execution of important operations to directors pursuant to the provisions of Article 399-13, paragraph (6), to that effect;
- (xxiii) if the stock company is a company with nominating committee, etc., a statement to that effect and the following matters:
  - (a) a statement to the effect that those among the directors who are outside directors are outside directors;
  - (b) the names of the committee members and executive officers of each committee; and
  - (c) the name and address of the representative executive officer;
- (xxiv) if there are provisions in the articles of incorporation with regard to exemption from liability of directors, accounting advisors, company auditors, executive officers or financial auditors under the provisions of Article 426, paragraph (1), the provisions of the articles of incorporation;
- (xxv) if there are provisions in the articles of incorporation with regard to the conclusion of contracts for the limitation of liabilities assumed by non-executive directors, etc. under the provisions of Article 427, paragraph (1), the provisions of the articles of incorporation;
- (xxvi) when taking measures under the provisions of Article 440, paragraph (3), the matters prescribed by Ministry of Justice Order which are necessary for making the information contained in the balance sheet provided for in paragraph (1) of that Article available to the general public;
- (xxvii) if there are provisions in the articles of incorporation with regard to the method of public notice under the provisions of Article 939, paragraph (1), the provisions of the articles of incorporation;
- (xxviii) if the provisions of the articles of incorporation set forth in the preceding item provide that electronic public notice is to be the method of

public notice, the following matters:

- (a) the matters prescribed by Ministry of Justice Order which are necessary for making the information to be publicly notified through electronic public notice available to the general public; and
- (b) if there are provisions of the articles of incorporation under the provisions of the second sentence of Article 939, paragraph (3), the provisions of the articles of incorporation; and
- (xxix) if there are no provisions of the articles of incorporation referred to in item (xxvii), a statement to the effect that publication in Official Gazette is to be the method of public notice pursuant to the provisions of Article 939, paragraph (4).

(Registration of Incorporation of General Partnership Companies)

Article 912 The registration of incorporation of a general partnership company must be completed by registering the following matters at the location of the head office:

- (i) the purpose;
- (ii) the trade name;
- (iii) the addresses of the head office and branch offices;
- (iv) if there are provisions in the articles of incorporation with regard to the duration or the grounds for dissolution of the general partnership company, the provisions;
- (v) the names and addresses of the members;
- (vi) the name of the member representing the general partnership company (limited to cases where there is a member not representing the general partnership company);
- (vii) if the member representing the general partnership company is a corporation, the name and address of the person who is to perform the duties of the member;
- (viii) if there are provisions in the articles of incorporation with regard to the method of public notice under the provisions of Article 939, paragraph (1), the provisions of the articles of incorporation;
- (ix) if the provisions of the articles of incorporation referred to in the preceding item provide that electronic public notice is to be the method of public notice, the following matters:
  - (a) the matters prescribed by Ministry of Justice Order which are necessary for making the information to be publicly notified through electronic public notice available to the general public; and
  - (b) if there are provisions of the articles of incorporation under the provisions of the second sentence of Article 939, paragraph (3), the provisions of the articles of incorporation; and

- (x) if there are no provisions of the articles of incorporation referred to in item (viii), a statement to the effect that publication in Official Gazette is to be the method of public notice pursuant to the provisions of Article 939, paragraph (4).

(Registration of Incorporation of a Limited Partnership Company)

Article 913 The registration of incorporation of a limited partnership company must be completed by registering the following matters at the location of the head office:

- (i) the purpose;
- (ii) the trade name;
- (iii) the addresses of the head office and branch offices;
- (iv) if there are provisions in the articles of incorporation with regard to the duration or the grounds for dissolution of the limited partnership company, the provisions;
- (v) the names and addresses of the members;
- (vi) a statement as to whether the members are members with limited liability or members with unlimited liability;
- (vii) the subjects of the contributions by members with limited liability, the value thereof and the value of the contributions already performed;
- (viii) the name of the member representing the limited partnership company (limited to cases where there is a member not representing the limited partnership company);
- (ix) if the member representing the limited partnership company is a corporation, the name and address of the person who is to perform the duties of the member;
- (x) if there are provisions in the articles of incorporation with regard to the method of public notice under the provisions of Article 939, paragraph (1), the provisions of the articles of incorporation;
- (xi) if the provisions of the articles of incorporation referred to in the preceding item provide that electronic public notice is to be the method of public notice, the following matters:
  - (a) the matters prescribed by Ministry of Justice Order which are necessary for making the information to be publicly notified through electronic public notice available to the general public; and
  - (b) if there are provisions of the articles of incorporation under the provisions of the second sentence of Article 939, paragraph (3), the provisions of the articles of incorporation; and
- (xii) if there are no provisions of the articles of incorporation referred to in item (x), a statement to the effect that publication in Official Gazette is to be the method of public notice pursuant to the provisions of Article 939,

paragraph (4).

(Registration of Incorporation of a Limited Liability Company)

Article 914 The registration of incorporation of a limited liability company must be completed by registering the following matters at the location of the head office:

- (i) the purpose;
- (ii) the trade name;
- (iii) the addresses of the head office and branch offices;
- (iv) if there are provisions in the articles of incorporation with regard to the duration or the grounds for dissolution of the limited liability company, these provisions;
- (v) the amount of stated capital;
- (vi) the names of the members who execute the business of the limited liability company;
- (vii) the name and address of the member representing the limited liability company;
- (viii) if the member representing the limited liability company is a corporation, the name and address of the person who is to perform the duties of the member;
- (ix) if there are provisions in the articles of incorporation with regard to the method of public notice under the provisions of Article 939, paragraph (1), the provisions of the articles of incorporation;
- (x) if the provisions of the articles of incorporation referred to in the preceding item provide that electronic public notice is to be the method of public notice, the following matters:
  - (a) the matters prescribed by Ministry of Justice Order which are necessary for making the information to be publicly notified through electronic public notice available to the general public; and
  - (b) if there are provisions of the articles of incorporation under the provisions of the second sentence of Article 939, paragraph (3), the provisions of the articles of incorporation; and
- (xi) if there are no provisions of the articles of incorporation referred to in item (ix), a statement to the effect that publication in Official Gazette is to be the method of public notice pursuant to the provisions of Article 939, paragraph (4).

(Registration of a Change)

Article 915 (1) When there is a change to the matters set forth in the items of Article 911, paragraph (3) or in the items of the preceding three Articles with regard to a company, the registration of the change must be completed at the

location of the head office within two weeks.

- (2) Notwithstanding the provisions of the preceding paragraph, if the period referred to in Article 199, paragraph (1), item (iv) has been prescribed, it is sufficient to complete the registration of a change resulting from a share issue within two weeks from the last day of that period.
- (3) Notwithstanding the provisions of paragraph (1), it is sufficient to complete the registration of a change based on any one of the following grounds within two weeks from the last day of each month:
- (i) exercise of share options; or
  - (ii) the demand under the provisions of Article 166, paragraph (1) (limited to cases where the matters set forth in Article 107, paragraph (2), item (ii), (c) or (d) or Article 108, paragraph (2), item (v), (b) are provided for as the features of shares).

(Registration of Relocation of the Head Office to the Jurisdictional District of Another Registry Office)

Article 916 When a company relocates its head office to the jurisdictional district of another registry office, the registration of relocation must be completed at the old location and the matters specified in the following items for the categories of companies set forth respectively in those items must be registered at the new location within two weeks:

- (i) stock company: the matters set forth in the items of Article 911, paragraph (3);
- (ii) general partnership company: the matters set forth in the items of Article 912;
- (iii) limited partnership company: the matters set forth in the items of Article 913; and
- (iv) limited liability company: the matters set forth in the items of Article 914.

(Registration of a Provisional Disposition Suspending Execution of Duties)

Article 917 When a provisional disposition order suspending execution of duties by any one of the persons specified in each of those items for the categories of companies set forth respectively in those items or appointing a person who will perform the duties on behalf of the former person is issued or a ruling changing or revoking the provisional disposition order is made, the registration thereof must be completed at the location of the head office:

- (i) stock company: a director (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory committee member or other director), accounting advisor, company auditor, representative director, committee member (meaning a member of a nominating committee, audit committee, or remuneration committee), executive officer or representative

- executive officer;
- (ii) general partnership company: a member;
- (iii) limited partnership company: a member; or
- (iv) limited liability company: a member executing business.

(Registration of a Manager)

Article 918 When a company appoints a manager or a manager's authority of representation becomes extinct, the registration thereof must be completed at the location of the head office.

(Registration of a Change of Kind of Membership Companies)

Article 919 When a membership company becomes a membership company of another kind pursuant to the provisions of Article 638, the registration of dissolution must be completed with regard to the membership company as it was prior to the change of kind and the registration of incorporation must be completed with regard to the membership company as it will be after the change of kind, at the location of the head office, within two weeks from the day on which the change to the articles of incorporation prescribed in that Article became effective.

(Registration of an Entity Conversion)

Article 920 When a company effects an entity conversion, the registration of dissolution must be completed with regard to the company as it was prior to the entity conversion and the registration of incorporation must be completed with regard to the company as it will be after the entity conversion, at the location of the head office, within two weeks from the day on which the entity conversion became effective.

(Registration of Absorption-Type Mergers)

Article 921 When a company effects an absorption-type merger, the registration of dissolution must be completed with regard to the company that disappears in the absorption-type merger and the registration of a change must be completed with regard to the company surviving the absorption-type merger, at the location of the head office, within two weeks from the day on which the absorption-type merger became effective.

