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This English translation of the Companies Act (PART I to PART IV) has been prepared (up to the revisions of Act No. 109 of 2006 (Effective December 15, 2006) in compliance with the Standard Bilingual Dictionary (March 2007 edition).

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## **Companies Act (PART I to PART IV) (Act No. 86 of 2005)**

### **PART I General Provisions**

#### **Chapter I Common Provisions**

##### **Article 1 (Purpose)**

The formation, organization, operation and management of companies shall be governed by the provisions of this Act, except as otherwise provided by other acts.

##### **Article 2 (Definitions)**

In this Act, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:

- (i) "Company" means any Stock Company, General Partnership Company, Limited Partnership Company or Limited Liability Company;
- (ii) "Foreign Company" means such any juridical person incorporated under the law of a foreign country or such other foreign organization that is of the same kind as the Company or is similar to a Company;
- (iii) "Subsidiary" means any entity which is prescribed by the applicable Ordinance of the Ministry of Justice as the juridical person the management of which is controlled by a Company, including, but not limited to, a Stock Company a majority of all votes in which are owned by the Company;
- (iv) "Parent Company" means any entity which is prescribed by the applicable Ordinance of the Ministry of Justice as a juridical person who controls the management of a Stock Company, including, but not limited to, a Company

- which has a Stock Company as its Subsidiary;
- (v) "Public Company" means any Stock Company the articles of incorporation of which do not require, as a feature of all or part of its shares, the approval of the Stock Company for the acquisition of such shares by transfer;
  - (vi) "Large Company" means any Stock Company which satisfies any of the following requirements:
    - (a) that the amount of the stated capital in the balance sheet as of the end of its Most Recent Business Year (hereinafter in this (a) and (b) below referring to the balance sheet reported to the annual shareholders' meeting under the provision of Article 439 in cases provided for in the first sentence of such Article, and referring to the balance sheet under Article 435(1) in cases where the first annual shareholders' meeting after the incorporation of the Stock Company has not yet been held) is 500,000,000 yen or more; or
    - (b) that the total sum of the amounts in the liabilities section of the balance sheet as of the end of its Most Recent Business Year is 20,000,000,000 yen or more;
  - (vii) "Company with Board of Directors" means any Stock Company which has a board of directors, or any Stock Company which is required to have a board of directors under the provisions of this Act;
  - (viii) "Company with Accounting Advisors" means any Stock Company which has Accounting Advisor(s);
  - (ix) "Company with Auditors" means any Stock Company which has auditor(s) (excluding any Stock Company the articles of incorporation of which provide that the scope of the audit by its auditor(s) shall be limited to an audit related to accounting), or any Stock Company which is required to have auditor(s) under the provisions of this Act;
  - (x) "Company with Board of Auditors" means any Stock Company which has a board of auditors, or any Stock Company which is required to have a board of auditors under the provisions of this Act;
  - (xi) "Company with Accounting Auditors" means any Stock Company which has accounting auditor(s), or any Stock Company which is required to have accounting auditor(s) under the provisions of this Act;
  - (xii) "Company with Committees" means any Stock Company which has a nominating committee, an audit committee and a compensation committee (hereinafter referred to as "Committees");
  - (xiii) "Corporation with Class Shares" means any Business Corporation which issues two or more classes of shares with different features as to the matters listed in the items of Article 108(1), including, but not limited to, the Dividend of Surplus;

- (xiv) "Class Meeting" means a meeting of Class Shareholders (hereinafter referring to the shareholders of any class of shares of a Company with Class Shares);
- (xv) "Outside Director" means a director of any Stock Company who is neither an Executive Director (hereinafter referring to a director of a Stock Company listed in any item of Article 363(1), and any other director who has executed operation of such Stock Company) nor an executive officer, nor an employee, including a manager, of such Stock Company or any of its Subsidiaries, and who has neither ever served in the past as an executive director nor executive officer, nor as an employee, including a manager, of such Stock Company or any of its Subsidiaries;
- (xvi) "Outside Company Auditor" means an auditor of any Stock Company who has neither ever served in the past as a director, Accounting Advisor (or, in cases where the accounting advisor is a juridical person, any member thereof who was in charge of its advisory affairs) or executive officer, nor as an employee, including a manager, of such Stock Company or any of its Subsidiaries;
- (xvii) "Shares with Restriction on Transfer" means the shares in cases where a Stock Company provides, as a feature of all or part of its shares, that the approval of the Stock Company is required for the acquisition of such shares by transfer;
- (xviii) "Shares with Put Option" means the shares in cases where a Stock Company provides, as a feature of all or part of its shares, that a shareholder may demand the Stock Company to redeem such shares;
- (xix) "Shares Subject to Call" means the shares in cases where a Stock Company provides, as a feature of all or part of its shares, that such Stock Company may redeem such shares upon the occurrence of specified event;
- (xx) "Share Unit" means such certain number in cases where a Stock Company provides in its articles of incorporation that certain number of shares it issues constitute one unit of shares which entitles a shareholder to cast one vote in a shareholders' meeting or Class Meeting;
- (xxi) "Share Option" means any right which entitles the holder to acquire shares in a Stock Company by exercising the right against such Stock Company;
- (xxii) "Bond with Share Options" means any Bond with attached Share Options;
- (xxiii) "Bond" means any monetary claim owed by a Company by allotment under the provisions of this Act and which will be redeemed in accordance with the provisions on the matters listed in the items of Article 676;
- (xxiv) "Most Recent Business Year" means the latest of business years for which approval under Article 438(2) (or any approval under Article 436(3) in cases provided for in Article 439(1)) is obtained with respect to the financial

- statements provided in Article 435(2) relating to each business year,
- (xxv) "Dividend Property" means the property to be distributed in cases where a Stock Company pays the Dividend of Surplus;
- (xxvi) "Entity Conversion" means any change, through conversion, from a Company listed in (a) or (b) below, respectively, to another form of Company prescribed immediately thereafter in the said (a) or (b):
- (a) from a Stock Company to a General Partnership Company, Limited Partnership Company or Limited Liability Company;
  - (b) from a General Partnership Company, Limited Partnership Company or Limited Liability Company to a Stock Company.
- (xxvii) "Absorption-type Merger" means any merger Company(s) effects with another Company(s) whereby the surviving Company succeeds to any and all rights and obligations of the absorbed Company(s);
- (xxviii) "Consolidation-type Merger" means any merger effected by two or more Companies whereby the new Company incorporated by the merger succeeds to any and all rights and obligations of the companies consolidated by the merger;
- (xxix) "Absorption-type Company Split" means any Company split whereby succeeding Company(s) succeeds after the Company Split, in whole or in part, to any rights and obligations, in whole or in part, in connection with the business of the Stock Company(s) or the Limited Liability Company(s) which is split;
- (xxx) "Incorporation-type Company Split" means any Company split whereby new Company(s) incorporated by the Company Split succeeds to any rights and obligations, in whole or in part, in connection with business of the Stock Company(s) or the Limited Liability Company(s) which is split;
- (xxxi) "Share Exchange" means any exchange of shares whereby Stock Company (s) cause all of its issued shares (hereinafter referring to the shares issued by a Stock Company) to be acquired by another Stock Company or Limited Liability Company;
- (xxxii) "Share Transfer" means any transfer whereby Stock Company(s) cause all of its issued shares to be acquired by a newly incorporated Stock Company;
- (xxxiii) "Method of Public Notice" means the method which a Company (including a Foreign Company) adopts to give public notice (excluding those which are required to be effected by publishing the notice in the Official Gazette pursuant to the provisions of this Act or any other acts);
- (xxxiv) "Electronic Public Notice" means a Method of Public Notice prescribed by the applicable ordinance of the Ministry of Justice which, through use of an electronic method (hereinafter referring to the method prescribed by the applicable ordinance of the Ministry of Justice which uses information communication technology including, but not limited to, the method which uses

electronic data processing system), enables the general public to access such public notice.

**Article 3 (Juridical Personality)**

A Company shall be a juridical person.

**Article 4 (Domicile)**

The domicile of a Company shall be the location of its head office.

**Article 5 (Commercial Transaction)**

Any act which a Company (hereinafter in this Article, in paragraph (1) of the following Article, in Article 8 and in Article 9, including a Foreign Company) carries out as its business and any act which it carries out for its business shall constitute a commercial transaction.

**Chapter II Trade Name of Company**

**Article 6 (Trade Name)**

- (1) The name of a Company shall be its trade name.
- (2) A Company shall use in its trade name the words "Kabushiki-Kaisha," "Gomei-Kaisha," "Goushi-Kaisha" or "Goudou-Kaisha" respectively for Stock Company, General Partnership Company, Limited Partnership Company or Limited Liability Company.
- (3) A Company may not use in its trade name any word which makes it likely that the Company may be mistaken for a different form of Company.

**Article 7 (No Use of Name, etc. which is Likely to be Mistaken for a Company)**

No person who is not a Company may use in its name or trade name any word which makes it likely that the person may be mistaken as a Company.

**Article 8**

- (1) No person may use, with a wrongful purpose, any name or trade name which makes it likely that the person may be mistaken for the other Company.
- (2) Any Company the enterprise interests of which have been, or are likely to be, infringed by the use of any name or trade name in violation of the provisions of the preceding paragraph may seek an injunction suspending or preventing the infringement against the person who infringes, or is likely to infringe, those enterprise interests.

**Article 9** (Liability of Company Permitting Others to Use Its Trade Name)

Any Company who has permitted others to carry out a business or engage in any enterprise by using the Company's own trade name shall be jointly and severally liable together with such others, vis-a-vis any person who has transacted with such others based on misunderstanding that such Company carries out such business, for the performance of any obligations which may arise from such transaction.

**Chapter III Employees of a Company**

**Section 1 Employees of a Company**

**Article 10** (Manager)

A Company (hereinafter in this Part including a Foreign Company) may appoint manager(s) and have him/her carry out its business at its head office or branch office.

**Article 11** (Manager's Authority of Representation)

- (1) A manager shall have authority to do any and all judicial and non-judicial acts on behalf of a Company in connection with its business.
- (2) A manager may elect or dismiss other employee(s).
- (3) No limitation on a manager's authority of representation may be asserted against a third party without knowledge of such limitation.

**Article 12** (Non-Competition by Manager)

- (1) A manager may not commit any of the following acts without the permission of the Company:
  - (i) engage in his/her own enterprise;
  - (ii) carry out, for himself/herself or for a third party, any transaction which is in the line of business of the Company;
  - (iii) become an employee of any other Company or merchant (excluding any Company; the same shall apply in Article 24);
  - (iv) become a director, executive officer or any member who executes the operation of any other Company.
- (2) If a manager commits any act listed in item (ii) of the preceding paragraph in violation of the provisions of that paragraph, the amount of the profit obtained by the manager or any third party as a result of such act shall be presumed to be amount of the damage suffered by the Company.

**Article 13** (Apparent Manager)

Any employee with a title which holds him/her out as the chief of the business of the head office or any branch office of a Company shall be deemed to have the authority to do any and all non-judicial acts in connection with the business of such head office or branch office, provided, however, that this shall not apply to the cases where his/her counterparty acts with knowledge of his/her actual authority.

**Article 14** (Employees to Whom the Authority of a Certain Kind of Matter or A Specific Matter is Delegated)

- (1) Any employee to whom the authority of a certain kind of matter or a specific matter in connection with the business is delegated shall have the authority to do any and all non-judicial acts in connection with such matter.
- (2) No limitation on the authority of representation of the employee provided in the preceding paragraph may be asserted against a third party without knowledge of such limitation.

**Article 15** (Employees of Stores for the Purpose of Selling Goods)

Any employee of a store the purpose of which is the sale, etc. (hereinafter in this Article referring to sale, lease or any other act similar to the foregoing) of goods shall be deemed to have authority to conduct the sale, etc. of the goods located in such store, provided, however, that this shall not apply to the cases where his/her counterparty acts with knowledge of his/her actual authority.

**Section 2 Commercial Agents of the Companies**

**Article 16** (Duty to Give Notice)

When any Commercial Agent (hereinafter in this Section referring to a person who acts on behalf of a Company as an agent or intermediary in any transaction in the ordinary line of business of the Company, and is not an employee of the Company) undertakes any transaction as an agent or intermediary, the Commercial Agent shall give notice of that fact to the Company without delay.

**Article 17** (Non-Competition by Commercial Agent)

- (1) A Commercial Agent may not carry out any of the following acts without the permission of the Company:
  - (i) carry out, for himself/herself or for a third party, any transaction which is in the line of business of the Company;
  - (ii) become a director, executive officer or any member who executes operation of any other Company which carries out the same kind of business as the Company.
- (2) If a Commercial Agent commits any act listed in item (i) of the preceding

paragraph in violation of provisions of that paragraph, the amount of the profit obtained by the Commercial Agent or any third party as a result of such act shall be presumed to be amount of the damage suffered by the Company.

**Article 18** (Authority to Receive Notice)

A Commercial Agent to whom the authority of the sale of goods or the role of intermediary in the same is delegated shall have authority to receive the notice regarding the sale and purchase including, but not limited to, the notice under Article 526(2) of the Commercial Code (Act No. 48 of 1899).

**Article 19** (Cancellation of Commercial Agency Contract)

- (1) A Company or the Commercial Agent may, when they did not define the period of the commercial agency contract, cancel the contract by giving an advance notice more than two months in advance.
- (2) Notwithstanding the provisions of the preceding paragraph, if there is any compelling reason, the Company or its Commercial Agent may cancel the commercial agency contract at any time.

**Article 20** (Right of Retention of Commercial Agent)

If any claim arising from acting as an agent or intermediary in any transaction is due, the Commercial Agent can retain any property or negotiable instruments of value which it possesses on behalf of the Company until the satisfaction of such claim, provided, however, that this shall not apply to the cases where the parties otherwise manifest their intention.

**Chapter IV Non-Competition after Assignment of Business**

**Article 21** (Non-competition by Assignor Company)

- (1) Unless the parties otherwise manifest their intention, a Company which assigned its business (hereinafter in this Chapter referred to as "Assignor Company") may not carry out the same line of business within the area of the same city, town or village (hereinafter in this Section referring to "ward" for the area in which special wards of Tokyo are located and for the cities designated under Article 252-19(1) of the Local Autonomy Act (Act No. 67 of 1947)), or within the area of any of its neighboring cities, towns or villages for twenty years from the day of the assignment of the business.
- (2) In cases where the Assignor Company agreed to a special provision to the effect that it will not carry out the same line of the business, the effectiveness of the special provision shall be limited to the period of thirty years from the day of the

assignment of the business.

- (3) Notwithstanding the provisions of the preceding two paragraphs, the Assignor Company may not carry out the same line of business with the purpose of unfair competition.

**Article 22** (Liabilities of Assignee Company using the Trade Name of the Assignor Company)

- (1) In cases where any Company to which any business is assigned (hereinafter in this Chapter referred to as "Assignee Company") continues to use the trade name of the Assignor Company, the Assignee Company shall also be liable for the performance of any obligations having arisen from the business of the Assignor Company.
- (2) The provisions of the preceding paragraph shall not apply in cases where the Assignee Company registers, at the location of its head office, without delay after it has accepted the assignment of the business, a statement to the effect that it will not be liable for the performance of the obligations of the Assignor Company. In cases where the Assignee Company and Assignor Company give notice to the above effect to any third party without delay after the assignment of the business, the provisions of the immediately preceding sentence shall apply to the third party who receives such notice.
- (3) In cases where the Assignee Company is liable for the performance of the obligations of the Assignor Company pursuant to the provisions of paragraph (1), the liability of the Assignee Company shall be extinguished upon lapse of two years after the day of the assignment of the business vis-a-vis any obligee who does not demand the performance, or does not give an advance notice of his/her demand, within that period.
- (4) In cases provided for in paragraph (1), any performance made vis-a-vis the Assignee Company with respect to any claim arising from the business of the Assignor Company shall remain effective if the performing party is without knowledge and is not grossly negligent.

**Article 23** (Assumption of Obligations by Assignee Company)

- (1) Even in cases where an Assignee Company does not continue to use the trade name of the Assignor Company, if it advertises to the effect that it will assume the obligations that has arisen from the business of the Assignor Company, the obligees of the Assignor Company may demand the performance against the Assignee Company.
- (2) In cases where the Assignee Company is liable for the performance of the obligations of the Assignor Company pursuant to the provisions of the preceding

paragraph, the liability of the Assignor Company shall be extinguished upon lapse of two years after the day of the advertisement under that paragraph vis-a-vis any obligee who does not demand the performance, or does not give an advance notice of his/her demand, within that period.

**Article 24** (Assignment of Business to or from a Merchant)

- (1) In cases where a Company assigns its business to a merchant, such Company shall be deemed to be the assignee provided for in paragraph (1) of Article 16 of the Commercial Code, and the provisions of Article 17 and Article 18 of the Code shall apply.
- (2) In cases where a Company accepts assignment of the enterprise of any merchant, such merchant shall be deemed to be the Assignor Company, and the provisions of the preceding two articles shall apply.

**PART II Stock Company**

**Chapter I Incorporation**

**Section 1 General Provisions**

**Article 25**

- (1) A Stock Company may be incorporated by either of the following methods:
  - (i) The method by which incorporator(s) subscribe(s) for all Shares Issued at Incorporation (meaning the shares which are issued at incorporation of a Stock Company. The same shall apply hereinafter) pursuant to the provisions of the next Section to Section 8 inclusive; or
  - (ii) The method by which, in addition to the subscription by incorporator(s) for the Shares Issued at Incorporation, person(s) who will subscribe for the Shares Issued at Incorporation is/are solicited pursuant to the provisions of the next Section, Section 3, Article 39 and Section 6 to Section 9 inclusive.
- (2) Each incorporator shall subscribe for one or more Shares Issued at Incorporation in the incorporation of a Stock Company.

**Section 2 Preparation of Articles of Incorporation**

**Article 26** (Preparation of Articles of Incorporation)

- (1) In order to incorporate a Stock Company, incorporator(s) shall prepare articles of incorporation, and all incorporators shall sign or affix the name(s) and seal(s) to it.

(2) Articles of incorporation set forth in the preceding paragraph may be prepared by Electromagnetic Records (meaning records produced by electronic forms, magnetic forms, or any other forms unrecognizable by human senses, which are for computer data-processing use as prescribed by the applicable Ordinance of the Ministry of Justice. The same shall apply hereinafter.). In such cases, actions prescribed by the applicable Ordinance of the Ministry of Justice shall be taken in lieu of the signing or the affixing of the names and seals, with respect to the data recorded in such Electromagnetic Records.

**Article 27** (Matters to be Specified or Recorded in the articles of incorporation)

Articles of incorporation of a Stock Company shall specify or record the following matters:

- (i) Purpose(s);
- (ii) Trade name;
- (iii) Location of the head office;
- (iv) Value of property to be contributed at the incorporation or the lower limit thereof;
- (v) Name(s) and address(es) of the incorporator(s).

**Article 28**

In cases where a Stock Company is to be incorporated, the following matters shall not become effective unless they are specified or recorded in the articles of incorporation referred to in Article 26(1):

- (i) Name(s) of person(s) who contribute(s) by any property other than money, the description of such property and the value thereof, and the number of the Shares Issued at Incorporation that are to be allotted to such person(s) (in cases where the Stock Company to be incorporated is a Company with Class Shares, referring to the class(es) and the number of each class of the Shares Issued at Incorporation; the same shall apply in item (i) of Article 32(1));
- (ii) Property that is agreed to be assigned to the Stock Company after the formation thereof, the value thereof, and the name of the assignor;
- (iii) Compensation or other special benefit which the incorporator(s) is to obtain by the formation of the Stock Company, and the name(s) of such incorporator(s) ; and
- (iv) Expenses regarding the incorporation that are borne by the Stock Company (excluding the fees for the certification of the articles of incorporation, and other expenses which are prescribed by the applicable Ordinance of the Ministry of Justice as expenses that are unlikely to cause harm to the Stock Company)

## **Article 29**

In addition to the matters listed in each item of Article 27 and each item of the preceding article, articles of incorporation of a Stock Company may specify or record the matters which, pursuant to the provisions of this Act, may not become effective unless provided for in the articles of incorporation, or other matters which do not violate any provision of this Act.

## **Article 30** (Certification of Articles of Incorporation)

- (1) Articles of incorporation set forth in Article 26(1) shall not become effective unless they are certified by a notary public.
- (2) Articles of incorporation that are certified by a notary public pursuant to the preceding paragraph may not be amended before the formation of the Stock Company except when they are amended under the provisions of Article 33(7) or (9), or Article 37(1) or (2).

## **Article 31** (Keeping and Inspection of Articles of Incorporation)

- (1) The incorporator(s) (or the Stock Company after the formation of such Stock Company) shall keep articles of incorporation at the place designated by the incorporator(s) (or at the head office or branch office of the Stock Company after the formation of such Stock Company).
- (2) The incorporator(s) (or, after the formation of such Stock Company, the shareholder(s) and creditor(s) of such Stock Company) may submit the following request at any time during the hours designated by the incorporator(s) (or, after the formation of such Stock Company, during the business hours of such Stock Company); provided, however, that the fees designated by the incorporator(s) (or, after the formation of such Stock Company, such Stock Company) are required to be paid in order to submit the requests listed in item (ii) or item (iv):
  - (i) If articles of incorporation are prepared in writing, a request to inspect it;
  - (ii) A request for a transcript or extract of the articles of incorporation referred to in the preceding item;
  - (iii) If articles of incorporation are prepared by Electromagnetic Records, a request to inspect anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice; or
  - (iv) A request that the matters recorded in the Electromagnetic Records set forth in the preceding item be provided by an Electromagnetic Method designated by the incorporator(s) (or, after the formation of such Stock Company, such Stock Company), or a request for any document that contains such data
- (3) If, after the formation of a Stock Company, it is necessary for the purpose of

exercising the rights of a Member of the Parent Company (meaning the shareholders and other members of the Parent Companies. The same shall apply hereinafter.) of such Stock Company, such Member of the Parent Company may, with the permission of the court, make the requests listed in each item of the preceding paragraph with respect to the articles of incorporation of such Stock Company; provided, however, that, in order to make the requests listed in item (ii) or item (iv) of that paragraph, the fees designated by such Stock Company is required to be paid.

- (4) In cases where articles of incorporation are prepared by Electromagnetic Records, for the purpose of the application of the provisions of paragraph (1) with respect to a Stock Company which adopts the measures prescribed by the applicable Ordinance of the Ministry of Justice as the measures that enable its branch offices to respond to the request listed in item (iii) and item (iv) of paragraph (2), "head office and branch office" in that paragraph shall be deemed to be replaced with "head office."

### **Section 3 Contributions**

#### **Article 32** (Determination of Matters regarding Shares Issued at Incorporation)

- (1) When incorporator(s) determine the following matters at the incorporation of the Stock Company (excluding matters provided for in the articles of incorporation), he/she shall obtain the consent of all incorporators:
- (i) The number of the Shares Issued at Incorporation that is to be allotted to each incorporator;
  - (ii) The amount of money to be paid in exchange for the Shares Issued at Incorporation set forth in the preceding item; and
  - (iii) Matters regarding the amount of the stated capital and capital reserves of the Stock Company after the formation.
- (2) In cases where the Stock Company to be incorporated is a Company with Class Shares, if the Shares Issued at Incorporation set forth in item (i) of the preceding paragraph are those which are provided for in the articles of incorporation under the provisions of the first sentence of Article 108(3), the incorporator(s) shall, with the consent of all incorporators, determine the features of such Shares Issued at Incorporation.

#### **Article 33** (Election of Inspector of Matters Specified or Recorded in the Articles of Incorporation)

- (1) If articles of incorporation specify or record the matters listed in each item of Article 28, the incorporator(s) shall, without delay after the certification by the

- notary public under Article 30(1), file a petition for the election of an inspector with the court in order to have the inspector investigate such matters.
- (2) In cases where the petition set forth in the preceding paragraph has been filed, the court shall elect the inspector except in case it dismisses such petition as non-conforming.
  - (3) In cases where the court has elected the inspector set forth in the preceding paragraph, it may fix the amount of the remuneration that the Stock Company after the formation pays to such inspector.
  - (4) The inspector set forth in paragraph (2) shall conduct necessary investigation and shall report the court by submitting documents or Electromagnetic Records (limited to those prescribed by the applicable Ordinance of the Ministry of Justice) which specifies or records the result of such investigation.
  - (5) If the court finds it necessary for the purpose of clarification of the contents of the report set forth in the preceding paragraph or of confirmation of the grounds supporting such report, it may request the inspector set forth in paragraph (2) a further report set forth in the preceding paragraph.
  - (6) When the inspector set forth in paragraph (2) reports pursuant to paragraph (4), he/she shall give the incorporator(s) a copy of the documents set forth in that paragraph, or provide the matters recorded in the Electromagnetic Records set forth in that paragraph by the method prescribed by the applicable Ordinance of the Ministry of Justice.
  - (7) In cases where the court receives a report under paragraph (4), if it finds the provisions in articles of incorporation relating to matters listed in each item of Article 28 (excluding any matters not subjected to the investigation by the inspector under paragraph (2)) to be improper, it shall make a ruling amending the same.
  - (8) In cases where some or all of the provisions in articles of incorporation relating to matters listed in each item of Article 28 are amended by a ruling set forth in the preceding paragraph, the incorporator(s) may rescind his/her manifestation of intention relating to subscription for the relevant Shares Issued at Incorporation within one week from the finalization of such ruling.
  - (9) In the cases prescribed in the preceding paragraph, the incorporator(s) may, with the consent of all incorporators, amend articles of incorporation repealing the provisions which have been amended by such ruling, within one week from the finalization of the ruling set forth in paragraph (7).
  - (10) The provisions of the preceding nine paragraphs shall not apply to the matters prescribed in following items:
    - (i) In cases where the total value specified or recorded in the articles of incorporation with respect to the property under item (i) and item (ii) of Article

- 28 (hereinafter in this Chapter referred to as "Properties Contributed in Kind") does not exceed 5,000,000 yen: Matters listed in item (i) and item (ii) of such Article;
- (ii) In cases where the value specified or recorded in the articles of incorporation with respect to the Properties Contributed in Kind that are Securities (meaning the securities provided for in paragraph (1) of Article 2 of the Financial Instruments and Exchange Act (Act No. 25 of 1948), including rights deemed to be securities pursuant to the provisions of paragraph (2) of such Article. The same shall apply hereinafter.) with a market price does not exceed the value calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the market price of such Securities: Matters listed in item (i) and item (ii) of Article 28 with respect to such Securities;
  - (iii) In cases where the verification of an attorney, a legal professional Company, a Certified Public Accountant (including a foreign certified public accountant as defined in Article 16-2(5) of the Certified Public Accountant Act (Act No. 103 of 1948). The same shall apply hereinafter.), an auditing firm, a tax accountant or a tax accountant corporation (in cases where the Properties Contributed in Kind consist of any real estate, referring to such verification and appraisal by a real property appraiser; hereinafter the same shall apply in this item) is obtained with respect to the reasonableness of the value specified or recorded in the articles of incorporation with respect to the Properties Contributed in Kind: Matters listed in item (i) and item (ii) of Article 28 (limited to those relating to the Properties Contributed in Kind so verified).
- (11) None of the following persons may provide the verification prescribed in item (iii) of the preceding paragraph
- (i) An incorporator;
  - (ii) An assignor of property under item (ii) of Article 28;
  - (iii) A Director at Incorporation (referring to a Director at Incorporation prescribed in paragraph (1) of Article 38) or an Auditor at Incorporation (referring to an Auditor at Incorporation prescribed for in item (ii), paragraph (2) of such Article);
  - (iv) A person who is subject to the disciplinary action ordering a suspension of operations and for whom the period of such suspension has not yet elapsed; or
  - (v) A legal professional Company, an auditing Company or a tax accountant Company more than half of whose members are persons who fall under any of the items (i) to (iii) above inclusive.

**Article 34 (Performance of Contributions)**

- (1) Incorporator(s) shall, without delay after subscription for Shares Issued at

Incorporation, contribute fully in money or in kind, with respect to the Shares Issued at Incorporation for which he/she has subscribed; provided, however, that, if the consent of all incorporator(s) is obtained, the foregoing provisions do not preclude him/her from performing registration, recording or other acts necessary to assert the creation or transfer of rights against third parties after the formation of the Stock Company.

- (2) The contribution in money pursuant to the provisions of the preceding paragraph shall be paid at the Bank, Etc. (meaning a Bank (meaning a bank as defined in Article 2(1) of the Bank Act (Act No. 59 of 1981). The same shall apply in Article 703(1)), a Trust Company (meaning a trust company as defined in Article 2(2) of the Trust Business Act (Act No. 154 of 2004). The same shall apply hereinafter) and other entities prescribed by the applicable Ordinance of the Ministry of Justice as entities equivalent to the same. The same shall apply hereinafter.) designated for payment by the incorporator.

**Article 35** (Assignment of Right to Become a Shareholder of Shares Issued at Incorporation)

The assignment of the right to become a shareholder of the Shares Issued at Incorporation by contribution pursuant to the provisions of paragraph (1) of the preceding article (hereinafter in this Chapter referred to as "Performance of Contributions") may not be asserted against the Stock Company after the formation.

**Article 36** (Forfeiture of Right to Become a Shareholder of Shares Issued at Incorporation)

- (1) In cases where not all of the incorporators fulfill the Performance of Contributions, the incorporators shall set a date and notify any incorporator who does not fulfill the Performance of Contributions that such incorporator shall fulfill the Performance of Contributions by such date.
- (2) The notice set forth in the provisions of the preceding paragraph shall be given no later than two weeks prior to the date provided for in such paragraph.
- (3) Incorporator(s) who is notified pursuant to the provisions of paragraph (1) shall forfeit the right to become the shareholder of Shares Issued at Incorporation by fulfilling the Performance of Contributions if the same fail to fulfill the Performance of Contributions by the date provided for in such paragraph.

**Article 37** (Provisions on Total Number of Authorized Shares)

- (1) In cases where the total number of shares that may be issued by a Stock Company (hereinafter referred to as "Total Number of Authorized Shares") is not provided for in the articles of incorporation, the incorporators shall, with the

consent of all incorporators, amend the articles of incorporation and create a provision on the Total Number of Authorized Shares prior to the formation of the Stock Company.

- (2) In cases where the Total Number of Authorized Shares is provided for in the articles of incorporation, the incorporators may, with the consent of all incorporators, amend the articles of incorporation with respect to the Total Number of Authorized Shares at any time prior to the formation of the Stock Company.
- (3) The total number of Shares Issued at Incorporation may not be less than one quarter of the Total Number of Authorized Shares; provided, however, that this shall not apply in cases where the Stock Company to be incorporated is not a Public Company.

#### **Section 4 Election and Dismissal of Officers at Incorporation**

##### **Article 38** (Election of Officers at Incorporation)

- (1) The incorporator(s) shall elect the Director(s) at Incorporation (meaning person(s) who becomes director(s) at the incorporation. The same shall apply hereinafter) without delay after the fulfillment of the Performance of Contributions.
- (2) In the cases listed in the following items, the incorporator(s) shall elect the persons provided for respectively in those items without delay after the fulfillment of the Performance of Contributions:
  - (i) In cases where the Stock Company to be incorporated is a Company with Accounting Advisors: Accounting Advisor(s) at Incorporation (meaning a person who becomes an accounting advisor at the incorporation. The same shall apply hereinafter.)
  - (ii) In cases where the Stock Company to be incorporated is a Company with Auditors (including any Stock Company the articles of incorporation of which provide that the scope of the audit by its auditor(s) is limited to an audit related to accounting): Auditor(s) at Incorporation (meaning a person who becomes an auditor at the incorporation. The same shall apply hereinafter.)
  - (iii) In cases where the Stock Company to be incorporated is a Company with Accounting Auditors: Accounting Auditor(s) at Incorporation (meaning a person who becomes an accounting auditor at the incorporation. The same shall apply hereinafter.)
- (3) Persons who are prescribed in articles of incorporation as Directors at Incorporation, Accounting Advisors at Incorporation, Auditors at Incorporation, and Accounting Auditors at Incorporation shall be deemed to be elected as Directors at Incorporation, Accounting Advisors at Incorporation, Auditors at Incorporation, and

Accounting Auditors at Incorporation, respectively, upon the fulfillment of the Performance of Contributions.

**Article 39**

- (1) In cases where a Stock Company to be incorporated is a Company with Board of Directors, there shall be three or more Directors at Incorporation.
- (2) In cases where a Stock Company to be incorporated is a Company with Board of Auditors, there shall be three or more Auditors at Incorporation.
- (3) A person who may not be a director, accounting advisor, auditor or accounting auditor of a Stock Company after formation pursuant to the provisions of paragraph (1) of Article 331 (including the case where it is applied mutatis mutandis pursuant to Article 335(1)), Article 333(1) or (3), or Article 337(1) or (3) may not become a Director at Incorporation, an Accounting Advisor at Incorporation, an Auditor at Incorporation, or an Accounting Auditor at Incorporation (hereinafter referred to as "Officers at Incorporation"), respectively.

**Article 40 (Method of Election of Officers at Incorporation)**

- (1) The election of the Officers at Incorporation shall be determined by a majority of the votes of the incorporators.
- (2) In the cases provided for in the preceding paragraph, an incorporator shall be entitled to one vote for each one Share Issued at Incorporation for which the Performance of Contributions has been fulfilled; provided, however, that, in cases where the Share Unit is provided for in the articles of incorporation, he/she shall be entitled to one vote for each one unit of the Shares Issued at Incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, in cases where the Stock Company to be incorporated is a Company with Class Shares, if it issues Shares Issued at Incorporation of a class for which it is provided that the voting rights may not be exercised in connection with the election of some or all of the directors, with respect to such class of the Shares Issued at Incorporation, the incorporators may not exercise voting rights in connection with the election of the Directors at Incorporation who are to become such directors.
- (4) The provisions of the preceding paragraph shall apply mutatis mutandis to the election of Accounting Advisors at Incorporation, Auditors at Incorporation and Accounting Auditors at Incorporation.

**Article 41 (Special Provisions on the Method of Election of Officers at Incorporation)**

- (1) Notwithstanding the provisions of paragraph (1) of the preceding article, in cases where, at the incorporation of a Stock Company, it issues shares of a class for which the matters listed in item (ix) of Article 108(1) (limited to those relating to

directors) are provided, the election of the Directors at Incorporation shall be determined by a majority of the votes (limited to the votes with respect to such class of the Shares Issued at Incorporation) of the incorporators who subscribed for such class of the Shares Issued at Incorporation, consistently with the provisions of articles of incorporation with respect to the matters provided for in item (ix), paragraph (2) of such Article.

- (2) In the cases provided for in the preceding paragraph, an incorporator shall be entitled to one vote for each one Share Issued at Incorporation of such class for which the Performance of Contributions is fulfilled; provided, however, that, in cases where the Share Unit is provided for in the articles of incorporation, he/she shall be entitled to one vote for each one unit of the Shares Issued at Incorporation of such class.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to the cases where the shares of a class for which matters listed in item (ix), paragraph (1) of Article 108 (limited to those relating to auditors) are provided are issued at incorporation of the Stock Company.

**Article 42** (Dismissal of Officers at Incorporation)

The incorporators may dismiss Officer(s) at Incorporation elected by the incorporators (including those deemed to be elected as Officer(s) at Incorporation pursuant to the provisions of Article 38(3)) at any time prior to the formation of the Stock Company.

**Article 43** (Method of Dismissal of Officers at Incorporation)

- (1) Dismissal of Officer(s) at Incorporation shall be determined by a majority of the votes of the incorporators (or by a majority of two thirds or more in case of dismissal of Auditor(s) at Incorporation).
- (2) In the cases provided for in the preceding paragraph, an incorporator shall be entitled to one vote for each one Share Issued at Incorporation for which the Performance of Contributions has been fulfilled; provided, however, that, in cases where the Share Unit is provided for in the articles of incorporation, he/she shall be entitled to one vote for each one unit of the Shares Issued at Incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, in cases where the Stock Company to be incorporated is a Company with Class Shares, if it issues Shares Issued at Incorporation of a class for which it is provided that the voting rights may not be exercised in connection with the dismissal of some or all of the directors, with respect to such class of the Shares Issued at Incorporation, the incorporators may not exercise voting rights in connection with the dismissal of the Directors at Incorporation who are to become such directors.

(4) The provisions of the preceding paragraph shall apply mutatis mutandis to the dismissal of Accounting Advisors at Incorporation, Auditors at Incorporation and Accounting Auditors at Incorporation.

**Article 44** (Special Provisions on Method of Dismissal of Directors at Incorporation)

(1) Notwithstanding the provisions of paragraph (1) of the preceding article, the dismissal of Director(s) at Incorporation who is elected pursuant to the provisions of paragraph (1) of Article 41 shall be determined by a majority of the votes of the incorporators relating to such election.

(2) Notwithstanding the provisions of the preceding paragraph, in cases where there is a provision in the articles of incorporation to the effect that a director who is elected pursuant to the provisions of paragraph (1) of Article 41, or is elected at a Class Organizational Meeting (referring to Class Organizational Meeting provided for in Article 84) or at a Class Meeting may be dismissed by a resolution of the shareholders' meeting, the dismissal of the Director at Incorporation who is elected pursuant to such provisions shall be determined by a majority of the votes of the incorporators.

(3) In the cases provided for in the preceding paragraph, an incorporator shall be entitled to one vote for each one Share Issued at Incorporation of such class for which the Performance of Contributions is fulfilled; provided, however, that, in cases where the Share Unit is provided for in the articles of incorporation, he/she shall be entitled to one vote for each one unit of the Shares Issued at Incorporation of such class.

(4) Notwithstanding the provisions of the preceding paragraph, in cases where a Director at Incorporation is to be dismissed pursuant to the provisions of paragraph (2) above, if Shares Issued at Incorporation of a class for which it is provided that the voting rights may not be exercised in connection with the dismissal of some or all of the directors are to be issued, with respect to such class of the Shares Issued at Incorporation, the incorporators may not exercise voting rights in connection with the dismissal of the Directors at Incorporation who are to become such directors.

(5) The provisions of the preceding four paragraphs shall apply mutatis mutandis to the dismissal of Auditors at Incorporation who are elected pursuant to the provisions of Article 41(1) which shall be applied mutatis mutandis under paragraph (3) of such Article. In such case, the term "majority" in paragraph (1) and paragraph (2) shall be deemed to be replaced with "majority of two thirds or more."

**Article 45** (Special Provisions on Effect of Election or Dismissal of Officers as at

### Incorporation)

- (1) In cases where, at the incorporation of a Stock Company, it issues shares of a class for which the matters listed in item (viii) of Article 108(1) are provided, if there are provisions in the articles of incorporation to the effect that a resolution of the Class Meeting is required with respect to the matters listed in the following items as the features of the shares of such class, the matters provided for in each of such items shall not become effective unless, in addition to the determination pursuant to the provisions of Article 40(1) or Article 43(1), there is a determination by a majority of the votes (limited to the votes with respect to the Shares Issued at Incorporation of such class) of the incorporators who subscribe for the Shares Issued at Incorporation of such class in accordance with the applicable provisions of the articles of incorporation:
  - (i) Election or dismissal of some or all of the directors: Election or dismissal of Directors at Incorporation who are to become such directors;
  - (ii) Election or dismissal of some or all of the accounting advisors: Election or dismissal of Accounting Advisors at Incorporation who are to become such accounting advisors;
  - (iii) Election or dismissal of some or all of the auditors: Election or dismissal of Auditors at Incorporation who are to become such auditors;
  - (iv) Election or dismissal of some or all of the accounting auditors: Election or dismissal of Accounting Auditors at Incorporation who are to become such accounting auditors.
- (2) In the cases provided for in the preceding paragraph, an incorporator shall be entitled to one vote for each one Share Issued at Incorporation of such class for which the Performance of Contributions is fulfilled; provided, however, that, in cases where the Share Unit is provided for in the articles of incorporation, he/she shall be entitled to one vote for each one unit of the Shares Issued at Incorporation of such class.

### **Section 5 Investigation by Directors at Incorporation**

#### **Article 46**

- (1) The Directors at Incorporation (referring to the Directors at Incorporation and Auditor at Incorporation in cases where the Stock Company to be incorporated is a Company with Auditors. The same shall apply hereinafter in this Article.) shall investigate the following matters without delay after their election:
  - (i) That, with respect to the Properties Contributed in Kind in the cases listed in item (i) or item (ii) of Article 33(10) (if listed in such item, limited to the securities under such item), the value specified or recorded in the articles of

- incorporation is reasonable;
- (ii) That the verification provided for in item (iii) of Article 33(10) is appropriate;
  - (iii) That the Performance of Contributions has been fulfilled; and
  - (iv) That, in addition to the matters listed in the preceding three items, the procedures for the incorporation of the Stock Company do not violate the applicable laws and regulations or articles of incorporation.
- (2) If, as a result of the investigation pursuant to the preceding paragraph, the Directors at Incorporation find that there is any violation of the applicable laws and regulations or articles of incorporation or there is any inappropriate matter in a matter listed in any item of such paragraph, directors shall give notice to such effect to the incorporator;
- (3) In cases where the Stock Company to be incorporated is a Company with Committees, the Director at Incorporation shall give the Representative Executive Officer at Incorporation (referring to the Representative Executive Officer at Incorporation provided for in item (iii) of Article 48(1)) notice to the effect that the investigation under paragraph (1) has been completed, or, if the notice under the preceding paragraph has been given, notice that such notice was given and a description of the contents thereof.

#### **Section 6 Appointment etc. of Representative Directors at Incorporation etc.**

##### **Article 47** (Appointment etc. of Representative Directors at Incorporation)

- (1) In cases where the Stock Company to be incorporated is a Company with Board of Directors (excluding a Company with Committees), the Directors at Incorporation shall appoint among the Directors at Incorporation a person who shall be the Representative Director (meaning the director who represents the Stock Company. The same shall apply hereinafter.) as at incorporation of the Stock Company ( hereinafter referred to as "Representative Director at Incorporation").
- (2) The Directors at Incorporation may remove the Representative Director at Incorporation at any time prior to the formation of the Stock Company.
- (3) The appointment and removal of the Representative Director at Incorporation pursuant to the provisions of the preceding two paragraphs shall be determined by a majority of the Directors at Incorporation.

##### **Article 48** (Appointment of Committee Members at Incorporation)

- (1) In cases where the Stock Company to be incorporated is a Company with Committees, the Director at Incorporation shall:
- (i) appoint the following persons (in the next paragraph referred to as "Committee

Members at Incorporation") among the Directors at Incorporation:

- (a) Persons who shall be members of the nominating committee at incorporation of the Stock Company:
  - (b) Persons who shall be committee members of the audit committee at incorporation of the Stock Company:
  - (c) Persons who shall be committee members of the compensation committee at incorporation of the Stock Company:
  - (ii) elect persons who shall be the executive officers at incorporation of the Stock Company (hereinafter referred to as "Executive Officers at Incorporation"); and
  - (iii) appoint among the Executive Officers at Incorporation the persons who shall be the representative executive officers at incorporation of the Stock Company (hereinafter referred to as "Representative Executive Officers at Incorporation"); provided, however, that, if there is only one Executive Officer at Incorporation, such person shall be deemed to have been appointed as the Representative Executive Officer at Incorporation.
- (2) At any time prior to the formation of the Stock Company, the Directors at Incorporation may remove the Committee Members at Incorporation or the Representative Executive Officers at Incorporation, or dismiss the Executive Officers at Incorporation.
- (3) The decision pursuant to the provisions of the preceding two paragraphs shall be made by a majority of the Directors at Incorporation.

## **Section 7 Formation of Stock Companies**

### **Article 49** (Formation of Stock Companies)

A Stock Company shall be formed by the registration of the incorporation at the location of its head office.

### **Article 50** (Right of Subscribers of Shares)

- (1) As at formation of a Stock Company, the incorporator shall be a shareholder for the Shares Issued at Incorporation for which the Performance of Contributions has been fulfilled.
- (2) The assignment of the right to become a shareholder pursuant to the provisions of the preceding paragraph may not be asserted against the Stock Company after the formation.

### **Article 51** (Restrictions on Invalidation or Rescission of Subscription)

- (1) The proviso to Article 93 and the provisions of Article 94(1) of the Civil Code (Act No. 89 of 1896) shall not apply to the manifestation of intention relating to

the subscription for Shares Issued at Incorporation.

- (2) After the formation of the Stock Company, the incorporator(s) may not assert the invalidity of his/her subscription for Shares Issued at Incorporation on the grounds of mistake, nor rescind his/her subscription for Shares Issued at Incorporation on the grounds of fraud or duress.

## **Section 8 Liability of Incorporators**

### **Article 52** (Liability for Insufficiency of Value of Properties Contributed)

- (1) If the value of the Properties Contributed in Kind at formation of a Stock Company is substantially short of the value specified or recorded in the articles of incorporation with respect to such Properties Contributed in Kind (or if there is any amendment of the articles of incorporation, the value so amended), the incorporators and Directors at Incorporation shall be jointly and severally liable to such Stock Company for the payment of the amount of such shortfall.
- (2) Notwithstanding the provisions of the preceding paragraph, the incorporators (in this paragraph and in item (ii) excluding those who contributed in kind under item (i) of Article 28 or the assignor of the property under item (ii) of the same Article) and Directors at Incorporation shall not be held liable in accordance with such paragraph with respect to the Properties Contributed in Kind in the following cases:
  - (i) Where the investigation by the inspector under Article 33(2) has been carried out with respect to the matters listed in item (i) or item (ii) of Article 28; or
  - (ii) Where such incorporators or Directors at Incorporation prove that they did not fail to exercise due care with respect to the performance of their duties.
- (3) In the cases set forth in paragraph (1), the person who carried out the verification provided for in item (iii) of Article 33(10) (hereinafter in this paragraph referred to as "Verifier") shall be jointly and severally liable with the person who assumes the liability under paragraph (1) for the payment of the amount of the shortfall under such paragraph; provided, however, that this shall not apply in cases where such Verifier prove that he/she did not fail to exercise due care with respect to the carrying out such verification.

### **Article 53** (Liability for Damages of Incorporators)

- (1) If an incorporator, Director at Incorporation or Auditor at Incorporation neglects his/her duties with respect to the incorporation of a Stock Company, he/she shall be liable to such Stock Company for damages arising as a result thereof.
- (2) If an incorporator, Director at Incorporation or Auditor at Incorporation are with knowledge or grossly negligent in performing his/her duties, such incorporator,

Director at Incorporation or Auditor at Incorporation shall be liable to a third party for damages arising as a result thereof.

**Article 54 (Joint and Several Liabilities of Incorporators)**

In cases where an incorporator, a Director at Incorporation or an Auditor at Incorporation is liable for damages arising in the Stock Company or a third party, if other incorporators, Directors at Incorporation or Auditors at Incorporation are also liable, such persons shall be joint and several obligors.

**Article 55 (Exemption from Liability)**

An exemption from the obligations assumed by an incorporator or Director at Incorporation pursuant to the provisions of Article 52(1) and the liability assumed by an incorporator, Director at Incorporation or Auditor at Incorporation pursuant to the provisions of Article 53(1) may not be given without the consent of all shareholders.

**Article 56 (Liability in cases of Failure to Form a Stock Company)**

If the formation of a Stock Company fails, the incorporator(s) shall be jointly and severally liable for any act committed in connection with the incorporation of the Stock Company, and shall bear the costs expended in connection with the incorporation of the Stock Company.

**Section 9 Incorporation by Solicitation**

**Subsection 1 Solicitation of Persons who Subscribe for Shares Issued at Incorporation**

**Article 57 (Solicitation of Persons who Subscribe for Shares Issued at Incorporation)**

- (1) Pursuant to the provisions of this Subsection, the incorporators may provide to the effect that subscribers be solicited for the Shares Issued at Incorporation.
- (2) Incorporators intending to provide to the effect that the solicitation under the preceding paragraph be carried out shall obtain the consent of all incorporators.

**Article 58 (Provision for Matters regarding Shares Solicited at Incorporation)**

- (1) Whenever the incorporator intends to carry out the solicitation under paragraph (1) of the preceding article, he/she shall decide the following matters with respect to the Shares Solicited at Incorporation (meaning the Shares Issued at Incorporation that are allotted to the persons who accept the solicitation under such paragraph and apply to subscribe for the Shares Issued at Incorporation. The

same shall apply hereinafter in this Section.):

- (i) The number of the Shares Solicited at Incorporation (in cases where the Stock Company to be incorporated is a Company with Class Shares, referring to the class(es) and the number of each class of Shares Solicited at Incorporation. The same shall apply hereinafter in this Subsection.);
  - (ii) The Amount to be Paid In for Shares Issued at Incorporation (meaning the amount of money which is to be paid in in exchange for one Share Solicited at Incorporation. The same shall apply hereinafter in this Subsection.);
  - (iii) The date by or period during which payment is to be made of the money to be paid in in exchange for the Shares Solicited at Incorporation;
  - (iv) If there is any arrangement that subscriptions for Shares Solicited at Incorporation may be rescinded in cases where the registration of incorporation is not effected by a certain date, a statement of such arrangement and such date.
- (2) If the incorporator intends to determine the matters listed in any item of the preceding paragraph, he/she shall obtain the consent of all incorporators.
- (3) The conditions for the solicitation under paragraph (1) of the preceding article, such as the Amount to be Paid In for Shares Solicited at Incorporation, shall be decided uniformly for each such solicitation (or, in cases where the Stock Company to be incorporated is a Company with Class Shares, for each such class and solicitation).

**Article 59** (Subscription for Shares Solicited at Incorporation)

- (1) The incorporator shall notify the person who, in response to the solicitation under paragraph (1) of Article 57, intends to apply to subscribe for the Shares Solicited at Incorporation of the following matters:
- (i) The date of the certification of the articles of incorporation and the name of the notary public who effected such certification;
  - (ii) The matters listed in each item of Article 27, each item of Article 28, each item of Article 32(1) and each item of paragraph (1) of the preceding article;
  - (iii) The value of the property contributed by the incorporator(s);
  - (iv) The place designated for payment pursuant to the provisions of Article 63(1);
  - (v) In addition to the foregoing, any other matters provided by applicable Ordinance of the Ministry of Justice.
- (2) In cases where not all of the incorporators fulfill the Performance of Contributions, the incorporators may not give the notice pursuant to the provisions of the preceding paragraph until after the date provided for in Article 36 (1).
- (3) A person who intends to apply to subscribe for Shares Solicited at Incorporation in response to a solicitation under Article 57(1) shall give the incorporators a document that states the following matters:

- (i) The name and address of the person who intends to apply; and
  - (ii) The number of Shares Solicited at Incorporation that he/she intends to subscribe for.
- (4) A person who submits the application referred to in the preceding paragraph may, in lieu of the giving of the document under such paragraph, provide the matters to be stated in the document under such paragraph by an Electromagnetic Method, with the approval of the incorporators, subject to the provisions of the applicable Cabinet Order. In such cases, the person who submitted the application shall be deemed to have given a document under such paragraph.
- (5) If there are changes in the matters listed in any item of paragraph (1), the incorporators shall immediately notify persons who submitted applications under paragraph (3) (hereinafter in this Subsection referred to as "Applicants") thereof and of the matters so changed.
- (6) It would be sufficient for a notice or demand to an Applicant by the incorporators to be sent to the address under item (i) of paragraph (3) (or, in cases where such Applicant notifies the incorporators of a different place or contact address for the receipt of notices or demand, to such place or contact address).
- (7) The notice or demand referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.

**Article 60** (Allotment of Shares Solicited at Incorporation)

- (1) The incorporators shall specify from among the Applicants the persons to whom the Shares Solicited at Incorporation are allotted, and specify the number of the Shares Solicited at Incorporation that are allotted to such persons. In such cases, the incorporators may reduce the number of the Shares Solicited at Incorporation to be allotted to such Applicants to less than the number referred to in item (ii), paragraph (3) of the preceding article.
- (2) The incorporator shall notify the Applicant, no later than the day immediately preceding the date referred to in item (iii) of Article 58(1) (or, in case a period is specified under that item, no later than the day immediately preceding the first day of that period), of the number of the Shares Solicited at Incorporation that are allotted to such Applicant.

**Article 61** (Special Provisions on the Subscription for and Allotment of Shares Solicited at Incorporation)

The provisions of the preceding two Articles shall not apply in cases where persons who intend to subscribe for Shares Solicited at Incorporation execute contracts for subscriptions for the total number of those shares.

**Article 62** (Subscriptions for Shares Solicited at Incorporation)

The persons listed in the following items shall be the subscribers for the number of the Shares Solicited at Incorporation provided for in each such item with respect to the Shares Solicited at Incorporation:

- (i) Applicants: The number of the Shares Solicited at Incorporation as allotted by the incorporators; or
- (ii) Persons who subscribed for the total number of the Shares Solicited at Incorporation under the contracts referred to in the preceding article: The number of the Shares Solicited at Incorporation for which such persons have subscribed.

**Article 63** (Payment of Amount to be Paid In for Shares Solicited at Incorporation)

- (1) The subscribers for the Shares Solicited at Incorporation shall pay fully the Amount to be Paid In for Shares Solicited at Incorporation for which the subscribers subscribed, at the Bank Etc. designated for payment by the incorporator(s), no later than the date set forth in item (iii) of Article 58(1) or within the period under that item.
- (2) Assignment of the right to become a shareholder of the Shares Issued at Incorporation by effecting payment pursuant to the preceding paragraph may not be asserted against the Stock Company after formation.
- (3) If a subscriber for the Shares Solicited at Incorporation fails to make payment pursuant to the provisions of paragraph (1), the subscriber shall forfeit the right to become the shareholder of the Shares Solicited at Incorporation by making such payment.

**Article 64** (Certificate of Deposit of Paid Money)

- (1) In cases where solicitation under Article 57(1) has been carried out, the incorporators may request the Bank, Etc. that handled the payment pursuant to the provisions of Article 34(1) and paragraph (1) of the preceding article to issue a certificate of deposit of a money amount paid in pursuant to such provisions.
- (2) The Bank, Etc. that issued the certificate referred to in the preceding paragraph may not assert against the Stock Company after formation any misstatement in such certificate or the existence of restrictions regarding the return of money paid in pursuant to the provisions of Article 34(1) or paragraph (1) of the preceding article.

**Subsection 2 Organizational Meeting**

**Article 65** (Calling of Organizational Meetings)

- (1) In cases where solicitation under Article 57(1) is to be carried out, the incorporator shall call a meeting of the Shareholders at Incorporation (meaning shareholders who shall be the shareholders of the Stock Company pursuant to the provisions of Article 50(1) or Article 102(2). The same shall apply hereinafter.) without delay on and after either the date under item (iii), of Article 58(1) or the last day of the period under such item, whichever comes later. (Such meeting is referred to as "Organizational Meeting" hereinafter.)
- (2) In the cases referred to in the preceding paragraph, the incorporators may call an Organizational Meeting at any time when the incorporators find it necessary

**Article 66** (Authority of Organizational Meetings)

An Organizational Meeting may resolve only the matters provided for in this Section, the discontinuation of the incorporation of a Stock Company, the conclusion of an Organizational Meeting and other matters regarding the incorporation of a Stock Company.

**Article 67** (Determinations to Call Organizational Meetings)

- (1) The incorporators shall decide the following matters in cases where the incorporators call an Organizational Meeting:
  - (i) The date, time and place of the Organizational Meeting;
  - (ii) The purpose(s) of the Organizational Meeting;
  - (iii) That Shareholders at Incorporation who do not attend the Organizational Meeting may exercise their votes in writing, if so arranged;
  - (iv) That Shareholders at Incorporation who do not attend the Organizational Meeting may exercise their votes by an Electromagnetic Method, if so arranged;
  - (v) In addition to the matters listed in the preceding items, any matters prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) In cases where the number of the Shareholders at Incorporation (excluding Shareholders at Incorporation who may not exercise votes on all matters which may be resolved at Organizational Meetings. The same shall apply in the next Article through Article 71.) is one thousand or more, the incorporators shall decide the matters listed in item (iii) of the preceding paragraph.

**Article 68** (Notices of Calling of Organizational Meetings)

- (1) In order to call an Organizational Meeting, incorporators shall dispatch notice thereof to the Shareholders at Incorporation no later than two weeks (or one week if the Stock Company to be incorporated is not a Public Company, except in cases where the matters listed in item (iii) or item (iv) of paragraph (1) of the

preceding article are decided, (or if a shorter period of time is provided for in the articles of incorporation in cases where the Stock Company to be incorporated is a Stock Company other than a Company with Board of Directors, such shorter period of time)) prior to the day of the Organizational Meeting.

- (2) The notice referred to in the preceding paragraph shall be in writing in the following cases:
  - (i) Where the matters listed in item (iii) or item (iv) of paragraph (1) of the preceding article are decided; or
  - (ii) Where the Stock Company to be incorporated is a Company with Board of Directors.
- (3) In lieu of the dispatch of the written notice referred to in the preceding paragraph, the incorporators may dispatch the notice by an Electromagnetic Method, with the consent of the Shareholders at Incorporation, in accordance with the provisions of the applicable Cabinet Order. In such cases, such incorporators shall be deemed to have dispatched the written notice under such paragraph.
- (4) The notice under the preceding two paragraphs shall specify or record the matters listed in each item of paragraph (1) of the preceding article.
- (5) It would be sufficient for a notice or demand to a Shareholder at Incorporation by the incorporators to be sent to the address under item (v) of Article 27, or item (i) of Article 59(3) (or, in cases where such Shareholder at Incorporation notifies the incorporator of a different place or contact address for the receipt of notices or letters of demand, to such place or contact address).
- (6) The notice or demand referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.
- (7) The provisions of the preceding two paragraphs shall apply mutatis mutandis to cases where a writing is given to the Shareholders at Incorporation when giving the notice referred to in paragraph (1), or to cases where the matters to be stated in such writing are provided by an Electromagnetic Method. In such case, the term "to have arrived" in the preceding paragraph shall be deemed to be replaced with "to have been given in such writing or to have been provided by an Electromagnetic Method with such matters."

**Article 69** (Omission of Calling Procedures)

Notwithstanding the provisions of the preceding article, Organizational Meetings may be held without the procedures of calling if the consent of all Shareholders at Incorporation is obtained; provided, however, that this shall not apply in cases where the matters listed in item (iii) or item (iv) of Article 67(1) are decided.

**Article 70** (Giving of Organizational Meeting Reference Documents and Voting Forms)

- (1) In cases where the matters listed in item (iii) of Article 67(1) are decided, the incorporators shall, when dispatching a notice under Article 68(1), give the Shareholders at Incorporation documents stating matters of reference for the exercise of votes (hereinafter in this Subsection referred to as "Organizational Meeting Reference Documents") and documents to be used by the Shareholders at Incorporation to exercise votes (hereinafter in this Subsection referred to as "Voting Forms"), as prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) If the incorporators dispatch notices by an Electromagnetic Method referred to in Article 68(3) to Shareholders at Incorporation who have given consent under the same paragraph, the incorporators may provide, in lieu of the giving of Organizational Meeting Reference Documents and Voting Forms pursuant to the provisions of the preceding paragraph, the matters to be specified in such documents by an Electromagnetic Method; provided, however, that, if requested by any Shareholder at Incorporation, the incorporators shall give these documents to such Shareholder at Incorporation.

**Article 71**

- (1) In cases where the matters listed in item (iv) of Article 67(1) are decided, the incorporators shall, when dispatching notice under Article 68(1), give the Shareholders at Incorporation the Organizational Meeting Reference Documents as prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) If the incorporators dispatch notices by an Electromagnetic Method referred to in Article 68(3) to Shareholders at Incorporation who have given consent under the same paragraph, the incorporators may provide, in lieu of the giving of Organizational Meeting Reference Documents pursuant to the provisions of the preceding paragraph, the matters to be specified in such documents by an Electromagnetic Method; provided, however, that, if requested by any Shareholder at Incorporation, the incorporators shall give the Organizational Meeting Reference Documents to such Shareholders at Incorporation.
- (3) In the cases provided for in paragraph (1), when sending notice to Shareholders at Incorporation who have given consent under Article 68(3) by an Electromagnetic Method referred to in that paragraph, the incorporators shall provide to the Shareholders at Incorporation the matters to be specified in the Voting Forms by such Electromagnetic Method, as prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) In the cases provided for in paragraph (1), if any Shareholder at Incorporation

who has not given consent under Article 68(3) requests, no later than one week prior to the day of the Organizational Meeting, for the provision of the matters to be specified in the Voting Form by an Electromagnetic Method, the incorporators shall provide such matters to such Shareholder at Incorporation by an Electromagnetic Method, as prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 72 (Number of Votes)**

- (1) Shareholders at Incorporation (excluding Shareholders at Incorporation prescribed by the applicable Ordinance of the Ministry of Justice as entities in a relationship that may allow the Stock Company after the formation to have substantial control of such entity through the holding of one quarter or more of the votes of all shareholders of such entity or other reasons) shall be entitled to one vote for each one Share Issued at Incorporation for which they subscribed at Organizational Meetings; provided, however, that, in cases where a Share Unit is provided for in the articles of incorporation, he/she shall be entitled to one vote for each one unit of the Shares Issued at Incorporation.
- (2) In cases where the Stock Company to be incorporated is a Company with Class Shares, if it issues Shares Issued at Incorporation of a class that has restrictions on matters for which votes may be exercised at the shareholders' meeting, the Shareholders at Incorporation may exercise, at the Organizational Meeting, votes with respect to such Shares Issued at Incorporation only in relation to matters that are equivalent to the matters for which they may exercise the votes at the shareholders' meeting.
- (3) Notwithstanding the provisions of the preceding paragraph, Shareholders at Incorporation may exercise votes with respect to the Shares Issued at Incorporation for which they subscribed in relation to the discontinuation of the incorporation of the Stock Company.

**Article 73 (Resolutions of Organizational Meetings)**

- (1) Resolutions of an Organizational Meeting shall be made by a majority of the votes of the Shareholders at Incorporation entitled to exercise their votes at such Organizational Meeting, being a majority of two thirds or more of the votes of such Shareholders at Incorporation who are present at the meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, in cases where the articles of incorporation are amended creating a provision to the effect that, as a feature of all shares issued by a Stock Company, the approval of such Stock Company is required for the acquisition of such shares by transfer (excluding cases where the Stock Company to be incorporated is a Company with Class Shares), the

- resolution of the Organizational Meeting with respect to such amendment in the articles of incorporation shall be made by a majority of the Shareholders at Incorporation entitled to exercise their votes at such Organizational Meeting, being a majority of two thirds or more of the votes of such Shareholders at Incorporation.
- (3) In cases where it is intended to create, as a feature of all shares issued by a Stock Company, any provision in articles of incorporation with respect to the matters listed in item (iii) Article 107(1) by amending the articles of incorporation, or to effect any amendment (excluding that which repeals provisions of the articles of incorporation with respect to such matters) in the articles of incorporation with respect to such matters (excluding cases where the Stock Company to be incorporated is a Company with Class Shares), the consent of all Shareholders at Incorporation shall be obtained.
- (4) An Organizational Meeting may not resolve matters other than the matters listed in item (ii) of Article 67(1); provided, however, that this shall not apply to amendment in the articles of incorporation or discontinuation of the incorporation of a Stock Company.

**Article 74 (Proxy Voting)**

- (1) Shareholders at Incorporation may exercise their votes by proxy. In such cases, such Shareholders at Incorporation or proxies shall submit to the incorporators a document evidencing the authority of proxy.
- (2) The grant of the authority of proxy under the preceding paragraph shall be made for each Organizational Meeting.
- (3) The Shareholders at Incorporation or proxies referred to in paragraph (1) may, in lieu of the submission of a document evidencing the authority of proxy, provide the matters to be stated in such document by an Electromagnetic Method with the approval of the incorporators in accordance with the provisions of the applicable Cabinet Order. In such cases, such Shareholders at Incorporation or proxies shall be deemed to have submitted such document.
- (4) In cases where the Shareholders at Incorporation are persons who gave consent under Article 68(3), the incorporators may not refuse to grant the approval under the preceding paragraph without justifiable reasons.
- (5) The incorporators may restrict the number of proxies who may attend the Organizational Meeting.
- (6) The incorporators (or the Stock Company after the formation of such Stock Company. The same shall apply hereinafter in paragraph (3) of the following Article and Article 76(4).) shall keep the documents evidencing the authority of proxy and the Electromagnetic Records which record the matters provided by an Electromagnetic Method under paragraph (3) at a place designated by the

incorporators (or at the head office of the Stock Company after the formation. of such Stock Company. The same shall apply hereinafter in paragraph (3) of the following Article and Article 76(4)) for the period of three months from the day of the Organizational Meeting.

(7) The Shareholders at Incorporation (or the shareholders of the Stock Company after the formation of such Stock Company. The same shall apply hereinafter in paragraph (4) of the following Article and Article 76(5).) may submit the following request at any time during the hours designated by the incorporators (or during the business hours of the Stock Company after the formation of such Stock Company. The same shall apply hereinafter in paragraph (4) of the following Article and Article 76(5).):

- (i) Requests for the inspection or copying of the documents evidencing the authority of proxy; and
- (ii) Requests for the inspection or copying of anything that displays the data recorded in the Electromagnetic Records under the preceding paragraph in a manner prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 75 (Voting in Writing)**

- (1) If the votes are exercised in writing, it shall be exercised by entering the Voting Form with the necessary matters and submitting it to the incorporators no later than the time prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) The number of the votes exercised in writing pursuant to the provisions of the preceding paragraph shall be included in the number of the votes of the Shareholders at Incorporation who are present at the meeting.
- (3) The incorporators shall keep the Voting Forms submitted pursuant to the provisions of paragraph (1) at a place designated by the incorporators for the period of three months from the day of the Organizational Meeting.
- (4) The Shareholders at Incorporation may make requests for the inspection or copying of the Voting Forms submitted pursuant to the provisions of paragraph (1) at any time during the hours designated by the incorporators.

**Article 76 (Voting by Electromagnetic Method)**

- (1) If the vote are exercised by an Electromagnetic Method, it shall be exercised by providing the matters to be entered on the Voting Form to the incorporators by an Electromagnetic Method, with the approval of such incorporators, no later than the time prescribed by the applicable Ordinance of the Ministry of Justice in accordance with the provisions of the applicable Cabinet Order.
- (2) In cases where the Shareholders at Incorporation are persons who have given consent under Article 68(3), the incorporators may not refuse to give the approval

under the preceding paragraph without justifiable reasons.

- (3) The number of the votes exercised by an Electromagnetic Method pursuant to the provisions of paragraph (1) shall be included in the number of the votes of the Shareholders at Incorporation who are present at the meeting.
- (4) The incorporators shall keep the Electromagnetic Records which record the matters provided pursuant to the provisions of paragraph (1) at a place designated by the incorporators for the period of three months from the day of the Organizational Meeting.
- (5) The Shareholders at Incorporation may, at any time during the hours designated by the incorporators, make a request for the inspection or copying of anything that displays the data recorded in the Electromagnetic Record under the preceding paragraph in a manner prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 77** (Diverse Exercise of Votes)

- (1) Shareholders at Incorporation may diversely exercise the votes they hold. In such cases, the shareholders shall notify the incorporators to such effect and of the reasons for the same no later than three days prior to the day of the Organizational Meeting.
- (2) If the Shareholders at Incorporation referred to in the preceding paragraph are not persons who subscribed for the Shares Issued at Incorporation on behalf of others, the incorporators may refuse the diverse exercise of the votes held by such Shareholders at Incorporation pursuant to the provisions of the preceding paragraph.

**Article 78** (Accountability of Incorporators)

In cases where incorporators are requested by the Shareholders at Incorporation to provide explanations on certain matters at an Organizational Meeting, the incorporators shall provide necessary explanations with respect to such matters; provided, however, that this shall not apply in cases where such matters are not relevant to the matters that are the purpose of the Organizational Meeting, or in cases where such explanations are to the serious detriment of the common interest of the Shareholders at Incorporation, or in other cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where there are justifiable grounds.

**Article 79** (Authority of Chairperson)

- (1) The chairperson of an Organizational Meeting shall maintain the order of such Organizational Meeting and organize the business of the meeting.
- (2) The chairperson of an Organizational Meeting may require any one who does not

comply with his/her orders or who otherwise disturbs the order of such Organizational Meeting to leave the room.

**Article 80** (Resolution for Postponement or Adjournment)

In cases where there is a resolution for the postponement or adjournment of an Organizational Meeting, the provisions of Article 67 and Article 68 shall not apply.

**Article 81** (Minutes)

- (1) Minutes shall be prepared with respect to the business of Organizational Meetings pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) The incorporators (or the Stock Company after the formation of such Stock Company. The same shall apply hereinafter in paragraph (2) of the following Article.) shall keep the minutes referred to in the preceding paragraph at a place designated by the incorporators (or at the head office of the Stock Company if after the incorporation of such Stock Company. The same shall apply hereinafter in paragraph (2) of the following Article.) for the period of ten years from the day of the Organizational Meeting.
- (3) The Shareholders at Incorporation (or the shareholders and creditors of the Stock Company after the formation of such Stock Company. The same shall apply hereinafter in paragraph (3) of the following Article.) may submit the following requests at any time during the hours designated by the incorporators (or during the business hours of such Stock Company if after the incorporation of such Stock Company. The same shall apply hereinafter in such paragraph.):
  - (i) If the minutes under paragraph (1) are prepared in writing, requests for inspection or copying of such documents; and
  - (ii) If the minutes under paragraph (1) are prepared by means of Electromagnetic Records, requests for inspection or copying of anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) If, after the formation of a Stock Company, it is necessary for the purpose of exercising the rights of a Member of the Parent Company of such Stock Company, he/she may, with the permission of the court, make the requests listed in each item of the preceding paragraph with respect to the minutes referred to in paragraph (1).

**Article 82** (Omission of Resolutions of Organizational Meetings)

- (1) In cases where incorporators submit a proposal with respect to any matter that is the purpose of an Organizational Meeting, if all Shareholders at Incorporation

(limited to those who may exercise their votes with respect to such matter) manifest their intention to agree to such proposal in writing or by means of Electromagnetic Records, it shall be deemed that a resolution to approve such proposal at an Organizational Meeting has been made.

- (2) The incorporators shall keep the documents or Electromagnetic Records under the provisions of the preceding paragraph at a place designated by the incorporators for the period of ten years from the day when the resolution of the Organizational Meeting is deemed to have been made pursuant to the provisions of the preceding paragraph.
- (3) The Shareholders at Incorporation may submit the following requests at any time during the hours designated by the incorporators:
  - (i) Requests for inspection or copying of the documents under the preceding paragraph; and
  - (ii) Requests for inspection or copying of anything that displays the data recorded in the Electromagnetic Records under the preceding paragraph in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) If, after the formation of a Stock Company, it is necessary for the purpose of exercising the rights of a Member of the Parent Company of such Stock Company, he/she may, with the permission of the court, make the requests listed in each item of the preceding paragraph with respect to the documents or Electromagnetic Records under paragraph (2).

**Article 83** (Omission of Reports to Organizational Meetings)

In cases where the incorporators notify all Shareholders at Incorporation of any matter that is to be reported to an Organizational Meeting, if all Shareholders at Incorporation manifest in writing or by means of Electromagnetic Records their intention to agree that it is not necessary to report such matter to the Organizational Meeting, it shall be deemed that such matter has been reported to the Organizational Meeting.

**Article 84** (Cases of Provision Requiring Resolution of Class Meeting)

In cases where the Stock Company to be incorporated is a Company with Class Shares, if there is a provision, as a feature of a certain class of shares to be issued as at the incorporation, to the effect that, with respect to the matter that is subject to the resolution of a shareholders' meeting, in addition to such resolution, the resolution of a Class Meeting constituted by the Class Shareholders of such class of shares is required, such matter shall not become effective unless the resolution is made at a Class Organizational Meeting (meaning a meeting of Class Shareholders at Incorporation (as defined below) of a certain class of the Shares Issued at

Incorporation. The same shall apply hereinafter.) constituted by the Class Shareholders at Incorporation (meaning the Shareholders at Incorporation of a certain class of Shares Issued at Incorporation. The same shall apply hereinafter in this Section.) of the Shares Issued at Incorporation of such class in addition to the resolution of the Organizational Meeting, consistently with the provisions of articles of incorporation; provided, however, that this shall not apply to the case where there exists no Class Shareholder at Incorporation who may exercise the votes at such Class Organizational Meeting.

**Article 85** (Calling and Resolutions of Class Organizational Meetings)

- (1) In cases where a resolution of a Class Organizational Meeting is to be made pursuant to the provisions of the preceding article, Article 90(1) (including the case where it is applied mutatis mutandis under paragraph (2) of the same Article), Article 92(1) (including the case where it is applied mutatis mutandis under paragraph (3) of the same Article), Article 100(1) or Article 101(1), the incorporators shall call a Class Organizational Meeting.
- (2) Resolutions of a Class Organizational Meeting shall be made by a majority of the votes of the Class Shareholders at Incorporation who are entitled to exercise their votes at such Class Organizational Meeting, being a majority of two thirds or more of the votes of such Class Shareholders at Incorporation who are present at the meeting.
- (3) Notwithstanding the provisions of the preceding paragraph, resolutions under Article 100(1) shall be made by a majority of the Class Shareholders at Incorporation who are entitled to exercise their votes at such Class Organizational Meeting, being a majority of two thirds or more of the votes of such Class Shareholders at Incorporation.

**Article 86** (Mutatis Mutandis Application of Provisions regarding Organizational Meetings)

The provisions of Article 67 through Article 71, Article 72(1), and Article 74 through Article 82 shall apply mutatis mutandis to Class Organizational Meetings. In such cases, the term "Shareholders at Incorporation" in item (iii) and item (iv) of paragraph (1) and paragraph (2) of Article 67, paragraph (1) and paragraph (3) of Article 68, Article 69 through Article 71, paragraph (1) of Article 72, paragraph (1), paragraph (3) and paragraph (4) of Article 74, paragraph (2) of Article 75, paragraph (2) and paragraph (3) of Article 76, Article 77, the main clause of Article 78 and paragraph (1) of Article 82 shall be deemed to be replaced with as "Class Shareholders at Incorporation (meaning Shareholders at Incorporation for a certain class of Shares Issued at Incorporation)."

### **Subsection 3 Reporting of Matters regarding Incorporation**

#### **Article 87**

- (1) The incorporators shall report matters regarding the incorporation of a Stock Company to an Organizational Meeting.
- (2) In the cases listed in the following items, the incorporators shall submit or provide to an Organizational Meeting the documents or Electromagnetic Records that state or record the matters provided for in such items:
  - (i) In cases where articles of incorporation provide for the matters listed in each item of Article 28 (excluding the matters provided for in each item of Article 33 (10) in cases listed in such items): The content of the report referred to of Article 33(4) of the inspector under paragraph (2) thereof; and
  - (ii) In the case listed in item (iii) of Article 33(10): The content of the verification provided in such item.

### **Subsection 4 Election and Dismissal of Director at Incorporation**

#### **Article 88** (Election of Directors at Incorporation)

In cases where the solicitation under Article 57(1) is carried out, the election of the Directors at Incorporation, Accounting Advisors at Incorporation, Auditors at Incorporation and Accounting Auditors at Incorporation shall be made by the resolution of an Organizational Meeting.

#### **Article 89** (Election of Directors at Incorporation by Cumulative Vote)

- (1) In cases where the purpose of an Organizational Meeting is the election of two or more Directors at Incorporation, the Shareholders at Incorporation (limited to the Shareholders at Incorporation entitled to exercise their votes with respect to the election of the Directors at Incorporation. The same shall apply hereinafter in this Article) may request the incorporators that the Directors at Incorporation be elected pursuant to the provisions of paragraph (3) through paragraph (5), except as otherwise provided in the articles of incorporation.
- (2) The request under the provisions of the preceding paragraph shall be made no later than five days prior to the day of the Organizational Meeting referred to in the same paragraph.
- (3) Notwithstanding the provisions of Article 72(1), in cases where a request is made pursuant to the provisions of paragraph (1), a Shareholder at Incorporation shall be entitled to such number of votes as is equal to the number of the Directors at Incorporation to be elected in such Organizational Meeting, for each one Share

Issued at Incorporation for which he/she subscribed (or, in cases where the Share Unit is provided for in the articles of incorporation, for each one unit of the Shares Issued at Incorporation for which he/she subscribed) with respect to the resolution of the election of the Directors at Incorporation. In such cases, the Shareholder at Incorporation may exercise his/her votes by casting votes for only one candidate or for two or more candidates.

- (4) In the cases set forth in the preceding paragraph, the Directors at Incorporation shall be elected in the order of the votes obtained by respective candidates.
- (5) In addition to the matters provided for in the preceding two paragraphs, necessary matters regarding the election of Directors at Incorporation in cases where a request has been made pursuant to the provisions of paragraph (1) shall be prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 90** (Election of Directors at Incorporation by Resolutions of Class Organizational Meetings)

- (1) Notwithstanding the provisions of Article 88, in cases where, at incorporation of the Stock Company, it issues shares of a class for which the matters listed in item (ix) of Article 108(1) (limited to those relating to directors) are provided, the Directors at Incorporation shall be elected by a resolution of a Class Organizational Meeting constituted by the Class Shareholders at Incorporation of such class of Shares Issued at Incorporation, consistently with the provisions of articles of incorporation with respect to the matters provided for in item (ix), paragraph (2) of such Article.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to the cases where the shares of a class for which matters listed in item (ix), Article 108 (1) (limited to those relating to auditors) are provided are issued at incorporation of the Stock Company.

**Article 91** (Dismissal of Directors at Incorporation)

Directors at Incorporation, Accounting Advisors at Incorporation, Auditors at Incorporation or Accounting Auditors at Incorporation who are elected pursuant to the provisions of Article 88 may be dismissed by resolution of an Organizational Meeting at any time prior to the formation of the Stock Company.

**Article 92**

- (1) Directors at Incorporation who are elected pursuant to the provisions of Article 90(1) may be dismissed by a resolution of a Class Meeting constituted by the Class Shareholders at Incorporation of such class of Shares Issued at Incorporation relating to such election at any time prior to the formation of the Stock Company.

- (2) Notwithstanding the provisions of the preceding paragraph, in cases where there is a provision in articles of incorporation to the effect that a director who is elected pursuant to the provisions of Article 41(1), or at a Class Organizational Meeting or at a Class Meeting may be dismissed by a resolution of the shareholders' meeting, a Director at Incorporation who is elected pursuant to the provisions of Article 90(1) may be dismissed by a resolution of an Organizational Meeting at any time prior to the formation of the Stock Company.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to the dismissal of an Auditor at Incorporation who is elected pursuant to the provisions of Article 90(1) applied mutatis mutandis under paragraph (2) of such Article.

### **Subsection 5 Investigation by Directors at Incorporation**

#### **Article 93** (Investigation by Directors at Incorporation)

- (1) The Directors at Incorporation (referring to the Directors at Incorporation and Auditors at Incorporation in cases where the Stock Company to be incorporated is a Company with Auditors. The same shall apply hereinafter in this Article.) shall investigate the following matters without delay after their election:
- (i) That, with respect to the Properties Contributed in Kind in the cases listed in item (i) or item (ii) of Article 33(10) (if listed in such item, limited to the securities under such item), the value specified or recorded in the articles of incorporation is reasonable;
  - (ii) That the verification provided for in item (iii) of Article 33(10) is appropriate;
  - (iii) That the Performance of Contributions by the incorporators and the payments pursuant to the provisions of Article 63(1) have been fulfilled; and
  - (iv) That, in addition to the matters listed in the preceding three items, the procedures for the incorporation of the Stock Company do not violate applicable laws and regulations or the articles of incorporation.
- (2) The Directors at Incorporation shall report the outcome of the investigations pursuant to the provisions of the preceding paragraph to an Organizational Meeting.
- (3) In cases where incorporators are asked by the Shareholders at Incorporation to provide explanations on the matters regarding the investigation pursuant to the provisions of the paragraph (1) at an Organizational Meeting, the incorporators shall provide necessary explanations with respect to such matters.

#### **Article 94** (Special Provisions in Case Directors at Incorporation are Incorporators)

- (1) In cases where some or all of the Directors at Incorporation (or the Directors at

Incorporation and Auditors at Incorporation in cases where the Stock Company to be incorporated is a Company with Auditors) are incorporators, an Organizational Meeting may make a resolution to elect a person to investigate the matters listed in each item of paragraph (1) of the preceding article.

(2) A person who is elected pursuant to the provisions of the preceding paragraph shall conduct the necessary investigation and report the outcome of such investigation to an Organizational Meeting.

### **Subsection 6 Amendment in Articles of Incorporation**

#### **Article 95 (No Amendment in Articles of Incorporation by Incorporators)**

In cases where the solicitation under Article 57(1) is carried out, the incorporators may not effect any amendment in the articles of incorporation on and after either the date referred to in item (iii) of Article 58(1) or the first day of the period referred to in the same item, whichever comes earlier, the provisions of Article 33(9) and Article 37(1) and (2) notwithstanding.

