

# **Bankruptcy Act (Not yet put into effect including Article 11)**

(Act No. 75 of June 2, 2004)

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## **Chapter I General Provisions**

(Purpose)

Article 1 The purpose of this Act is to appropriately coordinate the interests of creditors and other interested persons and the relationships of rights between debtors and creditors, with the aim of ensuring proper and fair liquidation of debtors' property, etc. and securing the opportunity for revitalization of their economic life, by specifying proceedings for liquidation of property held by debtors that are unable to pay debts or are insolvent, etc.

(Definitions)

- Article 2 (1) The term "bankruptcy proceedings" as used in this Act means the procedure for liquidating a debtor's property, inherited property or trust property as provided for in the following Chapters (excluding Chapter XII).
- (2) The term "bankruptcy case" as used in this Act means a case related to bankruptcy proceedings.
- (3) The term "bankruptcy court" as used in this Act means a district court before which a bankruptcy case is pending.
- (4) The term "bankrupt" as used in this Act means a debtor against whom an order commencing bankruptcy proceedings has been made pursuant to the provisions of Article 30, paragraph (1).
- (5) The term "bankruptcy claim" as used in this Act means a claim on property arising against the bankrupt from a cause that has occurred before the commencement of bankruptcy proceedings (including the claims stated in the items of Article 97), which does not fall within the scope of claims on the estate.
- (6) The term "bankruptcy creditor" as used in this Act means a creditor that holds a bankruptcy claim.
- (7) The term "claim on the estate" as used in this Act means a claim which may be paid from the bankruptcy estate at any time without going through bankruptcy proceedings.
- (8) The term "holder of claim on the estate" as used in this Act means a creditor that holds a claim on the estate.
- (9) The term "right of separate satisfaction" as used in this Act means a right that a person that holds a special statutory lien, pledge or mortgage against property that belongs to the bankruptcy estate, may exercise at the time of commencement of bankruptcy proceedings, pursuant to the provisions of Article 65, paragraph (1), against the property that is the subject matter of these rights.
- (10) The term "holder of a right of separate satisfaction" as used in this Act means a person that holds a right of separate satisfaction.
- (11) The term "unable to pay debts" as used in this Act means the condition in which a debtor is generally and continuously unable to pay debts as they become due, due to the lack of ability to pay (in the case of bankruptcy of the trust property, the condition in which the trustee is generally and continuously unable to pay obligation covered by the trust property due to the lack of ability to pay with the trust property (meaning obligations covered by the trust property as prescribed in Article 2, paragraph (9) of the Trust Act (Act No. 108 of 2006); the same applies below) as they become due).
- (12) The term "bankruptcy trustee" as used in this Act means a person that has a right to administer and dispose of property that belongs to the bankruptcy

estate in bankruptcy proceedings.

(13) The term "temporary administrator" as used in this Act means a person that is ordered to administer a debtor's property pursuant to the provisions of Article 91, paragraph (1).

(14) The term "bankruptcy estate" as used in this Act means a bankrupt's property, inherited property, or trust property for which a bankruptcy trustee has an exclusive right to administer and dispose of in bankruptcy proceedings.

#### (Status of Foreign Nationals)

Article 3 A foreign national or foreign corporation has the same status as a Japanese national or Japanese corporation, with respect to bankruptcy proceedings, discharge proceedings under the provisions of Chapter XII, Section 1 (referred to below as "discharge proceedings") and proceedings for release from restrictions under the provisions of Section 2 of that Chapter (collectively referred to below as "bankruptcy proceedings, etc." in this Chapter).

#### (Jurisdiction over Bankruptcy Cases)

Article 4 (1) A petition to commence bankruptcy proceedings under the provisions of this Act may be filed only if the debtor who is an individual has a business office, domicile, residence, or property in Japan, or if the debtor that is a corporation or any other association or foundation has a business office or other office or property in Japan.

(2) A claim for which demand by litigation may be made pursuant to the provisions of the Code of Civil Procedure (Act No. 109 of 1996) is deemed to exist in Japan.

Article 5 (1) A bankruptcy case is subject to the jurisdiction of the district court that has jurisdiction over: if the debtor engages in business, the locality of the debtor's principal business office; if the debtor engages in business and has a principal business office in a foreign state, the locality of the debtor's principal business office in Japan; if the debtor does not engage in business, or engages in business, but does not have any business office, the locality of the debtor's general venue.

(2) If there is no court with jurisdiction under the provisions of the preceding paragraph, a bankruptcy case is subject to the jurisdiction of the district court that has jurisdiction over the locality of the debtor's property (in the case of a claim, the place where demand by litigation may be made).

(3) Notwithstanding the provisions of the preceding two paragraphs, if a corporation holds the majority of voting rights (excluding the voting rights of the shares of stock which may not be exercised for all matters that may be

resolved at a shareholders meeting, and including the voting rights of the shares of stock for which the shareholder is deemed to have voting rights pursuant to the provisions of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); the same applies below in the following paragraph, Article 83, paragraph (2), item (ii) and paragraph (3) and Article 161, paragraph (2), item (ii), sub-item (a) and sub-item (b)) of all shareholders of a stock company, if a bankruptcy case, rehabilitation case, or reorganization case referred to below as a "bankruptcy case, etc." in this Article) is pending against the corporation (referred to below as a "parent corporation" in this Article and Article 161, paragraph (2), item (ii), sub-item (b)), a petition to commence bankruptcy proceedings against the stock company (referred to below as a "subsidiary stock company" in this Article and Article 161, paragraph (2), item (ii), sub-item (b)) may also be filed with the district court before which the bankruptcy case, etc. against the parent corporation is pending, and if a bankruptcy case, etc. is pending against the subsidiary stock company, a petition to commence bankruptcy proceedings against the parent corporation may also be filed with the district court before which the bankruptcy case, etc. against the subsidiary stock company is pending.

- (4) If a subsidiary stock company independently holds, or a parent corporation and a subsidiary stock company jointly hold the majority of voting rights of all shareholders of another stock company, the provisions of the preceding paragraph are applied as if the other stock company is a subsidiary stock company of the parent corporation.
- (5) Notwithstanding the provisions of paragraph (1) and paragraph (2), if a stock company has prepared consolidated financial statements (meaning consolidated financial statements prescribed in paragraph (1) of that Article) for the most recent fiscal year with regard to the stock company itself and another corporation, and reported the contents of the statement at an annual shareholders meeting of the stock company as provided for by Article 444 of the Companies Act, if a bankruptcy case, etc. is pending against the stock company, a petition to commence bankruptcy proceedings against the other corporation may also be filed with the district court before which the bankruptcy case, etc. against the stock company is pending, and if a bankruptcy case, etc. is pending against the other corporation, a petition to commence bankruptcy proceedings against the stock company may also be filed with the district court before which the bankruptcy case, etc. against the other corporation is pending.
- (6) Notwithstanding the provisions of paragraph (1) and paragraph (2), if a bankruptcy case, etc. is pending against a corporation, a petition to commence bankruptcy proceedings against the representative person of the corporation may also be filed with the district court before which the bankruptcy case, etc. against the corporation is pending, and if a bankruptcy case or rehabilitation

case is pending against the representative person of a corporation, a petition to commence bankruptcy proceedings against the corporation may also be filed with the district court before which the bankruptcy case or rehabilitation case against the representative person of the corporation is pending.

- (7) Notwithstanding the provisions of paragraph (1) and paragraph (2), if a bankruptcy case is pending against either one of the persons stated in each of the following items, a petition to commence bankruptcy proceedings against the other person stated in the respective items may also be filed with the district court before which the bankruptcy case is pending:
- (i) individual who is a joint and several obligor with each other;
  - (ii) individual one of whom is a principal obligor and the other is their guarantor; or
  - (iii) husband and wife.
- (8) Notwithstanding the provisions of paragraphs (1) and (2), if an order commencing bankruptcy proceedings is made and there are 500 or more creditors that hold claims that are supposed to be bankruptcy claims, a petition to commence bankruptcy proceedings may also be filed with the district court that has jurisdiction over the locality of the high court that has jurisdiction over the locality of the court with jurisdiction under these provisions.
- (9) Notwithstanding the provisions of paragraph (1) and paragraph (2), if there are 1,000 or more creditors prescribed in the preceding paragraph, a petition to commence bankruptcy proceedings may also be filed with the Tokyo District Court or the Osaka District Court.
- (10) If two or more district courts have jurisdiction over a bankruptcy case pursuant to the provisions of the preceding paragraphs, the bankruptcy case is subject to the jurisdiction of the district court with which the first petition to commence bankruptcy proceedings is filed.

(Exclusive Jurisdiction)

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

(Transfer of Bankruptcy Cases)

- Article 7 The court may transfer a bankruptcy case by its own authority (if the debtor involved in a bankruptcy case, or bankrupt files a petition for grant of discharge, or the bankruptcy case and the case related to the petition for grant of discharge) to any of the following district courts if the court finds it necessary to do so in order to avoid substantial detriment or delay:
- (i) the district court that has jurisdiction over the locality of the debtor's business office or other office other than the debtor's principal business office or other principal office;
  - (ii) the district court that has jurisdiction over the locality of the debtor's

- domicile or residence;
- (iii) the district court prescribed in Article 5, paragraph (2);
  - (iv) any of the district courts listed in sub-items (a) through (c) below:
    - (a) the district court prescribed in Article 5, paragraphs (3) through (7);
    - (b) the district court prescribed in Article 5, paragraph (8) if an order commencing bankruptcy proceedings is made and there are 500 or more creditors that hold claims that are supposed to be bankruptcy claims order commencing (after an order commencing bankruptcy proceedings is issued, bankruptcy creditors; the same applies in sub-item (c));
    - (c) the district court prescribed in Article 5, paragraph (9) if there are 1,000 or more creditors prescribed in sub-item (b); or
  - (v) the district court prescribed in Article 5, paragraph (1) or (2) if the bankruptcy case is pending pursuant to the provisions of Article 5, paragraphs (3) through (9) at the district court prescribed in the respective provisions.

(Optional Oral Argument)

- Article 8 (1) A judicial decision concerning bankruptcy proceedings, etc. may be made without oral argument.
- (2) The court may conduct necessary investigation on a case related to bankruptcy proceedings, etc. by its own authority.

(Appeals)

- Article 9 A person that has an interest in a judicial decision concerning bankruptcy proceedings, etc., only as specially provided for in this Act, may file an immediate appeal against the judicial decision. The period for filing is two weeks from the day on which the public notice becomes effective if a public notice of the juridical decision is made.

(Public Notices)

- Article 10 (1) A public notice under the provisions of this Act is made public in the Official Gazette.
- (2) A public notice becomes effective on the day following the day on which it is published.
- (3) If a service is required to be made pursuant to the provisions of this Act, it may be substituted by a public notice; provided, however, that this does not apply if both public notice and service are required to be made pursuant to the provisions of this Act.
- (4) When a public notice of a judicial decision is made pursuant to the provisions of this Act, it is deemed that all interested parties are notified of the judicial decision.

- (5) The provisions of the preceding two paragraphs do not apply if special provisions exist in this Act.

(Access of Case Documents)

- Article 11 (1) An interested person may make a request to the court clerk for the inspection of documents and any other materials (referred to below as "documents and other materials" in this Article and Article 12, paragraph (1)) submitted to the court or prepared by the court pursuant to the provisions of this Act (including other Acts as applied mutatis mutandis pursuant to this Act; the same applies in paragraph (1) of the following Article).
- (2) An interested person may make a request to the court clerk to copy documents and other materials, or to issue an authenticated copy, transcript, or extract of documents, etc..
- (3) The provisions of the preceding paragraph do not apply with respect to documents and other materials which are prepared in the form of audiotapes or videotapes (including objects onto which a fixed set of information has been recorded by any equivalent means). In this case, upon the request of an interested person with regard to these materials, the court clerk must permit the reproduction of the documents and other materials prepared in audiotapes or videotapes.

(Access of Information from the Court's Computer Files)

- Article 11-2 (1) Pursuant to the provisions of the Rules of the Supreme Court, an interested person may make a request to the court clerk to inspect matters recorded in computer files (excluding the following paragraph, paragraph (3), and the following Article; simply referred to below as "computer files") (referred to below in this Article and Article 12, paragraph (6) as "information from the court's computer files") stored on a computer (including its input and output devices; the same applies below) used by the court pursuant to the provisions of this Act displayed in a manner prescribed by the Rules of the Supreme Court.
- (2) An interested person may make a request to the court clerk, pursuant to the provisions of the Rules of the Supreme Court, to copy the information from the court's computer files by means of recording the matters in computer files stored on a computer used by the person by using an electronic data processing system (meaning an electronic data processing system connecting a computer used by the court to a computer used by the other party using the procedure via a telecommunications line; the same applies below) or any other method prescribed by the Rules of the Supreme Court.
- (3) An interested person may make a request to the court clerk, pursuant to the provisions of the Rules of the Supreme Court, to issue a paper document



stating all or part of the information from the court's computer files as certified by the court clerk to contain information in the paper document identical to the information from the court's computer files according to the methods prescribed by the Rules of the Supreme Court, or to provide an electronic or magnetic record (meaning any record which is produced by electronic, magnetic, or any other means unrecognizable by natural perceptive senses and is used for information processing by a computer; the same applies below) containing all or part of the information from the court's computer files as certified by the court clerk to contain information identical to the information from the court's computer files according to the methods prescribed by the Rules of the Supreme Court, by means of recording it in computer files stored on a computer used by the person via an electronic information processing system prescribed by the Rules of the Supreme Court or any other method prescribed by the Rules of the Supreme Court.

(Certification of Matters Involved in the Case)

Article 11-3 As provided for by the Rules of the Supreme Court, an interested person may make a request to the court clerk to issue a paper document stating the matters involved in the case as certified by the court clerk with respect to the matters according to the methods prescribed by the Rules of the Supreme Court, or to provide an electronic or magnetic record containing the matters as certified by the court clerk with respect to the matters according to the methods prescribed by the Rules of the Supreme Court, by means of recording it in computer files stored on a computer used by the person via an electronic information process system or any other method prescribed by the Rules of the Supreme Court.

(Special Provisions on Access)

Article 11-4 Notwithstanding the provisions of the preceding three Articles, a person stated in the following items may not make a request under the provisions of the preceding three Articles until the order, provisional order, or judicial decision specified in the respective item is issued or made; provided, however, that this does not apply when the relevant person is a petitioner for commencement of bankruptcy proceedings;

- (i) an interested person other than the debtor: a suspension order under the provisions of Article 24, paragraph (1), comprehensive stay order prescribed in Article 25, paragraph (2), provisional order under the provisions of Article 28, paragraph (1), order for temporary administration prescribed in Article 91, paragraph (2), provisional order under the provisions of Article 171, paragraph (1) or judicial decision on a petition to commence bankruptcy proceedings; or

- (ii) the debtor: a judicial decision to designate the date for oral argument concerning for interrogation or date on which the debtor is to be summoned to appear with respect to a petition to commence bankruptcy proceedings, or any order, provisional order, or judicial decision as specified in the preceding item.

(Restrictions on Access of Detrimental Parts of Documents)

Article 12 (1) If with regard to the following documents and other materials, a prima facie showing is made to the effect that the documents, etc. in question contain parts likely to be significantly detrimental to the administration or realization of the bankruptcy estate (prior to the commencement of bankruptcy proceedings, the debtor's property) if it is subject to the inspection or copying, issuance of an authenticated copy, transcription, or extraction or reproduction (hereinafter referred to as "access" in this paragraph through paragraph (3)) conducted by an interested person (the part of documents, etc. is referred to below as the "detrimental part" in this paragraph through paragraph (3)), upon the petition of a bankruptcy trustee or temporary administrator that submitted the documents, etc. in question, the court may limit persons that may make a request for access of the detrimental part to the person that has filed the petition (in case the petition has been filed by a temporary administrator, the temporary administrator or a bankruptcy trustee; the same applies in the following paragraph):

- (i) documents and other materials submitted to the court for the purpose of obtaining permission under Article 36, the proviso to Article 40, paragraph (1), or the proviso to paragraph (1) of that Article as applied mutatis mutandis pursuant to Article 40, paragraph (2) (including as applied mutatis mutandis pursuant to Article 96, paragraph (1)), Article 78, paragraph (2) (including as applied mutatis mutandis pursuant to Article 93, paragraph (3)), Article 84 (including as applied mutatis mutandis pursuant to Article 96, paragraph (1)) or the proviso to Article 93, paragraph (1); and
  - (ii) documents and other materials related to the report under the provisions of Article 157, paragraph (2).
- (2) When the petition stated in the preceding paragraph is filed, an interested person (excluding the one who filed the petition stated in that paragraph; the same applies in the following paragraph) may not make a request for access of the detrimental part until a judicial decision on the petition becomes final and binding.
- (3) An interested person that intends to make a request for access of the detrimental part may file a petition to the bankruptcy court for reversal of the order issued under the provisions of paragraph (1), on the grounds that the requirement prescribed in that paragraph is not met or is no longer met.

- (4) An immediate appeal may be filed against an order dismissing the petition stated in paragraph (1), and a judicial decision on the petition stated in the preceding paragraph.
- (5) An order to reverse the order under the provisions of paragraph (1) does not become effective unless it becomes final and binding.
- (6) The provisions of the preceding paragraphs apply mutatis mutandis to information from the court's computer files. In this case, the phrase "copying, issuance of an authenticated copy, transcription, or extraction or reproduction" in paragraph (1) is deemed to be replaced with "copying, issuance of certifying all or part of the content, or provision of electronic or magnetic record certifying all or part of the content".

(Application, Mutatis Mutandis of the Code of Civil Procedure)

Article 13 Except when there are special provisions, unless contrary to their nature, the provisions of Part 1 through Part 4 of the Code of Civil Procedure apply mutatis mutandis to bankruptcy proceedings, etc. In this case, the phrase "excluding a person that became a litigation representative with approval pursuant to the proviso to Article 54, paragraph (1))" in Article 132-11, paragraph (1), item (i) of the Code of Civil Procedure, is deemed to be replaced with "limited to an attorney at law) or person appointed as a bankruptcy trustee, temporary administrator, bankruptcy trustee representative, or temporary administrator representative", "the delegation" in that item is deemed to be replaced with "the delegation or appointment", and "Article 2" in item (ii) of that paragraph is deemed to be replaced with "Article 2 of that Code applied mutatis mutandis pursuant to Article 9".

(Rules of the Supreme Court)

Article 14 Beyond what is provided for in this Act, the necessary particulars concerning bankruptcy proceedings, etc. are specified by the Rules of the Supreme Court.

## **Chapter II Commencement of Bankruptcy Proceedings**

### **Section 1 Petition to Commence Bankruptcy Proceedings**

(Cause for Commencement of Bankruptcy Proceedings)

- Article 15 (1) When a debtor is unable to pay debts, the court commences bankruptcy proceedings upon petition by an order pursuant to the provisions of Article 30, paragraph (1).
- (2) When a debtor has suspended payments, the debtor is presumed to be unable to pay debts.

(Cause of Commencement of Bankruptcy Proceedings Against Corporations)

Article 16 (1) For the purpose of application of the provisions of paragraph (1) of the preceding Article when the debtor is a corporation, the term "unable to pay debts" in that paragraph is deemed to be replaced with "unable to pay debts or insolvent (meaning the condition in which a debtor is unable to pay its debts in full with its property)".

(2) The provisions of the preceding paragraph do not apply to any existing general partnership company or limited partnership company.

(Presumption of Grounds for Commencement of Bankruptcy Proceedings)

Article 17 If proceedings equivalent to bankruptcy proceedings are commenced against a debtor in a foreign state, the fact constituting the grounds for the commencement of bankruptcy proceedings is presumed to exist with regard to the debtor.

(Petition to Commence Bankruptcy Proceedings)

Article 18 (1) A creditor or debtor may file a petition to commence bankruptcy proceedings.

(2) When filing a petition to commence bankruptcy proceedings, a creditor must make a prima facie showing of the existence of the claim held by the creditor and the fact constituting the cause for the commencement of bankruptcy proceedings.

(Petition to Commence Bankruptcy Proceedings Against Corporations)

Article 19 (1) A petition to commence bankruptcy proceedings for a corporation stated in the following items may be filed by the person that the relevant item prescribes:

(i) a general incorporated association or general incorporation foundation: director;

(ii) a stock company or mutual company (meaning a mutual company prescribed in Article 2, paragraph (5) of the Insurance Business Act (Act No. 105 of 1995; the same applies in Article 150, paragraph (6), item (iii))): a company director; and

(iii) a general partnership company, limited partnership company, or limited liability company: a member that conducts business.

(2) A liquidator may also file a petition to commence bankruptcy proceedings against a corporation stated in any of the items of the preceding paragraph.

(3) When filing a petition to commence bankruptcy proceedings pursuant to the provisions of the preceding two paragraphs against a corporation stated in any of the items of paragraph (1), a prima facie showing of the fact constituting the cause for the commencement of bankruptcy proceedings must be made, except

when the petition to commence bankruptcy proceedings is filed by all of its company directors, members conducting business, or liquidators.

- (4) The provisions of the preceding three paragraphs apply mutatis mutandis to a corporation other than those listed in the items of paragraph (1).
- (5) A petition to commence bankruptcy proceedings for a corporation may be filed up until the delivery or distribution of its residual assets is completed, even after its dissolution.

(Method of Filing a Petition to Commence Bankruptcy Proceedings)

Article 20 (1) A petition to commence bankruptcy proceedings must be filed by means of a document stating the particulars specified by the Rules of the Supreme Court.

- (2) If a person other than a creditor files a petition to commence bankruptcy proceedings, the person must submit to the court a list of creditors stating the particulars specified by the Rules of the Supreme Court; provided, however, that if it is impossible to submit a list of creditors at the same time as filing the petition, it is sufficient for the person to submit the list without delay after filing the petition.

(Examination of Written Petition to Commence Bankruptcy Proceedings)

Article 21 (1) When a document under paragraph (1) of the preceding Article (referred to below as a "written petition to commence bankruptcy proceedings") does not state the particulars prescribed in that paragraph, the court clerk must specify a reasonable period and make an action to order that the defect should be corrected within the specified period. The same applies if the fees for a petition to commence bankruptcy proceedings required under the provisions of the Act on the Costs of Civil Procedure (Act No. 40 of 1971) are not paid.

- (2) The disposition stated in the preceding paragraph becomes effective when a notice is given in an appropriate manner.
- (3) An objection may be made to the action stated in paragraph (1) within an alterable period of one week from the day on which a notice is received.
- (4) The objection stated in the preceding paragraph has the effect of a stay of enforcement.
- (5) If the objection under paragraph (3) is made, when the court finds in a written petition to commence bankruptcy proceedings any defect other than the defect for which it has ordered correction by the action stated in paragraph (1), the court must specify a reasonable period and order that the additional defect should be corrected within that period.
- (6) In the case referred to in paragraph (1) or the preceding paragraph, if a petitioner for commencement of bankruptcy proceedings fails to correct the defect, the presiding judge must dismiss the written petition to commence

bankruptcy proceedings by an order.

- (7) An immediate appeal may be filed against the order stated in the preceding paragraph.

(Prepayment of Expenses)

Article 22 (1) When filing a petition to commence bankruptcy proceedings, the petitioner must prepay an amount designated by the court as expenses for bankruptcy proceedings.

- (2) An immediate appeal may be filed against an order on prepayment of expenses.

(Provisional Payment of Expenses)

Article 23 (1) The court may make a provisional payment of expenses for bankruptcy proceedings from the national treasury when the court finds it particularly necessary to do so for the protection of the interests of the petitioner and any interested person, while taking into consideration the petitioner's financial resources, the status of property that is to constitute the bankruptcy estate, and any other relevant circumstances. The same applies when the court issues an order commencing bankruptcy proceedings by its own authority.

- (2) The provisions of paragraph (1) of the preceding Article do not apply if a provisional payment of expenses for bankruptcy proceedings is made from the national treasury pursuant to the provisions of the first sentence of the preceding paragraph.

(Stay Orders for Other Proceedings)

Article 24 (1) If a petition to commence bankruptcy proceedings is filed, the court may order a suspension of the following proceedings or dispositions until an order is made on the petition to commence bankruptcy proceedings upon the petition of an interested person or by its own authority when it finds it necessary to do so; provided, however, that this only applies, in the case of the proceedings stated in item (i) or the disposition stated in item (vi), if the stay order is not likely to cause unjust damage to the creditor that filed the petition for the proceedings or the person that made the disposition, and in the case of the proceedings for limitation of liability stated in item (v), if an order to commence proceedings for limitation of liability has not yet been made:

- (i) proceedings already initiated against the debtor's property for enforcement, provisional seizure, provisional disposition, or exercise of a general statutory lien or auction by reason of a right of retention (excluding a right of retention under the provisions of the Commercial Code (Act No. 48 of 1899) or the Companies Act) (referred to below as "enforcement, etc." in this Section),

- which is based on a claim that is supposed to be a bankruptcy claim or claim on the estate, if an order commencing bankruptcy proceedings is made against the debtor (referred to below as "bankruptcy claim, etc." in this paragraph and paragraph (8) of the following Article), or is intended to secure a bankruptcy claim, etc.;
- (ii) proceedings already initiated against the debtor's property for the exercise of an enterprise mortgage, which is based on a bankruptcy claim, etc.;
  - (iii) court proceedings of an action relating to the debtor's property;
  - (iv) proceedings for a case relating to the debtor's property that is pending before an administrative authority;
  - (v) proceedings for limitation of liability of a debtor (meaning proceedings for limitation of liability under the provisions of Chapter III of the Act on Limitation of Ship owner Liability (Act No. 94 of 1975), Chapter V of the Act on Liability for Oil Pollution Damage (Act No. 95 of 1975), Article 31 and Article 32 of that Act applied mutatis mutandis pursuant to Article 43, paragraph (5) of that Act, Chapter III of the Act on Limitation of Shipowner Liability (excluding Article 9, Article 10, Article 16, and Article 54) applied mutatis mutandis pursuant to Article 43, paragraph (6) of the Act on Liability for Oil Pollution Damage or Article 31 and Article 32 of that Act applied mutatis mutandis pursuant to Article 51, paragraph (5) of the Act on Liability for Oil Pollution Damage, and Chapter III of that Act (excluding Article 9, Article 10, Article 16, Section 4, and Article 54) applied mutatis mutandis pursuant to Article 51, paragraph (6) of the Act on Liability for Oil Pollution Damage; the same applies in Article 263 and Article 264, paragraph (1)) for the debtor; and
  - (vi) a disposal to be made by the same procedure as that for the collection of national tax delinquency (the disposal is referred to below as a "disposal of foreign tax delinquency"), based on a claim from a foreign tax subject to mutual assistance (meaning the foreign tax subject to mutual assistance prescribed in Article 11, paragraph (1) of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Attendant upon the Enforcement of Tax Treaties (Act No. 46 of 1969; referred to below as the "Act on Special Provisions for the Enforcement of Tax Treaties" in Article 103, paragraph (5) and Article 253, paragraph (4)); the same applies below), which has already been initiated against the debtor's property and which is based on the ground of a bankruptcy claim, etc.
- (2) The court may change or reverse a suspension order issued under the provisions of the preceding paragraph.
  - (3) If an order for temporary administration prescribed in Article 91, paragraph (2) is issued, the court may order the rescission of the procedure for enforcement, etc. or disposal of foreign tax delinquency which has been

suspended pursuant to the provisions of paragraph (1) when it finds it particularly necessary to do so for the administration and disposal of the debtor's property, upon a petition of a temporary administrator, while requiring security to be provided.

- (4) An immediate appeal may be filed against a suspension order issued under the provisions of paragraph (1), an order issued under the provisions of paragraph (2), and a reversal order issued under the provisions of the preceding paragraph.
- (5) The immediate appeal stated in the preceding paragraph does not have the effect of a stay of enforcement.
- (6) If a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal referred to in that paragraph are made, the electronic judgment (meaning an electronic or magnetic record prepared pursuant to the provisions of Article 252, paragraph (1) of the Code of Civil Procedure applied mutatis mutandis pursuant to Article 122 of that Code applied mutatis mutandis pursuant to Article 13 that has been recorded in computer files pursuant to the provisions of Article 253, paragraph (2) of that Code applied mutatis mutandis pursuant to Article 122 of that Code applied mutatis mutandis pursuant to Article 13; the same applies below) must be served upon the parties concerned.

#### (Comprehensive Stay Orders)

- Article 25 (1) If a petition to commence bankruptcy proceedings is filed under special circumstances, and when the court finds that there is a risk that it would be impossible to achieve the purpose of the bankruptcy proceedings satisfactorily only by issuing a suspension order pursuant to the provisions of paragraph (1), item (i) or (vi) of the preceding Article, upon the petition of an interested person or by its own authority, the court may issue an order prohibiting all creditors from enforcement, etc. against a debtor's property, and a collection of national tax delinquency (including a disposition to be made by a procedure for making a disposal of national tax delinquency, and excluding a request for distribution; the same applies below), until an order is made on the petition to commence bankruptcy proceedings; but this applies only if the court issues a provisional order in advance or simultaneously under the provisions of Article 28, paragraph (1) or order for temporary administration prescribed in Article 91, paragraph (2) with respect to the debtor's principal property.
- (2) Upon issuing a stay order under the provisions of the preceding paragraph referred to below as a "comprehensive stay order"), the court may exclude a certain range of enforcement, etc. or procedures for collection of national tax delinquency from the subject to the comprehensive stay order when it finds it appropriate to do so.



- (3) If a comprehensive stay order is issued, the procedure for enforcement, etc. and disposal of foreign tax delinquency which have already been initiated against the debtor's assets (limited to the procedures or disposals that are to be prohibited by the comprehensive stay order) are suspended until an order is made on the petition to commence bankruptcy proceedings.
- (4) The court may change or reverse a comprehensive stay order.
- (5) If an order for temporary administration prescribed in Article 91, paragraph (2) is issued, the court may order reversal of the procedure for enforcement, etc. or disposal of foreign tax delinquency which has been suspended pursuant to the provisions of paragraph (3) upon the petition of a temporary administrator, while requiring security to be provided when it finds it particularly necessary to do so for the administration and disposal of the debtor's property.
- (6) An immediate appeal may be filed against a comprehensive stay order, an order made under the provisions of paragraph (4) and a reversal order issued under the provisions of the preceding paragraph.
- (7) The immediate appeal stated in the preceding paragraph does not have the effect of stay of enforcement.
- (8) When a comprehensive stay order is issued, the prescription is not completed with regard to a bankruptcy claim, etc. (limited to a claim for which enforcement, etc. or procedure for collection of national tax delinquency is prohibited by the comprehensive stay order) until the day on which two months have elapsed from the next day on which the comprehensive stay order ceases to be effective.

#### (Public Notice and Service Concerning Comprehensive Stay Order)

- Article 26 (1) If a comprehensive stay order is issued and an order to change or reverse this order is made, the court must give a public notice to that effect, serve the debtor (or a temporary administrator if any temporary administrator is appointed; the same applies in the following paragraph) and petitioner, and also the creditors and debtors (limited to cases in which a temporary administrator is appointed) who have been notified the main text of the respective order, the electronic judgment.
- (2) A comprehensive stay order and an order to change or reverse this order becomes effective from the time when the electronic judgment is served upon the debtor.
  - (3) If a judicial decision on an immediate appeal stated in paragraph (6) of the preceding Article (excluding an order to change or reverse a comprehensive stay order) is made, the electronic judgment must be served upon the parties concerned.

#### (Cancellation of Comprehensive Stay Orders)

- Article 27 (1) The court may issue an order to cancel a comprehensive stay order only for that creditor upon the petition of the creditor, when it finds the comprehensive stay order is likely to cause undue damage to the creditor who filed the petition for enforcement, etc. after issuing the comprehensive stay order. In this case, the creditor may have enforcement, etc. against the debtor's property, and any procedures for enforcement, etc. initiated by the creditor before the issuance of the comprehensive stay order that have been suspended under the provisions of Article 25, paragraph (3) resume their process.
- (2) The provisions of the preceding paragraph apply *mutatis mutandis* if the court finds that a comprehensive stay order is likely to cause undue damage to a person that conducts a disposition to collect national tax arrears.
- (3) For the purpose of applying the provisions of Article 25, paragraph (8) to a person that obtains a cancellation order under the provisions of paragraph (1) (including cases as applied *mutatis mutandis* pursuant to the preceding paragraph; the same applies in the following paragraph and paragraph (6)), the phrase "the day on which the comprehensive stay order ceases to be effective" in Article 25, paragraph (8) is deemed to be replaced with "the day on which a cancellation order under the provisions of Article 27, paragraph (1) (including cases as applied *mutatis mutandis* pursuant to paragraph (2) of the Article) is issued".
- (4) An immediate appeal may be filed against a judicial decision on the petition stated in paragraph (1).
- (5) The immediate appeal stated in the preceding paragraph does not have the effect of a stay of enforcement.
- (6) If a judicial decision on the petition stated in paragraph (1) and a judicial decision on the immediate appeal stated in paragraph (4) are made, the electronic judgments must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Provisional Order Concerning Debtor's Property)

- Article 28 (1) If a petition to commence bankruptcy proceedings is filed, upon the petition of an interested person or by their own authority, the court may issue a provisional order that prohibits a disposal of the debtor's assets or any other necessary provisional order concerning the assets until a decision is made on the petition to commence bankruptcy proceedings.
- (2) The court may change or reverse a provisional order issued under the provisions of the preceding paragraph.
- (3) An immediate appeal may be filed against a provisional order issued under the provisions of paragraph (1) and an order issued under the provisions of the preceding paragraph.
- (4) The immediate appeal stated in the preceding paragraph does not have the

effect of a stay of enforcement.

- (5) If a judicial decision prescribed in paragraph (3) and a judicial decision on the immediate appeal stated in that paragraph are made, the electronic judgments must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (6) Pursuant to the provisions of paragraph (1), if the court has issued a provisional order prohibiting a debtor from making payments to a creditor or conducting any other act with the creditor to extinguish the debtor's debt, the creditor may not assert the effect of the payment or any other act to extinguish the debt, which is made or conducted in violation of the provisional order in relation to the bankruptcy proceedings; provided, however, that this applies only if the creditor knows the fact that the provisional order was issued at the time of the act.

(Restriction on Withdrawal of Petitions to Commence Bankruptcy Proceedings)

Article 29 A person that has filed a petition to commence bankruptcy proceedings may withdraw the petition only before an order commencing bankruptcy proceedings is made. In this case, after a suspension order under the provisions of Article 24, paragraph (1), comprehensive stay order, provisional order under the provisions of paragraph (1) of the preceding Article, order for temporary administration prescribed in Article 91, paragraph (2) or provisional order under the provisions of Article 171, paragraph (1) is issued, a permission of the court is required.

## **Section 2 Order commencing Bankruptcy Proceedings**

(Order commencing Bankruptcy Proceedings)

Article 30 (1) If a petition to commence bankruptcy proceedings is filed and the court finds a fact constituting the grounds for the commencement of bankruptcy proceedings, it issues an order commencing bankruptcy proceedings, except in the cases listed in the following items:

- (i) when expenses for bankruptcy proceedings are not prepaid (excluding cases in which temporary payment of the expenses is made from the national treasury pursuant to the provisions of the first sentence of Article 23, paragraph (1)); or
  - (ii) if the petition to commence bankruptcy proceedings is filed for an unjust purpose or it is not filed in good faith.
- (2) The order issued under the preceding paragraph becomes effective from the time when it is issued.