(Registration of Consolidation-Type Mergers)

Article 922 (1) If two or more companies effect a consolidation-type merger, and the company that is incorporated in the consolidation-type merger is a stock company, the registration of dissolution must be completed with regard to the companies that disappear in the consolidation-type merger and the registration



of incorporation must be completed with regard to the company that is incorporated in the consolidation-type merger, at the location of the head office, within two weeks from the days specified in the following items for the categories of cases set forth respectively in those items:

- (i) if only stock companies constitute the companies disappearing in the consolidation-type merger: whichever of the following days is the latest:
    - (a) the day of the resolution at the shareholders meeting referred to in Article 804, paragraph (1);
    - (b) if a resolution at a general meeting of class shareholders is required to effect the consolidation-type merger, the day of relevant resolution;
    - (c) the day on which twenty days have elapsed from the day of the notice under the provisions of Article 806, paragraph (3) or the public notice referred to in paragraph (4) of that Article;
    - (d) if the companies disappearing in the consolidation-type merger have issued share options, the day on which twenty days have elapsed from the day of the notice under the provisions of Article 808, paragraph (3) or the public notice set forth in paragraph (4) of that Article;
    - (e) the day on which the procedures under the provisions of Article 810 have been completed; or
    - (f) the day decided on by an agreement between the companies disappearing in the consolidation-type merger;
  - (ii) if only membership companies constitute the companies disappearing in the consolidation-type merger: whichever of the following days is the latest:
    - (a) the day on which the consent of all members referred to in Article 813, paragraph (1) has been obtained (or, if prescribed in the proviso to that paragraph, the day on which the procedures provided for in the articles of incorporation have been completed);
    - (b) the day on which the procedures under the provisions of Article 810 as applied *mutatis mutandis* pursuant to Article 813, paragraph (2) have been completed; or
    - (c) the day decided on by an agreement between the companies disappearing in the consolidation-type merger; and
  - (iii) if both a stock company and a membership company are among the companies disappearing in the consolidation-type merger: whichever of the days specified in the preceding two items is later.
- (2) If two or more companies effect a consolidation-type merger, if the company that is incorporated in the consolidation-type merger is a membership company, the registration of dissolution must be completed with regard to the companies that disappear in the consolidation-type merger and the registration of incorporation must be completed with regard to the company that is incorporated in the consolidation-type merger, at the location of the head office,

within two weeks from the days specified in the following items for the categories of cases set forth respectively in those items:

- (i) if only stock companies constitute the companies disappearing in the consolidation-type merger: whichever of the following days is the latest:
  - (a) the day on which the consent of all members referred to in Article 804, paragraph (2) has been obtained;
  - (b) if the companies disappearing in the consolidation-type merger have issued share options, the day on which twenty days have elapsed from the day of the notice under the provisions of Article 808, paragraph (3) or the public notice referred to in paragraph (4) of that Article;
  - (c) the day on which the procedures under the provisions of Article 810 have been completed; or
  - (d) the day decided on by an agreement between the companies disappearing in the consolidation-type merger;
- (ii) if only membership companies constitute the companies disappearing in the consolidation-type merger: whichever of the following days is the latest:
  - (a) the day on which the consent of all members referred to in Article 813, paragraph (1) has been obtained (or, in the cases prescribed in the proviso to that paragraph, the day on which the procedures provided for in the articles of incorporation have been completed);
  - (b) the day on which the procedures under the provisions of Article 810 as applied mutatis mutandis pursuant to Article 813, paragraph (2) have been completed; or
  - (c) the day decided on by an agreement between the companies disappearing in the consolidation-type merger; and
- (iii) if both a stock company and a membership company are among the companies disappearing in the consolidation-type merger: whichever of the days specified in the preceding two items is later.

(Registration of an Absorption-Type Company Split)

Article 923 When a company effects an absorption-type company split, the registration of a change must be completed with regard to the company effecting the absorption-type company split and the company succeeding to all or part of the rights and obligations held by the company in connection with its business by transfer from relevant company, at the location of the head office, within two weeks from the day on which the absorption-type company split became effective.

(Registration of an Incorporation-Type Company Split)

Article 924 (1) If one or multiple stock companies or limited liability companies effect an incorporation-type company split, if the company that is incorporated

in the incorporation-type company split is a stock company, the registration of a change must be completed with regard to the companies effecting the incorporation-type company split and the registration of incorporation must be completed with regard to the company that is incorporated in the incorporation-type company split, at the location of the head office, within two weeks from the days specified in the following items for the categories of cases set forth respectively in those items:

- (i) if the company effecting the incorporation-type company split is only a stock company, whichever of the following days that is the latest:
  - (a) in cases other than those prescribed in Article 805, the day of the resolution at the shareholders meeting referred to in Article 804, paragraph (1);
  - (b) if a resolution at a general meeting of class shareholders is required to effect the incorporation-type company split, the day of relevant resolution;
  - (c) in cases other than those prescribed in Article 805, the day on which twenty days have elapsed from the day of the notice under the provisions of Article 806, paragraph (3) or the public notice relevant in paragraph (4) of that Article;
  - (d) if there are share option holders who are to receive the notice under the provisions of Article 808, paragraph (3), the day on which twenty days have elapsed from the day of the notice under the provisions of that paragraph or the public notice referred to in paragraph (4) of that Article;
  - (e) if the procedures under the provisions of Article 810 need to be carried out, the day on which relevant procedures are completed; or
  - (f) the day decided on by the stock company effecting the incorporation-type company split (or, if two or more stock companies jointly effect the incorporation-type company split, the day decided on by an agreement between relevant two or more stock companies effecting the incorporation-type company split);
- (ii) if the company effecting the incorporation-type company split is only a limited liability company, whichever of the following days that is the latest:
  - (a) the day on which the consent of all members referred to in Article 813, paragraph (1) has been obtained (or, in the cases prescribed in the proviso to that paragraph, the day on which the procedures provided for in the articles of incorporation have been completed);
  - (b) if the procedures under the provisions of Article 810 as applied *mutatis mutandis* pursuant to Article 813, paragraph (2) need to be carried out, the day on which relevant procedures were completed; or
  - (c) the day decided on by the limited liability company effecting the incorporation-type company split (or, if two or more limited liability companies jointly effect the incorporation-type company split, the day

- decided on by an agreement between relevant two or more limited liability companies effecting the incorporation-type company split); and
- (iii) if the company effecting the incorporation-type company split include both a stock company and a limited liability company, whichever of the days specified in the preceding two items that is later.
- (2) If one or multiple stock companies or limited liability companies effect an incorporation-type company split, and the company that is incorporated in the incorporation-type company split is a membership company, the registration of a change must be completed with regard to the companies effecting the incorporation-type company split and the registration of incorporation must be completed with regard to the company that is incorporated in the incorporation-type company split, at the location of the head office, within two weeks from the days specified in the following items for the categories of cases set forth respectively in those items:
- (i) if the company effecting the incorporation-type company split is only a stock company, whichever of the following days that is the latest:
- (a) in cases other than those prescribed in Article 805, the day of the resolution at the shareholders meeting set forth in Article 804, paragraph (1);
  - (b) if a resolution at a general meeting of class shareholders is required to effect the incorporation-type company split, the day of relevant resolution;
  - (c) in cases other than those prescribed in Article 805, the day on which twenty days have elapsed from the day of the notice under the provisions of Article 806, paragraph (3) or the public notice referred to in paragraph (4) of that Article;
  - (d) if the procedures under the provisions of Article 810 need to be carried out, the day on which relevant procedures were completed; or
  - (e) the day decided on by the stock company effecting the incorporation-type company split (or, if two or more stock companies jointly effect the incorporation-type company split, the day decided on by an agreement between relevant two or more stock companies effecting the incorporation-type company split);
- (ii) if the company effecting the incorporation-type company split is only a limited liability company, whichever of the following days that is the latest:
- (a) the day on which the consent of all members referred to in Article 813, paragraph (1) has been obtained (or, in the cases prescribed in the proviso to that paragraph, the day on which the procedures provided for in the articles of incorporation have been completed);
  - (b) if the procedures under the provisions of Article 810 as applied mutatis mutandis pursuant to Article 813, paragraph (2) need to be carried out, the day on which relevant procedures were completed; or

- (c) the day decided on by the limited liability company effecting the incorporation-type company split (or, if two or more limited liability companies jointly effect the incorporation-type company split, the day decided on by an agreement between relevant two or more limited liability companies effecting the incorporation-type company split); and
- (iii) if the company effecting the incorporation-type company split include both a stock company and a limited liability company, whichever of the days specified in the preceding two items that is later.

(Registration of a Share Transfer)

Article 925 If one or multiple stock companies effect a share transfer, the registration of incorporation must be completed with regard to the stock company that is incorporated in the share transfer, at the location of the head office, within two weeks from whichever of the following days that is the latest:

- (i) the day of the resolution at the shareholders meeting referred to in Article 804, paragraph (1);
- (ii) if a resolution at a general meeting of class shareholders is required to effect the share transfer, the day of the resolution;
- (iii) the day on which twenty days have elapsed from the day of the notice under the provisions of Article 806, paragraph (3) or the public notice referred to in paragraph (4) of that Article;
- (iv) if there are share option holders who are to receive the notice under the provisions of Article 808, paragraph (3), the day on which twenty days have elapsed from the day of the notice under the provisions of that paragraph or the public notice referred to in paragraph (4) of that Article;
- (v) if the procedures under the provisions of Article 810 need to be carried out, the day on which relevant procedures were completed; or
- (vi) the day decided on by the stock company effecting the share transfer (or, if two or more stock companies jointly effect the share transfer, the day decided on by an agreement between relevant two or more stock companies effecting the share transfer).

(Registration of Dissolution)

Article 926 When a company is dissolved pursuant to the provisions of Article 471, items (i) through (iii) or Article 641, items (i) through (iv), the registration of dissolution must be completed at the location of the head office within two weeks.

(Registration of Continuation)

Article 927 When a company continues in existence pursuant to the provisions off Article 473, Article 642, paragraph (1) or Article 845, the registration of

continuation must be completed at the location of the head office within two weeks.

(Registration of a Liquidator)

Article 928 (1) When the person set forth in Article 478, paragraph (1), item (i) becomes a liquidator of a liquidating stock company, the following matters must be registered at the location of the head office within two weeks from the day of dissolution:

- (i) the name of the liquidator;
- (ii) the name and address of the representative liquidator; and
- (iii) if the liquidating stock company is a company with board of liquidators, a statement to that effect.

(2) When the person set forth in Article 647, paragraph (1), item (i) becomes a liquidator of a liquidating membership company, the following matters must be registered at the location of the head office within two weeks from the day of dissolution:

- (i) the name and address of the liquidator;
- (ii) the name of the liquidator representing the liquidating membership company (limited to cases where there is a liquidator not representing the liquidating membership company); and
- (iii) if the liquidator representing the liquidating membership company is a corporation, the name and address of the person who is to perform the duties of the liquidator.