#### **Article 96 (Amendment in Articles of Incorporation at Organizational Meetings)**

Notwithstanding the provisions of Article 30(2), articles of incorporation may be amended by resolution of an Organizational Meeting.

#### **Article 97 (Rescission of Subscription for Shares Issued at Incorporation)**

In cases where it is resolved at the Organizational Meeting to effect an amendment in the articles of incorporation to change the matters listed in each item of Article 28, the Shareholders at Incorporation who dissented from such amendment at such Organizational Meeting may rescind the manifestation of their intention relating to the subscription for such Shares Issued at Incorporation only within two weeks after such resolution.

#### **Article 98 (Provision for Total Number of Authorized Shares by Resolutions of Organizational Meetings)**

If, in cases where the solicitation under Article 57(1) is carried out, the Total Number of Authorized Shares is not provided for in the articles of incorporation, the provision on the Total Number of Authorized Shares shall be created by amending the articles of incorporation prior to the formation of the Stock Company by resolution of an Organizational Meeting.

#### **Article 99 (Special Provisions on Procedures for Amendment in Articles of Incorporation)**

In cases where the Stock Company to be incorporated is a Company with Classes Shares, if the cases listed in any of the following items apply, the consent of all Class Shareholders at Incorporation of such classes of the Shares Issued at Incorporation in each of such items shall be obtained:

- (i) If it is intended to create, as a feature of a certain class of shares, any provision in the articles of incorporation with respect to the matters listed in item (vi) of Article 108(1), or to effect any amendment in the articles of incorporation with respect to such matters (excluding any amendment which repeals the provisions of the articles of incorporation with respect to such matters);
- (ii) If it is intended to create any provision in the articles of incorporation pursuant to the provisions of Article 322(2) with respect to a certain class of shares.

#### **Article 100**

In cases where the Stock Company to be incorporated is a Company with Class Shares, if it is intended to create, as a feature of a certain class of shares, any provision in the articles of incorporation with respect to the matters listed in item (iv) or item (vii) of Article 108(1) by amending the articles of incorporation, such amendment in the articles of incorporation shall not become effective unless a resolution is made at a Class Organizational Meeting constituted by the following Class Shareholders at Incorporation (in cases where there are two or more classes of Shares Issued at Incorporation relating to such Class Shareholders at Incorporation, referring to the respective Class Organizational Meetings constituted by Class Shareholders at Incorporation categorized by the class of such two or more classes of Shares Issued at Incorporation. The same shall apply hereinafter in this Article.); provided, however, that this shall not apply to cases where there is no Class Shareholder at Incorporation who may exercise his/her votes at such Class Organizational Meeting:

- (i) The Class Shareholders at Incorporation of such class of Shares Issued at Incorporation;
  - (ii) The Class Shareholders at Incorporation of Shares with Put Option for which there is a provision that the "other share" referred to in item (v) (b) of Article 108(2) shall be such class of share; or
  - (iii) The Class Shareholders at Incorporation of Shares Subject to Call Option for which there is a provision that the "other shares" referred to in item (vi) (b) of Article 108(2) shall be such class of shares;
- (2) The Class Shareholders at Incorporation who, at the Class Organizational Meeting referred to in the preceding paragraph, dissented from such amendment in the articles of incorporation may rescind the manifestation of their intention

relating to the subscription for such Shares Issued at Incorporation only within two weeks after the resolution made by such Class Organizational Meeting.

#### **Article 101**

(1) In cases where the Stock Company to be incorporated is a Company with Class Shares, if effecting any amendment in articles of incorporation with respect to any of the following matters is likely to cause detriment to the Class Shareholders at Incorporation of any class of Shares Issued at Incorporation, such amendment in the articles of incorporation shall not become effective unless a resolution is made at a Class Organizational Meeting constituted by the Class Shareholders at Incorporation of the Shares Issued at Incorporation of such class (in cases where there are two or more classes of Shares Issued at Incorporation relating to such Class Shareholders at Incorporation, referring to the respective Class Organizational Meetings constituted by the Class Shareholders at Incorporation categorized by the class of such two or more classes of Shares Issued at Incorporation); provided, however, that this shall not apply to cases where there is no Class Shareholder at Incorporation who may exercise his/her votes at such Class Organizational Meeting:

- (i) Creation of a new class of shares;
- (ii) Changes in the features of shares;
- (iii) Increase of the Total Number of Authorized Shares, or the Total Number of Authorized Shares in a Class (meaning the total number of shares in one class that the Stock Company is authorized to issue. The same shall apply hereinafter.).

(2) In cases where any amendment in the articles of incorporation with respect to the Share Unit is to be effected and there is a provision in the articles of incorporation pursuant to the provisions of Article 322(2) with respect to such amendment in the articles of incorporation, the provisions of the preceding paragraph shall not apply to the Class Organizational Meeting constituted by the Class Shareholders at Incorporation of such class of the Shares Issued at Incorporation.

#### **Subsection 7 Special Provisions on Incorporation Procedures**

#### **Article 102 (Special Provisions on Incorporation Procedures)**

(1) A subscriber for the Shares Solicited at Incorporation may submit the requests listed in each item of Article 31(2) at any time during the hours designated by the incorporators; provided, however, that, the fees designated by the incorporators are required to be paid in order to submit the requests listed in item (ii) or item (iv)

of such paragraph.

- (2) As at formation of a Stock Company, the subscriber for the Shares Solicited at Incorporation shall become a shareholder of the Shares Issued at Incorporation for which he/she have made payment pursuant to the provisions of Article 63(1).
- (3) The proviso to Article 93 and the provisions of Article 94(1) of the Civil Code shall apply to neither offer of subscription for nor allotment of the Shares Solicited at Incorporation, nor to manifestation of intention relating to contracts under Article 61.
- (4) The subscriber for the Shares Solicited at Incorporation may neither assert the invalidity of the his/her subscription for Shares Issued at Incorporation on the ground of mistake, nor rescind his/her subscription for Shares Issued at Incorporation on the ground of fraud or duress after the formation of a Stock Company, or after exercising his/her votes at an Organizational Meeting or Class Organizational Meeting.

**Article 103 (Liabilities of Incorporators)**

- (1) In cases where the solicitation under of Article 57(1) is carried out, for the purpose of the application of the provisions of Article 52(2), "in the following cases" in such paragraph shall be read as "in the cases of item (i)."
- (2) In cases where the solicitation under Article 57(1) is carried out, any person (excluding the incorporators) who consents to specifying or recording his/her name and a statement to the effect that he/she supports the incorporation of the Stock Company in any document or Electromagnetic Record regarding such solicitation, including an advertisement for such solicitation, shall be deemed to be an incorporator and the provisions of the preceding Section and the preceding paragraph shall apply.

**Chapter II. Share**

**Section 1 General Provisions**

**Article 104 (Shareholders' Liabilities)**

A shareholder's liability shall be limited to the amount of the subscription price of the shares he/she holds.

**Article 105 (Rights of Shareholders)**

- (1) A shareholder shall have the following rights and other rights recognized pursuant to the provisions of this Act with respect to the shares he/she holds:
  - (i) The right to receive dividends of surplus;

- (ii) The right to receive distribution of residual assets;
  - (iii) The right to cast a vote at shareholders meeting.
- (2) Provisions of articles of incorporation that do not give the entirety of the rights listed in item (i) and item (ii) of the preceding paragraph to shareholders shall not be effective.

**Article 106 (Exercise of Rights by Co-owners)**

If any share is co-owned by two or more persons, the co-owners may not exercise their rights in relation to such share unless they specify one person who exercises the rights in relation to such share, and notify the Stock Company of the name of that person; provided, however, that this shall not apply in cases where the Stock Company agrees to the exercise of such rights.

**Article 107 (Special Provision on Features of Shares)**

- (1) A Stock Company may determine the matters listed in the following items as the features of all shares it issues:
- (i) That the approval of such Stock Company shall be required for the acquisition of such shares by assignment;
  - (ii) That shareholders may demand, that such Stock Company acquire such shares held by such shareholders;
  - (iii) That such Stock Company may acquire such shares on condition of certain grounds arising.
- (2) If a Stock Company determines the matters listed in the following items as the features of all shares it issues, it shall provide for the matters prescribed in each such item in the articles of incorporation:
- (i) Regarding the fact that the approval of such Stock Company shall be required for the acquisition of such shares by assignment: The matters listed below:
    - (a) A statement to the effect that the acquisition of such shares by assignment shall require the approval of such Stock Company;
    - (b) If the Stock Company is deemed to have effected the approval under Article 136 or Article 137(1) under certain circumstances, a statement to such effect and a description of such circumstances.
  - (ii) Regarding the fact that shareholders may demand that such Stock Company acquire such shares held by such shareholders: The matters listed below:
    - (a) A statement to the effect that shareholders may demand that such Stock Company acquire the shares held by such shareholders;
    - (b) If Bonds of such Stock Company (other than those in relation to Bonds with Share Option) are delivered to such shareholders in exchange for the acquisition of one of the shares referred to in (a), the description of the classes

- of such Bonds (referring to the classes defined in Article 681(i). The same shall apply hereinafter in this Part.) and the total amount for each class of Bonds, or the method for calculating such total amount;
- (c) If Share Options of such Stock Company (other than those attached to Bonds with Share Option) are delivered to such shareholders in exchange for the acquisition of one of the shares referred to in (a), the features and number of such Share Options, or the method for calculating such number;
  - (d) If Bonds with Share Option of such Stock Company are delivered to such shareholders in exchange for the acquisition of one of the shares referred to in (a), the matters prescribed in (b) with respect to such Bonds with Share Option, and the matters prescribed in (c) with respect to the Share Options attached to such Bonds with Share Option;
  - (e) If any property other than shares, etc. (referring to shares, Bonds and Share Options. This shall apply hereinafter.) of such Stock Company is delivered to such shareholders in exchange for the acquisition of one of the shares referred to in (a), the description of the features and number or amount of such property, or the method for calculating such number or amount;
  - (f) The period during which the shareholders may demand that such Stock Company acquire such shares held by such shareholders.
- (iii) Regarding the fact that such Stock Company may acquire such shares on condition of certain grounds arising: The matters listed below:
- (a) A statement to the effect that such Stock Company will acquire its shares on the day when certain grounds arise, and of such grounds;
  - (b) If the grounds referred to in (a) will arise with the arrival of a day to be separately specified by such Stock Company, a statement to that effect;
  - (c) If a portion of the shares referred to in (a) will be acquired on the day the grounds referred to in (a) arise, a statement to that effect and of the method for determining the portion of shares to be acquired;
  - (d) If Bonds of such Stock Company (other than those of Bonds with Share Option) are delivered to such shareholders in exchange for the acquisition of one of the shares referred to in (a), the classes of such Bonds and the total amount for each class of Bonds, or the method for calculating such total amounts;
  - (e) If Share Options of such Stock Company (other than those attached to Bonds with Share Option) are delivered to such shareholders in exchange for the acquisition of one of the shares referred to in (a), the features and number of such Share Options, or the method for calculating such number;
  - (f) If Bonds with Share Option of such Stock Company are delivered to such shareholders in exchange for the acquisition of one share of the shares referred

to in (a), the matters prescribed in (d) with respect to such Bonds with Share Option, and the matters prescribed in (e) with respect to the Share Options attached to such Bonds with Share Option;

- (g) If any property other than shares, etc. of such Stock Company is delivered to such shareholders in exchange for the acquisition of one of the shares referred to in (a), the features and number or amount of such property, or the method for calculating such number or amount.

**Article 108** (Shares of Different Classes)

(1) A Stock Company may issue two or more classes of shares with different features which have different provisions on the following matters; provided, however, that a Company with Committees and a Public Company may not issue shares of a class that has provisions in relation to the matters listed in item (ix):

- (i) Dividends of surplus;
- (ii) Distribution of residual assets;
- (iii) Capacity to exercise the right to vote at a shareholders meeting;
- (iv) That the approval of such Stock Company shall be required for the acquisition of such class shares by assignment;
- (v) That shareholders may demand that such Stock Company acquire such class shares held by such shareholders;
- (vi) That such Stock Company may acquire such class shares on condition of certain grounds arising;
- (vii) That such Stock Company shall acquire all of such class shares by resolution of the shareholders meeting;
- (viii) Such of the matters to be resolved at a shareholders meeting (or at a shareholders meeting or board of directors meeting for a Company with Board of Directors, or at a shareholders meeting or board of liquidators meeting for a Company with Board of Liquidators (referring to the Company with Board of Liquidators as provided for Article 478(6). The same shall apply hereinafter in this Article.), that require, in addition to such resolution, a resolution of a Class Meeting constituted by the Class Shareholders of such class shares.
- (ix) That directors or company auditors shall be elected at a Class Meeting constituted by the Class Shareholders of such class shares.

(2) In cases where a Stock Company issues two or more classes of shares with different features that have different provisions on the following matters, it shall provide for the matters prescribed in each of such items and the Total Number of Authorized Shares in a Class in the articles of incorporation:

- (i) Regarding dividends of surplus: The method for determining the Dividend Property to be delivered to the shareholders of such classes, the conditions for

- dividends of surplus, and other features relating to dividends of surplus;
- (ii) Regarding the distribution of residual assets: The method for determining the value of the residual assets to be delivered to the shareholders of such classes, the kinds of such residual assets, and other features of treatment relating to the distribution of residual assets;
  - (iii) Regarding the matter of capacity to exercise the right to vote at shareholders meetings: The following matters:
    - (a) The matters in relation to which the voting right may be exercised at a shareholders meeting; and
    - (b) If any condition on the exercise of the voting right is to be prescribed for such class shares, such condition.
  - (iv) Regarding the fact that the approval of such Stock Company shall be required for the acquisition of such class shares by assignment: The matters prescribed in item (i), paragraph (2) of the preceding article with respect to such class shares;
  - (v) Regarding the fact that shareholders may demand that such Stock Company acquire such class shares held by such shareholders: The following matters:
    - (a) The matters prescribed in item (ii), paragraph (2) of the preceding article with respect to such class shares;
    - (b) If, in exchange for the acquisition of one share of such class shares, other shares of such Stock Company are delivered to such shareholders, the class of such other shares and the total number of each class, or the method for calculating such number;
  - (vi) Regarding the fact that such Stock Company may acquire such class shares on condition of certain grounds arising: The following matters:
    - (a) The matters prescribed in item (iii), paragraph (2) of the preceding article with respect to such class shares;
    - (b) If, in exchange for the acquisition of one share of such class shares, other shares of such Stock Company are delivered to such shareholders, the class of such other shares and the total number of each class, or the method for calculating such number;
  - (vii) Regarding the fact that such Stock Company shall acquire all of such class of shares by resolution of a shareholders meeting: The following matters:
    - (a) The method for determining the value of the acquisition price prescribed in Article 171(1) (i);
    - (b) If any condition is to be prescribed on whether or not the resolution of such shareholders meeting may be effected, such condition.
  - (viii) Regarding such of the matters to be resolved at a shareholders meeting (or at a shareholders meeting or board of directors meeting for a Company with Board of Directors, or at a shareholders meeting or board of liquidators meeting

for a Company with Board of Liquidators), that require, in addition to such resolution, a resolution of a Class Meeting constituted by the Class Shareholders of such class shares. The following matters:

- (a) The matters for which the resolution of such Class Meeting is required; and
  - (b) If any condition for which the resolution of such Class Meeting is required is to be prescribed, such condition.
- (ix) Regarding the fact that directors or company auditors shall be elected at a Class Meeting constituted by the Class Shareholders of such class shares. The following matters:
- (a) The election of directors or company auditors at a Class Meeting constituted by such Class Shareholders and the number of directors or company auditors to be elected;
  - (b) If some or all of the directors or company auditors who may be elected pursuant to the provisions of (a) shall be elected jointly with other Class Shareholders, the class of the shares held by such other Class Shareholders, and the number of directors or company auditors to be elected jointly;
  - (c) If there is any condition that alters the matters listed in (a) or (b), such condition, and the matters listed in (a) or (b) after such alternation in cases where such condition is fulfilled; and
  - (d) In addition to the matters listed in (a) to (c) inclusive, any matter prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) Notwithstanding the provisions of the preceding paragraph, with respect to some or all of the matters prescribed in each item of the same paragraph (limited to the amount of dividends which may be received by Class Shareholders of classes with different features with respect to dividends of surplus, and other matters prescribed by the applicable Ordinance of the Ministry of Justice), it may be provided in the articles of incorporation to the effect that such matters shall be determined by resolution of a shareholders meeting (or at a shareholders meeting or board of directors meeting for a Company with Board of Directors, or at a shareholders meeting or board of liquidators meeting for a Company with Board of Liquidators) by the time of the first issue of such class shares. In such cases, an outline of the features thereof shall be provided for in the articles of incorporation.

**Article 109 (Equality of Shareholders)**

- (1) A Stock Company shall treat its shareholders equally in accordance with the features and number of the shares they hold.
- (2) Notwithstanding the provisions of the preceding paragraph, a Stock Company that is not a Public Company may provide in its articles of incorporation to the effect that each shareholder shall be treated differently with respect to the matters

regarding the rights listed in each item of Article 105(1).

- (3) In cases where there is a provision in the articles of incorporation that is provided for in the preceding paragraph, the shares held by the shareholders under that paragraph shall be deemed to be class shares with different features with respect to the matters regarding the rights under that paragraph, and the provisions of this Part and Part V shall apply.

**Article 110** (Special Provisions on Procedures for Amendments in Articles of Incorporation)

In cases where it is intended to create, as a feature of all shares to be issued by a Stock Company, a provision in the articles of incorporation with respect to the matters listed in Article 107(1) (iii) by amending the articles of incorporation, or to effect any amendment (excluding that which abolishes the provisions of the articles of incorporation with respect to such matters) in the articles of incorporation with respect to such matters (excluding the case where the Stock Company is a Company with Class Shares), the consent of all shareholders shall be obtained.

**Article 111**

- (1) If a Company with Class Shares intends, after it has issued a certain class of shares, to create, as a feature of such class shares, a provision in the articles of incorporation with respect to the matters listed in Article 108(1) (vi) by amending the articles of incorporation, or to effect any amendment to the articles of incorporation with respect to such matters (excluding any amendment which abolishes the provisions of the articles of incorporation with respect to such matters), the consent of all Class Shareholders who hold such class shares shall be obtained.
- (2) In cases where a Company with Class Shares intends to create, as a feature of a certain class of shares, a provision in the articles of incorporation with respect to the matters listed in Article 108(1) (iv) or (vii), such amendment to the articles of incorporation shall not become effective unless a resolution is passed at a Class Meeting constituted by the following Class Shareholders (in cases where there are two or more classes of shares relating to such Class Shareholders, referring to the respective Class Meetings constituted by Class Shareholders categorized by the class of such two or more classes of shares. This shall apply hereinafter in this Article.); provided, however, that this shall not apply to cases where there is no Class Shareholder who can exercise his/her voting right at such Class Meeting:
- (i) The Class Shareholders of shares of such class;
  - (ii) The Class Shareholders of Shares with Put Option for which there is a provision that the "other shares" referred to in Article 108(2) (v) (b) shall be the

shares of such class; or

- (iii) The Class Shareholders of Shares subject to Call for which there is a provision that the "other shares" referred to in Article 108(2) (vi) (b) shall be the shares of such class.

**Article 112** (Special Provisions on Abolition of Provisions in Articles of Incorporation on Class Shares in relation to Election of Directors)

- (1) The provisions in the articles of incorporation on the matters listed in Article 108 (2) (ix) (limited to those on directors) shall be deemed to have been abolished if, in cases where the number of directors is less than the number prescribed in this Act or the articles of incorporation, hence it is not possible to elect directors in a number sufficient to satisfy such requirement.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to the provisions of the articles of incorporation on the matters listed in Article 108(2) (ix) (limited to those on company auditors).

**Article 113** (Total Number of Authorized Shares)

- (1) A Stock Company may not abolish the provisions on the Total Number of Authorized Shares by amending its articles of incorporation.
- (2) If it is intended to reduce the Total Number of Authorized Shares by amending the articles of incorporation, the Total Number of Authorized Shares after the amendment may not be less than the total number of the Issued Shares at the time when such amendment to the articles of incorporation becomes effective.
- (3) In cases where it is intended to increase the Total Number of Authorized Shares by amending the articles of incorporation, the Total Number of Authorized Shares after the amendment may not exceed the number four times the total number of the Issued Shares at the time when such amendment to the articles of incorporation becomes effective; provided, however, that this shall not apply in cases where the Stock Company is not a Public Company.
- (4) The number of the shares which holders of Share Options (excluding Share Options for which the first day of the period prescribed in Article 236(1) (iv) has not yet arrived) acquire pursuant to the provisions of Article 282 may not exceed the number obtained by subtracting the total number of the Issued Shares (excluding Treasury Shares (meaning shares in a Stock Company owned by that Stock Company itself. The same shall apply hereinafter.)) from the Total Number of Authorized Shares.

**Article 114** (Total Number of Authorized Share in a Class)

- (1) If it is intended to reduce the Total Number of Authorized Shares in a Class of a

certain class of shares by amending the articles of incorporation, the Total Number of Authorized Shares in a Class of such class of shares after the amendment may not be less than the total number of the Issued Shares of such class at the time when such amendment to the articles of incorporation becomes effective.

- (2) The total sum of the numbers set forth below for a certain class of shares may not exceed the number obtained by subtracting the total number of the Issued Shares of such class (excluding Treasury Shares) from the Total Number of Authorized Shares in a Class of such class of shares.
  - (i) The number of "other shares" prescribed in Article 167(2) (iv) which is to be acquired pursuant to the provisions of Article 167(2) by the shareholders (excluding the relevant Stock Company) of Shares with Put Option (excluding those for which the first day of the period prescribed in Article 107(2) (ii) (f) has not yet arrived);
  - (ii) The number of "other shares" prescribed in Article 170(2) (iv) which is to be acquired pursuant to the provisions of Article 170(2) by the shareholders (excluding the relevant Stock Company) of Shares subject to Call; and
  - (iii) The number of the shares which holders of Share Options (excluding those for which the first day of the period prescribed in Article 236(1) (iv) has not yet arrived) acquire pursuant to the provisions of Article 282.

**Article 115** (Number of Issued Shares with Restricted Voting Right)

In cases where a Company with Class Shares is a Public Company, if the number of the shares of a certain class with restriction in relation to matters on which voting right can be exercised at a shareholders meeting (hereinafter in this article referred to as "Shares with Restricted Voting Right") has exceeded one half of the total number of the Issued Shares, the Stock Company shall immediately take measures necessary to reduce the number of the Shares with Restricted Voting Right below one half of the total number of the Issued Shares.

**Article 116** (Dissenting Shareholders' Share Purchase Demand)

- (1) In the cases listed in the following items, dissenting shareholders may demand that the Stock Company purchase, at a fair price, the shares prescribed in such items held by such shareholders:
  - (i) In cases where it is intended to effect a amendment to the articles of incorporation to create a provision on matters listed in Article 107(1) (i) as a feature of all shares issued by a Stock Company: All shares;
  - (ii) In cases where it is intended to effect a amendment to the articles of incorporation to create a provision on matters listed in Article 108(1) (iv) or (vii) as the feature of a certain class of shares: The shares prescribed in each

- item of Article 111(2);
- (iii) In cases where any act listed below is to be performed, if any detriment is likely to be suffered by Class Shareholders who hold a certain class of shares (limited to those provided for in the articles of incorporation under the provisions of Article 322(2)): The shares of such class
- (a) Consolidation of shares or splitting of shares;
  - (b) Allotment of Shares without Contribution provided for in Article 185;
  - (c) Amendment to the articles of incorporation on the Share Unit;
  - (d) Solicitation of persons to subscribe for the shares of such Stock Company (limited to solicitation for which the Stock Company provides for the matters listed in each item of Article 202(1));
  - (e) Solicitation of persons to subscribe for the Share Options of such Stock Company (limited to solicitation for which the Stock Company provides for the matters listed in each item of Article 241(1));
  - (f) Allotment of Share Options without Contribution provided for in Article 277.
- (2) The "dissenting shareholders" provided for in the preceding paragraph shall mean the shareholders provided for in the following items in the cases listed in the same items:
- (i) In cases where a resolution of a shareholders meeting (including a Class Meeting) is required to perform an act in any item of the preceding paragraph: The following shareholders:
    - (a) Shareholders who gave notice to such Stock Company to the effect that they dissented from such act prior to such shareholders meeting and who dissented from such act at such shareholders meeting (limited to those who can exercise voting right at such shareholders meetings);
    - (b) Shareholders who cannot exercise voting right at such shareholders meetings.
  - (ii) In cases other than those prescribed in the preceding item: All shareholders.
- (3) A Stock Company that intends to perform an act in any item of paragraph (1) shall give notice to the shareholders of the shares provided for in each item of that paragraph to the effect that it intends to perform such act, no later than twenty days prior to the day when such act becomes effective (hereinafter in this article and in the next article referred to as "Effective Day").
- (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph.
- (5) Demands under the provisions of paragraph (1) (hereinafter in this Section referred to as "Share Purchase Demand") shall be made, within the period from the day twenty days prior to the Effective Day to the day immediately preceding the Effective Day, by disclosing the number of shares relating to such Share

Purchase Demand (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class).

- (6) Shareholders who have made the Share Purchase Demand may withdraw their Share Purchase Demand only in cases where they obtain the approval of the Stock Company.
- (7) If a Stock Company suspends the act in any item of paragraph (1), the Share Purchase Demand shall become ineffective.

**Article 117** (Determination of Price of Shares)

- (1) In cases where a Share Purchase Demand is made, if an agreement is reached between the shareholder and the Stock Company on the determination of the price of the shares, the Stock Company shall make the payment within sixty days from the Effective Day.
- (2) If no agreement is reached within thirty days from the Effective Day on the determination of the price of the shares, the shareholders or the Stock Company may file a petition to the court for a determination of the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (6) of the preceding article, in the cases provided for in the preceding paragraph, if the petition under that paragraph is not made within sixty days after the Effective Day, the shareholders may withdraw their Share Purchase Demand at any time after the expiration of such period.
- (4) The Stock Company shall also pay interest on the price determined by the court which shall be calculated at the rate of 6% per annum from and including the day of the expiration of the period referred to in paragraph (1).
- (5) The purchase relating to the Share Purchase Demand shall become effective at the time of payment of the price for such shares.
- (6) If a Company Issuing Share Certificate (meaning a Stock Company the articles of incorporation of which have provisions to the effect that share certificate representing its shares (or, in case of a Company with Class Shares, shares of all classes) shall be issued), has received a Share Purchase Demand with respect to shares for which share certificates are issued, the Stock Company shall pay the price of the shares relating to such Share Purchase Demand in exchange for the share certificate.

**Article 118** (Demand for Purchase of Share Options)

- (1) In cases where it is intended to effect any amendment to articles of incorporation listed in the following items, the holders of Share Options provided for in any such item may demand that the Stock Company purchase, at a fair price, the Share

Options held by the same:

- (i) In cases where it is intended to effect a amendment to the articles of incorporation to create a provision on matters listed in Article 107(1) (i) as a feature of all shares issued by a Stock Company: All Share Options;
  - (ii) In cases where it is intended to effect a amendment to the articles of incorporation to create a provision on matters listed in Article 108(1) (iv) or (vii) as a feature of a certain class of shares: The Share Options for which shares of such class are the underlying shares;
- (2) If holders of the Share Options attached to Bonds with Share Option intend to make the demand under the preceding paragraph (hereinafter in this Section referred to as "Share Option Purchase Demand"), they shall also make the demand for the purchase of Bonds with respect to Bonds with Share Option; provided, however, that this shall not apply in cases where it is otherwise provided for with respect to the Share Options attached to Bonds with Share Option.
  - (3) A Stock Company which intends to effect a amendment to the articles of incorporation listed in each item of paragraph (1) shall give notice to the holders of Share Options provided for in each item of that paragraph, no later than twenty days prior to the day when such amendment to the articles of incorporation becomes effective (hereinafter in this article and in the following article referred to as "Day of Amendment to Articles of Incorporation"), to the effect that such amendment to the articles of incorporation is to be effected.
  - (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph.
  - (5) The Share Option Purchase Demand shall be made, within the period form the day twenty days prior to the Day of Amendment to Articles of Incorporation to the day immediately preceding the Day of Amendment to Articles of Incorporation, by disclosing the features and number of Share Options relating to such Share Option Purchase Demand.
  - (6) Holders of Share Options who have made the Share Option Purchase Demand may withdraw their Share Option Purchase Demand only in cases where they obtain the approval of the Stock Company.
  - (7) If a Stock Company suspends the amendment to articles of incorporation provided for in any item of paragraph (1), the Share Option Purchase Demand shall become ineffective.

**Article 119** (Determination of Price of Share Options)

- (1) In cases where a Share Option Purchase Demand is made, if an agreement on the determination of the price of the Share Options is reached between the holder of Share Options (in cases where such Share Options are attached to Bonds with

Share Option, if there is a demand for the purchase of Bonds with respect to such Bonds with Share Option, including such Bonds. The same shall apply in this article.) and the Stock Company, the Stock Company shall make payment within sixty days from the Day of the Amendment to the Articles of Incorporation.

- (2) If no agreement on the determination of the price of the Share Options is reached within thirty days from the Day of Amendment to Articles of Incorporation, the holders of Share Options or the Stock Company may file a petition to the court for a determination of the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (6) of the preceding article, in the cases provided for in the preceding paragraph, if the petition under that paragraph is not filed within sixty days after the Day of Amendment to Articles of Incorporation, the holders of Share Options may withdraw their Share Option Purchase Demand at any time after the expiration of such period.
- (4) The Stock Company shall also pay interest on the price determined by the court which is calculated at the rate of 6% per annum from and including the day of the expiration of the period referred to in paragraph (1).
- (5) The purchase relating to the Share Option Purchase Demand shall become effective at the time of payment of the price for such Share Options.
- (6) If a Stock Company has received a Share Option Purchase Demand with respect to any Share Option for which a Share Option certificate is issued, it shall pay the price of the Share Option relating to such Share Option Purchase Demand in exchange for such Share Option certificate.
- (7) If a Stock Company has received a Share Option Purchase Demand with respect to a Share Option attached to a Bond with Share Option for which a certificate for Bond with Share Option provided for in Article 249 (ii) is issued, it shall pay the price of the Share Option relating to such Share Option Purchase Demand in exchange for such certificate for Bond with Share Option.

**Article 120** (Giving Benefits on Exercise of Shareholder's Right)

- (1) A Stock Company may not give property benefits to any person regarding the exercise of shareholders' rights (limited to benefits given for the accounts of such Stock Company or its Subsidiary. The same shall apply hereinafter in this article.).
- (2) If a Stock Company gives property benefits to a specific shareholder without charge, it shall be presumed that such Stock Company has given property benefits regarding the exercise of shareholders' rights. The same shall apply in cases where a Stock Company gives property benefits to a specific shareholder for value if the benefit received by such Stock Company or its Subsidiary is insignificant in comparison to such property benefits.

- (3) If a Stock Company gives property benefits in violation of the provisions of paragraph (1), the recipient of such benefit shall return the same to such Stock Company or its Subsidiary. In such cases, if the recipient has tendered anything to such Stock Company or its Subsidiary in exchange for such benefit, that person may receive the return of the same.
- (4) If a Stock Company gives property benefits in violation of the provisions of paragraph (1), persons prescribed by the applicable Ordinance of the Ministry of Justice as directors (including executive officers for Companies with Committees. The same shall apply hereinafter in this paragraph.) who are involved in giving such benefits shall be jointly and severally liable to such Stock Company for payment of an amount equivalent to the value of the benefit so given; provided, however, that this shall not apply if such persons (excluding the directors who gave such benefit) have proven that they did not fail to exercise due care in discharging their duties.
- (5) Exemptions from the obligations set forth in the preceding paragraph may not be given without the consent of all shareholders.

## **Section 2 Shareholder Registry**

### **Article 121** (Shareholder Registry)

A Stock Company shall prepare a shareholder registry and state or record the following matters (hereinafter referred to as "Matters to be Stated in the Shareholder Registry") in the same:

- (i) The names and addresses of shareholders;
- (ii) The number of shares held by the shareholders referred to in the preceding item (or the classes of shares and number for each class for a Company with Class Shares);
- (iii) The days when the shareholders referred to in item (i) acquired the shares; and
- (iv) In cases where the Stock Company is a Company Issuing Share Certificate, the serial numbers of share certificates representing the shares (limited to those for which share certificates are issued) under item (ii).

### **Article 122** (Delivery of Documents Stating Matters to be Stated in the Shareholder Registry)

- (1) The shareholders referred to in item (i) of the preceding article may request that the Stock Company deliver documents stating the matters to be specified in the shareholder registry that are stated or recorded in the shareholder registry with respect to such shareholders, or provide the Electromagnetic Records that

record such Matters to be Stated in the Shareholder Registry.

- (2) The documents referred to in the preceding paragraph shall be affixed with the signature, or name and seal, of the Representative Director of the Stock Company (referring to the representative executive officer for a Company with Committees. The same shall apply hereinafter in this paragraph and in the following paragraph.).
- (3) With respect to the Electromagnetic Records referred to in paragraph (1), the Representative Director of the Stock Company shall implement measures in lieu of the affixing of the signature, or name and seal that is prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) The provisions of the preceding three paragraphs shall not apply to a Company Issuing Share Certificate.

**Article 123** (Administrator of Shareholder Registry)

A Stock Company may provide in its articles of incorporation to the effect that an Administrator of Shareholder Registry (meaning a person who is responsible on behalf of the Stock Company for the administration of the shareholder registry including preparing and keeping the shareholder registry. The same shall apply hereinafter.) shall be installed, and may entrust such administration to the same.

**Article 124** (Record Date)

- (1) A Stock Company may, by prescribing a certain date (hereinafter in this Chapter referred to as a "Record Date"), prescribe the shareholders who are stated or recorded in the shareholder registry on the Record Date (hereinafter in this article referred to as "Shareholders as of the Record Date") as the persons who may exercise their rights.
- (2) In cases where a Record Date is to be established, the Stock Company shall prescribe the content of the rights which the Shareholders on the Record Date may exercise (limited to those which are exercised within three months from the Record Date).
- (3) If a Stock Company has prescribed a Record Date, it shall give public notice of such Record Date and the matters prescribed pursuant to the provisions of the preceding paragraph no later than two weeks prior to such Record Date; provided, however, that this shall not apply if the articles of incorporation provide for such Record Date and such matters.
- (4) In cases where the rights that the Shareholders on the Record Date may exercise are voting right at a shareholders meeting or Class Meeting, the Stock Company may prescribe some or all persons who acquire shares on or after such Record Date as persons who may exercise such right; provided, however, that this provision may

not prejudice the rights of the Shareholders on the Record Date of such shares.

- (5) The provisions of paragraph (1) to paragraph (3) inclusive shall apply mutatis mutandis to the Registered Pledgees of Shares provided for in Article 149(1).

**Article 125** (Keeping and Making Available for Inspection of Shareholder Registry)

- (1) A Stock Company shall keep the shareholder registry at its head office (or, in cases where there is an Administrator of Shareholder Registry, at its business office).
- (2) Shareholders and creditors may make the following requests at any time during the business hours of the Stock Company. In such cases, the reasons for such requests shall be disclosed.
- (i) If the shareholder registry is prepared in writing, a request for the inspection or copying of such document;
- (ii) If the shareholder registry is prepared by using Electromagnetic Records, a request for the inspection or copying of anything that indicates the matters recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) If a request in the preceding paragraph is made, a Stock Company may not refuse such request, except cases it falls under any of the following:
- (i) The shareholder or creditor who made such request (hereinafter in this paragraph referred to as the "Requestor") made the request for a purpose other than for research on securing or exercising his/her rights;
- (ii) The Requestor made the request with the purpose of interfering with the execution of the operations of such Stock Company or prejudicing the common benefit of the shareholders;
- (iii) The Requestor operates or engages in any business which is, in substance, in competition with the operations of such Stock Company;
- (iv) The Requestor made the request in order to report facts to third parties for profit, knowledge of which may be acquired by inspecting or copying the shareholder registry; or
- (v) The Requestor is a person who has reported facts, knowledge of which was acquired by inspecting or copying the shareholder registry, to third parties for profit in the immediately preceding two years.
- (4) If it is necessary for a member of the Parent Company of a Stock Company to exercise his/her rights, such member of the Parent Company may, with the permission of the court, make the requests in each item of paragraph (2) with respect to the shareholder registry of such Stock Company. In such cases, the reasons for such requests shall be disclosed.
- (5) The court may not grant the permission in the preceding paragraph if grounds

provided for in any item of paragraph (3) apply to the member of the Parent Company in the preceding paragraph.

**Article 126** (Notice to Shareholders)

- (1) It shall be sufficient for a notice or demand to shareholders to be sent by a Stock Company to the addresses of such shareholders stated or recorded in the shareholder registry (or, in cases where such shareholders notify such Stock Company of a different place or contact address for the receipt of notices or demands, to such place or contact address).
- (2) The notices or demand in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.
- (3) If a share is co-owned by two or more persons, the co-owners shall specify one person to receive the notices or demand sent by the Stock Company to shareholders and notify such Stock Company of the name of that person. In such cases, that person shall be deemed to be the shareholder and the provisions of the preceding two paragraphs shall apply.
- (4) In cases where there is no notice by co-owners under the provisions of the preceding paragraph, it shall be sufficient for a notice or demand sent by a Stock Company to the co-owners of the shareholders if it is sent to one of them.
- (5) The provisions of each of the preceding two paragraphs shall apply mutatis mutandis to cases where, when the notice referred to in Article 299(1) (including the case where it is applied mutatis mutandis in Article 325) is given, a document is delivered to shareholders or matters to be stated in such document are provided to shareholders by Electromagnetic Means. In such cases, the words "to have arrived" in paragraph (2) shall be read as "to have been effected by delivery of such documents or provision of such matters by Electromagnetic Means."

**Section 3 Transfer of Share**

**Subsection 1 Transfer of Share**

**Article 127** (Transfer of Share)

Shareholders may transfer the shares held by the same.

**Article 128** (Transfer of Shares in Company Issuing Share Certificate)

- (1) Transfer of shares in a Company Issuing Share Certificate shall not become effective unless the share certificates representing such shares are delivered; provided, however, that this shall not apply to transfer of shares that arise out of the disposition of Treasury Shares.

(2) Transfer effected prior to the issuance of the share certificate shall not be effective vis-a-vis the Company Issuing Share Certificate.

**Article 129** (Special Provisions on Disposition of Treasury Shares)

(1) A Company Issuing Share Certificate shall deliver the share certificates to persons who acquire Treasury Shares without delay after the day of the disposition of such Treasury Shares.

(2) Notwithstanding the provisions of the preceding paragraph, a Company Issuing Share Certificate that is not a Public Company may choose to not deliver the share certificates under that paragraph until the persons under that paragraph so request.

**Article 130** (Perfection of Transfer of Shares)

(1) Transfer of shares shall not be perfected against the Stock Company and other third parties unless the name and address of the person who acquires those shares is stated or recorded in the shareholder registry.

(2) For the purpose of the application of the provisions of the preceding paragraph with respect to a Company Issuing Share Certificate, "the Stock Company and other third parties" in that paragraph shall be read as "the Stock Company."

**Article 131** (Presumption of Rights)

(1) A possessor of share certificates shall be presumed to be the lawful owner of the rights in relation to the shares representing such share certificates.

(2) A person who receives delivery of the share certificates shall acquire the rights in relation to the shares represented by such share certificates; provided, however, that this shall not apply if that person has knowledge or is grossly negligent as to the fact of defective title of the transferor.

**Article 132** (Stating or Recording of Matters to be Stated in Shareholder registry Not Requested by Shareholders)

In the cases provided for in the following items, a Stock Company shall state or record the Matters to be Stated in the Shareholder Registry relating to the shareholders of the shares referred to in such items:

- (i) In cases where it has Issued Shares;
- (ii) In cases where it has acquired shares in such Stock Company;
- (iii) In cases where it has disposed of Treasury Shares.

**Article 133** (Stating or Recording of Matters to be Stated in Shareholder Registry at Request of Shareholders)

- (1) A person who has acquired shares from any person other than the Stock Company that issued such shares (excluding such Stock Company, hereinafter in this Section referred to as "Acquirer of Shares") may request that such Stock Company states or records the Matters to be Stated in the Shareholder Registry relating to such shares in the shareholder registry.
- (2) Except for the cases prescribed by the applicable Ordinance of the Ministry of Justice as cases of no likelihood of detriment to interested parties, requests pursuant to the provisions of the preceding paragraph shall be made jointly with the person stated or recorded in the shareholder registry as the shareholder of the shares so acquired, or his/her general successors including his/her heirs.

#### **Article 134**

The provisions of the preceding paragraph shall not apply in cases where the shares acquired by the Acquirer of Shares are Shares with Restriction on Transfer; provided, however, that this shall not apply in cases where it falls under any of the following:

- (i) Such Acquirer of Shares has obtained approval under Article 136 as to an intended acquisition of such Shares with Restriction on Transfer;
- (ii) Such Acquirer of Shares has obtained approval under Article 137(1) as to a completed acquisition of such Shares with Restriction on Transfer;
- (iii) Such Acquirer of Shares is a Designated Purchaser provided for in Article 140 (4);
- (iv) Such Acquirer of Shares is a person who has acquired the Shares with Restriction on Transfer by general succession including inheritance.

#### **Article 135 (Acquisition of Shares of Parent Companies Prohibited)**

- (1) A Subsidiary may not acquire the shares of a Stock Company that is its Parent Company (hereinafter in this article referred to as "Parent Company's Shares").
- (2) The provisions of the preceding paragraph shall not apply to the following cases:
  - (i) Cases where the Subsidiary accepts the transfer of the Parent Company's Shares held by another Company in cases where the Subsidiary accepts the assignment of the entire business of such other Company (including Foreign Companies);
  - (ii) Cases where the Subsidiary succeeds to the Parent Company's Shares from a Company that is extinguished after a merger;
  - (iii) Cases where the Subsidiary succeeds to the Parent Company's Shares from another Company by Absorption-type Company Split;
  - (iv) Cases where the Subsidiary succeeds to the Parent Company's Shares from another Company by Incorporation-type Company Split; or

- (v) In addition to the cases provided for in the preceding items, cases prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) The Subsidiary shall dispose of the Parent Company's Shares held by the same at an appropriate time.

### **Subsection 2 Approval Procedures relating to Transfer of Shares**

#### **Article 136** (Requests for Approval by Shareholders)

If shareholders of Shares with Restriction on Transfer intend to transfer the Shares with Restriction on Transfer held by the same to others (excluding the Stock Company which issued such Shares with Restriction on Transfer), they may request that such Stock Company make a determination as to whether or not to approve the acquisition by such others of such Shares with Restriction on Transfer.

#### **Article 137** (Request for Approval by Acquirers of Shares)

- (1) Acquirers of Shares who have acquired Shares with Restriction on Transfer may request that the Stock Company make a determination as to whether or not to approve the acquisition of such Shares with Restriction on Transfer.
- (2) Except for the cases prescribed by the applicable Ordinance of the Ministry of Justice as cases of no likelihood of detriment to interested parties, requests pursuant to the provisions of the preceding paragraph shall be made jointly with the person stated or recorded in the shareholder registry as the shareholder of the shares so acquired, or his/her general successors including his/her heirs.

#### **Article 138** (Method for Requests for Approval of Transfer)

The requests listed in the following items (hereinafter in this Subsection referred to as "Requests for Approval of Transfer") shall be made by disclosing the matters provided for in such items:

- (i) Requests pursuant to the provisions of Article 136: The following matters:
  - (a) The number of Shares with Restriction on Transfer that the shareholders making such request intend to transfer to others (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class);
  - (b) The name of the person accepting the transfer of the Shares with Restriction on Transfer referred to in (a);
  - (c) In cases where a Stock Company determines not to give approval under Article 136, if it is requested that such Stock Company or Designated Purchaser provided for in Article 140(4) purchase the Shares with Restriction on Transfer referred to in (a), the statement to such effect.

- (ii) The request pursuant to the provisions of paragraph (1) of the preceding article: The following matters:
  - (a) The number of Shares with Restriction on Transfer which the Acquirer of Shares making such request has acquired (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class);
  - (b) The name of the Acquirer of Shares referred to in (a);
  - (c) In cases where a Stock Company determines not to effect the approval under paragraph (1) of the preceding article, if it is requested that such Stock Company or the Designated Purchaser provided for in Article 140(4) purchase the Shares with Restriction on Transfer referred to in (a), a statement to such effect.

**Article 139** (Determination of Approval of transfer)

- (1) The determination by a Stock Company as to whether or not to grant approval under Article 136 or Article 137(1) shall be made by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors) ; provided, however, that this shall not apply in cases where it is otherwise provided for in the articles of incorporation.
- (2) If a Stock Company has made a determination under the preceding paragraph, it shall notify the person who made the Requests for Approval of Transfer (hereinafter in this subsection referred to as "Requester for Approval of Transfer") of the content of such determination.

**Article 140** (Purchase by Stock Company or Designated Purchaser)

- (1) In cases where a Stock Company receives a request under Article 138(i) (c) or (ii) (c), if it makes a determination to not give approval under Article 136 or Article 137(1), it shall purchase the Shares with Restriction on Transfer relating to such Requests for Approval of Transfer (hereinafter in this Subsection referred to as "Subject Shares"). In such cases, the following matters shall be prescribed:
  - (i) A statement to the effect that the Stock Company will purchase the Subject Shares;
  - (ii) The number of the Subject Shares that will be purchased by the Stock Company (or, for a Company with Class Shares, the classes of the Subject Shares and the number of shares for each class).
- (2) The determination of the matters listed in the items of the preceding paragraph shall be made by resolution of a shareholders meeting.
- (3) Requesters for Approval of Transfer may not exercise voting right at the shareholders meeting referred to in the preceding paragraph; provided, however, that this shall not apply in cases where all shareholders other than such

Requesters for Approval of Transfer may not exercise voting right at the shareholders meeting referred to in that paragraph.

- (4) Notwithstanding the provisions of paragraph (1), in the cases provided for in that paragraph, a Stock Company may designate a person to purchase some or all of the Subject Shares (hereinafter in this Subsection referred to as "Designated Purchaser").
- (5) The designation pursuant to the provisions of the preceding paragraph shall be made by resolution of the shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise provided for in the articles of incorporation.

**Article 141** (Notice of Purchases by Stock Company)

- (1) If a Stock Company has determined the matters listed in any item of paragraph (1) of the preceding article, it shall notify the Requester for Approval of Transfer of such matters.
- (2) If a Stock Company intends to give notice pursuant to the provisions of the preceding paragraph, it shall deposit the amount obtained by multiplying the amount of the net assets per share (referring to the amount prescribed by the applicable Ordinance of the Ministry of Justice as the amount of net assets per share. The same shall apply hereinafter.) by the number of the Subject Shares under item (ii), paragraph (1) of the preceding article, with a depository located in the area where its head office is located, and deliver a document certifying such deposit to the Requester for Approval of Transfer.
- (3) In cases where the Subject Shares are the shares of a Company Issuing Share Certificate, the Requester for Approval of Transfer who received delivery of the document referred to in the preceding paragraph shall deposit the share certificates representing the Subject Shares referred to in item (ii), paragraph (1) of the preceding article with a depository located in the area where the head office of such Company Issuing Share Certificate is located within one week from the day of receipt of such delivery. In such cases, such Requester for Approval of Transfer shall give notice of such deposit to such Company Issuing Share Certificate without delay.
- (4) If the Requester for Approval of Transfer under the preceding paragraph does not effect the deposit pursuant to the provisions of that paragraph within the period under that paragraph, the Company Issuing Share Certificate may cancel the contract for the sale and purchase of the Subject Shares provided for in item (ii), paragraph (1) of the preceding article.

**Article 142** (Designated Purchaser's Notice to Purchase)

- (1) If a Designated Purchaser is designated pursuant to the provisions of Article 140 (4), he/she shall notify the Requester for Approval of Transfer of the following matters:
  - (i) A statement to the effect that he/she has been designated as a Designated Purchaser; and
  - (ii) The number of the Subject Shares that the Designated Purchaser will purchase (or, for a Company with Class Shares, the classes of the Subject Shares and the number of shares for each class).
- (2) If a Designated Purchaser intends to give notice pursuant to the provisions of the preceding paragraph, the Designated Purchaser shall deposit the amount obtained by multiplying the amount of the net assets per share by the number of the Subject Shares under item (ii) of that paragraph with a depository located in the area where the head office of the Stock Company is located, and deliver a document certifying such deposit to the Requester for Approval of Transfer.
- (3) In cases where the Subject Shares are the shares of a Company Issuing Share Certificate, the Requester for Approval of Transfers who received delivery of the document referred to in the preceding paragraph shall deposit the share certificates representing the Subject Shares referred to in item (ii) of paragraph (1) with a depository located in the area where the head office of such Company Issuing Share Certificate is located within one week from the day of receipt of such delivery. In such cases, such Requester for Approval of Transfer shall give notice of such deposit to the Designated Purchaser without delay.
- (4) If the Requester for Approval of Transfer under the preceding paragraph does not effect the deposit pursuant to the provisions of that paragraph within the period under that paragraph, the Designated Purchaser may cancel the contract for the sale and purchase of the Subject Shares provided for in item (ii) of paragraph (1).

**Article 143** (Withdrawal of Requests for Approval of Transfer)

- (1) A Requester for Approval of Transfer who made a request under Article 138(i) (c) or (ii) (c) may, after he/she has received notice pursuant to the provisions of Article 141(1), withdraw his/her request only in cases where he/she obtains the approval of the Stock Company.
- (2) A Requester of Approval of Transfer who made a request under Article 138 (i) (c) or (ii) (c) may, after he/she has received notice pursuant to the provisions of paragraph (1) of the preceding article, withdraw his/her request only in cases where he/she obtains the approval of the Designated Purchaser.

**Article 144** (Determination of Sale Price)

- (1) In cases where notice is given pursuant to the provisions of Article 141(1), the sale price of the Subject Shares under Article 140(1) (ii) shall be prescribed through discussion between the Stock Company and the Requester for Approval of Transfer.
- (2) The Stock Company or Requester for Approval of Transfers may file a petition to the court for a determination of the sale price within twenty days from the day when notice is given pursuant to the provisions of Article 141(1).
- (3) In order to make the determination under the preceding paragraph, the court shall consider the financial conditions of the Stock Company at the time of the Requests for Approval of Transfer and all other circumstances.
- (4) Notwithstanding the provisions of paragraph (1), if a petition under paragraph (2) is made within the period provided for in that paragraph, the amount determined by the court in response to such petition shall be the sale price of the Subject Shares under Article 140(1) (ii).
- (5) Notwithstanding the provisions of paragraph (1), if no petition under paragraph (2) is made within the period provided for in that paragraph (except in cases where the discussions under paragraph (1) are successfully concluded within such period), the amount obtained by multiplying the amount of the net assets per share by the number of the Subject Shares under Article 140(1) (ii) shall be the sale price of the Subject Shares.
- (6) In cases where a deposit is effected pursuant to the provisions of Article 141(2), if the sale price of the Subject Shares under Article 140(1) (ii) has been finalized, the Stock Company shall be deemed to have paid the sale price, in whole or in part, up to an amount equivalent to the value of the money so deposited.
- (7) The provisions of the preceding paragraphs shall apply mutatis mutandis in cases where notice is given pursuant to the provisions of Article 142(1). In such cases, in paragraph (1), the term "Article 140(1) (ii)" shall be read as "Article 142(1) (ii)" and the term "Stock Company" shall be read as "Designated Purchaser"; in paragraph (2), the term "Stock Company" shall be read as "Designated Purchaser"; in paragraph (4) and paragraph (5), the term "Article 140(1) (ii)" shall be read as "Article 142(1) (ii)"; and in the preceding paragraph, the term "Article 141(2)" shall be read as "Article 142(2)," the term "Article 140(1) (ii)" shall be read as "item (ii), paragraph (1) of that article," and the term "Stock Company" shall be read as "Designated Purchaser."

**Article 145** (Cases where Stock Company is Deemed to have Approved)

In the cases listed below, the Stock Company shall be deemed to have given the approval under Article 136 or Article 137(1); provided, however, that this shall not apply if otherwise provided for by the agreement between the Stock Company and

the Requester for Approval of Transfer:

- (i) In cases where the Stock Company has failed to give notice pursuant to the provisions of Article 139(2) within two weeks (or if any shorter period of time is provided for in the articles of incorporation, such shorter period of time) from the day of the request pursuant to the provisions of Article 136 or Article 137(1);
- (ii) In cases where the Stock Company has failed to give notice pursuant to the provisions of Article 141(1) within forty days (or if any shorter period of time is provided for in the articles of incorporation, such shorter period of time) from the day of the notice pursuant to the provisions of Article 139(2) (except the cases where the Designated Purchaser gives notice pursuant to the provisions of Article 142(1) within ten days (or if any shorter period of time is provided in the articles of incorporation, such shorter period of time) from the day of the notice pursuant to the provisions of Article 139(2)).
- (iii) In addition to the cases provided for in the preceding two items, the cases prescribed by the applicable Ordinance of the Ministry of Justice.

### **Subsection 3 Pledging Shares**

#### **Article 146 (Pledge of Shares)**

- (1) Shareholders may pledge the shares held by the same.
- (2) Pledge of shares of a Company Issuing Share Certificate shall not become effective unless the share certificates for such shares are delivered.

#### **Article 147 (Perfection of Pledges of Shares)**

- (1) Pledges of shares shall not be perfected against the Stock Company and other third parties unless the names and addresses of the pledgees are stated or recorded in the shareholder registry.
- (2) Notwithstanding the provisions of the preceding paragraph, a pledgee of shares of a Company Issuing Share Certificate may not assert his/her pledge against the Stock Company and other third parties unless he/she is in continuous possession of the share certificates for such shares.
- (3) The provisions of Article 364 of the Civil Code shall not apply to shares.

#### **Article 148 (Entries in Shareholder Registry)**

A person who pledges shares may request that the Stock Company state or record the following matters in the shareholder registry:

- (i) The name and address of the pledgee;
- (ii) The shares underlying the pledge.

**Article 149** (Delivery of Documents Stating Matters to be Stated in Shareholder Registry)

- (1) The pledgees for whom the matters listed in the items of the preceding article are stated or recorded in the shareholder registry (hereinafter referred to as "Registered Pledgees of Shares") may request that the Stock Company deliver documents stating the matters listed in the items of that article with respect to such Registered Pledgees of Shares that are stated or recorded in the shareholder registry, or provide the Electromagnetic Records that record such matters.
- (2) The documents in the preceding paragraph shall be affixed with the signature, or name and seal, of the Representative Director of the Stock Company (the representative executive officer for a Company with Committees. The same shall apply hereinafter in this paragraph and in the following paragraph.).
- (3) With respect to the Electromagnetic Records referred to in paragraph (1), the Representative Director of the Stock Company shall implement measures in lieu of the affixation of signature, or name and seal prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) The provisions of the preceding three paragraphs shall not apply to a Company Issuing Share Certificate.

**Article 150** (Notices to Registered Pledgees of Shares)

- (1) It shall be sufficient for a notice or demand to a Registered Pledgee of Shares to be sent by a Stock Company to the addresses of such Registered Pledgee of Shares stated or recorded in the shareholder registry (or, in cases where such Registered Pledgee of Shares notifies the Stock Company of any different place or contact address for the receipt of notices or demands, to such place or contact address).
- (2) The notices or demands referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.

**Article 151** (Effect of Pledge of Shares)

In cases where a Stock Company carries out any of the acts listed below, the pledge for shares shall be effective with respect to the Monies, etc. (meaning monies and other properties. The same shall apply hereinafter.) which the shareholders of such shares are entitled to receive as a result of such act:

- (i) The acquisition of Shares with Put Option pursuant to the provisions Article 167(1);
- (ii) The acquisition of Shares subject to Call pursuant to the provisions of paragraph (1) of Article 170(1);
- (iii) The acquisition of Class Shares subject to Wholly Call provided for in Article

- 171(1) pursuant to the provisions of Article 170(1);
- (iv) Consolidation of shares;
  - (v) Share Split;
  - (vi) Allotment of Shares without Contribution provided for in Article 185;
  - (vii) Allotment of Share Options without Contribution provided for in Article 277;
  - (viii) Dividends of surplus;
  - (ix) Distribution of residual assets;
  - (x) Entity Conversion;
  - (xi) Mergers (limited to cases where such Stock Company is to be extinguished as a result of the merger);
  - (xii) Share Exchange;
  - (xiii) Share Transfer; or
  - (xiv) Acquisition of shares (excluding the acts listed in item (i) to item (iii) inclusive).

#### **Article 152**

- (1) In cases where a Stock Company (excluding a Company Issuing Share Certificate. The same shall apply hereinafter in this article.) carries out the acts listed in item (i) to item (iii) inclusive of the preceding article (limited to the cases where such Stock Company delivers the shares when carrying out such acts), or carries out the act listed in item (vi) of that article, if the pledgees of the pledges under that article are Registered Pledgees of Shares (excluding those for whom the matters listed in each item of Article 148 are stated or recorded in the shareholder registry because of a request pursuant to the provisions of Article 218 (5). The same shall apply hereinafter in this Subsection.), the names and addresses of such pledgees shall be stated or recorded in the shareholder registry with respect to the shares under the preceding article that the shareholders are entitled to receive.
- (2) In cases where the consolidation of shares has been effected, if the pledgees of the pledge under the preceding article are Registered Pledgees of Shares, the Stock Company shall state or record the names and addresses of such pledgees with respect to the shares that have been consolidated.
- (3) In cases where the Share Split has been effected, if the pledgees of the pledge under the preceding article are Registered Pledgees of Shares, the Stock Company shall state or record the names and addresses of such pledgees with respect to the shares that have been split.

#### **Article 153**

- (1) In the cases provided for in paragraph (1) of the preceding article, the Company

Issuing Share Certificate shall deliver the share certificates representing the shares that the shareholders under Article 151 receive to the Registered Pledges of Shares.

- (2) In the cases provided for in paragraph (2) of the preceding article, the Company Issuing Share Certificate shall deliver the share certificates representing the shares that have been consolidated to the Registered Pledges of Shares.
- (3) In the cases provided for in paragraph (3) of the preceding article, the Company Issuing Share Certificate shall deliver the share certificates that will be newly issued with respect to the shares that have been split to the Registered Pledges of Shares.

#### **Article 154**

- (1) Registered Pledges of Shares may receive Monies, etc. (limited to monies) under Article 151, and appropriate them as payment to satisfy their own claims in priority to other creditors.
- (2) If the claims under the preceding paragraph have not yet become due and payable, the Registered Pledges of Shares may have the Stock Company deposit an amount equivalent to the value of the Monies, etc. provided for in that paragraph. In such cases, the pledge shall be effective with respect to the monies so deposited.

### **Section 4 Acquisition of Own Shares by Stock Company**

#### **Subsection 1 General Provisions**

#### **Article 155**

A Stock Company may acquire shares issued by such Stock Company only in the following cases:

- (i) Where the grounds under Article 107(2)(iii)(a) have arisen;
- (ii) Where a request has been made under Article 138(i)(c) or (ii)(c);
- (iii) Where a resolution has been made under paragraph (1) of the following article;
- (iv) Where a request has been made pursuant to the provisions of Article 166(1);
- (v) Where a resolution has been made under Article 176(1);
- (vi) Where the Stock Company has made a request under the provisions of Article 176(1);
- (vii) Where a request has been made pursuant to the provisions of Article 192(1);
- (viii) Where the Stock Company has prescribed the matters listed in each item of Article 197(3);

- (ix) Where the Stock Company has prescribed the matters listed in each item of Article 234(4);
- (x) Where the Stock Company accepts the assignment of the entire business of another Company (including Foreign Companies) in cases where such Stock Company accepts the assignment of own shares held by such other Company;
- (xi) Where the Stock Company succeeds to own shares held by a Company that is to be extinguished after merger;
- (xii) Where the Stock Company succeeds to own shares held by a Company that is effecting an Absorption-type Company Split; or
- (xiii) In addition to the cases listed in the preceding items, in any case prescribed by the applicable Ordinance of the Ministry of Justice.

## **Subsection 2 Acquisition by Agreement with Shareholders**

### **Division 1 General Provisions**

#### **Article 156** (Determination of Matters regarding Acquisition of Shares)

- (1) A Stock Company shall prescribe the following matters by resolution of a shareholders meeting in advance in order to acquire for value own shares by agreement with its shareholders; provided, however, that the period under item (iii) cannot exceed one year:
  - (i) The number of shares to be acquired (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class); and
  - (ii) The description and total amount of the Monies, etc. (excluding the shares, etc. of such Stock Company. The same shall apply hereinafter in this Subsection.) that will be delivered in exchange for the acquisition of the shares; and
  - (iii) The period during which the shares can be acquired.
- (2) The provisions of the preceding paragraph shall not apply to the cases listed in item (i) and item (ii), and in item (iv) to item (xiii) inclusive of the preceding article.

#### **Article 157** (Determination of Acquisition Price)

- (1) Whenever a Stock Company intends to acquire its shares in accordance with a determination pursuant to the provisions of paragraph (1) of the preceding article, it shall prescribe the following matters:
  - (i) The number of shares to be acquired (or, for a Company with Class Shares, the class of the shares and the number of the shares);
  - (ii) The description, and the number or amount, or the method for the calculation

- thereof, of the Monies, etc. that will be delivered in exchange for the acquisition of one share;
- (iii) The total amount of Monies, etc. that will be delivered in exchange for the acquisition of the shares; and
  - (iv) The date on which the offer to transfer the shares will be made.
- (2) A Company with Board of Directors shall determine the matters listed in each item of the preceding paragraph by resolution of the board of directors.
- (3) The conditions prescribed for the acquisition of shares under paragraph (1) shall be uniform for each determination made under the provisions of that paragraph.

**Article 158** (Notice to Shareholders)

- (1) A Stock Company shall notify its shareholders (or, for a Company with Class Shares, the Class Shareholders of the classes of the shares it intends to acquire) of the matters listed in each item of paragraph (1) of the preceding article.
- (2) A Public Company may substitute a public notice for the notice under the provisions of the preceding paragraph.

**Article 159** (Offers to transfer)

- (1) If a shareholder who receives a notice pursuant to the provisions of paragraph (1) of the preceding article intends to make an offer to transfer the shares he/she holds, he/she shall disclose to the Stock Company the number of shares (or, for a Company with Class Shares, the classes of the shares and the number of the shares for each class) relating to such offer.
- (2) A Stock Company shall be deemed to have accepted, on the date provided for in Article 157(1) (iv), the transfer of shares that the shareholders under the preceding paragraph offered; provided, however, that if the total number of shares that the shareholders under that paragraph offered (hereinafter in this paragraph referred to as "Total Number of Shares Offered") exceed the number provided for in item (i), paragraph (1) of that article (hereinafter in this paragraph referred to as "Total Number of Shares to be Acquired"), it shall be deemed that the Stock Company has accepted the transfer of the shares in the number obtained by first dividing the Total Number of Shares to be Acquired by the Total Number of Shares Offered, and then multiplying such product by the number of the shares offered by the shareholders under the preceding paragraph (in cases where the number so obtained includes a fraction of less than one, such fraction shall be rounded off).

**Division 2 Acquisition from Specific Shareholders**

**Article 160** (Acquisition from Specific Shareholders)

- (1) In conjunction with the determination of the matters listed in each item of Article 156(1), a Stock Company may, by resolution of a shareholders meeting under that paragraph, make a determination to the effect that notice under the provisions of Article 158(1) shall be given to specific shareholders.
- (2) If a Stock Company intends to make a determination under the provisions of the preceding paragraph, it shall give notice to the shareholders (or, for a Company with Class Shares, the Class Shareholders of the classes of the shares to be acquired), by the time prescribed by the applicable Ordinance of the Ministry of Justice, to the effect that the shareholders may make the requests under the provisions of the following paragraph.
- (3) The shareholders under the preceding paragraph may, by the time prescribed by the applicable Ordinance of the Ministry of Justice, request that they be added to the specific shareholders provided for in paragraph (1) for the proposal for the shareholders meeting under that paragraph.
- (4) The specific shareholders under paragraph (1) may not exercise voting right at the shareholders meeting provided for in Article 156(1); provided, however, that this shall not apply in cases where all shareholders other than the specific shareholders under paragraph (1) may not exercise the voting right at such shareholders meeting.
- (5) In cases where specific shareholders are prescribed under paragraph (1), for the purpose of the application of the provisions of Article 158(1), "shareholders (or, for a Company with Class Shares, the Class Shareholder of the classes of the shares it intends to acquire)" in such paragraph shall be read as "specific shareholders under Article 160(1)."

**Article 161** (Special Provision on Acquisition of Shares with Market Price)

The provisions of paragraph (2) and paragraph (3) of the preceding article shall not apply if, in cases where the shares to be acquired are shares with a market price, the amount of the Monies, etc. to be delivered in exchange for the acquisition of one such share does not exceed the amount of the market price of one such share calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 162** (Special Provision on Acquisition from Heirs)

The provisions of Article 160(2) and (3) shall not apply in cases where a Stock Company acquires, from general successors of the shareholders, including their heirs, the shares of such Stock Company that the same acquired by general succession including inheritance; provided, however, that this shall not apply if it falls under any of the following:

- (i) The Stock Company is a Public Company; or
- (ii) Such general successors, including heirs exercised the voting right on such shares at a shareholders meeting or Class Meeting.

**Article 163** (Acquisition of Shares from Subsidiaries)

In cases where a Stock Company acquires shares in such Stock Company that are held by its Subsidiary, for the purpose of the application of the provisions of Article 156(1), "shareholders meeting" in such paragraph shall be read as "shareholders meeting (or board of directors meeting for a Company with Board of Directors)." In such cases, the provisions of Article 157 to Article 160 inclusive shall not apply.

**Article 164** (Provisions of Articles of Incorporation regarding Acquisition from Specific Shareholders)

- (1) If a Stock Company intends to make a determination under the provisions of Article 160(1) with respect to the acquisition of shares (or, for a Company with Class Shares, shares of a certain class. The same shall apply in the following paragraph.), it may provide in the articles of incorporation to the effect that the provisions of paragraph (2) and paragraph (3) of that article shall not apply.
- (2) If, after the shares are issued, it is intended to create a provision in the articles of incorporation under the provisions of the preceding paragraph with respect to such shares by amending the articles of incorporation, or to effect any amendment (excluding that which abolishes the provisions of the articles of incorporation under that paragraph) in the articles of incorporation with respect to such provisions, the consent of all shareholders who hold such shares shall be obtained.

**Division 3 Acquisition of Shares by Market Transactions**

**Article 165**

- (1) The provisions of Article 157 to Article 160 inclusive shall not apply in cases where a Stock Company acquires shares in such Stock Company through transactions undertaken by that Stock Company in the market or through a takeover bid provided for in Article 27-2(6) of the Financial Instruments and Exchange Act (hereinafter in this article referred to as "Market Transactions").
- (2) A Company with Board of Directors may provide in its articles of incorporation to the effect that the acquisition of own shares by Market Transactions may be prescribed by resolution of a board of directors meeting.
- (3) In cases where the provision of the articles of incorporation under the provisions of the preceding paragraph is created, for the purpose of the application of the provisions of Article 156(1), "shareholders meeting" in such paragraph shall be

read as "shareholders meeting (or shareholders meeting or board of director's meeting in the cases provided for in Article 165 (1))."

### **Subsection 3 Acquisition of Shares with Put Option and Shares subject to Call**

#### **Division 1 Demand for Acquisition of Shares with Put Option**

##### **Article 166 (Demand for Acquisition)**

- (1) Shareholders of Shares with Put Option may demand that the Stock Company acquire the Shares with Put Option held by such shareholders; provided, however, that this shall not apply if, in cases where the properties provided for in item (ii) (b) to item (ii) (e) inclusive of Article 107(2) is delivered in exchange for the acquisition of such Shares with Put Option, the book value of such properties exceeds the Distributable Amount under Article 461(2) on the day when such demand is made.
- (2) The demand pursuant to the provisions of the preceding paragraph shall be submitted by disclosing the number of Shares with Put Option relating to such demand (or, for a Company with Class Shares, the classes of the Shares with Put Option and the number of shares for each class).
- (3) If shareholders of a Company Issuing Share Certificate intend to submit demand pursuant to the provisions of paragraph (1) with respect to the Shares with Put Option held by the same, they shall submit the share certificates representing such Shares with Put Option to the Company Issuing Share Certificate; provided, however, that this shall not apply in cases where no share certificate representing such Shares with Put Option is issued.

##### **Article 167 (Effectuation)**

- (1) A Stock Company shall acquire the Shares with Put Option relating to a demand pursuant to the provisions of paragraph (1) of the preceding article on the day of such demand.
- (2) In the cases listed in the following items, a shareholders who submits a demand pursuant to the provisions of paragraph (1) of the preceding article shall become a shareholder provided for in each of such items in accordance with the provisions with respect to the matters provided for in Article 107(2) (ii) (or, for a Company with Class Shares, Article 108(2) (v)) on the day of the demand:
  - (i) In cases where there is a provision on the matters listed in Article 107(2) (ii) (b): Bondholders of the Bonds under that item (ii) (b);
  - (ii) In cases where there is a provision on the matters listed in Article 107(2) (ii)

- (c): Holders of Share Options under that item (ii) (c);
  - (iii) In cases where there is a provision on the matters listed in Article 107(2) (ii) (d): Bondholders of the Bonds with respect to Bonds with Share Option under that item (ii) (d), and holders of Share Options attached to such Bonds with Share Option;
  - (iv) In cases where there is a provision on the matters listed in Article 108(2) (v) (b): Shareholders of "other shares" under that item (v) (b);
- (3) In the cases provided for in item (iv) of the preceding paragraph, if the number of the "other shares" provided for in such item includes a fraction of less than one share, it shall be rounded off. In such cases, unless otherwise provided in the articles of incorporation, the Stock Company shall, in accordance with the categories of the cases listed in the following items, deliver to the shareholders who submitted demands pursuant to the provisions of paragraph (1) of the preceding article the monies in the amount equivalent to the amount obtained by multiplying the amount provided for in each of such items by such fraction:
- (i) In cases where such shares are shares with a market price: The amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the amount of the market price of one such share;
  - (ii) In cases other than the cases listed in the preceding item: The amount of net assets per share.
- (4) The provisions of the preceding paragraph shall apply mutatis mutandis to cases where there is a fraction with respect to the Bonds and Share Options of such Stock Company. In such cases, the term "amount of net assets per share" in item (ii) of that paragraph shall be read as "the amount prescribed by the applicable Ordinance of the Ministry of Justice."

## **Division 2 Acquisitions of Shares subject to Call**

### **Article 168** (Determination of Day of Acquisition)

- (1) In cases where there is a provision with respect to the matters listed in Article 107(2) (iii) (b), the Stock Company shall prescribe the day under that item (iii) (b) by resolution of a shareholders meeting (or of a board of director's meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise provided for in the articles of incorporation.
- (2) If a Stock Company prescribes the day under Article 107(2) (iii) (b), the Stock Company shall notify the shareholders of the Shares subject to Call (or, in cases where there is a provision with respect to the matters listed in item (iii) (c) of that paragraph, the shareholders of Shares subject to Call who are determined under the provisions of paragraph (1) of the following article) and the Registered

Pledges of Shares thereof of such date no later than two weeks prior to such day.  
(3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

**Article 169** (Determination of Shares to be Acquired)

- (1) In cases where there is a provision with respect to the matters listed in Article 107(2) (iii) (c), if a Stock Company intends to acquire Shares subject to Call, it shall determine the Shares subject to Call that it intends to acquire.
- (2) The Shares subject to Call under the preceding paragraph shall be determined by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise provided for in the articles of incorporation.
- (3) If a Stock Company makes the determination pursuant to the provisions of paragraph (1), the Stock Company shall immediately notify the shareholders of the Shares subject to Call who are identified pursuant to the provisions of that paragraph and the Registered Pledges of Shares thereof to the effect that the Stock Company will acquire such Shares subject to Call.
- (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph.

**Article 170** (Effectuation)

- (1) A Stock Company shall acquire, on the day when the grounds under Article 107 (2) (iii) (a) have arisen (or, in cases where there is a provision with respect to the matters listed in item (iii) (c) thereof, on the day listed in item (i) or the day listed in item (ii) below, whichever comes later. The same shall apply in the following paragraph and paragraph (5).), the Shares subject to Call (or, in cases where there is a provision with respect to the matters listed in item (iii) (c), paragraph (2) of that article, those determined pursuant to the provisions of paragraph (1) of the preceding article. The same shall apply in the following paragraph.):
  - (i) The day when grounds under Article 107(2) (iii) (a) have arisen; or
  - (ii) The day of notice pursuant to the provisions of paragraph (3) of the preceding article, or the day when two weeks have lapsed from the day of the public notice under paragraph (4) of that article.
- (2) In the cases listed in the following items, the shareholders of the Shares subject to Call (excluding the relevant Stock Company) shall become the status provided for in each of such items in accordance with the provisions with respect to the matters provided for in such item (or, for a Company with Class Shares, Article 108(2) (vi)) on the day when the grounds under Article 107(2) (iii) (a) have

arisen:

- (i) In cases where there is a provision on the matters listed in Article 107(2) (iii) (d): Bondholders of the Bonds under that item (iii) (d);
  - (ii) In cases where there is a provision on the matters listed in Article 107(2) (iii) (e): Holders of Share Options under that item (iii) (e);
  - (iii) In cases where there is a provision on the matters listed in Article 107(2) (iii) (f): Bondholders of the Bonds with respect to Bonds with Share Option under that item (ii) (d), and holders of Share Options attached to such Bonds with Share Option;
  - (iv) In cases where there is a provision on the matters listed in Article 108(2) (vi) (b): Shareholders of "other shares" under that item (vi) (b);
- (3) A Stock Company shall notify the shareholders of Shares subject to Call and Registered Pledgees of Shares thereof without delay after grounds have arisen under Article 107(2) (iii) (a) (in cases where there is a provision with respect to the matters listed in that item (iii) (c), the shareholders of Shares subject to Call determined pursuant to the provisions of paragraph (1) of the preceding article, and Registered Pledgees of Shares thereof) to the effect that such grounds have arisen; provided, however, that this shall not apply if the Stock Company has given notice under the provisions of Article 168(2) or has given public notice under the provisions of paragraph (3) of that article.
- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.
- (5) The provisions of the preceding paragraphs shall not apply if, in cases where the properties provided for in item (iii) (d) to item (iii) (g) inclusive of Article 107(2) is delivered in exchange for the acquisition of the Shares subject to Call, the book value of such properties exceeds the Distributable Amount under Article 461(2) on the day when the grounds under Article 107(2) (iii) (a) arose.

#### **Subsection 4 Acquisition of Class Shares subject to Wholly Call**

**Article 171** (Determinations regarding Acquisition of Class Shares subject to Wholly Call)

- (1) A Company with Class Shares which has issued Class Shares subject to Wholly Call (meaning the Class Shares that have provisions with respect to the matters listed in Article 108(1) (vii) hereof. The same shall apply in this Subsection.) may acquire all of the Class Shares subject to Wholly Call by resolution of a shareholders meeting. In such cases, the following matters shall be prescribed by resolution of such shareholders meeting:
- (i) If Monies, etc. will be delivered in exchange for the acquisition of the Class

Shares subject to Wholly Call, the following matters with respect to such Monies, etc. (hereinafter in this article referred to as "Consideration for Acquisition"):

- (a) If such Consideration for Acquisition consists of the shares in the Stock Company, the classes of such shares and the number of shares for each class, or the method for calculating such numbers;
  - (b) If such Consideration for Acquisition consists of the Bonds of the Stock Company (excluding those with respect to the Bonds with Share Option), the classes of such Bonds and the total amount of Bonds for each class, or the method for calculating such total amounts;
  - (c) If such Consideration for Acquisition consists of the Share Options of the Stock Company (excluding those attached to Bonds with Share Option), the features and number of such Share Options, or the method for calculating such number;
  - (d) If such Consideration for Acquisition consists of the Bonds with Share Option of the Stock Company, the matters prescribed in (b) above with respect to such Bonds with Share Option, and the matters prescribed in (c) above with respect to the Share Options attached to such Bonds with Share Option; and
  - (e) If such Consideration for Acquisition consists of properties other than the shares, etc. of the Stock Company, the description and number or value of such properties, or the method for calculating such number or value.
- (ii) In the cases provided for in the preceding item, the matters regarding the allotment of the Consideration for Acquisition to the shareholders of the Class Shares subject to Wholly Call.
  - (iii) The day on which the Stock Company will acquire the Class Shares subject to Wholly Call (hereinafter in this Subsection referred to as "Acquisition Day").
- (2) The provisions regarding the matters listed in item (ii) of the preceding paragraph shall stipulate that the Consideration for Acquisition will be allotted in proportion to the number of the Class Shares subject to Wholly Call held by the shareholders (excluding the relevant Stock Company).
  - (3) The directors, at the shareholders meeting under paragraph (1) above, shall explain the reasons for the need to acquire all of the Class Shares subject to Wholly Call.

**Article 172** (Petition to Court for Determination of Price)

- (1) In cases where the matters listed in each item of paragraph (1) of the preceding article are prescribed, the following shareholders may file a petition to the court, within twenty days from the day of the shareholders meeting under that paragraph, for a determination of the price of the Class Shares subject to Wholly

Call for the acquisition by the Stock Company.

- (i) Shareholders who give notice to such Stock Company to the effect that they dissent from the acquisition by the Stock Company of the Class Shares subject to Wholly Call act prior to such shareholders meeting and do dissent from such acquisition at such shareholders meeting (limited to those who can exercise voting right at such shareholders meeting);
  - (ii) Shareholders who cannot exercise voting right at such shareholders meeting.
- (2) The Stock Company shall also pay the interest on the price determined by the court which shall be calculated at the rate of 6% per annum from and including the Acquisition Day.

**Article 173 (Effectuation)**

- (1) A Stock Company shall acquire Class Shares subject to Wholly Call on the Acquisition Day.
- (2) In the cases listed in the following items, shareholders of the Class Shares subject to Wholly Call other than the Stock Company shall become the person provided for in each of such items in accordance with provisions made by resolution of the shareholders meeting under Article 171(1) on the Acquisition Day:
  - (i) In cases where there is a provision on the matters listed in Article 171(1) (i) (a): Shareholders of shares under that item (i) (a);
  - (ii) In cases where there is a provision on the matters listed in Article 171(1) (i) (b): Bondholders of Bonds under that item (i) (b);
  - (iii) In cases where there is a provision on the matters listed in Article 171(1) (i) (c): Holders of Share Options under that item (i) (c);
  - (iv) In cases where there is a provision on the matters listed in Article 171(1) (i) (d): Bondholders of the Bonds with respect to Bonds with Share Option under that item (i) (d), and holders of Share Options attached to such Bonds with Share Option;

**Subsection 5 Demand for Sale to Heirs**

**Article 174 (Provisions of Articles of Incorporation regarding Demand for Sale to Heirs)**

A Stock Company may provide in the articles of incorporation to the effect that it may demand that a person who has acquired shares (limited to Shares with Restriction on Transfer) in such Stock Company by general succession, including inheritance, sell such shares to such Stock Company.

**Article 175 (Determinations regarding Demand for Sale)**

- (1) In cases where there is a provision of the articles of incorporation under the provisions of the preceding article, whenever a Stock Company intends to effect a demand pursuant to the provisions of paragraph (1) of the following article, it shall prescribe the following matters by resolution of a shareholders meeting:
  - (i) The number of shares for which the Stock Company intends to effect the demand pursuant to the provisions of paragraph (1) of the following article (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class); and
  - (ii) The names of the persons who hold the shares under the preceding item.
- (2) The persons under item (ii) of the preceding paragraph may not exercise voting right at the shareholders meeting under that paragraph; provided, however, that this shall not apply in cases where all shareholders other than the persons under that paragraph may not exercise the voting right at such shareholders meeting.

**Article 176 (Demand for Sale)**

- (1) If a Stock Company determines the matters listed in each item of paragraph (1) of the preceding article, it may demand that the persons under item (ii) of that paragraph sell the shares under item (i) of that paragraph to such Stock Company; provided, however, that this shall not apply when one year has lapsed from the day when such Stock Company acquires knowledge of the general succession, including inheritances.
- (2) Demands pursuant to the provisions of paragraph (1) shall be made by disclosing the number of shares relating to such demand (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class).
- (3) A Stock Company may withdraw a demand under the provisions of paragraph (1) at any time.