(Particulars to Be Specified upon Issuing Order commencing Bankruptcy

Proceedings)

Article 31 (1) The court must appoint one or more bankruptcy trustees and specify the following particulars upon issuing an order commencing bankruptcy proceedings:

- (i) the period during which a proof of a bankruptcy claim should be filed;
  - (ii) the date of a creditors' meeting that is to be convoked to report the status of the debtor's property (referred to as a "meeting for reporting the status of property" in paragraph (4), Article 136, paragraphs (2) and (3) and Article 158); and
  - (iii) the period for conducting an investigation of bankruptcy claims (or the date for conducting an investigation of bankruptcy claims in the case referred to in Article 116, paragraph (2)).
- (2) Notwithstanding the provisions of item (i) and item (iii) of the preceding paragraph, the court may choose not to specify the period stated in item (i) of that paragraph and the period and date stated in item (iii) of that paragraph when it finds that the bankruptcy estate is likely to be insufficient for paying expenses for bankruptcy proceedings.
- (3) In the case referred to in the preceding paragraph, if it finds that the bankruptcy estate is no longer insufficient for paying expenses for bankruptcy proceedings, the court must promptly specify the period stated in paragraph (1), item (i) and the period or date stated in item (iii) of that paragraph.
- (4) Notwithstanding the provisions of paragraph (1), item (ii), if it finds it inappropriate to convoke a meeting for reporting the status of property while taking into consideration the number of known bankruptcy creditors and any other relevant circumstances, the court may choose not to specify the date stated in paragraph (1), item (ii).
- (5) In the case referred to in paragraph (1), if there are 1,000 or more known bankruptcy creditors and it is found appropriate, the court may issue an order not to give a notice to bankruptcy creditors under the provisions of paragraph (3), item (i) of the following Article, as applied mutatis mutandis pursuant to the main clauses of paragraph (4) and paragraph (5) of that Article, and the provisions of the main clause of Article 33, paragraph (3) and the main clause of Article 139, paragraph (3) (in the case referred to in the main clause of Article 139, paragraph (3), creditors with voting rights prescribed in the main clause of Article 139, paragraph (3); the same applies in paragraph (2) of the following Article), and not to summon, on the date of a creditors' meeting, bankruptcy creditors that filed a proof of a bankruptcy claim pursuant to the provisions of Article 111, Article 112 or Article 114 (referred to below as "holders of filed bankruptcy claims").

(Public Notice of Commencement of Bankruptcy Proceedings)

- Article 32 (1) The court must immediately give a public notice of the following particulars when it has issued an order commencing bankruptcy proceedings:
- (i) the main text of the order commencing bankruptcy proceedings;
  - (ii) the name of the bankruptcy trustee;
  - (iii) the period or date established pursuant to the provisions of paragraph (1) of the preceding Article;
  - (iv) an order to the effect that a person that possesses property that belongs to the bankruptcy estate and a person that owes a debt to the bankrupt (referred to as a "possessor of property, etc." in paragraph (3), item (ii)) must not deliver the property or pay the bankrupt; and
  - (v) when it is found to be appropriate to make a simplified distribution under the provisions of Article 204, paragraph (1), item (ii), the order to the effect that any bankruptcy creditor that has an objection to the making of a simplified distribution should state the objection to the court before the expiration of the period stated in paragraph (1), item (iii) of the preceding Article or before the end of the date stated in that item.
- (2) When an order under paragraph (5) of the preceding Article is issued, in addition to the particulars stated in the items of the preceding paragraph, the court must give a public notice to the effect that it will not give a notice to bankruptcy creditors under the provisions of item (i) of the following paragraph, as applied *mutatis mutandis* pursuant to the main clauses of paragraph (4) and paragraph (5), and the provisions of the main clause of paragraph (3) of the following Article and the main clause of Article 139, paragraph (3), and that it will not summon holders of filed bankruptcy claims on the date of a creditors' meeting.
- (3) The following persons must be given a notice of the particulars of which a public notice should be made pursuant to the provisions of the preceding two paragraphs:
- (i) a bankruptcy trustee, the bankrupt, and known bankruptcy creditors;
  - (ii) a known possessor of property, etc.;
  - (iii) a temporary administrator when an order for temporary administration prescribed in Article 91, paragraph (2) is issued; and
  - (iv) a labor union, etc. (meaning a labor union consisting of the majority of a bankrupt's employees and other workers, if there is a labor union, or a person representative of the majority of a bankrupt's employees and other workers, if there is no labor union consisting of the majority of a bankrupt's employees and other workers; the same applies in Article 78, paragraph (4) and Article 136, paragraph (3)).
- (4) The provisions of paragraph (1), item (iii) and item (i) of the preceding paragraph apply *mutatis mutandis* if the period stated in paragraph (1), item (i) of the preceding Article and the period or date stated in item (iii) of the

same paragraph are specified pursuant to the provisions of paragraph (3) of the Article; provided, however, that when an order under paragraph (5) of the Article is issued, the notice is not required to be given to known bankruptcy creditors.

- (5) The provisions of paragraph (1), item (ii) and paragraph (3), item (i) and item (ii) apply mutatis mutandis if there is a change in the particulars stated in paragraph (1), item(ii), and the provisions of paragraph (1), item (iii) and paragraph (3), item (i) apply mutatis mutandis if there is a change in the particulars stated in paragraph (1), item (iii) (limited to cases in which there is a change to the period stated in paragraph (1), item (i) of the preceding Article or the date stated in item (ii) of that paragraph); provided, however, that when an order under paragraph (5) of that Article is issued, the notice is not required to be given to known bankruptcy creditors.

#### (Appeals Against Rulings)

Article 33 (1) An immediate appeal may be filed against a judicial decision on a petition to commence bankruptcy proceedings.

- (2) The provisions of Articles 24 through 28 apply mutatis mutandis when an immediate appeal referred to in the preceding paragraph is filed against a decision dismissing with prejudice a petition to commence bankruptcy proceedings.

- (3) The court that has made an order commencing bankruptcy proceedings must immediately give a public notice of the main text of the reversal order and give a notice of the main text to the persons listed in the items of paragraph (3) of the preceding Article (excluding item (iii)), if an immediate appeal stated in paragraph (1) is filed and an order to reverse this order becomes final and binding; but when an order stated in Article 31, paragraph (5) is issued, the notice is not required to be given to known bankruptcy creditors.

### **Section 3 Effect of Commencement of Bankruptcy Proceedings**

#### **Subsection 1 General Rules**

#### (Scope of Bankruptcy Estate)

Article 34 (1) Any and all property that a bankrupt holds at the time of commencement of bankruptcy proceedings (irrespective of whether it exists in Japan) is to constitute a bankruptcy estate.

- (2) Any claim which may arise in the future and be enforced by the bankrupt based on a cause that has occurred prior to the commencement of bankruptcy proceedings is to belong to the bankruptcy estate.
- (3) Notwithstanding the provisions of paragraph (1), the following property does not belong to a bankruptcy estate:

- (i) money obtained by multiplying the amount prescribed in Article 131, item (iii) of the Civil Enforcement Act (Act No. 4 of 1979) by two-thirds; and
  - (ii) property that may not be seized (excluding money prescribed in Article 131, item (iii) of the Civil Enforcement Act); provided, however, that this does not apply to property for which a seizure is allowed pursuant to the provisions of Article 132, paragraph (1) of that Act (including cases as applied mutatis mutandis pursuant to Article 192 of that Act) and property which becomes seizable after the commencement of bankruptcy proceedings.
- (4) During the period from the time when an order commencing bankruptcy proceedings is issued until the day on which one month has elapsed since the day on which the order becomes final and binding, by an order and upon the petition of the bankrupt or by its own authority, the court may expand the scope of property that does not belong to the bankruptcy estate, while taking into consideration the bankrupt's living conditions, the types of property stated in the items of the preceding paragraph that the bankrupt held at the time of commencement of bankruptcy proceedings and the amount of its value, the likelihood for the bankrupt to earn income and any other relevant circumstances.
- (5) The court must hear an opinion of a bankruptcy trustee when issuing an order stated in the preceding paragraph.
- (6) The bankrupt may file an immediate appeal against an order dismissing the petition stated in paragraph (4).
- (7) If an order stated in paragraph (4) or a judicial decision on the immediate appeal stated in the preceding paragraph is made, the electronic judgment must be served upon the bankrupt and the bankruptcy trustee. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

#### (Constructive Existence of Corporations)

Article 35 A corporation that is dissolved through an order commencing bankruptcy proceedings under the provisions of other Acts or a dissolved corporation that has received an order commencing bankruptcy proceedings is deemed to remain in existence to the extent of the purpose of liquidation through bankruptcy proceedings until the bankruptcy proceedings are closed.

#### (Continuation of Bankrupt's Business)

Article 36 Even after an order commencing bankruptcy proceedings is made, a bankruptcy trustee may continue the bankrupt's business with permission of the court.

#### (Restriction on Bankrupt's Residence)

Article 37 (1) The bankrupt may not leave their place of residence without filing

a petition and obtaining the permission of the court.

- (2) The bankrupt may file an immediate appeal against an order dismissing without prejudice the petition stated in the preceding paragraph.

(Physically Escorting the Bankrupt to the Court)

Article 38 (1) The court may order the bankrupt to be physically escorted to the court or any other place when it finds it necessary.

- (2) When a petition to commence bankruptcy proceedings is made, the court may order the debtor physically escorted to the court or any other place even before making an order commencing bankruptcy proceedings.
- (3) A physical escort under the provisions of the preceding two paragraphs must be undertaken after the issuance of a writ of physical escort
- (4) The bankrupt or debtor may file an immediate appeal against an order to order the physical escort to the court or other places made under the provisions of paragraph (1) or (2).
- (5) The provisions of the Code of Criminal Procedure (Act No. 131 of 1948) concerning physical escorts apply *mutatis mutandis* to the physical escorts to the court and other places under the provisions of paragraphs (1) and (2).

(Application, *Mutatis Mutandis* to Persons Equivalent to Bankrupts)

Article 39 The provisions of the preceding two paragraphs apply *mutatis mutandis* to the bankrupt's legal representative and manager, as well as to the bankrupt's director, company director, executive officer, and any other person equivalent to them.

(Obligation of Explanation of Bankrupts)

Article 40 (1) Upon the request of a bankruptcy trustee or the creditors' committee prescribed in Article 144, paragraph (2) or the request based on a resolution at a creditors' meeting, the following persons must give necessary explanation concerning bankruptcy; provided, however, that with regard to the person stated in item (v), this applies only when permitted by the court:

- (i) bankrupt;
  - (ii) bankrupt's agent;
  - (iii) when the bankrupt is a corporation, its director, company director, executive officer, inspector, company auditor, and liquidator;
  - (iv) any other person equivalent to the persons stated in the preceding item;
  - and
  - (v) bankrupt's employee (excluding the person stated in item (ii)).
- (2) The provisions of the preceding paragraph apply *mutatis mutandis* to a person that is any of the persons stated in the items of that paragraph (excluding item (i)).



(Obligation to Disclose Important Property of Bankrupts)

Article 41 After an order commencing bankruptcy proceedings is issued, the bankrupt must submit to the court a document stating the contents of real property, cash, securities, deposits and savings, and any other types of property designated by the court that the bankrupt owns.

(Lapse of Other Procedures)

- Article 42 (1) If an order commencing bankruptcy proceedings is issued, enforcement against property that belong to the bankruptcy estate, provisional seizures, provisional dispositions against the property, general statutory liens, enterprise mortgages or disposal of foreign tax delinquency, which is based on a bankruptcy claim or claim on the estate, or is intended to secure a bankruptcy claim or claim on the estate, cannot be exercised.
- (2) In the case prescribed in the preceding paragraph, the procedures for enforcement, provisional seizure, provisional disposition, exercise of a general statutory lien or exercise of an enterprise mortgage or disposal of foreign tax delinquency prescribed in that paragraph, which have already been initiated against property that belong to the bankruptcy estate, cease to be effective in relation to the bankruptcy estate; provided, however, that with regard to the procedure for enforcement or exercise of a general statutory lien prescribed in that paragraph (referred to below as "enforcement or exercise of a statutory lien" in this Article), this does not preclude a bankruptcy trustee from continuing the procedure in the interest of the bankruptcy estate.
- (3) With regard to the procedure for enforcement or exercise of a statutory lien continued pursuant to the provisions of the proviso to the preceding paragraph, the provisions of Article 63 and Article 129 of the Civil Enforcement Act (including cases in which these provisions are applied mutatis mutandis pursuant to that Act or other laws and regulations concerning a procedure for enforcement) do not apply.
- (4) A claim for expenses against the bankrupt for the procedure for enforcement or exercise of a statutory lien continued pursuant to the provisions of the proviso to paragraph (2) is a claim on the estate.
- (5) With regard to a third party action against the enforcement or exercise of a statutory lien continued pursuant to the provisions of the proviso to paragraph (2), the bankruptcy trustee stands as a defendant.
- (6) If an order commencing bankruptcy proceedings is issued, no petition may be filed for a property disclosure procedure (meaning an assets disclosure procedure prescribed in Article 196 of the Civil Enforcement Act; the same applies below in this paragraph and Article 249, paragraph (1) and paragraph (2)) or procedure for acquiring information from a third party (meaning the

procedures for acquiring information from third parties prescribed in Article 204 of that Act; the same applies below in this paragraph and Article 249, paragraphs (1) and (2)) based on a bankruptcy claim or claim on the estate, and a property disclosure procedure and a procedure for acquiring information from a third party based on a bankruptcy claim or claim on the estate, cease to be effective.

(Handling of Collection of National Tax Delinquency)

- Article 43 (1) If an order commencing bankruptcy proceedings is issued, collection of national tax delinquency (excluding a disposal of foreign tax delinquency; the same applies in the following paragraph) may not be made against property that belongs to the bankruptcy estate.
- (2) If a collection of national tax delinquency has already been initiated against property that belongs to the bankruptcy estate, an order commencing bankruptcy proceedings does not preclude the continuation of the collection of national tax delinquency.
- (3) When an order commencing bankruptcy proceedings is issued, the prescription for a fine, petty fine, and collection of equivalent value do not proceed until the bankruptcy proceedings are closed. The same applies during the period after a petition for a grant of discharge is filed until a judicial decision on the petition becomes final and binding (if a petition for a grant of discharge is filed before an order commencing bankruptcy proceedings is issued, during the period after an order commencing bankruptcy proceedings is issued until a judicial decision on the petition becomes final and binding).

(Actions Relating to Bankruptcy Estates)

- Article 44 (1) When an order commencing bankruptcy proceedings is issued, any action relating to the bankruptcy estate in which the bankrupt stands as a party is subject to a continuance.
- (2) A bankruptcy trustee may take over the action which was subject to a continuance under the provisions of the preceding paragraph which does not relate to any bankruptcy claim. In this case, a petition for taking over the action may also be filed by the opponent.
- (3) In the case referred to in the preceding paragraph, the opponent's claim for court costs against the bankrupt is a claim on the estate.
- (4) When the bankruptcy proceedings are closed, any action relating to the bankruptcy estate in which a bankruptcy trustee stands as a party is subject to a continuance.
- (5) The bankrupt must take over the action which was subject to a continuance under the provisions of the preceding paragraph. In this case, a petition for taking over the action may also be filed by the opponent.

- (6) If bankruptcy proceedings are closed before the action which was subject to a continuance pursuant to the provisions of paragraph (1) is taken over under the provisions of paragraph (2), the bankrupt automatically takes over the action.

(Handling of Actions by the Subrogee and Actions for Rescission of Fraudulent Acts)

Article 45 (1) If an action filed by a bankruptcy creditor or holder of a claim on the estate pursuant to the provisions of Article 423, paragraph (1), Article 423-7 or Article 424, paragraph (1) of the Civil Code (Act No. 89 of 1896) is pending at the time of commencement of bankruptcy proceedings, the action is subject to a continuance.

- (2) A bankruptcy trustee may take over the action which was subject to a continuance pursuant to the provisions of the preceding paragraph. In this case, a petition for taking over the action may also be filed by the opponent.
- (3) In the case referred to in the preceding paragraph, the opponent's claim for court costs against the bankruptcy creditor or holder of a claim on the estate is a claim on the estate.
- (4) If the bankruptcy proceedings are closed after the action was taken over under the provisions of paragraph (2), the bankruptcy proceedings which were subject to a continuance under the provisions of paragraph (1), the action is subject to a continuance.
- (5) In the case referred to in the preceding paragraph, the bankruptcy creditor or holder of claim on the estate must take over the action. In this case, a petition for taking over the action may also be filed by the opponent.
- (6) If the bankruptcy proceedings which were subject to a continuance under the provisions of paragraph (1) are closed before the proceeding action has been taken over under the provisions of paragraph (2), the bankruptcy creditor or holder of claim on the estate automatically takes over the action.

(Handling of Cases Pending Before Administrative Agencies)

Article 46 The provisions of Article 44 apply mutatis mutandis to cases relating to the bankruptcy estate that is pending before an administrative agency.

**Subsection 2 Effect of Commencement of Bankruptcy Proceedings**

(Effect of Juridical Acts After Commencement of Bankruptcy Proceedings)

Article 47 (1) A juridical act conducted by the bankrupt after the commencement of bankruptcy proceedings with respect to property that belongs to the bankruptcy estate may not be asserted effective in relation to the bankruptcy proceedings.

- (2) A juridical act conducted by the bankrupt on the date of commencement of bankruptcy proceedings is presumed to be conducted after the commencement of bankruptcy proceedings.

(Effect of Acquisition of Rights After Commencement of Bankruptcy Proceedings)

- Article 48 (1) If a right is acquired after the commencement of bankruptcy proceedings with respect to property that belongs to the bankruptcy estate but it is not by way of the bankrupt's juridical act, the acquisition of the right may not be asserted effective in relation to the bankruptcy proceedings.
- (2) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis to the acquisition of the right under the preceding paragraph that occurs on the date of commencement of bankruptcy proceedings.

(Effect of Registrations After Commencement of Bankruptcy Proceedings)

- Article 49 (1) A registration or a provisional registration under the provisions of Article 105, item (i) of the Real Property Registration Act (Act No. 123 of 2004), which is made with respect to real property or a vessel after the commencement of bankruptcy proceedings based on the cause of registration that occurred prior to the commencement of bankruptcy proceedings, may not be asserted to be effective in relation to the bankruptcy proceedings; provided, however, that this does not apply to a registration or provisional registration made by a person entitled to demand registration, without the knowing the commencement of bankruptcy proceedings.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to a registration or provisional registration made with respect to the establishment, transfer, or modification of a right, or registration made with respect to the establishment, transfer, or modification of an enterprise mortgage.

(Effect of Payment to the Bankrupt After Commencement of Bankruptcy Proceedings)

- Article 50 (1) Payment made to the bankrupt after the commencement of bankruptcy proceedings without knowing the commencement may also be asserted effective in relation to the bankruptcy proceedings.
- (2) Payment made to the bankrupt after the commencement of bankruptcy proceedings with the knowledge of the commencement may be asserted effective in relation to the bankruptcy proceedings only to the extent that the bankruptcy estate has been enriched.

(Presumption of Existence or Absence of Knowledge)

- Article 51 For the application of the provisions of the preceding two Articles, the

absence of knowledge of the commencement of bankruptcy proceedings is presumed prior to a public notice made under the provisions of Article 32, paragraph (1), and the existence of knowledge of the commencement of bankruptcy proceedings is presumed after the public notice is made.

(Co-Ownership)

Article 52 (1) If two or more persons jointly hold property rights and any one of them has received an order commencing bankruptcy proceedings, a claim for dividing the property in co-ownership may be made even if there is an agreement between the co-owners to the effect that division has not been agreed upon.

(2) In the case referred to in the preceding paragraph, other co-owners may acquire the bankrupt's co-owned interest in the property by paying a reasonable amount of compensation.

(Executory Contracts)

Article 53 (1) If both the bankrupt and the other party under an executory contract have not yet completely performed their obligations by the time of the commencement of bankruptcy proceedings, a bankruptcy trustee may cancel the contract or may perform the bankrupt's obligation and request the other party to perform their obligation.

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

(3) The provisions of the preceding paragraph apply mutatis mutandis if the counterparty or a bankruptcy trustee may give a notice of termination pursuant to the provisions of the first sentence of Article 631 of the Civil Code or cancel the contract pursuant to the first sentence of Article 642, paragraph (1) of that Code.

Article 54 (1) If a contract is cancelled pursuant to the provisions of paragraph (1) or (2) of the preceding Article, the counterparty may exercise their right to claim of compensation for damages as a bankruptcy creditor.

(2) In the case referred to in the preceding paragraph, if the counter-performance received by the bankrupt still exists in the bankruptcy estate, the counterparty may request its return, and if it does not exist in the bankruptcy estate, they may exercise their right over its value as a holder of a claim on the estate.

(Executory Contracts for Continuous Performance)

- Article 55 (1) After the commencement of bankruptcy proceedings, the counterparty to a bilateral contract who has an obligation to provide continuous performance to the bankrupt may not refuse to perform the obligation on the grounds that no payment is made with regard to the bankruptcy claim arising from the performance provided prior to the filing of a petition to commence bankruptcy proceedings.
- (2) A claim arising from the performance that is provided by the counterparty to an executory contract prescribed in the preceding paragraph after the filing of a petition to commence bankruptcy proceedings, and prior to the commencement of bankruptcy proceedings (in the case of continuous performance for which the amount of claim should be calculated for each specific period of time, the claim arising from the performance provided within the period that includes the date of filing of the petition is included) is a claim on the estate.
- (3) The provisions of the preceding two paragraphs do not apply to a labor contract.

(Lease Contracts)

- Article 56 (1) The provisions of Article 53, paragraphs (1) and (2) do not apply when the counterparty of the bankrupt under a contract for the establishment of a leasehold or any other right of use or extracting profit has a registration or meets any other requirement for duly asserting the right against any third party.
- (2) In the case prescribed in the preceding paragraph, a claim held by the counterparty is a claim on the estate.

(Contract of Mandate)

- Article 57 When bankruptcy proceedings are commenced against the mandator, if they have administered the mandated business without receiving a notice of commencement of bankruptcy proceedings under the provisions of Article 655 of the Civil Code and also without knowing the fact of the commencement of bankruptcy proceedings, the mandatary may exercise their right to a claim arising from the above mentioned administration as a bankruptcy creditor.

(Contracts for Transaction of Goods with Market Quotation)

- Article 58 (1) With regard to a contract for a transaction of goods with a quotation on an exchange or any other market quotation the purpose of which cannot be achieved unless the transaction is performed on a specific date or within a specific period of time from the nature of the transaction, if the due date is to come after the commencement of bankruptcy proceedings, it is

deemed that the contract has been cancelled.

- (2) In the case referred to in the preceding paragraph, the amount of compensation for damages is determined by the difference between the quotation for the same kind of transaction to be performed at the same time at the place of performance or any other reference place for quotation, and the price of the goods under the contract.
- (3) The provisions of Article 54, paragraph (1) apply *mutatis mutandis* to compensation for damages under the provisions of the preceding paragraph.
- (4) If there are any special provisions in the exchange or market in question with regard to the particulars specified in paragraph (1) or paragraph (2), those provisions prevail.
- (5) If, under a basic contract concluded for performing transactions stated in paragraph (1) continuously by the parties to the transactions, there is an agreement to the effect that claims and liabilities of compensation for damages prescribed in paragraph (2) arising from all contracts for transactions prescribed in paragraph (1) enforced under the basic contract is settled on a net basis, such an agreement prevails with regard to the calculation of the claimable amount of damages.

#### (Open Accounts)

- Article 59 (1) Open accounts terminate when a bankruptcy proceeding is commenced against either party to the account. In this case, each party may close the account and claim payment of the balance.
- (2) The claim under the provisions of the preceding paragraph belongs to the bankruptcy estate if it is held by the bankrupt, or is a bankruptcy claim if it is held by the other party.

#### (Acceptance or Payment of Bills of Exchange)

- Article 60 (1) When bankruptcy proceedings are commenced against the drawer or endorser of a bill of exchange, if the drawee or the backup drawee has accepted or paid the bill without knowing the commencement, the drawee or the backup drawee may exercise their right over a claim arising from the acceptance or payment as a bankruptcy creditor.
- (2) The provisions of the preceding paragraph apply *mutatis mutandis* to checks and money and other items or securities issued for the delivery of payment.
  - (3) The provisions of Article 51 apply *mutatis mutandis* to the application of the provisions of the preceding two paragraphs.

#### (Change of Administrators of Matrimonial Property)

- Article 61 The provisions of Article 758, paragraphs (2) and (3), and Article 759 of the Civil Code apply *mutatis mutandis* when bankruptcy proceedings are

commenced against a husband or wife who administers the property of their spouse, and the provisions of Article 835 of that Code apply mutatis mutandis when bankruptcy proceedings are commenced against a person that exercises parental authority.

### **Subsection 3 Right of Segregation**

(Right of Segregation)

Article 62 The commencement of bankruptcy proceedings does not affect the right to segregate, from the bankruptcy estate, property that does not belong to the bankrupt (referred to as a "right of segregation" in Article 64 and Article 78, paragraph (2), item (xiii)).

(Right of Segregation of the Seller over Goods in Transit)

- Article 63 (1) When the seller has sent the goods that are the subject matter of sale to the buyer, if an order commencing bankruptcy proceedings is made against the buyer while the buyer has not yet paid the price in full and not yet received the goods at the destination, the seller may retrieve the goods; provided, however, that this does not preclude a bankruptcy trustee from requesting the delivery of the goods by paying the price in full.
- (2) The provisions of the preceding paragraph do not preclude the application of the provisions of Article 53, paragraphs (1) and (2).
- (3) The provisions of paragraph (1) apply mutatis mutandis when the commission merchant that is commissioned to purchase goods has sent the goods to the consigner. In this case, the term "price" in that paragraph is deemed to be replaced with "remuneration and expenses".

(Rights of Substitutional Segregation)

- Article 64 (1) If the bankrupt (or a temporary administrator if any temporary administrator is appointed) has transferred property that is the subject matter of a right of segregation prior to the commencement of bankruptcy proceedings to a third party, the person that has a right of segregation over the property may request the transfer of a claim for counter-performance. The same applies when a bankruptcy trustee transfers property that is the subject matter of a right of segregation to a third party.
- (2) In the case referred to in the preceding paragraph, if a bankruptcy trustee has received counter-performance, the person that has a right of segregation stated in that paragraph may request the delivery of the property received by the bankruptcy trustee as the counter-performance.

### **Subsection 4 Right of Separate Satisfaction**



(Right of Separate Satisfaction)

Article 65 (1) A right of separate satisfaction may be exercised without going through bankruptcy proceedings.

(2) If property that is the subject matter of a security interest (meaning a special statutory lien, pledge, or mortgage; the same applies below in this paragraph) no longer belongs to the bankruptcy estate due to sale by private contract by a bankruptcy trustee or for any other reason, the person that has the security interest may also have a right of separate satisfaction over the property that is the subject matter of the security interest if it still exists.

(Handling of Rights of Retention)

Article 66 (1) A right of retention under the provisions of the Commercial Code or the Companies Act that exists at the time of commencement of bankruptcy proceedings over property that belongs to the bankruptcy estate is deemed to be a special statutory lien against the bankruptcy estate.

(2) The special statutory lien stated in the preceding paragraph is subordinate to any other special statutory lien under the provisions of the Civil Code or any other Acts.

(3) Except for the one prescribed in paragraph (1), a right of retention that exists at the time of commencement of bankruptcy proceedings over property that belongs to the bankruptcy estate ceases to be effective against the bankruptcy estate.

### **Subsection 5 Right to Set-Off**

(Right to Set-Off)

Article 67 (1) If owing a debt to the bankrupt at the time of commencement of bankruptcy proceedings, a bankruptcy creditor may offset the debt without going through bankruptcy proceedings.

(2) Even when a claim held by a bankruptcy creditor is subject to a due date or condition subsequent at the time of the commencement of bankruptcy proceedings or it falls within the category of claims stated in Article 103, paragraph (2), item (i), this does not preclude the bankruptcy creditor from offsetting a debt pursuant to the provisions of the preceding paragraph. The same applies when a debt owed by a bankruptcy creditor is subject to a due date or condition or it relates to a claim which may arise in the future.

(Amount of Bankruptcy Claim Permissible for Set-Off)

Article 68 (1) The amount of a bankruptcy claim for which a bankruptcy creditor offsets a debt pursuant to the provisions of the preceding Article is the amount

specified in each item of Article 103, paragraph (2) for the categories of claims listed in the respective items.

- (2) Notwithstanding the provisions of the preceding paragraph, if a claim held by a bankruptcy creditor is a claim without interest or a claim for periodic payments, the bankruptcy creditor may offset a debt only up to the amount of the creditor's claim after deducting the amount of the portion stated in Article 99, paragraph (1), items (ii) through (iv).

(Set-Off by Holder of Claims Subject to Condition Subsequent)

Article 69 When a person that holds a claim subject to a condition subsequent offsets a debt, in the interest of the bankruptcy estate, the person must provide security for or make a contractual deposit of the amount of their debt to be extinguished by the set-off.

(Requests for Bailments by Holders of Claims Subject to Condition Precedent)

Article 70 If a person that holds a claim subject to a condition precedent or a claim which may arise in the future pays their debt to the bankrupt, in order to offset a debt later, the person may request a bailment of the amount of payment up to the amount of their claim. The same applies when a person that holds a claim to refund the security deposit pays their rent debt.

(Stay of Set-Offs)

Article 71 (1) A bankruptcy creditor may not effect a set-off in the following cases:

- (i) if the bankruptcy creditor has incurred a debt to the bankruptcy estate after the commencement of bankruptcy proceedings;
- (ii) if the bankruptcy creditor has incurred a debt to the bankrupt after the bankrupt became unable to pay debts, under a contract with the bankrupt for disposing of the bankrupt's property with the intent to offset any debt to be incurred by the bankruptcy creditor under the contract exclusively against bankruptcy claims, or under a contract for incurring any debt owed by another person to the bankrupt, and the bankruptcy creditor knew that the bankrupt was unable to pay debts at the time of the conclusion of the contract;
- (iii) if the bankruptcy creditor has incurred a debt to the bankrupt after the bankrupt suspended payments, and the bankruptcy creditor knew the fact that the bankrupt had suspended payments at the time of incurring of the debt; provided, however, that this does not apply if the bankrupt was not unable to pay debts at the time when the bankrupt suspended payments; and
- (iv) if the bankruptcy creditor has incurred a debt to the bankrupt after a petition to commence bankruptcy proceedings was filed, and the bankruptcy

creditor knew of the fact that a petition to commence bankruptcy proceedings had been filed at the time of incurring that debt.

- (2) The provisions of item (ii) through item (iv) of the preceding paragraph do not apply if the incurring of a debt prescribed in these provisions stems from any of the causes listed in the following items:
- (i) a statutory cause;
  - (ii) a cause that had occurred before the bankruptcy creditor came to know the fact that the bankrupt had been unable to pay debts, that the bankrupt had suspended payments, or that a petition to commence bankruptcy proceedings had been filed; or
  - (iii) a cause that had occurred not less than one year before a petition to commence bankruptcy proceedings was filed.

Article 72 (1) A person that owes a debt to the bankrupt may not offset a debt in the following cases:

- (i) when the person has acquired another person's bankruptcy claim after the commencement of bankruptcy proceedings;
  - (ii) when the person has acquired a bankruptcy claim after the bankrupt became unable to pay debts, and the person knew the fact that the bankrupt was unable to pay debts at the time of acquisition of the claim;
  - (iii) when the person has acquired a bankruptcy claim after the bankrupt suspended payments, and the person knew the fact that the bankrupt had suspended payments at the time of acquisition of the claim; provided, however, that this does not apply if the bankrupt was not unable to pay debts at the time when the bankrupt suspended payments; or
  - (iv) when the person has acquired a bankruptcy claim after a petition to commence bankruptcy proceedings was filed, and the person knew the fact that a petition to commence bankruptcy proceedings had been filed at the time of acquisition of the claim.
- (2) The provisions of items (ii) through (iv) of the preceding paragraph do not apply if the acquisition of a bankruptcy claim prescribed in these provisions stems from any of the causes stated in the following items:
- (i) a statutory cause;
  - (ii) a cause that had occurred before the person that owes a debt to the bankrupt came to know the fact that the bankrupt had been unable to pay debts, that the bankrupt had suspended payments, or that a petition to commence bankruptcy proceedings had been filed;
  - (iii) a cause that had occurred more than one year before a petition to commence bankruptcy proceedings was filed; or
  - (iv) a contract concluded between the bankrupt and the person that owes a debt to the bankrupt.

(Bankruptcy Trustee's Rights of Demand)

- Article 73 (1) After the period stated in Article 31, paragraph (1), item (iii) expires or the date stated in Article 31, paragraph (1), item (iii) ends, a bankruptcy trustee may set a period of not less than one month and make a demand on a bankruptcy creditor that is able to offset a debt pursuant to the provisions of Article 67, that the bankruptcy creditor should give a definite answer within that period with regard to whether they will effect a set-off, with their bankruptcy claim; provided, however, that this does apply only if the debt owed by the bankruptcy creditor is due.
- (2) If a demand under the provisions of the preceding paragraph is made, the bankruptcy creditor may not assert the effect of offsetting debt in their bankruptcy claim in bankruptcy proceedings if the bankruptcy creditor fails to give a definite answer within the period specified under the provisions of that paragraph, .

### **Chapter III Offices for Bankruptcy Proceedings**

#### **Section 1 Bankruptcy Trustees**

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

(Appointment of Bankruptcy Trustees)

- Article 74 (1) A bankruptcy trustee is appointed by the court.
- (2) A corporation may serve as a bankruptcy trustee.

(Supervision of Bankruptcy Trustees)

- Article 75 (1) The court supervises a bankruptcy trustee.
- (2) Upon the petition of an interested person or by its own authority, the court may dismiss a bankruptcy trustee if the bankruptcy trustee does not appropriately administer and dispose of property that belongs to the bankruptcy estate, or if there are any other material reasons to do so. In this case, the court must interrogate the bankruptcy trustee.

(Performance of Duties by Two or More Bankruptcy Trustees)

- Article 76 (1) If there are two or more bankruptcy trustees, they perform their duties jointly; provided, however, that with permission of the court, they may perform their duties independently or divide the duties among them.
- (2) If there are two or more bankruptcy trustees, it is sufficient that a manifestation of intention by a third party be made to any one of them.

(Bankruptcy Trustee Representatives)

- Article 77 (1) A bankruptcy trustee may appoint one or more bankruptcy trustee

representatives on their own responsibility, if necessary, in order to have them perform their duties.

- (2) The appointment of the bankruptcy trustee representative stated in the preceding paragraph requires the permission of the court.

### **Subsection 2 Authority of Bankruptcy Trustees**

(Authority of Bankruptcy Trustees)

Article 78 (1) If an order commencing bankruptcy proceedings is made, the right to administer and dispose of property that belongs to the bankruptcy estate is vested exclusively in a bankruptcy trustee appointed by the court.

- (2) Bankruptcy trustees must obtain permission of the court in order to conduct the following acts:

- (i) sale by private contract of real estate, Japanese vessels or foreign vessels that must be registered;
- (ii) sale by private contract of mining rights, fishing rights, rights to operate a public facility, etc., timber rights, rights to operate fishing port surface facilities, patent rights, utility model rights, design rights, trademark rights, rights of layout-designs of integrated circuits, breeder's rights, copyrights or neighboring rights;
- (iii) transfer of operations or business;
- (iv) package sale of goods;
- (v) borrowing of money;
- (vi) approval of renunciation of inheritance under the provisions of Article 238, paragraph (2), approval of renunciation of a universal legacy under the provisions of Article 243 as applied mutatis mutandis pursuant to Article 238, paragraph (2) or renunciation of a particular legacy pursuant to the provisions of Article 244 paragraph (1);
- (vii) sale by private contract of movables;
- (viii) transfer of a claim or securities;
- (ix) request for performance under the provisions of Article 53, paragraph (1);
- (x) filing of an action;
- (xi) settlement or arbitration agreement (meaning an arbitration agreement prescribed in Article 2, paragraph (1) of the Arbitration Act (Act No. 138 of 2003));
- (xii) waiver of a right;
- (xiii) approval of a claim on the estate, right of segregation or right of separate satisfaction;
- (xiv) redemption of the collateral for the right of separate satisfaction; and
- (xv) any other act designated by the court.