(3) When a liquidator is appointed, the matters set forth in the items of paragraph (1) must be registered in the case of a liquidating stock company and the matters set forth in the items of the preceding paragraph must be registered in the case of a liquidating membership company, at the location of the head office, within two weeks.

(4) The provisions of Article 915, paragraph (1) apply mutatis mutandis to the registration under the provisions of the preceding three paragraphs, and the provisions of Article 917 apply mutatis mutandis to a liquidator, representative liquidator or liquidator representing a liquidating membership company.

(Registration of Completion of Liquidation)

Article 929 When liquidation is completed, the registration of the completion of liquidation must be completed at the location of the head office within two weeks from the days specified in the following items for the categories of companies set forth respectively in those items:

- (i) liquidating stock company: the day of the approval referred to in Article 507, paragraph (3);
- (ii) liquidating membership company (limited to a general partnership

company or a limited partnership company): the day of the approval referred to in Article 667, paragraph (1) (or, if the method of disposition of property referred to in Article 668, paragraph (1) has been prescribed, the day on which the disposition of property has been completed); and

(iii) liquidating membership company (limited to a limited liability company): the day of the approval referred to in Article 667, paragraph (1).

Article 930 to Article 932 Deleted

### **Section 3 Registration of a Foreign Company**

(Registration of a Foreign Company)

Article 933 (1) When a foreign company specifies its representative in Japan for the first time pursuant to the provisions of Article 817, paragraph (1), registration of the foreign company must be completed at the locations specified in the following items for the categories of cases set forth respectively in those items, within three weeks:

- (i) if no business office is established in Japan, the address of its representative in Japan (limited to those whose address is in Japan; hereinafter the same applies in this Section); or
- (ii) if a business office is established in Japan, the location of relevant business office.

(2) Upon the registration of a foreign company, the matters set forth in the items of Article 911, paragraph (3) or in the items of Articles 912 through 914 must be registered and also the following matters must be registered, in accordance with the same kind of company or the most similar kind of company in Japan:

- (i) the law governing the incorporation of the foreign company;
- (ii) the name and address of its representative in Japan;
- (iii) if the same kind of company or the most similar company in Japan is a stock company, the method of giving public notice under the provisions of the governing law prescribed in item (i);
- (iv) in the cases prescribed in the preceding item, if the foreign company intends to take the measure prescribed in Article 819, paragraph (3), the matters prescribed by Ministry of Justice Order which are necessary for making the information contained in what is equivalent to the balance sheet provided for in paragraph (1) of that Article available to the general public;
- (v) if there are provisions with regard to the method of public notice under the provisions of Article 939, paragraph (2), the provisions;
- (vi) if the provisions referred to in the preceding item provide that electronic public notice is to be the method of public notice, the following matters:
  - (a) the matters prescribed by Ministry of Justice Order which are necessary for making the information to be publicly notified through electronic public

- notice available to the general public; and
- (b) if there are provisions under the provisions of the second sentence of Article 939, paragraph (3), the provisions; and
- (vii) if there are no provisions referred to in item (v), a statement to the effect that publication in Official Gazette is to be the method of public notice pursuant to the provisions of Article 939, paragraph (4).
- (3) With regard to application of the provisions of the preceding paragraph concerning a business office established in Japan by a foreign company, relevant business office is deemed to be the branch office prescribed in Article 911, paragraph (3), item (iii), Article 912, item (iii), Article 913, item (iii) or Article 914, item (iii).
- (4) The provisions of Article 915 and Articles 918 through 929 apply mutatis mutandis to foreign companies. In these cases, the term "two weeks" in these provisions is deemed to be replaced with "three weeks" and the term "location of the head office" in those provisions is deemed to be replaced with "address of its representative in Japan (limited to those whose address is in Japan) (or, for a foreign company that has established a business office in Japan, the location of relevant business office)".
- (5) When a matter that should be registered pursuant to the provisions of the preceding paragraphs arises in a foreign country, the period for registration is counted from the day on which the notice thereof reached a representative in Japan.

(Registration of Appointment of a Representative in Japan)

- Article 934 (1) If a foreign company that has not established a business office in Japan specifies a new representative in Japan after registration of the foreign company (excluding cases where the address of the relevant representative is within the jurisdictional district of the registry having jurisdiction over the address of another representative in Japan), the registration of the foreign company must also be completed at the address of the newly specified representative in Japan, within three weeks.
- (2) If a foreign company that has established a business office in Japan establishes a new business office in Japan after registration of the foreign company (excluding cases where the location of the relevant business office is within the jurisdictional district of the registry office having jurisdiction over the location of another registered business office), the registration of the foreign company must also be completed at the location of the newly established business office in Japan, within three weeks.

(Registration of the Relocation of the Address of a Representative in Japan)

- Article 935 (1) When a representative in Japan of a foreign company that has



not established a business office in Japan relocates representative's address to the jurisdictional district of another registry office after registration of the foreign company, the registration of relocation must be completed at the location of the old address within three weeks and the registration of the foreign company must be completed at the location of the new address within four weeks; provided, however, that it is sufficient to have the relocation of the address registered at the location of the new address when the representative relocates the representative's address to the jurisdictional district of the registry office having jurisdiction over the location of the address of another registered representative in Japan.

- (2) When a foreign company that has established a business office in Japan relocates its business office to the jurisdictional district of another registry office after registration of the foreign company, the registration of relocation must be completed at the old location within three weeks and the registration of the foreign company must be completed at the new location within four weeks; provided, however, that it is sufficient to have the relocation of the business office registered at the new location when it relocates a business office to the jurisdictional district of the registry office having jurisdiction over the location of the address of another registered business office.

(Registration of Establishment of a Business Office in Japan)

Article 936 (1) When a foreign company that has not established a business office in Japan establishes a business office in Japan after registration of the foreign company, the registration of the establishment of the business office must be completed at the location of the address of its representative in Japan within three weeks and the registration of the foreign company must be completed at the location of the business office within four weeks; provided, however, that it is sufficient to have the establishment of the business office registered when it establishes a business office to the jurisdictional district of the registry office having jurisdiction over the address of a registered representative in Japan.

- (2) When a foreign company that has established a business office in Japan closes all of its business offices in Japan after registration of the foreign company, the registration of the closure of the business office must be complete at the location of its business office within three weeks and the registration of the foreign company must be completed at the location of the address of its representative in Japan within four weeks, except if all of its representatives in Japan of the foreign company intend to resign; provided, however, that it is sufficient to have the closure of all business offices registered when the address of its representative in Japan is within the jurisdictional district of the registry office having jurisdiction over the location of the registered business office.

## Section 4 Commissioning of Registration

(Commissioning of Registration by a Judicial Decision)

Article 937 (1) In the following cases, a court clerk must commission the registration, ex officio, to the registry office having jurisdiction over the location of the head office of the company without delay:

- (i) when a judgment upholding a claim relating to any one of the following actions becomes final and binding:
  - (a) an action seeking invalidation of the incorporation of a company;
  - (b) an action seeking invalidation of a share issue after the formation of a stock company;
  - (c) an action seeking invalidation of an issue of share options (if relevant share options are those attached to bonds with share options, they include the bonds concerning relevant bonds with share options; hereinafter the same applies in this Section);
  - (d) an action seeking invalidation of a reduction in the amount of stated capital of a stock company;
  - (e) an action for a declaratory judgment of absence of a share issue after the formation of a stock company;
  - (f) an action for a declaratory judgment of absence of an issuance of share options;
  - (g) the following actions if matters resolved at a shareholders meeting, etc. have been registered:
    - 1. an action for a declaratory judgment of absence of a resolution at a shareholders meeting, etc. or invalidation of a resolution at a shareholders meeting, etc. on the basis that the contents of that resolution violate laws and regulations; or
    - 2. an action seeking revocation of a resolution at a shareholders meeting, etc.;
  - (h) an action seeking rescission of the incorporation of a membership company;
  - (i) an action seeking dissolution of a company;
  - (j) an action seeking dismissal of an officer of a stock company;
  - (k) an action seeking removal of a member of membership company; or
  - (l) an action seeking extinguishment of right to execute business or authority of representation of member executing business of a membership company;
- (ii) when any one of the following judicial decisions is made:
  - (a) a judicial decision on the appointment of a person who is temporarily to perform the duties of a director (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory

- committee member or other director), accounting advisor, company auditor, representative director, committee member (meaning a member of a nominating committee, audit committee, or remuneration committee), executive officer or representative executive officer under the provisions of Article 346, paragraph (2), Article 351, paragraph (2) or Article 401, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 403, paragraph (3) and Article 420, paragraph (3));
- (b) a judicial decision on the appointment of a person who is temporarily to perform the duties of a liquidator or representative liquidator under the provisions of Article 351, paragraph (2) as applied mutatis mutandis pursuant to Article 346, paragraph (2) or Article 483, paragraph (6) as applied mutatis mutandis pursuant to Article 479, paragraph (4) (excluding the judicial decision prescribed in paragraph (2), item (i) of the following Article);
- (c) a judicial decision revoking the judicial decision set forth in (a) or (b) (excluding the judicial decision prescribed in paragraph (2), item (ii) of the following Article);
- (d) a judicial decision revoking a judicial decision on the appointment or selection of a liquidator, a representative liquidator or a liquidator who represents a liquidating membership company (excluding the judicial decision prescribed in paragraph (2), item (iii) of the following Article); or
- (e) a judicial decision on the dismissal of a liquidator (excluding the judicial decision prescribed in paragraph (2), item (iv) of the following Article); and
- (iii) when any one of the following judicial decisions becomes final and binding:
- (a) a judicial decision revoking the judicial decision set forth in (e) of the preceding item; or
- (b) a judicial decision ordering the dissolution of a company under the provisions of Article 824, paragraph (1).
- (2) When a judicial decision ordering the prohibition of a foreign company's continuous transactions in Japan or closure of its business office in Japan under the provisions of Article 827, paragraph (1) becomes final and binding, a court clerk must commission the registration, ex officio, to the registry office having jurisdiction over the locations specified in the following items for the categories of foreign companies set forth respectively in those items without delay:
- (i) foreign company that has not established a business office in Japan: the address of its representative in Japan (limited to those whose address is in Japan); and
- (ii) foreign company that has established a business office in Japan: the location of relevant business office.
- (3) If a judgment upholding a claim relating to the actions set forth in the

following items becomes final and binding, a court clerk must commission the registrations specified respectively in those items, ex officio, to the registry office having jurisdiction over the location of the head office of each company without delay:

