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## **Civil Rehabilitation Act (Act No. 225 of December 22, 1999)**

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**Chapter I General Provisions**

#### Article 1 (Purpose)

The purpose of this Act is, by formulating, for debtors in financial difficulties, rehabilitation plans as consented to by a number of their creditors and confirmed by the court, to appropriately coordinate the relationships of rights under civil law between such debtors and creditors, with the aim of ensuring the rehabilitation of the debtors' business or economic life.

#### 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) Rehabilitation debtor: A debtor in financial difficulties against whom a petition for rehabilitation proceedings has been filed or an order of commencement of rehabilitation proceedings has been made or for whom a rehabilitation plan is being executed
- (ii) Rehabilitation debtor, etc.: The rehabilitation debtor in cases where no trustee is appointed, or a trustee in cases where any trustee is appointed
- (iii) Rehabilitation plan: A plan that specifies clauses for modifying some or all of the rights of rehabilitation creditors or any other provisions prescribed in Article 154
- (iv) Rehabilitation proceedings: Proceedings for formulating a rehabilitation plan as provided for in the following Chapter and thereafter

#### Article 3 (Status of Foreign Nationals)

A foreign national or foreign juridical person shall have the same status as a Japanese national or Japanese juridical person, respectively, with respect to rehabilitation proceedings.

#### Article 4 (Jurisdiction over Rehabilitation Cases)

- (1) A petition for commencement of rehabilitation proceedings under the provisions of this Act may be filed only if the debtor, who is an individual, has a business office, domicile, residence or property in Japan, or if the debtor, who is a juridical person or any other association or foundation, has a business office or other office or property in Japan.
- (2) A claim for which demand by litigation may be made pursuant to the provisions of the Code of Civil Procedure (Act No. 109 of 1996) shall be deemed to exist in Japan.

#### Article 5

- (1) A rehabilitation case shall be subject to the jurisdiction of the district court that has jurisdiction over: if the rehabilitation debtor engages in commercial business,

the location of the rehabilitation debtor's principal business office; if the rehabilitation debtor engages in commercial business and has a principal business office in a foreign state, the location of the rehabilitation debtor's principal business office in Japan; if the rehabilitation debtor does not engage in commercial business or engages in commercial business but does not have any business office, the location of the rehabilitation debtor's general venue.

- (2) If there is no court with jurisdiction under the provision of the preceding paragraph, the rehabilitation case shall be subject to the jurisdiction of the district court that has jurisdiction over the location of the rehabilitation debtor's assets (in the case of a claim, the place where demand by litigation may be made).
- (3) Notwithstanding the provisions of the preceding two paragraphs, where a juridical person holds the majority of voting rights (excluding the voting rights of the shares of stock which may not be exercised for all matters that may be resolved at a shareholders meeting, and including the voting rights of the shares of stock for which the shareholder is deemed to have voting rights pursuant to the provision of Article 879(3) of the Companies Act (Act No. 86 of 2005); hereinafter the same shall apply in the following paragraph, Article 59(3)(ii) and (4) and Article 127-2(2)(ii)(a) and (b)) of all shareholders of a stock company, if a rehabilitation case or reorganization case (hereinafter referred to as a "rehabilitation case, etc." in this Article) is pending against said juridical person (hereinafter referred to as a "parent juridical person" in this Article and Article 127-2(2)(ii)(b)), a petition for commencement of rehabilitation proceedings against said stock company (hereinafter referred to as a "subsidiary stock company" in this Article and Article 127-2(2)(ii)(b)) may also be filed with the district court before which the rehabilitation case, etc. against the parent juridical person is pending, and if a rehabilitation case, etc. is pending against the subsidiary stock company, a petition for commencement of rehabilitation proceedings against the parent juridical person may also be filed with the district court before which the rehabilitation case, etc. against the subsidiary stock company is pending.
- (4) Where the subsidiary stock company independently holds or the parent juridical person and the subsidiary stock company jointly hold the majority of voting rights of all shareholders of another stock company, the provision of the preceding paragraph shall be applied by deeming such other stock company as a subsidiary stock company of the parent juridical person.
- (5) Notwithstanding the provisions of paragraph (1) and paragraph (2), where a stock company, as provided for by Article 444 of the Companies Act, has prepared consolidated financial statements (meaning consolidated financial statements prescribed in paragraph (1) of said Article) for the most recent business year with regard to the stock company itself and another juridical person, and reported the contents thereof at an annual shareholders meeting of the stock company, if a

rehabilitation case, etc. is pending against the stock company, a petition for commencement of rehabilitation proceedings against such other juridical person may also be filed with the district court before which the rehabilitation case, etc. against the stock company is pending, and if a rehabilitation case, etc. is pending against such other juridical person, a petition for commencement of rehabilitation proceedings against the stock company may also be filed with the district court before which the rehabilitation case, etc. against such other juridical person is pending.

(6) Notwithstanding the provisions of paragraph (1) and paragraph (2), where a rehabilitation case, etc. is pending against a juridical person, a petition for commencement of rehabilitation proceedings against the representative person of the juridical person may also be filed with the district court before which the rehabilitation case, etc. against the juridical person is pending, and where a rehabilitation case is pending against the representative person of a juridical person, a petition for commencement of rehabilitation proceedings against the juridical person may also be filed with the district court before which the rehabilitation case against the representative person of the juridical person is pending.

(7) Notwithstanding the provisions of paragraph (1) and paragraph (2), if a rehabilitation case is pending against either one of the persons set forth in each of the following items, a petition for commencement of rehabilitation proceedings against the other person set forth in the respective items may also be filed with the district court before which the rehabilitation case is pending:

- (i) Individuals who are joint and several debtors with each other
- (ii) Individuals one of whom is a principal debtor and the other is his/her guarantor
- (iii) Husband and wife

(8) Notwithstanding the provisions of paragraph (1) and paragraph (2), if there are 500 or more rehabilitation creditors, a petition for commencement of rehabilitation proceedings may also be filed with the district court that has jurisdiction over the location of the high court that has jurisdiction over the location of the court with jurisdiction under these provisions.

(9) Notwithstanding the provisions of paragraph (1) and paragraph (2), if there are 1,000 or more rehabilitation creditors, a petition for commencement of rehabilitation proceedings may also be filed with the Tokyo District Court or the Osaka District Court.

(10) If two or more district courts have jurisdiction over a rehabilitation case pursuant to the provisions of the preceding paragraphs, the rehabilitation case shall be subject to the jurisdiction of the district court with which the first petition for commencement of rehabilitation proceedings is filed.

#### Article 6 (Exclusive Jurisdiction)

The court jurisdiction prescribed in this Act shall be exclusive.

#### Article 7 (Transfer of Rehabilitation Cases)

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

- (i) The district court that has jurisdiction over the location of the rehabilitation debtor's business office or other office other than the rehabilitation debtor's principal business office or other principal office
- (ii) The district court that has jurisdiction over the location of the rehabilitation debtor's domicile or residence
- (iii) The district court prescribed in Article 5(2)
- (iv) Any of the district courts listed in (a) to (c) below:
  - (a) The district court prescribed in Article 5(3) to (7)
  - (b) If there are 500 or more rehabilitation creditors, the district court prescribed in Article 5(8)
  - (c) If there are 1,000 or more rehabilitation creditors, the district court prescribed in Article 5(9)
- (v) If the rehabilitation case is pending pursuant to the provisions of Article 5(3) to (9) at the district court prescribed in the respective provisions, the district court prescribed in paragraph (1) or paragraph (2) of said Article

#### Article 8 (Optional Oral Argument, etc.)

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

#### Article 9 (Appeal)

A person who has an interest in a judicial decision concerning rehabilitation proceedings, only as specially provided for in this Act, may file an immediate appeal against the judicial decision. The period for filing, where a public notice of the juridical decision is made, shall be two weeks from the day on which such public notice becomes effective.

#### Article 10 (Public Notice, etc.)

- (1) A public notice under the provisions of this Act shall be effected by publication in an official gazette.

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

Article 11 (Commission of Registration, etc. on Rehabilitation Proceedings of Juridical Person)

- (1) Where an order of commencement of rehabilitation proceedings is made against the rehabilitation debtor who is a juridical person, a court clerk, by his/her own authority, without delay, shall commission the registry office having jurisdiction over the location of each business office or other office of the rehabilitation debtor (limited to such office for which a person who serves as a representative person of the juridical person is designated as one of the matters to be registered at the location of the business office or other office in question) to make a registration of the commencement of rehabilitation proceedings; provided, however, that if the rehabilitation debtor is a foreign company, such commission shall be made to the registry office having jurisdiction over the domicile of its representative person for Japan (limited to one who has a domicile in Japan) (in the case of a foreign company that has business offices in Japan, the location of each such business office).
- (2) Where a disposition under the provisions of Article 54(1), Article 64(1) or Article 79(1) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article; the same shall apply in the following paragraph) is made against the rehabilitation debtor set forth in the preceding paragraph, a court clerk, by his/her own authority, without delay, shall commission the registry office prescribed in the preceding paragraph to make a registration of said disposition.
- (3) When making the registration set forth in the preceding paragraph, the matters specified in each of the following items shall also be registered for the categories of registrations listed in the respective items:
  - (i) Registration of a disposition under the provision of Article 54(1) prescribed in the preceding paragraph: The name and address of a supervisor, and the acts designated pursuant to the provision of paragraph (2) of said Article

- (ii) Registration of a disposition under the provisions of Article 64(1) or Article 79(1) prescribed in the preceding paragraph: The name and address of a trustee or provisional administrator, if permission set forth in the proviso to Article 70(1) (including cases where applied mutatis mutandis pursuant to Article 83(1); hereinafter the same shall apply in this item) is granted for independent performance of duties by each trustee or provisional administrator, a statement to that effect, and if permission set forth in the proviso of Article 70(1) is granted for division of duties among trustees or provisional administrators, a statement to that effect and the contents of the duties assigned to each trustee or provisional administrator
- (4) The provision of paragraph (2) shall apply mutatis mutandis where a disposition prescribed in said paragraph is changed or revoked or there is a change to any of the matters prescribed in the preceding paragraph.
- (5) The provision of paragraph (1) shall apply mutatis mutandis where any of the following events occurs with regard to the rehabilitation debtor set forth in said paragraph:
  - (i) An order of revocation of the order of commencement of rehabilitation proceedings, an order of discontinuance of rehabilitation proceedings or an order of confirmation or disconfirmation of the rehabilitation plan becomes final and binding
  - (ii) An order of revocation of the rehabilitation plan becomes final and binding (limited to cases where rehabilitation proceedings have not yet been closed)
  - (iii) Rehabilitation proceedings terminate as a result of an order of termination of rehabilitation proceedings
- (6) A registrar, when making a registration of the commencement of rehabilitation proceedings pursuant to the provision of paragraph (1), by his/her own authority, shall cancel a registration of the commencement of special liquidation against the rehabilitation debtor, if there is any such registration.
- (7) A registrar, when making a registration of the revocation of an order of commencement of rehabilitation proceedings pursuant to the provision of paragraph (5) (i), by his/her own authority, shall restore a registration cancelled under the provision of the preceding paragraph, if there is any such registration.
- (8) The provision of paragraph (6) shall apply mutatis mutandis to a registration of the commencement of bankruptcy proceedings in the case of making a registration of the confirmation of the rehabilitation plan pursuant to the provision of paragraph (5) (i).

Article 12 (Commission of Registration, etc. on Registered Rights)

- (1) In the following cases, a court clerk, by his/her own authority, without delay, shall commission a registration of the temporary restraining order concerned:



- (i) Where a temporary restraining order under the provision of Article 30(1) (including cases where applied mutatis mutandis pursuant to Article 36(2)) is issued with respect to any registered right that belongs to the rehabilitation debtor's assets (meaning any and all property held by the rehabilitation debtor; the same shall apply hereinafter)
  - (ii) Where a temporary restraining order under the provision of Article 134-2(1) (including cases where applied mutatis mutandis pursuant to paragraph (7) of said Article) or Article 142(1) or (2) is issued with respect to any registered right.
- (2) The provision of the preceding paragraph shall apply mutatis mutandis where the temporary restraining order prescribed in said paragraph is changed or revoked or such temporary restraining order ceases to be effective.
- (3) Where an order of commencement of rehabilitation proceedings is made, a court clerk, when he/she becomes aware that there is a registration under the provision of Article 938(3) of the Companies Act (including cases where applied mutatis mutandis pursuant to paragraph (4) of said Article) with regard to any registered right that belongs to the rehabilitation debtor's property, by his/her own authority, without delay, shall commission cancellation of the registration.
- (4) Where a registration is cancelled under the provision of the preceding paragraph, when an order to revoke the order of commencement of rehabilitation proceedings has become final and binding, a court clerk, by his/her own authority, without delay, shall commission restoration of the registration cancelled under the provision of said paragraph.
- (5) The provision of paragraph (3) shall apply mutatis mutandis where an order of confirmation of the rehabilitation plan has become final and binding, and a court clerk has become aware that there is a registration of the commencement of bankruptcy proceedings involving any registered right that belongs to the rehabilitation debtor's property.

#### Article 13 (Registration of Avoidance)

- (1) Where any act constituting the cause of registration is avoided, a supervisor or trustee shall apply for a registration of avoidance. The same shall apply where a registration is avoided.
- (2) A registrar, when making a registration on a right pertaining to the registration of avoidance set forth in the preceding paragraph, by his/her own authority, shall cancel the following registrations:
  - (i) The registration of avoidance in question
  - (ii) The registration arising from the avoided act as the cause of registration, or the avoided registration
  - (iii) Any subsequent registration made after the registration set forth in the

preceding item

- (3) In the case prescribed in the preceding paragraph, if, after any act is avoided until a registration of avoidance is made, a registration is made with respect to a third party's right (limited to such right whose effect may be asserted in relation to rehabilitation proceedings) the subject matter of which is the right pertaining to the registration set forth in item (ii) of said paragraph, notwithstanding the provision of said paragraph, a registrar, by his/her own authority, shall cancel said registration of avoidance and make a registration of the transfer of the right pertaining to the registration set forth in said item to the rehabilitation debtor.
- (4) Where a registration of avoidance set forth in paragraph (1) is made, if, with regard to the rehabilitation debtor, an order of confirmation of the rehabilitation plan becomes final and binding, a court clerk, by his/her own authority, without delay, shall commission cancellation of said registration of avoidance.
- (5) In the case prescribed in the preceding paragraph, a registrar, when commissioned by a court clerk to cancel the registration of avoidance, shall cancel the registration listed in paragraph (2) (ii) and (iii) by his/her own authority. In this case, if, after any act is avoided until a registration of avoidance is made, a registration is made with respect to a third party's right the subject matter of which is the right pertaining to the registration set forth in item (ii) of said paragraph, a registrar, by his/her own authority, shall make a registration of the transfer of the right pertaining to the registration set forth in item (ii) of said paragraph to the rehabilitation debtor, instead of canceling the registration listed in item (ii) and item (iii) of said paragraph.
- (6) Where a registration of avoidance set forth in paragraph (1) is made, if, with regard to the rehabilitation debtor, an order of revocation of the order of commencement of rehabilitation proceedings or an order of disconfirmation of the rehabilitation plan becomes final and binding, or an order of discontinuance of rehabilitation proceedings becomes final and binding before an order of confirmation of the rehabilitation plan becomes final and binding, a court clerk, by his/her own authority, without delay, shall commission cancellation of said registration of avoidance.

#### Article 14 (Exclusion from Taxation)

Registration and license tax shall not be imposed on the registrations under the provisions of the preceding three Articles.

#### Article 15 (Application Mutatis Mutandis to Registered Rights)

The provisions of the preceding three Articles shall apply mutatis mutandis to registered rights.

Article 16 (Inspection, etc. of Case Documents)

- (1) An interested person, pursuant to the provisions of this Act (including other Acts as applied mutatis mutandis pursuant to this Act), may make a request to a court clerk for the inspection of documents and any other objects (hereinafter referred to as "documents, etc." in this Article and paragraph (1) of the following Article) submitted to the court or prepared by the court.
- (2) An interested person may make a request to a court clerk for the copying of documents, etc., issuance of an authenticated copy, transcript or extract of documents, etc. or issuance of a certificate of matters concerning the case in question.
- (3) The provision of the preceding paragraph shall not apply with respect to documents, etc. which are prepared in the form of audiotapes or videotapes (including objects on which certain matters are recorded by any means equivalent thereto). In this case, upon the request of an interested person with regard to these objects, a court clerk shall permit reproduction thereof.
- (4) Notwithstanding the provisions of the preceding three paragraphs, a person set forth in each of the following items may not make a request under the provisions of the preceding three paragraphs until the order, temporary restraining order or judicial decision specified in the respective items is issued or made; provided, however, that this shall not apply where the person in question is a petitioner for commencement of rehabilitation proceedings:
  - (i) An interested person other than the rehabilitation debtor: A stay order under the provision of Article 26(1), prohibition order pursuant to the provision of Article 27(1), temporary restraining order under the provision of Article 30(1), stay order under the provision of Article 31(1), disposition under the provisions of Article 54(1) or Article 79(1), temporary restraining order under the provision of Article 134-2(1), stay order under the provision of Article 197(1) or judicial decision on a petition for commencement of rehabilitation proceedings
  - (ii) The rehabilitation debtor: A judicial decision to designate the date for oral argument or date for interrogation on which the rehabilitation debtor is to be summoned to appear with respect to a petition for commencement of rehabilitation proceedings, or any order, temporary restraining order or judicial decision specified in the preceding item

Article 17 (Restriction on Inspection, etc. of Detrimental Part of Documents, etc.)

- (1) Where with regard to the following documents, etc., prima facie showing is made to the effect that the documents, etc. in question contain such part that is likely to be significantly detrimental to the maintenance or rehabilitation of the rehabilitation debtor's business or serious damage to the rehabilitation debtor's property if it is subject to the inspection or copying, issuance of an authenticated

copy, transcript or extract, or reproduction (hereinafter referred to as "inspection, etc." in this Article) conducted by an interested person (such part of documents, etc. shall hereinafter be referred to as "detrimental part" in this Article), the court, upon the petition of the rehabilitation debtor, etc. (or a provisional administrator if any provisional administrator is appointed; hereinafter the same shall apply in this paragraph and the following paragraph) who submitted the documents, etc. in question, a supervisor, examiner or individual rehabilitation commissioner, may limit persons who may make a request for inspection, etc. of the detrimental part to the persons who has filed the petition and the rehabilitation debtor, etc.:

- (i) Documents, etc. submitted to the court for the purpose of obtaining permission under Article 41(1) (including cases where applied mutatis mutandis pursuant to Article 81(3)), Article 42(1), Article 56(5) or the proviso to Article 81(1)
  - (ii) Documents, etc. pertaining to the report of the results of the investigation prescribed in Article 62(2) or Article 223(3) (including cases where applied mutatis mutandis pursuant to Article 244) or the report under the provisions of Article 125(2) or (3)
- (2) When the petition set forth in the preceding paragraph is filed, no interested person (excluding the person who filed the petition set forth in said paragraph and the rehabilitation debtor, etc.; the same shall apply in the following paragraph) may make a request for inspection, etc. of the detrimental part until a judicial decision on the petition becomes final and binding.
- (3) An interested person who intends to make a request for inspection, etc. of the detrimental part may file a petition to the rehabilitation court for revocation of the order made under the provision of paragraph (1), on the grounds that the requirement prescribed in said paragraph is not met or is no longer met.
- (4) An immediate appeal may be filed against an order to dismiss without prejudice the petition set forth in paragraph (1) and a judicial decision on the petition set forth in the preceding paragraph.
- (5) An order to revoke the order made under the provision of paragraph (1) shall not become effective unless it becomes final and binding.

#### Article 18 (Application Mutatis Mutandis of the Code of Civil Procedure)

With respect to rehabilitation proceedings, etc., except as otherwise provided, the provisions of the Code of Civil Procedure shall apply mutatis mutandis.

#### Article 19 (Rules of the Supreme Court)

In addition to what is provided for in this Act, the necessary matters concerning rehabilitation proceedings shall be specified by the Rules of the Supreme Court.

#### Article 20 Deleted

## **Chapter II Commencement of Rehabilitation Proceedings**

### **Section 1 Petition for Commencement of Rehabilitation Proceedings**

#### Article 21 (Petition for Commencement of Rehabilitation Proceedings)

- (1) When there is the risk that a fact constituting the grounds for commencement of bankruptcy proceedings would occur to a debtor, the debtor may file a petition for commencement of rehabilitation proceedings to the court. The same shall apply when a debtor is unable to pay his/her debts that are due without causing significant hindrance to the continuation of his/her business.
- (2) In the case prescribed in the first sentence of the preceding paragraph, a creditor may also file a petition for commencement of rehabilitation proceedings.

#### Article 22 (Obligation to File Petition for Commencement of Bankruptcy Proceedings and Filing of Petition for Commencement of Rehabilitation Proceedings)

Even where, pursuant to the provisions of other Acts, a juridical person's director or any other person equivalent thereto shall file a petition for commencement of bankruptcy proceedings or commencement of special liquidation against the juridical person, these provisions shall not preclude these persons from filing a petition for commencement of rehabilitation proceedings.

#### Article 23 (Prima Facie Showing)

- (1) When filing a petition for commencement of rehabilitation proceedings, a petitioner shall make a prima facie showing of the fact constituting the grounds for commencement of rehabilitation proceedings.
- (2) A creditor, when filing a petition set forth in the preceding paragraph, shall also make a prima facie showing of the existence of the claim held thereby.

#### Article 24 (Prepayment of Expenses)

- (1) When filing a petition for commencement of rehabilitation proceedings, a petitioner shall prepay an amount designated by the court as expenses for rehabilitation proceedings.
- (2) An immediate appeal may be filed against an order on prepayment of expenses.

#### Article 24-2 (Hearing of Opinions)

Where a petition for commencement of rehabilitation proceedings is filed, the court, before making an order on said petition, shall hear opinions of the labor union, etc. (meaning the labor union consisting of the majority of the rehabilitation debtor's employees and other workers, if there is any such labor union, or the person

representative of the majority of the rehabilitation debtor's employees and other workers, if there is no labor union consisting of the majority of the rehabilitation debtor's employees and other workers; the same shall apply hereinafter, except in Article 246 (3)), except where it is obvious that the court should dismiss said petition with prejudice on the merits or make an order of commencement of rehabilitation proceedings.

#### Article 25 (Conditions for Commencement of Rehabilitation Proceedings)

In any of the following cases, the court shall dismiss with prejudice on the merits a petition for commencement of rehabilitation proceedings:

- (i) Where expenses for rehabilitation proceedings are not prepaid
- (ii) Where bankruptcy proceedings or special liquidation proceedings are pending before the court, and enforcing either proceedings conforms to the common interests of creditors.
- (iii) Where it is obvious that a proposed rehabilitation plan is unlikely to be prepared or approved or a rehabilitation plan is unlikely to be confirmed.
- (iv) Where the petition for commencement of rehabilitation proceedings is filed for an unjustifiable purpose or it is not filed in good faith.

#### Article 26 (Stay Order, etc. for Other Procedures and Proceedings)

(1) Where a petition for commencement of rehabilitation proceedings is filed, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may order stay of the following procedures or proceedings until an order is made on the petition for commencement of rehabilitation proceedings: provided, however, that this shall only apply, in the case of the procedure set forth in item (ii), if the stay order is not likely to cause undue damage to the rehabilitation creditor who filed the petition for the procedure or proceedings:

- (i) Bankruptcy proceedings or special liquidation proceedings against the rehabilitation debtor
  - (ii) Procedure for compulsory execution, provisional seizure or provisional disposition which is based on a rehabilitation claim or auction by reason of a right of retention (excluding a right of retention under the provisions of the Commercial Code (Act No. 48 of 1899) or the Companies Act) which is intended to secure a rehabilitation claim, etc. (hereinafter referred to as "compulsory execution based on a rehabilitation claim, etc." in the following Article, Article 29 and Article 39), already initiated against the rehabilitation debtor's property
  - (iii) Court proceedings relating to the rehabilitation debtor's property
  - (iv) Procedure for a case relating to the rehabilitation debtor's property that is pending before an administrative agency
- (2) The court may change or revoke a stay order issued under the provision of the

preceding paragraph.

- (3) The court, when it finds it particularly necessary for the continuation of the rehabilitation debtor's business, upon the petition of the rehabilitation debtor (or a provisional administrator if any provisional administrator is appointed), may order the revocation of the procedure stayed pursuant to the provision of paragraph (1) (ii), while requiring security to be provided.
- (4) An immediate appeal may be filed against a stay order issued under the provision of paragraph (1), an order made under the provision of paragraph (2) and a revocation order issued under the provision of the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (6) Where a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in said paragraph are made, the written decisions shall be served upon the parties concerned.

Article 27 (Comprehensive Prohibition Order on Compulsory Execution Based on Rehabilitation Claim, etc.)

- (1) Where a petition for commencement of rehabilitation proceedings is filed, if there are special circumstances where the court finds the risk that it would be impossible to achieve the purpose of the rehabilitation proceedings satisfactorily only by issuing a stay order under the provision of paragraph (1) of the preceding Article, the court, upon the petition of an interested person or by its own authority, may issue an order to prohibit all rehabilitation creditors from enforcing, against the rehabilitation debtor's property, compulsory execution based on a rehabilitation claim, etc., until an order is made on the petition for commencement of rehabilitation proceedings; provided, however, that this shall apply only where the court, in advance or simultaneously, issues a temporary restraining order under the provision of Article 30(1) with respect to the rehabilitation debtor's principal property or disposition under the provision of Article 54(1) or Article 79(1).
- (2) Where a prohibition order under the provision of the preceding paragraph (hereinafter referred to as a "comprehensive prohibition order") is issued, the procedure for compulsory execution based on a rehabilitation claim, etc. already initiated against the rehabilitation debtor's property shall be stayed until an order is made on the petition for commencement of rehabilitation proceedings.
- (3) The court may change or revoke a comprehensive prohibition order.
- (4) The court, when it finds it particularly necessary for the continuation of the rehabilitation debtor's business, upon the petition of the rehabilitation debtor (or a provisional administrator if any provisional administrator is appointed), may order revocation of the procedure for compulsory execution based on a rehabilitation claim, etc. stayed pursuant to the provision of paragraph (2), while requiring

security to be provided.

- (5) An immediate appeal may be filed against a comprehensive prohibition order, an order made under the provision of paragraph (3) and a revocation order issued under the provision of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (7) When a comprehensive prohibition order is issued, the prescription shall not be completed with regard to a rehabilitation claim until the day on which two months have elapsed since the day following the day on which the comprehensive prohibition order ceases to be effective.

#### Article 28 (Public Notice and Service, etc. Concerning Comprehensive Prohibition Order)

- (1) Where a comprehensive prohibition order is issued and an order to change or revoke said order is made, a public notice shall be made to that effect, the written orders shall be served upon the rehabilitation debtor (or a provisional administrator if any provisional administrator is appointed; the same shall apply in the following paragraph) and the petitioner, and a notice of the main text of the respective order shall be given to known rehabilitation creditors and the rehabilitation debtor (limited to cases where a provisional administrator is appointed).
- (2) A comprehensive prohibition order and an order to change or revoke said order shall become effective as from the time when the written orders are served upon the rehabilitation debtor.
- (3) Where a revocation order under the provision of paragraph (4) of the preceding Article is issued and a judicial decision on an immediate appeal set forth in paragraph (5) of said Article (excluding an order to change or revoke a comprehensive prohibition order) is made, the written order/decision shall be served upon the parties concerned.

#### Article 29 (Cancellation of Comprehensive Prohibition Order)

- (1) The court, when it finds, after issuing a comprehensive prohibition order, that the order is likely to cause undue damage to a rehabilitation creditor who filed a petition for compulsory execution based on a rehabilitation claim, etc., upon the petition of said rehabilitation creditor, may make a order that the comprehensive prohibition order shall be cancelled only with regard to said creditor. In this case, the creditor may enforce compulsory execution based on a rehabilitation claim, etc. against the debtor's property, and any procedure for compulsory execution, etc. initiated by said creditor prior to the issuance of the comprehensive prohibition order shall be continued.



- (2) For the purpose of application of the provision of Article 27(7) to a person who obtains a cancellation order under the provision of the preceding paragraph, the phrase "the day on which the comprehensive prohibition order ceases to be effective" in Article 27(7) shall be deemed to be replaced with "the day on which a cancellation order under the provision of Article 29(1) is made."
- (3) An immediate appeal may be filed against a judicial decision on the petition set forth in paragraph (1).
- (4) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (5) Where a judicial decision on the petition set forth in paragraph (1) and a judicial decision on the immediate appeal set forth in paragraph (3) are made, the written decisions shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10(3) shall not apply.

Article 30 (Provisional Seizure, Provisional Disposition and Temporary Restraining Order)

- (1) Where a petition for commencement of rehabilitation proceedings is filed, the court, upon the petition of an interested person or by its own authority, may order a provisional seizure or provisional disposition or issue any other necessary temporary restraining order concerning the rehabilitation debtor's business and property until an order is made on the petition for commencement of rehabilitation proceedings.
- (2) The court may change or revoke a temporary restraining order issued under the provision of the preceding paragraph.
- (3) An immediate appeal may be filed against a temporary restraining order issued under the provision of paragraph (1) and an order made under the provision of the preceding paragraph.
- (4) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (5) Where a judicial decision prescribed in paragraph (3) and a judicial decision on the immediate appeal set forth in said paragraph are made, the written decisions shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10(3) shall not apply.
- (6) Where the court, pursuant to the provision of paragraph (1), has issued a temporary restraining order to prohibit the rehabilitation debtor from making payment to a rehabilitation creditor or conducting any other act with the rehabilitation creditor to cause his/her debt to be extinguished, the rehabilitation creditor may not assert, in relation to the rehabilitation proceedings, the effect of the payment or any other act to cause the debt to be extinguished, which is made or conducted in violation of the temporary restraining order; provided, however,

that this shall apply only if the rehabilitation creditor knows, at the time of commission of such act, the fact that the temporary restraining order was issued.

#### Article 31 (Stay Order for Procedure for Exercise of Interest Security)

- (1) Where a petition for commencement of rehabilitation proceedings is filed, the court, upon the petition of an interested person or by its own authority, may specify a reasonable period and order stay of the procedure for exercise of any security interest that exists on the rehabilitation debtor's property prescribed in Article 53(1), when it finds that the stay conforms to the common interest of rehabilitation creditors and is not likely to cause undue damage to the auction applicant; provided, however, that this shall not apply where the claim secured by that interest security is a common benefit claim or claim with general priority.
- (2) The court, when issuing a stay order under the provision of the preceding paragraph, shall hear opinions of the auction applicant.
- (3) The court may change or revoke a stay order issued under the provision of paragraph (1).
- (4) Against a stay order under the provision of paragraph (1) and an order to change the order under the provision of the preceding paragraph, only the auction applicant may file an immediate appeal.
- (5) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (6) Where a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in said paragraph are made, the written decisions shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10(3) shall not apply.

#### Article 32 (Restriction on Withdrawal of Petition for Commencement of Rehabilitation Proceedings)

A person who has filed a petition for commencement of rehabilitation proceedings may withdraw the petition only prior to an order of commencement of rehabilitation proceedings being made. In this case, after a stay order under the provision of Article 26(1), comprehensive prohibition order, temporary restraining order under the provision of Article 30(1), stay order under the provision of paragraph (1) of the preceding Article, disposition under the provisions of Article 54(1) or Article 79(1), temporary restraining order under the provision of Article 134-2(1) or stay order under the provision of Article 197(1) is issued or made, permission of the court shall be required.

### **Section 2 Order of Commencement of Rehabilitation Proceedings**

Article 33 (Order of Commencement of Rehabilitation Proceedings)

- (1) Where a petition for commencement of rehabilitation proceedings that meets the requirement prescribed in Article 21 is filed, the court shall make an order of commencement of rehabilitation proceedings, except where it dismisses the petition with prejudice on the merits pursuant to the provision of Article 25.
- (2) The order set forth in the preceding paragraph shall become effective as from the time when it is made.

Article 34 (Matters to Be Specified upon Making Order of Commencement of Rehabilitation Proceedings)

- (1) The court, upon making an order of commencement of rehabilitation proceedings, shall specify a period during which proofs of rehabilitation claims should be filed and the period for conducting an investigation of rehabilitation claims.
- (2) In the case referred to in the preceding paragraph, the court, if there are 1,000 or more known rehabilitation creditors and it finds it appropriate, may make an order not to give a notice to rehabilitation creditors under the provisions of paragraph (3) (i) of the following Article, as applied mutatis mutandis pursuant to the main clause of paragraph (5) of said Article, and the provision of the main clause of Article 37, and not to summon, on the date of a creditors meeting (excluding one aimed for adopting a resolution on a proposed rehabilitation plan), holders of filed rehabilitation claims prescribed in Article 102(1).

Article 35 (Public Notice of Commencement of Rehabilitation Proceedings, etc.)

- (1) The court, when it has made an order of commencement of rehabilitation proceedings, shall immediately make a public notice of the following matters; provided, however, that when there is no bond administrator, etc. prescribed in Article 169-2(1), a public notice of the matter set forth in item (iii) shall not be required:
  - (i) The main text of the order of commencement of rehabilitation proceedings
  - (ii) The periods specified pursuant to the provision of paragraph (1) of the preceding Article
  - (iii) The statement to the effect that where there is any bond administrator, etc. prescribed in Article 169-2(1) with regard to company bonds, etc. prescribed in Article 169-2(1) issued by the rehabilitation debtor, rehabilitation creditors may not exercise their voting rights based on such company bonds, etc. except in any of the cases listed in the items of said paragraph (excluding the case set forth in paragraph (3) of said Article).
- (2) When an order set forth in paragraph (2) of the preceding Article is made, the court, in addition to the matters listed in the items of the preceding paragraph, shall make a public notice to the effect that it will not give a notice to

rehabilitation creditors under the provisions of item (i) of the following paragraph, as applied mutatis mutandis pursuant to the main clause of paragraph (5), and the provision of the main clause of Article 37, and also will not summon holders of filed rehabilitation claims prescribed in Article 102(1) on the date of a creditors meeting (excluding one aimed for adopting a resolution on a proposed rehabilitation plan).

- (3) The following persons shall be given a notice of the matters of which a public notice shall be made pursuant to the provisions of the preceding two paragraphs:
  - (i) The rehabilitation debtor, and known rehabilitation creditors
  - (ii) A supervisor, trustee or provisional administrator in cases where a disposition is made under the provisions of Article 54(1), Article 64(1) or the first sentence of Article 79(1), respectively
- (4) Notwithstanding the provision of the preceding paragraph, when it is obvious that the rehabilitation debtor is unable to pay his/her debts in full with his/her property with regard to claims that take preference over consensually-subordinated rehabilitation claims (meaning a claim for which the rehabilitation creditor and the rehabilitation debtor, prior to the commencement of rehabilitation proceedings, reach an agreement to the effect that if bankruptcy proceedings are commenced against the rehabilitation debtor, the claim shall be subordinated to a subordinate bankruptcy claim prescribed in Article 99(1) of the Bankruptcy Act (Act No. 75 of 2004) in the order of priority for receiving a liquidating distribution in the bankruptcy proceedings; the same shall apply hereinafter), the notice under the provision of the preceding paragraph shall not be required to be given to the holders of such consensually-subordinated rehabilitation claims if they are known.
- (5) The provisions of paragraph (1)(ii), paragraph (3)(i) and the preceding paragraph shall apply mutatis mutandis where there is a change to the period during which proofs of rehabilitation claims should be filed as specified pursuant to the provision of paragraph (1) of the preceding Article; provided, however, that when an order set forth in paragraph (2) of said Article is made, the notice shall not be required to be given to known rehabilitation creditors.

#### Article 36 (Appeal against Ruling)

- (1) An immediate appeal may be filed against a judicial decision on a petition for commencement of rehabilitation proceedings.
- (2) The provisions of Article 26 to Article 30 shall apply mutatis mutandis where an immediate appeal set forth in the preceding paragraph is filed against an order to dismiss with prejudice on the merits a petition for commencement of rehabilitation proceedings.

#### Article 37 (Revocation of Order of Commencement of Rehabilitation Proceedings)

The court that has made an order of commencement of rehabilitation proceedings, if an immediate appeal set forth in paragraph (1) of the preceding Article is filed and an order to revoke said order becomes final and binding, shall immediately make a public notice of the main text of the revocation order and give a notice of the main text thereof to the persons listed in the items of Article 35(3) (excluding a provisional administrator and the persons who are not given a notice under the provision of paragraph (4) of said Article); provided, however, that when an order set forth in Article 34(2) is made, the notice shall not be required to be given to known rehabilitation creditors.

#### Article 38 (Status of the Rehabilitation Debtor)

- (1) The rehabilitation debtor, even after a rehabilitation proceeding is commenced against him/her, shall have the right to carry out his/her business or administer or dispose of his/her property (irrespective of whether or not it exists in Japan; the same shall apply in Article 66 and Article 81(1)).
- (2) Where a rehabilitation proceeding is commenced, the rehabilitation debtor shall have the obligation, vis-à-vis creditors, to exercise the right set forth in the preceding paragraph and conduct rehabilitation proceedings in a fair and sincere manner.
- (3) The provisions of the preceding two paragraphs shall not apply where a disposition under the provision of Article 64(1) is made.

#### Article 39 (Stay of Other Procedures and Proceedings, etc.)

- (1) Where an order of commencement of rehabilitation proceedings is made, it is not allowed to file a petition for commencement of bankruptcy proceedings, commencement of rehabilitation proceedings or commencement of special liquidation, enforce compulsory execution based on a rehabilitation claim, etc. against the rehabilitation debtor, or file a petition for an assets disclosure procedure based on a rehabilitation claim, and the bankruptcy proceedings and the procedure for compulsory execution based on a rehabilitation claim, etc. and assets disclosure procedure based on a rehabilitation claim, which have already been initiated against the rehabilitation debtor, shall be stayed, and the special liquidation proceedings shall cease to be effective.
- (2) The court, when it finds it unlikely to cause hindrance to rehabilitation, upon the petition of the rehabilitation debtor, etc. or by its own authority, may order the continuation of the procedure for compulsory execution based on a rehabilitation claim, etc. stayed pursuant to the provision of the preceding paragraph, and when it finds it necessary for rehabilitation, upon the petition of the rehabilitation debtor, etc. or by its own authority, may order the revocation of the stayed procedure for compulsory execution based on a rehabilitation claim, etc., while

requiring or not requiring the provision of security.

- (3) When an order of commencement of rehabilitation proceedings is made, the following claims shall be common benefit claims:
- (i) A priority claim on the bankruptcy estate involved in the bankruptcy proceedings stayed pursuant to the provision of paragraph (1) (excluding the claim set forth in Article 148(1) (iii) of the Bankruptcy Act, and including the claims prescribed in Article 55(2) and Article 148(4) of said Act in cases where bankruptcy proceedings are not commenced)
  - (ii) A claim arising against the rehabilitation debtor from the proceedings that cease to be effective pursuant to the provision of paragraph (1), and a claim for expenses against the rehabilitation debtor with respect to such proceedings
  - (iii) A claim for expenses against the rehabilitation debtor with respect to the procedure continued pursuant to the provision of the preceding paragraph
- (4) When an order of commencement of rehabilitation proceedings is made, the prescription for a fine, petty fine and collection of equivalent value shall not run until the rehabilitation proceedings are closed (when an order of confirmation of the rehabilitation plan is made, the prescription shall not run until the payment period specified in the rehabilitation plan as prescribed in Article 181(2) expires (or until payment based on the rehabilitation plan is completed or the rehabilitation plan is revoked, if these events occur prior to the expiration of said period)); provided, however, that this shall not apply where the claim for the fine, petty fine or collection of equivalent value in question is a common benefit claim.

