

# Secured Bond Trust Act

(Act No. 52 of March 13, 1905)

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## Chapter I General Provisions

(Definitions)

Article 1 The term "trust company" as used in this Act means a company that has obtained a license from the Prime Minister referred to in Article 3.

(Trust Agreements)

Article 2 (1) A company that seeks to secure bonds must comply with a trust agreement between the party holding the property to be offered as collateral and the trust company (simply referred to below as a "trust agreement"). In this case, if the party holding the property to be offered as collateral is not the company that is to issue bonds or that has issued bonds (collectively referred to below as the "issuing company"), the trust agreement does not become effective without the consent of the issuing company.

(2) In the case referred to in the preceding paragraph, the trust company must perform the administration of bonds on behalf of bondholders.

(3) In the case referred to in paragraph (1), the provisions of Article 702 of the Companies Act (Act No. 86 of 2005) do not apply.

(Licenses)

Article 3 No company may engage in trust business for secured bonds unless it obtains a license from the Prime Minister.

Article 4 A financial institution that has obtained authorization referred to in Article 1, paragraph (1) of the Act on Engagement in Trust Business by Financial Institutions (Act No. 43 of 1943; referred to below as the "Act on Trust Business by Financial Institutions") (limited to those that engage in the entrusted business of administration of bonds and the trust business related to security interest) or a person that has obtained a license referred to in Article 3 or Article 53, paragraph (1) of the Trust Business Act (Act No. 154 of 2004) is deemed to have obtained a license referred to in the preceding Article.

(Scope of Business)

Article 5 In addition to trust business for secured bonds, a trust company may engage in the following business:

- (i) the business of a bank as prescribed in Articles 10 and 11 of the Banking Act (Act No. 59 of 1981), and the business of a bank as prescribed in Article 12 of that Act (limited to business that a bank engages in pursuant to other laws prescribed in that Article);
- (ii) the business of a long-term credit bank as prescribed in Article 6 of the Long-Term Credit Bank Act (Act No. 187 of 1952) and the business of a long-term credit bank as prescribed in Article 6-2 of that Act (limited to business that a long-term credit bank engages in pursuant to other laws prescribed in that Article);
- (iii) the business of the Shoko Chukin Bank, Ltd. as prescribed in Article 21 (excluding paragraph (2) and paragraph (4), item (x)) of the Shoko Chukin Bank Limited Act (Act No. 74 of 2007);
- (iv) the business of Norinchukin Bank as prescribed in Article 54 (excluding paragraph (4), item (ix)) of the Norinchukin Bank Act (Act No. 93 of 2001);
- (v) the business of a credit cooperative as prescribed in Article 9-8 (excluding paragraph (7), item (vi)) of the Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949) or the business of a federation of cooperatives as prescribed in Article 9-9 of that Act (excluding the business stated in paragraph (6), item (xi) of that Article (limited to the business stated in Article 9-8, paragraph (7), item (vi) of that Act));
- (vi) the business of a shinkin bank as prescribed in Article 53 (excluding paragraph (6), item (vi)) of the Shinkin Bank Act (Act No. 238 of 1951) or the business of a federation of shinkin banks as prescribed in Article 54 (excluding paragraph (5), item (vi)) of that Act;
- (vii) the business of the Rokinren Bank as prescribed in Article 58-2 (excluding paragraph (3), item (vi)) of the Labor Bank Act (Act No. 227 of 1953);
- (viii) the business of an agricultural cooperative or a federation of agricultural cooperatives as prescribed in Article 10 (excluding paragraph (7), item (vi)) of the Agricultural Cooperatives Act (Act No. 132 of 1947);

- (ix) the business of an insurance company as prescribed in Article 97, Article 98, Article 99 (excluding paragraph (2), item (ii)), and Article 100 of the Insurance Business Act (Act No. 105 of 1995), or the business of a foreign insurance company, etc. as prescribed in Article 97, Article 98, Article 99, paragraph (1), paragraph (2) (excluding item (ii)), and paragraphs (4) through (6), and Article 100 of that Act as applied mutatis mutandis pursuant to Article 199 of that Act;
- (x) the business of a financial institution engaged in trust business as prescribed in Article 1, paragraph (1) of the Act on Trust Business by Financial Institutions;
- (xi) the business of a trust company as prescribed in Article 21, paragraph (1) of the Trust Business Act; and
- (xii) beyond what is stated in the preceding items, business specified by Cabinet Order.

(Amount of Stated Capital)

Article 6 The amount of stated capital or total amount of contribution of trust companies must not be less than 10 million yen.

(Paid-In Amount of Contribution)

Article 7 If a trust company is a general partnership company or limited partnership company, it must not start conducting trust business for secured bonds until the paid-in amount of contribution reaches five million yen.

(Application, Mutatis Mutandis of the Trust Business Act)

Article 8 The provisions of Article 15, Articles 22 through 24, Article 28, paragraph (3), and Article 29 of the Trust Business Act apply mutatis mutandis if a trust company (excluding a person that is deemed to have obtained a license referred to in Article 3 pursuant to the provisions of Article 4 and a person that is registered as referred to in Article 7, paragraph (1) or Article 54, paragraph (1) of that Act) engages in trust business for secured bonds.

(Supervision of Trust Companies)

Article 9 Trust business for secured bonds that a trust company engages in is subject to supervision by the Prime Minister.

(On-Site Inspections)

Article 10 (1) When finding it necessary to ensure the sound and appropriate management of the trust business of a trust company, the Prime Minister may order the trust company to submit reports or materials that should serve as a

reference in connection with the business or property of the trust company, or may have relevant officials enter the business offices and other facilities of the trust company, and ask questions concerning the status of its business or property, or inspect books, documents, and any other articles.