- (i) an action seeking invalidation of an entity conversion of a company: registration of dissolution with regard to the company after the entity conversion and registration of restoration with regard to the company effecting the entity conversion;
- (ii) an action seeking invalidation of an absorption-type merger of a company: registration of a change with regard to the company surviving the absorption-type merger and registration of restoration with regard to the company disappearing in the absorption-type merger;
- (iii) an action seeking invalidation of a consolidation-type merger of a company: registration of dissolution with regard to the company that is incorporated in the consolidation-type merger and registration of restoration with regard to the companies disappearing in the consolidation-type merger;
- (iv) an action seeking invalidation of an absorption-type company split: registration of a change with regard to the company effecting the absorption-type company split and the company succeeding to all or part of the rights and obligations held by relevant company in connection with its business by transfer from the company;
- (v) an action seeking invalidation of an incorporation-type company split: registration of a change with regard to the company effecting the incorporation-type company split and registration of dissolution with regard to the company that is incorporated in the incorporation-type company split;
- (vi) an action seeking invalidation of a share exchange of a stock company: registration of a change with regard to the stock company effecting the share transfer (limited to cases where there are provisions on the matters set forth in Article 768, paragraph (1), item (iv)) and the company acquiring all of the issued shares of the stock company effecting the share transfer;
- (vii) an action seeking invalidation of a share exchange of a stock company: registration of a change with regard to the company effecting the share transfer (limited to cases where there are provisions on the matters set forth in Article 773, paragraph (1), item (ix)) and registration of dissolution with regard to the stock company that is incorporated in the share transfer; and
- (viii) an action seeking invalidation of a partial share exchange of a stock company: registration of the change with regard to the parent company resulting from a partial share exchange.

(Commissioning of Registration by a Juridical Decision Concerning Special Liquidation)

- Article 938 (1) In the cases set forth in the following items, a court clerk must commission the registrations specified respectively in those items, ex officio, to the registry office having jurisdiction over the location of the head office of the liquidating stock company without delay:
- (i) when an order to commence special liquidation is issued, registration of commencement of special liquidation;
  - (ii) when a ruling to revoke an order to commence special liquidation becomes final and binding, registration of revocation of commencement of special liquidation; and
  - (iii) when a ruling to conclude special liquidation becomes final and binding, registration of conclusion of special liquidation.
- (2) In the following cases, a court clerk must commission the registration, ex officio, to the registry office having jurisdiction over the location of the head office of the liquidating stock company without delay:
- (i) when the court makes a judicial decision on the appointment of a person who is temporarily to perform the duties of a liquidator or representative liquidator under the provisions of Article 351, paragraph (2) as applied mutatis mutandis pursuant to Article 346, paragraph (2) or Article 483, paragraph (6) as applied mutatis mutandis pursuant to Article 479, paragraph (4) after the commencement of special liquidation;
  - (ii) when the court makes a judicial decision revoking the judicial decision referred to in the preceding item;
  - (iii) when the court makes a judicial decision revoking a judicial decision on the appointment or selection of a liquidator or representative liquidator after the commencement of special liquidation;
  - (iv) when the court makes a judicial decision on the dismissal of a liquidator after the commencement of special liquidation; and
  - (v) when a judicial decision revoking the judicial decision referred to in the preceding item becomes final and binding.
- (3) In the following cases, a court clerk must commission the registration of the relevant provisional order, ex officio, without delay:
- (i) when the court issues a provisional order under the provisions of Article 540, paragraph (1) or (2) concerning a right which is categorized as the property of the liquidating stock company and which is registered; and
  - (ii) when the court issues a provisional order under the provisions of Article 542, paragraph (1) or (2) concerning a registered right.
- (4) The provisions of the preceding paragraph apply mutatis mutandis to cases where a provisional order as prescribed in that paragraph is changed or revoked or if such a provisional order becomes ineffective.
- (5) The provisions of the preceding two paragraphs apply mutatis mutandis to registered rights.

- (6) The provisions of the preceding paragraphs apply mutatis mutandis to the liquidation of a foreign company's property in Japan under the provisions of Article 822, paragraph (1), excluding those that are not applicable by their nature.

## **Chapter V Public Notice**

### **Section 1 General Provisions**

(Method of Public Notice of a Company)

Article 939 (1) A company may prescribe any one of the following methods as the method of public notice in its articles of incorporation:

- (i) publication in Official Gazette;
- (ii) publication in a daily newspaper that publishes matters on current affairs;
- or
- (iii) electronic public notice.

(2) A foreign company may prescribe any one of the methods set forth in the items of the preceding paragraph as the method of public notice.

(3) If a company or a foreign company prescribes to the effect that the method set forth in paragraph (1), item (iii) is to be the method of public notice, it is sufficient to prescribe to the effect that electronic public notice is the method of public notice. In these cases, the method set forth in item (i) or item (ii) of that paragraph may be prescribed as the method of public notice for cases where it is unable to give public notice by way of electronic public notice due to an accident or other unavoidable circumstances.

(4) The method of public notice of a company or a foreign company that does not have the provisions under the provisions of paragraph (1) or paragraph (2) is the method referred to in paragraph (1), item (i).

(Public Notice Period of Electronic Public Notice)

Article 940 (1) If a stock company or a membership company gives public notice under the provisions of this Act by way of electronic public notice, it must give public notice by way of electronic public notice continuously until the days specified in the following items for the categories of public notice set forth respectively in those items:

- (i) public notice if the public notice must be given a certain period prior to a specified date pursuant to the provisions of this Act: the specified date;
- (ii) public notice under the provisions of Article 440, paragraph (1): the day on which five years have elapsed from the day of the conclusion of the annual shareholders meeting referred to in that paragraph;
- (iii) public notice to the effect that objections may be stated within the period specified in the public notice: the day on which the period has elapsed; and

- (iv) public notice other than that referred in the preceding three items: the day on which one month has elapsed from the start of relevant public notice.
- (2) If a foreign company gives public notice under the provisions of Article 819, paragraph (1) by way of electronic public notice, it must give public notice by way of electronic public notice continuously until the day on which five years have elapsed from the day of the conclusion of the procedure referred to in that paragraph.
- (3) Notwithstanding the provisions of the preceding two paragraphs, if an interruption of public notice (meaning that the information, which was made available to the general public, is no longer made available or that the information has been altered after being made available to the general public; hereinafter the same applies in this paragraph) occurs during the period in which public notice was to be given by way of electronic public notice pursuant to these provisions (hereinafter referred to as the "public notice period" in this Chapter), if all of the following conditions are met, that interruption of public notice does not affect the effects of relevant public notice:
- (i) the company acts in good faith and without gross negligence without gross negligence or the company has justifiable grounds with regard to the occurrence of the interruption of public notice;
  - (ii) the total time during which the interruption of public notice has occurred does not exceed one-tenth of the public notice period; and
  - (iii) promptly after learning about the occurrence of the interruption of public notice, the company has given public notice of that fact, the time when the interruption of public notice occurred and the details of the interruption of public notice by appending the information to the relevant public notice.

## **Section 2 Electronic Public Notice Investigation Body**

(Electronic Public Notice Investigation)

Article 941 A company that intends to give public notice under the provisions of this Act or another Act (excluding the public notice under the provisions of Article 440, paragraph (1); hereinafter the same applies in this Section) by way of electronic public notice must request a person who has been registered by the Minister of Justice (hereinafter referred to as an "investigation body" in this Section) to carry out an investigation as to whether the information contained in relevant public notice is being made available to the general public during the public notice period, pursuant to the provisions of Ministry of Justice Order.

(Registration)

Article 942 (1) The registration referred to in the preceding Article (hereinafter

simply referred to as the "registration" in this Section) is made through an application by a person who intends to conduct the investigation under the provisions of that Article (hereinafter referred to as the "electronic public notice investigation" in this Section).

- (2) A person who intends to obtain the registration must pay a fee to the amount specified by Cabinet Order by giving consideration to the actual cost.

(Grounds for Disqualification)

Article 943 A person who falls under any one of the following categories of persons may not obtain the registration:

- (i) a person who has been sentenced to a fine or a severer punishment for the violation of the provisions of this Section or the provisions of Article 955, paragraph (1) as applied mutatis mutandis pursuant to Article 97-4, paragraph (5) of the Agricultural Cooperatives Act (Act No. 132 of 1947), Article 50-2, paragraph (10) and Article 66-40, paragraph (6) of the Financial Instruments and Exchange Act, Article 34-20, paragraph (6) and Article 34-23, paragraph (4) of the Certified Public Accountants Act, Article 26, paragraph (6) of the Consumer Cooperatives Act (Act No. 200 of 1948), Article 126-4, paragraph (5) of the Fisheries Cooperatives Act (Act No. 242 of 1948), Article 33, paragraph (7) of the Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949) (including the cases where it is applied mutatis mutandis pursuant to Article 20 of the Export Fisheries Promotion Act (Act No. 154 of 1954) and Article 5-23, paragraph (3) and Article 47, paragraph (2) of the Act on Organizations of Small and Medium Sized Enterprises (Act No. 185 of 1957)), Article 30-28, paragraph (6) of the Attorneys Act (Act No. 205 of 1949) (including the cases where it is applied mutatis mutandis pursuant to Article 43, paragraph (3) of that Act and Article 67, paragraph (2), Article 80, paragraph (1), and Article 82, paragraph (3) of the Act on the Handling of Legal Services by Foreign Lawyers (Act No. 66 of 1986) ), Article 55, paragraph (3) of the Ship Owners' Mutual Insurance Union Act (Act No. 177 of 1950), Article 45-2, paragraph (6) of the Judicial Scrivener Act (Act No. 197 of 1950), Article 40-2, paragraph (6) of the Land and House Investigator Act (Act No. 228 of 1950), Article 11, paragraph (9) of the Commodity Futures Act (Act No. 239 of 1950), Article 13-20-2, paragraph (6) of the Administrative Scrivener Act (Act No. 4 of 1951), Article 25, paragraph (2) of the Act on Securities Investment Trust and Securities Investment Corporations (Act No. 198 of 1951) (including the cases where it is applied mutatis mutandis pursuant to Article 59 of that Act) and Article 186-2, paragraph (4) of that Act, Article 48-19-2, paragraph (6) of the Certified Public Tax Accountant Act (including the cases where it is applied mutatis mutandis pursuant to Article 49-12, paragraph (3) of that