- (3) Notwithstanding the provisions of the preceding paragraph, in the following

cases, the acts listed in item (vii) to item (xiv) of that paragraph do not require permission stated in that paragraph:

- (i) if the value of the subject matter of the act in question is not more than the amount specified by the Rules of the Supreme Court; or
  - (ii) beyond the case stated in the preceding item, if the court considers that the permission stated in the preceding paragraph is not required for the act in question.
- (4) When granting the permission stated in paragraph (2) for the transfer of an operation or business pursuant to the provisions of paragraph (2), item (iii), the court must hear opinions of the labor union, etc.
- (5) Any act conducted without the permission stated in paragraph (2) is void; provided, however, that this may not be asserted against a third party in good faith.
- (6) When seeking to conduct any of the acts stated in the items of paragraph (2), a bankruptcy trustee must hear the opinions of the bankrupt, except if the hearing is likely to cause a delay, or in any of the cases stated in the items of paragraph (3).

#### (Administration of Bankruptcy Estates)

Article 79 A bankruptcy trustee must commence the administration of property that belongs to the bankruptcy estate immediately after assuming office.

#### (Eligibility of Interested Parties)

Article 80 In an action relating to a bankruptcy estate, a bankruptcy trustee is to stand as a plaintiff or defendant.

#### (Management of Postal Items)

Article 81 (1) The court may commission a person engaged in a delivery service to deliver to a bankruptcy trustee, a postal item or letter item prescribed in Article 2, paragraph (3) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) (referred to as a "postal item, etc." in the following Article and Article 118, paragraph (5)) that is addressed to the bankrupt when it finds it necessary to do so for a bankruptcy trustee to perform their duties.

- (2) The court may cancel or change the commission prescribed in the preceding paragraph after hearing opinions of a bankruptcy trustee upon the petition of the bankrupt or by its own authority.
- (3) Upon the closing of bankruptcy proceedings, the court must cancel the commission prescribed in paragraph (1).
- (4) The bankrupt or a bankruptcy trustee may file an immediate appeal against an order made under the provisions of paragraph (1) or paragraph (2) and a

judicial decision to dismiss without prejudice the petition stated in paragraph (2).

- (5) The immediate appeal stated in the preceding paragraph filed against an order made under the provisions of paragraph (1) does not have the effect of stay of enforcement.

Article 82 (1) Upon receiving a postal item, etc. addressed to the bankrupt, a bankruptcy trustee may open the item and view its content.

- (2) The bankrupt may request a bankruptcy trustee to let the bankrupt inspect the postal item, etc. stated in the preceding paragraph received by the bankruptcy trustee, or deliver it to the bankrupt, if the postal item, etc. does not relate to the bankruptcy estate.

#### (Investigation by Bankruptcy Trustees)

Article 83 (1) A bankruptcy trustee may request any of the persons stated in the items of Article 40, paragraph (1) and any of the persons prescribed in paragraph (2) of that Article to give an explanation pursuant to the provisions of that Article, or may inspect books, documents, and any other objects relating to the bankruptcy estate.

- (2) A bankruptcy trustee may request a subsidiary company, etc. (meaning a corporation specified in each of the following items for the category stated in the respective items; the same applies in the following paragraph) of the bankrupt to give an explanation on the status of their business and property, or may inspect their books, documents, and any other materials if it is necessary to do so in order to perform their duties:

(i) if the bankrupt is a stock company: a subsidiary company (meaning a subsidiary company prescribed in Article 2, paragraph (iii) of the Companies Act) of the bankrupt;

(ii) if the bankrupt is a person other than a stock company: a stock company in which the bankrupt holds the majority of voting rights held by all shareholders; and

- (3) If a subsidiary company, etc. of the bankrupt (limited to a person other than a stock company; the same applies below in this paragraph) independently holds or the bankrupt and the bankrupt's subsidiary company, etc. jointly hold the majority of voting rights held by all shareholders of another stock company, for the purpose of application of the provisions of the preceding paragraph, the other stock company is deemed to be a subsidiary company of the bankrupt.

#### (Ensuring Performance of Duties by Bankruptcy Trustees)

Article 84 When facing resistance in the process of performing their duties, a bankruptcy trustee may request for police assistance in order to eliminate the

resistance with permission of the court.

(Bankruptcy Trustees' Duties of Care)

Article 85 (1) A bankruptcy trustee must perform their duties with the due care of a prudent manager.

(2) If a bankruptcy trustee fails to take the due care stated in the preceding paragraph, the bankruptcy trustee is jointly and severally liable to compensate damage to any interested person.

(Bankruptcy Trustee's Duty to Strive to Provide Information)

Article 86 A bankruptcy trustee must strive to provide a person that has a claim for salary or claim for retirement allowance, both of which are bankruptcy claims, with information necessary for their participation in the bankruptcy proceedings.

(Remuneration for Bankruptcy Trustees)

Article 87 (1) A bankruptcy trustee may receive advance payments of expenses and remuneration determined by the court.

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

(3) The provisions of the preceding two paragraphs apply mutatis mutandis to a bankruptcy trustee representative.

(Bankruptcy Trustees' Duty to Report upon Termination of Duties)

Article 88 (1) A bankruptcy trustee must submit a report of account to the court without delay upon the termination of their duties.

(2) In the case referred to in the preceding paragraph, if there is a vacancy in the office of the bankruptcy trustee, the report of account stated in that paragraph must be submitted by a successor bankruptcy trustee, notwithstanding the provisions of that paragraph.

(3) In the case referred to in paragraph (1) or the preceding paragraph, the bankruptcy trustee stated in paragraph (1) or the successor bankruptcy trustee stated in the preceding paragraph must file a petition stated in the main clause of Article 135, paragraph (1) for the purpose of making a report of account to a creditors' meeting upon the termination of the bankruptcy trustee's office.

(4) The bankrupt, a bankruptcy creditor, or successor bankruptcy trustee (excluding the successor bankruptcy trustee stated in paragraph (2)) may make an objection to the report of account stated in paragraph (1) or paragraph (2) on the date of a creditors' meeting convoked upon the petition stated in the preceding paragraph.



- (5) There must be an interval of three days or more between the date of a creditors' meeting stated in the preceding paragraph and the date of submission of a report of account under the provisions of paragraph (1) or paragraph (2).
- (6) If an objection stated in paragraph (4) is not made on the date of a creditors' meeting stated in that paragraph, it is deemed that the account stated in paragraph (1) or paragraph (2) has been approved.

Article 89 (1) In the case referred to in paragraph (1) or paragraph (2) of the preceding Article, the bankruptcy trustee stated in paragraph (1) of that Article or the successor bankruptcy trustee stated in paragraph (2) of that Article may file a petition to the court for making a report of account in writing, in lieu of filing a petition stated in paragraph (3) of that Article.

- (2) The court must give a public notice to the effect that the report is submitted and that any objection to the account should be made within a specified period of time, when a petition has been filed pursuant to the provisions of the preceding paragraph and a report of account has been submitted pursuant to the provisions of paragraph (1) or (2) of the preceding Article. In this case, this period may not be shorter than one month.
- (3) The bankrupt, a bankruptcy creditor, or successor bankruptcy trustee (excluding the successor bankruptcy trustee stated in paragraph (1)) may make an objection to the account stated in paragraph (1) or paragraph (2) of the preceding Article within the period stated in the preceding paragraph.
- (4) If an objection stated in the preceding paragraph is not made within the period stated in paragraph (2), it is deemed that the account stated in paragraph (1) or paragraph (2) of the preceding Article has been approved.

(Administration of Property upon Termination of Duties)

- Article 90 (1) Upon the termination of a bankruptcy trustee's duties, if there are pressing circumstances, the bankruptcy trustee or their successor must make a necessary disposition until a successor bankruptcy trustee or the bankrupt is able to administer the property.
- (2) If an order of reversal of an order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings becomes final and binding, a bankruptcy trustee must pay claims on the estate; provided, however, that with regard to a claim on the estate which is in dispute in terms of its existence or nonexistence or its amount, a bankruptcy trustee must deposit with an official depository in the interest of the person that holds the claim.

## **Section 2 Temporary Administrators**

(Orders for Temporary Administration)

Article 91 (1) The court may make a disposition to order that a debtor's property be administered by a temporary administrator until the order is made on the petition to commence bankruptcy proceedings upon the petition of an interested person or by its own authority if the petition to commence bankruptcy proceedings is filed, when the debtor (limited to a corporation; the same applies below in this Section, Article 148, paragraph (4), and Article 152, paragraph (2)) administers and disposes of their property in an inappropriate manner or the court otherwise finds it particularly necessary to do so for securing the debtor's property,.

- (2) The court must order for temporary administration appoint one or more temporary administrators under the order for temporary administration when making a disposition under the provisions of the preceding paragraph (referred to below as a "order for temporary administration").
- (3) The provisions of the preceding two paragraphs apply mutatis mutandis if an immediate appeal stated in Article 33, paragraph (1) is filed against an order dismissing a petition to commence bankruptcy proceedings.
- (4) The court may change or reverse an order for temporary administration.
- (5) An immediate appeal may be filed against an order for temporary administration or an order made under the provisions of the preceding paragraph.
- (6) The immediate appeal stated in the preceding paragraph does not have the effect of stay of enforcement.

(Public Notice and Service Concerning Order for Temporary Administrations)

Article 92 (1) When the court has issued an order for temporary administration, it must give a public notice to that effect. The same applies when the court issues an order to change or reverse an order for temporary administration.

- (2) When an order for temporary administration is issued, an order under the provisions of paragraph (4) of the preceding Article is made, or a judicial decision on the immediate appeal stated in paragraph (5) of that Article is made, the electronic judgment must be served upon the parties concerned.
- (3) The provisions of Article 10, paragraph (4) do not apply to the case referred to in paragraph (1).

(Authority of Provisional Administrators)

Article 93 (1) When an order for temporary administration is issued, the right to administer and dispose of the debtor's property (irrespective of whether it exists in Japan) is vested exclusively in a temporary administrator; provided, however, that a temporary administrator must obtain permission of the court in order to conduct any act that does not fall within the scope of the debtor's

ordinary business.

- (2) Any act conducted without the permission stated in the proviso to the preceding paragraph is invalid; provided, however, that this may not be asserted against a third party in good faith.
- (3) The provisions of Article 78, paragraphs (2) through (6) apply *mutatis mutandis* to a temporary administrator.

(Temporary Administrator's Duty to Report upon Termination of Duties)

Article 94 (1) Upon the termination of their duties a temporary administrator must make a report of account to the court in writing without delay.

- (2) In the case referred to in the preceding paragraph, if there is a vacancy in the office of a temporary administrator, the report of account stated in the same paragraph must, notwithstanding the provisions of that paragraph, be submitted by a successor temporary administrator or a bankruptcy trustee.

(Temporary Administrator Representatives)

Article 95 (1) If necessary, a temporary administrator may appoint one or more temporary administrator representatives on their own responsibility, in order to have them perform their duties.

- (2) The appointment of a temporary administrator representative under the provisions of the preceding paragraph requires a permission of the court.

(Application, *Mutatis Mutandis*)

Article 96 (1) The provisions of Article 40 apply *mutatis mutandis* to a request made by a temporary administrator, the provisions of Article 47, Article 50, and Article 51 apply *mutatis mutandis* when an order for temporary administration is issued, the provisions of Article 74, paragraph (2), Article 75, Article 76, Article 79, Article 80, Articles 82 through 85, Article 87, paragraphs (1) and (2), and Article 90, paragraph (1) apply *mutatis mutandis* to a temporary administrator, and the provisions of Article 87, paragraphs (1) and (2) apply *mutatis mutandis* to a temporary administrator representative. In this case, the phrase "public notice under the provisions of Article 32, paragraph (1)" in Article 51 is deemed to be replaced with "public notice under the provisions of Article 92, paragraph (1)", and the term "successor bankruptcy trustee" in Article 90, paragraph (1) is deemed to be replaced with "successor temporary administrator or a bankruptcy trustee".

- (2) With regard to an action relating to a debtor's property and a case relating to a debtor's property that is pending before an administrative agency, the provisions specified in the following items apply *mutatis mutandis* in the cases stated in the respective items:
  - (i) when an order for temporary administration is issued: Article 44,

- paragraphs (1) through (3); and
- (ii) when an order for temporary administration ceases to be effective (excluding cases in which an order commencing bankruptcy proceedings is made): Article 44, paragraphs (4) through (6).

## **Chapter IV Bankruptcy Claims**

### **Section 1 Rights of Bankruptcy Creditors**

(Claims Included in the Scope of Bankruptcy Claims)

Article 97 The following claims (excluding those falling within the scope of claims on the estate) are to be included in the scope of bankruptcy claims:

- (i) claims for interest arising after the commencement of bankruptcy proceedings;
- (ii) claims for damages or penalty for a default arising after the commencement of bankruptcy proceedings;
- (iii) claims for delinquent tax, interest tax, or delinquent charge arising after the commencement of bankruptcy proceedings, or claim for a foreign tax subject to mutual legal assistance similar to them;
- (iv) claims that may be collected as provided for by the National Tax Collection Act (Act No. 147 of 1959) or by the procedure of the Act as that for collecting national tax (referred to below as "claim for tax, etc."), which arises against the bankruptcy estate from a cause that occurs after the commencement of bankruptcy proceedings;
- (v) claims for an additional tax (meaning an additional tax for under reporting, additional tax for failure to file, additional tax for non-payment and heavy additional tax prescribed in Article 2, item (iv) of the Act on General Rules for National Taxes (Act No. 66 of 1962)) or additional charge (meaning additional payment for under report, additional payment for failure to file, additional payment for non-payment, and heavy additional payment prescribed in Article 1, paragraph (1), item (xiv) of the Local Tax Act (Act No. 226 of 1950)), or claim for a foreign tax subject to mutual assistance similar to them;
- (vi) claims for a fine, petty fine, court costs for a criminal case, collection of delinquent payment, or civil fine (referred to below as "claim for a fine, etc.");
- (vii) claims for expenses for participation in bankruptcy proceedings;
- (viii) claims for damages of the counterparty prescribed in Article 54, paragraph (1) (including as applied mutatis mutandis pursuant to Article 58, paragraph (3));
- (ix) claims prescribed in Article 57;
- (x) claims under the provisions of Article 59, paragraph (1), which is held by the other party;

- (xi) claims prescribed in Article 60, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article); and
- (xii) rights specified in Article 168, paragraph (2), item (ii) or (iii).

(Preferred Bankruptcy Claims)

Article 98 (1) A bankruptcy claim for which a general statutory lien or any other general priority exists over property that belongs to the bankruptcy estate (excluding a subordinate bankruptcy claim prescribed in paragraph (1) of the following Article and consensually-subordinated bankruptcy claim prescribed in paragraph (2) of that Article; referred to below as a "preferred bankruptcy claim") takes precedence over other bankruptcy claims.

- (2) In the case referred to in the preceding paragraph, the order of priority among preferred bankruptcy claims is as provided for by the Civil Code, the Commercial Code, or any other laws.
- (3) When a priority exists with regard to the amount of claim arising for a specific period of time, the period is calculated from the time of commencement of bankruptcy proceedings.

(Subordinate Bankruptcy Claims)

Article 99 (1) The following claims (referred to below as "subordinate bankruptcy claims") are subordinated to other bankruptcy claims (excluding the consensually-subordinated bankruptcy claim prescribed in the following paragraph):

- (i) claims stated in Article 97, items (i) through (vii);
- (ii) with regard to a claim with a fixed due date that is to become due after the commencement of bankruptcy proceedings and bears no interest, the amount equivalent to the interest calculated based on the statutory interest rate at the time of commencement of the bankruptcy proceedings accrued for the number of years from the commencement of bankruptcy proceedings until the due date (any period of less than one year is rounded off);
- (iii) with regard to a claim with an uncertain due date that is to become due after the commencement of bankruptcy proceedings and bears no interest, the difference between the amount of the claim and the appraised value of the claim as of the time of commencement of bankruptcy proceedings; and
- (iv) with regard to a claim for periodic payments of which the amount and duration are fixed, the sum of the amounts calculated with regard to the respective periodic payments in accordance with the provisions of item (ii) (when the amount calculated by deducting the total from the total amount of periodic payments exceeds the amount of the principal which would accrue interest equivalent to the periodic payments when calculating at a statutory interest rate at the time of commencement of the bankruptcy proceedings,

the amount in excess is added).

- (2) A claim for which the bankruptcy creditor and the bankrupt have reached an agreement prior to the commencement of bankruptcy proceedings to the effect that if bankruptcy proceedings are commenced against the bankrupt, the claim is subordinated to a subordinate bankruptcy claim in the order of priority for receiving a distribution in the bankruptcy proceedings (referred to below as an "consensually-subordinated bankruptcy claim") is subordinated to a subordinate bankruptcy claim.

#### (Enforcement of Bankruptcy Claims)

Article 100 (1) Except as otherwise provided for in this Act, a bankruptcy claim may not be enforced without going through bankruptcy proceedings.

- (2) The provisions of the preceding paragraph do not apply when enforcing a claim for tax, etc. (excluding a foreign tax claim subject to mutual assistance), which is a bankruptcy claim, through the following acts:
- (i) collection of national tax delinquency that has already been made, at the time of commencement of bankruptcy proceedings, against the property that belongs to the bankruptcy estate; and
  - (ii) appropriation of a refund or payment in excess, which is enforced by a person with the authority to collect.

#### (Permission for Payment of Claims for Salary)

Article 101 (1) If a bankruptcy creditor that filed a notification of claim for salary or a claim for a retirement allowance, both of which are preferred bankruptcy claims, is likely to have difficulty in maintaining their standard of living unless they receive payment of these bankruptcy claims, the court may permit payment of the claim in whole or in part, before permission is granted for the first time for the final distribution prescribed in Article 195, paragraph (1), simplified distribution prescribed in Article 204, paragraph (1), consensual distribution prescribed in Article 208, paragraph (1), or interim distribution prescribed in Article 209, paragraph (1), upon the petition of a bankruptcy trustee or by its own authority; provided, however, that this applies only if the payment is not likely to harm the interest of a person that holds a claim on the estate or any other preferred bankruptcy claim with the same or higher level of priority.

- (2) When a bankruptcy trustee is requested by a bankruptcy creditor stated in the preceding paragraph to file the petition stated in that paragraph, the bankruptcy trustee must report that fact to the court immediately. In this case, if the bankruptcy trustee has decided not to file the petition, the trustee must report the circumstances for that to the court without delay.

(Set-Off by Bankruptcy Trustees)

Article 102 If a set-off of a claim that belongs to the bankruptcy estate against a bankruptcy claim conforms to the common interests of bankruptcy creditors, a bankruptcy trustee may offset with permission of the court.

(Bankruptcy Creditor's Participation in Proceedings)

Article 103 (1) A bankruptcy creditor may participate in bankruptcy proceedings with a bankruptcy claim that the creditor holds.

- (2) In the case referred to in the preceding paragraph, the amount of a bankruptcy claim is the amount specified in each of the following items in accordance with the category of claims stated in the respective items:
- (i) the following claims: the amount of the claim appraised at the time of commencement of bankruptcy proceedings:
    - (a) claims not for payment of money;
    - (b) monetary claim the amount of which is not fixed or the amount of which is fixed in a foreign currency;
    - (c) claim for periodic payments the amount and duration of which are not fixed; or
  - (ii) claim other than those listed in the preceding item: the amount of the claim.
- (3) If a bankruptcy claim is a claim with a due date that is to become due after the commencement of bankruptcy proceedings, this bankruptcy claim is deemed to have become due at the time of commencement of bankruptcy proceedings.
- (4) Even if a bankruptcy claim is a claim with conditions or is a claim which may arise in the future at the time of commencement of bankruptcy proceedings, the bankruptcy creditor may participate in the bankruptcy proceedings with the bankruptcy claim.
- (5) Notwithstanding the provisions of paragraph (1), in order to participate in the bankruptcy proceedings by reason of a claim for a foreign tax subject to mutual assistance, a decision of implementation of mutual assistance (meaning the decision of implementation of mutual assistance prescribed in Article 11, paragraph (1) of the Act on Special Provisions for the Enforcement of Tax Treaties; the same applies in Article 134, paragraph (2)) is required.

(Participation in Proceedings When Two or More Persons Have the Obligation of Performing the Entire Proceedings)

Article 104 (1) When several persons have the obligation to perform the entire proceedings respectively, if an order commencing bankruptcy proceedings is made against all or some or one of them, their creditor may participate in the bankruptcy proceedings against each person with regard to the whole amount of the claim that they hold at the time of commencement of bankruptcy

proceedings.

- (2) In the case referred to in the preceding paragraph, even if other persons who have the obligation to perform the entire proceedings have paid the creditor or conducted any other act with the creditor to cause their debt to be extinguished (referred to below as "payment, etc." in this Article) after the commencement of bankruptcy proceedings, except if the whole amount of the claim is extinguished, the creditor may exercise their right for the whole amount of the claim that they hold at the time of the commencement of bankruptcy proceedings.
- (3) In the case prescribed in paragraph (1), a person that has a right to receive reimbursement to be exercised against the bankrupt in the future may participate in the bankruptcy proceedings with regard to the whole amount of reimbursement; provided, however, that this does not apply when a creditor has participated in the bankruptcy proceedings regarding the claim that they hold at the time of commencement of bankruptcy proceedings.
- (4) When a creditor participates in the bankruptcy proceedings pursuant to the provisions of paragraph (1), if a person that has a right to receive reimbursement to be exercised against the bankrupt in the future has made payment, etc. to the creditor after the commencement of bankruptcy proceedings, the person that has a right to receive reimbursement may exercise the creditor's right as a bankruptcy creditor to the extent of the right to receive reimbursement only when the whole amount of the creditor's claim is extinguished.
- (5) The provisions of paragraph (2) apply mutatis mutandis when a third party that provided their property as security in order to secure the bankrupt's debt (referred to below as a "third party collateral provider" in this paragraph) has made payment, etc. to the creditor after the commencement of bankruptcy proceedings, and the provisions of the preceding two paragraphs apply mutatis mutandis to a third party collateral provider that has the right to obtain against the bankrupt in the future.

(Participation in Proceedings in the Case of Guarantor's Bankruptcy)

Article 105 If an order commencing bankruptcy proceedings is issued against a guarantor, a creditor may participate in the bankruptcy proceedings with regard to the whole amount of the claim that they hold at the time of the commencement of bankruptcy proceedings.

(Participation in Proceedings in the Case of Bankruptcy of Persons with Unlimited Liability for Corporation's Debts)

Article 106 When an order commencing bankruptcy proceedings is issued against a person that has unlimited liability for a corporation's debts, a



creditor of the corporation may participate in the bankruptcy proceedings with regard to the whole amount of the claim that they hold at the time of commencement of bankruptcy proceedings.

(Participation in Proceedings in the case of Bankruptcy of Person with Limited Liability for Corporation's Debts)

Article 107 (1) If an order commencing bankruptcy proceedings is issued against a person that has limited liability for a corporation's debts, a creditor of the corporation may not participate in the bankruptcy proceedings. In this case, the corporation is not precluded from participating in the bankruptcy proceedings to demand contributions.

(2) When there is a person that has limited liability for a corporation's debts, if an order commencing bankruptcy proceedings is issued against the corporation, a creditor of the corporation may not exercise their right against the person that has limited liability for the corporation's debts.

(Participation in Proceedings by Holders of Right of Separate Satisfaction)

Article 108 (1) With regard to a claim secured by a security interest prescribed in Article 65, paragraph (2) which pertains to the right of separate satisfaction, a holder of a right of separate satisfaction may exercise their right as a bankruptcy creditor only for the amount of the claim for which payment cannot be received by exercising the right of separate satisfaction; provided, however, that if the amount of the claim secured by the security interest is no longer secured in whole or in part after the commencement of bankruptcy proceedings, the holder of the right of separate satisfaction is not precluded from exercising their right as a bankruptcy creditor for the whole or part of the amount of the claim.

(2) The preceding paragraph also applies to a person that holds a special statutory lien, pledge, or mortgage on the bankrupt's property that does not belong to the bankruptcy estate or a person that holds a bankruptcy claim in the previous bankruptcy proceedings when an additional order commencing bankruptcy proceedings is issued against the bankrupt.

(Participation in Proceedings by Bankruptcy Creditors Receiving Payment in Foreign States)

Article 109 A bankruptcy creditor may participate in the bankruptcy proceedings with regard to the amount of the claim before receiving the payment even if the bankruptcy creditor has received payment of their bankruptcy claim after an order commencing bankruptcy proceedings is issued by exercising their right against property that belongs to the bankruptcy estate and exists in a foreign state.

(Bankruptcy Creditor Representatives)

- Article 110 (1) With permission of the court, a bankruptcy creditor may jointly or severally appoint one or more bankruptcy creditor representatives.
- (2) A bankruptcy creditor representative may perform any and all acts involved in bankruptcy proceedings in the interest of the bankruptcy creditors that appoint the representative.
- (3) If there are two or more bankruptcy creditor representatives, they exercise their authority jointly; provided, however, that it is sufficient for a manifestation of intention by a third party to be made to one of them.
- (4) The court may rescind the permission stated in paragraph (1) when it finds the exercise of authority by the bankruptcy creditor representative to be grossly unfair.

## **Section 2 Filing Proofs of Bankruptcy Claims**

(Filing Proofs of Bankruptcy Claims)

- Article 111 (1) A bankruptcy creditor that seeks to participate in bankruptcy proceedings must file notification of the following particulars to the court within a period during which proofs of bankruptcy claims should be filed as specified pursuant to the provisions of Article 31, paragraph (1), item (i) or paragraph (3) (referred to below as a "period for filing proofs of claims"):
- (i) the amount and cause of each bankruptcy claim;
  - (ii) if the claim in question is a preferred bankruptcy claim, a statement to that effect;
  - (iii) if the claim in question is a subordinate bankruptcy claim or consensually-subordinated bankruptcy claim, a statement to that effect;
  - (iv) if the total amount of distribution given to a bankruptcy creditor is less than the amount specified by the Rules of the Supreme Court but the creditor has the intention of receiving distribution money, a statement to that effect; and
  - (v) beyond what is stated in the preceding items, particulars specified by the Rules of the Supreme Court.
- (2) A holder of a right of separate satisfaction must file a notification of the following particulars, in addition to those stated in the items of the preceding paragraph:
- (i) the collateral for the right of separate satisfaction; and
  - (ii) the amount of the claim for which payment is not expected to be received by exercising the right of separate satisfaction.
- (3) The provisions of the preceding paragraph apply mutatis mutandis to a holder of a special statutory lien, pledge or mortgage or a holder of a bankruptcy claim

prescribed in Article 108, paragraph (2) (hereinafter referred to as a "holder of a quasi-right of separate satisfaction").

(Filing of Notifications After Expiration of Ordinary Period for Investigation or After End of Ordinary Date of Investigation)

- Article 112 (1) When a bankruptcy creditor is unable to file proofs of bankruptcy claims by the expiration of the period stated in Article 31, paragraph (1), item (iii) (referred to below as the "ordinary period for investigation") or the end of the date stated in Article 31, paragraph (1), item (iii) (referred to below as the "ordinary date of investigation") due to grounds not attributable to them, they may file a notification only within one month after the grounds cease to exist.
- (2) The one-month period prescribed in the preceding paragraph may not be extended or shortened.
- (3) With regard to a bankruptcy claim arising after the expiration of an ordinary period for investigation or the end of an ordinary date of investigation, a notification must be filed within the inalterable period of one month after the claim arose.
- (4) The provisions of paragraphs (1) and (2) apply mutatis mutandis when a bankruptcy creditor makes a change to any filed particular, which is likely to be prejudicial to interests of other bankruptcy creditors, after the expiration of an ordinary period for investigation or the end of an ordinary date of investigation due to grounds not attributable to them.

(Change of Titles of Holders of Filed Claims)

- Article 113 (1) A person that has acquired a filed bankruptcy claim may have the title of the holder of the filed claim changed even after the expiration of an ordinary period for investigation or the end of an ordinary date of investigation.
- (2) If a person whose title of the holder of a filed claim is to be changed pursuant to the provisions of the preceding paragraph, when the person has the intention of receiving the distribution money even if the total amount of the distribution to be given to them is less than the amount specified by the Rules of the Supreme Court prescribed in Article 111, paragraph (1), item (iv), the person must file a notification with the court to that effect.

(Filing of Notifications of Claims for Tax)

- Article 114 A person that holds any of the following claims must file without delay with the court a notification of the amount and cause of the claim, and a statement to that effect, and any other particulars specified by the Rules of the Supreme Court if the claim in question is a claim for a foreign tax subject to mutual assistance. In this case, if the person that holds the claim is a holder of a right of separate satisfaction or holder of a quasi-right of separate

satisfaction, the provisions of Article 111, paragraph (2) apply *mutatis mutandis*:

- (i) a claim for tax, etc., which does not fall within the scope of claims on the estate; or
- (ii) a claim for a fine, etc., which does not fall within the scope of claims on the estate.

### **Section 3 Investigation and Finalization of Bankruptcy Claims**

#### **Subsection 1 General Rules**

(Creation of Electronic Table of Bankruptcy Creditors)

Article 115 (1) The court clerk must create an electronic table of bankruptcy creditors (an electronic or magnetic record prepared by the court clerk to clarify the subject matter and results of investigation of bankruptcy claims and to clarify matters relating to finalized bankruptcy claims; the same applies below) with regard to filed bankruptcy claims, pursuant to the provisions of the Rules of the Supreme Court.

(2) In the electronic table of bankruptcy creditors, the particulars stated in Article 111, paragraph (1), items (i) through (iv) and paragraph (2), item (ii) of that Article (including as applied *mutatis mutandis* pursuant to paragraph (3) of that Article) and any other particulars specified by the Rules of the Supreme Court must be recorded.

(3) If the court clerk prepared an electronic table of bankruptcy creditors pursuant to the provisions of paragraph (1), the clerk must record the electronic table in a file, pursuant to the provisions of the Rules of the Supreme Court.

(4) If there are any errors in the contents in the electronic table of bankruptcy creditors (limited to one recorded in computer files pursuant to the provisions of the preceding paragraph; the same applies below), the court clerk may make a disposition to correct them at any time upon petition or by their own authority.

(5) A disposition for correction under the provisions of the preceding paragraph must be made by recording in computer files to that effect pursuant to the provisions of the Rules of the Supreme Court.

(6) The provisions of Article 71, paragraphs (4), (5), and (8) of the Code of Civil Procedure apply *mutatis mutandis* to dispositions for correction under the provisions of paragraph (4) or a disposition dismissing a petition specified in that paragraph and petitions objecting to the dispositions.

(Method of Investigation of Bankruptcy Claims)

Article 116 (1) An investigation of bankruptcy claims by the court is conducted

pursuant to the provisions of the following Subsection based on a statement of approval or disapproval prepared by a bankruptcy trustee as well as written objections made by bankruptcy creditors and by the bankrupt.

- (2) Notwithstanding the provisions of the preceding paragraph, the court may conduct an investigation of bankruptcy claims pursuant to the provisions of Subsection 3 based on approval or disapproval given by a bankruptcy trustee as well as objections made by bankruptcy creditors and by the bankrupt on the date of the investigation when the court finds it necessary to do so.
- (3) The court may conduct an investigation of bankruptcy claims in writing during the special period for investigation under the provisions of Article 119 even after conducting the investigation of bankruptcy claims on the ordinary date of investigation under the provisions of Article 121, and may conduct an investigation of bankruptcy claims on the special date of investigation under the provisions of Article 122 when the court finds it necessary to do so even after conducting the investigation of bankruptcy claims in writing during the ordinary period for investigation under the provisions of Article 118.

### **Subsection 2 Investigations of Bankruptcy Claims in Writing**

(Preparation and Submission of Statements of Approval or Disapproval)

Article 117 (1) When an ordinary period for investigation is specified, a bankruptcy trustee must prepare a statement of approval or disapproval of the following particulars with regard to each bankruptcy claim filed during the period for filing notifications of claims:

- (i) the amount of the bankruptcy claim;
- (ii) a statement to the effect that the claim in question is a preferred bankruptcy claim;
- (iii) a statement to the effect that the claim in question is a subordinate bankruptcy claim or consensually-subordinated bankruptcy claim; and
- (iv) the amount of the claim for which payment is not expected to be received by exercising a right of separate satisfaction (including a special statutory lien, pledge or mortgage, or bankruptcy claim prescribed in Article 108, paragraph (2)).

- (2) A bankruptcy trustee may state their approval or disapproval of the particulars listed in the items of the preceding paragraph (if there is a change to any filed particular, the particular stated in each item of that paragraph after the change; the same applies in this Section) in the statement of approval or disapproval stated in that paragraph also with regard to a bankruptcy claim which is filed or for which a change is made to any filed particular (limited to a change which is prejudicial to the interests of other bankruptcy creditors; the same applies in this Section) after the expiration of the period for filing

notifications of claims.

- (3) A bankruptcy trustee must submit a statement of approval or disapproval prepared pursuant to the provisions of the preceding two paragraphs by the time limit set by the court prior to an ordinary period for investigation.
- (4) With regard to any particular of which approval or disapproval should be stated in a statement of approval or disapproval stated in paragraph (1) pursuant to the provisions of that paragraph, if neither approval nor disapproval is stated in the statement of approval or disapproval submitted pursuant to the provisions of the preceding paragraph, it is deemed that a bankruptcy trustee has approved the particular.
- (5) With regard to a bankruptcy claim for which approval or disapproval of the particulars stated in the items of paragraph (1) may be stated in a statement of approval or disapproval pursuant to the provisions of paragraph (2), if the statement of approval or disapproval submitted pursuant to the provisions of paragraph (3) states approval or disapproval of a part of the particulars, it is deemed that a bankruptcy trustee has approved the particulars of which neither approval nor disapproval is stated in the statement of approval or disapproval.

(Investigations During Ordinary Periods for Investigation)

- Article 118 (1) A holder of a filed bankruptcy claim may make an objection in writing to the court within an ordinary period for investigation with regard to the particulars stated in the items of paragraph (1) of the preceding Article concerning a bankruptcy claim prescribed in paragraph (1) or (2) of that Article.
- (2) The bankrupt may make an objection in writing to the court within an ordinary period for investigation with regard to the amount of the bankruptcy claim referred to in the preceding paragraph.
  - (3) When the court has made an order to change the ordinary period for investigation, it must serve the electronic judgment upon the bankruptcy trustee, the bankrupt, and holders of filed bankruptcy claims (prior to the expiration of the period for filing notifications of claims, the known bankruptcy creditors).
  - (4) The delivery under the provisions of the preceding paragraph may be made by sending the necessary documents by ordinary mail or by correspondence delivery services prescribed in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Business Operators that are provided by a general correspondence delivery operator prescribed in paragraph (6) of that Article or a specified correspondence delivery service provider prescribed in paragraph (9) of that Article.
  - (5) If a service has been made under the provisions of the preceding paragraph, the service is deemed to have been made at the time when the postal item, etc.

sent should have normally reached the addressee.