#### Article 40 (Discontinuation of Action, etc.)

- (1) When an order of commencement of rehabilitation proceedings is made, any action relating to the rehabilitation debtor's property and also relating to a rehabilitation claim shall be discontinued.
- (2) If the rehabilitation proceedings are closed before the action prescribed in the preceding paragraph is taken over under the provisions of Article 107(1), Article 109(2) (including cases where applied *mutatis mutandis* pursuant to the second sentence of Article 113(2)) or Article 213(5) (including cases where applied *mutatis mutandis* pursuant to Article 219(2)), the rehabilitation debtor shall automatically take over the action.
- (3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* to a case relating to the rehabilitation debtor's property and also relating to a rehabilitation claim, which is pending before an administrative agency at the time of commencement of rehabilitation proceedings.

#### Article 40-2 (Action for Obligee's Subrogation Right, etc.)

- (1) If an action filed by a rehabilitation creditor pursuant to the provisions of Article

423 or Article 424 of the Civil Code (Act No. 89 of 1896), action of avoidance or action of objection to an order upholding a request for avoidance filed under the provisions of the Bankruptcy Act is pending at the time of commencement of rehabilitation proceedings, the respective action shall be discontinued.

- (2) The rehabilitation debtor, etc. may take over the action discontinued pursuant to the provision of the preceding paragraph, which is filed by a rehabilitation debtor pursuant to the provision of Article 423 of the Civil Code. In this case, a petition for taking over of action may also be filed by the opponent.
- (3) In the case referred to in the preceding paragraph, the opponent's claim for court costs against the rehabilitation creditor shall be a common benefit claim.
- (4) If the rehabilitation proceedings are closed after the action prescribed in paragraph (2) was taken over under the provision of said paragraph, the action shall be discontinued except where it has been discontinued pursuant to the provision of Article 68(2) as applied mutatis mutandis pursuant to paragraph (4) of said Article.
- (5) In the case referred to in the preceding paragraph, the rehabilitation creditor shall take over the action. In this case, a petition for taking over of action may also be filed by the opponent.
- (6) If the rehabilitation proceedings are closed after the action prescribed in paragraph (2) was discontinued pursuant to the provision of Article 68(2) as applied mutatis mutandis pursuant to paragraph (4) of said Article, notwithstanding the provision of paragraph (3) of said Article as applied mutatis mutandis pursuant to paragraph (4) of said Article, the rehabilitation creditor shall take over the action. In this case, a petition for taking over of action may also be filed by the opponent.
- (7) If the rehabilitation proceedings are closed before the action discontinued under the provision of paragraph (1) is taken over under the provision of paragraph (2) or Article 140(1), the rehabilitation creditor or bankruptcy trustee shall automatically take over the action.

#### Article 41 (Restriction on Acts of the Rehabilitation Debtor, etc.)

- (1) The court, when it finds it necessary after the commencement of rehabilitation proceedings, may require the rehabilitation debtor, etc. to obtain permission of the court in order to conduct the following acts:
  - (i) Disposition of property
  - (ii) Acceptance of the transfer of property
  - (iii) Borrowing of money
  - (iv) Cancellation of a contract under the provision of Article 49(1)
  - (v) Filing of an action
  - (vi) Settlement or arbitration agreement (meaning an arbitration agreement

- prescribed in Article 2(1) of the Arbitration Act (Act No. 138 of 2003))
- (vii) Waiver of a right
  - (viii) Admittance of a common benefit claim, claim with general priority or right of segregation prescribed in Article 52
  - (ix) Redemption of the collateral for a right of separate satisfaction
  - (x) Any other act designated by the court
- (2) Any act conducted without the permission set forth in the preceding paragraph shall be void; provided, however, that this may not be asserted against a third party without knowledge.

#### Article 42 (Transfer of Operation, etc.)

- (1) After the commencement of rehabilitation proceedings, the rehabilitation debtor, etc. shall obtain permission of the court in order to transfer the entirety or a significant part of the rehabilitation debtor's operation or business. In this case, the court may grant permission only when it finds it necessary for the rehabilitation of the rehabilitation debtor's business.
- (2) The court, when granting the permission set forth in the preceding paragraph, shall hear opinions of known rehabilitation creditors (in cases where the rehabilitation debtor, at the time of commencement of rehabilitation proceedings, is unable to pay his/her debts in full with his/her property with regard to claims that take preference over consensually-subordinated rehabilitation claims, the holders of such consensually-subordinated rehabilitation claims shall be excluded). In this case, if there is a creditors committee prescribed in Article 117(2), it shall be sufficient to hear opinions of the committee.
- (3) The court, when granting the permission set forth in paragraph (1), shall hear opinions of the labor union, etc.
- (4) The provision of paragraph (2) of the preceding Article shall apply mutatis mutandis to any act conducted without the permission set forth in paragraph (1).

#### Article 43 (Permission in lieu of Approval based on Resolution at Shareholders Meeting Regarding Business Transfer)

- (1) If the rehabilitation debtor that is a stock company, after the commencement of rehabilitation proceedings, is unable to pay its debts in full with its property, the court, upon the petition of the rehabilitation debtor, etc., may grant permission in lieu of approval based on a resolution at a shareholders meeting prescribed in Article 467(1) of the Companies Act with regard to the transfer of the entire business of the rehabilitation debtor's business or the transfer of a significant part of the business prescribed in paragraph (1) (ii) of said Article; provided, however, that this shall apply only when such transfer of the entire business or transfer of a significant part of the business is necessary for the continuation of the business.



- (2) Where an order of permission set forth in the preceding paragraph (hereinafter referred to as a "substituted permission" in this Article) is made, the written order shall be served upon the rehabilitation debtor, etc., and a document stating the gist of the order shall be served upon shareholders, respectively.
- (3) An order of substituted permission shall become effective as from the time when the service to the rehabilitation debtor, etc. under the provision of the preceding paragraph is made.
- (4) A service to shareholders under the provision of paragraph (2) shall be made to a shareholder's address specified or recorded in the shareholder registry or any other place which a shareholder has notified the rehabilitation debtor of, by sending the necessary documents by ordinary mail or by services of correspondence delivery prescribed in Article 2(2) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) that are provided by a general correspondence delivery operator prescribed in paragraph (6) of said Article or specified correspondence delivery operator prescribed in paragraph (9) of said Article.
- (5) Where a service has been made under the provision of the preceding paragraph, the service shall be deemed to have been made at the time when the postal item or the letter item prescribed in Article 2(3) of the Act on Correspondence Delivery by Private Business Operators (hereinafter referred to as a "postal item, etc.") sent thereby should have normally arrived.
- (6) A shareholder may file an immediate appeal against an order of substituted permission.
- (7) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (8) The provisions of Article 469 and Article 470 of the Companies Act shall not apply where the transfer of the entire business or transfer of a significant part of the business prescribed in paragraph (1) is conducted with substituted permission.

#### Article 44 (Acquisition of Rights after Commencement)

- (1) Where a rehabilitation creditor has acquired a right based on a rehabilitation claim after the commencement of rehabilitation proceedings with respect to the rehabilitation debtor's assets, if it is not by way of the act conducted by the rehabilitation debtor (or a trustee or the rehabilitation debtor if any trustee is appointed), the rehabilitation creditor may not assert such acquisition of the right as effective in relation to the rehabilitation proceedings.
- (2) A right acquired on the date of commencement of rehabilitation proceedings shall be presumed to be acquired after the commencement of rehabilitation proceedings.

#### Article 45 (Registrations after Commencement)

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

#### Article 46 (Acceptance of Bills after Commencement)

- (1) Where a rehabilitation proceeding is commenced against the rehabilitation debtor who is the drawer or endorser of a bill of exchange, if the drawee or the drawee in case of need has accepted or paid the bill without knowledge of the fact of the commencement, the drawee or the drawee in case of need may exercise his/her right over a claim arising from such acceptance or payment as a rehabilitation creditor.
- (2) The provision of the preceding paragraph shall apply mutatis mutandis to checks and to securities issued for the purpose of delivering money or any other things or securities.

#### Article 47 (Presumption of the Existence or Absence of Knowledge)

For the purpose of application of the provisions of the preceding two Articles, the absence of knowledge of the commencement of rehabilitation proceedings shall be presumed prior to a public notice made under the provision of Article 35(1) (hereinafter referred to as a "public notice of the commencement of rehabilitation proceedings"), and the existence of knowledge of the commencement of rehabilitation proceedings shall be presumed after a public notice of the commencement of rehabilitation proceedings.

#### Article 48 (Co-ownership)

- (1) Where the rehabilitation debtor holds a property right jointly with another or other persons, if a rehabilitation proceeding is commenced, the rehabilitation debtor, etc. may make a claim for division of the property in co-ownership even if

there is an agreement between the co-owners to the effect that division shall not be made.

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

#### Article 49 (Bilateral Contract)

- (1) If both the rehabilitation debtor and his/her counter party under a bilateral contract have not yet completely performed their obligations by the time of commencement of rehabilitation proceedings, the rehabilitation debtor, etc. may cancel the contract or may perform the rehabilitation debtor's obligation and request the counter party to perform his/her obligation.
- (2) In the case referred to in the preceding paragraph, the counter party may set a reasonable period and make a demand on the rehabilitation debtor, etc. that he/she should give a definite answer within that period with regard to whether he/she will cancel the contract or request the performance of the obligation. In this case, if the rehabilitation debtor, etc. fails to give a definite answer within that period, it shall be deemed that he/she waives a right to cancel under the provision of said paragraph.
- (3) The provisions of the preceding two paragraphs shall not apply to a collective agreement.
- (4) Where the rehabilitation debtor's obligation is to be performed pursuant to the provision of paragraph (1), the claim held by the counter party shall be a common benefit claim.
- (5) The provision of Article 54 of the Bankruptcy Act shall apply mutatis mutandis where a contract is cancelled under the provision of paragraph (1). In this case, in paragraph (1) of said Article, the term "bankruptcy creditor" shall be deemed to be replaced with "rehabilitation creditor"; in paragraph (2) of said Article, the term "bankrupt" shall be deemed to be replaced with "rehabilitation debtor," the term "bankruptcy estate" shall be deemed to be replaced with "rehabilitation debtor's assets," and the term "priority creditor on the bankruptcy estate" shall be deemed to be replaced with "holder of common benefit claim."

#### Article 50 (Bilateral Contract for Continuous Performance)

- (1) The counter party to a bilateral contract who has an obligation to provide continuous performance to the rehabilitation debtor, after the commencement of rehabilitation proceedings, may not refuse to perform the obligation on the grounds that no payment is made with regard to the rehabilitation claim arising from the performance provided prior to the filing of a petition for commencement of rehabilitation proceedings.

- (2) A claim arising from the performance that is provided by the counter party to a bilateral contract prescribed in the preceding paragraph after the filing of a petition for commencement of rehabilitation proceedings and prior to the commencement of rehabilitation proceedings ( in the case of continuous performance for which the amount of claim should be calculated for each specific period of time, such claim arising from the performance provided within the period that includes the date of filing of the petition shall be included) shall be a common benefit claim.
- (3) The provisions of the preceding two paragraphs shall not apply to a labor contract.

#### Article 51 (Application Mutatis Mutandis of the Bankruptcy Act to Bilateral Contract)

The provisions of Article 56, Article 58 and Article 59 of the Bankruptcy Act shall apply mutatis mutandis where a rehabilitation proceeding is commenced. In this case, in Article 56(1) of said Act, the phrase "Article 53(1) and (2)" shall be deemed to be replaced with "Article 49(1) and (2) of the Civil Rehabilitation Act," and the term "bankrupt" shall be deemed to be replaced with "rehabilitation debtor"; in Article 56(2) of said Act, the term "priority claim on the bankruptcy estate" shall be deemed to be replaced with "common benefit claim"; in Article 58(1) of said Act, the phrase "commencement of bankruptcy proceedings" shall be deemed to be replaced with "commencement of rehabilitation proceedings"; in Article 54(1) of said Act as applied mutatis mutandis pursuant to Article 58(3) of said Act, the term "bankruptcy creditor" shall be deemed to be replaced with "rehabilitation creditor"; in Article 59(1) of said Act, the term "bankruptcy proceedings" shall be deemed to be replaced with "rehabilitation proceedings"; in Article 59(2) of said Act, the phrase "The claim under the provision of the preceding paragraph shall belong to the bankruptcy estate if it is held by the bankrupt or shall be a bankruptcy claim if it is held by the counter party." shall be deemed to be replaced with "The claim under the provision of the preceding paragraph shall be a rehabilitation claim if it is held by the counter party. "

#### Article 52 (Right of Segregation)

- (1) The commencement of rehabilitation proceedings shall not affect a right to segregate, from the rehabilitation debtor, property that does not belong to the rehabilitation debtor.
- (2) The provisions of Article 63 and Article 64 of the Bankruptcy Act shall apply mutatis mutandis where a rehabilitation proceeding is commenced. In this case, in Article 63(1) of said Act, the phrase "order of commencement of bankruptcy proceedings" shall be deemed to be replaced with "order of commencement of

rehabilitation proceedings"; in the proviso to Article 63(1) and Article 64 of said Act, the term "a bankruptcy trustee" shall be deemed to be replaced with "the rehabilitation debtor (or a trustee if any trustee is appointed)"; in Article 63(2) of said Act, the phrase "Article 53(1) and (2)" shall be deemed to be replaced with "Article 49(1) and (2) of the Civil Rehabilitation Act"; in Article 63(3) of said Act, the term "paragraph (1)" shall be deemed to be replaced with "the preceding two paragraphs," and the term "said paragraph" shall be deemed to be replaced with "paragraph (1)"; in Article 64(1) of said Act, the term "bankrupt" shall be deemed to be replaced with "rehabilitation debtor," and the phrase "commencement of bankruptcy proceedings" shall be deemed to be replaced with "commencement of rehabilitation proceedings."

#### Article 53 (Right of Separate Satisfaction)

- (1) A person who has any interest security (meaning a special statutory lien, pledge, mortgage, or a right of retention under the provisions of the Commercial Code or the Companies Act; the same shall apply in paragraph (3)) that exists, at the time of commencement of rehabilitation proceedings, on the rehabilitation debtor's property, shall have a right of separate satisfaction over the property that is the subject matter of the security interest.
- (2) A right of separate satisfaction may be exercised without going through rehabilitation proceedings.
- (3) Where property that is the subject matter of a security interest no longer belongs to the rehabilitation debtor's assets due to sale by private contract by the rehabilitation debtor, etc. or for any other reason, the person who has such security interest, if it still exists, shall also have a right of separate satisfaction over the property that is the subject matter of the security interest.

### **Chapter III Authorities for Rehabilitation Proceedings**

#### **Section 1 Supervisors**

#### Article 54 (Supervision Order)

- (1) Where a petition for commencement of rehabilitation proceedings is filed, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may make a disposition to order supervision by a supervisor.
- (2) The court, when making the disposition set forth in the preceding paragraph (hereinafter referred to as a "supervision order"), in the supervision order, shall appoint one or more supervisors and designate acts that the rehabilitation debtor may not conduct without obtaining their consent.
- (3) A juridical person may serve as a supervisor.

- (4) Any act conducted without the supervisor's consent prescribed in paragraph (2) shall be void; provided, however, that this may not be asserted against a third party without knowledge.
- (5) The court may change or revoke a supervision order.
- (6) An immediate appeal may be filed against a supervision order and an order made under the provision of the preceding paragraph.
- (7) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.

#### Article 55 (Public Notice and Service Concerning Supervision Order)

- (1) The court, when it has issued a supervision order, shall make a public notice to that effect. The same shall apply where the court makes an order to change or revoke a supervision order.
- (2) Where a supervision order is issued, an order under the provision of paragraph (5) of the preceding Article is made, and a judicial decision on the immediate appeal set forth in paragraph (6) of said Article is made, the written orders/decision shall be served upon the parties concerned.
- (3) The provision of Article 10(4) shall not apply to the case referred to in paragraph (1).

#### Article 56 (Empowerment for Avoidance)

- (1) Where an order of commencement of rehabilitation proceedings is made, the court, upon the petition of an interested person or by its own authority, may empower a supervisor to exercise a right of avoidance of a specific act.
- (2) A supervisor, when empowered pursuant to the provision of the preceding paragraph, may receive or pay money and perform the administration and disposition of property in the interest of the rehabilitation debtor to the extent necessary for the exercise of such power.
- (3) The provisions of Article 77(1) to (3) shall apply mutatis mutandis to a supervisor set forth in the preceding paragraph. In this case, the phrase "successor trustee" in paragraph (2) of said Article shall be deemed to be replaced with "successor supervisor who is empowered under the provision of Article 56(1) to exercise a right of avoidance or trustee," and the phrase "supervisor trustee" in paragraph (3) of said Article shall be deemed to be replaced with "successor supervisor who is empowered under the provision of Article 56(1) to exercise a right of avoidance, trustee."
- (4) The court may change or revoke an order made under the provision of paragraph (1)
- (5) The court, when it finds it necessary, may require a supervisor empowered pursuant to the provision of paragraph (1) to obtain permission of the court in

order to file an action, make a settlement or conduct any other act designated by the court.

- (6) The provision of Article 41(2) shall apply mutatis mutandis to any act conducted by a supervisor without the permission set forth in the preceding paragraph.

#### Article 57 (Supervision of Supervisor, etc.)

- (1) A supervisor shall be supervised by the court.
- (2) The court, upon the petition of an interested person or by its own authority, may dismiss a supervisor if the supervisor does not appropriately supervise the administration and disposition of the rehabilitation debtor's business and property, or there are any other material reasons. In this case, the court shall interrogate the supervisor.

#### Article 58 (Performance of Duties by Two or More Supervisors)

If there are two or more supervisors, they shall perform their duties jointly; provided, however, that with permission of the court, they may perform their duties independently or divide the duties among them.

#### Article 59 (Investigation by Supervisor, etc.)

- (1) A supervisor may request the following persons to report on the status of the rehabilitation debtor's business and property, or may inspect the rehabilitation debtor's books, documents and any other objects:
  - (i) The rehabilitation debtor
  - (ii) The rehabilitation debtor's agent
  - (iii) In cases where the rehabilitation debtor is a juridical person, its director, executive officer, inspector, auditor and liquidator
  - (iv) Any other person equivalent to the persons listed in the preceding item
  - (v) The rehabilitation debtor's employee (excluding the person set forth in item (ii))
- (2) The provision of the preceding paragraph shall apply mutatis mutandis to a person who was any of the persons listed in the items of said paragraph (excluding item (i)).
- (3) A supervisor, when necessary in order to perform his/her duties, may request a subsidiary company, etc. (meaning a juridical person specified in each of the following items for the cases listed in the respective items; the same shall apply in the following paragraph) of the rehabilitation debtor to report on the status of its business and property, or may inspect its books, documents and any other objects:
  - (i) Where the rehabilitation debtor is a stock company: A subsidiary company (meaning a subsidiary company prescribed in Article 2(iii) of the Companies

Act) of the rehabilitation debtor

- (ii) Where the rehabilitation debtor is a person other than a stock company: A stock company in which the rehabilitation debtor holds the majority of voting rights of all shareholders
- (4) Where a subsidiary company, etc. of the rehabilitation debtor (limited to one that is a person other than a stock company; hereinafter the same shall apply in this paragraph) independently holds or the rehabilitation debtor and the rehabilitation debtor's subsidiary company, etc. jointly hold the majority of voting rights of all shareholders of another stock company, for the purpose of application of the provision of the preceding paragraph, such other stock company shall be deemed to be a subsidiary company of the rehabilitation debtor.

#### Article 60 (Supervisor's Duty of Care)

- (1) A supervisor shall perform his/her duties with the due care of a prudent manager.
- (2) If a supervisor(s) fails to have the due care set forth in the preceding paragraph, the supervisor(s) shall be jointly and severally liable to compensate damage to any interested person.

#### Article 61 (Remuneration for Supervisor, etc.)

- (1) A supervisor may receive advance payments of expenses as well as remuneration determined by the court.
- (2) A supervisor shall obtain permission of the court in order to accept any claims against the rehabilitation debtor or any shares of the rehabilitation debtor or any other contributions to the rehabilitation debtor, or assign these.
- (3) A supervisor may not receive payment of expenses and remuneration if he/she has conducted any act prescribed in the preceding paragraph without obtaining the permission set forth in said paragraph.
- (4) An immediate appeal may be filed against an order made pursuant to the provision of paragraph (1).

### **Section 2 Examiners**

#### Article 62 (Examination Order)

- (1) Where a petition for commencement of rehabilitation proceedings is filed, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may make a disposition to order an examination by an examiner.
- (2) The court, when making the disposition set forth in the preceding paragraph (hereinafter referred to as an "examination order"), in the examination order, shall appoint one or more examiners and specify the matters that the examiner(s)



should examine and the period during which they should report the results of the examination to the court.

- (3) The court may change or revoke an examination order.
- (4) An immediate appeal may be filed against an examination order and an order made under the provision of the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (6) Where a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in said paragraph are made, the written decisions shall be served upon the parties concerned.

#### Article 63 (Application Mutatis Mutandis of the Provisions on Supervisor)

The provisions of Article 54(3), Article 57, the main clause of Article 58, and Article 59 to Article 61 shall apply mutatis mutandis to an examiner.

### **Section 3 Trustees**

#### Article 64 (Administration Order)

- (1) When the rehabilitation debtor (limited to a juridical person; hereinafter the same shall apply in this paragraph) administers and disposes of its property in an inappropriate manner or the court otherwise finds it particularly necessary for the rehabilitation of the rehabilitation debtor's business, the court, upon the petition of an interested person or by its own authority, may make a disposition, upon making an order of commencement of rehabilitation proceedings or after making such order, to order that the rehabilitation debtor's business and property be administered by a trustee.
- (2) The court, when making a disposition set forth in the provision of the preceding paragraph (hereinafter referred to as an "administration order"), shall appoint one or more trustees in the administration order.
- (3) The court, when issuing an administration order, shall interrogate the rehabilitation debtor; provided, however, that this shall not apply if there are pressing circumstances.
- (4) The court may change or revoke an administration order.
- (5) An immediate appeal may be filed against an administration order and an order made under the provision of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.

#### Article 65 (Public Notice and Service Concerning Administration Order)

- (1) The court, when it has issued an administration order, shall make a public

notice of the following matters, except in the cases prescribed in the following paragraph:

- (i) The fact that an administration order is issued, and the name of a trustee
  - (ii) The order to the effect that a person who possesses property that belongs to the rehabilitation debtor and person who owes a debt to the rehabilitation debtor (referred to as a "possessor of property, etc." in paragraph (5)) shall not deliver the property or make payment to the rehabilitation debtor
- (2) The court, if it has issued an administration order upon making an order of commencement of rehabilitation proceedings, shall also include the matters listed in the preceding paragraph in the public notice of the commencement of rehabilitation proceedings.
  - (3) The court, when it has made an order to change or revoke an administration order, shall make a public notice to that effect.
  - (4) Where an administration order is issued, an order set forth in the preceding paragraph is made, and a judicial decision on the immediate appeal set forth in paragraph (5) of said Article is made, the written orders/decision shall be served upon the parties concerned.
  - (5) A notice shall be given to known possessors of property, etc. with regard to, in cases where an administration order is issued, the matters listed in paragraph (1), or in cases where an order set forth in paragraph (3) is made or where an order to revoke the order of commencement of rehabilitation proceedings has become final and binding after an administration order was issued, such fact.
  - (6) The provision of Article 10(4) shall not apply in the case referred to in paragraph (1).

#### Article 66 (Powers of Trustee)

When an administration order is issued, the right to carry out the rehabilitation debtor's business and to administer and dispose of the rehabilitation debtor's property shall be vested exclusively in a trustee.

#### Article 67 (Action Relating to the Rehabilitation Debtor's Property Where Administration Order Is Issued)

- (1) Where an administration order is issued, in an action relating to the rehabilitation debtor's property, a trustee shall stand as a plaintiff or defendant.
- (2) Where an administration order is issued, any action relating to the rehabilitation debtor's property in which the rehabilitation debtor stands as a party shall be discontinued. The same shall apply to an action set forth in Article 145(1) in which a rehabilitation creditor stands as a party.
- (3) A trustee may take over the action discontinued under the provision of the preceding paragraph which does not relate to any rehabilitation claim (excluding

those prescribed in Article 40-2(2) which is taken over pursuant to the provision of Article 40-2(2)). In this case, a petition for taking over of action may also be filed by the opponent.

- (4) An action discontinued pursuant to the provision of paragraph (2), which relates to a rehabilitation claim and is initiated under the provisions of Article 106(1), Article 109(1) or the first sentence of Article 113(2) or taken over under the provisions of Article 107(1) or Article 109(2) (including cases where applied mutatis mutandis pursuant to the second sentence of Article 113(2)), or which is prescribed in Article 40-2(2) and taken over pursuant to the provision of Article 40-2(2), shall be taken over by a trustee. In this case, a petition for taking over of action may also be filed by the opponent.
- (5) In the cases referred to in the preceding two paragraphs, the opponent's claim for court costs against the rehabilitation debtor or the rehabilitation creditor set forth in the second sentence of paragraph (2) shall be a common benefit claim.

#### Article 68

- (1) When the rehabilitation proceedings are closed before the action discontinued under the provision of paragraph (2) of the preceding Article is taken over under the provisions of paragraph (3) or paragraph (4) of said Article, the rehabilitation debtor shall automatically take over the action (excluding one prescribed in Article 40-2(2) which is discontinued pursuant to the provision of paragraph (3) of said Article; the same shall apply in the following paragraph).
- (2) When the rehabilitation proceedings are closed, any action relating to the rehabilitation debtor's property in which a trustee stands as a party shall be discontinued.
- (3) The rehabilitation debtor shall take over the action discontinued under the provision of the preceding paragraph (excluding one set forth in Article 137(1) in cases where rehabilitation proceedings are closed as a result of an order of disconfirmation of the rehabilitation plan, order of discontinuance of rehabilitation proceedings or order of revocation of the rehabilitation plan becoming final and binding). In this case, a petition for taking over of action may also be filed by the opponent.
- (4) The provision of paragraph (1) shall apply mutatis mutandis where an order to revoke an administration order becomes final and binding before the taking over of action under the provisions of paragraph (3) or paragraph (4) of the preceding Article takes place, and the provisions of the preceding two paragraphs shall apply mutatis mutandis where an order to revoke an administration order becomes final and binding. In this case, in paragraph (1), the phrase "paragraph (2) of the preceding Article" shall be deemed to be replaced with "the second sentence of paragraph (2) of the preceding Article," and the phrase "action (excluding one

prescribed in Article 40-2(2) which is discontinued pursuant to the provision of paragraph (3) of said Article; the same shall apply in the following paragraph)" shall be deemed to be replaced with "action."

- (5) The provision of paragraph (3) shall apply mutatis mutandis to the action discontinued under the provision of the second sentence of paragraph (2) of the preceding Article in cases where an order to revoke an administration order becomes final and binding before the taking over of action under the provision of paragraph (3) of said Article takes place. In this case, the term "rehabilitation debtor" in paragraph (3) shall be deemed to be replaced with "rehabilitation creditor set forth in the second sentence of paragraph (2) of the preceding Article."

#### Article 69 (Case Pending Before Administrative Agency)

The provisions of Article 67(2) to (5) and the preceding Article shall apply mutatis mutandis to a case relating to the rehabilitation debtor's property that is pending before an administrative agency at the time when an administration order is issued.

#### Article 70 (Performance of Duties by Two or More Trustees)

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

#### Article 71 (Trustee Representative)

- (1) A trustee, if necessary, may appoint one or more trustee representatives on his/her own responsibility, in order to have them perform his/her duties.
- (2) The appointment of a trustee representative set forth in the preceding paragraph shall require permission of the court.

#### Article 72 (Administration of the Rehabilitation Debtor's Business and Property)

A trustee shall commence the administration of the rehabilitation debtor's business and property immediately after assuming office.

#### Article 73 (Management of Postal Items, etc.)

- (1) The court, when it finds it necessary in order for a trustee to perform his/her duties, may commission a person engaged in correspondence delivery to deliver, to a trustee, a postal item, etc. that is addressed to the rehabilitation debtor.
- (2) The court, upon the petition of the rehabilitation debtor or by its own authority, may cancel or change the commission prescribed in the preceding paragraph, after

hearing opinions of a trustee.

- (3) Upon the close of rehabilitation proceedings, the court shall cancel the commission prescribed in paragraph (1). The same shall apply when an administration order is revoked.
- (4) The rehabilitation debtor or a trustee may file an immediate appeal against an order made under the provisions of paragraph (1) or paragraph (2) and a judicial decision to dismiss without prejudice the petition set forth in paragraph (2).
- (5) The immediate appeal set forth in the preceding paragraph filed against an order made under the provision of paragraph (1) shall not have the effect of stay of execution.

#### Article 74

- (1) A trustee, upon receiving a postal item, etc. addressed to the rehabilitation debtor, may open it and view its contents.
- (2) The rehabilitation debtor may request a trustee to let him/her inspect the postal item, etc. set forth in the preceding paragraph, received by the trustee, or deliver it to him/her, if such postal item, etc. does not relate to the rehabilitation debtor's assets.

#### Article 75 (Restriction on Trustee's Acts)

- (1) A trustee, without permission of the court, may not accept the rehabilitation debtor's property or assign his/her own property to the rehabilitation debtor, or conduct any other transaction with the rehabilitation debtor on behalf of him/herself or a third party.
- (2) Any act conducted without the permission set forth in the preceding paragraph shall be void; provided, however, that this may not be asserted against a third party without knowledge.

#### Article 76 (Rehabilitation Debtor's Acts after Issuance of Administration Order)

- (1) A juridical act conducted by the rehabilitation debtor after the issuance of an administration order with respect to the rehabilitation debtor's assets may not be asserted as effective in relation to the rehabilitation proceedings; provided, however, that this shall not apply where the other party did not know, at the time of commission of such act, the fact that an administration order was issued.
- (2) Payment made to the rehabilitation debtor after the issuance of an administration order without knowledge of the issuance may also be asserted as effective in relation to the rehabilitation proceedings.
- (3) Payment made to the rehabilitation debtor after the issuance of an administration order with knowledge of the issuance may be asserted as effective in relation to the rehabilitation proceedings only to the extent that the

rehabilitation debtor's assets have been enriched.

- (4) The provision of Article 47 shall apply mutatis mutandis for the purpose of the application of the provisions of the preceding three paragraphs. In this case, the phrase "public notice made under the provision of Article 35(1) (hereinafter referred to as a "public notice of the commencement of rehabilitation proceedings")" shall be deemed to be replaced with "public notice made under the provision of Article 65(1) (or a public notice made under the provision of Article 35(1) in cases where an administration order is issued upon making an order of commencement of rehabilitation proceedings)."

#### Article 76-2 (Remuneration for Director, etc.)

Where an administration order is issued and the rehabilitation debtor is a juridical person, its director, executive officer, inspector, auditor liquidator or any other person equivalent thereto may not claim remuneration from the rehabilitation debtor.

#### Article 77 (Trustee's Duty to Report upon Termination of Office, etc.)

- (1) A trustee, upon the termination of his/her office, shall submit a report of account to the court without delay.
- (2) In the case referred to in the preceding paragraph, if there is a vacancy in the office of trustee, the report of account set forth in said paragraph, notwithstanding the provision of said paragraph, shall be submitted by a successor trustee.
- (3) Upon the termination of a trustee's office, if there are pressing circumstances, the trustee or his/her successor shall take necessary measures until a successor trustee or the rehabilitation debtor is able to administer property.
- (4) Where an order to revoke the order of commencement of rehabilitation proceedings, an order of discontinuance of bankruptcy proceedings or an order of disconfirmation of the rehabilitation plan becomes final and binding or where an order of revocation of the rehabilitation plan becomes final and binding before the close of rehabilitation proceedings, a trustee, except in the case prescribed in Article 252(6), shall pay common benefit claims and claims with general priorities, and with regard to any disputed claim, shall make a statutory deposit of such payment in the interest of the person who holds the claim.

#### Article 78 (Application Mutatis Mutandis of the Provisions on Supervisor)

The provisions of Article 54(3), Article 57, and Article 59 to Article 61 shall apply mutatis mutandis to a trustee, and the provision of Article 61 shall apply mutatis mutandis to a trustee representative.

### **Section 4 Provisional Administrators**

Article 79 (Provisional Administration Order)

- (1) Where a petition for commencement of rehabilitation proceedings is filed, when the rehabilitation debtor (limited to a juridical person; hereinafter the same shall apply in this Section) administers and disposes of its property in an inappropriate manner or the court otherwise finds it particularly necessary for the continuation of the rehabilitation debtor's business, the court, upon the petition of an interested person or by its own authority, may make a disposition to order that the rehabilitation debtor's business and property be administered by a provisional administrator until an order is made on the petition for commencement of rehabilitation proceedings. In this case, the provision of Article 64(3) shall apply mutatis mutandis.
- (2) The court, when making a disposition under the provision of the preceding paragraph (hereinafter referred to as a "provisional administration order"), shall appoint one or more provisional administrators in the provisional administration order.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis where an immediate appeal set forth in Article 36(1) is filed against an order to dismiss with prejudice on the merits a petition for commencement of rehabilitation proceedings.
- (4) The court may change or revoke a provisional administration order.
- (5) An immediate appeal may be filed against a provisional administration order and an order made under the provision of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.

Article 80 (Public Notice and Service Concerning Provisional Administration Order)

- (1) The court, when it has issued a provisional administration order, shall make a public notice to that effect. The same shall apply where the court makes an order to change or revoke a provisional administration order.
- (2) Where a provisional administration order is issued, an order under the provision of paragraph (4) of the preceding Article is made, and a judicial decision on the immediate appeal set forth in paragraph (5) of said Article is made, the written orders/decision shall be served upon the parties concerned.
- (3) The provision of Article 10(4) shall not apply to the case referred to in paragraph (1).

Article 81 (Powers of Provisional Administrator)

- (1) When a provisional administration order is issued, the right to carry out the rehabilitation debtor's business and to administer and dispose of the rehabilitation debtor's property shall be vested exclusively in a provisional administrator;

provided, however, that a provisional administrator shall obtain permission of the court in order to conduct any act that does not fall within the scope of the rehabilitation debtor's ordinary business.

- (2) Any act conducted without the permission set forth in the proviso to the preceding paragraph shall be void; provided, however, that this may not be asserted against a third party without knowledge.
- (3) The provision of Article 41 shall apply mutatis mutandis to a provisional administrator.

#### Article 82 (Provisional Administrator Representative)

- (1) A provisional administrator, if necessary, may appoint one or more provisional administrator representatives on his/her own responsibility, in order to have them perform his/her duties.
- (2) The appointment of a provisional administrator representative set forth in the provision of the preceding paragraph shall require permission of the court.

#### Article 83 (Application Mutatis Mutandis of the Provisions on Supervisor to Provisional Administrator, etc.)

- (1) The provisions of Article 54(3), Article 57, Article 59 to Article 61, Article 67(1), Article 70, Article 72, Article 74 to Article 76, and Article 77(1) to (3) shall apply mutatis mutandis to a provisional administrator, and the provision of Article 61 shall apply mutatis mutandis to a provisional administrator representative. In this case, the phrase "public notice made under the provision of Article 65(1) (or a public notice made under the provision of Article 35(1) in cases where an administration order is issued upon making an order of commencement of rehabilitation proceedings)" in the second sentence of Article 76(4) shall be deemed to be replaced with "public notice made under the provision of Article 80(1)," the term "successor trustee" in Article 77(2) shall be deemed to be replaced with "successor provisional administrator," and the term "successor trustee" in paragraph (3) of said Article shall be deemed to be replaced with "successor provisional administrator, trustee."
- (2) The provisions of Article 67(2), (3) and (5) shall apply mutatis mutandis where a provisional administration order is issued, and the provisions of Article 68(1) to (3) shall apply mutatis mutandis where a provisional administration order ceases to be effective.
- (3) The provisions of Article 67(2), (3) and (5) and Article 68(1) to (3) shall apply mutatis mutandis to a case relating to the rehabilitation debtor's property that is pending before an administrative agency at the time when a provisional administration order is issued. In this case, the phrase "when the rehabilitation proceedings are closed" in Article 68(1) and (2) shall be deemed to be replaced



with "when a provisional administration order ceases to be effective."

- (4) The provision of Article 76-2 shall apply, where an administration order is issued and the rehabilitation debtor is a juridical person, to its director, executive officer, inspector, auditor, liquidator or any other person equivalent thereto.

## **Chapter IV Rehabilitation Claims**

### **Section 1 Rights of Rehabilitation Creditors**

#### Article 84 (Claims in the Scope of Rehabilitation Claims)

- (1) A claim on property arising against the rehabilitation debtor from a cause that has occurred before the commencement of rehabilitation proceedings (excluding one that is a common benefit claim or claim with general priority; the same shall apply in the following paragraph) shall be a rehabilitation claim.
- (2) The following claims shall also be rehabilitation claims:
- (i) Claim for interest arising after the commencement of rehabilitation proceedings
  - (ii) Claim for damages or penalty for a default arising after the commencement of rehabilitation proceedings
  - (iii) Claim for expenses for participation in rehabilitation proceedings

#### Article 85 (Prohibition of Payment of Rehabilitation Claim)

- (1) With regard to a rehabilitation claim, after the commencement of rehabilitation proceedings, except as otherwise provided for in this Act, it is not allowed to make or receive payment or conduct any other act to cause the claim to be extinguished (excluding a release) unless it is provided for in a rehabilitation plan.
- (2) If a small or medium-sized enterprise operator whose major trading partner is the rehabilitation debtor is likely to experience significant hindrance to the continuation of his/her business unless he/she receives payment of his/her rehabilitation claim, the court, even before an order of confirmation of the rehabilitation plan becomes final and binding, upon the petition of the rehabilitation debtor, etc. or by its own authority, may permit payment of the claim in whole or part.
- (3) The court, when granting permission under the provision of the preceding paragraph, shall take into consideration the status of transactions between the rehabilitation debtor and the small or medium-sized enterprise operator set forth in said paragraph, the rehabilitation debtor's financial standing, the interest of any interested person and all other circumstances concerned.
- (4) The rehabilitation debtor, etc., when requested by a rehabilitation creditor to file the petition set forth in paragraph (2), shall report to the court to that effect

immediately. In this case, if the rehabilitation debtor, etc. has decided not to file a petition, he/she shall report the reason to the court without delay.

- (5) Where it would be possible to make rehabilitation proceedings progress smoothly by paying a minor rehabilitation claim promptly or significant hindrance would be caused to the continuation of the rehabilitation debtor's business unless a small rehabilitation claim is paid promptly, the court, even before an order of confirmation of the rehabilitation plan becomes final and binding, upon the petition of the rehabilitation debtor, etc., may permit payment of such claim.
- (6) The provisions of paragraph (2) to the preceding paragraph shall not apply to a rehabilitation claim that is a consensually-subordinated rehabilitation claim.

#### Article 85-2 (Set-off by the Rehabilitation Debtor, etc.)

The rehabilitation debtor, etc., if a set-off of a claim that belongs to the rehabilitation debtor's assets against a rehabilitation claim conforms to the common interests of rehabilitation creditors, may effect such set-off with permission of the court.