Act), Article 87-4, paragraph (4) of the Shinkin Bank Act (Act No. 238 of 1951), Article 15, paragraph (6) of the Export and Import Transaction Act (Act No. 299 of 1952) (including the cases where it is applied mutatis mutandis pursuant to Article 19-6 of that Act), Article 55, paragraph (5) of the Loan Security Act for Small and Medium Sized Fishery Industry (Act No. 346 of 1952), Article 91-4, paragraph (4) of the Labor Bank Act (Act No. 227 of 1953), Article 16, paragraph (8) of the Research and Development Partnerships Act (Act No. 81 of 1961), Article 48-3, paragraph (5) of the Agricultural Credit Guarantee Insurance Act (Act No. 204 of 1961) (including the cases where it is applied mutatis mutandis pursuant to Article 48-9, paragraph (7) of that Act), Article 25-23-2, paragraph (6) of the Act on Public Consultants on Social and Labor Insurance (Act No. 89 of 1968), Article 8-2, paragraph (5) of the Forestry Partnership Act (Act No. 36 of 1978), Article 49-2, paragraph (2) of the Banking Act, Article 67-2 and Article 217, paragraph (3) of the Insurance Business Act (Act No. 105 of 1995), Article 194, paragraph (4) of the Act on Securitization of Assets (Act No. 105 of 1998), Article 53-2, paragraph (6) of the Patent Attorney Act (Act No. 49 of 2000), Article 96-2, paragraph (4) of the Norinchukin Bank Act (Act No. 93 of 2001), Article 57, paragraph (6) of the Trust Business Act, Article 333 of the Act on General Incorporated Association and General Incorporated Foundation, and Article 20, paragraph (4), Article 61, paragraph (7), and Article 63-20, paragraph (7) of the Payment Services Act (Act No. 59 of 2009) (hereinafter collectively referred to as the "electronic public notice related provisions" in this Section) or the violation of an order based on the provisions of this Section and where two years have yet to elapse from the day on which the execution of the sentence has been completed or the sentence has become no longer applicable;

(ii) a person whose registration has been rescinded pursuant to the provisions of Article 954 and where two years have yet to elapse from the day of the rescission; or

(iii) a corporation where the directors, etc. engaged in the business thereof (meaning directors, executive officers, members executing business, inspectors, company auditors or persons equivalent thereto; the same applies in Article 947) include a person who falls under any one of the preceding two items.

(Registration Standards)

Article 944 (1) When a person who has filed an application for a registration pursuant to the provisions of Article 942, paragraph (1) satisfies all of the following requirements, the Minister of Justice must complete the registration of that person. In these cases, the necessary procedures concerning a

registration are prescribed by Ministry of Justice Order:

- (i) the person carries out the electronic public notice investigation by using the computers (including input-output devices; hereinafter the same applies in this item) and programs (meaning instructions given to a computer, combined so as to obtain a certain result; hereinafter the same applies in this item) necessary for the electronic public notice investigation, which satisfy all of the following requirements:
  - (a) relevant computers and programs allow users to inspect, through the internet, the information that is publicly notified by way of electronic public notice;
  - (b) necessary measures are taken for preventing persons from making relevant computers fail to operate in accordance with the purpose of use or making them operate against the purpose of use by damaging relevant computers or an electronic or magnetic record to be used by the computers, giving false information or wrongful instructions to the computers or any other method;
  - (c) relevant computers and programs have the function of preserving the information and instructions that have been input into relevant computers and the information received through the internet throughout the period of carrying out the electronic public notice investigation; and
- (ii) the necessary implementation method for carrying out the electronic public notice investigation appropriately has been prescribed.
- (2) The registration is to be completed by stating or recording the following matters in the investigation body register:
  - (i) the date of the registration and the registration number;
  - (ii) the name and address of the person who obtained the registration, and in the case of a corporation, the name of the representative thereof; and
  - (iii) the location of the place of business where the person who obtained the registration will carry out the electronic public notice investigation.

(Renewal of Registration)

Article 945 (1) Unless a registration is renewed at an interval of not less than three years as specified by Cabinet Order, it becomes ineffective by the expiration of the period.

- (2) The provisions of the preceding three Articles apply mutatis mutandis to the renewal of a registration referred to in the preceding paragraph.

(Obligation of Investigation)

Article 946 (1) When being requested to carry out an electronic public notice investigation, an investigation body must carry out the electronic public notice investigation except if there are justifiable grounds.

- (2) An investigation body must carry out an electronic public notice investigation fairly and by the method prescribed by Ministry of Justice Order.
- (3) If an investigation body carries out an electronic public notice investigation, the investigation body must report to the Minister of Justice the trade name of the person who has requested the electronic public notice investigation (hereinafter referred to as the "investigation entruster" in this Section) and any other matters prescribed by Ministry of Justice Order, pursuant to the provisions of Ministry of Justice Order.
- (4) An investigation body must, without delay after an electronic public notice investigation, notify the investigation entruster of the results of the electronic public notice investigation, pursuant to the provisions of Ministry of Justice Order.

(Cases Where an Electronic Public Notice Investigation Is Unable to Be Carried Out)

Article 947 An investigation body is unable to carry out an electronic public notice investigation with regard to public notice given by any one of the following persons by way of electronic public notice or with regard to the public notice in the cases prescribed by Ministry of Justice Order as those where the persons or directors, etc. thereof were involved in the public notice given by way of electronic public notice:

- (i) the relevant investigation body;
- (ii) the parent stock company (meaning a stock company which has the relevant investigation body as its subsidiary company) if the relevant investigation body is a stock company;
- (iii) a corporation whose directors, etc. or employees (including those who have been in either of the positions within the past two years; the same applies in the following item) constitute more than half of the directors, etc. of the relevant investigation body; or
- (iv) a corporation whose directors, etc. or employees include the relevant investigation body (excluding one who is a corporation) or a director, etc. having the authority of representation of the relevant investigation body.

(Notification of a Change in the Place of Business)

Article 948 When an investigation body intends to change the location of the place of business where electronic public notice investigations will be carried out, the investigation body must give notification to the Minister of Justice by two weeks prior to the day of that change.

(Business Rules)

Article 949 (1) An investigation body must prescribe rules concerning the

business of electronic public notice investigations (referred to as the "business rules" in the following paragraph) and notify the Minister of Justice thereof prior to the commencement of the business of electronic public notice investigations. The same applies when the investigation body intends to change the business rules.

- (2) The business rules must provide for the implementation method of electronic public notice investigations, fees concerning electronic public notice investigations and any other matters prescribed by Ministry of Justice Order.

(Suspension or Discontinuance of Business)

Article 950 When an investigation body intends to suspend or discontinue all or part of the business of electronic public notice investigations, the investigation body must notify the Minister of Justice to that effect in advance, pursuant to the provisions of Ministry of Justice Order.

(Keeping and Inspection of Financial Statements)

Article 951 (1) An investigation body must, within three months from the end of each business year, prepare an inventory of property, a balance sheet, profit and loss statement or settlement of accounts, and business report (including electronic or magnetic records, if electronic or magnetic records are prepared in lieu of these documents; referred to as the "financial statements, etc." in the following paragraph) for the business year, and keep them at the investigation body's place of business for five years.

- (2) An investigation entruster or any other interested party may make the following requests to an investigation body at any time during the business hours of the investigation body; provided, however, that that person must pay the fee designated by the investigation body when making the request set forth in item (ii) or item (iv):
- (i) when the financial statements, etc. are prepared in the form of documents, requests for the inspection or copying of relevant documents;
  - (ii) requests for the delivery of a transcript or extract of the documents referred to in the preceding item;
  - (iii) if the financial statements, etc. have been prepared as an electronic or magnetic record, a request to inspect or copy anything that is used in a manner prescribed by Ministry of Justice Order to display the information recorded in that electronic or magnetic record; and
  - (iv) a request to be provided with the information recorded in the electronic or magnetic record referred to in the preceding item by an electronic or magnetic means that the Investigation body has designated, or a request to be issued a document showing that information.

(Compliance Order)

Article 952 When the Minister of Justice finds that an investigation body no longer complies with any one of the items of Article 944, paragraph (1), the minister may order the investigation body to take necessary measures for complying with these provisions.

(Order for Improvement)

Article 953 When the Minister of Justice finds that an investigation body violates the provisions of Article 946, the minister may order the investigation body to carry out electronic public notice investigations or to take necessary measures to improve the method of electronic public notice investigation or the method of any other business.

(Rescission of Registration)

Article 954 When an investigation body falls under any one of the following items, the Minister of Justice may rescind the registration of the investigation body or order the suspension of all or part of the business of electronic public notice investigations for a set period:

- (i) when the investigation body falls under Article 943, item (i) or (iii);
- (ii) when the investigation body violates the provisions of Article 947 (including the cases where it is applied mutatis mutandis pursuant to the electronic public notice related provisions) to Article 950, Article 951, paragraph (1) or paragraph (1) of the following Article (including the cases where it is applied mutatis mutandis pursuant to the electronic public notice related provisions);
- (iii) when the investigation body rejects a request under the provisions of the items of Article 951, paragraph (2) or the items of paragraph (2) of the following Article (including the cases where it is applied mutatis mutandis pursuant to the electronic public notice related provisions) without justifiable grounds;
- (iv) when the investigation body violates the order referred to in Article 952 or in the preceding Article (including the cases where it is applied mutatis mutandis pursuant to the electronic public notice related provisions); or
- (v) when the investigation body obtains the registration referred to in Article 941 by wrongful means.

(Statements in an Investigation Record Book)

Article 955 (1) An investigation body must, pursuant to the provisions of Ministry of Justice Order, keep investigation records or what is prescribed by Ministry of Justice Order as being equivalent thereto (hereinafter referred to as the "investigation record book, etc." in this Article), state or record the

matters prescribed by Ministry of Justice Order concerning electronic public notice investigations, and preserve relevant investigation record book, etc.