- (2) Officials who conduct on-site inspections pursuant to the provisions of the preceding paragraph must carry their identification cards and present them when requested by a person concerned.
- (3) The authority to conduct an on-site inspection under paragraph (1) must not be construed as being granted for criminal investigation purposes.

#### (Suspension of Business)

Article 11 When finding it necessary to ensure the sound and appropriate management of the trust business of a trust company in light of the status of the business or property of the trust company, the Prime Minister may, to the extent necessary, order the trust company to suspend all or part of its business by setting a deadline, to change how it executes its business, or take other measures necessary for supervision.

#### (Revocation of Licenses)

Article 12 If a trust company violates laws and regulations, a disposition rendered by the Prime Minister based on its article of incorporation or laws and regulations, or performs an act that harms the public interest, the Prime Minister may order the trust company to suspend all or part of its business or to dismiss its director, executive officer, or company auditor, or may revoke the license referred to in Article 3.

#### (Dissolution as a Result of Revocation of License)

Article 13 A trust company that exclusively engages in trust business for secured bonds (referred to as a "trust company specializing in secured bonds" in the following Article through Article 16) is to be dissolved if its license is revoked under the preceding Article.

Article 14 If a trust company specializing in secured bonds is dissolved pursuant to the provisions of the preceding Article, the Prime Minister appoints a liquidator upon the petition of an interested person or by its own authority.

#### (Appointment and Dismissal of Liquidators)

Article 15 (1) The Prime Minister appoints or dismisses a liquidator prescribed in Article 478, paragraphs (2) through (4), Article 479, paragraph (2), Article 647, paragraphs (2) through (4), or Article 648, paragraph (3) of the Companies Act regarding a trust company specializing in secured bonds.

- (2) A petition under Article 479, paragraph (2) of the Companies Act may be filed by the settlor, the issuing company, or a bondholders meeting (meaning a bondholders meeting regarding secured bonds; the same applies below).

(Supervision of Liquidation)

Article 16 (1) The liquidation of a trust company specializing in secured bonds is subject to supervision by the Prime Minister.

- (2) When finding it necessary for the supervision referred to in the preceding paragraph, the Prime Minister may have relevant officials enter the business offices and other facilities of a trust company specializing in secured bonds, and ask questions concerning the status of its business or property, or inspect books, documents, and any other articles.
- (3) The provisions of Article 10, paragraphs (2) and (3) apply mutatis mutandis to an on-site inspection under the preceding paragraph.

(Foreign Companies)

Article 17 (1) If a company seeks to issue secured bonds in a foreign country, the person holding the property to be offered as collateral may conclude a trust agreement with a foreign company, with permission from the Prime Minister.

- (2) If a foreign company that has accepted a trust pursuant to the provisions of the preceding paragraph does not have a branch office in Japan, it must designate a representative in Japan.
- (3) A corporation may become the representative in Japan referred to in the preceding paragraph.
- (4) If a foreign company designates a representative in Japan pursuant to the provisions of paragraph (2), it must notify the Prime Minister of the name and address of the representative without delay.
- (5) Regarding trust affairs, a foreign company's representative in Japan has the same authority as that of a trust company's director or executive officer, or a member who represents the trust company.

## **Chapter II Deeds of Trust**

(Form of Trust Agreements)

Article 18 (1) Trust agreements do not become effective unless executed in the form of a deed of trust.

- (2) A deed of trust may be prepared in the form of electronic or magnetic records (meaning records specified by Cabinet Office Order and Ministry of Justice Order as those to be used in computerized information processing, prepared in an electronic form or a magnetic form, or any other form that cannot be perceived by the human senses; the same applies below).

(Information Required to Be Stated or Recorded in a Deed of Trust)

Article 19 (1) The following information must be stated or recorded in a deed of trust:

- (i) the names of the settlor, the trustee company, and the issuing company;
  - (ii) the total amount of secured bonds;
  - (iii) the amount of each secured bond;
  - (iv) the interest rate for the secured bonds;
  - (v) the method and due date of redemption of secured bonds;
  - (vi) the method and due date of payment of interest;
  - (vii) in the case of issuing secured bond certificates (meaning bond certificates of secured bonds; the same applies below), a statement to that effect;
  - (viii) in the case prescribed in the preceding item, the information required to be stated in a secured bond certificate;
  - (ix) in the case prescribed in item (vii), if coupons are attached to secured bond certificates, a statement to that effect;
  - (x) if it is decided that bondholders may not make a demand under Article 698 of the Companies Act in whole or in part, a statement to that effect;
  - (xi) if it is decided that the trustee company may carry out the acts stated in Article 706, paragraph (1), item (ii) of the Companies Act without a resolution adopted at a bondholders meeting, a statement to that effect;
  - (xii) if the issuing company solicits subscribers for secured bonds, the amount to be paid in for each secured bond (meaning the amount of money to be paid in, in exchange for each secured bond) or its minimum amount, or the method for calculating those amounts;
  - (xiii) the type of collateral, the property to be offered as collateral, the order of priority of the security interest, the amount of claims secured by the security interest held by the security interest holder having a higher priority order, and any right that can be asserted against the security interest holder regarding the property to be offered as collateral;
  - (xiv) the date of preparation of a deed of trust; and
  - (xv) beyond what is stated in the preceding items, information specified by Cabinet Office Order and Ministry of Justice Order.
- (2) If a deed of trust is prepared in writing, the settlor (if the settlor is a corporation, its representative) and the representative of the trustee company must sign the document or affix their names and seals to the document.
- (3) If a deed of trust is prepared in the form of electronic or magnetic records, the settlor (if the settlor is a corporation, its representative) and the representative of the trustee company must take measures in lieu of signing of their names or affixing of their names and seals specified by Cabinet Office Order and Ministry of Justice Order.