(Investigations During Special Period for Investigation)

Article 119 (1) The court must specify a period for conducting an investigation of the claim (referred to below as a "special period for investigation") with regard to a bankruptcy claim which is filed or for which a change is made to any filed particular after the period for filing notifications of claims has expired but before an ordinary period for investigation expires or an ordinary date of investigation ends; provided, however, that this does not apply if a bankruptcy trustee states their approval or disapproval of all or a part of the particulars stated in the items of paragraph (1) of that Article, or no objection is made by a bankruptcy trustee or any bankruptcy creditors against conducting an investigation on an ordinary date of investigation with regard to the bankruptcy claim in the statement of approval or disapproval submitted pursuant to the provisions of Article 117, paragraph (3).

(2) The main clause of the preceding paragraph also applies to a bankruptcy claim which is filed under the provisions of Article 112, paragraph (1) or (3) or for which a change is made to any filed particular under the provisions of paragraph (1) of that Article as applied *mutatis mutandis* pursuant to paragraph (4) of that Article after the expiration of an ordinary period for investigation or the end of an ordinary date of investigation.

(3) In the case referred to in the main clause of paragraph (1) or in the preceding paragraph, the expenses for the special period for investigation is borne by the person that holds the bankruptcy claim.

(4) With regard to a bankruptcy claim to be investigated during the special period for investigation, a bankruptcy trustee must prepare a statement of approval or disapproval to state their approval or disapproval of the particulars stated in the items of Article 117, paragraph (1), and submit it to the court by the due date set by the court prior to the special period for investigation. In this case, the provisions of paragraph (4) of that Article apply *mutatis mutandis*.

(5) A holder of a filed bankruptcy claim may make an objection in writing to the court with regard to the particulars stated in the items of Article 117, paragraph (1) concerning the bankruptcy claim stated in the preceding paragraph and the bankrupt may make an objection in writing to the court with regard to the amount of the bankruptcy claim, within the special period for investigation,.

(6) The provisions of paragraphs (3) through (5) of the preceding Article apply *mutatis mutandis* to the service of an electronic judgment when an order to decide or change the special period for investigation is made.

(Prepayments of Expenses for Special Period for Investigation)

- Article 120 (1) In the case referred to in the main clause of paragraph (1), or in paragraph (2) of the preceding Article, the court clerk must decide a reasonable period for investigation and order the person that holds the bankruptcy claim stated in paragraph (3) of that Article to prepay the expenses stated in that paragraph.
- (2) The disposition made under the provisions of the preceding paragraph becomes effective when a notice is given by a means that is considered to be appropriate.
- (3) An objection may be filed against a disposition made under the provisions of paragraph (1) within an inalterable period of one week from the day on which the notice is received.
- (4) The objection stated in the preceding paragraph has the effect of stay of enforcement.
- (5) In the case referred to in paragraph (1), if the person that holds the bankruptcy claim stated in that paragraph does not prepay the expense stated in that paragraph, the court must dismiss without prejudice the person's filing of proofs of bankruptcy claims or filing of the change of any filed particular by an order.
- (6) An immediate appeal may be filed against the order of dismissal made under the provisions of the preceding paragraph.

**Subsection 3 Investigations of Bankruptcy Claims on the Dates**

(Investigations on Ordinary Date of Investigation)

- Article 121 (1) When an ordinary date of investigation is specified, a bankruptcy trustee must appear on the ordinary date of investigation and state their approval or disapproval of the particulars stated in the items of Article 117, paragraph (1) with regard to each bankruptcy claim filed during the period for filing notifications of claims.
- (2) A holder of a filed bankruptcy claim or their agent may appear on an ordinary date of investigation and make an objection with regard to the particulars prescribed in the preceding paragraph concerning the bankruptcy claim referred to in that paragraph.
- (3) The bankrupt must appear on an ordinary date of investigation; provided, however, that they may have an agent appear on their behalf if there are legitimate grounds for doing so.
- (4) The bankrupt who appears pursuant to the provisions of the main clause of the preceding paragraph may make an objection with regard to the amount of the bankruptcy claim stated in paragraph (1).
- (5) The bankrupt who appears pursuant to the provisions of the main clause of



- paragraph (3) must state their opinions on necessary matters.
- (6) The provisions of the preceding two paragraphs apply mutatis mutandis to the agent stated in the proviso to paragraph (3).
  - (7) The provisions of the preceding paragraphs apply mutatis mutandis if no objection is made by a bankruptcy trustee or bankruptcy creditors against conducting an investigation on an ordinary date of investigation with regard to a bankruptcy claim which is filed, or for which a change is made to any filed particular after the expiration of the period for filing a notification of claim.
  - (8) An investigation of bankruptcy claims on an ordinary date of investigation may not be conducted without the appearance of a bankruptcy trustee.
  - (9) When it has made an order to change the ordinary date of investigation, the court must serve the electronic judgment upon a bankruptcy trustee, the bankrupt, and holders of filed bankruptcy claims (prior to the expiration of the period for filing notifications of claims, known bankruptcy creditors).
  - (10) When the court has issued an order to postpone or continue the investigation of bankruptcy claims on an ordinary date of investigation, it must serve the electronic judgment upon a bankruptcy trustee, the bankrupt and holders of filed bankruptcy claims, except if the order is communicated on that ordinary date of investigation.
  - (11) The provisions of Article 118, paragraphs (4) and (5) apply mutatis mutandis to the service under the provisions of the preceding two paragraphs.

(Ordinary Date of Investigation Based on Communication Using Audiovisual Transmissions)

- Article 121-2 (1) Pursuant to the provisions of the Rules of the Supreme Court, the court may perform procedures on an ordinary date of investigation using a means that enables the court, the bankrupt, the bankruptcy trustee, and the holders of filed bankruptcy claims to communicate with one another through audio and visual transmissions while gaining an awareness of one another's situation if the court finds it appropriate to do so.
- (2) The bankrupt, bankruptcy trustee, or holder of a filed bankruptcy claim without appearing on an ordinary date of investigation under the provisions of the preceding paragraph but participates in the proceedings is deemed to have appeared on that ordinary date of investigation.

(Investigation on Special Date of Investigation)

- Article 122 (1) The court may specify a date for conducting an investigation of the claim (referred to below as a "special date of investigation") when it finds it necessary to do so with regard to a bankruptcy claim which is filed or for which a change is made to any filed particular after the period for filing notifications of claims has expired but before the ordinary period for investigation expires or

the ordinary date of investigation ends ; provided, however, that this does not apply if a bankruptcy trustee states, in the statement of approval or disapproval submitted pursuant to the provisions of Article 117, paragraph (3), their approval or disapproval of all or a part of the particulars stated in the items of paragraph (1) of that Article, or no objection is made by a bankruptcy trustee or bankruptcy creditors against conducting an investigation on the ordinary date of investigation with regard to the bankruptcy claim.

- (2) The provisions of Article 119, paragraphs (2) and (3), Article 118, paragraphs (3) through (5) as applied mutatis mutandis pursuant to Article 119, paragraph (6), Article 120, Article 121 (excluding paragraphs (7) and (9)), and the preceding Article apply mutatis mutandis to the special date of investigation in the case referred to in the main clause of the preceding paragraph.

**(Objection Made by the Bankrupt After End of Date of Investigation)**

Article 123 (1) If the bankrupt was unable to appear on the ordinary date of investigation or special date of investigation due to grounds not attributable to the bankrupt, the bankrupt may make an objection in writing to the court with regard to the amount of the bankruptcy claim investigated on that ordinary date of investigation or special date of investigation within one week after the grounds cease to exist.

- (2) The one-week period prescribed in the preceding paragraph may not be extended or shortened.

**Subsection 4 Finalization of Bankruptcy Claims**

**(Finalization of Bankruptcy Claims Without Objection)**

Article 124 (1) The particulars stated in the items of Article 117, paragraph (1) (excluding item (iv)) are finalized if they are approved by a bankruptcy trustee and no objection is made by any holder of filed bankruptcy claim during the ordinary period for investigation or special period for investigation or on the ordinary date of investigation or special date of investigation in the investigation of bankruptcy claims.

- (2) The court clerk must record the results of the investigation of bankruptcy claims in the electronic schedule of bankruptcy creditors pursuant to the provisions of the Rules of the Supreme Court.
- (3) The records in the electronic schedule of bankruptcy creditors with regard to the particulars that are finalized pursuant to the provisions of paragraph (1) have the same effect as a final and binding judgment against all bankruptcy creditors.

**(Orders for Bankruptcy Claim Assessment)**

Article 125 (1) In an investigation of bankruptcy claims, if a bankruptcy trustee has disapproved the amount of a bankruptcy claim or whether the type of the claim is a preferred bankruptcy claim, subordinate bankruptcy claim, or consensually-subordinated bankruptcy claim (referred to below as the "amount, etc." in this Article and Article 127, paragraph (1)), or an objection has been made by any holder of a filed bankruptcy claim with regard to these matters, the holder of a filed bankruptcy claim that holds the bankruptcy claim in question (referred to below as the "denied or disputed bankruptcy claim") may file a petition to the court against the bankruptcy trustee as well as the holders of filed bankruptcy claim that made the objection (referred to below as the "denying or disputing party" in this Subsection) for assessment of the amount, etc. of the claim (referred to below as a "petition for bankruptcy claim assessment") in order to finalize the amount and type of the claim; provided, however, that this does not apply in the case referred to in Article 127, paragraph (1) and Article 129, paragraphs (1) and (2).

- (2) A petition for bankruptcy claim assessment must be filed within an inalterable period of one month from the last day of the ordinary period for investigation or special period for investigation for the denied or disputed bankruptcy claim or from the ordinary date of investigation or special date of investigation for the claim.
- (3) When a petition for bankruptcy claim assessment is filed, the court must make a judicial decision to assess the existence or nonexistence of the denied or disputed bankruptcy claim and its amount, etc. by an order (referred to below as a "bankruptcy claim assessment order" in the following paragraph) except when the court dismisses the petition as unlawful without prejudice.
- (4) The court must interrogate the denying or disputing party when making a bankruptcy claim assessment order.
- (5) If an order is made on a petition for bankruptcy claim assessment, the electronic judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Actions Against Orders on Petition for Bankruptcy Claim Assessment)

Article 126 (1) A person that is dissatisfied with an order on a petition for bankruptcy claim assessment may file an action to oppose the order (referred to below as an "action to oppose a bankruptcy claim assessment") within an inalterable period of one month after the day on which the person received the service of the order.

- (2) An action to oppose a bankruptcy claim assessment is subject to the jurisdiction of the bankruptcy court.
- (3) The court of first instance with which an action to oppose a bankruptcy claim assessment is filed may transfer by its own authority the suit pertaining to the

action to oppose the bankruptcy claim assessment to the district court prescribed in Article 5, paragraph (1) (or the district court prescribed in Article 5, paragraph (2) if there is no appropriate court that corresponds to the court prescribed in Article 5, paragraph (1)) notwithstanding the provisions of the preceding paragraph when it finds it necessary to do so in order to avoid substantial detriment or delay when the bankruptcy court's jurisdiction over the bankruptcy case is based on only the provisions of Article 5, paragraph (8) or (9) (including cases in which the bankruptcy court has accepted the bankruptcy case transferred to it pursuant to the provisions of Article 7, item (iv) and the acceptance of the transferred case is based on only the provisions of Article 7, item (iv), sub-item (b) or (c)).

- (4) In an action to oppose bankruptcy claim assessment, all of the denying or disputing parties must stand as defendants if the action is filed by the bankruptcy creditor that holds the denied or disputed bankruptcy claim, and the bankruptcy creditor must stand as a defendant if it is filed by a denying or disputing party.
- (5) Oral argument for an action to oppose bankruptcy claim assessment may not be commenced until the period stated in paragraph (1) has expired.
- (6) If two or more actions to oppose bankruptcy claim assessment are pending with respect to the same bankruptcy claim concurrently, oral arguments and judicial decisions of these actions must be made in a consolidated manner. In this case, the provisions of Article 40, paragraphs (1) through (3) of the Code of Civil Procedure apply *mutatis mutandis*.
- (7) A judgment rendered with regard to an action to oppose a bankruptcy claim assessment approves or changes the order on the petition for bankruptcy claim assessment except when the action is dismissed as unlawful.

#### (Taking Over of Actions Relating to Denied or Disputed Bankruptcy Claims)

Article 127 (1) If an action relating to a denied or disputed bankruptcy claim is pending at the time of commencement of bankruptcy proceedings, when a bankruptcy creditor seeks the finalization of the amount, etc. of the claim, the creditor must file a petition for taking over the action, designating all of the denying or disputing parties as the opponents.

- (2) The provisions of Article 125, paragraph (2) apply *mutatis mutandis* to the petition stated in the preceding paragraph.

#### (Limitations to Assertion)

Article 128 In proceedings for assessment based on a petition for bankruptcy claim assessment or court proceedings of an action to oppose bankruptcy claim assessment or court proceedings of an action taken over under the provisions of paragraph (1) of the preceding Article, a bankruptcy creditor may assert the

particulars stated in Article 111, paragraph (1), items (i) through (iii) concerning the denied or disputed bankruptcy claim as recorded only in the electronic schedule of bankruptcy creditors.

(Assertion of Objection to Claims with Enforceable Title of Obligation)

- Article 129 (1) With regard to a denied or disputed bankruptcy claim accompanied by an enforceable title of obligation or final judgment, the denying or disputing party may assert an objection only through the court proceedings that the bankrupt may carry out.
- (2) If an action relating to the denied or disputed bankruptcy claim prescribed in the preceding paragraph is pending at the time of commencement of bankruptcy proceedings, when the denying or disputing party stated in that paragraph seeks to assert an objection under the provisions of that paragraph, the denying or disputing party must take over the action in which the bankruptcy creditor that holds the bankruptcy claim in question stands as their opponent.
- (3) The provisions of Article 125, paragraph (2) apply *mutatis mutandis* to the assertion of an objection under the provisions of paragraph (1) or the taking over of the action under the provisions of the preceding paragraph, and the provisions of Article 126, paragraphs (5) and (6) and the preceding Article apply *mutatis mutandis* to the cases referred to in the preceding two paragraphs. In these cases, the phrase "the period stated in paragraph (1)" in Article 126, paragraph (5) is deemed to be replaced with "an inalterable period of one month from the last day of the ordinary period for investigation, or special period for investigation for the denied or disputed bankruptcy claim or from the ordinary date of investigation or special date of investigation for the claim".
- (4) When the assertion of an objection under the provisions of paragraph (1) or the taking over of the action under the provisions of paragraph (2) has not taken place within the period prescribed in Article 125, paragraph (2) as applied *mutatis mutandis* pursuant to the preceding paragraph, if the denying or disputing party is a bankruptcy creditor, it is deemed that no objection under Article 118, paragraph (1), Article 119, paragraph (5), or Article 121, paragraph (2) has been made (including as applied *mutatis mutandis* pursuant to Article 121, paragraph (7) or Article 122, paragraph (2)), and if the denying or disputing party is a bankruptcy trustee, it is deemed that the bankruptcy trustee has approved the bankruptcy claim in question.

(Records of Outcome of Actions Concerning Finalization of Bankruptcy Claims)

Article 130 If a petition is filed by a bankruptcy trustee or a bankruptcy creditor, pursuant to the provisions of the Rules of the Supreme Court, the court clerk

must record the outcome of an action concerning the finalization of a bankruptcy claim (if an action to oppose bankruptcy claim assessment against an order on a petition for bankruptcy claim assessment is not filed within the period prescribed in Article 126, paragraph (1) or is dismissed without prejudice, the content of that order) in the electronic schedule of bankruptcy creditors.

(Effect of Judgment on Actions Concerning Finalization of Bankruptcy Claims)

Article 131 (1) A judgment made upon an action concerning the finalization of a bankruptcy claim is effective against all bankruptcy creditors.

(2) If an action to oppose bankruptcy claim assessment against an order on a petition for bankruptcy claim assessment is not filed within the period prescribed in Article 126, paragraph (1) or is dismissed, the order has the same effect as the final and binding judgment against all bankruptcy creditors.

(Reimbursement of Court Costs)

Article 132 When the bankruptcy estate has been enriched from an action concerning the finalization of a bankruptcy claim (including an order on a petition for bankruptcy claim assessment), the bankruptcy creditor that asserted an objection, as a holder of the claim on the estate, may claim a reimbursement of the court costs to the extent that the bankruptcy estate has been enriched.

(Handling of Proceedings for Finalization of Bankruptcy Claims upon Closing of Bankruptcy Proceedings)

Article 133 (1) Proceedings for petition for bankruptcy claim assessment which are pending at the time of the closing of bankruptcy proceedings are to be closed if the closing of bankruptcy proceedings results from an order of reversal of the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings, which has become final and binding, and is to continue to be pending if the closing of bankruptcy proceedings results from an order of termination of bankruptcy proceedings.

(2) If bankruptcy proceedings are closed as a result of an order of termination of bankruptcy proceedings, when an order on a petition for bankruptcy claim assessment is made after the closing of bankruptcy proceedings, an action to oppose bankruptcy claim assessment may be filed pursuant to the provisions of Article 126, paragraph (1).

(3) An action to oppose bankruptcy claim assessment or an action to take over pursuant to the provisions of Article 127, paragraph (1) or Article 129, paragraph (2), which is pending at the time of closing of bankruptcy proceedings and in which a bankruptcy trustee stands as a party, is not to be

subject to a continuance, notwithstanding the provisions of Article 44, paragraph (4), if the closing of bankruptcy proceedings results from an order of termination of bankruptcy proceedings.

- (4) An action to oppose bankruptcy claim assessment, which is pending at the time of closing of bankruptcy proceedings and in which a bankruptcy trustee does not stand as a party, is to be concluded if the closing of bankruptcy proceedings results from an order of reversal of the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings, which has become final and binding, and continues to be pending if the closing of bankruptcy proceedings results from an order of termination of bankruptcy proceedings.
- (5) An action taken over pursuant to the provisions of Article 127, paragraph (1) or Article 129, paragraph (2) which is pending at the time of closing of bankruptcy proceedings and in which a bankruptcy trustee does not stand as a party is subject to a continuance if the closing of bankruptcy proceedings results from an order of reversal of the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings, which has become final and binding, and is to continue to be pending if the closing of bankruptcy proceedings results from an order of termination of bankruptcy proceedings.
- (6) If an action is subject to a continuance pursuant to the provisions of the preceding paragraph, the provisions of Article 44, paragraph (5) apply *mutatis mutandis*.

### **Subsection 5 Special Provisions for Tax Claims**

Article 134 (1) With regard to a claim for tax, etc. and a claim for a fine, etc., the provisions from Subsection 1 (excluding Article 115) through the preceding Subsection do not apply.

- (2) When the cause of a claim (excluding claims for a fine, petty fine, and court costs for a criminal case) filed under the provisions of Article 114 (in the case of a claim for a foreign tax subject to mutual assistance, a decision of implementation of mutual assistance) is a disposition against which a request for review, an action (excluding a criminal action; the same applies in the following paragraph), or any other appeal may be filed, a bankruptcy trustee may assert an objection with regard to the filed claim by a means of filing an appeal.
- (3) In the case referred to in the preceding paragraph, if an action relating to the filed claim is pending at the time of the commencement of bankruptcy proceedings, a bankruptcy trustee that seeks to assert an objection prescribed in that paragraph must take over the action in which the bankruptcy creditor

that holds the filed claim stands as the opponent. The same applies when a case relating to the bankruptcy estate is pending before an administrative agency with regard to the filed claim at the time of the commencement of bankruptcy proceedings.

- (4) The assertion of an objection under the provisions of paragraph (2) or the taking over of the action under the provisions of the preceding paragraph must be performed within an inalterable period of one month after the day on which a bankruptcy trustee came to know the fact of the filing prescribed in paragraph (2).
- (5) The provisions of Article 124, paragraph (2) apply mutatis mutandis to a claim filed pursuant to the provisions of Article 114, and the provisions of Article 128, Article 130, Article 131, paragraph (1), and paragraph (3) of the preceding Article apply mutatis mutandis to cases in which the assertion of an objection under the provisions of paragraph (2) or the taking over of the action under the provisions of paragraph (3) has taken place.

## **Section 4 Creditors' Meetings and Creditors' Committees**

### **Subsection 1 Creditors' Meetings**

(Convocation of Creditors' Meetings)

Article 135 (1) The court must convoke a creditors' meeting upon the petition of any of the persons stated in the following items; provided, however, that this does not apply when the court finds it inappropriate to convoke a creditors' meeting taking into consideration the number of known bankruptcy creditors and other circumstances:

- (i) a bankruptcy trustee;
- (ii) the creditors' committee prescribed in Article 144 (2); or
- (iii) a bankruptcy creditor that holds a bankruptcy claim that accounts for one-tenth or more of the amount of total claims held by known bankruptcy creditors as estimated by the court.

(2) The court may convoke a creditors' meeting when the court finds it appropriate even when the petition stated in the main clause of the preceding paragraph is not filed.

(Summon on Dates of Creditors' Meetings)

Article 136 (1) On the date of a creditors' meeting, a bankruptcy trustee, the bankrupt, and holders of filed bankruptcy claims must be summoned; provided, however, that when the order stated in Article 31, paragraph (5) is issued, holders of filed bankruptcy claims are not required to be summoned.

(2) Notwithstanding the provisions of the main clause of the preceding paragraph, it is allowed not to summon holders of filed bankruptcy claims that may not



exercise their voting rights. In the case of a meeting for reporting the status of property, the same applies to persons that are given a notice pursuant to the provisions of Article 32, paragraph (3).

- (3) The court must give a public notice and give a notice of the date of a meeting for reporting the status of property pursuant to the provisions of Article 32, paragraph (1), item (iii) and paragraph (3), and must also give a public notice of the date of each creditors' meeting (excluding a meeting for reporting the status of property; the same applies below in this paragraph) and the subject matter of the meeting, and give a notice of the date of each creditors' meeting to the labor union, etc.
- (4) If it is rendered on the date of a creditors' meeting that the meeting is to be postponed or continued, the provisions of the main clause of paragraph (1) and the preceding paragraph do not apply.

#### (Creditors' Meeting Based on Communication Using Audiovisual Transmissions)

Article 136-2 (1) If the court finds it to be appropriate, pursuant to the provisions of the Rules of the Supreme Court, the court may conduct proceedings on a date of a creditors' meeting using a means that enables the court, the bankrupt, a bankruptcy trustee, holders of filed bankruptcy claims, and foreign trustees (meaning foreign trustees prescribed in Article 245, paragraph (1); the same applies in the following paragraph) to communicate one another through audio and visual transmissions while gaining an awareness of one another's situation.

- (2) The bankrupt, a bankruptcy trustee, holders of a filed bankruptcy claim, and foreign trustees who have participated in the proceedings without appearing on a date referred to in the preceding paragraph are deemed to have appeared on that date.

#### (Direction of Creditors' Meetings)

Article 137 Creditors' meetings are directed by the court.

#### (Resolution at Creditors' Meetings)

Article 138 In order to adopt a matter that requires a resolution at a creditors' meeting, consent is required from persons whose voting rights account for more than half of the total amount of voting rights held by bankruptcy creditors that may exercise voting rights (referred to below as "voting right holders" in this Subsection) and attended a creditors' meeting on the date set or voted by document, etc. as prescribed in paragraph (2), item (ii) of the following Article.

#### (Orders to Refer to Resolution)

Article 139 (1) The court issues an order that the matter is to be referred to a resolution at a creditors' meeting when a person stated in each item of Article 135, paragraph (1) has filed a petition stated in the main clause of Article 135, paragraph (1) for the purpose of referring a matter that requires a resolution at a creditors' meeting to a resolution.

(2) The court must, in the order to refer a matter to a resolution stated in the preceding paragraph, determine any of the following means as the means for voting right holders to exercise their voting rights:

(i) means of exercising a voting right on the date of a creditors' meeting;

(ii) means of exercising a voting right by voting by document, etc. within a period specified by the court (meaning voting by document or any other means specified by the Rules of the Supreme Court); or

(iii) means of exercising a voting right by either of the means stated in the preceding two items voting right holders select. In this case, the last day of the period referred to in the preceding item must precede the date of a creditors' meeting referred to in item (i).

(3) When the court has determined the means stated in item (ii) or (iii) of the preceding paragraph as that for exercising a voting right, it must give a public notice to that effect, and give a notice to voting right holders that voting by document, etc. prescribed in item (ii) of that paragraph is allowed only within a period specified by the court; provided, however, that the notice is not required to be given if an order referred to in Article 31, paragraph (5) is issued.

(Means of Determining Amount of Voting Right When Creditors' Meetings Are Held on the Date Set)

Article 140 (1) When the court designates the means stated in paragraph (2), item (i) or (iii) of the preceding Article as that for exercising a voting right, voting right holders may exercise their voting rights in accordance with the amount of money specified in each of the following items in accordance with the category stated in the respective items:

(i) a holder of a filed bankruptcy claim that holds a bankruptcy claim, the amount of which is finalized pursuant to the provisions of Subsection 4 of the preceding Section (excluding a holder of a right of separate satisfaction, holder of a quasi-right of separate satisfaction, or person that holds a bankruptcy claim that is a claim subject to a condition precedent, or a claim which may arise in the future (referred to as a "holder of a right of separate satisfaction, etc." in the following paragraph and paragraph (1), item (i) of the following Article)): the amount of the bankruptcy claim finalized;

(ii) a holder of a filed bankruptcy claim that holds a voting right without objection referred to in the main clause of the following paragraph: the amount filed (in the case of a holder of a right of separate satisfaction or

- holder of a quasi-right of separate satisfaction, the amount stated in Article 111, paragraph (2), item (ii) (including as applied *mutatis mutandis* pursuant to Article 111, paragraph (3) or Article 114)); or
- (iii) a holder of the filed bankruptcy claim with a voting right subject to objection referred to in the main clause of the following paragraph: the amount determined by the court; provided, however, that a holder of filed bankruptcy claim may not exercise their voting right if the court has decided not to allow them to exercise the voting right.
- (2) A bankruptcy trustee or holder of a filed bankruptcy claim may make an objection on the date of a creditors' meeting against a voting right of a holder of a filed bankruptcy claim under the provisions of the preceding paragraph; provided, however, that this does not apply to a voting right held by a holder of a filed bankruptcy claim (excluding a holder of a right of separate satisfaction, etc.) who holds a bankruptcy claim the amount of which is finalized pursuant to the provisions of Subsection 4 of the preceding Section.
- (3) The court may change the decision made under the provisions of paragraph (1), item (iii) at any time upon the petition of an interested person or by its own authority.

(Means of Determining Amount of Voting Rights When Creditors' Meeting Is Not Held on the Meeting Date)

- Article 141 (1) When the court determines the means stated in Article 139, paragraph (2), item (ii) as the means for exercising a voting right, a voting right holder may exercise their voting right in accordance with the amount specified in each of the following items in accordance with the category stated in the respective items:
- (i) a holder of a filed bankruptcy claim that holds a bankruptcy claim the amount of which is finalized pursuant to the provisions of Subsection 4 of the preceding Section (excluding a holder of a right of separate satisfaction, etc.): the confirmed amount of the bankruptcy claim; or
- (ii) a holder of a filed bankruptcy claim (excluding the one stated in the preceding item): the amount specified by the court; provided, however, that a holder of a filed bankruptcy claim may not exercise their voting right if the court has determined not to allow them to exercise the voting right.
- (2) The court may change the order under item (ii) of the preceding paragraph at any time upon the petition of an interested person or by its own authority.

(Voting Rights of Bankruptcy Creditors)

- Article 142 (1) A bankruptcy creditor does not have the right to vote with regard to a subordinate bankruptcy claim or consensually-subordinated bankruptcy claim.

- (2) A bankruptcy creditor that has received payment pursuant to the provisions of Article 101, paragraph (1) and a bankruptcy creditor that has received payment prescribed in Article 109 may not exercise the right to vote with regard to the amount of the claim paid.

(Exercise of Voting Rights by Proxy)

Article 143 Voting right holders may exercise their voting rights by proxy.

### **Subsection 2 Creditors' Committees**

(Creditors' Committees)

Article 144 (1) When there is a committee consisting of bankruptcy creditors, upon the petition of an interested person, the court may approve the participation of the committee in bankruptcy proceedings as provided for by this Act; provided, however, that this applies only when all of the conditions referred to in the following items are met:

- (i) the number of committee members is not less than three and not more than the number specified by the Rules of the Supreme Court;
  - (ii) it is found that the majority of bankruptcy creditors consent to the committee's participation in bankruptcy proceedings; and
  - (iii) it is found that the committee properly represents the interest of bankruptcy creditors as a whole.
- (2) When the court finds it necessary, it may request the approved committee pursuant to the provisions of the preceding paragraph (referred to below as the "creditors' committee") to state its opinion in bankruptcy proceedings.
- (3) The creditors' committee may state its opinion to the court or a bankruptcy trustee in bankruptcy proceedings.
- (4) When it is found that the creditors' committee has carried out activities that contribute to ensuring smooth progress of bankruptcy proceedings, upon the petition of a bankruptcy creditor that has incurred necessary expenses for the activities, the court may permit reimbursement of the amount of expenses which it finds reasonable to the bankruptcy creditor from the bankruptcy estate. In this case, a claim for the expenses is to be a claim on the estate.
- (5) Upon the petition of an interested person or by its own authority, the court may rescind the approval given pursuant to the provisions of paragraph (1) at any time.

(Hearing of Opinions of Creditors' Committees)

Article 145 (1) When approval is given pursuant to the provisions of paragraph (1) of the preceding Article, the court clerk must notify a bankruptcy trustee to that effect without delay.

- (2) Upon receiving the notice under the provisions of the preceding paragraph, a bankruptcy trustee must hear opinions of the creditors' committee without delay with regard to the particulars concerning the administration and disposal of property that belong to the bankruptcy estate.

(Bankruptcy Trustee's Duty to Report to the Creditors' Committees)

Article 146 (1) When a bankruptcy trustee has submitted a written report, etc.

(meaning written reports, inventories of assets, or balance sheets; the same applies below in this Article) to the court pursuant to the provisions of Article 153, paragraph (2) or Article 157, the bankruptcy trustee must also submit the written report, etc. to the creditors' committee without delay.

- (2) In the case referred to in the preceding paragraph, when a bankruptcy trustee has filed a petition referred to in Article 12, paragraph (1) (including as applied mutatis mutandis following a deemed replacement of terms pursuant to paragraph (6) of that Article; the same applies below in this paragraph) alleging that the written reports, etc. contain a detrimental part prescribed in paragraph (1) of that Article, it is sufficient for the bankruptcy trustee to submit the written report, etc. excluding the part in question to the creditors' committee.

- (3) Pursuant to the provisions of the Rules of the Supreme Court, in lieu of submitting a written report, etc. under the provisions of the preceding two paragraphs, a bankruptcy trustee may submit the matters that should be stated in that written report, etc. by electronic or magnetic means (meaning a method using an electronic data processing system or other information and communication technology as prescribed by the Rules of the Supreme Court) with the consent of the creditors' committee. In this case, the bankruptcy trustee is recognized as having submitted a written report, etc. under the provisions of the preceding two paragraphs.

(Report Order to Bankruptcy Trustees)

Article 147 (1) When it is necessary for the interest of bankruptcy creditors as a whole, the creditors' committee may request the court to order that a bankruptcy trustee submit a report pursuant to the provisions of Article 157, paragraph (2) with regard to the necessary particulars concerning the administration and disposal of property that belongs to the bankruptcy estate.

- (2) The court that has received a request pursuant to the provisions of the preceding paragraph must order that a bankruptcy trustee submit a report under the provisions of Article 157, paragraph (2) when it finds the request appropriate.

## **Chapter V Claims on the Estate**

(Claims Classified as Claims on the Estate)

Article 148 (1) The following claims are claims on the estate:

- (i) a claim for expenses for court proceedings performed for the common interest of bankruptcy creditors;
  - (ii) a claim for expenses for the administration, realization, and distribution of the bankruptcy estate;
  - (iii) a claim for tax, etc. arising from a cause occurring before the commencement of bankruptcy proceedings (excluding a claim for a foreign tax subject to mutual assistance and the claim stated in Article 97, item (v)), for which the due date of payment has not arrived or one year has not elapsed after the due date of payment by the time of commencement of bankruptcy proceedings (if a collection of national tax delinquency may not be made for a certain part of the one-year period due to the issuance of a comprehensive stay order during that period, that part of the period is excluded);
  - (iv) a claim arising from an act conducted by a bankruptcy trustee with respect to the bankruptcy estate;
  - (v) a claim arising against the bankruptcy estate after the commencement of bankruptcy proceedings that comes from management of affairs or unjust enrichment;
  - (vi) a claim arising against the bankruptcy estate after the commencement of bankruptcy proceedings from an act conducted due to pressing circumstances after the termination of the mandate or extinguishment of the authority of representation;
  - (vii) a claim held by the counterparty when a bankruptcy trustee performs the obligation pursuant to the provisions of Article 53, paragraph (1); and
  - (viii) a claim arising by reason of the commencement of bankruptcy proceedings, during the period after the commencement of bankruptcy proceedings until the end of the contract when a notice of termination of an executory contract (including the termination of a lease contract pursuant to the provisions of Article 53, paragraph (1) or (2)) is given.
- (2) If a bankruptcy trustee has received performance of a conditioned legacy, the claim held by the counterparty to whom the bankruptcy trustee bears duties to seek the benefit of the burden, is to be a claim on the estate as long as it does not exceed the target value of the bequest.
- (3) The provisions of Article 103, paragraphs (2) and (3) apply mutatis mutandis to the claims on the estate prescribed in paragraph (1), item (vii) and the preceding paragraph. In this case, if the claim on the estate is a claim without interest or claim for periodic payments, the amount of the claim is the amount obtained by deducting an amount equivalent to the part of the claim that is a

subordinate bankruptcy claim stated in Article 99, paragraph (1), items (ii) through (iv), suppose the claim is treated as a bankruptcy claim.

- (4) A claim arising from an act conducted by a temporary administrator based on their authority with respect to a debtor's property is to be a claim on the estate.

(Salaries for Employees)

Article 149 (1) A claim for the salary of employees of the bankrupt for the three months preceding the commencement of bankruptcy proceedings is to be a claim on the estate.

- (2) A claim for a retirement allowance of an employee of the bankrupt who has retired prior to the closing of bankruptcy proceedings (excluding the part of the claim that is to be a subordinate bankruptcy claim when the whole amount of the claim is treated as a bankruptcy claim) is a claim on the estate for the amount equivalent to the total amount of the employee's salary for the three months preceding the retirement (if that amount is less than the total amount of the employee's salary for the three months preceding the commencement of bankruptcy proceedings, the total amount for the three months preceding the commencement of bankruptcy proceedings).

(Expenses and Remuneration for Bond Administrators)

Article 150 (1) If a bond administrator or assistant bond administrator seeks to administer the affairs concerning the administration of corporate bonds that are bankruptcy claims, when the court finds it necessary to do so in order to ensure smooth progress of bankruptcy proceedings, it may grant permission to the effect that the bond administrator's or assistant bond administrator's claim for expenses to be incurred from the administrative work is to be a claim on the estate.

- (2) Even if a bond administrator or assistant bond administrator has administered the affairs concerning the administration of corporate bonds that are bankruptcy claims without obtaining the permission referred to in the preceding paragraph, when it is found that the bond administrator or assistant bond administrator has contributed to ensuring smooth progress of bankruptcy proceedings, the court may grant permission to the effect that a claim for reimbursement of the expenses incurred for the administration of the affairs is to be a claim on the estate for the amount that the court finds reasonable by taking into consideration the degree of contribution.
- (3) The court may grant permission to the effect that a bond administrator's or assistant bond administrator's claim for remuneration arising from a cause that has occurred after the commencement of bankruptcy proceedings is to be a claim on the estate for the amount that the court finds reasonable.
- (4) A claim for which the permission obtained pursuant to the provisions of the

preceding three paragraphs is to be a claim on the estate.