**Article 177 (Determination of Sale Price)**

- (1) In cases where notice is given under the provisions of paragraph (1) of the preceding article, the sale price of the shares under Article 175(1) (i) shall be prescribed through discussion between the Stock Company and the persons under item (ii) of that paragraph.
- (2) The Stock Company or persons under Article 175(1) (ii) may file a petition to the court for a determination of the sale price within twenty days from the day when a demand is made under the provisions of paragraph (1) of the preceding article.
- (3) In order to make the determination under the preceding paragraph, the court shall consider the financial conditions of the Stock Company at the time of the demand pursuant to the provisions of paragraph (1) of the preceding article and

all other circumstances.

- (4) Notwithstanding the provisions of paragraph (1), if a petition is made under paragraph (2) within the period provided for in that paragraph, the amount determined by the court in response to such petition shall be the sale price of the shares under Article 175(1) (i).
- (5) If no petition is made under paragraph (2) within the period provided for in that paragraph (except in cases where the discussions under paragraph (1) are successfully concluded within such period), a demand under the provisions of paragraph (1) of the preceding article shall become ineffective.

### **Subsection 6 Cancellation of Shares**

#### **Article 178**

- (1) A Stock Company may cancel its Treasury Shares. In such cases, the Stock Company shall determine the number of the Treasury Shares it intends to cancel (or, for a Company with Class Shares, the classes of the shares and the number of Treasury Shares for each class).
- (2) For a Company with Board of Directors, the determination under the provisions of the second sentence of the preceding paragraph shall be made by resolution of a board of directors meeting.

#### **Article 179**

Deleted

### **Section 5 Consolidation of Shares**

#### **Subsection 1 Consolidation of Shares**

#### **Article 180 (Consolidation of Shares)**

- (1) A Stock Company may consolidate its shares.
- (2) Whenever a Stock Company intends to consolidate its shares, it shall determine the following matters by resolution of a shareholders meeting:
  - (i) The ratio of the consolidation;
  - (ii) The day when the consolidation of shares will become effective;
  - (iii) In cases where the Stock Company is a Company with Class Shares, the classes of the shares it will consolidate.
- (3) The directors shall, at the shareholders meeting under the preceding paragraph, explain the reasons for the need to consolidate the shares.

**Article 181** (Notices to Shareholders)

- (1) No later than two weeks prior to the day under item (ii), paragraph (2) of the preceding article, the Stock Company shall notify the shareholders (or, for a Company with Class Shares, referring to the Class Shareholders of the classes of shares under item (iii) of that paragraph. The same shall apply in the following article.) and the Registered Pledges of the Shares thereof of the matters listed in each item of that paragraph.
- (2) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

**Article 182** (Effectuation)

On the day provided for in Article 180(2) (ii), the shareholders shall become shareholders of shares in the number obtained by multiplying the number of shares (or, for a Company with Class Shares, shares of the classes provided for in item (iii) of that paragraph. The same shall apply hereinafter in this Article.) they held on the day immediately preceding that day, by the ratio provided for in item (i) of that paragraph.

**Subsection 2 Share Split**

**Article 183** (Share Split)

- (1) A Stock Company may split its shares.
- (2) Whenever a Stock Company intends to split its shares, it shall prescribe the following matters by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors):
  - (i) The ratio of the total number of shares after the increase as a result of the Share Split to the total number of Issued Shares (or, for a Company with Class Shares, Issued Shares of the classes under item (iii)) immediately before the Share Split, and the Record Date relating to such Share Split;
  - (ii) The day when the Share Split will become effective;
  - (iii) In cases where the Stock Company is a Company with Class Shares, the classes of the shares it splits.

**Article 184** (Effectuation)

- (1) Shareholders stated or recorded in the shareholder registry on the Record Date (or, for a Company with Class Shares, Class Shareholders of the classes provided for in item (iii), paragraph (2) of the preceding article who are stated or recorded in the shareholder registry on the Record Date) shall acquire, on the day provided for in item (ii) of that paragraph, shares in the number obtained by multiplying

the number of shares (or, for a Company with Class Shares, shares of the classes provided for in item (iii) of that paragraph. The same shall apply hereinafter in this paragraph.) they hold on the Record Date, by the ratio provided for in item (i), paragraph (2) of that article.

- (2) Notwithstanding the provisions of Article 466, a Stock Company (excluding a Stock Company that in fact issues two or more classes of shares) may, without a resolution of a shareholders meeting, effect an amendment to the articles of incorporation that is intended to increase the Total Number of Authorized Shares on the day provided for in item (ii), paragraph (2) of the preceding article to the extent of the number obtained by multiplying the Total Number of Authorized Shares as of the day immediately preceding such day, by the ratio provided for in item (i) of that paragraph.

### **Subsection 3 Allotment of Shares without Contribution**

#### **Article 185 (Allotment of Shares without Contribution)**

A Stock Company may allot the shares of such Stock Company to shareholders (or, for a Company with Class Shares, shareholders of certain classes) without requiring them to make additional contribution (hereinafter in this Subsection referred to as "Allotment of Shares without Contribution").

#### **Article 186 (Determination of Matters concerning Allotment of Shares without Contribution)**

- (1) Whenever a Stock Company intends to effect the Allotment of Shares without Contribution, it shall prescribe the following matters:
- (i) The number of shares the Stock Company will allot to shareholders (or, for a Company with Class Shares, the classes of shares and the number of shares for each class), or the method for calculating such number;
  - (ii) The day when such Allotment of Shares without Contribution becomes effective; and
  - (iii) In cases where the Stock Company is a Company with Class Shares, the classes of shares held by the shareholders entitled to such Allotment of Shares without Contribution.
- (2) The provisions regarding the matters listed in item (i) of the preceding paragraph shall stipulate that the shares under item (i) of that paragraph will be allotted in proportion to the number of shares (or, for a Company with Class Shares, shares of the classes under item (iii) of that paragraph) held by shareholders (or, for a Company with Class Shares, Class Shareholders of shares of the classes under item (iii) of that paragraph) other than such Stock Company.

- (3) The determination of the matters listed in each item of paragraph (1) shall be made by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise provided in the articles of incorporation.

**Article 187 (Effectuation of Allotment of Shares without Contribution)**

- (1) Shareholders to whom the shares under item (i), paragraph (1) of the preceding article have been allotted shall become shareholders of the shares provided for in item (i) of that paragraph on the day provided for in item (ii) of that paragraph.
- (2) Without delay after the day provided for in item (ii) of that paragraph, a Stock Company shall notify shareholders (or, for a Company with Class Shares, Class Shareholders of the classes under item (iii) of that paragraph) and the Registered Pledges of the Shares thereof of the number of the shares (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class) that have been allotted to such shareholders.

**Section 6 Share Units**

**Subsection 1 General Provisions**

**Article 188 (Share Unit)**

- (1) A Stock Company may provide in the articles of incorporation, with respect to the shares it issues, to the effect that a fixed number of shares shall constitute one unit of shares, which entitles a shareholder to cast one vote at a shareholders meeting or Class Meeting.
- (2) The fixed number in the preceding paragraph may not exceed the number prescribed by the applicable Ordinance of the Ministry of Justice.
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- (3) A Company with Class Shares shall provide for the Share Unit for each class of its shares.

**Article 189 (Restriction on Rights in relation to Shareholdings less than One Unit)**

- (1) Shareholders who hold shares in a number less than one Share Unit (hereinafter referred to respectively as "Holder of Shares Less than One Unit" and "Shares Less than One Unit") may not exercise voting right at a shareholders meeting or Class Meeting with respect to their Shares Less than One Unit.
- (2) A Stock Company may provide in the articles of incorporation to the effect that Holders of Shares Less than One Unit may not exercise some or all rights, other than the following rights, with respect to the relevant Shares Less than One Unit:

- (i) The right to take delivery of the Consideration for Acquisition provided for in Article 171(1) (i);
  - (ii) The right to take delivery of Monies, etc. in exchange for the acquisition by the Stock Company of Shares subject to Call;
  - (iii) The right to receive the Allotment of Shares without Contribution provided for in Article 185;
  - (iv) The right to demand the purchase of the Shares Less than One Unit pursuant to the provisions of Article 192(1);
  - (v) The right to receive the distribution of residual assets;
  - (vi) In addition to the matters listed in the preceding items, any matters prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) A Company Issuing Share Certificate may provide in the articles of incorporation to the effect that it may elect to not issue share certificates representing Shares Less than One Unit.

**Article 190 (Disclosure of Reasons)**

In cases where the Share Unit is to be prescribed, the directors shall explain the reasons for the need to prescribe such Share Unit at the shareholders meeting at which it is intended to amend the articles of incorporation to prescribe such Share Unit.

**Article 191 (Special Provisions on Procedures)**

Notwithstanding the provisions of Article 466, a Stock Company may effect a amendment to the articles of incorporation that will increase the size of the Share Unit (or, for a Company with Class Shares, the size of the Share Unit for the shares of each class. The same shall apply hereinafter in this article.) or create a provision in the articles of incorporation with respect to the Share Unit without a resolution of a shareholders meeting, in cases that fall under both of the following items:

- (i) That the amendment will increase the size of the Share Unit simultaneously with a Share Split, or create a provision in the articles of incorporation with respect to the Share Unit; and
- (ii) That the number provided for in (a) below is not less than the number provided for in (b) below:
  - (a) The number obtained by dividing the number of the shares held by each shareholder after such amendment to the articles of incorporation by the Share Unit;
  - (b) The number of the shares held by each shareholder before such amendment to the articles of incorporation (or, in cases where the Share Unit is prescribed, the number obtained by dividing the number of such shares by the Share

Unit).

**Subsection 2 Demand for Purchase from Holder of Shares Less than One Unit**

**Article 192** (Demand for Purchase of Holder of Shares Less than One Unit)

- (1) Holders of Shares Less than One Unit may demand that the Stock Company purchase their Shares Less than One Unit.
- (2) A demand under the provisions of the preceding paragraph shall be made by disclosing the number of the Shares Less than One Unit relating to that demand (or, for a Company with Class Shares, the classes of the Shares Less than One Unit and the number of shares for each class).
- (3) A Holder of Shares Less than One Unit who makes a demand pursuant to the provisions of paragraph (1) may withdraw such demand only if the approval of the Stock Company is obtained.

**Article 193** (Determination of Price of Shares Less than One Unit)

- (1) In cases where the demand pursuant to the provisions of paragraph (1) of the preceding article is made, the amount provided for in each of the following items in accordance with the categories of the cases listed in such items, shall be the price of the Shares Less than One Unit relating to such demand:
  - (i) In cases where the Shares Less than One Unit are shares with a market price, the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the market price of such Shares Less than One Unit;
  - (ii) In cases other than the cases listed in the preceding item, the amount prescribed through discussions between the Stock Company and the Holder of Shares Less than One Unit who made the demand under the provisions of paragraph (1) of the preceding article.
- (2) In the cases listed in item (ii) of the preceding paragraph, the Holder of Shares Less than One Unit who made the demand pursuant to the provisions of paragraph (1) of the preceding article, or the Stock Company, may file a petition to the court for a determination of the sale price within twenty days from the day when such demand is made.
- (3) In order to make the determination under the preceding paragraph, the court shall consider the financial condition of the Stock Company at the time of the demand pursuant to the provisions of paragraph (1) of the preceding article and all other circumstances.
- (4) Notwithstanding the provisions of paragraph (1), if petition is filed under paragraph (2) within the period provided for in that paragraph, the amount

determined by the court in response to such petition shall be the price of such Shares Less than One Unit.

- (5) Notwithstanding the provisions of paragraph (1), in the cases listed in item (ii) of that paragraph, if no petition is filed under paragraph (2) within the period provided for in that paragraph (except in cases where the discussions under item (ii) of paragraph (1) are successfully concluded within such period), the sale price of the Shares Less than One Unit shall be the amount obtained by multiplying the amount of the net assets per share by the number of the Shares Less than One Unit related to the demand pursuant to the provisions of paragraph (1) of the preceding article.
- (6) The purchase of the shares related to the demand pursuant to the provisions of paragraph (1) of the preceding article shall become effective as at payment for such shares.
- (7) If a Company Issuing Share Certificate is subject to a demand pursuant to the provisions of paragraph (1) of the preceding article with respect to shares for which share certificates have been issued, it shall pay the price of the shares related to such demand in exchange for the share certificates.

### **Subsection 3 Demand for Sale to Holder of Shares Less than One Unit**

#### **Article 194**

- (1) A Stock Company may provide in the articles of incorporation to the effect that a Holder of Shares Less than One Unit may submit to such Stock Company a Demand for the Sale of Shares Less than One Unit (referring to a demand that the Stock Company sell to a Holder of Shares Less than One Unit such number of shares which, together with the number of Shares Less than One Unit held by such Holder of Shares Less than One Unit, will constitute one Share Unit. The same shall apply hereinafter in this article.).
- (2) Demand for the Sale of Shares Less than One Unit shall be made by disclosing the number of the Shares Less than One Unit to be sold to such Holder of Shares Less than One Unit (or, for a Company with Class Shares, the classes of the Shares Less than One Unit and the number of shares for each class).
- (3) A Stock Company that is subject to a Demand for the Sale of Shares Less than One Unit shall sell its Treasury Shares to such Holders of Shares Less than One Unit, unless the Stock Company does not hold, at the time of reception of such Demand for the Sale of Shares Less than One Unit, Treasury Shares in a number corresponding to the number of the Shares Less than One Unit provided for in the preceding paragraph.
- (4) The provisions of Article 192(3), and paragraph (1) to paragraph (6) inclusive

of the preceding article shall apply mutatis mutandis to Demand for the Sale of Shares Less than One Unit.

#### **Subsection 4 Changes in Share Unit**

##### **Article 195**

- (1) Notwithstanding the provisions of Article 466, a Stock Company may decrease the size of the Share Unit or abolish the provision of the articles of incorporation with respect to the Share Unit by effecting a amendment to the articles of incorporation by decision of the directors (or resolution of a board of directors meeting for a Company with Board of Directors).
- (2) In cases where a amendment is made in the articles of incorporation pursuant to the provisions of the preceding paragraph, the Stock Company shall, without delay after the day of the effectuation of such amendment to the articles of incorporation, notify its shareholders (or, for a Company with Class Shares, its Class Shareholders of the classes for which the Share Unit has been changed pursuant to the provisions of that paragraph) to the effect that such amendment to the articles of incorporation has been made.
- (3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

#### **Section 7 Omission to Notices to Shareholders**

##### **Article 196** (Omission of Notices to Shareholders)

- (1) In cases where notices or demands from a Stock Company do not reach a shareholder for five consecutive years or more, the Stock Company shall no longer be required to give notices or issue demands to such shareholder.
- (2) In the cases provided for in the preceding paragraph, the domicile of the Stock Company shall be the place where the obligation of the Stock Company with regard to the shareholder under that paragraph is performed.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to Registered Pledgees of Shares.

##### **Article 197** (Auction of Shares)

- (1) A Stock Company may sell shares that fall under both of the following items by auction and tender the proceeds thereof to the shareholders of such shares:
  - (i) That there is no requirement to give notice or issue a demand to the shareholder of such shares pursuant to the provisions of paragraph (1) of the preceding article, or Article 294(2); and

- (ii) That the shareholders of such shares have not received dividends of surplus for consecutive five years.
- (2) In lieu of sale by auction under the provisions of the preceding paragraph, a Stock Company may sell shares under that paragraph with a market price in an amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the market price thereof, and shares under that paragraph without a market price using a method other than auction with the permission of the court. In such cases, if there are two or more directors, the petition for such permission shall be filed with the consent of all directors.
- (3) The Stock Company may purchase some or all of the shares sold under the provisions of the preceding paragraph. In such cases, the Stock Company shall prescribe the following matters:
  - (i) The number of shares to be purchased (or, for a Company with Class Shares, the classes of shares and the number of shares for each class);
  - (ii) The total amount of the monies to be delivered in exchange for the purchase of the shares in the preceding item.
- (4) A Company with Board of Directors shall determine the matters listed in each item of the preceding paragraph by resolution of a board of directors meeting.
- (5) Notwithstanding the provisions of paragraph (1) and paragraph (2), in cases where there are Registered Pledgees of Shares, the Stock Company may effect the auction under the provisions of paragraph (1), or the sale pursuant to the provisions of paragraph (2), only if such Registered Pledgees of Shares are the persons who fall under both of the following items:
  - (i) That there is no requirement to give notice or issue a demand to such persons under the provisions of Article 196(1) applied mutatis mutandis under paragraph (3) of that paragraph; and
  - (ii) That the persons have not received the dividends of surplus to which they are entitled under the provisions of Article 154(1) for consecutive five years.

**Article 198** (Objections of Interested Parties)

- (1) In cases where a Stock Company effects an auction under the provisions of paragraph (1) of the preceding article, or a sale under the provisions of paragraph (2) of that article, the Stock Company shall give public notice to the effect that interested parties, including the shareholders of the shares provided for in paragraph (1) of that article, may state their objections during a certain period of time, and other matters prescribed by the applicable Ordinance of the Ministry of Justice, and shall issue separate demands seeking such objections, if any, to each shareholder of such shares and each Registered Pledgee of Shares thereof; provided, however, that such period cannot be less than three months.

- (2) Notwithstanding the provisions of Article 126(1) and Article 150(1), the demands under the provisions of the preceding paragraph shall be sent to the addresses of such shareholders and Registered Pledgees of Shares stated or recorded in the shareholder registry (or, in cases where such shareholders or Registered Pledgees of Shares notify such Stock Company of a different place or contact address for the receipt of notices or demands, to such place or contact address).
- (3) Notwithstanding the provisions of Article 126(3) and (4), if a share is co-owned by two or more persons, the demand pursuant to the provisions of paragraph (1) shall be sent to the address of the co-owners specified or recorded in the shareholder registry (or, in cases where such co-owners notify such Stock Company of a different place or contact address for the receipt of notices or demands, to such place or contact address).
- (4) The provisions of Article 196(1) (including cases where it is applied mutatis mutandis under paragraph (3) of that paragraph) shall not apply to demands under the provisions of paragraph (1).
- (5) In cases where public notice is given under the provisions of paragraph (1) (limited to cases where share certificates representing the shares under paragraph (1) of the preceding article have been issued), if no interested party raises any objection within the period under paragraph (1), the share certificates representing such shares shall become invalid on the last day of such period.

## **Section 8 Issue of Shares for Subscription**

### **Subsection 1 Determination of Subscription Requirements**

#### **Article 199** (Determination of Subscription Requirements)

- (1) Whenever a Stock Company intends to solicit persons to subscribe for shares it issues or for Treasury Shares it disposes of, the Stock Company shall prescribe the following matters with respect to the Shares for Subscription (meaning shares the Stock Company allots to persons who subscribed for those shares in response to such solicitation. The same shall apply hereinafter in this Section.):
  - (i) The number of Shares for Subscription (or, for a Company with Class Shares, the classes and the number of the Shares for Subscription. The same shall apply hereinafter in this Section.);
  - (ii) The Amount To Be Paid In (meaning the amount of the monies to be paid in in exchange for one of the Shares for Subscription, or the amount of any property other than monies to be contributed. The same shall apply hereinafter in this Section.) for the Shares for Subscription or the method for calculating such

- amount;
- (iii) If property other than monies will be the subject of the contribution, a statement to such effect and the description and value of such property;
  - (iv) The day or period for the payment of the monies in exchange for the Shares for Subscription, or the contribution of the property under the preceding item;
  - (v) If shares are issued, matters regarding the capital and capital reserves that is to be increased.
- (2) The determination of the matters listed in each item of the preceding paragraph (hereinafter in this Section referred to as "Subscription Requirements") shall be made by resolution of a shareholders meeting.
  - (3) In cases where the Amount To Be Paid In under item (ii) of paragraph (1) is particularly favorable to subscribers for the Shares for Subscription, the directors shall, at the shareholders meeting under the preceding paragraph, explain the reasons for the need to solicit such persons with such an offer of the Amount To Be Paid In.
  - (4) For a Company with Class Shares, if the class of the Shares for Subscription under item (i) of paragraph (1) is that of Shares with Restriction on Transfer, the determination of the Subscription Requirements regarding such class of shares shall not become effective without a resolution of the relevant Class Meeting, except in cases where there is a provision in the articles of incorporation to the effect that, with respect to the solicitation of subscribers for such class shares, a resolution of the Class Meeting constituted by the Class Shareholders of such class shares is not required; provided, however, that this shall not apply to cases where there is no Class Shareholder who can exercise his/her voting right at such Class Meeting.
  - (5) The Subscription Requirements shall be uniform for each solicitation under paragraph (1).

**Article 200** (Delegation of Determination of Subscription Requirements)

- (1) Notwithstanding the provisions of paragraphs (2) and (4) of the preceding article, a shareholders meeting may, by means of a resolution, delegate the determination of the Subscription Requirements to the directors (or, for a Company with Board of Directors, the board of directors). In such cases, the shareholders meeting shall prescribe the maximum number of the Shares for Subscription for which the Subscription Requirements may be determined under such delegation, and the minimum Amount To Be Paid In.
- (2) In cases where the minimum Amount To Be Paid In in the preceding paragraph is particularly favorable to subscribers for the Shares for Subscription, the directors shall, at the shareholders meeting under that paragraph, explain the reason for the

need to solicit such persons with such an offer of the Amount To Be Paid In.

- (3) The resolution under paragraph (1) shall be effective with respect only to solicitations under paragraph (1) of the preceding article under which the date in item (iv) of that paragraph (in cases where a period is determined under that item, the last day of such period) falls within one year from the day of such resolution.
- (4) For a Company with Class Shares, if the class of the Shares for Subscription under paragraph (1) is that of Shares with Restriction on Transfer, the delegation of the determination of the Subscription Requirements regarding such class shares shall not become effective without a resolution of the Class Meeting constituted by the Class Shareholders of such class shares, except in cases where there is a provision in the articles of incorporation under paragraph (4) of the preceding article with respect to such class shares; provided, however, that this shall not apply to cases where there is no Class Shareholder who can exercise his/her voting right at such Class Meeting.

**Article 201** (Special Provisions on Determination of Subscription Requirements for Public Company)

- (1) Except for cases provided for in Article 199(3), for the purpose of the application of the provisions of paragraph (2) of that article to a Public Company, "shareholders meeting" in that paragraph shall be read as "board of directors meeting." In such cases, the provision of the preceding article shall not apply.
- (2) In cases where Subscription Requirements are determined by a resolution of the board of directors meeting provided for in Article 199(2) applied by the reading of terms pursuant to the provisions of the preceding paragraph, if a Public Company solicits subscribers for shares with a market price, it may prescribe, in lieu of the matters listed in item (ii), paragraph (1) of that article, the method for determining the Amount To Be Paid In that is appropriate to realize payment in at a fair value.
- (3) If a Public Company has determined Subscription Requirements by a resolution of the board of directors meeting provided for in Article 199(2) applied by the reading of terms pursuant to the provisions of the preceding paragraph, that Public Company shall notify the shareholders of such Subscription Requirements (in cases where the method for determining the Amount To Be Paid In has been prescribed, including that method. The same shall apply hereinafter in this Section.) no later than two weeks prior to the day referred to in item (iv), paragraph (1) of that article (or, in cases where a period has been prescribed under that item, no later than two weeks prior to the first day of that period).
- (4) A public notice may be substituted for the notice under the provisions of the

preceding paragraph.

- (5) The provisions of paragraph (3) shall not apply in cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where it is unlikely that the protection of shareholders is compromised, including cases where, with respect to Subscription Requirements, the Stock Company has submitted, no later than two weeks prior to the date provided for in that paragraph, a notice under Article 4 (1) or (2) of the Financial Instruments and Exchange Act.

**Article 202** (Cases where Entitlement to Allotment of Shares is Granted to Shareholders)

- (1) In carrying out solicitation under Article 199(1), the Stock Company may grant entitlement to the allotment of shares to its shareholders. In such cases, the Stock Company shall prescribe the following matters in addition to the Subscription Requirements:
- (i) A statement to the effect that the Stock Company will grant entitlement to the allotment of the Shares for Subscription of that Stock Company (or, for a Company with Class Shares, class shares identical to the class shares held by such shareholders) to shareholders, subject to the application provided for in paragraph (2) of the following article;
  - (ii) The day for the application for subscription for the Shares for Subscription referred to in the preceding item.
- (2) In the cases provided for in the preceding paragraph, the shareholders under item (i) of that paragraph (excluding the Stock Company) shall be entitled to the allotment of the Shares for Subscription in accordance with the number of shares they hold; provided, however, that if the number of the Shares for Subscription to be allotted to such shareholders includes a fraction of less than one share, it shall be rounded off.
- (3) In cases where the Stock Company prescribes the matters listed in each item of paragraph (1), the Subscription Requirements and the matters listed in each item of that paragraph shall be prescribed in accordance with the categories of the cases listed in the following items, by the methods provided for in each of such items:
- (i) In cases where there is a provision in the articles of incorporation to the effect that such Subscription Requirements and the matters listed in each item of paragraph (1) may be prescribed by decision of the directors (excluding the cases where the Stock Company is a Company with Board of Directors): A decision of the directors;
  - (ii) In cases where there is a provision in the articles of incorporation to the effect that such Subscription Requirements and the matters listed in each item of paragraph (1) may be prescribed by resolution of the board of directors

- (excluding the cases listed in the following item): A resolution of the board of directors;
- (iii) In cases where the Stock Company is a Public Company: A resolution of the board of directors;
- (iv) In cases other than those listed in the preceding three items: A resolution of a shareholders meeting;
- (4) In cases where a Stock Company prescribes the matters listed in each item of paragraph (1), the Stock Company shall notify the shareholders under item (i) of that paragraph (excluding such Stock Company) of the following matters no later than two weeks prior to the date provided for in item (ii) of that paragraph:
- (i) The Subscription Requirements;
- (ii) The number of Shares for Subscription to be allotted to such shareholders; and
- (iii) The date provided for in item (ii) of paragraph (1).
- (5) The provisions of paragraphs (2) to (4) inclusive of Article 199 and the preceding two articles shall not apply in cases where entitlement to the allotment of shares is granted to shareholders under the provisions of paragraphs (1) to (3) inclusive hereof.

## **Subsection 2 Allotment of Shares for Subscription**

### **Article 203 (Applications for Shares for Subscription)**

- (1) A Stock Company shall notify persons who intend to subscribe for Shares for Subscription in response to solicitation in Article 199(1) of the matters listed in the following items:
- (i) The trade name of the Stock Company;
- (ii) The Subscription Requirements;
- (iii) If any money payment is to be made, the place where payments are handled;
- (iv) In addition to the matters listed in the preceding three paragraphs, matters prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) A person who submits an application to subscribe for Shares for Subscription in response to solicitation in Article 199(1) shall deliver a document that specifies the following matters:
- (i) The name and address of the person applying;
- (ii) The number of Shares for Subscription for which he/she intends to subscribe.
- (3) A person who submits an application under the preceding paragraph may, in lieu of the delivery of the document under that paragraph, provide the matters to be stated in the document under that paragraph by Electromagnetic Means, with the approval of the Stock Company, pursuant to the provisions of the applicable Cabinet Order. In such cases, the person who submitted the application shall be

deemed to have delivered the document under that paragraph.

- (4) The provisions of paragraph (3) shall not apply in cases where the Stock Company has issued a prospectus provided for in Article 2(10) of the Securities and Exchange Act that states the matters listed in each item of that paragraph to a person who intends to submit the application in paragraph (1), and in other cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where it is unlikely that the protection of persons who intend to submit applications for subscription for Shares for Subscription is compromised.
- (5) If there are changes in the matters listed in each item of paragraph (1), the Stock Company shall immediately notify persons who have submitted applications in paragraph (2) (hereinafter in this Subsection referred to as "Applicants") thereof and of the matters so changed.
- (6) It shall be sufficient for a notice or demand to an Applicant to be sent by the Stock Company to the address under item (i) of paragraph (2) (or, in cases where such Applicant notifies the Stock Company of a different place or contact address for the receipt of notices or demands, to such place or contact address).
- (7) The notices or demands referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.

**Article 204** (Allotment of Shares for Subscription)

- (1) A Stock Company shall specify the persons to whom Shares for Subscription will be allotted from among the Applicants and the number of Shares for Subscription to be allotted to those persons. In such cases, the Stock Company may reduce the number of Shares for Subscription the Stock Company allots to such Applicants below the number under item (ii), paragraph (2) of the preceding article.
- (2) In cases where Shares for Subscription are Shares with Restriction on Transfer, the determination under the provisions of the preceding paragraph shall be made by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise prescribed in the articles of incorporation.
- (3) The Stock Company shall notify the Applicants, no later than the day immediately preceding the date referred to in item (iv), paragraph (1) of Article 199 (or, in cases where a period is prescribed under that item, no later than the day immediately preceding the first day of that period), of the number of Shares for Subscription that will be allotted to such Applicants.
- (4) In cases where the Stock Company has granted entitlement to the allotment of shares to its shareholders pursuant to the provisions of Article 202, if the shareholders do not submit, no later than the date under item (ii), paragraph (1)

of that article, applications under paragraph (2) of the preceding article, such shareholders shall lose the entitlement to the allotment of Shares for Subscription.

**Article 205** (Special Provision on Subscription and Allotment of Shares for Subscription)

The provisions of the preceding two Articles shall not apply in cases where a person who intends to subscribe for Shares for Subscription executes a contract for subscription for the total number of those shares.

**Article 206** (Subscription for Shares for Subscription)

The persons listed in the following items shall be the subscribers for Shares for Subscription with respect to the number of Shares for Subscription prescribed in each of such items:

- (i) Applicants: The number of the Shares for Subscription allotted by the Stock Company; or
- (ii) A person who subscribed for all of the Shares for Subscription under a contract in the preceding article: The number of Shares for Subscription for which that person has subscribed.

**Subsection 3 Contribution of Property other than Monies**

**Article 207**

- (1) If a Stock Company has prescribed the matters listed in Article 199(1) (iii), the Stock Company shall file a petition to the court, without delay after the determination of the Subscription Requirements, for the appointment of an inspector in order to have the inspector investigate the value of the property provided for in that item (hereinafter in this Section referred to as "Properties Contributed in Kind").
- (2) In cases where the petition referred to in the preceding paragraph has been filed, the court shall appoint an inspector, except in cases where it dismisses such petition as unlawful.
- (3) In cases where the court has appointed the inspector under the preceding paragraph, it may fix the amount of the remuneration that the Stock Company shall pay to such inspector.
- (4) The inspector referred to in paragraph (2) shall conduct the necessary investigations and submit a report, either by recording the outcome of such investigations or by providing documents or Electromagnetic Records (limited to those prescribed by the applicable Ordinance of the Ministry of Justice) to the court.

- (5) If the court finds it necessary to clarify the contents of the report under the preceding paragraph or to confirm the grounds supporting such report, it may request that the inspector under paragraph (2) submit a further report under the preceding paragraph.
- (6) If the inspector under paragraph (2) has submitted the report referred to in paragraph (4), he/she shall deliver to the Stock Company a copy of the documents under such paragraph, or provide the matters recorded in the Electromagnetic Records under such paragraph by the methods prescribed by the applicable Ordinance of the Ministry of Justice.
- (7) In cases where the court receives a report under paragraph (4), if it finds the value provided for in Article 199(1) (iii) with respect to Properties Contributed in Kind (excluding a value not subjected to investigation by the inspector under paragraph (2)) to be improper, it shall issue a ruling changing such value.
- (8) In cases where the value of Properties Contributed in Kind has been changed, in whole or in part, because of a ruling under the preceding paragraph, the subscriber for Shares for Subscription (limited to a person who tenders Properties Contributed in Kind. The same shall apply hereinafter in this article.) may rescind his/her applications for subscription for Shares for Subscription, or his/her manifestation of intention relating to the contract provided for in Article 205, limited to within one week from the finalization of such ruling.
- (9) The provisions of the preceding paragraphs shall not apply in the cases in each of the following items with respect to the matters prescribed respectively in those items:
- (i) In cases where the total number of the shares to be allotted to the subscribers for the Shares for Subscription does not exceed one tenth (1/10) of the total number of Issued Shares: The value of the Properties Contributed in Kind that are tendered by the subscribers for such Shares for Subscription;
  - (ii) In cases where the total sum of the value provided for under Article 199(1) (iii) with respect to the Properties Contributed in Kind does not exceed 5,000,000 yen: The value of such Properties Contributed in Kind;
  - (iii) In cases where the value of the securities with market price provided for under Article 199(1) (iii) with respect to Properties Contributed in Kind does not exceed the value calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the market price of such securities: The value of the Properties Contributed in Kind with respect to such securities;
  - (iv) In cases where the verification of an attorney, a legal professional corporation, a certified public accountant, an auditing firm, a tax accountant or a tax accountant corporation (or in cases where the Properties Contributed in Kind consist of real estate, such verification and an appraisal by a real property

- appraiser. The same shall apply hereinafter in this item.) is obtained with respect to the reasonableness of the value provided for under Article 199(1) (iii) with respect to Properties Contributed in Kind: The value of the Properties Contributed in Kind so verified;
- (v) In cases where the Properties Contributed in Kind consist of a money claim (limited to claims that have already fallen due) to the Stock Company, and the value provided for under Article 199(1) (iii) with respect to such money claim does not exceed the book value of the debt representing such monetary claim: The value of the Properties Contributed in Kind with respect to such monetary claim
- (10) None of the following persons can provide the verification provided in item (iv) of the preceding paragraph:
- (i) A director, an accounting advisor, a company auditor or executive officer, or an employee including a manager;
  - (ii) A subscriber for Shares for Subscription;
  - (iii) A person who is subject to a suspension of operations for whom the period of such suspension has not elapsed yet; or
  - (iv) A legal profession corporation, an auditing firm or a tax accountant corporation with respect to which more than half of its members are persons who fall under either item (i) or item (ii) above.

#### **Subsection 4 Performance of Contributions**

##### **Article 208** (Performance of Contributions)

- (1) Subscribers for Shares for Subscription (excluding persons who tender Properties Contributed in Kind) shall, on the date or within the period provided for in Article 199(1) (iv), pay in the entire Amount To Be Paid In for the Shares for Subscription for which the subscribers respectively subscribed, at the bank etc. designated by the Stock Company as the place for the handling of payments.
- (2) Subscribers for Shares for Subscription (limited to persons who tender Properties Contributed in Kind) shall, on the date or within the period provided for in Article 199(1) (iv), deliver the Properties Contributed in Kind equivalent in value to the entire Amount To Be Paid In of the Shares for Subscription for which the subscribers respectively subscribed.
- (3) Subscribers for Shares for Subscription may not set off their obligations to effect payment under the provisions of paragraph (1) or delivery under the provisions of the preceding paragraph ( hereinafter in this Subsection referred to as "Performance of Contribution") against claims they have against the Stock Company.

- (4) Assignment of the right to become a shareholder of Shares for Subscription by effecting the Performance of Contribution cannot be asserted against the Stock Company.
- (5) A subscriber for Shares for Subscription shall lose his/her right to become the shareholder of Shares for Subscription by effecting the Performance of Contribution if he/she fails to effect the Performance of Contribution.

**Article 209** (Timing of Shareholder Status)

In the cases listed in the following items, a subscriber for Shares for Subscription shall become the shareholder of the Shares for Subscription for which he/she has effected the Performance of Contribution on the day prescribed in each of such items:

- (i) In cases where a date under Article 199(1) (iv) is prescribed: Such date; and
- (ii) In cases where a period under Article 199(1) (iv) is prescribed: The day on which the Performance of Contribution is effected.

**Subsection 5 Demanding Cessation of Issue of Shares for Subscription**

**Article 210**

In the following cases, if shareholders are likely to suffer disadvantage, shareholders may demand that the Stock Company cease a share issue or disposition of Treasury Shares relating to solicitations under Article 199(1):

- (i) In cases where such share issue or disposition of Treasury Shares violates the applicable laws and regulations or articles of incorporation; or
- (ii) In cases where such share issue or disposition of Treasury Shares is effected by using a method which is extremely unfair.

**Subsection 6 Liabilities relating to Solicitation**

**Article 211** (Restrictions on Invalidation or Rescission of Subscription)

- (1) The proviso to Article 93 and the provisions of Article 94(1) of the Civil Code shall not apply to manifestation of intention relating to applications for subscription for, or the allotment of, Shares for Subscription, or the contract under Article 205.
- (2) If one year has elapsed from the day on which a subscriber for Shares for Subscription became a shareholder pursuant to the provisions of Article 209, or if he/she has exercised his/her rights in relation to such shares, he/she may not thereafter assert the invalidity of the subscription for the Shares for Subscription on the grounds of mistake, or rescind the subscription for Shares for Subscription on the grounds of fraud or duress.

**Article 212** (Liabilities of Persons who Subscribed for Shares with Unfair Amount To Be Paid In)

- (1) In the cases listed in the following items, subscribers for Shares for Subscription shall be liable to a Stock Company for payment of the amount provided for in such items:
  - (i) In cases where the subscriber subscribed for the Shares for Subscription at an Amount To Be Paid In that is extremely unfair, in collusion with directors (or directors or executive officers for a Company with Committees): The amount equivalent to the difference between such Amount To Be Paid In and the fair value of such Shares for Subscription;
  - (ii) In cases where the value of the Properties Contributed in Kind that the subscriber tendered when he/she became a shareholder of the Shares for Subscription pursuant to the provisions of Article 209 is extremely short of the value provided for under Article 199(1) (iii) with respect to the Properties Contributed in Kind: The amount of such shortfall.
- (2) In the cases provided for in item (ii) of the preceding paragraph, if the subscriber for Shares for Subscription who tendered the Properties Contributed in Kind is without knowledge and is not grossly negligent as to the fact that the value of such Properties Contributed in Kind is extremely short of the value prescribed under Article 199(1) (iii) with respect to the Properties Contributed in Kind, that subscriber may rescind his/her application for subscription for Shares for Subscription or his/her manifestation of intention relating to the contract provided for in Article 205.

**Article 213** (Liabilities of Directors in case of Shortfall in Value of Property Contributed)

- (1) In the cases listed in item (ii), paragraph (1) of the preceding article, the following persons (hereinafter in this article referred to as "Directors, etc.") shall be liable to the Stock Company for payment of the amounts listed in such items:
  - (i) Executive directors who carried out duties regarding the solicitation of subscribers for such Shares for Subscription (or, for a Company with Committees, executive officers. The same shall apply hereinafter in this item.) and other persons prescribed by the applicable Ordinance of the Ministry of Justice as persons who were involved, in the performance of their duties, in the execution of the business of such executive directors;
  - (ii) If a shareholders meeting has passed a resolution regarding the determination of the value of Properties Contributed in Kind, the persons prescribed by the applicable Ordinance of the Ministry of Justice as the directors who submitted

- proposals to such shareholders meeting;
- (iii) If a board of directors meeting has passed a resolution regarding the determination of the value of Properties Contributed in Kind, the persons prescribed by the applicable Ordinance of the Ministry of Justice as the directors (or, for a Company with Committees, directors or executive officers) who submitted proposals to such board of directors meeting;
- (2) Notwithstanding the provisions of the preceding paragraph, the Directors, etc. shall not be liable for Properties Contributed in Kind under that paragraph in the cases listed below:
- (i) An investigation has been carried out by an inspector under Article 207(2) with respect to the value of the Properties Contributed in Kind; or
  - (ii) Such Directors, etc. have proven that they did not fail to exercise care with respect to the performance of their duties.
- (3) In the cases provided for in paragraph (1), the person who submitted the verification provided for in Article 207(9) (iv) (hereinafter in this article referred to as "Verifying Person") shall be liable for payment of the amount provided for in item (ii), paragraph (1) of the preceding article to the Stock Company; provided, however, that this shall not apply in cases where such Verifying Person has proven that he/she did not fail to exercise care with respect to the submission of such verification.
- (4) In cases where a subscriber for Shares for Subscription bears an obligation to pay an amount provided for in item (ii), paragraph (1) of the preceding article with respect to Properties Contributed in Kind tendered by the subscriber, if the persons listed as follows bear obligations provided for in such items with respect to such Properties Contributed in Kind, such persons shall be joint and several obligors:
- (i) Directors, etc.: The obligations under paragraph (1); and
  - (ii) Verifying persons: The obligations under the main clause of the preceding paragraph.

## **Section 9 Share Certificate**

### **Subsection 1 General Provisions**

#### **Article 214** (Provisions of Articles of Incorporation to the effect that Share Certificates be Issued)

A Stock Company may provide in the articles of incorporation to the effect that it issues share certificates relating to its shares (or, for a Company with Class Shares, the shares of all classes).

**Article 215** (Issuing of Share Certificate)

- (1) A Company Issuing Share Certificate shall, without delay after the day of a share issue, issue share certificates for such shares.
- (2) If a Company Issuing Share Certificate consolidates shares, it shall issue share certificates for the consolidated shares without delay after the day provided for in Article 180(2) (ii).
- (3) If a Company Issuing Share Certificate splits shares, it shall issue share certificates for the split shares (excluding those which have been already issued) without delay after the day provided for in Article 183(2) (ii).
- (4) Notwithstanding the provisions of the preceding three paragraphs, a Company Issuing Share Certificate that is not a Public Company may elect to not deliver share certificates under those paragraphs until shareholders so request.

**Article 216** (Matters to be Specified on Share Certificates)

A Stock Company shall state the following matters and the serial number on a share certificate, and the Representative Director of the Company Issuing Share Certificate (or the representative executive officer for a Company with Committees) shall affix his/her signature, or name and seal:

- (i) The trade name of the Company Issuing Share Certificate;
- (ii) The number of shares represented by such share certificates;
- (iii) If it is provided that the approval of the Stock Company is required for the acquisition of shares which are represented by such share certificates by assignment, a statement to such effect; and
- (iv) For a Company with Class Shares, the class and features of the shares represented by such share certificates.

**Article 217** (Offer Not to Possess Share Certificates)

- (1) Shareholders of a Company Issuing Share Certificate may make an offer to such Company Issuing Share Certificate to the effect that they do not wish to hold share certificates representing shares held by the same.
- (2) The offer pursuant to the provisions of the preceding paragraph shall be made by disclosing the number of shares relating to the offer (or, for a Company with Class Shares, the classes of shares and the number of shares for each class). In such cases, if share certificates representing such shares have been issued, such shareholders shall submit such share certificates to the Company Issuing Share Certificate.
- (3) A Company Issuing Share Certificate that has received an offer under the provisions of paragraph (1) shall state or record in the shareholder registry,

without delay, a statement that it will not issue share certificates for the shares referred to in the first sentence of the preceding paragraph.

- (4) If a Company Issuing Share Certificate has stated or recorded the statement pursuant to the provisions of the preceding paragraph, it may not issue share certificates for the shares referred to in the first sentence of paragraph (2).
- (5) Share certificates submitted pursuant to the provisions of the second sentence of paragraph (2) shall become ineffective when a statement is stated or recorded pursuant to the provisions of paragraph (3).
- (6) A shareholder who has made an offer pursuant to the provisions of paragraph (1) may at any time demand that the Company Issuing Share Certificate issue share certificates for the shares referred to in the first sentence of paragraph (2). In such cases, if there are any share certificates that have been submitted pursuant to the provisions of the second sentence of paragraph (2), the cost for the issuing of the share certificates shall be borne by such shareholder.

**Article 218** (Abolition of Provisions of Articles of Incorporation that Share Certificates be Issued)

- (1) If a Company Issuing Share Certificate intends to effect a amendment to the articles of incorporation to abolish provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a Company with Class Shares, shares of all classes), it shall give public notice of the following matters, and give separate notice thereof to each shareholder and each Registered Pledgee of Shares no later than two weeks prior to the day on which such amendment to the articles of incorporation takes effect:
  - (i) A statement to the effect that the Stock Company abolishes the provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a Company with Class Shares, shares of all classes);
  - (ii) The day on which the amendment to the articles of incorporation will take effect; and
  - (iii) A statement to the effect that the share certificates of such Stock Company shall become invalid on the day provided for in the preceding item.
- (2) he share certificates for the shares of a Company Issuing Share Certificate shall become invalid on the day provided for in item (ii) of the preceding paragraph.
- (3) Notwithstanding the provisions of paragraph (1), in cases where a Company Issuing Share Certificate that does not issue share certificates for any of its shares intends to effect a amendment to the articles of incorporation to abolish provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a Company with Class Shares, shares of all classes), it shall be sufficient to notify the shareholders and Registered Pledgees of Shares of the

matters listed in item (i) and item (ii) of that paragraph no later than two weeks prior to the day provided for in item (ii) of that paragraph.

- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.
- (5) In the cases provided for in paragraph (1), pledgees of shares (excluding Registered Pledgees of Shares) may, no later than the day immediately preceding the day provided for in item (ii) of that paragraph, demand that the Company Issuing Share Certificate state or record the matters listed in each item of Article 148 in the shareholder registry.

### **Subsection 2 Submission of Share Certificate**

#### **Article 219** (Public Notice in relation to Submission of Share Certificate)

- (1) In cases where a Company Issuing Share Certificate carries out an act listed in the following items, it shall, more than one month prior to the day when such act takes effect, give public notice to the effect that share certificates for the shares provided for in each of such items be submitted to such Company Issuing Share Certificate before such day, and a separate notice to such effect to each shareholder and each Registered Pledgee of Shares thereof; provided, however, that this shall not apply in cases where the Company Issuing Share Certificate does not issue share certificates for any of its shares:
  - (i) Amendments to the articles of incorporation to create provisions of the articles of incorporation with respect to the matters listed in Article 107(1) (i): All shares (or, for a Company with Class Shares, the class shares that have provisions with respect to such matters);
  - (ii) Consolidation of shares: All shares (or, for a Company with Class Shares, the class shares under Article 180(2) (iii));
  - (iii) Acquisitions of Class Shares subject to Wholly Call provided for in Article 171 (1): Such Class Shares subject to Wholly Call;
  - (iv) Acquisitions of Shares subject to Call: Such Shares subject to Call;
  - (v) Entity Conversion: All shares;
  - (vi) Mergers (limited to cases where such Stock Company is to be extinguished as a result of the merger): All shares;
  - (vii) Share Exchanges: All shares;
  - (viii) Share Transfers: All shares;
- (2) If a person fails to submit the share certificates to a Stock Company no later than the day on which an act listed in any item of the preceding paragraph takes effect, the Stock Company may, until such share certificates are submitted, refuse to deliver Monies, etc. to which the shareholders of the shares represented by such

share certificates are entitled as a result of such act.

- (3) The share certificates representing the shares provided for in each item of paragraph (1) shall become invalid on the day when the act listed in each such item takes effect.

**Article 220** (Cases where Share Certificates cannot be Submitted)

- (1) In cases where the acts listed in each item of paragraph (1) of the preceding article are carried out, if a person cannot submit share certificates, the Company Issuing Share Certificate may, at the request of that person, give public notice to interested parties to the effect that they can state their objections, if any, during a certain period of time; provided, however, that such period cannot be less than three months.
- (2) In cases where public notice is given under the provisions of the preceding paragraph, if no interested party states an objection during the period of time under that paragraph, the Company Issuing Share Certificate may deliver Monies, etc. under paragraph (2) of the preceding article to the person who made the request under the preceding paragraph.
- (3) The costs of the public notice under the provisions of paragraph (1) shall be borne by the person who makes the request under that paragraph.

**Subsection 3 Registration of Lost Share Certificate**

**Article 221** (Registry of Lost Share Certificates)

A Company Issuing Share Certificate (including a Company Issuing Share Certificate in cases where one year has not elapsed from the day immediately following the day on which such Company Issuing Share Certificate effected an amendment to the articles of incorporation to abolish provisions of the articles of incorporation to the effect that it issues share certificates for its shares (or, for a Company with Class Shares, shares of all classes). The same shall apply hereinafter in this Subsection (excluding Article 223, Article 227 and Article 228(2)).) shall prepare a registry of lost share certificates and state or record the following matters (hereinafter in this Subsection referred to as "Matters to be Stated in the Registry of Lost Share Certificates") in the same:

- (i) The serial numbers of the share certificates relating to the request under the provisions of Article 223 (including share certificates that have become invalid under the provisions of Article 218(2) or Article 219(3), and share certificates representing shares in cases where a judgment upholding a claim seeking invalidation of the share issue or the disposition of such shares has become final and binding. The same shall apply hereinafter in this Subsection (excluding

Article 228).);

- (ii) The names and addresses of persons who have lost share certificates under the preceding item;
- (iii) The names and addresses of persons who are stated or recorded in the shareholder registry as the shareholders or Registered Pledges of Shares of the shares represented by the share certificates (hereinafter in this subsection, referring to as "Registered Holder.") under paragraph (1); and
- (iv) The day on which the matters listed in the preceding three paragraphs are stated or recorded for the share certificates provided for in paragraph (1) (hereinafter in this Subsection referred to as "Day of Registration of Loss of Share Certificate").

**Article 222** (Delegation of Administration of Registry of Lost Share Certificates)

For the purpose of the application of the provisions of Article 123 to a Company Issuing Share Certificate, in that Article, "of the shareholder registry" shall be read as "of the shareholder registry and the registry of lost share certificates," and "keeping the shareholder registry" shall be read as "keeping the shareholder registry and the registry of lost share certificates."

**Article 223** (Requests for Registration of Lost Share Certificate)

A person who has lost share certificates may make a request for the Company Issuing Share Certificate to state or record the Matters to be Stated in the Registry of Lost Share Certificates for such share certificates (hereinafter referred to as the "Registration of Lost Share Certificate").

**Article 224** (Notices to Registered Holders)

- (1) In cases where a Company Issuing Share Certificate has effected the Registration of Lost Share Certificate in response to a request under the provisions of the preceding article, if the person stated or recorded in the registry of lost share certificates as the person who lost the share certificates relating to such request (hereinafter in this Subsection referred to as "Registrant of Lost Share Certificate") is not the Registered Holder of the shares represented by such share certificates, the Company Issuing Share Certificate shall, without delay, notify such Registered Holder to the effect that the Company Issuing Share Certificate has effected the Registration of Lost Share Certificates for such share certificates, and of the matters listed in items (i), (ii) and (iv) of Article 221.
- (2) In cases where share certificates have been submitted to the Company Issuing Share Certificate in order to exercise rights with respect to the shares, if the Registration of Lost Share Certificate has been effected for such share certificates,

the Company Issuing Share Certificate shall, without delay, notify the person who submitted such share certificates to the effect that the Registration of Lost Share Certificate has been effected for such share certificates.

**Article 225** (Filing of Application to Cancel by Holders of Share Certificate)

- (1) A person who holds share certificates subject to the Registration of Lost Share Certificate (excluding the Registrant of Lost Share Certificate for such share certificates) may file an application with the Company Issuing Share Certificate for the cancellation of such Registration of Lost Share Certificate, as prescribed by the applicable Ordinance of the Ministry of Justice; provided, however, that this shall not apply if one year has elapsed from the day immediately following the Day of Registration of the Loss of Share Certificate.
- (2) A person who intends to make an application under the provisions of the preceding paragraph shall submit the share certificates referred to in that paragraph to the Company Issuing Share Certificate.
- (3) A Company Issuing Share Certificate that has received an application under the provisions of paragraph (1) shall, without delay, notify the Registrant of Lost Share Certificate referred to in that paragraph of the name and address of the person who made the application under the provisions of that paragraph, and of the serial numbers of the share certificates referred to in that paragraph.
- (4) On the day on which two weeks have elapsed from the day of the notice under the provisions of the preceding paragraph, the Company Issuing Share Certificate shall cancel the Registration of Lost Share Certificate relating to share certificates submitted pursuant to the provisions of paragraph (2). In such cases, the Company Issuing Share Certificate shall return such share certificates to the person who filed the application under the provisions of paragraph (1).

**Article 226** (Filing of Application to Cancel by Registrant of Lost Share Certificates)

- (1) A Registrant of Lost Share Certificate may file an application with the Company Issuing Share Certificate, as prescribed by the applicable Ordinance of the Ministry of Justice, to cancel the Registration of Lost Share Certificate (excluding the Registration of Lost Share Certificate for share certificates submitted under the provisions of paragraph (2) of the preceding article in cases where an amendment is effected to the articles of incorporation to abolish provisions of the articles of incorporation to the effect that the Company Issuing Share Certificate issues share certificates for its shares (or, for a Company with Class Shares, shares of all classes)).
- (2) A Company Issuing Share Certificate that has received an application under the provisions of the preceding paragraph shall cancel the Registration of Lost Share

Certificate relating to such application on the day of the receipt of such application.

**Article 227** (Cancellation of Registration of Lost Share Certificate where Provisions of Articles of Incorporation to Issue Share Certificates are Abolished)

In cases where a Company Issuing Share Certificate amends the articles of incorporation to abolish provisions of the articles of incorporation to the effect that the Company Issuing Share Certificate issues share certificates for its shares (or, for a Company with Class Shares, shares of all classes), the Company Issuing Share Certificate shall cancel the Registration of Lost Share Certificate (excluding registrations for share certificates submitted under the provisions of Article 225(2) only if the Registrant of Lost Share Certificate is the Registered Holder of the shares relating to the share certificates subject to such Registration of Lost Share Certificate) on the day of the effectuation of such amendment to the articles of incorporation.

**Article 228** (Invalidation of Share Certificate)

- (1) Share certificates subject to the Registration of Lost Share Certificate (excluding registrations that have been cancelled) shall become invalid on the day on which one year has elapsed from the day immediately following the Day of Registration of Lost Share Certificate.
- (2) In cases where share certificates become invalid under the provisions of the preceding paragraph, the Company Issuing Share Certificate shall reissue share certificates to the Registrant of Lost Share Certificate for such share certificates.

**Article 229** (Relationship with Procedures for Notices seeking Objections)

- (1) In cases where a Registrant of Lost Share Certificate submits a request under Article 220(1), the Company Issuing Share Certificate may give public notice pursuant to the provisions of that paragraph only if the last day of the period under that paragraph arrives before the day on which one year has elapsed from the day immediately following the Day of Registration of Lost Share Certificate.
- (2) If a Company Issuing Share Certificate gives public notice under the provisions of Article 220(1), such Company Issuing Share Certificate shall cancel the Registration of Lost Share Certificate for the share certificates relating to such public notice on the day of such public notice.

**Article 230** (Effect of Registration of Lost Share Certificate)

A Company Issuing Share Certificate may not state or record the names and addresses of the persons who acquired shares represented by share certificates subject to the Registration of Lost Share Certificate until the earliest of the following

days (hereinafter in this article referred to as the "Day of Cancellation of Registration"):

- (i) The day on which such Registration of Lost Share Certificate is cancelled; or
  - (ii) The day on which one year has elapsed from the day immediately following the Day of Registration of Lost Share Certificate.
- (2) A Company Issuing Share Certificate may reissue share certificates subject to the Registration of Lost Share Certificate only after the Day of Cancellation of Registration.
- (3) If a Registrant of Lost Share Certificate is not the Registered Holder of the shares represented by the share certificates subject to the Registration of Lost Share Certificate, the shareholders of such shares may not exercise voting right at a shareholders meeting or Class Meeting until the Day of Cancellation of Registration.
- (4) An auction pursuant to the provisions of Article 197(1) or a sale pursuant to the provisions of paragraph (2) of that article may not be effected with respect to shares represented by share certificates subject to the Registration of Lost Share Certificate.

**Article 231** (Keeping and Making Available for Inspection of Registry of Lost Share Certificates)

- (1) A Company Issuing Share Certificate shall keep the registry of lost share certificates at its head office (or, in cases where there is a Administrator of Shareholder Registry, at its sales office).
- (2) Any person may submit the following requests at any time during the business hours of a Company Issuing Share Certificate with respect to the registry of lost share certificates (limited to the portion in which such person has an interest). In such cases, the reasons for such request shall be disclosed.
- (i) If the registry of lost share certificates is prepared in writing, a request for the review or copying of such document;
  - (ii) If the registry of lost share certificates is prepared by Electromagnetic Means, a request for the inspection or copying of anything that indicates the matters recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 232** (Notices to Registrants of Lost Share Certificate)

- (1) It shall be sufficient for a notice or demand to a Registrant of Lost Share Certificate to be sent by a Company Issuing Share Certificate to the address of such Registrant of Lost Share Certificate stated or recorded in the registry of lost share certificates (or, in cases where such Registrant of Lost Share Certificate

notifies the Company Issuing Share Certificate of a different place or contact address for the receipt of notices or demands, to such place or contact address).

- (2) The notices or demands referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.

**Article 233** (Exception to Application)

The provisions of Part III of the Non-Contentious Cases Procedures Act (Act No. 14 of 1898) shall not apply to share certificates.

**Section 10 Miscellaneous Provisions**

**Article 234** (Treatment of Fractions)

- (1) In cases where a Stock Company delivers shares in such Stock Company to the persons listed in the following items when any act listed in such items is carried out, if the number of the shares of such Stock Company that shall be delivered to such persons includes a fraction of less than one share, the Stock Company shall sell the number of shares equivalent to the total sum of the fractions by auction (in cases where the total sum includes a fraction of less than one, such fraction shall be rounded off) and shall deliver the proceeds of that auction to such persons in proportion to the fractions attributed to them:
- (i) The acquisition of shares under the provisions of Article 170(1): The shareholders of such Stock Company;
  - (ii) The acquisition of shares under the provisions of Article 173(1): The shareholders of such Stock Company;
  - (iii) The Allotment of Shares without Contribution provided for in the provisions of Article 185: The shareholders of such Stock Company;
  - (iv) The acquisition of Share Options pursuant to the provisions of Article 275(1): The holders of the Share Options provided for in of 236(1) (vii) (a);
  - (v) Mergers (limited to cases where such Stock Company survives the merger): The shareholders or members of the Company which is to be extinguished after the merger;
  - (vi) The issuing of shares to be issued at the time of incorporation under merger contracts: The shareholders or members of the Company which is to be extinguished after the merger;
  - (vii) The acquisition of all Issued Shares of another Stock Company by Share Exchange: The shareholders of the Stock Company that effects the Share Exchange;
  - (viii) The issuing of shares to be issued at the time of incorporation under Share

- Transfer plan: The shareholders of the Stock Company that effects the Share Transfer plan;
- (2) In lieu of sale by auction under the provisions of the preceding paragraph, a Stock Company may sell shares under that paragraph with a market price in an amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the market price thereof, and shares under that paragraph without a market price using a method other than auction with the permission of the court. In such cases, if there are two or more directors, the petition for such permission shall be filed with the consent of all directors.
  - (3) For the purpose of the application of the provisions of the preceding paragraph in cases where the shares under paragraph (1) are sold, "of that auction" in paragraph (1) shall be read as "of that sale."
  - (4) A Stock Company may purchase some or all of the shares sold pursuant to the provisions of paragraph (2). In such cases, the following matters shall be prescribed:
    - (i) The number of shares to be purchased (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class); and
    - (ii) The total amount of the monies to be delivered in exchange for the purchase of the shares under the preceding item.
  - (5) A Company with Board of Directors shall determine the matters listed in each item of the preceding paragraph by resolution of the board of directors.
  - (6) The provisions of paragraphs (1) to (4) inclusive shall apply mutatis mutandis to cases where Bonds or Share Options of such Stock Company are delivered to the persons provided for in each item of paragraph (1) when any act listed in such items is carried out.

### **Article 235**

- (1) If a Share Split or consolidation of shares effected by a Stock Company produces any fraction less than one share in the number of the shares, the Stock Company shall sell the number of shares equivalent to the total sum of the fractions by auction (in cases where the total sum includes a fraction of less than one, such fraction shall be rounded off) and shall deliver the proceeds of that auction to the shareholders in proportion to the fractions attributed to them:
- (2) The provisions of paragraphs (2) to (5) inclusive of the preceding article shall apply mutatis mutandis to the cases provided for in the preceding paragraph.

## **Chapter III Share Option**

### **Section 1 General Provisions**

**Article 236** (Features of Share Option)

- (1) If a Stock Company issues Share Options, the features of the Share Options shall consist of the following matters:
  - (i) The number of the shares underlying the Share Options (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class), or the method for calculating that number;
  - (ii) The value of the property to be contributed when such Share Options are exercised or the method for calculating that value;
  - (iii) If property other than monies will be the subject of the contribution when Share Options are exercised, a statement to such effect and the description and value of that property;
  - (iv) The period during which such Share Options can be exercised;
  - (v) Matters regarding the capital and capital reserves that will be increased in cases where shares will be issued as a result of the exercise of such Share Options;
  - (vi) If it is arranged that the approval of such Stock Company will be required for the acquisition of such Share Options by assignment, a statement to such effect;
  - (vii) If it is arranged that such Stock Company may acquire such Share Options on condition of certain grounds arising, the following matters:
    - (a) A statement that such Stock Company may acquire its Share Options on the day when certain grounds arise, and of those grounds;
    - (b) If it is arranged that the grounds referred to in (a) will arise as at the arrival of a day to be separately prescribed by such Stock Company, a statement of such arrangement;
    - (c) If it is arranged that a portion of the Share Options referred to in (a) may be acquired on the day the grounds referred to in (a) arise, a statement of such arrangement and of the method for determining the portion of the Share Options to be acquired;
    - (d) If shares in such Stock Company are delivered to the holders of such Share Options in exchange for the acquisition of the Share Options referred to in (a), the number of such shares (or, for a Company with Class Shares, the classes of the shares and the number of shares for each class), or the method for calculating that number;
    - (e) If Bonds of such Stock Company (other than those on Bonds with Share Option) are delivered to the holders of such Share Options in exchange for the acquisition of the Share Options referred to in (a), the description of the classes of such Bonds and the total amount for each class of Bonds, or the method for calculating that total amount;

- (f) If other Share Options of such Stock Company (other than those attached to Bonds with Share Option) are delivered to the holders of such Share Options in exchange for the acquisition of the Share Options referred to in (a), the feature and number of such other Share Options, or the method for calculating that number;
- (g) If Bonds with Share Option of such Stock Company are delivered to the holders of such Share Options in exchange for the acquisition of the Share Options referred to in (a), the matters prescribed in (e) for such Bonds with Share Option, and the matters prescribed in (f) for the Share Options attached to such Bonds with Share Option;
- (h) If property other than Share Options, etc. of such Stock Company is delivered to the holders of such Share Options in exchange for the acquisition of the Share Options referred to in (a), a description of the features and number or amount of such property, or the method for calculating that number or amount.
- (viii) If it is arranged that in cases where such Stock Company carries out acts listed in sub-items (a) to (e) inclusive below, the Share Options of the Stock Company provided for in sub-items (a) to (e) inclusive is to be delivered to the holders of such Share Options, a statement to that effect and of the conditions of the same:
  - (a) Mergers (limited to cases where such Stock Company is to be extinguished as a result of the merger): The Stock Company that survives the merger or the Stock Company incorporated as a result of the merger;
  - (b) Absorption-type Company Split: The Stock Company which succeeds, in whole or in part, to any rights and obligations that a Stock Company effecting an Absorption-type Company Split holds in connection with its business;
  - (c) Incorporation-type Company Split: The Stock Company incorporated as a result of the Incorporation-type Company Split;
  - (d) Share Exchange: The Stock Company that acquires all of the Issued Shares of the Stock Company effecting the Share Exchange;
  - (e) Share Transfer: The Stock Company incorporated as a result of the Share Transfer;
- (ix) If, in cases where the number of the shares to be issued to the holder of Share Options who has exercised his/her Share Options includes a fraction of less than one share, such fraction shall be rounded off, a statement to that effect.
- (x) If it is arranged to issue Share Option certificates representing such Share Options (excluding those attached to Bonds with Share Option), a statement to that effect.
- (xi) In the cases provided for in the preceding item, if the holders of Share Options

cannot make, in whole or in part, the demand under the provisions of Article 290, a statement to that effect.

- (2) The number of the Share Options attached to Bonds with Share Option shall be uniform for each monetary amount for the Bonds with respect to such Bonds with Share Option.

#### **Article 237 (Exercise of Rights by Co-owners)**

If any Share Option is co-owned by two or more persons, the co-owners may not exercise their rights in relation to such Share Option unless they specify one person to exercise the rights in relation to such Share Option, and notify the Stock Company of the name of that person; provided, however, that this shall not apply in cases where the Stock Company has agreed to the exercise of such rights.

### **Section 2 Share Option Issue**

#### **Subsection 1 Determination of Subscription Requirements**

#### **Article 238 (Determination of Subscription Requirements)**

- (1) Whenever a Stock Company intends to solicit subscribers for a Share Option issue, the Stock Company shall prescribe the following matters (hereinafter in this Section referred to as "Subscription Requirements") with respect to the Share Options for Subscription (meaning the Share Options that is to be allotted to persons who subscribed for such Share Options in response to such solicitation. The same shall apply hereinafter in this Chapter.):
  - (i) The features and number of the Share Options for Subscription;
  - (ii) In cases where it is arranged that there is no requirement for monies to be paid in in exchange for the Share Options for Subscription, a statement to that effect;
  - (iii) In cases other than the cases provided for in the preceding item, the Amount To Be Paid In for the Share Options for Subscription (meaning the amount of money to be paid in in exchange for one Share Option for Subscription. The same shall apply hereinafter in this Chapter.) or the method for calculating that amount;
  - (iv) The day on which the Share Options for Subscription is allotted (hereinafter in this Section referred to as the "Day of Allotment");
  - (v) If the Stock Company prescribes the date for the payment of monies in exchange for the Share Options for Subscription, that date;
  - (vi) In cases where Share Options for Subscription are attached to Bonds with Share Option, the matters listed in each item of Article 676;

- (vii) In the cases provided for in the preceding item, if the Stock Company otherwise provides for the method for submission of a demand under the provisions of Article 118(1), Article 777(1), Article 787(1), or Article 808(1) with respect to the Share Options for Subscription attached to the Bonds with Share Option under that item, that provision.
- (2) The determination of the Subscription Requirements shall be made by resolution of shareholders meeting.
- (3) In the following cases, the directors shall explain at the shareholders meeting referred to in the preceding paragraph the reasons for the need to solicit subscribers for Share Options for Subscription with the offer of the conditions under item (i) or in the amount under item (ii):
- (i) If, in the cases provided for in item (ii) of paragraph (1), the absence of a requirement for the payment in of monies is particularly favorable to relevant persons; or
- (ii) If, in the cases provided for in item (iii) of paragraph (1), the Amount To Be Paid In under that paragraph is particularly favorable to relevant persons.
- (4) For a Company with Class Shares, if some or all classes of the shares underlying the Share Options for Subscription are Shares with Restriction on Transfer, the determination of the Subscription Requirements regarding such Share Options for Subscription shall not become effective without a resolution of the relevant Class Meeting, except in cases where there is a provision in the articles of incorporation to the effect that, with respect to the solicitation of subscribers for Share Options for Subscription for which the underlying shares are such class shares, a resolution of the Class Meeting constituted by the Class Shareholders of such class is not required; provided, however, that this shall not apply to cases where there is no Class Shareholder who can exercise his/her voting right at such Class Meeting.
- (5) The Subscription Requirements shall be uniform for each solicitation under paragraph (1).

**Article 239** (Delegation of Determination of Subscription Requirements)

- (1) Notwithstanding the provisions of paragraphs (2) and (4) of the preceding article, a shareholders meeting may delegate the determination of the Subscription Requirements to the directors (or, for a Company with Board of Directors, the board of directors) by resolution. In such cases, the shareholders meeting shall prescribe the following matters:
- (i) The features and maximum number of Share Options for Subscription for which the Subscription Requirements may be determined under such delegation; and
- (ii) In cases where it is arranged that there will be no requirement to pay monies

- in with respect to the Share Options for Subscription under the preceding item, a statement to that effect;
- (iii) In cases other than those prescribed in the preceding item, the minimum Amount To Be Paid In for Share Options for Subscription.
- (2) In the following cases, the directors shall explain at the shareholders meeting referred to in the preceding paragraph the reasons for the need to solicit subscribers for Share Options for Subscription with the offer of the conditions under item (i) or in the amount under item (ii):
- (i) If, in the cases provided for in item (ii) of the preceding paragraph, the absence of a requirement for the payment in of monies is particularly favorable to relevant persons; or
  - (ii) If, in the cases provided for in item (iii) of the preceding paragraph, the minimum Amount To Be Paid In under that paragraph is particularly favorable to relevant persons.
- (3) Resolutions under paragraph (1) shall be effective with respect only to solicitation under that paragraph under which the date under item (iv), paragraph (1) of the preceding article falls within one year from the day of such resolution.
- (4) For a Company with Class Shares, if some or all of the classes of the shares underlying the Share Options for Subscription are Shares with Restriction on Transfer, the determination of the Subscription Requirements regarding such Share Options for Subscription shall not become effective without a resolution of the relevant Class Meeting, except in cases where there is a provision in the articles of incorporation referred to in paragraph (3) of the preceding article; provided, however, that this shall not apply to the case where there is no Class Shareholder who can exercise his/her voting right at such Class Meeting.

**Article 240** (Special Provisions on Determination of Subscription Requirements for Public Company)

- (1) Except for the cases listed in each item of Article 238(3), for the purpose of the application of the provisions of paragraph (2) of that article to a Public Company, "shareholders meeting" in that paragraph shall be read as "board of directors meeting." In such cases, the provision of the preceding article shall not apply.
- (2) In cases where a Public Company has determined Subscription Requirements by a resolution of a board of directors meeting provided for in Article 238(2) applied by the reading of terms pursuant to the provisions of the preceding paragraph, the Public Company shall notify the shareholders of such Subscription Requirements no later than two weeks prior to the Day of Allotment.
- (3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

- (4) The provisions of paragraph (2) shall not apply in cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where it is unlikely that the protection of shareholders is compromised, including cases where, with respect to Subscription Requirements, the Stock Company has submitted, no later than two weeks prior to the Day of Allotment, a notice under Article 4(1) or (2) of the Securities and Exchange Act.

**Article 241** (Cases where Entitlement to Allotment of Share Options is Granted to Shareholders)

- (1) In carrying out solicitation under Article 238(1), the Stock Company may grant entitlement to the allotment of Share Options to its shareholders. In such cases, in addition to the Subscription Requirements, the Stock Company shall prescribe the following matters:
- (i) A statement to the effect that the Stock Company will grant entitlement to the allotment of the Share Options for Subscription of that Stock Company (or, for a Company with Class Shares, the Share Options the shares underlying which have the class identical to the class of the shares held by such shareholders) to shareholders subject to the application provided for in paragraph (2) of the following article;
  - (ii) The day for the application for subscription for the Share Options for Subscription referred to in the preceding item.
- (2) In the cases provided for in the preceding paragraph, the shareholders under item (i) of that paragraph (excluding the Stock Company) shall be entitled to the allotment of the Share Options for Subscription in accordance with the number of shares they hold; provided, however, that if the number of the Share Options for Subscription to be allotted to such shareholders includes a fraction of less than one unit, it shall be rounded off.
- (3) In cases where the Stock Company prescribes the matters listed in each item of paragraph (1), the Subscription Requirements and the matters listed in each item of that paragraph shall be prescribed in accordance with the categories of the cases listed in the following items, by the methods provided for in each of such items:
- (i) In cases where there is a provision in the articles of incorporation to the effect that such Subscription Requirements and the matters listed in each item of paragraph (1) may be prescribed by decision of the directors (excluding the cases where the Stock Company is a Company with Board of Directors): A decision of the directors;
  - (ii) In cases where there is a provision in the articles of incorporation to the effect that such Subscription Requirements and the matters listed in each item of paragraph (1) may be prescribed by resolution of the board of directors

- (excluding the cases listed in the following item): A resolution of the board of directors;
- (iii) In cases where the Stock Company is a Public Company: A resolution of the board of directors;
- (iv) In cases other than those listed in the preceding three items: A resolution of a shareholders meeting;
- (4) In cases where a Stock Company determines the matters listed in each item of paragraph (1), the Stock Company shall notify the shareholders under item (i) of that paragraph (excluding such Stock Company) of the following matters no later than two weeks prior to the date provided for in item (ii) of that paragraph:
- (i) The Subscription Requirements;
- (ii) The features and number of Share Options for Subscription to be allotted to such shareholders; and
- (iii) The date provided for in item (ii) of paragraph (1).
- (5) The provisions of Article 238(2) to (4) inclusive and the preceding two articles shall not apply in cases where entitlement to the allotment of Share Options is granted to the shareholders under the provisions of paragraph (1) to paragraph (3) inclusive hereof.

### **Subsection 2 Allotment of Share Options for Subscription**

#### **Article 242 (Application for Share Options for Subscription)**

- (1) A Stock Company shall notify persons who intend to subscribe for Share Options for Subscription in response to solicitation in Article 238(1) of the matters listed in the following items:
- (i) The trade name of the Stock Company;
- (ii) The Subscription Requirements;
- (iii) If any payment is to be made when the Share Options are exercised, the place where payments are handled;
- (iv) In addition to the matters listed in the preceding three paragraphs, any matter prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) A person who applies to subscribe for the Share Options for Subscription in response to solicitation in paragraph (1) of Article 238 shall deliver a document which specifies the following matters:
- (i) The name and address of the person applying;
- (ii) The number of Share Options for Subscription for which he/she intends to subscribe.
- (3) A person who applies referred to in the preceding paragraph may, in lieu of the delivery of the document under such paragraph, provide the matters to be specified

in the document under such paragraph by Electromagnetic Means, with the approval of the Stock Company, subject to the provisions of the applicable Cabinet Order. In such cases, the person applying shall be deemed to have delivered the document under such paragraph.

- (4) The provisions of paragraph (3) shall not apply in cases where the Stock Company has issued a prospectus provided for in Article 2(10) of the Financial Instruments and Exchange Act that specifies the matters listed in each item of that paragraph to the person who intends to submit the application under paragraph (1), and in other cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where it is unlikely that the protection of persons who intend to submit applications for subscription for Share Options for Subscription are compromised.
- (5) If there are changes in the matters listed in each item of paragraph (1), the Stock Company shall immediately notify persons who have submitted applications under paragraph (2) (hereinafter in this Subsection referred to as "Applicants") thereof and of the matter so changed.
- (6) In cases where Share Options for Subscription are attached to Bonds with Share Option, Applicants (limited to those who submitted applications solely for Share Options for Subscription) shall be deemed to have applied for subscription for the Bonds with Share Option to which the Share Options for Subscription relating to such applications are attached.
- (7) It shall be sufficient for a notice or demand to an applicant to be sent by the Stock Company to the address under item (i) of paragraph (2) (or, in cases where such applicant notifies the Stock Company of a different place or contact address for the receipt of notices or demands, to such place or contact address).
- (8) The notices or demands referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.

**Article 243** (Allotment of Share Options for Subscription)

- (1) A Stock Company shall specify the persons from among the Applicants the persons to whom Share Options for Subscription will be allotted, and determine the number of Share Options for Subscription to be allotted to those persons. In such cases, the Stock Company may reduce the number of Share Options for Subscription the Stock Company allots to such Applicants below the number under item (ii), paragraph (2) of the preceding article.
- (2) In the following cases, the determination under the provisions of the preceding paragraph shall be made by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that

this shall not apply in cases where it is otherwise provided for in the articles of incorporation.

- (i) In cases where some or all of the shares underlying the Share Options for Subscription are Shares with Restriction on Transfer; or
  - (ii) In cases where the Share Options for Subscription are Share Options with Restriction on Transfer (meaning Share Options for which it is provided that the acquisition of such Share Options by assignment shall require the approval of the Stock Company. The same shall apply hereinafter in this Chapter.)
- (3) The Stock Company shall notify the Applicants, no later than the day immediately preceding the Day of Allotment, of the number of the Share Options for Subscription that will be allotted to such Applicants (in cases where such Share Options for Subscription are attached to Bonds with Share Option, including a description of the classes of Bonds with respect to such Bonds with Share Option and the total amount of money for each class of Bonds).
- (4) In cases where the Stock Company has granted entitlement to the allotment of Share Options pursuant to the provisions of Article 241 to its shareholders, if the shareholders do not submit, no later than the date under item (ii), paragraph (1) of that article, applications under paragraph (2) of the preceding article, such shareholders shall lose the entitlement to the allotment of Share Options for Subscription.

**Article 244** (Special Provisions on the Subscription for and Allotment of Share Options for Subscription)

- (1) The provisions of the preceding two Articles shall not apply in cases where a person who intends to subscribe for Share Options for Subscription executes a contract for subscription for the total number of those Share Options.
- (2) For the purpose of the application of the preceding paragraph in cases where the Share Options for Subscription are those attached to Bonds with Share Option, "for subscription for the total number of those Share Options" in that paragraph shall be read as "for subscription for the total number of those Share Options and the total amount of the Bonds to which such Share Options for Subscription are attached."

**Article 245** (Status as Holders of Share Options)

- (1) The persons listed in the following items shall become the holders of the Share Options for Subscription provided for in such items on the Day of Allotment:
  - (i) Applicants: The Share Options for Subscription allotted by the Stock Company; and
  - (ii) Persons who subscribed for the total number of the Share Options for

Subscription under the provisions of paragraph (1) of the preceding article: The Share Options for Subscription for which those persons have subscribed.

- (2) In cases where Share Options for Subscription are attached to Bonds with Share Option, the persons who become holders of the Share Options under the provisions of the preceding paragraph shall become bondholders of the Bonds with respect to the Bonds with Share Option to which such Share Options for Subscription are attached.

### **Subsection 3 Payments for Share Options for Subscription**

#### **Article 246**

- (1) In the cases provided for under Article 238(1) (iii), holders of Share Options shall pay the entire Amount To Be Paid In for the Share Options for Subscription for which the holders respectively subscribed, at the place for the handling of bank, etc. payments designated by the Stock Company, no later than the day immediately preceding the first day of the period provided for under Article 236(1) (iv) for Share Options for Subscription (or, in the cases provided for under Article 238(1) (v), no later than the date under that item; in paragraph (3) referred to as the "Payment Date")
- (2) Notwithstanding the provisions of the preceding paragraph, holders of Share Options may, with the approval of the Stock Company, tender property other than monies equivalent to the Amount To Be Paid In or set off their claims against such Stock Company, in lieu of payment under the provisions of that paragraph.
- (3) In the cases provided for under Article 238(1) (iii), holders of Share Options may not exercise the Share Options for Subscription unless they pay in the entire Amount To Be Paid In for their respective Share Options for Subscription (including tendering property other than monies or setting off claims against such Stock Company in lieu of such payment) no later than the Payment Date with respect to such Share Options for Subscription.

### **Subsection 4 Demand for Discontinuation of Issue of Share Options for Subscription**

#### **Article 247**

In the following cases, if shareholders are likely to suffer any disadvantage, shareholders may demand that the Stock Company discontinue an issue of the Share Options relating to solicitation under Article 238(1):

- (i) In cases where such Share Option issue violates the applicable laws and regulations or articles of incorporation; or

- (ii) In cases where such Share Option issue is effected by using a method that is extremely unfair.

### **Subsection 5 Miscellaneous Provisions**

#### **Article 248**

The provisions of Article 676 through Article 680 shall not apply to the solicitation of subscribers for the Bonds with respect to the Bonds with Share Option.

### **Section 3 Share Option Registry**

#### **Article 249 (Share Option Registry)**

A Stock Company shall, without delay after the day Share Options are issued, prepare a Share Option registry and state or record, in accordance with the categories of Share Options listed in the following items, the matters listed in such items (hereinafter referred to as "Matters to be Specified in the Share Option Registry"):

- (i) Share Options for which bearer form Share Option certificates are issued (hereinafter in this Chapter referred to as "Bearer Share Options"): The serial numbers of such Share Option certificates and the features and number of such Bearer Share Options; and
- (ii) Share Options attached to Bonds with Share Option for which bearer form certificates for Bonds with Share Option (referring to Bond certificates for Bond with Share Option with Issued Certificates (meaning a Bond with Share Option for which it is provided that a Bond certificate shall be issued for the Bond for such Bond with Share Option. The same shall apply hereinafter in this Chapter.). The same shall apply hereinafter.) are issued (hereinafter in this Chapter referred to as "Bearer Bonds with Share Option"): The serial numbers of such certificates for Bonds with Share Option and the features and number of such Share Options; and
- (iii) Share Options other than the Share Options listed in the preceding two items: The following matters:
  - (a) The names and addresses of the holders of Share Options;
  - (b) The features and number of the Share Options held by the holders of Share Options referred to in (a);
  - (c) The days when the holders of Share Options referred to in (a) acquired the Share Options; and
  - (d) If the Share Options referred to in (b) are Share Options with Issued Certificates (meaning Share Options (excluding those attached to Bonds with

Share Option) for which it is provided that Share Option certificates are issued for such Share Options. The same shall apply hereinafter in this Chapter.), the serial numbers of the Share Option certificates representing such Share Options (limited to those for which Share Option certificates are issued).

- (e) If the Share Options referred to in (b) are attached to Bonds with Share Option with Issued Certificates, the serial numbers of the certificates of Bonds with Share Option for the Bonds with Share Option (limited to those for which certificates of Bonds with Share Option are issued) to which such Share Options are attached.