- (2) An investigation entruster or any other interested party may make the following requests to an investigation body with regard to the investigation record book, etc. preserved by relevant investigation body pursuant to the provisions of the preceding paragraph or paragraph (2) of the following Article (limited to the portions in which that person has an interest) at any time during the business hours of the investigation body; provided, however, that the person must pay the fee designated by the investigation body when making relevant requests:
- (i) when the investigation record book, etc. is prepared in the form of documents, requests for the delivery of a copy of relevant documents; and
  - (ii) when the investigation record book, etc. has been prepared as an electronic or magnetic record, a request to be provided with the information recorded in that electronic or magnetic record by an electronic or magnetic means that the investigation body has designated, or a request to be issued a document showing that information.

(Succession of an Investigation Record Book)

- Article 956 (1) When an investigation body intends to discontinue all of its business of electronic public notice investigation or when its registration is rescinded pursuant to the provisions of Article 954, the investigation body must have another investigation body succeed to the investigation record book, etc. referred to in paragraph (1) of the preceding Article (including the cases where it is applied mutatis mutandis pursuant to the electronic public notice related provisions), which the former investigation body has preserved.
- (2) An investigation body that has succeeded to the investigation record book, etc. referred to in the preceding paragraph pursuant to the provisions of that paragraph must preserve the investigation record book, etc. pursuant to the provisions of Ministry of Justice Order.

(Implementation of the Business of Electronic Public Notice Investigation by the Minister of Justice)

- Article 957 (1) When no person obtains a registration, when a notification to suspend or discontinue all or part of the business of electronic public notice investigation under the provisions of Article 950 is given, when rescinding a registration or ordering an investigation body to suspend all or part of the business of electronic public notice investigation pursuant to the provisions of Article 954, when it becomes difficult for an investigation body to implement all or part of the business of electronic public notice investigation due to a natural disaster or on any other grounds, or in any other cases where it is

found necessary, the Minister of Justice may personally carry out all or part of the business of electronic public notice investigation.

- (2) The succession of the business of electronic public notice investigation and any other necessary matters if the Minister of Justice personally carries out all or part of the business of electronic public notice investigation pursuant to the provisions of the preceding paragraph are prescribed by Ministry of Justice Order.
- (3) A person who seeks the electronic public notice investigation carried out by the Minister of Justice pursuant to the provisions of paragraph (1) must pay a fee to the amount specified by Cabinet Order by giving consideration to the actual cost.

#### (Reports and Inspections)

Article 958 (1) The Minister of Justice may, to the extent necessary for the enforcement of this Act, have an investigation body report on the status of the investigation body's business or accounting, or have officials of the Minister of Justice enter the office or place of business of an investigation body and inspect the status of the business or the books, documents or any other articles.

- (2) An official must, when conducting an on-site inspection pursuant to the provisions of the preceding paragraph, carry an identification card and present it to the person concerned.
- (3) The authority to conduct on-site inspections under paragraph (1) must not be construed as being vested for criminal investigation.

#### (Public Notice)

Article 959 In the following cases, the Minister of Justice must give public notice to that effect in Official Gazette:

- (i) when the minister completes a registration;
- (ii) when the minister confirms that a registration became ineffective pursuant to the provisions of Article 945, paragraph (1);
- (iii) when the notification referred to in Article 948 or Article 950 is given;
- (iv) when the minister rescinds a registration or orders the suspension of all or part of the business of electronic public notice investigation pursuant to the provisions of Article 954; or
- (v) when the Minister of Justice personally carries out all or part of the business of electronic public notice investigation pursuant to the provisions of Article 957, paragraph (1) or when the minister ceases to carry out all or part of the business of electronic public notice investigation that the minister had personally carried out.

### **Part VIII Penal Provisions**

(Crime of an Aggravated Breach of Trust by a Director)

Article 960 (1) When any one of the following persons, for the purpose of promoting the person's own interest or the interest of a third party or inflicting damage on a stock company, commits an act in breach of the person's duties and causes financial damages to relevant stock company, the person is punished by imprisonment for not more than ten years or a fine of not more than ten million yen, or both:

(i) an incorporator;

(ii) a director at incorporation or company auditor at incorporation;

(iii) a director, accounting advisor, company auditor or executive officer;

(iv) a person to perform duties on behalf of a director, company auditor or executive officer who has been appointed based on a provisional disposition order under the provisions of Article 56 of the Civil Provisional Remedies Act;

(v) a person who is temporarily to perform the duties of a director (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory committee member or other director), accounting advisor, company auditor, representative director, committee member (meaning a member of a nominating committee, audit committee, or remuneration committee), executive officer or representative executive officer appointed pursuant to the provisions of Article 346, paragraph (2), Article 351, paragraph (2) or Article 401, paragraph (3) (including the cases where it is applied mutatis mutandis pursuant to Article 403, paragraph (3) and Article 420, paragraph (3));

(vi) a manager;

(vii) an employee to whom the authority of a certain kind of matter or a specific matter concerning business has been delegated; or

(viii) an inspector.

(2) The provisions of the preceding paragraph also apply when any one of the following persons, for the purpose of promoting the person's own interest or the interest of a third party or inflicting damage on a liquidating stock company, commits an act in breach of the person's duties and causes financial damages to relevant liquidating stock company:

(i) a liquidator of the liquidating stock company;

(ii) a person to perform duties on behalf of a liquidator of the liquidating stock company who has been appointed based on a provisional disposition order under the provisions of Article 56 of the Civil Provisional Remedies Act;

(iii) a person who is temporarily to perform the duties of a liquidator or representative liquidator appointed pursuant to the provisions of Article 346, paragraph (2) as applied mutatis mutandis pursuant to Article 479,



paragraph (4) or Article 351, paragraph (2) as applied mutatis mutandis pursuant to Article 483, paragraph (6);

- (iv) a liquidator's agent;
- (v) a supervisor; or
- (vi) an investigator.

(Crime of an Aggravated Breach of Trust by a Representative Bondholder)

Article 961 When a representative bondholder or a resolution administrator (meaning the resolution administrator prescribed in Article 737, paragraph (2); the same applies hereinafter), for the purpose of promoting the person's own interest or the interest of a third party or inflicting damage on a bondholder, commits an act in breach of the person's duties and causes financial damages to the bondholder, the person is punished by imprisonment for not more than five years or a fine of not more than five million yen, or both.

(Attempted Crime)

Article 962 Attempts of the crimes referred to in the preceding two Articles are punished.

(Crimes That Put Company Property at Risk)

Article 963 (1) When the person set forth in Article 960, paragraph (1), item (i) or (ii) makes a false statement to or conceals facts from a court, an organizational meeting or an organizational meeting of class shareholders with regard to payment or delivery under the provisions of Article 34, paragraph (1) or Article 63, paragraph (1) or the matters set forth in the items of Article 28, the person is punished by imprisonment for not more than five years or a fine of not more than five million yen, or both.

(2) The provisions of the preceding paragraph also apply when any one of the persons set forth in Article 960, paragraph (1), items (iii) through (v) makes a false statement to or conceals facts from a court, a shareholders meeting or a general meeting of class shareholders with regard to the matters set forth in Article 199, paragraph (1), item (iii) or Article 236, paragraph (1), item (iii).

(3) The provisions of paragraph (1) also apply when an inspector makes a false statement to or conceals facts from a court with regard to the matters set forth in the items of Article 28, Article 199, paragraph (1), item (iii) or Article 236, paragraph (1), item (iii).

(4) The provisions of paragraph (1) also apply when a person elected pursuant to the provisions of Article 94, paragraph (1) makes a false statement to or conceals facts from an organizational meeting with regard to payment or delivery under the provisions of Article 34, paragraph (1) or Article 63, paragraph (1) or the matters set forth in the items of Article 28.

(5) The provisions of paragraph (1) also apply when any one of the persons set forth in Article 960, paragraph (1), items (iii) through (vii) falls under any one of the following items:

- (i) when the person, under any name, unlawfully acquires shares of a stock company on the account of the stock company;
- (ii) when the person pays dividends of surplus in violation of the provisions of laws and regulations or the articles of incorporation; or
- (iii) when the person disposes of a stock company's property for the purpose of speculative trading outside the scope of the purpose of the stock company.

(Crime of Use of False Documents)

Article 964 (1) When any one of the following persons, in soliciting subscribers for shares, share options, bonds or bonds with share options, uses materials providing explanations about the business of the company or any other matters, advertisements for relevant solicitation or any other documents concerning relevant solicitation that contain false statements with regard to important matters or, if an electronic or magnetic record has been prepared in lieu of relevant documents, uses an electronic or magnetic record that contains a false records with regard to important matters for the administration of relevant solicitation, the person is punished by imprisonment for not more than five years or a fine of not more than five million yen, or both:

- (i) any one of the persons set forth in Article 960, paragraph (1), items (i) through (vii);
  - (ii) a member who executes the business of a membership company;
  - (iii) a person to perform duties on behalf of a member who executes the business of a membership company, who has been appointed based on a provisional disposition order under the provisions of Article 56 of the Civil Provisional Remedies Act; or
  - (iv) a person to whom solicitation of subscribers for shares, share options, bonds or bonds with share options has been entrusted.
- (2) The provisions of the preceding paragraph also apply when a person who carries out the secondary distribution of shares, share options, bonds or bonds with share options uses documents concerning the secondary distribution that contain false statements with regard to important matters or, if an electronic or magnetic record has been prepared in lieu of relevant documents, uses an electronic or magnetic record that contains a false record with regard to important matters for the administration of the secondary distribution.

(Crime of Falsifying Payments in Collusion with Officers and Employees of Institutions That Handle Payments)

Article 965 When any one of the persons set forth in Article 960, paragraph (1),

items (i) through (vii) colludes with officers and employees of an institution that handles payments for the purpose of falsifying payments for a share issue, the person is punished by imprisonment for not more than five years or a fine of not more than five million yen, or both. The same applies to any institution that participates in the collusion.

(Crime of Excessive Issue of Shares)

Article 966 When any one of the following persons issues shares exceeding the total number of shares that may be issued by a stock company, the person is punished by imprisonment for not more than five years or a fine of not more than five million yen:

- (i) an incorporator;
- (ii) a director at incorporation or executive officer at incorporation;
- (iii) a director or executive officer or a liquidator of a liquidating stock company;
- (iv) a person to perform duties on behalf of a director or executive officer or a liquidator of a liquidating stock company who has been appointed based on a provisional disposition order under the provisions of Article 56 of the Civil Provisional Remedies Act; or
- (v) a person who is temporarily to perform the duties of a director (in cases of a company with audit and supervisory committee, a director who is an audit and supervisory committee member or other director), an executive officer or a liquidator of a liquidating stock company appointed pursuant to the provisions of Article 346, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 479, paragraph (4)) or Article 401, paragraph (3) as applied mutatis mutandis pursuant to Article 403, paragraph (3).