- (5) An immediate appeal may be filed against the order of permission pursuant to the provisions of paragraphs (1) through (3).
- (6) The provisions of the preceding paragraphs apply mutatis mutandis to a claim for expenses or remuneration that arises from the affairs concerning the administration of a claim stated in each of the following items, which is a bankruptcy claim, in accordance with the category of the persons stated in the respective items:
- (i) a trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bond Trust Act (Act No. 52 of 1905): corporate bonds prescribed in that paragraph;
  - (ii) a social medical corporation bond administrator prescribed in Article 54-5 of the Medical Care Act (Act No. 205 of 1948) or an assistant social medical corporation bond administrator prescribed in Article 54-5-2 of that Act: social medical corporation bonds prescribed in Article 54-2, paragraph (1) of that Act;
  - (iii) an investment corporation bond administrator prescribed in Article 139-8 of the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951) or an assistant investment corporation bond administrator prescribed in Article 139-9-2, paragraph (1) of that Act: investment corporation bonds prescribed in Article 2, paragraph (19) of that Act;
  - (iv) a bond administrator prescribed in Article 61-6 of the Insurance Business Act or an assistant bond administrator prescribed in Article 61-7-2 of that Act: corporate bonds issued by a mutual company; or
  - (v) a specified corporate bond administrator prescribed in Article 126 of the Act on the Securitization of Assets (Act No. 105 of 1998) or an assistant specified corporate bond administrator prescribed in Article 127-2, paragraph (1) of that Act: specified corporate bonds prescribed in Article 2, paragraph (7) of that Act.

#### (Handling of Claims on the Estate)

Article 151 A claim on the estate is paid in preference to a bankruptcy claim.

#### (Means of Payment in Case of Insufficient Bankruptcy Estates)

Article 152 (1) When it has become obvious that a bankruptcy estate is insufficient for paying the total amount of claims on the estate, the bankruptcy estate makes payment in proportion to the amount of each claim, notwithstanding any priorities specified in laws and regulations; provided, however, that this does not preclude the effect of any right of retention, special statutory lien, pledge, or mortgage that is intended to secure a claim on the estate.



- (2) Notwithstanding the provisions of the preceding paragraph, claims on the estate stated in Article 148, paragraph (1), items (i) and (ii) (including a claim for expenses for the administration and realization of a debtor's property, which is prescribed in paragraph (4) of that Article) are paid prior to other claims on the estate in the case prescribed in the main clause of that paragraph.

## **Chapter VI Administration of Bankruptcy Estates**

### **Section 1 Investigation of the Status of Bankrupt's Property**

#### **(Evaluation of Property Values)**

- Article 153 (1) Without delay after the commencement of bankruptcy proceedings, a bankruptcy trustee must evaluate the value of any and all of the property that belongs to the bankruptcy estate at the time of commencement of bankruptcy proceedings. In this case, the bankruptcy trustee may have the bankrupt attend the evaluation.
- (2) When they have completed the evaluation under the provisions of the preceding paragraph, a bankruptcy trustee must immediately prepare an inventory of assets and a balance sheet at the time of commencement of bankruptcy proceedings and submit them to the court.
- (3) If the total amount of property that belongs to a bankruptcy estate is less than the amount specified by the Rules of the Supreme Court, , with the permission of the court, a bankruptcy trustee may choose not to prepare and submit the balance sheet referred to in that paragraph, notwithstanding the provisions of the preceding paragraph.

#### **(Presentation of Collaterals Subject to Right of Separate Satisfaction)**

- Article 154 (1) A bankruptcy trustee may request a holder of a right of separate satisfaction to present the collateral subject to the right of separate satisfaction.
- (2) When a bankruptcy trustee seeks to evaluate the collateral referred to in the preceding paragraph, the holder of a right of separate satisfaction may not refuse it.

#### **(Sealing and Closing of Books)**

- Article 155 (1) A bankruptcy trustee may, when they find it necessary, have the court clerk, court enforcement officer, or notary put a seal on the property that belongs to a bankruptcy estate or remove the seal.
- (2) The court clerk may close books relating to the bankruptcy estate upon the petition of a bankruptcy trustee when they find it necessary.

(Delivery of Property Belonging to Bankruptcy Estates)

- Article 156 (1) The court may issue a ruling ordering that the bankrupt deliver the property that belongs to a bankruptcy estate to a bankruptcy trustee upon a petition of the bankruptcy trustee.
- (2) The court must interrogate the bankrupt when issuing the ruling referred to in the preceding paragraph.
- (3) An immediate appeal may be filed against the order on the petition referred to in paragraph (1).
- (4) When a judicial decision on the ruling on the petition referred to in paragraph (1) and on the immediate appeal referred to in the preceding paragraph are made, the electronic judgments must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (5) The ruling referred to in paragraph (1) does not become effective unless it becomes final and binding.

(Reports to the Court)

- Article 157 (1) A bankruptcy trustee must submit a written report stating the following particulars to the court without delay after the commencement of bankruptcy proceedings:
- (i) the circumstances that have resulted in the commencement of bankruptcy proceedings;
  - (ii) the past and present status of the bankrupt and the bankruptcy estate;
  - (iii) whether there are circumstances that require a provisional order pursuant to the provisions of Article 177, paragraph (1) or officers' liability assessment order prescribed in Article 178, paragraph (1); and
  - (iv) other necessary particulars concerning bankruptcy proceedings.
- (2) Beyond what is prescribed in the preceding paragraph, as determined by the court, a bankruptcy trustee must report to the court the status of the administration and disposal of the property that belongs to the bankruptcy estate and any other particulars ordered by the court.

(Reports to Meetings for Reporting the Status of Property)

- Article 158 At a meeting for reporting the status of property, a bankruptcy trustee must report the outline of the particulars stated in the items of paragraph (1) of the preceding Article.

(Reports to Creditors' Meetings)

- Article 159 A bankruptcy trustee must report the status of the bankruptcy estate to a creditors' meeting as determined by a resolution at a creditors' meeting.

## Section 2 Right of Avoidance

(Avoidance of Acts Prejudicial to Bankruptcy Creditors)

Article 160 (1) The following acts (excluding acts concerning the provision of security or extinguishment of debt) may be avoided in the interest of the bankruptcy estate after the commencement of bankruptcy proceedings:

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

(Avoidance of Acts of Disposing of Property While Receiving Reasonable Consideration)

Article 161 (1) When the bankrupt has received reasonable consideration from the other party to an act after conducting the act of disposing of property, the act may be avoided in the interest of the bankruptcy estate after the commencement of bankruptcy proceedings, only if it satisfies all of the following requirements:

- (i) the act has the actual risk that the bankrupt would conceal, gratuitously convey, or otherwise dispose of the property in a manner prejudicial to bankruptcy creditors (referred to below as "concealing or carrying out other disposal") by realizing real property or otherwise changing the type of

- property through the disposal;
  - (ii) the bankrupt had the intention of concealing or carrying out other disposal of the money or any other property received as consideration for the act at the time of the act; or
  - (iii) the other party had the knowledge that the bankrupt had the intention of concealing or carrying out other disposal referred to in the preceding item at the time of the act.
- (2) For the application of the provisions of the preceding paragraph, if the other party to the act is any of the following persons, at the time of the act the other party is presumed to have known that the bankrupt had the intention of concealing or carrying out other disposal referred to in item (ii) of that paragraph:
- (i) if the bankrupt is a corporation, its director, company director, executive officer, inspector, company auditor, liquidator, or any other person equivalent to them;
  - (ii) if the bankrupt is a corporation, a person that falls under any of the persons stated in the following sub-items (a) through (c) in relation to the bankrupt:
    - (a) a person that holds the majority of voting rights of all shareholders of the stock company that is the bankrupt;
    - (b) the parent corporation when the majority of voting rights of all shareholders of the stock company that is the bankrupt are held by its subsidiary stock company or jointly by the parent corporation and its subsidiary stock company;
    - (c) if the bankrupt is a corporation other than a stock company, a person equivalent to the persons stated in sub-item (a) or (b);
  - (iii) the bankrupt's relative or a person living together with the bankrupt.

#### (Avoidance of Grant of Collateral to Specific Creditors)

Article 162 (1) The following acts (limited to acts concerning the provision of security or extinguishment of debt conducted with regard to an existing debt) may be avoided in the interest of the bankruptcy estate after the commencement of bankruptcy proceedings:

- (i) the act conducted by the bankrupt after becoming unable to pay debts or a petition to commence bankruptcy proceedings was filed; provided, however, that this applies only when the creditor had known either of the facts specified in the following sub-item (a) or (b) in accordance with the category stated in sub-item (a) or (b), respectively at the time of the act:
  - (a) if the act was conducted after the bankrupt had become unable to pay debts: the fact that the bankrupt was unable to pay debts or suspended payments

- (b) if the act was conducted after a petition to commence bankruptcy proceedings had been filed: the fact that a petition to commence bankruptcy proceedings was filed; or
  - (ii) an act that is not included in the scope of the bankrupt's obligation or the time of performance of the act, which was conducted within 30 days before the bankrupt became unable to pay debts; provided, however, that this does not apply if the creditor did not know at the time of the act that the act would prejudice other bankruptcy creditors.
- (2) For the purpose of application of the provisions of item (i) of the preceding paragraph, in the following cases, the creditor is presumed to have known, at the time of the act stated in that item, the facts specified in the following sub-item (a) or (b) in accordance with the category of the case stated in sub-item (a) or (b), respectively (in the case stated in sub-item (a) of that item, both the fact that the bankrupt was unable to pay debts and the fact that the bankrupt suspended payments):
- (i) when the creditor is any of the persons stated in the items of paragraph (2) of the preceding Article; or
  - (ii) when the act stated in item (i) of the preceding paragraph is not included in the scope of the bankrupt's obligation or the means taken or time of performance of the act.
- (3) For the application of the provisions of the items of paragraph (1), after suspension of payments took place (limited to suspension that took place within one year prior to the filing of a petition to commence bankruptcy proceedings), the bankrupt is presumed to have been unable to pay debts.

(Exceptions to Payment of Debts on Negotiable Instruments)

Article 163 (1) The provisions of paragraph (1), item (i) of the preceding Article do not apply when a person that has received payment of a negotiable instrument from the bankrupt would lose their right on the negotiable instrument against one or more debtors on the negotiable instrument unless the person receives the payment.

- (2) In the case referred to in the preceding paragraph, if the final obligor for reimbursement or the person that had entrusted the drawing of the negotiable instrument had known or was negligent in not knowing, at the time of drawing, the fact that suspension of payments, etc. had taken place, a bankruptcy trustee may have these persons redeem the money paid by the bankrupt to them.
- (3) The provisions of paragraph (1) of the preceding Article do not apply to the act concerning the provision of security or extinguishment of debt, which is conducted by the bankrupt with regard to a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance) or a claim for a fine, etc.

for the person that has the authority to collect the claim.

(Avoidance of Requirements for Perfection of Changes in Rights)

Article 164 (1) When an act necessary to assert the establishment, transfer, or modification of a right against a third party (including a provisional registration) was conducted after suspension of payments, etc. took place, if the act was conducted after 15 days had elapsed from the date of establishment, transfer, or modification of the right, knowing that suspension of payments, etc. had taken place, the act may be avoided in the interest of the bankruptcy estate after the commencement of bankruptcy proceedings; provided, however, that this does not apply to a definitive registration based on the above or other provisional registration.

(2) The provisions of the preceding paragraph apply *mutatis mutandis* to a registration that makes the acquisition of a right effective.

(Avoidance of Acts of Enforcement)

Article 165 The exercise of a right of avoidance is not precluded even when an act to be avoided is accompanied by an enforceable title of obligation or is based on an act of enforcement.

(Restrictions on Avoidance Due to Suspension of Payments)

Article 166 An act conducted not less than one year before the date of filing of a petition to commence bankruptcy proceedings (excluding the act prescribed in Article 160, paragraph (3)) may not be avoided by the reason that the act was conducted after the suspension of payments had taken place or while knowing the fact of suspension of payments.

(Effect of Exercise of Right of Avoidance)

Article 167 (1) The exercise of a right of avoidance restores the bankruptcy estate to its original state.

(2) When the act prescribed in Article 160, paragraph (3) is avoided, if the other party did not know that suspension of payments, etc. had taken place nor that the act would prejudice a bankruptcy creditor at the time of the act, it is sufficient for the other party to reimburse the benefit that have actually received.

(Rights Held by the Other Party Over Counter-Performance Received by the Bankrupt)

Article 168 (1) When an act prescribed in Article 160, paragraph (1) or (3), or Article 161, paragraph (1) is avoided, the other party may exercise the right specified in each of the following items in accordance with the category stated

in the respective items:

- (i) when the counter-performance received by the bankrupt actually exists within the bankruptcy estate: the right to claim the return of the counter-performance; or
  - (ii) when the counter-performance received by the bankrupt does not actually exist within the bankruptcy estate: the right to claim, the reimbursement of the value of the counter-performance as a holder of claim on the estate.
- (2) Notwithstanding the provisions of item (ii) of the preceding paragraph, in the cases stated in that item, if the bankrupt had the intention to conceal or carry out other disposal of the property that they received as a value for the act and the other party knew that the bankrupt had the intention at the time when the act in question was conducted, the other party may exercise the right specified in each of the following items in accordance with the category stated in the respective items:
- (i) when the enrichment arising from the counter-performance received by the bankrupt actually exists in whole within the bankruptcy estate: the right to claim the return of the actual enrichment as a holder of the claim on the estate;
  - (ii) when the enrichment arising from the counter-performance received by the bankrupt does not actually exist within the bankruptcy estate: the right to claim, the reimbursement of the value of the counter-performance as a bankruptcy creditor; or
  - (iii) when the enrichment arising from the counter-performance received by the bankrupt actually exists in part within the bankruptcy estate: the right to claim the return of the actual enrichment as a holder of claim on the estate, and the right to claim the reimbursement of any difference between the counter-performance and the actual enrichment as a bankruptcy creditor.
- (3) For the purpose of application of the provisions of the preceding paragraph, if the other party to the act in question is any of the persons stated in the items of Article 161, paragraph (2), the other party is presumed to have known that the bankrupt had the intention to conceal or carry out other disposal referred to in the preceding paragraph at the time of the act.
- (4) A bankruptcy trustee may request the other party to reimburse the amount obtained by deducting the amount that is included in the scope of claims on the estate pursuant to the provisions of the preceding three paragraphs (in the case stated in paragraph (1), item (i), the value of the counter-performance received by the bankrupt) from the value of the property to be returned when seeking to avoid an act prescribed in Article 160, paragraph (1) or (3), or Article 161, paragraph (1), in lieu of requesting the return of the property that should be returned to the bankruptcy estate pursuant to the provisions of paragraph (1) of the preceding Article,.

(Restoration of the Other Party's Claims)

Article 169 When an act prescribed in Article 162, paragraph (1) is avoided, if the other party returns the performance received or reimburses the value of the performance, the other party's claim restores to its original state.

(Right of Avoidance Against Subsequent Acquirers)

Article 170 (1) In the cases stated in the following items, a right of avoidance may also be exercised against subsequent acquirers specified in the respective item if there are grounds for avoidance against the other party to the act to be avoided; provided, however, that if the relevant subsequent acquirer acquired the subject matter from another subsequent acquirer, this is limited to cases in which there were grounds for avoidance against all subsequent acquirers that acquired the subject matter before the relevant subsequent acquirer acquired the subject matter:

- (i) when a subsequent acquirer had known that the act of the bankrupt would prejudice the bankruptcy creditors at the time of acquisition;
  - (ii) when a subsequent acquirer is any of the persons stated in the items of Article 161, paragraph (2); provided, however, that this does not apply if the subsequent acquirers did not know that the act of the bankrupt would prejudice the bankruptcy creditors at the time of acquisition; and
  - (iii) when a subsequent acquirer acquired the subject matter by a gratuitous act or by an onerous act that should be deemed to be equivalent to that act.
- (2) The provisions of Article 167, paragraph (2) apply mutatis mutandis when a right of avoidance is exercised pursuant to the provisions of item (iii) of the preceding paragraph.

(Rights of Subsequent Acquirers Relating to Counter-Performance Received by the Bankrupt)

Article 170-2 (1) If an act conducted by the bankrupt referred to in the provisions of Article 160, paragraph (1) or paragraph (3) or Article 161, paragraph (1) was avoided by the exercise of a right of avoidance against a subsequent acquirer, the subsequent acquirer may exercise the rights prescribed in the items of Article 168, paragraph (1) in accordance with the category stated in the respective item; provided, however, that in the case stated in item (i) of that paragraph, if the value of the counter-performance received by the bankrupt exceeds the value of the counter-performance by the subsequent acquirer or the value of the extinguished claims of the subsequent acquirer referred to in paragraph (4), the subsequent acquirer may exercise the right to make a claim for reimbursement of the value of the counter-performance received by the bankrupt as a holder of a claim on the estate.



- (2) Notwithstanding the provisions of the preceding paragraph, in the case stated in Article 168, paragraph (1), item (ii), at the time when the act in question was conducted, if the bankrupt had the intention to conceal or carry out other disposal of the property received as value for the act, and the other party knew that the bankrupt had the intention, the subsequent acquirer may exercise the rights specified in each item of paragraph (2) of that Article in accordance with the category stated in the respective item.
- (3) For the purpose of application of the provisions of the preceding paragraph, if the other party to the act in question is any of the persons stated in the items of Article 161, paragraph (2), the other party is presumed to have known, at the time of the act, that the bankrupt had the intention to conceal or carry out other disposal referred to in the preceding paragraph.
- (4) The exercise of rights under the provisions of paragraph (1) and (2) is limited to the value of the counter-performance by the subsequent acquirer in order to acquire the property from the predecessor or the value of the claim that was extinguished as a result of the acquisition of the property by the subsequent acquirer from the predecessor.
- (5) When seeking to avoid an act prescribed in paragraph (1) by exercising a right of avoidance against the subsequent acquirer in lieu of requesting return of the property that should be returned to the bankruptcy estate pursuant to the provisions of Article 167, paragraph (1), a bankruptcy trustee may request the subsequent acquirer to reimburse the amount obtained by deducting the amount that is included in the scope of claims on the estate pursuant to the provisions of the preceding four paragraphs (in the case stated in Article 168, paragraph (1), item (i) (excluding cases filing under the proviso of paragraph (1)), the value of the counter-performance received by the bankrupt) from the value of the property to be returned.

(Rights of Subsequent Acquirer Pertaining to the Other Party's Claim)

Article 170-3 If an act conducted by the bankrupt prescribed in Article 162, paragraph (1) is avoided through the exercise of a right of avoidance against a subsequent acquirer and the subsequent acquirer returns the performance received or reimburses the value of the performance, the subsequent acquirer may exercise the claim of the other party to be restored to its original state pursuant to the provisions of Article 169 if that act is avoided through the exercise of a right of avoidance against the other party. In this case, the provisions of paragraph (4) of the preceding Article apply *mutatis mutandis*.

(Provisional Order for Right of Avoidance)

Article 171 (1) When the court finds it necessary in order to secure a right of avoidance during the period after a petition to commence bankruptcy

proceedings is filed until ruling on the petition is made, upon the petition of an interested person (or a temporary administrator if any temporary administrator is appointed) or by its own authority, the court may issue an order of provisional seizure, a provisional disposition, or any other necessary provisional order.

- (2) The provisional order under the provisions of the preceding paragraph may be issued with or without requiring the provision of security.
- (3) The court may change or reverse a provisional order under the provisions of paragraph (1) upon petition or by its own authority.
- (4) An immediate appeal may be filed against a provisional order under the provisions of paragraph (1) and a judicial decision on the petition referred to in the preceding paragraph.
- (5) The immediate appeal referred to in the preceding paragraph does not have the effect of stay of enforcement.
- (6) When a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal referred to in that paragraph are made, the electronic judgments must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (7) The provisions of the preceding paragraphs apply *mutatis mutandis* when an immediate appeal referred to in Article 33, paragraph (1) is filed against an order dismissing a petition to commence bankruptcy proceedings.

(Continuation of Procedures for Provisional Orders and Handling of Security)

- Article 172 (1) When a provisional order under the provisions of paragraph (1) of the preceding Article (including as applied *mutatis mutandis* pursuant to paragraph (7) of that Article) is issued, if an order commencing bankruptcy proceedings is made, a bankruptcy trustee may continue the procedures for the provisional order.
- (2) If a bankruptcy trustee does not continue the procedures for the provisional order referred to in the preceding paragraph pursuant to the provisions of that paragraph within one month after an order commencing bankruptcy proceedings is made, the provisional order ceases to be effective.
  - (3) When a bankruptcy trustee seeks to continue the procedures for the provisional order referred to in paragraph (1) pursuant to the provisions of that paragraph, if the whole or part of the security prescribed in paragraph (2) of the preceding Article (including as applied *mutatis mutandis* pursuant to paragraph (7) of that Article) does not belong to the bankruptcy estate, the bankruptcy trustee must substitute the whole or part of the security with another security by way of property that belongs to the bankruptcy estate.
  - (4) The provisions of Article 18, and Chapter II, Section 4 (excluding Article 37, paragraphs (5) through (7)) and Section 5 of the Civil Provisional Remedies Act

(Act No. 91 of 1989) apply *mutatis mutandis* to a provisional order issued for the proceedings to be continued by a bankruptcy trustee pursuant to the provisions of paragraph (1).

(Exercise of Rights of Avoidance)

Article 173 (1) A right of avoidance is exercised by a bankruptcy trustee by filing an action, making a request for avoidance, or filing a defense.

(2) The action and case of request for avoidance referred to in the preceding paragraph are subject to the jurisdiction of the bankruptcy court.

(Requests for Avoidance)

Article 174 (1) When making a request for avoidance, the requester must make a *prima facie* showing of the fact constituting the grounds for avoidance.

(2) A judicial decision to uphold a request for avoidance or dismiss the request must be made by an order with its reason.

(3) The court must interrogate the other party or any subsequent acquirer when making an order referred to in the preceding paragraph.

(4) When an order to uphold a request for avoidance is made, the electronic judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(5) The proceedings for a request for avoidance are closed upon the closing of bankruptcy proceedings.

(Actions Against Order to Uphold Requests for Avoidance)

Article 175 (1) A person that is dissatisfied with an order to uphold a request for avoidance may file an action to oppose the order within an inalterable period of one month after the day on which the order is served.

(2) The action referred to in the preceding paragraph is subject to the jurisdiction of the bankruptcy court.

(3) A judgment rendered with regard to the action referred to in paragraph (1) approves, changes, or reverses the order referred to in that paragraph, except when the action is dismissed as unlawful.

(4) When a judgment to approve an order stated in paragraph (1) becomes final and binding, the order has the same effect as a final and binding judgment. The same applies if the action referred to in the paragraph is not filed within the period prescribed in that paragraph or is dismissed without prejudice.

(5) With regard to a judgment to approve or change the order referred to in paragraph (1), the court in charge of the case may declare a provisional execution as provided for by Article 259, paragraph (1) of the Code of Civil Procedure.

(6) The court proceedings of the action referred to in paragraph (1) are concluded

upon the closing of bankruptcy proceedings, notwithstanding the provisions of Article 44, paragraph (4).

(Periods for Exercising Rights of Avoidance)

Article 176 A right of avoidance may not be exercised if two years have elapsed since the date of commencement of bankruptcy proceedings. The same applies when 10 years have elapsed since the date of the act to be avoided.

### **Section 3 Pursuing Liabilities of Officers of Corporations**

(Provisional Orders on Officer's Property)

Article 177 (1) When an order commencing bankruptcy proceedings is made against a debtor that is a corporation, the court may issue a provisional order on the property of the corporation's director, company director, executive officer, inspector, company auditor, liquidator, or any other person equivalent to them (referred to below as "officer" in this Section), when it finds it necessary to do so upon the petition of a bankruptcy trustee or by its own authority with regard to a claim for damages based on the liabilities of , these officers.

- (2) When the court finds that there is an urgent need even during the period after a petition to commence bankruptcy proceedings is filed until an order on the petition is made, the court may issue a provisional order under the provisions of the preceding paragraph upon the petition of a debtor (or a temporary administrator if any temporary administrator is appointed) or by its own authority.
- (3) The court may change or reverse a provisional order under the provisions of the preceding two paragraphs.
- (4) An immediate appeal may be filed against a provisional order under the provisions of paragraph (1) or (2) or an order under the provisions of the preceding paragraph.
- (5) The immediate appeal referred to in the preceding paragraph does not have the effect of a stay of enforcement.
- (6) When a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal referred to in that paragraph are made, the electronic judgments must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (7) The provisions of paragraph (2) through the preceding paragraph apply mutatis mutandis if an immediate appeal referred to in Article 33, paragraph (1) is filed against an order dismissing a petition to commence bankruptcy proceedings.

(Petitions for Assessment of Officers' Liabilities)

- Article 178 (1) When an order commencing bankruptcy proceedings is made against a debtor that is a corporation, the court may reach an assessment decision on the rights to seek damages pursuant to the liability of the officers (referred to below as "officers' liability assessment order" in this Section) upon the petition of a bankruptcy trustee or by its own authority by an order when it finds it necessary to do so,.
- (2) When filing the petition referred to in the preceding paragraph, the petitioner must make a prima facie showing of the fact constituting the grounds for the liability.
- (3) When the court commences proceedings for officers' liability assessment order by its own authority, it must issue an order to that effect.
- (4) When the petition referred to in paragraph (1) is filed or the order referred to in the preceding paragraph is issued, for the purpose of postponement of expiry of prescription and renewal of prescription, it is deemed that demand by litigation has been made.
- (5) The proceedings for officers' liability assessment order is closed upon the closing of bankruptcy proceedings (excluding cases in which an officers' liability assessment order has been already issued at the time of the closing of bankruptcy proceedings).

(Officers' Liability Assessment Orders)

- Article 179 (1) An officers' liability assessment order and an order dismissing the petition referred to in paragraph (1) of the preceding Article must state reasons for them.
- (2) The court must interrogate the officers in question when making a judicial decision prescribed in the preceding paragraph.
- (3) When an officers' liability assessment order is made, the electronic judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Action Against Officers' Liability Assessment Orders)

- Article 180 (1) A person that is dissatisfied with an officers' liability assessment order may file an action to oppose the order within an inalterable period of one month after the day on which the person received the service of the order.
- (2) The action referred to in the preceding paragraph is subject to the jurisdiction of the bankruptcy court.
- (3) For the action stated in paragraph (1), a bankruptcy trustee must stand as a defendant if it is filed by an officer, and an officer must stand as a defendant if it is filed by a bankruptcy trustee.
- (4) A judgment rendered with regard to the action referred to in paragraph (1)

approves, changes or reverses the officers' liability assessment order, except when the action is dismissed as unlawful.

(5) A judgment that approves or changes an officers' liability assessment order has the same effect as a judgment to order performance in the case of enforcement.

(6) With regard to a judgment that approves or changes an officers' liability assessment order, the court in charge of the case may, as provided for by Article 259, paragraph (1) of the Code of Civil Procedure, declare provisional execution.

#### (Effect of Officers' Liability Assessment Order)

Article 181 If an action referred to in paragraph (1) of the preceding Article is not filed within the period referred to in that paragraph or is dismissed, the officers' liability assessment order has the same effect as the final and binding judgment to order performance.

#### (Member's Liability of Contributions)

Article 182 The provisions of Article 663 of the Companies Act apply mutatis mutandis when an order commencing bankruptcy proceedings is issued against a debtor that is a corporation. In this case, the term "relevant liquidating membership company" in that Article is deemed to be replaced with "bankruptcy trustee".

#### (Silent Partners' Liability of Contributions)

Article 183 When a silent partnership agreement terminates by reason that the proprietor has received an order commencing bankruptcy proceedings, a bankruptcy trustee may have the silent partner pay contributions up to the amount of loss to be borne by them.

## **Chapter VII Realization of Bankruptcy Estates**

### **Section 1 General Rules**

#### (Methods of Realization)

Article 184 (1) Realization of the property referred to in Article 78, paragraph (2), items (i) and (ii) is conducted pursuant to the provisions of the Civil Enforcement Act and other laws and regulations concerning a procedure for enforcement except when it is conducted through sale by private contract pursuant to those provisions.

(2) A bankruptcy trustee may realize the collateral for the right of separate satisfaction. In this case, the holder of the right of separate satisfaction may not refuse the realization pursuant to the provisions of the Civil Enforcement

- Act and other laws and regulations concerning a procedure for enforcement.
- (3) In the cases referred to in the preceding two paragraphs, the provisions of Article 63 and Article 129 of the Civil Enforcement Act (including as applied *mutatis mutandis* pursuant to the provisions of that Act and other laws and regulations concerning a procedure for enforcement) do not apply.
- (4) In the case referred to in paragraph (2), if the amount to be received by a holder of a right of separate satisfaction has not been finalized, a bankruptcy trustee must separately deposit the fee. In this case, the right of separate satisfaction exists upon the fee deposited.

(Designation of the Period for Disposal by Holders of Rights of Separate Satisfaction)

- Article 185 (1) If a holder of a right of separate satisfaction has a right to dispose of the collateral for the right of separate satisfaction by means other than that prescribed by law, upon the petition of a bankruptcy trustee, the court may specify a period during which the holder of the right of separate satisfaction should dispose of the collateral.
- (2) A holder of a right of separate satisfaction that fails to dispose the collateral within the period stated in the preceding paragraph loses the right referred to in that paragraph.
- (3) An immediate appeal may be filed against a judicial decision on the petition referred to in paragraph (1).
- (4) When a judicial decision on the petition referred to in paragraph (1) and a judicial decision on the immediate appeal referred to in the preceding paragraph are made, the electronic judgments must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

## **Section 2 Extinguishment of Security Interests**

(Petitions for Permission for Extinguishment of Security Interests)

- Article 186 (1) If any security interest (meaning a special statutory lien, pledge, mortgage, or a right of retention under the provisions of the Commercial Code or the Companies Act; the same applies below in this Section) exists at the time of commencement of bankruptcy proceedings against property that belongs to the bankruptcy estate, if it is in the common interest of bankruptcy creditors to extinguish the security interests by selling the property by private contract, a bankruptcy trustee may file a petition to the court for permission to sell the property by private contract and extinguish all security interests on the property by paying to the court the amount of money specified in each of the following items in accordance with the category stated in the respective

items; however, this does not apply if it is found that this would unduly harm the interest of the persons who hold the security interests:

- (i) when a bankruptcy trustee seeks to transfer part of the amount of money that can be obtained from the counterparty through sale (excluding the amount of money consisting of the amount of actual costs already paid or to be paid in the future from the bankruptcy estate for concluding and performing the sales contract and the amount of consumption tax, etc. to be imposed on the transfer of the property (meaning the amount of consumption tax and the amount of local consumption tax to be imposed based on the former amount as a tax base; hereinafter the same applies in this Section), which is to be borne by the counterparty under the sales contract; referred to below as "proceeds" in this Section) into the bankruptcy estate: the amount obtained by deducting the amount of money to be deducted from the proceeds and added to the bankruptcy estate (referred to below as the "money deducted from the proceeds and added to the bankruptcy estate" in this Section) from the amount of proceeds; or
  - (ii) cases other than the one stated in the preceding item: the amount of proceeds.
- (2) In the case stated in item (i) of the preceding paragraph, a bankruptcy trustee that seeks to file a petition referred to in that paragraph must consult with the person that holds the security interest in question in advance with regard to the amount of money deducted from the proceeds and added to the bankruptcy estate.
- (3) The petition referred to in paragraph (1) must be filed by means of a document stating the following particulars (referred to below as a "written petition" in this Section):
- (i) the indication of the property that is the subject of a security interest;
  - (ii) the amount of proceeds (if the property referred to in the preceding item consists of two or more pieces of property, the amount of proceeds and the amount allocated to each piece of property);
  - (iii) the name of the counterparty to the sale of the property referred to in item (i);
  - (iv) the indication of the security interest required to be extinguished;
  - (v) the amount of claim secured by the security interests referred to in the preceding item;
  - (vi) in the case stated in paragraph (1), item (i), the amount of money to be deducted from the proceeds and added to the estate (if the property referred to in the preceding item consists of two or more pieces of property, the amount of money to be deducted from the proceeds and added to the bankruptcy estate and the amount allocated to each piece of property); and
  - (vii) the content and process of the consultation under the provisions of the



preceding paragraph.

- (4) When a petition referred to in paragraph (1) is filed, a document or electronic or magnetic record stating or recording the content of the sales contract for the sale of property referred to in item (i) of the preceding paragraph (including the amount of money consisting of the amount of actual costs already paid or to be paid in the future from the bankruptcy estate for concluding and performing the sales contract and the amount of consumption tax, etc. to be imposed on the transfer of the property, which is to be borne by the counterparty under the sales contract) must be submitted to the court.
- (5) If a petition referred to in paragraph (1) is filed, the written petition and the document or the electronic or magnetic record referred to in the preceding paragraph must be served upon the person that holds the security interest referred to in paragraph (3), item (iv) which is stated in the written petition (referred to below as a "designated security interest holder" in this Section). In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

#### (Petitions for Exercise of Security Interests)

- Article 187 (1) If a designated security interest holder has an objection to the petition referred to in paragraph (1) of the preceding Article, they may submit to the court a document or an electronic or magnetic record that certifies their filing of a petition for exercise of security interest within one month after the day on which the written petition and the document or the electronic or magnetic record referred to in paragraph (4) of that Article is served upon all designated security interest holders pursuant to the provisions of paragraph (5) of that Article.
- (2) The court may extend the period referred to in the preceding paragraph upon the petition of a designated security interest holder, only if the designated security interest holder has compelling reasons.
  - (3) If there is an agreement between a bankruptcy trustee and a designated security interest holder with regard to the amounts of proceeds and of money to be deducted from the proceeds and added to the estate (in the case stated in paragraph (1), item (ii) of the preceding Article, the amount of proceeds), the designated security interest holder may not file a petition for exercise of security interests.
  - (4) A designated security interest holder may not file a petition for exercise of security interests after the period referred to in paragraph (1) (if it is extended pursuant to the provisions of paragraph (2), the extended period; the same applies below in this Section) has expired, except when an order of permission referred to in Article 189, paragraph (1) is reversed pursuant to the provisions of Article 190, paragraph (6) or an order of non-permission referred to in that

paragraph becomes final and binding.

- (5) If the petition for exercise of security interest has been withdrawn or dismissed without prejudice after a document or an electronic or magnetic record that certifies the filing of a petition for exercising security interests referred to in paragraph (1) was submitted, the document or the electronic or magnetic record is deemed not to have been submitted. The same applies when the procedure for exercising security interests referred to in that paragraph is reversed pursuant to the provisions of Article 63 of the Civil Enforcement Act as applied mutatis mutandis pursuant to Article 188 of that Act, or Article 129 of that Act as applied mutatis mutandis pursuant to Article 192 of that Act (including as applied mutatis mutandis pursuant to that Act and other laws and regulations concerning a procedure for enforcement).
- (6) After an order of non-permission stated in Article 189, paragraph (1) became final and binding, if a petition for exercising security interests referred to in paragraph (1) has been withdrawn or dismissed and a bankruptcy trustee files a petition referred to in paragraph (1) of the preceding Article, the designated security interest holder that has filed the petition for exercising security interests may not submit the document or the electronic or magnetic record that certifies their filing of the petition for exercising security interests referred to in that paragraph, notwithstanding the provisions of paragraph (1).

#### (Purchase Offers)

Article 188 (1) A designated security interest holder that has an objection to the petition referred to in Article 186, paragraph (1) may make an offer to a bankruptcy trustee within the period stated in paragraph (1) of the preceding Article to the effect that the designated security interest holder or any other person will purchase the property referred to in Article 186, paragraph (3), item (i) referred to below as a "purchase offer" in this Section).