**Article 250** (Delivery of Documents Stating Matters to be Specified in the Share Option Registry)

- (1) The holders of Share Options referred to in item (iii) (a) of the preceding article may request that the Stock Company deliver documents stating the Matters to be Specified in the Share Option Registry that are stated or recorded in the Share Option registry with respect to such holders of Share Options, or provide the Electromagnetic Records that record such Matters to be Specified in the Share Option Registry.
- (2) The documents referred to in the preceding paragraph shall be affixed with the signature, or name and seal, of the Representative Director of the Stock Company (referring to the representative executive officer for a Company with Committees. The same shall apply in the following paragraph.).
- (3) With respect to the Electromagnetic Records referred to in paragraph (1), the Representative Director of the Stock Company shall implement measures in lieu of the affixation of signature, or name and seal, prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) The provisions of the preceding three paragraphs shall not apply to Share Options with Issued Certificates or Share Options attached to Bonds with Share Option with Issued Certificates.

**Article 251** (Administration of Share Option Registry)

For the purpose of the application of Article 123 in cases where a Stock Company issues Share Options, in that article, "Administrator of Shareholder Registry" shall be read as "Administrator of Shareholder Registry and Share Option Registry" and "keeping the shareholder registry" shall be read as "keeping the shareholder registry and Share Option registry."

**Article 252** (Keeping and Making Available for Inspection of Share Option Registry)

- (1) A Stock Company shall keep the Share Option registry at its head office (or, in cases where there is an Administrator of Shareholder Registry, at its business office).
- (2) Shareholders and creditors may submit the following requests at any time during the business hours of the Stock Company. In such cases, the reasons for such requests shall be disclosed.
  - (i) If the Share Option registry is prepared in writing, a request for the inspection or copying of such document;
  - (ii) If the Share Option registry is prepared by Electromagnetic Means, a request for the inspection or copying of anything that indicates the matters recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) If a request referred to in the preceding paragraph is made, a Stock Company may not refuse such request unless it falls under any of the following:
  - (i) The shareholder or creditor who made such request (hereinafter in this paragraph referred to as the "Requestor") submitted the request for a purpose other than for research on securing or exercising his/her rights;
  - (ii) The Requestor made the request with the purpose of interfering with the execution of the operations of such Stock Company or prejudicing the common benefit of the shareholders;
  - (iii) The Requestor operates or engages in any business which is, in substance, in competition with the operations of such Stock Company;
  - (iv) The Requestor made the request in order to report facts to third parties for profit, knowledge of which may be acquired by inspecting or copying the Share Option registry; or
  - (v) The Requestor is a person who has reported facts. Knowledge of which was acquired by reviewing or copying the Share Option registry, to third parties for profit in the immediately preceding two years.
- (4) If it is necessary for a member of the Parent Company of a Stock Company to exercise his/her rights, such member of the Parent Company may, with the permission of the court, make the requests set forth in each item of paragraph (2) with respect to the Share Option registry of such Stock Company. In such cases, the reasons for such requests shall be disclosed.
- (5) The court may not grant the permission referred to in the preceding paragraph if any circumstance provided for in any item of paragraph (3) applies to the member of the Parent Company referred to in the preceding paragraph.

**Article 253** (Notices to Holders of Share Options)

- (1) It shall be sufficient for a notice or demand to holders of Share Options to be

sent by a Stock Company to the addresses of such holders of Share Options stated or recorded in the Share Options registry (or, in cases where such holders of Share Options notify such Stock Company of a different place or contact address for the receipt of notices or demands, to such place or contact address).

- (2) The notices or demands referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.
- (3) If a Share Option is co-owned by two or more persons, the co-owners shall specify one person who receives the notice or demand sent by the Stock Company to the holders of Share Options and notify such Stock Company of the name of that person. In such case, that person shall be deemed to be the holder of Share Option and the provisions of the preceding two paragraphs shall apply.
- (4) In cases where there is no notice by co-owners pursuant to the provisions of the preceding paragraph, it shall be sufficient for a notice or demand sent by a Stock Company to the co-owners of the Share Options if it is sent to one of them.

#### **Section 4 Transfer of Share Option**

##### **Subsection 1 Transfer of Share Option**

###### **Article 254** (Transfer of Share Option)

- (1) Holders of Share Options may transfer the Share Options held by the same.
- (2) Notwithstanding the provisions of the preceding paragraph, Share Options attached to Bonds with Share Option may not be transferred on a stand-alone basis; provided, however, that this shall not apply if the Bonds with respect to such Bonds with Share Option are extinguished.
- (3) Bonds with respect to Bonds with Share Option may not be transferred on a stand-alone basis; provided, however, that this shall not apply if the Share Options attached to such Bonds with Share Option are extinguished.

###### **Article 255** (Transfer of Share Options with Issued Certificate)

- (1) Transfer of Share Options with issued certificates shall not become effective unless the Share Option certificates representing such Share Options with Issued Certificate are delivered; provided, however, that this shall not apply to transfer of Share Options with issued certificates that arise out of the disposition of Own Share Options (meaning Own Share Options that the Stock Company holds. The same shall apply hereinafter in this Chapter.).
- (2) Transfer of Share Options attached to Bonds with Share Option with Issued Certificate shall not become effective unless the certificates of Bonds with Share

Option for such Bonds with Share Option with Issued Certificate are delivered; provided, however, that this shall not apply to transfer of Share Options attached to Own Bonds with Share Option (meaning Own Bonds with Share Option that the Stock Company holds. The same shall apply hereinafter in this article and in the following article.) that arise out of the disposition of such Own Bonds with Share Option.

**Article 256** (Special Provisions on Disposition of Own Share Option)

- (1) A Stock Company shall, without delay after the day of the disposition of its Own Share Options (limited to Share Options with Issued Certificate), deliver the Share Option certificates to the persons who acquired such Own Share Options.
- (2) Notwithstanding the provisions of the preceding paragraph, a Stock Company may elect to not deliver Share Option certificates under that paragraph until the persons under that paragraph so request.
- (3) A Stock Company shall, without delay after the day of the disposition of its Own Bonds with Share Option (limited to Bond with Share Option with Issued Certificate), deliver the certificates of Bonds with Share Option to the persons who acquire such Own Bonds with Share Option.
- (4) The provisions of Article 687 shall not apply to the transfer of Bonds with respect to the Own Bonds with Share Option arising from the disposition of such Own Bonds with Share Option.

**Article 257** (Perfection of Transfer of Share Option)

- (1) Transfer of Share Options shall not be perfected against the Stock Company and other third parties unless the names and addresses of the person who acquire those Share Options is stated or recorded in the Share Options registry.
- (2) For the purpose of the application of the provisions of the preceding paragraph with respect to Share Options with Issued Certificates for which registered Share Option certificates are issued, and Share Options attached to the Bond with Share Option with Issued Certificate for which registered certificates of Bonds with Share Option are issued, "the Stock Company and other third parties" in that paragraph shall be read as "the Stock Company."
- (3) The provisions of paragraph (1) shall not apply to any Bearer Share Options or Share Options attached to Bearer Bonds with Share Option.

**Article 258** (Presumption of Rights)

- (1) A possessor of Share Option certificates shall be presumed to be the lawful owner of the rights in relation to the Share Options with Issued Certificate for such Share Option certificates.

- (2) A person who receives delivery of Share Option certificates shall acquire the rights in relation to the Share Options with Issued Certificate for such Share Option certificates; provided, however, that this shall not apply if that person has knowledge or is grossly negligent as to the fact of defective title of the transferor.
- (3) A possessor of certificates of Bonds with Share Option shall be presumed to be the lawful owner of the rights in relation to the Share Options attached to Bonds with Share Option with Issued Certificates for such certificates of Bonds with Share Option.
- (4) A person who receives delivery of certificates of Bonds with Share Option shall acquire the rights in relation to the Share Options attached to the Bond with Share Option with Issued Certificates for such certificates of Bonds with Share Option; provided, however, that this shall not apply if that person has knowledge or is grossly negligent as to the fact of defective title of the transferor.

**Article 259** (Stating or Recording of Matters to be Specified in the Share Option Registry Not Requested by Holders of Share Options)

- (1) In the cases provided for in the following items, a Stock Company shall state or record the Matters to be Specified in the Share Option Registry relating to the holders of Share Options referred to in such items:
  - (i) In cases where it has acquired the Share Options of such Stock Company;
  - (ii) In cases where it has disposed of Own Share Options.
- (2) The provisions of the preceding paragraph shall not apply to Bearer Share Options or Share Options attached to Bearer Bonds with Share Option.

**Article 260** (Stating or Recording of Matters to be Specified in the Share Option Registry at Request of Holders of Share Options)

- (1) A person who has acquired Share Options from a person other than the Stock Company that issued such Share Options (excluding such Stock Company, hereinafter in this Section referred to as "Acquirer of Share Options") may request that such Stock Company state or record, in the Share Option registry, the Matters to be Specified in the Share Option Registry relating to such Share Options.
- (2) Except for cases prescribed by the applicable Ordinance of the Ministry of Justice as cases of no likelihood of detriment to interested parties, requests under the provisions of the preceding paragraph shall be made jointly with the person stated or recorded in the Share Option registry as the holder of the Share Options so acquired, or his/her general successors including his/her heirs.
- (3) The provisions of the preceding two paragraphs shall not apply to Bearer Share Options or Share Options attached to Bearer Bonds with Share Option.

## **Article 261**

The provisions of the preceding paragraph shall not apply in cases where the Share Options acquired by the Acquirer of Share Options are Share Options with Restriction on Transfer; provided, however, that this shall not apply in cases where it falls under any of the following:

- (i) Such Acquirer of Share Options has obtained approval under the following article as to an intended acquisition of such Share Options with Restriction of Transfer;
- (ii) Such Acquirer of Share Options has obtained approval under Article 263(1) as to a completed acquisition of such Share Options with Restriction of Transfer;
- (iii) Such Acquirer of Share Options is a person who acquired the Share Options with Restriction of Transfer by general succession including inheritance.

### **Subsection 2 Restriction on Transfer of Shares**

#### **Article 262** (Requests for Approval by Holders of Share Option)

If holders of Share Options with Restriction on Transfer intend to transfer Share Options with Restriction on Transfer held by the same to others (excluding the Stock Company which issued such Share Options with Restriction on Transfer), they may request that such Stock Company make a determination as to whether or not to approve the acquisition by such others of such Share Options with Restriction on Transfer.

#### **Article 263** (Request for Approval by Acquirers of Share Options)

- (1) Acquirers of Share Options who have acquired Share Options with Restriction on Transfer may request that the Stock Company make a determination as to whether or not to approve the acquisition of such Share Options with Restriction on Transfer.
- (2) Except for cases prescribed by the applicable Ordinance of the Ministry of Justice as cases of no likelihood of detriment to interested parties, requests pursuant to the provisions of the preceding paragraph shall be submitted jointly with the person stated or recorded in the Share Option registry as the holder of the Share Options so acquired, or his/her general successors including his/her heirs.

#### **Article 264** (Method for Requests for Approval of Transfer)

The requests listed in the following items (hereinafter in this Subsection referred to as "Requests for Approval of Transfer") shall be made by disclosing the matters provided for in such items:

- (i) Requests under the provisions of Article 262: The following matters:

- (a) The features and number of Share Options with Restriction on Transfer that the holders of Share Options making such request intend to transfer to others;
- (b) The names of the person accepting the transfer of the Share Options with Restriction on Transfer referred to in (a);
- (ii) Requests under the provisions of paragraph (1) of the preceding article: The following matters:
  - (a) The features and number of Share Options with Restriction on Transfer that the Acquirer of Share Options making such request has acquired;
  - (b) The name of the Acquirer of Share Options referred to in (a);

**Article 265** (Determination of Approval of Transfer)

- (1) The determination by a Stock Company as to whether or not to grant approval under Article 262 or Article 263(1) shall be made by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors) ; provided, however, that this shall not apply in cases where it is otherwise provided for as a feature of the Share Options.
- (2) If a Stock Company has made a determination under the preceding paragraph, it shall notify the person who made the Requests for Approval of Transfer of the content of such determination.

**Article 266** (Cases where Stock Company is Deemed to have Approved)

In cases where a Stock Company has failed to give notice pursuant to the provisions of paragraph (2) of the preceding article within two weeks (or if any shorter period of time is provided for in the articles of incorporation, such shorter period of time) from the day of the Requests for Approval of Transfer, the Stock Company shall be deemed to have given the approval under Article 262 or Article 263 (1); provided, however, that this shall not apply if otherwise provided for by agreement between the Stock Company and the person who made the Requests for Approval of Transfer:

**Subsection 3 Pledge of Share Options**

**Article 267** (Pledge of Share Options)

- (1) Holders of Share Options may pledge the Share Options held by the same.
- (2) Notwithstanding the provisions of the preceding paragraph, Share Options attached to Bonds with Share Option may not be pledged on a stand-alone basis; provided, however, that this shall not apply if the Bonds with respect to such Bonds with Share Option are extinguished.
- (3) Bonds with respect to Bonds with Share Option may not be pledged on a

stand-alone basis; provided, however, that this shall not apply if the Share Options attached to such Bonds with Share Option are extinguished.

- (4) Pledges of Share Options with Issued Certificate shall not become effective unless the Share Option certificates for such Share Options with Issued Certificates are delivered.
- (5) Pledges of Share Options attached to Bonds with Share Option with Issued Certificate shall not become effective unless the certificates of Bonds with Share Option for such Bonds with Share Option with Issued Certificate are delivered.

**Article 268** (Perfection of Pledges of Share Options)

- (1) Pledges of Share Options shall not be perfected against the Stock Company and other third parties unless the names and addresses of pledgees are stated or recorded in the Share Option registry.
- (2) Notwithstanding the provisions of the preceding paragraph, a pledgee of Share Options with Issued Certificate may not assert his/her pledge against the Stock Company and other third parties unless he/she is in continuous possession of the Share Option certificates for such Share Options with Issued Certificate.
- (3) Notwithstanding the provisions of paragraph (1), a pledgee of Share Options attached to Bonds with Share Option with Issued Certificates may not assert his/her pledge against the Stock Company and other third parties unless he/she is in continuous possession of the certificates of Bonds with Share Option for such Bonds with Share Option with Issued Certificate.

**Article 269** (Entries in Share Option Registry)

- (1) A person who pledges Share Options may request that the Stock Company state or record the following matters in the Share Option registry:
  - (i) The name and address of the pledgee;
  - (ii) The Share Options underlying the pledge.
- (2) The provisions of the preceding paragraph shall not apply to Bearer Share Options or Share Options attached to Bearer Bonds with Share Option.

**Article 270** (Delivery of Documents Stating Matters to be Specified in the Share Option Registry)

- (1) The pledgees for whom the matters listed in the items of the preceding article are stated or recorded in the Share Option registry (hereinafter referred to as "Registered Pledgees of Share Options") may request that the Stock Company deliver documents stating the matters listed in the items of that paragraph with respect to such Registered Pledgees of Share Options that are stated or recorded in the Share Option registry, or provide the Electromagnetic Records that record such

matters.

- (2) The documents referred to in the preceding paragraph shall be affixed with the signature, or name and seal, of the Representative Director of the Stock Company (the representative executive officer for a Company with Committees. The same shall apply in the following paragraph.).
- (3) With respect to the Electromagnetic Records referred to in paragraph (1), the Representative Director of the Stock Company shall implement measures in lieu of the affixation of signature, or name and seal prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) The provisions of the preceding three paragraphs shall not apply to Share Options with Issued Certificate or Share Options attached to Bonds with Share Option with Issued Certificate.

**Article 271** (Notices to Registered Pledges of Share Options)

- (1) It shall be sufficient for a notice or demand to a Registered Pledges of Share Options to be sent by a Stock Company to the addresses of such Registered Pledges of Share Options stated or recorded in the Share Option registry (or, in cases where such Registered Pledges of Share Options notify the Stock Company of any different place or contact address for the receipt of notices or demands, to such place or contact address).
- (2) The notices or demands referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand should normally have arrived.

**Article 272** (Effect of Pledge of Share Options)

- (1) In cases where a Stock Company carries out any of the acts listed below, pledge for Share Options shall be effective with respect to the Monies, etc. which the holders of such Share Options are entitled to receive as a result of such act:
  - (i) The acquisition of Share Options;
  - (ii) Entity Conversion;
  - (iii) Mergers (limited to cases where such Stock Company is to be extinguished as a result of the merger);
  - (iv) Absorption-type Company Split;
  - (v) Incorporation-type Company Split;
  - (vi) Share Exchange; or
  - (vii) Share Transfer.
- (2) Registered Pledges of Share Options may receive Monies, etc. (limited to monies) under the preceding paragraph, and appropriate them as payment to satisfy their own claims in priority to other creditors.

- (3) If the claims under the preceding paragraph have not yet become due and payable, the Registered Pledges of Share Options may have the Stock Company deposit an amount equivalent to the value of the Monies, etc. provided for in that paragraph. In such cases, the pledge shall be effective with respect to the monies so deposited.
- (4) Pledges for Share Options attached to Bonds with Share Option (limited to cases where the property provided for in Article 236(1) (iii) consists of the Bonds with respect to such Bonds with Share Option, and the redemption amount for such Bonds is equal to or more than the value provided for in item (ii) of that paragraph with respect to such Share Options) shall be effective with respect to the shares that holders of such Share Options receive by exercising such Share Options.

## **Section 5 Acquisition of Own Share Option by Stock Companies**

### **Subsection 1 Acquisition of Share Option pursuant to Subscription Requirements**

#### **Article 273** (Determination of Day of Acquisition)

- (1) In cases where there are provision with respect to the matters listed in Article 236(1) (vii) (b) as a feature of Share Options subject to Call (meaning Share Options for which there are provisions with respect to the matters listed in item (vii) (a) of that paragraph. The same shall apply hereinafter in this Chapter.), the Stock Company shall determine the day under the same item (vii) (b) by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise provided as a feature of such Share Options subject to Call.
- (2) If a Stock Company determines the day under Article 236(1) (vii) (b), the Stock Company shall notify the holders of Share Options subject to Call (or, in cases where there are provisions with respect to the matters listed in item (vii) (c) of that paragraph, the holders of Share Options subject to Call determined under the provisions of paragraph (1) of the following article) and the Registered Pledges of Share Options thereof of such date, no later than two weeks prior to such day.
- (3) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

#### **Article 274** (Determination of Share Options to be Acquired)

- (1) In cases where there are provisions with respect to the matters listed in Article

- 236(1) (vii) (c), if a Stock Company intends to acquire Share Options subject to Call, it shall determine the Share Options subject to Call that it intends to acquire.
- (2) The Share Options subject to Call under the preceding paragraph shall be determined by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise provided as a feature of such Share Options subject to Call.
- (3) If a Stock Company makes the determination pursuant to the provisions of paragraph (1), the Stock Company shall immediately notify the holders of Share Options subject to Call who are determined under the provisions of that paragraph and the Registered Pledgees of Share Options thereof to the effect that the Stock Company will acquire such Share Options subject to Call.
- (4) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

**Article 275 (Effectuation)**

- (1) A Stock Company shall acquire, on the day when the grounds under item (vii) (a), paragraph (1) of Article 236 have arisen (or, in cases where there is a provision with respect to the matters listed in item (vii) (c) thereof, the day listed in item (i) or the day listed in item (ii) below, whichever comes later. The same shall apply in the following paragraph and paragraph (3)), Share Options subject to Call (or, in cases where there are provisions with respect to the matters listed in item (vii) (c), paragraph (1) of that article, the Share Options subject to Call determined pursuant to the provisions of paragraph (1) of the preceding article. The same shall apply in the following paragraph and paragraph (3)):
- (i) The day when the grounds under Article 236(1) (vii) (a) have arisen; or
- (ii) The day of notice under the provisions of paragraph (3) of the preceding article, or the day when two weeks have lapsed from the day of the public notice under paragraph (4) of that article.
- (2) In cases where the Share Options subject to Call that a Stock Company acquires under the provisions of the preceding paragraph are attached to Bonds with Share Option, the Stock Company shall acquire the Bonds with respect to such Bonds with Share Option on the day when the grounds under Article 236(1) (vii) (a) have arisen.
- (3) In the cases listed in the following items, the holders of Share Options subject to Call (excluding the relevant Stock Company) shall acquire the status provided for in each of such items in accordance with the provisions with respect to the matters provided for in such item, on the day when the grounds under Article 236(1) (vii) (a) have arisen:

- (i) In cases where there are provisions on the matters listed in Article 236(1) (vii) (d): Shareholders of shares under the same item (vii) (d);
  - (ii) In cases where there are provision on the matters listed in Article 236(1) (vii) (e): Bondholders of Bonds under the same item (vii) (e);
  - (iii) In cases where there are provisions on the matters listed in Article 236(1) (vii) (f): Holders of "other Share Options" under that item (vii) (f);
  - (iv) In cases where there are provisions on the matters listed in Article 236(1) (vii) (g): Bondholders of the Bonds with respect to Bonds with Share Option under that item (vii) (g), and holders of Share Options attached to such Bonds with Share Option;
- (4) Without delay after the grounds under Article 236(1) (vii) (a) have arisen, a Stock Company shall notify the holders of Share Options subject to Call and Registered Pledges of Share Options thereof (in cases where there are provisions with respect to the matters listed in the same item (vii) (c) thereof, the holders of Share Options subject to Call determined pursuant to the provisions of paragraph (1) of the preceding article, and Registered Pledges of Share Options thereof) to the effect that such grounds has occurred; provided, however, that this shall not apply if the Stock Company has given notice under the provisions of Article 273(2) or has given public notice under the provisions of paragraph (3) of the same article.
- (5) A public notice may be substituted for the notice under the provisions of the preceding paragraph.

## **Subsection 2 Cancellation of Share Options**

### **Article 276**

- (1) A Stock Company may cancel its Own Share Options. In such cases, the Stock Company shall determine the features and number of the Own Share Options it intends to cancel.
- (2) For a Company with Board of Directors, the determination under the provisions of the second sentence of the preceding paragraph shall be made by resolution of a board of directors meeting.

## **Section 6 Allotment of Share Options without Contribution**

### **Article 277 (Allotment of Share Options without Contribution)**

A Stock Company may allot the Share Options of such Stock Company to shareholders (or, for a Company with Class Shares, shareholders of a certain class) without requiring them to make additional contribution (hereinafter in this Section

referred to as "Allotment of Share Options without Contribution").

**Article 278** (Determination of Matters in relation to Allotment of Share Options without Contribution)

- (1) Whenever a Stock Company intends to effect the Allotment of Share Options without Contribution, it shall prescribe the following matters:
  - (i) The features and number of the Share Options the Stock Company will allot to shareholders or the method for calculating such number;
  - (ii) In cases where the Share Options provided for in the preceding item are attached to Bonds with Share Option, the classes of Bonds with respect to such Bonds with Share Option, and the total of the amounts for each Bond or the method for calculating such amount;
  - (iii) The day when such Allotment of Share Options without Contribution becomes effective; and
  - (iv) In cases where the Stock Company is a Company with Class Shares, the classes of shares held by shareholders who are entitled to such Allotment of Share Options without Contribution.
- (2) The provisions regarding the matters listed in item (i) and item (ii) of the preceding paragraph shall be that the Share Options under item (i) of that paragraph and the Bonds under item (ii) of that paragraph will be allotted in proportion to the number of shares (or, for a Company with Class Shares, the shares of the classes under item (iv) of that paragraph) held by shareholders (or, for a Company with Class Shares, Class Shareholders of the classes under item (iv) of that paragraph) other than such Stock Company.
- (3) The determination of the matters listed in each item of paragraph (1) shall be made by resolution of a shareholders meeting (or of a board of directors meeting for a Company with Board of Directors); provided, however, that this shall not apply in cases where it is otherwise provided for in the articles of incorporation.

**Article 279** (Effectuation of Allotment of Share Options without Contribution)

- (1) Shareholders to whom the Share Options under item (i), paragraph (1) of the preceding article have been allotted shall become the holders of the Share Options provided for in item (i) of that paragraph on the day provided for in item (iii) of that paragraph (or, in the case provided for in item (ii) of that paragraph, the holders of the Share Options provided for in item (i) of that paragraph and the Bondholders of the Bonds provided for in item (ii) of that paragraph).
- (2) No later than the first day of the period provided for in Article 236(1) (iv) with respect to the Share Options provided for in item (i), paragraph (1) of the preceding article, a Stock Company shall notify shareholders (or, for a Company

with Class Shares, Class Shareholders of the classes under item (iv), paragraph (1) of the preceding article) and the Registered Pledges of Shares thereof, of the features and number of the Share Options (in the cases provided for in item (ii), paragraph (1) of the preceding article, including the classes of Bonds that have been allotted to such shareholders and the total of the amounts for each Bond) that have been allotted to such shareholders.

## **Section 7 Exercising Share Option**

### **第一款 総則**

#### **Subsection 1 General Provisions**

#### **Article 280 (Exercising Share Option)**

- (1) Share Options shall be exercised by disclosing the following matters:
  - (i) The features and number of the Share Options to be exercised; and
  - (ii) The day on which the Share Options will be exercised.
- (2) If it is intended to exercise Share Options with Issued Certificate, the holders of such Share Options with Issued Certificate shall submit the Share Option certificates for such Share Options with Issued Certificate to the Stock Company; provided, however, that this shall not apply if no such Share Option certificates have been issued.
- (3) If it is intended to exercise Share Options attached to Bonds with Share Option with Issued Certificate, the holders of such Share Options shall submit to the Stock Company the certificates of Bonds with Share Option for Bonds with Share Option to which such Share Options are attached. In such case, such Stock Company shall specify in such certificates of Bonds with Share Option to the effect that those Share Options attached to such Bonds with Share Option with Issued Certificate have been extinguished.
- (4) Notwithstanding the provisions of the preceding paragraph, in cases where it is intended to exercise Share Options attached to Bonds with Share Option with Issued Certificate, if the Bonds with respect to such Bonds with Share Option with Issued Certificate are extinguished by the exercise of such Share Options, the holders of such Share Options shall submit the certificates of Bonds with Share Option for the Bonds with Share Option to which such Share Options are attached to the Stock Company
- (5) Notwithstanding the provisions of paragraph (3), in cases where it is intended to exercise the Share Options attached to Bonds with Share Option with Issued Certificate after the redemption of the Bonds with respect to such Bonds with Share Option with Issued Certificate, the holders of such Share Options shall

submit the certificates of Bonds with Share Option for the Bonds with Share Option to which such Share Options are attached to the Stock Company.

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(6) A Stock Company cannot exercise Own Share Options.

**Article 281** (Payment of Amount to be Paid in on Exercise of Share Option)

(1) If monies are the subject of the contribution to be made on the exercise of Share Options, the holders of Share Options shall pay in the entire amount of the value provided for in Article 236(1) (ii) with respect to the Share Options relating to such exercise at the place for the handling of bank etc. payments designated by the Stock Company on the day provided for in item (ii), paragraph (1) of the preceding article.

(2) If any property other than monies is the subject of the contribution to be made on the exercise of Share Options, the holders of Share Options shall deliver the property provided for in Article 236(1) (iii) with respect to the Share Options relating to such exercise on the day provided for in item (ii), paragraph (1) of the preceding article. In such cases, if the value of such property falls short of the value provided for in Article 236(1) (ii), the holders of the Share Options shall pay in monies equivalent to the balance thereof at the place for the handling of payments referred to in the preceding paragraph.

(3) Holders of Share Options may not set off their obligations to effect payment under the provisions of paragraph (1) or delivery under the provisions of the preceding paragraph against claims the Holders of Share Options have against the Stock Company.

**Article 282** (Timing of Shareholder Status)

Holders of Share Options who have exercised Share Options shall become shareholders of the shares underlying such Share Options on the day when such Share Options are exercised.

**Article 283** (Treatment of Fraction)

In cases where Share Options are exercised, if the number of the shares to be issued to the holders of such Share Options includes a fraction of less than one share, the Stock Company shall, in accordance with the categories of the cases listed in the following items, deliver to the holders of such Share Options monies equivalent to the amount obtained by multiplying the amount provided for in each such item by such fraction; provided, however, that this shall not apply in cases where there are provisions with respect to the matters listed in Article 236(1) (ix):

(i) In cases where such shares are shares with a market price: The amount

- calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the market price of one such share; and
- (ii) In cases other than the cases listed in the preceding item: The amount of net assets per share.

### **Subsection 2 Contribution of Property Other than Monies**

#### **Article 284**

- (1) In cases where Share Options for which there are provisions with respect to the matters listed in Article 236(1) (iii) are exercised, a Stock Company shall petition the court, without delay after a delivery of property under the provisions of Article 281(2), for the appointment of an inspector, in order to have the inspector investigate the value of the property provided for in that item (hereinafter in this Section referred to as "Properties Contributed in Kind").
- (2) In cases where the petition referred to in the preceding paragraph has been filed, the court shall appoint an inspector, except in cases where it dismisses such petition as unlawful.
- (3) In cases where the court has appointed the inspector under the preceding paragraph, it may fix the amount of the remuneration that the Stock Company shall pay to such inspector.
- (4) The inspector referred to in paragraph (2) shall conduct the necessary investigations, and submit a report, either by recording the outcome of such investigations or by providing the documents or Electromagnetic Records (limited to those prescribed by the applicable Ordinance of the Ministry of Justice) to the court.
- (5) If the court finds it necessary to clarify the contents of the report under the preceding paragraph or to confirm the grounds supporting such report, it may request that the inspector under paragraph (2) submit a further report under the preceding paragraph.
- (6) If the inspector under paragraph (2) has submitted the report referred to in paragraph (4), he/she shall deliver to the Stock Company a copy of the documents under such paragraph, or provide the matters recorded in the Electromagnetic Records under such paragraph by the methods prescribed by the applicable Ordinance of the Ministry of Justice.
- (7) In cases where the court receives a report under paragraph (4), if it finds the value provided for in item (iii), paragraph (1) of Article 236 with respect to the Properties Contributed in Kind (excluding a value not subjected to the investigation by the inspector under paragraph (2)) to be improper, it shall issue a ruling changing such value.

- (8) In cases where the value of the Properties Contributed in Kind has been changed, in whole or in part, because of a ruling under the preceding paragraph, the holders of the Share Options referred to in paragraph (1) may rescind their manifestation of intention relating to the exercise of their Share Options, limited to within one week from the finalization of such ruling.
- (9) The provisions of the preceding paragraphs shall not apply in the cases in each of the following items with respect to the matters prescribed respectively in those items:
- (i) In cases where the total number of the shares to be delivered to the holders of Share Options that have been exercised does not exceed one tenth (1/10) of the total number of Issued Shares: The value of the Properties Contributed in Kind that are tendered by the holders of such Share Options;
  - (ii) In cases where the total sum of the values provided for under Article 236(1) (iii) with respect to the Properties Contributed in Kind does not exceed 5,000,000 yen: The value of such Properties Contributed in Kind;
  - (iii) In cases where the value provided for under Article 236(1) (iii) with respect to the Properties Contributed in Kind does not exceed the value calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the market price of such securities: The value of the Properties Contributed in Kind with respect to such securities;
  - (iv) In cases where, the verification of an attorney, a legal professional corporation, a certified public accountant, an auditing firm, a tax accountant or a tax accountant corporation (or in cases where the Properties Contributed in Kind consist of real estate, hereinafter in this item referring to such verification and an appraisal by a real property appraiser) is obtained with respect to the reasonableness of the value provided for under Article 236(1) (iii) with respect to Properties Contributed in Kind: The value of the Properties Contributed in Kind so verified;
  - (v) In cases where the Properties Contributed in Kind consist of a money claim (limited to claims that have already fallen due), and the value provided for under Article 236(1) (iii) with respect to such money claim does not exceed the book value of the debt representing such money claim: The value of the Properties Contributed in Kind with respect to such monetary claim
- (10) None of the following persons can provide the verification provided in item (iv) of the preceding paragraph:
- (i) A director, an accounting advisor, a company auditor or executive officer, or an employee including a manager;
  - (ii) A holder of Share Options;
  - (iii) A person who has become subject to a suspension of operations for whom the

- period of such suspension has not elapsed yet; or
- (iv) A legal profession corporation, an auditing firm or a tax accountant corporation with respect to which more than half of its members are the persons who fall under either item (i) or item (ii) above.

### **Subsection 3 Liabilities**

#### **Article 285** (Liabilities of Persons who Subscribed for Share Options with Unfair Amount To Be Paid In)

- (1) In the cases listed in the following items, a holder of Share Options who has exercised Share Options shall be liable to the Stock Company for payment of the amount provided for in such items:
- (i) In the cases provided for in Article 238(1) (ii), if the arrangement that there is no requirement for monies to be paid in for Share Options for Subscription is a condition that is extremely unfair (limited to the cases where the holder of the Share Options subscribed for the Share Options in collusion with directors (or, directors or executive officers for a Company with Committees. The same shall apply in the following item.)): The fair value of such Share Options;
- (ii) In the cases provided for in Article 238(1) (iii), if the holder of the Share Options subscribed for the Share Options at an Amount To Be Paid In that is extremely unfair, in collusion with directors: The amount equivalent to the difference between such Amount To Be Paid In and the fair value of such Share Options;
- (iii) In cases where the value of the Properties Contributed in Kind that the holder of the Share Options tendered when he/she became a shareholder pursuant to the provisions of Article 282 is extremely short of the value provided for under Article 236(1) (iii) with respect to the Properties Contributed in Kind: The amount of such shortfall
- (2) In the cases provided for in item (iii) of the preceding paragraph, if the holder of the Share Options who tendered the Properties Contributed in Kind is without knowledge and is not grossly negligent as to the fact that the value of such Properties Contributed in Kind is extremely short of the value provided for under item (iii), paragraph (1) of Article 236 with respect to the Properties Contributed in Kind, the holder of the Share Options may rescind his/her manifestation of intention relating to the exercise of the Share Options.

#### **Article 286** (Liabilities of Directors in case of Shortfall in Value of Property Contributed)

- (1) In the cases listed in item (iii), paragraph (1) of the preceding article, the

following persons (hereinafter in this article referred to as "Directors, etc.") shall be liable to the Stock Company for payment of the amounts listed in such items:

- (i) Executive directors who carried out duties regarding the solicitation of such holders of Share Options (or, for a Company with Committees, executive officers. The same shall apply in this item.) and other persons prescribed by the applicable Ordinance of the Ministry of Justice as persons who were involved, in the performance of their duties, in the execution of the business of such executive directors;
  - (ii) If a shareholders meeting has passed a resolution regarding the determination of the value of the Properties Contributed in Kind, the persons prescribed by the applicable Ordinance of the Ministry of Justice as the directors who submitted proposals to such shareholders meeting;
  - (iii) If a board of directors meeting has passed a resolution regarding the determination of the value of Properties Contributed in Kind, the persons prescribed by the applicable Ordinance of the Ministry of Justice as the directors (or, for a Company with Committees, directors or executive officers) who submitted proposals to such board of directors meeting;
- (2) Notwithstanding the provisions of the preceding paragraph, the Directors, etc. shall not be liable for Properties Contributed in Kind under that paragraph in the cases listed below:
- (i) An investigation has been carried out by an inspector under Article 284(2) with respect to the value of the Properties Contributed in Kind; or
  - (ii) Such Directors, etc. have proven that they did not fail to exercise care with respect to the performance of their duties.
- (3) In the cases provided for in paragraph (1), the person who submitted the verification provided for in Article 284 (9) (iv) (hereinafter in this article referred to as "Verifying Person") shall be liable for the payment of the amount provided for in item (iii), paragraph (1) of the preceding article to the Stock Company; provided, however, that this shall not apply in cases where such Verifying Person has proven that he/she did not fail to exercise care with respect to the submission of such verification.
- (4) In cases where a holder of Share Options bears an obligation to pay an amount provided for in item (iii), paragraph (1) of the preceding article with respect to Properties Contributed in Kind tendered by the holder of Share Options, if the persons listed as follows bear obligations provided for in such items with respect to such Properties Contributed in Kind, such persons shall be joint and several obligors:
- (i) Directors, etc.: The obligations under paragraph (1); and
  - (ii) Verifying Person: The obligations under the main clause of the preceding

paragraph.

#### **Subsection 4 Miscellaneous Provisions**

##### **Article 287**

In addition to the cases provided for in Article 276(1), if a holder of Share Options can no longer exercise the Share Options held by the same, such Share Options shall be extinguished.

#### **Section 8 Certificates for Share Options**

##### **Subsection 1 Share Option Certificates**

##### **Article 288** (Issuing of Share Option Certificates)

- (1) A Stock Company shall, without delay after the day of issue of Share Options with Issued Certificate, issue Share Option certificates for such Share Options with Issued Certificate.
- (2) Notwithstanding the provisions of the preceding paragraph, a Stock Company may elect to not deliver the Share Option certificates under that paragraph until the holders of Share Options so request.

##### **Article 289** (Matters to be Stated on Share Option Certificate)

A Stock Company shall state the following matters and the serial number on a Share Option certificate and the Representative Director of the Stock Company (or the representative executive officer for a Company with Committees) shall affix his/her signature, or name and seal:

- (i) The trade name of the Stock Company; and
- (ii) The features and number of Share Options with Issued Certificate relating to such Share Option certificates;

##### **Article 290** (Conversion between Registered Share Option and Bearer Share Option)

Holders of Share Options with Issued Certificate may demand at any time that the Stock Company convert their registered Share Option certificates into bearer Share Option certificates, or convert their bearer Share Option certificates into registered Share Option certificates, except in cases where there is an arrangement that such conversion is not possible under the provisions with respect to the matters listed in Article 236(1) (i).

##### **Article 291** (Loss of Share Option Certificates)

- (1) Share Option certificates may be invalidated pursuant to the public notification procedures under Article 142 of the Non-Contentious Cases Procedures Act.
- (2) A person who has lost Share Option certificates may not request the re-issuing of their Share Option certificates until after they obtain the decision for invalidation provided for in Article 148(1) of the Non-Contentious Cases Procedures Act.

### **Subsection 2 Certificates of Bonds with Share Option**

#### **Article 292**

- (1) The certificates of Bonds with Share Option representing Bonds with Share Option with Issued Certificate shall state the features and number of the Share Options attached to such Bonds with Share Option with Issued Certificate, in addition to the matters to be stated under the provisions of Article 697 (1).
- (2) In cases where it is intended to redeem Bonds with respect to Bonds with Share Option with Issued Certificate, if the Share Options attached to such Bonds with Share Option with Issued Certificate have not been extinguished, the Stock Company may not demand the redemption of the Bonds in exchange for the certificates of Bonds with Share Option representing such Bonds with Share Option with Issued Certificate. In such cases, the Stock Company may, in exchange for the redemption of the Bonds, seek the presentation of such certificates of Bonds with Share Option and may enter a statement on such certificates of Bonds with Share Option to the effect that the Bonds have been redeemed.

### **Subsection 3 Submission of Share Option Certificate**

#### **Article 293** (Public Notice in relation to Submission of Share Option Certificate)

- (1) In cases where a Stock Company carries out an act listed in the following items, if it has issued Share Option certificates representing the Share Options provided for in such items (if such Share Options are attached to Bonds with Share Option, hereinafter in this Subsection referring to the certificates of Bonds with Share Option representing such Bonds with Share Option), such Stock Company shall, more than one month prior to the day when such act takes effect, give public notice to the effect that such Share Option certificates shall be submitted to such Stock Company before such day, and a separate notice to such effect to each holder of such Share Options and each registered pledgee of such Share Options:
  - (i) Acquisitions of Share Options subject to Call: Such Share Options subject to Call;
  - (ii) Organizational Changes: All Share Options;
  - (iii) Mergers (limited to cases where such Stock Company is to be extinguished as

- a result of the merger: All Share Options;
- (iv) Absorption-type Company Split: Share Options under Absorption-type split agreement provided for in Article 758(v) (a);
  - (v) Incorporation-type Company Split: Share Options under Incorporation-type company split plan provided for in Article 763(x) (a);
  - (vi) Share Exchange: Share Options under Share Exchange agreement provided for in Article 768(1) (iv) (a); or
  - (vii) Share Transfer: Share Options under Share Transfer plan provided for in Article 773 (1) (ix) (a);
- (2) If a person fails to submit Share Option certificates to a Stock Company no later than the day on which the act listed in each item of the preceding paragraph takes effect, the Stock Company may, until such Share Option certificates are submitted, refuse to deliver the Monies, etc. to which the holders of the Share Options representing such Share Option certificates are entitled as a result of such act.
- (3) The Share Option certificates representing the Share Options provided for in each item of paragraph (1) shall become invalid on the day when the act listed in each such item takes effect.
- (4) The provisions of Article 220 shall apply mutatis mutandis if, in cases where an act listed in any item of paragraph (1) is carried out, a person cannot submit the Share Option certificates.

**Article 294** (Cases Where Bearer Share Option Certificates are not Submitted)

- (1) Notwithstanding the provisions of Article 132, in cases where the act listed in item (i), paragraph (1) of the preceding article is carried out (limited to cases where, in exchange for the acquisition of Share Options by a Stock Company, shares in such Stock Company are delivered to the holders of such Share Options), if Share Option certificates (hereinafter in this article limited to those in bearer form) are not submitted pursuant to the provisions of that paragraph, the Stock Company is not required to state or record in the shareholder registry the matters listed in Article 121(i) relating to shares that persons who hold such Share Option certificates are entitled to have delivered.
- (2) In the cases provided for in the preceding paragraph, a Stock Company is not required to send notices or demands to shareholders of shares that persons who hold Share Option certificates that shall be submitted pursuant to the provisions of paragraph (1) of the preceding article are entitled to have delivered.
- (3) Notwithstanding the provisions of Article 249 and Article 259(1), in cases where the act listed in item (i), paragraph (1) of the preceding article is carried out (limited to cases where, in exchange for the acquisition of Share Options by a Stock Company, other Share Options of such Stock Company (excluding those

attached to Bonds with Share Option) are delivered to the holders of such Share Options), if no Share Option certificates are submitted pursuant to the provisions of that paragraph, the Stock Company is not required to state or record in the Share Option registry the matters listed in Article 249(iii) (a) relating to such other Share Options (excluding Bearer Share Options) that persons who hold such Share Option certificates are entitled to have delivered.

- (4) In the cases provided for in the preceding paragraph, a Stock Company is not required to send notices or demands to holders of Share Options that persons who hold Share Option certificates that shall be submitted pursuant to the provisions of paragraph (1) of the preceding article are entitled to have delivered.
- (5) Notwithstanding the provisions of Article 249 and Article 259 (1), in cases where the act listed in item (i), paragraph (1) of the preceding article is carried out (limited to cases where, in exchange for the acquisition of Share Options by a Stock Company, Bonds with Share Option of such Stock Company are delivered to the holders of such Share Options), if no Share Option certificates are submitted pursuant to the provisions of that paragraph, the Stock Company is not required to state or record in the Share Option registry the matters listed in Article 249(iii) (a) relating to Share Options attached to the Bonds with Share Option (excluding Bearer Bonds with Share Option) that persons who hold such Share Option certificates are entitled to have delivered.
- (6) In the cases provided for in the preceding paragraph, a Stock Company is not required to send notices or demands to holders of Share Options attached to the Bonds with Share Option that persons who hold Share Option certificates that shall be submitted pursuant to the provisions of paragraph (1) of the preceding article are entitled to have delivered.

## **Chapter IV Organ**

### **Section 1 Shareholders Meeting and Class Meeting**

#### **Subsection 1 Shareholders Meeting**

##### **Article 295 (Authority of Shareholders Meeting)**

- (1) Shareholders' meetings may resolve the matters provided for in this Act, the organization, operations and administration of the Stock Company, and any and all other matters regarding the Stock Company.
- (2) Notwithstanding the provisions of the preceding paragraph, for a Company with Board of Directors, a shareholders meeting may resolve only the matters provided for in this Act and the matters provided for in the articles of incorporation.

- (3) Provisions of the articles of incorporation which provide to the effect that any organization other than the shareholders meeting, such as directors, executive officers and board of directors, may determine any matter which, pursuant to the provisions of this Act, requires the resolution of the shareholders meeting shall not be effective.

**Article 296** (Calling of Shareholders Meeting)

- (1) Annual shareholders meeting shall be called within a defined period of time after the end of each business year.
- (2) A shareholders meeting may be called whenever necessary.
- (3) A shareholders meeting shall be called by directors, except in cases where it is called pursuant to the provisions of paragraph (4) of the following Article.

**Article 297** (Demand for Calling of Meeting by Shareholders)

- (1) Shareholders having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) not less than three hundredths ( $3/100$ ) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders may demand the directors, by showing the matters which shall be the purpose of the shareholders meeting (limited to the matters on which such shareholders may exercise their votes) and the reason of the calling, that they call the shareholders meeting.
- (2) For the purpose of the application of the preceding paragraph to a Stock Company which is not a Public Company, "having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "having."
- (3) The number of the votes of the shareholders who may not exercise their votes on the matters that are the purpose of the shareholders meeting referred to in paragraph (1) shall not be included in the number of the votes of all shareholders under that paragraph.
- (4) In the following cases, the shareholders who made the demand pursuant to the provisions of paragraph (1) may call the shareholders meeting with the permission of the court.
- (i) In cases where the calling procedure is not effected without delay after the demand pursuant to the provisions of paragraph (1); or
- (ii) In cases where a notice for the calling of the shareholders meeting which designates, as the day of the shareholders meeting, a day falling within the period of eight weeks (or, in cases where any period less than that is provided for in the articles of incorporation, such period) from the day of the demand

pursuant to the provisions of paragraph (1) is not dispatched.

**Article 298** (Determination to Call Shareholders Meeting)

- (1) Directors (in cases where shareholders call a shareholders meeting pursuant to the provisions of paragraph (4) of the preceding Article, such shareholders. The same shall apply in the main clause of the next paragraph and in the following Article to Article 302 inclusive) shall decide the following matters in cases where they call a shareholders meeting:
  - (i) The date, time and place of the shareholders meeting;
  - (ii) If there is any matter which is the purpose of the shareholders meeting, such matter;
  - (iii) That shareholders who do not attend the shareholders meeting may exercise their votes in writing, if so arranged;
  - (iv) That shareholders may exercise their votes by an Electromagnetic Method, if so arranged;
  - (v) In addition to the matters listed in the preceding items, any matters prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) In cases where the number of the shareholders (excluding shareholders who may not exercise their votes on all matters which may be resolved at a shareholders meetings. The same shall apply in the next Article to Article 302 inclusive) is one thousand or more, the directors shall decide the matters listed in item (iii) of the preceding paragraph; provided, however, that this shall not apply to the cases where such Stock Company is a Stock Company which issues the shares provided for in Article 2(16) of the Financial Instruments and Exchange Act and is an entity prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) For the purpose of the application of the provisions of the preceding paragraph to a Company with Board of Directors, "matters which may be resolved at the shareholders meetings" in that that paragraph shall be read as "matters listed in paragraph (2) of the preceding paragraph."
- (4) At a Company with Board of Directors, the decision of the matters listed in each item of paragraph (1) shall be made by the resolution of the board of directors, except for the cases where the shareholders call the Company pursuant to the provisions of paragraph (4) of the preceding Article.

**Article 299** (Notice of Calling of Shareholders' meetings)

- (1) In order to call the shareholders meeting, the directors shall dispatch the notice thereof to the shareholders no later than two weeks (or one week if the Stock Company is not a Public Company, except in cases where the matters listed in item (iii) or (iv) of paragraph (1) of the preceding Article are decided, (or if a shorter

period of time is provided for in the articles of incorporation in cases where the Stock Company is a Stock Company other than the Company with Board of Directors, such shorter period of time)) prior to the day of the shareholders meeting.

- (2) The notice referred to in the preceding paragraph shall be in writing in the following cases:
  - (i) Where the matters listed in item (iii) or (iv) of paragraph (1) of the preceding Article are decided; or
  - (ii) Where the Stock Company is a Company with Board of Directors.
- (3) In lieu of the dispatch of the written notice referred to in the preceding paragraph, the directors may dispatch the notice by an Electromagnetic Method, with the consent of the shareholders, in accordance with the provisions of the applicable Cabinet Order. In such cases, such directors shall be deemed to have dispatched the written notice under such paragraph.
- (4) The notice under the preceding two paragraphs shall specify or record the matters listed in each item of paragraph (1) of the preceding article.

**Article 300** (Omission of Calling Procedures)

Notwithstanding the provisions of the preceding Article, the shareholders meeting may be held without the procedures of calling if the consent of all shareholders is obtained; provided, however, that this shall not apply in cases where the matters listed in item (iii) or item (iv) of Article 298(1) are decided.

**Article 301** (Giving of Reference Documents for Shareholders Meeting and Voting Forms)

- (1) In cases where the matters listed in item (iii) of Article 298(1) are decided, the directors shall, when dispatching a notice under Article 299(1), give the shareholder the document stating matters of reference for the exercise of votes (hereinafter in this Subsection referred to as "Reference Document for Shareholders Meeting") and the document to be used by the shareholder to exercise the votes (hereinafter in this Subsection referred to as "Voting Form") pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) If the directors dispatch notices by an Electromagnetic Method referred to in Article 299(3) to the shareholders who have given consent under the same paragraph, the directors may provide, in lieu of the giving of the Reference Documents for Shareholders Meeting and Voting Forms pursuant to the provisions of the preceding paragraph, the matters to be specified in such document by an Electromagnetic Method; provided, however, that, if requested by any shareholder, they shall give these documents to such shareholder.

### **Article 302**

- (1) In cases where the matters listed in item (iv) of Article 298(1) are decided, the directors shall, when dispatching a notice under Article 299(1), give the shareholders the Reference Documents for Shareholders Meeting pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) If the directors dispatch the notice by an Electromagnetic Method referred to in Article 299(3) to the shareholders who have given consent under the same paragraph, the directors may provide, in lieu of the giving of the Reference Documents for Shareholders Meeting pursuant to the provisions of the preceding paragraph, the matters to be specified in such documents by an Electromagnetic Method; provided, however, that, if requested by any shareholder, the directors shall give the Reference Documents for Shareholders Meeting to such shareholder.
- (3) In the case provided for in paragraph (1), when sending notice to the shareholders who have given consent under Article 299(3) by an Electromagnetic Method referred to in the same paragraph, the directors shall provide to the shareholders the matters to be specified in the Voting Forms by such Electromagnetic Method pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (4) In the case provided for in paragraph (1), if any shareholder who has not given consent under Article 299(3) requests, no later than one week prior to the day of the shareholders meeting, for the provision of the matters to be specified in the Voting Form by an Electromagnetic Method, the directors shall provide such matters to such shareholder by an Electromagnetic Method pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.

### **Article 303 (Shareholders' Right to Propose)**

- (1) Shareholders may demand that the directors include certain matters (limited to the matters on which such shareholders may exercise their votes. The same shall apply in the following paragraph) in the purpose of the shareholders meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, at a Company with Board of Directors, only shareholders having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) not less than one hundredth (1/100) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders or not less than three hundred (or, in cases where lesser number is prescribed in the articles of incorporation, such number of) votes of all shareholders may demand the directors that the directors include certain matters in the purpose of the shareholders meeting. In such cases,

that demand shall be submitted no later than eight weeks (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) prior to the day of the shareholders meeting.

- (3) For the purpose of the application of the preceding paragraph to a Company with Board of Directors which is not a Public Company, "having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "having."
- (4) The number of the votes to which the shareholders who may not exercise their votes on the certain matters referred to in paragraph (2) are entitled shall not be included in the number of the votes of all shareholders under that paragraph.

#### **Article 304**

Shareholders may submit proposals at the shareholders meeting with respect to the matters that are the purpose of the shareholders meeting (limited to the matters on which such shareholders may exercise their votes. The same shall apply in paragraph (1) of the following article); provided, however, that this shall not apply in cases where such proposals are in violation of the laws or the articles of incorporation, or in cases where three years have not elapsed from the day on which, with respect to the proposal which is essentially identical to such proposal, affirmative votes not less than one tenths (1/10) (or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their voting rights on such proposal) were not obtained.

#### **Article 305**

- (1) Shareholders may demand the directors that, no later than eight weeks (or, in cases where any period less than that is provided for in the articles of incorporation, such period) prior to the day of the shareholders meeting, shareholders be notified of the summary of the proposals which such demanding shareholders intend to submit with respect to the matters that are the purpose of the shareholders meeting (or, in cases where a notice pursuant to paragraph (2) or paragraph (3) of Article 299 is to be given, such summary be specified or recorded in that notice); provided, however, that, for a Company with Board of Directors, only shareholders having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more) not less than one hundredth (1/100) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders or not less than three hundred (or, in

cases where lesser number is prescribed in the articles of incorporation, such number of) votes of all shareholders may make such demand.

- (2) For the purpose of the application of the proviso to the preceding paragraph to a Company with Board of Directors which is not a Public Company, "having consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "having."
- (3) The number of the votes to which the shareholders who may not exercise their votes on the matters that are the purpose of the shareholders meeting referred to in paragraph (1) are entitled shall not be included in the number of the votes of all shareholders under the proviso to that paragraph.
- (4) The provisions of the preceding three paragraphs shall not apply in cases where the proposals under paragraph (1) are in violation of the laws or the articles of incorporation, or in cases where three years have not elapsed from the day on which, with respect to the proposal which is essentially identical to such proposal, affirmative votes not less than one tenths (1/10) (or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their voting rights on such proposal) were not obtained.

**Article 306** (Election of Inspector on Calling Procedures of Shareholders Meeting)

- (1) A Stock Company or shareholders who hold not less than one hundredth (1/100) (or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) of the votes of all shareholders (excluding the shareholders who may not exercise their votes on all matters which may be resolved at the shareholders meeting) may file a petition with the court, before a shareholders meeting, for the election of an inspector who shall be retained to investigate the calling procedures and method of resolution relating to such shareholders meeting.
- (2) For the purpose of the provisions of the preceding paragraph to a Company with Board of Directors which is a Public Company, in that paragraph, "matters which may be resolved at the shareholders meeting" shall be read as "matters listed in item (ii) of Article 298(1)" and "hold" shall be read as "have held, for the consecutive period of six months or more (or, in cases where any period less than that is provided for in the articles of incorporation, such period)"; and for the purpose of the provisions of the preceding paragraph to a Company with Board of Directors which is not a Public Company, "matters which may be resolved at the shareholders meeting" in that paragraph shall be read as "matters listed in item (ii) of Article 298(1)."

- (3) In cases where the petition for the election of an inspector pursuant to the provisions of the preceding two paragraphs has been filed, the court shall elect the inspector except in case it dismisses such petition as non-conforming.
- (4) In cases where the court has elected the inspector set forth in the preceding paragraph, it may fix the amount of the compensation which the Stock Company shall pay to such inspector.
- (5) The inspector set forth in paragraph (3) shall conduct necessary investigation and shall report the court by submitting the document or Electromagnetic Records (limited to those prescribed by the applicable Ordinance of the Ministry of Justice) which specifies or records the result of such investigation.
- (6) If the court finds it necessary to for the purpose of clarification of the contents of the report set forth in the preceding paragraph or of confirmation of the grounds supporting such report, it may request the inspector set forth in paragraph (3) a further report set forth in the preceding paragraph.
- (7) When the inspector set forth in paragraph (3) reports pursuant to paragraph (5), he/she shall give the Stock Company (in cases where the person who filed a petition for the election of an inspector was not such Stock Company, such Stock Company and that person) a copy of the document set forth in that paragraph, or provide the matters recorded in the Electromagnetic Records set forth in that paragraph by the method prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 307** (Determination by the Court of the Calling of Shareholders Meeting)

- (1) In cases where the report under paragraph (5) of the preceding Article is submitted, if the court finds it necessary, it shall order the directors to take some or all of the measures listed below:
  - (i) To call a shareholders meeting within a defined period of time; and
  - (ii) To notify the shareholders of the result of the investigation under paragraph (5) of the preceding Article.
- (2) In cases where the court orders the measures listed in item (i), paragraph (1) of the preceding Article, the directors shall disclose the content of the report under paragraph (5) of the preceding Article at the shareholders meeting under that paragraph.
- (3) In the cases provided for in the preceding paragraph, the directors (or the directors and company auditors for a Company with Auditors) shall investigate the content of the report under paragraph (5) of the preceding Article and report the result thereof to the shareholders meeting under item (i) of paragraph (1).

**Article 308** (Number of Votes)

- (1) Shareholders (excluding the shareholder prescribed by the applicable Ordinance of the Ministry of Justice as the entity in a relationship that may allow the Stock Company to have substantial control of such entity through the holding of one quarter or more of the votes of all shareholders of such entity or other reasons) shall be entitled to one vote for each one share they hold at the shareholders meeting; provided, however, that, in cases where a Share Unit is provided for in the articles of incorporation, they shall be entitled to one vote for each one unit of the shares.
- (2) Notwithstanding the provisions of the preceding paragraph, a Stock Company shall not have any votes with respect to its Treasury Shares.

**Article 309** (Resolution of Shareholders Meetings)

- (1) Unless otherwise provided for in the articles of incorporation, the resolution of a shareholders meeting shall be made by a majority of the votes of the shareholders present at the meeting where the shareholders holding a majority of the votes of the shareholders who are entitled to exercise their votes are present.
- (2) Notwithstanding the provisions of the preceding paragraph, the resolutions of the following shareholders meetings shall be made by a majority of two thirds (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of the shareholders present at the meeting where the shareholders holding a majority (in cases where a proportion of one third or more is provided for in the articles of incorporation, such proportion or more) of the votes of the shareholders entitled to exercise their votes at such shareholders meeting are present. In such cases, it is not precluded from providing in the articles of incorporation, in addition to such requirements for resolution, additional requirements including those providing to the effect that the approval of a certain number or more of the shareholders are required:
  - (i) Shareholders meeting under Article 140(2) and (5);
  - (ii) Shareholders meeting under Article 156(1) (limited to the case where the specific shareholders under Article 160(1) are to be identified);
  - (iii) Shareholders meeting under Article 171(1) and Article 175(1);
  - (iv) Shareholders meeting under Article 180(2);
  - (v) Shareholders meeting under Article 199(2), Article 200(1), item (iv) of Article 202(3) and Article 204(2);
  - (vi) Shareholders meeting under Article 238(2), Article 239(1), item (iv) of Article 241(3) and Article 243(2);
  - (vii) Shareholders meeting under Article 339(1) (limited to the case where directors elected pursuant to the provisions of item (iii) through (v) of Article 342 are to be dismissed or company auditors are to be dismissed);

- (viii) Shareholders meeting under Article 425(1);
  - (ix) Shareholders meeting under Article 447(1) (excluding the cases which fall under both of the following conditions):
    - (a) That the matters listed in each item of Article 447(1) shall be determined at the annual shareholders meeting; and
    - (b) That the amount referred to in item (i) of Article 447(1) shall not exceed the amount which is calculated in a manner prescribed by the applicable Ordinance of the Ministry of Justice as the amount of deficit at the day of the annual shareholders meeting referred to in Sub-item (a) (or, in the case provided for in the first sentence of Article 439, the day when the approval under Article 436(4) is effected).
  - (x) Shareholders' meeting under Article 454(4) (limited to the cases where it is to be arranged that the Dividend Property shall consist of any property other than cash, and that no Right to Demand Distribution of Monies provided for in item (i) of that paragraph shall be granted to the shareholders);
  - (xi) Shareholders' meeting in cases where the resolution by such shareholders meeting is required pursuant to the provisions of Chapter VI through Chapter VIII;
  - (xii) Shareholders' meeting in cases where no resolution by such shareholders meeting is required pursuant to the provisions of Part V.
- (3) Notwithstanding the provisions of the preceding two paragraphs, the resolutions of the following shareholders meetings (excluding the shareholders meetings of a Company with Class Shares) shall be made by a majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the shareholders entitled to exercise their votes at such shareholders meeting, being a majority of two thirds (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of such shareholders:
- (i) Shareholders' meetings where the articles of incorporation are amended creating a provision to the effect that, as the features of all shares issued by a Stock Company, the approval of such Stock Company is required for the acquisition of such shares by transfer;
  - (ii) Shareholders' meetings under Article 783(1) (limited to such shareholders meeting where the Stock Company which will be absorbed by merger or Stock Company which effects Share Exchange is a Public Company, and some or all of the Cash Etc. to be delivered to the shareholders of such Stock Company consist of Shares with Restriction on Transfer, Etc. (meaning the Shares with Restriction on Transfer, Etc. provided for in paragraph (3) of that paragraph. The same shall apply hereinafter in the following item.)); or

- (iii) Shareholders' meetings under Article 804(1) (limited to such shareholders meeting where the Stock Company which effects merger or Share Transfer is a Public Company, and some or all of the Monies, Etc. to be distributed to the shareholders of such Stock Company consist of Shares with Restriction on Transfer, Etc.).
- (4) Notwithstanding the provisions of the preceding three paragraphs, resolutions of the shareholders meetings which effect any amendment in the articles of incorporation (excluding those which repeal such provisions of the articles of incorporation) with respect to the amendment in the articles of incorporation pursuant to the provisions of Article 109(2) shall be made by the majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of all shareholders, being a majority equating three quarters (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of all shareholders.
- (5) At a Company with Board of Directors, the shareholders meeting may not resolve matters other than the matters listed in item (ii) of Article 298(1); provided, however, that this shall not apply to the election of the persons provided for in paragraph (1) or paragraph (2) of Article 316, nor to requests for the presence of an accounting auditor under Article 398(2).

**Article 310 (Proxy Voting)**

- (1) Shareholders may exercise their votes by proxy. In such cases, such shareholders or proxies shall submit to the directors a document evidencing the authority of proxy.
- (2) The grant of the authority of proxy under the preceding paragraph shall be made for each shareholders meeting.
- (3) Shareholders or proxies referred to in paragraph (1) may, in lieu of the submission of the document evidencing the authority of proxy, provide the matters to be stated in such document by an Electromagnetic Method with the approval of the Stock Company in accordance with the provisions of the applicable Cabinet Order. In such cases, such shareholders or proxies shall be deemed to have submitted such document.
- (4) In cases where the shareholders are the persons who gave consent under Article 299(3), the Stock Company may not refuse to grant the approval under the preceding paragraph without justifiable reasons.
- (5) The Stock Company may restrict the number of proxies who may attend the shareholders meeting.
- (6) The Stock Company shall keep the documents evidencing the authority of proxy and the Electromagnetic Records which records the matters provided by the

Electromagnetic Method under paragraph (3) at its head office for the period of three months from the day of the shareholders meeting.

(7) The shareholders (excluding the shareholders who may not exercise their votes on all matters which may be resolved at the shareholders meeting under the preceding paragraph. The same shall apply hereinafter in paragraph (4) of the following Article and in Article 312(5)) may submit the following request at any time during the business hours of the Stock Company:

- (i) Request for the inspection or copying of the documents evidencing the authority of proxy; and
- (ii) Request for inspection or copying of anything that displays the data recorded in the Electromagnetic Records under the preceding paragraph in a manner prescribed the applicable Ordinance of the Ministry of Justice.

**Article 311 (Voting in Writing)**

- (1) If the votes are exercised in writing, it shall be exercised by entering the Voting Form with necessary matters and submitting it to the Stock Company no later than the time prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) The number of the votes exercised in writing pursuant to the provisions of the preceding paragraph shall be included in the number of the votes of the shareholders who are present at the meeting.
- (3) The Stock Company shall keep the Voting Forms submitted pursuant to the provisions of paragraph (1) at its head office for the period of three months from the day of the shareholders meeting.
- (4) The shareholders may make requests for the inspection or copying of the Voting Forms submitted pursuant to the provisions of paragraph (1) at any time during the business hours of the Stock Company.

**Article 312 (Voting by Electromagnetic Method)**

- (1) If the votes are exercised by an Electromagnetic Method, it shall be exercised by providing the matters to be entered on the Voting Form to the Stock Company by an Electromagnetic Method, with the approval of such Stock Company, no later than the time prescribed by the applicable Ordinance of the Ministry of Justice in accordance with the provisions of the applicable Cabinet Order.
- (2) In cases where the shareholders are the persons who have given consent under Article 299(3), the Stock Company may not refuse to give the approval under the preceding paragraph without justifiable reasons.
- (3) The number of the votes exercised by an Electromagnetic Method pursuant to the provisions of paragraph (1) shall be included in the number of the votes of the shareholders who are present at the meeting.

- (4) The Stock Company shall keep the Electromagnetic Records which record the matters provided pursuant to the provisions of paragraph (1) at its office for the period of three months from the day of the shareholders meeting.
- (5) The shareholders may, at any time during the business hours of the Stock Company, make requests for the inspection or copying of anything that displays the data recorded in the Electromagnetic Records under the preceding paragraph in a manner prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 313** (Diverse Exercise of Votes)

- (1) Shareholders may diversely exercise the votes they hold.
- (2) For a Company with Board of Directors, the shareholders under the preceding paragraph shall notify the Stock Company that they will diversely exercise their votes and of the reason thereof no later than three days prior to the day of the shareholders meeting.
- (3) If the shareholders referred to in the paragraph (1) are not persons who hold the shares on behalf of others, the Stock Company may refuse the diverse exercise of the votes held by such shareholders pursuant to the provisions of that paragraph.

**Article 314** (Accountability of Directors, etc.)

In cases where a director, an accounting advisor, a company auditor or an executive officer is requested by the shareholders to provide explanations on certain matters at the shareholders meeting, they shall provide necessary explanations with respect to such matters; provided, however, that this shall not apply in cases where such matters are not relevant to the matters that are the purpose of the shareholders meeting, or in cases where such explanations are to the serious detriment of the common interest of the shareholders, or in other cases prescribed by the applicable Ordinance of the Ministry of Justice as the cases where there are justifiable grounds.

**Article 315** (Authority of Chairperson)

- (1) The chairperson of the shareholders meeting shall maintain the order of such shareholders meeting and organize the business of the meeting.
- (2) The chairperson of the shareholders meeting may require any one who does not comply with his/her order or who otherwise disturbs the order of such shareholders meeting to leave the room.

**Article 316** (Investigation of Materials Submitted to the Shareholders Meeting)

- (1) The shareholders meeting may, by its resolution, elect a person to investigate the materials submitted or provided to such shareholders meeting by the directors,

accounting advisors, company auditors, board of company auditors and accounting auditors.

- (2) The shareholders meeting which is called pursuant to the provisions of Article 297 may, by its resolution, elect a person who will be charged to investigate the status of the operations and property of the Stock Company.

**Article 317 (Resolution for Postponement or Adjournment)**

In cases where there is a resolution for the postponement or adjournment of the shareholders meeting, the provisions of Article 298 and Article 299 shall not apply.

**Article 318 (Minutes)**

- (1) Minutes shall be prepared with respect to the business of the shareholders meetings pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) The Stock Company shall keep the minutes referred to in the preceding paragraph at its head office for the period of ten years from the day of the shareholders meeting.
- (3) The Stock Company shall keep copies of the minutes referred to in paragraph (1) at its branch offices for the period of five years from the day of the shareholders meeting; provided, however, that this shall not apply to the cases where such minutes are prepared by Electromagnetic Records and the Stock Company adopts the measures prescribed by the applicable Ordinance of the Ministry of Justice as measures enabling its branch offices to respond to the request listed in item (ii) of the following paragraph.
- (4) The shareholders and creditors may submit the following requests at any time during the business hours of the Stock Company:
  - (i) If the minutes under paragraph (1) are prepared in writing, requests for inspection or copying of such documents or copies of such documents; and
  - (ii) If the minutes under paragraph (1) are prepared by Electromagnetic Records, requests for inspection or copying of anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (5) If it is necessary for the purpose of exercising the rights of a Member of the Parent Company of a Stock Company, he/she may, with the permission of the court, make the requests listed in each item of the preceding paragraph with respect to the minutes referred to in paragraph (1).

**Article 319 (Omission of Resolution of Shareholders Meetings)**

- (1) In cases where directors or shareholders submit a proposal with respect to a

matter which is the purpose of the shareholders meeting, if all shareholders (limited to those who may exercise their votes with respect to such matter) manifest their intention to agree to such proposal in writing or by means of Electromagnetic Records, it shall be deemed that the resolution to approve such proposal at the shareholders meeting has been made.

- (2) The Stock Company shall keep the documents or Electromagnetic Records under the provisions of the preceding paragraph at its head office for a period of ten years from the day when the resolution of the shareholders meeting is deemed to have been made pursuant to the provisions of the preceding paragraph.
- (3) The shareholders may submit the following requests at any time during the business hours of the Stock Company:
  - (i) Request for inspection or copying of the documents under the preceding paragraph; and
  - (ii) Request for inspection or copying of anything that displays the data recorded in the Electromagnetic Records under the preceding paragraph in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) If it is necessary for the purpose of exercising the rights of a Member of the Parent Company of such Stock Company, he/she may, with the permission of the court, make the requests listed in each item of the preceding paragraph with respect to the documents or Electromagnetic Records under paragraph (2).
- (5) In cases where it is deemed that the resolutions to approve proposals on all matters that are the purpose of the annual shareholders meeting have been made at the shareholders meeting pursuant to the provisions of paragraph (1), such annual shareholders meeting shall be deemed concluded at that time.

**Article 320 (Omission of Reports to Shareholders Meetings)**

In cases where the directors notify all shareholders of any matter that is to be reported to the shareholders meeting, if all shareholders manifest in writing or by means of Electromagnetic Records their intention to agree that it is not necessary to report such matter to the shareholders meeting, it shall be deemed that such matter has been reported to the shareholders meeting.

**Subsection 2 Class Meeting**

**Article 321 (Authority of Class Meeting)**

Class Meeting may resolve only the matters provided for in this Act and the matters provided for in the articles of incorporation.

**Article 322 (Class Meeting where Detriment to Class Shareholders of Certain Class**

Likely)

- (1) In cases where a Company with Class Shares carries out an act listed in the following items, if it is likely to cause detriment to the Class Shareholders of any class of shares, such act shall not become effective unless a resolution is made at a Class Meeting constituted by the Class Shareholders of the shares of such class (in cases where there are two or more classes of shares relating to such Class Shareholders, referring to the respective Class Meetings constituted by the Class Shareholders categorized by the class of such two or more classes of shares. The same shall apply hereinafter in this Article); provided, however, that this shall not apply to the case where there exists no Class Shareholder who may exercise his/her votes at such Class Meeting:
  - (i) Amendment of the articles of incorporation with respect to the following matters (excluding those provided for in paragraph (1) or paragraph (2) of Article 111);
    - (a) Creation of a new class of the shares;
    - (b) Change in the features of the shares;
    - (c) Increase of the Total Number of Authorized Shares, or Total Number of Authorized Shares in a Class.
  - (ii) Consolidation of shares or share split;
  - (iii) Allotment of share without contribution provided for in Article 185;
  - (iv) Solicitation of persons who subscribe for the shares of such Stock Company (limited to that which prescribes the matters listed in each item of Article 202 (1));
  - (v) Solicitation of persons who subscribe for the Share Options of such Stock Company (limited to that which prescribes the matters listed in each item of Article 241(1));
  - (vi) Allotment of Share Option without contribution provided for in Article 277;
  - (vii) Merger;
  - (viii) Absorption-type Company Split;
  - (ix) Succession by Absorption-type Company Split to some or all of the rights and obligations held by another Company with respect to such Company's business;
  - (x) Incorporation-type Company Split;
  - (xi) Share Exchange;
  - (xii) Acquisition of all Issued Shares of another Stock Company by Share Exchange; or
  - (xiii) Share Transfer.
- (2) A Company with Class Shares may provide in the articles of incorporation that, as a feature of a certain class of shares, a resolution of the Class Meeting pursuant to the provisions of the preceding paragraph shall not be required.

- (3) The provisions of the paragraph (1) shall not apply to Class Meeting constituted by the Class Shareholders of the class which is subject to the provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph; provided, however, that this shall not apply to the cases where the amendment in the articles of incorporation (excluding the amendment relating to Share Unit) set forth in item (i) of paragraph (1) is carried out.
- (4) If, after shares of a certain class are issued, it is intended to create provisions pursuant to the provisions of paragraph (2) with respect to the shares of such class by effecting an amendment in the articles of incorporation, the consent of all Class Shareholders of such class shall be obtained.

**Article 323** (Cases of Provision Requiring Resolution of Class Meeting)

If, at a Company with Class Shares, there is a provision, as a feature of a certain class of shares, to the effect that, with respect to the matter that is subject to the resolution of the shareholders meeting (for a Company with Board of Directors, shareholders meeting or board of directors; and for a Company with Board of Liquidators provided for in Article 478(6), shareholders meeting or board of liquidators), in addition to such resolution, the resolution of a Class Meeting constituted by the Class Shareholders of such class of shares is required, such matter shall not become effective unless the resolution is made at a Class Meeting constituted by the Class Shareholders of the shares of such class in addition to the resolution of the shareholders meeting, board of directors or board of liquidators, consistently with the provisions of articles of incorporation; provided, however, that this shall not apply to the case where there exists no Class Shareholder who may exercise the votes at such Class Meeting.

**Article 324** (Resolution of Class Meetings)

- (1) Unless otherwise provided for in the articles of incorporation, resolutions of a Class Meeting shall be made by a majority of the votes of the shareholders of that class present at the meeting where the shareholders who hold a majority of the votes of all shareholders of the shares of such class are present.
- (2) Notwithstanding the provisions of the preceding paragraph, the resolutions of the following Class Meetings shall be made by a majority of two thirds (in cases where any higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of the shareholders present at the meeting where the shareholders who hold a majority of the votes (in cases where any proportion of one third or more is provided for in the articles of incorporation, such proportion or more) of the shareholders who are entitled to exercise their votes at such Class Meeting are present. In such cases, it is not precluded from providing in the

articles of incorporation, in addition to such requirements for resolution, additional requirements including those providing to the effect that the approval of a certain number or more of the shareholders are required:

- (i) Class Meeting under Article 111(2) (limited to the cases where, as a feature of a certain class of shares, a provision of the articles of incorporation is to be created with respect to the matters listed in item (vii) of Article 108(1));
  - (ii) Class Meeting under of Article 199(4) and Article 200(4);
  - (iii) Class Meeting under Article 238(4) and Article 239(4);
  - (iv) Class Meeting under Article 322(1);
  - (v) Class Meeting under Article 339(1) which is applied by the deemed replacement of terms pursuant to the provisions of Article 347(2);
  - (vi) Class Meeting under Article 795(4);
- (3) Notwithstanding the provisions of the preceding two paragraphs, the resolutions of the following Class Meetings shall be made by a majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the shareholders entitled to exercise their votes at such Class Meeting, being a majority of two thirds (in cases where a higher proportion is provided for in the articles of incorporation, such proportion) or more of the votes of such shareholders:
- (i) Class Meetings under Article 111(2) (limited to the cases where, as a feature of a certain class of shares, a provision of the articles of incorporation is to be created with respect to the matters listed in item (vii) of Article 108(1));
  - (ii) Class Meetings under Article 783(3) and Article 804(3).

**Article 325** (Mutatis mutandis Application of Provisions regarding Shareholders Meetings)

The provisions of the preceding Subsection (excluding paragraph (1) and paragraph (2) of Article 295, paragraph (1) and paragraph (2) of Article 296, and Article 309) shall apply mutatis mutandis to the Class Meeting. In such cases, in Article 297(1), "all shareholders" shall be deemed to be replaced with "all shareholders (limited to the shareholders of a certain class of shares. The same shall apply hereinafter in this Subsection (excluding Article 308(1))." and "Shareholders" shall be deemed to be replaced with "Shareholders (limited to the shareholders of a certain class of shares. The same shall apply hereinafter in this Subsection (excluding Article 318(4) and Article 319(3))."

**Section 2 Establishment of Organs Other Than Shareholders Meeting**

**Article 326** (Establishment of Organs Other Than Shareholders Meeting)

- (1) A Stock Company shall have one or more directors.
- (2) A Stock Company may have a board of directors, an accounting advisor, a company auditor, a board of company auditors, an accounting auditor or Committees as prescribed by the articles of incorporation.

**Article 327** (Obligations to Establish Board of Directors and Other Organizations)

- (1) The following Stock Company shall have a board of directors.
  - (i) A Public Company;
  - (ii) A Company with Board of Company Auditors;
  - (iii) A Company with Committees.
- (2) A Company with Board of Directors (excluding Company with Committees) shall have a company auditor; provided, however, that this shall not apply to a Company with Accounting Advisors that is not a Public Company.
- (3) A Company with Accounting Auditors (excluding a Company with Committees) shall have a company auditor.
- (4) A Company with Committees may not have a company auditor.
- (5) A Company with Committees shall have an accounting auditor.

**Article 328** (Obligations of Large Companies to Establish Board of Company Auditors, etc.)

- (1) A Large Company (excluding a Company which is not a Public Company and a Company with Committees) shall have a board of company auditors and an accounting auditor.
- (2) A Large Company which is not a Public Company shall have an accounting auditor.

**Section 3 Election and Dismissal of Officers and Accounting Auditors**

**Subsection 1 Election**

**Article 329** (Election)

- (1) Officers (meaning directors, accounting advisors and company auditors. The same shall apply hereinafter in this Section and in Article 371(4) and Article 394 (3)) and accounting auditors shall be elected by resolution of a shareholders meeting.
- (2) In case of the resolution under the preceding paragraph, substitute Officers may be elected as prescribed by the applicable Ordinance of the Ministry of Justice by way of precaution against the cases where there are no Officers in office or the cases where there is a vacancy which results in a shortfall in the number of

Officers prescribed in this Act or articles of incorporation.

**Article 330 (Relationship between Stock Company and Officers)**

The relationship between a Stock Company and its Officers or accounting auditors shall be governed by the provisions on mandate.

**Article 331 (Qualifications of Directors)**

- (1) The following persons may not act as directors:
  - (i) A juridical person;
  - (ii) An adult ward, a person under curatorship, or a person who is similarly treated under foreign laws and regulations;
  - (iii) A person who has been sentenced to a penalty for having violated the provisions of this Act or the Act on General Incorporated Association and General Incorporated Foundation (Act No. 48 of 2006), or for having committed: a crime under Article 197, Article 197-2(1) (i) through (x) or (xiii), Article 198 (viii), Article 199, Article 200(i) through (xii), (xx) or (xxi), Article 203 (3) or Article 205(i) through (vi), (xix) or (xx) of the Financial Instruments and Exchange Act; a crime under Articles 255, 256, 258 through 260 or 262 of the Civil Rehabilitation Act (Act No. 225 of 1999); a crime under Articles 65, 66, 68 or 69 of the Act on Recognition and Assistance for Foreign Insolvency Procedures (Act No. 129 of 2000); a crime under Articles 266, 267, 269 through Article 271 or 273 of the Corporate Reorganization Act (Act No. 154 of 2002); or a crime under Articles 265, 266, 268 through 272 or 274 of the Bankruptcy Act, for whom two years have not elapsed since the day on which the execution of the sentence was completed or the sentence no longer applied.
  - (iv) A person who violated the provisions of laws and regulations other than those provided for in the preceding item, was sentenced to imprisonment or severer penalty and who has not completed the execution of the sentence or to whom the sentence still applies (excluding persons for whom the execution of the sentence is suspended).
- (2) A Stock Company may not provide in the articles of incorporation that directors shall be shareholders; provided, however, that this shall not apply to a Stock Company that is not a Public Company.
- (3) A director of a Company with Committees may not concurrently act as an employee including a manager of such Company with Committees.
- (4) A Company with Board of Directors shall have three or more directors.

**Article 332 (Directors' Terms of Office)**

- (1) Directors' terms of office shall continue until the conclusion of the annual

shareholders meeting for the last business year which ends within two years from the time of their election; provided, however, that this shall not preclude the shortening the term of the directors by the articles of incorporation or by the resolution of the shareholders meeting.

- (2) The provisions of the preceding paragraph shall not preclude a Stock Company which is not a Public Company (excluding a Company with Committees) from extending, by the articles of incorporation, the term of office under that paragraph until the conclusion of the annual shareholders meeting for the last business year which ends within ten years from the time of the election.
- (3) For the purpose of the application of the provisions under paragraph (1) to the directors of a Company with Committees, "two years" in that paragraph shall be read as "one year."
- (4) Notwithstanding the provisions of the preceding three paragraphs, in cases where any of the following amendments in the articles of incorporation is made, the directors' term of office shall expire when such amendment in the articles of incorporation takes effect:
  - (i) An amendment in the articles of incorporation to the effect that Committees shall be established;
  - (ii) An amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that Committees shall be established; or
  - (iii) An amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that, as a feature of all shares the Stock Company issues, the approval of the Stock Company is required for the acquisition of such shares by transfer (excluding an amendment made by a Company with Committees).