#### Article 86 (Rehabilitation Creditor's Participation in Proceedings)

- (1) A rehabilitation creditor may participate in rehabilitation proceedings by reason of a rehabilitation claim that he/she holds.
- (2) The provisions of Article 104 to Article 107 of the Bankruptcy Act shall apply mutatis mutandis to the exercise of rights by a rehabilitation creditor in cases where a rehabilitation proceeding is commenced. In this case, in the provisions of Article 104 to Article 107 of said Act, the phrase "commencement of bankruptcy proceedings" shall be deemed to be replaced with "commencement of rehabilitation proceedings"; in Article 104(1), (3) and (4), Article 105, Article 106 and Article 107(1) of said Act, the term "bankruptcy proceedings" shall be deemed to be replaced with "rehabilitation proceedings"; the terms "bankrupt" in the provisions of Article 104(3) to (5) of said Act shall be deemed to be replaced with "rehabilitation debtor"; and in paragraph (4) of said Article, the term "bankruptcy creditor" shall be deemed to be replaced with "rehabilitation creditor".

#### Article 87 (Rehabilitation Creditor's Voting Right)

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

- time of commencement of rehabilitation proceedings until the due date (any fraction of less than one year during that period shall be rounded off)
- (ii) Claim for periodic payments the amount and duration of which are fixed: The total of the amounts calculated with regard to the respective periodic payments in accordance with the provision of the preceding item (in cases where such total exceeds the amount of principal which would accrue interest equivalent to the periodic payments when calculating at a statutory interest rate, such amount of principal)
  - (iii) The following claims: The amount of the claim estimated as of the time of commencement of rehabilitation proceedings:
    - (a) Claim with an uncertain due date that is to become due after the commencement of rehabilitation proceedings and bears no interest
    - (b) Claim for periodic payments the amount and duration of which are not fixed
    - (c) Claim not intended for payment of money
    - (d) Monetary claim the amount of which is not fixed or the amount of which is fixed in a foreign currency
    - (e) Claim with condition
    - (f) Claim which may arise in the future and be enforced against the rehabilitation debtor
  - (iv) Claim other than those listed in the preceding three items: The amount of the claim
- (2) Notwithstanding the provision of the preceding paragraph, a rehabilitation creditor shall not have any voting right with regard to any of the claims listed in Article 84(2) and a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings prescribed in Article 97.
- (3) Notwithstanding the provision of paragraph (1), where the rehabilitation debtor, at the time of commencement of rehabilitation proceedings, is unable to pay his/her debts in full with his/her property with regard to claims that take preference over consensually-subordinated rehabilitation claims, the holders of such consensually-subordinated rehabilitation claims shall not have any voting right.

#### Article 88 (Participation in Proceedings by Holder of Right of Separate Satisfaction)

A holder of a right of separate satisfaction, with regard to a claim secured by a security interest prescribed in Article 53(1) which pertains to the right of separate satisfaction, may exercise his/her right as a rehabilitation creditor only for the part of the claim for which payment cannot be received by exercising the right of separate satisfaction; provided, however, that where the claim secured by the security interest is no longer secured in whole or part after the commencement of rehabilitation proceedings, the holder of the right of separate satisfaction shall not be precluded from exercising his/her right as a rehabilitation creditor for such whole or part of the

claim.

Article 89 (Payment Received by Rehabilitation Creditor in Foreign State)

- (1) A rehabilitation creditor, even where he/she, by exercising his/her right against the rehabilitation debtor's property that exists in a foreign state, has received payment of his/her rehabilitation claim after an order of commencement of rehabilitation proceedings is made, may participate in rehabilitation proceedings with regard to the amount of the claim as of the time before receiving such payment.
- (2) The rehabilitation creditor set forth in the preceding paragraph may not receive payment through rehabilitation proceedings until any other rehabilitation creditor (in cases where the rehabilitation creditor set forth in said paragraph holds an consensually-subordinated rehabilitation claim, the person who holds another consensually-subordinated rehabilitation claim) receives payment at the same proportion as he/she has received payment.
- (3) The rehabilitation creditor set forth in paragraph (1) may not exercise his/her voting right with regard to the part of the claim for which he/she has received payment in the foreign state.

Article 90 (Rehabilitation Creditors' Representative)

- (1) Rehabilitation creditors, with permission of the court, may jointly or interpedently appoint one or more rehabilitation creditors' representatives.
- (2) The court, when it finds it necessary in order to ensure smooth progress in rehabilitation proceedings, may specify a reasonable period and recommend that rehabilitation creditors appoint a rehabilitation creditors' representative.
- (3) A rehabilitation creditors' representative may perform any and all acts involved in rehabilitation proceedings in the interest of the rehabilitation creditors who appoint him/her.
- (4) If there are two ore more rehabilitation creditors' representatives, they shall exercise their powers jointly; provided, however, that it shall be sufficient that a manifestation of intention by a third party be made to any one of them.
- (5) The court may revoke an order of permission set forth in paragraph (1) or an order of appointment set forth in paragraph (1) of the following Article when it finds the exercise of powers by the rehabilitation creditors' representative to be extremely unfair.
- (6) Rehabilitation creditors may dismiss at any time the rehabilitation creditors' representative that they have appointed.

Article 90-2 (Appointment of Rehabilitation Creditors' Representative by Court)

- (1) Where there are an extremely large number of rehabilitation creditors who have

common interest, if any of these rehabilitation creditors, despite the recommendation made under paragraph (2) of the preceding Article, does not appoint a rehabilitation creditors' representative within the period set forth in said paragraph, and the court finds that the progress of rehabilitation proceedings would be hindered unless a rehabilitation creditors' representative is appointed, the court, on behalf of such rehabilitation creditors, may appoint a rehabilitation creditors' representative whom it considers suitable.

- (2) When appointing a rehabilitation creditors' representative under the provision of the preceding paragraph, the court shall obtain consent of the rehabilitation creditors' representative in question.
- (3) Where a rehabilitation creditors' representative is appointed under the provision of paragraph (1), the rehabilitation creditors' representative shall be deemed to be appointed by the principal (the person for whom the rehabilitation creditors' representative is appointed under the provision of said paragraph; the same shall apply in paragraph (6)) under the provision of paragraph (1) of the preceding Article.
- (4) A rehabilitation creditors' representative appointed under the provision of paragraph (1) may resign with permission of the court if there are justifiable grounds.
- (5) A rehabilitation creditors' representative appointed under the provision of paragraph (1) may receive payment of the following from the rehabilitation debtor's assets:
  - (i) Prepayment of necessary expenses for conducting the acts prescribed in paragraph (3) of the preceding Article, or reimbursement of the amount of such expenses paid
  - (ii) The amount of remuneration that the court finds reasonable
- (6) With regard to the relationships between a rehabilitation creditors' representative appointed under the provision of paragraph (1) and the principal, the provisions of Article 644 to Article 647 and Article 654 of the Civil Code shall apply *mutatis mutandis*.

#### Article 91 (Compensation, etc.)

- (1) The court, if it is found that a rehabilitation creditor or rehabilitation creditors' representative or their agent has contributed to ensuring the rehabilitation of the rehabilitation debtor, upon the petition of the rehabilitation debtor, etc. or by its own authority, may grant permission to the effect that the expenses incurred by these persons for the administration of affairs concerned shall be reimbursed or compensation shall be paid to them from the rehabilitation debtor's assets.
- (2) An immediate appeal may be filed against an order made under the provision of the preceding paragraph.

#### Article 92 (Right of Set-Off)

- (1) Where a rehabilitation creditor owes a debt to the rehabilitation debtor at the time of commencement of rehabilitation proceedings, the rehabilitation creditor, when his/her claim and debt become suitable for a set-off prior to the expiration of the period for filing proofs of claims prescribed in Article 94(1), may effect a set-off only within said period for filing proofs of claims, even if it is not provided for in a rehabilitation plan. The same shall apply where a rehabilitation creditor's debt is subject to a due date.
- (2) Where the debt owed by a rehabilitation creditor to the rehabilitation debtor at the time of commencement of rehabilitation proceedings is a rent debt, the rehabilitation creditor may effect a set-off with regard to any rent debt that is to become due after the commencement of rehabilitation proceedings (including one that is to become due after the expiration of the period for filing proofs of claims set forth in the preceding paragraph; the same shall apply in the following paragraph) up to the amount equivalent to the six-month rent as of the time of commencement of rehabilitation proceedings only within the period for filing proofs of claims set forth in the preceding paragraph, even if it is not provided for in a rehabilitation plan.
- (3) In the case referred to in the preceding paragraph, when the rehabilitation creditor, with regard to his/her rent debt that is to become due after the commencement of rehabilitation proceedings, has made payment of the debt after the commencement of rehabilitation proceedings, the rehabilitation creditor's claim to refund the security deposit shall be a common benefit claim up to the amount paid within the amount equivalent to the six-month rent as of the time of commencement of rehabilitation proceedings (in cases where a set-off is effected under the provision of said paragraph, the amount of the rent debt from which the rehabilitation creditor is relieved shall be deducted).
- (4) The provisions of the preceding two paragraphs shall apply mutatis mutandis to a debt for payment of a rent payable by a superficiary or rent payable by a farming right holder.

#### Article 93 (Prohibition of Set-Off)

- (1) A rehabilitation creditor may not effect a set-off in the following cases:
  - (i) Where the rehabilitation creditor has assumed a debt to the rehabilitation debtor after the commencement of rehabilitation proceedings
  - (ii) Where the rehabilitation creditor has assumed a debt to the rehabilitation debtor by, after the rehabilitation debtor became unable to pay debts (the condition in which rehabilitation debtor, due to the lack of ability to pay, is generally and continuously unable to pay his/her debts as they become due; the

same shall apply hereinafter), concluding a contract for disposing of the rehabilitation debtor's property with the rehabilitation debtor with the intent to set off any debt to be assumed by the rehabilitation creditor under the contract exclusively against rehabilitation claims, or concluding a contract for assuming any debt owed by another person to the rehabilitation debtor, and the rehabilitation creditor knew, at the time of conclusion of the contract, that the rehabilitation debtor was unable to pay debts.

(iii) Where the rehabilitation creditor has assumed a debt to the rehabilitation debtor after the rehabilitation debtor suspended payments, and the rehabilitation creditor knew, at the time of assumption of the debt, the fact that the rehabilitation debtor had suspended payments; provided, however, that this shall not apply if the rehabilitation debtor was not unable to pay debts at the time when the rehabilitation debtor suspended payments.

(iv) Where the rehabilitation creditor has assumed a debt to the rehabilitation debtor after a petition for commencement of rehabilitation proceedings, commencement of bankruptcy proceedings or commencement of special liquidation (hereinafter referred to as a "petition for commencement of rehabilitation proceedings, etc." in this Article and the following Article) was filed, and the rehabilitation creditor knew, at the time of assumption, of the fact that a petition for commencement of rehabilitation proceedings, etc. had been filed.

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

(i) A statutory cause

(ii) A cause that had occurred before the rehabilitation creditor came to know the fact that the rehabilitation debtor had been unable to pay debts, that the rehabilitation debtor had suspended payments or that a petition for commencement of rehabilitation proceedings, etc. had been filed

(iii) A cause that had occurred not less than one year before a petition for commencement of rehabilitation proceedings, etc. was filed

#### Article 93-2

(1) A person who owes a debt to the rehabilitation debtor may not effect a set-off in the following cases:

(i) Where the person has acquired another person's rehabilitation claim after the commencement of rehabilitation proceedings.

(ii) Where the person has acquired a rehabilitation claim after the rehabilitation debtor became unable to pay debts, and the person knew, at the time of acquisition of the claim, the fact that the rehabilitation debtor was unable to pay

debts.

- (iii) Where the person has acquired a rehabilitation claim after the rehabilitation debtor suspended payments, and the person knew, at the time of acquisition of the claim, the fact that the rehabilitation debtor had suspended payments; provided, however, that this shall not apply if the rehabilitation debtor was not unable to pay debts at the time when the rehabilitation debtor suspended payments.
  - (iv) Where the person has acquired a rehabilitation claim after a petition for commencement of rehabilitation proceedings, etc. was filed, and the person knew, at the time of acquisition of the claim, the fact that a petition for commencement of rehabilitation proceedings, etc. had been filed.
- (2) The provisions of item (ii) to item (iv) of the preceding paragraph shall not apply where the acquisition of a rehabilitation claim prescribed in these provisions arose from any of the causes listed in the following items:
- (i) A statutory cause
  - (ii) A cause that had occurred before the person who owes a debt to the rehabilitation debtor came to know the fact that the rehabilitation debtor had been unable to pay debts, that the rehabilitation debtor had suspended payments or that a petition for commencement of rehabilitation proceedings, etc. had been filed
  - (iii) A cause that had occurred not less than one year before a petition for commencement of rehabilitation proceedings, etc. was filed
  - (iv) A contract concluded between the rehabilitation debtor and the person who owes a debt to the rehabilitation debtor

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

### Article 94 (Filing of Proofs)

- (1) A rehabilitation creditor who intends to participate in rehabilitation proceedings shall file a proof to the court, within a period during which proofs of rehabilitation claims should be filed as specified pursuant to the provisions of Article 34(1) (hereinafter referred to as a "period for filing proofs claims"), with regard to the amount and cause of each rehabilitation claim, if the claim in question is a consensually-subordinated rehabilitation claim, a statement to that effect, the amount of the voting right, and any other matters specified by the Rules of the Supreme Court.
- (2) A holder of a right of separate satisfaction, in addition to the matters listed in the items of the preceding paragraph, shall also file a proof of the collateral for the right of separate satisfaction, and the amount of the claim for which payment is not expected to be received by exercising the right of separate satisfaction.



Article 95 (Subsequent Completion of Filing of Proofs, etc.)

- (1) Where a rehabilitation creditor was unable to file a proof of his/her rehabilitation claim within the period for filing proofs of claims due to grounds not attributable thereto, he/she may subsequently complete the filing of proof only within one month after the reasons cease to exist.
- (2) The one-month period for subsequent completion of filing of proof specified in the preceding paragraph may not be extended or shortened.
- (3) With regard to a rehabilitation claim arising after the expiration of the period for filing proofs of claims, a proof shall be filed within an unextendable period of one month after the claim arose.
- (4) The filing of proof set forth in paragraph (1) and paragraph (3) may not be made after an order to refer a proposed rehabilitation plan to a resolution is made.
- (5) The provisions of paragraph (1), paragraph (2) and the preceding paragraph shall apply mutatis mutandis where a rehabilitation creditor makes a change to any filed matter, which is prejudicial to the interest of other rehabilitation creditors, due to grounds not attributable thereto.

Article 96 (Change of Name of Holder of Filed Claim)

A person who has acquired a filed rehabilitation claim may receive a change of the name of the holder of filed claim even after the expiration of the period for filing proofs of claims. The same shall apply to a person who has acquired a rehabilitation claim stated in a statement of approval or disapproval under the provision of Article 101(3).

Article 97 (Filing of Proofs of Claims for Fine, Petty Fine, etc.)

With regard to a claim for a fine, petty fine, court costs for a criminal case, collection of equivalent value or non-penal fine which has arisen prior to the commencement of rehabilitation proceedings (excluding one that is a common benefit claim or claim with general priority; thereafter referred to as a "claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings"), the State or local public entity that holds such claim shall file a proof of the amount and cause thereof with the court without delay.

Article 98 Deleted

**Section 3 Investigation and Determination of Rehabilitation Claims**

Article 99 (Preparation of Schedule of Rehabilitation Creditors, etc.)

- (1) A court clerk shall prepare a schedule of rehabilitation creditors with regard to

filed rehabilitation claims as well as rehabilitation claims stated by the rehabilitation debtor, etc. in a statement of approval or disapproval pursuant to the provision of Article 101(3).

- (2) In the schedule of rehabilitation creditors set forth in the preceding paragraph, for each claim, its content (including whether or not it is a consensually-subordinated rehabilitation claim; hereinafter the same shall apply in this Section) and cause, the amount of the voting right, the amount of the claim prescribed in Article 94(2), and any other matters specified by the Rules of the Supreme Court shall be entered.
- (3) If there are any errors in the entries in the schedule of rehabilitation creditors, a court clerk, upon petition or by his/her own authority, may make a disposition to correct the statements at any time.

#### Article 100 (Investigation of Rehabilitation Claims)

An investigation of rehabilitation claims by the court shall be conducted, with regard to the matters prescribed in paragraph (2) of the preceding Article, based on a statement of approval or disapproval prepared by the rehabilitation debtor, etc. as well as written objections made by rehabilitation creditors and by the rehabilitation debtor (limited to cases where a trustee is appointed).

#### Article 101 (Preparation and Submission of Statement of Approval or Disapproval)

- (1) The rehabilitation debtor, etc. shall prepare a statement of approval or disapproval to state, with regard to each rehabilitation claim filed during the period for filing proofs of claims, his/her approval or disapproval of the content of such claim and the voting right.
- (2) The rehabilitation debtor, etc., with regard to a rehabilitation claim which is filed or for which a change is made to any filed matter under the provision of Article 95, may also state his/her approval or disapproval of the content of such claim and the voting right (in cases where there is a change to any filed matter, the content of the claim and the voting right as changed) in the statement of approval or disapproval set forth in said paragraph.
- (3) The rehabilitation debtor, etc., if he/she knows that there is any rehabilitation claim that has not been filed, shall state, in the statement of approval or disapproval set forth in paragraph (1), what he/she is aware of and any other matters specified by the Rules of the Supreme Court with regard to such rehabilitation claim.
- (4) Where no consensually-subordinated rehabilitation claim is filed within the period for filing proofs of claims, the provision of the preceding paragraph shall not apply to any consensually-subordinated rehabilitation claim that is known to the rehabilitation debtor, etc.

- (5) The rehabilitation debtor, etc. shall submit a statement of approval or disapproval prepared pursuant to the provisions of the preceding paragraphs by the time limit set by the court prior to the period for conducting an investigation of rehabilitation claims prescribed in Article 34(1) (hereinafter referred to as the "ordinary period for investigation").
- (6) If, in the statement of approval or disapproval submitted pursuant to the provision of the preceding paragraph, neither approval nor disapproval is stated with regard to the content of a rehabilitation claim prescribed in paragraph (1) or the voting right, it shall be deemed that the rehabilitation debtor, etc. approves these matters. The same shall apply where neither approval nor disapproval is stated in said statement of approval or disapproval with regard to the content of a rehabilitation claim prescribed in paragraph (2) or the voting right.

#### Article 102 (Investigation during the Ordinary Period for Investigation)

- (1) A rehabilitation creditor who has filed a proof of his/her claim (hereinafter referred to as a "holder of filed rehabilitation claim") may make an objection in writing to the court, within the ordinary period for investigation, with regard to the content of a rehabilitation claim prescribed in paragraph (1) or paragraph (2) of the preceding Article or the voting right, or the content of a rehabilitation claim stated in a statement of approval or disapproval pursuant to the provision of paragraph (3) of said Article.
- (2) The rehabilitation debtor (limited to cases where a trustee is appointed) may make an objection in writing to the court, within the ordinary period for investigation, with regard to the content of the rehabilitation claim prescribed in the preceding paragraph.
- (3) When an order to change the ordinary period for investigation is made, the written order shall be served upon the rehabilitation debtor, a trustee, and holders of filed rehabilitation claims (prior to the expiration of the period for filing proofs of claims, known rehabilitation creditors).
- (4) The service under the provision of the preceding paragraph may be made by the method prescribed in Article 43(4).
- (5) Where a service has been made under the provision of the preceding paragraph, the service shall be deemed to have been made at the time when the postal item, etc. sent thereby should have normally arrived.

#### Article 103 (Investigation during the Special Period for Investigation)

- (1) The court, with regard to a rehabilitation claim which is filed or for which a change is made to any filed matter under the provision of Article 95, shall specify a period for conducting an investigation of such claim (hereinafter referred to as a "special period for investigation"); provided, however, that this shall not apply

where the rehabilitation debtor, etc. states, in a statement of approval or disapproval, his/her approval or disapproval of the content of such rehabilitation claim or the voting right.

- (2) In the case referred to in the main clause of the preceding paragraph, the expenses for the special period for investigation shall be borne by the person who holds the rehabilitation claim investigated.
- (3) The rehabilitation debtor, etc., with regard to a rehabilitation claim to be investigated during the special period for investigation, shall prepare a statement of approval or disapproval to state his/her approval or disapproval of the content of such claim and the voting right, and submit it to the court by the time limit set by the court prior to the special period for investigation. In this case, the provision of the first sentence of Article 101 (6) shall apply mutatis mutandis.
- (4) A holder of filed rehabilitation claim and the rehabilitation debtor (limited to cases where a trustee is appointed) may make an objection in writing to the court within the special period for investigation, with regard to the content of a rehabilitation claim set forth in the preceding paragraph or the voting right, or the amount of a rehabilitation claim set forth in said paragraph, respectively.
- (5) The provisions of paragraph (3) to paragraph (5) of the preceding Article shall apply mutatis mutandis to the service of a written order where an order to specify or change the special period for investigation is made.

#### Article 103-2 (Prepayment of Expenses for the Special Period for Investigation)

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

provision of the preceding paragraph.

#### Article 104 (Results of Investigation of Rehabilitation Claims)

- (1) The content of a rehabilitation claim and the amount of the voting right (in the case of a rehabilitation claim stated in a statement of approval or disapproval pursuant to the provision of Article 101(3), the content as stated therein) shall become determined if, in the investigation of rehabilitation claims, they are approved by the rehabilitation debtor, etc. and no objection is made by any holder of filed rehabilitation claim during the period of investigation.
- (2) A court clerk shall make an entry of the results of the investigation of rehabilitation claims in the schedule of rehabilitation creditors.
- (3) The entries in the schedule of rehabilitation creditors with regard to the rehabilitation claims that become determined pursuant to the provision of paragraph (1) shall have the same effect as a final and binding judgment against all rehabilitation creditors.

#### Article 105 (Assessment Decision on Rehabilitation Claim)

- (1) Where, in an investigation of rehabilitation claims, the rehabilitation debtor, etc. has disapproved the content of a rehabilitation claim or an objection has been made by any holder(s) of filed rehabilitation claim with regard to this matter, the holder of filed rehabilitation claim who holds the rehabilitation claim in question (hereinafter referred to as the "denied/disputed rehabilitation claim"), in order to determine the content of the claim, may file a petition for assessment to the court against the rehabilitation debtor as well as said holder(s) of filed rehabilitation claim who made the objection (hereinafter referred to as the "denying/disputing party" in this Article to Article 107 and Article 109); provided, however, that this shall not apply in the case referred to in Article 107(1) and Article 109(1) and (2).
- (2) The petition for assessment set forth in the main clause of the preceding paragraph shall be filed within an unextendable period of one month from the last day of the period of investigation for the denied/disputed rehabilitation claim.
- (3) Where a petition for assessment set forth in the main clause of paragraph (1) is filed, the court shall make an assessment decision, except where it dismisses the petition as unlawful without prejudice.
- (4) An assessment decision shall specify the existence or nonexistence of a denied/disputed rehabilitation claim and the content thereof.
- (5) The court, when making an assessment decision, shall interrogate the denying/disputing party(s).
- (6) Where a judicial decision on a petition for assessment set forth in the main clause of paragraph (1) is made, the written decision shall be served upon the

parties concerned. In this case, the provision of the main clause of Article 10(3) shall not apply.

Article 106 (Action Against Judicial Decision on Petition for Assessment)

- (1) A person who disagrees with a judicial decision on a petition for assessment set forth in the main clause of paragraph (1) of the preceding Article may file an action to oppose within an unextendable period of one month after the day on which the person received the service of the decision.
- (2) The action set forth in the preceding paragraph shall be subject to the jurisdiction of the rehabilitation court.
- (3) The court of the first instance with which an action set forth in paragraph (1) is filed, when it finds it necessary in order to avoid substantial detriment or delay in cases where the rehabilitation court's jurisdiction over the rehabilitation case is based on no provisions of laws or regulations other than the provision of Article 5 (8) or (9) (including cases where the rehabilitation court has accepted the rehabilitation case transferred thereto pursuant to the provision of Article 7(iv) and the acceptance of the transferred case is based on no provision other than the provision of Article 7(iv) (b) or (c)), by its own authority, may transfer said action to the district court prescribed in Article 5(1) (or the district court prescribed in Article 5(2) if there is no such court that corresponds to the court prescribed in Article 5(1)), notwithstanding the provision of the preceding paragraph.
- (4) In an action set forth in paragraph (1), all of the denying/disputing party(s), etc. shall stand as defendants if it is filed by the rehabilitation creditor who holds the denied/disputed rehabilitation claim, and such rehabilitation creditor shall stand as a defendant if it is filed by a denying/disputing party.
- (5) Oral argument for an action set forth in paragraph (1) may not be commenced until the period set forth in said paragraph has expired.
- (6) If two or more actions set forth in paragraph (1) are pending with respect to the same claim concurrently, oral arguments and judicial decisions of these actions shall be made in a consolidated manner. In this case, the provisions of Article 40 (1) to (3) of the Code of Civil Procedure shall apply mutatis mutandis.
- (7) A judgment rendered with regard to an action set forth in paragraph (1), except where the action is dismissed as unlawful without prejudice, shall approve or change the judicial decision set forth in said paragraph.

Article 107 (Taking Over of Action Relating to Denied/Disputed Rehabilitation Claim)

- (1) Where an action relating to a denied/disputed rehabilitation claim is pending at the time of commencement of rehabilitation proceedings, when a rehabilitation

creditor seeks to determine the content of the claim, he/she shall file a petition for taking over of action, designating all of the denying/disputing party(s) as the opponents.

- (2) The provision of Article 105(2) shall apply mutatis mutandis to the petition set forth in the preceding paragraph.

#### Article 108 (Limitation to Assertion)

In the proceedings for assessment based on a petition for assessment set forth in the main clause of Article 105(1) or court proceedings of an action set forth in Article 106(1) or court proceedings of an action taken over under the provision of paragraph (1) of the preceding Article, a rehabilitation creditor may assert the content and cause of the denied/disputed rehabilitation claim, only as entered in the schedule of rehabilitation creditors.

#### Article 109 (Assertion of Objection to Claim with Enforceable Title of Obligation, etc.)

- (1) With regard to a denied/disputed rehabilitation claim accompanied by an enforceable title of obligation or final judgment, the denying/disputing party may assert an objection only through the court proceedings that the rehabilitation debtor may carry out.
- (2) Where an action relating to the rehabilitation claim prescribed in the preceding paragraph is pending at the time of commencement of rehabilitation proceedings, when the denying/disputing party intends to assert an objection under the provision of said paragraph, the denying/disputing party shall take over the action in which the rehabilitation creditor who holds the rehabilitation claim in question stands as the opponent.
- (3) The provision of Article 105(2) shall apply mutatis mutandis to the assertion of an objection under the provision of paragraph (1) or the taking over of action under the provision of the preceding paragraph, and the provisions of Article 106 (5) and (6) and the preceding Article shall apply to the cases referred to in the preceding two paragraphs. In this case, the phrase "the period set forth in said paragraph" in Article 106(5) shall be deemed to be replaced with "an unextendable period of one month from the last day of the period for investigation for the denied/disputed rehabilitation claim."
- (4) Where the assertion of an objection under the provision of paragraph (1) or the taking over of action under the provision of paragraph (2) has not taken place within the period prescribed in Article 105(2) as applied mutatis mutandis pursuant to the preceding paragraph, if the denying/disputing party is a rehabilitation creditor, it shall be deemed that no objection under Article 102(1) or Article 103(4) has been made, and if the denying/disputing party is the

rehabilitation debtor, etc., it shall be deemed that the rehabilitation debtor, etc. has approved the rehabilitation claim in question.

Article 110 (Entry of the Outcome of Action Concerning the Determination of Rehabilitation Claim)

A court clerk, upon the petition of the rehabilitation debtor, etc. or a rehabilitation creditor, shall make an entry, in the schedule of rehabilitation creditors, of the outcome of an action concerning the determination of a rehabilitation claim (in cases where an action set forth in Article 106(1) against a judicial decision on a petition for assessment set forth in the main clause of Article 105(1) is not filed within the period prescribed in Article 106(1) or is dismissed without prejudice, the content of said judicial decision).

Article 111 (Effect of Judgment, etc. on Action Concerning the Determination of Rehabilitation Claim)

- (1) A judgment made upon an action concerning the determination of a rehabilitation claim shall be effective against all rehabilitation creditors.
- (2) If an action set forth in Article 106(1) against a judicial decision on a petition for assessment set forth in the main clause of Article 105(1) is not filed within the period prescribed in Article 106(1) or is dismissed without prejudice, said judicial decision shall have the same effect as a final and binding judgment against all rehabilitation creditors.

Article 112 (Reimbursement of Court Costs)

When the rehabilitation debtor's assets have been enriched from an action concerning the determination of a rehabilitation claim (including a judicial decision on a petition for assessment set forth in the main clause of Article 105(1)), the rehabilitation creditor who asserted an objection may claim reimbursement of court costs from the rehabilitation debtor's property to the extent that the rehabilitation debtor's assets have been enriched.

Article 112-2 (Treatment of the Proceedings for Determination of Rehabilitation Claim upon Close of Rehabilitation Proceedings)

- (1) The proceedings for assessment based on a petition for assessment set forth in the main clause of Article 105(1) which are pending at the time of close of rehabilitation proceedings shall be closed if the close of rehabilitation proceedings occurs before an order of confirmation of the rehabilitation plan becomes final and binding, and shall continue to be pending if the close of rehabilitation proceedings occurs after an order of confirmation of the rehabilitation plan becomes final and binding.



- (2) The provisions of Article 68(2) and (3) shall apply mutatis mutandis to proceedings for assessment based on a petition for assessment set forth in the main clause of Article 105(1) in which a trustee stands as a party in cases where rehabilitation proceedings are closed after an order of confirmation of the rehabilitation plan becomes final and binding.
- (3) Where rehabilitation proceedings are closed after an order of confirmation of the rehabilitation plan becomes final and binding, if a judicial decision on a petition for assessment set forth in the main clause of Article 105(1) is made after the close of rehabilitation proceedings, an action set forth in Article 106(1) may be filed pursuant to the provision of Article 106(1).
- (4) An action set forth in Article 106(1) which is pending at the time of close of rehabilitation proceedings and in which the rehabilitation debtor, etc. does not stand as a party shall be discontinued if the close of rehabilitation proceedings occurs before an order of confirmation of the rehabilitation plan becomes final and binding, and shall continue to be pending if the close of rehabilitation proceedings occurs after an order of confirmation of the rehabilitation plan becomes final and binding.
- (5) The action pending at the time of close of rehabilitation proceedings (excluding those in which the rehabilitation debtor, etc. stands as a party), which is taken over under the provisions of Article 107(1) or Article 109(2), shall be discontinued if the close of rehabilitation proceedings occurs before an order of confirmation of the rehabilitation plan becomes final and binding, and shall not be discontinued if the close of rehabilitation proceedings occurs after an order of confirmation of the rehabilitation plan becomes final and binding.
- (6) Where an action is discontinued pursuant to the provision of the preceding paragraph, the provision of Article 68(3) shall apply mutatis mutandis.

Article 113 (Appeal against Claim for Fine, etc. Arising Prior to the Commencement of Rehabilitation Proceedings)

- (1) With regard to a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings, the provisions of Article 100 to the preceding Article shall not apply.
- (2) Where the cause of a claim for collection of equivalent value or non-penal fine filed under the provision of Article 97 is a disposition against which a request for review, action (excluding a criminal action; the same shall apply in the following paragraph) or any other appeal may be filed, the rehabilitation debtor, etc. may assert an objection with regard to the claim for collection of equivalent value or non-penal fine by a method of filing such an appeal.
- (3) In the case referred to in the preceding paragraph, if an action relating to the filed claim for collection of equivalent value or non-penal fine is pending at the

time of commencement of rehabilitation proceedings, the rehabilitation debtor, etc. who intends to assert an objection prescribed in said paragraph shall take over the action in which the rehabilitation creditor who holds the filed claim stands as the opponent. The same shall apply where a case relating to the rehabilitation debtor's property is pending before an administrative agency with regard to the filed claim for collection of equivalent value or non-penal fine at the time of commencement of rehabilitation proceedings.

- (4) The assertion of an objection under the provision of paragraph (2) or the taking over of action under the provision of the preceding paragraph shall be performed within an unextendable period of one month after the day on which the rehabilitation debtor, etc. came to know the fact of the filing of a claim for collection of equivalent value or non-penal fine prescribed in paragraph (2).
- (5) The provision of Article 104(2) shall apply mutatis mutandis to a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings, which is filed pursuant to the provision of Article 97, and the provisions of Article 108, Article 110, and Article 111(1) shall apply mutatis mutandis to cases where the assertion of an objection under the provision of paragraph (2) or the taking over of action under the provision of paragraph (3) has taken place.

#### **Section 4 Creditors Meetings and Creditors Committee**

##### Article 114 (Convocation of Creditors Meetings)

The court shall convoke a creditors meeting upon the petition of the rehabilitation debtor, etc. or the creditors committee prescribed in Article 117(2) or petition of a rehabilitation creditor who holds a rehabilitation claim that accounts for one-tenth or more of the value of total claims held by known rehabilitation creditors as determined by the court; provided, however, that the court may convoke a creditors meeting without these petitions when it finds it appropriate.

##### Article 115 (Summon on the Date of Creditors Meeting, etc.)

- (1) On the date of a creditors meeting, the rehabilitation debtor, a trustee, holders of filed rehabilitation claims, and any person who has assumed a debt or provided security for the purpose of rehabilitation shall be summoned; provided, however, that when the order set forth in Article 34(2) is made, holders of filed rehabilitation claims shall not be required to be summoned, except on the date of a creditors meeting aimed for adopting a resolution on a proposed rehabilitation plan.
- (2) Notwithstanding the provision of the preceding paragraph, it is allowed not to summon holders of filed rehabilitation claims who may not exercise their voting rights.

- (3) A notice of the date of a creditors meeting shall be given to the labor union, etc.
- (4) The court shall make a public notice of the date of a creditors meeting and the matters that are the purposes of the meeting.
- (5) If it is rendered, on the date of a creditors meeting, that the meeting shall be postponed or continued, the provisions of paragraph (1) and the preceding two paragraphs shall not apply.

#### Article 116 (Direction of Creditors Meetings)

Creditors meetings shall be directed by the court.

#### Article 117 (Creditors Committee)

- (1) Where there is a committee consisting of rehabilitation creditors, the court, upon the petition of an interested person, may give approval to the participation of said committee in rehabilitation proceedings as provided for by this Act; provided, however, that this shall apply only where all of the following requirements are met:
  - (i) The number of committee members is not less than three and not more than the number specified by the Rules of the Supreme Court.
  - (ii) It is found that the majority of rehabilitation creditors consent to the committee's participation in rehabilitation proceedings.
  - (iii) It is found that the committee will properly represent the interest of rehabilitation creditors as a whole.
- (2) The court, when it finds it necessary, may request the committee approved pursuant to the provision of the preceding paragraph (hereinafter referred to as the "creditors committee") to state its opinions in rehabilitation proceedings.
- (3) The creditors committee may state its opinions to the court, the rehabilitation debtor, etc. or a supervisor in rehabilitation proceedings.
- (4) When it is found that the creditors committee has carried out activities that contribute to ensuring the rehabilitation of the rehabilitation debtor, the court, upon the petition of a rehabilitation creditor who has incurred necessary expenses for said activities, may permit reimbursement of the amount of expenses, which it finds reasonable, to said rehabilitation creditor from the rehabilitation debtor's assets.
- (5) The court, upon the petition of an interested person or by its own authority, may rescind the approval given pursuant to the provision of paragraph (1) at any time.

#### Article 118 (Hearing of Opinions of the Creditors Committee)

- (1) A court clerk, when approval is given pursuant to the provision of paragraph (1) of the preceding Article, without delay, shall give a notice to the rehabilitation debtor, etc. to that effect.

(2) The rehabilitation debtor, etc., upon receiving the notice under the provision of the preceding paragraph, without delay, shall hear opinions of the creditors committee with regard to the matters concerning the administration of the rehabilitation debtor's business and property.

Article 118-2 (Duty to Report of the Rehabilitation Debtor, etc. to the Creditors Committee)

- (1) The rehabilitation debtor, etc., when he/she has submitted written reports, etc. (meaning written reports, inventory of assets or balance sheets; hereinafter the same shall apply in this Article) to the court pursuant to the provisions of Article 124(2) or Article 125(1) or (2), without delay, shall also submit said written reports, etc. to the creditors committee.
- (2) When the rehabilitation debtor, etc., in the case referred to in the preceding paragraph, has filed a petition set forth in Article 17(1), alleging that the written reports, etc. in question contain a detrimental part prescribed in Article 17(1), it shall be sufficient for him/her to submit the written reports, etc. excluding such part to the creditors committee.

Article 118-3 (Report Order to the Rehabilitation Debtor, etc.)

- (1) The creditors committee, when it is necessary for the interest of rehabilitation creditors as a whole, may request the court to order that the rehabilitation debtor, etc. make a report under the provision of Article 125(2) with regard to the status of the administration of the rehabilitation debtor's business and property and other necessary matters concerning the rehabilitation of the rehabilitation debtor's business.
- (2) The court that has received a request made under the provision of the preceding paragraph, when it finds the request appropriate, shall order that the rehabilitation debtor, etc. make a report under the provision of Article 125(2).

**Chapter V Common Benefit Claims, Claims with General Priorities, and Post Commencement Claims**

Article 119 (Claims in the Scope of Common Benefit Claims)

The following claims shall be common benefit claims:

- (i) A claim for expenses for court proceedings performed for the common interest of rehabilitation creditors
- (ii) A claim for expenses for the administration and disposition of the rehabilitation debtor's business, living and property after the commencement of rehabilitation proceedings
- (iii) A claim for expenses for the execution of a rehabilitation plan (excluding one

- arising after the close of rehabilitation proceedings)
- (iv) A claim for expenses, remuneration and compensation payable under the provisions of Article 61(1) (including cases where applied mutatis mutandis pursuant to Article 63, Article 78 and Article 83(1)), Article 90-2(5), Article 91(1), Article 112, Article 117(4) and Article 223(9) (including cases where applied mutatis mutandis pursuant to Article 244)
  - (v) A claim arising from the borrowing of funds or any other act conducted by the rehabilitation debtor, etc. with respect to the rehabilitation debtor's assets after the commencement of rehabilitation proceedings
  - (vi) A claim arising against the rehabilitation debtor after the commencement of rehabilitation proceedings from management without mandate or unjust enrichment
  - (vii) A claim for unavoidable expenses that should be paid for the interest of the rehabilitation debtor, which has arisen after the commencement of rehabilitation proceedings (excluding those listed in the preceding items)

Article 120 (Borrowings, etc. Prior to Commencement)

- (1) Where the rehabilitation debtor (excluding cases where a provisional administrator is appointed; hereinafter the same shall apply in this paragraph and paragraph (3)), after a petition for commencement of rehabilitation proceedings is filed and before rehabilitation proceedings are commenced, borrows funds, purchases raw materials or conducts any other act indispensable for the continuation of the rehabilitation debtor's business, the court may grant permission to the effect that the other party's claim arising from such act shall be a common benefit claim.
- (2) The court may empower a supervisor to give approval in lieu of the permission set forth in the preceding paragraph.
- (3) When the rehabilitation debtor has conducted any of the acts prescribed in paragraph (1) with permission set forth in paragraph (1) or approval set forth in the preceding paragraph, the other party's claim arising from such act shall be a common benefit claim.
- (4) A claim arising from the borrowing of funds or any other act conducted by a provisional administrator as empowered with respect to the rehabilitation debtor's business and property shall be a common benefit claim.

Article 120-2 (Expenses and Remuneration for Bond Administrator, etc.)

- (1) Where a bond administrator intends to administer the affairs concerning the administration of company bonds that are rehabilitation claims, the court, when it finds it necessary in order to achieve the purpose of rehabilitation proceedings, may grant permission to the effect that the bond administrator's claim for expenses

to be incurred for the administration of said affairs against the rehabilitation debtor shall be a common benefit claim.