(Crime of the Giving or Acceptance of a Bribe by a Director)

Article 967 (1) When any one of the following persons accepts, solicits or promises to accept property benefits in connection with the person's duties, in response to a wrongful request, the person is punished by imprisonment for not more than five years or a fine of not more than five million yen:

- (i) any one of the persons set forth in the items of Article 960, paragraph (1) or the items of Article 960, paragraph (2);
  - (ii) the person prescribed in Article 961; or
  - (iii) financial auditor or a person who is temporarily to perform the duties of a financial auditor appointed pursuant to the provisions of Article 346, paragraph (4).
- (2) A person who has given, offered or promised to give the benefits referred to in the preceding paragraph is punished by imprisonment for not more than three

years or a fine of not more than three million yen.

(Crime of the Giving or Acceptance of a Bribe in Relation to Exercise of a Right of a Shareholder)

Article 968 (1) A person who has accepted, solicited or promised to accept property benefits in relation to any one of the following matters, in response to a wrongful request, is punished by imprisonment for not more than five years or a fine of not more than five million yen:

- (i) statement of opinions or exercise of a voting right at a shareholders meeting, general meeting of class shareholders, organizational meeting or organizational meeting of class shareholders, bondholders meeting or creditors meeting;
  - (ii) exercise of the right of a shareholder prescribed in Article 210 or Article 247, Article 297, paragraph (1) or (4), Article 303, paragraph (1) or (2), Article 304, Article 305, paragraph (1) or Article 306, paragraph (1) or (2) (including the cases where these provisions are applied mutatis mutandis pursuant to Article 325), Article 358, paragraph (1), Article 360, paragraph (1) or (2) (including the cases where these provisions are applied mutatis mutandis pursuant to Article 482, paragraph (4)), Article 422, paragraph (1) or (2), Article 426, paragraph (7), Article 433, paragraph (1) or Article 479, paragraph (2), exercise of the right of a shareholder or creditor prescribed in Article 511, paragraph (1) or Article 522, paragraph (1) or exercise of the right of a creditor prescribed in Article 547, paragraph (1) or (3);
  - (iii) exercise of a right of a bondholder whose bonds are less than one-tenth of the total amount of bonds (excluding bonds that have been redeemed);
  - (iv) filing of the action prescribed in Article 828, paragraph (1), Articles 829 through 831, Article 833, paragraph (1), Article 847, paragraph (3) or (5), Article 847-2, paragraph (6) or (8), Article 847-3, paragraph (7) or (9), Article 853, Article 854 or Article 858 (limited to one filed by a shareholder, etc. (meaning a shareholder, etc. as prescribed in Article 847-4, paragraph (2); the same applies in the following item), or creditor of a stock company or a person holding share options or bonds with share options of a stock company); or
  - (v) intervention of a shareholder, etc. in a suit under the provisions of Article 849, paragraph (1).
- (2) The provisions of the preceding paragraph also apply to a person who has given, offered or promised to give the benefits referred to in that paragraph.

(Confiscation and Collection of Equivalent Value)

Article 969 In the cases referred to in Article 967, paragraph (1) or paragraph (1) of the preceding Article, the benefits accepted by the offender are

confiscated. When it is not possible to confiscate all or part of the benefits, an equivalent value thereof is collected.

(Crime of the Giving of Benefits in Relation to Exercise of a Right of a Shareholder)

- Article 970 (1) When any one of the persons set forth in Article 960, paragraph (1), items (iii) through (vi) or any other employee of a stock company gives property benefits on the account of the stock company or its subsidiary company in relation to the exercise of a right of a shareholder, right of a qualified former shareholder of the stock company (meaning a qualified former shareholder as prescribed in Article 847-2, paragraph (9); the same applies in paragraph (3)), or right of a shareholder of an ultimate, wholly owning parent company, etc. of the stock company (meaning an ultimate, wholly owning parent company, etc. prescribed in Article 847-3, paragraph (1); the same applies in paragraph (3)), the person is punished by imprisonment for not more than three years or a fine of not more than three million yen.
- (2) The provisions of the preceding paragraph also apply to a person who has, knowingly, received the benefits referred to in that paragraph or caused the benefits to be given to a third party.
- (3) The provisions of paragraph (1) also apply to a person who has requested the person prescribed in that paragraph to give to the relevant person who has requested or a third party the benefits referred to in that paragraph on the account of a stock company or its subsidiary company in relation to the exercise of a right of a shareholder, right of a qualified former shareholder of the stock company, or right as a shareholder in the ultimate, wholly owning parent company, etc. of the stock company.
- (4) When a person who has committed either of the crimes referred to in the preceding two paragraphs intimidates the person prescribed in paragraph (1) with regard to committing the crime, the former person is punished by imprisonment for not more than five years or a fine of not more than five million yen.
- (5) A person who has committed any one of the crimes referred to in the preceding three paragraphs may be punished by cumulative imposition of both imprisonment and a fine in light of the circumstances.
- (6) When a person who has committed the crime referred to in paragraph (1) surrenders, the punishment may be reduced or the person may be exempted from punishment.

(Crime Committed Outside Japan)

Article 971 (1) The crimes referred to in Articles 960 through 963, Article 965, Article 966, Article 967, paragraph (1), Article 968, paragraph (1) and

paragraph (1) of the preceding Article also apply to persons who committed these crimes outside Japan.

(2) The crimes referred to in Article 967, paragraph (2), Article 968, paragraph (2) and paragraphs (2) through (4) of the preceding Article are governed by Article 2 of the Penal Code (Act No. 45 of 1907).

(Application of Penal Provisions to Corporations)

Article 972 When the person prescribed in Article 960, Article 961, Articles 963 through 966, Article 967, paragraph (1) or Article 970, paragraph (1) is a corporation, these provisions and the provisions of Article 962 apply respectively to the director, executive officer or any other officer executing business, or the manager who has committed the act.

(Crime of Violation of an Order to Suspend Business)

Article 973 A person who has violated an order to suspend all or part of the business of electronic public notice investigation (meaning the electronic public notice investigation prescribed in Article 942, paragraph (1); the same applies hereinafter) under the provisions of Article 954 is punished by imprisonment for not more than one year or a fine of not more than one million yen, or both.

(Crime of False Notification)

Article 974 A person who falls under any one of the following items is punished by a fine of not more than three hundred thousand yen:

- (i) a person who has failed to give notification under the provisions of Article 950 or has given false notification;
- (ii) a person who, in violation of the provisions of Article 955, paragraph (1), has failed to state or record in an investigation record book, etc. (meaning the investigation record book, etc. prescribed in that paragraph; hereinafter the same applies in this item) the matters prescribed by Ministry of Justice Order concerning electronic public notice investigations prescribed in that paragraph, or has stated or recorded false matters, or who, in violation of the provisions of that paragraph or Article 956, paragraph (2), has failed to preserve an investigation record book, etc.; or
- (iii) a person who has failed to make a report under the provisions of Article 958, paragraph (1) or has made a false report, or who has refused, obstructed or avoided an inspection under the provisions of that paragraph.

(Dual Liability)

Article 975 When the representative of a corporation, or an agent, employee or other worker of a corporation or individual commits any one of the violations referred to in the preceding two Articles with regard to the business of the

corporation or individual, not only the offender is punished but also the corporation or individual is punished by the fine prescribed in the respective Articles.

(Acts to Be Punished by a Civil Fine)

Article 976 When an incorporator, director at incorporation, company auditor at incorporation, executive officer at incorporation, director, accounting advisor or member who is to perform the duties thereof, company auditor, executive officer, financial auditor or member who is to perform the duties thereof, liquidator, liquidator's agent, member who executes the business of a membership company, person to perform duties on behalf of a director, company auditor, executive officer, liquidator or member who executes the business of a membership company who has been appointed based on a provisional disposition order under the provisions of Article 56 of the Civil Provisional Remedies Act, person who is temporarily to perform the duties of a director, accounting advisor, company auditor, representative director, committee member, executive officer or representative executive officer prescribed in Article 960, paragraph (1), item (v), person who is temporarily to perform the duties of a liquidator or representative liquidator prescribed in paragraph (2), item (iii) of that Article, person who is temporarily to perform the duties of a financial auditor prescribed in Article 967, paragraph (1), item (iii), inspector, supervisor, investigator, shareholder register administrator, bond register administrator, bond administrator, bond administrator to succeed to the administration of the bonds, assistant bond administrator, assistant bond administrator to succeed to the administration of the bonds, representative bondholder, resolution administrator, foreign company's representative in Japan or manager falls under any one of the following items, the person is punished by a civil fine of not more than one million yen; provided, however, that this does not apply when the act should be made subject to a criminal punishment:

- (i) when the person fails to complete a registration under the provisions of this Act;
- (ii) when the person fails to give public notice or notice under the provisions of this Act or has given improper public notice or notice;
- (iii) when the person fails to disclose matters under the provisions of this Act;
- (iv) when, in violation of the provisions of this Act, the person refuses to allow a person to inspect or copy a document or something on which the information recorded in an electronic or magnetic record is displayed in a manner prescribed by Ministry of Justice Order, refuses to issue a transcript or extract of documents, refuses to use an electronic or magnetic means to provide a person with the information recorded in an electronic or magnetic