**Article 333 (Qualifications of Accounting Advisors)**

- (1) An accounting advisor shall be a Certified Public Accountant or audit firm, or a certified public tax accountant or tax accountant corporation.
- (2) An audit firm or tax accountant corporation which has been elected as the accounting advisor shall appoint, from among its members, a person who is in charge of the affairs of an accounting advisor, and notify the Stock Company to that effect. In such cases, the persons listed in each item of following paragraph may not be appointed.
- (3) The following persons may not act as accounting advisors:
  - (i) A director, company auditor or executive officer, or an employee, including a manager, of a Stock Company or its Subsidiary;
  - (ii) A person who is subject to the disciplinary action ordering a suspension of operations and for whom the period of such suspension has not yet elapsed; or

- (iii) A person who, pursuant to the provisions of Article 43 of the Certified Public Tax Accountant Act (Act No. 237 of 1951), may not engage in the business of the certified public tax accountant prescribed in Article 2(2) of that act.

**Article 334** (Accounting Advisors' Terms of Office)

- (1) The provisions of Article 332 shall apply mutatis mutandis to the accounting advisors' terms of office.
- (2) Notwithstanding the provisions of Article 332 applied mutatis mutandis under the preceding paragraph, in cases where a Company with Accounting Advisors effects an amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that it shall have an accounting advisor, the accounting advisor's term of office shall expire when such amendment in the articles of incorporation takes effect.

**Article 335** (Qualifications of Company auditors)

- (1) The provisions of paragraph (1) and paragraph (2) of Article 331 shall apply mutatis mutandis to company auditors.
- (2) A company auditor of a Stock Company may not concurrently act as a director, employee, including manager, of that Stock Company or its Subsidiary, and may not act as an accounting advisor (if the accounting advisor is a juridical person, the member who is in charge of its affairs) or an executive officer of such Subsidiary.
- (3) A Company with Board of Company auditors shall have three or more company auditors, and the half or more of them shall be Outside Company Auditors.

**Article 336** (Company Auditors' Terms of Office)

- (1) Company auditors' terms of office shall continue until the conclusion of the annual shareholders meeting for the last business year which ends within four years from the time of their election.
- (2) The provisions of the preceding paragraph shall not preclude a Stock Company which is not a Public Company from extending, by the articles of incorporation, the terms of office under that paragraph until the conclusion of the annual shareholders meeting for the last business year which ends within ten years from the time of the election.
- (3) The provisions of paragraph (1) shall not preclude providing, by the articles of incorporation, that the term of office of a company auditor, who is elected as the substitute for a company auditor who retired from office before the expiration of the term of office, shall continue until the time the term of office of the company auditor who retired from office expires.
- (4) Notwithstanding the provisions of the preceding three paragraphs, in cases

where any of the following amendments in the articles of incorporation is made, the company auditors' terms of office shall expire when such amendment in the articles of incorporation takes effect:

- (i) An amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that company auditors shall be established;
- (ii) An amendment in the articles of incorporation to the effect that Committees shall be established;
- (iii) An amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that the scope of the audit by the company auditors shall be limited to an audit related to accounting;
- (iv) An amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that, as a feature of all shares the Stock Company issues, the approval of the Stock Company is required for the acquisition of such shares by transfer.

**Article 337 (Qualifications of Accounting Auditors)**

- (1) An accounting auditor shall be a Certified Public Accountant or an audit firm.
- (2) An audit firm which has been elected as an accounting auditor shall appoint, from among its members, a person who is in charge of the affairs of an accounting auditor, and notify the Stock Company to that effect. In such cases, the person listed in item (ii) of the following paragraph may not be appointed.
- (3) The following persons may not act as accounting auditors:
  - (i) A person who, pursuant to the provisions of the Certified Public Accountant Act, may not audit the financial statement provided for in Article 435(2);
  - (ii) A person who is in continuous receipt of remuneration from a Subsidiary of the Stock Company, or from a director, accounting advisor, company auditor or executive officer of that Subsidiary, for operations other than the operations of the Certified Public Accountant or audit firm, or the spouse of that person; or
  - (iii) An audit firm half or more of its members of which are persons listed in the above items.

**Article 338 (Accounting Auditors' Terms of Office)**

- (1) An accounting auditor's term of office shall continue until the conclusion of the annual shareholders meeting for the last business year which ends within one year from the time of their election.
- (2) Unless otherwise resolved at the annual shareholders meeting under the preceding paragraph, accounting auditors shall be deemed to have been re-elected at such annual shareholders meeting.
- (3) Notwithstanding the provisions of the preceding two paragraphs, in cases where

a Company with Accounting Auditors makes any amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that it shall have an accounting auditor, the accounting auditor's term of office shall expire when such amendment in the articles of incorporation takes effect.

### **Subsection 2 Dismissal**

#### **Article 339 (Dismissal)**

- (1) Officers and accounting auditors may be dismissed at any time by resolution of a shareholders meeting.
- (2) A person dismissed pursuant to the provisions of the preceding paragraph shall be entitled to demand damages arising from the dismissal from the Stock Company, except in cases where there are justifiable grounds for such dismissal.

#### **Article 340 (Dismissal of Accounting Auditors by Company Auditors)**

- (1) The company auditor may dismiss an accounting auditor if that accounting auditor:
  - (i) has breached his or her duty in the course of his/her duties, or neglected his/her duties;
  - (ii) has engaged in misconduct inappropriate for an accounting auditor; or
  - (iii) has difficulty in, or is unable to cope with the execution of his/her duties due to mental or physical disability.
- (2) Dismissals pursuant to the provisions of the preceding paragraph shall be effected by the unanimous consent of all company auditors in cases where there are two or more company auditors.
- (3) If an accounting auditor is dismissed pursuant to the provisions of paragraph (1), the company auditor (or, in cases where there are two or more company auditors, the company auditor appointed by the company auditors from among themselves) shall report such fact and the reason for dismissal to the first shareholders meeting called after the dismissal.
- (4) For the purpose of the application of the provisions of the preceding three paragraphs to a Company with Board of Company Auditors, "company auditor" in paragraph (1) shall be read as "board of company auditors," "company auditors in cases where there are two or more company auditors" in paragraph (2) shall be read as "company auditors," and "company auditor (or, in cases where there are two or more company auditors, the company auditor appointed by the company auditors from among themselves)" in the preceding paragraph shall be read as "the company auditor appointed by the board of company auditors."
- (5) For the purpose of the application of the provisions of paragraph (1) through

paragraph (3) to a Company with Committees, "a company auditor" in paragraph (1) shall be read as "[an] audit committee," "company auditors in cases where there are two or more company auditors" in paragraph (2) shall be read as "committee members of the audit committee," and "company auditor (or, in cases where there are two or more company auditors, the company auditor appointed by the company auditors from among themselves)" in paragraph (3) shall be read as "committee member appointed by the audit committee."

### **Subsection 3 Special Provisions on the Procedures for Election and Dismissal**

#### **Article 341 (Resolution at Shareholders Meeting for Election and Dismissal of Officers)**

Notwithstanding the provisions of Article 309(1), resolutions for the election or dismissal of officers shall be made by the majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the votes of the shareholders present at the meeting where the shareholders holding the majority of the votes (in cases where a proportion of one third or more is provided for in the articles of incorporation, such proportion or more) of the shareholders entitled to exercise their votes are present.

#### **Article 342 (Election of Directors by Cumulative Vote)**

- (1) In cases where the purpose of the shareholders meeting is the election of two or more directors, the shareholders (limited to the shareholders entitled to exercise their votes with respect to the election of the directors. The same shall apply hereinafter in this article) may request the Stock Company that the directors be elected pursuant to the provisions of paragraph (3) through paragraph (5), except as otherwise provided in the articles of incorporation.
- (2) The request under the provisions of the preceding paragraph shall be made no later than five days prior to the day of the shareholders meeting referred to in that paragraph.
- (3) Notwithstanding the provisions of Article 308(1), in cases where a request is made pursuant to the provisions of paragraph (1), a shareholder shall be entitled to such number of votes as is equal to the number of the directors to be elected in such shareholders meeting for each one share the shareholder holds (or, in cases where the Share Unit is provided for in the articles of incorporation, for each one unit of the shares the shareholder holds) with respect to the resolution of the election of the directors. In such cases, the shareholder may exercise his/her votes by casting votes for only one candidate or for two or more candidates.

- (4) In the case provided for in the preceding paragraph, the directors shall be elected in the order of the votes obtained by respective candidates.
- (5) In addition to the matters provided in the preceding two paragraphs, necessary matters regarding the election of directors in cases where a request has been made pursuant to the provisions of paragraph (1) shall be prescribed by the applicable Ordinance of the Ministry of Justice.
- (6) The provisions of the preceding article shall not apply to resolutions for the dismissal of the directors elected pursuant to the provisions of the preceding three paragraphs.

**Article 343** (Consent of Company Auditors to Election of Company Auditors)

- (1) In cases where a company auditor is in office, directors shall obtain the consent of the company auditor (or, in cases where there are two or more company auditors, the majority of the company auditors) in order to submit a proposal for the election of a company auditor to the shareholders meeting.
- (2) The company auditor may request the directors that they include the election of the company auditor in the purpose of the shareholders meeting, or they submit a proposal regarding the election of company auditor to the shareholders meeting.
- (3) For the purpose of the application of the preceding two paragraphs to a Company with Board of Company Auditors, "company auditor (or, in cases where there are two or more company auditors, the majority of the company auditors)" in paragraph (1) shall be read as "board of company auditors," and "company auditor may" in the preceding paragraph shall be read as "board of company auditors may."
- (4) The provisions of Article 341 shall not apply to resolutions for the dismissal of company auditors.

**Article 344** (Consent of Company Auditors to the Election of Accounting Auditors)

- (1) At a Company with Auditors, they shall obtain the consent of the company auditor (or, in cases where there are two or more company auditors, the majority of the company auditors) in order to carry out the following acts:
  - (i) Submitting a proposal for the election of an accounting auditor to a shareholders meeting;
  - (ii) Including the dismissal of an accounting auditor in the purpose of the shareholders meeting; or
  - (iii) Including the refusal to reelect an accounting auditor in the purpose of the shareholders meeting.
- (2) A company auditor may request that the directors carry out the following acts:
  - (i) Submitting a proposal for the election of an accounting auditor to the shareholders meeting;

- (ii) Including the election or dismissal of an accounting auditor in the purpose of the shareholders meeting; or
  - (iii) Including the refusal to reelect an accounting auditor in the purpose of the shareholders meeting.
- (3) For the purpose of the application of the preceding two paragraphs to a Company with Board of Company Auditors, "company auditor (or, in cases where there are two or more company auditors, the majority of the company auditors)" in paragraph (1) and "company auditor" in the preceding paragraph shall be read as "board of company auditors."

**Article 345** (Statement of Opinions on Election of Accounting Advisors, etc.)

- (1) Accounting advisors may state their opinions on the election or dismissal, or resignation of accounting advisors at the shareholders meeting.
- (2) A person who has resigned as an accounting advisor may attend the first shareholders meeting called after the resignation and state the fact of the resignation and the reason thereof.
- (3) Directors shall notify the person under the preceding paragraph of the fact that the shareholders meeting under that paragraph is to be called, and of the matters listed in item (i) of Article 298(1).
- (4) The provisions of paragraph (1) shall apply mutatis mutandis to a company auditor, and the provisions of the preceding two paragraphs shall apply mutatis mutandis to a person who resigned as the company auditor, respectively. In such cases, "accounting advisors" in paragraph (1) shall be read as "company auditors."
- (5) The provisions of paragraph (1) shall apply mutatis mutandis to an accounting auditor, and the provisions of paragraph (2) and paragraph (3) shall apply mutatis mutandis to a person who resigned as the accounting auditor and a person dismissed as the accounting auditor pursuant to the provisions of Article 340(1), respectively. In such cases, "on the election or dismissal, or resignation of accounting advisors at the shareholders meeting" in paragraph (1) shall be read as "on the election, dismissal or refusal of reelection, or resignation of accounting auditors, by attending the shareholders meeting," and in paragraph (2), "after the resignation" shall be read with "after the dismissal or resignation," and "the fact of the resignation and the reason thereof" shall be read with "the fact of the resignation and the reason thereof, or opinions on the dismissal."

**Article 346** (Measures when Vacancies arise among Officers)

- (1) Where there are no Officers in office, or where there is a vacancy which results in a shortfall in the number of Officers prescribed in this Act or articles of incorporation, an Officer who retired from office due to expiration of his/her term of

office or resignation shall continue to have the rights and obligations of an Officer until a newly elected officer (including a person who is to temporarily perform the duties of an Officer under the following paragraph) assumes his/her office.

- (2) In the case provided for in the preceding paragraph, if the court finds it necessary, it may, in response to a petition by interested persons, elect a person who is to temporarily perform the duties of an Officer.
- (3) In cases where the court has elected a person who is to temporarily perform the duties of an Officer under the preceding paragraph, the court may prescribe the amount of the remuneration that the Stock Company shall pay to that person.
- (4) Where there are no accounting auditors in office, or where there is a vacancy which results in a shortfall in the number of accounting auditors prescribed in the articles of incorporation, if an accounting auditor is not elected without delay, the company auditor shall elect a person who is to temporarily perform the duties of an accounting auditor.
- (5) The provisions of Article 337 and Article 340 shall apply mutatis mutandis the person who is to temporarily perform the duties of an accounting auditor under the preceding paragraph.
- (6) For the purpose of the application of the provisions of paragraph (4) to a Company with Board of Company Auditors, "company auditor" in that paragraph shall be read as "board of company auditors."
- (7) For the purpose of the application of the provisions of paragraph (4) to a Company with Committees, "company auditor" in that paragraph shall be read as "audit committee."

**Article 347** (Election of Directors or Company Auditors at Class Meetings)

- (1) For the purpose of the application of the provisions of Article 329(1), Article 332(1), Article 339(1) and Article 341 to the cases where it issues shares in a class for which there is the provision with respect to the matters listed in item (ix) of Article 108(1) (limited to those relating to directors), "shareholders meeting" in Article 329(1) shall be read as "shareholders meeting (or, for directors, Class Meeting constituted by the Class Shareholders of each class of shares in accordance with the applicable provisions of the articles of incorporation on the matters prescribed in item (ix) Article 108(2))"; "by resolution of a shareholders meeting" in Article 332(1) and Article 339(1) shall be read as "by resolution of a shareholders meeting (or, for directors elected pursuant to the provisions of Article 41(1), or at a Class Meeting under Article 90(1) or a Class Meeting under Article 329(1) applied by reading of terms pursuant to the provisions of Article 347(1), Class Meeting constituted by the Class Shareholders of shares of the class relating to the election of such director (or shareholders meeting in cases where it is

otherwise provided in the articles of incorporation, or in cases where, before the expiration of the term of office of such director, there are no longer any shareholders entitled to exercise his/her votes at such Class Meeting)); "Article 309(1)" in Article 341 shall be read as "Article 309(1) and Article 324"; and "shareholders meeting" in Article 341 shall be read as "shareholders meeting (including the Class Meeting under Article 329(1) and Article 339(1) applied by the reading of terms pursuant to the provisions of Article 347(1))."

- (2) For the purpose of the application of the provisions of Article 329(1), Article 339(1) and Article 341 to the cases where it issues shares in a class for which there is the provision with respect to the matters listed in item (ix) of Article 108(1) (limited to those relating to company auditors), "shareholders meeting" in Article 329(1) shall be read as "shareholders meeting (or, for company auditors, Class Meeting constituted by the Class Shareholders of each class of shares in accordance with the applicable provisions of the articles of incorporation on the matters prescribed in item (ix) Article 108(2))"; "the shareholders meeting" in Article 339(1) shall be read as "shareholders meeting (or, for company auditors elected pursuant to the provisions of Article 41(1) applied mutatis mutandis under paragraph (3) of that article, or at a Class Meeting under Article 90(1) applied mutatis mutandis under paragraph (2) of that article or at a Class Meeting under 329(1) applied by the reading of terms pursuant to the provisions of Article 347(2), Class Meeting constituted by the Class Shareholders of shares of the class relating to the election of such company auditor (or shareholders meeting in cases where it is otherwise provided in the articles of incorporation, or in cases where, before the expiration of the term of office of such company auditor, there are no longer any shareholders entitled to exercise his/her votes at such Class Meeting))"; "Article 309(1)" in Article 341 shall be read as "Article 309(1) and Article 324"; and "shareholders meeting" in Article 341 shall be read as "shareholders meeting (including the Class Meeting under Article 329(1) applied by the reading of terms pursuant to the provisions of Article 347(2))."

#### **Section 4 Directors**

##### **Article 348 (Execution of Operations)**

- (1) The directors shall execute the operations of the Stock Company (excluding a Company with Board of Directors. The same shall apply hereinafter in this article), unless otherwise provided in the articles of incorporation.
- (2) In cases where there are two or more directors, the operations of the Stock Company shall be decided by a majority of the directors, unless otherwise provided in the articles of incorporation.

- (3) In the case provided for in the preceding paragraph, the directors may not delegate the decisions on the following matters to individual directors:
- (i) The election or dismissal of managers;
  - (ii) The establishment, relocation and abolition of branch offices;
  - (iii) The matters listed in each item of Article 298(1) (including the cases where such items are applied mutatis mutandis under Article 325);
  - (iv) The development of systems necessary to ensure that the execution of the duties by the directors complies with the laws and regulations and the articles of incorporation, and other systems prescribed by the applicable Ordinance of the Ministry of Justice as systems necessary to ensure the properness of operations of a Stock Company; or
  - (v) Exemption from the liability under Article 423(1) pursuant to the provisions of the articles of incorporation under the provisions of Article 426(1).
- (4) At a Large Company, the directors shall decide the matters listed in item (iv) of the preceding paragraph.

**Article 349 (Representatives of Companies)**

- (1) The directors shall represent the Stock Company; provided, however, that this shall not apply in cases where Representative Directors or other persons who represent the Company are otherwise designated.
- (2) In cases where there are two or more directors referred to in the main clause of the preceding paragraph, each director shall represent the Stock Company individually.
- (3) A Stock Company (excluding a Company with Board of Directors) may appoint Representative Directors from among the directors pursuant to the articles of incorporation, or through the appointment by the directors from among themselves pursuant to the provisions of the articles of incorporation, or by resolution of a shareholders meeting.
- (4) Representative Directors shall have authority to do any and all judicial and non-judicial acts in connection with the operations of the Stock Company.
- (5) No limitation on the authority under the preceding paragraph may be asserted against a third party without knowledge of such limitation.

**Article 350 (Liability for Damages Caused by Acts of Directors)**

A Stock Company shall be liable for damage caused to third parties by its Representative Directors or other representatives during the course of the performance of their duties.

**Article 351 (Measures when Vacancy arises in Office of Representative Director)**

- (1) Where there are no Representative Directors in office, or where there is a vacancy which results in a shortfall in the number of Representative Directors prescribed in the articles of incorporation, a Representative Director who retired from office due to expiration of his/her term of office or resignation shall continue to have the rights and obligations of a Representative Director until a newly appointed Representative Director (including the person who is to temporarily perform the duties of a Representative Director under the following paragraph) assumes his/her office.
- (2) In the case provided for in the preceding paragraph, if the court finds it necessary, it may, in response to the petition by the interested persons, elect a person who is to temporarily perform the duties of a Representative Director.
- (3) In cases where the court has elected the person who is to temporarily perform the duties of a Representative Director under the preceding paragraph, the court may prescribe the amount of the remuneration that the Stock Company shall pay to that person.

**Article 352** (Authority of Persons who Perform Duties on Behalf of Directors)

- (1) A person who is elected by a provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act (Act No. 91 of 1989) to perform the duties of directors or Representative Directors on behalf of them shall obtain the permission of the court in order to engage in acts that do not belong to the ordinary operations of the Stock Company, unless otherwise provided for in the provisional disposition order.
- (2) Any act of the person who performs the duties of directors or Representative Directors on behalf of them that is performed in violation of the provisions of the preceding paragraph shall be void; provided, however, that the Stock Company may not assert that voidness against a third party without knowledge.

**Article 353** (Representation of Companies in Actions between Stock Company and Directors)

Notwithstanding the provisions of Article 349(4), in cases where a Stock Company files an action against its directors (including persons who were directors. The same shall apply hereinafter in this article), or the directors of a Stock Company files an action against that Stock Company, a shareholders meeting may designate a person to represent the Stock Company in such action.

**Article 354** (Apparent Representative Directors)

In cases where a Stock Company gives the title of president, vice president or other title regarded as having authority to represent the Stock Company to a director who

is not a Representative Director, the Stock Company shall be liable to third parties without knowledge for the acts of such director.

**Article 355 (Duty of Loyalty)**

Directors shall perform their duties for the Stock Company in a loyal manner in compliance with laws and regulations, the articles of incorporation, and resolutions of shareholders meetings.

**Article 356 (Restrictions on Competition and Conflicting Interest Transactions)**

- (1) In the following cases, a director shall disclose the material facts on the relevant transactions at a shareholders meeting and obtain approval of the shareholders meeting:
  - (i) If a directors intends to carry out, for himself/herself or for a third party, any transactions in the line of business of the Company;
  - (ii) If the director intends to carry out any transactions with the Stock Company for himself/herself or for a third party; or
  - (iii) If a Stock Company intends to guarantee debts of a director or otherwise to carry out any transactions with a person other than the director that results in a conflict of interests between the Stock Company and such director.
- (2) The provisions of Article 108 of the Civil Code shall not apply to the transactions under item (ii) of the preceding paragraph that are approved under that paragraph.

**Article 357 (Director's Duty to Report)**

- (1) If directors detect any fact likely to cause substantial detriment to the Stock Company, they shall immediately report such fact to the shareholders (or, for a Company with Auditors, the company auditors).
- (2) For the purpose of the application of the provisions of the preceding paragraph to a Company with Board of Company Auditors, "shareholders (or, for a Company with Auditors, the company auditors)" in that paragraph shall be read as "board of company auditors."

**Article 358 (Election of Inspector of Execution of Operation)**

- (1) If there are sufficient grounds to suspect misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the operations of a Stock Company, the following shareholders may file a petition for the election of an inspector with the court in order to have the inspector investigate the status of the operations and the financial status of such Stock Company:

- (i) Shareholders who hold not less than three hundredths (3/100) of the votes (or, in cases where a lesser proportion is prescribed in the articles of incorporation, such proportion) of all shareholders (excluding shareholders who may not exercise their votes on all matters which may be resolved at shareholders meetings); or
  - (ii) Shareholders who hold not less than three hundredths (3/100) (or, in cases where a lesser proportion prescribed in the articles of incorporation, such proportion) of the Issued Shares (excluding Treasury Shares).
- (2) In cases where the petition under the preceding paragraph has been filed, the court shall elect the inspector except in case it dismisses such petition as non-conforming.
  - (3) In cases where the court has elected the inspector under the preceding paragraph, it may fix the amount of the remuneration that the Stock Company shall pay to such inspector.
  - (4) The inspector referred to in paragraph (2) may investigate the status of the operations and the financial status of Subsidiaries of the Stock Company if it is necessary in order to perform his/her duties.
  - (5) The inspector referred to in paragraph (2) shall conduct necessary investigation and shall report the court by submitting the documents or Electromagnetic Records (limited to those prescribed by the applicable Ordinance of the Ministry of Justice) which specifies or records the result of such investigation.
  - (6) If the court finds it necessary for the purpose of clarification of the contents of the report under the preceding paragraph or of confirmation of the grounds supporting such report, it may request the inspector under paragraph (2) a further report under the preceding paragraph.
  - (7) When the inspector under paragraph (2) reports pursuant to paragraph (5), he/she shall give the Stock Company and the shareholders who filed the petition for the election of an inspector a copy of the documents under that paragraph, or provide the matters recorded in the Electromagnetic Records under that paragraph by the method prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 359** (Decision by Court to Call Shareholders Meeting)

- (1) In cases where the report under paragraph (5) of the preceding Article is submitted, if the court finds it necessary, it shall order the directors to take some or all of the measures listed below:
  - (i) To call a shareholders meeting within a defined period of time; and
  - (ii) To notify shareholders of the result of the investigation under paragraph (5) of the preceding Article.
- (2) In cases where the court orders the measures listed in item (i), paragraph (1) of

the preceding Article, the directors shall disclose the content of the report under paragraph (5) of the preceding Article at the shareholders meeting under that paragraph.

- (3) In the cases provided for in the preceding paragraph, the directors (or the directors and company auditors for a Company with Auditors) shall investigate the content of the report under paragraph (5) of the preceding Article and report the result thereof to the shareholders meeting under item (i) of paragraph (1).

**Article 360 (Enjoinment of Acts of Directors by Shareholders)**

- (1) In cases where a director engages, or is likely to engage, in an act outside the scope of the purpose of a Stock Company, or other acts in violation of laws and regulations or the articles of incorporation, if such act is likely to cause substantial detriment to such Stock Company, shareholders having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more) may demand that such director cease such act.
- (2) For the purpose of the application of the provisions of the preceding paragraph to a Stock Company which is not a Public Company, "shareholders having the shares consecutively for the preceding six months or more (or, in cases where shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "shareholders."
- (3) For the purpose of the application of the provisions of paragraph (1) to a Company with Auditors or a Company with Committees, "substantial detriment" in that paragraph shall be read as "irreparable detriment."

**Article 361 (Remuneration for Directors)**

- (1) The following matters with respect to the financial benefits received from a Stock Company as a consideration for the execution of the duties, such as remunerations and bonuses, (hereinafter in this Chapter referred to as "Remunerations") of directors shall be fixed by resolution of a shareholders meeting if such matters are not prescribed in the articles of incorporation:
  - (i) For Remunerations in a fixed amount, that amount;
  - (ii) For Remunerations the amount of which is not fixed, the specific method for calculating that amount;
  - (iii) For Remunerations that are not monetary, the specific contents thereof.
- (2) Directors who prescribed the matters listed in item (ii) or item (iii) of the preceding paragraph, or who submitted a proposal to amend these matters to a shareholders meeting shall explain the reasons why such matters are reasonable at such shareholders meeting.

## **Section 5 Board of Directors**

### **Subsection 1 Authority**

#### **Article 362** (Authority of Board of Directors)

- (1) Board of directors shall be composed of all directors.
- (2) Board of directors shall perform the following duties:
  - (i) Deciding the execution of the operations of the Company with Board of Directors;
  - (ii) Supervising the execution of the duties by directors; and
  - (iii) Appointing and removing Representative Directors.
- (3) Board of directors shall appoint Representative Directors from among the directors.
- (4) Board of directors may not delegate the decision on the execution of important operations such as the following matters to directors:
  - (i) The disposal of and acceptance of assignment of important assets;
  - (ii) Borrowing in a significant amount;
  - (iii) The election and dismissal of a important employee including managers;
  - (iv) The establishment, changes or abolition of important structures including branch offices;
  - (v) Matters prescribed by the applicable Ordinance of the Ministry of Justice as important matters regarding the solicitation of persons who subscribe for Bonds such as the matters listed in item (i) of Article 676;
  - (vi) The development of systems necessary to ensure that the execution of duties by directors complies with laws and regulations and the articles of incorporation, and other systems prescribed by the applicable Ordinance of the Ministry of Justice as systems necessary to ensure the properness of operations of a Stock Company; or
  - (vii) Exemption from liability under Article 423(1) pursuant to provisions of the articles of incorporation under the provisions of Article 426(1).
- (5) A Company with Board of Directors that is a Large Company shall decide the matters listed in item (vi) of the preceding paragraph.

#### **Article 363** (Authority of Directors of Companies with Board of Directors)

- (1) The following directors shall execute the operations of a Company with Board of Directors:
  - (i) A Representative Director; or
  - (ii) A director other than a Representative Director, who is appointed by

resolution of the board of directors as the director who is to execute the operations of a Company with Board of Directors.

- (2) The directors listed in each item of the preceding paragraph shall report the status of the execution of his/her duties to the board of directors at least once every three months.

**Article 364** (Representation of Company in Actions between Companies with Board of Directors and Directors)

In the case provided for in Article 353, except when there is designation by a shareholders meeting pursuant to the provisions of that article, the board of directors may designate a person to represent the Company with Board of Directors with respect to the actions under that article.

**Article 365** (Restrictions on Competition and Transactions with Companies with Board of Directors)

- (1) For the purpose of the application of the provisions of Article 356 to a Company with Board of Directors, "shareholders meeting" in paragraph (1) of that article shall be read as "board of directors."
- (2) At a Company with Board of Directors, a director who has engaged in transactions under each item of Article 356(1) shall report the material facts with respect to such transaction to the board of directors without delay after such transaction.

**Subsection 2 Operations**

**Article 366** (Convenor)

- (1) A board of directors meetings shall be called by any director; provided, however, that, if the director to call the board of directors meetings is designated by the articles of incorporation or the board of directors, such director shall call the meetings.
- (2) In the case provided for in the proviso to the preceding paragraph, directors other than the director designated pursuant to the provision of the proviso to that paragraph (referred to as "Convenor." The same shall apply hereinafter in this Chapter) may demand that the Convenor call the board of directors meeting by indicating to the Convenor the matters that are the purpose of the board of directors meeting.
- (3) In cases where, within five days from the day of the demand made pursuant to the provisions of preceding paragraph, a notice of calling of the board of directors meeting which designates as the day of the board of directors meeting a day falling

within two weeks from the day of the demand is not dispatched, the directors who made the demand may call the board of directors meeting.

**Article 367** (Demand for Calling of Meeting by Shareholders)

- (1) If shareholders of a Company with Board of Directors (excluding a Company with Auditors and Company with Committees) recognize that a director engages, or is likely to engage, in an act outside the scope of the purpose of the Company with Board of Directors, or other acts in violation of laws and regulations or the articles of incorporation, they may demand the calling of a board of directors meeting.
- (2) The demand pursuant to the provisions of the preceding paragraph shall be made to the directors (or to the Convenor in the case provided for in the proviso to paragraph (1) of the preceding article) by indicating the matters that are the purpose of the board of directors meeting.
- (3) The provisions of paragraph (3) of the preceding article shall apply mutatis mutandis to the cases where a demand is made pursuant to the provisions of paragraph (1).
- (4) Shareholders who made the demand pursuant to the provisions of paragraph (1) may attend the board of directors meeting which is called pursuant to such demand or which they call pursuant to the provisions of paragraph (3) of the preceding article applied mutatis mutandis under the preceding paragraph and state their opinions.

**Article 368** (Calling Procedures)

- (1) A person who calls a board of directors meeting shall dispatch the notice thereof to each director (or, for a Company with Auditors, to each director and each company auditor) no later than one week (or if a shorter period of time is prescribed in the articles of incorporation, such period of time) prior to the day of the board of directors meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, the board of directors meeting may be held without the procedures of calling if the consent of all directors (or, for a Company with Auditors, directors and company auditors) is obtained.

**Article 369** (Resolution of Board of Directors Meetings)

- (1) The resolution of a board of directors meeting shall be made by a majority (in cases where a higher proportion is provided for in the articles of incorporation, such proportion or more) of the directors present at the meeting where the majority (in cases where a higher proportion is provided for in the articles of

incorporation, such proportion or more) of the directors entitled to participate in the vote are present.

- (2) Directors who have a special interest in the resolution under the preceding paragraph may not participate in the vote.
- (3) With respect to the business of the board of directors meeting, minutes shall be prepared pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, and if the minutes are prepared in writing, the directors and company auditors present at the meeting shall sign or affix the names and seals to it.
- (4) With respect to the matters recorded in Electromagnetic Records in cases where the minutes under the preceding paragraph are prepared by such Electromagnetic Records, an action in lieu of the signing or the affixing of names and seals prescribed by the applicable Ordinance of the Ministry of Justice shall be taken.
- (5) Directors who participate in resolutions of the board of directors meeting and do not have their objections recorded in the minutes under paragraph (3) shall be presumed to have agreed to such resolutions.

**Article 370 (Omission of Resolution of Board of Directors Meeting)**

A Company with Board of Directors may provide in the articles of incorporation to the effect that, in cases where directors submit a proposal with respect to a matter which is the purpose of the resolution of board of directors meeting, if all directors (limited to those who are entitled to participate in votes with respect to such matter) manifest their intention to agree to such proposal in writing or by means of Electromagnetic Records (except for the case, at a Company with Auditors, where a company auditor states his/her objections to such proposal), it shall be deemed that the resolution to approve such proposal at the board of directors meeting has been made.

**Article 371 (Minutes)**

- (1) A Company with Board of Directors shall keep the minutes referred to in Article 369 (3) or the documents or Electromagnetic Records which specify or record the manifestation of intention under the preceding article (hereinafter in this article referred to as "Minutes") at its head office for the period of ten years from the day of the board of directors meeting (including the day when a resolution of a board of directors meeting is deemed to have been made pursuant to the provisions of the preceding article).
- (2) If it is necessary for the purpose of exercising the rights of a shareholder, he/she may make the following requests at any time during the business hours of a Stock Company:
  - (i) If the Minutes under the preceding paragraph are prepared in writing, requests

- for inspection or copying of such documents; and
- (ii) If the Minutes under the preceding paragraph are prepared in Electromagnetic Records, requests for inspection or copying of anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) For the purpose of the application of the provisions of the preceding paragraph to a Company with Auditors or Company with Committees, "at any time during the business hours of a Stock Company" in that paragraph shall be read as "with the permission of the court."
  - (4) If it is necessary for the purpose of pursuing the liability of Officers or executive officers by a creditor of a Company with Board of Directors, such creditor may, with the permission of the court, make the request set forth in each item of paragraph (2) with respect to the Minutes of such Company with Board of Directors.
  - (5) The provision of the preceding paragraph shall apply mutatis mutandis to the cases where it is necessary for the purpose of exercising the rights of a Member of the Parent Company of a Company with Board of Directors.
  - (6) If the court finds that the inspection or copying relating to the requests listed in each item of paragraph (2) applied by the reading of terms under paragraph (3), or a request under paragraph (4) (including the case of the mutatis mutandis application under the preceding paragraph. The same shall apply hereinafter in this paragraph) is likely to cause substantial detriment to such Company with Board of Directors or its Parent Company or Subsidiary, the court may not grant the permission under paragraph (2) applied by the reading of terms under paragraph (3) or the permission under paragraph (4).

**Article 372** (Omission of Report to Board of Directors)

- (1) In cases where the directors, accounting advisors, company auditors or accounting auditors have notified all directors (or, for a Company with Auditors, directors and company auditors) of matters that are to be reported to a board of directors meeting, it shall be unnecessary to report such matters to a board of directors meeting.
- (2) The provisions of the preceding paragraph shall not apply to reports under the provisions of Article 363(2).
- (3) For the purpose of the application of the provisions of the preceding two paragraphs to a Company with Committees, "company auditors or accounting auditors" in paragraph (1) shall be read as "accounting auditors or executive officers"; "directors (or, for a Company with Auditors, directors and company auditors)" in paragraph (1) shall be read as "directors"; and "Article 363(2)" in

the preceding paragraph shall be read as "Article 417(4)."

**Article 373** (Resolution of Board of Directors by Special Directors)

- (1) Notwithstanding the provisions of Article 369(1), in cases where a Company with Board of Directors (excluding a Company with Committees) falls under all of the following requirements, the board of directors may provide to the effect that the resolution of the board of directors on the matters listed in item (i) and item (ii) of Article 362(4) may be made, where the majority (in cases where a higher proportion is determined by the board of directors, such proportion or more) of three or more directors appointed in advance (hereinafter in this Chapter referred to as "Special Directors") who are entitled to participate in the vote are present, by the majority (in cases where a higher proportion is determined by the board of directors, such proportion or more) of such directors present:
  - (i) That there are six or more directors; and
  - (ii) That one or more of the directors are Outside Directors.
- (2) In cases where there is a provision on the vote by Special Directors pursuant to the provisions of the preceding paragraph, directors other than the Special Directors shall not be required to attend the board of directors meeting that decides the matters listed in item (i) and item (ii) of Article 362(4). For the purpose of the application of the provisions of the main clause of Article 366(1) and Article 368 to such cases, "any director" in the main clause of 366(1) shall be read as "any Special Director (referring to the Special Director provided for in Article 373(1). The same shall apply in Article 368)," "in the articles of incorporation" in Article 368 (1) shall be read as "by the board of directors," "each director" in the same paragraph shall be read as "each Special Director," "directors (" in paragraph (2) of that article shall be read as "Special Directors (," and "directors and" in the same paragraph shall be read as "Special Directors and."
- (3) The person who is appointed by Special Directors from among themselves shall report without delay after the resolution of the board of directors under the preceding paragraph the content of such resolution to the directors other than the Special Directors.
- (4) The provisions of Article 366 (excluding the main clause of paragraph (1)), Article 367, Article 369(1) and Article 370 shall not apply to the board of directors under paragraph (2).

**Section 6 Accounting Advisors**

**Article 374** (Authority of Accounting Advisors)

- (1) Accounting advisors shall prepare, jointly with the directors, the Financial

Statements (referring to the Financial Statements provided for in Article 435(2). The same shall apply hereinafter in this Chapter) and the supplementary schedules thereof, the Temporary Financial Statements (referring to the Temporary Financial Statements provided for in Article 441(1). The same shall apply hereinafter in this Chapter) as well as the Consolidated Financial Statements (referring to the Consolidated Financial Statements provided for in Article 444(1). The same shall apply in Article 396(1)). In such cases, the accounting advisors shall prepare accounting advisor's report pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.

- (2) Accounting advisors may at any time inspect or copy the following things or request reports on accounting from directors and managers or other employees:
  - (i) If the account books or the materials relating thereto are prepared in writing, such documents; and
  - (ii) If the account books or the materials relating thereto are prepared by Electromagnetic Records, anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice;
- (3) If it is necessary for the purpose of performing duties of an accounting advisor, an accounting advisor may request reports on accounting from a Subsidiary of the Company with Accounting Advisors, or investigate the status of the operations and financial status of the Company with Accounting Advisors or of its Subsidiary.
- (4) The Subsidiary under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (5) Accounting advisors may not employ a person listed in item (ii) or item (iii) of Article 333(3) in performing their duties.
- (6) For the purpose of the application of the provisions of paragraph (1) and paragraph (2) to a Company with Committees, "directors" in paragraph (1) shall be read as "executive officers," and "directors and" in paragraph (2) shall be read as "executive officers and directors, and."

**Article 375** (Accounting Advisor's Duty to Report)

- (1) If an accounting advisor detect, during the performance of their duties, misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the duties of the directors, they shall report the same to the shareholders (or, for a Company with Auditors, to the company auditors) without delay.
- (2) For the purpose of the application of the provisions of the preceding paragraph to a Company with Board of Company Auditors, "shareholders (or, for a Company with Auditors, to the company auditors)" in that paragraph shall be read as "board

of company auditors."

- (3) For the purpose of the application of the provisions of paragraph (1) to a Company with Committees, "directors" in that paragraph shall be read as "executive officers or directors" and "shareholders (or, for a Company with Auditors, to the company auditors)" in the same paragraph shall be read as "audit committee."

**Article 376** (Attendance at Board of Directors Meetings)

- (1) Accounting advisors (in cases where accounting advisors are audit firms or tax accountant corporation, referring to the members who are to perform the duties of the accounting advisors. The same shall apply hereinafter in this Article) of a Company with Board of Directors shall attend the board of directors meetings that effect the approval under Article 436(3), Article 441(3) or Article 444(5). In such cases, accounting advisors shall state their opinions if they regard it necessary.
- (2) At a Company with Accounting Advisors, a person who is to call the board of directors meetings under the preceding paragraph shall dispatch the notice thereof to each accounting advisor no later than one week (or if a shorter period of time is provided for in the articles of incorporation, such shorter period of time) prior to the day of such board of directors meeting.
- (3) In order to hold a board of directors meeting under paragraph (1) without the calling procedures pursuant to the provisions of Article 368(2) at a Company with Accounting Advisors, the consent of all accounting advisors shall be obtained.

**Article 377** (Statement of Opinions at Shareholders Meetings)

- (1) If an accounting advisor's opinion on matters regarding the preparation of the statements provided for in Article 374(1) differs from those of the directors, the accounting advisor (in cases where the accounting advisors are audit firms or tax accountant corporations, referring to the members who are to perform the duties of the accounting advisors) may state his/her opinion at the shareholders meeting.
- (2) For the purpose of the application of the provisions of the preceding paragraph to a Company with Committees, "directors" in that paragraph shall be read as "executive officers."

**Article 378** (Keeping and Inspection of Financial Statements by Accounting Advisors)

- (1) Accounting advisors shall keep the things listed in the following items at the place designated by the accounting advisors for the period provided for in each such item, pursuant to the applicable Ordinance of the Ministry of Justice:
  - (i) The Financial Statements and the supplementary schedules thereof, and the accounting advisor's report for each business year Five years from the day one

- week (or, for a Company with Board of Directors, two weeks) prior to the day of the annual shareholders meeting (or, in the case provided for in Article 319 (1), from the day when the proposal under that paragraph was submitted); and
- (ii) The Temporary Financial Statements and the accounting advisor's report Five years from the day when the Temporary Financial Statement was prepared.
- (2) The shareholders and creditors of a Company with Accounting Advisors may submit the following request to the accounting advisors at any time during the business hours of the Company with Accounting Advisors (except for cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where it is difficult for the accounting advisor to response to the request); provided, however, that the fees designated by such accounting advisors are required to be paid in order to submit the requests listed in item (ii) or item (iv):
- (i) If the statements listed in each item of the preceding paragraph are prepared in writing, a request to inspect the statements;
- (ii) A request for a transcript or extract of the statements referred to in the preceding item;
- (iii) If the statements listed in each item of the preceding paragraph are prepared by Electromagnetic Records, a request to inspect anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice; or
- (iv) A request that the matters recorded in the Electromagnetic Records referred to in the preceding item be provided by an Electromagnetic Method designated by the accounting advisor, or a request for any document which contains such data.
- (3) If it is necessary for the purpose of exercising the rights of a Member of the Parent Company of a Company with Accounting Advisors, he/she may, with the permission of the court, make the requests listed in each item of the preceding paragraph with respect to the things of such Company with Accounting Auditors listed in each item of paragraph (1); provided, however, that, in order to make the requests listed in item (ii) or item (iv) of the preceding paragraph, the fees designated by such accounting advisor are required to be paid.

**Article 379 (Remunerations for Accounting Advisors)**

- (1) The Remunerations for accounting advisors shall be fixed by resolution of a shareholders meeting if the amount thereof is not prescribed in the articles of incorporation.
- (2) In cases where there are two or more accounting advisors, if there is no provision in the articles of incorporation and no resolution by a shareholders meeting with respect to the Remunerations for each accounting advisor, such Remunerations

shall be fixed by discussion by the accounting advisors within the extent of the Remunerations referred to in the preceding paragraph.

- (3) Accounting advisors (or, in cases where accounting advisors are audit firms or tax accountant corporation, the members who are to perform the duties of accounting advisors) may state their opinions on Remunerations for the accounting advisors at a shareholders meeting.

**Article 380 (Requests for Indemnification of Expenses)**

If accounting advisors make the following requests to a Company with Accounting Advisors with respect to the execution of their duties, such Company with Accounting Advisors may not refuse such request except in cases where it proves that the expense or debt relating to such request is not necessary for the execution of the duties of such accounting advisors:

- (i) Requests for advancement of expenses;
- (ii) Requests for indemnification of the expenses paid and interests thereon from and including the day of the payment; or
- (iii) Requests for payment (or, in cases where such debt is not yet due, provision of reasonable security) to the creditor of a debt incurred.

**Section 7 Company Auditors**

**Article 381 (Authority of Company Auditors)**

- (1) Company auditors shall audit the execution of duties by directors (or directors and accounting advisors for a Company with Accounting Advisors). In such cases, company auditors shall prepare audit reports pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) Company auditors may at any time request reports on the business from the directors and accounting advisors and managers and other employees, or investigate the status of the operations and financial status of the Company with Auditors.
- (3) Company auditors may, if it is necessary for the purpose of performing duties of the company auditors, request reports on the business from a Subsidiary of the Company with Auditors, or investigate the status of the operations and financial status of its Subsidiary.
- (4) The Subsidiary under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.

**Article 382 (Duty to Report to Directors)**

If company auditors find that directors engage in misconduct, or are likely to

engage in such conduct, or that there are facts in violation of laws and regulations or the articles of incorporation or grossly improper facts, they shall report the same to the directors (or, for a Company with Board of Directors, to the board of directors) without delay.

**Article 383** (Duty to Attend Board of Directors Meetings)

- (1) Company auditors shall attend the board of directors meeting, and shall state their opinions if they find it necessary; provided, however, that, in cases where there are two or more company auditors, if there is a provision on the vote by Special Directors pursuant to the provisions of Article 373(1), the specific company auditor who shall attend the board of directors meeting under paragraph (2) of that article shall be appointed by the company auditors from among the company auditors.
- (2) In the case provided for in the preceding article, if company auditors find it necessary, they may demand that the directors (or a Convenor in case provided for in the proviso to Article 366(1)) call the board of directors meeting.
- (3) In cases where, within five days from the day of the demand made pursuant to the provisions of preceding paragraph, a notice of calling of the board of directors meeting which designates as the day of the board of directors meeting a day falling within the period of two weeks from the day of the demand are not dispatched, the company auditors who made that demand may call the board of directors meeting.
- (4) The provisions of the preceding two paragraphs shall not apply to the board of directors meeting under Article 373(2).

**Article 384** (Duty to Report to Shareholders Meeting)

Company auditors shall investigate proposals, documents and other items prescribed by the applicable Ordinance of the Ministry of Justice that directors intend to submit to the shareholders meeting. In such cases, if company auditors find that there is a violation of laws and regulations or the articles of incorporation or a grossly improper fact, they shall report the results of the investigation to a shareholders meeting.

**Article 385** (Enjoinment of Acts of Directors by Company Auditors)

- (1) In cases where a director engages, or is likely to engage, in an act outside the scope of the purpose of a Stock Company, or other acts in violation of laws and regulations or the articles of incorporation, if such act is likely to cause substantial detriment to such Company with Auditors, company auditors may demand that such director cease such act.
- (2) In the cases provided for in the preceding paragraph, if the court orders a

director under the preceding paragraph to cease such act by a provisional disposition, the court shall not require the provision of security.

**Article 386** (Representation of Company in Actions between Company with Auditors and Directors)

- (1) Notwithstanding the provisions of Article 349(4), Article 353 and Article 364, in cases where a Company with Auditors files an action against its directors (including persons who were directors. The same shall apply hereinafter in this article), or the directors file an action against that Company with Auditors, the company auditors shall represent the Company with Auditors in such action.
- (2) Notwithstanding the provisions of Article 349(4), in the following cases, the company auditors shall represent the Company with Auditors:
  - (i) In cases where a Company with Auditors is requested to file an action under Article 847(1) (limited to requests for the filing of actions that pursue the liability of directors); or
  - (ii) In cases where a Company with Auditors receives notice of suit under Article 849(3) (limited to those related to actions that pursue the liability of directors) and a notice or demand pursuant to the provisions of Article 850(2) (limited to those related to the settlement of a suit relating to an action that pursues the liability of directors).

**Article 387** (Remunerations for Company Auditors)

- (1) The Remunerations for company auditors shall be fixed by resolution of a shareholders meeting if the amount thereof is not prescribed in the articles of incorporation.
- (2) In cases where there are two or more company auditors, if there is no provision in the articles of incorporation and no resolution by a shareholders meeting with respect to the Remunerations for each company auditor, such Remunerations shall be fixed by discussion by the company auditors within the extent of the Remunerations referred to in the preceding paragraph.
- (3) Company auditors may state their opinions on Remunerations for the company auditors at a shareholders meeting.

**Article 388** (Requests for Indemnification of Expenses)

If company auditors make the following requests to a Company with Auditors (including a Stock Company the articles of incorporation of which provide that the scope of the audit by its company auditors shall be limited to an audit related to accounting) with respect to the execution of their duties, such Company with Auditors may not refuse such request except in cases where it proves that the

expense or debt relating to such request is not necessary for the execution of the duties of such company auditors:

- (i) Requests for advancement of expenses;
- (ii) Requests for indemnification of the expenses paid and the interests thereon from and including the day of the payment; or
- (iii) Requests for the payment (or, in cases where such debt is not yet due, provision of reasonable security) to the creditor of a debt incurred.

**Article 389** (Limitation of Scope of Audit by Provisions of Articles of Incorporation)

- (1) A Stock Company which is not a Public Company (excluding a Company with Board of Company Auditors and Company with Accounting Auditors) may provide in the articles of incorporation that the scope of the audit by its company auditors shall be limited to an audit related to accounting, notwithstanding the provisions of Article 381(1).
- (2) Company auditors of a Stock Company that has the provisions of the articles of incorporation under the provisions of the preceding paragraph shall prepare audit reports pursuant to the applicable Ordinance of the Ministry of Justice.
- (3) The company auditors under the preceding paragraph shall investigate the proposals, documents and other items prescribed by the applicable Ordinance of the Ministry of Justice that are related to accounting which the directors intend to submit to a shareholders meeting, and report the results of that investigation to a shareholders meeting.
- (4) The company auditors under paragraph (2) may at any time inspect or copy the following things, or request reports on accounting from directors and accounting advisors as well as managers or other employees:
  - (i) If the account books or the materials relating thereto are prepared in writing, such documents;
  - (ii) If the account books or the materials relating thereto are prepared by Electromagnetic Records, anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice; or
- (5) If it is necessary for the purpose of performing duties of a company auditor under paragraph (2), a company auditor may request reports on accounting from a Subsidiary of the Stock Company, or investigate the status of the operations and financial status of the Stock Company or of its Subsidiary.
- (6) The Subsidiary under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (7) The provisions from Article 382 through Article 386 shall not apply to a Stock Company which has provisions of the articles of incorporation pursuant to the

provisions of paragraph (1).

## **Section 8 Board of Company Auditors**

### **Subsection 1 Authority**

#### **Article 390**

- (1) Board of company auditors shall be composed of all company auditors.
- (2) Board of company auditors shall perform the following duties; provided, however, that the decision in item (iii) may not preclude company auditors from exercising their authority:
  - (i) Preparing audit reports;
  - (ii) Appointing and removing full-time company auditors; and
  - (iii) Deciding audit policy, methods for investigating the status of the operations and financial status of a Company with Board of Company Auditors and other matters regarding the execution of the duties of company auditors.
- (3) Board of company auditors shall appoint full-time company auditors from among the company auditors.
- (4) If a board of company auditors requests, company auditors shall report the status of the execution of their duties to the board of company auditors at any time.

### **Subsection 2 Operations**

#### **Article 391 (Convenor)**

A board of company auditors meeting shall be called by any company auditor.

#### **Article 392 (Calling Procedures)**

- (1) To call a board of company auditors meeting, a company auditor shall dispatch the notice thereof to each company auditor no later than one week (or if a shorter period of time is prescribed in the articles of incorporation, such shorter period of time) prior to the day of the board of company auditors meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, the board of company auditors meeting may be held without the procedures of calling if the consent of all company auditors is obtained.

#### **Article 393 (Resolution of Board of Company Auditors Meetings)**

- (1) The resolution of a board of company auditors meeting shall be made by a majority of the company auditors.

- (2) With respect to the business of the board of company auditors meeting, minutes shall be prepared pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, and if the minutes are prepared in writing, the company auditors present at the meeting shall sign or affix the names and seals to it.
- (3) With respect to the matters recorded in Electromagnetic Records in cases where the minutes under the preceding paragraph are prepared in such Electromagnetic Records, an action in lieu of the signing or the affixing of names and seals prescribed by the applicable Ordinance of the Ministry of Justice shall be taken.
- (4) Company auditors who participate in resolutions of the board of company auditors meeting and do not have their objections recorded in the minutes under paragraph (2) shall be presumed to have agreed to such resolutions.

**Article 394** (Minutes)

- (1) A Company with Board of Company Auditors shall keep the minutes referred to in paragraph (2) of the preceding article at its head office for the period of ten years from the day of the board of company auditors meeting.
- (2) If it is necessary for the purpose of exercising the rights of a shareholder of a Company with Board of Company Auditors, he/she may, with the permission of the court, make the following requests:
  - (i) If the minutes under the preceding paragraph are prepared in writing, requests for inspection or copying of such documents; and
  - (ii) If the minutes under the preceding paragraph are prepared by Electromagnetic Records, requests for inspection or copying of anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) The provisions of the preceding paragraph shall apply mutatis mutandis to the cases where it is necessary for the purpose of pursuing the liability of Officers by a creditor of a Company with Auditors and to the cases where it is necessary for the purpose of exercising the rights of a Member of the Parent Company.
- (4) If the court finds that the inspection or copying relating to the requests under paragraph (2) (including the case of the mutatis mutandis application under the preceding paragraph. The same shall apply hereinafter in this paragraph) is likely to cause substantial detriment to such Company with Board of Company Auditors or its Parent Company or Subsidiary, the court may not grant the permission under paragraph (2).

**Article 395** (Omission of Report to Board of Company auditors)

In cases where the directors, accounting advisors, company auditors or accounting auditors have notified all company auditors of matters that are to be reported to a

board of company auditors meeting, it shall be unnecessary to report such matters to a board of company auditors meeting.

## **Section 9 Accounting Auditors**

### **Article 396 (Authority of Accounting Auditors)**

- (1) Accounting auditors shall audit the Financial Statements and the supplementary schedules thereof, the Temporary Financial Statements as well as the Consolidated Financial Statements of a Stock Company pursuant to the provisions of the next Chapter. In such cases, accounting auditors shall prepare accounting audit reports pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) Accounting auditors may at any time inspect and copy the following things or request reports on accounting from directors and accounting advisors as well as managers or other employees:
  - (i) If account books or materials relating thereto are prepared in writing, such documents; and
  - (ii) If account books or materials relating thereto are prepared by Electromagnetic Records, anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice;
- (3) Accounting auditors may, if it is necessary for the purpose of performing duties of the accounting auditors, request reports on accounting from a Subsidiary of the Company with Accounting Auditors, or investigate the status of the operations and financial status of the Company with Accounting Auditors or of its Subsidiary.
- (4) The Subsidiary under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (5) Accounting auditors may not employ a person listed in any of the following items in performing their duties:
  - (i) A person listed in item (i) or item (ii) of Article 337(3);
  - (ii) A person who is a director, accounting advisor, company auditor, executive officer or employee, including a manager, of a Company with Accounting Auditors; or
  - (iii) A person who is in continuous receipt of remuneration from a Company with Accounting Auditors or its Subsidiary for operations other than the operations of the Certified Public Accountant or audit firm.
- (6) For the purpose of the application of the provisions of paragraph (2) to a Company with Committees, "directors" in that paragraph shall be read as "executive officers, directors."

**Article 397** (Report to Company Auditors)

- (1) If accounting auditors detect, during the performance of their duties, misconduct or material facts in violation of laws and regulations or the articles of incorporation in connection with the execution of the duties of the directors, they shall report the same to the company auditors without delay.
- (2) If it is necessary for the purpose of performing their duties, company auditors may request reports on the accounting auditors' audits from the accounting auditors.
- (3) For the purpose of the application of the provisions of paragraph (1) to a Company with Board of Company Auditors, "company auditors" in that paragraph shall be read as "board of company auditors."
- (4) For the purpose of the application of the provisions of paragraph (1) and paragraph (2) to a Company with Committees, "directors" in paragraph (1) shall be read as "executive officers or directors," "company auditors" in the same paragraph shall be read as "audit committee," and "company auditors" in paragraph (2) shall be read as "committee members of the audit committee who are appointed by the audit committee."

**Article 398** (Statement of Opinions at Annual Shareholders Meeting)

- (1) If an accounting auditor's opinion on whether or not the statements provided for in Article 396(1) comply with laws and regulations or the articles of incorporation differs from those of the company auditors, the accounting auditor (in cases where accounting auditors are audit firms or tax accountant corporations, referring to the members who are to perform their duties. The same shall apply in the following paragraph) may attend the annual shareholders meeting and state their opinion.
- (2) If there is a resolution of an annual shareholders meeting that requires the attendance of accounting auditors, the accounting auditors shall attend the shareholders meeting and state their opinions.
- (3) For the purpose of the application of the provisions of paragraph (1) to a Company with Board of Company Auditors, "company auditors" in that paragraph shall be read as "board of company auditors or company auditors."
- (4) For the purpose of the application of the provisions of paragraph (1) to a Company with Committees, "company auditors" in that paragraph shall be read as "audit committee or its committee members."

**Article 399** (Involvement of Company Auditors in Decision on Remunerations for Accounting Auditors)

- (1) Directors shall obtain the consent of the company auditor (if there are two or more company auditors, the majority of the company auditors) in cases where the

directors fix the Remunerations for accounting auditors or persons who are to temporarily perform the duties of accounting auditors.

- (2) For the purpose of the application of the preceding paragraph to a Company with Board of Company Auditors, "company auditor (if there are two or more company auditors, the majority of the company auditors)" in that paragraph shall be read as "board of company auditors."
- (3) For the purpose of the application of the provisions of paragraph (1) to a Company with Committees, "company auditor (if there are two or more company auditors, the majority of the company auditors)" in that paragraph shall be read as "audit committee."

## **Section 10 Committees and Executive Officers**

### **Subsection 1 Appointment of Committee Members and Election of Executive Officers**

#### **Article 400 (Appointment of Committee Members)**

- (1) Each Committee shall be composed of three or more committee members.
- (2) The committee members of each Committee shall be appointed from among the directors by resolution of the board of directors.
- (3) The majority of the committee members of each Committee shall be Outside Directors.
- (4) A committee member of the audit committee (hereinafter referred to as "Audit Committee Member") may not concurrently act as an executive officer or Executive Director of a Company with Committees or its Subsidiary, or as an accounting advisor (if the accounting advisor is a juridical person, the member who is to perform the duties of the accounting advisor) or employee, including manager, of a Subsidiary of a Company with Committees.

#### **Article 401 (Removal of Committee Members)**

- (1) The committee members of each Committee may be removed at any time by resolution of the board of directors.
- (2) Where there is a vacancy which results in a shortfall in the number of committee members of each Committee provided for in paragraph (1) of the preceding article (or, if the number of committee members provided for in the articles of incorporation is four or more, that number), a committee member who retired from office due to expiration of his/her term of office or resignation shall continue to have the rights and obligations of a committee member until a newly appointed committee member (including a person who is to temporarily perform the duties of

a committee member under the following paragraph) assumes his/her office.

- (3) In the case provided for in the preceding paragraph, if the court finds it necessary, it may, in response to a petition by interested persons, elect a person who is to temporarily perform the duties of a committee member.
- (4) In cases where the court has elected the person who is to temporarily perform the duties of a committee member under the preceding paragraph, the court may prescribe the amount of the remuneration that the Company with Committees shall pay to that person.

**Article 402** (Election of Executive Officers)

- (1) A Company with Committees shall have one or more executive officers.
- (2) Executive officer shall be elected by resolution of the board of directors.
- (3) The relationship between a Company with Committees and its executive officers shall be governed by the provisions on mandate.
- (4) The provisions of Article 331(1) shall apply mutatis mutandis to executive officers.
- (5) A Stock Company may not provide in the articles of incorporation that the executive officers shall be shareholders; provided, however, that this shall not apply to a Company with Committees that is not a Public Company.
- (6) An executive officer may act concurrently as a director.
- (7) An executive officer's term of office shall continue until the conclusion of the first board of directors meeting called after the conclusion of the annual shareholders meeting for the last business year ending within one year from the time of their election; provided, however, that this does not preclude the shortening the executive officer's term of office by the articles of incorporation.
- (8) Notwithstanding the provisions of the preceding paragraph, in cases where a Company with Committees makes any amendment in the articles of incorporation to repeal the provisions of the articles of incorporation to the effect that Committees shall be established, the executive officer's term of office shall expire when such amendment in the articles of incorporation takes effect.

**Article 403** (Dismissal of Executive Officers)

- (1) Executive officers may be dismissed at any time by resolution of the board of directors.
- (2) An executive officer dismissed pursuant to the provisions of the preceding paragraph shall be entitled to demand damages arising from the dismissal from the Company with Committees, except in cases where there are justifiable grounds for such dismissal.
- (3) The provisions from paragraph (2) through paragraph (4) of Article 402 shall

apply mutatis mutandis to the cases where there are no executive officers in office, or where there is a vacancy which results in a shortfall in the number of executive officers prescribed in the articles of incorporation.

### **Subsection 2 Authority of Committees**

#### **Article 404** (Authority of Committees)

- (1) A nominating committee shall determine the contents of proposals regarding the election and dismissal of directors (or directors and accounting advisors for a Company with Accounting Advisors) to be submitted to a shareholders meeting.
- (2) An audit committee shall perform the following duties:
  - (i) Auditing the execution of duties by Executive Officers, Etc. (meaning executive officers and directors, or, for a Company with Accounting Advisors, meaning executive officers, directors and accounting advisors. The same shall apply hereinafter in this Section) and preparing audit reports; and
  - (ii) Determining the contents of proposals regarding the election and dismissal of accounting auditors and the refusal to reelect accounting auditors to be submitted to a shareholders meeting.
- (3) Notwithstanding the provisions of Article 361(1) and Article 379(1) and (2), a compensation committee shall determine the contents of the Remunerations for individual Executive Officers, Etc. If an executive officer acts concurrently as an employee, including manager, of a Company with Committees, the same shall apply to the contents of the Remunerations for such employee, including manager.
- (4) If committee members make the following requests to a Company with Committees with respect to the execution of their duties (limited to that regarding the execution of the duties of the Committee to which such committee members belong. The same shall apply hereinafter in this paragraph), such Company with Committees may not refuse such request except in cases where it proves that the expense or debt relating to such request is not necessary for the execution of the duties of such committee members:
  - (i) Requests for advancement of the expenses;
  - (ii) Request for the indemnification of the expenses paid and interests thereon from and including the day of the payment; or
  - (iii) Requests for the payment (or, in cases where such debt is not yet, provision of reasonable security) to the creditor of a debt incurred.

#### **Article 405** (Investigations by Audit Committees)

- (1) Audit Committee Members appointed by the audit committee may at any time request reports on the execution of their duties from Executive Officers, Etc. and

employees including managers, or investigate the status of the operations and financial status of the Company with Committees.

- (2) Audit Committee Members appointed by the audit committee may, if it is necessary for the purpose of performing duties of the audit committee, request reports on the business from a Subsidiary of the Company with, or investigate the status of the operations and financial status of its Subsidiary.
- (3) The Subsidiary under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds.
- (4) Audit Committee Members under paragraph (1) and paragraph (2) shall comply with resolutions of the audit committee, if any, on matters regarding the collection of the report or investigation under such respective paragraphs.

**Article 406** (Duty to Report to Board of Directors)

If Audit Committee Members find that executive officers or directors engage in misconduct, or are likely to engage in such conduct, or that there are facts in violation of laws and regulations or the articles of incorporation or grossly improper facts, they shall report the same to the board of directors without delay.

**Article 407** (Enjoinment of Acts of Executive Officers, Etc. by Audit Committee Members)

- (1) In cases where an executive officer or director engages, or is likely to engage, in any act outside the scope of the purpose of a Company with Committees, or other acts in violation of laws and regulations or the articles of incorporation, if such act is likely to cause substantial detriment to such Company with Committees, the Audit Committee Members may demand that such executive officer or director cease such act.
- (2) In the cases provided for in the preceding paragraph, if the court orders a executive officer or director under the preceding paragraph to cease such act by a provisional disposition, the court shall not require the provision of security.

**Article 408** (Representation of Company in Actions between Company with Committees and Executive Officers or Directors)

- (1) Notwithstanding the provisions of Article 349(4) applied mutatis mutandis under Article 420(3), and the provisions of Article 353 and Article 364, in cases where a Company with Committees files an action against its executive officers (including persons who were executive officers. The same shall apply hereinafter in this article) or directors (including persons who were directors. The same shall apply hereinafter in this article), or the executive officers or directors of a Company with Committees files an action against that Company with Committees,

the persons provided for in each of the following items for the case categories listed in such items shall represent the Company with Committees in such actions:

- (i) In cases where Audit Committee Members are the party to the suit relating to such action The person designated by the board of directors (or, in cases where the shareholders meeting designates a person to represent the Company with Committees with respect to such action, that person); and
  - (ii) In cases other than the case listed in the preceding item The Audit Committee Member appointed by the audit committee.
- (2) Notwithstanding the provisions of the preceding paragraph, in cases where executive officers or directors file an action against the Company with Committees, the service of complaint on the Audit Committee Members (excluding those filing such action) shall be effective service on such Company with Committees.
- (3) Notwithstanding the provisions of Article 349(4) applied mutatis mutandis under Article 420(3), in the following cases, the Audit Committee Members shall represent the Company with Committees:
- (i) In cases where a Company with Committees receives a request (limited to requests for the filing of actions that pursue the liability of executive officers or directors) pursuant to the provisions of Article 847(1) (excluding cases where such Audit Committee Members are the party to the suit relating to such claim); or
  - (ii) In cases where a Company with Committees receives notice of suit under Article 849(3) (limited to those related to actions that pursue the liability of executive officers or directors) and a notice or demand (limited to those related to the settlement of a suit relating to an action that pursues the liability of executive officers or directors) pursuant to the provisions of Article 850(2) (excluding cases where such Audit Committee Members are the party to the suit relating to these claims).

**Article 409** (Methods for Decisions on Remuneration by Compensation Committee)

- (1) The compensation committee shall prescribe the policy on decisions on the content of the Remunerations for individual Executive Officers, Etc.
- (2) The compensation committee shall comply with the policy under the preceding paragraph in order to make decisions under the provisions of Article 404(3).
- (3) In cases where the compensation committee uses what is listed in the following items as the individual Remunerations of Executive Officers, Etc., it shall decide the matters provided for in each of such item as the contents thereof; provided, however, that the Remunerations for individual accounting advisors shall be that listed in item (i):
  - (i) Remunerations in a fixed amount: The amount for each individual person;

- (ii) Remunerations the amount of which is not fixed: The specific method for calculating that amount for each individual person;
- (iii) Remunerations that are not monetary: The specific contents thereof for each individual person.

### **Subsection 3 Operation of Committees**

#### **Article 410 (Convenors)**

A Committee shall be called by any committee member of such Committee.

#### **Article 411 (Calling Procedures)**

- (1) To call a Committee meeting, a committee member of that Committee shall dispatch the notice thereof to each committee member of such Committee no later than one week (or if a shorter period of time is prescribed by the board of directors, such shorter period of time) prior to the day of the Committee meeting.
- (2) Notwithstanding the provisions of the preceding paragraph, the Committee meeting may be held without the procedures of calling if the consent of all committee members of such Committee is obtained.
- (3) If requested by the Committee, Executive Officers, Etc. shall attend such Committee meeting and provide explanations on the matters requested by such Committee.

#### **Article 412 (Resolution of Committee Meetings)**

- (1) The resolution of a Committee meeting shall be made by a majority (in cases where a higher proportion is prescribed by the board of directors, such proportion or more) of the committee members present at the meeting where the majority (in cases where a higher proportion is prescribed by the board of directors, such proportion or more) of the committee members entitled to participate in the vote are present.
- (2) Committee members who have a special interest in the resolution under the preceding paragraph may not participate in the vote.
- (3) With respect to the business of the Committee meeting, minutes shall be prepared pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, and if the minutes are prepared in writing, the committee members present at the meeting shall sign or affix the names and seals to it.
- (4) With respect to the matters recorded in Electromagnetic Records in cases where the minutes under the preceding paragraph are prepared in such Electromagnetic Records, an action in lieu of the signing or the affixing of names and seals prescribed by the applicable Ordinance of the Ministry of Justice shall be taken.

- (5) Committee members who participate in resolutions of the Committee meeting and do not have their objections recorded in the minutes under paragraph (3) shall be presumed to have agreed to such resolutions.

**Article 413 (Minutes)**

- (1) A Company with Committees shall keep the minutes referred to in paragraph (3) of the preceding article at its head office for the period of ten years from the day of the Committee meeting.
- (2) The directors of a Company with Committees may inspect or copy anything listed in the following items:
- (i) If the minutes under the preceding paragraph are prepared in writing, such documents; and
  - (ii) If the minutes under the preceding paragraph are prepared in Electromagnetic Records, anything which indicates the matters recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) If it is necessary for the purpose of exercising the rights of a shareholder of a Company with Committees, he/she may, with the permission of the court, make requests for inspection or copying of the things set forth in each item of the preceding paragraph with respect to the minutes under paragraph (1).
- (4) The provision of the preceding paragraph shall apply mutatis mutandis to the cases where it is necessary for the purpose of pursuing the liability of committee members by a creditor of a Company with Committees and where it is necessary for the purpose of exercising the rights of a Member of the Parent Company.
- (5) If the court finds that the inspection or copying relating to the requests under paragraph (3) (including cases of the mutatis mutandis application under the preceding paragraph. The same shall apply hereinafter in this paragraph) is likely to cause substantial detriment to such Company with Committees or its Parent Company or Subsidiary, the court may not grant the permission under paragraph (3).

**Article 414 (Omission of Report to Committees)**

In cases where the executive officers, directors, accounting advisors or accounting auditors have notified all committee members of matters that are to be reported to a Committee meeting, it shall be unnecessary to report such matters to a Committee meeting.

**Subsection 4 Authority of Directors of Companies with Committees**

**Article 415** (Authority of Directors of Companies with Committees)

Directors of a Company with Committees may not execute the operations of the Company with Committees unless otherwise provided in this act or any order under this Act.

**Article 416** (Authority of Board of Directors of Company with Committees)

(1) The board of directors of a Company with Committees shall perform the following duties notwithstanding the provisions of Article 362:

(i) Deciding on the following matters and on the execution of other operations of the Company with Committees:

(a) Basic management policy;

(b) The matters prescribed by the applicable Ordinance of the Ministry of Justice as those necessary for the execution of the duties of the audit committee;

(c) In cases where there are two or more executive officers, matters regarding the interrelationship between executive officers including the division of duties between executive officers and hierarchy of commands of executive officers;

(d) The directors to receive requests for the calling of board of directors meeting pursuant to the provisions of paragraph (2) of the following article; or

(e) The development of systems necessary to ensure that the execution of duties by executive officers complies with laws and regulations and the articles of incorporation, and other systems prescribed by the applicable Ordinance of the Ministry of Justice as systems necessary to ensure the properness of operations of a Stock Company.

(ii) The supervision of the execution of duties by Executive Officers, Etc.

(2) The board of directors of a Company with Committees shall decide the matters listed in item (i) (a) through item (i) (e) of the preceding paragraph.

(3) The board of directors of a Company with Committees may not delegate the execution of the duties listed in each item of paragraph (1) to directors.

(4) The board of directors of a Company with Committees may, by resolution of the same, delegate decisions on the execution of the operations of the Company with Committees to executive officers; provided, however, that this shall not apply to the following matters:

(i) Decisions under Article 136 or Article 137(1), and the designation under Article 140(4);

(ii) Decisions on the matters listed in each item of Article 156(1) applied by the reading of terms under Article 165(3);

(iii) Decisions under Article 262 or Article 263(1);

(iv) Decisions on the matters listed in each item of Article 298(1);

- (v) Decisions on the contents of proposals to be submitted to a shareholders meeting (excluding those regarding the election and dismissal of directors, accounting advisors and accounting auditors and the refusal to reelect accounting auditors);
- (vi) Approval under Article 356(1) applied by the reading of terms under Article 365(1) (including cases of mutatis mutandis application by the reading of terms under Article 419(2));
- (vii) Designation of the directors to call the board of directors meeting pursuant to the provisions of the proviso to Article 366(1);
- (viii) Appointment of the committee members pursuant to the provisions of Article 400(2) and removal of committee members pursuant to the provisions of Article 400(1);
- (ix) Election of executive officers pursuant to the provisions of Article 402(2) and dismissal of executive officers pursuant to the provisions of Article 403(1);
- (x) Designation of persons to represent Companies with Committees pursuant to the provisions of item (i) of Article 408(1);
- (xi) Appointment of representative executive officers pursuant to the provisions of the first sentence of Article 420(1) and removal of representative executive officers pursuant to the provisions of paragraph (2) of the same article;
- (xii) Exemption from liability under Article 423(1) pursuant to the provisions of the articles of incorporation under the provisions of Article 426(1);
- (xiii) Approvals under Article 436(3), Article 441(3) and Article 444(5);
- (xiv) Decisions on the matters to be decided pursuant to the provisions of Article 454 (1) applied by the reading of terms under paragraph (5) of the same article;
- (xv) Decisions on the contents of contracts relating to the acts listed in each item of Article 467(1) (excluding those which do not require approval by resolution of shareholders meeting of such Company with Committees);
- (xvi) Decisions on the contents of merger agreements (excluding those which do not require approval by resolution of shareholders meeting of such Company with Committees);
- (xvii) Decisions on the contents of Absorption-type Company Split agreements (excluding those which do not require approval by resolution of shareholders meeting of such Company with Committees);
- (xviii) Decisions on the contents of Incorporation-type Company Split plans (excluding those which do not require approval by resolution of shareholders meeting of such Company with Committees);
- (xix) Decisions on the contents of Share Exchange agreements (excluding those which do not require approval by resolution of shareholders meeting of such

- Company with Committees);
- (xx) Decisions on the contents of Share Transfer plans;

**Article 417** (Operations of Board of Directors of Company with Committees)

- (1) At a Company with Committees, even in cases where there is provision for a Convenor, persons appointed by the Committees from among their committee members may call the board of directors meeting.
- (2) Executive officers may demand that the directors under item (i) (d), paragraph (1) of the preceding article call the board of directors meeting by indicating to those directors the matters that are the purpose of the board of directors meeting. In such cases, if a notice of calling of the board of directors meeting which designates as the day of the board of directors meeting a day falling within two weeks from the day of the demand is not dispatched within five days from the day of such demand, such executive officers may call the board of directors meeting.
- (3) The persons appointed by the Committees from among the committee members shall report the status of the execution of the duties of such Committees to the board of directors without delay.
- (4) The executive officers shall report the status of the execution of their duties to the board of directors at least once every three months. In such cases, executive officers may submit such reports through their agents (limited to other executive officers).
- (5) If requested by the board of directors, executive officers shall attend the board of directors meeting and provide explanations on the matters requested by the board of directors.

**Subsection 5 Authority of Executive Officers**

**Article 418** (Authority of Executive Officers)

Executive officers shall perform the following duties:

- (i) Deciding on the execution of the operations of the Company with Committees that were delegated to the executive officers by resolution of the board of directors pursuant to the provisions of Article 416(4); and
- (ii) The execution of the operations of the Company with Committees.

**Article 419** (Executive officer's Duty to Report to Audit Committee Members)

- (1) If executive officers detect any fact likely to cause substantial detriment to the Company with Committees, they shall immediately report such fact to the Audit Committee Members.
- (2) The provisions of Article 355, Article 356 and Article 365(2) shall apply mutatis

mutandis to executive officers. In such cases, "shareholders meeting" in Article 356 (1) shall be read as "board of directors meeting" and "At a Company with Board of Directors, a director who has engaged in transactions under each item of Article 356(1)" in Article 365(2) shall be read as "An executive officer who has engaged in transactions under each item of Article 356(1)."

(3) The provisions of Article 357 shall not apply to Companies with Committees.

**Article 420 (Representative Executive Officers)**

(1) Board of directors shall appoint representative executive officers from among the executive officers. In such cases, if there is only one executive officer, that person shall be regarded as having been appointed as the representative executive officer.

(2) A representative executive officer may be removed at any time by resolution of the board of directors.

(3) The provisions of Article 349(4) and (5) shall apply mutatis mutandis to representative executive officers, the provisions of Article 352 shall apply mutatis mutandis to a person elected by a provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act to perform the duties of executive officers or representative executive officers on behalf of the same, and the provisions of Article 401(2) through (4) shall apply mutatis mutandis to the cases where there are no representative executive officers in office, or where there is a vacancy which results in a shortfall in the number of executive officers prescribed in the articles of incorporation, respectively.

**Article 421 (Apparent Representative Executive Officers)**

In cases where a Company with Committees gives the title of president, vice president or other title regarded as having authority to represent the Company with Committees to an executive officer who is not a representative executive, the Company with Committees shall be liable to third parties without knowledge for the acts of such executive officer.

**Article 422 (Enjoinment of Acts of Executive Officers by Shareholders)**

(1) In cases where an executive officer engages, or is likely to engage, in an act outside the scope of the purpose of a Company with Committees, or other acts in violation of laws and regulations or the articles of incorporation, if such act is likely to cause irreparable detriment to such Company with Committees, shareholders having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more) may demand that such executive officer cease such act.

(2) For the purpose of the application of the provisions of the preceding paragraph to

a Company with Committees which is not a Public Company, "shareholders having the shares consecutively for the preceding six months or more (or, in cases where a shorter period is prescribed in the articles of incorporation, such period or more)" in that paragraph shall be read as "shareholders."

### **Section 11 Liability for Damages of Officers, Etc.**

#### **Article 423** (Liability for Damages of Officers, Etc. to Stock Company for Damages)

- (1) If a director, accounting advisor, company auditor, executive officer or accounting auditor (hereinafter in this Section referred to as "Officers, Etc.") neglects his/her duties, he/she shall be liable to such Stock Company for damages arising as a result thereof.
- (2) If a director or executive officer engages in a transaction listed in item (i) of Article 356(1) in violation of the provisions of Article 356(1) (including cases where applied mutatis mutandis under Article 419(2)). The same shall apply hereinafter in this paragraph), the amount of the profits obtained by the director, executive officer or a third party as a result of such transaction shall be presumed to be the amount of the damages under the preceding paragraph.
- (3) If a Stock Company incurs damages as a result of the transaction provided for in item (ii) or item (iii) of Article 356(1) (including cases where these provisions are applied mutatis mutandis under Article 419(2)), the following directors or executive officers shall be presumed to have neglected their duties:
  - (i) Directors and executive officers provided for in Article 356(1) (including cases where applied mutatis mutandis under Article 419(2));
  - (ii) Directors and executive officers who decided that the Stock Company would undertake such transaction; or
  - (iii) Directors who agreed to the board of directors' resolution approving such transaction (for a Company with Committees, limited to cases where such transaction is a transaction between the Company with Committees and the directors or is a transaction that gives rise to a conflict of interest between the Company with Committees and the directors).

#### **Article 424** (Exemption from Liability for Damages to Stock Company)

An exemption from liability under paragraph (1) of the preceding article may not be given without the consent of all shareholders.

#### **Article 425** (Partial Exemption from Liability)

- (1) Notwithstanding the provisions of the preceding paragraph, if the relevant Officers, Etc. are without knowledge and are not grossly negligent in performing

their duties, exemption from liability under Article 423(1) may be given by resolution of a shareholders meeting, to the extent of the amount obtained by subtracting the sum of the following amounts (in Article 427(1) referred to as "Minimum Liability Amount") from the amount for which they are liable:

- (i) The amount obtained by multiplying the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the amount equivalent to the annual amount of property benefits which such Officers, Etc. have received, or are to receive, from the Stock Company as consideration for the execution of their duties while they are in the office by the numbers provided for in Sub-item (a) through (c) for the categories of Officers, Etc. listed in such Sub-item (a) through (c):
    - (a) Representative Directors or representative executive officers: 6;
    - (b) directors (excluding Outside Directors) other than Representative Directors or executive officers other than representative executive officers: 4;
    - (c) Outside Directors, accounting advisors, company auditors or accounting auditors: 2.
  - (ii) In cases where such Officers, Etc. have subscribed for Share Options of such Stock Company (limited to cases listed in each item of Article 238(3)), the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the amount equivalent to the amount of the property benefits regarding such Share Options.
- (2) In cases under the preceding paragraph, the directors shall disclose the following matters to the shareholders meeting under that paragraph:
- (i) The facts that cause the liability and the amount of the liability for damages;
  - (ii) The maximum amount for which exemption may be given pursuant to the provisions of the preceding paragraph and the grounds supporting such calculation; and
  - (iii) The reasons for which exemption from the liability is to be given and the amount for which exemption is to be given.
- (3) At a Company with Auditors or Company with Committees, in order to submit proposals regarding the exemption from liability under Article 423(1) (limited to the exemption from liability of directors (excluding those who are Audit Committee Members) and executive officers) to a shareholders meeting, directors shall obtain the consent of the persons provided for in the following items for the Stock Company categories listed in each such item:
- (i) Company with Auditors: The company auditor (all company auditors if there are two or more company auditors); and
  - (ii) Company with Committees: All Audit Committee Members.
- (4) In cases where a resolution under paragraph (1) is made, if the Stock Company

gives any property benefits prescribed by the applicable Ordinance of the Ministry of Justice including, but not limited to, retirement allowance to the Officers, Etc. in that paragraph after such resolution, the Stock Company shall obtain the approval of a shareholders meeting. The same shall apply if such Officers, Etc. exercise or transfer the Share Options under item (ii) of the same paragraph after such resolution.