(2) A purchase offer must be made by means of a document stating the following particulars:

(i) the name of the person that seeks to purchase the property stated in Article 186, paragraph (3), item (i) (referred to below as the "applicant for purchase" in this Section);

(ii) the amount of money that a bankruptcy trustee can obtain from the applicant for purchase through the sale of the property referred to in Article 186, paragraph (3), item (i) (excluding the amount of money consisting of the amount of actual costs already paid or to be paid in the future from the bankruptcy estate for concluding and performing the sales contract and the amount of consumption tax, etc. to be imposed on the transfer of the property, which is to be borne by the purchase applicant under the sales contract; referred to below as the "offered purchase price" in this Section); and

- (iii) if the property stated in Article 186, paragraph (3), item (i) consists of two or more pieces of property, the amount of offered purchase price allocated to each piece of property.
- (3) The offered purchase price must be more than the sum obtained by adding the amount of proceeds referred to in Article 186, paragraph (3), item (ii) which is stated in the written petition to the amount equivalent to one-twentieth of the amount.
- (4) If the property referred to in Article 186, paragraph (3), item (i) consists of two or more pieces of property, the amount of the offered purchase price stated in paragraph (2), item (iii) allocated to each piece of property must not be below the amount of proceeds referred to in paragraph (3), item (ii) of that Article allocated to each respective piece of property.
- (5) Upon making a purchase offer, a purchase applicant must provide a bankruptcy trustee with the guarantee of the amount and by the means specified by the Rules of the Supreme Court.
- (6) The provisions of paragraph (3) of the preceding Article apply *mutatis mutandis* to a purchase offer.
- (7) A person that has made a purchase offer (if a person other than the person who has made the purchase offer is a purchase applicant, the purchase applicant) may withdraw the purchase offer within the period referred to in paragraph (1) of the preceding Article.
- (8) When a purchase offer is made, a bankruptcy trustee must notify the court to the effect that they will sell the property referred to in Article 186, paragraph (3), item (i) to the purchase applicant after the period referred to in paragraph (1) of the preceding Article has expired. In this case, if two or more purchase offers are made, a bankruptcy trustee must give notification to the effect that they will sell the property to the purchase applicant who has made the purchase offer with the highest offered purchase price (if there are two or more purchase offers with the highest offered purchase price, the purchase applicant who has made the first offer).
- (9) In the case referred to in the preceding paragraph, a bankruptcy trustee must submit to the court the document referred to in paragraph (2) related to the purchase offer made within the period stated in paragraph (1) of the preceding Article.
- (10) When a purchase offer is made, in order to withdraw the petition referred to in Article 186, paragraph (1), a bankruptcy trustee must obtain consent from the purchase applicant (after the order of permission stated in paragraph (1) of the following Article becomes final and binding, the purchaser prescribed in paragraph (2) of that Article).

(Orders of Permission for Extinguishment of Security Interests)

Article 189 (1) Except when the court issues an order of non-permission by reason that a designated security interest holder has submitted a document or an electronic or magnetic record that certifies their filing of a petition for exercise of security interests within the period referred to in Article 187, paragraph (1), it must issue an order of permission referred to in Article 186, paragraph (1), designating the person specified in each of the following items in accordance with the category stated in the respective items as the counterparty to the sale related to the permission:

- (i) when the notification prescribed in paragraph (8) of the preceding Article has not been made: the counterparty to the sale stated in Article 186, paragraph (3), item (iii); or
  - (ii) when the notification prescribed in paragraph (8) of the preceding Article has been made: the purchase applicant prescribed in that paragraph.
- (2) In the case stated in item (ii) of the preceding paragraph, when the order of permission stated in that paragraph has become final and binding, it is deemed that a bankruptcy trustee and the purchase applicant specified in that item (referred to below as the "purchaser" in this Section) related to the permission has concluded a sales contract with the same content as that stated or recorded in the document or the electronic or magnetic record referred to in Article 186, paragraph (4) (excluding the counter party to the sale). In this case, the offered purchase price is deemed to be the amount of proceeds under the sales contract.
- (3) When a judicial decision on the petition stated in Article 186, paragraph (1) is made, a purchase applicant (excluding the purchase applicant specified in paragraph (1), item (ii)) may withdraw the purchase offer made by them until the judicial decision becomes final and binding.
- (4) An immediate appeal may be filed against a judicial decision on the petition referred to in Article 186, item (1).
- (5) When a judicial decision on the petition referred to in Article 186, paragraph (1) or a judicial decision on the immediate appeal referred to in the preceding paragraph is made, the electronic judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

(Payments of Money)

Article 190 (1) When an order of permission referred to in paragraph (1) of the preceding Article has become final and binding, the counterparty to the sale related to the permission must pay to the court the amount of money specified in each of the following items in accordance with the category of the cases stated in the respective items by the due date set by the court:

- (i) in the case stated in paragraph (1), item (i) of the preceding Article: the amount specified in each item of Article 186, paragraph (1) in accordance

- with the category stated in the respective items; and
- (ii) in the case stated in paragraph (1), item (ii) of the preceding Article: the amount obtained by deducting the guaranteed amount provided by the purchaser pursuant to the provisions of Article 188, paragraph (5) from the amount of proceeds prescribed in the second sentence of paragraph (2) of that Article.
- (2) When payment of money pursuant to the provisions of item (ii) of the preceding paragraph is made, the amount of money equivalent to the amount of guarantee provided by the purchaser pursuant to the provisions of Article 188, paragraph (5) is allocated to proceeds.
  - (3) In the case referred to in the preceding paragraph, a bankruptcy trustee must immediately pay to the court the amount of money equivalent to the guaranteed amount referred to in that paragraph.
  - (4) In the case referred to in paragraph (1), item (i), the security interest held by a designated security interest holder is extinguished when payment of money pursuant to the provisions of paragraph (1), item (i) is made, and in the case stated in paragraph (1), item (ii), the security interest held by a designated security interest holder is extinguished when payment of money pursuant to the provisions of paragraph (1), item (ii) and payment of money pursuant to the provisions of the preceding paragraph are made.
  - (5) When payment of money prescribed in the preceding paragraph is made, the court clerk must commission the cancellation of the registrations of the security interests extinguished.
  - (6) If payment of money under the provisions of paragraph (1) is not made, the court must reverse the order of permission referred to in paragraph (1) of the preceding Article.
  - (7) In the case referred to in the preceding paragraph, the purchaser may not claim return of the guarantee referred to in paragraph (2).

(Implementation of Distributions)

- Article 191 (1) When payment of money prescribed in paragraph (4) of the preceding Article is made, the court must implement the distribution according to the electronic distribution list (meaning an electronic or magnetic record prepared pursuant to the provisions of Article 85, paragraph (3) of the Civil Enforcement Act applied mutatis mutandis pursuant to paragraph (4) that has been recorded in computer files pursuant to the provisions of paragraph (5) of that Article applied mutatis mutandis pursuant to paragraph (4)) for distribution of the money to each designated security interest holder, except in the case prescribed in the following paragraph.
- (2) When there is only one designated security interest holder or when there are two or more designated security interest holders and the money prescribed in

paragraph (4) of the preceding Article is sufficient for paying the claims secured by the security interests held by those holders, pursuant to the provisions of the Rules of the Supreme Court, the court prepares an electronic statement of delivery of the money (meaning an electronic or magnetic record prepared by the court clerk pursuant to the provisions of the Rules of the Supreme Court recording the amount of the payment money and surplus, the amounts of the principal of the claims, interest, and any other incidental claims of the claims secured by security interest held by each designated security interest holder and the order and amount of delivery of payment money so that the payment money and surplus can be delivered; the same applies in the following paragraph), and delivers the payment money to the designated security interest holders and delivers any surplus to a bankruptcy trustee.

- (3) If the court has prepared an electronic statement of delivery pursuant to the provisions of the preceding paragraph, the court must record the electronic statement of delivery in computer files pursuant to the provisions of the Rules of the Supreme Court.
- (4) The provisions of Articles 85 through 86 and Articles 88 through 92 of the Civil Enforcement Act apply *mutatis mutandis* to the procedure for distribution referred to in paragraph (1), and the provisions of Article 88, Article 91, and Article 92 of that Act apply *mutatis mutandis* to the procedure for delivery of payment money pursuant to the provisions of paragraph (2).

### **Section 3 Extinguishment of Right of Retention Under the Commercial Code**

Article 192 (1) When any right of retention under the provisions of the Commercial Code or the Companies Act exists against the property that belongs to the bankruptcy estate at the time of commencement of bankruptcy proceedings, if the property is necessary for the business continued pursuant to the provisions of Article 36 or the recovery of the property otherwise contributes to maintaining or increasing the value of the bankruptcy estate, a bankruptcy trustee may make a demand to the holder of the right of retention that the right be extinguished.

- (2) In order to make a demand under the provisions of the preceding paragraph, the amount of money equivalent to the value of the property referred to in that paragraph must be paid to the holder of the right of retention referred to in that paragraph.
- (3) Permission of the court must be obtained in order to make a demand under the provisions of paragraph (1) and to make a payment prescribed in the preceding paragraph.

- (4) If the permission referred to in the preceding paragraph is granted and the amount of payment prescribed in paragraph (2) is sufficient to cover the value of the property referred to in paragraph (1), the right of retention referred to in that paragraph is extinguished at the time when the payment is made or at the time when a demand under the provisions of paragraph (1) is made, whichever occurs later.
- (5) In an action to request the return of the property stated in paragraph (1) on the grounds that the right of retention referred to in that paragraph is extinguished pursuant to the provisions of the preceding paragraph, even if the amount of payment prescribed in paragraph (2) is not sufficient to cover the value of the property, upon the plaintiff's petition and when the court in charge of the action finds it appropriate, the court may order the holder of the right of retention referred to in paragraph (1) to return the property, on the condition that the amount of any shortage is to be paid within a reasonable period of time.

## **Chapter VIII Distribution**

### **Section 1 General Rules**

#### **(Means of Distribution)**

- Article 193 (1) A bankruptcy creditor may receive a distribution from the bankruptcy estate as provided for by this Chapter.
- (2) A bankruptcy creditor must receive a distribution at the place where a bankruptcy trustee performs their duties; provided, however, that this does not preclude other provisions to be made by an agreement between a bankruptcy trustee and a bankruptcy creditor.
- (3) When having made a distribution a bankruptcy trustee must submit to the court a report stating the amount distributed. In this case, the court clerk must record the amount stated in the report in the electronic schedule of bankruptcy pursuant to the provisions of the Rules of the Supreme Court.

#### **(Order of Distributions)**

- Article 194 (1) Distributions are to be made in the following order among bankruptcy claims and in the order of priority prescribed in Article 98, paragraph (2) among preferred bankruptcy claims referred to in item (i):
- (i) preferred bankruptcy claims;
  - (ii) bankruptcy claims other than those stated in the preceding item, the following item, and item (iv);
  - (iii) subordinate bankruptcy claims; and
  - (iv) consensually-subordinated bankruptcy claims.
- (2) With regard to bankruptcy claims eligible for distribution with the same

priority, distribution is made in proportion to the amount of each claim.

## **Section 2 Final Distribution**

### **(Final Distribution)**

Article 195 (1) After the ordinary period for investigation has expired or the ordinary date of investigation has ended and after realization has been completed for property that belongs to the bankruptcy estate, a bankruptcy trustee must make a distribution without delay under the provisions of this Section (referred to below as a "final distribution" in this Chapter and the following Chapter) to holders of filed bankruptcy claims except in the case prescribed in Article 217, paragraph (1).

(2) A bankruptcy trustee must obtain permission of the court clerk in order to make a final distribution.

(3) The court may set the time for making a final distribution in advance after hearing opinions of a bankruptcy trustee.

### **(Distribution Lists)**

Article 196 (1) A bankruptcy trustee must prepare a distribution list stating the following particulars and submit it to the court without delay when permission under the provisions of paragraph (2) of the preceding Article is granted:

(i) the name and address of a bankruptcy creditor that may participate in the procedure for a final distribution;

(ii) the amount of claim that may enter into the procedure for a final distribution; and

(iii) the amount available for a final distribution.

(2) The particulars stated in item (ii) of the preceding paragraph must be stated by distinguishing each of preferred bankruptcy claims, subordinate bankruptcy claims, and consensually-subordinated bankruptcy claims from other bankruptcy claims, and with regard to preferred bankruptcy claims, the particulars must be stated in the order of priority prescribed in Article 98, paragraph (2).

(3) With regard to bankruptcy claims secured by a revolving mortgage which pertains to a right of separate satisfaction, a bankruptcy trustee must state the claims in the distribution list even if the bankruptcy creditor that holds the bankruptcy claims does not prove to the bankruptcy trustee the amount of the claims for which payment cannot be received by exercising the revolving mortgage. In this case, the part of the amount of the bankruptcy claims on the day on which permission under the provisions of paragraph (2) of the preceding Article was granted, which exceeds the maximum amount, is to be the amount of the claims that may enter into the procedure for a final distribution.



- (4) The provisions of the preceding paragraph apply mutatis mutandis to a person that holds a mortgage prescribed in Article 108, paragraph (2) (limited to one that is a revolving mortgage).

(Public Notices of Distribution)

- Article 197 (1) Without delay after submitting a distribution list to the court pursuant to the provisions of paragraph (1) of the preceding Article, a bankruptcy trustee must give a public notice of the total amount of the claims that may enter into the procedure for a final distribution and the amount available for a final distribution, or give a notice of those particulars to holders of the filed bankruptcy claims.
- (2) The notice under the provisions of the preceding paragraph is deemed to have arrived at the time when the notice should have normally arrived.
- (3) When the time at which the notice given under the provisions of paragraph (1) should have normally reached each holder of the filed bankruptcy claims has passed, a bankruptcy trustee must notify the court to that effect without delay.

(Exclusion of Bankruptcy Claims)

- Article 198 (1) In order to participate in the procedure for a final distribution with regard to a denied or disputed bankruptcy claim (excluding those prescribed in Article 129, paragraph (1)) within two weeks from the day on which the public notice under the provisions of paragraph (1) of the preceding Article becomes effective or the day on which the notification is made under the provisions of paragraph (3) of that Article, the bankruptcy creditor that holds the denied or disputed bankruptcy claim must prove to a bankruptcy trustee the fact that the proceedings for assessment based on a petition for the finalization of the denied or disputed bankruptcy claim, the court proceedings of an action to oppose bankruptcy claim assessment, or the court proceedings of an action taken over pursuant to the provisions of Article 127, paragraph (1) are pending.
- (2) In order to participate in the procedure for a final distribution with regard to a bankruptcy claim that is a claim subject to a condition precedent or claim which may arise in the future, the bankruptcy claim is required to become enforceable within the period prescribed in the preceding paragraph (referred to below as the "period of exclusion concerning a final distribution" in this Section and Section 5).
- (3) In order to participate in the procedure for a final distribution, within the period of exclusion concerning a final distribution, a holder of a right of separate satisfaction must prove to a bankruptcy trustee the fact that the whole or part of the claim secured by a security interest prescribed in Article

65, paragraph (2) which pertains to the right of separate satisfaction is no longer secured after the commencement of bankruptcy proceedings, or prove the amount of the claim for which payment cannot be received by exercising the security interest, except in the case referred to in the following paragraph.

- (4) With regard to bankruptcy claims secured by a revolving mortgage that are stated in the distribution list pursuant to the provisions of the first sentence of Article 196, paragraph (3) (including as applied *mutatis mutandis* pursuant to paragraph (4) of that Article), except when the amount of the claims for which payment cannot be received by exercising the security interest is proven within the period of exclusion concerning a final distribution, the part of the amount of the claims that may enter into the procedure for a final distribution stated in the distribution list under the provisions of the second sentence of paragraph (3) of that Article (including as applied *mutatis mutandis* pursuant to paragraph (4) of that Article) is deemed to be the amount of claims for which payment cannot be received.
- (5) The provisions of paragraph (3) apply *mutatis mutandis* to a holder of a quasi-right of separate satisfaction.

#### (Correction of Distribution Lists)

Article 199 (1) In the following cases, a bankruptcy trustee must immediately correct the distribution list:

- (i) when a cause that requires correction to the electronic schedule of bankruptcy creditors occurs within the period of exclusion concerning a final distribution;
  - (ii) when the particular prescribed in paragraph (1) of the preceding Article is proved within the period of exclusion concerning a final distribution; and
  - (iii) when the particular prescribed in paragraph (3) of the preceding Article is proved within the period of exclusion concerning a final distribution.
- (2) The provisions of item (iii) of the preceding paragraph apply *mutatis mutandis* to a holder of a quasi-right of separate satisfaction.

#### (Objection to Distribution Lists)

Article 200 (1) A bankruptcy creditor that is dissatisfied with an entry in the distribution list may raise an objection to the court only within one week after the period of exclusion concerning a final distribution expires.

- (2) The court must order a bankruptcy trustee to correct the distribution list when it finds an objection raised under the provisions of the preceding paragraph well-grounded.
- (3) An immediate appeal may be filed against a judicial decision on the objection raised under the provisions of paragraph (1). In this case, the period for filing an immediate appeal against the order to order correction of the distribution

list is calculated from the day on which it becomes possible for an interested person to make a request for inspection of the electronic judgment pursuant to the provisions of Article 11-2, paragraph (1).

- (4) When a judicial decision to dismiss the objection raised under the provisions of paragraph (1) and a judicial decision on the immediate appeal referred to in the first sentence of the preceding paragraph (excluding an order to order correction of the distribution list) are made, the electronic judgments must be served upon the parties concerned.

(Determination and Notice of Amounts of Distribution)

Article 201 (1) A bankruptcy trustee must determine the amount of distribution to be given to each bankruptcy creditor that is able to participate in the procedure for a final distribution without delay after the period prescribed in paragraph (1) of the preceding Article has expired (if an objection under the provisions of that paragraph is raised, after the proceedings of the objection have been closed).

- (2) A bankruptcy trustee must make a distribution of any amount deposited pursuant to the provisions of Article 70 in the interest of a bankruptcy creditor that was unable to participate in the procedure for a final distribution due to the failure to conform to the provisions of Article 198, paragraph (2), to other bankruptcy creditors as part of a final distribution.
- (3) With regard to a bankruptcy claim subject to a condition subsequent, if the condition is not met within the period of exclusion concerning a final distribution, the security provided under the provisions of Article 69 ceases to be effective, and the amount deposited pursuant to the provisions of that Article must be paid to the bankruptcy creditor that holds the bankruptcy claim.
- (4) A bankruptcy creditor that has received payment pursuant to the provisions of Article 101, paragraph (1) or a bankruptcy creditor that has received payment prescribed in Article 109 may not receive a final distribution until any other bankruptcy creditor with the same priority as the relevant creditor receives a distribution at the same proportion as the payment they have received.
- (5) When the amount of distribution to be given to each bankruptcy creditor is determined pursuant to the provisions of paragraph (1), with regard to a bankruptcy creditor that has not made a notification under the provisions of Article 111, paragraph (1), item (iv) or Article 113, paragraph (2), if the amount of distribution determined for the bankruptcy creditor is less than the amount specified by the Rules of the Supreme Court as prescribed in Article 111, paragraph (1), item (iv), a bankruptcy trustee must make a final distribution of the amount of distribution to bankruptcy creditors other than

the relevant bankruptcy creditor. In this case, the amount of distribution to be given to those other bankruptcy creditors must be determined for the amount of distribution.

- (6) If any property available for a final distribution is newly discovered before giving a notice of the amount of distribution pursuant to the provisions of the following paragraph, a bankruptcy trustee must correct the distribution list without delay.
- (7) A bankruptcy trustee must give a notice of the amount of distribution determined pursuant to the provisions of paragraph (1) through the preceding paragraph to each bankruptcy creditor that may participate in the procedure for a final distribution (excluding a bankruptcy creditor that may not receive a final distribution pursuant to the provisions of paragraph (5)).

#### (Depositing Amounts for Distribution)

Article 202 A bankruptcy trustee must make a deposit of the following amounts of distribution in the interest of the bankruptcy creditor that is to receive the distribution:

- (i) the amount for distribution to a denied or disputed bankruptcy claim for which the proceedings for assessment based on a petition for bankruptcy claim assessment, court proceedings of an action to oppose bankruptcy claim assessment, court proceedings of an action taken over under the provisions of Article 127, paragraph (1) or Article 129, paragraph (2), or court proceedings of the assertion of an objection under the provisions of Article 129, paragraph (1) are pending at the time when a notice of the amount for distribution is given under the provisions of paragraph (7) of the preceding Article;
- (ii) the amount for distribution for a right to impose taxes, etc. or for a right to impose a fine, etc. for which proceedings for a request for review, action (excluding a criminal action), or any other appeal have not been closed at the time when a notice of the amount for distribution is given pursuant to the provisions of paragraph (7) of the preceding Article; and
- (iii) the amount for distribution that a bankruptcy creditor refuses to receive.

#### (Handling of Holders of Claims on Estates Unknown to Bankruptcy Trustees)

Article 203 A holder of a claim on the estate that is unknown to a bankruptcy trustee at the time when a notice of the amount of distribution pursuant to the provisions of Article 201, paragraph (7) is given may not receive payment by using the amount available for a final distribution.

### **Section 3 Simplified Distribution**

#### (Simplified Distribution)

Article 204 (1) When a final distribution may be made pursuant to the provisions of Article 195, paragraph (1), in the following cases, upon the petition of a bankruptcy trustee, the court clerk may permit distribution under the provisions of this Section (referred to below as a "simplified distribution" in this Chapter and the following Chapter) in lieu of a final distribution:

- (i) when it is found that the amount available for distribution is less than ten million yen;
  - (ii) when the court has made a public notice of the particular stated in Article 32, paragraph (1), item (v) pursuant to the provisions of paragraph (1) of that Article and given a notice to that effect to known bankruptcy creditors pursuant to the provisions of paragraph (3), item (i) of that Article, and no objection is made by any holder of a filed bankruptcy claim by the time prescribed in paragraph (1), item (v) of that Article; or
  - (iii) beyond what is listed in the preceding two items, when a simplified distribution is found appropriate.
- (2) When the permission under the provisions of the preceding paragraph is granted, without delay after submitting the distribution list to the court pursuant to the provisions of Article 196, paragraph (1) as applied *mutatis mutandis* pursuant to the following Article following the deemed replacement of terms, a bankruptcy trustee must determine the estimated amount of distribution to be given to each holder of a filed bankruptcy claim, and give a notice to each holder of a filed bankruptcy claim of the total amount of claims that may enter into the procedure for a simplified distribution, the amount available for a simplified distribution, and the estimated amount of distribution.
- (3) The notice under the provisions of the preceding paragraph is deemed to have reached the addressee at the time when the notice should have normally arrived.
- (4) If the time at which the notice given under the provisions of paragraph (2) should have normally reached the holders of filed bankruptcy claims has passed, a bankruptcy trustee must notify the court to that effect without delay.

(Application, *Mutatis Mutandis*)

Article 205 With regard to a simplified distribution, the provisions of the preceding Section (excluding Article 195, Article 197, Article 200, paragraphs (3) and (4), and Article 201, paragraph (7)) apply *mutatis mutandis*. In this case, the phrase "permission under the provisions of paragraph (2) of the preceding Article" in Article 196, paragraphs (1) and (3) is deemed to be replaced with "permission under the provisions of Article 204, paragraph (1)"; in Article 198, paragraph (1), the phrase "the day on which the public notice made under the provisions of paragraph (1) of the preceding Article becomes

effective or the day on which the notification is made under the provisions of paragraph (3) of that Article" is deemed to be replaced with "the day on which the notification is made under the provisions of Article 204, paragraph (4)", and the phrase "within two weeks" is deemed to be replaced with "within one week"; the phrase "after the proceedings of the objection have been closed" in Article 201, paragraph (1) is deemed to be replaced with "after an order on the objection is made"; the phrase "before giving a notice of the amount of distribution under the provisions of the following paragraph" in Article 201, paragraph (6) is deemed to be replaced with "within the period prescribed in paragraph (1) of the preceding Article"; the phrase "when a notice of the amount of distribution is given under the provisions of paragraph (7) of the preceding Article" in Article 202, item (i) and item (ii) and the phrase "when a notice of the amount of distribution under the provisions of Article 201, paragraph (7) is given" in Article 203 are deemed to be replaced with "when the period prescribed in Article 200, paragraph (1) expires".

(Rescission of Permissions for Simplified Distribution)

Article 206 When the permission under the provisions of Article 204, paragraph (1), item (iii) is granted, when giving a notice pursuant to the provisions of paragraph (2) of that Article, a bankruptcy trustee must simultaneously give a notice that a bankruptcy creditor that has any objection to the implementation of a simplified distribution is required to make an objection to the court within one week from the date of notification under the provisions of paragraph (4) of that Article. In this case, if an objection is made by a holder of a filed bankruptcy claim within one week from the date of notification under the provisions of that paragraph, the court clerk must rescind the permission.

(Exclusion from Application)

Article 207 Permission for a simplified distribution under the provisions of Article 204, paragraph (1) may not be granted if an interim distribution prescribed in Article 209, paragraph (1) has been made.

#### **Section 4 Consensual Distribution**

Article 208 (1) When a final distribution may be made pursuant to the provisions of Article 195, paragraph (1), upon the petition of a bankruptcy trustee, the court clerk may permit distribution under the provisions of this Article (referred to below as a "consensual distribution" in this Chapter and the following Chapter) in lieu of a final distribution. In this case, a bankruptcy trustee may file a petition only when all of the holders of filed bankruptcy claims have consented to the distribution list, the amount of distribution, and

- the time and means of distribution determined by the bankruptcy trustee.
- (2) When the permission under the provisions of the preceding paragraph is granted, a bankruptcy trustee may make a consensual distribution to the holders of filed bankruptcy claims referred to in the second sentence of that paragraph according to the distribution list, the amount of distribution, and the time and means of distribution stated in the second sentence of that paragraph.
- (3) With regard to a consensual distribution, the provisions of Article 196, paragraphs (1) and (2), and Article 203 apply *mutatis mutandis*. In this case, the phrase "when permission under the provisions of paragraph (2) of the preceding Article is granted, without delay" in Article 196, paragraph (1) is deemed to be replaced "in advance", and the phrase "when a notice of the amount of distribution under the provisions of Article 201, paragraph (7) is given" in Article 203 is deemed to be replaced with "when permission under the provisions of Article 208, paragraph (1) is granted".

## **Section 5 Interim Distribution**

### **(Interim Distributions)**

- Article 209 (1) After the ordinary period for investigation has expired or the ordinary date of investigation has ended and before realization is completed for the property that belongs to the bankruptcy estate, when a bankruptcy trustee finds that money suitable for distribution that belongs to the bankruptcy estate exists, the bankruptcy trustee may make a distribution under the provisions of this Section (referred to below as an "interim distribution" in this Section) to holders of filed bankruptcy claims prior to a final distribution.
- (2) A bankruptcy trustee must obtain permission of the court in order to make an interim distribution.
- (3) With regard to an interim distribution, the provisions of Article 196, paragraphs (1) and (2), Article 197, Article 198, paragraph (1), Article 199, paragraph (1), items (i) and (ii), Article 200, Article 201, paragraph (4), and Article 203 apply *mutatis mutandis*. In this case, the phrase "permission under the provisions of paragraph (2) of the preceding Article" in Article 196, paragraph (1) is deemed to be replaced with "permission under the provisions of Article 209, paragraph (2)", the phrase "period of exclusion concerning a final distribution" in the items of Article 199, paragraph (1) and Article 200, paragraph (1) is deemed to be replaced with "period of exclusion concerning an interim distribution prescribed in Article 210, paragraph (1)", and the phrase "amount of distribution under the provisions of Article 201, paragraph (7)" in Article 203 is deemed to be replaced with "percentage of distribution under the provisions of Article 211".

(Exclusion of Holders of Rights of Separate Satisfaction)

- Article 210 (1) In order to participate in the procedure for an interim distribution, within the period prescribed in Article 198, paragraph (1) as applied mutatis mutandis pursuant to paragraph (3) of the preceding Article (referred to below as the "period of exclusion concerning an interim distribution" in this Section), a holder of a right of separate satisfaction must prove to a bankruptcy trustee the fact that they have commenced the disposal of the collateral for the right of separate satisfaction, and also make a prima facie showing of the amount of the claim for which payment cannot be received by the disposal to a bankruptcy trustee.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to a holder of a quasi-right of separate satisfaction.
- (3) When proof is made and a prima facie showing is made within the period of exclusion concerning an interim distribution with regard to the particulars prescribed in paragraph (1) (including as applied mutatis mutandis pursuant to the preceding paragraph), a bankruptcy trustee must immediately correct the distribution list.

(Determination and Notice of Percentage of Distribution)

- Article 211 Without delay after the period prescribed in Article 200, paragraph (1) as applied mutatis mutandis pursuant to Article 209, paragraph (3) has expired (when an objection under the provisions of Article 200, paragraph (1) is raised, after an order on the objection is made), a bankruptcy trustee must determine the percentage of distribution and give a notice of the percentage to each bankruptcy creditor that may participate in the procedure for an interim distribution.

(Handling of Claims Subject to Condition Subsequent)

- Article 212 (1) With regard to a bankruptcy claim that is a claim subject to a condition subsequent, an interim distribution may not be received unless reasonable security is provided.
- (2) With regard to the bankruptcy claim stated in the preceding paragraph, if the condition is not met within the period of exclusion concerning a final distribution, the security provided under the provisions of that paragraph ceases to be effective.

(Handling of Excluded Bankruptcy Claims in Subsequent Distributions)

- Article 213 With regard to a bankruptcy claim that was unable to enter into the procedure for an interim distribution on the grounds of failure to prove the particular prescribed in Article 198, paragraph (1) as applied mutatis mutandis



pursuant to Article 209, paragraph (3), if the bankruptcy creditor that holds the bankruptcy claim has proven the particular within the period of exclusion concerning a final distribution or within the period of exclusion concerning an interim distribution that may be made after the interim distribution, the bankruptcy creditor may receive a distribution at the amount that they could have received in the previous interim distribution in preference to other bankruptcy creditors with the same priority in the final distribution or a subsequent interim distribution that may be made after the previous interim distribution. The same applies when a holder of a right of separate satisfaction (including a holder of a quasi-right of separate satisfaction) that was unable to participate in the procedure for an interim distribution on the grounds of failure to prove or make a prima facie showing of the particular prescribed in Article 210, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) has proved and made a prima facie showing of the particular within the period of exclusion concerning a subsequent interim distribution that may be made after the interim distribution.

(Depositing Amounts for Distribution)

Article 214 (1) A bankruptcy trustee that seeks to make an interim distribution must make a deposit of the amount of distribution to the following bankruptcy claims:

- (i) a denied or disputed bankruptcy claim, for which the proceedings stated in Article 202, item (i) are pending;
  - (ii) a claim for tax, etc. or claim for a fine, etc., for which the proceedings stated in Article 202, item (ii) have not been closed when a notice of the percentage of distribution under the provisions of Article 211 is given;
  - (iii) part of a claim for which proof is made and a prima facie showing is made pursuant to the provisions of Article 210, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) within the period of exclusion concerning an interim distribution, related to the amount subject to the prima facie showing;
  - (iv) a bankruptcy claim that is a claim subject to a condition precedent or claim which may arise in the future;
  - (v) a bankruptcy claim that is a claim subject to a condition subsequent, for which security pursuant to the provisions of Article 212, paragraph (1) is not provided; and
  - (vi) a bankruptcy claim held by a bankruptcy creditor that has not filed a notification pursuant to the provisions of Article 111, paragraph (1), item (iv) or Article 113, paragraph (2).
- (2) When a deposit of the amount of distribution to a bankruptcy claim stated in item (i) or (ii) of the preceding paragraph is made pursuant to the provisions of

those items, a bankruptcy trustee must deposit the amount of distribution deposited in the interest of the bankruptcy creditor that is to receive it when making a deposit of the amount of distribution to the bankruptcy claim pursuant to the provisions of Article 202, item (i) or (ii).

- (3) When a deposit of the amount of distribution to a bankruptcy claim stated in paragraph (1), item (iii) or (iv) is made pursuant to the provisions of those items, if the bankruptcy creditor or holder of a right of separate satisfaction (including a holder of a quasi-right of separate satisfaction) that holds the bankruptcy claim was unable to participate in the procedure for a final distribution due to the failure to conform to the provisions of Article 198, paragraph (2) or prove the particular prescribed in paragraph (3) of that Article (including as applied *mutatis mutandis* pursuant to paragraph (5) of that Article), a bankruptcy trustee must make a final distribution of the amount of distribution deposited to other bankruptcy creditors.
- (4) When a deposit of the amount of distribution to a bankruptcy claim stated in paragraph (1), item (v) is made pursuant to the provisions of that item, if the condition attached to the bankruptcy claim is not met within the period of exclusion concerning a final distribution, a bankruptcy trustee must pay the amount of distribution deposited to the bankruptcy creditor that holds the bankruptcy claim.
- (5) For the purpose of application of the provisions of Article 201, paragraph (5) when a deposit of the amount of distribution to a bankruptcy claim stated in paragraph (1), item (vi) is made pursuant to the provisions of that item, in Article 201, paragraph (5), the phrase "the amount of distribution determined for the bankruptcy creditor is less than the amount specified by the Rules of the Supreme Court prescribed in Article 111, paragraph (1), item (iv)" is deemed to be replaced with "the total of the amount of distribution determined for the bankruptcy creditor and the amount of distribution to a bankruptcy claim stated in Article 214, paragraph (1), item (vi) deposited by a bankruptcy trustee pursuant to the provisions of that item is less than the amount specified by the Rules of the Supreme Court prescribed in Article 111, paragraph (1), item (iv)", and the phrase "the amount of distribution" is deemed to be replaced with "the sum".

## **Section 6 Subsequent Distribution**

Article 215 (1) After a notice of the amount of distribution pursuant to the provisions of Article 201, paragraph (7) is given (in the case of a simplified distribution, after the period prescribed in Article 200, paragraph (1) as applied *mutatis mutandis* pursuant to Article 205 expires, and in the case of a consensual distribution, after the permission pursuant to the provisions of

Article 208, paragraph (1) is granted), if a considerable amount of property available for a new distribution is confirmed, a bankruptcy trustee must make a distribution under the provisions of this Article with permission of the court (referred to below as a "subsequent distribution" in this Article) to holders of filed bankruptcy claims, in addition to a final distribution, simplified distribution, or consensual distribution. The same applies after an order of termination of bankruptcy proceedings is issued.

- (2) With regard to a subsequent distribution, the provisions of Article 201, paragraphs (4) and (5), Article 202, and Article 203 apply *mutatis mutandis*. In this case, the term "provisions of paragraph (1)" in Article 201, paragraph (5) is deemed to be replaced with "provisions of Article 215, paragraph (4)", and the term "paragraph (7) of the preceding Article" in Article 202, items (i) and (ii) and the term "Article 201, paragraph (7)" in Article 203 is deemed to be replaced with "Article 215, paragraph (5)".
- (3) A subsequent distribution is made according to the distribution list prepared for a final distribution, simplified distribution, or consensual distribution.
- (4) When the permission pursuant to the provisions of paragraph (1) is granted, a bankruptcy trustee must determine without delay the amount of distribution to each bankruptcy creditor that may participate in the procedure for a subsequent distribution.
- (5) A bankruptcy trustee must give notice of the amount of distribution determined pursuant to the provisions of the preceding paragraph to each bankruptcy creditor that may participate in the procedure for a subsequent distribution (excluding a bankruptcy creditor that may not receive a subsequent distribution pursuant to the provisions of Article 201, paragraph (5) as applied *mutatis mutandis* pursuant to paragraph (2) following the deemed replacement of terms).
- (6) A bankruptcy trustee must make a report of accounts to the court in writing without delay after making a subsequent distribution.
- (7) In the case referred to in the preceding paragraph, if a bankruptcy trustee has become absent, the report of accounts stated in that paragraph must be made by a successor bankruptcy trustee, notwithstanding the provisions of that paragraph.