(Keeping and Inspection of Deeds of Trust)

Article 20 (1) The settlor and the trustee company must each keep a deed of trust at the domicile of the settlor (if the settlor is a corporation, its head office or principal office) and the head office of the trustee company during the period from the date of preparation of the deed of trust until the date of completion of trust affairs.

- (2) A bondholder or a prospective subscriber for secured bonds, an obligee of the settlor, or if the settlor is a corporation, a shareholder or its member, may make the following requests at any time during the hours specified by the settlor (if the settlor is a corporation, its operating hours or business hours) or during the operating hours of the trustee company; provided, however, that to make the request stated in item (ii) or item (iv), the requestor must pay the expenses specified by the settlor or the trustee company:
- (i) if the deed of trust is prepared in writing, a request for inspection of the document;
  - (ii) a request for delivery of a transcript or an extract of the document referred to in the preceding item;
  - (iii) if the deed of trust is prepared in the form of electronic or magnetic records, a request for inspection of a thing displaying the information recorded in the electronic or magnetic records by the means specified by Cabinet Office Order and Ministry of Justice Order; and
  - (iv) a request for provision of the information recorded in the electronic or magnetic records referred to in the preceding item using electronic or magnetic means (meaning a means of using information and communication technology specified by Cabinet Office Order and Ministry of Justice Order, such as a means using an electronic data processing system; the same applies below except in Article 59) specified by the settlor or the trustee company, or for delivery of a document stating the information.

(Information Required to Be Stated or Recorded in Deeds of Trust in Cases of Issue in Installments)

Article 21 (1) In the case of issuing the total amount of secured bonds in installments, the following information must be stated or recorded in a deed of trust in lieu of the information stated in Article 19, paragraph (1), items (iii) through (xii):

- (i) a statement to the effect that the total amount of secured bonds is to be issued in installments; and
  - (ii) the maximum limit of the interest rate for the secured bonds.
- (2) In the case prescribed in the preceding paragraph, the settlor and the trustee company must make an additional entry of the following information in the

deed of trust referred to in that paragraph regarding each installment of the secured bonds to be issued, by the time of issuance of each installment of secured bonds:

- (i) the total amount of secured bonds to be issued in that installment;
- (ii) the information stated in Article 19, paragraph (1), items (iii) through (xii) regarding the secured bonds referred to in the preceding item; and
- (iii) if any of the information stated in the preceding items is added after the date of preparation of the deed of trust, the day on which the additional entry has been made.

(Deadline for Issue in Installments)

Article 22 If the total amount of secured bonds is issued in installments, the last installment of secured bonds must be issued within five years from the date of preparation of the relevant deed of trust.

(Reduction in the Total Amount of Secured Bonds in Cases of Issue in Installments)

Article 23 (1) If the total amount of secured bonds is issued in installments, the settlor may request the trustee company to reduce the total amount of secured bonds to be issued, if there are reasonable grounds for the reduction; provided, however, that the total amount of secured bonds after the reduction may not be less than the total amount of secured bonds already issued.

(2) If a reduction is made as referred to in the preceding paragraph, the settlor and the trustee company must make an additional entry of the following information in the deed of trust referred to in Article 21, paragraph (1):

- (i) a statement to the effect that the reduction referred to in the preceding paragraph has been made, and the total amount of secured bonds after the reduction; and
- (ii) the day on which the information stated in the preceding item has been added.

(3) The settlor is liable to compensate the trustee company for damage incurred due to the reduction referred to in paragraph (1).

### **Chapter III Solicitation of Subscribers for Secured Bonds**

(Application for Secured Bonds)

Article 24 (1) If the issuing company seeks to solicit subscribers for secured bonds, it must give notice to persons who seek to apply for subscription for secured bonds in response to the solicitation, regarding the following information in addition to the information stated in the items of Article 677, paragraph (1) of the Companies Act:



- (i) the names and addresses of the settlor and the trustee company;
  - (ii) a statement to the effect that the bonds to be issued are secured bonds;
  - (iii) information sufficient to identify the deed of trust;
  - (iv) the information stated in Article 19, paragraph (1), item (xi);
  - (v) an outline of the information stated in Article 19, paragraph (1), item (xiii) (limited to information that is necessary for notifying prospective applicants of the value of collateral);
  - (vi) the results of the investigation on the value of collateral conducted by the trustee company; and
  - (vii) the hours during which the request stated in the items of Article 20, paragraph (2) may be made, and the method of making the request stated in item (ii) or item (iv) of that paragraph.
- (2) Regarding the application of the provisions of the preceding paragraph when the issuing company seeks to solicit subscribers for secured bonds that are bonds with share options, the term "the items of Article 677, paragraph (1)" in that paragraph is deemed to be replaced with "the items of Article 242, paragraph (1)."

(Application for Secured Bonds in Case of Issue in Installments)

**Article 25** If the total amount of secured bonds is issued in installments, the issuing company must give notice to persons who seek to apply for subscription for secured bonds in response to the solicitation referred to in paragraph (1) of the preceding Article, the following information in addition to the information stated in the items of that paragraph:

- (i) a statement to the effect that the total amount of secured bonds is to be issued in installments; and
- (ii) the total amount of secured bonds already issued in each installment, the unredeemed amount of those bonds, the interest rate, and the due date of redemption of those bonds.