- (2) Even where a bond administrator has administered the affairs concerning the administration of company bonds that are rehabilitation claims without the permission set forth in the preceding paragraph, the court, if it is found that the bond administrator has contributed to ensuring the rehabilitation of the rehabilitation debtor's business, may grant permission to the effect that a claim for rehabilitation of the expenses incurred for the administration of said affairs shall be a common benefit claim for an amount that the court finds reasonable by taking into consideration the degree of his/her contribution.
- (3) The court may grant permission to the effect that a bond administrator's claim for remuneration arising from a cause that has occurred after the commencement of rehabilitation proceedings shall be a common benefit claim for an amount that the court finds reasonable.
- (4) A claim for which permission is obtained under the provisions of the preceding three paragraphs shall be a common benefit claim.
- (5) An immediate appeal may be filed against an order of permission under the provisions of paragraph (1) to paragraph (3).
- (6) The provisions of the preceding paragraphs shall apply mutatis mutandis to a claim for expenses or remuneration that arises from the affairs concerning the administration of a claim set forth in each of the following items, which is a rehabilitation claim, for the categories of the persons listed in the respective items:
  - (i) A trustee company under a trust agreement prescribed in Article 2(1) of the Secured Bonds Trust Act (Act No. 52 of 1905): Company bonds prescribed in Article 2(1) of said Act
  - (ii) A social medical care corporation bond administrator prescribed in Article 54-5 of the Medical Care Act (Act No. 205 of 1948): Social medical care corporation bonds prescribed in Article 54-2(1) of said Act
  - (iii) An investment corporation bond administrator prescribed in Article 139-8 of the Act on Investment Trust and Investment Corporation (Act No. 198 of 1951): Investment corporation bonds prescribed in Article 2(24) of said Act
  - (iv) A bond administrator prescribed in Article 61-6 of the Insurance Business Act (Act No. 105 of 1995): Company bonds issued by a mutual company (meaning a mutual company prescribed in Article 2(5) of said Act)
  - (v) A specified bond administrator prescribed in Article 126 of the Act on Securitization of Assets (Act No. 105 of 1998): Specified company bonds prescribed in Article 2(7) of said Act

#### Article 121 (Treatment of Common Benefit Claims)

- (1) Common benefit claims may be paid at any time without going through

rehabilitation proceedings.

- (2) Common benefit claims shall be paid in preference to rehabilitation claims.
- (3) Where compulsory execution or provisional seizure is enforced against the rehabilitation debtor's property based on a common benefit claim, if the compulsory execution or provisional seizure would cause significant hindrance to rehabilitation and the rehabilitation debtor additionally has adequate property that is easy to realize, the court, after the commencement of rehabilitation proceedings, upon the petition of the rehabilitation debtor, etc. or by its own authority, may order the stay or revocation of the compulsory execution or provisional seizure, while requiring or not requiring the provision of security.
- (4) The court may change or revoke a stay order issued under the provision of the preceding paragraph.
- (5) An immediate appeal may be filed against a stay order or revocation order issued under the provision of paragraph (3) and an order made under the provision of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.

#### Article 122 (Claims with General Priority)

- (1) A claim for which a general statutory lien or any other general priority exists (excluding one that is a common benefit claim) shall be a claim with general priority.
- (2) Claims with general priorities may be paid at any time without going through rehabilitation proceedings.
- (3) Where a priority exists with regard to the amount of claim arising for a specific period of time, such period shall be calculated from the time of commencement of rehabilitation proceedings.
- (4) The provisions of paragraph (3) to paragraph (6) of the preceding Article shall apply mutatis mutandis to compulsory execution or provisional seizure based on a claim with general priority, or exercise of a general statutory lien intended to secure a claim with general priority.

#### Article 123 (Post Commencement Claims)

- (1) A claim on property arising from a cause that has occurred after the commencement of rehabilitation proceedings (excluding one that is a common benefit claim, claim with general priority or rehabilitation claim) shall be a post commencement claim.
- (2) With regard to a post commencement claim, during the period after a rehabilitation proceeding is commenced until the payment period specified in a rehabilitation plan expires (or until rehabilitation proceedings are closed if the

close of rehabilitation proceedings occurs before an order of confirmation of the rehabilitation plan becomes final and binding, or until payment based on the rehabilitation plan is completed or the rehabilitation plan is revoked if these events occur prior to the expiration of said period), it is not allowed to make or receive payment or conduct any other act to cause the claim to be extinguished (excluding a release).

- (3) During the period prescribed in the preceding paragraph, it is not allowed to enforce compulsory execution, provisional seizure or provisional disposition against the rehabilitation debtor's property or file a petition for an assets disclosure procedure based on a post commencement claim.

## **Chapter VI Investigation and Securing of the Rehabilitation Debtor's Property**

### **Section 1 Investigation on the Status of the Rehabilitation Debtor's Property**

#### Article 124 (Evaluation of Property, etc.)

- (1) The rehabilitation debtor, etc., without delay after the commencement of rehabilitation proceedings (in the case of a trustee, after assuming office), shall evaluate the value of any and all property that belongs to the rehabilitation debtor as of the time of commencement of rehabilitation proceedings.
- (2) The rehabilitation debtor, etc., when he/she has completed the evaluation under the provision of the preceding paragraph, shall immediately prepare an inventory of assets and balance sheets as of the time of commencement of rehabilitation proceedings and submit these to the court.
- (3) The court, when it finds it necessary, upon the petition of an interested person or by its own authority, may appoint a valuator and order him/her to value the rehabilitation debtor's property.

#### Article 125 (Report to the Court)

- (1) The rehabilitation debtor, etc., without delay after the commencement of rehabilitation proceedings (in the case of a trustee, after assuming office), shall submit to the court a written report stating the following matters:
  - (i) The circumstances that have resulted in the commencement of rehabilitation proceedings
  - (ii) The past and existing status of the rehabilitation debtor's business and property
  - (iii) Whether or not there are circumstances that require a temporary restraining order under the provision of Article 142(1) or assessment decision under the provision of Article 143(1)
  - (iv) Other necessary matters concerning rehabilitation proceedings



- (2) In addition to what is prescribed in the preceding paragraph, the rehabilitation debtor, etc., as provided for by the court, shall report to the court the status of the administration of the rehabilitation debtor's business and property and any other matters as ordered by the court.
- (3) A supervisor, as provided for by the court, shall report to the court the status of the administration of the rehabilitation debtor's business and property and any other matters as ordered by the court.

#### Article 126 (Report to Meeting for Reporting the Status of Property)

- (1) At a creditors meeting convoked to report the status of the rehabilitation debtor's property, the rehabilitation debtor, etc. shall report the gist of the matters listed in the items of paragraph (1) of the preceding Article.
- (2) At the creditors meeting set forth in the preceding paragraph (referred to as a "meeting for reporting the status of property"), the court shall hear opinions of the rehabilitation debtor, a trustee or holders of filed rehabilitation claims with regard to the appointment of a trustee as well as the matters concerning the administration of the rehabilitation debtor's business and property.
- (3) At a meeting for reporting the status of property, the labor union, etc. may state its opinions with regard to the matters prescribed in the preceding paragraph.

### **Section 2 Right of Avoidance**

#### Article 127 (Avoidance of Acts Prejudicial to Rehabilitation Creditors)

- (1) The following acts (excluding acts concerning the provision of security or extinguishment of debt) may be avoided in the interest of the rehabilitation debtor's assets after the commencement of rehabilitation proceedings:
  - (i) An act conducted by the rehabilitation debtor while knowing that it would prejudice rehabilitation creditors; provided, however, that this shall not apply where the person who has benefited from said act did not know, at the time of the act, the fact that it would prejudice any rehabilitation creditor.
  - (ii) An act that would prejudice rehabilitation creditors conducted by the rehabilitation debtor after suspension of payments or filing of a petition for commencement of rehabilitation proceedings, commencement of bankruptcy proceedings or commencement of special liquidation (hereinafter referred to as "suspension of payments, etc." in this Section) took place; provided, however, that this shall not apply where the person who has benefited from said act did not know, at the time of the act, the fact that suspension of payments, etc. had taken place nor the fact that the act would prejudice any rehabilitation creditor.
- (2) With respect to an act concerning the extinguishment of debt conducted by the rehabilitation debtor, if the value of the performance received by the creditor

exceeds the amount of the debt extinguished by said act, and said act satisfies any of the requirements listed in the items of the preceding paragraph, such act may be avoided in the interest of the rehabilitation debtor's assets after the commencement of rehabilitation proceedings only with regard to the part other than the part equivalent to the amount of the debt extinguished.

- (3) Any gratuitous act, or any onerous act that should be deemed to be equal to such an act, conducted by the rehabilitation debtor after or within six months prior to suspension of payments, etc. may be avoided in the interest of the rehabilitation debtor's assets after the commencement of rehabilitation proceedings.

#### Article 127-2 (Avoidance of Acts of Disposing of Property Conducted While Receiving Reasonable Value)

- (1) When the rehabilitation debtor, after conducting an act of disposing of his/her property, has received a reasonable value from the other party to said act, the act may be avoided in the interest of the rehabilitation debtor's assets after the commencement of rehabilitation proceedings, if it satisfies all of the following requirements:
  - (i) The act has the actual risk that the rehabilitation debtor would conceal, gratuitously convey or otherwise dispose of the property in a manner prejudicial to rehabilitation creditors (hereinafter referred to as "concealment or other disposition" in this Article and Article 132-2(2) and (3)) by realizing real property or otherwise changing the type of property by way of such disposition.
  - (ii) The rehabilitation debtor, at the time of the act, had the intention of conducting concealment or other disposition of the money or any other property that he/she received as a value for the act.
  - (iii) The other party, at the time of the act, knew that the rehabilitation debtor had the intention of conducting concealment or other disposition set forth in the preceding item.
- (2) For the purpose of application of the provision of the preceding paragraph, if the other party to the act in question is any of the following persons, the other party shall be presumed to have known, at the time of the act, that the rehabilitation debtor had the intention of conducting concealment or other disposition set forth in item (ii) of said paragraph:
  - (i) In cases where the rehabilitation debtor is a juridical person, its director, executive officer, inspector, auditor, liquidator or any other person equivalent thereto
  - (ii) In cases where the rehabilitation debtor is a juridical person, a person who falls under any of the categories of persons listed in (a) to (c) below in relation to the rehabilitation debtor:
    - (a) In cases where the rehabilitation debtor is a stock company, a person who

holds the majority of voting rights of all shareholders of the rehabilitation debtor

- (b) In cases where the rehabilitation debtor is a stock company, and the majority of voting rights of all shareholders of the rehabilitation debtor are held independently by a subsidiary stock company of a parent juridical person or jointly by a parent juridical person and its subsidiary stock company, the parent juridical person
- (c) In cases where the rehabilitation debtor is a juridical person other than a stock company, a person equivalent to those set forth in (a) or (b)
- (iii) The rehabilitation debtor's relative or a person living together with the rehabilitation debtor

#### Article 127-3 (Avoidance of Provision of Security, etc. to Specific Creditors)

- (1) The following acts (limited to acts concerning the provision of security or extinguishment of debt conducted with regard to an existing debt) may be avoided in the interest of the rehabilitation debtor's assets after the commencement of rehabilitation proceedings:
  - (i) An act conducted by the rehabilitation debtor after he/she became unable to pay debts or a petition for commencement of rehabilitation proceedings, commencement of bankruptcy proceedings or commencement of special liquidation was filed (hereinafter referred to as the "filing of a petition for commencement of rehabilitation proceedings, etc." in this Section); provided, however, that this shall apply only where the creditor, at the time of the act, knew either of the facts set forth in (a) or (b) below for the cases listed in (a) or (b), respectively:
    - (a) Where the act was conducted after the rehabilitation debtor became unable to pay debts: The fact that the rehabilitation debtor was unable to pay debts or suspended payments
    - (b) Where the act was conducted after a petition for commencement of rehabilitation proceedings, etc. was filed: The fact that a petition for commencement of rehabilitation proceedings, etc. was filed
  - (ii) An act that is not included in the scope of the rehabilitation debtor's obligation in terms of the act itself or the time of performance of the act, which was conducted within 30 days before the rehabilitation debtor became unable to pay debts; provided, however, that this shall not apply if the creditor did not know, at the time of the act, the fact that it would prejudice other rehabilitation creditors.
- (2) For the purpose of application of the provision of item (i) of the preceding paragraph, in the following cases, the creditor shall be presumed to have known, at the time of the act set forth in said item, either of the facts set forth in (a) or (b)

below for the cases listed in (a) or (b), respectively (in the case set forth in (a) of said item, both the facts that the rehabilitation debtor was unable to pay debts and that the rehabilitation debtor suspended payments):

- (i) Where the creditor is any of the persons listed in the items of paragraph (2) of the preceding Article
  - (ii) Where the act set forth in item (i) of the preceding paragraph is not included in the scope of the rehabilitation debtor's obligation in terms of the act itself or the method or time of performance of the act
- (3) For the purpose of application of the provisions of the items of paragraph (1), after suspension of payments took place (limited to suspension that took place within one year prior to the filing of a petition for commencement of rehabilitation proceedings, etc.), the rehabilitation debtor shall be presumed to have been unable to pay debts.

#### Article 128 (Exceptions to Payment of Debts on Negotiable Instrument, etc.)

- (1) The provision of paragraph (1) (i) of the preceding Article shall not apply where a person who has received payment of a negotiable instrument from the rehabilitation debtor would lose his/her right on the negotiable instrument against one or more debtors on the negotiable instrument unless he/she receives such payment.
- (2) In the case referred to in the preceding paragraph, if the final obligor for redemption or the person who had entrusted the drawing of the negotiable instrument knew or was negligent in not knowing, at the time of drawing, the fact that suspension of payments, etc. had taken place, a supervisor empowered to exercise a right of avoidance under the provision of Article 56(1) (hereinafter referred to as a "supervisor empowered to avoid") or a trustee may have these persons redeem the money paid by the rehabilitation debtor to them.
- (3) The provision of paragraph (1) of the preceding Article shall not apply to any act concerning the provision of security or extinguishment of debt, which is conducted by the rehabilitation debtor with regard to a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings for the person who has the power to collect the claim.

#### Article 129 (Avoidance of Requirements of Perfection of Changes in Rights)

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

definitive registration based on prior unavoidable provisional registration.

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

#### Article 130 (Avoidance of Acts of Execution)

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

#### Article 131 (Restriction on Avoidance by Reason of Suspension of Payments)

Any act conducted not less than one year before the date of filing of a petition for commencement of rehabilitation proceedings, etc. (excluding the act prescribed in Article 127(3)) may not be avoided by reason that the act was conducted after suspension of payments had taken place or while knowing the fact of suspension of payments.

#### Article 132 (Effect of the Exercise of Right of Avoidance)

- (1) The exercise of a right of avoidance shall restore the rehabilitation debtor's assets to its original state.
- (2) Where an act prescribed in Article 127(3) is avoided, if the other party did not know, at the time of the act, the fact that suspension of payments, etc. had taken place nor the fact that the act would prejudice any rehabilitation creditor, it shall be sufficient for the other party to return the actual enrichment that he/she enjoys.

#### Article 132-2 (Rights Held by the Other Party over Counter-Performance Received by the Rehabilitation Debtor, etc.)

- (1) When an act prescribed in Article 127(1) or (3) or Article 127-2(1) is avoided, the other party may exercise a right set forth in each of the following items for the categories listed in the respective items:
  - (i) Where the counter-performance received by the rehabilitation debtor actually exists within the rehabilitation debtor's assets: A right to claim return of the counter-performance
  - (ii) Where the counter-performance received by the rehabilitation debtor does not actually exist within the rehabilitation debtor's assets: A right to claim, as a holder of common benefit claim, reimbursement of the value of the counter-performance
- (2) Notwithstanding the provision of item (ii) of the preceding paragraph, in the cases listed in said item, if the rehabilitation debtor, at the time of the act in question, had the intention of conducting concealment or other disposition of the property that he/she received as a value for the act and the other party knew that

the rehabilitation debtor had such intention, the other party may exercise a right set forth in each of the following items for the cases listed in the respective items:

- (i) Where the enrichment arising from the counter-performance received by the rehabilitation debtor actually exists in whole within the rehabilitation debtor's assets: A right to claim, as a holder of common benefit claim, return of the actual enrichment
  - (ii) Where the enrichment arising from the counter-performance received by the rehabilitation debtor does not actually exist within the rehabilitation debtor's assets: A right to claim, as a rehabilitation creditor, reimbursement of the value of the counter-performance
  - (iii) Where the enrichment arising from the counter-performance received by the rehabilitation debtor actually exists in part within the rehabilitation debtor's assets: A right to claim, as a holder of common benefit claim, return of the actual enrichment, and a right to claim, as a rehabilitation creditor, reimbursement of any difference between the counter-performance and the actual enrichment
- (3) For the purpose of application of the provision of the preceding paragraph, if the other party to the act in question is any of the persons listed in the items of Article 127-2(2), the other party shall be presumed to have known, at the time of the act, that the rehabilitation debtor had the intention of conducting concealment or other disposition set forth in the preceding paragraph.
- (4) A supervisor empowered to avoid or a trustee, when he/she intends to avoid an act prescribed in Article 127(1) or (3) or Article 127-2(1), in lieu of requesting return of the property that should be returned to the rehabilitation debtor's assets pursuant to the provision of paragraph (1) of the preceding Article, may request the other party to reimburse the amount obtained by deducting the amount that shall be included in the scope of common benefit claims pursuant to the provisions of the preceding three paragraphs (in the case set forth in paragraph (1) (i), the value of the counter-performance received by the rehabilitation debtor) from the value of said property to be returned.

#### Article 133 (Restoration of the Other Party's Claim)

Where an act prescribed in Article 127-3(1) is avoided, if the other party returns the performance that he/she has received or reimburses the value of such performance, this shall restore the other party's claim to its original state.

#### Article 134 (Right of Avoidance against Subsequent Acquirers)

- (1) In the following cases, a right of avoidance may also be exercised against any subsequent acquirers:
  - (i) Where the subsequent acquirers knew, at the time of acquisition, that there were grounds for avoidance against their predecessors.

- (ii) Where each of the subsequent acquirers is any of the persons listed in the items of Article 127-2(2); provided, however, that this shall not apply if the subsequent acquirers did not know, at the time of acquisition, that there were grounds for avoidance against their predecessors.
- (iii) Where the subsequent acquirers acquired the subject matter by any gratuitous act or by any onerous act that should be deemed to be equal to such an act, and there were grounds for avoidance against their predecessors.
- (2) The provision of Article 132(2) shall apply mutatis mutandis where a right of avoidance is exercised pursuant to the provision of item (iii) of the preceding paragraph.

Article 134-2 (Temporary Restraining Order for Right of Avoidance)

- (1) The court, when it finds it necessary in order to secure a right of avoidance during the period after a petition for commencement of rehabilitation proceedings is filed until an order on said petition is made, upon the petition of an interested person (or a provisional administrator if any provisional administrator is appointed) or by its own authority, may issue an order of provisional seizure or provisional disposition or any other necessary temporary restraining order.
- (2) The temporary restraining order under the provision of the preceding paragraph may be issued while requiring or not requiring the provision of security.
- (3) The court, upon petition or by its own authority, may change or revoke a temporary restraining order issued under the provision of paragraph (1).
- (4) An immediate appeal may be filed against a temporary restraining order issued under the provision of paragraph (1) and a judicial decision on the petition set forth in the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (6) Where a judicial decision prescribed in paragraph (4) and a judicial decision on the immediate appeal set forth in said paragraph are made, the written decisions shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10(3) shall not apply.
- (7) The provisions of the preceding paragraphs shall apply mutatis mutandis where an immediate appeal set forth in Article 36(1) is filed against an order to dismiss with prejudice on the merits a petition for commencement of rehabilitation proceedings.

Article 134-3 (Continuation of Procedure Pertaining to Temporary Restraining Order and Treatment of Security)

- (1) Where a temporary restraining order under the provision of paragraph (1) of the preceding Article (including cases where applied mutatis mutandis pursuant to

paragraph (7) of said Article) is issued, if an order of commencement of rehabilitation proceedings is made, a supervisor empowered to avoid or a trustee may continue the procedure pertaining to the temporary restraining order.

- (2) If the procedure pertaining to a temporary restraining order set forth in the preceding paragraph is not continued pursuant to the provision of said paragraph, the temporary restraining order shall cease to be effective.
- (3) Where a supervisor empowered to avoid or a trustee intends to continue the procedure pertaining to a temporary restraining order set forth in paragraph (1) pursuant to the provision of said paragraph, if the whole or part of the security prescribed in paragraph (2) of the preceding Article (including cases where applied mutatis mutandis pursuant to paragraph (7) of said Article) does not belong to the rehabilitation debtor's assets, he/she shall substitute, for the whole or part of such security, another security by way of property that belongs to the rehabilitation debtor's assets.
- (4) The provisions of Article 18 of the Civil Preservation Act (Act No. 91 of 1989) and Chapter II, Section 4 (excluding Article 37(5) to (7)) and Section 5 of said Act shall apply mutatis mutandis to a temporary restraining order for the procedure to be continued by a supervisor empowered to avoid or a trustee pursuant to the provision of paragraph (1).

#### Article 135 (Exercise of Right of Avoidance)

- (1) A right of avoidance shall be exercised by a supervisor empowered to avoid or a trustee by filing an action or making a request for avoidance.
- (2) Cases of the action and request for avoidance set forth in the preceding paragraph shall be subject to the jurisdiction of the rehabilitation court.
- (3) In addition to the methods prescribed in paragraph (1), a trustee may also exercise a right of avoidance by raising a defense.

#### Article 136 (Request for Avoidance)

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



Article 137 (Action Against Order Upholding Request for Avoidance)

- (1) A person who disagrees with an order upholding a request for avoidance may file an action to oppose within an unextendable period of one month after the day on which the person received the service of the order.
- (2) The action set forth in the preceding paragraph shall be subject to the jurisdiction of the rehabilitation court.
- (3) A judgment rendered with regard to the action set forth in paragraph (1), except where the action is dismissed as unlawful without prejudice, shall approve, change or revoke the order set forth in said paragraph.
- (4) When a judgment approving an order made under paragraph (1) becomes final and binding, the order shall have the same effect as a final and binding judgment. The same shall apply if the action set forth in the preceding paragraph is not filed within the period prescribed in said paragraph or is dismissed without prejudice.
- (5) With regard to a judgment to approve or change the order set forth in paragraph (1), the court in charge of the case, as provided for by Article 259(1) of the Code of Civil Procedure, may declare provisional execution.
- (6) The action set forth in paragraph (1) in which a supervisor empowered to avoid stands as a party shall be concluded if rehabilitation proceedings are closed as a result of an order of revocation of the order of commencement of rehabilitation proceedings becoming final and binding or an order of termination of rehabilitation proceedings being made, and shall be discontinued if rehabilitation proceedings are closed as a result of an order of disconfirmation of the rehabilitation plan, order of discontinuance of rehabilitation proceedings or order of revocation of the rehabilitation plan becoming final and binding.
- (7) The action set forth in paragraph (1) in which a trustee stands as a party, notwithstanding the provision of Article 68(2), shall be concluded if rehabilitation proceedings are closed as a result of an order of revocation of the order of commencement of rehabilitation proceedings becoming final and binding or an order of termination of rehabilitation proceedings being made.

Article 138 (Intervention in Action by Supervisor Empowered to Avoid, etc.)

- (1) Notwithstanding the provision of Article 135(1), a supervisor empowered to avoid, if an action is pending between the other party against whom he/she may exercise a right of avoidance (hereinafter referred to as the "other party" in this Article) and the rehabilitation debtor, may intervene in the action as a party thereto, designating the other party as a defendant, in order to exercise the right of avoidance; provided, however, that this shall apply only where he/she makes a claim pertaining to the right or obligation that is the subject matter of the action.
- (2) Where an action of avoidance in which a supervisor empowered to avoid stands

as a party (including the action set forth in paragraph (1) of the preceding Article and action taken over under the provision of Article 140(1)) is pending, the rehabilitation debtor may intervene in the action as a party thereto, designating the other party as a defendant, in order to make a claim pertaining to the right or obligation that is the subject matter of the action.

- (3) In the case prescribed in the preceding paragraph, the other party, until the conclusion of the oral argument of the action in question, may file another action pertaining to the right or obligation that is the subject matter of said action, designating the rehabilitation debtor as a defendant, by consolidating these actions.
- (4) The provisions of Article 40(1) to (3) of the Code of Civil Procedure shall apply *mutatis mutandis* to the cases referred to in the preceding three paragraphs, and the provisions of Article 43 and Article 47(2) and (3) of said Code shall apply to an application for intervention.

#### Article 139 (Period for Exercise of Right of Avoidance)

A right of avoidance may not be exercised if two years have elapsed since the date of commencement of rehabilitation proceedings (in cases where bankruptcy proceedings have been commenced prior to the date of commencement of rehabilitation proceedings, this period shall start from the date of commencement of bankruptcy proceedings). The same shall apply where 20 years have elapsed since the date of the act to be avoided.

#### Article 140 (Action for Avoidance of Fraudulent Act, etc.)

- (1) A supervisor empowered to avoid or a trustee may take over the action discontinued pursuant to the provision of Article 40-2(1), which is filed by a rehabilitation creditor pursuant to the provision of Article 424 of the Civil Code or action of avoidance or action of objection to an order upholding a request for avoidance under the provisions of the Bankruptcy Act. In this case, a petition for taking over of action may also be filed by the opponent.
- (2) In the case referred to in the preceding paragraph, the opponent's claim for court costs against the rehabilitation creditor or a bankruptcy trustee shall be a common benefit claim.
- (3) If the rehabilitation proceedings are closed after the action prescribed in paragraph (1) was taken over under the provision of said paragraph, the action shall be discontinued except where it has been discontinued pursuant to the provision of paragraph (1) of the following Article.
- (4) In the case referred to in the preceding paragraph or cases where rehabilitation proceedings are closed after the action prescribed in paragraph (1) was discontinued pursuant to the provision of paragraph (1) of the following Article,

the rehabilitation creditor or a bankruptcy trustee shall take over the action. In this case, a petition for taking over of action may also be filed by the opponent.

Article 141 (Discontinuation and Taking Over of Action of Avoidance, etc.)

- (1) Where any of the judicial decisions listed in the following items is revoked, the action specified in the respective items shall be discontinued:
  - (i) A supervision order or a judicial decision under the provision of Article 56(1): Action of avoidance or an action set forth in Article 137(1) in which a supervisor empowered to avoid stands as a party, court proceedings in which a supervisor empowered to avoid has intervened under the provision of Article 138(1), or action prescribed in paragraph (1) of the preceding Article which has been taken over by a supervisor empowered to avoid
  - (ii) An administration order: Action set forth in Article 137(1) in which a trustee stands as a party or action prescribed in paragraph (1) of the preceding Article taken over by a trustee
- (2) Where, after an action is discontinued pursuant to the provision of the preceding paragraph, a supervisor is empowered to exercise a right of avoidance pursuant to the provision of Article 56(1) or a trustee is appointed, such supervisor or trustee shall take over the action. In this case, a petition for taking over of action may also be filed by the opponent.

### **Section 3 Pursuing the Liabilities of Officers of Juridical Persons**

Article 142 (Temporary Restraining Order upon Officer's Property)

- (1) Where an order of commencement of rehabilitation proceedings is made against the rehabilitation debtor who is a juridical person, the court, when it finds it necessary, upon the petition of the rehabilitation debtor, etc. or by its own authority, with regard to a claim for damages based on the liabilities of the rehabilitation debtor's director, executive officer, inspector, auditor, liquidator or any other person equivalent thereto (hereinafter referred to as "officer" in this Article to Article 145), may issue a temporary restraining order upon the property of these officers.
- (2) The court, when it finds urgent necessity even before making a petition for commencement of rehabilitation proceedings, upon the petition of the rehabilitation debtor, etc. (or a provisional administrator if any provisional administrator is appointed) or by its own authority, may issue a temporary restraining order under the provision of the preceding paragraph.
- (3) If no trustee is appointed in the case prescribed in paragraph (1) or if no provisional administrator is appointed in the case prescribed in the preceding paragraph, a rehabilitation creditor may also file a petition set forth in paragraph

- (1) or the preceding paragraph.
- (4) The court may change or revoke a temporary restraining order issued under the provisions of paragraph (1) or paragraph (2)
- (5) An immediate appeal may be filed against a temporary restraining order issued under the provisions of paragraph (1) or paragraph (2) and an order made under the provision of the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (7) Where a judicial decision prescribed in paragraph (5) and a judicial decision on the immediate appeal set forth in said paragraph are made, the written decisions shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10(3) shall not apply.

Article 143 (Petition for Assessment of Claim for Damages)

- (1) Where an order of commencement of rehabilitation proceedings is made against the rehabilitation debtor who is a juridical person, the court, when it finds it necessary, upon the petition of the rehabilitation debtor, etc. or by its own authority, may make an assessment decision on a claim for damages based on its officer's liability.
- (2) In the case prescribed in the preceding paragraph, if no trustee is appointed, a rehabilitation creditor may also file a petition set forth in said paragraph.
- (3) When filing the petition set forth in preceding paragraph (1), the petitioner shall make a prima facie showing of the fact constituting the cause of liability.
- (4) Where the court commences proceedings for assessment by its own authority, it shall make an order to that effect.
- (5) When a petition set forth in paragraph (1) is filed or an order of commencement of proceedings for assessment by the court's own authority is made, for the purpose of interruption of prescription, it shall be deemed that demand by litigation is made.
- (6) The proceedings for assessment (excluding those initiated after an assessment decision set forth in paragraph (1) is made) shall be closed upon the close of rehabilitation proceedings.

Article 144 (Judicial Decision on Assessment of Claim for Damages)

- (1) An assessment decision set forth in paragraph (1) of the preceding Article and a judicial decision to dismiss with prejudice on the merits the petition set forth in said paragraph shall be made by an order stating reasons therefor.
- (2) The court, when making an order set forth in the preceding paragraph, shall interrogate the officer in question.
- (3) Where an assessment decision set forth in paragraph (1) of the preceding

Article is made, the written decision shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10(3) shall not apply.

#### Article 145 (Action Against Assessment Decision)

- (1) A person who disagrees with an assessment decision set forth in Article 143(1) may file an action to oppose within an unextendable period of one month after the day on which the person received the service of the decision.
- (2) The action set forth in the preceding paragraph shall be subject to the jurisdiction of the rehabilitation court.
- (3) In an action set forth in paragraph (1) (excluding an action set forth in the following paragraph), the person who has filed a petition set forth in Article 143(1) shall stand as a defendant if the action is filed by the officer in question, and the officer in question shall stand as a defendant if it is filed by the person who has filed a petition set forth in Article 143(1).
- (4) In an action set forth in paragraph (1) against an assessment decision made by the court's own authority, the rehabilitation debtor, etc. shall stand as a defendant if the action is filed by the officer in question, and the officer in question shall stand as a defendant if it is filed by the rehabilitation debtor, etc.

#### Article 146

- (1) Oral argument for an action set forth in paragraph (1) of the preceding Article may not be commenced until the period set forth in said paragraph has expired.
- (2) If two or more actions set forth in paragraph (1) of the preceding Article are pending concurrently, oral arguments and judicial decisions of these actions shall be made in a consolidated manner. In this case, the provisions of Article 40(1) to (3) of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (3) A judgment rendered with regard to an action set forth in paragraph (1) of the preceding Article, except where the action is dismissed as unlawful without prejudice, shall approve or change the assessment decision.
- (4) A judgment that approves or changes an assessment decision, for the purpose of compulsory execution, shall have the same effect as a judgment to order performance.
- (5) With regard to a judgment that approves or changes an assessment decision, the court in charge of the case, as provided for by Article 259(1) of the Code of Civil Procedure, may declare provisional execution.
- (6) When rehabilitation proceedings are closed, the action set forth in paragraph (1) of the preceding Article in which the rehabilitation debtor, etc. does not stand as a party shall be discontinued. In this case, the provision of Article 68(3) shall apply *mutatis mutandis*.

Article 147 (Effect of Assessment Decision)

If an action set forth in Article 145(1) is not filed within the period set forth in said paragraph or is dismissed without prejudice, the assessment decision shall have the same effect as a final and binding judgment to order performance.

**Section 4 Extinguishment of Security Interests**

Article 148 (Permission for Extinguishment of Security Interests, etc.)

- (1) Where there exist any security interests prescribed in Article 53(1) (hereinafter referred to as "security interest" in this Article, the following Article, and Article 152), at the time of commencement of rehabilitation proceedings, against the rehabilitation debtor's property, if said property is indispensable for the continuation of the rehabilitation debtor's business, the rehabilitation debtor, etc. may file a petition to the court for permission for causing all security interests that exist on said property to be extinguished by paying to the court the amount of money equivalent to the value of said property.
- (2) The petition set forth in the preceding paragraph shall be filed by means of a document stating the following matters:
  - (i) The indication of the property that is the subject matter of the security interest
  - (s)
  - (ii) The value of the property set forth in the preceding item
  - (iii) The indication of the security interest(s) to be extinguished
  - (iv) The amount of claim secured by the security interest(s) set forth in the preceding item
- (3) Where an order of permission set forth in paragraph (1) is made, the written order shall be served, with the document set forth in the preceding paragraph (hereinafter referred to as a "written petition" in this Article and the following Article), upon the person(s) who hold the security interest(s) set forth in item (iii) of said paragraph as stated in said written petition (hereinafter referred to as the "security interest holder(s)" in this Article to Article 153). In this case, the provision of the main clause of Article 10(3) shall not apply.
- (4) A security interest holder may file an immediate appeal against an order of permission made under the provision of paragraph (1).
- (5) Where a judicial decision on the immediate appeal set forth in the preceding paragraph is made, the written decision shall be served upon security interest holder(s). In this case, the provision of the main clause of Article 10(3) shall not apply.
- (6) Where the security interest set forth in paragraph (2)(iii) is a revolving mortgage, if two weeks have elapsed since the day on which the revolving mortgagee received the service made under the provision of paragraph (3), the

principal to be secured by the revolving mortgage shall be fixed.

- (7) The provision of Article 398-20(2) of the Civil Code shall apply mutatis mutandis where a petition for permission set forth in paragraph (1) is withdrawn or the permission set forth in said paragraph is rescinded.

#### Article 149 (Request for Valuation)

- (1) A security interest holder, if he/she has an objection to the value set forth in paragraph (2) (ii) of the preceding Article as stated in the written petition (hereinafter referred to as the "offered price" in Article 151 and Article 152), may make a request, within one month from the day on which he/she received the service of said written petition, for the valuation of the property that is the subject matter of the security interest concerned (hereinafter referred to as the "property" in the following Article).
- (2) The court that has granted the permission set forth in paragraph (1) of the preceding Article, only where there is any unavoidable ground, upon the petition of the security interest holder, may extend the period set forth in the preceding paragraph.
- (3) A case pertaining to a request under the provision of paragraph (1) (hereinafter referred to as a "request for valuation" in this Article to Article 152) shall be subject to the jurisdiction of the rehabilitation court.
- (4) A person who makes a request for valuation shall prepay an amount designated by the court as expenses for the proceedings for the request.
- (5) If prepayment of expenses prescribed in the preceding paragraph is not made, the rehabilitation court shall dismiss without prejudice the request for valuation.

#### Article 150 (Valuation of Property)

- (1) Where a request for valuation is made, the rehabilitation court, except where it dismisses the request without prejudice, shall appoint a valuator and order him/her to value the property.
- (2) In the case referred to in the preceding paragraph, the rehabilitation court, by an order, shall value the property based on the valuation made by a valuator.
- (3) Where there are two or more security interest holders, the order set forth in the preceding paragraph shall be made after the period set forth in paragraph (1) of the preceding Article (in cases where the period has been extended pursuant to the provision of paragraph (2) of said Article, the period as extended; hereinafter referred to as the "period of request" in Article 152(1)) has expired for all security interest holders. In this case, if two or more cases of requests for valuation are pending concurrently, the judicial decisions of these cases shall be made in a consolidated manner.
- (4) The order set forth in paragraph (2) shall also be effective against a security

interest holder who has not made a request for valuation.

- (5) The rehabilitation debtor, etc. and any security interest holder may file an immediate appeal against an order on the request for valuation.
- (6) Where an order on the request for valuation or a judicial decision on the immediate appeal set forth in said paragraph is made, the written order/decision shall be served upon the rehabilitation debtor, etc. and the security interest holder (s). In this case, the provision of the main clause of Article 10(3) shall not apply.

#### Article 151 (Burden of Expenses)

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

#### Article 152 (Payment of Money Equivalent to Value, etc.)

- (1) The rehabilitation debtor, etc. shall pay to the court, by the time limit set by the court, money equivalent to the offered price if no request for valuation is made within the period of request or all requests for valuation are withdrawn or dismissed without prejudice, or shall pay to the court, by said time limit, money equivalent to the value determined by an order set forth in Article 150(2) if said order becomes final and binding.
- (2) The security interest(s) held by security interest holder(s) shall be extinguished at the time when money is paid under the provision of the preceding paragraph.



- (3) Where money is paid under the provision of paragraph (1), a court clerk shall commission cancellation of registration(s) of the security interest(s) extinguished.
- (4) If the rehabilitation debtor, etc. fails to pay money under the provision of paragraph (1), the court shall rescind the permission set forth in Article 148(1).

#### Article 153 (Implementation of Liquidating Distribution)

- (1) Where payment of money prescribed in paragraph (4) of the preceding Article is made, the court, according to a distribution list, shall implement liquidating distribution to security interest holder(s), except in the case prescribed in the following paragraph.
- (2) Where there is only one security interest holder or where there are two or more security interest holders and the money paid pursuant to the provision of paragraph (1) of the preceding Article is sufficient for paying the claims secured by the security interests held by the respective holders and the expenses borne by the rehabilitation debtor pursuant to the provision of Article 151(1), the court shall prepare a statement of delivery of said money, and deliver payment money to the security interest holder(s) and deliver any surplus to the rehabilitation debtor, etc.
- (3) The provisions of Article 85 and Article 88 to Article 92 of the Civil Execution Act (Act No. 4 of 1979) shall apply mutatis mutandis to the procedure for a liquidating distribution set forth in paragraph (1), and the provisions of Article 88, Article 91 and Article 92 of said Act shall apply mutatis mutandis to the procedure for delivery of payment money under the provision of the preceding paragraph.

### **Chapter VII Rehabilitation Plan**

#### **Section 1 Clauses of Rehabilitation Plan**

#### Article 154 (Clauses of Rehabilitation Plan)

- (1) A rehabilitation plan shall specify clauses concerning the following matters:
  - (i) Modification of some or all of the rights of rehabilitation creditors
  - (ii) Payment of common benefit claims and claims with general priorities
  - (iii) The content of known post commencement claims, if there is any
- (2) Where the creditors committee conducts supervision or any other participation in order to secure performance of payment within the payment period specified in a rehabilitation plan, if the rehabilitation debtor bears all or part of the expenses for the committee's supervision or participation, the rehabilitation plan shall specify clauses on such burden of expenses.
- (3) Where permission of the court is granted under the provision of Article 166(1), a rehabilitation plan may specify clauses on the rehabilitation debtor's acquisition of

its shares, clauses on consolidation of its shares, clauses on reduction in the amount of its stated capital or clauses on amendment of its articles of incorporation with regard to the total number of shares that may be issued by the rehabilitation debtor, all of which shall be conducted as provided for in a rehabilitation plan.