## **Chapter IX Closing of Bankruptcy Proceedings**

(Order of Discontinuance of Bankruptcy Proceedings to be Made at the Same Time as Making Order commencing Bankruptcy Proceedings)

Article 216 (1) If the court finds that the bankruptcy estate is insufficient for paying expenses for bankruptcy proceedings, it must make an order of discontinuance of bankruptcy proceedings at the same time as making an order

commencing bankruptcy proceedings.

- (2) The provisions of the preceding paragraph do not apply if an amount sufficient for paying expenses for bankruptcy proceedings is prepaid.
- (3) The court must immediately give a public notice of the following particulars and give a notice of those particulars to the bankrupt when it has made an order of discontinuance of bankruptcy proceedings at the same time as making an order commencing bankruptcy proceedings pursuant to the provisions of paragraph (1),:
  - (i) the main text of the order commencing bankruptcy proceedings; and
  - (ii) the main text of the order of discontinuance of bankruptcy proceedings and the outline of the reasons attached.
- (4) An immediate appeal may be filed against an order of discontinuance of bankruptcy proceedings under the provisions of paragraph (1).
- (5) The immediate appeal referred to in the preceding paragraph does not have the effect of a stay of enforcement.
- (6) The provisions of Article 31 and Article 32 apply *mutatis mutandis* when an order to reverse the order of discontinuance of bankruptcy proceedings made pursuant to the provisions of paragraph (1) becomes final and binding.

(Order of Discontinuance of Bankruptcy Proceedings Made After Making Order commencing Bankruptcy Proceedings)

- Article 217 (1) When the court finds that the bankruptcy estate is insufficient for paying expenses for bankruptcy proceedings after making an order commencing bankruptcy proceeding, it must make an order of discontinuance of bankruptcy proceedings upon the petition of a bankruptcy trustee or by its own authority. In this case, the court must hear opinions of bankruptcy creditors on the date of a creditors' meeting.
- (2) Notwithstanding the provisions of the second sentence of the preceding paragraph, the court may hear opinions of bankruptcy creditors by document or any other means specified by the Rules of the Supreme Court when it finds it appropriate in lieu of hearing opinions of bankruptcy creditors on the date of a creditors' meeting. In this case, a person stated in Article 135, paragraph (1), item (ii) or (iii) may not file a petition for convocation of a creditors' meeting pursuant to the provisions of Article 135, paragraph (1) for conducting the hearing of opinions.
  - (3) The provisions of the preceding two paragraphs do not apply when an amount sufficient for paying expenses for bankruptcy proceedings is prepaid.
  - (4) When the court has made an order of discontinuance of bankruptcy proceedings under the provisions of paragraph (1), the court must immediately give a public notice of the main text of the order and the outline of the reasons attached, and serve the electronic judgment upon the bankrupt and a

bankruptcy trustee.

- (5) When the court has made an order dismissing the petition referred to in paragraph (1), it must serve its electronic judgment upon a bankruptcy trustee. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (6) An immediate appeal may be filed against an order of discontinuance of bankruptcy proceedings pursuant to the provisions of paragraph (1) and an order dismissing the petition referred to in that paragraph.
- (7) When an order to reverse the order of discontinuance of bankruptcy proceedings pursuant to the provisions of paragraph (1) has become final and binding, the court that has made the order of discontinuance of bankruptcy proceedings must immediately give a public notice to that effect.
- (8) An order of discontinuance of bankruptcy proceedings pursuant to the provisions of paragraph (1) does not become effective unless it becomes final and binding.

(Order of Discontinuance of Bankruptcy Proceedings with Consent of Bankruptcy Creditors)

Article 218 (1) The court must issue an order of discontinuance of bankruptcy proceedings upon a petition of a bankrupt that satisfies any of the requirements stated in the following items:

- (i) when the bankrupt has obtained consent for discontinuance of bankruptcy proceedings from all bankruptcy creditors that filed a notification within the period for filing notification of claims; or
  - (ii) when there is any bankruptcy creditor that does not give consent to the preceding item, and the bankrupt has provided security to the bankruptcy creditor that the court finds reasonable; provided, however, that this is limited to the case in which consent is obtained from other holders of filed bankruptcy claims for the provision of the security from the bankruptcy estate if the security is provided from the bankruptcy estate.
- (2) Notwithstanding the provisions of the preceding paragraph, the court may issue an order not to require the consent referred to in item (i) of that paragraph and the proviso to item (ii) of that paragraph from a bankruptcy creditor that holds a bankruptcy claim that has not been finalized. For the purpose of application of the provisions of item (i) of that paragraph and the proviso to item (ii) of that paragraph in this case, the term "holders of filed bankruptcy claims" in these provisions is deemed to be replaced with "holders of filed bankruptcy claims (excluding a bankruptcy creditor that holds a bankruptcy claim that has not been finalized, and from whom the court does not require consent)."
- (3) The court must give a public notice to that effect when the petition stated in

paragraph (1) is filed.

- (4) A holder of filed bankruptcy claim may state their opinion to the court with regard to the petition referred to in paragraph (1) within two weeks from the day on which the public notice prescribed in the preceding paragraph becomes effective.
- (5) The provisions of paragraphs (4) through (8) of the preceding Article apply mutatis mutandis to an order of discontinuance of bankruptcy proceedings pursuant to the provisions of paragraph (1). In this case, the term "a bankruptcy trustee" in paragraph (5) of that Article is deemed to be replaced with "the bankrupt".

(Order of Discontinuance of Bankruptcy Proceedings with Consent of  
Bankruptcy Creditors in Which the Bankrupt Is a Corporation)

Article 219 In order to file a petition referred to in paragraph (1) of the preceding Article, the bankrupt that is a corporation must perform the procedure in advance for the corporation to continue to exist by complying with the provisions concerning the amendment of articles of incorporation or other basic articles.

(Order of Completion of Bankruptcy Proceedings)

- Article 220 (1) The court must issue an order of completion of bankruptcy proceedings when a creditors' meeting referred to in Article 88, paragraph (4) is concluded or the period prescribed in Article 89, paragraph (2) expires after a final distribution, simplified distribution, or consensual distribution is completed.
- (2) When the court has issued an order of completion of bankruptcy proceedings pursuant to the provisions of the preceding paragraph, it must immediately give a public notice of the main text of the order and the outline of the reasons attached, and give a notice of these to the bankrupt.

(Effect of Records in Electronic Schedule of Bankruptcy Creditors After  
Discontinuance or Completion of Bankruptcy Proceedings)

Article 221 (1) When an order of discontinuance of bankruptcy proceedings pursuant to the provisions of Article 217, paragraph (1) or Article 218, paragraph (1) becomes final and binding or when an order of completion of bankruptcy proceedings pursuant to the provisions of paragraph (1) of the preceding Article is issued, with regard to bankruptcy claims that are finalized, the records in the electronic schedule of bankruptcy creditors have the same effect as a final and binding judgment against the bankrupt. In this case, a bankruptcy creditor may execute enforcement against the bankrupt based on the records in the electronic schedule of bankruptcy creditors with regard to a

bankruptcy claim that has been finalized.

- (2) The provisions of the preceding paragraph do not apply when the bankrupt (including the agent referred to in the proviso to Article 121, paragraph (3)) has made an objection pursuant to the provisions of Article 118, paragraph (2), Article 119, paragraph (5), Article 121, paragraph (4) (including as applied mutatis mutandis pursuant to Article 121, paragraph (6) (including as applied mutatis mutandis pursuant to paragraph (7) of that Article or Article 122, paragraph (2)) or Article 121, paragraph (7) or Article 122, paragraph (2)) or Article 123, paragraph (1).

## **Chapter X Special Provisions Concerning Bankruptcy of Estate**

### **Section 1 Bankruptcy of Estate**

(Jurisdiction over Bankruptcy Cases Relating to Estate)

- Article 222 (1) A petition to commence bankruptcy proceedings under the provisions of this Act against an estate may be filed only if the decedent's address as of the time of commencement of succession or property that belongs to the estate exists in Japan.
- (2) A bankruptcy case relating to an estate is subject to the jurisdiction of the district court that has jurisdiction over the decedent's domicile as of the time of commencement of succession.
- (3) If there is no court with jurisdiction pursuant to the provisions of the preceding paragraph, the bankruptcy case relating to an estate is subject to the jurisdiction of the district court that has jurisdiction over the locality of property that belongs to the estate (in the case of a claim, the place where demand by litigation may be made).
- (4) For the purpose of application of the provisions of Article 5, paragraphs (8) and (9), and Article 7, item (v) to a bankruptcy case relating to an estate, the term "paragraphs (1) and (2)" in Article 5, paragraphs (8) and (9) is deemed to be replaced with "Article 222, paragraphs (2) and (3)", and the phrase "paragraph (1) or (2) of that Article" in Article 7, item (v) is deemed to be replaced with "Article 222, paragraphs (2) and (3)".
- (5) If two or more district courts have jurisdiction over a bankruptcy case relating to an estate pursuant to the provisions of the preceding three paragraphs, the bankruptcy case is subject to the jurisdiction of the district court with which the first petition to commence bankruptcy proceedings is filed.

(Grounds for Commencement of Bankruptcy Proceedings Against Estate)

- Article 223 For the purpose of application of Article 30, paragraph (1) to an inherited property, the phrase "when the court finds a fact constituting the grounds for the commencement of bankruptcy proceedings" in Article 30,

paragraph (1) is deemed to be replaced with "when the court finds it impossible to pay debts to creditors of the succession and to legatees in full with the estate".

(Petitions to Commence Bankruptcy Proceedings)

Article 224 (1) With regard to inherited property, in addition to an creditor of the succession or a legatee, an heir, administrator of the estate, liquidator of the estate, or executor (limited to an executor who has a right to conduct acts necessary for the administration of the estate; the same applies below in this Section) may file a petition to commence bankruptcy proceedings.

(2) When a person stated in each of the following items files a petition to commence bankruptcy proceedings against the estate, they must make a prima facie showing of the fact specified in the respective items:

- (i) an creditor of the succession or a legatee: the existence of the claim held by them and the fact constituting the grounds for the commencement of bankruptcy proceedings against the estate; and
- (ii) an heir, administrator of the estate, liquidator of the inherited property, or executor: the fact constituting the grounds for the commencement of bankruptcy proceedings against the estate.

(Period for Filing a Petition to Commence Bankruptcy Proceedings)

Article 225 A petition to commence bankruptcy proceedings may be filed against an estate only within the period during which a request for division of property may be made pursuant to the provisions of Article 941, paragraph (1) of the Civil Code; provided, however, that if qualified acceptance is made or division of property is conducted, a petition to commence bankruptcy proceedings may be made until payment to creditors of the succession and legatees is completed.

(Commencement of Succession Before Order commencing Bankruptcy Proceedings is Issued)

Article 226 (1) When succession has commenced with regard to a debtor after a petition to commence bankruptcy proceedings is filed and before an order commencing bankruptcy proceedings is issued, the court may issue an order to continue the bankruptcy proceedings against the inherited property upon the petition of an creditor of the succession, a legatee, an heir, an administrator of the inherited property, liquidator of the inherited property, or executor.

(2) The petition for continuation prescribed in the preceding paragraph must be filed within one month after the succession commences.

(3) The bankruptcy proceedings prescribed in paragraph (1) is closed, if a petition for continuation prescribed in paragraph (1) is not filed within the period referred to in the preceding paragraph, when the period expires, and if a



petition for continuation prescribed in paragraph (1) is made within the period stated in the preceding paragraph and a judicial decision to dismiss the petition becomes final and binding, when the decision becomes final and binding.

- (4) An immediate appeal may be filed against a judicial decision to dismiss the petition for continuation prescribed in paragraph (1).

(Commencement of Succession After Order commencing Bankruptcy Proceedings)

Article 227 When succession has commenced with regard to the bankrupt after an order commencing bankruptcy proceedings is issued, the court continues the bankruptcy proceedings against the estate.

(Relationship with Procedures for Qualified Acceptance or Division of Property)

Article 228 An order commencing bankruptcy proceedings against an inherited property does not preclude qualified acceptance or division of property; provided, however, that the procedures for qualified acceptance or division of property is suspended until an order of reversal of the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings becomes final and binding, or an order of completion of bankruptcy proceedings is issued.

(Scope of Bankruptcy Estates)

- Article 229 (1) If an order commencing bankruptcy proceedings is issued against an estate, any property that belongs to the estate (irrespective of whether it exists in Japan) is to constitute the bankruptcy estate. In this case, rights that the decedent held vis-à-vis an heir are deemed not to have been extinguished.
- (2) If an order commencing bankruptcy proceedings is issued against estate after an heir has disposed of all or a part of the estate, rights that the heir holds with regard to counter-performance belong to the bankruptcy estate.
- (3) In the case prescribed in the preceding paragraph, if the heir has already received the counter-performance stated in that paragraph, the heir must return the counter-performance to the bankruptcy estate; provided, however, that if the heir did not know at the time of receiving the counter-performance, the fact constituting the grounds for the commencement of bankruptcy proceedings or the fact that the filing of a petition to commence bankruptcy proceedings has been made, it is sufficient for the heir to return the benefit that they hold.

(Obligation of Explanation of Heirs)

Article 230 (1) If an order commencing bankruptcy proceedings is issued against

an estate, the following persons must give a necessary explanation concerning bankruptcy upon a request of a bankruptcy trustee or creditors' committee, or a request based on a resolution at a creditors' meeting:

- (i) a person that was the decedent's agent;
  - (ii) an heir and their agent; and
  - (iii) an administrator of the estate, liquidator of the estate, and an executor.
- (2) The provisions of the preceding paragraph apply *mutatis mutandis* to a person that was any of the persons listed in item (ii) or (iii) of that paragraph.
- (3) The provisions of Article 37 and Article 38 apply *mutatis mutandis* to heirs and their legal representative and manager when an order commencing bankruptcy proceedings is issued against the estate.

#### (Status of Creditors of Succession and Legatee)

Article 231 (1) If an order of commencement bankruptcy proceedings is issued against an estate, an creditor of the succession and a legatee may participate in bankruptcy proceedings with regard to the entire amount of their claims even when an order commencing bankruptcy proceedings is issued against an heir.

- (2) If an order commencing bankruptcy proceedings is issued against an estate, claims held by an creditors of the succession take precedence over claims held by a legatee.

#### (Status of Heirs)

Article 232 (1) If an order commencing bankruptcy proceedings is issued against an estate, rights that an heir held *vis-à-vis* the decedent are deemed not to have been extinguished. In this case, an heir has the same rights as an creditor of the succession with regard to a claim that they held *vis-à-vis* the decedent.

- (2) In the case prescribed in the preceding paragraph, when an heir has made payment to an creditor of the succession or conducted any other act that causes the debts to be extinguished with their own property, the heir may exercise rights that the creditor of the succession held *vis-à-vis* the decedent to the extent of the amount paid by the heir.

#### (Status of Heir's Creditors)

Article 233 If an order commencing bankruptcy proceedings is issued against an estate, an heir's creditors may not exercise their rights as bankruptcy creditors.

#### (Application of Provisions on the Right of Avoidance)

Article 234 For the purpose of application of the provisions of Chapter VI, Section 2, when an order commencing bankruptcy proceedings is issued against an estate, an act conducted by the decedent, an heir, an administrator of the

estate, liquidator of the estate, or an executor with respect to the estate is deemed to have been conducted by the bankrupt.

(Avoidance of Provision of Security to Legatees)

Article 235 (1) If an order commencing bankruptcy proceedings is issued against an estate, if an act concerning the provision of security or extinguishment of debt to a legatee would prejudice a bankruptcy creditor that holds a claim that takes precedence over the legatee's claim, the act may be avoided.

(2) The provisions of Article 167, paragraph (2) apply mutatis mutandis when the act stated in the preceding paragraph is avoided pursuant to the provisions of that paragraph. In this case, the phrase "that the act would prejudice a bankruptcy creditor" in Article 167, paragraph (2) is deemed to be replaced with "that the act would prejudice a bankruptcy creditor stated in Article 235, paragraph (1)".

(Distribution of Residual Assets After Avoidance)

Article 236 If an order commencing bankruptcy proceedings is issued against an estate, when an act conducted by the decedent, an heir, an administrator of an estate, a liquidator of the estate, or an executor with regard to the estate is avoided, a bankruptcy trustee must distribute residual assets to the other party to the avoided act, in accordance with the value of the other party's right after making payment to the creditors of the succession.

(Petition for Discontinuance of Bankruptcy Proceedings with the Consent of Bankruptcy Creditors)

Article 237 (1) A petition referred to in Article 218, paragraph (1) with regard to bankruptcy of an estate is to be filed by an heir.

(2) If there are two or more heirs, each heir may file the petition referred to in the preceding paragraph.

## **Section 2 Bankruptcy of Heirs**

(Effect of Unconditional Acceptance of Inheritance or Renunciation of Inheritance by the Bankrupt)

Article 238 (1) If inheritance commences with regard to the bankrupt before an order commencing bankruptcy proceedings is made, unconditional acceptance of inheritance made by the bankrupt after an order commencing bankruptcy proceedings is issued has the effect of qualified acceptance vis-à-vis the bankruptcy estate. The same applies to renunciation of inheritance made by the bankrupt after an order commencing bankruptcy proceedings is issued.

(2) A bankruptcy trustee may acknowledge the effect of renunciation of

inheritance notwithstanding the provisions of the second sentence of the preceding paragraph. In this case, a bankruptcy trustee must submit a statement to the family court to that effect within three months after they came to know that the inheritance had been renounced.

(Relationship with the Procedures for Qualified Acceptance or Division of Property)

Article 239 An order commencing bankruptcy proceedings against an heir does not preclude qualified acceptance or division of property; provided, however, that if no heir other than the heir in question has the authority to conduct acts necessary for the payment of debts with regard to the estate, the procedures for qualified acceptance or division of property is suspended until an order of reversal of the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings becomes final and binding, or an order of completion of bankruptcy proceedings is issued.

(Status of Creditors of Succession, Legatees, and Heir's Creditors)

- Article 240 (1) If an order commencing bankruptcy proceedings is issued against an heir, even when division of property is made or an order commencing bankruptcy proceedings is issued against the estate, a creditor of the succession and a legatee may participate in the bankruptcy proceedings with regard to the entire amount of their claims.
- (2) If an order commencing bankruptcy proceedings is issued against an heir and an order commencing bankruptcy proceedings is issued against the estate, with regard to the heir's bankruptcy estate, claims held by the heir's creditors have precedence over the claims held by a creditor of the succession and a legatee.
- (3) If an order commencing bankruptcy proceedings is issued against an heir based on a petition to commence bankruptcy proceedings filed within the period prescribed in Article 225, claims held by the heir's creditors against the heir's own property have precedence over claims held by a creditor of the succession and a legatee, and claims held by a creditor of the succession and a legatee against the estate have precedence over claims held by the heir's creditors.
- (4) If an order commencing bankruptcy proceedings is issued against an heir and the heir has made qualified acceptance, a creditor of the succession and a legatee may not exercise their rights over the heir's own property as bankruptcy creditors. The same applies when unconditional acceptance of inheritance has the effect of qualified acceptance pursuant to the provisions of Article 238, paragraph (1).

(Payment Received by Creditors of Succession in the Procedures for Qualified

#### Acceptance or Division of Property)

- Article 241 (1) A creditor of the succession or a legatee may participate in bankruptcy proceedings with regard to the amount of the claims at the time before receiving the payment, by exercising their rights in the procedures for qualified acceptance or division of property, even when they have received payment of their bankruptcy claims after an order of commencement bankruptcy proceedings is issued against an heir. The same applies when an heir's creditor has received payment of their bankruptcy claim after an order commencing bankruptcy proceedings is made against the heir by exercising their right in the procedure for division of property.
- (2) The creditor of the succession or legatee, or heir's creditor referred to in the preceding paragraph may not receive a distribution through bankruptcy proceedings until any other bankruptcy creditor with the same priority as them receives a distribution of the same proportion of payment as they have received (if there are two or more heirs, the payment is limited to the part corresponding to the inheritance share of the heir that has received the order commencing bankruptcy proceedings; the same applies in the following paragraph).
- (3) The creditor of the succession or legatee, or heir's creditor referred to in paragraph (1) may not exercise their voting rights with regard to the amount of the claims for which they received payment under the preceding paragraph.

#### (Administration and Disposal of Estate After Qualified Acceptance or Division of Property)

- Article 242 (1) After an order commencing bankruptcy proceedings is made against an heir, if the heir has made qualified acceptance or division of property has been conducted with regard to the heir, a bankruptcy trustee must administer and dispose of the estate separately from the heir's own property. The same applies if an order commencing bankruptcy proceedings is made against an heir after qualified acceptance was made or division of property was conducted.
- (2) If there are any residual assets after a bankruptcy trustee has completed the administrative work and disposal of the estate pursuant to the provisions of the preceding paragraph, the part of the residual assets that should belong to the heir is deemed to be heir's own property. In this case, a bankruptcy trustee must supplement the bankruptcy estate's inventory of assets and balance sheet with regard to the residual assets.
- (3) The provisions of the first sentence of paragraph (1) and the preceding paragraph apply mutatis mutandis if unconditional acceptance has the effect of qualified acceptance pursuant to the provisions of Article 238, paragraph (1) and the case referred to in Article 240, paragraph (3).

### **Section 3 Bankruptcy of Legatees**

(Bankruptcy of Universal Legatees)

Article 243 The provisions of the preceding Section apply mutatis mutandis if an order commencing bankruptcy proceedings is issued against a universal legatee.

(Acceptance or Renunciation of Particular Legacies)

- Article 244 (1) If a particular legacy was given to a bankrupt before an order commencing bankruptcy proceedings is issued, when the bankrupt has not accepted or renounced the legacy at the time the order is issued, a bankruptcy trustee may accept or renounce the legacy on behalf of the bankrupt.
- (2) The provisions of Article 987 of the Civil Code apply mutatis mutandis in the case referred to in the preceding paragraph.

### **Chapter X-2 Special Provisions Concerning Bankruptcy of Trust Property**

(Jurisdiction over Bankruptcy Cases Relating to Trust Property)

- Article 244-2 (1) A petition to commence bankruptcy proceedings pursuant to the provisions of this Act against trust property may be filed only if property that belongs to the trust property or the trustee's address is in Japan.
- (2) A bankruptcy case relating to trust property is subject to the jurisdiction of the district court that has jurisdiction over the trustee's domicile (if there are two or more trustees, the domicile of any of the trustees).
- (3) If there is no court with jurisdiction pursuant to the provisions of the preceding paragraph, the bankruptcy case relating to the trust property is subject to the jurisdiction of the district court that has jurisdiction over the locality of the property that belongs to the trust property (for a claim, the place in which demand by litigation may be made).
- (4) For the purpose of application of the provisions of Article 5, paragraphs (8) and (9), and Article 7, item (v) to a bankruptcy case relating to the trust property, the term "paragraphs (1) and (2)" in Article 5, paragraphs (8) and (9) is deemed to be replaced with "Article 244-2, paragraphs (2) and (3)", and the term "paragraph (1) or (2) of that Article" in Article 7, item (v) is deemed to be replaced with "Article 244-2, paragraph (2) or (3)".
- (5) If two or more district courts have jurisdiction over a bankruptcy case relating to the trust property pursuant to the provisions of the preceding three paragraphs, the bankruptcy case is under the jurisdiction of the district court with which the first petition to commence bankruptcy proceedings is filed.

(Grounds for Commencement of Bankruptcy Proceedings Against Trust

Property)

Article 244-3 For the purpose of application of Article 15, paragraph (1) to trust property, the term "unable to pay debts" in Article 15, paragraph (1) is deemed to be replaced with "unable to pay debts or insolvent (meaning the condition in which the trustee is unable to make full payment on the obligation covered by the trust property with property that comes under trust property)."

(Petitions to Commence Bankruptcy Proceedings)

Article 244-4 (1) In addition to a person that holds a trust claim (meaning a trust claim prescribed in Article 21, paragraph (2), item (ii) of the Trust Act; the same applies in item (i) of the following paragraph and Article 244-7) or a beneficiary, the trustee, or the administrator of trust property, the incorporated trust property administrator, or the administrator referred to in Article 170, paragraph (1) of that Act (hereinafter collectively referred to as the "trustee, etc.") may file a petition to commence bankruptcy proceedings against the trust property.

- (2) When a person stated in each of the following items files a petition to commence bankruptcy proceedings against trust property, they must make a prima facie showing of the fact specified in the respective items:
- (i) a person that holds a trust claim or a beneficiary: the existence of the trust claim or beneficial claim held by a person and the fact constituting the cause for the commencement of bankruptcy proceedings against the trust property; and
  - (ii) the trustee, etc.: the fact constituting the cause for the commencement of bankruptcy proceedings against the trust property.
- (3) The provisions of item (ii) of the preceding paragraph do not apply when there is only one trustee, etc. or when there are two or more trustees, etc. and the petition to commence bankruptcy proceedings is filed by all of the trustees, etc.
- (4) Even after the termination of the trust, a petition to commence bankruptcy proceedings may be filed against the trust property until the distribution of its residual assets is completed.

(Scope of Bankruptcy Estates)

Article 244-5 If an order commencing bankruptcy proceedings is issued against trust property, any and all of the property that comes under trust property at the time of commencement of bankruptcy proceedings (irrespective of whether it exists in Japan) is to constitute the bankruptcy estate.

(Obligation of Explanation by Trustees)

Article 244-6 (1) If an order commencing bankruptcy proceedings is issued against trust property, the following persons must give necessary explanation

concerning bankruptcy upon a request of a bankruptcy trustee or creditors' committee, or a request based on a resolution at a creditors' meeting,:

- (i) a trustee, etc.; and
  - (ii) an accounting auditor (meaning an accounting auditor prescribed in Article 248, paragraph (1) or (2) of the Trust Act; hereinafter the same applies in this Chapter).
- (2) The provisions of the preceding paragraph apply mutatis mutandis to a person that was the person stated in items of that paragraph.
- (3) The provisions of Article 37 and Article 38 apply mutatis mutandis to a trustee, etc. (limited to a trustee, etc. who is an individual) if an order commencing bankruptcy proceedings is made against the trust property.
- (4) The provisions of Article 41 apply mutatis mutandis to a trustee, etc. if an order commencing bankruptcy proceedings is issued against the trust property.

#### (Status of Trust Creditors and Beneficiaries)

- Article 244-7 (1) If an order commencing bankruptcy proceedings is issued against trust property, even when an order commencing bankruptcy proceedings is issued against the trustee, a person that holds a trust claim and a beneficiary may participate in the bankruptcy proceedings with regard to the entire amount of the claim that each of them holds at the time of commencement of bankruptcy proceedings.
- (2) If an order commencing bankruptcy proceedings is issued against the trust property, a trust claim has precedence over a beneficial claim.
- (3) A beneficial claim and a consensually-subordinated bankruptcy claim have the same priority; provided, however, that a consensually-subordinated bankruptcy claim may be given preference over a beneficial claim by the provisions of the terms of trust.

#### (Status of Trustees)

- Article 244-8 A right held by a trustee pursuant to the provisions of Article 49, paragraph (1) of the Trust Act (including as applied mutatis mutandis pursuant to Article 53, paragraph (2) and Article 54, paragraph (4) of that Act) is deemed to be a monetary claim in its relation to bankruptcy proceedings against trust property.

#### (Status of Creditors Related to Obligations Covered Only by the Trustee's Own Property)

- Article 244-9 If an order commencing bankruptcy proceedings is made against trust property, a person holding claims pertaining to the obligation covered only by the trustee's own property, etc. (meaning obligation covered only by the trustee's own property, etc. as prescribed in Article 22, paragraph (1) of the



Trust Act) may not exercise their rights as bankruptcy creditors.

(Application of Provisions on the Right of Avoidance)

Article 244-10 (1) For the purpose of application of the provisions of Chapter VI, Section 2, if an order commencing bankruptcy proceedings is issued against trust property, an act conducted by a trustee, etc. with respect to the trust property is deemed to have been conducted by the bankrupt.

(2) For the purpose of application of the provisions of Article 161, paragraph (1) in the case referred to in the preceding paragraph, if the other party to the act is a trustee, etc. or an accounting auditor, at the time of the act, that other party is presumed to have known that the trustee, etc. had the intention of concealing or carrying out other disposal referred to in Article 161, paragraph (1), item (ii).

(3) For the purpose of application of the provisions of Article 162, paragraph (1), item (i) in the case referred to in paragraph (1), if the creditor is a trustee, etc. or an accounting auditor, the creditor is presumed to have known the respective facts specified in sub-item (a) or (b) of Article 162, paragraph (1), item (i) in accordance with the category of cases stated in sub-item (a) or (b) (in the case stated in sub-item (a), both of the facts that the bankrupt was unable to pay debts and that the bankrupt suspended payments) at the time of the act stated in Article 162, paragraph (1), item (i).

(4) For the purpose of application of the provisions of Article 168, paragraph (2) and Article 170-2, paragraph (2) in the case prescribed in paragraph (1), if the other party to the act is a trustee, etc. or an accounting auditor, the other party is presumed to have known that the trustee, etc. had the intention of concealing or carrying out other disposal prescribed in these provisions at the time of the act.

(Authority of Bankruptcy Trustees)

Article 244-11 (1) If an order commencing bankruptcy proceedings is issued against trust property, the following acts are conducted by a bankruptcy trustee:

- (i) exercising of the right to rescind under the provisions of Article 27, paragraph (1) or (2) of the Trust Act;
- (ii) ratification under the provisions of Article 31, paragraph (5) of the Trust Act;
- (iii) exercising of the right to rescind under the provisions of Article 31, paragraph (6) or (7) of the Trust Act;
- (iv) exercising of the right under the provisions of Article 32, paragraph (4) of the Trust Act;
- (v) pursuing the liability under the provisions of Article 40 or Article 41 of the

- Trust Act; and
- (vi) exemption from liability under the provisions of Article 42 of the Trust Act (including as applied mutatis mutandis pursuant to Article 254, paragraph (3) of that Act); and
  - (vii) pursuing the liability under the provisions of Article 226, paragraph (1), Article 228, paragraph (1), or Article 254, paragraph (1) of the Trust Act.
- (2) The provisions of the preceding paragraph apply mutatis mutandis to a temporary administrator.
- (3) The provisions of Article 177 apply mutatis mutandis to a provisional order on the property of a trustee, etc. or an accounting auditor if an order commencing bankruptcy proceedings is issued against the trust property, and the provisions of Articles 178 through 181 apply mutatis mutandis to an assessment of a claim for compensation for loss or for restoration based on the liability of the trustee, etc. or accounting auditor in the bankruptcy proceedings against the trust property.

(Orders for Temporary Administration)

Article 244-12 For the purpose of application of the provisions of Chapter III, Section 2, if a petition to commence bankruptcy proceedings is filed against the trust property, the phrase "when a debtor (limited to a corporation; the same applies below in this Section, Article 148, paragraph (4), and Article 152, paragraph (2)) administers and disposes of its property" in Article 91, paragraph (1) and the term "the debtor's property" in Article 91, paragraph (1), Article 93, paragraph (1), and Article 96, paragraph (2) are deemed to be replaced with "property that comes under trust property".

(Petitions for Discontinuance of Bankruptcy Proceedings with Consent of Bankruptcy Creditors)

- Article 244-13 (1) A petition referred to in Article 218, paragraph (1) with regard to bankruptcy of trust property is filed by a trustee, etc.
- (2) If there are two or more trustees, etc., each trustee, etc. may file the petition referred to in the preceding paragraph.
  - (3) When filing a petition referred to in paragraph (1) for bankruptcy of trust property, the petitioner must perform the procedure for maintaining the trust in advance by complying with the provisions concerning modification of a trust.

## **Chapter XI Special Provisions When Foreign Insolvency Proceedings Exist**

(Cooperation with Foreign Trustees)

Article 245 (1) If foreign insolvency proceedings taken against the bankrupt exists (meaning proceedings commenced in a foreign state, which are

equivalent to bankruptcy proceedings or rehabilitation proceedings; the same applies below in this Chapter), a bankruptcy trustee may request a foreign trustee (meaning a person that has a right to administer and dispose of the bankrupt's property in the foreign insolvency proceedings; the same applies below in this Chapter) to provide cooperation and information necessary for the proper implementation of bankruptcy proceedings.

- (2) In the case prescribed in the preceding paragraph, a bankruptcy trustee is to endeavor to provide a foreign trustee with cooperation and information necessary for the proper implementation of foreign insolvency proceedings.

#### (Authority of Foreign Trustees)

Article 246 (1) Foreign trustees may file a petition to commence bankruptcy proceedings against a debtor.

- (2) Foreign trustees must make a prima facie showing of the fact constituting the grounds for the commencement of bankruptcy proceedings when filing the petition referred to in the preceding paragraph.
- (3) A foreign trustee may attend a creditors' meeting on the date of the meeting and state their opinion in bankruptcy proceedings against the bankrupt.
- (4) If a foreign trustee has filed a petition to commence bankruptcy proceedings pursuant to the provisions of paragraph (1), a notice must be given to the foreign trustee when a comprehensive stay order is issued or an order to change or reverse that order is issued, the main text of the respective order; when an order commencing bankruptcy proceedings is issued, the particulars for which a public notice should be given pursuant to the provisions of Article 32, paragraph (1); when there is a change to the particulars stated in Article 32, paragraph (1), item (ii) or (iii), a statement to that effect; when an order to reverse the order commencing bankruptcy proceedings becomes final and binding, the main text of the order.

#### (Mutual Participation in Proceedings)

Article 247 (1) A foreign trustee may represent a bankruptcy creditor that has not filed a notification of claim but has participated in foreign insolvency proceedings against the bankrupt, and participate in bankruptcy proceedings against the bankrupt; however, this is limited to when the foreign trustee has the authority to do so pursuant to laws and regulations of the relevant foreign state.

- (2) A bankruptcy trustee may represent a holder of filed bankruptcy claim that is not participating in foreign insolvency proceedings, and participate in the foreign insolvency proceedings.
- (3) A bankruptcy trustee may perform any act involved in the foreign insolvency proceedings in the interest of the bankruptcy creditor that they represented

pursuant to the provisions of that paragraph when they have participated in foreign insolvency proceedings under the provisions of the preceding paragraph; provided, however, that delegation of authority from the bankruptcy creditor is required in order to withdraw a notification of a claim filed, seek a settlement, or perform any other act that is likely to jeopardize the rights of bankruptcy creditors.

## **Chapter XII Discharge Proceedings and Release from Restrictions**

### **Section 1 Discharge Proceedings**

(Petitions for Grant of Discharges)

- Article 248 (1) A debtor who is an individual (or the bankrupt after an order commencing bankruptcy proceedings is issued; the same applies below in this Section, except for paragraph (4)) may file a petition to the bankruptcy court for grant of discharge within a period from the day on which a petition to commence bankruptcy proceedings is filed until one month has elapsed since the day on which an order commencing bankruptcy proceedings becomes final and binding.
- (2) When the debtor referred to in the preceding paragraph (referred to below as the "debtor" in this Section) is unable to file a petition for grant of discharge within the period prescribed in that paragraph due to grounds not attributable to them, they may file the petition only within one month after the grounds cease to exist.
- (3) When filing a petition for grant of discharge, the petitioner must submit a list of holders of dischargeable claims stating the particulars specified by the Rules of the Supreme Court; provided, however, that if it is not possible to submit a list of holders of dischargeable claims at the same time as filing the petition, it is sufficient to submit the list without delay after filing the petition.
- (4) If the debtor has filed a petition to commence bankruptcy proceedings, the debtor is deemed to have filed a petition for grant of discharge at the same time as filing the petition; provided, however, that this does not apply if the debtor has manifested their intention to the contrary upon filing the petition to commence bankruptcy proceedings.
- (5) When a petition for grant of discharge is deemed to have been filed pursuant to the provisions of the main clause of the preceding paragraph, the list of creditors referred to in Article 20, paragraph (2) is deemed to be the list of holders of dischargeable claims referred to in the main clause of paragraph (3).
- (6) If the debtor has filed a petition for grant of discharge, they may not file a petition referred to in Article 218, paragraph (1) or a petition to commence rehabilitation proceedings.
- (7) If the debtor has filed any of the petitions stated in the following items, they

may not file a petition for grant of discharge until the orders specified in the respective items become final and binding, notwithstanding the provisions of paragraph (1) or (2):

- (i) a petition referred to in Article 218, paragraph (1): an order dismissing the petition; and
- (ii) a petition to commence rehabilitation proceedings: an order dismissing the petition, order of discontinuance of rehabilitation proceedings, or order of disconfirmation of the rehabilitation plan.