## **Chapter IV Secured Bond Certificates**

(Information to Be Stated in Secured Bond Certificates)

**Article 26** The following information must be stated in secured bond certificates, in addition to the information required to be stated pursuant to the provisions of Article 697, paragraph (1) of the Companies Act (the information required to be stated pursuant to the provisions of Article 292, paragraph (1) of that Act in the case of a secured bond certificate for a bond with share option):

- (i) the information stated in Article 24, paragraph (1), items (i) through (iv);  
and
- (ii) if the total amount of secured bonds is to be issued in installments, a

statement to that effect.

(Proof of Secured Bond Certificates)

Article 27 (1) When a secured bond certificate complies with the provisions of a trust agreement, the representative of the trustee company must state that fact in the secured bond certificate, and sign the certificate or affix their name and seal to the certificate.

(2) A secured bond certificate does not become effective unless the certificate includes the statement and the signature or has the name and seal affixed under the preceding paragraph.

## **Chapter V Bond Registers**

(Information to Be Stated or Recorded in Bond Registers of Secured Bonds)

Article 28 The issuing company must state or record in a bond register the following information in addition to the information stated in the items of Article 681 of the Companies Act, without delay after the date of issue of the secured bonds:

- (i) the information stated in Article 19, paragraph (1), item (xiii);
- (ii) the information stated in Article 24, paragraph (1), items (i) through (iv);
- and
- (iii) if the total amount of secured bonds is to be issued in installments, a statement to that effect.

(Submission of Copies of Bond Registers to Trustee Companies)

Article 29 The issuing company must submit or provide a copy of the bond register to the trustee company, pursuant to the provisions of Cabinet Office Order and Ministry of Justice Order.

(Keeping and Inspection of Copies of Bond Registers)

Article 30 (1) Trustee companies must keep a copy of the bond register referred to in the preceding Article at its head office during the period from the date of submission or provision of the copy under that Article until the date of completion of trust affairs.

(2) A bondholder may make the following requests at any time during the operating hours of the trustee company, and when doing so, must disclose the reasons for the request:

- (i) if the copy of the bond register referred to in the preceding Article is prepared in writing, a request for inspection or copying of the document; and
- (ii) if the copy of the bond register referred to in the preceding Article is prepared in the form of electronic or magnetic records, a request for

inspection or copying of a thing displaying the information recorded in the electronic or magnetic records by the means specified by Cabinet Office Order and Ministry of Justice Order.

- (3) A trustee company may not refuse a request referred to in the preceding paragraph, unless the request falls under any of the following cases:
- (i) the requesting bondholder has made the request for a purpose other than an investigation for securing or exercising their rights;
  - (ii) the requesting bondholder has made the request to report to a third party, for profit, any fact that the bondholder learned by inspecting or copying a copy of the bond register; or
  - (iii) the requesting bondholder has reported to a third party, for profit, any fact that the bondholder learned by inspecting or copying a copy of the bond register, within the past two years.

## **Chapter VI Bondholders Meetings**

(Convocation of Bondholders Meetings)

Article 31 Regarding the application of the provisions of Article 717, paragraph (2), Article 718, paragraphs (1) and (4), Article 720, paragraph (1), Article 729, paragraph (1), Article 731, paragraph (3), and Article 735-2, paragraphs (1) and (3) of the Companies Act to a bondholders meeting, the term "bond administrator" in Article 717, paragraph (2) of the Companies Act is deemed to be replaced with "trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bond Trust Act (Act No. 52 of 1905) (simply referred to below as "trust agreement")," the term ", bond administrator or assistant bond administrator" in Article 718, paragraphs (1) and (4) and the main clause of Article 729, paragraph (1) of the Companies Act is deemed to be replaced with "or trustee company under a trust agreement," the term "bond administrator or assistant bond administrator" in Article 720, paragraph (1) and the proviso of Article 729, paragraph (1) of that Act and the term "bond administrator, assistant bond administrator" in Article 731, paragraph (3) and Article 735-2, paragraphs (1) and (3) are deemed to be replaced with "trustee company under a trust agreement," and the term "regarding ... (in the case of an assistant bond administrator, concerning the consent of the bondholders meeting prescribed in Article 711, paragraph (1) as applied mutatis mutandis pursuant to Article 714-7)" in paragraph (1) of that Article is deemed to be replaced with "regarding ..."

(Resolutions at Bondholders Meetings)

Article 32 Notwithstanding the provisions of Article 724, paragraph (1) of the Companies Act, to approve the following matters at a bondholders meeting,

consent must be obtained from persons who hold not less than one-fifth of the total amount of voting rights of voting right holders (meaning bondholders who are entitled to exercise voting rights), and hold not less than two-thirds of the total amount of voting rights of voting right holders present at the meeting:

- (i) change to collateral under Article 41; and
- (ii) change in the order of priority of security interest, or assignment or waiver of security interest or its order of priority under Article 41 as applied *mutatis mutandis* pursuant to Article 42.

#### (Minutes of Bondholders Meetings)

Article 33 (1) The trustee company must keep a copy of the minutes referred to in Article 731, paragraph (1) of the Companies Act or the document or electronic or magnetic record referred to in Article 735-2, paragraph (1) of that Act (referred to as "minutes, etc." in the items of the following paragraph) at its head office for a period of ten years from the date of a bondholders meeting.