- (4) Where permission of the court is granted under the provision of Article 166-2(2), a rehabilitation plan may specify clauses on the solicitation (excluding solicitation for which the matters listed in the items of Article 202(1) of said Act shall be specified; hereinafter the same shall apply in this Chapter) of subscribers for shares for subscription (meaning shares for subscription prescribed in Article 199(1) of the Companies Act, limited to shares with restriction on transfer; hereinafter the same shall apply in this Chapter).

#### Article 155 (Modification of Rights Based on Rehabilitation Plan)

- (1) The content of any modification of rights based on a rehabilitation plan shall be equal between rehabilitation creditors; provided, however, that this shall not apply where any rehabilitation creditor who will suffer detriment has given consent or where equity will not be undermined even if the plan otherwise provides for a small rehabilitation claim or any of the claims listed in Article 84(2) or any other difference in treatment of rehabilitation creditors.
- (2) Notwithstanding the provision of the preceding paragraph, in cases where proof of any consensually-subordinated rehabilitation claim is filed, a fair and equitable difference must be provided in the contents of a rehabilitation plan between persons who hold rehabilitation claims (excluding consensually-subordinated rehabilitation claims) and persons who hold consensually-subordinated rehabilitation claims, while taking into consideration the content of an agreement on the order of priority for receiving a liquidating distribution prescribed in Article 35(4).
- (3) If a debt is to be assumed or the term for a debt is to be extended based on a rehabilitation plan, except where there are special circumstances, the rehabilitation plan shall set a term for such debt not exceeding ten years from the time when an order of confirmation of the rehabilitation plan becomes final and binding.
- (4) With regard to claims for fine, etc. arising prior to the commencement of rehabilitation proceedings, a rehabilitation plan may not provide for reduction and release of debts or any other measures that would affect the rights concerned.

#### Article 156 (General Standards for Modification of Rights)

Clauses for modifying rights of rehabilitation creditors shall provide for general standards for the reduction and release of debts, extension of the term for debts or

any other modification of rights ( in cases where proof of any consensually-subordinated rehabilitation claim is filed, general standards for consensually-subordinated rehabilitation claims shall be included) .

Article 157 (Provisions on Rights of Holders of Filed Rehabilitation Claims, etc.)

- (1) Clauses for modifying rights of rehabilitation creditors shall clearly indicate rights held by holders of filed rehabilitation claims and rehabilitation creditors stated in a written approval or disapproval under the provision of Article 101(3), which are to be modified, and also provide for the content of rights as modified according to the general standards set forth in the preceding Article; provided, however, that this shall not apply to rehabilitation claims prescribed in Article 159 and Article 160(1).
- (2) If there is a right held by a holder of filed rehabilitation claim or rehabilitation creditor, both prescribed in the preceding paragraph, which will not be affected by a rehabilitation plan, such right shall be clearly indicated.

Article 158 (Provisions on Owing of Debts and Provision of Security)

- (1) If a person other than the rehabilitation debtor owes a debt for the purpose of rehabilitation by assuming a debt or becoming a guarantor, a rehabilitation plan shall clearly indicate such person and provide for the content of such debt.
- (2) If the rehabilitation debtor or a person other than the rehabilitation debtor provides security for the purpose of rehabilitation, a rehabilitation plan shall clearly indicate such person who provides security and provide for the content of the security interest.

Article 159 (Provisions on Rehabilitation Claims Not Yet Determined)

If there is a denied/disputed rehabilitation claim for which determination proceedings have not yet been closed, a rehabilitation plan shall provide for appropriate measures for such claim, while taking into consideration the possible outcome of the determination of the rights concerned.

Article 160 (Provisions on Rights of Holder of Right of Separate Satisfaction)

- (1) If there is a person who holds a rehabilitation claim and the part of the claim for which payment cannot be received by exercising a right of separate satisfaction has not yet been determined, a rehabilitation plan shall provide for appropriate measures for enabling such person to exercise rights as a rehabilitation creditor in cases where such part of the claim is determined.
- (2) Where the principal of a revolving mortgage for securing the rehabilitation claim prescribed in the preceding paragraph is fixed, a rehabilitation plan may provide for provisional payment figured by estimate according to the general standards set

forth in Article 156 with regard to the part of the claim secured by such revolving mortgage which exceeds the maximum amount. In this case, the rehabilitation plan shall also provide for measures for settlement to be implemented when the part of the claim for which payment cannot be received by exercising the revolving mortgage has been determined.

Article 161 (Provisions on the Rehabilitation Debtor's Acquisition of Its Shares, etc.)

- (1) If the rehabilitation debtor is a stock company and acquires shares of the rehabilitation debtor itself based on a rehabilitation plan, the following matters shall be provided for in the rehabilitation plan:
  - (i) The number of shares to be acquired by the rehabilitation debtor (in the case of a company with class shares, the classes of shares and the number of shares of each class)
  - (ii) The date on which the rehabilitation debtor is to acquire the shares set forth in the preceding item
- (2) If the rehabilitation debtor is a stock company and consolidates its shares based on a rehabilitation plan, the matters listed in the items of Article 180(2) of the Companies Act shall be provided for in the rehabilitation plan.
- (3) If the rehabilitation debtor is a stock company and reduces the amount of its stated capital based on a rehabilitation plan, the matters listed in the items of Article 447(1) of the Companies Act shall be provided for in the rehabilitation plan.
- (4) If the rehabilitation debtor is a stock company and amends its articles of incorporation based on a rehabilitation plan with regard to the total number of shares that may be issued by the rehabilitation debtor, the content of such amendment shall be provided for in the rehabilitation plan.

Article 162 (Provisions on Solicitation of Subscribers for Shares for Subscription)

When the rehabilitation debtor, who is a stock company, intends to solicit subscribers for shares for subscription with permission of the court under the provision of Article 166-2(2), a rehabilitation plan shall provide for the matters listed in the items of Article 199(1) of the Companies Act.

## **Section 2 Submission of Proposed Rehabilitation Plan**

Article 163 (Period for Submission of Proposed Rehabilitation Plan)

- (1) The rehabilitation debtor, etc., within the period specified by the court after the expiration of the period for filing proofs of claims, shall prepare a proposed rehabilitation plan and submit it to the court.
- (2) The rehabilitation debtor (limited to cases where a trustee is appointed) or a

holder of filed rehabilitation claim may prepare a proposed rehabilitation plan and submit to the court within the period specified by the court.

- (3) The court, upon petition or by its own authority, may extend the period specified thereby pursuant to the provisions of the preceding two paragraphs.

#### Article 164 (Submission of Proposed Rehabilitation Plan in Advance)

- (1) The rehabilitation debtor, etc., notwithstanding the provision of paragraph (1) of the preceding Article, may submit a proposed rehabilitation plan after a petition for commencement of rehabilitation proceedings is filed and before the period for filing proofs of claims expires.
- (2) In the case referred to in the preceding paragraph, a proposed rehabilitation plan may be submitted without providing therein for the matters prescribed in Article 157 and Article 159. In this case, the proposed rehabilitation plan shall be supplemented with clauses on these matters within the period specified by the court after the expiration of the period for filing proofs of claims.

#### Article 165 (Consent of Person Who Owes Debt, etc.)

- (1) A person who intends to submit a proposed rehabilitation plan which provides for the owing of a debt or provision of security prescribed in Article 158 shall obtain consent, in advance, from the person who will owe the debt or provide the security.
- (2) A person who intends to submit a proposed rehabilitation plan which provides for provisional payment figured by estimate set forth in Article 160(2) shall obtain consent, in advance, from the person who holds the revolving mortgage pertaining to such provision.

#### Article 166 (Permission Concerning Clauses on the Rehabilitation Debtor's Acquisition of Its Shares, etc.)

- (1) A person who intends to submit a proposed rehabilitation plan which specifies the clauses prescribed in Article 154(3) shall obtain permission of the court in advance.
- (2) The court may grant the permission set forth in the preceding paragraph only where the rehabilitation debtor who is a stock company is unable to pay its debts in full with its property.
- (3) Where an order of permission set forth in paragraph (1) is made, the written order shall be served upon the person who filed the petition for the permission, and a document stating the gist of the order shall be served upon shareholders, respectively. With regard to the service to shareholders made in this case, the provisions of Article 43(4) and (5) shall apply mutatis mutandis.
- (4) A shareholder may file an immediate appeal against an order of permission

under the provision of paragraph (1).

Article 166-2 (Permission Concerning Clauses on Solicitation of Subscribers for Shares for Subscription)

- (1) A proposed rehabilitation plan which specifies the clauses prescribed in Article 154(4) may be filed only by the rehabilitation debtor.
- (2) The rehabilitation debtor, when he/she intends to submit the proposed rehabilitation plan set forth in the preceding paragraph, shall obtain permission of the court in advance.
- (3) The court may grant the permission set forth in the preceding paragraph only when it finds that the rehabilitation debtor who is a stock company is unable to pay its debts in full with its property and that the solicitation of subscribers for shares for subscription is indispensable for the continuation of the rehabilitation debtor's business.
- (4) The provisions of paragraph (3) and paragraph (4) of the preceding Article shall apply mutatis mutandis where an order of permission set forth in paragraph (2) is made.

Article 167 (Revision of Proposed Rehabilitation Plan)

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

Article 168 (Opinions of the Rehabilitation Debtor's Labor Union, etc.)

The court shall hear opinions of the labor union, etc. with regard to a proposed rehabilitation plan. The same shall apply to a proposed rehabilitation plan as revised under the provision of the preceding Article.

**Section 3 Resolution on Proposed Rehabilitation Plan**

Article 169 (Order to Refer to Resolution)

- (1) Where a proposed rehabilitation plan is submitted, the court shall make an order to refer the proposed rehabilitation plan to a resolution, except in any of the cases listed in the following items:
  - (i) Where the general period for investigation has not yet expired.
  - (ii) Where no report is made by the rehabilitation debtor, etc. at a meeting for reporting the status of property or no written report set forth in Article 125(1) is submitted.
  - (iii) Where the court finds that the proposed rehabilitation plan satisfies any of

- the requirements listed in the items of Article 174(2) (excluding item (iii)).
- (iv) Where the court discontinues rehabilitation proceedings pursuant to the provision of Article 191(ii).
- (2) The court, when making an order to refer to a resolution set forth in the preceding paragraph, shall specify a method available to rehabilitation creditors who may exercise voting rights (hereinafter referred to as "voting right holders") for exercising their voting rights, and set a time limit for giving a notice to the court in the case of diverse exercise of a voting right under the provision of Article 172(2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article). In this case, any of the following methods shall be designated as the method for exercising a voting right:
- (i) The method of exercising a voting right on the date of a creditors meeting
  - (ii) The method of exercising a voting right by voting by document, etc. (meaning voting by document or any other means specified by the Rules of the Supreme Court) within a period specified by the court
  - (iii) The method of exercising a voting right by either of the methods listed in the preceding two items as chosen by voting right holders. In this case, the last day of the period set forth in the preceding item shall precede the date of a creditors meeting set forth in item (i).
- (3) The court, when it has made an order to refer to a resolution set forth in paragraph (1), shall make a public notice of the time limit prescribed in the first sentence of the preceding paragraph and give a notice of said time limit and the contents of the proposed rehabilitation plan or the gist thereof to the persons prescribed in the main clause of Article 115(1) (excluding those prescribed in paragraph (2) of said Article).
- (4) The court, when it has designated either of the methods set forth in paragraph (2)(ii) or (iii) as the method for exercising a voting right, shall make a public notice to that effect, and shall give a notice to voting right holders that voting by document, etc. prescribed in item (ii) of said paragraph shall be allowed only within a period specified by the court.
- (5) Where the court has designated the method set forth in paragraph (2)(ii) as the method for exercising a voting right, if a person who may file a petition set forth in the first sentence of Article 114 has filed, within the period set forth in the preceding paragraph, a petition for convocation of a creditors meeting aimed for adopting a resolution on a proposed rehabilitation plan, the court shall rescind the designation of the method for exercising a voting right, and designate the method set forth in paragraph (2)(i) or (iii) instead.

Article 169-2 (Restriction on Exercise of Voting Rights by Bondholders, etc.)

- (1) A person who holds a company bond or a claim specified in each item of Article

120-2(6) (hereinafter referred to as "company bond, etc." in this Article), which is a rehabilitation claim, if there is any bond administrator or person set forth in the respective items of said paragraph (hereinafter referred to as a "bond administrator, etc." in this Article) for said company bond, etc., may exercise his/her voting right based on said company bond, etc., only in any of the cases listed in the following items:

- (i) Where the person has filed a proof of rehabilitation claim or received a change of the name of the holder of filed claim with regard to the company bond, etc. in question.
  - (ii) Where the bond administrator, etc. has filed a proof of rehabilitation claim with regard to the company bond, etc. in question, and before an order to refer a proposed rehabilitation plan to a resolution is made, has made an offer to the court to the effect that he/she has the intention of exercising his/her voting right based on said company bond, etc. (including cases where the bond administrator, etc., with regard to a company bond, etc. which is a rehabilitation claim and for which such an offer is made, has received a change of the name of the potential voter under the provision of the following paragraph).
- (2) A person who has acquired a company bond, etc. which is a rehabilitation claim and for which an offer prescribed in item (ii) of the preceding paragraph is made may receive a change of the name of the potential voter.
- (3) In the following cases, a person who holds a company bond, etc. set forth in paragraph (1) (limited to one who falls under any of the items of said paragraph), notwithstanding the provision of said paragraph, may not exercise his/her voting right for a resolution of the proposed rehabilitation plan in question:
- (i) Where, with regard to the exercise of a voting right for a resolution on a proposed rehabilitation plan based on a company bond, etc. which is a rehabilitation claim, a resolution at a bondholders meeting set forth in Article 706(1) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 54-7 of the Medical Care Act) or resolution at a social medical care corporation bond holders meeting, resolution at an investment corporation bond holders meeting set forth in Article 139-9(4) of the Act on Investment Trust and Investment Corporation, resolution at a bondholders meeting set forth in Article 61-7(4) of the Insurance Business Act, or resolution at a specified company bond holders meeting set forth in Article 127(4) of the Act on Securitization of Assets is adopted.
  - (ii) Where there exists a provision set forth in the proviso to Article 706(1) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 54-7 of the Medical Care Act), provision set forth in the proviso to Article 139-9(4) of the Act on Investment Trust and Investment Corporation, provision set forth in the proviso to Article 61-7(4) of the Insurance Business Act, or



where a notice set forth in the proviso to Article 127(4) of the Act on Securitization of Assets is given.

Article 170 (Method of Determination of the Amount of Voting Right Where Creditors Meeting Is to Be Held, etc.)

- (1) Where the court designates either of the methods set forth in Article 169(2) (i) or (iii) as the method for exercising a voting right, the rehabilitation debtor, etc. or a holder of filed rehabilitation claim may make an objection on the date of a creditors meeting; provided, however, that this shall not apply to a voting right held by a holder of filed rehabilitation claim the amount of which is determined pursuant to the provision of Article 104(1).
- (2) In the case prescribed in the main clause of the preceding paragraph, voting right holders may exercise their voting rights in accordance with the amount specified in each of the following items for the categories listed in the respective items:
  - (i) A holder of filed rehabilitation claim who holds a voting right the amount of which is determined pursuant to the provision of Article 104(1): The amount thus determined
  - (ii) A holder of filed rehabilitation claim who holds a voting right without objection set forth in the main clause of the preceding paragraph: The amount filed
  - (iii) A holder of filed rehabilitation claim who holds a voting right subject to objection set forth in the main clause of the preceding paragraph: The amount specified by the court; provided, however, that such a holder of filed rehabilitation claim may not exercise his/her voting right if the court has decided not to allow him/her to exercise the voting right.
- (3) The court, upon the petition of an interested person or by its own authority, may change the order made under the provision of item (iii) of the preceding paragraph at any time.

Article 171 (Method of Determination of the Amount of Voting Right Where Creditors Meeting Is Not to Be Held, etc.)

- (1) Where the court designates the method set forth in Article 169(2) (ii) as the method for exercising a voting right, voting right holders may exercise their voting rights in accordance with the amount specified in each of the following items for the categories listed in the respective items:
  - (i) A holder of filed rehabilitation claim who holds a voting right the amount of which is determined pursuant to the provision of Article 104(1): The amount thus determined
  - (ii) A holder of filed rehabilitation claim (excluding one set forth in the preceding

item): The amount specified by the court; provided, however, that such a holder of filed rehabilitation claim may not exercise his/her voting right if the court has decided not to allow him/her to exercise the voting right.

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

#### Article 172 (Methods of Exercising Voting Rights, etc.)

- (1) Voting right holders may exercise their voting rights by proxy.
- (2) Each voting right holder may exercise his/her voting right diversely. In this case, he/she shall give a notice to the court in writing to that effect by the time limit prescribed in the first sentence of Article 169(2).
- (3) The provision of the preceding paragraph shall apply mutatis mutandis where the proxy prescribed in paragraph (1) diversely exercises a voting right vested therein (if the proxy has his/her own voting right, such voting right shall be included).

#### Article 172-2 (Determination of Voting Right Holders as of Record Date)

- (1) The court, when it finds it appropriate, upon making an order to refer a proposed rehabilitation plan to a resolution, may designate a certain day (hereinafter referred to as the "record date" in this Article) and determine the rehabilitation creditors recorded in the schedule of rehabilitation creditors as of the record date as voting right holders.
- (2) The court shall make a public notice of the record date. In this case, the record date shall be on or after the day on which two weeks elapsed since the date of public notice.

#### Article 172-3 (Requirements for Approval of Proposed Rehabilitation Plan)

- (1) In order to approve a proposed rehabilitation plan, both of the following consents shall be required:
  - (i) Consent of the majority of voting right holders (limited to those who attended a creditors meeting or voted by voting by document, etc. prescribed in Article 169 (2) (ii))
  - (ii) Consent of persons who hold voting rights that account for not less than half of the total amount of voting rights held by voting right holders
- (2) Where proof of any consensually-subordinated rehabilitation claims is filed, a resolution on a proposed rehabilitation plan shall be adopted separately by holders of rehabilitation claims (excluding consensually-subordinated rehabilitation claims; hereinafter the same shall apply in this Article, Article 172-5(4) and Article 174-2 (1) and (2)) and by holders of consensually-subordinated rehabilitation claims; provided, however, that this shall not apply where there is no holder of

consensually-subordinated rehabilitation claim who holds a voting right.

- (3) Even in the case prescribed in the main clause of the preceding paragraph, the court, when it finds it appropriate, may make an order to the effect that a resolution shall be adopted collectively by holders of rehabilitation claims and holders of consensually-subordinated rehabilitation claims.
- (4) The court may revoke the order set forth in the preceding paragraph until it makes an order to refer a proposed rehabilitation plan to a resolution.
- (5) Where an order is made under the provision of the preceding two paragraphs, the written order shall be served upon voting right holders; provided, however, that this shall not apply where the order is rendered on the date of a creditors meeting.
- (6) Notwithstanding the provision of paragraph (1), in order to approve a proposed rehabilitation plan in cases where a resolution on the proposed rehabilitation plan shall be adopted separately by holders of rehabilitation claims and holders of consensually-subordinated rehabilitation claims, pursuant to the provision of the main clause of paragraph (2), both of the consents listed in the items of paragraph (1) shall be required among both holders of rehabilitation claims and holders of consensually-subordinated rehabilitation claims.
- (7) For the purpose of application of the provisions of paragraph (1) (i) or the preceding paragraph in cases where any voting right holder has exercised only part of his/her voting right pursuant to the provision of Article 172(2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article) in order to consent to a proposed rehabilitation plan (excluding one who has not exercised the remaining part of the voting right), for each such voting right holder, the number of voting right holders prescribed in paragraph (1) (i) shall be increased by one and the number of voting right holders who have exercised voting rights to consent to the proposed rehabilitation plan shall be increased by one-half, respectively.

#### Article 172-4 (Modification of Proposed Rehabilitation Plan)

Where either of the methods set forth in Article 169(2) (i) or (iii) is designated as the method for exercising a voting right, the person who has submitted a proposed rehabilitation plan, with permission of the court, may modify the proposed rehabilitation plan at a creditors meeting as long as it does not adversely affect rehabilitation creditors.

#### Article 172-5 (Continuance of the Date of Creditors Meeting)

- (1) Where either of the methods set forth in Article 169(2) (i) or (iii) has been designated as the method for exercising a voting right on a proposed rehabilitation plan, and the proposed rehabilitation plan has not been approved, if any of the consents listed in the following items is obtained, the court, upon the petition of

the person who has submitted the proposed rehabilitation plan or by its own authority, shall designate and render the further date; provided, however, that this shall not apply where it is obvious that the proposed rehabilitation plan is unlikely to be approved on the further date:

- (i) Any of the consents set forth in the items of Article 172-3(1)
  - (i) Consent to the continuance of the majority of voting right holders present at the creditors meeting on the date set therefor, whose voting rights collectively account for more than half of the total amount of voting rights held by the voting right holders present
- (2) In the case referred to in the main clause of the preceding paragraph, approval of a proposed rehabilitation plan set forth in the main clause of said paragraph shall be made within two months from the date of the first creditors meeting to which the proposed rehabilitation plan has been referred for a resolution.
  - (3) The court, when it finds it necessary, upon the petition of the person who has submitted a proposed rehabilitation plan or by its own authority, may extend the period set forth in the preceding paragraph; provided, however, that an extension shall not exceed one month.
  - (4) Where a resolution on a proposed rehabilitation plan shall be adopted separately by holders of rehabilitation claims and holders of consensually-subordinated rehabilitation claims pursuant to the provision of the main clause of Article 172-3 (2), the provisions of the preceding three paragraphs shall apply only if the consent listed in either item of paragraph (1) is obtained among both holders of rehabilitation claims and holders of consensually-subordinated rehabilitation claims.

#### Article 173 (Continuation in Existence of Juridical Person Where Proposed Rehabilitation Plan Is Approved)

- (1) Where a rehabilitation proceeding is commenced against the rehabilitation debtor that is a juridical person in liquidation or special liquidation or a judicial person against which bankruptcy proceedings have been commenced, if a proposed rehabilitation plan is approved, the juridical person may continue to exist, if it is an incorporated association, by complying with the provisions concerning the amendment of articles of incorporation, or if it is an incorporated foundation, by obtaining approval of the competent government agency.
- (2) The authority of the competent government agency prescribed in the preceding paragraph, as provided for by Cabinet Order, may be delegated in whole or part to any administrative agency of the State.
- (3) The affairs under the authority of the competent government agency prescribed in paragraph (1), as provided for by Cabinet Order, may be administered in whole or part by the governor or any other executive agency of a prefecture.

#### **Section 4 Confirmation of Rehabilitation Plan, etc.**

##### Article 174 (Order of Confirmation or Disconfirmation of Rehabilitation Plan)

- (1) Where a proposed rehabilitation plan is approved, the court shall make an order of confirmation of the rehabilitation plan, except in any of the cases set forth in the following paragraph.
- (2) In any of the cases set forth in the following items, the court shall make an order of disconfirmation of the rehabilitation plan:
  - (i) Where the rehabilitation proceedings or rehabilitation plan contravene provisions of any Act and such defect cannot be corrected; provided, however, that this shall not apply where rehabilitation proceedings contravene provisions of any Act but such contravention is a minor one.
  - (ii) Where the rehabilitation plan is unlikely to be executed.
  - (iii) Where the resolution on the rehabilitation plan has been adopted by unlawful means.
  - (iv) Where the resolution on the rehabilitation plan is contrary to the common interests of rehabilitation creditors.
- (3) The persons prescribed in the main clause of Article 115(1) and the labor union, etc. may state their opinions with regard to whether or not the proposed rehabilitation plan should be approved.
- (4) Where an order of confirmation or disconfirmation of the rehabilitation plan is made, a document stating the main text of the order and the gist of the reasons attached thereto shall be served upon the persons prescribed in the main clause of Article 115(1).
- (5) In the case prescribed in the preceding paragraphs, the labor union, etc. shall be given a notice to the effect that the order set forth in said paragraph is made.

##### Article 174-2 (Special Provisions on Approval Where Consensually-Subordinated Rehabilitation Claims Are Filed, etc.)

- (1) Where a resolution on a proposed rehabilitation plan shall be adopted separately by holders of rehabilitation claims and holders of consensually-subordinated rehabilitation claims pursuant to the provision of the main clause of Article 172-3 (2), even if the proposed rehabilitation plan is not approved due to the fact that either of the consents listed in the items of paragraph (1) of said Article has not been obtained among either of the holders of rehabilitation claims or holders of consensually-subordinated rehabilitation claims, the court may make an order of confirmation of the rehabilitation plan by modifying the proposed rehabilitation plan, and in the interest of the holders of either category of claims among whom consent has not been obtained, by specifying a clause that the holders of such

claims shall be paid the amount of distribution that they are expected to receive if bankruptcy proceedings are commenced, or any other equivalent clauses to protect the holders of these claims in a fair and equitable manner.

- (2) Where a resolution on a proposed rehabilitation plan shall be adopted separately by holders of rehabilitation claims and holders of consensually-subordinated rehabilitation claims pursuant to the provision of the main clause of Article 172-3 (2), if it is obvious that for a proposed rehabilitation plan, the consent listed in either item of paragraph (1) of said Article will not be obtained among either of the holders of rehabilitation claims or holders of consensually-subordinated rehabilitation claims, the court, upon the petition of the person who is to prepare a proposed rehabilitation plan, may permit that a proposed rehabilitation plan will be prepared by specifying, in advance, the clauses prescribed in the preceding paragraph in the interest of the holders of the category of claims among whom consent obviously will not be obtained. In this case, the holders of the category of claims among whom consent obviously will not be obtained may not exercise their voting rights to adopt a resolution on the proposed rehabilitation plan.
- (3) When the petition set forth in the preceding paragraph is filed, the court shall hear opinions of the petitioner and at least one of the holders of the category of claims among whom consent obviously will not be obtained.

Article 175 (Immediate Appeal Against Order of Confirmation of Rehabilitation Plan, etc.)

- (1) An immediate appeal may be filed against an order of confirmation or disconfirmation of the rehabilitation plan.
- (2) Notwithstanding the provision of the preceding paragraph, where the rehabilitation debtor, at the time of commencement of rehabilitation proceedings, is unable to pay his/her debts in full with his/her property with regard to claims that take preference over consensually-subordinated rehabilitation claims, the holder of a consensually-subordinated rehabilitation claim may not file an immediate appeal except on the grounds that the contents of a rehabilitation plan are in violation of Article 155(1) with regard to the relationships between the holders of consensually-subordinated rehabilitation claims.
- (3) A rehabilitation creditor who held no voting right, when filing an immediate appeal set forth in paragraph (1), shall make a prima facie showing to the effect that he/she is a rehabilitation creditor.
- (4) The provision of the preceding paragraph shall apply mutatis mutandis to an appeal against an order under the provision of Article 336 of the Code of Civil Procedure and to a petition for permission for appeal against an order under the provision of Article 337 of said Code, both provisions applied mutatis mutandis pursuant to Article 18, which are filed against a judicial decision on the immediate

appeal set forth in paragraph (1).

Article 176 (Time When Rehabilitation Plan Becomes Effective)

A rehabilitation plan shall become effective when an order of confirmation becomes final and binding.

Article 177 (Scope of Effect of Rehabilitation Plan)

- (1) A rehabilitation plan shall be effective in the interest of and against the rehabilitation debtor, all rehabilitation creditors, and any person who assumes a debt or provides security for the purpose of rehabilitation.
- (2) A rehabilitation plan shall not affect any security interests prescribed in Article 53(1) held by holders of rights of separate satisfaction, any rights held by rehabilitation creditors against the rehabilitation debtor's guarantor or any other person who owes debts jointly with the rehabilitation debtor, and any security provided by persons other than the rehabilitation debtor in the interest of rehabilitation creditors.

Article 178 (Discharge from Rehabilitation Claims)

When an order of confirmation of the rehabilitation plan becomes final and binding, the rehabilitation debtor shall be discharged from his/her liabilities for all rehabilitation claims, except for those for the rights approved pursuant to the provisions of the rehabilitation plan or provisions of this Act; provided, however, that this shall not apply to any claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings.

Article 179 (Modification of Rights of Holders of Filed Rehabilitation Claims, etc.)

- (1) When an order of confirmation of the rehabilitation plan becomes final and binding, the rights of holders of filed rehabilitation claims and those of rehabilitation creditors who hold rehabilitation claims stated in a statement of approval or disapproval pursuant to the provision of Article 101(3) shall be modified as provided for in the rehabilitation plan.
- (2) Holders of filed rehabilitation claims and rehabilitation creditors prescribed in the preceding paragraph, only where their claims have been determined, may exercise their rights approved pursuant to the provisions of the rehabilitation plan.

Article 180 (Entry of Clauses of Rehabilitation Plan in Schedule of Rehabilitation Creditors)

- (1) When an order of confirmation of the rehabilitation plan becomes final and binding, a court clerk shall make an entry of the clauses of the rehabilitation plan in the schedule of rehabilitation creditors.

- (2) In the case referred to in the preceding paragraph, with regard to the rights approved pursuant to the provisions of the rehabilitation plan based on rehabilitation claims, the relevant entries in the schedule of rehabilitation creditors shall have the same effect as a final and binding judgment against the rehabilitation debtor and any person who assumes a debt or provides security for the purpose of rehabilitation.
- (3) In the case referred to in paragraph (1), a person who holds a right set forth in the preceding paragraph that is intended to seek payment of money or any other performance may enforce compulsory execution based on the relevant entries in the schedule of rehabilitation creditors against the rehabilitation debtor and any person who has assumed a debt for the purpose of rehabilitation; provided, however, that this shall not preclude the application of the provisions of Article 452 and Article 453 of the Civil Code.

Article 181 (Treatment of Rehabilitation Claims Not Filed, etc.)

- (1) When an order of confirmation of the rehabilitation plan becomes final and binding, the following rehabilitation claims (excluding consensually-subordinated rehabilitation claims in cases where no proof of consensually-subordinated rehabilitation claim is filed) shall be modified according to the general standards set forth in Article 156:
  - (i) A rehabilitation claim for which the rehabilitation creditor was unable to file a proof within the period for filing proofs of claims due to grounds not attributable thereto, where such grounds have not been extinguished before the order prescribed in Article 95(4) is made
  - (ii) A rehabilitation claim that has arisen after the order set forth in the preceding item is made
  - (iii) In the case prescribed in Article 101(3), a rehabilitation claim that the rehabilitation debtor has not stated under the provision of Article 101(3)
- (2) With regard to a right as modified under the provision of item (iii) of the preceding paragraph, until the payment period specified in the rehabilitation plan expires (or until payment based on the rehabilitation plan is completed or the rehabilitation plan is revoked, if these events occur prior to the expiration of said period), it is not allowed to make or receive payment or conduct any other act to cause the right to be extinguished (excluding a release).
- (3) Where an order of confirmation of the rehabilitation plan becomes final and binding, the provision of the preceding paragraph shall also apply to a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings.

Article 182 (Exercise of Rights by Holder of Right of Separate Satisfaction Based on Rehabilitation Plan)



Where a rehabilitation creditor holds a security interest prescribed in Article 53 (1), only if the part of the claim for which payment cannot be received by exercising the right of separate satisfaction is determined, he/she may exercise, with regard to such part of the claim, rights approved pursuant to the provisions of the confirmed rehabilitation plan or rights as modified pursuant to the provision of paragraph (1) of the preceding Article; provided, however, that if the security interest in question is a revolving mortgage and the rehabilitation plan provides for provisional payment figured by estimate and measures for settlement under the provision of Article 160 (2), these provisions shall prevail.

Article 183 (The Rehabilitation Debtor's Acquisition of Its Shares Based on Rehabilitation Plan, etc.)

- (1) If a rehabilitation plan specifies, pursuant to the provision of Article 154(3), clauses on the rehabilitation debtor's acquisition of its shares, the rehabilitation debtor shall acquire the shares set forth in Article 161(1) (i) on the date set forth in Article 161(1) (ii) as provided for in the rehabilitation plan confirmed.
- (2) If a rehabilitation plan specifies, pursuant to the provision of Article 154(3), clauses on the consolidation of shares, the rehabilitation debtor may consolidate its shares as provided for in the rehabilitation plan confirmed. In this case, the provisions of Article 116 and Article 117 of the Companies Act shall not apply.
- (3) In the case referred to in the preceding paragraph, a case pertaining to a petition for permission set forth in Article 234(2) of the Companies Act as applied mutatis mutandis pursuant to Article 235(2) of said Act shall be subject to the jurisdiction of the rehabilitation court.
- (4) If a rehabilitation plan specifies, pursuant to the provision of Article 154(3), clauses on the reduction of the amount of stated capital, the rehabilitation debtor may reduce the amount of its stated capital as provided for in the rehabilitation plan confirmed. In this case, the provisions of Article 449 and Article 740 of the Companies Act shall not apply.
- (5) In the case referred to in the preceding paragraph, notwithstanding the provisions of Article 828(1) (v) and (2) (v) of the Companies Act, no action may be filed to seek invalidation of the reduction of the amount of stated capital.
- (6) If a rehabilitation plan specifies, pursuant to the provision of Article 154(3), clauses on the amendment of the articles of incorporation with regard to the total number of shares that may be issued by the rehabilitation debtor, the articles of incorporation shall be amended as provided for in the rehabilitation plan when an order of confirmation of the rehabilitation plan becomes final and binding.
- (7) Where the consolidation of shares, reduction in the amount of stated capital or amendment of the articles of incorporation, as provided for in the rehabilitation plan confirmed, is conducted pursuant to the provisions of paragraph (2),

paragraph (4) or the preceding paragraph, the written application for registration of these matters shall be accompanied by a transcript or extract of a written order of confirmation of the rehabilitation plan.

Article 183-2 (Where Rehabilitation Plan Specifies Clauses on Solicitation of Subscribers for Shares for Subscription)

- (1) If a rehabilitation plan specifies, pursuant to the provision of Article 154(4), clauses on the solicitation of subscribers for shares for subscription, notwithstanding the provision of Article 199(2) of the Companies Act, the subscription requirements prescribed in Article 199(2) of said Act may be specified by a decision of directors (or by a resolution of the board of directors in cases where the rehabilitation debtor is a company with board of directors). In this case, the provisions of Article 199(4) and Article 204(2) of said Act shall not apply.
- (2) The provisions of Article 201(3) to (5) of the Companies Act shall apply mutatis mutandis in the case referred to in the preceding paragraph.
- (3) The written application for registration of modification by reason of the solicitation of subscribers for shares for subscription set forth in paragraph (1) shall be accompanied by a transcript or extract of a written order of confirmation of the rehabilitation plan.

Article 184 (Loss of Effect of Stayed Procedures or Proceedings)

When an order of confirmation of the rehabilitation plan becomes final and binding, the procedures or proceedings stayed pursuant to the provision of Article 39 (1) shall cease to be effective; provided, however, that this shall not apply to the procedures or proceedings continued pursuant to the provision of Article 39(2).

Article 185 (Effect of Entries in Schedule of Rehabilitation Creditors Upon Order of Disconfirmation Becoming Final and Binding)

- (1) When an order of disconfirmation of the rehabilitation plan becomes final and binding, the entries in the schedule of rehabilitation creditors with regard to rehabilitation claims determined shall have the same effect as a final and binding judgment against the rehabilitation debtor; provided, however, that this shall not apply where the rehabilitation debtor makes an objection pursuant to the provisions of Article 102(2) or Article 103(4).
- (2) In the case referred to in the preceding paragraph, a rehabilitation creditor may enforce compulsory execution against the rehabilitation debtor based on the entries in the schedule of rehabilitation creditors.

**Chapter VIII Procedures after Confirmation of Rehabilitation Plan**

Article 186 (Execution of Rehabilitation Plan)

- (1) When an order of confirmation of the rehabilitation plan becomes final and binding, the rehabilitation debtor, etc. shall promptly execute the rehabilitation plan.
- (2) In the case prescribed in the preceding paragraph, if any supervisor is appointed, the supervisor shall supervise the execution of the rehabilitation plan by the rehabilitation debtor.
- (3) The court, when it finds it necessary in order to ensure the execution of the rehabilitation plan, shall order the rehabilitation debtor or any person who assumes a debtor or provides security for the purpose of rehabilitation to provide reasonable security in the interest of the following persons:
  - (i) A person who has rights approved pursuant to the provisions of the rehabilitation plan or provisions of this Act
  - (ii) A person who holds a denied/disputed rehabilitation claim for which determination proceedings have not yet been closed
  - (iii) A person who holds a rehabilitation claim where the part of the claim for which payment cannot be received by exercising a right of separate satisfaction has not yet been determined
- (4) The provisions of Article 76, Article 77, Article 79 and Article 80 of the Code of Civil Procedure shall apply mutatis mutandis to the security set forth in the preceding paragraph.

Article 187 (Modification of Rehabilitation Plan)

- (1) If, after an order of confirmation of the rehabilitation plan is made, the need to modify any matters specified in the rehabilitation plan arises due to unavoidable reasons, the court, only prior to the close of rehabilitation proceedings, upon the petition of the rehabilitation debtor, a trustee, supervisor or holder of filed rehabilitation claim, may modify the rehabilitation plan.
- (2) Where a petition is filed pursuant to the provision of the preceding paragraph for any modification of a rehabilitation plan that is found to adversely affect rehabilitation creditors, the provisions concerning the procedure to be performed upon the submission of a proposed rehabilitation plan shall apply mutatis mutandis; provided, however, that it shall not be required to have rehabilitation creditors who will not be adversely affected by the modification of the rehabilitation plan participate in the modification procedure, and those who do not exercise their voting rights on the proposed modification (excluding those who attended the creditors meeting aimed for adopting a resolution on the proposed modification) and have consented to the initial rehabilitation plan shall be deemed to consent to the proposed modification.

- (3) The provisions of Article 175 and Article 176 shall apply mutatis mutandis where an order of modification of the rehabilitation plan is made.

#### Article 188 (Termination of Rehabilitation Proceedings)

- (1) The court, when an order of confirmation of the rehabilitation plan becomes final and binding, shall make an order of termination of rehabilitation proceedings, except where a supervisor or trustee is appointed.
- (2) Where a supervisor is appointed, the court, when the rehabilitation plan has been executed or three years have elapsed since an order of confirmation of the rehabilitation plan became final and binding, upon the petition of the rehabilitation debtor or the supervisor or by its own authority, shall make an order of termination of rehabilitation proceedings.
- (3) Where a trustee is appointed, the court, when the rehabilitation plan has been executed or it has found that the rehabilitation plan will surely be executed, upon the petition of the rehabilitation debtor or the trustee or by its own authority, shall make an order of termination of rehabilitation proceedings.
- (4) A supervision order and administration order shall cease to be effective when an order of termination of rehabilitation proceedings is made.
- (5) The court, when it has made an order of termination of rehabilitation proceedings, shall make a public notice of the main text of the order and the gist of the reasons attached thereto.

#### Article 189 (Revocation of Rehabilitation Plan)

- (1) Where an order of confirmation of the rehabilitation plan becomes final and binding, if any of the grounds set forth in the following items exist, the court, upon the petition of a rehabilitation creditor, may make an order of revocation of the rehabilitation plan:
  - (i) The rehabilitation plan has been established by unlawful means.
  - (ii) The rehabilitation debtor, etc. has neglected in implementing the rehabilitation plan.
  - (iii) The rehabilitation debtor has violated the provisions of Article 41(1) or Article 42(1) or conducted any act set forth in Article 54(2) without obtaining a supervisor's consent prescribed in Article 54(2).
- (2) A petition set forth in the preceding paragraph on any of the grounds listed in item (i) of said paragraph may not be filed if a rehabilitation debtor creditor has alleged the respective grounds set forth in said item in an immediate appeal against an order of confirmation of the rehabilitation plan or has failed to allege the grounds while knowing them, if one month has elapsed since a rehabilitation creditor became aware of the existence of the respective grounds set forth in said item, or if two years have elapsed since an order of confirmation of the

rehabilitation plan became final and binding.