- (5) In cases where a resolution under paragraph (1) is made, if such Officers, Etc. possess share option certificates that certify the Share Options under the preceding paragraph, such Officers, Etc. shall deposit such share option certificates with the Stock Company without delay. In such cases, such Officers, Etc. may not demand the return of such share option certificates until after the approval under that paragraph is obtained with respect to the transfer under that paragraph.

**Article 426** (Provisions of Articles of Incorporation on Exemption by Directors)

- (1) Notwithstanding the provisions of Article 424, Companies with Auditors (limited to cases where there are two or more directors) or Companies with Committees may provide in the articles of incorporation that, in cases where the relevant Officers, Etc. are without knowledge and are not grossly negligent in performing their duties, if it is found particularly necessary taking into account the relevant circumstances including, but not limited to, the details of the facts that caused the liability and the status of execution of duties by such Officers, Etc., exemption may be given with respect to the liability under Article 423(1) by the consent of a majority of the directors (excluding the directors subject to such liability) (or, for Companies with Board of Directors, by resolution of the board of directors) to the extent of the amount which exemption may be given pursuant to the provisions of paragraph (1) of the preceding article.
- (2) The provisions of paragraph (3) of the preceding article shall apply mutatis mutandis to cases where a proposal to amend the articles of incorporation to create provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph (limited to provisions of the articles of incorporation to the effect that directors (excluding those who are Audit Committee Members) and executive officers may be exempted from the liability) is submitted to a shareholders meeting, to cases where the consent of directors with respect to exemption from liability under the provisions of the articles of incorporation pursuant to the provisions of that paragraph (limited to exemption from liability of directors (excluding those who are Audit Committee Members) and executive officers) is to be obtained, and to the cases where a proposal regarding such exemption from liability is submitted to the board of directors.
- (3) If consent (or, for a Company with Board of Directors, a resolution of the board

of directors) to the effect that Officers, Etc. shall be exempted from the liability under the provisions of the articles of incorporation pursuant to the provisions of paragraph (1) has been given, the directors shall, without delay, give public notice, or give notice to shareholders, to the effect that any objections to the matters listed in each item of paragraph (2) of the preceding article or to the exemption from liability ought to be stated within a specified period of time; provided, however, that such period may not be shorter than one month.

- (4) For the purpose of the application of the provisions of the preceding paragraph to a Stock Company that is not a Public Company, "give public notice, or give notice to shareholders" in that paragraph shall be read as "give notice to shareholders."
- (5) If shareholders having not less than three hundredths ( $3/100$ ) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders (excluding Officers, Etc. subject to the liability referred to in paragraph (3)) state objections during the period provided for in that paragraph, the Stock Company may not effect the exemption pursuant to the provisions of the articles of incorporation under the provisions of paragraph (1).
- (6) The provisions of paragraph (4) and paragraph (5) of the preceding article shall apply mutatis mutandis to cases where exemption from liability is given pursuant to the provisions of the articles of incorporation under the provisions of paragraph (1).

**Article 427 (Contracts for Limitation of Liability)**

- (1) Notwithstanding the provisions of Article 424, a Stock Company may provide in the articles of incorporation that the Stock Company may enter into contracts with Outside Directors, accounting advisors, Outside Company Auditors or accounting auditors (hereinafter in this article referred to as "Outside Directors, Etc.") to the effect that, if such Outside Directors, Etc. are without knowledge and are not grossly negligent in performing their duties, the liability of the Outside Directors, Etc. under Article 423(1) shall be limited to either an amount specified by the Stock Company in advance within the limit of the amount provided for in the articles of incorporation, or the Minimum Liability Amount, whichever is higher.
- (2) If Outside Directors, Etc. who have entered into contracts under the preceding paragraph assume the office of Executive Director, executive officer, or employee, including manager, of such Stock Company or its Subsidiaries, such contracts shall become ineffective from then on.
- (3) The provisions of Article 425(3) shall apply mutatis mutandis to cases where a proposal to amend the articles of incorporation to create provisions of the articles of incorporation under the provisions of paragraph (1) (limited to the provisions of

the articles of incorporation to the effect that contracts may be entered into with Outside Directors (excluding those who are Audit Committee Members)) is submitted to a shareholders meeting.

- (4) If a Stock Company that entered into contracts under paragraph (1) has come to know that it has suffered damages as a result of Outside Directors, Etc. who were the counterparties to such contracts neglecting their duties, the Stock Company shall disclose the following matters at the first shareholders meeting called thereafter:
- (i) Matters listed in item (i) and 2 of Article 425(2);
  - (ii) The contents of such contracts and reasons for entering into such contracts; and
  - (iii) The amount for which it was arranged that such Outside Directors, Etc. would be exempted from liability for damages in Article 423(1).
- (5) The provisions of Article 425(4) and (5) shall apply mutatis mutandis to cases where it has been arranged pursuant to contracts under paragraph (1) that Outside Directors, Etc. shall not be liable for damages in excess of the limit provided for in that paragraph.

**Article 428** (Special Provision on Transactions carried out by Director for Himself/Herself)

- (1) A director or executive officer who has carried out transactions under item (ii) of Article 356(1) (including cases of mutatis mutandis application under Article 419(2)) (limited to transactions carried out for himself/herself) may not be exempted from the liability under Article 423(1) for the reason that the neglect of his/her duties was due to grounds not attributable to such directors or executive officers.
- (2) The provisions of the preceding three articles shall not apply to the liability in the preceding paragraph.

**Article 429** (Liability for Damages of Officers, Etc. to Third Parties)

- (1) If Officers, Etc. are with knowledge or grossly negligent in performing their duties, such Officers, Etc. shall be liable to a third party for damages arising as a result thereof.
- (2) The provisions of the preceding paragraph shall also apply if the persons listed in the following items carry out the acts provided for in each such item; provided, however, that this shall not apply if such persons prove that they did not fail to exercise due care with respect to the performance of their duties:
- (i) Directors and executive officers: The following acts:
    - (a) The giving of false notice with respect to important matters, notice of which

shall be given when soliciting persons to subscribe for shares, Share Options, Bonds or Bonds with Share Option, or the making of false statements or records with respect to materials used for explanations regarding the business of the relevant Stock Company and other matters for the purpose of such solicitation;

- (b) The making of false statements or records with respect to important matters to be specified or recorded in Financial Statements and business reports as well as the supplementary schedules thereof and Temporary Financial Statements;
- (c) The false registration; and
- (d) The false public notice (including the measures provided for in Article 440 (3));
- (ii) Accounting advisors: The making of false statements or records with respect to important matters to be specified or recorded in Financial Statements as well as supplementary schedules thereof, Temporary Financial Statements and accounting advisors' reports;
- (iii) Auditors and Audit Committee Members: The making of false statements or records with respect to important matters to be specified or recorded in audit reports;
- (iv) Accounting Auditor: The making of false statements or records with respect to important matters to be specified or recorded in accounting audit reports;

**Article 430 (Joint and Several Liabilities of Officers, Etc.)**

In cases where Officers, Etc. are liable for damages arising in the Stock Company or a third party, if other Officers, Etc. are also liable, such persons shall be joint and several obligors.

**Chapter V Accounting**

**Section 1 Accounting Principle**

**Article 431**

The accounting for a Stock Company shall be subject to the business accounting practices generally accepted as fair and appropriate.

**Section 2 Account Books**

**Subsection 1 Account Books**

**Article 432** (Preparation and Retention of Account Books)

- (1) A Stock Company shall prepare accurate account books in a timely manner pursuant to the applicable Ordinance of the Ministry of Justice.
- (2) A Stock Company shall retain its account books and important materials regarding its business for ten years from the time of the closing of the account books.

**Article 433** (Request to Inspect Account Books)

- (1) Shareholders having not less than three hundredths ( $3/100$ ) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the votes of all shareholders (excluding shareholders who may not exercise their votes on all matters which may be resolved at a shareholders meeting) or shareholders having not less than three hundredths ( $3/100$ ) (or, in cases where lesser proportion is prescribed in the articles of incorporation, such proportion) of the Issued Shares (excluding Treasury Shares) may make the following requests at any time during the business hours of the Stock Company. In such cases, the reasons for such requests shall be disclosed.
  - (i) If the account books or materials relating thereto are prepared in writing, the requests for inspection or copying of such documents;
  - (ii) If the account books or materials relating thereto are prepared by Electromagnetic Records, the requests for inspection or copying of anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) If a request referred to in the preceding paragraph is made, the Stock Company may not refuse the request unless it is found that any of the following apply:
  - (i) The shareholder who makes such request (hereinafter in this paragraph referred to as "Requestor") makes the request for a purpose other than for investigation related to the securing or exercising of his/her right;
  - (ii) The Requestor makes the request for the purpose of interfering with the execution of the operations of such Stock Company and prejudicing the common benefit of the shareholders;
  - (iii) The Requestor operates or engages in business which is, in substance, in competition with the operations of such Stock Company;
  - (iv) The Requestor makes the request in order to report facts which he/she may learn by inspecting or copying the account books or materials relating thereto to third parties for profit; or
  - (v) The Requestor is a person who has reported facts which he/she learned by inspecting or copying the account books or materials relating thereto to third parties for profit during the last two years.

- (3) If it is necessary for the purpose of exercising the rights of a Member of the Parent Company of a Stock Company, he/she may, with the permission of the court, make the request listed in each item of paragraph (1) with respect to the account books or materials relating thereto. In such cases, the reasons for such request shall be disclosed.
- (4) The court may not grant the permission referred to in the preceding paragraph if there are any of the facts provided for in each item of paragraph (2) with respect to the Member of the Parent Company referred to in the preceding paragraph.

**Article 434** (Order to Submit Account Books)

The court may, in response to a petition or ex officio, order the parties to a suit to submit account books, in whole or in part.

**Subsection 2 Financial Statements, etc.**

**Article 435** (Preparation and Retention of Financial Statements, etc.)

- (1) A Stock Company shall prepare a balance sheet as at the day of its formation pursuant to the applicable Ordinance of the Ministry of Justice.
- (2) A Stock Company shall prepare Financial Statements (meaning balance sheets, profit and loss statements and other statements prescribed by the applicable Ordinance of the Ministry of Justice as necessary and appropriate in order to indicate the status of the assets and profits and losses of a Stock Company) and business reports for each business year and supplementary schedules thereof pursuant to the applicable Ordinance of the Ministry of Justice.
- (3) Financial Statements and business reports and supplementary schedules thereof may be prepared by Electromagnetic Records.
- (4) A Stock Company shall retain its Financial Statements and supplementary schedules thereof for ten years from the time of preparation of the Financial Statements.

**Article 436** (Audit of Financial Statements, etc.)

- (1) At Companies with Auditors (including Stock Companies the articles of incorporation of which provide that the scope of the audit shall be limited to an audit related to accounting, and excluding the Companies with Accounting Auditors), the Financial Statements and business reports and supplementary schedules thereof under paragraph (2) of the preceding article shall be audited by company auditors pursuant to the applicable Ordinance of the Ministry of Justice.
- (2) At Companies with Accounting Auditors, the documents listed in the following items shall be audited by the persons listed in each such item pursuant to the

applicable Ordinance of the Ministry of Justice:

- (i) The Financial Statements and supplementary schedules thereof under paragraph (2) of the preceding article: Auditors (or audit committees for Companies with Committees) and accounting auditors;
  - (ii) The business reports and supplementary schedules thereof under paragraph (2) of the preceding article: Auditors (or audit committees for Companies with Committees);
- (3) At Companies with Board of Directors, the Financial Statements and business report and supplementary schedules thereof under paragraph (2) of the preceding article (or, in cases where the provisions of paragraph (1) or the preceding paragraph apply, those which have been audited as provided for in paragraph (1) and the preceding paragraph) shall be approved by the board of directors.

**Article 437** (Provision of Financial Statements, etc. to Shareholders)

At Companies with Board of Directors, directors shall, when giving notice to call annual shareholders meetings, provide to shareholders pursuant to the applicable Ordinance of the Ministry of Justice the Financial Statements and business reports that have been approved as provided for in paragraph (3) of the preceding paragraph (in cases where the provisions of paragraph (1) or paragraph (2) of the same article apply, including audit reports and accounting audit reports).

**Article 438** (Provision of Financial Statements, etc. to Annual Shareholders Meetings)

- (1) At Stock Companies listed in the following items, directors shall submit or provide the Financial Statements and business reports provided for in each such item to annual shareholders meetings:
- (i) Companies with Auditors provided for in Article 436(1) (excluding Companies with Board of Directors): Financial Statements and business reports that have been audited pursuant to Article 436(1);
  - (ii) Companies with Accounting Auditors (excluding Companies with Board of Directors): Financial Statements and business reports that have been audited pursuant to Article 436(2);
  - (iii) Companies with Board of Directors: Financial Statements and business reports that have been approved pursuant to Article 436(3); and
  - (iv) Stock Companies other than those listed in the preceding three items: Financial Statements and business reports under Article 435(2).
- (2) Financial Statements that have been submitted or provided pursuant to the provisions of the preceding paragraph shall be approved by the annual shareholders meeting.

(3) Directors shall report the contents of the business reports submitted or provided pursuant to the provisions of paragraph (1) to the annual shareholders meeting.

**Article 439** (Special Provision on Companies with Accounting Auditors)

With respect to Companies with Accounting Auditors, in cases where the Financial Statements that have been approved pursuant to Article 436(3) satisfy the requirements prescribed by the applicable Ordinance of the Ministry of Justice as statements that accurately indicate the status of the assets and profits and losses of a Stock Company in compliance with applicable laws and regulations and the articles of incorporation, the provisions of paragraph (2) of the preceding article shall not apply. In such cases, directors shall report the contents of such Financial Statements to the annual shareholders meeting.

**Article 440** (Public Notice of Financial Statements)

- (1) A Stock Company shall give public notice of its balance sheet (or, for a Large Company, its balance sheet and profit and loss statement) without delay after the conclusion of the annual shareholders meeting pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) Notwithstanding the provisions of the preceding paragraph, with respect to a Stock Company for which the Method of Public Notice is a method listed in item (i) or (ii) of Article 939(1), it shall be sufficient to give public notice of a summary of the balance sheet provided for in the preceding paragraph.
- (3) A Stock Company referred to in the preceding paragraph may, without delay after the conclusion of the annual shareholders meeting, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, take measures to make the information contained in the balance sheet provided for in paragraph (1) available to the general public continually by the Electromagnetic Method until the day on which five years have elapsed from the day of the conclusion of the annual shareholders meeting. In such cases, the provisions of the preceding two paragraphs shall not apply.
- (4) The provisions of the preceding three paragraphs shall not apply to Stock Companies that shall submit their securities reports to the Prime Minister pursuant to the provisions of Article 24(1) of the Financial Instruments and Exchange Act.

**Article 441** (Temporary Financial Statements)

- (1) Stock Companies may prepare the following documents (hereinafter referred to as "Temporary Financial Statements") pursuant to the provisions of the applicable Ordinance of the Ministry of Justice in order to grasp the financial status of such

Stock Company as at a certain day (hereinafter in this paragraph referred to as "Temporary Account Closing Day") included in the business year immediately following the Most Recent Business Year:

- (i) A balance sheet as at the Temporary Closing Date; and
  - (ii) A profit and loss statement for the period from the first day of the business year that includes the Temporary Account Closing Day to the Temporary Account Closing Day.
- (2) At Companies with Auditors or Companies with Accounting Auditors provided for in Article 436(1), Temporary Financial Statements shall be audited by company auditors or accounting auditors (or, for Companies with Committees, by the audit committee and accounting auditors) pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (3) At Companies with Board of Directors, Temporary Financial Statements (or, in cases where the provisions of the preceding paragraph apply, the statements audited under that paragraph) shall be approved by the board of directors.
- (4) At Stock Companies listed in the following items, the Temporary Financial Statements provided for in each such item shall be approved by a shareholders meeting; provided, however, that this shall not apply in cases where the Temporary Financial Statements satisfy the requirements prescribed by the applicable Ordinance of the Ministry of Justice as statements that accurately indicate the status of the assets and profits and losses of a Stock Company in compliance with applicable laws and regulations and the articles of incorporation:
- (i) Companies with Auditors or Companies with Accounting Auditors provided for in Article 436(1) (in each case excluding Company with Board of Directors): Temporary Financial Statements that have been audited pursuant to paragraph (2);
  - (ii) Companies with Board of Directors: Temporary Financial Statements that have been approved pursuant to the preceding paragraph; and
  - (iii) Stock Companies other than those listed in the preceding two items: Temporary Financial Statements under paragraph (1).

**Article 442** (Keeping and Inspection of Financial Statements, Etc.)

- (1) Stock Companies shall keep the things listed in the each of the following items (hereinafter in this article referred to as "Financial Statements, Etc.") at its head office for the period provided for in each such item:
- (i) Financial Statements and business reports for each business year and supplementary schedules thereof (in cases where the provisions of Article 436(1) or (2) apply, including audit reports or accounting audit reports): Five years from the day one week (or, for Companies with Board of Directors, two weeks)

- prior to the day of the annual shareholders meeting (or, in cases provided for in Article 319(1), from the day when the proposal under that paragraph is made); and
- (ii) Temporary Financial Statements (in cases where the provisions of paragraph (2) of the preceding article apply, including audit reports and accounting audit reports): Five years from the day when the Temporary Financial Statements are prepared.
- (2) A Stock Company shall keep copies of the Financial Statements, Etc. listed in the following items at its branch offices for the period provided for in each such item; provided, however, that this shall not apply to the cases where the Financial Statements, Etc. are prepared by Electromagnetic Records and the Stock Company adopts the measures prescribed by the applicable Ordinance of the Ministry of Justice as measures enabling its branch offices to respond to the request listed in item (iii) and item (iv) of the following paragraph:
- (i) Financial Statements, Etc. listed in item (i) of the preceding paragraph: Three years from the day one week (or, for a Company with Board of Directors, two weeks) prior to the day of the annual shareholders meeting (or, in cases provided for in Article 319(1), from the day when the proposal under that paragraph is made); and
  - (ii) Financial Statements, Etc. listed in item (ii) of the preceding paragraph: Three years from the day when the Temporary Financial Statements under that item are prepared.
- (3) The shareholders and creditors may submit the following requests at any time during the business hours of the Stock Company; provided, however, that the fees designated by such Stock Company are required to be paid in order to submit the requests listed in item (ii) or (iv):
- (i) If the Financial Statements, Etc. are prepared in writing, requests for inspection of such documents or copies of such documents;
  - (ii) Requests for a transcript or extract of the document referred to in the preceding item;
  - (iii) If the Financial Statements, Etc. are prepared by Electromagnetic Records, requests for inspection of anything that displays the data recorded in such Electromagnetic Records in a manner prescribed by the applicable Ordinance of the Ministry of Justice; or
  - (iv) Request that the matters recorded in the Electromagnetic Records referred to in the preceding item be provided by Electromagnetic Methods prescribed by the Stock Company, or requests for documents that state such matters.
- (4) If it is necessary for the purpose of exercising the rights of a Member of the Parent Company of a Stock Company, he/she may, with the permission of the

court, make the requests listed in each item of the preceding paragraph with respect to the Financial Statements, Etc. of such Stock Company; provided, however, that, in order to make the requests listed in item (ii) or (iv) of that paragraph, the fees designated by such Stock Company are required to be paid.

**Article 443** (Order to Submit Financial Statements, etc.)

The court may, in response to a petition or ex officio, order the parties to a suit to submit Financial Statements and supplementary schedules thereof, in whole or in part.

**Subsection 3 Consolidated Financial Statements**

**Article 444**

- (1) A Company with Accounting Auditors may, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, prepare Consolidated Financial Statements (meaning statements prescribed by the applicable Ordinance of the Ministry of Justice as necessary and appropriate in order to indicate the status of the assets and profits and losses of a business group comprised of such Company with Accounting Auditors and its Subsidiaries. The same shall apply hereinafter) for each business year.
- (2) Consolidated Financial Statements may be prepared by Electromagnetic Records.
- (3) An entity that is a Large Company as at the last day of a business year and shall submit a securities report to the Prime Minister pursuant to the provisions of Article 24(1) of the Securities and Exchange Act shall prepare Consolidated Financial Statements for such business year.
- (4) Consolidated Financial Statements shall be audited by the company auditors (or, for a Company with Committees, by the audit committee) and accounting auditors pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (5) In cases where a Company with Accounting Auditors is a Company with Board of Directors, the consolidated financial statements audited as provided for in the preceding paragraph shall be approved by the board of directors.
- (6) In cases where a Company with Accounting Auditors is a Company with Board of Directors, directors shall, when giving notice to call annual shareholders meetings, provide to shareholders, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, Consolidated Financial Statements that have been approved as provided for in the preceding paragraph.
- (7) At Companies with Accounting Auditors listed in the following items, directors shall submit or provide the Consolidated Financial Statements provided for in each such item to the annual shareholders meetings. In such cases, the contents of the

Consolidated Financial Statements provided for in each such item and the results of the audit under paragraph (4) shall be reported to the annual shareholders meeting:

- (i) A Company with Accounting Auditors which is a Company with Board of Directors: Consolidated Financial Statements approved as provided for in paragraph (5);
- (ii) A Company with Accounting Auditors other than that listed in the preceding item: Consolidated Financial Statements audited as provided for in paragraph (4).

### **Section 3 Amounts of Stated Capital, etc.**

#### **Subsection 1 General Provisions**

##### **Article 445 (Amounts of Stated Capital and Amounts of Reserves)**

- (1) Unless it is otherwise provided for in this Act, the amount of stated capital of a Stock Company shall be the amount of properties contributed by persons who become shareholders at the incorporation or share issue.
- (2) The amount not exceeding half of the amount of the contribution under the preceding paragraph may not be recorded as stated capital.
- (3) The amount not recorded as stated capital pursuant to the provisions of the preceding paragraph shall be recorded as capital reserves.
- (4) If a Stock Company pays dividends of surplus, it shall record an amount equivalent to one tenth of the amount of the deduction from surplus as a result of the payment of such dividends of surplus as capital reserves or retained earnings reserves (hereinafter referred to as "Reserves"), pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (5) The amount to be recorded as stated capital or Reserves at mergers, Absorption-type Company Splits, Incorporation-type Company Splits, Share Exchanges or Share Transfers shall be prescribed by the applicable Ordinance of the Ministry of Justice.

##### **Article 446 (Amounts of Surplus)**

The amount of the surplus of a Stock Company shall be the amount obtained by subtracting the sum of the amounts listed in item (v) through (vii) from the sum of the amounts listed in item (i) through (iv):

- (i) The amount obtained by subtracting the sum of the amounts listed in Sub-item (c) through (e) from the sum of the amounts listed in Sub-item (a) through (b) as at the last day of the Most Recent Business Year:

- (a) The amount of assets;
  - (b) The sum of the book value of Treasury Shares;
  - (c) The amount of debt;
  - (d) The sum of the amount of stated capital and Reserves;
  - (e) The sum of the amounts, other than those listed in Sub-item (c) and (d), recorded in each account title prescribed by the applicable Ordinance of the Ministry of Justice.
- (ii) In cases where Treasury Shares are disposed of after the last day of the Most Recent Business Year, the amount obtained by subtracting the book value of such Treasury Shares from the amount of the value received in exchange for such Treasury Shares;
  - (iii) In cases where the amount of stated capital is reduced after the last day of the Most Recent Business Year, the amount of such reduction (excluding the amount under item (ii), paragraph (1) of the following article);
  - (iv) In cases where the Reserves are reduced after the last day of the Most Recent Business Year, the amount of such reduction (excluding the amount under item (ii) of Article 448(1));
  - (v) In cases where Treasury Shares are canceled pursuant to the provisions of Article 178(1) after the last day of the Most Recent Business Year, the amount of the book value of such Treasury Shares;
  - (vi) The sum of the following amounts in cases where dividend of surplus is paid after the last day of the Most Recent Business Year:
    - (a) The total book value of the Dividend Property referred to in item (i) of Article 454(1) (excluding the book value of such Dividend Property assigned to shareholders who exercised the Rights to Demand Distribution of Monies provided for in item (i), paragraph (4) of that paragraph);
    - (b) The sum of the amounts of the money delivered to shareholders who exercised the Rights to Demand Distribution of Monies provided for in item (i) of Article 454(4); and
    - (c) The sum of the amounts of money paid to shareholders of Disqualified Shares provided for in Article 456.
  - (vii) The sum of the amounts, other than those listed in the preceding two items, recorded in each account title prescribed by the applicable Ordinance of the Ministry of Justice.

**Subsection 2 Reductions, etc. in Amount of Stated Capital**

**Division 1 Reductions, etc. in Amount of Stated Capital**

**Article 447** (Reductions in Amount of Stated Capital)

- (1) A Stock Company may reduce the amount of its stated capital. In such cases, the following matters shall be decided by resolution of a shareholders meeting:
  - (i) The amount by which the stated capital is reduced;
  - (ii) If all or part of the amount by which the stated capital is reduced is to be appropriated to Reserves, a statement to such effect and the amount to be appropriated to Reserves;
  - (iii) The day on which the reduction in the amount of stated capital takes effect.
- (2) The amount under item (i) of the preceding paragraph may not exceed the amount of stated capital as at the day under item (iii) of that paragraph.
- (3) In cases where a Stock Company reduces the amount of stated capital concurrently with a share issue, if the amount of stated capital after the day on which such reduction in the amount of stated capital takes effect is not less than the amount of stated capital before such day, for the purpose of the application of the provisions of paragraph (1), "resolution of a shareholders meeting" in that paragraph shall be read as "decision of the directors (or, for a Company with Board of Directors, resolution of the board of directors)."

**Article 448** (Reductions in Amount of Reserves)

- (1) A Stock Company may reduce the amount of its Reserves. In such cases, the following matters shall be decided by resolution of a shareholders meeting:
  - (i) The amount by which the Reserves are reduced;
  - (ii) If all or part of the amount by which the Reserves are reduced is to be appropriated to the stated capital, a statement to such effect and the amount to be appropriated to the stated capital;
  - (iii) The day on which the reduction in the amount of the Reserves takes effect.
- (2) The amount under item (i) of the preceding paragraph may not exceed the amount of the Reserves as at the day under item (iii) of that paragraph.
- (3) In cases where a Stock Company reduces the amount of the Reserves concurrently with a share issue, if the amount of the Reserves after the day on which such reduction in the amount of the Reserves takes effect is not less than the amount of the Reserves before such day, for the purpose of the application of the provisions of paragraph (1), "resolution of a shareholders meeting" in that paragraph shall be read as "decision of the directors (or, for a Company with Board of Directors, resolution of the board of directors)."

**Article 449** (Objection of Creditors)

- (1) In cases where a Stock Company reduces the amount of its stated capital or Reserves (hereinafter in this article referred to as "Stated Capitals, Etc.")

(excluding cases where the whole of the amount by which the Reserves are reduced is appropriated to the stated capital), creditors of such Stock Company may state their objections to the reduction in the amount of the Capitals, Etc.; provided, however, that this shall not apply to cases where only the amount of the Reserves is reduced and all of the following apply:

- (i) That matters listed in each item of paragraph (1) of the preceding article are decided at the annual shareholders meeting; and
  - (ii) That the amount referred to in item (i), paragraph (1) of the preceding article does not exceed the amount calculated in the manner prescribed by the applicable Ordinance of the Ministry of Justice as the amount of the deficit as at the day of the annual shareholders meeting referred to in the preceding item (or, in cases provided for in the first sentence of Article 439, the day when the approval under Article 436(4) is given).
- (2) In cases where creditors of a Stock Company may state their objections pursuant to the provisions of the preceding paragraph, such Stock Company shall give public notice of the matters listed below in the official gazette and shall give notices inviting objections separately to each known creditor, if any; provided, however, that the period under item (iii) may not be less than one month:
- (i) The details of such reduction in the amount of Capitals, Etc.;
  - (ii) The matters prescribed by the applicable Ordinance of the Ministry of Justice as the matters regarding the Financial Statements of such Stock Company; and
  - (iii) A statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if a Stock Company gives public notice under that paragraph by Method of Public Notice listed in item (ii) or (iii) of Article 939(1) in accordance with the provisions of the articles of incorporation pursuant to the provisions of that paragraph in addition to the official gazette, the Stock Company is not required to give separate notices under the provisions of the preceding paragraph.
- (4) In cases where creditors do not raise any objections within the period under item (iii) of paragraph (2), such creditors shall be deemed to have approved such reduction in the amount of the Capitals, Etc.
- (5) In cases where creditors raise objections within the period under item (iii) of paragraph (2), the Stock Company shall make payment or provide equivalent security to such creditors, or entrust equivalent property to a Trust Company, Etc. (meaning Trust Companies and financial institutions that engage in trust business (referring to financial institutions approved under Article 1(1) of the Act on the Concurrent Undertaking of Trust Business by Financial Institutions (Act No. 43 of 1943)). The same shall apply hereinafter) for the purpose of making such creditors

receive the payment; provided, however, that this shall not apply if there is no risk of harm to such creditors by such reduction in the amount of Capitals, Etc.

(6) The actions listed in the following items shall take effect on the day provided for in each such item; provided, however, that this shall not apply if the procedures pursuant to the provisions of paragraph (2) through the preceding paragraph have not been completed:

(i) Reduction in the amount of stated capital: The day under item (iii) of Article 447(1); and

(ii) Reduction in the amount of the Reserves: The day under item (iii), paragraph (1) of the preceding article.

(7) A Stock Company may change the day provided for in each item of the preceding paragraph at any time before such day.

### **Division 2 Increases in Amount of Stated Capital, etc.**

#### **Article 450 (Increases in Amount of Stated Capital)**

(1) A Stock Company may increase the amount of its stated capital by reducing the amount of its surplus. In such cases, the following matters shall be decided:

(i) The amount by which the surplus is reduced;

(ii) The day on which the increase in the amount of stated capital takes effect;

(2) Decisions on the matters listed in each of the items of the preceding paragraph shall be made by resolution of a shareholders meeting.

(3) The amount under item (i) of paragraph (1) may not exceed the amount of surplus as at the day under item (ii) of that paragraph.

#### **Article 451 (Increase in Amount of Reserves)**

(1) A Stock Company may increase the amount of its Reserves by reducing the amount of its surplus. In such cases, the following matters shall be decided:

(i) The amount by which the surplus is reduced;

(ii) The day on which the increase in the amount of the Reserves takes effect;

(2) Decisions on the matters listed in the items of the preceding paragraph shall be made by resolution of a shareholders meeting.

(3) The amount under item (i) of paragraph (1) may not exceed the amount of surplus as at the day under item (ii) of that paragraph.

### **Division 3 Other Appropriation of Surplus**

#### **Article 452**

A Stock Company may, by resolution of a shareholders meeting, make the

appropriation of its surplus, including, but not limited to, the disposition of loss and funding of voluntary reserves (excluding those provided for in the preceding Division and those which dispose of the property of the Stock Company, including, but not limited to, dividends of surplus). In such cases, the Stock Company shall decide on the amount of such appropriation of surplus and other matters prescribed by the applicable Ordinance of the Ministry of Justice.

#### **Section 4 Dividends of Surplus**

##### **Article 453** (Dividends of Surplus to Shareholders)

A Stock Company may distribute dividends of surplus to its shareholders (excluding such Stock Company).

##### **Article 454** (Decisions on Matters regarding Dividends of Surplus)

(1) Whenever a Stock Company intends to distribute dividends of surplus pursuant to the provisions of the preceding article, it shall decide the following matters by resolution of a shareholders meeting:

- (i) The kind and total book value of the Dividend Property (excluding the Shares, Etc. of such Stock Company);
- (ii) The matters regarding the assignment of the Dividend Property to shareholders;
- (iii) The day on which such distribution of dividend of surplus takes effect.

(2) In the cases provided for in the preceding paragraph, if a Stock Company issues two or more classes of shares with different features as to dividends of surplus, the Stock Company may decide the following matters as the matters listed in item (ii) of that paragraph in accordance with the features of such classes of shares:

- (i) If there is any arrangement that no Dividend Property is assigned to the shareholders of a certain class of shares, a statement to such effect and such class of shares;
- (ii) In addition to the matters listed in the preceding item, if there is any arrangement that each class of shares shall be treated differently with respect to assignment of Dividend Property, a statement to such effect and the details of such different treatment.

(3) The decisions on the matters listed in item (ii) of paragraph (1) shall provide that the Dividend Property is assigned in proportion to the number of the shares (or, in cases where there are decisions on the matters listed in item (ii) of the preceding paragraph, the number of the shares of each class) held by the shareholders (excluding the relevant Stock Company and shareholders of the class of shares referred to in item (i) of the preceding paragraph).

- (4) If the Dividend Property consists of property other than monies, the Stock Company may decide the following matters by resolution of a shareholders meeting; provided, however, that the last day of the period referred to in item (i) shall be the day that is or precedes the day referred to in item (iii) of paragraph (1):
- (i) If Right to Demand Distribution of Monies (meaning the right to demand that the Stock Company deliver monies in lieu of such Dividend Property. The same shall apply hereinafter in this Chapter) is granted to shareholders, a statement to such effect and the period during which the Right to Demand Distribution of Monies may be exercised; and
  - (ii) If there is any arrangement that no Dividend Property shall be assigned to shareholders who hold less than a certain number of shares, a statement to such effect and that number.
- (5) A Company with Board of Directors may provided in the articles of incorporation that it may distribute a dividend of surplus only once during a business year by resolution of the board of directors (limited to that where the Dividend Property consists of monies. It is referred to as "Interim Dividend" hereinafter in this Chapter). For the purpose of the application of the provisions of paragraph (1) to the Interim Dividend in such cases, "shareholders meeting" in that paragraph shall be read as "board of directors."

**Article 455** (Exercise of Rights to Demand Distribution of Monies)

- (1) In the cases provided for in item (i) of paragraph (4) of the preceding article, the Stock Company shall notify shareholders of the matters listed in that item no later than 20 days prior to the last day of the period referred to in that item.
- (2) A Stock Company shall pay to shareholders who have exercised the Right to Demand Distribution of Monies, in lieu of the Dividend Property assigned to such shareholders, the monies equivalent to the value of such Dividend Property. In such cases, the amounts provided for in each of the following items for the case categories listed in each such item shall be the value of such Dividend Property:
- (i) In cases where such Dividend Property consists of property with a market price: The amount calculated in the manner prescribed by the applicable Ordinance of the Ministry of Justice as the market price of such Dividend Property;
  - (ii) In cases other than those listed in the preceding item: The amount determined by the court in response to a petition by the Stock Company.

**Article 456** (Treatment where Minimum Number of Shares is Prescribed)

In cases where the number referred to in item (ii) of Article 454(4) (hereinafter

in this article referred to as "Minimum Number of Shares") is prescribed, a Stock Company shall pay to shareholders having shares in a number less than the Minimum Number of Shares (hereinafter in this article referred to as "Disqualified Shares") monies equivalent to the amount obtained by multiplying the amount prescribed as the value of the Dividend Property assigned to shareholders having shares in the Minimum Number of Shares in accordance with the applicable provisions of the second sentence of paragraph (2) of the preceding article by the ratio of the number of such Disqualified Shares to the Minimum Number of Shares.

**Article 457** (Methods of Delivery of Dividend Property)

- (1) The Dividend Property (including monies paid pursuant to the provisions of Article 455(2) and monies paid pursuant to the provisions of the preceding article. The same shall apply hereinafter in this article) shall be delivered at the address of the shareholders (including Registered Pledgees of Shares. The same shall apply hereinafter in this article) specified or recorded in the shareholder registry, or at other place of which the shareholders have notified the Stock Company (in paragraph (3) referred to as "Address, Etc.").
- (2) The cost of the delivery of Dividend Property pursuant to the provisions of the preceding paragraph shall be borne by the Stock Company; provided, however, that, if such cost increases due to reasons attributable to shareholders, such increased amount shall be borne by the shareholders.
- (3) The provisions of the preceding two paragraphs shall not apply to the delivery of Dividend Property to shareholders who do not have Address, Etc. in Japan.

**Article 458** (Exclusion from Application)

The provisions of Article 453 through the preceding article shall not apply in cases where the amount of the net assets of the Stock Company is less than 3,000,000 yen.

**Section 5 Special Provision on Organs that Decide Dividends of Surplus**

**Article 459** (Provisions of Articles of Incorporation that Board of Directors Determines Dividends of Surplus)

- (1) A Company with Accounting Auditors (excluding Companies for which the last day of the term of office of directors falls on a day after the day of the conclusion of the annual shareholders meeting for the last business year ending within one year from the time of their election, and Companies with Auditors that are not Companies with Board of Company Auditors) may provide in the articles of incorporation that the board of directors (for matters listed in item (ii), limited to the board of directors under Article 436(3)) may decide the following matters:

- (i) The matters listed in each item of Article 156(1) in cases other than cases where a decision pursuant to the provisions of Article 160 (1) is made;
  - (ii) The matters listed in item (i) and (iii) of Article 448(1) in cases that fall under item (ii) of Article 449(1);
  - (iii) The matters listed in the second sentence of Article 452; and
  - (iv) The matters listed in each item of Article 454(1) and each item of paragraph (4) of that article; provided, however, that the cases where the Dividend Property consists of property other than monies and no Right to Demand Distribution of Monies are granted to shareholders are excluded.
- (2) The provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph shall be effective only in cases where the Financial Statements for the Most Recent Business Year satisfy the requirements prescribed by the applicable Ordinance of the Ministry of Justice as accurately indicating the status of the assets and profits and losses of a Stock Company in compliance with applicable laws and regulations and the articles of incorporation.
- (3) For the purpose of the application of the provisions of item (i) of Article 449(1) in cases where there is a provision in the articles of incorporation pursuant to the provisions of paragraph (1), "annual shareholders meeting" in that item shall be read as "annual shareholders meeting or board of directors under Article 436(3)."

**Article 460 (Restriction on Rights of Shareholders)**

- (1) In cases where there is a provision in the articles of incorporation pursuant to the provisions of paragraph (1) of the preceding article, a Stock Company may provide in the articles of incorporation that the matters listed in each item of that paragraph shall not be decided by resolution of a shareholders meeting.
- (2) The provisions of the articles of incorporation pursuant to the provisions of the preceding paragraph shall be effective only in cases where the Financial Statements for the Most Recent Business Year satisfy the requirements prescribed by the applicable Ordinance of the Ministry of Justice as accurately indicating the status of the assets and profits and losses of a Stock Company in compliance with applicable laws and regulations and the articles of incorporation.

**Section 6 Liability related to Dividends of Surplus**

**Article 461 (Restriction on Dividends)**

- (1) The total book value of the Monies, Etc. (excluding shares of the relevant Stock Company. The same shall apply hereinafter in this Section) delivered to shareholders as a result of the following acts may not exceed the Distributable Amount as at the day on which such act takes effect:

- (i) The purchase of shares of such Stock Company in response to a demand under item (i) (c) or (ii) (c) of Article 138;
  - (ii) The acquisition of shares of such Stock Company based on a decision pursuant to the provisions of Article 156(1) (limited to acquisitions of shares by such Stock Company in the cases provided for in Article 163 or Article 165(1));
  - (iii) The acquisition of shares of such Stock Company based on a decision pursuant to the provisions of Article 157(1);
  - (iv) The acquisition of shares of such Stock Company pursuant to the provisions of Article 173(1);
  - (v) The purchase of shares of such Stock Company based on a request pursuant to the provisions of Article 176(1);
  - (vi) The purchase of shares of such Stock Company pursuant to the provisions of Article 197(3);
  - (vii) The purchase of shares of such Stock Company pursuant to the provisions of Article 234(4); or
  - (viii) Dividend of surplus.
- (2) The "Distributable Amount" provided for in the preceding paragraph shall mean the amount obtained by subtracting the sum of the amounts listed in item (iii) through 6 from the sum listed in item (i) and item (ii) (the same shall apply hereinafter in this Section):
- (i) The amount of surplus;
  - (ii) The amounts listed below in cases where the approval under Article 441(4) (or the approval under paragraph (3) of that article in the cases provided for in the proviso to that paragraph) is obtained for the Temporary Financial Statements:
    - (a) The sum of the amounts recorded in each account title prescribed by the applicable Ordinance of the Ministry of Justice as the amount of profits during the period under item (ii) of Article 441(1); and
    - (b) In cases where Treasury Shares are disposed of during the during the period under item (ii) of Article 441(1), the amount of the value received in exchange for such Treasury Shares.
  - (iii) The book value of Treasury Shares;
  - (iv) In cases where Treasury Shares are disposed of after the last day of the Most Recent Business Year, the amount of the value received in exchange for such Treasury Shares;
  - (v) In the cases provided for in item (ii), the sum of the amounts recorded in each account title prescribed by the applicable Ordinance of the Ministry of Justice as the amount of losses during the period under item (ii) of Article 441(1); and
  - (vi) Other than those listed in the preceding three items, the sum of the amounts

recorded in each account title prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 462** (Liability related to Dividends of Surplus)

(1) In cases where a Stock Company carries out an act listed in any item of paragraph (1) of the preceding article in violation of the provisions of that paragraph, persons who received Monies, Etc. as a result of such act, as well as Executing Persons (meaning Executive Directors (or, for a Company with Committees, executive officers. The same shall apply hereinafter in this paragraph) and other persons prescribed by the applicable Ordinance of the Ministry of Justice as persons involved, in performing their duties, in the execution of the operations by such Executive Directors. The same shall apply hereinafter in this Section) who performed duties regarding such act and, in cases where such act is any of the acts listed below, the persons provided for in each such item shall be jointly and severally liable to such Stock Company for payment of monies in an amount equivalent to the book value of the Monies, Etc. received by the persons who received such Monies, Etc.:

(i) The acts listed in item (ii), paragraph (1) of the preceding article: The following persons:

(a) In cases where a resolution relating to a decision pursuant to the provisions of Article 156(1) is passed by a shareholders meeting (limited to cases where the total amount of the Monies, Etc. under item (ii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Shareholders Meeting (meaning persons prescribed by the applicable Ordinance of the Ministry of Justice as directors who submitted proposals to such shareholders meeting. The same shall apply hereinafter in this paragraph) relating to such shareholders meeting;

(b) In cases where a resolution relating to a decision pursuant to the provisions of Article 156(1) is passed by a board of directors meeting (limited to cases where the total amount of the Monies, Etc. under item (ii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Board of Directors Meeting (meaning persons prescribed by the applicable Ordinance of the Ministry of Justice as directors who submitted proposals to such board of directors meeting (or, for a Company with Committees, directors or executive officers). The same shall apply hereinafter in this paragraph) relating to such board of directors meeting;

(ii) The acts listed in item (iii), paragraph (1) of the preceding article: The

following persons:

- (a) In cases where a resolution relating to a decision pursuant to the provisions of Article 157(1) is passed by a shareholders meeting (limited to cases where the total amount under item (iii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Shareholders Meeting relating to such shareholders meeting;
- (b) In cases where a resolution relating to a decision pursuant to the provisions of Article 157(1) is passed by a board of directors meeting (limited to cases where the total amount under item (iii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Board of Directors Meeting relating to such board of directors meeting;
- (iii) The acts listed in item (iv), paragraph (1) of the preceding article: the Proposing Directors at Shareholders Meeting relating to the shareholders meeting under Article 171(1) (limited to such shareholders meeting in cases where the total amount of Consideration for Acquisition under item (i) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution);
- (iv) The acts listed in item (vi), paragraph (1) of the preceding article: The following persons:
  - (a) In cases where a resolution relating to a decision pursuant to the provisions of the second sentence of Article 197(3) is passed by a shareholders meeting (limited to cases where the total amount under item (ii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Shareholders Meeting relating to such shareholders meeting;
  - (b) In cases where a resolution relating to a decision pursuant to the provisions of the second sentence of Article 197(3) is passed by a board of directors meeting (limited to cases where the total amount under item (ii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Board of Directors Meeting relating to such board of directors meeting;
- (v) The acts listed in item (vii), paragraph (1) of the preceding article: The following persons:
  - (a) In cases where a resolution relating to a decision pursuant to the provisions of the second sentence of Article 234(4) is passed by a shareholders meeting (limited to cases where the total amount under item (ii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of

such resolution), the Proposing Directors at Shareholders Meeting relating to such shareholders meeting;

(b) In cases where a resolution relating to a decision pursuant to the provisions of the second sentence of Article 234(4) is passed by a board of directors meeting (limited to cases where the total amount under item (ii) of that paragraph decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Board of Directors Meeting relating to such board of directors meeting;

(vi) The acts listed in item (viii), paragraph (1) of the preceding article: The following persons:

(a) In cases where a resolution relating to a decision pursuant to the provisions of Article 454(1) is passed by a shareholders meeting (limited to cases where the book value of the Dividend Property decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Shareholders Meeting relating to such shareholders meeting;

(b) In cases where a resolution relating to a decision pursuant to the provisions of Article 454(1) is passed by a board of directors meeting (limited to cases where the book value of the Dividend Property decided by such resolution exceeds the Distributable Amount as at the day of such resolution), the Proposing Directors at Board of Directors Meeting relating to such board of directors meeting.

(2) Notwithstanding the provisions of the preceding paragraph, Executing Persons and the persons provided for in each item of that paragraph shall not be liable under such paragraph in cases where such persons prove that they did not fail to exercise due care with respect to the performance of their duties.

(3) An exemption from the obligations assumed by Executing Persons and the persons provided for in each item of paragraph (1) pursuant to the provisions of that paragraph may not be given; provided, however, that this shall not apply in cases where all shareholders consent to the exemption from such obligations to the extent of the Distributable Amount as at the time of the act listed in each item of paragraph (1) of the preceding article.

**Article 463** (Restrictions on Remedy Over against Shareholders)

(1) In the cases provided for in paragraph (1) of the preceding article, shareholders without knowledge with respect to the fact that the total book value of the Monies, Etc. delivered to shareholders as a result of the acts listed in each item of Article 461(1) exceeds the Distributable Amount as at the day when such act takes effect shall not be obligated to respond to the remedy over that the Executing Persons who made the payment of monies under paragraph (1) of the preceding article or

the persons provided for in each item of that paragraph have against such shareholders, with respect to the Monies, Etc. which such shareholders received.

- (2) In the cases provided for in paragraph (1) of the preceding article, creditors of a Stock Company may have the shareholders who are liable pursuant to the provisions of that paragraph pay monies equivalent to the book value of the Monies, Etc. they have received (or, in cases where such value exceeds the amount that the Stock Company owes to such creditors, such amount).

**Article 464** (Liability where Shares are Acquired in Response to Demand for Purchase)

- (1) In cases where a Stock Company acquires shares in response to the demands pursuant to the provisions of Article 116(1), if the amount of the monies paid to the shareholders who made such demands exceeds the Distributable Amount as at the day when such payment is made, the Executing Persons who performed duties in relation to the acquisition of such shares shall be jointly and severally liable to the Stock Company for payment of such excess amount; provided, however, that this shall not apply in cases where such persons prove that they did not fail to exercise due care with respect to the performance of their duties.
- (2) Exemption from the obligations under the preceding paragraph may not be given without the consent of all shareholders.

**Article 465** (Liability in Cases of Deficit)

- (1) In cases where a Stock Company carries out the acts listed in any of the following items, if the sum of the amounts listed in item (iii), (iv) and (vi) of Article 461(2) when approval under Article 438(2) (or, in cases provided for in the first sentence of Article 439, approval under Article 436(3)) is obtained with respect to the Financial Statements for the business year that contains the day on which such act is carried out (or, if the business year immediately preceding such business year is not the Most Recent Business Year, the business year immediately preceding such business year) exceeds the amount listed in item (i) of that paragraph, the Executing Persons who performed duties in relation to the acts listed in each such item shall be jointly and severally liable to such Stock Company for payment of such excess amount (or, in cases where such excess amount exceeds the amount listed in each such item, the amount listed in each such item).; provided, however, that this shall not apply in cases where such Executing Persons prove that they did not fail to exercise due care with respect to the performance of their duties:
  - (i) The purchase of shares of such Stock Company in response to a demand under item (i) (c) or (ii) (c) of Article 138: The total book value of the Monies, Etc.

- delivered to shareholders as a result of the purchase of such shares;
- (ii) The acquisition of shares of such Stock Company based on a decision pursuant to the provisions of Article 156(1) (limited to acquisitions of shares by such Stock Company in cases provided for in Article 163 or Article 165(1)): The total book value of the Monies, Etc. delivered to shareholders as a result of the acquisition of such shares;
  - (iii) The acquisition of shares of such Stock Company based on a decision pursuant to the provisions of Article 157(1): The total book value of the Monies, Etc. delivered to shareholders as a result of the acquisition of such shares;
  - (iv) The acquisition of shares of such Stock Company pursuant to the provisions of Article 167(1): The total book value of the Monies, Etc. delivered to shareholders as a result of the acquisition of such shares;
  - (v) The acquisition of shares of such Stock Company pursuant to the provisions of Article 170(1): The total book value of the Monies, Etc. delivered to shareholders as a result of the acquisition of such shares;
  - (vi) The acquisition of shares of such Stock Company pursuant to the provisions of Article 173(1): The total book value of the Monies, Etc. delivered to shareholders as a result of the acquisition of such shares;
  - (vii) The purchase of shares of such Stock Company based on a demand pursuant to the provisions of Article 176(1): The total book value of the Monies, Etc.
  - (viii) The purchase of shares of such Stock Company pursuant to the provisions of Article 197(3): The total book value of the Monies, Etc. delivered to shareholders as a result of the purchase of such shares;
  - (ix) The purchase of shares of such Stock Company pursuant to the provisions of Article 234(4): The total book value of the Monies, Etc. delivered to the persons provided for in each item of paragraph (1) of that article as a result of the purchase of such shares;
    - (a) Article 234(4): The persons listed in each item of Article 234(1)
    - (b) Article 234(4) applied *mutatis mutandis* pursuant to Article 235(2): The shareholders
  - (x) Distribution of dividends of surplus (excluding those listed in Sub-item (a) through (c) below): The sum of the amounts listed in Sub-item (a) through (c) in item (vi) of Article 446 with respect to such distribution of dividend of surplus;
    - (a) Distribution of dividends of surplus in cases where the matters listed in each item of Article 454(1) are decided at an annual shareholders meeting (or, in cases provided for in the first sentence of Article 439, an annual shareholders meeting or a board of directors meeting under Article 436(3));
    - (b) Distribution of dividends of surplus in cases where the matters listed in each

- item of Article 454(1) are decided at a shareholders meeting for the purpose of deciding the matters listed in each item of Article 447(1) (limited to the cases where the amount under item (i) of that paragraph (or, if there are monies to be paid to shareholders of Disqualified Shares pursuant to the provisions of Article 456, the aggregate amount thereof) does not exceed the amount under item (i) of Article 447(1) and there is no provision with respect to the matters listed in item (ii) of that paragraph);
- (c) Distribution of dividends of surplus in cases where the matters listed in each item of Article 454(1) are decided at a shareholders meeting for the purpose of deciding the matters listed in each item of Article 448(1) (limited to the cases where the amount under item (i) of that paragraph (or, if there are monies to be paid to shareholders of Disqualified Shares pursuant to the provisions of Article 456, the aggregate amount thereof) does not exceed the amount under item (i) of Article 448(1) and there is no provision with respect to the matters listed in item (ii) of that paragraph);
- (2) Exemption from the obligations under the preceding paragraph may not be given without the consent of all shareholders.

## **Chapter VI Changes in Articles of Incorporation**

### **Article 466**

A Stock Company may change the articles of incorporation by the resolution of a shareholders meeting after its incorporation.

## **Chapter VII Assignment of Business**

### **Article 467 (Approvals of Assignment of Business)**

- (1) In cases where a Stock Company intends to commit any of the following acts, it must obtain the approval of the contracts relating to such acts by the resolution of the shareholders meeting no later than the day immediately preceding the day when such act takes effect (hereinafter in this Chapter referred to as "Effective Day"):
- (i) The assignment of the entire business;
- (ii) The assignment of significant part of the business (excluding the assignment in which the book value of the assets to be assigned to others by such assignment does not exceed one fifth (1/5) (or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) of the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the total assets of such Stock Company);

- (iii) The acceptance of assignment of entire business of another Company (hereinafter in this article and the next article including juridical persons including Foreign Corporations and other juridical persons);
  - (iv) The entering into, changing or termination of contracts for the lease of the entire business, contracts for the entrustment of the management of the entire business, contracts for sharing with others the entirety of profit and loss of business and other contracts equivalent to the above;
  - (v) The acquisition at any time within two years after the incorporation of such Stock Company (hereinafter in this item limited to the Stock Company that was incorporated by the method listed in each item of paragraph (1) of Article 25) of assets of such Stock Company that existed prior to such incorporation and continues to be used for its business; provided, however, that the cases where the proportion of the amount listed in Sub-item (a) to the amount listed in Sub-item (b) does not exceed one fifth (1/5) (or, in cases where any lower proportion is provided for in the articles of incorporation, such proportion) shall be excluded:
    - (a) The total book value of the assets that are issued as the consideration for such assets;
    - (b) The amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the net assets of such Stock Company.
- (2) In cases where the act listed in item (iii) of the preceding paragraph is committed, if the assets assigned to the Stock Company which commits such act include shares of such Stock Company, directors must explain the matters regarding such shares at a shareholders meeting under that paragraph.

**Article 468** (Cases where Approval of Assignment of Business is not Required)

- (1) The provisions of the preceding article shall not apply in cases where other party to the contracts relating to the acts listed in items (i) through (iv) of paragraph (1) of that article (hereinafter in this Chapter referred to as "Assignment of Business") is the Special Controlling Company (hereinafter, in cases where nine tenths (9/10) (or, in cases where any proportion higher than that is provided for in the articles of incorporation, such proportion) or more of the voting rights of all shareholders of a Stock Company are held by other Company, and by Stock Companies all of the issued shares in which are held by such other Company and other juridical persons prescribed by the applicable Ordinance of the Ministry of Justice as entities equivalent to the above, referring to such other Company) of the Stock Company that effects such Assignment of Business.
- (2) The provisions of the preceding article shall not apply if, in cases where the act listed in item (iii) of paragraph (1) of that article is carried out, the proportion of the amount listed in item (i) to the amount listed in item (ii) does not exceed one

fifth (1/5) (or, in cases where any lower proportion is provided for in the articles of incorporation, such proportion):

- (i) The total book value of the assets that are issued as the consideration for all business of such other Company;
  - (ii) The amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the amount of the net assets of such Stock Company.
- (3) In the cases provided for in the preceding paragraph, if shareholders that hold the shares (limited to those that entitle the shareholders to exercise voting rights at a shareholders meeting under paragraph (1) of the preceding article) in the number prescribed by the applicable Ordinance of the Ministry of Justice notify the Stock Company that carries out the act listed in item (iii), paragraph (1) of the preceding article to the effect that such shareholders dissent from such act, within two weeks from the day of the notice under the provisions of paragraph (3) of the following article or the public notice under paragraph (4) of that article, such Stock Company must obtain the approval of the contract relating to such act by resolution of a shareholders meeting no later than the day immediately preceding the Effective Day.

**Article 469** (Dissenting Shareholders Demand for Purchase of Shares)

- (1) In cases where Assignment of Business is to be effected, dissenting shareholders may demand that the Stock Company effecting the Assignment of Business purchase the shares held by such shareholders at a fair price; provided, however, that this shall not apply if, in cases where the act listed in item (i), paragraph (1) of Article 467 is carried out, the resolution of a shareholders' meeting under item (iii) of Article 471 is passed simultaneously with the resolution of a shareholders' meeting under that paragraph.
- (2) The dissenting shareholders provided for in the preceding paragraph means the shareholders provided for in each of the following items in the cases listed in the same items:
  - (i) In cases where a resolution of a shareholders meeting (including a Class Meeting) is required to effect the Assignment of Business: The following shareholders:
    - (a) Shareholders who gave notice to such Stock Company to the effect that they dissented from such Assignment of Business prior to such shareholders meeting and who dissented from such Assignment of Business at such shareholders meeting (limited to those who can exercise voting rights at such shareholders meetings);
    - (b) Shareholders who cannot exercise voting rights at such shareholders

meetings.

- (ii) In cases other than those prescribed in the preceding item: All shareholders.
- (3) A Stock Company that intends to effect the Assignment of Business must give notice to its shareholders to the effect that it intends to effect the Assignment of Business (or, in the cases provided for in paragraph (2) of Article 467, to the effect that the Stock Company will carry out the act listed in item (iii), paragraph (1) of that article and of the matters regarding shares under paragraph (2) of that article), no later than twenty days prior to the Effective Day.
- (4) A public notice may be substituted for the notice pursuant to the provisions of the preceding paragraph in the following cases:
  - (i) In cases where the Stock Company which effects the Assignment of Business is a Public Company;
  - (ii) In cases where the Stock Company which effects the Assignment of Business receives the approval of the contract relating to the Assignment of Business by the resolution of a shareholders meeting under paragraph (1) of Article 467.
- (5) Demands under the provisions of paragraph (1) (hereinafter in this Chapter referred to as "Share Purchase Demand") must be made after the day twenty days prior to the effective day but no later than the day immediately preceding the Effective Day, by disclosing the number of shares relating to such Share Purchase Demand (or, for a Company with Classes of Shares, the classes of the shares and the number of shares for each class).
- (6) Shareholders who made the Share Purchase Demand may withdraw their Share Purchase Demand only in cases where such shareholders obtain the approval of the Stock Company that effects the Assignment of Business.
- (7) If the Assignment of Business is suspended, the Share Purchase Demand shall become ineffective.

**Article 470** (Decision on Share Price)

- (1) In cases where a Share Purchase Demand is made, if an agreement deciding the price of shares is reached between the shareholder and the Stock Company that effects the Assignment of Business, such Stock Company must make the payment within sixty days from the Effective Day.
- (2) If no agreement deciding the price of shares is reached within thirty days from the Effective Day, the shareholders or the Stock Company under the preceding paragraph may petition the court for a determination of the price within thirty days after the expiration of that period.
- (3) Notwithstanding the provisions of paragraph (6) of the preceding article, in the cases provided for in the preceding paragraph, if the petition under that paragraph is not made within sixty days after the Effective Day, the shareholders may

withdraw their Share Purchase Demand at any time after the expiration of such period.

- (4) Stock Companies under paragraph (1) must also pay interest on the price determined by the court which shall be calculated at the rate of 6% per annum from and including the day of the expiration of the period referred to in that paragraph.
- (5) The purchase relating to the Share Purchase Demand shall become effective as at payment of the price for such shares.
- (6) If a Company issuing share certificates has received a Share Purchase Demand with respect to shares for which share certificates are issued, the Company must pay the price of the shares relating to such Share Purchase Demand in exchange for the share certificates.

## **Chapter VIII Dissolution**

### **Article 471 (Grounds for Dissolution)**

A Stock Company shall dissolve on the grounds listed below:

- (i) The expiration of the duration provided for in the articles of incorporation;
- (ii) The grounds for dissolution provided for in the articles of incorporation;
- (iii) A resolution of a shareholders meeting;
- (iv) A merger (limited to cases where such Stock Company is liquidated as a result of the merger);
- (v) A ruling to commence bankruptcy procedures; or
- (vi) Judgment that orders the dissolution pursuant to the provisions of paragraph (1) of Article 824 or paragraph (1) of Article 833.

### **Article 472 (Deemed Dissolution of Dormant Companies)**

- (1) In cases where the Minister of Justice gives a public notice to a dormant Company (hereinafter in this article referring to a Stock Company for which twelve years have elapsed from the day when a registration regarding such Stock Company was last effected) in Official Gazette to the effect that the dormant Company should submit a notice to the effect that it has not abolished its business pursuant to the applicable Ordinance of the Ministry of Justice to the registry that has jurisdiction over the area where dormant Company's head office is located within two months, if that dormant Company fails to submit that notice, the dormant Company shall be deemed to have dissolved upon expiration of that two month period; provided, however, that this shall not apply if any registration regarding such dormant Company is effected during such period.
- (2) If the public notice has been given under the provisions of the preceding

paragraph, the registry must issue a notice to such effect to dormant Companies.

**Article 473** (Continuation of Companies)

In cases where a Stock Company dissolves on the grounds listed in item (i) through item (iii) of Article 471 (including the cases where Stock Companies are deemed to have dissolved under the provisions of paragraph (1) of the preceding article), the Stock Company may continue in existence by resolution of a shareholders meeting until the completion of the liquidation under the provisions of the following Chapter (in cases where the Stock Company is deemed to have dissolved pursuant to the provisions of that paragraph, limited to the completion within three years from the time of the deemed dissolution).

**Article 474** (Restrictions on Mergers and Other Transactions of Dissolved Stock Companies)

In cases where a Stock Company has dissolved, such Stock Company may not carry out the following acts:

- (i) Mergers (limited to the cases where such Stock Company survives the merger);
- (ii) Succession by Absorption-type Company Split to some or all of the rights and obligations held by another Company with respect to such Company's business.

**Chapter IX Liquidation**

**Section 1 General Provisions**

**Subsection 1 Commencement of Liquidation**

**Article 475** (Causes of Commencement of Liquidation)

A Stock Company must go into liquidation in the cases listed below, subject to the provisions of this Chapter:

- (i) In cases where the Stock Company has dissolved (excluding the cases where Stock Companies have dissolved on the grounds listed in item (iv) of Article 471 and cases where it dissolved as a result of the ruling to commence bankruptcy procedures and such bankruptcy procedures have not ended);
- (ii) In cases where a judgment allowing a claim seeking invalidation of the incorporation of a Stock Company has become final and binding; or
- (iii) In cases where a judgment allowing a claim seeking invalidation of the Share Transfer has become final and binding.

**Article 476** (Capacity of Liquidating Stock Companies)

Stock Companies that go into liquidation under the provisions of the preceding article (hereinafter referred to as "Liquidating Stock Companies") shall be deemed to remain in existence until the liquidation is completed, to the extent of the purpose of the liquidation.

## **Subsection 2 Structures for Liquidating Stock Companies**

### **Division 1 Establishment of Structures Other Than Shareholders Meetings**

#### **Article 477**

- (1) A Liquidating Stock Company must have one or more liquidators.
- (2) A Liquidating Stock Company may have a board of liquidators, a Company Auditor, a board of Company Auditors or a board of Company Auditors as prescribed by the articles of incorporation.
- (3) A Liquidating Stock Company the articles of incorporation of which provide that a board of Company Auditors shall be established must establish a board of liquidators.
- (4) A Liquidating Stock Company that was a Public Company or a Large Company when it fell under a case listed in each item of Article 475 must establish a board of Company Auditors.
- (5) At a Liquidating Stock Company that was a Company with Committees when it fell under a case listed in each item of Article 475 and to which the provisions of the preceding paragraph apply, an Audit Committee Member shall be the Company Auditor.
- (6) The provisions of Section 2 of Chapter IV shall not apply to Liquidating Stock Companies.

### **Division 2 Assumption of Office and Dismissal of Liquidators and Resignation of Company Auditors**

#### **Article 478 (Assumption of Office of Liquidators)**

- (1) The following persons shall become liquidators of a Liquidating Stock Company:
  - (i) A director (excluding cases where persons listed in the following item or in item (iii) exist);
  - (ii) A person prescribed by the articles of incorporation;
  - (iii) A person who is appointed by resolution of a shareholders meeting.
- (2) In the absence of a liquidator under the provisions of the preceding paragraph, the court shall appoint the liquidator in response to the petition by the interested

parties.

- (3) Notwithstanding the provisions of the preceding two paragraphs, with respect to a Liquidating Stock Company that has dissolved on the grounds listed in item (vi) of Article 471, the court shall appoint the liquidator in response to a petition by the interested parties or the Minister of Justice or ex officio.
- (4) Notwithstanding the provisions of paragraphs (1) and (2), with respect to a Liquidating Stock Company that has fallen under the cases listed in item (ii) or item (iii) of Article 475, the court shall appoint the liquidator in response to a petition by the interested parties.
- (5) For the purpose of the application of the provisions of item (i) of paragraph (1) and paragraph (3) of Article 335 to a Liquidating Stock Company that was a Company with Committees when it fell under a case listed in each item of Article 475, the word "director" in paragraph (1) shall be read as "director who is not an Audit Committee Member" and the words "Outside Company Auditors" in paragraph (3) of Article 335 shall be read as "who have at no time in the past served as executive directors (excluding Outside Company Auditors), Accounting Advisors (or, in cases where the Accounting Advisors are juridical persons, partners in the same who are in charge of its advisory affairs) or executive officers or managers or other employees of such Company with Board of Company Auditors or any of its Subsidiaries."
- (6) The provisions of Article 330 and paragraph (1) of Article 331 shall apply mutatis mutandis to liquidators, and the provisions of paragraph (4) of that article shall apply mutatis mutandis to Companies with Board of Liquidators (hereinafter referring to Liquidating Stock Companies that establish a board of liquidators or Liquidating Stock Companies that must establish a board of liquidators under the provisions of this Act), respectively. In such cases, the word "directors" shall be as "liquidators."

**Article 479** (Dismissal of Liquidators)

- (1) Liquidators (excluding those appointed by the court pursuant to the provisions of paragraphs (2) through (4) of the preceding article) may be dismissed at any time by resolution of a shareholders meeting.
- (2) If there are substantial grounds, the court may dismiss a liquidator in response to the petition by the following shareholders:
  - (i) Shareholders (excluding the following shareholders) who have held, for the consecutive period of past six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period), not less than three hundredths (3/100) of the voting rights of all shareholders (excluding the following shareholders) (or, in cases where a lower proportion is provided for in

- the articles of incorporation, such proportion):
- (a) Shareholders who cannot exercise voting rights on proposals to the effect that liquidators be dismissed; or
  - (b) Shareholders that are the liquidators related to such petition.
- (ii) Shareholders (excluding the following shareholders) who have held, for the consecutive period of six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period), not less than three hundredths (3/100) of the issued shares (excluding the shares held by the following shareholders) (or, in cases where a lower proportion is provided for in the articles of incorporation, such proportion):
- (a) A shareholder who is the relevant Liquidating Stock Company; or
  - (b) Shareholders that are the liquidators relating to such petition.
- (3) For the purpose of the application of the provisions of the items of the preceding paragraph to Liquidating Stock Companies that are not Public Companies, the words "have held, for the consecutive period of past six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period)," in those provisions shall be read as "hold."
- (4) The provisions of paragraphs (1) through (3) of Article 346 shall apply mutatis mutandis to liquidators.

**Article 480 (Resignation of Company Auditors)**

- (1) In cases where Liquidating Stock Companies effect any of the following changes in the articles of incorporation, Company Auditors of such Liquidating Stock Companies shall resign when such change in the articles of incorporation takes effect:
- (i) Any change in the articles of incorporation to abolish the provisions of the articles of incorporation to the effect that Company Auditors shall be established; or
  - (ii) Any change in the articles of incorporation to abolish the provisions of the articles of incorporation to the effect that the scope of the audit by the Company Auditors shall be limited to accounting audit.
- (2) The provisions of 336 shall not apply to Company Auditors of Liquidating Stock Companies.

**Division 3 Liquidators' Duties**

**Article 481 (Liquidators' Duties)**

Liquidators shall perform the following duties:

- (i) The conclusion of current business;

- (ii) The collection of debts and the performance obligations; and
- (iii) The delivery of the residual assets.

**Article 482** (Execution of Business)

- (1) A liquidator shall execute the business of the Liquidating Stock Companies (hereinafter in this article excluding Companies with Board of Liquidators).
- (2) In cases where there are two or more liquidators, the business of the Liquidating Stock Company shall be determined by a majority of the liquidators, unless otherwise provided for in the articles of incorporation.
- (3) In the cases provided for in the preceding paragraph, the liquidators cannot delegate the determination on the following matters to individual liquidators:
  - (i) The appointment or dismissal of a manager;
  - (ii) The establishment, relocation and abolition of branch offices;
  - (iii) The matters listed in each item of paragraph (1) of Article 298 (including the case where such items are applied mutatis mutandis under Article 325);
  - (iv) The development of the system necessary to ensure that the execution of the duties by the liquidators comply with the laws and regulations and the articles of incorporation, and other systems prescribed by the applicable Ordinance of the Ministry of Justice as the systems that are necessary to ensure the proper operations of a Liquidating Stock Company; or
- (4) The provisions of Articles 353 through 357, Article 360 and Article 361 shall apply mutatis mutandis to liquidators (as to the provisions of these articles, excluding liquidators appointed by the court under the provisions of paragraphs (2) through (4) of Article 478). In such cases, the words "paragraph (4) of Article 349" in Article 353 shall be read as "paragraph (4) of Article 349 applied mutatis mutandis under paragraph (6) of Article 483," the words "representative director" in Article 354 shall be read as "representative liquidator (referring to the representative liquidator provided for in paragraph (1) of Article 483)," and the words "a Company with Company Auditors or a Companies with Committees" in paragraph (3) of Article 360 shall be read as "a Company with Company Auditors."

**Article 483** (Representatives of Liquidating Stock Companies)

- (1) A liquidator or liquidators shall represent the Liquidating Stock Company; provided, however, that this shall not apply in cases where representative liquidators (hereinafter referring to liquidators who represent the Liquidating Stock Company) or other persons who represent the Liquidating Stock Company are otherwise prescribed.
- (2) In cases where there are two or more liquidators referred to in the main clause

of the preceding paragraph, each liquidator shall represent the Liquidating Stock Company individually.

- (3) A Liquidating Stock Company (excluding a Company with Board of Liquidators) may appoint representative liquidators from among the liquidators under the articles of incorporation, or through the appointment by the liquidators (hereinafter in this paragraph excluding those that are appointed by the court pursuant to the provisions of paragraphs (2) through (4) of Article 478) from among themselves pursuant to the applicable provisions of the articles of incorporation, or by the resolution of the shareholders meeting.
- (4) In cases where directors become liquidators pursuant to the provisions of item (i), paragraph (1) of Article 478, if representative directors are already specified, such representative directors shall act as the representative liquidators.
- (5) In cases where the court appoints liquidators pursuant to the provisions of paragraphs (2) through (4) of Article 478, it may prescribe representative liquidators from among those liquidators.
- (6) The provisions of paragraphs (4) and (5) of Article 349 and Article 351 shall apply mutatis mutandis to representative liquidators, and the provisions of Article 352 shall apply mutatis mutandis to persons who are appointed by the provisional disposition order provided for in Article 56 of the Civil Business Preservation Act to perform the duties of liquidators or representative liquidators on behalf of them, respectively.

**Article 484** (Commencement of Bankruptcy Procedures for Liquidating Stock Companies)

- (1) In cases where it has become clear that the assets of a Liquidating Stock Company are not sufficient to fully discharge its debts, liquidators must immediately file a petition for the commencement of bankruptcy procedures.
- (2) In cases where a Liquidating Stock Company has become subject to the ruling for the commencement of bankruptcy procedures, if liquidators have transferred their administration to the trustee in bankruptcy, they shall have completed their duties.
- (3) In the cases provided for in the preceding paragraph, if the Liquidating Stock Company has already made payments to creditors or distributions to shareholders, the trustee in bankruptcy may retrieve the same.

**Article 485** (Remuneration for Liquidators Appointed by the Court)

In cases where the court has appointed the liquidator under the provisions of paragraphs (2) through (4) of Article 478, the court may prescribe the amount of the remuneration that the Liquidating Stock Companies shall pay to such liquidator.

**Article 486** (Liquidators' Liability to Liquidating Stock Companies for Damages)

- (1) If a liquidator fails to discharge his/her duties, he/she shall be liable to compensate such Liquidating Stock Companies for any losses arising as a result.
- (2) If a liquidator engages in any transaction listed in item (i), paragraph (1) of Article 356 applied mutatis mutandis under paragraph (4) of Article 482 in violation of the provisions of the paragraph (1) of Article 356, the amount of the profit obtained by the liquidator or a third party as a result of such transaction shall be presumed to be amount of the losses under the preceding paragraph.
- (3) If a Liquidating Stock Company suffers loss as a result of the transaction provided for in item (ii) or (iii) of paragraph (1) of Article 356 applied mutatis mutandis under paragraph (4) of Article 482, the following liquidators shall be presumed to have failed to discharge their duties:
  - (i) Liquidators provided for in paragraph (1) of Article 356 applied mutatis mutandis under paragraph (4) of Article 482;
  - (ii) Liquidators who decided that the Liquidating Stock Companies would undertake such transaction; or
  - (iii) Liquidators who agreed to the board of liquidators' resolution to approve such transaction.
- (4) The provisions of Article 424 and paragraph (1) of Article 428 shall apply mutatis mutandis to liquidators' liability under paragraph (1). In such cases, the words "item (ii), paragraph (1) of Article 356 (including the cases where such item is applied mutatis mutandis under paragraph (2) of Article 419)" in paragraph (1) of Article 428 shall be read as "item (ii), paragraph (1) of Article 356 applied mutatis mutandis under paragraph (4) of Article 482."

**Article 487** (Liquidators' Liability to Third Parties)

- (1) If liquidators had knowledge or were grossly negligent in discharging their duties, such liquidators shall be liable to compensate losses arising in a third party as a result thereof.
- (2) The provisions of the preceding paragraph shall also apply if the liquidators commit the acts provided for in the following items; provided, however, that this shall not apply if such liquidators have proven that they did not fail to exercise due care with respect to the performance of their duties:
  - (i) The giving of false notice with respect to important matters, the notice of which must be given when soliciting persons to subscribe for shares, Share Options, Bonds or Bonds with Share Options or making of false statement or records with respect to materials used for the explanation regarding the business of such Liquidating Stock Company and other matters for the purpose of such

solicitation;

- (ii) The making of false statements or records with respect to important matters to be stated or recorded in the property inventory of provided for in paragraph (1) of Article 492 as well as the balance sheet and administrative report in paragraph (1) of Article 494 and annexed detailed statements thereof.
- (iii) Registering a false registration; or
- (iv) Giving false public notice.

**Article 488** (Joint and Several Liabilities of and Company Auditors)

- (1) In cases where liquidators or Company Auditors are liable to compensate losses arising in the Liquidating Stock Companies or a third party, if other liquidators or Company Auditors are also liable, such persons shall be joint and several obligors.
- (2) In the cases provided for in the preceding paragraph, the provisions of Article 430 shall not apply.

**Division 4 Board of Liquidators**

**Article 489** (Authority of Board of Liquidators)

- (1) Board of liquidators shall be organized by all liquidators.
- (2) Board of liquidators shall perform the following duties:
  - (i) Deciding the execution of the business of the Company with Board of Liquidators;
  - (ii) Supervising the execution of the duties by liquidators; and
  - (iii) Appointing and removing representative liquidators.
- (3) Board of liquidators must appoint representative liquidators from among the liquidators; provided, however, that this shall not apply if there are other representative liquidators.
- (4) Board of liquidators may remove representative liquidators it appointed and persons who became representative liquidators pursuant to the provisions of paragraph (4) of Article 483.
- (5) If the court has prescribed representative liquidators under the provisions of paragraph (5) of Article 483, the board of liquidators cannot select or remove the representative liquidators.
- (6) Board of liquidators cannot delegate the decisions on the execution of important business such as the following matters to the liquidators:
  - (i) The disposal and acceptance of assignment of important assets;
  - (ii) The taking out of substantial loans;
  - (iii) The appointment and dismissal of managers or other important employees;
  - (iv) The establishment, change or closure of branch offices and other important

- structures;
- (v) The matters listed in item (i) of Article 676 and other matters prescribed by the applicable Ordinance of the Ministry of Justice as important matters regarding the solicitation of persons to subscribe for Bonds;
  - (vi) The development of systems necessary to ensure that the execution of the duties by the liquidators comply with the laws and regulations and the articles of incorporation, and other systems prescribed by the applicable Ordinance of the Ministry of Justice as the systems necessary to ensure the proper business of a Liquidating Stock Company; or
- (7) The following liquidators shall execute the business of the Company with Board of Liquidators:
- (i) A representative liquidator; and
  - (ii) A liquidator other than a representative liquidator who is appointed by the resolution of the board of liquidators as the liquidator who is to execute the business of a Company with Board of Liquidators.
- (8) The provisions of paragraph (2) of Article 363, Article 364 and Article 365 shall apply mutatis mutandis to a Company with Board of Liquidators. In such cases, in paragraph (2) of Article 363, the words "each item of the preceding paragraph" shall be read as "each item of paragraph (7) of Article 489," the words "director" shall be read as "liquidator," and the words "board of directors" shall be read as "board of liquidators"; in Article 364, the words "Article 353" shall be read as "Article 353 applied mutatis mutandis under paragraph (4) of Article 482," and the words "board of directors" shall be read as "board of liquidators"; in paragraph (1) of Article 365, words "Article 356" shall be read as "Article 356 applied mutatis mutandis under paragraph (4) of Article 482," and the words "board of directors" shall be read as "board of liquidators"; and in paragraph (2) of Article 365, the words "each item of paragraph (1) of Article 365" shall be read as "each item of paragraph (1) of Article 365 applied mutatis mutandis under paragraph (4) of Article 482," the word "director" shall be read as "liquidator," and the words "to the board of directors" shall be read as "to the board of liquidators."

**Article 490 (Operations of Board of Liquidators)**

- (1) A board of liquidators meeting shall be convened by each liquidator; provided, however, that, if the liquidator who convenes the board of liquidators meeting is prescribed by the articles of incorporation or the board of liquidators, such liquidator shall convene the meeting.
- (2) In the case provided for in the proviso to the preceding paragraph, liquidators other than the liquidator prescribed under the provision of the proviso to that paragraph (hereinafter in this paragraph referred to as "Convener") may request

the Convener that the Convener convene the board of liquidators meeting by indicating to the Convener the matters that are the purpose of the board of liquidators meeting.

- (3) In cases where the Convener fails to send, within five days from the day of the request under the provisions of preceding paragraph, any notice of convocation of a board of liquidators meeting that specifies a day falling within two weeks from the day of that request as the day of the board of liquidators meeting, the liquidators who made that request may convene the board of liquidators meeting.
- (4) The provisions of Article 367 and Article 368 shall apply mutatis mutandis to the convocation of the board of liquidators meeting at a Company with Board of Liquidators. In such cases, in paragraph (1) of Article 367, the words "a Company with Company Auditors and Companies with Committees" shall be read as "a Companies with Committees," and the words "any director" shall be read as "any liquidator"; in paragraph (2) of Article 367, the words "to the directors (or to the Convener in the case provided for in the proviso to paragraph (1) of the preceding article)" shall be read as "to the liquidators (or to the Convener provided for in paragraph (2) of Article 490 in the case provided for in the proviso to paragraph (1) of that article)"; in paragraph (3) and paragraph (4) of Article 367, the words "paragraph (3) of the preceding article" shall be read as "paragraph (3) of Article 490"; in paragraph (1) of Article 368, the words "each director" shall be read as "each liquidator"; and in paragraph (2) of Article 368, the words "directors (or" shall be read as "liquidators (or," and "directors and" shall be read as "liquidators and."
- (5) The provisions of Article 369 through Article 371 shall apply mutatis mutandis to Companies with Board of Liquidators. In such cases, in paragraph (1) of Article 369, the words "of the directors" shall be read as "of the liquidators"; in paragraph (2) of Article 369, the words "Directors" shall be read as "Liquidators"; in paragraph (3) of Article 369, the words "directors and" shall be read as "liquidators and"; in paragraph (5) of Article 369, the words "Directors who" shall be read as "Liquidators who"; in Article 370, the words "directors submit" shall be read as "liquidators submit" and the words "directors (" shall be read as "liquidators ("; in paragraph (3) of Article 371, the words "a Company with Company Auditors or Companies with Committees" shall be read as "a Company with Company Auditors"; and in paragraph (4) of Article 371, the words "officers or executive officers" shall be read as "liquidators and Company Auditors."
- (6) The provisions of paragraph (1) and paragraph (2) of Article 372 shall apply mutatis mutandis to the report to board of liquidators at a Company with Board of Liquidators. In such cases, in paragraph (1) of Article 372, the words "the directors, Accounting Advisors, Company Auditors or Accounting Auditor(s)" shall

be read as "liquidators or Company Auditors," "directors (" shall be read as "liquidators (" and "directors and" shall be read as "liquidators and"; and in paragraph (2) of Article 372, the words "paragraph (2) of Article 363" shall be read as "paragraph (2) of Article 363 applied mutatis mutandis under paragraph (8) of Article 489";

### **Division 5 Application of Provisions regarding Directors and Others**

#### **Article 491**

With respect to Liquidating Stock Companies, out of the provisions in Chapter V (excluding Article 155), Chapter III, Section 1 of Chapter IV, paragraph (2) of Article 335, paragraph (1) and paragraph (2) of Article 343, paragraph (3) of Article 345 applied mutatis mutandis under paragraph (4) of that article, Article 359, Section 7 and Section 8 of Chapter IV and Chapter VII, provisions regarding directors, representative directors, board of directors or Company with Board of Directors shall apply to liquidators, representative liquidators, board of liquidators or Company with Board of Liquidators as provisions regarding liquidators, representative liquidators, board of liquidators or Company with Board of Liquidators, respectively.