(2) A bondholder may make the following requests at any time during the operating hours of the trustee company:

- (i) if a copy of the minutes, etc. is prepared in writing, a request for inspection or copying of the document; and
- (ii) if a copy of the minutes, etc. is prepared in the form of electronic or magnetic records, a request for inspection or copying of a thing displaying the information recorded in the electronic or magnetic records by the means specified by Cabinet Office Order and Ministry of Justice Order.

#### (Execution of Resolutions Adopted at Bondholders Meetings)

Article 34 (1) Notwithstanding the provisions of Article 737, paragraph (1) of the Companies Act, a resolution at a bondholders meeting is executed by the trustee company; provided, however, that if there is a conflict of interest between the bondholders and the trustee company, resolutions are executed by the person specified in each of the following items in accordance with the category of cases stated in the respective items:

- (i) if a resolution administrator (meaning the resolution administrator prescribed in Article 737, paragraph (2) of the Companies Act) has been appointed: the resolution administrator; and
- (ii) in cases other than the case stated in the preceding paragraph, if a representative bondholder has been appointed: the representative bondholder.

(2) The representative bondholder referred to in item (ii) of the preceding Article may personally execute the matters entrusted to them pursuant to the provisions of Article 736, paragraph (1) of the Companies Act or may have another person execute the matters.

## **Chapter VII Effects of Trust Agreements**

(Authority of Trustee Companies Over the Administration of Secured Bonds)

Article 35 Unless otherwise provided for in this Act, the trustee company holds the same authority and assumes the same obligation as those of the bond administrator for the administration of secured bonds.

(Obligation of Trustee Companies for the Management or Disposal of Security Interests)

Article 36 The trustee company assumes the obligation to preserve and enforce security interests under a trust agreement on behalf of all bondholders.

(Rights of Bondholders)

Article 37 (1) Bondholders equally enjoy the benefits of collateral in proportion to the amount of their bonds.

(2) A security interest under a trust agreement may be exercised only on behalf of all bondholders.

(Effect of Security Interests under Trust Agreements)

Article 38 A security interest under a trust agreement becomes effective even before bonds are established.

(Exclusion from Application of the Provisions of the Civil Code to Security Interests under Trust Agreements)

Article 39 (1) The provisions of Article 348 and Article 376 (excluding the part concerning the assignment and waiver of mortgage or its order of priority) of the Civil Code (Act No. 89 of 1896) and the provisions of Article 515 of the Commercial Code (Act No. 48 of 1899) do not apply to a security interest under a trust agreement.

(2) The provisions of Article 298, paragraph (3) of the Civil Code, as applied mutatis mutandis pursuant to Article 350 of that Code do not apply to a pledge under a trust agreement.

(3) The provisions of Article 354 of the Civil Code do not apply to a pledge on movables under a trust agreement.

(4) Notwithstanding the provisions of the preceding three paragraphs, if the provisions of a trust agreement provide otherwise, those provisions prevail.

(Addition of Collateral)

Article 40 Collateral for secured bonds may be added by making a modification to the trust by agreement between the trustee company and the settlor.

(Changes to Collateral)

- Article 41 (1) Collateral for secured bonds may be changed by making a modification to the trust by agreement among the trustee company, the settlor, and the bondholders who are beneficiaries.
- (2) A decision by beneficiaries regarding the agreement referred to in the preceding paragraph is to be made by resolution at a bondholders meeting.
- (3) Notwithstanding the provisions of the preceding two paragraphs, if the value of collateral after the change to collateral is sufficient to secure the principal and interest of the unredeemed secured bonds, the change to collateral for secured bonds may be made by agreement between the trustee company and the settlor.
- (4) If the change to collateral for secured bonds is made pursuant to the provisions of the preceding paragraph, the trustee company must give public notice to that effect and also give notice to each known bondholder to that effect, without delay.

(Changes in the Order of Priority of Security Interests)

Article 42 The provisions of the preceding Article apply mutatis mutandis to a change in the order of priority of a security interest, or assignment or waiver of a security interest or its order of priority regarding secured bonds.

(Obligation to Enforce Security Interests)

- Article 43 (1) If secured bonds are not paid when they are due or the issuing company is dissolved without completing payment of secured bonds, the trustee company must take necessary measures regarding the secured bonds such as enforcing the security interest without delay.
- (2) The trustee company may enforce compulsory execution against collateral, file a petition for enforcement of a security interest, or file a petition for enforcement of an enterprise mortgage, on behalf of all bondholders, based on an authenticated copy of an enforceable title of obligation given to the trustee company (or a certificate of recorded information prescribed in Article 25 of the Civil Execution Act (Act No. 4 of 1979) if an electronic or magnetic record of a title of obligation is recorded in a file that is stored on a computer (including input and output devices) used by the court).
- (3) In the case referred to in the preceding paragraph, an objection to an obligee may be submitted to the trustee company.

(Obligation of Trustee Companies That Received Payment)

Article 44 (1) If a trustee company receives payment on behalf of bondholders, it must deliver the property received (if the property is realized, including the

proceeds of realization) to the bondholders in proportion to the amount of their bonds without delay.

- (2) The provisions of Article 647 of the Civil Code apply *mutatis mutandis* when a trustee company consumes the property referred to in the preceding paragraph for its own benefit.
- (3) If a trustee company is unable to ascertain a bondholder, or a bondholder refuses to receive the property or is unable to receive the property, the trustee company must deposit the property referred to in paragraph (1) for that bondholder with an official depository.