- (3) A petition set forth in paragraph (1) on the grounds set forth in item (ii) of said paragraph may be filed only by a rehabilitation creditor who holds a right that accounts for one-tenth or more of the value, as determined by the court, of all rights approved pursuant to the provisions of the rehabilitation plan (excluding the parts of rights already performed), and has not received performance in whole or part of said right that is due.
- (4) The court, when it has made an order of revocation of the rehabilitation plan, shall immediately serve the written order upon the person who filed the petition and the rehabilitation debtor, etc., and make a public notice of the main text of the order and the gist of the reasons attached thereto.
- (5) An immediate appeal may be filed against a judicial decision on the petition set forth in paragraph (1).
- (6) An order set forth in paragraph (4) shall not become effective unless it becomes final and binding.
- (7) Where an order set forth in paragraph (4) becomes final and binding, any rehabilitation claim modified by the rehabilitation plan shall be restored to its original state; provided, however, that this shall not affect any rights acquired by rehabilitation creditors based on the rehabilitation plan.
- (8) The provision of Article 185 shall apply mutatis mutandis where an order set forth in paragraph (4) becomes final and binding, and the provision of paragraph (4) of the preceding Article shall apply mutatis mutandis where an order set forth in paragraph (4) becomes final and binding prior to the close of rehabilitation proceedings.

Article 190 (Where Order of Commencement of Bankruptcy Proceedings or Order of Commencement of Additional Rehabilitation Proceedings Is Made)

- (1) Where, prior to the complete implementation of the rehabilitation plan, an order of commencement of bankruptcy proceedings or order of commencement of additional rehabilitation proceedings is made against the rehabilitation debtor, any rehabilitation claim modified by the rehabilitation plan shall be restored to its original state; provided, however, that this shall not affect any rights acquired by rehabilitation creditors based on the rehabilitation plan.
- (2) The provision of Article 185 shall apply mutatis mutandis in the case referred to in the preceding paragraph.
- (3) In the bankruptcy proceedings based on an order of commencement of bankruptcy proceedings set forth in paragraph (1), the amount of a bankruptcy claim that has been a rehabilitation claim shall be the amount obtained by deducting any amount paid based on the rehabilitation plan from the initial amount of the rehabilitation claim.

- (4) In the bankruptcy proceedings set forth in the preceding paragraph, even if any amount is paid for a bankruptcy claim set forth in paragraph (1) based on the rehabilitation plan set forth in said paragraph, the initial amount of the rehabilitation claim shall be deemed to be the amount of the claim that may enter into the procedure for a liquidating distribution, and the basis for calculating the percentage of distribution shall be determined by adding such amount paid to the bankruptcy estate; provided, however, that the bankruptcy creditor who holds such bankruptcy claim may not receive a liquidating distribution until any other bankruptcy creditor with the same priority as his/hers receives a liquidating distribution at the same proportion as he/she has received payment.
- (5) When an order of commencement of bankruptcy proceedings set forth in paragraph (1) is made, the provision of security conducted by the rehabilitation debtor for a rehabilitation creditor after the close of rehabilitation proceedings shall cease to be effective if it is not based on the rehabilitation plan.
- (6) In additional rehabilitation proceedings, a rehabilitation creditor, even after receiving any payment of his/her rehabilitation claim based on the rehabilitation plan set forth in paragraph (1), may participate in the rehabilitation proceedings with regard to the whole amount of the claim as of the time before receiving such payment.
- (7) In additional rehabilitation proceedings, a rehabilitation creditor who participates in the rehabilitation proceedings pursuant to the provision of the preceding paragraph may not receive payment until any other rehabilitation creditor with the same priority as his/hers receives payment at the same proportion as he/she has received payment.
- (8) In additional rehabilitation proceedings, a rehabilitation creditor who participates in the rehabilitation proceedings pursuant to the provision of paragraph (6) may not exercise his/her voting right with regard to the part of the claim that he/she has received payment based on the rehabilitation plan set forth in paragraph (1).
- (9) In additional rehabilitation proceedings, common benefit claims in the previous rehabilitation proceedings shall be deemed to be common benefit claims.

## **Chapter IX Discontinuance of Rehabilitation Proceedings**

### **Article 191 (Discontinuance of Proceedings Before Confirmation of Rehabilitation Plan)**

In any of the cases listed in the following items, the court, by its own authority, shall make an order of discontinuance of rehabilitation proceedings:

- (i) Where it has become obvious that a proposed rehabilitation plan worthy to be referred to a resolution is unlikely to be prepared.

- (ii) Where no proposed rehabilitation plan is submitted within the period specified by the court or any extension thereof, or all proposed rehabilitation plans submitted within such period or extension are not worthy to be referred to a resolution.
- (iii) Where a proposed rehabilitation plan is rejected, or where a further date for a creditors meeting is designated pursuant to the provisions of the main clause of Article 172-5(1) and paragraph (4) of said Article, and the proposed rehabilitation plan is not approved within the period that conforms to the provisions of paragraph (2) and paragraph (3) of said Article.

#### Article 192

- (1) If, after the period for filing proofs of claims has expired and before an order of confirmation of the rehabilitation plan becomes final and binding, it has become obvious that none of the grounds for petition for commencement of rehabilitation proceedings prescribed in Article 21(1) exist, the court, upon the petition of the rehabilitation debtor, a trustee or holder of filed rehabilitation claim, shall make an order of discontinuance of rehabilitation proceedings.
- (2) When filing a petition set forth in the preceding paragraph, the petitioner shall make a prima facie showing of the fact constituting the grounds for discontinuance of rehabilitation proceedings.

#### Article 193 (Discontinuance of Proceedings by Reason of the Rehabilitation Debtor's Breach of Duties)

- (1) In any of the cases listed in the following items, the court, upon the petition of a supervisor or trustee or by its own authority, may make an order of discontinuance of rehabilitation proceedings:
  - (i) Where the rehabilitation debtor has violated an order issued by the court under the provisions of Article 30(1).
  - (ii) Where the rehabilitation debtor has violated the provisions of Article 41(1) or Article 42(1) or conducted any act set forth in Article 54(2) without obtaining a supervisor's consent prescribed in Article 54(2).
  - (iii) Where the rehabilitation debtor has not submitted a statement of approval or disapproval by the time limit set by the court pursuant to the provisions of Article 101(5) or Article 103(3).
- (2) When making an order set forth in the preceding paragraph, the court shall interrogate the rehabilitation debtor.

#### Article 194 (Discontinuance of Proceedings After Confirmation of Rehabilitation Plan)

If, after an order of confirmation of the rehabilitation plan has become final and

binding, it has become obvious that the rehabilitation plan is unlikely to be executed, the court, upon the petition of the rehabilitation debtor, etc. or a supervisor or by its own authority, shall make an order of discontinuance of rehabilitation proceedings.

Article 195 (Public Notice of Discontinuance of Rehabilitation Proceedings, etc.)

- (1) The court, when it has made an order of discontinuance of rehabilitation proceedings, shall immediately make a public notice of the main text of the order and the gist of the reasons attached thereto.
- (2) An immediate appeal may be filed against an order set forth in the preceding paragraph.
- (3) The provision of Article 175(3) shall apply mutatis mutandis to an immediate appeal set forth in the preceding paragraph, and to an appeal against an order under the provision of Article 336 of the Code of Civil Procedure and a petition for permission for appeal against an order under the provision of Article 337 of said Code, both provisions applied mutatis mutandis pursuant to Article 18, which are filed against a judicial decision on said immediate appeal.
- (4) When an order to revoke the order of discontinuance of rehabilitation proceedings becomes final and binding, the court that made the order of discontinuance of rehabilitation proceedings shall immediately make a public notice to that effect.
- (5) An order set forth in paragraph (1) shall not become effective unless it becomes final and binding.
- (6) The discontinuance of rehabilitation proceedings ordered after an order of confirmation of the rehabilitation plan became final and binding shall not affect any effects arising from the execution of the rehabilitation plan or the provisions of this Act.
- (7) The provision of Article 185 shall apply mutatis mutandis where an order of discontinuance of rehabilitation proceedings made under the provisions of Article 191, Article 192(1) or Article 193(1) becomes final and binding (excluding cases where an order of discontinuance of rehabilitation proceedings becomes final and binding after an order of confirmation of the rehabilitation plan became final and binding), and the provision of Article 188(4) shall apply mutatis mutandis where an order set forth in paragraph (1) becomes final and binding.

## **Chapter X Special Provisions on Home Loan Claims**

Article 196 (Definitions)

In this Chapter, Chapter XII and Chapter XIII, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:

- (i) Residence: A building that the rehabilitation debtor, who is an individual, owns



and uses for his/her own residential purpose, not less than half of its floor area being used exclusively for his/her residential purpose; provided, however, that if the rehabilitation debtor owns two or more such buildings, only one of these buildings that the rehabilitation debtor uses mainly for his/her residential purpose shall be treated as the residence.

- (ii) Site of the residence: Land used for the residence or a superficies right established on such land
- (iii) Home loan claim: A rehabilitation claim with a provision authorizing installment payment, which pertains to a loan of funds necessary for the construction or purchase of the residence (including funds necessary for the acquisition of land or land lease right to be used for the residence) or funds necessary for the remodeling of the residence, with a mortgage being established on the residence for the purpose of securing the claim itself or a right of exoneration held by the guarantor for any debt arising from the claim (limited to a person engaging in the guarantee business; hereinafter referred to as a "guarantee company") against the principal debtor
- (iv) Special clause on home loan: A clause in a rehabilitation plan that modifies, pursuant to the provisions of Article 199(1) to (4), the whole or part of a home loan claim held by a rehabilitation creditor
- (v) Home loan contract: A contract for a loan of funds pertaining to a home loan claim

Article 197 (Stay Order on Procedure for Exercise of Mortgage, etc.)

- (1) Where a petition for commencement of rehabilitation proceedings is filed, the court, if it finds that a rehabilitation plan that specifies special clauses on home loan is likely to be confirmed, upon the petition of the rehabilitation debtor, may specify a reasonable period and order the stay of a procedure for the exercise of a mortgage prescribed in item (iii) of the preceding Article which is established on the residence or the site for the residence owned by the rehabilitation debtor.
- (2) The provisions of Article 31(2) to (6) shall apply mutatis mutandis to a stay order issued under the provision of the preceding paragraph.
- (3) Where the rehabilitation debtor, if he/she does not pay part of a home loan claim after the commencement of rehabilitating proceedings, will forfeit the benefit of time with regard to the whole or part of the home loan claim in accordance with the provisions of the home loan contract, the court, when it finds that a rehabilitation plan that specifies special clauses on home loan is likely to be confirmed, may permit payment of such claim upon the petition of the rehabilitation debtor even before an order of confirmation of the rehabilitation plan becomes final and binding.

Article 198 (Cases Where Special Clauses on Home Loan May Be Specified, etc.)

- (1) With regard to a home loan claim (excluding one held by a rehabilitation creditor who has been subrogated to the holder of a home loan claim under the provision of Article 500 of the Civil Code, by way of such subrogation), a rehabilitation plan may specify special clauses on home loan; provided, however, that this shall not apply where any security interest prescribed in Article 53(1) (excluding a mortgage prescribed in Article 196(iii)) exists on the residence or where a mortgage set forth in Article 196(iii) is also established on real property other than the residence and any security interest prescribed in Article 53(1) that is subordinated to said mortgage exists on said real property.
- (2) Where a guarantee company has performed its guarantee obligation for a home loan claim, if a petition for commencement of rehabilitation proceedings is filed before six months have elapsed since the day on which the guarantee obligation has been performed in whole, a rehabilitation plan may specify special clauses on home loan with regard to the rights of a person who is supposed to acquire a home loan claim pursuant to the provision of the main clause of Article 204(1). In this case, the provision of the proviso to the preceding paragraph shall apply *mutatis mutandis*.
- (3) If there are two or more rehabilitation creditors who hold home loan claims prescribed in paragraph (1) or persons who are supposed to acquire home loan claims pursuant to the provision of the main clause of Article 204(1), special clauses on home loan specified to be shall target all these persons.

Article 199 (Content of Special Clauses on Home Loan)

- (1) Special clauses on home loan, except in the cases prescribed in the following paragraph or paragraph (3), shall specify the content specified in each of the following items for the categories of claims listed in the respective items:
  - (i) Principal of a home loan claim that will become due by the time when an order of confirmation of the rehabilitation plan becomes final and binding (excluding one that will not become due by that time if the rehabilitation debtor does not forfeit the benefit of time) and agreed interest on home loan (meaning an interest at an agreed interest rate under the home loan contract; hereinafter the same shall apply in this Article) to be accrued from such principal after an order of confirmation of the rehabilitation plan becomes final and binding, as well as interest on a home loan claim to be accrued and any damages for default to be incurred by the time when an order of confirmation of the rehabilitation plan becomes final and binding: These claims shall be paid in full within the payment period specified in a rehabilitation plan (excluding special clauses on home loan) (or within five years after an order of confirmation of the rehabilitation plan becomes final and binding if said period exceeds five years; referred to as the

"general period for payment" in paragraph (3))

- (ii) Principal of a home loan claim that will not become due by the time when an order of confirmation of the rehabilitation plan becomes final and binding (including one that will not become due by that time if the rehabilitation debtor does not forfeit the benefit of time) and agreed interest on home loan to be accrued from such principal after an order of confirmation of the rehabilitation plan becomes final and binding: These claims shall be paid in accordance with an agreement on the time and amount of payment in the case of the absence of default under the home loan contract
- (2) Where a rehabilitation plan that specifies special clauses on home loan under the provision of the preceding paragraph is unlikely to be confirmed, the special clauses on home loan may set the due date for the home loan claim as coming after the final due date set under the home loan contract (hereinafter referred to as the "agreed final due date" in this paragraph and paragraph (4)). The content of a modification of rights in this case shall meet all of the following requirements:
- (i) Each of the following claims shall be paid in full:
    - (a) Principal of the home loan claim and agreed interest on home loan to be accrued from such principal after an order of confirmation of the rehabilitation plan becomes final and binding
    - (b) Interest on the home loan claim to be accrued and any damages for default to be incurred by the time when an order of confirmation of the rehabilitation plan becomes final and binding
  - (ii) The final due date as modified by the special clauses on home loan shall not come more than ten years later than the agreed final due date, and the age of the rehabilitation debtor as of the final due date as modified by the special clauses on home loan shall not exceed seventy years.
  - (iii) With regard to the claim set forth in item (i) (a), if the interval between due dates and the amount of payment on each due date under the home loan contract are specified by certain standards, the modification shall generally conform to such standards.
- (3) Where a rehabilitation plan that specifies special clauses on home loan under the provision of the preceding paragraph is unlikely to be confirmed, it may be provided that during a certain period within the general period for payment (hereinafter referred to as the "grace period to pay principal" in this paragraph), payment shall be required only for part of principal of a home loan claim and agreed interest on home loan to be accrued from the principal of the home loan claim during the grace period to pay principal. The content of a modification of rights in this case shall meet all of the following requirements:
- (i) The requirements listed in item (i) and item (ii) of the preceding paragraph are specified.

- (ii) With regard to the provisions on the due date and the amount of payment of a claim set forth in item (i) (a) of the preceding paragraph after the expiration of the grace period to pay principal, if the interval between due dates and the amount of payment on each due date under the home loan contract are specified by certain standards, the modification shall generally conform to such standards.
- (4) If consent is obtained from any person who is subject to a modification of rights by the special clauses on home loan, notwithstanding the provisions of the preceding three paragraphs, special clauses on home loan may be specified to the effect that the term for debt for the home loan claim shall be extended by more than ten years from the agreed final due date and any modification other than the modifications prescribed in the preceding three paragraphs shall be made.
- (5) The provision of Article 155(1) shall not apply between a person who is subject to a modification of rights by special clauses on home loan and other rehabilitation creditors, the provision of Article 155(3) shall not apply to special clauses on home loan, and the provisions of Article 160 and Article 165(2) shall not apply to a person who is subject to a modification of rights by special clauses on home loan.

Article 200 (Submission of Proposed Rehabilitation Plan Specifying Special Clauses on Home Loan, etc.)

- (1) A proposed rehabilitation plan that specifies special clauses on home loan may be submitted only by the rehabilitation debtor.
- (2) When the rehabilitation debtor has submitted a proposed rehabilitation plan that specifies special clauses on home loan and it has resulted in any of the cases set forth in the following items, any objection made in an investigation of rehabilitation claims, by the time specified in the respective items, by a holder of filed rehabilitation creditor with regard to the content of the home loan claim prescribed in Article 198(1) shall cease to be effective as of that respective time; provided, however, that this shall apply only where the proceedings for determination of the rehabilitation claim subject to said objection have not yet been closed by that time:
  - (i) None of the holders of filed rehabilitation claims has submitted a proposed rehabilitation plan that specifies no special clause on home loan within the period specified by the court or any extension thereof: The time when said period or extension has expired
  - (ii) A proposed rehabilitation plan submitted by a holder of filed rehabilitation claim that specifies no special clause on home loan has not been referred to a resolution, and only a proposed rehabilitation plan that specifies special clauses on home loan has been referred to a resolution: The time when an order prescribed in the proviso to Article 167 is made
  - (iii) Both a proposed rehabilitation plan that specifies special clauses on home

loan and a proposed rehabilitation plan submitted by a holder of filed rehabilitation claim that specifies no special clause on home loan have been referred to a resolution, and the proposed rehabilitation plan that specifies special clauses on home loan has been approved: The time when the plan is approved

- (3) Where an objection set forth in the main clause of the preceding paragraph has ceased to be effective pursuant to the provision of said paragraph, the provisions of Article 104(1) and (3) shall not apply to the home loan claim in question.
- (4) When the rehabilitation debtor has submitted a proposed rehabilitation plan that specifies special clauses on home loan and it has resulted in any of the cases set forth in the items of paragraph (2), the provision of paragraph (2) shall also apply to an objection made in an investigation of rehabilitation claims, by the time specified in the respective items, by a rehabilitation creditor who holds a home loan claim prescribed in Article 198(1) and does not hold any rehabilitation claim except for said home loan claim or by a guarantee company that does not hold any rehabilitation claim except for a right of exoneration based on the guarantee for the debt for a home loan claim. In this case, the person who has made such objection shall not be subject to the effect of the relevant statements in the schedule of rehabilitation creditors that shall be the same as a final and binding judgment under the provisions of Article 104(3) and Article 180(2).
- (5) When the rehabilitation debtor has submitted a proposed rehabilitation plan that specifies special clauses on home loan and it has resulted in any of the cases set forth in paragraph (2) (i) or (ii), the rehabilitation creditor or guarantee company prescribed in the first sentence of the preceding paragraph may not make an objection set forth in the main clause of Article 170(1).

Article 201 (Resolution on Proposed Rehabilitation Plan Specifying Special Clauses on Home Loan, etc.)

- (1) When adopting a resolution on a proposed rehabilitation plan that specifies special clauses on home loan, a person who is supposed to be subject to a modification of rights by the special clauses on home loan and guarantee company shall not have any voting right with regard to a home loan claim or a right of exoneration based on the guarantee for the debt for a home loan claim, respectively.
- (2) When a proposed rehabilitation plan that specifies special clauses on home loan is submitted, the court shall hear opinions of any person who is supposed to be subject to a modification of rights by special clauses on home loan. The same shall apply to a proposed rehabilitation plan that specifies special clauses on home loan as revised under the provision of Article 167 (excluding cases where it is obvious that the revision will not adversely affect such person who is supposed to be

subject to a modification of rights by the special clauses on home loan).

- (3) For the purpose of application of the provision of Article 169(1) to a proposed rehabilitation plan that specifies special clauses on home loan, the phrase "items of Article 174(2) (excluding item (iii))" in paragraph (3) of said Article shall be deemed to be replaced with "items of Article 202(2) (excluding item (iv))."

#### Article 202 (Order of Confirmation or Disconfirmation of Rehabilitation Plan Specifying Special Clauses on Home Loan)

- (1) Where a proposed rehabilitation plan that specifies special clauses on home loan is approved, the court shall make an order of confirmation of the rehabilitation plan, except in the cases set forth in the following paragraph.
- (2) Where a proposed rehabilitation plan that specifies special clauses on home loan is approved, the court, in any of the cases set forth in the following items, shall make an order of confirmation of the rehabilitation plan:
  - (i) Where the rehabilitation plan falls under any of the grounds prescribed in Article 174(2) (i) or (iv).
  - (ii) Where the rehabilitation plan cannot be found to be feasible for execution
  - (iii) Where the rehabilitation debtor is likely to lose his/her ownership in the residence or the right to use the land, which is currently used for the residence, for the purpose of owning the residence.
  - (iv) Where the resolution on the rehabilitation plan has been adopted by unlawful means.
- (3) A person who is supposed to be subject to a modification of rights by special clauses on home loan, even if he/she has not filed a proof of rehabilitation claim, may state his/her opinions with regard to whether or not the proposed rehabilitation plan that specifies the special clauses on home loan should be confirmed.
- (4) Where an order of confirmation or disconfirmation of the rehabilitation plan that specifies special clauses on home loan is made, a document stating the main text of the order and the gist of the reasons attached thereto shall also be served upon any person who is supposed to be subject to a modification of rights by the special clauses on home loan but has not filed a proof of rehabilitation claim.
- (5) Where a proposed rehabilitation plan that specifies special clauses on home loan is approved, the provisions of Article 174(1) and (2) shall not apply.

#### Article 203 (Effect of Rehabilitation Plan Specifying Special Clauses on Home Loan, etc.)

- (1) When an order of confirmation of the rehabilitation plan that specifies special clauses on home loan becomes final and binding, the provision of Article 177(2) shall not apply to any mortgage prescribed in Article 196(iii) that is established

on the residence and the site of the residence and any right held by a person who is subject to a modification of rights by the special clauses on home loan against the rehabilitation debtor's guarantee or any other person who owes debts jointly with the rehabilitation debtor. In this case, if the rehabilitation debtor is one of the joint and several obligors, the extension of the term under the special clauses on home loan shall also be effective against other joint and several obligor(s).

- (2) When an order of confirmation of the rehabilitation plan that specifies special clauses on home loan becomes final and binding, with regard to rights as modified by the special clauses on home loan, it shall be deemed that the special clauses on home loan contain the same provisions as the provision on the forfeiture of the benefit of time and other provisions of the home loan contract; provided, however, that this shall not preclude the special clauses from providing otherwise with consent set forth in Article 199(4).
- (3) For the purpose of application of the provisions of Article 123(2) and Article 181(2) in cases where an order of confirmation of the rehabilitation plan that specifies special clauses on home loan becomes final and binding, in these provisions, the phrase "payment period specified in the rehabilitation plan" shall be deemed to be replaced with "the payment period specified in the rehabilitation plan (excluding special clauses on home loan)," and the phrase "payment based on the rehabilitation plan" shall be deemed to be replaced with "payment based on the rehabilitation plan (excluding special clauses on home loan)."
- (4) The provision of Article 181(2) as applied mutatis mutandis by replacing the relevant terms and phrases pursuant to the preceding paragraph shall not apply to rights as modified by special clauses on home loan, and the provision of Article 182 shall not apply to a person who is subject to a modification of rights by special clauses on home loan.

#### Article 204 (Where Guarantee Company Has Performed Guarantee Obligation)

- (1) Where an order of confirmation of the rehabilitation plan that specifies special clauses on home loan becomes final and binding, if a guarantee company has already performed its guarantee obligation for a home loan claim, such performance of the guarantee obligation shall be deemed to have never occurred; provided, however, that this shall not affect any act conducted by the guarantee company, as a rehabilitation creditor, based on a right acquired thereby as a result of the performance of the guarantee obligation.
- (2) In the case referred to in the main text of the preceding paragraph, if the rehabilitation debtor, before the order of confirmation becomes final and binding, has already made payment to the guarantee company for the right of exoneration pertaining to the guarantee obligation set forth in said paragraph, the rehabilitation debtor shall not be required to make payment based on a home loan

claim to the person who has acquired said home loan claim pursuant to the provision of the main clause of said paragraph, for such amount already paid. In this case, the guarantee company shall deliver the amount already paid to the person who has acquired the home loan claim pursuant to the provision of the main clause of said paragraph.

Article 205 (Where No Petition for Assessment Is Filed)

- (1) Where no petition for assessment prescribed in Article 105(1) is filed with regard to a home loan claim prescribed in Article 198(1) within an unextendable period set forth in Article 105(2) (excluding the cases referred to in Article 107 and Article 109), where an objection set forth in the main clause of Article 200(2) has ceased to be effective pursuant to the provision of Article 200(2), and where a guarantee company has performed its guarantee obligation for a home loan claim, the provisions of Article 157, Article 159, the second sentence of Article 164(2) and Article 179 shall not apply to the special clauses on home loan.
- (2) When an order of confirmation of the rehabilitation plan that specifies special clauses on home loan becomes final and binding, in the case prescribed in the preceding paragraph (excluding cases where a guarantee company has performed its guarantee obligation for a home loan claim), rights of a rehabilitation creditor who holds a home loan claim and rights of a person who is supposed to acquire a home loan claim pursuant to the provision of the main clause of paragraph (1) of the preceding Article shall be modified according to the general standards set forth in Article 156 under the special clauses on home loan.

Article 206 (Revocation of Rehabilitation Plan Specifying Special Clauses on Home Loan, etc.)

- (1) With regard to a rehabilitation plan that specifies special clauses on home loan, a petition for revocation of the rehabilitation plan on the grounds set forth in Article 189(1) (ii), notwithstanding the provision of paragraph (3) of said Article, may be filed only by a rehabilitation creditor who holds a right that accounts for one-tenth or more of the value, as determined by the court, of all rights approved pursuant to the provisions of the rehabilitation plan (excluding those as modified by the special clauses on home loan; excluding the part of rights already performed), and has not received performance in whole or part of said right that is due.
- (2) For the purpose of application of the provisions of the proviso to Article 189(7) and the proviso to Article 190(1) in cases where an order of revocation of the rehabilitation plan that specifies special clauses on home loan becomes final and binding, in these provisions, the phrase "any rights acquired by a rehabilitation creditor based on the rehabilitation plan" shall be deemed to be replaced with "any



rights acquired by a rehabilitation creditor based on the rehabilitation plan and the effect generated pursuant to the provision of the main clause of Article 204(1)."

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

### Article 207 (Cooperation with Foreign Trustees)

- (1) The rehabilitation debtor, etc., where there exist foreign insolvency proceedings (meaning proceedings commenced in a foreign state, which are equivalent to bankruptcy proceedings or rehabilitation proceedings; the same shall apply hereinafter) enforced against the rehabilitation debtor, may request a foreign trustee (meaning a person who has a right to administer and dispose of the rehabilitation debtor's property in said foreign insolvency proceedings; the same shall apply hereinafter) to provide cooperation and information necessary for the rehabilitation of the rehabilitation debtor.
- (2) In the case prescribed in the preceding paragraph, the rehabilitation debtor, etc. shall endeavor to provide a foreign trustee with cooperation and information necessary for the rehabilitation of the rehabilitation debtor.

### Article 208 (Presumption of the Grounds for Commencement of Rehabilitation Proceedings)

Where foreign insolvency proceedings are enforced against the rehabilitation debtor, a fact constituting the grounds for the commencement of rehabilitation proceedings shall be presumed to exist with regard to the rehabilitation debtor.

### Article 209 (Powers of Foreign Trustee, etc.)

- (1) In the case prescribed in the first sentence of Article 21(1), a foreign trustee may file a petition for commencement of rehabilitation proceedings against the rehabilitation debtor. In this case, for the purpose of application of the provision of Article 33(1), the term "Article 21" in Article 33(1) shall be deemed to be replaced with "the first sentence of Article 209(1)."
- (2) A foreign trustee may attend a creditors meeting and state his/her opinions in rehabilitation proceedings against the rehabilitation debtor.
- (3) In rehabilitation proceedings against the rehabilitation debtor, a foreign trustee may prepare a proposed rehabilitation plan and submit it to the court within the period prescribed in Article 163(1) (in cases where it is extended pursuant to the provision of paragraph (3) of said Article, within the extension thereof).
- (4) Where a foreign trustee has filed a petition for commencement of rehabilitation proceedings pursuant to the provision of paragraph (1), a notice shall be given to the foreign trustee with regard to: when a comprehensive prohibition order is

issued or an order to change or revoke said order is made, the main text of the respective order; when an order of commencement of rehabilitation proceedings is made, the matters for which a public notice shall be made pursuant to the provision of Article 35(1); when there is a change to the period specified pursuant to the provision of Article 34(1), the statement to that effect; when an order to revoke the order of commencement of rehabilitation proceedings becomes final and binding, the main text of the order.

#### Article 210 (Mutual Participation in Proceedings)

- (1) A foreign trustee, while representing a rehabilitation creditor who has not filed a proof of claim but has participated in foreign insolvency proceedings against the rehabilitation debtor, may participate in rehabilitation proceedings against the rehabilitation debtor; provided, however, that this shall only apply where the foreign trustee has the power to do so pursuant to laws and regulations of the foreign state concerned.
- (2) The rehabilitation debtor, etc., while representing a holder of filed rehabilitation claim (including one who holds a rehabilitation claim stated in a statement of approval or disapproval pursuant to the provision of Article 101(3); the same shall apply in the following paragraph) who has not participated in foreign insolvency proceedings, may participate in said foreign insolvency proceedings.
- (3) The rehabilitation debtor, etc., when he/she has participated in foreign insolvency proceedings under the provision of the preceding paragraph, may perform any and all acts involved in the foreign insolvency proceedings in the interest of the holder of filed rehabilitation claim whom he/she represents; provided, however, that delegation of powers from said holder of filed rehabilitation claim shall be required in order to withdraw a proof of claim filed, seek a settlement or perform any other act that is likely to prejudice the rights of other holders of filed rehabilitation claims.

## **Chapter XII Special Provisions Concerning Simplified Rehabilitation and Consensual Rehabilitation**

### **Section 1 Simplified Rehabilitation**

#### Article 211 (Order of Simplified Rehabilitation)

- (1) If, after the period for filing proofs of claims has expired and before the ordinary period for investigation has started, a petition is filed by the rehabilitation debtor, etc., the court shall make an order of simplified rehabilitation (meaning an order to the effect that proceedings for investigation and determination of rehabilitation claims shall not be performed; the same shall apply hereinafter). In this case, the

rehabilitation debtor, etc. may file a petition only where a holder of filed rehabilitation claim who holds a claim that accounts for three-fifths or more of the value, as determined by the court, of total claims held by holders of filed rehabilitation claims has, in writing, consented to a proposed rehabilitation plan submitted by the rehabilitation debtor, etc. and also consented to not performing the proceedings for investigation and determination of rehabilitation claims provided for in Chapter IV, Section 3.

- (2) When filing a petition set forth in the preceding paragraph, the rehabilitation debtor, etc. shall give a notice to the labor union, etc. to that effect.
- (3) Where a petition set forth in paragraph (1) is filed, the court, when it finds that a proposed rehabilitation plan set forth in the second paragraph of said paragraph falls under any of the grounds set forth in the items of Article 174(2) (excluding item (iii)), shall dismiss the petition without prejudice.
- (4) For the purpose of application of the provisions of the second sentence of paragraph (1) and the preceding paragraph in cases where a rehabilitation plan set forth in the second sentence of paragraph (1) specifies special clauses on home loan, in the second sentence of paragraph (1), the phrase "total claims held by holders of filed rehabilitation claims" shall be deemed to be replaced with "all of the claims held by holders of filed rehabilitation claims (excluding a home loan claim prescribed in Article 198(1) or a right of exoneration based on the guarantee for the debt for a home loan claim, which has been filed)," the phrase "holder of filed rehabilitation claim who holds a claim" shall be deemed to be replaced with "holder of filed rehabilitation claim who holds said claim," and the phrase "items of Article 174(2) (excluding item (iii))" shall be deemed to be replaced with "items of Article 202(2) (excluding item (iv))."

Article 212 (Effect of Order of Simplified Rehabilitation, etc.)

- (1) Where an order of simplified rehabilitation is made, an order on the ordinary period for investigation shall cease to be effective.
- (2) The court, upon making an order of simplified rehabilitation, shall make an order to refer a proposed rehabilitation plan to a resolution set forth in the second sentence of paragraph (1) of the preceding Article, while designating the method set forth in Article 169(2) (i) as a method for exercising voting rights and setting a time limit for giving a notice to the court in the case of diverse exercise of a voting right under the provision of Article 172(2) (including cases where applied *mutatis mutandis* pursuant to paragraph (3) of said Article).
- (3) Where an order of simplified rehabilitation is made, a public notice shall be made with regard to the date of a creditors meeting aimed for adopting a resolution on a proposed rehabilitation plan set forth in the second sentence of paragraph (1) of the preceding Article, the time limit prescribed in the preceding

paragraph, and the proposed rehabilitation plan in question, and a notice of these matters shall also be given to the persons prescribed in the main text of Article 115 (1). In this case, a notice of the date of such creditors meeting shall be given to the labor union, etc.

- (4) The provisions of Article 115(1) to (4) shall not apply to the creditors meeting set forth in the preceding paragraph.
- (5) For the purpose of application of the provision of Article 172(2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article) in cases where an order of simplified rehabilitation is made, the phrase "the first sentence of Article 169(2)" in paragraph (2) of said Article shall be deemed to be replaced with "Article 212(2)."

#### Article 213 (Immediate Appeal, etc.)

- (1) An immediate appeal may be filed against a judicial decision on the petition set forth in Article 211(1).
- (2) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (3) Where an order to revoke an order of simplified rehabilitation becomes final and binding, the court that has made the order of simplified rehabilitation shall specify the ordinary period for investigation without delay.
- (4) The provisions of Article 102(3) to (5) shall apply mutatis mutandis to the service of an order to specify the ordinary period for investigation set forth in the preceding paragraph.
- (5) Where an order of simplified rehabilitation becomes final and binding, the rehabilitation debtor, etc. shall take over any action discontinued pursuant to the provision of Article 40(1) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article). In this case, a petition for taking over of action may also be filed by the opponent.

#### Article 214 (Special Provisions on Creditors Meetings)

- (1) At a creditors meeting prescribed in Article 212(3), only a proposed rehabilitation plan set forth in the second sentence of Article 211(1) may be referred to a resolution.
- (2) The court may not refer the proposed rehabilitation plan set forth in the preceding paragraph to a resolution unless a report is made by the rehabilitation debtor, etc. at a meeting for reporting the status of property or a written report set forth in Article 125(1) is submitted.
- (3) Where a holder of filed rehabilitation claim who has not attended a creditors meeting set forth in paragraph (1) has given the consent set forth in the second sentence of Article 211(1), for the purpose of application of the provisions of

Article 172-3(1) and (6), such holder of filed rehabilitation claim shall be deemed to have attended the creditors meeting and consented to the proposed rehabilitation plan in question; provided, however, that this shall not apply if such holder of filed rehabilitation claim, prior to the commencement of the creditors meeting set forth in paragraph (1), has submitted to the court a document stating that he/she revokes the consent prescribed in the second sentence of Article 211 (1).

Article 215 (Special Provisions on Effect of Rehabilitation Plan, etc.)

- (1) Where an order of simplified rehabilitation is made, when an order of confirmation of the rehabilitation plan becomes final and binding, all rights of rehabilitation creditors (excluding consensually-subordinated rehabilitation claims in cases where no proof of consensually-subordinated rehabilitation claim is filed, and claims for fine, etc. arising prior to the commencement of rehabilitation proceedings) shall be modified according to the general standards set forth in Article 156(1).
- (2) For the purpose of application of the provisions of Article 182, Article 189(3) and Article 206(1) in the case prescribed in the preceding paragraph, the phrase "rights approved pursuant to the provisions of the rehabilitation plan confirmed or rights as modified pursuant to the provision of paragraph (1) of the preceding Article" in Article 182 and the phrase "rights approved pursuant to the provisions of the rehabilitation plan" in Article 189(3) and Article 206(1) shall be deemed to be replaced with "rights as modified pursuant to the provision of Article 215(1)."
- (3) In the case prescribed in paragraph (1), if no proof of consensually-subordinated rehabilitation claim is filed, the rehabilitation debtor shall be discharged from his/her liabilities for any consensually-subordinated rehabilitation claim.

Article 216 (Exclusion from Application of Provisions on Investigation and Determination of Rehabilitation Claims, etc.)

- (1) Where an order of simplified rehabilitation is made, the following provisions shall not apply: Article 67(4), Chapter IV, Section 3, Article 157, Article 159, the second sentence of Article 164(2), Article 169, Article 171, Article 178 to Article 180, Article 181(1) and (2), Article 185 (including cases where applied mutatis mutandis pursuant to Article 189(8), Article 190(2) and Article 195(7)), Article 186(3) and (4), Article 187, Article 200(2) and (4) and Article 205(2).
- (2) For the purpose of application of the provision of Article 67(3) in cases where an order of simplified rehabilitation is made, the phrase "action [discontinued under the provision of the preceding paragraph] which does not relate to any rehabilitation claim" in Article 67(3) shall be deemed to be replaced with "action [discontinued under the provision of the preceding paragraph]."

## Section 2 Consensual Rehabilitation

### Article 217 (Order of Consensual Rehabilitation)

- (1) If, after the period for filing proofs of claims has expired but before the ordinary period for investigation has started, a petition is filed by the rehabilitation debtor, etc. the court shall make an order of consensual rehabilitation (meaning an order to the effect that proceedings for investigation and determination of rehabilitation claims and a procedure for adopting a resolution on a proposed rehabilitation plan submitted by the rehabilitation debtor, etc. shall not be performed; the same shall apply hereinafter). In this case, the rehabilitation debtor, etc. may file a petition only where all holders of filed rehabilitation claims have, in writing, consented to a proposed rehabilitation plan submitted by the rehabilitation debtor, etc. and also consented to not performing the proceedings for investigation and determination of rehabilitation claims provided for in Chapter IV, Section 3.
- (2) The court may not make an order of consensual rehabilitation unless a report is made by the rehabilitation debtor, etc. at a meeting for reporting the status of property or a written report set forth in Article 125(1) is submitted.
- (3) Where a petition set forth in paragraph (1) is filed, the court, when it finds that a proposed rehabilitation plan set forth in the second paragraph of said paragraph falls under any of the grounds set forth in the items of Article 174(2) (excluding item (iii)), shall dismiss the petition without prejudice.
- (4) Where an order of consensual rehabilitation is made, a public notice shall be made with regard to the main text of the order, the gist of the reasons attached thereto and the proposed rehabilitation plan set forth in the second sentence of paragraph (1), and a notice of these matters shall also be given to the persons prescribed in the main text of Article 115(1).
- (5) For the purpose of application of the provisions of the second sentence of paragraph (1), paragraph (3) and the preceding paragraph in cases where a proposed rehabilitation plan set forth in the second sentence of paragraph (1) specifies special clauses on home loan, the phrase "holders of filed rehabilitation claims" in the second sentence of paragraph (1) shall be deemed to be replaced with "holders of filed rehabilitation claims (excluding a rehabilitation creditor who holds a home loan claim prescribed in Article 198(1) and does not hold any rehabilitation claim except for said home loan claim or a guarantee company that does not hold any rehabilitation claim except for a right of exoneration based on the guarantee for the debt for a home loan claim," the phrase "items of Article 174(2) (excluding item (iii))" in paragraph (3) shall be deemed to be replaced with "items of Article 202(2) (excluding item (iv))," and the phrase "persons prescribed in the main text of Article 115(1)" in the preceding paragraph shall be

deemed to be replaced with "the persons prescribed in the main text of Article 115 (1) and any person who is supposed to be subject to a modification of rights by the special clauses on home loan but has not filed a proof of rehabilitation claim."