(Prohibition of Enforcement)

Article 249 (1) If a petition for grant of discharge is filed and an order of discontinuance of bankruptcy proceedings under the provisions of Article 216, paragraph (1) is issued, an order of discontinuance of bankruptcy proceedings made under the provisions of Article 217, paragraph (1) has become final and binding, or an order of termination of bankruptcy proceedings under the provisions of Article 220, paragraph (1) is issued, until a judicial decision on the petition becomes final and binding, it is not allowed to enforce a enforcement, provisional seizure, provisional disposition or disposal of foreign tax delinquency based on a bankruptcy claim, or exercise a general statutory lien or auction on the grounds of a right of retention (excluding a right of retention under the provisions of the Commercial Code or the Companies Act) against the bankrupt's property (referred to below as "enforcement, etc. based on a bankruptcy claim" in this Article), or to file a petition for a property disclosure procedure or procedure for acquiring information from a third party based on a bankruptcy claim or make a collection of national tax delinquency (excluding a disposal of foreign tax delinquency) against the bankrupt's property, and any procedure for enforcement, etc. or disposition based on a bankruptcy claim already initiated against the bankrupt's property and property disclosure procedure and procedure for acquiring information from a third party based on a bankruptcy claim already initiated against the bankrupt is to be suspended.

- (2) When an order of grant of discharge becomes final and binding, the procedure for enforcement, etc. based on a bankruptcy claim or disposition, and the property disclosure procedure and procedure for acquiring information from a third party based on a bankruptcy claim which have been suspended pursuant to the provisions of the preceding paragraph cease to be effective.
- (3) In the case referred to in paragraph (1), the prescription period does not expire with regard to a bankruptcy claim stated in each of the following items, until the day on which two months have elapsed since the day following the day on which the order specified in the respective items becomes final and binding:

- (i) a claim stated in each item of Article 253, paragraph (1): an order on a petition for grant of discharge; and
- (ii) a bankruptcy claim other than the claim stated in the preceding item: an order dismissing a petition to grant discharge or order of non-grant of discharge.

(Investigations and Reports on Discharge)

Article 250 (1) The court may have a bankruptcy trustee conduct an investigation on the existence or nonexistence of any of the grounds stated in the items of Article 252, paragraph (1) or the circumstances to be considered when determining whether or not to issue an order of grant of discharge, and report the results of the investigation.

- (2) The bankrupt must cooperate in investigations on the particulars prescribed in the preceding paragraph conducted by the court or investigation conducted by a bankruptcy trustee pursuant to the provisions of that paragraph.

(Statements of Opinions on Discharge)

Article 251 (1) When a petition to grant discharge is filed, after an order commencing bankruptcy proceedings is made, the court must specify a period during which a bankruptcy trustee and bankruptcy creditors (excluding those who hold claims stated in the items of Article 253, paragraph (1); the same applies in the following paragraph, paragraph (4) of the following Article, and Article 254) may state their opinions to the court with regard to whether or not it is appropriate to issue an order to grant discharge to the bankrupt.

- (2) When the court has made an order to specify the period referred to in the preceding paragraph, it must give a public notice of the period and give a notice of the period to a bankruptcy trustee and known bankruptcy creditors.
- (3) The period referred to in paragraph (1) must be at least one month from the day on which the public notice made under the provisions of the preceding paragraph becomes effective.

(Requirements for Order to Grant Discharges)

Article 252 (1) The court issues an order to grant a discharge if the bankrupt does not fall under any of the cases stated in the following items:

- (i) for the purpose of harming the creditors, the bankrupt has concealed or damaged the property that belongs or should belong to the bankruptcy estate, disposed of the property in a manner disadvantageous to creditors or conducted any other act that would unduly reduce the value of the bankruptcy estate;
- (ii) for the purpose of delaying the commencement of bankruptcy proceedings, the bankrupt has assumed a debt under extremely disadvantageous

- conditions or purchased goods through a margin transaction and disposed of them under extremely disadvantageous conditions;
- (iii) for the purpose of giving a special benefit to a specific creditor to whom they are indebted or for harming other creditors, the bankrupt has conducted an act concerning provision of security or extinguishment of debt which is not included in the scope of the debtor's obligation in terms of the act itself or the means or time of performance of the act;
  - (iv) the bankrupt has significantly reduced their property or assumed excessive debt through overspending, gambling, or any other speculative act;
  - (v) during the period from the day one year before the day on which a petition to commence bankruptcy proceedings is filed until the day on which an order commencing bankruptcy proceedings is made, knowing a fact that would be a cause of the commencement of bankruptcy proceedings exists, the bankrupt has acquired property through a marginal transaction by fraudulent means so as to make the other party believe that the fact does not exist;
  - (vi) the bankrupt has destroyed, forged, or altered books, documents or any other articles concerning the status of their business and property;
  - (vii) the bankrupt has submitted a false list of holders of dischargeable claims (including a list of creditors that is deemed to be a list of holders of dischargeable claims pursuant to the provisions of Article 248, paragraph (5); the same applies in paragraph (1), item (vi) of the following Article);
  - (viii) the bankrupt has refused to give an explanation or given a false explanation in the investigation conducted by the court in bankruptcy proceedings;
  - (ix) the bankrupt has obstructed the duties of a bankruptcy trustee, temporary administrator, bankruptcy trustee representative, or temporary administrator representative through fraudulent means,;
  - (x) if any of the grounds stated in the following sub-items (a) through (c) exist, a petition for grant of discharge is filed within seven years from the day specified in sub-item (a), (b), or (c), respectively:
    - (a) an order to grant a discharge became final and binding: the day on which the order to grant a discharge became final and binding;
    - (b) a rehabilitation plan for rehabilitation for salaried workers, etc. prescribed in Article 239, paragraph (1) of the Civil Rehabilitation Act (Act No. 225 of 1999) was carried out: the day on which the order of confirmation of the rehabilitation plan became final and binding;
    - (c) an order of discharge prescribed in Article 235, paragraph (1) of the Civil Rehabilitation Act (including as applied mutatis mutandis pursuant to Article 244 of that Act) became final and binding: the day on which the order of confirmation of the rehabilitation plan related to the order of discharge became final and binding; or

- (xi) the bankrupt has violated the obligation prescribed in Article 40, paragraph (1), item (i), Article 41, or Article 250, paragraph (2) or any other obligation prescribed by this Act.
- (2) Notwithstanding the provisions of the preceding paragraph, even if the bankrupt falls under any of the cases stated in the items of that paragraph, the court may issue an order to grant a discharge when it finds it appropriate to grant a discharge taking into consideration the developments that led to issuing an order commencing bankruptcy proceedings and all other circumstances.
- (3) When an order to grant a discharge is issued, pursuant to the provisions of the Rules of the Supreme Court, the court clerk must prepare an electronic or magnetic record which recorded the main text of the order and record it in computer files.
- (4) When it has made an order to grant a discharge, the court must immediately serve the electronic judgment upon the bankrupt and a bankruptcy trustee and serve the electronic or magnetic record which was recorded in computer files pursuant to the provisions of the preceding paragraph upon bankruptcy creditors. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply with regard to the service of an electronic judgment.
- (5) The court must, when it has issued an order of non-grant of discharge, immediately serve the electronic judgment upon the bankrupt. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (6) An immediate appeal may be filed against a judicial decision on a petition to grant a discharge.
- (7) If a judicial decision on the immediate appeal stated in the preceding paragraph is made, the electronic judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (8) An order to grant a discharge does not become effective unless it becomes final and binding.

(Effect of Order to Grant Discharges)

Article 253 (1) When an order to grant a discharge becomes final and binding, the bankrupt is discharged from their liabilities for bankruptcy claims, except for distribution in bankruptcy proceedings; provided, however, that this does not apply to the following claims:

- (i) a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance);
- (ii) a claim for damages for a tort that the bankrupt has committed in bad faith;
- (iii) a claim for damages for a tort that harms the life or body of another person



- which the bankrupt has committed intentionally or by gross negligence (excluding the claim stated in the preceding item);
- (iv) a claim related to any of the following obligations:
    - (a) the obligation to cooperate and provide mutual assistance between husband and wife under the provisions of Article 752 of the Civil Code;
    - (b) the obligation to share expenses arising from marriage under the provisions of Article 760 of the Civil Code;
    - (c) the obligation concerning the custody of a child under the provisions of Article 766 of the Civil Code (including as applied mutatis mutandis pursuant to Article 749, Article 771, and Article 788 of that Code);
    - (d) the obligation of support under the provisions of Articles 877 through 880 of the Civil Code;
    - (e) any obligation similar to those stated in sub-items (a) through (d) above, which are under a contract;
  - (v) a claim of an employee and a claim for return of an employee's deposit, which have arisen from an employment relationship;
  - (vi) a claim that the bankrupt has not stated in the list of holders of dischargeable claims knowing its existence (excluding a claim held by a person that knew that an order commencing bankruptcy proceedings against the bankrupt has been made); or
  - (vii) a claim for a fine, etc.
- (2) An order to grant a discharge does not affect any rights held by bankruptcy creditors against the bankrupt's guarantor or any other person that owes debts jointly with the bankrupt and any security provided by persons other than the bankrupt in the interest of bankruptcy creditors.
  - (3) If an order to grant a discharge has become final and binding, when there is an electronic schedule of bankruptcy creditors, pursuant to the provisions of the Rules of the Supreme Court, the court clerk must record in the schedule to the effect that the order to grant a discharge has become final and binding.
  - (4) Notwithstanding the provisions of paragraph (1), the effect of discharge under the provisions of that paragraph with regard to a claim for a foreign tax subject to mutual assistance may be asserted only in relation to the mutual assistance under the provisions of Article 11, paragraph (1) of the Act on Special Provisions for the Enforcement of Tax Treaties.

#### (Order of Reversal of Discharges)

Article 254 (1) When a judgment finding the bankrupt guilty for the crime stated in Article 265 has become final and binding, upon the petition of a bankruptcy creditor or by its own authority, the court may issue an order of reversal of discharge. The same applies when an order to grant a discharge was issued due to unlawful means used by the bankrupt, and a bankruptcy creditor has filed a

petition for reversal of discharge within one year after the order to grant a discharge was issued.

- (2) When an order of reversal of discharge is made, pursuant to the provisions of the Rules of the Supreme Court, the court clerk must prepare an electronic or magnetic record which recorded the main text of the order and record it in computer files.
- (3) The court must, when it has issued an order of reversal of discharge, immediately serve the electronic judgment upon the bankrupt and the petitioner, and serve the electronic or magnetic record which was recorded in computer files pursuant to the provisions of the preceding paragraph upon bankruptcy creditors. In this case, with regard to service of the electronic judgment, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (4) An immediate appeal may be filed against a judicial decision on the petition referred to in paragraph (1) and an order of reversal of discharge by the court's own authority.
- (5) When a judicial decision on the immediate appeal stated in the preceding paragraph is made, the electronic judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.
- (6) When an order of reversal of discharge becomes final and binding, the order to grant a discharge ceases to be effective.
- (7) When an order of reversal of discharge has become final and binding, if there is a person that has acquired a claim against the bankrupt arising from a cause that occurred after the order to grant a discharge was issued and before the order of reversal of a discharge has become final and binding, the person has the right to receive payment of their claim in preference to other creditors in new bankruptcy proceedings.
- (8) The provisions of paragraph (3) of the preceding Article apply *mutatis mutandis* when an order of reversal of a discharge becomes final and binding.

## **Section 2 Release from Restrictions**

(Release from Restrictions)

- Article 255 (1) The bankrupt's rights are released from restrictions in any of the following cases. The same applies when an order of release from restrictions referred to in paragraph (1) of the following Article becomes final and binding.
- (i) when an order to grant a discharge has become final and binding;
  - (ii) when an order of discontinuance of bankruptcy proceedings under the provisions of Article 218, paragraph (1) has become final and binding;
  - (iii) when an order of confirmation of the rehabilitation plan has become final

- and binding; or
- (iv) when ten years have elapsed after an order commencing bankruptcy proceedings was issued, and the bankrupt has not been given a final and binding judgment of conviction for the crime stated in Article 265 during this period.
  - (2) The effect of release from restrictions under the provisions of the preceding paragraph is as provided for by laws and regulations concerning personal qualifications.
  - (3) When an order of reversal of discharge or order of reversal of a rehabilitation plan becomes final and binding, the release from restrictions under the provisions of paragraph (1), item (i) or (iii) ceases to be effective from that time onwards.

(Order of Release from Restrictions)

- Article 256 (1) When the bankrupt is discharged from all of their debts to bankruptcy creditors through payment or any other means, the bankruptcy court must issue an order of release from restrictions upon the petition of the bankrupt.
- (2) The court must give a public notice to that effect when the petition referred to in the preceding paragraph is filed.
  - (3) A bankruptcy creditor may state their opinions on the petition stated in paragraph (1) to the court within three months from the day on which the public notice under the provisions of the preceding paragraph becomes effective.
  - (4) When a judicial decision on a petition referred to in paragraph (1) is made, pursuant to the provisions of the Rules of the Supreme Court, the court clerk must prepare an electronic or magnetic record recording the main text of the order and record it in computer files.
  - (5) When it has made a judicial decision on the petition referred to in paragraph (1), the court must serve the electronic judgment upon the bankrupt, and serve the electronic or magnetic record recorded in computer files pursuant to the provisions of the preceding paragraph upon bankruptcy creditors. In this case, with regard to service of the electronic judgment, the provisions of the main clause of Article 10, paragraph (3) do not apply.
  - (6) An immediate appeal may be filed against a judicial decision on the petition referred to in paragraph (1).
  - (7) When a judicial decision on the immediate appeal referred to in the preceding paragraph is made, the electronic judgment must be served upon the parties concerned. In this case, the provisions of the main clause of Article 10, paragraph (3) do not apply.

**Chapter XIII Miscellaneous Provisions**

(Commission of Registration in Bankruptcy Proceedings of Corporations)

Article 257 (1) If an order commencing bankruptcy proceedings is issued against a debtor that is a corporation, by their own authority, the court clerk must commission the registry office with jurisdiction over the locality of the head office or principal office of the bankrupt to register the commencement of bankruptcy proceedings without delay; provided, however, that if the bankrupt is a foreign corporation which is a foreign company, the commission must be made to the registry office with jurisdiction over the place of domicile of its representative person for Japan (limited to one who has a domicile in Japan) (in the case of a foreign company that has business offices in Japan, the location of each business office), and if the bankrupt is any other foreign corporation, the registry office with jurisdiction over the locality of each of its offices must be commissioned.

- (2) The registration referred to in the preceding paragraph must include the name and address of each bankruptcy trustee; if permission under the proviso to Article 76, paragraph (1) is granted for independent performance of duties by each bankruptcy trustee, a statement to that effect; and if permission under the proviso to that paragraph is granted for division of duties among bankruptcy trustees, a statement to that effect; and the content of the duties assigned to each bankruptcy trustee must be included.
- (3) The provisions of paragraph (1) apply *mutatis mutandis* when there is a change to any of the particulars prescribed in the preceding paragraph.
- (4) When an order for temporary administration is issued against the debtor referred to in paragraph (1), the court clerk must commission the registry office prescribed in that paragraph to make a registration of the order for temporary administration without delay by their own authority.
- (5) The registration referred to in the preceding paragraph must include the name and address of each temporary administrator; if permission stated in the proviso to Article 76, paragraph (1) as applied *mutatis mutandis* pursuant to Article 96, paragraph (1) is granted for independent performance of duties by each temporary administrator, a statement to that effect; and if permission stated in the proviso of Article 76, paragraph (1) as applied *mutatis mutandis* pursuant to Article 96, paragraph (1) is granted for division of duties among temporary administrators, a statement to that effect; and the content of the duties assigned to each temporary administrator must be included.
- (6) The provisions of paragraph (4) apply *mutatis mutandis* when an order to change or reverse the judicial decision prescribed in that paragraph is made or there is a change to any of the particulars prescribed in the preceding paragraph.
- (7) The provisions of paragraph (1) apply *mutatis mutandis*, with regard to the

bankrupt stated in that paragraph if an order of reversal of the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings becomes final and binding, or an order for completion of bankruptcy proceedings is issued.

- (8) The provisions of the preceding paragraphs apply *mutatis mutandis* if an order commencing bankruptcy proceedings is issued against the trust property of a limited liability trust. In this case, the phrase "the locality of the head office or principal office of the bankrupt" in paragraph (1) is deemed to be replaced with "the place of administration of affairs (meaning the place of administration of affairs prescribed in Article 216, paragraph (2) of the Trust Act) of the limited liability trust".

(Commission of Registration on Bankruptcy Proceedings of Individuals)

Article 258 (1) If an order commencing bankruptcy proceedings is issued against a debtor who is an individual, the court clerk must commission a registry office to make a registration of the commencement of bankruptcy proceedings by their own authority without delay in the following cases:

- (i) when the court clerk comes to know that there is a registration concerning the bankrupt; or
- (ii) when the court clerk comes to know that there is a registered right that belongs to the bankruptcy estate.

- (2) The provisions of the preceding paragraph apply *mutatis mutandis* if, with regard to the bankrupt, an order to reverse the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings becomes final and binding, or an order for completion of bankruptcy proceedings is issued.
- (3) The court clerk must commission cancellation of the registration by their own authority without delay if any right with which a registration of the commencement of bankruptcy proceedings was made pursuant to the provisions of paragraph (1), item (ii) is determined by the order under Article 34, paragraph (4) as not belonging to the bankruptcy estate. The same applies when a bankruptcy trustee has waived the registered right and filed a petition for commission of cancellation of the registration.
- (4) The provisions of paragraph (1), item (ii) (including as applied *mutatis mutandis* pursuant to paragraph (2)) and the second sentence of the preceding paragraph apply *mutatis mutandis* if an order of commencement bankruptcy proceedings is issued against estate or trust property.
- (5) The provisions of paragraph (1), item (ii) apply *mutatis mutandis* if an order for temporary administration is issued on the trust property or if the order for temporary administration is changed or reversed.

(Commission of Registration of Provisional Orders)

- Article 259 (1) In the following cases, the court clerk must commission a registration of the provisional order by their own authority without delay:
- (i) if a provisional order under the provisions of Article 28, paragraph (1) (including as applied mutatis mutandis pursuant to Article 33 paragraph (2)) is issued with respect to a registered right that belongs to a debtor's property; and
  - (ii) if a provisional order under the provisions of Article 171, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (7) of that Article) or of Article 177, paragraph (1) or (2) (including as applied mutatis mutandis pursuant to paragraph (7) of that Article) is issued with respect to a registered right.
- (2) The provisions of the preceding paragraph apply mutatis mutandis if the provisional order prescribed in that paragraph is changed or reversed or the provisional order ceases to be effective.

(Registration of Avoidance)

- Article 260 (1) When an act constituting the cause of registration is avoided, a bankruptcy trustee must apply for a registration of avoidance. The same applies when a registration is avoided.
- (2) When making a registration on a right pertaining to the registration of avoidance referred to in the preceding paragraph, a registrar must cancel the following registrations by their own authority:
- (i) registration of the avoidance in question;
  - (ii) registration arising from the avoided act as the cause of registration, or the avoided registration; and
  - (iii) any subsequent registration made after the registration stated in the preceding item.
- (3) In the case prescribed in the preceding paragraph, after an avoided act was made but before the registration of avoidance is made, if the registration whose subject matter is the right pertaining to the registration stated in item (ii) of that paragraph is made with respect to a third party's right (limited to the right whose effect may be asserted in relation to bankruptcy proceedings), notwithstanding the provisions of that paragraph, a registrar must cancel the registration of avoidance and make the registration of the transfer of the right pertaining to the registration stated in that item to the bankrupt by their own authority.
- (4) When a registration of avoidance referred to in paragraph (1) is made, with regard to the bankrupt, if an order of reversal of the order commencing bankruptcy proceedings or an order of discontinuance of bankruptcy proceedings becomes final and binding, or an order of termination of

bankruptcy proceedings is made, the court clerk must commission cancellation of the registration of avoidance by their own authority without delay. The same applies if a bankruptcy trustee has waived the right related to the registration stated in paragraph (2), item (ii) and has filed a petition for commission of cancellation of the registration of avoidance.

(Exclusion from Taxation)

Article 261 Registration and license tax is not imposed on the registrations under the provisions of Article 257 through the preceding Article.

(Application, Mutatis Mutandis to Registered Rights)

Article 262 The provisions of Article 258, paragraph (1), item (ii) and the provisions of that item as applied mutatis mutandis pursuant to paragraph (2) of that Article (including as applied mutatis mutandis pursuant to paragraph (4) of that Article), the provisions of paragraph (3) of that Article (including cases in which the provisions of the second sentence of paragraph (3) of that Article is applied mutatis mutandis pursuant to paragraph (4) of that Article), and the provisions of the preceding three Articles apply mutatis mutandis to the registered rights.

(Suspension of Bankruptcy Proceedings upon Discontinuance of Limitation of Liability Proceedings)

Article 263 If an order of discontinuance of limitation of liability proceedings is issued with regard to the limitation of liability proceedings commenced in the interest of the bankrupt, bankruptcy proceedings are suspended until the order becomes final and binding.

(Measures to Be Taken upon Discontinuance of Limitation of Liability Proceedings)

Article 264 (1) If an order of discontinuance of limitation of liability proceedings has become final and binding with regard to the limitation of liability proceedings commenced in the interest of the bankrupt, the court must specify a period during which a proof of the claims should be filed and a time period for conducting an investigation of the claims in the interest of holders of claims under limitation.

- (2) The court must give a public notice of the period or date specified under the provisions of the preceding paragraph.
- (3) Known holders of claims subject to limitation must be notified of the particulars which should be given a public notice pursuant to the provisions of Article 32, paragraph (1), items (i) and (ii) and the preceding paragraph.
- (4) A bankruptcy trustee, the bankrupt, and holders of filed bankruptcy claims

must be notified of the particulars which should be given public notice pursuant to the provisions of paragraph (2); provided, however, that if the period or date for conducting an investigation of claims specified under the provisions of paragraph (1) (when the period or date is changed, the changed period or date) is the same as the period or date specified under the provisions of Article 31, paragraph (1), item (iii), notification is not required to be given to holders of filed bankruptcy claims.

- (5) The provisions of the preceding three paragraphs apply *mutatis mutandis* when the period during which a proof of claims should be filed as specified under the provisions of paragraph (1) is changed, the provisions of Article 118, paragraphs (3) through (5) apply *mutatis mutandis* when an order to change the period for conducting an investigation of claims specified under the provisions of paragraph (1) is made, the provisions of Article 121, paragraphs (9) through (11) apply *mutatis mutandis* pursuant when an order to change the date for conducting an investigation of claims specified under the provisions of paragraph (1) is made or an order to postpone or continue the investigation of claims on that date is made. In this cases, the term "a bankruptcy trustee" in Article 118, paragraph (3) and Article 121, paragraph (9) is deemed to be replaced with "holders of filed claims subject to limitation (or known holders of claims subject to limitation before the expiration of the period during which notification of claims should be filed as specified under the provisions of Article 264, paragraph (1)), a bankruptcy trustee", and the term "a bankruptcy trustee" in Article 121, paragraph (10) is deemed to be replaced with "holders of filed claims subject to limitation, a bankruptcy trustee".
- (6) The provisions of Article 31, paragraphs (2) and (3) apply *mutatis mutandis* to the period and date prescribed in paragraph (1).

## **Chapter XIV Penal Provisions**

### **(Crime of Bankruptcy Fraud)**

- Article 265 (1) Regardless of whether before or after the commencement of bankruptcy proceedings, a person that has conducted any of the following acts for the purpose of harming creditors is punishable by imprisonment for not more than ten years or a fine of not more than ten million yen, or both, when an order commencing bankruptcy proceedings against the debtor (in the case of bankruptcy of estate, the estate, and in the case of bankruptcy of trust property, the trust property; the same applies in the following paragraph) becomes final and binding. The same applies to a person that has knowingly served as the other party to the act stated in item (iv) when an order commencing bankruptcy proceedings becomes final and binding:
- (i) an act of concealing or damaging the debtor's property (in the case of



bankruptcy of estate, property that belongs to the estate, and in the case of bankruptcy of trust property, property that comes under the trust property; the same applies below in this Article);

- (ii) an act of faking the transfer of the debtor's property or assumption of debts;
- (iii) an act of altering the existing status of the debtor's property, thereby reducing its value; or
- (iv) an act of disposing of the debtor's property in a manner disadvantageous to creditors, or an act of assuming debts disadvantageous to creditors by the debtor.

(2) Beyond what is prescribed in the preceding paragraph, the same also applies to a person that has acquired the debtor's property or has had a third party acquire the property without the consent of a bankruptcy trustee or any other legitimate grounds, knowing that an order commencing bankruptcy proceedings has been issued or an order for temporary administration has been issued against a debtor for the purpose of harming creditors

#### (Crime of Providing Security to Specific Creditors)

Article 266 Regardless of whether before or after the commencement of bankruptcy proceedings, with regard to debt to a specific creditor, if a debtor (in the case of bankruptcy of estate, including an heir, administrator of the estate, liquidator of the estate, or executor, and in the case of bankruptcy of trust property, including a trustee, etc.; the same applies below in this Article) has conducted an act concerning the provision of security or extinguishment of debt that is not included in the scope of the debtor's obligation in terms of the act itself or the means or time of performance of the act for the purpose of harming other creditors, and an order commencing bankruptcy proceedings has become final and binding, the debtor is punishable by imprisonment for not more than five years or a fine of not more than five million yen, or both.

#### (Crime of Aggravated Breach of Trust by Bankruptcy Trustees)

Article 267 (1) When a bankruptcy trustee, temporary administrator, bankruptcy trustee representative, or temporary administrator representative has committed an act in breach of their duties and caused financial loss to creditors for the purpose of promoting their own interest or the interest of a third party, or inflicting damage on creditors, the person is punishable by imprisonment for not more than ten years or a fine of not more than ten million yen, or both.

(2) When a bankruptcy trustee or temporary administrator is a corporation, the provisions of the preceding paragraph apply to the officers or employees who perform the duties of a bankruptcy trustee or temporary administrator.

(Crime of Refusal of Explanation or Inspection)

Article 268 (1) A person that , has refused to give an explanation or has given a false explanation in violation of the provisions of Article 40, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 230, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) or Article 244-6, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) is punishable by imprisonment for not more than three years or a fine of not more than three million yen, or both. The same applies to a person that has refused to give an explanation or has given a false explanation in violation of the provisions of Article 40, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) as applied mutatis mutandis pursuant to Article 96, paragraph (1).

(2) The provisions of the first sentence of the preceding paragraph also apply when a representative, agent, employee, or other worker (referred to below as a "representative, etc." in this paragraph and paragraph (4)) of a person stated in Article 40, paragraph (1), items (ii) through (v) or a person that was a person stated in these items, or of a person stated in each item of Article 230, paragraph (1) (excluding an heir) or a person that was a person stated in item (ii) or (iii) of Article 230, paragraph (1) (excluding an heir), or of a person stated in each item of Article 244-6, paragraph (1) or a person that was a person stated in these items (each of those persons is referred to below as a "person with a duty to explain" in this paragraph), in connection with the business of the person with a duty to explain has refused to give an explanation or has given a false explanation in violation of the provisions of Article 40, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), Article 230, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article), or Article 244-6, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article). The same applies when a representative, etc. of a person with a duty to explain has refused to give an explanation or has given a false explanation in connection with the business of the person with a duty to explain, in violation of the provisions of Article 40, paragraph (1) (including as applied mutatis mutandis pursuant to paragraph (2) of that Article) as applied mutatis mutandis pursuant to Article 96, paragraph (1).

(3) The provisions of the first sentence of paragraph (1) also apply when the bankrupt has refused an inspection under the provisions of Article 83, paragraph (1) (including as applied mutatis mutandis pursuant to Article 96, paragraph (1)), when an order commencing bankruptcy proceedings is issued against the estate and a person stated in Article 230, paragraph (1), item (ii) or (iii) has refused an inspection under the provisions of Article 83, paragraph (1),

or when an order commencing bankruptcy proceedings is issued against the trust property and the trustee, etc. has refused an inspection under the provisions of Article 83, paragraph (1) (including as applied *mutatis mutandis* pursuant to Article 96, paragraph (1)).

- (4) The provisions of the first sentence of paragraph (1) also apply when a representative, etc. of the bankrupt's subsidiary company, etc. prescribed in Article 83, paragraph (2) (including one that is deemed to be the bankrupt's subsidiary company, etc. under paragraph (3) of that Article; the same applies below in this paragraph has refused to give an explanation under the provisions of paragraph (2) of that Article (including as applied *mutatis mutandis* pursuant to Article 96, paragraph (1); the same applies below in this paragraph) or has given a false explanation, or has refused an inspection under the provisions of Article 83, paragraph (2) in connection with the business of the bankrupt's subsidiary company, etc.

(Crime of Refusal of Disclosure of Important Property)

Article 269 When the bankrupt (in the case of bankruptcy of trust property, a trustee, etc.) has refused to submit a document pursuant to the provisions of Article 41 (including as applied *mutatis mutandis* pursuant to Article 244-6, paragraph (4)) or has submitted false documents to the court, the person is punishable by imprisonment for not more than three years or a fine of not more than three million yen, or both.

(Crime of Spoliation of Objects Concerning Status of Business and Property)

Article 270 Regardless of whether before or after the commencement of bankruptcy proceedings, for the purpose of harming creditors, a person that has spoliated, forged, or altered books, documents, or any other objects concerning the status of a debtor's business and property (in the case of bankruptcy of the estate, property that belongs to the estate, and in the case of bankruptcy of trust property, property that comes under the trust property) is punishable by imprisonment for not more than three years or a fine of not more than three million yen, or both when an order commencing bankruptcy proceedings against the debtor (in the case of bankruptcy of the estate, the estate, and in the case of bankruptcy of trust property, the trust property) becomes final and binding. The same applies to a person that has spoliated, forged, or altered books concerning the closed bankruptcy estate pursuant to the provisions of Article 155, paragraph (2).

(Crime of Refusal of Explanation in Interrogations)

Article 271 In an interrogation concerning a petition to commence bankruptcy proceedings (excluding those filed by a person other than the debtor) or

petition for grant of discharge, when a debtor has refused to give an explanation with regard to the particulars for which the court has required an explanation, or has given a false explanation, the person is punishable by imprisonment for not more than three years or a fine of not more than three million yen, or both.

(Crime of Obstruction of Duties against Bankruptcy Trustees)

Article 272 A person that has obstructed the duties of a bankruptcy trustee, temporary administrator, bankruptcy trustee representative, or temporary administrator representative by the use of fraudulent means or force is punishable by imprisonment for not more than three years or a fine of not more than three million yen, or both.

(Crime of Acceptance of Bribes)

- Article 273 (1) When a bankruptcy trustee, temporary administrator, bankruptcy trustee representative, or temporary administrator representative (referred to as a "bankruptcy trustee, etc." in the following paragraph) has accepted, solicited, or promised to accept a bribe in connection with their duties, the person is punishable by imprisonment for not more than three years or a fine of not more than three million yen, or both.
- (2) In the case referred to in the preceding paragraph, when the bankruptcy trustee, etc. has agreed to perform an act in response to an unlawful request, the person is punishable by imprisonment for not more than five years or a fine of not more than five million yen, or both.
- (3) If a bankruptcy trustee or temporary administrator is a corporation, when its officer or employee who performs the duties of a bankruptcy trustee or temporary administrator has accepted, solicited, or promised to accept a bribe in connection with the duties of a bankruptcy trustee or temporary administrator, the person is to be punished by imprisonment for not more than three years or a fine of not more than three million yen, or both. The same applies if a bankruptcy trustee or temporary administrator is a corporation, and its officer or employee has had the bankruptcy trustee or temporary administrator accept or solicit or promise to accept a bribe in connection with the duties of the bankruptcy trustee or temporary administrator.
- (4) In the case referred to in the preceding paragraph, when the officer or employee has agreed to perform an act in response to an unlawful request, the person is punishable by imprisonment for not more than five years or a fine of not more than five million yen, or both.
- (5) If a bankruptcy creditor or bankruptcy creditors' representative or their agent, officer or employee has accepted, solicited, or promised to accept a bribe while agreeing to perform an act in response to an unlawful request in connection

with the exercise of a voting right on the date of a meeting of creditors or exercise of a voting right by voting by document, etc. prescribed in Article 139, paragraph (2), item (ii), the person is punishable by imprisonment for not more than five years or a fine of not more than five million yen, or both.

- (6) In the cases referred to in the preceding paragraphs, a bribe accepted by the offender or by the bankruptcy trustee or temporary administrator that is a corporation is to be confiscated. If the whole or part of the bribe cannot be confiscated, an amount equivalent to its value is to be collected.

#### (Crime of Offering Bribes)

Article 274 (1) A person that has given, offered, or promised to offer a bribe prescribed in paragraph (1) or (3) of the preceding Article is to be punished by imprisonment for not more than three years or a fine of not more than three million yen, or both.

- (2) A person that has given, offered, or promised to offer a bribe prescribed in paragraph (2), (4), or (5) of the preceding Article is punishable by imprisonment for not more than five years or a fine of not more than five million yen, or both.

#### (Crime of Forcibly Demanding Meeting with the Bankrupt)

Article 275 A person that has forcibly demanded a meeting with the bankrupt or their relative or any other person, or intimidated any of these persons for the purpose of forcing the bankrupt (limited to a bankrupt who is an individual, or in the case of bankruptcy of the estate, an heir; hereinafter the same applies in this Article) or their relative or any other person to pay a bankruptcy claim (after the closing of discharge proceedings, limited to those discharged; the same applies below in this Article), or for the purpose of forcing the bankrupt's relative or any other person to guarantee a bankruptcy claim is punishable by imprisonment for not more than three years or a fine of not more than three million yen, or both.

#### (Crimes Committed Outside Japan)

Article 276 (1) The crimes referred to in Article 265, Article 266, Article 270, Article 272, and Article 274 are governed by the provisions of Article 2 of the Penal Code (Act No. 45 of 1907).

- (2) The crimes referred to in Article 267 and Article 273 (excluding paragraph (5)) are governed by the provisions of Article 4 of the Penal Code.
- (3) The crime stated in Article 273, paragraph (5) also applies to a person that has committed the crime referred to in that paragraph outside Japan.

#### (Dual Criminal Liability Provision)

Article 277 When a representative of a corporation, or an agent, employee, or any other worker of a corporation or individual has committed a violation of Article 265, Article 266, Article 268 (excluding paragraph (1)), Articles 269 through 272, Article 274 or 275 in connection with the business or property of the corporation or individual, not only is the offender punishable but also the offender's corporation or individual is punishable by a fine prescribed in the respective Articles.