#### **Subsection 3 Property Inventories**

#### **Article 492 (Preparation of Inventory of Property)**

- (1) Liquidators (or, for Companies with Board of Liquidators, liquidators listed in each item of paragraph (7) of Article 489) must investigate the current status of the assets of the Liquidating Stock Companies and prepare, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, the inventory of property and the balance sheet as of the day when the Liquidating Stock Companies has fallen under any of the cases listed in each item of Article 475 (hereinafter in this article and following article referred to as "Inventory of Property"), without delay after assuming the office.
- (2) At a Company with Board of Liquidators, the Inventory of Property must be approved by the board of liquidators.
- (3) Liquidators must submit or provide the Inventory of Property (or, in cases where the provisions of the preceding paragraph apply, the Inventory of Property approved under that paragraph) to the shareholders meeting and obtain the approval of the same.
- (4) A Liquidating Stock Company must retain its Inventory of Property from the time of the preparation of such Inventory of Property until the registration

completion of the liquidation at the location of its head office.

**Article 493** (Order to Submit Inventory of Property)

The court may, in response to a petition or ex officio, order the parties to a lawsuit to submit the Inventory of Property, in whole or in part.

**Article 494** (Preparation and Retention of Balance Sheet)

- (1) A Liquidating Stock Company must prepare balance sheet and administrative report regarding each liquidation year (referring to each one year period starting on the day immediately following the day when the Liquidating Stock Companies has fallen under any of the cases listed in each item of Article 475 or the anniversary of that day of the subsequent years (or, in cases where such anniversary does not exist, the immediately preceding day)) as well as annexed detailed statements thereof as prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) Balance sheet and administration reports as well as annexed detailed statements thereof under the preceding paragraph may be prepared by using electromagnetic records.
- (3) A Liquidating Stock Company must retain its balance sheet under paragraph (1) and annexed detailed statements thereof from the time of the preparation of such balance sheet until the registration of the completion of the liquidation at the location of its head office.

**Article 495** (Audit of Balance Sheet)

- (1) Companies with Company Auditors (including Liquidating Stock Companies which have the provisions of the articles of incorporation to the effect that the scope of the audit shall be limited to accounting audit) must have the balance sheet and administration reports as well as annexed detailed statements thereof under paragraph (1) of the preceding article audited by Company Auditors pursuant to the applicable Ordinance of the Ministry of Justice.
- (2) Companies with Board of Liquidators must have the balance sheet and administration report as well as annexed detailed statements thereof under paragraph (1) of the preceding article (or, in cases where the provisions of the preceding paragraph apply, those which have been audited as provided for in the preceding paragraph) approved by the board of liquidators.

**Article 496** (Keeping and Inspection of Balance Sheet)

- (1) Liquidating Stock Companies must keep the balance sheet and administration report regarding each liquidating administrative year provided for in paragraph

- (1) of Article 494 as well as annexed detailed statements thereof (including, in cases where the provisions of paragraph (1) of the preceding article apply, audit reports, hereinafter in this article referred to as "Balance Sheet") at its head office from the day preceding the day of the annual shareholders meeting (or, in the cases provided for in paragraph (1) of Article 319, from the day when the proposal under that paragraph is submitted) until the registration of the completion of the liquidation at the location of its head office.
- (2) Shareholders and creditors may make the following request at any time during the business hours of the Liquidating Stock Company; provided, however, that the expense prescribed by such Liquidating Stock Company must be paid in order to make the request listed in item (ii) or item (iv):
- (i) If the Balance Sheet is prepared in writing, request to inspect such documents;
  - (ii) A request for the issuance of a transcript or extract of the documents referred to in the preceding item;
  - (iii) If the Balance Sheet are prepared by using electromagnetic records, requests to inspect anything that indicates the matters recorded in such electromagnetic records in a manner prescribed by the applicable Ordinance of the Ministry of Justice; or
  - (iv) Requests that the matters recorded in the electromagnetic records referred to in the preceding item be provided by an electromagnetic method prescribed by the Liquidating Stock Company, or requests for the issuance of any document that states such matters.
- (3) If it is necessary for a partner of the Parent Company of a Liquidating Stock Company to exercise such partner's rights, such partner may, with the permission of the court, make the requests listed in each item of the preceding paragraph with respect to the Balance Sheet of such Liquidating Stock Company; provided, however, that the expenses prescribed by such Liquidating Stock Company must be paid in order to make the requests listed in item (ii) or item (iv) of that paragraph.

**Article 497** (Provision of Balance Sheet to Annual Shareholders Meeting)

- (1) At Liquidating Stock Company listed in the following items, liquidators must submit or provide the Balance Sheet and administrative reports provided for in each such item to the annual shareholders meeting:
- (i) Companies with Company Auditors (excluding Companies with Board of Liquidators) provided for in paragraph (1) of Article 495: The Balance Sheets and administrative reports that have been audited under that paragraph;
  - (ii) Companies with Board of Liquidators: The Balance Sheets and administration reports that have been approved pursuant to paragraph (2) of Article 495; and

- (iii) Liquidating Stock Companies other than those listed in the preceding two items: The Balance Sheets and administration reports under paragraph (1) of Article 494.
- (2) Balance Sheets that have been submitted or provided pursuant to the provisions of the preceding paragraph must be approved by the annual shareholders meeting.
- (3) Directors must report the contents of the administrative reports submitted or provided pursuant to the provisions of paragraph (1) to the annual shareholders meeting.

**Article 498 (Order to Submit Balance Sheet)**

The court may, in response to a petition or ex officio, order the parties to a lawsuit to submit Balance Sheets under paragraph (1) of Article 194 and annexed detailed statements thereof, in whole or in part.

**Subsection 4 Performance of Obligations**

**Article 499 (Public Notices to Creditors)**

- (1) A Liquidating Stock Company must, without delay after having fallen under each item of Article 475, give public notice in the Official Gazette to the creditors of such Liquidating Stock Companies to the effect that creditors should state their claims during a certain period of time and must give such notices separately to each known creditor, if any; provided, however, that such period cannot be less than two months.
- (2) The public notice pursuant to the provisions of the preceding paragraph must contain a notation to the effect that such creditors shall be excluded from the liquidation unless they state their claims during such period of time.

**Article 500 (Restrictions on Performance of Obligations)**

- (1) A Liquidating Stock Company cannot perform its obligations during the period of time under paragraph (1) of the preceding article. In such cases, a Liquidating Stock Company cannot be exempted from the liability arising from its failure to perform.
- (2) Notwithstanding the provisions of the preceding paragraph, even during the period of time under paragraph (1) of the preceding article, a Liquidating Stock Company may, with the permission of the court, perform its obligations relating to claims of minor claims, claims secured by security interests over the assets of the Liquidating Stock Company, or other claims unlikely to be detrimental to other creditors even if performed. In such cases, if there are two or more liquidators, the petition for such permission must be made with the consent of all of the

liquidators.

**Article 501** (Performance of Obligations relating to Conditional Claims)

- (1) A Liquidating Stock Company may perform its obligations relating to conditional claims, claims of indeterminate duration or other claims of indeterminable amount. In such cases, a petition for the appointment of an appraiser must be filed to the court in order to have such claims evaluated.
- (2) In the cases provided for in the preceding paragraph, a Liquidating Stock Company must perform its obligations relating to the claims under that paragraph in accordance with the evaluations by the appraiser under that paragraph.
- (3) Any expense for the procedures for the appointment of the appraiser under paragraph (1) shall be borne by the Liquidating Stock Company. The same shall apply to the expense for the summonses and questions for the purpose of the appraiser's appraisal.

**Article 502** (Restrictions on Distribution of Residual Assets before Performance of Obligations)

A Liquidating Stock Company cannot distribute its property to its shareholders until after performance of the obligations of such Liquidating Stock Company; provided, however, that this shall not apply in cases where assets regarded as necessary for the performance of obligations relating to a claim that is the subject of dispute as to its existence or otherwise or as to its amount have been withheld.

**Article 503** (Exclusion from Liquidation)

- (1) Creditors of a Liquidating Stock Company (excluding known creditors) who fail to state their claims during the period under paragraph (1) of Article 499 shall be excluded from the liquidation.
- (2) Creditors who are excluded from the liquidation pursuant to the provisions of the preceding paragraph may demand the performance with respect to the residual assets that are not distributed.
- (3) In cases where residual assets of a Liquidating Stock Company have been distributed to some shareholders, the assets necessary for the distribution to shareholders other than such shareholders in the same proportion as that applied for the distribution received by such shareholders shall be deducted from the residual assets under the preceding paragraph.

**Subsection 5 Distribution of Residual Assets**

**Article 504** (Determination of Matters regarding Distribution of Residual Assets)

- (1) If a Liquidating Stock Company intends to distribute its residual assets, it must prescribe the following matters by decision of liquidators (or, for a Company with Board of Liquidators, by resolution of the board of liquidators):
  - (i) Kind of residual assets; and
  - (ii) Matters regarding the allotment of residual assets to shareholders.
- (2) In the cases provided for in the preceding paragraph, if two or more classes of shares with different features as to the distribution of residual assets are issued, the Liquidating Stock Company may prescribe the following matters as the matters listed in item (ii) of that paragraph in accordance with the features of such classes of shares:
  - (i) If there is any arrangement that no residual assets will be allotted to the shareholders of a certain class of shares, a statement to that effect and such class of shares;
  - (ii) In addition to the matter listed in the preceding item, if there is an arrangement that each class of shares shall be treated differently with respect to allotment of residual assets, a statement to that effect and the details of such different treatment.
- (3) The provisions regarding the matters listed in item (ii) of paragraph (1) must stipulate that the residual assets will be allotted in proportion to the number of the shares (or, in cases where there is a provision with respect to the matters listed in item (ii) of the preceding paragraph, the number of the shares of each class) held by the shareholders (excluding the relevant Liquidating Stock Company and shareholders of the class of shares referred to in item (i) of the preceding paragraph).

**Article 505** (Cases where Residual Assets Consist of Property Other Than Monies)

- (1) If residual assets consist of property other than monies, shareholders shall have the right to demand distribution of monies (hereinafter in this article referring to the rights to demand that the Liquidating Stock Company deliver monies in lieu of such residual assets). In such cases, the Liquidating Stock Company must prescribe the following matters by resolution of liquidators (or, for a Company with Board of Liquidators, by resolution of board of liquidators):
  - (i) The period during which rights to demand distribution of monies can be exercised; and
  - (ii) If there is any arrangement that no residual assets shall be allotted to shareholders who hold less than certain number of shares, a statement to that effect and that number.
- (2) In the cases provided for in the preceding paragraph, the Liquidating Stock Company must notify the shareholders of the matters listed in item (i) of that

paragraph no later than 20 days prior to the last day of the period referred to such item.

- (3) A Liquidating Stock Company must pay to shareholders who exercised rights to demand distribution of monies, in lieu of the residual assets allotted to such shareholders, monies equivalent to the value of such residual assets. In such cases, the amount provided for in each of the following items for the case categories listed in each such item shall be the value of such residual assets:
  - (i) In cases where such residual assets consist of property with a market price: The amount calculated in a manner prescribed by the applicable Ordinance of the Ministry of Justice as the market price of such residual assets;
  - (ii) In cases other than those listed in the preceding item: The amount determined by the court in response to the petition by the Liquidating Stock Company.

**Article 506** (Treatment in case Base Number of Shares is Provided)

In cases where the number in item (ii), paragraph (1) of the preceding article (hereinafter in this article referred to as "Minimum Number of Shares") is prescribed, a Liquidating Stock Company must pay to the shareholders who hold shares in a number less than the Minimum Number of Shares (hereinafter in this article referred to as "Below Minimum Shareholding") the monies equivalent to the amount which is obtained by multiplying the amount prescribed as the value of the residual assets allotted to the shareholders who hold shares in the Minimum Number of Shares in accordance with the applicable provisions of the second sentence of paragraph (3) of the preceding article by the ratio of the number shares in such Below Minimum Shareholding to the Minimum Number of Shares.

**Subsection 6 Conclusion of Liquidation**

**Article 507**

- (1) If the administration of a liquidation has concluded, the Liquidating Stock Company must prepare the settlement of accounts pursuant to the provisions of the applicable Ordinance of the Ministry of Justice without delay.
- (2) At a Company with Board of Liquidators, the settlement of accounts must be approved by the board of liquidators.
- (3) Liquidators must submit or provide the settlement of accounts (or, in cases where the provisions of the preceding paragraph apply, the settlement of accounts approved under that paragraph) to the shareholders meeting and obtain the approval of the same.
- (4) If the approval is given under the preceding paragraph, an exemption shall be deemed to have been given for the liquidators' liability for failure to perform their

duties; provided, however, that this shall not apply if there has been misconduct regarding the execution of the liquidators' duties.

### **Subsection 7 Retention of Accounting Materials**

#### **Article 508**

- (1) A Liquidator (or, for a Company with Board of Liquidators, the liquidators listed in each item of paragraph (7) of Article 489) must retain the books of the Liquidating Stock Company as well as any material data regarding the business and liquidation of the same (hereinafter in this article referred to as "Accounting Materials") for a period of ten years from the time of the registration of the completion of the liquidation at the location of head office of the Liquidating Stock Company.
- (2) The court may, in response to the petition by the interested parties, appoint a person to act on behalf of the liquidator in the preceding paragraph in retaining the Accounting Materials. In such cases, the provisions of that paragraph shall not apply.
- (3) The person appointed pursuant to the provisions of the preceding paragraph must retain the Accounting Materials for a period of ten years from the time of the registration of the completion of the liquidation at the location of head office of the Liquidating Stock Company.
- (4) Expenses regarding the procedures for the appointment under the provisions of paragraph (2) shall be borne by the Liquidating Stock Company.

### **Subsection 8 Exceptions to Application**

#### **Article 509**

- (1) The provisions listed below shall not apply to Liquidating Stock Companies:
  - (i) Article 155;
  - (ii) In Chapter V, Subsection 2 (excluding paragraph (4) of Article 435, paragraph (3) of Article 440, Article 442 and Article 443) and Subsection 3 of Section 2 as well as Section 3 through Section 5; and
  - (iii) In Chapter IV and Chapter V of Part V, portions relating to the procedures of Share Exchange and Share Transfer.
- (2) A Liquidating Stock Company may acquire the shares of such Liquidating Stock Company, limited to cases where acquisition is effected without consideration or in other cases prescribed by the applicable Ordinance of the Ministry of Justice.

### **Section 2 Special Liquidations**

## **Subsection 1 Commencement of Special Liquidations**

### **Article 510 (Cause of Commencement of Special Liquidation)**

If the court finds that the grounds listed below exist with respect to a Liquidating Stock Company, it shall order such Liquidating Stock Company to commence special liquidation in response to the filing under the provisions of Article 514:

- (i) The existence of circumstances prejudicial to the implementation of the liquidation; or
- (ii) The suspicion that the Liquidating Stock Company is insolvent (hereinafter in this article and in paragraph (2) of the following article referring to the status where the assets of the Liquidating Stock Company is not sufficient to fully discharge its debts).

### **Article 511 (Petition for Commencement of Special Liquidation)**

- (1) Creditors, liquidators, Company Auditors or shareholders may file a petition for the commencement of special liquidation.
- (2) If it is suspected that a Liquidating Stock Company is insolvent, liquidators must file a petition for the commencement of the special liquidation.

### **Article 512 (Order to Suspend Other Procedures)**

- (1) In cases where a petition is filed for the commencement of the special liquidation, if the court finds it necessary, it may, in response to the petition by the creditors, liquidators, Company Auditors or shareholders or ex officio, order that the following procedures be suspended until a decision is made on the filing of a petition for the commencement of the special liquidation; provided, however, that, with respect to the bankruptcy procedures listed in item (i), this shall be limited to cases where the ruling to commence bankruptcy procedures is not yet been handed down, and with respect to the procedures listed in item (ii), this shall be limited to cases where the creditors that petitioned for such procedures are not likely to suffer undue loss:
  - (i) Bankruptcy procedures for the Liquidating Stock Company; or
  - (ii) Procedures of compulsory execution, provisional attachment or provisional disposition (excluding those based on general liens and other claims that have general priority) that are already enforced to the assets of the Liquidating Stock Company.
- (2) The provisions of the preceding paragraph shall also apply if immediate appeal under paragraph (5) of Article 890 is filed against a ruling to dismiss the petition for the commencement of special liquidation.

**Article 513** (Restrictions on Withdrawal of Petition for Commencement of Special Liquidation)

A person who filed a petition for the commencement of special liquidation may withdraw such petition limited to if it is before the order to commence special liquidation. In such cases, the permission of the court must be obtained if it is after an order to suspend has been issued pursuant to the provisions of the preceding paragraph, a protective disposition has been effected pursuant to the provisions of paragraph (2) of Article 540 or a disposition has been effected pursuant to the provisions of paragraph (2) of Article 541.

**Article 514** (Order to Commence Special Liquidation)

In cases where a petition for the commencement of special liquidation has been filed, if the court finds that there are grounds that warrant the commencement of special liquidation, the court shall order the commencement of special liquidation, except in cases falling under any of the following:

- (i) If no advance has been made for the expense for the special liquidation procedures;
- (ii) If it is clear that there is no expectation of the completion of the liquidation, even by special liquidation;
- (iii) If it is clear that invoking the special liquidation is contrary to the general interest of creditors; or
- (iv) If the petition for the commencement of special liquidation has been filed with improper purpose, or the petition was otherwise not filed in good faith.

**Article 515** (Suspension of Other Procedures)

- (1) If an order to commence special liquidation is issued, petition cannot be filed for commencement of bankruptcy procedures, or for compulsory execution, provisional attachment or provisional disposition against the assets of a Liquidating Stock Company, or for property disclosure procedures (hereinafter in this paragraph limited to those in response to a petition under paragraph (1) of Article 197 of the Civil Execution Act (Act No. 4 of 1979)), and the bankruptcy procedures (limited to those for which a ruling to commence bankruptcy procedures has not yet been handed down), the compulsory execution, provisional attachment or provisional disposition procedures already effected against the assets of the Liquidating Stock Company and property disclosure procedures shall be suspended; provided, however, that this shall not apply with respect to the compulsory execution, provisional attachment or provisional disposition or property disclosure procedures pursuant to general liens and other claims that have general priority.

- (2) If an order to commence special liquidation has become final and binding, the procedures suspended pursuant to the provisions of the preceding paragraph shall become ineffective in relation to the procedures for the special liquidation.
- (3) If an order to commence special liquidation is issued, prescription shall not be completed with respect to the claims of creditors of the Liquidating Stock Company (excluding general liens and other claims that have general priority, claims that have accrued in relation to the Liquidating Stock Company for the procedures for special liquidation and rights to seek reimbursement of expense for the procedures for special liquidation from the Liquidating Stock Company, hereinafter in this Section referred to as "Agreement Claims") until the day on which two months have elapsed from the day of the registration of the rescission of the commencement of special liquidation or registration of conclusion of special liquidation provided for in item (ii) or item (iii) of paragraph (1) of Article 938.

**Article 516** (Order to Suspend Procedures to Enforce Security Interests)

In cases where the court issues an order to commence special liquidation, the court may, in response to a petition by the liquidators, Company Auditors, creditors or shareholders or ex officio, prescribing a reasonable period of time, order the suspension of procedures to enforce a security interest if the court finds that it suits the general interests of the creditors and those who petitioned for the procedures to enforce the security interest (hereinafter in this article referring to procedures to enforce the security interest the assets of the Liquidating Stock Company, procedures to enforce charge on whole company assets or compulsory execution procedures based on the general liens and other claims that have general priority that have already been enforced against the assets of the Liquidating Stock Company) are not likely to suffer undue loss.

**Article 517** (Prohibition of Set-offs)

- (1) Creditors who hold Agreement Claims (hereinafter in this Section referred to as "Agreement Claim Creditors") may not effect set-offs in the cases listed below:
  - (i) If such creditors assumed debts owed to the Liquidating Stock Company after the commencement of special liquidation;
  - (ii) If such creditor assumed debts owed to the Liquidating Stock Company after the Liquidating Stock Company became unable to pay its debts (hereinafter in this Subsection referring to the status under which, due to its lack of capacity to pay, the Liquidating Stock Company is generally and continuously unable to pay debts that are due) by entering into contracts with the Liquidating Stock Company under which assets of the Liquidating Stock Company are to be disposed of for the purpose of offsetting obligations the creditors assume under

- the contract exclusively against the Agreement Claims or by entering into contracts under which the creditors assume obligations of a person who owes the obligations to the Liquidating Stock Company, and creditors had the knowledge at the time of executing such contracts that the Liquidating Stock Company was unable to pay debts;
- (iii) If, in cases where they assumed debts after suspension of payment, they had the knowledge at the time of such assumption of debt that payments had been suspended; provided, however, that this shall not apply if the Liquidating Stock Company was not insolvent at the time of such suspension of payments; or
  - (iv) If, in cases where such creditors assumed debts after the commencement of special liquidation, they had the knowledge at the time of such assumption that the petition for commencement of special liquidation had been filed.
- (2) The provisions of item (ii) through item (iv) of the preceding paragraph shall not apply in cases where the assumption of debt pursuant to the provisions of those provisions is based on any of the causes listed below:
- (i) Statutory causes;
  - (ii) Causes in existence before the Agreement Claim Creditors acquired the knowledge that the Liquidating Stock Company was unable to pay debts, or the petition for suspension of payments or commencement of special liquidation had been filed; or
  - (iii) Causes that accrued one year or more before the petition for the commencement of special liquidation was filed.

#### **Article 518**

- (1) Creditors who owe debts to a Liquidating Stock Company cannot effect the set-off in the cases listed below:
- (i) If such creditors acquired Agreement Claims of others after the commencement of special liquidation;
  - (ii) If, in cases where such creditors acquired Agreement Claims after Liquidating Stock Company became unable to pay debts, they had the knowledge that the Liquidating Stock Company was unable to pay debts at the time of the acquisition of the Agreement Claims;
  - (iii) If, in cases where such creditors acquired Agreement Claims after the suspension of payment, they had the knowledge that there was suspension of payment at the time of the acquisition of the same; provided, however, that this shall not apply if the Liquidating Stock Company was not unable to pay debts at the time of such suspension of payment;
  - (iv) If, in cases where such creditors acquired Agreement Claims after the petition for commencement of special liquidation, they had the knowledge that the

commencement of special liquidation had been filed at the time of the acquisition of the Agreement Claims.

- (2) The provisions under items (ii) through (iv) of the preceding paragraph shall not apply in cases where the acquisition of the Agreement Claims provided for in those provisions is based on any of the causes listed below:
- (i) Statutory causes;
  - (ii) Causes in existence before the persons who assumed debts owed to the Liquidating Stock Company acquired the knowledge that the Liquidating Stock Company was unable to pay debts, or that a petition for suspension of payments or commencement of special liquidation was filed; or
  - (iii) Causes that accrued one year or more before the petition for the commencement of special liquidation was filed; or
  - (iv) Contracts between the persons who assume debts owed to the Liquidating Stock Company and the Liquidating Stock Company.

### **Subsection 2 Supervision and Investigations by the Court**

#### **Article 519** (Supervision by the Court)

- (1) If an order to commence special liquidation is issued, the liquidation of the Liquidating Stock Company shall be subject to supervisions by the court.
- (2) If the court finds it necessary, it may seek a statement of opinion with respect to procedures for the special liquidation of such Liquidating Stock Company from the government agency that supervises the business of the Liquidating Stock Company, or entrust the investigations to the same.
- (3) The government agency under the preceding paragraph may state its opinion with respect to the procedures for special liquidation of such Liquidating Stock Company to the court.

#### **Article 520** (Investigations by the Court)

The Court may at any time order a Liquidating Stock Company to report the status of its administration of the liquidation and assets, or otherwise conduct investigations that are necessary for the supervision of the liquidation.

#### **Article 521** (Submission of Inventory of Property to the Court)

In cases where an order to commence special liquidation is issued, the Liquidating Stock Company must, without delay after the approval under paragraph (3) of Article 492 is given, submit the Inventory of Property (hereinafter referring to the Inventory of Property provided for in that paragraph); provided, however, that, if the Inventory of Property is prepared by using electromagnetic records, a document that

specifies the matters recorded in such electromagnetic records must be submitted to the court.

**Article 522 (Order to Investigate)**

- (1) If the court finds it necessary after the commencement of special liquidation considering the status of the assets of a Liquidating Stock Company, it may effect the disposition ordering that the matters listed below be investigated by investigators (hereinafter in Article 533 referred to as "Investigation Order") in response to a petition by liquidators, Company Auditors, creditors who have claims equivalent to one tenth or more of the total amount of the claims of creditors that have stated their claims and other creditors known to the Liquidating Stock Company, or shareholders who have held, for the consecutive period of past six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period), not less than three hundredths (3/100) of the voting rights of all shareholders (excluding the shareholders that cannot exercise voting rights on all matters on which resolutions can be passed at the shareholders meeting; or, in cases where any proportion less than that is provided for in the articles of incorporation, such proportion) or shareholders who have held, for the consecutive period of past six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period), not less than three hundredths (3/100) of the issued shares (excluding treasury shares; or, in cases where a lower proportion is provided for in the articles of incorporation, such proportion) or ex officio:
  - (i) Circumstances that resulted in the commencement of special liquidation;
  - (ii) Status of the business and assets of the Liquidating Stock Company;
  - (iii) Whether or not it is necessary to issue the temporary restraining order pursuant to the provisions of paragraph (1) of Article 540; or
  - (iv) Whether or not it is necessary to issue the temporary restraining order pursuant to the provisions of paragraph (1) of Article 542;
  - (v) Whether or not it is necessary to make the Ruling Evaluating Subject Officers' Liability provided for in paragraph (1) of Article 545; or
  - (vi) Other matters necessary for special liquidation specified by the court.
- (2) The amounts of the claims in relation to which creditors who hold security interest (limited to special liens, pledges, mortgages or rights of retention provided for in the provisions of this Act or Commercial Code) with respect to the assets of a Liquidating Stock Company are entitled to payment by exercising those security interests shall not be included in the amount of the claims under the preceding paragraph.
- (3) For the purpose of the application of the provisions of paragraph (1) to

Liquidating Stock Companies that are not Public Companies, the words "have held, for the consecutive period of six months or more (or, in cases where a shorter period is provided for in the articles of incorporation, such period)," in that paragraph shall be read as "hold."

### **Subsection 3 Liquidators**

#### **Article 523** (Liquidators' Duty of Fairness and Good Faith)

In cases where special liquidation is commenced, liquidators shall assume the duty to perform the liquidation administration in fairness and good faith in relation to creditors, the Liquidating Stock Company and shareholders.

#### **Article 524** (Dismissal of Liquidators)

- (1) The court may dismiss liquidators in response to the petition by creditors or shareholders or ex officio if the liquidators do not perform the liquidation administration properly or there otherwise are significant grounds to do so.
- (2) The court shall appoint liquidators if there is any vacancy in the office of liquidator.
- (3) Even in cases where there are liquidators in office, the court may appoint additional liquidators if the court finds it necessary.

#### **Article 525** (Liquidators' Agents)

- (1) If necessary, liquidators may appoint one or more liquidators' agents at their own responsibility to cause them perform the duties of the liquidators.
- (2) Permission of the court must be obtained with respect to the appointment of agents of liquidators under the preceding paragraph.

#### **Article 526** (Remuneration of Liquidators)

- (1) Liquidators may receive advance payment of the expense, and remuneration determined by the court.
- (2) The provisions of the preceding paragraph shall apply mutatis mutandis to liquidators' agents.

### **Subsection 4 Supervisor**

#### **Article 527** (Appointment of Supervisors)

- (1) The court may appoint one or more supervisors and grant to such Supervisors the authority to give consent in lieu of the permission under paragraph (1) of Article 535.

(2) Juridical persons may act as supervisors.

**Article 528** (Supervision over Supervisors)

(1) The court shall supervise supervisors.

(2) The court may dismiss supervisors in response to the petition by interested parties or ex officio if the supervisors fail to supervise the management of the business and assets of the Liquidating Stock Company properly or there otherwise are significant grounds to do so.

**Article 529** (Performance of Duties by Two or more Supervisors)

If there are two or more supervisors, they shall perform their duties jointly; provided, however, that they may perform their duties individually or divide their duties, with the permission of the court.

**Article 530** (Investigations by Supervisors)

(1) Supervisors may at any time ask liquidators and Company Auditors of a Liquidating Stock Company and employees, including managers, to provide a report on the business, or investigate the status of the business and property of the Liquidating Stock Company.

(2) Supervisors may, when it is necessary to perform their duties, ask Subsidiaries of a Liquidating Stock Company to provide reports on the business, or investigate the status of the business and assets of Subsidiaries of the Liquidating Stock Company.

**Article 531** (Supervisors' Duty of Care)

(1) Supervisors must perform their duties with due care of a prudent manager.

(2) If supervisors fail to exercise the due care under the preceding paragraph, those supervisors shall be jointly and severally liable to compensate losses arising in interested parties.

**Article 532** (Remunerations of Supervisors)

(1) Supervisors may receive advance payment of the expense, and remunerations determined by the court.

(2) Supervisors must obtain the permission of the court if, after their appointment, they assign, or assigned claims owed by the Liquidating Stock Company or shares in the Liquidating Stock Company.

(3) Supervisors cannot receive payment of expense or remuneration if they engage in the acts provided for in the preceding paragraph without the permission under the preceding paragraph.

## **Subsection 5 Investigators**

### **Article 533** (Appointment of Investigators)

In cases where the court issues an Investigation Order, it must appoint one or more investigating members in such Investigation Order, and prescribe the matters that the investigators ought to investigate and the period in which the investigators are to report the outcome of the investigation to the court.

### **Article 534** (Mutatis mutandis Application of Provisions on Supervisors)

The provisions of the preceding Subsection (excluding paragraph (1) of Article 527 and proviso to Article 529) shall apply mutatis mutandis to supervisors.

## **Subsection 6 Restrictions on Acts of Liquidating Stock Companies**

### **Article 535** (Restrictions on Acts of Liquidating Stock Companies)

- (1) In cases where an order is issued for the commencement of special liquidation, a Liquidating Stock Company must obtain the permission of the court in order to carry out the acts listed below; provided, however, that, if supervisors are appointed under the provisions of paragraph (1) of Article 527, consent of the supervisors must be obtained in lieu of that permission:
- (i) The disposal of an asset (excluding the act listed in each item of paragraph (1) of the following article);
  - (ii) The taking out of a loan;
  - (iii) The filing of an action;
  - (iv) A settlement or the entering in an arbitration agreement (referring to the arbitration agreement provided for in paragraph (1) of Article 2 of the Arbitration Act (Act No. 138 of 2003));
  - (v) A waiver of rights; or
  - (vi) Other acts designated by the court.
- (2) Notwithstanding the provisions of the preceding paragraph, the permission under that paragraph is not required with respect to the act listed in items (i) through (v) of that paragraph in the cases listed below:
- (i) If the act is related to an act that involves the amount equivalent to or less than the amount provided for in the Supreme Court Rules; or
  - (ii) If, in addition to the act listed in the preceding item, the act relates to an act for which the court has held that the permission under the preceding paragraph is not required.
- (3) Any act committed without the permission under paragraph (1) or consent of

supervisors in lieu thereof shall be ineffective; provided, however, that the above provision may not be asserted against a third party without knowledge.

**Article 536 (Restrictions on Assignment of Business)**

- (1) In cases where an order for commencement of special liquidation is issued, if a Liquidating Stock Company intends to carry out any act listed below, it must obtain the permission of the court:
  - (i) Assignment of the entire business; or
  - (ii) Assignment of significant part of the business (excluding the assignment in which the book value of the assets to be assigned by such assignment does not exceed one fifth (1/5) (or, in cases where any lower proportion is provided for in the articles of incorporation, such proportion) of the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the total amount of the assets of such Stock Company);
- (2) The provisions of paragraph (3) of the preceding article shall apply mutatis mutandis to the acts committed without the permission under the preceding paragraph.
- (3) The provisions of Chapter VII (excluding item (v), paragraph (1) of Article 467) shall not apply to the cases of special liquidation.

**Article 537 (Restrictions on Performance of Obligations)**

- (1) In cases where an order is issued for commencement of special liquidation, a Liquidating Stock Company must perform obligations to Agreement Claim Creditors in proportion to the amount of their claims.
- (2) Notwithstanding the provisions of the preceding paragraph, a Liquidating Stock Company may, with the permission of the court, perform its obligations relating to minor claims, claims secured by security interests, or other claims that are unlikely to be detrimental to other creditors even if performed in excess of the proportion of the amount of the claims.

**Article 538 (Method of Conversion into Cash)**

- (1) A Liquidating Stock Company may convert its assets into cash pursuant to the provisions of the Civil Execution Act and other laws and regulations on compulsory execution procedures. In such cases, the provisions of item (i), paragraph (1) of Article 535 shall not apply.
- (2) A Liquidating Stock Company may convert the assets that underlie the security interest provided for in paragraph (2) of Article 522 (hereinafter in this article and in the following article simply referred to as "Security Interest") into cash pursuant to the provisions of the Civil Execution Act and other laws and

regulations on compulsory execution procedures. In such cases, a person who holds such Security Interest (hereinafter in this article and in the following article simply referred to as "Security Interest Holder") may not refuse the conversion into cash.

- (3) In the cases of the preceding two paragraphs, the provisions of Article 63 and Article 129 of the Civil Execution Act (including the cases where those provisions are applied mutatis mutandis under that act and other laws and regulations on compulsory execution procedures) shall not apply.
- (4) If, in the case of paragraph (2), the amount that the Security Interest Holder is to receive is not fixed yet, the Liquidating Stock Company must deposit the proceeds separately. In such cases, the security interest shall exist with respect to the proceeds so deposited.

**Article 539** (Designating Periods for Disposition by Security Interest Holders)

- (1) If Security Interest Holders have the right to dispose of the assets that underlie the security interest without relying on the method prescribed by the Act, the court may, in response to the petition by the Liquidating Stock Company, specify the period during which the Security Interest Holders ought to effect the disposition.
- (2) Security Interest Holders shall lose their right under the preceding paragraph if they do not effect disposition during the period under the preceding paragraph.

**Subsection 7 Dispositions Necessary to Supervise Liquidation**

**Article 540** (Temporary Restraining Order regarding Assets of Liquidating Stock Company)

- (1) In cases where an order is issued for commencement of special liquidation, if the court finds it necessary to supervise the liquidation, the court may, in response to a petition by the creditors, liquidators, Company Auditors or shareholders or ex officio, order the provisional disposition that prohibits the disposition of the property of the Liquidating Stock Company or other necessary temporary restraining orders.
- (2) Even during the period from the time when a petition for commencement of special liquidation is filed to the time when a ruling is handed down on such petition, if the court finds it necessary, the court may, in response to the petitions by the creditors, liquidators, Company Auditors or shareholders or ex officio, effect the temporary restraining orders under the provisions of the preceding paragraph. The same shall apply if an immediate appeal in paragraph (5) of Article 890 is filed against the ruling to dismiss the petition for the commencement of special liquidation

(3) In cases where the court orders the temporary restraining orders under the provisions of the preceding two paragraphs to the effect that the Liquidating Stock Company is prohibited from carrying out the performance of its obligations and other acts that extinguishes its obligation to its creditors, the creditors may not, in relation to the special liquidation, assert the effectiveness of the performance of the obligations and other acts that extinguish its obligations, that were effected in contravention of such temporary restraining orders; provided, however, that this shall be limited to the cases where the creditors had the knowledge that such temporary restraining orders were effected at the time of the creditors' act.

**Article 541** (No Entry in Shareholder registry)

(1) In cases where an order is issued for commencement of special liquidation, if the court finds it necessary to supervise the liquidation, the court may, in the shareholder registry in response to the petitions by the creditors, liquidators, Company Auditors or shareholders or ex officio, prohibit a Liquidating Stock Company from stating or recording Matters to be Stated in the Shareholder registry.

(2) Even during the period from the time when a petition for commencement of special liquidation is filed to the time when a ruling is handed down on such petition, if the court finds it necessary, the court may, in response to the petitions by the creditors, liquidators, Company Auditors or shareholders or ex officio, effect the disposition under the provisions of the preceding paragraph. The same shall apply if immediate appeal under paragraph (5) of Article 890 is filed against the ruling to dismiss the petition for the commencement of special liquidation.

**Article 542** (Temporary Restraining Orders on Property of Officers)

(1) In cases where an order for commencement of special liquidation is issued, if the court finds it necessary to supervise the liquidation, the court may, with respect to rights to seek damages pursuant to the liability of the incorporators, directors upon incorporation, Company Auditors upon incorporation, Qualified Officers provided for in paragraph (1) of Article 423 or liquidators (hereinafter in this Subsection referred to as "Subject Officers"), in response to the petition by the Liquidating Stock Company or ex officio, effect temporary restraining orders against the assets of such Subject Officers.

(2) Even during the period from the time when a petition for commencement of special liquidation is filed to the time when a ruling is made with respect to such petition, if the court finds it urgently necessary, the court may, in response to the petitions by the Liquidating Stock Company or ex officio, effect a disposition under the provisions of the preceding paragraph. The same shall apply if immediate

appeal in paragraph (5) of Article 890 is filed against the ruling to dismiss a petition for the commencement of special liquidation

**Article 543** (Prohibition of Exemptions from Liability of Officers)

In cases where an order is issued for commencement of special liquidation, if the court finds it necessary to supervise the liquidation, the court may, in response to the petitions by the creditors, liquidators, Company Auditors or shareholders or ex officio, effect the disposition that prohibits the exemption of liability of the Subject Officers.

**Article 544** (Rescission of Exemption from Liability of Officers)

- (1) If an order is issued for commencement of special liquidation, a Liquidating Stock Company may rescind the exemption of liability of Subject Officers effected within one year prior to or after the time when the petition for commencement of special liquidation was filed. The same shall apply with respect to the exemption from the liability of Subject Officers that effected for improper purpose.
- (2) The rights of rescission under the provisions of the preceding paragraph shall be exercised by filing an action or defense.
- (3) The rights of rescission under the provisions of paragraph (1) cannot be exercised when two years have lapsed from the day when the order was issued for the commencement of special liquidation. The same shall apply if twenty years have elapsed from the day when Subject Officers was exempted from liability.

**Article 545** (Ruling Evaluating Subject Officers' Liability)

- (1) In cases where an order is issued for commencement of special liquidation, if the court finds it necessary, the court may, in response to the petition by the Liquidating Stock Company or ex officio, pass judgment evaluating the rights to seek damages pursuant to the liability of the Subject Officers (hereinafter in this article referred to as "Ruling Evaluating Subject Officers' Liability")
- (2) In cases where the court commences procedures of the Ruling Evaluating Subject Officers' Liability ex officio, it must make the determination to that effect.
- (3) If the petition under paragraph (1) is filed or the ruling in the preceding paragraph is made, for the purpose of the nullification of the prescription, it shall be deemed that a judicial claim has been made.
- (4) The procedures for the Ruling Evaluating Subject Officers' Liability (excluding those after the Ruling Evaluating Subject Officers' Liability) shall end if the special liquidation is ended.

**Subsection 8 Creditors' Meetings**

**Article 546** (Convocation of Creditors' meetings)

- (1) Creditors' meetings may be convened whenever it is required to implement special liquidation.
- (2) A Creditors' meeting shall be convened by the Liquidating Stock Company, except in cases where convened pursuant to the provisions of paragraph (3) of the following Article.

**Article 547** (Demand for Convocation of Meeting by Creditors)

- (1) Agreement Claim Creditors who have Agreement Claims equivalent to one tenth or more of the total amount of the Agreement Claims of Agreement Claim Creditors that have stated their claims and other Agreement Claim Creditors known to the Liquidating Stock Company may demand, by disclosing the matters that are the purpose of the creditors' meeting and the reasons of the convocation, that the Liquidating Stock Company convene a creditors' meeting.
- (2) The amount of the Agreement Claims in relation to which Agreement Claim Creditors who hold security interest provided for in paragraph (2) of Article 522 with respect to the assets of a Liquidating Stock Company are entitled by exercising their security interest shall not be included in the amount of the Agreement Claims under the preceding paragraph.
- (3) In the following cases, Agreement Claim Creditors who made the demand pursuant under the provisions of paragraph (1) may convene the creditors' meeting with the permission of the court:
  - (i) In cases where the convocation procedure is not effected without delay after the demand pursuant to the provisions of paragraph (1); or
  - (ii) In cases where a notice for the convocation of the creditors' meeting that specifies a day falling within six weeks from the day of the demand under the provisions of paragraph (1) as the day of the creditors' meeting, is not sent.

**Article 548** (Determination of Convocation of Creditors' Meeting)

- (1) A person who convenes a creditors' meeting (hereinafter in this Subsection referred to as "Convener") must prescribe the following matters in cases where he/she convenes a creditors' meeting:
  - (i) The date, time and place of the creditors' meeting;
  - (ii) The matters that are the purpose of the creditors' meeting;
  - (iii) If it is to be arranged that Agreement Claim Creditors who do not attend the creditors' meeting may exercise their voting rights by electromagnetic means, a statement to that effect;
  - (iv) In addition to the matters listed in the preceding three items, any matters prescribed by the applicable Ordinance of the Ministry of Justice.

- (2) In cases where a Liquidating Stock Company convenes a creditors' meeting, such Liquidating Stock Company must prescribe with respect to each Agreement Claim whether or not voting rights can be exercised at the creditors' meeting and the amount of the same.
- (3) In cases where a person other than the Liquidating Stock Company convenes a creditors' meeting, such Convener must demand that the Liquidating Stock Company prescribe the matters provided for in the preceding paragraph. In such cases, if that demand is made, the Liquidating Stock Company must prescribe the matters provided for in that paragraph.
- (4) Agreement Claim Creditors who hold security interest provided for in paragraph (2) of Article 522 with respect to the property of a Liquidating Stock Companies shall have no voting rights with respect to the amount of the Agreement Claims to the payment of which they are entitled by exercising their security interest.

**Article 549** (Notice of Convocation of Creditors' Meetings)

- (1) In order to convene a creditors' meeting, the Convener must give the written notice thereof to Agreement Claim Creditors who stated their claims and other Agreement Claim Creditors known to the Liquidating Stock Company and the Liquidating Stock Company, no later than two weeks prior to the day of the creditors' meeting.
- (2) In lieu of the sending of the written notice referred to in the preceding paragraph, the Convener may send the notice by an electromagnetic means with the approval of the Agreement Claim Creditors in accordance with the provisions of the applicable Cabinet Order. In such cases, such Convener shall be deemed to have sent the written notice under such paragraph.
- (3) The notice under the preceding two paragraphs must state or record the matters listed in each item of paragraph (1) of the preceding article.
- (4) The provisions of the preceding three paragraphs shall apply mutatis mutandis to Agreement Claim Creditors that stated their claims and other Agreement Claim Creditors known to the Liquidating Stock Company that hold general liens and other claims that have general priority, claims that have arisen in relation to the Liquidating Stock Company for procedures for special liquidation or rights to seek reimbursement of expenses of procedures for special liquidation from the Liquidating Stock Company.

**Article 550** (Issuance of Reference documents for Creditors' Meetings and Proxy Cards)

- (1) The Convener must, when giving a notice under paragraph (1) of the preceding article, issue to the Agreement Claim Creditors that stated their claims and other

Agreement Claim Creditors known to the Liquidating Stock Company, documents which contain stating the matters provided for under the provisions of paragraph (2) or paragraph (3) of Article 548 with respect to the Agreement Claims held by such Agreement Claim Creditors and matters of reference for the exercising the voting rights (in the following paragraph referred to as "Reference documents for Creditors' Meeting") as well as the document to be used by the Agreement Claim Creditors to exercise the voting rights (hereinafter in this Subsection referred to as "Proxy Card") as prescribed by the applicable Ordinance of the Ministry of Justice.

(2) If the Convener intends to send notices by an electromagnetic means in paragraph (2) of the preceding article to the Agreement Claim Creditors that have given consent under the same paragraph, the Convener must provide the matters to be specified in such document by an electromagnetic means in lieu of the issuance of the Creditors' Meeting reference documents and Proxy Card under the provisions of the preceding paragraph; provided, however, that, if requested by an Agreement Claim Creditor, the Convener must issue such documents to such Agreement Claim Creditor.

#### **Article 551**

- (1) In cases where the matters listed in item (iii), paragraph (1) of Article 548 are prescribed, the Convener must, when giving a notice by an electromagnetic means to the Agreement Claim Creditors who have given the consent under paragraph (2) of Article 549, provide to the Agreement Claim Creditors the matters to be specified in the Proxy Card by such electromagnetic means.
- (2) In cases where the matters listed in item (iii), paragraph (1) of Article 548 are prescribed, if an Agreement Claim Creditor who has not given the consent under paragraph (2) of Article 549 makes a request, no later than one week prior to the day of the creditors' meeting, for the provision of the matters to be stated in the Proxy Card by an electromagnetic means, the Convener must provide such matters to such Agreement Claim Creditor by an electromagnetic means, pursuant to the applicable Ordinance of the Ministry of Justice.

#### **Article 552 (Direction of Creditors' Meeting)**

- (1) Creditors' meeting shall be directed by the court.
- (2) If a Convener intends to call a creditors' meeting, the Convener must notify the court in advance of the matters listed in each item of paragraph (1) of Article 548 and the matters provided for under the provisions of paragraph (2) of paragraph (3) of that article.

#### **Article 553 (Treatment of Voting Rights under Objections)**

If, with respect to matters prescribed for each Agreement Claim pursuant to the provisions of paragraph (2) or paragraph (3) of Article 548, persons who hold such Agreement Claims or other Agreement Claim Creditors state their objections at a creditors' meeting, the court shall prescribe the same.

**Article 554 (Resolutions of Creditors' Meetings)**

- (1) In order to adopt a matter to be resolved at a resolution at a creditors' meeting, all of the following consents must be obtained:
  - (i) The consent of a majority of the voting rights holders present at the meeting (hereinafter in this Subsection and following Subsection referring to the Agreement Claim Creditors that can exercise voting rights); and
  - (ii) The consent of persons who hold the voting rights in excess of half of the total voting rights of the voting rights holders present at the meeting.
- (2) For the purpose of the application of the provisions of item (i), paragraph (1) of Article 558, if any voting rights holder exercised only some of the voting rights he/she holds as a consent to the matters under the preceding paragraph under the provisions of paragraph (1) of that article (excluding the cases where his/her remaining voting rights were not exercised), for each such voting rights holder, "one" shall be added to the number of the voting rights holders who attended the meeting, and "one" shall be added to the number of the voting rights holders who gave their consent, respectively.
- (3) Creditors' meeting cannot pass resolutions with respect to matters other than the matters listed in item (ii), paragraph (1) of Article 548.

**Article 555 (Proxy Voting)**

- (1) Agreement Claim Creditors may exercise voting rights by proxy. In such cases, such Agreement Claim Creditors or proxy must submit to the Convener a document which certifies the power of representation.
- (2) The grant of the power of representation under the preceding paragraph must be made for each creditors' meeting.
- (3) Agreement Claim Creditors or proxy referred to in paragraph (1) may, in lieu of the submission of the document which certifies the power of representation, provide the matters to be specified in such document by electromagnetic means with the approval of the Convener pursuant to the provisions of the applicable Cabinet Order. In such cases, such Agreement Claim Creditors or proxies shall be deemed to have submitted such document.
- (4) In cases where the Agreement Claim Creditors are the persons who gave consent under paragraph (2) of Article 549, the Convener may not refuse providing the approval under the preceding paragraph without a justifiable ground.

**Article 556** (Voting in Writing)

- (1) Agreement Claim Creditors who do not attend the creditors' meeting may exercise their voting rights in writing.
- (2) The exercise of voting rights in writing shall be effected by entering necessary matters on the Proxy Card and submitting the Proxy Card to the Convener by the time prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) Voting rights holders who exercised the voting rights in writing pursuant to the provisions of the preceding paragraph shall be deemed to have been present at the creditors' meeting for the purpose of the provisions of paragraph (1) of Article 554 and paragraph (1) of Article 567.

**Article 557** (Voting through Use of Electromagnetic Means)

- (1) The exercise of a voting rights by an electromagnetic means shall be effected by providing the matters to be entered in the proxy card to the Convener by an electromagnetic means, with the approval of such Convener, no later than the time prescribed by the applicable Ordinance of the Ministry of Justice in accordance with the provisions of the applicable Cabinet Order.
- (2) In cases where the Agreement Claim Creditors are the persons who gave consent under paragraph (2) of Article 549, the Convener may not refuse providing the approval under the preceding paragraph without justifiable grounds.
- (3) Voting rights holders who exercised the voting rights by an electromagnetic means under the provisions of paragraph (1) shall be deemed to have been present at the creditors' meeting for the purpose of the application of the provisions of paragraph (1) of Article 554 and paragraph (1) of Article 567.

**Article 558** (Inconsistent Voting)

- (1) Agreement Claim Creditors may exercise the voting rights they hold without maintaining consistency. In such cases, the Agreement Claim Creditors must notify the Convener to such effect and of the reason thereof no later than three days prior to the day of the creditors' meeting.
- (2) If an Agreement Claim Creditor referred to in the preceding paragraph is not a person who holds the Agreement Claims on behalf of others, the Convener may reject the inconsistent exercise of the voting rights held by such Agreement Claim Creditor under the provisions of that paragraph.

**Article 559** (Attendance of Creditors who Hold Security Interest)

Creditors' meetings or Conveners may demand that the following creditors are present at the meeting and hear their opinions. In such cases, a resolution must be

passed to that effect at a creditors' meeting:

- (i) Creditors that hold security interest provided for in paragraph (2) of Article 522; and
- (ii) Creditors who hold general liens and other claims that have general priority, claims that have arisen in relation to the Liquidating Stock Company for the procedures for special liquidation or rights to seek from the Liquidating Stock Company reimbursement of expense for the procedures for special liquidation.

**Article 560 (Resolution for Postponement or Continuation)**

In cases where there is a resolution for the postponement or continuation of the creditors' meeting, the provisions of Article 548 (excluding paragraph (4)) and Article 549 shall not apply.

**Article 561 (Minutes)**

The Convener must prepare minutes with respect to the business of the creditors' meeting, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.

**Article 562 (Report to Creditors' Meeting of Outcome of Investigations Liquidators)**

In cases where an order is issued for the commencement of special liquidation, if the liquidators provided for in paragraph (1) of Article 492 have completed the investigations of the current status of the property of the Liquidating Stock Companies and have prepared the Inventory of Property (hereinafter in this article referring to the Inventory of Property provided for in that paragraph), the Liquidating Stock Company must, without delay, convene the creditors' meeting and report to such creditors' meeting the outcome of the investigations of the status of the operations and assets of the Liquidating Stock Companies as well as the summary of the Inventory of Property, and state its opinions regarding the policy and prospect of the implementation of the liquidation; provided, however, that this shall not apply if the Liquidating Stock Company regards it as appropriate to make the creditors aware of the content of the matters to be reported and such opinions by means other than the statement of the report and opinions to the creditors' meeting.

**Subsection 9 Agreements**

**Article 563 (Offer of Agreements)**

A Liquidating Stock Company may offer an agreement to the creditors' meeting.

**Article 564 (Terms and Conditions of Agreements)**

- (1) Terms and conditions regarding the change of some or all of the rights of Agreement Claim Creditors (excluding the security interest provided for in paragraph (2) of Article 522) must be provided for in the Agreements.
- (2) The terms and conditions that change some or all of the rights of Agreement Claim Creditors must prescribe reductions of debts and extensions of terms and other general standards for the change in rights.

**Article 565** (Change in Rights under Agreements)

Any changes of rights under an agreement must be equal as between Agreement Claim Creditors; provided, however, that this shall not apply in cases where Agreement Claim Creditors that will suffer detriment have given consent, in cases where the equality will not be compromised even if it is otherwise provided with respect to minor Agreement Claims, or in other cases where the equality will not be compromised even if there are differences as between Agreement Claim Creditors.

**Article 566** (Participation of Creditors Holding Security Interest)

If a Liquidating Stock Company regards it as necessary in preparing a draft agreement, it may seek the participation of the following creditors:

- (i) Creditors that hold security interest provided for in paragraph (2) of Article 522; and
- (ii) Creditors that hold general liens and other claims that have general priority.

**Article 567** (Requirements for Adoption of Agreements)

- (1) Notwithstanding the provisions of paragraph (1) of Article 554, in order to adopt an agreement at a creditors' meeting, all of the following consents must be obtained:
  - (i) The consent of a majority of the voting rights holders present at the meeting; and
  - (ii) The consent of persons who hold the voting rights in excess of two thirds (2/3) of the total voting rights of the voting rights holders.
- (2) The provisions of paragraph (2) of Article 554 shall apply mutatis mutandis to the application of the provisions of item (i) of the preceding paragraph.

**Article 568** (Petition Seeking Approval of Agreements)

If an agreement is adopted, the Liquidating Stock Company must petition the court for approval of the agreement without delay.

**Article 569** (Ruling Approving or Rejecting Agreements)

- (1) In cases where a petition under the preceding article is filed, the court shall

hand down the ruling approving the agreement except for the cases under the following paragraph.

- (2) The court shall hand down a ruling rejecting the agreement in cases falling under any of the following:
  - (i) If the procedures for special liquidation or the agreement violates any provisions of the act, and such deficiency cannot be remedied; provided, however, that this shall not apply if, in cases where the procedures for special liquidation violates provisions of the acts, the degree of such violation is minor;
  - (ii) If there is no prospect that the agreement will be fulfilled;
  - (iii) If the agreement was established by unlawful means; or
  - (iv) If the agreement is contrary to the general interest of the creditors.

**Article 570** (Time of Effectuation of Agreements)

Agreements shall take effect upon finalization of the rulings to approve.

**Article 571** (Scope of Effectiveness of Agreements)

- (1) An agreement shall be effective on behalf of, and shall bind, the Liquidating Stock Company and all Agreement Claim Creditors.
- (2) An agreement shall not affect security interest provided for in paragraph (2) of Article 522 held by creditors provided for in that paragraph, rights that Agreement Claim Creditors hold, jointly with guarantors of the Liquidating Stock Company or otherwise with the Liquidating Stock Company, against persons who owe obligations, or collateral provided by persons other than the Liquidating Stock Company for the benefit of the Agreement Claim Creditors.

**Article 572** (Change of Details of Agreements)

The details of an agreement may be changed if it is necessary for the implantation of the agreement. In such cases, the provisions of Article 563 through the preceding article shall apply mutatis mutandis.

**Subsection 10 Completion of Special Liquidation**

**Article 573** (Rulings on Conclusion of Special Liquidation)

After the commencement of special liquidation, the court shall hand down a ruling on the conclusion of the special liquidation in response to petitions by liquidators, Company Auditors, creditors, shareholders, or investigators in the cases listed below:

- (i) If the special liquidation has been completed; or
- (ii) If the special liquidation is no longer necessary.

**Article 574 (Ruling for Commencement of Bankruptcy Procedures)**

- (1) After the commencement of special liquidation, if the court finds, in the cases listed below, facts on the part of the Liquidating Stock Company that constitute cause for the commencement of bankruptcy procedures, the court must make ex officio the ruling for commencement of bankruptcy procedures in accordance with the Bankruptcy Act:
  - (i) If there is no prospect of an agreement;
  - (ii) If there is no prospect that the agreement will be implemented; or
  - (iii) If reliance on the special liquidation is contrary to the general interest of the creditors.
- (2) After the commencement of special liquidation, if the court finds, in the cases listed below, facts on the part of the Liquidating Stock Company that constitute cause for the commencement of bankruptcy procedures, the court may make an ex officio ruling for commencement of bankruptcy procedures in accordance with the Bankruptcy Act:
  - (i) If an agreement is not adopted; or
  - (ii) If a ruling to reject an agreement has become final and binding;
- (3) For the purpose of the application of the provisions of item (iv), paragraph (1) and items (ii) and (iii) of paragraph (2) of Article 71, item (iv), paragraph (1) and items (ii) and (iii) of paragraph (2) of Article 72, Article 160 (excluding item (i) of paragraph (1)), Article 162 (excluding item (ii) of paragraph (1)), paragraph (2) of Article 163, paragraph (1) of Article 164 (including the cases where that paragraph is applied mutatis mutandis under paragraph (1) of that article), Article 166, and paragraph (2) of Article 167 (including the cases where that paragraph is applied mutatis mutandis under paragraph (2) of Article 170) of the Bankruptcy Act in cases where a ruling to commence bankruptcy procedures has been made under the provisions of the preceding two paragraphs, the petition for the commencement of bankruptcy procedures shall be deemed to have been filed at the time when the petition in each of the following items for the case categories listed in each such items were filed:
  - (i) In cases where there was a petition for the commencement of bankruptcy procedures before the petition for the commencement of special liquidation in bankruptcy procedures that became ineffective because the order to commence special liquidation becoming final and binding: Such petition for the commencement of bankruptcy procedures;
  - (ii) In cases other than the cases listed in the preceding item: The petition for the commencement of special liquidation
- (4) If a ruling to commence bankruptcy procedures is handed down under the provisions of paragraph (1) or paragraph (2), claims that have arisen in relation

to the Liquidating Stock Company for the procedures for special liquidation and rights to seek reimbursement of expense regarding the procedures for special liquidation from the Liquidating Stock Company shall constitute preferred claims against the bankrupt's estate.

## **PART III Companies without Share**

### **Chapter I Incorporation**

#### **Article 575** (Preparation of Articles of Incorporation)

- (1) In order to incorporate an General Partnership Company, Limited Partnership Company or Limited Liability Company (hereinafter collectively referred to as "Membership Company"), persons who intend to be its partners must prepare articles of incorporation which must be signed by or record the names of and be affixed with the seals, of all partners.
- (2) The articles of incorporation in the preceding paragraph may be prepared using electromagnetic records. In such cases, measures prescribed by the applicable Ordinance of the Ministry of Justice must be taken in lieu of signing, or the recording of names and affixing of seals, with respect to the information recorded in such electromagnetic records.

#### **Article 576** (Matters to be Specified or Recorded in the Articles of Incorporation)

- (1) Articles of incorporation of Membership Companies must specify or record the following matters:
  - (i) Purposes;
  - (ii) Trade name;
  - (iii) Location of the head office;
  - (iv) Names and addresses of the partners
  - (v) Whether the partners are unlimited partners or limited partners; and
  - (vi) Subject matter invested by the partners (limited to monies, etc. if they are limited partners) and the value and standard of evaluation of the same.
- (2) If the Membership Company to be incorporated is a General Partnership Company, a statement that all of the partners are unlimited partners must be specified or recorded as the matter listed in item (v) of the preceding paragraph.
- (3) If the Membership Company to be incorporated is a Limited Partnership Company, a statement that some of the partners are unlimited partners and other partners are limited partners must be stated or recorded as the matter listed in item (v) of paragraph (1).
- (4) If the Membership Company to be incorporated is a Limited Liability Company,

a statement that all of the partners are limited partners must be stated or recorded as the matter listed in item (v) of paragraph (1).

#### **Article 577**

In addition to those provided for in the preceding paragraph, articles of incorporation of a Membership Company may state or record matters which, under the provisions of this Act, will not become effective unless provided for in the articles of incorporation, or other matters which do not violate any provision of this Act.

#### **Article 578** (Performance of Contributions as at Incorporation of Limited Liability Companies)

In cases where a Membership Company to be incorporated is a Limited Liability Company, persons who intend to be partners of such Limited Liability Company must pay in the entire sum of monies relating to their partnership contribution or deliver the entire property, other than monies, relating to their contribution after the preparation of the articles of incorporation but before the registration of the incorporation of the Limited Liability Company; provided, however, that, if the consent of all persons who intend to be partners of the Limited Liability Company is obtained, this shall not preclude them from carrying out registration, recording or other acts necessary to assert the creation or transfer of rights against third parties after the incorporation of the Limited Liability Company.

#### **Article 579** (Incorporation of Membership Companies)

A Membership Company shall be incorporated by the registration of the incorporation at the location of its head office.

### **Chapter II Partners**

#### **Section 1 Responsibility of Partners**

#### **Article 580** (Responsibility of Partners)

- (1) Partners shall be jointly and severally liable for the performance of obligations of the Membership Company in the cases listed below:
  - (i) In cases where the obligations of such Membership Company cannot be fully performed with the assets of the same; or
  - (ii) In cases where compulsory execution against the assets of such Membership Company has not been successful (except for the cases where the partners have proven that such Membership Company has financial resources to pay and that the compulsory execution can be effected at ease).

- (2) Limited liability partners shall be liable for the performance of the obligations of the Membership Company to the extent of the value of their investment (excluding the value of the contributions already performed to the Membership Company).

**Article 581** (Partners' Defenses)

- (1) In cases where partners are liable for the performance of the obligations of a Membership Company, the partners may assert defenses against the creditors of such Membership Company that the Membership Company may raise against such creditors.
- (2) In the cases provided for in the preceding paragraph, if a Membership Company has a right to set-off, right to rescind or right to terminate against its creditors, the partners may refuse the performance of obligations to such creditors.

**Article 582** (Partners' Liability in relation to Contributions)

- (1) In cases where a partner provides monies as the subject matter of a partnership contribution, if he/she fails to effect such contribution, such partner must compensate the loss in addition to the payment of interest on such contribution.
- (2) In cases where a partner provides claims as the subject matter of a contribution, if the obligor of such claims fails to perform the obligations when they become due, such partner shall be liable for the performance of the same. In such cases, such partner must compensate the loss in addition to the payment of interest on such obligations.

**Article 583** (Special Provision in case of Partners' Liability Change)

- (1) In cases where a limited partner has become an unlimited partner, the person who has become such unlimited partner shall also be liable as an unlimited partner for the performance of the obligations of the Membership Company that arose before such person became an unlimited partner.
- (2) Even in cases where a limited partner (excluding partners of Limited Liability Company) reduce the value of the contributions, such limited partners shall be liable to the extent of his/her pre-existing liability for the obligations of the Membership Company that arose before the registration to that effect.
- (3) Even in cases where an unlimited partner has become a limited partner, the person who has become such a limited partner shall be liable as an unlimited partner for the performance of the obligations of the Membership Company that arose before the registration to such effect.
- (4) The liability under the preceding two paragraphs to the creditors of the Membership Company who do not make their claims, or do not give an advance notice of their claims, within two years from the day of such registration shall be

extinguished when two years have elapsed from the day of the registration in the preceding two paragraphs.

**Article 584** (Capacity to Act of Minors Permitted to Become Unlimited Partners)

A minor who is permitted to become an unlimited partner of a Membership Company shall be deemed to be a person with capacity to act regarding any act committed in his/her capacity as a partner.

**Section 2 Assignments of Equity Interests**

**Article 585** (Assignment of Equity Interest)

- (1) A partner cannot assign all or part of his/her equity interests to others without the approval of all other partners.
- (2) Notwithstanding the provisions of the preceding paragraph, a limited partner who does not execute business may assign some or all of his/her equity interests to others if the approval of all other partners who execute the business is obtained.
- (3) Notwithstanding the provisions of Article 637, if a change in the articles of incorporation arises in conjunction with the assignment of equity interests of any limited partner who does not execute the business, the change in the articles of incorporation due to the assignment of that equity interest may be effected with the consent of all partners who execute the business.
- (4) The provisions of the preceding three paragraphs shall not preclude the provisions to the contrary in the articles of incorporation.

**Article 586** (Liability of Partners who Assign Entire Equity Interests)

- (1) A partner who assigned all of his/her equity interests to others shall be liable to the extent of his/her pre-existing liability for the obligations of the Membership Company that arose before the registration to that effect.
- (2) Liability in the preceding paragraph to the creditors of the Membership Company who do not state their claims or do not give an advance notice of their claims, within two years from the day of such registration shall be extinguished when two years have elapsed from the day of the registration in that paragraph.

**Article 587**

- (1) Membership Companies may not accept the assignment of some or all of their own equity interests.
- (2) In cases where a Membership Company has acquired any equity interest in such Membership Company, such equity interest shall be extinguished when such Membership Company acquires the same.

### **Section 3 Liability for Mistaken Acts**

#### **Article 588** (Liability of Limited Partners for Acts Mistaken as Acts of Unlimited Partners)

- (1) If a limited partner of a Limited Partnership Company engages in an act that causes such limited partner to be mistaken as an unlimited partner, such limited partner shall assume the same liability as that assumed by an unlimited partner in relation to persons who transact with the Limited Partnership Company based on such mistaken belief.
- (2) If a limited partner of a Limited Partnership Company or Limited Liability Company engages in an act that causes mistake as to the extent of the limited partner's liability (excluding that in the preceding paragraph), such limited partner shall assume the liability to perform the obligations of such Limited Partnership Company or Limited Liability Company in relation to persons who transact with the Limited Partnership Company or Limited Liability Company on the bases of such mistaken belief, to the extent of the liability so mistaken.

#### **Article 589** (Responsibility for Acts Mistaken as Acts of Partners)

- (1) If a person who is neither a partner of a General Partnership Company nor Limited Partnership Company engages in an act that causes such person to be mistaken as an unlimited partner, such person shall assume the same liability as that assumed by an unlimited partner in relation to persons who transact with the General Partnership Company or Limited Partnership Company on the bases of such mistaken belief.
- (2) If a person who is a partner in neither a Limited Partnership Company nor Limited Liability Company engages in an act that causes such person to be mistaken as a limited partner, such person shall assume liability to perform the obligations of such Limited Partnership Company or Limited Liability Company in relation to persons who transact with the Limited Partnership Company or Limited Liability Company on the bases of such mistaken belief the to the extent of the liability so mistaken.

### **Chapter III Administration**

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

#### **Article 590** (Execution of Business)

- (1) A partner shall execute the business of the Membership Company, unless

otherwise provided for in the articles of incorporation.

- (2) In cases where there are two or more partners, the business of the Membership Company shall be determined by a majority of the partners, unless otherwise provided for in the articles of incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, each partner may perform the ordinary business of the Membership Company individually; provided, however, that this shall not apply in cases where other partners raise objections before the completion of the same.

**Article 591** (Where Articles of Incorporation Provide for Partners who Execute Business)

- (1) In cases where partners who execute the business are provided for in the articles of incorporation, if there are two or more partners who execute the business, the business of the Membership Company shall be determined by a majority of the partners who execute the operations, unless otherwise provided for in the articles of incorporation. For the purpose of the application of the provisions of paragraph (3) of the preceding article to such cases, "partner(s)" in that paragraph shall be read as "partner(s) who execute(s) the business."
- (2) Notwithstanding the provisions of the preceding paragraph, in the cases provided for in that paragraph, the appointment and dismissal of managers shall be determined by a majority of the partners; provided, however, that this shall not preclude the provision to the contrary in the articles of incorporation.
- (3) In cases where partners who execute the business are provided for in the articles of incorporation, if all partners who execute the operations leave the Company, such provisions of the articles of incorporation shall become ineffective.
- (4) In cases where partners who execute the business are provided for in the articles of incorporation, partners who execute the business may not resign without justifiable grounds.
- (5) Partners who execute the business under the preceding paragraph may be dismissed with the unanimous consent of other partners, limited to cases where there are justifiable grounds.
- (6) The provisions of the preceding two paragraphs shall not preclude the provision to the contrary in the articles of incorporation.

**Article 592** (Partners' Investigations regarding Status of Business and Assets of Membership Company)

- (1) In cases where partners who execute the business are provided for in the articles of incorporation, each partner may investigate the status of the business and assets of the Membership Company even if he/she does not have the rights to execute the

business of the same.

- (2) The provisions of the preceding paragraph shall not preclude provision to the contrary in the articles of incorporation; provided, however, that even the articles of incorporation may not provide to the effect of restricting the carrying out of investigations by partners provided for in that paragraph at the end of the business year or if there are significant grounds to do so.

## **Section 2 Partners who Execute Business**

### **Article 593** (Relationship between Partners Executing Business and Membership Company)

- (1) Partners who execute the business shall have the duty to perform their duties with due care of a prudent manager.
- (2) Partners who execute the business must perform their duties for the Membership Company in a loyal manner in compliance with the laws and regulations and articles of incorporation.
- (3) Partners who execute the business must report the status of the execution of their duties whenever there are requests by the Membership Company or other partners, and must report the progress and outcome of their duties without delay after those duties end.
- (4) The provisions of Article 646 through 650 of the Civil Code shall apply mutatis mutandis to the relationship between partners who execute the business and the Membership Company. In such cases, "mandated business" in paragraph (1) of Article 646, paragraph (2) of Article 648, Article 649 and Article 650 shall be deemed to be replaced with "their duties," and "mandate" in paragraph (3) of Article 648 of the same Code shall be deemed to be replaced with "duties in the preceding paragraph."
- (5) The provisions of the preceding two paragraphs shall not preclude provision to the contrary in the articles of incorporation.

### **Article 594** (Non-Competition)

- (1) Partners who execute the business may not carry out the following acts without the approval of all partners other than such partners; provided, however, that this shall not apply in cases where the articles of incorporation provide otherwise:
- 一 自己又は第三者のために持分会社の事業の部類に属する取引をすること。
  - (i) Carrying out, for themselves or for a third party, any transaction which is in the line of business of the Membership Company; or
  - (ii) Becoming directors, executive officers or partners who execute the business of a Company the purpose of which is a business that is similar to the business of

the Membership Company.

- (2) If partners who execute the business carry out any act listed in item (i) of the preceding paragraph in violation of the provisions of that paragraph, the amount of the profit obtained by such partners who execute such business or any third party as a result of such act shall be presumed to be amount of the loss suffered by the Membership Company.

**Article 595** (Restrictions on Transactions involving Conflict of Interest)

- (1) In the following cases, partners who execute the business must obtain the approval of a majority of the partners other than such partners with respect to such transactions; provided, however, that this shall not apply in cases where the articles of incorporation provide otherwise:
  - (i) If partners who execute the business intend to engage in a transaction with the Membership Company for themselves or on behalf of a third party; or
  - (ii) If a Membership Company intends to guarantee the debt of partners who execute the business or otherwise to engage in a transaction with any person other than partners that will results in the conflict of interest between the Membership Company and such partners.
- (2) The provisions of Article 108 of the Civil Code shall not apply to transactions under item (i) of the preceding paragraph that have received the approval under that paragraph.

**Article 596** (Liability of Partners who Execute Operations to Membership Company for Damages)

If partners who execute the business fail to perform their duties, they shall be jointly and severally liable to the Membership Company for losses arising as a result.

**Article 597** (Liability of Limited Partners who Execute Business to Membership Company for Damages)

If limited partners who execute the business had knowledge, or was grossly negligent in discharging their duties, such limited partners shall be jointly and severally liable to compensate losses arising in a third party as a result.

**Article 598** (Special Provisions where Juridical Persons are Partners Executing Business)

- (1) In cases where juridical persons act as partners who execute the business, such juridical persons must appoint persons who are to perform the duties of partners who execute such business and notify other partners of the names and addresses of such persons.

(2) The provisions from Article 593 through the preceding article shall apply mutatis mutandis to the persons who are to perform the duties of partners appointed under the provisions of the preceding paragraph.

**Article 599** (Representatives of Membership Companies)

(1) A partner or partners who execute the business shall represent the Membership Company; provided, however, that this shall not apply in cases where partners or other persons who represent the Membership Companies are otherwise designated.

(2) In cases where there are two or more partners who execute the business referred to in the main clause of the preceding paragraph, each partner who executes the business shall represent the Membership Company individually.

(3) A Membership Company may appoint partners who represent the Membership Company from among the partners who execute the business pursuant to the articles of incorporation, or through the appointment by the partners themselves pursuant to the provisions of the articles of incorporation.

(4) Partners who represent the Membership Company shall have authority to do all judicial and non-judicial acts in connection with the operations of the Membership Company.

(5) No limitation on the authority under the preceding paragraph may be asserted against a third party without knowledge.

**Article 600** (Liability for Damages Caused by Acts of Partners who Represent Membership Companies)

A Membership Company shall be liable to compensate losses that partners who represent the Membership Company or other representatives caused to third parties in the performance of their duties.

**Article 601** (Representation of Company in Claims between Membership Companies without Share and Partners)

Notwithstanding the provisions of paragraph (4) of Article 599, in cases where a Membership Company files an action against any of its partners, or any of the partners files an action against that Membership Company, if there is no representative of the Membership Company with respect to such action (excluding the relevant partner), the representative of the Membership Company in such action may be determined by a majority of the partners other than such partner.

**Article 602**

Notwithstanding the provisions of paragraph (1) of Article 599, in cases where a partner requests that the Membership Company file an action to pursue the liability

of a partner, if the Membership Company fails to file such action within 60 days after the day of such request, such partner making the request may represent the Membership Company with respect to such action; provided, however, that this shall not apply in cases where the purpose of such action is to seek unlawful gains of such partner or a third party or to inflict losses on such Membership Company.

### **Section 3 Persons who Perform Duties on behalf of Partners Executing Business**

#### **Article 603**

- (1) A person who is appointed by a provisional disposition order provided for in Article 56 of the Civil Affairs Preservation Act to act on behalf of partners who execute the business or partners who represent the Membership Company, in carrying out of the duties of the same, must obtain the permission of the court in order to engage in any act which does not belong to the ordinary business of the Membership Company, unless otherwise provided for in the provisional disposition order.
- (2) An act of a person who acts on behalf of partners who execute the business or partners who represent the Membership Company in carrying out duties of the same that is performed in violation of the provisions of the preceding paragraph shall be ineffective; provided, however, that the Membership Company may not assert that ineffectiveness against a third party without knowledge.

### **Chapter IV Admission and Withdrawal of Partners**

#### **Section 1 Admission of Partners**

#### **Article 604 (Admission of Partners)**

- (1) A Membership Company may admit a new partner.
- (2) Admission of partners of a Membership Company shall take effect when a change relating to such partner is effected in the articles of incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, in cases where a Limited Liability Company admits a new partner, if the person who intends to become the new partner has not performed all or a part of the payment or delivery relating to the contribution at the time of the change in the articles of incorporation in that paragraph, such person shall become a partner of the Limited Liability Company when such payment or delivery has been completed.

#### **Article 605 (Responsibility of Admitted Partners)**

A partner that is admitted after the incorporation of a Membership Company shall also be liable for the performance of obligations of the Membership Company that arose before such admission.

## **Section 2 Withdrawal of Partners**

### **Article 606 (Voluntary Withdrawal)**

- (1) In cases where the duration of a Membership Company is not provided by the articles of incorporation, or in cases where the articles of incorporation provide that the Membership Company shall continue to exist for the life of a particular partner, each partner may withdraw at the end of the business year. In such cases, each partner must give advance notice of withdrawal to the Membership Company more than six months in advance.
- (2) The provisions of the preceding paragraph do not preclude the Membership Company from provision to the contrary in the articles of incorporation.
- (3) Notwithstanding the provisions of the preceding two paragraphs, if there are any unavoidable grounds, any partner may withdraw at any time.

### **Article 607 (Statutory Withdrawal)**

- (1) Other than as provided for in the preceding article, paragraph (1) of Article 609, Article 642 and Article 845, partners shall withdraw on the grounds listed below:
  - (i) Grounds provided for in the articles of incorporation having arisen;
  - (ii) The consent of all partners;
  - (iii) Death;
  - (iv) Mergers (limited to cases where the relevant partner that is a juridical person is liquidated as a result of the merger);
  - (v) A ruling to commence bankruptcy procedures;
  - (vi) Dissolution (excluding that resulting from the grounds listed in the preceding two items);
  - (vii) Being subject to a decision for commencement of guardianship; or
  - (viii) Removal.
- (2) A Membership Company can provide to the effect that no partner shall withdraw due to some or all of the grounds listed in items (v) through (vii) of the preceding paragraph.

### **Article 608 (Special Provision in case of Inheritances and Mergers)**

- (1) A Membership Company may provide in its articles of incorporation that, in cases where a partner in the same dies or is liquidated as a result of the merger, the heirs or other general successors of such partner may succeed to the equity

interest of such partner.

- (2) Notwithstanding the provisions of paragraph (2) of Article 604, in cases where the provisions in the preceding paragraph are prescribed in the articles of incorporation, a general successor in that paragraph (limited to general successors that are not a partner) shall become a partner holding equity interest in that paragraph at the time when the general successor succeeds to such equity interest.
- (3) In cases where there is a provision in paragraph (1) in the articles of incorporation, the Membership Company shall be deemed to have effected the change in the articles of incorporation relating to the general successor in that paragraph when such general successor has succeeded to the equity interest under that paragraph.
- (4) In cases where there are two or more general successors (limited to general successors that have succeeded to a partnership interest by inheritance and have not performed all or part of the payment in or delivery relating to the partnership contribution) in paragraph (1), each general successor shall be jointly and severally liable for the performance of such payment in or delivery relating to the contribution.
- (5) In cases where there are two or more general successors (limited to those who have succeeded to equity interest by inheritance) under paragraph (1), each general successor may not exercise his/her rights with respect to the interest which he/she has succeeded to unless he/she designates one person who exercises the rights with respect to such equity interest; provided, however, that this shall not apply in cases where the Membership Company gives its consent to the exercise of such rights.

**Article 609** (Forcing of Partners to Withdraw by Creditors that have attached Equity Interest)

- (1) A creditor that has attached the equity interest of a partner may force such partner to withdraw at the end of the business year. In such cases, such creditor must give advance notice thereof to the Membership Company and such partner more than 6 months in advance.
- (2) The advance notice under the second sentence of the preceding paragraph shall become ineffective if the partner in that paragraph performs such partner's obligations to the creditor in that paragraph or has provided appropriate security.
- (3) A creditor who gives the advance notice under the second sentence of paragraph (1) may petition the court for the disposition necessary to preserve the rights to claim the refund of the equity interest.

**Article 610** (Deemed Changes of Articles of Incorporation upon Withdrawal of

Partners)

In cases where a partner withdraws pursuant to the provisions of Article 606, paragraph (1) of Article 607, paragraph (1) of the preceding article or paragraph (2) of Article 642 (including the cases where a partner is deemed to have withdrawn under the provisions of Article 845), a Membership Company shall be deemed to have effected a change in the articles of incorporation to abolish the provisions of the articles of incorporation relating to such partner.

**Article 611** (Refund of Equity Interest in Conjunction with Withdrawal)

- (1) A partner that has withdrawn may receive the refund of his/her equity interest; provided, however, that this shall not apply in cases where a general successor of such partner becomes a partner under the provisions of paragraph (1) and paragraph (2) of Article 608.
- (2) Accounting as between a partner that has withdrawn and the Membership Company must be effected in accordance with the status of the assets of the Membership Company as at the time of the withdrawal.
- (3) The equity interest of a withdrawn partner may be refunded in monies regardless of the kind of his/her contribution.
- (4) With respect to matters not completed yet as at the time of the withdrawal, accounting may be effected after the completion of the same.
- (5) For the purpose of the application of the provisions of paragraph (2) and the preceding paragraph in cases where a partner withdraws due to removal, the words "the time of the withdrawal" in those provisions shall be read as "the time of the filing of an action seeking removal."
- (6) In the cases provided for in the preceding paragraph, the Membership Company must also pay interest calculated at the rate of 6% per annum from and including the day of the time of the filing of an action seeking removal.
- (7) Attachment on the equity interest of a partner shall be also effective to the rights seeking the refund of the equity interest.

**Article 612** (Liability of Withdrawn Partners)

- (1) A partner that has withdrawn shall be liable for the obligations of the Membership Company that arose before the registration of the withdrawal to the extent of the partner's pre-existing liability.
- (2) The liability under the preceding paragraph shall be extinguished when two years have elapsed from the day of the registration under the preceding paragraph in relation to the creditors of the Membership Company who do not state their claims, or do not give an advance notice of their claims within two years from the day of such registration.

**Article 613** (Demand for Change of Trade Names)

In cases where a Membership Company uses the family name or first and family names, or the corporate name, of a partner in its trade name, such partner that has withdrawn may demand that such Membership Company discontinue the use of such family name or first name and family names, or corporate name.

**Chapter V Accounting**

**Section 1 Accounting Principles**

**Article 614**

Accounting of a Membership Company shall be subject to the corporate accounting practices that are generally accepted as fair and appropriate.

**Section 2 Accounting Books**

**Article 615** (Preparation and Retention of Accounting Books)

- (1) A Membership Company must prepare accurate accounting books in a timely manner as prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) A Membership Company must retain its accounting books and important materials regarding its business for ten years from the time of the closing of the accounting books.

**Article 616** (Order to Submit Accounting Books)

The court may, in response to a petition or ex officio, order the parties to a lawsuit to submit the accounting books, in whole or in part.

**Section 3 Financial Statements**

**Article 617** (Preparation and Retention of Financial Statements)

- (1) A Membership Company must prepare a balance sheet as of the day of its incorporation pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) A Membership Company must prepare financial statements (hereinafter in this Chapter referring to balance sheet and other statements that are prescribed by the applicable Ordinance of the Ministry of Justice to be necessary and appropriate in order to indicate the status of the property of a Membership Company) for each business year pursuant to the provisions of the applicable Ordinance of the

Ministry of Justice.