#### (Appointment of Special Agents)

Article 45 (1) In the following cases, a court may appoint a special agent upon the petition of a bondholders meeting:

- (i) the trustee company is negligent in the processing of trust affairs and administration of secured bonds that it is required to perform on behalf of all bondholders; and
  - (ii) there is a conflict of interest between the bondholders and the trustee company, and it is necessary for the trustee company to carry out acts in or out of court in relation to the processing of trust affairs and administration of secured bonds on behalf of bondholders.
- (2) A judicial decision dismissing the petition referred to in the preceding paragraph must include the reasons for that decision.
  - (3) No appeal may be filed against a judicial decision on the appointment of a special agent under paragraph (1).
  - (4) A non-contentious case related to the petition referred to in paragraph (1) is under the jurisdiction of the district court that has jurisdiction over the locality of the head office of the issuing company.
  - (5) The provisions of Article 40 and Article 57, paragraph (2), item (ii) of the Non-Contentious Case Procedures Act (Act No. 51 of 2011) do not apply to a non-contentious case under paragraph (1).

#### (Formalities of Acts Performed by Trustee Companies)

Article 46 If a trustee company or a special agent referred to in paragraph (1) of the preceding Article performs acts in or out of court on behalf of all bondholders pursuant to the provisions of this Act, the company or agent is not required to identify individual bondholders.

#### (Remuneration for Trustee Companies)

Article 47 (1) Notwithstanding the provisions of Article 54 of the Trust Act (Act No. 108 of 2006) and Article 741, paragraph (1) of the Companies Act, the trustee company may demand a reasonable amount of remuneration for the

processing of trust affairs and administration of secured bonds from the settlor or the issuing company; provided, however, that if the provisions of the trust agreement provide otherwise, those provisions prevail.

- (2) The provisions of Article 648, paragraphs (2) and (3) of the Civil Code apply mutatis mutandis to the remuneration that the trustee company receives from the settlor or the issuing company pursuant to the provisions of the preceding paragraph; provided, however, that if the provisions of the trust agreement provide otherwise, those provisions prevail.
- (3) The provisions of Article 741, paragraph (3) of the Companies Act do not apply to the remuneration that the trustee company receives from the settlor or the issuing company pursuant to the provisions of paragraph (1).

#### (Expenses for Trustee Companies)

Article 48 (1) Notwithstanding the provisions of the main clause of Article 48, paragraph (1), the main clause of Article 53, paragraph (1) of the Trust Act, and Article 741, paragraph (1) of the Companies Act, the settlor or the issuing company is liable to reimburse all expenses duly incurred by the trustee company that are deemed as necessary expenses for the processing of trust affairs and administration of secured bonds, as well as interest accrued on the expenses on or after the date of payment, and to compensate for all damage suffered by the trustee company in the absence of negligence on its part; provided, however, that if the provisions of the trust agreement provide otherwise, those provisions prevail.

- (2) Notwithstanding the provisions of the main clause of Article 48, paragraph (2) of the Trust Act, the trustee company may demand advance payment of expenses required for performing the processing of trust affairs and administration of secured bonds from the settlor or the issuing company; provided, however, that if the provisions of the trust agreement provide otherwise, those provisions prevail.
- (3) The provisions of Article 741, paragraph (3) of the Companies Act do not apply to the reimbursement of expenses and their interest or the compensation for damages as referred to in paragraph (1).
- (4) The security interest under a trust agreement is also effective to cover claims that arise against the trustee company pursuant to the provisions of paragraph (1).
- (5) Trustee companies are entitled to receive payment from collateral for the claims referred to in the preceding paragraph in precedence to bondholders.

#### (Inspection of State of Storage of Collateral)

Article 49 (1) The settlor, a representative bondholder, or a bondholder who holds secured bonds that account for not less than one-tenth of the total



amount of secured bonds (excluding the amount already redeemed) may inspect the state of storage of collateral by the trustee company at any time.

- (2) Bondholders who hold secured bond certificates in bearer form may not conduct the inspection referred to in the preceding paragraph unless they present their certificates to the trustee company.

## **Chapter VIII Succession and Completion of Trust Affairs**

(Resignation of Trustee Companies)

Article 50 (1) Regarding the application of the provisions of Article 57 of the Trust Act to a trustee company, the term "and a beneficiary" in paragraph (1) of that Article is deemed to be replaced with ", the issuing company, and a bondholders meeting."

- (2) If the trustee company resigns pursuant to the provisions of Article 57, paragraph (1) of the Trust Act as applied pursuant to the provisions of the preceding paragraph following the deemed replacement of terms, it must designate a company that is to succeed to the trust affairs.

- (3) The provisions of Article 17, paragraph (1) apply mutatis mutandis if the company that is to succeed to the trust affairs is a foreign company.

(Dismissal of Trustee Companies)

Article 51 Regarding the application of the provisions of Article 58 of the Trust Act to a trustee company, the term "and the beneficiary" in paragraph (1) of that Article is deemed to be replaced with ", the issuing company, and a bondholders meeting", the term " and the beneficiary" in paragraph (2) of that Article is deemed to be replaced with ", the issuing company, and a bondholders meeting," the term " and the beneficiary must" in that paragraph is deemed to be replaced with "and the issuing company must," the term "has caused a substantial detriment to the trust property through a breach of the duties" in paragraph (4) of that Article is deemed to be replaced with "breaches the duties, is unsuitable for the processing of trust affairs or administration of secured bonds," and the term "or the beneficiary" in paragraphs (4) and (7) of that Article is deemed to be replaced with ", the issuing company or a bondholders meeting."

(Authority of the Prime Minister)

Article 52 If the license referred to in Article 3 granted to the trustee company ceases to be effective due to revocation under Article 12 or any other grounds, the Prime Minister may file a petition under Article 58, paragraph (4), Article 62, paragraph (4), or Article 63, paragraph (1) of the Trust Act.