- (6) The provisions of Article 174(3) and Article 211(2) shall apply mutatis mutandis to a petition set forth in paragraph (1), the provisions of Article 174(5) and Article 212(1) shall apply mutatis mutandis to cases where an order of consensual rehabilitation is made, and the provision of Article 202(3) shall apply mutatis mutandis to opinions on an order of consensual rehabilitation in cases where a proposed rehabilitation plan set forth in the second sentence of paragraph (1) specifies special clauses on home loan.

#### Article 218 (Immediate Appeal)

- (1) An immediate appeal may be filed against a judicial decision on the petition set forth in paragraph (1) of the preceding Article.
- (2) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (3) The provisions of Article 175(2) and (3) shall apply mutatis mutandis to an immediate appeal set forth in paragraph (1) as well as to an appeal against an order under the provision of Article 336 of the Code of Civil Procedure and a petition for permission for appeal against an order under the provision of Article 337 of said Code, both provisions applied mutatis mutandis pursuant to Article 18, which are filed against a judicial decision on said immediate appeal, the provisions of Article 213(3) shall apply mutatis mutandis to cases where an order to revoke an order of consensual rehabilitation becomes final and binding, and the provisions of Article 102(3) to (5) shall apply mutatis mutandis to the service of an order to specify the ordinary period for investigation set forth in Article 213(3) as applied mutatis mutandis pursuant to this paragraph.

#### Article 219 (Effect of Order of Consensual Rehabilitation Becoming Final and Binding)

- (1) When an order of consensual rehabilitation becomes final and binding, it shall be deemed that an order of confirmation of the rehabilitation plan becomes final and binding with regard to a proposed rehabilitation plan set forth in the second sentence of Article 217(1).
- (2) The provisions of Article 173, Article 213(5) and Article 215 shall apply mutatis mutandis where an order of consensual rehabilitation becomes final and binding.

#### Article 220 (Exclusion from Application of Provisions on Investigation and Determination of Rehabilitation Claims, etc.)

- (1) Where an order of consensual rehabilitation is made, the following provisions

shall not apply: Article 67(4), Chapter IV, Section 3, Article 157, Article 159, the second sentence of Article 164(2), Chapter VII, Section 3, Article 174, Article 175, Article 178 to Article 180, Article 181(1) and (2), Article 185 (including cases where applied mutatis mutandis pursuant to Article 189(8), Article 190(2) and Article 195(7)), Article 186(3) and (4), Article 187, Article 200(2) and (4) and Article 205(2).

- (2) For the purpose of application of the provision of Article 67(3) in cases where an order of consensual rehabilitation is made, the phrase "action [discontinued under the provision of the preceding paragraph] which does not relate to any rehabilitation claim" in Article 67(3) shall be deemed to be replaced with "action [discontinued under the provision of the preceding paragraph]."

### **Chapter XIII Special Provisions on Rehabilitation for Individuals with Small-Scale Debts and Rehabilitation for Salaried Workers, Etc.**

#### **Section 1 Rehabilitation for Individuals with Small-Scale Debts**

Article 221 (Requirements for Commencement of Proceedings, etc.)

- (1) A debtor who is an individual, if he/she is likely to earn income continuously or regularly in the future and the total amount of rehabilitation claims owed by him/her (excluding the amount of home loan claim(s), the amount of rehabilitation claim(s) for which payment is expected to be received by exercising a right of separate satisfaction, and the amount of claim(s) for a fine, etc. arising prior to the commencement of rehabilitation proceedings) is not more than 50 million yen, may request the implementation of rehabilitation proceedings subject to the special provisions prescribed in this Section (hereinafter referred to as "rehabilitation for individuals with small-scale debts").
- (2) A request for rehabilitation for individuals with small-scale debts shall be made upon filing a petition for commencement of rehabilitation proceedings (in cases where a creditor has filed a petition for commencement of rehabilitation proceedings, such request shall be made by the time when an order of commencement of rehabilitation proceedings is made).
- (3) When making a request set forth in the preceding paragraph, a document stating the following matters (hereinafter referred to as the "list of creditors") shall be submitted:
- (i) The name of each rehabilitation creditor and the amount and cause of each rehabilitation claim held thereby
  - (ii) With regard to a holder of a right of separate satisfaction, the collateral for the right of separate satisfaction and the amount of a rehabilitation claim for



- which payment is not expected to be received by exercising the right of separate satisfaction (hereinafter referred to as the "estimated amount of deficiency")
- (iii) If the claim in question is a home loan claim, a statement to that effect
  - (iv) If the debtor has the intention of submitting a proposed rehabilitation plan that specifies special clauses on home loan, a statement to that effect
  - (v) Other matters specified by the Rules of the Supreme Court
- (4) The rehabilitation debtor, when stating in the list of creditors the amount of each rehabilitation claim and the estimated amount of deficiency, may also state that he/she has an objection to the whole or part of such amount.
  - (5) With respect to the calculation of the total amount of rehabilitation claims prescribed in paragraph (1) and the statement of the amount of each rehabilitation claim in the list of creditors, the rehabilitation claims listed in Article 87(1) (i) to (iii) shall be treated as the claims of the amount specified in the respective items for the categories of claims listed in the respective items.
  - (6) The rehabilitation debtor, when making a request set forth in paragraph (2), shall clarify whether or not he/she has the intention of seeking the commencement of rehabilitation proceedings even where it becomes obvious that said request does not satisfy the requirements prescribed in paragraph (1) or paragraph (3); provided, however, that this shall not apply where a creditor has filed a petition for commencement of rehabilitation proceedings.
  - (7) The court, when it finds that the request set forth in paragraph (2) obviously does not satisfy the requirements prescribed in the main clause of the preceding paragraph, shall make an order, only before making an order of commencement of rehabilitation proceedings, to the effect that the rehabilitation case shall be handled through ordinary rehabilitation proceedings; provided, however, that if the rehabilitation debtor has clarified, pursuant to the provision of the main clause of the preceding paragraph, that he/she has no intention of seeking the commencement of rehabilitation proceedings, the court shall dismiss with prejudice on the merits the petition for commencement of rehabilitation proceedings.

#### Article 222 (Measures Taken Upon Commencement of Rehabilitation Proceedings)

- (1) In the case of rehabilitation for individuals with small-scale debts, the court, upon making an order of commencement of rehabilitation proceedings, shall specify, in addition to the period for filing proofs of claims, a period during which an objection may be made to any filed rehabilitation claim. In this case, the court shall not be required to specify the ordinary period for investigation.
- (2) The court, when it has made an order of commencement of rehabilitation proceedings, shall immediately make a public notice of the main text of the order of commencement of rehabilitation proceedings, the period for filing proofs of claims, and the period during which an objection may be made to any filed rehabilitation

claim as prescribed in the preceding paragraph (hereinafter referred to as the "ordinary period for making objections").

- (3) The rehabilitation debtor and known rehabilitation creditors shall be given a notice of the matters prescribed in the preceding paragraph.
- (4) Known rehabilitation creditors shall be given a notice of the matters stated in the list of creditors pursuant to the provisions of the items of paragraph (3) of the preceding Article and the provision of paragraph (4) of said Article.
- (5) The provisions of paragraph (2) and paragraph (3) shall apply mutatis mutandis where there is a change to the period for filing proofs of claims.

#### Article 223 (Individual Rehabilitation Commissioner)

- (1) Where a request set forth in Article 221(2) is made, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may appoint one or more individual rehabilitation commissioners; provided, however, that if a petition for valuation of rehabilitation claim prescribed in the main text of Article 227(1) is filed, the court shall appoint an individual rehabilitation commissioner except where it dismisses the petition as unlawful without prejudice.
- (2) The court, when making an order under the provision of the preceding paragraph, shall designate one or more of the matters listed below as duties of an individual rehabilitation commissioner:
  - (i) Investigating the status of the rehabilitation debtor's property and income
  - (ii) Assisting the court in the valuation of rehabilitation claim prescribed in the main clause of Article 227(1)
  - (iii) Making recommendations necessary for the rehabilitation debtor to prepare a proper proposed rehabilitation plan
- (3) The court, when designating, in an order under the provision of paragraph (1), the matter set forth in item (i) of the preceding paragraph as a duty of an individual rehabilitation commissioner, shall also specify a period during which he/she should report the results of the investigation to the court.
- (4) The court may change or revoke an order made under the provision of paragraph (1)
- (5) An immediate appeal may be filed against orders made pursuant to the provisions of paragraph (1) and the preceding paragraph.
- (6) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (7) Where a judicial decision prescribed in paragraph (5) and a judicial decision on the immediate appeal set forth in said paragraph are made, the written decisions shall be served upon the parties concerned.
- (8) An individual rehabilitation commissioner for whom the matter set forth in paragraph (2) (i) is designated as his/her duty may request the rehabilitation

debtor or his/her statutory agent to report on the status of the rehabilitation debtor's property and income or may inspect the rehabilitation debtor's books, documents and any other objects.

- (9) An individual rehabilitation commissioner may receive advance payments of expenses as well as remuneration determined by the court.
- (10) The provisions of Article 54(3), Article 57, Article 58, Article 60, and Article 61 (2) to (4) shall apply mutatis mutandis to an individual rehabilitation commissioner.

#### Article 224 (Content of Proof of Rehabilitation Claim Required)

- (1) In the case of rehabilitation for individuals with small-scale debts, rehabilitation creditors who intend to participate in rehabilitation proceedings shall not be required to file a proof of the amount of the voting right.
- (2) With regard to the filing of proofs of rehabilitation claims in the case of rehabilitation for individuals with small-scale debts, the provision of Article 221(5) shall apply mutatis mutandis.

#### Article 225 (Cases Where Proof of Rehabilitation Claim Is Deemed to Be Filed)

A rehabilitation creditor stated in the list of creditors shall be deemed, with regard to his/her rehabilitation claim stated in the list of creditors, to have filed a proof of rehabilitation claim on the first day of the period for filing proofs of claims, with the same content as that of the statements in the list of creditors, except where he/she has filed with the court, within the period for filing proofs of claims, a proof of said rehabilitation claim in question or proof to the effect that he/she does not have said rehabilitation claim.

#### Article 226 (Objection to Filed Rehabilitation Claims)

- (1) The rehabilitation debtor and a holder of filed rehabilitation claim may make an objection in writing to the court within the ordinary period for making objections with regard to the amount of a filed rehabilitation claim or estimated amount of deficiency; provided, however, that the rehabilitation debtor may make no objection to the amount of a rehabilitation claim and estimated amount of deficiency stated in the list of creditors, for which he/she has not stated in the list of creditors, pursuant to the provision of Article 221(4), that he/she has an objection.
- (2) Where a rehabilitation claim is filed or a change is made to any filed matter pursuant to the provision of Article 95, the court shall specify a period during which an objection to the rehabilitation claim in question may be made (hereinafter referred to as the "special period for making objections").
- (3) The rehabilitation debtor and a holder of filed rehabilitation claim may make an objection in writing to the court within the special period for making objections

with regard to the amount of a filed rehabilitation claim or estimated amount of deficiency within the special period for making objections.

- (4) The provisions of Article 102(3) to (5) shall apply mutatis mutandis to the service of a written order in cases where an order to specify the special period for making objections or an order to change the ordinary period for making objections or special period for making objections is made, and the provision of Article 103(2) shall apply mutatis mutandis in the case referred to in paragraph (2).
- (5) The provisions of the preceding paragraphs shall not apply to a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings, and to a home loan claim prescribed in Article 198(1) in cases where the rehabilitation debtor has stated in the list of creditors that he/she has the intention of submitting a proposed rehabilitation plan that specifies special clauses on home loan.
- (6) Where the rehabilitation debtor has stated in the list of creditors that he/she has the intention of submitting a proposed rehabilitation plan that specifies special clauses on home loan, a rehabilitation creditor who holds a home loan claim prescribed in Article 198(1) and does not hold any rehabilitation claim except for said home loan claim, and a guarantee company that does not hold any rehabilitation claim except for the right of exoneration based on the guarantee for the debt for a home loan claim may not make an objection set forth in the main clause of paragraph (1) and paragraph (3).

#### Article 227 (Valuation of Rehabilitation Claim)

- (1) Where the rehabilitation debtor or a holder of filed rehabilitation claim has made an objection pursuant to the provisions of the main clause of paragraph (1) of the preceding Article or paragraph (3) of said Article, the rehabilitation creditor who holds the rehabilitation claim subject to objection may file a petition with the court, within an unextendable period of three weeks from the last day of the period for making objections, for valuation of rehabilitation claim; provided, however, that where the rehabilitation claim in question is accompanied by an enforceable title of obligation or final judgment, such petition shall be filed by the person who made the objection.
- (2) In the case referred to in the proviso to the preceding paragraph, if a petition for valuation of rehabilitation claim is not filed within an unextendable period set forth in the main clause of the preceding paragraph or such petition is dismissed without prejudice, any objection set forth in the main clause of paragraph (1) of the preceding Article or paragraph (3) of said Article shall be deemed to have never been made.
- (3) When filing a petition for valuation of rehabilitation claim, a petitioner shall prepay an amount designated by the court as expenses for proceedings for the petition.

- (4) If prepayment of expenses prescribed in the preceding paragraph is not made, the court shall dismiss without prejudice the petition for valuation of rehabilitation claim.
- (5) The court, when designating, in an order under the provision of Article 223(1), the matter set forth in paragraph (2) (ii) of said Article as a duty of an individual rehabilitation commissioner, shall also specify a period during which he/she should report the results of the investigation to the court.
- (6) An individual rehabilitation commissioner for whom the matter set forth in Article 223(2) (ii) is designated as his/her duty may request the rehabilitation debtor or his/her statutory agent or a rehabilitation creditor (limited to a rehabilitation creditor in cases where the matter set forth in Article 223(2) (i) is also designated as the individual rehabilitation commissioner's duty) to produce materials concerning the existence or nonexistence of the rehabilitation claim in question and the estimated amount of deficiency.
- (7) In the valuation of rehabilitation claim, the court shall determine the existence or nonexistence of the rehabilitation claim pertaining to a petition for valuation of rehabilitation claim and the amount thereof or estimated amount of deficiency.
- (8) The court, when conducting the valuation of rehabilitation claim, shall hear opinions of an individual rehabilitation commissioner for whom the matter set forth in Article 223(2) (ii) is designated as his/her duty.
- (9) With regard to the valuation of rehabilitation claim under the provision of paragraph (7), the provision of Article 221(5) shall apply mutatis mutandis.
- (10) The provisions of the preceding paragraphs shall not apply to a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings, and to a home loan claim prescribed in Article 198(1) in cases where the rehabilitation debtor has stated in the list of creditors that he/she has the intention of submitting a proposed rehabilitation plan that specifies special clauses on home loan.

Article 228 (Exemption from Duty to Prepare Balance Sheets, etc.)

In the case of rehabilitation for individuals with small-scale debts, the rehabilitation debtor shall not be required to prepare and submit balance sheets under the provision of Article 124(2).

Article 229 (Content of Modification of Rights by Rehabilitation Plan, etc.)

- (1) In the case of rehabilitation for individuals with small-scale debts, the content of any modification of rights based on a rehabilitation plan shall be equal between rehabilitation creditors, except where any rehabilitation creditor who will suffer detriment has given consent or where the plan otherwise provides for the due date of small rehabilitation claim or for any of the claims listed in Article 84(2).
- (2) An extension of the term for debt under the clauses that modify rights of

rehabilitation creditors, unless otherwise provided for pursuant to the provision of the preceding paragraph, shall be prescribed as follows:

- (i) Payment shall be made based on an installment payment plan wherein the due date comes more than once in three months.
  - (ii) The final due date is set as a certain day in the month that includes the day on which three years elapse since the date of the order of confirmation of the rehabilitation plan becoming final and binding (in cases where there are special circumstances, a certain day which comes within five years since the date of the order of confirmation of the rehabilitation plan becoming final and binding, and comes after the first day of the month following the month that includes the day on which three years elapse since said date).
- (3) Notwithstanding the provision of paragraph (1), with regard to any of the following rehabilitation claims, a rehabilitation plan may not provide for reduction and release of debts or any other measures that would affect the rights concerned, except with consent of the rehabilitation creditor concerned:
- (i) A claim for damages for a tort that the rehabilitation debtor has committed in bad faith
  - (ii) A claim for damages for a tort harming the life or body of another that the rehabilitation debtor has committed intentionally or by gross negligence (excluding the claim set forth in the preceding item)
  - (iii) A claim arising from any of the following duties:
    - (a) The duty to cooperate and provide mutual assistance between husband and wife under the provision of Article 752 of the Civil Code
    - (b) The duty to share expenses arising from marriage under the provision of Article 760 of the Civil Code
    - (c) The duty concerning the custody of a child under the provision of Article 766 of the Civil Code (including cases where applied mutatis mutandis pursuant to Article 749, Article 771 and Article 788 of said Code)
    - (d) The duty to support under the provisions of Article 877 to Article 880 of the Civil Code
    - (e) Any duties similar to the duties listed in (a) to (d) above, which are under a contract
- (4) The provision of paragraph (1) shall not apply between a person who is subject to a modification of rights by special clauses on home loan and other rehabilitation creditors, and the provision of paragraph (2) shall not apply to special clauses on home loan.

#### Article 230 (Resolution on Proposed Rehabilitation Plan)

- (1) The court may not refer a proposed rehabilitation plan to a resolution unless the ordinary period for making objections (in cases where a special period for making

objections is specified, such period shall be included) has expired and a written report set forth in Article 125(1) has been submitted. Where an objection under the provision of the main clause of Article 226(1) is made within said ordinary period for making objections (including cases where an objection under the provision of paragraph (3) of said Article is made within a special period for making objection, if any such period is specified), the court also may not refer such a plan to a resolution until an unextendable period set forth in the main clause of Article 227(1) has expired (if a petition for valuation of rehabilitation claim is filed within such unextendable period, until the valuation of rehabilitation claim is conducted).

- (2) The court may not refer a proposed rehabilitation plan to a resolution where it finds that the proposed rehabilitation plan falls under any of the grounds set forth in the items of Article 174(2) (excluding item (iii); or Article 202(2) (i) to (iii) if the proposed rehabilitation plan specifies special clauses on home loan) or the cases set forth in the items of paragraph (2) of the following Article.
- (3) When a proposed rehabilitation plan is submitted, the court, except in the cases referred to in the preceding two paragraphs, shall make an order to refer the proposed rehabilitation plan to a resolution, while designating the method set forth in Article 169(2) (ii) as a method for exercising voting rights and setting a time limit for giving a notice to the court in the case of diverse exercise of a voting right under the provision of Article 172(2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article).
- (4) The court, when it has made an order set forth in the preceding paragraph, shall make a public notice to that effect, and give a notice to voting right holders with regard to the time limit prescribed in said paragraph, the contents of the proposed rehabilitation plan or the gist thereof, and to the effect that any person who does not consent to the proposed rehabilitation plan should respond to that effect within the period specified by the court by the method designated pursuant to the provision of said paragraph.
- (5) For the purpose of application of the provision of Article 172(2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article) in cases where an order set forth in paragraph (3) is made, the phrase "the first sentence of Article 169(2)" in paragraph (2) of said Article shall be deemed to be replaced with "Article 230(3)."
- (6) If the number of voting right holders who have responded, within the period set forth in paragraph (4) by the method set forth in said paragraph, that they do not consent to a proposed rehabilitation plan, is less than half of the total number of voting right holders, and the amount of voting rights held by voting right holders who have thus responded does not exceed half of the total amount of voting rights held by all voting holders, it shall be deemed that the proposed rehabilitation plan

is approved.

- (7) For the purpose of application of the provision of the preceding paragraph in cases where any of the voting right holders who have responded by the method set forth in paragraph (4) that they do not consent to a proposed rehabilitation plan, has exercised only part of his/her voting right pursuant to the provision of Article 172(2) (including cases where applied *mutatis mutandis* pursuant to paragraph (3) of said Article), for each such voting right holder, the total number of voting right holders shall be increased by one and the number of voting right holders who have responded by the method set forth in paragraph (4) that they do not consent to the proposed rehabilitation plan shall be increased by one-half, respectively.
- (8) A holder of filed rehabilitation claim may exercise his/her voting right, in the case of a filed rehabilitation claim to which no objection is made before the expiration of the ordinary period for making objections or the special period for making objections (excluding one prescribed in Article 226(5); hereinafter referred to as a "claim without objection"), according to the amount of filed rehabilitation claim or estimated amount of deficiency, and in the case of a rehabilitation claim for which the court has determined the amount of claim or estimated amount of deficiency pursuant to the provision of Article 227(7) (hereinafter referred to as an "valued claim"), according to these amounts, respectively.

#### Article 231 (Order of Confirmation or Disconfirmation of Rehabilitation Plan)

- (1) In the case of rehabilitation for individuals with small-scale debts, where a proposed rehabilitation plan is approved, the court shall make an order of confirmation of the rehabilitation plan, except in the case referred to in Article 174 (2) (or Article 202(2) if the proposed rehabilitation plan specifies special clauses on home loan) or the cases set forth in the following paragraph.
- (2) In the case of rehabilitation for individuals with small-scale debts, the court may also make an order of disconfirmation in any of the cases set forth in the following items:
  - (i) Where the rehabilitation debtor is unlikely to earn income continuously or regularly in the future.
  - (ii) Where the total of the amount of claims without objection and the amount of valued claims (excluding the amount of home loan claim(s), the amount of rehabilitation claim(s) for which payment is expected to be received by exercising a right of separate satisfaction, and the amount of claim(s) listed in Article 84(2)) exceeds 50 million yen.
  - (iii) Where the total of the amount of claims without objection and the amount of valued claims prescribed in the preceding item is more than 30 million yen but not more than 50 million yen, and the total amount of payment based on the rehabilitation plan (such payment shall hereinafter be referred to as the "total



amount of payment based on the plan") for such claims without objection and valued claims (excluding any rehabilitation claim for which payment is expected to be received by exercising a right of separate satisfaction and the claims listed in the items of Article 84(2); hereinafter referred to as "standard claims") is less than one-tenth of the total of the amount of such claims without objection and the amount of such valued claims.

- (iv) Where the total of the amount of claims without objection and the amount of valued claims prescribed in item (ii) is not more than 30 million yen, and the total amount of payment based on the plan is less than one-fifth of the total amount of standard claims or one million yen, whichever is larger (if the total amount of standard claims is less than one million yen, the baseline shall be the total amount of standard claims, and if one-fifth of the total amount of standard claims is more than three million yen, the baseline shall be three million yen).
- (v) Where the rehabilitation debtor has stated in the list of creditors that he/she has the intention of submitting a proposed rehabilitation plan that specifies special clauses on home loan, but the rehabilitation plan does not specify any special clauses on home loan.

#### Article 232 (Effect of Rehabilitation Plan, etc.)

- (1) In the case of rehabilitation for individuals with small-scale debts, when an order of confirmation of the rehabilitation plan becomes final and binding, the claims listed in Article 87(1) (i) to (iii) shall be modified into rehabilitation claims of the amount specified in the respective items.
- (2) In the case of rehabilitation for individuals with small-scale debts, when an order of confirmation of the rehabilitation plan becomes final and binding, all rights of rehabilitation creditors (in the case of the claims listed in Article 87(1) (i) to (iii), the rights as modified pursuant to the provision of the preceding paragraph; excluding the claims listed in the items of Article 229(3) and claims for fine, etc. arising prior to the commencement of rehabilitation proceedings) shall be modified according to the general standards set forth in Article 156.
- (3) In the case prescribed in the preceding paragraph, with regard to a rehabilitation claim modified pursuant to the provision of said paragraph that is not a claim without objection or valued claim, until the payment period specified in the rehabilitation plan expires (or until payment based on the rehabilitation plan is completed or the rehabilitation plan is revoked, if these events occur prior to the expiration of said period; the same shall apply in the following paragraph and paragraph (5)), it is not allowed to make or receive payment or conduct any other act to cause the claim to be extinguished (excluding a release); provided, however, that this shall not apply if the rehabilitation creditor was unable to file a proof of claim regarding such modified rehabilitation claim within the period for filing

proofs of claims due to grounds not attributable thereto and such grounds have not ceased to exist before the order prescribed in Article 230(3) is made, or the modified rehabilitation claim was subject to the valuation of rehabilitation claim.

- (4) In the case prescribed in paragraph (2), with regard to any of the claims listed in the items of Article 229(3) that is a claim without objection or valued claim, payment shall be made according to the general standards set forth in Article 156, and payment shall also be made, upon the expiration of the payment period specified in the rehabilitation plan, for any amount that remains after deducting the amount paid within said payment period from the amount of the claim in question.
- (5) In the case prescribed in paragraph (2), with regard to any of the claims listed in the items of Article 229(3) that is not a claim without objection or valued claim, payment shall be made, upon the expiration of the payment period specified in the rehabilitation plan, for the whole amount of the claim in question; provided, however, that the provision of the preceding paragraph shall apply in the case prescribed in the proviso to paragraph (3).
- (6) In the case prescribed in paragraph (2), for the purpose of application of the provisions of Article 182, Article 189(3) and Article 206(1), the phrase "rights approved pursuant to the provisions of the rehabilitation plan confirmed or rights as modified pursuant to the provision of paragraph (1) of the preceding Article" in Article 182 shall be deemed to be replaced with "rights as modified pursuant to the provision of Article 232(2) and claims listed in the items of Article 229(3)," the phrase "all rights approved pursuant to the provisions of the rehabilitation plan (excluding the parts of rights already performed)" in Article 189(3) shall be deemed to be replaced with "all rights as modified pursuant to the provision of Article 232(2) and claims listed in the items of Article 229(3) (limited to the part to be paid according to the general standards set forth in Article 156 pursuant to the provision of Article 232(4) (including cases where applied mutatis mutandis pursuant to the proviso to paragraph (5) of said Article))," and the phrase "all rights approved pursuant to the provisions of the rehabilitation plan (excluding those as modified by the special clauses on home loan; excluding the part of rights already performed)" in Article 206(1) shall be deemed to be replaced with "all rights as modified pursuant to the provision of Article 232(2) (excluding those as modified by the special clauses on home loan) and claims listed in the items of Article 229(3) (limited to the part to be paid according to the general standards set forth in Article 156 pursuant to the provision of Article 232(4) (including cases where applied mutatis mutandis pursuant to the proviso to paragraph (5) of said Article))."
- (7) For the purpose of application of the provisions of paragraph (3) to paragraph (5) in cases where an order of confirmation of the rehabilitation plan that specifies

special clauses on home loan becomes final and binding, the phrase "payment period specified in the rehabilitation plan" in these paragraphs shall be deemed to be replaced with "payment period specified in the rehabilitation plan (excluding the special clauses on home loan)," the phrase "payment based on the rehabilitation plan" in the main clause of paragraph (3) shall be deemed to be replaced with "payment based on the rehabilitation plan (excluding the special clauses on home loan)," and the phrase "the modified rehabilitation claim was subject to the valuation of rehabilitation claim" in the proviso to paragraph (3) shall be deemed to be replaced with "the modified rehabilitation claim was subject to the valuation of rehabilitation claim or the right as modified is a home loan claim as modified by the special clauses on home loan."

#### Article 233 (Termination of Rehabilitation Proceedings)

In the case of rehabilitation for individuals with small-scale debts, rehabilitation proceedings shall automatically terminate as a result of an order of confirmation of the rehabilitation plan becoming final and binding.

#### Article 234 (Modification of Rehabilitation Plan)

- (1) In the case of rehabilitation for individuals with small-scale debts, if, after an order of confirmation of the rehabilitation plan is made, it becomes significantly difficult to execute the rehabilitation plan, upon the petition of the rehabilitation debtor, the term for debt specified in the rehabilitation plan may be extended. In this case, the final due date for debt as modified shall be within two years from the final due date for debt initially specified in the rehabilitation plan.
- (2) Where a petition for modification of the rehabilitation plan is filed pursuant to the provision of the preceding paragraph, the provisions concerning the procedure to be performed upon submission of a proposed rehabilitation plan shall apply *mutatis mutandis*.
- (3) The provisions of Article 175 (excluding paragraph (2)) and Article 176 shall apply *mutatis mutandis* where an order of modification of a rehabilitation plan is made.

#### Article 235 (Discharge Granted Due to Extreme Difficulty in Execution of Plan)

- (1) Where it becomes extremely difficult for the rehabilitation debtor to execute the rehabilitation plan due to grounds not attributable thereto and all of the requirements listed in the following items are satisfied, the court, upon the petition of the rehabilitation debtor, may make an order of discharge:
  - (i) With regard to each standard claim as modified pursuant to the provision of Article 232(2) and each rehabilitation claim prescribed in the proviso to paragraph (3) of said Article, payment is completed for not less than

- three-fourths of the amount of the claim in question.
- (ii) With regard to any of the claims listed in the items of Article 229(3) (limited to the part to be paid according to the general standards set forth in Article 156 pursuant to the provision of Article 232(4) (including cases where applied *mutatis mutandis* pursuant to the proviso to paragraph (5) of said Article)), payment is completed for not less than three-fourths of the amount of the claim in question.
  - (iii) It is not contrary to the common interests of rehabilitation creditors to make an order of discharge.
  - (iv) It is extremely difficult to modify the rehabilitation plan under the provision of the preceding Article.
- (2) When a petition set forth in the preceding paragraph is filed, the court shall hear opinions of holders of filed rehabilitation claims.
  - (3) When an order of discharge is made, a document stating the main text of the order and the gist of the reasons attached thereto shall be served upon the rehabilitation debtor and holders of filed rehabilitation claims.
  - (4) An immediate appeal may be filed against a judicial decision on the petition set forth in paragraph (1).
  - (5) An order of discharge shall not become effective unless it becomes final and binding.
  - (6) Where an order of discharge becomes final and binding, the rehabilitation debtor shall be discharged from his/her liabilities for all debts owed to rehabilitation creditors (excluding claims listed in the items of Article 229(3) and a claim for a fine, etc. arising prior to the commencement of rehabilitation proceedings), except for the parts already performed.
  - (7) The fact that an order of discharge has become final and binding shall not affect any security interests prescribed in Article 53(1) held by holders of rights of separate satisfaction, any rights held by rehabilitation creditors against the rehabilitation debtor's guarantor or any other person who owes debts jointly with the rehabilitation debtor, or any security provided by persons other than the rehabilitation debtor in the interest of rehabilitation creditors.
  - (8) For the purpose of application of the provisions of paragraph (2) and paragraph (3) in cases where a rehabilitation plan specifies special clauses on home loan, the term "holders of filed rehabilitation claims" in paragraph (2) shall be deemed to be replaced with "holders of filed rehabilitation claims and a person who is subject to a modification of rights by special clauses on home loan," and the phrase "and holders of filed rehabilitation claims" in paragraph (3) shall be deemed to be replaced with ", holders of filed rehabilitation claims and a person who is subject to a modification of rights by special clauses on home loan."

#### Article 236 (Revocation of Rehabilitation Plan)

In the case of rehabilitation for individuals with small-scale debts, where an order of confirmation of the rehabilitation plan becomes final and binding, the court, upon the petition of a rehabilitation creditor, may also make an order of revocation of the rehabilitation plan even when it has become obvious that the total amount of payment based on the plan falls below the total amount of distribution for standard claims as calculated on the assumption that bankruptcy proceedings are enforced against the rehabilitation debtor at the time when the order of confirmation of the rehabilitation plan is made. In this case, the provision of Article 189(2) shall apply *mutatis mutandis*.

#### Article 237 (Discontinuance of Rehabilitation Proceedings)

- (1) In the case of rehabilitation for individuals with small-scale debts, where the number of voting right holders who have responded, within the period set forth in Article 230(4) by the method set forth in Article 230(4), that they do not consent to a proposed rehabilitation plan, is not less than half of the total number of voting right holders, or the amount of voting rights held by voting right holders who have thus responded exceeds half of the total amount of voting rights held by all voting holders, the court, by its own authority, shall also make an order of discontinuance of rehabilitation proceedings. In this case, the provision of paragraph (7) of said Article shall apply *mutatis mutandis*.
- (2) In the case of rehabilitation for individuals with small-scale debts, where the rehabilitation debtor has failed to state property that should be stated in the inventory of assets or made a false statement, the court, upon the petition of a holder of filed rehabilitation claim or individual rehabilitation commissioner or by its own authority, may make an order of discontinuance of rehabilitation proceedings. In this case, the provision of Article 193(2) shall apply *mutatis mutandis*.

#### Article 238 (Exclusion from Application of Provisions on Ordinary Rehabilitation Proceedings)

In the case of rehabilitation for individuals with small-scale debts, the following provisions shall not apply: Article 34(2), Article 35, the main clause of Article 37 (limited to the part concerning a consensually-subordinated rehabilitation claim) and the proviso to said Article, Article 40, Article 40-2 (excluding the part concerning an action filed by a rehabilitation creditor pursuant to the provision of Article 423 of the Civil Code), Article 42(2) (limited to the part concerning a consensually-subordinated rehabilitation claim), Chapter III, Section 1 and Section 2, Article 85(6), Article 87(3), Article 89(2) and Article 94(1) (limited to the parts of the provisions concerning a consensually-subordinated rehabilitation claim), Chapter

IV, Section 3 (excluding Article 113(2) to (4)) and Section 4, Article 126, Chapter VI, Section 2, Article 155(1) to (3), Article 156 (limited to the part concerning a consensually-subordinated rehabilitation claim), Article 157 to Article 159, Article 163(2), the second sentence of Article 164(2), Article 165(1), Chapter VII, Section 3 (excluding Article 172), Article 174(1), Article 174-2, Article 175(2), Article 178 to Article 180, Article 181(1) and (2), Article 185 (including cases where applied mutatis mutandis pursuant to Article 189(8), Article 190(2), and Article 195(7)), Article 186(3) and (4), Article 187, Article 188, Article 200(2) and (4), Article 202 (1), Article 205(2), and Chapter XII.

### **Section 2 Rehabilitation for Salaried Workers, Etc.**

Article 239 (Requirements for Commencement of Proceedings, etc.)

- (1) A debtor prescribed in Article 221(1), if he/she is likely to receive salary or earn similar regular income and the amount of such salary or income is expected to fluctuate within a small range, may request the implementation of rehabilitation proceedings subject to the special provisions prescribed in this Section (hereinafter referred to as "rehabilitation for salaried workers, etc.") .
- (2) A request for rehabilitation for salaried workers, etc. shall be made upon filing a petition for commencement of rehabilitation proceedings (in cases where a creditor has filed a petition for commencement of rehabilitation proceedings, such request shall be made by the time when an order of commencement of rehabilitation proceedings is made) .
- (3) When making a request set forth in the preceding paragraph, the rehabilitation debtor shall clarify whether or not he/she has the intention of seeking the commencement of ordinary rehabilitation proceedings where it becomes obvious that said request does not satisfy the requirements prescribed in Article 221(1) or in Article 221(3) as applied mutatis mutandis pursuant to Article 244, and also clarify whether or not he/she has the intention of seeking the commencement of proceedings for rehabilitation for individuals with small-scale debts where it becomes obvious that any of the grounds set forth in the items of paragraph (5) exist; provided, however, that this shall not apply where a creditor has filed a petition for commencement of rehabilitation proceedings.
- (4) The court, when it finds that the request set forth in paragraph (2) obviously does not satisfy the requirements prescribed in the main clause of the preceding paragraph, shall make an order, only before making an order of commencement of rehabilitation proceedings, to the effect that the rehabilitation case shall be handled through ordinary rehabilitation proceedings; provided, however, that if the rehabilitation debtor has clarified, pursuant to the provision of the main clause of the preceding paragraph, that he/she has no intention of seeking the

commencement of ordinary rehabilitation proceedings, the court shall dismiss with prejudice on the merits the petition for commencement of rehabilitation proceedings.

(5) In addition to the case prescribed in the preceding paragraph, where a request set forth in paragraph (2) is made, the court, when it finds that any of the grounds set forth in the following items obviously exist, shall make an order, only before making an order of commencement of rehabilitation proceedings, to the effect that the rehabilitation case shall be handled through proceedings for rehabilitation for individuals with small-scale debts; provided, however, that if the rehabilitation debtor has clarified, pursuant to the provision of the main clause of paragraph (3), that he/she has no intention of seeking the commencement of proceedings for rehabilitation for individuals with small-scale debts, the court shall dismiss with prejudice on the merits the petition for commencement of rehabilitation proceedings:

(i) The rehabilitation debtor is not likely to receive salary or earn similar regular income, or the amount of such salary or income is expected to fluctuate within a small range.

(ii) The rehabilitation debtor falls under any of the grounds listed in (a) to (c) below, and he/she has made the request within seven years from the day specified in (a) to (c), respectively:

(a) A rehabilitation plan has been executed through proceedings for rehabilitation for salaried workers, etc.: The day on which the order of commencement of the rehabilitation plan became final and binding

(b) An order of discharge prescribed in Article 235(1) (including cases where applied *mutatis mutandis* pursuant to Article 244) has become final and binding: The day on which the order of confirmation of the rehabilitation plan pertaining to said order of discharge became final and binding

(c) An order of grant of a discharge prescribed in Article 252(1) of the Bankruptcy Act has become final and binding: The day on which said order has become final and binding

#### Article 240 (Hearing of Opinions on Proposed Rehabilitation Plan)

(1) In the case of rehabilitation for salaried workers, etc., where a proposed rehabilitation plan is submitted, the court shall make an order to the effect that opinions shall be heard from holders of filed rehabilitation claims with regard to whether or not the proposed rehabilitation plan should be approved, except in the following cases:

(i) Where the court finds that the proposed rehabilitation plan falls under any of the grounds set forth in the items of paragraph (2) of the following Article.

(ii) Where the ordinary period for making objections has not yet expired, or where

an objection is made within the ordinary period for making objections under the provision of the main clause of Article 226(1) as applied mutatis mutandis pursuant to Article 244 and the unextendable period set forth in the main clause of Article 227(1) as applied mutatis mutandis pursuant to Article 244 has not yet expired (or where a petition for valuation of rehabilitation claim is filed within such unextendable period but valuation of rehabilitation claim has not yet been conducted)

- (iii) Where the special period for making objection is specified, and said special period for making objections has not yet expired, or an objection is made within said special period for making objections under the provision of Article 226(3) as applied mutatis mutandis pursuant to Article 244 and the unextendable period prescribed in the main clause of Article 227(1) as applied mutatis mutandis pursuant to Article 244 has not yet expired (or where a petition for valuation of rehabilitation claim is filed within such unextendable period but valuation of rehabilitation claim has not yet been conducted)
  - (iv) Where the written report set forth in Article 125(1) is not submitted.
- (2) The court, when it has made an order set forth in the preceding paragraph, shall make a public notice to that effect, and give a notice to holders of filed rehabilitation claims with regard to the contents of the proposed rehabilitation plan or the gist thereof, as well as a notice to the effect that any person who has an opinion that the proposed rehabilitation plan falls under any of the grounds set forth in the items of paragraph (2) of the following Article should submit, within the period specified by the court, such opinion and a document specifically describing the respective grounds.
- (3) For the purpose of application of the provisions of Article 95(4) and the proviso to Article 167 in the case of rehabilitation for salaried workers, etc., the phrase "order to refer the proposed rehabilitation plan to a resolution" in these provisions shall be deemed to be replaced with "order to the effect that opinions shall be heard from holders of filed rehabilitation claims with regard to whether or not the proposed rehabilitation plan should be approved."