- record, or refuses to issue a person a document showing that information, without justifiable grounds for the refusal;
- (v) when the person obstructs an inspection under the provisions of this Act;
- (vi) when the person makes a false statement to or conceals facts from a government agency, shareholders meeting, general meeting of class shareholders, organizational meeting or organizational meeting of class shareholders, bondholders meeting or creditors meeting;
- (vii) when the person fails to state or record matters to be stated or recorded in the articles of incorporation, shareholder register, lost share certificates register, share option register, bond register, minutes, inventory of property, accounting books, balance sheet, profit and loss statement, business report, administration report, annexed detailed statements referred to in Article 435, paragraph (2) or Article 494, paragraph (1), accounting advisor's report, audit report, financial audit report, settlement of accounts, or the documents or an electronic or magnetic record referred to in Article 122, paragraph (1), Article 149, paragraph (1), Article 171-2, paragraph (1), Article 173-2, paragraph (1), Article 179-5, paragraph (1), Article 179-10, paragraph (1), Article 182-2, paragraph (1), Article 182-6, paragraph (1), Article 250, paragraph (1), Article 270, paragraph (1), Article 682, paragraph (1), Article 695, paragraph (1), Article 782, paragraph (1), Article 791, paragraph (1), Article 794, paragraph (1), Article 801, paragraph (1) or (2), Article 803, paragraph (1), Article 811, paragraph (1), Article 815, paragraph (1) or (2), Article 816-2, paragraph (1) or Article 816-10, paragraph (1) or states or records false matters;
- (viii) when the person fails to keep books, documents or electronic or magnetic records in violation of the provisions of Article 31, paragraph (1) or the provisions of Article 74, paragraph (6), Article 75, paragraph (3), Article 76, paragraph (4), Article 81, paragraph (2) or Article 82, paragraph (2) (including the cases where these provisions are applied *mutatis mutandis* pursuant to Article 86), Article 125, paragraph (1), Article 171-2, paragraph (1), Article 173-2, paragraph (2), Article 179-5, paragraph (1), Article 179-10, paragraph (2), Article 182-2, paragraph (1), Article 182-6, paragraph (2), Article 231, paragraph (1) or Article 252, paragraph (1), Article 310, paragraph (6), Article 311, paragraph (3), Article 312, paragraph (4), Article 318, paragraph (2) or (3) or Article 319, paragraph (2) (including the cases where these provisions are applied *mutatis mutandis* pursuant to Article 325), Article 371, paragraph (1) (including the cases where these provisions are applied *mutatis mutandis* pursuant to Article 490, paragraph (5)), Article 378, paragraph (1), Article 394, paragraph (1), Article 399-11, paragraph (1), Article 413, paragraph (1), Article 442, paragraph (1) or (2), Article 496, paragraph (1), Article 684, paragraph (1), Article 731, paragraph (2), Article



- 782, paragraph (1), Article 791, paragraph (2), Article 794, paragraph (1), Article 801, paragraph (3), Article 803, paragraph (1), Article 811, paragraph (2) Article 815, paragraph (3), Article 816-2, paragraph (1) or Article 816-10, paragraph (2);
- (ix) when the person fails to provide an explanation about the matters for which an explanation was sought by shareholders or shareholders at incorporation at a shareholders meeting, general meeting of class shareholders, organizational meeting or organizational meeting of class shareholders, without justifiable grounds;
  - (x) when the person acquires shares in violation of the provisions of Article 135, paragraph (1) or fails to dispose of shares in violation of the provisions of paragraph (3) of that Article;
  - (xi) when the person cancels shares in violation of the provisions of Article 178, paragraph (1) or (2);
  - (xii) when the person sells shares by auction or by any other method in violation of the provisions of Article 197, paragraph (1) or (2);
  - (xiii) when the person issues share certificates, share option certificates or bond certificates prior to the day of issue of the shares, share options or bonds;
  - (xiv) when the person fails to issue share certificates, share option certificates or bond certificates without delay in violation of the provisions of Article 215, paragraph (1), Article 288, paragraph (1) or Article 696;
  - (xv) when the person fails to state matters to be stated in share certificates, share option certificates or bond certificates or states false matters;
  - (xvi) when the person fails to cancel a registration of lost share certificate in violation of the provisions of Article 225, paragraph (4), Article 226, paragraph (2), Article 227 or Article 229, paragraph (2);
  - (xvii) when the person states or records matters in a shareholder register in violation of the provisions of Article 230, paragraph (1);
  - (xviii) when the person fails to call a shareholders meeting in violation of the provisions of Article 296, paragraph (1) or a court order under the provisions of Article 307, paragraph (1), item (i) (including the cases where it is applied *mutatis mutandis* pursuant to Article 325) or Article 359, paragraph (1), item (i);
  - (xviii)-2 when, if a demand under the provisions of Article 303, paragraph (1) or (2) (including the cases where they are applied *mutatis mutandis* pursuant to Article 325) has been filed, the person fails to include the matter related to that demand in the purpose of the shareholders meeting or general meeting of class shareholders;
  - (xix) when measures for electronic provision are not taken in violation of the provisions of Article 325-3, paragraph (1) (including the cases where it is

- applied mutatis mutandis pursuant to Article 325-7);
- (xix)-2 when outside directors are not appointed in violation of the provisions of Article 327-2;
  - (xix)-3 in violation of the provisions of Article 331, paragraph (6), when outside directors are not elected to fulfill the majority of directors who are audit and supervisory committee members;
  - (xx) when the person fails to elect enough outside company auditors to constitute half or more of the company auditors in violation of the provisions of Article 335, paragraph (3);
  - (xxi) when, if a request under the provisions of Article 343, paragraph (2) (including as applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (2)) or Article 344-2, paragraph (2) (including as applied following the deemed replacement of terms pursuant to the provisions of Article 347, paragraph (1)) has been filed, the person fails to include the matter related to the request in the purpose of a shareholders meeting or general meeting of class shareholders or fails to submit the proposal related to relevant request to a shareholders meeting or general meeting of class shareholders;
  - (xxii) when, if there is a shortfall in the number of directors (in cases of a company with audit and supervisory committee, directors who are audit and supervisory committee members or other directors), accounting advisors, company auditors, executive officers or financial auditors prescribed in this Act or the articles of incorporation, the person fails to carry out the procedures for electing a person to assume the position (including the appointment of a person who is temporarily to perform the duties of a financial auditor);
  - (xxiii) when the person fails to make a report to a board of directors or board of liquidators or makes a false report in violation of the provisions of Article 365, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to Article 419, paragraph (2) and Article 489, paragraph (8)) or Article 430-2, paragraph (4) (including the cases where it is applied mutatis mutandis pursuant to paragraph (5) of the Article);
  - (xxiv) when the person fails to select a full-time company auditor in violation of the provisions of Article 390, paragraph (3);
  - (xxv) when the person fails to record capital reserves or reserves in violation of the provisions of Article 445, paragraph (3) or (4) or reduces the amount of reserves in violation of the provisions of Article 448;
  - (xxvi) when the person reduces the amount of stated capital or reserves, refunds equity interest, disposes of property of a membership company, effects an entity conversion, absorption-type merger, consolidation-type merger, absorption-type company split, incorporation-type company split,

- share exchange share transfer, or partial share exchange or effects the resignation of all of a foreign company's representatives in Japan in violation of the provisions of Article 449, paragraph (2) or (5), Article 627, paragraph (2) or (5), Article 635, paragraph (2) or (5), Article 670, paragraph (2) or (5), Article 779, paragraph (2) or (5) (including the cases where they are applied mutatis mutandis pursuant to Article 781, paragraph (2)), Article 789, paragraph (2) or (5) (including the cases where they are applied mutatis mutandis pursuant to Article 793, paragraph (2)), Article 799, paragraph (2) or (5) (including the cases where they are applied mutatis mutandis pursuant to Article 802, paragraph (2)), Article 810, paragraph (2) or (5) (including the cases where they are applied mutatis mutandis pursuant to Article 813, paragraph (2)), Article 816-8, paragraph (2) or paragraph (5), or Article 820, paragraph (1) or (2);
- (xxvii) when the person fails to file a petition for the commencement of bankruptcy proceedings in violation of the provisions of Article 484, paragraph (1) or Article 656, paragraph (1) or fails to file a petition for the commencement of special liquidation in violation of the provisions of Article 511, paragraph (2);
- (xxviii) when the person inappropriately prescribes the period referred to in Article 499, paragraph (1), Article 660, paragraph (1) or Article 670, paragraph (2) for the purpose of delaying the completion of liquidation;
- (xxix) when the person performs obligations in violation of the provisions of Article 500, paragraph (1), Article 537, paragraph (1) or Article 661, paragraph (1);
- (xxx) when the person distributes property of a liquidating stock company or liquidating membership company in violation of the provisions of Article 502 or Article 664;
- (xxxi) when the person violates the provisions of Article 535, paragraph (1) or Article 536, paragraph (1);
- (xxxii) when the person violates a provisional order under the provisions of Article 540, paragraph (1) or (2) or Article 542, paragraph (1) or (2);
- (xxxiii) when the person issues bonds in violation of the provisions of Article 702 or fails to specify a bond administrator or assistant bond administrator to succeed to the administration of the bonds in violation of the provisions of Article 714, paragraph (1) (including the cases where it is applied mutatis mutandis pursuant to Article 714-7);
- (xxxiv) when the person violates a court order under the provisions of Article 827, paragraph (1); or
- (xxxv) when the person fails to request an electronic public notice investigation in violation of the provisions of Article 941.

Article 977 A person who falls under any one of the following items is punished by a civil fine of not more than one million yen:

- (i) a person who fails to make a report or makes a false report in violation of the provisions of Article 946, paragraph (3);
- (ii) a person who, in violation of the provisions of Article 951, paragraph (1), fails to keep financial statements, etc. (meaning the financial statements, etc. prescribed in that paragraph; the same applies hereinafter) or fails to state or record matters to be stated or recorded in financial statements, etc. or states or records false matters; or
- (iii) a person who refuses any one of the requests set forth in the items of Article 951, paragraph (2) or the items of Article 955, paragraph (2) without justifiable grounds.

Article 978 A person who falls under any one of the following items is punished by a civil fine of not more than one million yen:

- (i) a company that uses in its trade name any word which makes it likely that the company may be mistaken for a different form of company in violation of the provisions of Article 6, paragraph (3);
- (ii) a person who uses in that person's own name or trade name any word which makes it likely that the person may be mistaken for a company in violation of the provisions of Article 7; or
- (iii) a person who uses any name or trade name which makes it likely that the person may be mistaken for another company (including a foreign company).

Article 979 (1) A person who engages in business by using the name of a company prior to the formation of relevant company is punished by a civil fine of an amount equivalent to the registration and license tax for the incorporation of the company.

(2) The provisions of the preceding paragraph also apply to a person who carries out a transaction in violation of the provisions of Article 818, paragraph (1) or Article 821, paragraph (1).