(Succession of Trust Affairs)

Article 53 (1) Succession of trust affairs under Article 50, paragraph (2) becomes effective upon the preparation of a contract for that purpose by the settlor, the company that was the trustee company (referred to below as the "former trustee company"), and the company that is to succeed to the trust affairs (referred to below as the "new trustee company").

(2) The contract referred to in the preceding paragraph may be prepared in the form of electronic or magnetic records.

(3) If the contract referred to in paragraph (1) is to be prepared in writing, the settlor (if the settlor is a corporation, its representative) and the representatives of the former trustee company and the new trustee company must sign the document or affix their names and seals to the document.

(4) If the contract referred to in paragraph (1) is prepared in the form of electronic or magnetic records, the settlor (if the settlor is a corporation, its representative) and the representatives of the former trustee company and the new trustee company must take measures in lieu of signing of their names or affixing of their names and seals specified by Cabinet Office Order and Ministry of Justice Order.

(Public Notice of Succession)

Article 54 If trust affairs have been succeeded to, the issuing company and the new trustee company must respectively give public notice to that effect and also give notice to each known bondholder to that effect without delay.

(Rights and Obligations of the New Trustee Company)

Article 55 The rights and obligations that belonged to the former trustee company on behalf of bondholders, the settlor, or the issuing company are to be transferred to the new trustee company retroactively as of the time of the resignation, dismissal, revocation of license, or dissolution of the former trustee company; provided, however, that this does not apply to the former trustee company's liability for breach of contract or tort.

(Transfer of Documents)

Article 56 The former trustee company's director (its executive officer if it is a company with a nominating committee and other committees), a member who represents it, or its liquidator, or bankruptcy trustee must transfer things that it will take custody of on behalf of the settlor, the issuing company or bondholders, and documents related to trust affairs to the new trustee company, as well as take any and all acts necessary for handing over its trust affairs to the new trustee company, without delay.

(Supervision of Affairs Concerning Succession)

Article 57 (1) The affairs concerning succession of trust affairs are subject to supervision by the Prime Minister.

(2) When finding it necessary for the supervision referred to in the preceding paragraph, the Prime Minister may have relevant officials enter the business offices and other facilities of the former trustee company or the new trustee company, and ask questions concerning the status of their business or property, or inspect their books, documents, and any other articles.

(3) The provisions of Article 10, paragraphs (2) and (3) apply mutatis mutandis to the on-site inspection under the preceding paragraph.

(Completion of Trust Affairs)

Article 58 (1) If a trustee company has completed the trust affairs, it must prepare a general accounting statement and give public notice of this.

(2) The general accounting statement referred to in the preceding paragraph may be prepared in the form of electronic or magnetic records.

## **Chapter IX Miscellaneous Provisions**

(Public Notices)

Article 59 Public notices under this Act (excluding public notices under the following Article) must be given by the means of public notice used by the issuing company; provided, however, that if the party that is required to give the public notice is not the issuing company and the means of notice is electronic public notice (meaning, among the means of public notice, a means of taking measures that make the information which should be given in public notice available to unspecified and large number of persons by electronic or magnetic means (meaning an electronic or magnetic means prescribed in Article 2, item (xxxiv) of the Companies Act), which is prescribed in that item), the public notice must be given in the Official Gazette.

(Public Notice of Supervisory Disposition)

Article 60 If the Prime Minister orders suspension of all or part of business pursuant to the provisions of Article 11 or Article 12, or revokes the license referred to in Article 3 pursuant to the provisions of Article 12, the Prime Minister must give public notice to that effect.

(Persons Entitled to Register Creation of Security Interests)

Article 61 The trustee company is the person entitled to register creation of a security interest under a trust agreement.

(Entering the Amount of Claims in Registrations of Creation of Security Interests)

Article 62 (1) When registering the creation of a security interest under a trust agreement, it is sufficient to record the total amount of secured bonds as the amount of claim stated in Article 83, paragraph (1), item (i) of the Real Property Registration Act (Act No. 123 of 2004).

(2) Notwithstanding the provisions of Article 83, paragraph (1), item (i), Article 88, and Article 95 of the Real Property Registration Act, if the total amount of secured bonds is issued in installments for the registration referred to in the preceding paragraph, the information required to be registered regarding the secured bonds is limited to the total amount of secured bonds, a statement to the effect that the total amount of secured bonds is to be issued in installments, and the maximum limit of the interest rate for the secured bonds.

(3) The information prescribed in the preceding two paragraphs is to be included in the content of the application information regarding the registration referred to in paragraph (1).

(Registration Concerning Issue of Bonds in Installments)

Article 63 (1) If the total amount of secured bonds is to be issued in installments, and the secured bonds are issued, the total amount of secured bonds issued in that installment, and the information stated in Article 19, paragraph (1), item (iv) concerning the issued secured bonds must be registered within two weeks from the date on which the total amount of secured bonds in that installment has been issued.

(2) If the total amount of secured bonds is to be issued in installments, and the secured bonds are issued in a foreign country and any matter that is required to be registered arises in the foreign country, the period for registration is counted from the date on which the notice of that matter has arrived.

(3) The registration referred to in paragraph (1) is to be made as a supplement to a registration of the right to secure the secured bonds.

(Exclusion from Application of the Real Property Registration Act)

Article 64 The provisions of Chapter IV, Section 3, Subsection 5 of the Real Property Registration Act do not apply to a registration under a trust agreement.