- (3) Financial statements may be prepared by using electromagnetic records.
- (4) A Membership Company must retain its financial statements for ten years from the time of the preparation of the same.

**Article 618** (Inspection of Financial Statements)

- (1) Partners of a Membership Company may submit the following requests at any time during the business hours of such Membership Company:
  - (i) If the financial statements are prepared in writing, request for inspection or copying of such documents; or
  - (ii) If the financial statements are prepared using electromagnetic records, requests for inspection or copying of anything that indicates the matters recorded in such electromagnetic records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) The provisions of the preceding paragraph shall not preclude provision to the contrary in the articles of incorporation; provided, however, that even the articles of incorporation may not provide to the effect of restricting the submission of requests listed in each item of that paragraph at the end of the business year by partners.

**Article 619** (Order to Submit Financial Statements)

The court may, in response to a petition or ex officio, order the parties to a lawsuit to submit financial statements, in whole or in part.

**Section 4 Reductions in Stated Capital**

**Article 620**

- (1) A Membership Company may reduce the amount of its stated capital to compensate for losses.
- (2) The amount by which the stated capital will be reduced under the provisions of the preceding paragraph cannot exceed the amount calculated in the manner prescribed by the applicable Ordinance of the Ministry of Justice as the amount of the losses.

**Section 5 Distribution of Profit**

**Article 621** (Distribution of Profits)

- (1) Partners may demand that the Membership Company distribute its profit.
- (2) A Membership Company may prescribe matters regarding the method for

demanding the distribution of the profit and other matters on the distribution of profit in the articles of incorporation.

- (3) Attachment on the equity interest of a partner shall be also effective against the right to demand the distribution of the profits.

**Article 622** (Proportion of Distribution of Profits and Losses among Partners)

- (1) If there is no provision in the articles of incorporation with respect to the proportion of the distribution of profits and losses, those proportions shall be determined in accordance with the value of each partner's contribution.
- (2) If provisions with respect to the proportions of the distribution of either profit or loss alone are provided in the articles of incorporation, it shall be presumed that such proportion is common to distributions of profits and distributions of losses.

**Article 623** (Limited Partners' Responsibility regarding Distribution of Profit)

- (1) In cases where the book value of the monies, etc. delivered by a Membership Company to a limited partner by the distribution of profit (hereinafter in this paragraph referred to as "Distributed Amount") exceeds the amount of the profit as at the day when such distribution of profit takes place (hereinafter in this Chapter referring to the amount calculated in the manner prescribed by the applicable Ordinance of the Ministry of Justice as the profit of a Membership Company), limited partners who received such distribution of profit shall be jointly and severally liable to such Membership Company for the payment of monies equivalent to such Distributed Amount.
- (2) For the purpose of the application of the provisions of paragraph (2) of Article 580 to the partners that received the distribution of profit under the preceding paragraph in the cases provided for in that paragraph, words "to the extent of the value of their investment (excluding the value of the contributions to the Membership Company already performed)" in that paragraph (2) of Article 580 shall be read as "to the extent of the sum of the value of their investment (excluding the value of the contributions to the Membership Company already performed) and the amount by which the Distributed Amount under paragraph (1) of Article 623 exceeds the amount of the profit under that paragraph."

## **Section 6 Contribution Refunds**

**Article 624**

- (1) Partners may demand that the Membership Company refund the monies, etc. that partners have already paid in or delivered as contributions (hereinafter in this Part referred to as "Contribution Refunds"). In such cases, if such monies, etc.

consist of any property other than monies, they shall not be precluded from demanding the refund of monies in an amount equivalent to the value of such property.

- (2) M Membership Company may prescribe matters regarding the method for demanding the Contribution Refunds and other matters on Contribution Refunds in its articles of incorporation.
- (3) Attachment of the equity interest of a partner shall be also effective against the rights to demand a Contribution Refunds.

## **Section 7 Special Provisions on Accounting of Limited Liability Companies**

### **Subsection 1 Special Provision on Inspection of Financial Statements**

#### **Article 625**

Creditors of a Limited Liability Company may make the requests listed in each item of paragraph (1) of Article 618 with respect to its financial statements (limited to those prepared within the preceding five years) at any time during the business hours of the Limited Liability Company.

### **Subsection 2 Special Provisions on Reduction in Stated Capital**

#### **Article 626** (Reductions in Stated Capital where Contribution Refund is Effected)

- (1) In addition to the cases under paragraph (1) of Article 620, a Limited Liability Company may reduce the amount of its stated capital to effect a Contribution Refund.
- (2) The amount of the stated capital to be reduced pursuant to the provisions of the preceding paragraph may not exceed the amount obtained by subtracting the surplus amount as of the day when the Refund of Contributions is effected from Contribution Refund Amount provided for in paragraph (2) of Article 632.
- (3) The amount of the stated capital to be reduced by Partnership Interest Refund Amount pursuant to the provisions of the paragraph (1) may not exceed the amount obtained by subtracting the surplus amount as of the day when the Refund of Equity Interests is effected from Equity Interest Refund Amount provided for in paragraph (1) of Article 635.
- (4) The term "surplus amount" provided for in the preceding two paragraphs shall mean the amount obtained by subtracting the total sum of the amounts listed in item (ii) through item (iv) from the amount listed in item (i) (the same shall apply to Subsection 4 and Subsection 5):
  - (i) Amount of assets;

- (ii) Amount of debt;
- (iii) Amount of stated capital; and
- (iv) Other than those listed in the preceding two items, the total sum of the amounts accounted for in each line item prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 627 (Objection of Creditors)**

- (1) In cases where a Limited Liability Company reduces the amount of stated capital, creditors of such Limited Liability Company may state their objections to the reduction in the stated capital to such Limited Liability Company.
- (2) In cases provided for in the preceding paragraph, the Limited Liability Company must give public notice of the matters listed below in the Official Gazette and must give notice of the same separately to each known creditor; provided, however, that the period under item (ii) cannot be less than one month:
  - (i) The details of such reduction in stated capital; and
  - (ii) A statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if, in addition to a notice in the Official Gazette, a Limited Liability Company effects the public notice under that paragraph in a manner listed in item (ii) or item (iii) of paragraph (1) of Article 939 in accordance with the provisions of the articles of incorporation under the provisions of that paragraph, the Limited Liability Company shall no longer be required to give separate notices under the provisions of the preceding paragraph.
- (4) In cases where the creditors do not raise any objection within the period under item (ii) of paragraph (2), such creditors shall be deemed to have approved such reduction of in the stated capital.
- (5) In cases where the creditors raise any objection within the period under item (ii) of paragraph (2), the Limited Liability Company must make the payment or provide appropriate security to such creditors, or entrust equivalent assets to a qualified trust company for the purpose of assuring the payment to such creditors; provided, however, that this shall not apply if such reduction in the stated capital is unlikely to be detrimental to such creditors.
- (6) The reduction in stated capital shall take effect on the day when the procedures in each of the preceding paragraphs has ended.

**Subsection 3 Special Provisions concerning Distribution of Profits**

**Article 628 (Restriction on Distribution of Profits)**

In cases where the book value of the monies, etc. delivered to partners of a Limited Liability Company through the distribution of profits (hereinafter in this Subsection referred to as "Distributed Amount") exceeds the amount of the profit as at the day when such distribution of profit takes place, such distribution of profit cannot be effected. In such cases, the Limited Liability Company may reject demands under the provisions of paragraph (1) of Article 621.

**Article 629** (Liability for Distribution of Profits)

- (1) In cases where a Limited Liability Company effects the distribution of profit in violation of the provisions of the preceding paragraph, the partners that executed the operations in connection with such distribution of profits shall be jointly and severally liable to such Limited Liability Company, together with the partners that received such distribution of profits, for payment of the monies in an amount equivalent to such Distributed Amount; provided, however, that this shall not apply in cases where such partners who executed such operations have proven that they did not fail to exercise due care with respect to the performance of their duties:
- (2) Exemption from the obligations in the preceding paragraph cannot be given; provided, however, that this shall not apply in cases where consent of all partners is obtained with respect to the exemption of such obligations, to the extent of the amount of profits as at the day when the distribution of profits takes place.

**Article 630** (Restrictions on Right to Obtain Reimbursement from Partners)

- (1) In the cases provided for in paragraph (1) of the preceding article, if partners that received the distribution of profits are without knowledge with respect to the fact that the Distributed Amount exceeds the amount of the profit as at the day when such distribution of profit takes place, such partners shall not be obliged to respond to a demand for reimbursement by the partners who executed the operations in connection with such distribution of profit with respect to such Distributed Amount.
- (2) In the cases provided for in paragraph (1) of the preceding article, creditors of a Limited Liability Company may have the partners that received the distribution of profits pay monies equivalent to the Distributed Amount (or, in cases where such Distributed Amount exceeds the amount which the Limited Liability Company owes to such creditors, such amount owed).
- (3) The provisions of paragraph (2) of Article 623 shall not apply to partners in a Limited Liability Company.

**Article 631** (Liability in Cases of Deficit)

- (1) In cases where a Limited Liability Company effects the distribution of profits, if a deficit (hereinafter in this paragraph referring to the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the amount of the deficit of the Limited Liability Company) occurs at the end of the business year that contains the day on which such distribution of profit takes place, partners that executed the operations in connection with such distribution of profit with respect to such Distributed Amount shall be jointly and severally liable to such Limited Liability Company, together with the partners who received such distribution of profit, for payment of the amount of that deficit (or, if the amount of such deficit exceeds the Distributed Amount, such Distributed Amount); provided, however, that this shall not apply in cases where such partners who executed such operations have proven that they did not fail to exercise due care with respect to the performance of their duties:
- (2) Exemption from the obligations in the preceding paragraph cannot be given without the consent of all partners.

#### **Subsection 4 Special Provisions on Contribution Refunds**

##### **Article 632** (Restrictions on Contribution Refunds)

- (1) Notwithstanding the provisions of paragraph (1) of Article 624, partners in a Limited Liability Company may not make the demand under the provisions of the first sentence of that paragraph except in cases where the value of partner's contributions will be reduced by changes in the articles of incorporation.
- (2) In cases where the book value of the monies, etc. delivered by a Limited Liability Company to a partner by Contribution Refunds (hereinafter in this Subsection referred to as "Amount of Contribution Refunds") exceeds the amount of surplus as of the day when a demand is made under the provisions of the first sentence of paragraph (1) of Article 624 (in cases where the reduction in the stated capital under paragraph (1) of Article 626 is effected, hereinafter in this Subsection referring to the amount of surplus after such reduction), or the reduction in the stated capital in the preceding paragraph, whichever is lower, such Contribution Refunds cannot be effected. In such cases, the Limited Liability Company may reject the demand under the provisions of the first sentence of paragraph (1) of Article 624.

##### **Article 633** (Partner's Liability for Contribution Refunds)

- (1) In cases where a Limited Liability Company effects the Contribution Refunds in violation of the provisions of the preceding paragraph, the partners who executed the operations in connection with such Contribution Refunds shall be jointly and

severally liable to such Limited Liability Company, together with the partners who received such Contribution Refunds, for payment of the monies in an amount equivalent to such Amount of Contribution Refunds; provided, however, that this shall not apply in cases where such partners who executed such operations have proven that they did not fail to exercise due care in the performance of their duties:

(2) Exemption from the obligations under the preceding paragraph may not be given; provided, however, that this shall not apply in cases where consent of all partners is obtained with respect to the exemption of such obligations to the extent of the surplus as at the day when the Contribution Refunds takes place.

**Article 634 (Restrictions on Rights to Obtain Reimbursement from Partners)**

- (1) In the cases provided for in paragraph (1) of the preceding article, if partners who received the Contribution Refund are without knowledge with respect to the fact that the Amount of Contribution Refunds exceeds the amount of surplus as at the day when such Contribution Refunds takes place, such partners shall not have the obligation to respond to the demand for reimbursement by the partners that executed the operations in connection with such Contribution Refunds with respect to such Amount of Contribution Refunds.
- (2) In the cases provided for in paragraph (1) of the preceding article, creditors of a Limited Liability Company may have the partners that received the Contribution Refunds pay the monies equivalent to the Amount of Contribution Refunds (or, in cases where such Amount of Contribution Refunds exceeds the amount that the Limited Liability Company owes to such creditors, such amount owed).

**Subsection 5 Special Provisions on Refund of Equity Interest in Conjunction with Withdrawals**

**Article 635 (Objection of Creditors)**

- (1) In cases where the book value of the monies, etc. delivered by a Limited Liability Company to partners through equity interest refund (hereinafter in this Subsection referred to as "Partnership Interest Refund Amount") exceeds the surplus as of the day when such equity interest refund takes place, creditors of such Limited Liability Company may state their objections as to the equity interest refund to such Limited Liability Company.
- (2) In cases provided for in the preceding paragraph, the Limited Liability Company must make the public notice of the matters listed below in the Official Gazette and must give notice of the same separately to each known creditor, if any; provided, however, that the period in item (ii) cannot be less than one month (or, in cases where the Partnership Interest Refund Amount exceeds the amount calculated by

the method prescribed by the applicable Ordinance of the Ministry of Justice as the amount of the net assets of such Limited Liability Company, two months):

- (i) The details of the equity interest refund that exceeds such surplus; and
  - (ii) A statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if, in addition to using the Official Gazette, a Limited Liability Company effects the public notice in that paragraph in a manner listed in item (ii) or (iii) of paragraph (1) of Article 939 in accordance with the provisions of the articles of incorporation under the provisions of that paragraph, the Limited Liability Company shall no longer be required to give separate notices under the provisions of the preceding paragraph; provided, however, that this shall not apply in cases where the Partnership Interest Refund Amount exceeds the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the amount of the net assets of such Limited Liability Company.
- (4) In cases where the creditors do not raise any objection within the period in item (ii) of paragraph (2), such creditors shall be deemed to have approved such equity interest refund.
- (5) In cases where the creditors raise objections within the period in item (ii) of paragraph (2), the Limited Liability Company must make the payment or provide appropriate security to such creditors, or entrust appropriate assets to a qualified trust company with the purpose of assuring the payment to such creditors; provided, however, that this shall not apply if, in cases where the Partnership Interest Refund Amount does not exceed the amount calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the net assets of such Limited Liability Company, such equity interest refund is unlikely to be detrimental to such creditors.

**Article 636** (Responsibility of Partners who Execute Operations)

- (1) In cases where a Limited Liability Company effects an equity interest refund in violation of the provisions of the preceding paragraph, the partners who executed the operations in connection with such equity interest refund shall be jointly and severally liable to such Limited Liability Company, together with the partners who received such equity interest refund, for payment of the monies in the amount equivalent to such Partnership Interest Refund Amount; provided, however, that this shall not apply in cases where such partners who executed the operations regarding the refund of equity interest have proven that they did not fail to exercise due care in the performance of their duties:
- (2) Exemptions from the obligations under the preceding paragraph cannot be given;

provided, however, that this shall not apply in cases where consent of all partners is obtained with respect to the exemption of such obligations to the extent of the surplus as at the day when the equity interest refund takes place.

## **Chapter VI Change in Articles of Incorporation**

### **Article 637** (Change in Articles of Incorporation)

A Membership Company may change its articles of incorporation with the consent of all partners, unless otherwise provided for in the articles of incorporation.

### **Article 638** (Change in Kind of Membership Company by Change in Articles of Incorporation)

- (1) A General Partnership Company shall, by effecting the change in the articles of incorporation listed in each of the following items, become a Membership Company of the kind listed in each such item:
  - (i) Changes in the articles of incorporation that admits limited partners: Limited Partnership Company;
  - (ii) Changes of the articles of incorporation to convert some of its partners into limited partners: Limited Partnership Company;
  - (iii) Changes of the articles of incorporation to convert all of its partners into limited partners: Limited Liability Company.
- (2) A Limited Partnership Company shall, by effecting the change in the articles of incorporation listed in each of the following items, become a Membership Company of the kind listed in each such item:
  - (i) Changes in the articles of incorporation to convert all of its partners into unlimited partners: General Partnership Company; and
  - (ii) Changes in the articles of incorporation to convert all of its partners into limited partners: Limited Liability Company.
- (3) A Limited Liability Company shall, by effecting the change in the articles of incorporation listed in each of the following items, become a Membership Company of the kind listed in each such item:
  - (i) Changes in the articles of incorporation to convert all of its partners into unlimited partners: General Partnership Company;
  - (ii) Changes in the articles of incorporation to admit unlimited partners: Limited Partnership Company; and
  - (iii) Changes in the articles of incorporation to convert some of its partners into unlimited partners: Limited Partnership Company.

### **Article 639** (Deemed Changes in Articles of Incorporation on Withdrawal of Partners)

of a Limited Partnership Company)

- (1) In cases where, due to withdrawal of limited partners, partners of a Limited Partnership Company consist only of unlimited partners, such Limited Partnership Company shall be deemed to have effected a change in the articles of incorporation to become a General Partnership Company.
- (2) In cases where, due to withdrawal of unlimited partners, partners of a Limited Partnership Company consist only of limited partners, such Limited Partnership Company shall be deemed to have effected changes in the articles of incorporation to become a Limited Liability Company.

**Article 640** (Performance of Contributions in Changing Articles of Incorporation)

- (1) In cases where changes in the articles of incorporation listed in item (iii) of paragraph (1) or item (ii) of paragraph (2) of Article 638 is to be effected, if partners of the Membership Company that effects such changes in the articles of incorporation have not performed all or part of the payment in or delivery relating to the contributions to the Limited Liability Company after such changes in the articles of incorporation, such changes in the articles of incorporation shall take effect on the day when such payment in and delivery have been completed.
- (2) In cases where changes in the articles of incorporation to become a Limited Liability Company are deemed to have been effected pursuant to the provisions of paragraph (2) of the preceding article, if the partners have not performed all or part of the payment in or delivery relating to the partners' contributions, such payment in or delivery must be completed within one month of the day when such changes in the articles of incorporation are deemed to have been effected; provided, however, that this shall not apply in cases where changes in the articles of incorporation to become a General Partnership Company or Limited Partnership Company are effected within such period.

**Chapter VII Dissolution**

**Article 641** (Grounds for Dissolution)

A Membership Company shall dissolve on the grounds listed below:

- (i) The expiration of the duration provided for in the articles of incorporation;
- (ii) The grounds for dissolution provided for in the articles of incorporation having arisen
- (iii) The consent of all partners;
- (iv) The absence of all partners;
- (v) A merger (limited to cases where such Membership Company is liquidated as a result of the merger);

- (vi) A ruling for commencement of bankruptcy procedures; or
- (vii) A judgment ordering the dissolution under the provisions of paragraph (1) of Article 824 or paragraph (1) of Article 833.

**Article 642** (Continuation of Membership Companies)

- (1) In cases where a Membership Company dissolves on the grounds listed in items (i) through (iii) of the preceding article, the Membership Company may continue in existence by the consent of some or all partners until the completion of the liquidation under the provisions of the following Chapter.
- (2) In the case provided for in the preceding paragraph, partners who have not given consent to the continuation of the Membership Company shall withdraw on the day when it is determined that the Membership Company will continue in existence.

**Article 643** (Restrictions on Mergers of Dissolved Membership Company)

In cases where a Membership Company has dissolved, such Membership Company cannot engage in the following acts:

- (i) Mergers (limited to the cases where such Membership Company survives the merger);
- (ii) Succession by Absorption-type Company Split to some or all of the rights and obligations held by another Company with respect to such Company's business.

## **Chapter VIII Liquidation**

### **Section 1 Commencement of Liquidation**

**Article 644** (Causes of Commencement of Liquidation)

A Membership Company must go into liquidation in the cases listed below subject to the provisions of this Chapter:

- (i) In cases where the Membership Company has dissolved (excluding the cases where Membership Companies have dissolved on the grounds listed in item (v) of Article 641 and cases where Membership Companies have dissolved as a result of a ruling for commencement of bankruptcy procedures and such bankruptcy procedures have not ended);
- (ii) In cases where a judgment allowing a claim seeking invalidation of the incorporation has become final and binding; or
- (iii) In cases where a judgment which permits a claim seeking rescission of the incorporation has become final and binding.

**Article 645** (Capacity of Liquidating Membership Companies)

Membership Companies that go into liquidation themselves under the provisions of the preceding article ( hereinafter referred to as "Liquidating Membership Companies") shall be deemed to remain in existence until the completion of liquidation to the extent of the purpose of the liquidation.

## **Section 2 Liquidators**

### **Article 646** (Establishment of Liquidators)

A Liquidating Membership Company must have one or more liquidators.

### **Article 647** (Assumption of Office of Liquidators)

- (1) The following persons shall become liquidators of a Liquidating Membership Company:
  - (i) A partner who executes the operations (excluding the cases where persons listed in the following item or in item (iii) exist);
  - (ii) A person prescribed by the articles of incorporation; or
  - (iii) A person prescribed by the consent of a majority of partners (or, if partners who execute the operations are provided for in the articles of incorporation, those partners).
- (2) In the absence of a liquidator under the provisions of the preceding paragraph, the court shall appoint a liquidator in response to the petition by the interested parties.
- (3) Notwithstanding the provisions of the preceding two paragraphs, with respect to a Liquidating Membership Company that has dissolved on the grounds listed in item (iv) of item (vii) of Article 641, the court shall appoint a liquidator in response to a petition by interested parties or the Minister of Justice or ex officio.
- (4) Notwithstanding the provisions of paragraphs (1) and (2), with respect to a Liquidating Membership Company that has fallen under the cases listed in item (ii) or (iii) of Article 644, the court shall appoint a liquidator in response to a petition by the interested parties.

### **Article 648** (Dismissal of Liquidators)

- (1) Liquidators (excluding those appointed by the court under the provisions of paragraphs (2) through (4) of the preceding article) may be dismissed at any time.
- (2) Dismissals under the provisions of the preceding paragraph shall be determined by a majority of the partners unless otherwise provided for in the articles of incorporation.
- (3) If there are significant grounds, the court may dismiss a liquidator in response to

a petition by the partners or other interested parties.

**Article 649** (Liquidators' Duties)

Liquidators shall perform the following duties:

- (i) The conclusion of current business;
- (ii) The collection of debts and the performance of obligations; and
- (iii) To deliver the residual assets.

**Article 650** (Execution of Business)

- (1) A liquidator shall execute the operations of the Liquidating Membership Company.
- (2) In cases where there are two or more liquidators, the operations of the Liquidating Membership Company shall be decided by a majority of the liquidators, unless otherwise provided for in the articles of incorporation.
- (3) Notwithstanding the provisions of the preceding paragraph, in cases where there are two or more partners, assignment of some or all of the business of a Liquidating Membership Company shall be decided by a majority of the partners.

**Article 651** (Relationship between Liquidators and Liquidating Membership Company)

- (1) The relationship between a Liquidating Membership Company and its liquidators shall be governed by the applicable provisions on mandate.
- (2) The provisions of paragraph (2) of Article 593, Article 594 and Article 595 shall apply mutatis mutandis to liquidators. In such cases, "partners other than such partners" in paragraph (1) of Article 594 and paragraph (1) of Article 595 shall be deemed to be read as "partners (or, in cases where such liquidators are partners, partners other than such liquidators)."

**Article 652** (Liquidators' Liability for Damages to Liquidating Membership Company)

If liquidators fail to discharge their duties, the liquidators shall be jointly and severally liable to compensate such Liquidating Membership Company for losses arising as a result.

**Article 653** (Liquidators' Liability for Damages to Third Parties)

If liquidators had knowledge or was grossly negligent in discharging the duties of the same, such liquidators shall be jointly and severally liable to compensate losses arising in a third party as a result.

**Article 654** (Special Provisions where Juridical Persons are Liquidators)

- (1) In case where juridical persons act as liquidators, such juridical persons must appoint persons who are to perform the duties of such liquidators and notify the partners of the names and addresses of such persons.
- (2) The provisions of the preceding three articles shall apply mutatis mutandis to the persons who are to perform the duties of liquidators appointed under the provisions of the preceding paragraph.

**Article 655** (Representatives of Liquidating Membership Company)

- (1) A liquidator or liquidators shall represent the Liquidating Membership Company; provided, however, that this shall not apply in cases where liquidators or other persons who represent the Liquidating Membership Company are otherwise prescribed.
- (2) In cases where there are two or more liquidators referred to in the main clause of the preceding paragraph, each liquidator shall represent the Liquidating Membership Company individually.
- (3) A Liquidating Membership Company may appoint liquidators who represent the Liquidating Membership Company from among the liquidators pursuant to the articles of incorporation, or through the appointment by the liquidators (hereinafter in this paragraph excluding those appointed by the court under the provisions of paragraph (2) through paragraph (4) of Article 647) from among themselves pursuant to the provisions of the articles of incorporation.
- (4) In cases where partners who execute the operations become liquidators pursuant to the provisions of item (i), paragraph (1) of Article 647, if the partners that represent the Membership Company are already prescribed, such partners that represent the Membership Company shall become the liquidators that represent the Liquidating Membership Company.
- (5) In cases where the court appoints liquidators under the provisions of paragraph (2) through paragraph (4) of Article 647, the court may prescribe liquidators that represent the Liquidating Membership Company from among those liquidators.
- (6) The provisions of paragraph (4) and paragraph (5) of Article 599 shall apply mutatis mutandis to liquidators that represent the Liquidating Membership Company, and the provisions of Article 603 shall apply mutatis mutandis to persons that are appointed by a provisional disposition order provided for in Article 56 of the Civil Affairs Preservation Act to perform the duties of liquidators or liquidators who represent the Liquidating Membership Company on behalf of them, respectively.

**Article 656** (Commencement of Bankruptcy Procedures with respect to Liquidating

#### Membership Company)

- (1) In cases where it has become clear that the assets of a Liquidating Membership Company are not sufficient to fully discharge its debts, liquidators must immediately file a petition for the commencement of bankruptcy procedures.
- (2) In cases where a Liquidating Membership Company is subject to a ruling for the commencement of bankruptcy procedures, if liquidators have transferred the administration of the same to the trustee in bankruptcy, liquidators shall be have completed their duties.
- (3) In the cases provided for in the preceding paragraph, if the Liquidating Membership Company has already made payments to creditors or distributions to partners, the trustee in bankruptcy may retrieve the same.

#### **Article 657** (Remuneration for Liquidators Appointed by the Court)

In cases where the court has appointed a liquidator under the provisions of paragraphs (2) through (4) of Article 647, the court may prescribe the amount of the remuneration that the Liquidating Membership Company shall pay to such liquidator.

### **Section 3 Inventory of Property**

#### **Article 658** (Preparation of Inventory of Property)

- (1) Liquidators must investigate the current status of the property of the Liquidating Membership Companies and prepare, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, an inventory of property and the balance sheet as of the day when the Liquidating Membership Companies fell under cases listed in any of the item of Article 644 (hereinafter in this Section referred to as "Inventory of Property") and notify each partner of the details of the same, without delay after assuming office.
- (2) Liquidating Membership Companies must retain its Inventory of Property from the time of the preparation of such Inventory of Property until the registration completion of the liquidation at the location of its head office.
- (3) Liquidating Membership Companies must report every month the current status of the liquidation at the request of the partners.

#### **Article 659** (Orders to Submit Inventory of Property)

The court may, in response to a petition or ex officio, order parties to a lawsuit to submit the Inventory of Property, in whole or in part.

### **Section 4 Performance of Obligations**

**Article 660** (Public Notices to Creditors)

- (1) A Liquidating Membership Company (hereinafter in this paragraph and in the following article limited to Limited Liability Companies) must, without delay after having fallen under a case listed in any item of Article 644, give public notice in the Official Gazette to the creditors of such Liquidating Membership Companies to the effect that creditors should state their claims during a certain period of time and must give notice of the same separately to each known creditor, if any; provided, however, that such period cannot be less than two months.
- (2) The public notice pursuant to the provisions of the preceding paragraph must contain a notation to the effect that such creditors will be excluded from the liquidation unless they state their claims during such period of time.

**Article 661** (Restrictions on Performance of Obligations)

- (1) A Liquidating Membership Company cannot perform its obligations during the period of time under paragraph (1) of the preceding article. In such cases, a Liquidating Membership Company cannot be exempted from the liability arising from its failure to perform.
- (2) Notwithstanding the provisions of the preceding paragraph, even during the period of time under paragraph (1) of the preceding article, a Liquidating Membership Company may, with the permission of the court, perform its obligations relating to minor claims, claims secured by security interests over the assets of the Liquidating Membership Company, or other claims unlikely to be detrimental to other creditors even if performed. In such cases, if there are two or more liquidators, the petition for such permission must be made with the consent of all of them.

**Article 662** (Performance of Obligations relating to Conditional Claims)

- (1) A Liquidating Membership Company may perform obligations relating to conditional claims, claims the duration of indeterminate duration or other claims of indeterminate amount. In such cases, a petition for the appointment of an appraiser must be filed with the court in order to have such claims evaluated.
- (2) In the cases provided for in the preceding paragraph, a Liquidating Membership Company must perform its obligations relating to the claims under that paragraph in accordance with the evaluation by the appraiser under that paragraph.
- (3) The expenses of the procedures for the appointment of the appraiser under paragraph (1) shall be borne by the Liquidating Membership Company. The same shall apply to the expense of summonses and questions for the purpose of appraiser's evaluation.

**Article 663** (Demand for Performance of Contributions)

In cases where the current assets of a Liquidating Membership Company are not sufficient to fully discharge its debts, if there are partners who have not performed all or part of their contributions, such Liquidating Membership Company may have such partners make their contributions, notwithstanding the provisions of the articles of incorporation relating to such contributions.

**Article 664** (Restrictions on Distribution of Residual Assets before Performance of Obligations)

A Liquidating Membership Company cannot distribute its assets to its partners until after performance of the obligations of such Liquidating Membership Company; provided, however, that this shall not apply in cases where assets regarded as necessary for the performance of obligations relating to a claim that is the subject of dispute as to its existence or otherwise or as to its amount have been withheld.

**Article 665** (Exclusion from Liquidation)

- (1) Creditors of a Liquidating Membership Company ((excluding known creditors; hereinafter in this article limited to Limited Liability Companies) who fail to state their claims during the period under paragraph (1) of Article 660 shall be excluded from the liquidation.
- (2) Creditors who are excluded from the liquidation pursuant to the provisions of the preceding paragraph may demand the performance solely with respect to the residual assets that are not distributed.
- (3) In cases where residual assets of a Liquidating Membership Company have been distributed to some partners, the assets necessary for the distribution to partners other than such partners in the same proportion as that applied for the distribution received by such partners shall be deducted from the residual assets under the preceding paragraph.

**Section 5 Distribution of Residual Assets**

**Article 666** (Proportion of Distribution of Residual Assets)

If there is no provision in the articles of incorporation with respect to the proportions of the distribution of residual assets, that proportions shall be prescribed in accordance with the value of each partner's contribution.

**Section 6 End of Liquidation Administrations**

### **Article 667**

- (1) If the administration of a liquidation has ended, the Liquidating Membership Company must carry out the accounting relating to the liquidation and obtain the approval of the partners without delay.
- (2) If partners do not raise objections to the accounting under the preceding paragraph within one month, the partners shall be deemed to have approved such accounting; provided, however, that this shall not apply if there is any misconduct regarding the execution of the liquidators' duties.

### **Section 7 Voluntary Liquidation**

#### **Article 668** (Method to Dispose of Assets)

- (1) A Membership Company (hereinafter in this Section limited to a General Partnership Company and a Limited Partnership Company) may prescribe, by the articles of incorporation or by the consent of all partners, the method of the disposition of the assets of such Membership Company in cases where such Membership Company is dissolved on the grounds listed in items (i) through (iii) of Article 641.
- (2) The provisions of Section 2 through the immediately preceding Section shall not apply to Membership Companies that have prescribed the method of the disposition of assets under the preceding paragraph.

#### **Article 669** (Preparation of Inventory of Property)

- (1) In cases where a Membership Company that determines the method of the disposition of assets under paragraph (1) of the preceding article is dissolved on the grounds listed in items (i) through (iii) of Article 641, the Liquidating Membership Company (hereinafter in this Section limited to a General Partnership Company and a Limited Partnership Company) must prepare, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, the inventory of property and the balance sheet as of the day of the dissolution within two weeks after the day of the dissolution.
- (2) In cases where a Membership Company that has not prescribed the method of the disposition of assets under paragraph (1) of the preceding article is dissolved on the grounds listed in items (i) through (iii) of Article 641, if it prescribes the method of the disposition of assets in that paragraph after the dissolution, the Liquidating Membership Company must prepare, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice, an inventory of property and the balance sheet as of the day of the dissolution within two weeks of the day of such prescribing of the method of the disposition of assets.

**Article 670** (Objection of Creditors)

- (1) In cases where a Membership Company has prescribed the method of the disposition of assets under paragraph (1) of Article 668, creditors of the Liquidating Membership Company after the dissolution thereof may state their objections to such method of the disposition of assets to such Liquidating Membership Company.
- (2) In cases provided for in the preceding paragraph, the Liquidating Membership Company must, within two weeks from the day of the dissolution (or, in the cases provided for in paragraph (2) of the preceding article, of the day when such method of disposition of the assets is prescribed), give public notice of the matters listed below in the Official Gazette and must give notice of the same separately to each known creditor, if any; provided, however, that the period under item (ii) cannot be less than one month:
  - (i) A statement that liquidation will be effected in accordance with the method of the disposition of assets under paragraph (1) of Article 668; and
  - (ii) A statement to the effect that creditors may state their objections within a certain period of time.
- (3) Notwithstanding the provisions of the preceding paragraph, if, in addition to using the Official Gazette, a Liquidating Membership Company effects public notice under that paragraph in a manner listed in item (ii) or (iii) of paragraph (1) of Article 939 in accordance with the provisions of the articles of incorporation under the provisions of that paragraph, the Liquidating Membership Company shall no longer be required to give separate notices under the provisions of the preceding paragraph.
- (4) In cases where the creditors do not raise objections within the period under item (ii) of paragraph (2), such creditors shall be deemed to have approved such disposition of assets.
- (5) In cases where the creditors raise objections within the period under item (ii) of paragraph (2), the Liquidating Membership Company must make payment to or provide appropriate security to such creditors, or entrust appropriate assets to a qualified trust company for the purpose of assuring the payment to such creditors.

**Article 671** (Consents of Creditors that have attached Equity Interest)

- (1) In cases where a Membership Company prescribes the method of the disposition of assets under paragraph (1) of Article 668, if there are creditors that have attached the equity interest of partners, consent of those creditors must be obtained if the Liquidating Membership Company after the dissolution intends to dispose of its assets.

- (2) If the Liquidating Membership Company under the preceding paragraph disposes of its assets in violation of the provisions of that paragraph, creditors that attached the equity interests of partners may demand that such Liquidating Membership Company pay an amount equivalent to those equity interests.

### **Section 8 Retention of Accounting Materials**

#### **Article 672**

- (1) A Liquidator (or, in cases where the method of the disposition of assets in paragraph (1) of Article 668 is prescribed, a partner that represents the Liquidating Membership Company) must retain the books of the Liquidating Membership Company as well as any material data regarding the business and liquidation of the same (hereinafter in this article referred to as "Accounting Materials") for a period of ten years from the time of the registration of completion of the liquidation at the location of head office of the Liquidating Membership Company.
- (2) Notwithstanding the provisions of the preceding paragraph, in cases where a person who retains the Accounting Materials has been prescribed by the articles of incorporation or by a majority of the partners, that person must retain the Accounting Materials for a period of ten years from the time of registration of the completion of the liquidation at the location of head office of the Liquidating Membership Company.
- (3) The court may, in response to a petition by interested parties, appoint a person to act on behalf of the liquidator in paragraph (1) or the person who retains the Accounting Materials under the provisions of the preceding paragraph in the retaining the Accounting Materials. In such cases, the provisions of the preceding two paragraphs shall not apply.
- (4) The person appointed pursuant to the provisions of the preceding paragraph must retain the Accounting Materials for a period of ten years from the time of the registration of the completion of the liquidation at the location of head office of the Liquidating Membership Company.
- (5) The expenses regarding the procedures for the appointment under the provisions of paragraph (3) shall be borne by the Liquidating Membership Company.

### **Section 9 Extinctive Prescription of Partner's Liability**

#### **Article 673**

- (1) The liability of the partner in Article 580 shall be extinguished in relation to the creditors of the Liquidating Membership Company who do not state their claims, or

do not give advance notice of their claims within five years from the day of the registration of the dissolution at the location of head office of the Liquidating Membership Company, when five years have elapsed from the day of such registration.

(2) Creditors of the Liquidating Membership Company may demand that the Liquidating Membership Company make the payment, even after the lapse of the period under the preceding paragraph, if there are residual assets not distributed to partners.

## **Section 10 Exceptions to Application**

### **Article 674 (Exceptions to Application)**

The provisions listed below shall not apply to Liquidating Membership Company:

- (i) Section 1 of Chapter IV;
- (ii) Article 606, paragraph (1) of Article 607 (excluding items (iii) and (iv)) and Article 609;
- (iii) In Chapter V, Section 3 (excluding paragraph (4) of Article 617, Article 618 and Article 619) through Section 6 and Subsection 2 of Section 7; and
- (iv) item (iii) of paragraph (1) and item (ii) of paragraph (2) of Article 638.

### **Article 675 (Special Provisions on Withdrawal of Partners due to Inheritances and Mergers)**

In cases where a partner in a Liquidating Membership Company dies or is liquidated as a result of the merger, the heirs or other general successors of such partner, may succeed to the equity interest of such partner even in the absence of the provisions of the articles of incorporation under paragraph (1) of Article 608. In such cases, the provisions of paragraphs (4) and (5) of that article shall apply mutatis mutandis.

## **PART IV Bonds**

### **Chapter I General Provisions**

#### **Article 676 (Determination of Matters on Bonds for Subscription)**

Whenever a Company intends to solicit persons who subscribe for the Bonds it issues, the Company must determine the following matters with respect to the Bonds for subscription (hereinafter in this Part referring to the Bonds that will be allotted to the persons who subscribed for those Bonds in response to such solicitation):

- (i) The total amount of Bonds for subscription;

- (ii) The amount of each Bond for subscription;
- (iii) The interest rate for the Bonds for subscription;
- (iv) The method and due date for the redemption of the Bonds for subscription;
- (v) The method and due date for payment of the interest;
- (vi) If Bond certificates are to be issued, the statement to that effect;
- (vii) If it is to be arranged that bondholders may not make the demand under the provisions of Article 698, in whole or in part, the statement to that effect;
- (viii) If it is to be arranged that bondholders may perform the act listed in item (ii), paragraph (1) of Article 706 in the absence of the resolution of the bondholders' meeting, the statement to that effect;
- (ix) The amount to be paid in for each Bond for subscription (hereinafter in this Chapter referring to the amount of monies to be paid in in exchange for each Bond for subscription) or the minimum amount thereof, or the method for calculating those amounts;
- (x) The due date for payment in of the monies in exchange for the Bond for subscription;
- (xi) If it is to be arranged that the issue of the Bonds for subscription will not be carried out in their entirety in cases where the persons to whom the Bonds for subscription will be allotted are not prescribed for the total amount of the bonds by a certain day, the statement to that effect and that certain day; and
- (xii) In addition to the matters listed in each of the above items, matters prescribed by applicable Ordinance of the Ministry of Justice.

**Article 677** (Applications for Bonds for Subscription)

- (1) A Company must notify persons who intend to subscribe for Bonds for subscription in response to the solicitation under the preceding paragraph of the matters listed in the following items:
  - (i) The trade name of the Company;
  - (ii) The matters listed in each item of the preceding Article relating to such solicitation;
  - (iii) In addition to the matters listed in the preceding two items, matters prescribed by the applicable Ordinance of the Ministry of Justice.
- (2) A person who intends to apply the subscription for the Bonds for subscription in response to the solicitation in the preceding paragraph must deliver a document that specifies the following matters:
  - (i) The name and address of the person applying;
  - (ii) The amount of the Bonds for subscription for which he/she intends to subscribe and the number of Bonds for each amount; and
  - (iii) If the Company has prescribed the minimum amount under item (ix) of the

- preceding article, the preferred amount for payment.
- (3) A person who submits an application in paragraph (1) may, in lieu of the delivery of the document in that paragraph, provide the matters to be stated in the document in that paragraph by an electromagnetic means with the approval of the Company pursuant to the provisions of the applicable Cabinet Order. In such cases, the person who submitted the application shall be deemed to have delivered the document in that paragraph.
  - (4) The provisions of paragraph (1) shall not apply in cases where the Company has issued the prospectus prescribed in paragraph (10) of Article 2 of the Financial Instruments and Exchange Act that states the matters listed in each item of that paragraph to a person who intends to submit the application under paragraph (1), and in other cases that are prescribed by the applicable Ordinance of the Ministry of Justice as the cases where it is unlikely that the protection of persons who intend to submit the application for the subscription for Bonds for subscription will be compromised.
  - (5) If there are changes in the matters listed in any item of paragraph (1), the Company must immediately notify persons who have submitted applications in paragraph (2) (hereinafter in this Subsection referred to as "Applicants") thereof and of the matters so changed.
  - (6) It shall be sufficient for a notice or letters of demand to an Applicant to be sent by the Company to the address under item (i) of paragraph (2) (or, in cases where such Applicant notifies the Company of a different place or contact address for the receipt of notices or letters of demand, to such place or contact address).
  - (7) The notice or letters of demand referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or letter of demand should normally have arrived.

**Article 678** (Allotment of Bonds for Subscription)

- (1) A Company must specify the persons to whom Bonds for subscription will be allotted from among the Applicants, and the amount, and the number for each amount, of the Bonds for subscription to be allotted to those persons. In such cases, the Company may reduce the number for each amount of Bonds for subscription that are to be allotted to such Applicants below the number under item (ii), paragraph (2) of the preceding article.
- (2) The Company must notify the Applicants, no later than the day immediately preceding the date referred to in item (x) of Article 676 of the amount, and the number for each amount, of the Bonds for subscription that will be allotted to such Applicant.

**Article 679** (Special Provision on Subscription and Allotment of Bonds for Subscription)

The provisions of the preceding two Articles shall not apply in cases where a person who intends to subscribe for the Bonds for subscription executes a contract for the subscription for the total amount of those Bonds.

**Article 680** (Bondholders of Bonds for Subscription)

The person listed in the following items shall be the Bondholders of the Bonds for subscription provided for in each of such items:

- (i) Applicants: The Bonds for subscription allotted by the Company; or
- (ii) A person who subscribed for all amount of the Bonds for subscription under the contract referred to in the preceding article: The Bonds for subscription which such person has subscribed.

**Article 681** (Bond Registry)

A Company must, without delay after the day when Bonds are issued, prepare a bond registry and state or record the following matters (hereinafter referred to as "Matters to be Specified in Bond Registry") in that registry:

- (i) The matters listed in items (iii) through (xiii) of Article 676 and other matters prescribed by the applicable Ordinance of the Ministry of Justice as the matters that specify the features of the Bonds (hereinafter in this Part referred to as "Class");
- (ii) For each Class, the total amount of the Bonds and the amount of each Bond;
- (iii) The amount of the monies paid in in exchange for each Bond, and the day of the payment in;
- (iv) The name and address of the Bondholders (excluding the Bondholders of bearer Bonds (hereinafter in this Part referring to Bonds for which bearer form Bond certificates are issued));
- (v) The days when the Bondholders in the preceding item acquired each Bond;
- (vi) If bond certificates are issued, the serial number of the Bond certificates, the days of issue, whether the bond certificates are registered certificates or bearer certificates, and the number of the bearer bond certificates;
- (vii) In addition to the foregoing, matters prescribed by applicable Ordinance of the Ministry of Justice.

**Article 682** (Delivery of Document Stating Matters to be Stated in Bond Registry)

- (1) Bondholders (excluding the bondholders of bearer bonds) may request the Company that issued the Bonds (hereinafter in this Part referred to as "Bond-issuing Company") to deliver the documents stating the Matters to be

Stated in Bond Registry that are stated or recorded in the bond registry with respect to such bondholders, or provide the electromagnetic records that records such Matters to be Stated in Bond Registry.

- (2) The document referred to in the preceding paragraph must be affixed with the signature, or name and seal, of the representative of the Bond-issuing Company.
- (3) With respect to the electromagnetic records referred to in paragraph (1), the representative of the Bond-issuing Company must implement measures in lieu of the affixation of signature, or name and seal prescribed by the applicable Ordinance of the Ministry of Justice.
- (4) The provisions of the preceding three paragraphs shall not apply in cases where there is provision to the effect that bond certificates shall be issued for such bonds.

**Article 683** (Management of Bond Registry)

A Company may appoint a manager of the Bond Registry (hereinafter referring to a person who shall be responsible on behalf of the Company for the administration regarding the bond registry such as preparing and keeping the bond registry) and may entrust such administration of the registry to the same.

**Article 684** (Keeping and Making Available for Inspection of Bond Registry)

- (1) A Bond-issuing Company must keep the Bond Registry at its head office (or, in case a manager of Bond Registry is appointed, at its business office).
- (2) The Bondholders and other persons prescribed by the applicable Ordinance of the Ministry of Justice may make the following requests at any time during the business hours of the bond-issuing Company. In such cases, the reasons for such request must be disclosed.
  - (i) If the Bond Registry is prepared in writing, the request for the inspection or copying of such document;
  - (ii) If the Bond Registry is prepared by using electromagnetic records, the request for the inspection or copying of the thing that indicates the matters recorded in such electromagnetic records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.
- (3) If the request referred to in the preceding paragraph is made, the bond-issuing Company may not refuse such request unless:
  - (i) The person who made such request, made the request for a purpose other than for the research on securing or exercising his/her rights;
  - (ii) The person who made such request, made the request in order to report the fact which he/she may learn by reviewing or copying the bond registry to third parties for profit; or
  - (iii) The person who makes the request is a person who has reported the facts,

- knowledge of which was acquired by inspecting or copying the bond registry, to third parties for profit in the immediately preceding two years.
- (4) In cases where a bond-issuing Company is a Stock Company, if it is necessary for a partner in the Parent Company of such bond-issuing Company to exercise his/her right, such partner in the Parent Company may, with the permission of the court, make the request in each item of paragraph (2) with respect to the bond registry of such bond-issuing Company. In such cases, the reasons of such request must be disclosed.
  - (5) The court may not grant the permission in the preceding paragraph if grounds provided for in any item of paragraph (3) apply to the partner of the parent Company in the preceding paragraph.

**Article 685** (Notices to Bondholders)

- (1) It shall be sufficient for a notice or demand letter to bondholders to be sent by a bond-issuing Company to the address of such bondholders stated or recorded in the bond registry (or, in cases where such bondholders notify such bond-issuing Company of a different place or contact address for receipt of notices or demand letters, to such place or contact address).
- (2) The notices or demand letters referred to in the preceding paragraph shall be deemed to have arrived at the time when such notice or demand letter should normally have arrived.
- (3) If a bond is co-owned by two or more persons, the co-owners must specify one person to receive the notices or demand letters sent by the bond-issuing Company to bondholders and notify such bond-issuing Company of the name of that person. In such cases, that person shall be deemed to be the bondholder and the provisions of the preceding two paragraphs shall apply mutatis mutandis.
- (4) In cases where there is no notice by co-owners under the provisions of the preceding paragraph, it shall be sufficient for a notice or demand letter sent by a bond-issuing Company to the co-owners of the bondholders if it is sent to one of them.
- (5) The provisions of the preceding paragraphs shall apply mutatis mutandis to the cases where, when the notice in paragraph (1) of Article 720 is given, a document is delivered or matters to be stated in such document are provided to the bondholders by an electromagnetic means. In such cases, the words "to have arrived" in paragraph (2) shall be read as "to have been effected by delivery of such documents or provision of such matters by electromagnetic means."

**Article 686** (Exercise of Rights by Co-owners)

If a bond is co-owned by two or more persons, the co-owners may not exercise their

rights in relation to such bond unless they specify one person to exercise the rights in relation to such bond, and notify the Company of the name of that person; provided, however, that this shall not apply in cases where the Company has agreed to the exercise of such rights.

**Article 687** (Assignment of Bonds with Issued Certificates)

Assignment Bonds for which there is provision to the effect that bond certificates shall be issued shall not become effective unless bond certificates relating to such bonds are delivered.

**Article 688** (Perfection of Assignment of Bonds)

- (1) Assignment of bonds cannot be asserted against the bond-issuing Company and other third parties unless the name and addresses of the persons who acquire those bonds is stated or recorded in the Bond Registry.
- (2) For the purpose of the application of the provisions of the preceding paragraph in cases where there is provision to the effect that bond certificates shall be issued with respect to such bonds, the words "the bond-issuing Company and other third parties" in that paragraph shall be read as "the bond-issuing Company."
- (3) The provisions of the preceding two paragraphs shall not apply to bearer bonds.

**Article 689** (Presumption of Rights)

- (1) A possessor of bond certificates shall be presumed to be the lawful owner of the right in relation to the Bonds for such bond certificates.
- (2) A person who takes the delivery of bond certificates shall acquire the rights in relation to the bonds for such bond certificates; provided, however, that this shall not apply if that person has knowledge or is grossly negligent.

**Article 690** (Stating or Recording Matters to be Stated in Bond Registry without Request from Bondholders)

- (1) In the cases provided for in the following items, the bond-issuing Company must state or record the Matters to be Stated in Bond Registry relating to the bondholders referred to in such items:
  - (i) In cases where the bondholders have acquired the bonds of such bond-issuing Company;
  - (ii) In cases where the bondholders have disposed of own bonds.
- (2) The provisions of the preceding paragraph shall not apply to any bearer bond.

**Article 691** (Stating or Recording Matters to be Stated in Bond Registry as Requested by Bondholders)

- (1) A person who has acquired bonds from any person other than the bond-issuing Company (excluding such bond-issuing Company) may request that such bond-issuing Company state or record the Matters to be Stated in Bond Registry relating to such bonds in the Bond Registry.
- (2) Except for the cases prescribed by the applicable Ordinance of the Ministry of Justice as the case of no likelihood of harm to interested parties, requests under the provisions of the preceding paragraph must be made jointly with the person stated or recorded in the Bond Registry as the bondholder of the bonds so acquired, or his/her general successor(s) including his/her heir(s).
- (3) The provisions of the preceding two paragraphs shall not apply to any bearer bond.

**Article 692** (Pledges of Bonds with Issued Certificates)

Pledges of bonds for which there is provision to the effect that bond certificates shall be issued, shall not become effective, unless Bond certificates relating to such bonds are delivered.

**Article 693** (Perfection of Pledge of Bonds)

- (1) Pledge of bonds cannot be asserted against the Bond-issuing Company and other third parties unless the names and addresses of the pledgees are stated or recorded in the Bond Registry.
- (2) Notwithstanding the provisions of the preceding paragraph, a pledgee of bonds for which there is provision to the effect that bond certificates shall be issued may not assert his/her pledge against the Bond-issuing Company and other third parties unless he/she is in continuous possession of the bond certificates relating to such bonds.

**Article 694** (Entries in Bond Registry regarding Pledges)

- (1) A person who pledges bonds may request the bond-issuing Company to state or record the following matters in the Bond Registry:
  - (i) The name and address of the pledgee;
  - (ii) The bond underlying the pledge.
- (2) The provisions of the preceding paragraph shall not apply in cases where there is provision to the effect that bond certificates will be issued.

**Article 695** (Delivery of Documents Stating Matters to be Stated in Bond Registry regarding Pledges)

- (1) The pledgees for whom the matters listed in each of the items of paragraph (1) of the preceding article are stated or recorded in the Bond Registry may request

that bond-issuing Company deliver documents stating the matters listed in each of the items of that paragraph with respect to such pledgees that are stated or recorded in the Bond Registry, or provide the Electromagnetic Records that record such matters.

- (2) The documents in the preceding paragraph must be affixed with the signature, or name and seal, of a representative of the bond-issuing Company.
- (3) With respect to the Electromagnetic Records in paragraph (1), the representative of the bond-issuing Company must implement measures in lieu of the affixation of signature, or name and seal prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 696** (Issuing of Bond Certificates)

A bond-issuing Company must, without delay after the day of a bond issue for which there is provision to the effect that bond certificates shall be issued, issue bond certificates for such bonds.

**Article 697** (Matters to be Stated on Bond Certificates)

- (1) A bond-issuing Company must state the following matters and the serial number on a bond certificate, and the representative of the bond-issuing Company must affix his/her signature, or name and seal:
  - (i) The trade name of the bond-issuing Company;
  - (ii) The amount of bonds relating to such bond certificates;
  - (iii) The Class of bonds relating to such bond certificates;
- (2) Coupons may be attached to bond certificates.

**Article 698** (Conversions between Registered Bonds and Bearer Bonds)

Bondholders of bonds for which bond certificates are issued may demand at any time that the bond-issuing Company convert their registered bond certificates into bearer bond certificates, or convert their bearer bond certificates into registered bond certificates, except in cases where there is an arrangement under provisions with respect to the matters listed in item (vii) of Article 676 that such conversion is not possible.

**Article 699** (Loss of Bond Certificates)

- (1) Bond certificates may be invalidated pursuant to the public notification procedures under Article 142 of the Non-Contentious Cases Procedures Act.
- (2) Persons who have lost bond certificates may not request the reissuing of their bond certificates until after they obtain the invalidation provided for in paragraph (1) of Article 148 of the Non-Contentious Cases Procedures Act.

**Article 700 (Redemption of Bonds where Coupons Missing)**

- (1) In cases where a bond-issuing Company redeems a bond for which a bond certificate is issued before it matures, if a coupon attached to the bond is missing, the bond-issuing Company must deduct the amount of the claim for interest on the bond indicated on such coupon from the redemption amount; provided, however, that this shall not apply if such claim has fallen due.
- (2) The possessor of the coupon in the preceding paragraph may demand at any time that the bond-issuing Company pay the amount that must be deducted under the provisions of that paragraph in exchange for the coupon.

**Article 701 (Extinctive Prescription of Right to Claim Redemption of Bonds)**

- (1) The right to claim the redemption of bonds shall be extinguished by prescription if not exercised for ten years.
- (2) The right to claim interest on bonds and the right to claim under the provisions of paragraph (2) of the preceding Article shall be extinguished by prescription if not exercised for five years.

**Chapter II Bond Managers**

**Article 702 (Establishment of Bond Managers)**

In cases where a Company will issue bonds, the Company must specify a bond manager and entrust the receipt of payments, the preservation of rights of claim on behalf of the bondholders and other administration of the bonds to that manager; provided, however, that this shall not apply in cases where the amount of each bond is 100,000,000 yen or more, and other cases prescribed by the applicable Ordinance of the Ministry of Justice as cases where it is unlikely that the protection of bondholders will be compromised.

**Article 703 (Qualifications of Bond Managers)**

A bond manager must be a person listed as follows:

- (i) A bank;
- (ii) A trust company; and
- (iii) In addition to the above, a person prescribed by the applicable Ordinance of the Ministry of Justice as a person equivalent to the above.

**Article 704 (Obligations of Bond Managers)**

- (1) Bond managers must perform the administration of bonds in a fair and sincere manner on behalf of the bondholders.

- (2) Bond managers must manage the bonds with due care of a prudent manager to the bondholders.

**Article 705 (Bond Manager's Power of Representation)**

- (1) A manager shall have authority to do all judicial and non-judicial acts on behalf of bondholders that are necessary to receive payment of claims relating to the bonds or to preserve the realization of claims relating to the bonds.
- (2) In cases where a bond manager has received payment under the preceding paragraph, the bondholders may claim payment of the redeemed amount of bonds and interest from the bond manager. In such cases, if there is provision to the effect that bond certificates shall be issued, the bondholders must claim the payment of such redeemed amount in exchange for the bond certificates, and the payment of such interest in exchange for the coupons.
- (3) The right to claim under the provisions of the first sentence of the preceding paragraph shall be extinguished by prescription if not exercised for ten years.
- (4) If it is necessary for a bond manager to carry out the acts under paragraph (1) with respect to bonds that the bond manager has been entrusted to administer, the bond manager may, with the permission of the court, investigate the status of the business and assets of the bond-issuing Company.

**Article 706**

- (1) A bond manager may not carry out the following acts without a resolution of a bondholders' meeting; provided, however, that this shall not apply with respect to the act listed in item (ii) if there is provision with respect to the matters listed in item (viii) of Article 676:
  - (i) With respect to all of the bonds, granting extension for the payment of those bonds, or releasing, or settling liability arising from the failure to perform the obligations of those bonds (excluding the acts listed in the following item);
  - (ii) With respect to all of the bonds, prosecuting lawsuits, or proceeding with bankruptcy procedures, rehabilitation procedures, reorganization procedures or procedures regarding special liquidation (excluding the act under paragraph (1) of the preceding article).
- (2) If a bond manager carries out the acts listed in item (ii) of the preceding paragraph without a resolution of a bondholders' meeting under the provisions of the proviso to that paragraph, the bond manager must, without delay, give public notice to such effect and separate notice thereof to each known bondholder.
- (3) The public notice under the provisions of the preceding paragraph must be made in accordance with the method of public notice used by the bond-issuing Company; provided, however, that, if that method is electromagnetic public notice, such public

notice must be effected by publication in the Official Gazette.

- (4) If it is necessary for a bond manager to carry out the acts listed in each item of paragraph (1) with respect to bonds that the bond manager has been entrusted to administer, the bond manager may, with the permission of the court, investigate the status of the business and assets of the bond-issuing Company.

**Article 707** (Appointment of Special Agent)

In cases where there is conflict between the interests of the bondholders and those of the bond manager, if it is necessary to carry out judicial and non-judicial acts on behalf of bondholders, the court must, in response to a petition by the bondholders' meeting, appoint a special agent.

**Article 708** (Method of Acts of Bond Managers)

If a bond manager or a special agent under the preceding article performs judicial or non-judicial acts on behalf of bondholders, he/she need not identify individual bondholders.

**Article 709** (Special Provisions for Multiple Bond Managers)

- (1) If there are two or more bond managers, these persons must perform the acts within their authority jointly.
- (2) In the cases provided for in the preceding paragraph, if bond managers have accepted payments under paragraph (1) of Article 705, the bond managers shall be jointly and severally liable for payment of the amount so tendered.

**Article 710** (Liability of Bond Manager)

- (1) If bond managers commit acts in violation of this Act or resolutions of the bondholders' meeting, they shall be jointly and severally liable to compensate bondholders for losses arising as a result.
- (2) A bond manager shall be liable to compensate bondholders for losses if the bond manager commits any of the following acts after, or within three months prior to, the bond-issuing Company having failed to redeem bonds or pay interest on the same, or having suspended payments; provided, however, that this shall not apply if such bond manager has proven that he/she did not fail to manage the Bonds with due diligence, or that such losses were not caused by such acts:
  - (i) Accepting, with respect to an obligation relating to a claim of such bond manager, the tender of a security or an act regarding the extinguishment of the obligation from the bond-issuing Company;
  - (ii) Assigning a claim of such bond manager to a person who has a special relationship prescribed by the applicable Ordinance of the Ministry of Justice

with such bond manager (limited to cases where the person who has such special relationship has accepted with respect to an obligation relating to such claim, the tender of a security or an act regarding the extinguishment of the obligation, from the bond-issuing Company); or

- (iii) In cases where such bond manager has a claim against the bond-issuing Company, entering into a contract with the bond-issuing Company for disposal of assets of the bond-issuing Company, or entering into a contract under which the bond manager assumes the obligations that a person owes to the bond-issuing Company, in each case for the sole purpose of setting off obligations to the bond-issuing Company that the bond manager assumes under the contract against the bond manager's claim against the bond-issuing Company.
- (iv) In cases where such bond manager has an obligation to the bond-issuing Company, accepting the assignment of a claim against the bond-issuing Company and setting off such obligation against such claim.

**Article 711 (Resignation of Bond Managers)**

- (1) A bond manager may resign with the consent of the bond-issuing Company and the bondholders' meeting. In such cases, if there is no other bond manager, such bond manager must specify a bond manager to succeed to the administration of the bonds, in advance.
- (2) Notwithstanding the provisions of the preceding paragraph, a bond manager may resign on any ground provided for in the entrustment contract under the provisions of Article 702; provided, however, that this shall not apply if such contract does not have provisions regarding bond managers to succeed to the administration of the bonds.
- (3) Notwithstanding the provisions of paragraph (1), a bond manager may resign with the permission of the court if there are unavoidable reasons.

**Article 712 (Liability of Bond Managers after Resignation)**

The provisions of paragraph (2) of Article 710 shall apply mutatis mutandis to a person who resigned as bond manager under the provisions of paragraph (2) of the preceding article after, or within three months prior to, the bond-issuing Company having failed to redeem bonds or pay interest, or having suspended payments.

**Article 713 (Dismissal of Bond Managers)**

The court may dismiss a bond manager in response to a petition by a bond-issuing Company or a bondholders' meeting if such bond manager has violated the bond manager's obligations, if the bond manager is not fit to handle the administration for which the bond manager is responsible, or if there are other justifiable grounds.

**Article 714** (Succession to Bond Manager's Administration of Bonds)

- (1) In cases where a bond manager has fallen under any of the following circumstances, if there is no other bond manager, the bond-issuing Company must specify a bond manager to succeed to the administration of the bonds, and entrust the administration of the bonds to such person on behalf of the bondholders. In such cases, the bond-issuing Company must convene a bondholders' meeting without delay in order to obtain the consent of the same, and if such consent cannot be obtained, must file a petition for the permission of the court in lieu of such consent:
  - (i) If the bond manager is no longer a person listed in any item of Article 703;
  - (ii) If the bond manager has resigned under the provisions of paragraph (3) of Article 711;
  - (iii) If the bond manager has been dismissed under the provisions of the preceding paragraph; or
  - (iv) If the bond manager has been dissolved.
- (2) In the cases provided for in the first sentence of the preceding paragraph, if a bond-issuing Company does not convene a meeting under the provisions of the second sentence of that paragraph or file a petition under the second sentence of that paragraph within two months of the day on which the bond-issuing Company fell under any of the circumstances in each item of that paragraph, the bond-issuing Company shall forfeit the benefit of time in relation to the total amount of such bonds.
- (3) In the cases provided for in the first sentence of paragraph (1), if there are unavoidable reasons, interested parties may petition the court for the appointment of a bond manager to succeed to the administration of the bonds.
- (4) In cases where a bond-issuing Company has specified the bond manager to succeed to the administration of the bonds under the provisions of the first sentence of paragraph (1) (excluding cases where the consent of a bondholders' meeting has been obtained), or in cases where a bond manager has been appointed to succeed to the administration of the bonds under the provisions of the preceding paragraph, the bond-issuing Company must, without delay, give public notice to such effect and separate notice thereof to each known bondholder.

**Chapter III Bondholders' Meeting**

**Article 715** (Constitution of Bondholders' Meetings)

Bondholders' meetings for each Class of bonds shall be constituted by bondholders.

**Article 716** (Authority of Bondholders' Meetings)

Bondholders' meetings may make resolutions on matters provided for in this Act, and matters in relation to the interests of the bondholders.

**Article 717** (Convocation of Bondholders' Meetings)

- (1) Bondholders' meetings may, where necessary, be convened at any time.
- (2) Bondholders' meetings shall be convened by the bond-issuing Company or bond manager, except in cases where a bondholders' meeting is convened under the provisions of paragraph (3) of the following article.

**Article 718** (Demand for Convocation of Meeting by Bondholders)

- (1) Bondholders who hold not less than one tenth (1/10) of the total amount of bonds of a certain Class (excluding bonds that have been redeemed) may demand that the bond-issuing Company or bond manager convene a bondholders' meeting, by disclosing the matters that form the purpose of the bondholders' meeting and the reasons for the convocation.
- (2) The sum of the amount of bonds of such Class held by the bond-issuing Company itself shall not be included in the calculation of the total amount of the bonds under the preceding paragraph.
- (3) In the following cases, the bondholders who made the demand under the provisions of paragraph (1) may convene a bondholders' meeting with the permission of the court.
  - (i) In cases where the convocation procedure is not effected without delay after the demand pursuant to the provisions of paragraph (1); or
  - (ii) In cases where notice of the convocation of a bondholders' meeting stating a day falling within an eight-week period after the day of the demand under the provisions of paragraph (1) as the day of the bondholders' meeting, is not sent.
- (4) Bondholders of bearer bonds who intend to make a demand pursuant to the provisions of paragraph (1) or to effect the convocation pursuant to the provisions of the preceding paragraph must present their bond certificates to the bond-issuing Company or bond manager.

**Article 719** (Determination of Convocation of Bondholders' Meeting)

A person who convenes a bondholders' meeting (hereinafter in this Chapter referred to as "Convener") must specify the following matters in cases where he/she convenes a bondholders' meeting:

- (i) The date, time and place of the bondholders' meeting;
- (ii) The matters that form the purpose of the bondholders' meeting;
- (iii) If it is to be arranged that bondholders who do not attend the bondholders'

meeting may exercise voting rights by electromagnetic means, a statement to such effect;

- (iv) In addition to the matters listed in the preceding three items, matters prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 720** (Notice of Convocation of Bondholders' Meetings)

- (1) In order to convene a bondholders' meeting, the Convener must give written notice thereof to known bondholders and the bond-issuing Company, as well as to the bond manager if appointed, no later than two weeks prior to the day of the bondholders' meeting.
- (2) In lieu of sending the written notice referred to in the preceding paragraph, the Convener may send a notice by electromagnetic means with the consent of bondholders, pursuant to the provisions of the applicable Cabinet Order. In such cases, such Convener shall be deemed to have sent the written notice under that paragraph.
- (3) The notice under the preceding two paragraphs must state or record the matters listed in each item of the preceding article.
- (4) In cases where a bond-issuing Company issues bearer bond certificates, in order to convene a bondholders' meeting, the Convener must give public notice to the effect that a bondholders' meeting will be convened and of the matters listed in each item of the preceding article no later than three weeks prior to the day of the bondholders' meeting.
- (5) The public notice pursuant to the provisions of the preceding paragraph must be given in accordance with the method of public notice used by the bond-issuing Company; provided, however, that, in cases where the Convener is a person other than the bond-issuing Company, if such method is electromagnetic public notice, such public notice must be effected by publication in the Official Gazette.

**Article 721** (Delivery of Bondholders' Meeting Reference Documents and Proxy Cards)

- (1) The Convener must, when giving notice under paragraph (1) of the preceding article, deliver documents containing reference materials for exercising voting rights (hereinafter in this article referred to as "Bondholders' Meeting Reference Documents") and the documents to be used by bondholders to exercise voting rights (hereinafter in this Chapter referred to as "Proxy Cards") to known bondholders, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) If the Convener intends to send notice by the electromagnetic means in paragraph (2) of the preceding article to bondholders who have given consent

under the same paragraph, they may provide, by electromagnetic means in lieu of the delivery of the Bondholders' Meeting Reference Documents and Proxy cards under the provisions of the preceding paragraph, the matters to be stated in such documents; provided, however, that, if there is a request from a bondholder, the Convener must deliver such documents to such bondholder.

- (3) In cases where public notice is given pursuant to the provisions of paragraph (4) of the preceding article, if there is a request by a bondholder of bearer bonds no later than one week prior to the day of the bondholders' meeting, the Convener must immediately deliver the Bondholders' Meeting Reference Documents and Proxy Cards to such bondholder.
- (4) In lieu of the delivery of the Bondholders' Meeting Reference Documents and Proxy Cards under the provisions of the preceding paragraph, the Convener may provide the matters to be stated in such documents by electromagnetic means with the consent of bondholders, pursuant to the provisions of the applicable Cabinet Order. In such cases, such Convener shall be deemed to have delivered those documents under the provisions of that paragraph.

#### **Article 722**

- (1) In cases where the matters listed in item (iii) of Article 719 are specified, the Convener must, when giving notice by electromagnetic means to bondholders who have given consent under paragraph (2) of Article 720, provide to the bondholders, by such electromagnetic means, the matters to be specified in the Proxy Card, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) In cases where the matters listed in item (iii) of Article 719 are specified, if there is a request from a bondholder who did not give consent under paragraph (2) of Article 720 no later than one week prior to the day of the bondholders' meeting, for the provision of the matters to be stated on the proxy card by electromagnetic means, the Convener must immediately provide such matters to such bondholder by electromagnetic means, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.

#### **Article 723 (Amount of Voting Rights)**

- (1) Bondholders shall have voting rights at bondholders' meetings in proportion to the total amounts of bonds of the relevant Classes they hold (excluding amounts already redeemed).
- (2) Notwithstanding the provisions of the preceding paragraph, a bond-issuing Company shall not have voting rights with respect to its own bonds that it holds.
- (3) Bondholders of bearer bonds who intend to exercise voting rights must present their bond certificates to the Convener no later than one week prior to the day of a

bondholders' meeting.

**Article 724 (Resolutions of Bondholders' Meetings)**

- (1) In order to pass a matter to be resolved at a bondholders' meeting, the consent of persons who hold more than half of the total amount of voting rights of voting rights holders (hereinafter in this Chapter referring to the bondholders who can exercise voting rights) present at the meeting must be obtained.
- (2) Notwithstanding the provisions of the preceding paragraph, in order to pass the following matters at a bondholders' meeting, the consent of persons who hold not less than one fifth (1/5) of the total amount of voting rights of voting rights holders, being not less than two thirds (2/3) of the total amount of voting rights of voting rights holders present at the meeting, must be obtained.
  - (i) Matters regarding the acts listed in each item of Article 706; and
  - (ii) Matters for which a resolution of a bondholders' meeting is required under the provisions of paragraph (1) of Article 706, paragraph (1) of Article 736, the proviso to paragraph (1) of Article 737 and Article 738.
- (3) Bondholders' meetings may not pass resolutions on matters other than those listed in item (ii) of Article 719.

**Article 725 (Proxy Voting)**

- (1) Bondholders may exercise voting rights by proxy. In such cases, such bondholders or proxies must submit to the Convener a document certifying such power of representation.
- (2) The grant of the power of representation under the preceding paragraph must be made for each bondholders' meeting.
- (3) Bondholders or proxies referred to in paragraph (1) may, in lieu of the submission of the document certifying the power of representation, provide the matters to be stated in such document by electromagnetic means with the approval of the Convener pursuant to the provisions of the applicable Cabinet Order. In such cases, such bondholders or proxies shall be deemed to have submitted such document.
- (4) In cases where the bondholders are persons who gave consent under paragraph (2) of Article 720, the Convener may not refuse to grant approval under the preceding paragraph without reasonable grounds.

**Article 726 (Voting in Writing)**

- (1) Bondholders who do not attend a bondholders' meeting may exercise voting rights in writing.
- (2) The exercise of voting rights in writing shall be effected by entering the

necessary matters on the Proxy Card and submitting the Proxy Card to the Convener by the time prescribed by the applicable Ordinance of the Ministry of Justice.

- (3) The number of voting rights exercised in writing under the provisions of the preceding paragraph shall be included in the number of the voting rights of the bondholders present at the meeting.

**Article 727** (Voting by Electromagnetic Means)

- (1) The exercise of voting rights by electromagnetic means shall be effected by providing the matters to be entered on the proxy card to the Convener by electromagnetic means, with the approval of such Convener, no later than the time prescribed by the applicable Ordinance of the Ministry of Justice, pursuant to the provisions of the applicable Cabinet Order.
- (2) In cases where the bondholders are persons who have given consent under paragraph (2) of Article 720, the Convener may not refuse to grant approval under the preceding paragraph without justifiable grounds.
- (3) The amount of the voting rights exercised by electromagnetic means under the provisions of paragraph (1) shall be included in the amount of the voting rights of the bondholders present at the meeting.

**Article 728** (Inconsistent Voting)

- (1) Bondholders may exercise the voting rights they hold without maintaining consistency. In such cases, the bondholders must notify the Convener to such effect and of the reasons for the same no later than three days prior to the day of the bondholders' meeting.
- (2) If a bondholder in the preceding paragraph is not a person who holds bonds on behalf of others, the Convener may reject the inconsistent exercise of the voting rights held by such bondholder under the provisions of that paragraph.

**Article 729** (Attendance of Representative of Bond-issuing Company)

- (1) Bond-issuing Company or bond managers may state their opinions by having a representative or agent attend the bondholders' meeting, or in writing; provided, however, that, for bond managers, this shall not apply if that bondholders' meeting is convened for the appointment of a special agent under Article 707.
- (2) Bondholders or Conveners may, when they regard it as necessary, demand the attendance of a Bond-issuing Company's representative or agent attend a meeting. In such cases, for attendance at a bondholders' meeting, a resolution must be passed to the effect that such demand will be made.

**Article 730 (Resolution for Postponement or Continuation)**

In cases where a resolution has been passed for the postponement or continuation of the bondholders' meeting, the provisions of Articles 719 and 720 shall not apply.

**Article 731 (Minutes)**

- (1) Minutes must be prepared with respect to the business of the bondholders' meeting, pursuant to the provisions of the applicable Ordinance of the Ministry of Justice.
- (2) The bond-issuing Company must keep the minutes in the preceding paragraph at its head office for a period of ten years from the day of a bondholders' meeting.
- (3) The bond manager and bondholders may make the following requests at any time during the business hours of the Bond-issuing Company:
  - (i) If the minutes in paragraph (1) are prepared in writing, requests for the inspection or copying of such documents; and
  - (ii) If the minutes in paragraph (1) are prepared using electromagnetic records, requests for the inspection or copying of anything that indicates the matters recorded in such electromagnetic records in a manner prescribed by the applicable Ordinance of the Ministry of Justice.

**Article 732 (Petitions for Approval of Resolutions of Bondholders' Meetings)**

When a resolution is made at a bondholders' meeting, the Convener must file a petition with the court for the approval of such resolution within one week of the day of such resolution.

**Article 733 (Rejection of Resolutions of Bondholders' Meetings)**

The court cannot approve a resolution of a bondholders' meeting in cases falling under any of the following:

- (i) If the procedures for the convocation of the bondholders' meeting or the method of the resolution of the bondholders' meeting violates laws and regulations or the matters stated or recorded in materials used for explaining the business of such bond-issuing Company or other matters regarding the solicitation in Article 676;
- (ii) If the resolution was adopted by an unlawful method;
- (iii) If the resolution is extremely unfair; or
- (iv) If the resolution is contrary to the general interests of bondholders.

**Article 734 (Effectiveness of Resolutions of Bondholders' Meetings)**

- (1) A resolution of a bondholders' meeting shall not become effective unless the approval of the court is obtained.
- (2) A resolution of a bondholders' meeting shall be effective against all bondholders

who hold bonds of the relevant Class.

**Article 735** (Public Notice of Rulings Approving or Rejecting Resolutions of Bondholders' Meetings)

If a ruling has been given approving or rejecting a resolution of a bondholders' meeting, the bond-issuing Company must give public notice to that effect without delay.

**Article 736** (Appointment of Representative Bondholders)

- (1) A bondholders' meeting may appoint, by resolution of the same, one or more representative bondholders from among bondholders who hold bonds representing not less than one thousandth (1/1000) of the total amount of bonds of the relevant Class (excluding amounts already redeemed), and entrust decisions on the matters on which resolutions are to be passed at bondholders' meetings to such representative bondholders.
- (2) The provisions of paragraph (2) of Article 718 shall apply mutatis mutandis to the total amount of the Bonds provided for in the preceding paragraph.
- (3) In cases where there are two or more representative bondholders, unless otherwise provided for at a bondholders' meeting, the decisions on the matters provided for in paragraph (1) shall be made by a majority of those representative bondholders.

**Article 737** (Execution of Resolutions of Bondholders' Meetings)

- (1) Resolutions of bondholders' meetings shall be executed by the bond manager or representative bondholders (except where there is a bond manager); provided, however, that this shall not apply if the person who executes resolutions of bondholders' meetings is separately prescribed by a resolution of a bondholders' meeting.
- (2) The provisions under paragraphs (1) through (3) of Article 705, and under Articles 708 and 709 shall apply mutatis mutandis to cases where a representative bondholder or person responsible for the execution of resolutions of bondholders' meetings prescribed under the provisions of the proviso to the preceding paragraph (hereinafter in this Chapter referred to as "Resolution Administrator") executes the resolutions of bondholders' meetings.

**Article 738** (Dismissal of Representative Bondholders)

A bondholders' meeting may, at any time by resolution of the same, dismiss or change the matters entrusted to the representative bondholders or Resolution Administrator.

**Article 739** (Forfeiture of the Benefit of Time for Failure to Pay Interest on Bonds)

- (1) If a bond-issuing Company fails to pay interest on bonds, or fails to periodically partially redeem bonds in cases where it must carry out that redemption, pursuant to a resolution of a bondholders' meeting, the person who executes such resolution may give written notice to the bond-issuing Company to the effect that that bond-issuing Company must make payment within a defined period of time, and to the effect that, if payment is not made within such period of time, the bond-issuing Company shall forfeit the benefit of time as to the total amount of such bonds, provided, however, that such period may not be less than two months.
- (2) A person who executes a resolution under the preceding paragraph may, in lieu of the written notice under the provisions of that paragraph, provide the matters to be notified under the provisions of that paragraph by electromagnetic means, with the approval of the bond-issuing Company, pursuant to the provisions of the applicable Cabinet Order. In such cases, the person who executes such resolution shall be deemed to have given such written notice.
- (3) If a Bond-issuing Company fails to make the payment in paragraph (1) within the period in that paragraph, it shall forfeit the benefit of time with respect to the total amount of such bonds.

**Article 740** (Special Provisions on Objection Procedures for Creditors)

- (1) In order for a bondholder to raise an objection under the provisions of Article 449, Article 627, Article 635, Article 670, Article 779 (including cases where applied mutatis mutandis under paragraph (2) of Article 781), Article 789 (including cases where applied mutatis mutandis under paragraph (2) of Article 793), Article 799 (including cases where applied mutatis mutandis under paragraph (2) of Article 802) or Article 810 (including cases where applied mutatis mutandis in paragraph (2) of Article 813), the objection must be raised by resolution of a bondholders' meeting. In such cases, the court may, in response to a petition by interested parties, extend the period during which objections can be raised on behalf of bondholders.
- (2) Notwithstanding the provisions of the preceding paragraph, a bond manager may raise objections on behalf of bondholders; provided, however, that this shall not apply in cases where there is provision to the contrary in a contract relating to entrustment under the provisions of Article 702.
- (3) For the purpose of the application of the provisions of paragraph (2) of Article 449, paragraph (2) of Article 627, (hereinafter in this paragraph including cases where applied mutatis mutandis under paragraph (2) of Article 781), paragraph (2) of Article 789 (hereinafter in this paragraph including cases where applied

mutatis mutandis under paragraph (2) of Article 793), paragraph (2) of Article 799 (hereinafter in this paragraph including cases where applied mutatis mutandis under paragraph (2) of Article 802) or paragraph (2) of Article 810 (hereinafter in this paragraph including cases where applied mutatis mutandis under paragraph (2) of Article 813) to a bond-issuing Company, the words "known creditors" in paragraph (2) of Article 449, paragraph (2) of Article 627, paragraph (2) of Article 635, paragraph (2) of Article 670, paragraph (2) of Article 779 and paragraph (2) of Article 799 shall be read as "known creditors (if there is a bond manager, including such bond manager)" and the words "known creditors (limited to those who can raise objections under the provisions of that paragraph" in paragraph (2) of Article 789 and paragraph (2) of Article 810 shall be read as "known creditors (limited to those who can raise objections under the provisions of that paragraph, and, if there is a bond manager, including such bond manager)."

**Article 741 (Remuneration for Bond Managers)**

- (1) With the permission of the court, a bond-issuing Company may bear the cost of the remuneration to be paid to the bond manager, representative bondholders or Resolution Administrator, the costs necessary for handling the administration of the bond-issuing Company, and the interest that accrues from and including the day of disbursement of the remuneration and costs, as well as amounts of compensation for losses suffered by those persons for handling the administration of the bond-issuing Company in the absence of negligence, unless there is provisions in the contracts with the bond-issuing Company.
- (2) The petition for permission under the preceding paragraph shall be made by the bond managers, representative bondholders or Resolution Administrator.
- (3) With respect to the remuneration, costs and interest as well as amounts of compensation in paragraph (1), the bond managers, representative bondholders or Resolution Administrator shall have the right to obtain reimbursement, before the bondholders, from the proceeds of payments received under paragraph (1) of Article 705 (including cases where that paragraph is applied mutatis mutandis under paragraph (2) of Article 737).

**Article 742 (Burden of Costs of Bondholders' Meetings)**

- (1) The costs of bondholders' meetings shall be borne by the bond-issuing Company.
- (2) The costs of the petition in Article 732 shall be borne by the bond-issuing Company; provided, however, that the court may, in response to the petition by the bond-issuing Company or other interested parties or ex officio, separately prescribe a persons from among the Convener and other interested parties to bear some or all of the costs.