(Submission of Materials to the Minister of Finance)

Article 65 (1) If the Minister of Finance finds it necessary for planning or making policies regarding the system for trust business for secured bonds in connection with the system for disposal of failed financial institutions and financial risk management under the Minister's jurisdiction, the Minister may

request the Prime Minister to provide necessary materials and explanations.

- (2) If the Minister of Finance finds it particularly necessary for planning or making policies regarding the system for trust business for secured bonds in connection with the system for disposal of failed financial institutions and financial risk management under the Minister's jurisdiction, the Minister may request a trust company to provide materials, explanations, and any other cooperation to the extent necessary.

(Delegation of Authority)

Article 66 (1) The Prime Minister delegates the authority under this Act (excluding those stated in the following items) to the Commissioner of the Financial Services Agency:

- (i) granting a license referred to in Article 3; and
- (ii) revoking a license under Article 12.

- (2) The Commissioner of the Financial Services Agency may delegate part of the authority delegated to it pursuant to the provisions of the preceding paragraph to the Director-General of a local finance bureau or a local finance branch bureau, pursuant to the provisions of Cabinet Order.

(Delegation to Cabinet Office Order)

Article 67 Beyond what is provided for in this Act, an application for a license, a notification, and other matters necessary for the implementation of this Act are specified by Cabinet Office Order.

## **Chapter X Penal Provisions**

Article 68 (1) A person who falls under any of the following items is subject to imprisonment for not more than three years or a fine of not more than three million yen, or both:

- (i) a person who, in violation of the provisions of Article 3, engages in trust business for secured bonds without a license; or
- (ii) a person who, in violation of the provisions of Article 15 of the Trust Business Act as applied mutatis mutandis pursuant to Article 8, has another person engage in trust business for secured bonds.

- (2) A person who falls under any of the following items is subject to imprisonment for not more than one year or a fine of not more than three million yen, or both:

- (i) a person who, in violation of the provisions of Article 24, paragraph (1), item (i), item (iii), or item (iv) of the Trust Business Act as applied mutatis mutandis pursuant to Article 8, performs any of the acts stated in those provisions; or

- (ii) a person who violates the provisions of Article 29, paragraph (2) of the Trust Business act as applied mutatis mutandis pursuant to Article 8.
- (3) A person who fails to deliver a document under Article 29, paragraph (3) of the Trust Business Act as applied mutatis mutandis pursuant to Article 8 or delivers a false document is subject to imprisonment for not more than six months or a fine of not more than 500,000 yen, or both.

Article 69 (1) If the representative of a corporation (including an association or a foundation that is not a corporation, and for which a representative or an administrator has been designated; the same applies below in this paragraph) or an agent, an employee, or any other worker of a corporation or an individual performs a violating act referred to in the preceding Article in connection with the business of the corporation or individual, in addition to the offender being subject to punishment, the corporation or individual is subject to the fine referred to in that Article.

- (2) If an association or a foundation that is not a corporation is punished pursuant to the provisions of the preceding paragraph, its representative or administrator represents the association or foundation in connection with its procedural acts, and the provisions of laws concerning criminal procedure of cases in which a corporation is the accused or suspect apply mutatis mutandis.

Article 70 In any of the following cases, the settlor (if the settlor is a corporation, a member in charge of executing its business, its director, executive officer, liquidator or any person in charge of executing its business) or a bankruptcy trustee of the settlor, a member in charge of executing the business of the trustee company or issuing company or its director, executive officer, liquidator or bankruptcy trustee, a representative bondholder, a special agent referred to in Article 45, paragraph (1), or a representative of a foreign company is subject to a civil fine of not more than one million yen:

- (i) the person fails to make a notification, or give public notice or notice, as prescribed in this Act, or gives a false public notice or notice;
- (ii) the person refuses without reasonable grounds, to allow the inspection or copying of a document or a thing displaying the information recorded in electronic or magnetic records by the means specified by Cabinet Office Order and Ministry of Justice Order, or to deliver a transcript or extract of a document, to provide the information recorded in electronic or magnetic records by electronic or magnetic means, or to deliver a document stating the information, in violation of the provisions of this Act;
- (iii) the person fails to keep documents or electronic or magnetic records that are required to be kept pursuant to this Act, fails to state or record information that is required to be stated or recorded in them, or makes a

- false statement or record of that information;
- (iv) the person violates an order issued by the Prime Minister under this Act;
  - (v) the person obstructs an inspection conducted by the Prime Minister under this Act;
  - (vi) person fails to have a matter decided by a resolution at a bondholders meeting when a resolution is required, or violates a resolution adopted at a bondholders meeting;
  - (vii) the person fails to make a report at a bondholders meeting or to a representative bondholder, or makes a false report;
  - (viii) the person violates the provisions of Article 5;
  - (ix) the person violates the provisions of Article 7;
  - (x) the person violates the provisions of Article 17, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 50, paragraph (3));
  - (xi) the person fails to state the information that is required to be stated in a secured bond certificate or makes a false statement of that information, in violation of the provisions of Article 26;
  - (xii) the person issues a secured bond certificate without following the procedure prescribed in Article 27, paragraph (1);
  - (xiii) the person fails to submit or provide a copy of the bond register in violation of the provisions of Article 29, or makes a false statement or record in a copy of the bond register;
  - (xiv) the person fails to preserve or enforce a security interest under Article 36;
  - (xv) the person violates the provisions of Article 44, paragraph (1) or paragraph (3);
  - (xvi) the person obstructs an inspection conducted under Article 49, paragraph (1);
  - (xvii) the person fails to transfer affairs under Article 56; or
  - (xviii) the person fails to make a registration under Article 63.