Article 241 (Order of Confirmation or Disconfirmation of Rehabilitation Plan, etc.)

- (1) When the period specified pursuant to the provision of paragraph (2) of the preceding Article has expired, the court shall make an order of confirmation of the rehabilitation plan, except in the cases set forth in the following paragraph.
- (2) In any of the cases set forth in the following items, the court shall make an order of disconfirmation of the rehabilitation plan:
  - (i) Where any of the grounds prescribed in Article 174(2) (i) or (ii) (or the grounds prescribed in Article 174(2) (i) or Article 202(2) (ii) in cases where the rehabilitation plan specifies special clauses on home loan) exist.



- (ii) Where the rehabilitation plan is contrary to the common interests of rehabilitation creditors.
- (iii) Where the rehabilitation plan specifies special clauses on home loan, and it falls under the grounds prescribed in Article 202(2) (iii)
- (iv) Where the rehabilitation debtor does not receive salary or earn similar regular income, or the range of fluctuation in the amount of such salary or income is not expected to be small.
- (v) Where any of the grounds prescribed in Article 231(2) (ii) to (v) exist.
- (vi) Where the grounds prescribed in Article 239(5) (ii) exist.
- (vii) Where the total amount of payment based on the rehabilitation plan cannot be found to be not less than the amount obtained by multiplying by two the amount that remains after deducting, from the amount specified in (a) to (c) below for the cases listed in (a) to (c), respectively, the amount of expenses for one year necessary for maintaining the minimum standards of living for the rehabilitation debtor and persons eligible to receive his/her support.
  - (a) Where, with regard to the amount of the rehabilitation debtor's salary or similar regular income, reemployment or any other event that should cause a fluctuation amounting to not less than one-fifth of his/her annual income has occurred at a certain time within two years prior to the submission of the proposed rehabilitation plan: The amount obtained by deducting, from the total income earned during the period from when such event occurred until the proposed rehabilitation plan was submitted, the amount of income tax, prefectural inhabitants tax or Tokyo inhabitants tax on individuals, and municipal inhabitants tax or special ward inhabitants tax on individuals as well as social insurance premiums prescribed in Article 74(2) of the Income Tax Act (Act No. 33 of 1965) (referred to as "income tax, etc." in (b) and (c)) imposed on such total amount, as converted into the amount per year
  - (b) Where the rehabilitation debtor, at a certain time within two years prior to the submission of the proposed rehabilitation plan, has started to receive salary or earn similar regular income which is expected to fluctuate within a small range (excluding one who falls under the case set forth in (a)): The amount obtained by deducting, from the total income earned during the period from when he/she started to receive salary or earn similar regular income which is expected to fluctuate within a small range, until the proposed rehabilitation plan was submitted, the amount of income tax, etc. imposed on such total amount, as converted into the amount per year
  - (c) Any case other those set forth in (a) and (b): The amount obtained by dividing by two the amount that remains after deducting, from the total amount of income earned by the rehabilitation debtor for the two years prior to the submission of the proposed rehabilitation plan, the amount of income tax,

etc. imposed on such total amount

- (3) The amount of expenses for one year prescribed in item (vii) of the preceding paragraph shall be specified by Cabinet Order while taking into consideration the age and residential area of the rehabilitation debtor and persons eligible to receive his/her support, the number of such persons eligible to receive support, the price situation and any other circumstances concerned.

#### Article 242 (Revocation of Rehabilitation Plan)

In the case of rehabilitation for salaried workers, etc., where an order of confirmation of the rehabilitation plan becomes final and binding, the court, upon the petition of a rehabilitation creditor, may also make an order of revocation of the rehabilitation plan when it has become obvious that the total amount of payment based on the plan falls below the total amount of distribution for standard claims as calculated on the assumption that bankruptcy proceedings are enforced against the rehabilitation debtor at the time when the order of confirmation of the rehabilitation plan is made, or that the rehabilitation plan falls under the case set forth in paragraph (2) (vii) of the preceding Article. In this case, the provision of Article 189 (2) shall apply *mutatis mutandis*.

#### Article 243 (Discontinuance of Rehabilitation Proceedings)

In the case of rehabilitation for salaried workers, etc., the court, by its own authority, shall make an order of discontinuance of rehabilitation proceedings in any of the cases set forth in the following items:

- (i) It has become obvious that there is no likelihood that a proposed rehabilitation plan that falls under none of the items of Article 241 (2) will be prepared.
- (ii) Where no proposed rehabilitation plan is submitted within the period specified by the court or any extension thereof, or a proposed rehabilitation plan(s) submitted within such period or extension falls under any of the items of Article 241 (2).

#### Article 244 (Application *Mutatis Mutandis* of Provisions on Rehabilitation for Individuals with Small-Scale Debts)

The provisions of Article 221 (3) to (5), Article 222 to Article 229, Article 232 to Article 235, and Article 237 (2) shall apply *mutatis mutandis* to rehabilitation for salaried workers, etc.

#### Article 245 (Exclusion from Application of Provisions on Ordinary Rehabilitation Proceedings)

In the case of rehabilitation for salaried workers, etc., the provisions prescribed in Article 238 and the provisions of Article 87 (1) and (2), Article 172, Article 174 (2)

and (3), Article 191, and Article 202(2) shall not apply.

## **Chapter XIV Transfer Between Rehabilitation Proceedings and Bankruptcy Proceedings**

### **Section 1 Transfer from Bankruptcy Proceedings to Rehabilitation Proceedings**

Article 246 (Petition for Commencement of Rehabilitation Proceedings Filed by Bankruptcy Trustee)

- (1) A bankruptcy trustee, when a fact constituting the grounds for commencement of rehabilitation proceedings exists with regard to the bankrupt, may file a petition for commencement of rehabilitation proceedings against the bankrupt, with permission of the court (meaning a judge or panel of judges in charge of the bankruptcy case; hereinafter the same shall apply in this Article).
- (2) The court may grant the permission set forth in the preceding paragraph only where it finds that enforcing rehabilitation proceedings conforms to the common interests of creditors.
- (3) Where a petition for the permission set forth in paragraph (1) is filed, the court, except where it is obvious that the petition should be dismissed without prejudice or the permission should be granted, shall hear opinions of the labor union, etc. (meaning the labor union consisting of the majority of the bankrupt's employees and other workers, if there is any such labor union, or the person representative of the majority of the bankrupt's employees and other workers, if there is no labor union consisting of the majority of bankrupt's employees and other workers), before making an order on the petition.
- (4) The provision of Article 23(1) shall not apply to a petition for commencement of rehabilitation proceedings filed under the provision of paragraph (1).

Article 247 (Order Not to Require Filing of Proofs of Rehabilitation Claims)

- (1) Where the court makes an order of commencement of rehabilitation proceedings, when it finds it appropriate while taking into consideration the content and cause of each bankruptcy claim filed in the bankruptcy proceedings to be stayed pursuant to the provision of Article 39(1), the number of denied/disputed bankruptcy claims prescribed in the main clause of Article 125(1) of the Bankruptcy Act, whether or not any liquidating distribution will be made through the bankruptcy proceedings, and any other circumstances concerned, it may make an order, upon making said order of commencement of rehabilitation proceedings, to the effect that rehabilitation creditors who hold rehabilitation claims that have been filed as bankruptcy proceedings in said bankruptcy proceedings (excluding claims that

have been filed as preferred bankruptcy claims prescribed in Article 98(1) of said Act and claims for fine, etc. prescribed in Article 97(vi) of said Article; hereinafter the same shall apply in this Article) shall not be required to file proofs of such rehabilitation claims.

- (2) The court, when it has made an order pursuant to the provision of the preceding paragraph, shall indicate, in the public notice to be made under the provision of Article 35(1), that rehabilitation creditors who hold rehabilitation claims that have been filed as bankruptcy claims in the bankruptcy proceedings set forth in the preceding paragraph shall not be required to file proofs of such rehabilitation claims, and give a notice to known rehabilitation creditors to that effect.
- (3) Where an order under the provision of paragraph (1) is made, with regard to claims that have been filed as bankruptcy claims in the bankruptcy proceedings set forth in said paragraph, it shall be deemed that the persons who have filed proofs of the bankruptcy claims (or persons who have received a change of the name of holder of filed claim with regard to such claims filed in said bankruptcy proceedings, if there is any such person; the same shall apply in paragraph (5)) have filed proofs of rehabilitation claims on the first day of the period for filing proofs prescribed in Article 94(1).
- (4) In the case referred to in the preceding paragraph, for each of the categories of filed matters listed in the following items regarding such claim that has been filed as a bankruptcy claim, it shall be deemed that the matter specified in the respective items has been filed when filing a proof of rehabilitation claim:
  - (i) With regard to a claim that has been filed with a statement that the claim is a subordinate bankruptcy claim prescribed in Article 99(1) of the Bankruptcy Act, the amount and cause of the bankruptcy claim set forth in Article 111(1)(i) of said Act: The amount of the rehabilitation claim, as an element of the content of the rehabilitation claim prescribed in Article 94(1), and the cause of the rehabilitation claim prescribed in Article 94(1)
  - (ii) With regard to such claim that has been filed as a bankruptcy claim, except for the claim set forth in the preceding item, the amount and cause of the bankruptcy claim set forth in Article 111(1)(i) of the Bankruptcy Act: The amount of the rehabilitation claim, as an element of the content of the rehabilitation claim prescribed in Article 94(1), the amount of the voting right for the rehabilitation claim prescribed in Article 94(1), and the cause of the rehabilitation claim prescribed in Article 94(1)
  - (iii) With regard to a claim filed with a statement that the claim is a consensually-subordinated bankruptcy claim prescribed in Article 99(2) of the Bankruptcy Act, such statement set forth in Article 111(1)(iii) of said Act: The statement that the claim is a consensually-subordinated rehabilitation claim prescribed in Article 94(1)

- (iv) The amount of the claim for which payment is not expected to be received by exercising a right of separate satisfaction set forth in Article 111(2) (ii) of the Bankruptcy Act: The amount of the claim for which payment is not expected to be received by exercising a right of separate satisfaction set forth in Article 94 (2)
- (5) Where the person who filed a proof of a claim as a bankruptcy claim has filed a proof of rehabilitation claim within the period for filing proofs of claims prescribed in Article 94(1), the provisions of the preceding two paragraphs shall not apply to any claim filed as a bankruptcy claim set forth in paragraph (3), which is held by such person who has filed a proof of a claim as a bankruptcy claim.
- (6) The provisions of the preceding paragraphs shall not apply where rehabilitation proceedings pertaining to the order of commencement of rehabilitation proceedings set forth in paragraph (1) are for rehabilitation for individuals with small-scale debts or rehabilitation for salaried workers, etc.

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

### Article 248 (Transfer of Bankruptcy Case Where Order of Commencement of Rehabilitation Proceedings Is Made)

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

### Article 249 (Petition for Commencement of Bankruptcy Proceedings Prior to Close of Rehabilitation Proceedings)

- (1) Where, with regard to the rehabilitation debtor against whom bankruptcy proceedings have not yet been commenced, an order of revocation of the order of commencement of rehabilitation proceedings, an order of discontinuance of rehabilitation proceedings, an order of disconfirmation of the rehabilitation plan or an order of revocation of the rehabilitation plan (limited to one based on a petition filed prior to the close of rehabilitation proceedings; hereinafter the same shall apply in this Article) is made, notwithstanding the provision of Article 39(1), a petition for commencement of bankruptcy proceedings may be filed with the rehabilitation court against said rehabilitation debtor even before the respective order becomes final and binding. The same shall apply where, after the bankruptcy proceedings commenced against the rehabilitation debtor have ceased to be effective as a result of an order of confirmation of the rehabilitation plan becoming

final and binding, an order of discontinuance of rehabilitation proceedings under the provisions of Article 193 or Article 194 or an order of revocation of the rehabilitation plan is made.

- (2) An order of commencement of bankruptcy proceedings based on the petition for commencement of bankruptcy proceedings filed under the provision of the preceding paragraph may not be made unless an order prescribed in the first sentence of said paragraph or an order of discontinuance of rehabilitation proceedings or order of revocation of the rehabilitation plan set forth in the second sentence of said paragraph becomes final and binding.

Article 250 (Order of Commencement of Bankruptcy Proceedings by Court's Authority Upon Close of Rehabilitation Proceedings)

- (1) Where, with regard to the rehabilitation debtor against whom bankruptcy proceedings have not yet been commenced, an order of dismissal with prejudice on the merits of a petition for commencement of rehabilitation proceedings, an order of discontinuance of rehabilitation proceedings, an order of disconfirmation of the rehabilitation plan or an order of revocation of the rehabilitation plan becomes final and binding, the court, when it finds that a fact constituting the grounds for commencement of bankruptcy proceedings exists with regard to such rehabilitation debtor, by its own authority, may make an order of commencement of bankruptcy proceedings in accordance with the Bankruptcy Act.
- (2) Where, after the bankruptcy proceedings commenced against the rehabilitation debtor have ceased to be effective as a result of an order of confirmation of the rehabilitation plan becoming final and binding, an order of discontinuance of rehabilitation proceedings under the provisions of Article 193 or Article 194 or an order of revocation of the rehabilitation plan becomes final and binding, the court, by its own authority, may make an order of commencement of bankruptcy proceedings in accordance with the Bankruptcy Act; provided, however, that this shall not apply where the court makes an order of commencement of bankruptcy proceedings based on a petition for commencement of bankruptcy proceedings under the provision of the second sentence of paragraph (1) of the preceding Article.

Article 251 (Temporary Restraining Order Prior to Commencement of Bankruptcy Proceedings Upon Close of Rehabilitation Proceedings, etc.)

- (1) In the following cases, the court, when it finds it necessary, by its own authority, may issue a stay order under the provision of Article 24(1) of the Bankruptcy Act, comprehensive prohibition order prescribed in Article 25(2) of said Act, temporary restraining order under the provision of Article 28(1) of said Act, provisional administration order prescribed in Article 91(2) of said Act or temporary

restraining order under the provision of Article 171(1) of said Act (hereinafter referred to as "temporary restraining order, etc." in this Article and Article 254 (4)):

- (i) Where, with regard to the rehabilitation debtor against whom bankruptcy proceedings have not yet been commenced, an order of dismissal with prejudice on the merits of a petition for commencement of rehabilitation proceedings, an order of revocation of the order of commencement of rehabilitation proceedings, an order of discontinuance of rehabilitation proceedings, an order of disconfirmation of the rehabilitation plan or an order of revocation of the rehabilitation plan is made.
  - (ii) Where, after the bankruptcy proceedings commenced against the rehabilitation debtor have ceased to be effective as a result of an order of confirmation of the rehabilitation plan becoming final and binding, an order of discontinuance of rehabilitation proceedings under the provisions of Article 193 or Article 194 or an order of revocation of the rehabilitation plan is made.
- (2) If the court, after issuing a temporary restraining order, etc. under the provision of item (i) of the preceding paragraph, has decided not to make an order of commencement of bankruptcy proceedings under the provision of paragraph (1) of the preceding Article, it shall revoke said temporary restraining order, etc. without delay.
- (3) The temporary restraining order, etc. issued under the provision of paragraph (1) (i) shall cease to be effective when an order to revoke said order prescribed in said item is made. The same shall apply to a temporary restraining order, etc. issued under the provision of paragraph (1) (ii) in cases where an order to revoke the order of discontinuance of rehabilitation proceedings or order of revocation of the rehabilitation plan set forth in paragraph (1) (ii) is made.
- (4) Notwithstanding the provisions of Article 24(4), Article 25(6), Article 28(3), Article 91(5) and Article 171(4) of the Bankruptcy Act, no immediate appeal may be filed against an order made under the provision of paragraph (2).

#### Article 252 (Application of the Bankruptcy Act in Bankruptcy Proceedings Upon Close of Rehabilitation Proceedings)

- (1) In the following cases concerning the rehabilitation debtor against whom bankruptcy proceedings have not yet been commenced, for the purpose of application of the relevant provisions of the Bankruptcy Act (meaning the provisions of the Bankruptcy Act, Article 71(1) (iv) and (2) (ii) and (iii), Article 72(1) (iv) and (2) (ii) and (iii), Article 160 (excluding paragraph (1) (i)), Article 162 (excluding paragraph (1) (ii)), Article 163(2), Article 164(1) (including cases where applied mutatis mutandis pursuant to paragraph (2) of said Article), Article 166, and Article 167(2) (including cases where applied mutatis mutandis

pursuant to Article 170(2) of said Act); the same shall apply in paragraph (3)), a petition for commencement of rehabilitation proceedings, etc. (in cases where an order of dismissal with prejudice on the merits of a petition for commencement of rehabilitation proceedings, an order of discontinuance of rehabilitation proceedings, an order of disconfirmation of the rehabilitation plan or an order of revocation of the rehabilitation plan (limited to one based on a petition filed prior to the close of rehabilitation proceedings) becomes final and binding, this phrase refers to a petition for commencement of rehabilitation proceedings, petition for commencement of special liquidation in the proceedings for special liquidation that have ceased to be effective as a result of the commencement of rehabilitation proceedings, or any act conducted by the rehabilitation debtor or his/her statutory agent or the rehabilitation debtor's director, executive officer or any other person equivalent thereto, which shall constitute the crime set forth in Article 265 of the Bankruptcy Act, and in cases where an order of revocation of the rehabilitation plan, which is not based on a petition filed prior to the close of rehabilitation proceedings, becomes final and binding, said phrase refers to a petition for revocation of the rehabilitation plan; hereinafter the same shall apply in this paragraph) shall be deemed to be a petition for commencement of bankruptcy proceedings only where no petition for commencement of bankruptcy proceedings has been filed prior to said petition for commencement of rehabilitation proceedings, etc:

- (i) Where an order of commencement of bankruptcy proceedings is made under the provision of Article 250(1).
- (ii) Where, based on a petition for commencement of bankruptcy proceedings filed before an order of dismissal with prejudice on the merits of a petition for commencement of rehabilitation proceedings becomes final and binding, an order of commencement of bankruptcy proceedings is made after said order of dismissal becomes final and binding.
- (iii) Where, based on a petition for commencement of bankruptcy proceedings filed before an order of commencement of rehabilitation proceedings is made, an order of commencement of bankruptcy proceedings is made after an order of revocation of the order of commencement of rehabilitation proceedings becomes final and binding, after an order of discontinuance of rehabilitation proceedings under the provisions of Article 191 to Article 193, Article 237 and Article 243 becomes final and binding before an order of confirmation of the rehabilitation plan becomes final and binding, or after an order of disconfirmation of the rehabilitation plan becomes final and binding.
- (iv) Where, based on a petition for commencement of bankruptcy proceedings filed under the provision of the first sentence of Article 249(1), an order of commencement of bankruptcy proceedings is made.



- (2) For the purpose of application of the provision of the first sentence of Article 176 of the Bankruptcy Act in cases where an order of commencement of bankruptcy proceedings prescribed in the items of the preceding paragraph is made upon the close of rehabilitation proceedings as a result of an order of disconfirmation of the rehabilitation plan, order of discontinuance of rehabilitation proceedings or order of revocation of the rehabilitation plan becoming final and binding, the date of order of commencement of rehabilitation proceedings shall be deemed to be the date of commencement of bankruptcy proceedings set forth in the first sentence of said Article.
- (3) For the purpose of application of the relevant provisions of the Bankruptcy Act in cases where, with regard to the rehabilitation debtor against whom bankruptcy proceedings have already been commenced, an order of commencement of bankruptcy proceedings is made based on a petition for commencement of bankruptcy proceedings filed under the provision of the second sentence of Article 249(1) or an order of commencement of bankruptcy proceedings is made under the provision of Article 250(2), it shall be deemed that a petition for commencement of bankruptcy proceedings is filed at the time when the petition specified in each of the following items is filed for the cases listed in the respective items:
- (i) Where an order for commencement of bankruptcy proceedings is made upon an order of discontinuance of rehabilitation proceedings under the provisions of Article 193 or Article 194, or order of revocation of the rehabilitation plan (limited to one based on a petition filed prior to the close of rehabilitation proceedings) becoming final and binding: A petition for commencement of bankruptcy proceedings in the bankruptcy proceedings that have ceased to be effective as a result of an order of confirmation of the rehabilitation plan becoming final and binding
  - (ii) Where an order of commencement of bankruptcy proceedings is made upon an order of revocation of the rehabilitation plan, except for one set forth in the preceding item, becoming final and binding: A petition for revocation of the rehabilitation plan
- (4) For the purpose of application of the provision of the first sentence of Article 176 of the Bankruptcy Proceedings in cases where an order of commencement of bankruptcy proceedings prescribed in the preceding paragraph is made (limited to the case set forth in item (i) of said paragraph), the date of commencement of bankruptcy proceedings in the bankruptcy proceedings that have ceased to be effective as a result of an order of confirmation of the rehabilitation plan becoming final and binding shall be deemed to be the date of commencement of bankruptcy proceedings set forth in the first sentence of said Article.
- (5) For the purpose of application of the provision of Article 149(1) of the Bankruptcy Act in cases where an order of commencement of bankruptcy

proceedings prescribed in the items of paragraph (1) or in paragraph (3) is made (excluding the case set forth in paragraph (3) (ii)), the phrase "the three months preceding the commencement of bankruptcy proceedings" in Article 149(1) of said Act shall be deemed to be replaced with "the three months preceding the commencement of bankruptcy proceedings (or the three months preceding the commencement of rehabilitation proceedings if an order of commencement of rehabilitation proceedings is made prior to the date of commencement of bankruptcy proceedings)."

- (6) Where an order of commencement of bankruptcy proceedings prescribed in the preceding paragraph is made, common benefit claims (including the claims prescribed in Article 50(2) and Article 120(1) and (4) in cases where rehabilitation proceedings are not commenced) shall be claims on the estate. The same shall apply where bankruptcy proceedings commenced against the rehabilitation debtor are continued as a result of an order of dismissal with prejudice on the merits of a petition for commencement of rehabilitation proceedings becoming final and binding, an order of discontinuance of rehabilitation proceedings under the provisions of Article 191 to Article 193, Article 237 and Article 243 becoming final and binding before an order of confirmation of the rehabilitation plan becoming final and binding, or an order of disconfirmation of the rehabilitation plan becoming final and binding.

#### Article 253 (Order Not to Require Filing of Proofs of Bankruptcy Claims)

- (1) Where the court (meaning a judge or panel of judges in charge of the bankruptcy case; hereinafter the same shall apply in the following Article) makes an order of commencement of bankruptcy proceedings prescribed in the items of paragraph (1) of the preceding Article or in paragraph (3) of said Article, when it finds it appropriate while taking into consideration the content and cause of each rehabilitation claim as well as the amount of the voting right as filed in the rehabilitation proceedings that are closed, the number of denied/disputed rehabilitation claims prescribed in the main clause of Article 105(1), whether or not any right will be modified by a rehabilitation plan and the content of such modification, and any other circumstances concerned, it may make an order, upon making said order of commencement of bankruptcy proceedings, to the effect that bankruptcy creditors who hold bankruptcy claims that have been filed as rehabilitation claims in said rehabilitation proceedings (excluding claims for fine, etc. arising prior to the commencement of rehabilitation proceedings; hereinafter the same shall apply in this Article) shall not be required to file proofs of such bankruptcy claims.
- (2) The court, when it has made an order pursuant to the provision of the preceding paragraph, shall indicate, in the public notice to be made under the provision of

Article 32(1) of the Bankruptcy Act, that bankruptcy creditors who hold bankruptcy claims that have been filed as rehabilitation claims in the rehabilitation proceedings set forth in the preceding paragraph shall not be required to file proofs of such bankruptcy claims, and give a notice to known bankruptcy creditors to that effect.

- (3) Where an order under the provision of paragraph (1) is made, with regard to claims that have been filed as rehabilitation claims in the rehabilitation proceedings set forth in said paragraph, it shall be deemed that the persons who have filed proofs of such rehabilitation claims (or persons who have received a change of the name of holder of filed claim with regard to such claims filed in said rehabilitation proceedings, if there is any such person; the same shall apply in paragraph (6)) have filed proofs of bankruptcy claims (including a proof of the matter set forth in Article 111(1) (iv) of the Bankruptcy Act) on the first day of the period for filing proofs prescribed in Article 111(1) of said Act.
- (4) In the case referred to in the preceding paragraph, for each of the categories of filed matters listed in the following items regarding such claim that has been filed as a rehabilitation claim, it shall be deemed that the matter specified in the respective items has been filed when filing a proof of bankruptcy claim:
  - (i) With regard to any of the claims listed in Article 87(1) (iii) (b) to (d), the amount of the voting right for the rehabilitation claim and the cause of the rehabilitation claim, both prescribed in Article 94(1): The amount and cause of the bankruptcy claim set forth in Article 111(1) (i) of said Act
  - (ii) With regard to such claim that has been filed as a rehabilitation claim, except for the claim set forth in the preceding item, the amount of the rehabilitation claim, as an element of the content of the rehabilitation claim, and the cause of the rehabilitation claim, both prescribed in Article 94(1): The amount and cause of the bankruptcy claim set forth in Article 111(1) (i)
  - (iii) With regard to any of the claims listed in the items of Article 84(2), the content of the rehabilitation claim prescribed in Article 94(1): The statement that the claim in question is a consensually-subordinated bankruptcy claim prescribed in Article 111(1) (iii) of the Bankruptcy Act
  - (iv) With regard to any of the claims listed in Article 87(1) (i), (ii) or (iii) (a), the amount of the rehabilitation claim, as an element of the content of the rehabilitation claim, and the amount of the voting right for the rehabilitation claim, both prescribed in Article 94(1): The statement that the claim in question is a subordinate bankruptcy claim set forth in Article 111(1) (iii) of the Bankruptcy Act for its part corresponding to the amount obtained by deducting the amount of the voting right for the rehabilitation claim from the amount of the filed rehabilitation claim, which is an element of the content thereof
  - (v) With regard to a claim filed with a statement that the claim is a

consensually-subordinated rehabilitation claim, the statement to that effect prescribed in Article 94(1) : The statement that the claim is a consensually-subordinated bankruptcy claim prescribed in Article 111(1)(iii) of the Bankruptcy Act

- (vi) The amount of the claim for which payment is not expected to be received by exercising a right of separate satisfaction set forth in Article 94(2) : The amount of the claim for which payment is not expected to be received by exercising a right of separate satisfaction set forth in Article 111(2)(ii) of the Bankruptcy Act
- (5) Notwithstanding the provisions of the items of the preceding paragraph (excluding item (iv)), if the rehabilitation proceedings set forth in paragraph (1) are for rehabilitation for individuals with small-scale debts or rehabilitation for salaried workers, etc., the amount and cause of the filed rehabilitation claim as well as the estimated amount of deficiency (including the amount and cause of the rehabilitation claim as well as the estimated amount of deficiency that shall be deemed to be filed pursuant to the provision of Article 225) shall be deemed to be the amount and cause of the bankruptcy claim as well as the amount of the claim for which payment is not expected to be received by exercising a right of separate satisfaction set forth in Article 111(2)(ii) of the Bankruptcy Act, respectively, in the filing of proof of claim.
- (6) Where the person who filed a proof of a claim as a rehabilitation claim has filed a proof of bankruptcy claim within the period for filing proofs of claims prescribed in Article 111(1) of the Bankruptcy Act, the provisions of the preceding three paragraphs shall not apply to any claim filed as a rehabilitation claim set forth in paragraph (3), which is held by such person who filed a proof of a claim as a rehabilitation claim.
- (7) The provisions of the preceding paragraphs shall apply mutatis mutandis to bankruptcy proceedings pertaining to an order of commencement of bankruptcy proceedings that are enforced against the rehabilitation debtor prior to the complete implementation of the rehabilitation plan.

Article 254 (Action Against Order to Uphold Request for Avoidance, etc.)

- (1) Where rehabilitation proceedings are closed as a result of an order of disconfirmation of the rehabilitation plan, an order of discontinuance of rehabilitation proceedings or an order of revocation of the rehabilitation plan becoming final and binding, if an order of commencement of bankruptcy proceedings prescribed in the items of Article 252(1) or in paragraph (3) of said Article is made, a bankruptcy trustee may take over an action set forth in Article 137(1) that is discontinued pursuant to the provisions of Article 68(2) or Article 137(6) (including one set forth in Article 137(1) that is pending at the time of

close of rehabilitation proceedings and is discontinued pursuant to the provision of Article 141(1); the same shall apply in paragraph (3) and paragraph (4)). In this case, a petition for taking over of action may also be filed by the opponent.

- (2) In the case referred to in the preceding paragraph, the opponent's claim for court costs against a supervisor empowered to avoid or a trustee shall be a claim on the estate.
- (3) In the case referred to in paragraph (1), if the bankruptcy proceedings are closed before the action set forth in Article 137(1) discontinued pursuant to the provisions of Article 68(2) or Article 137(6) is taken over under the provision of paragraph (1), the action shall be closed.
- (4) An action set forth in Article 137(1), which is discontinued pursuant to the provisions of Article 68(2) or Article 137(6) and pertains to a rehabilitation case involving the rehabilitation debtor against whom bankruptcy proceedings have not yet been commenced, shall be closed if an order of commencement of bankruptcy proceedings prescribed in the items of Article 252(1) is not made within one month from the date of discontinuance of the action (if, for a certain part of the one-month period, a temporary restraining order, etc. is issued under the provision of Article 251(1) (i) or a temporary restraining order, etc. is issued in bankruptcy proceedings based on a petition for commencement of bankruptcy proceedings set forth in the items of Article 252(2), such part of the period shall be excluded).
- (5) The proceedings for assessment based on a petition for assessment set forth in the main clause of Article 105(1), which shall continue to be pending pursuant to the provision of Article 112-2(1), shall be closed when an order of commencement of bankruptcy proceedings prescribed in the items of Article 252(1) or in paragraph (3) of said Article is made. In this case, the provision of Article 112-2(3) shall not apply.
- (6) The provision of paragraph (4) shall apply mutatis mutandis to an action set forth in Article 106(1), which is discontinued pursuant to the provision of Article 112-2(4) and pertains to a rehabilitation case involving the rehabilitation debtor against whom bankruptcy proceedings have not yet been commenced.

## **Chapter XV Penal Provisions**

### Article 255 (Crime of Fraudulent Rehabilitation)

- (1) A person who, before or after the commencement of rehabilitation proceedings, for the purpose of harming creditors, has conducted any of the acts listed in the following items shall be punished by imprisonment with work for not more than ten years or a fine of not more than ten million yen, or both, when an order of commencement of rehabilitation proceedings against the debtor becomes final and binding. The same shall apply to a person who has served as the other party to the

act set forth in item (iv) while knowing such purpose, when an order of commencement of rehabilitation proceedings becomes final and binding:

- (i) An act of concealing or damaging the debtor's property
  - (ii) An act of faking the transfer of the debtor's property or assumption of debts
  - (iii) An act of altering the existing status of the debtor's property, thereby reducing its value
  - (iv) An act of disposing of the debtor's property in a manner disadvantageous to creditors, or an act, committed by the debtor, of assuming debts disadvantageous to creditors
- (2) In addition to what is prescribed in the preceding paragraph, said paragraph shall also apply to a person who, knowing that an administration order or provisional administration order is issued against a debtor, for the purpose of harming creditors, has acquired the debtor's property or has had a third party acquire it, without consent of a trustee or any other justifiable grounds.

Article 256 (Crime of Providing Security to Specific Creditor, etc.)

Where a debtor, before or after the commencement of rehabilitation proceedings, with regard to his/her debt to a specific creditor, for the purpose of harming other creditors, has conducted an act concerning the provision of security or extinguishment of debt that is not included in the scope of the debtor's obligation in terms of the act itself or the method or time of performance of the act, and an order of commencement of rehabilitation proceedings has become final and binding, the debtor shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.

Article 257 (Crime of Special Breach of Trust by Supervisor, etc.)

- (1) Where a supervisor, examiner, trustee, provisional administrator, individual rehabilitation commissioner, trustee representative or provisional administrator representative, for the purpose of promoting his/her own interest or the interest of a third party, or inflicting damage on creditors, has committed an act in breach of his/her duty and caused financial loss to creditors, he/she shall be punished by imprisonment with work for not more than ten years or a fine of not more than ten million yen, or both.
- (2) Where a supervisor, examiner, trustee, provisional administrator or individual rehabilitation commissioner (hereinafter referred to as a "supervisor, etc." in this paragraph) is a juridical person, the provision of the preceding paragraph shall apply to its officer or official who performs the duties of a supervisor, etc.

Article 258 (Crime of Refusal of Explanation and Inspection, etc.)

- (1) Where a person listed in the items of Article 59(1) or person who was the

person listed in Article 59(1) (ii) to (v) has refused to give an explanation under the provisions of Article 59(1) (including cases where applied mutatis mutandis pursuant to paragraph (2) of said Article; including cases where these provisions are applied mutatis mutandis pursuant to Article 63, Article 78 or Article 83(1)) or given a false explanation, or where the rehabilitation debtor or his/her statutory agent has refused to give an explanation under the provision of Article 223(8) (including cases where applied mutatis mutandis pursuant to Article 244) or given a false explanation, the offender shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.

- (2) The provision of the preceding paragraph shall also apply where a representative person, agent, employee or other worker (hereinafter referred to as a "representative person, etc." in paragraph (4)) of a person set forth in items (ii) to (v) of Article 59(1) or person who was the person set forth in these items (these persons shall hereinafter be referred to as a "person under duty to report" in this paragraph), in connection with the business of the person under duty to report, has refused to give an explanation under the provisions of paragraph (1) of said Article (including cases where applied mutatis mutandis pursuant to paragraph (2) of said Article; including cases where these provisions are applied mutatis mutandis pursuant to Article 63, Article 78 or Article 83(1)) or given a false explanation, or where a representative person, agent, employee or other worker of the rehabilitation debtor's statutory agent, in connection with the business of the statutory agent, has refused to give an explanation under the provision of Article 223(8) (including cases where applied mutatis mutandis pursuant to Article 244) or given a false explanation.
- (3) The provision of paragraph (1) shall also apply where the rehabilitation debtor has refused an inspection under the provision of Article 59(1) (including cases where applied mutatis mutandis pursuant to Article 63, Article 78 or Article 83(1)) or where the rehabilitation debtor or his/her statutory agent has refused an inspection under the provision of Article 223(8) (including cases where applied mutatis mutandis pursuant to Article 244).
- (4) The provision of paragraph (1) shall also apply where a representative person, etc. of the rehabilitation debtor's subsidiary company, etc. prescribed in Article 59(3) (including one that shall be deemed to be the rehabilitation debtor's subsidiary company, etc. under paragraph (4) of said Article; hereinafter the same shall apply in this paragraph), in connection with the business of the rehabilitation debtor's subsidiary company, etc., has refused to give an explanation or refused an inspection under the provision of paragraph (3) of said Article (including cases where applied mutatis mutandis pursuant to Article 63, Article 78 or Article 83(1)) or given a false explanation.

Article 259 (Crime of Spoilation of Objects Concerning the Status of Business and Property, etc.)

A person who, before or after the commencement of rehabilitation proceedings, for the purpose of harming creditors, has spoiled, forged or altered books, documents or any other objects concerning the status of a debtor's business and property shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both, when an order of commencement of rehabilitation proceedings against the debtor becomes final and binding.

Article 260 (Crime of Obstruction of Duties against Supervisor, etc.)

A person who, by the use of fraudulent means or force, has obstructed the performance of duties of a supervisor, examiner, trustee, provisional administrator, individual rehabilitation commissioner, trustee representative or provisional administrator representative shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.

Article 261 (Crime of Acceptance of Bribe)

- (1) Where a supervisor, examiner, trustee, provisional administrator, individual rehabilitation commissioner, trustee representative or provisional administrator representative, in connection with his/her duties, has accepted, solicited or promised to accept a bribe, he/she shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.
- (2) In the case referred to in the preceding paragraph, where the supervisor, examiner, trustee, provisional administrator, individual rehabilitation commissioner, trustee representative or provisional administrator representative has agreed to perform an act in response to an unlawful request, he/she shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.
- (3) Where a supervisor, examiner, trustee, provisional administrator, individual rehabilitation commissioner (hereinafter referred to as a "supervisor, etc." in this Article) is a juridical person, if its officer or official who performs the duties of a supervisor, etc., in connection with the duties of a supervisor, etc., has accepted, solicited or promised to accept a bribe, he/she shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both. The same shall apply where a supervisor, etc. is a juridical person, and its officer or official, in connection with the duties of a supervisor, etc., has caused the supervisor, etc. to accept or solicit or promise to accept a bribe.
- (4) In the case referred to in the preceding paragraph, where the officer or official has agreed to perform an act in response to an unlawful request, he/she shall be



punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.

- (5) Where a rehabilitation creditor or rehabilitation creditors' representative or their agent, officer or official, in connection with the exercise of a voting right on the date of a creditors meeting or exercise of a voting right by voting by document, etc. prescribed in Article 169(2)(ii), has accepted, solicited or promised to accept a bribe while agreeing to perform an act in response to an unlawful request, he/she shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.
- (6) In the cases referred to in the preceding paragraphs, a bribe accepted by the offender or by the supervisor, etc. who is a juridical person shall be confiscated. If the whole or part of the bribe cannot be confiscated, an equivalent value thereof shall be collected.

#### Article 262 (Crime of Offer of Bribe)

- (1) A person who has given, offered or promised to offer a bribe prescribed in paragraph (1) or paragraph (3) of the preceding Article shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.
- (2) A person who has given, offered or promised to offer a bribe prescribed in paragraph (2), paragraph (4) or paragraph (5) of the preceding Article shall be punished by imprisonment with work for not more than five years or a fine of not more than five million yen, or both.

#### Article 263 (Crime of Forcibly Demanding Meeting, etc. with the Rehabilitation Debtor, etc.)

A person who, for the purpose of causing the rehabilitation debtor (limited to a rehabilitation debtor who is an individual; hereinafter the same shall apply in this Article) or his/her relative or any other person to pay a rehabilitation claim (if rehabilitation proceedings are closed after an order of confirmation of the rehabilitation plan becomes final and binding, limited to those discharged; hereinafter the same shall apply in this Article), or causing the rehabilitation debtor's relative or any other person to guarantee a rehabilitation claim, has forcibly demanded a meeting with the rehabilitation debtor or his/her relative or any other person or intimidated any of these persons shall be punished by imprisonment with work for not more than three years or a fine of not more than three million yen, or both.

#### Article 264 (Crimes Committed Outside Japan)

- (1) The crimes set forth in Article 255, Article 256, Article 259, Article 260 and

Article 262 shall be governed by the provision of Article 2 of the Penal Code (Act No. 45 of 1907).

(2) The crimes set forth in Article 257 and Article 261 (excluding paragraph (5)) shall be governed by the provision of Article 4 of the Penal Code.

(3) The crime set forth in Article 261(5) shall also apply to a person who has committed the crime set forth in Article 261(5) outside Japan.

#### Article 265 (Dual Liability)

When the representative person of a juridical person, or an agent, employee or any other worker of a juridical person or individual, in connection with the business or property of the juridical person or individual, has committed violation of Article 255, Article 256, Article 258 (excluding paragraph (1)), Article 259, Article 260, Article 262 or Article 263, not only the offender shall be punished but also the juridical person or individual shall be punished by a fine prescribed in the respective Articles.

#### Article 266 (Non-Penal Fine)

(1) The rehabilitation debtor or a person who owes a debt or provides security for the purpose of rehabilitation, if he/she has violated an order issued by the court under the provision of Article 186(3), shall be punished by a non-penal fine of not more than one million yen.

(2) Where the rehabilitation debtor or his/her statutory agent or a rehabilitation creditor has not complied with the request for submission of materials under the provision of Article 227(6) (including cases where applied *mutatis mutandis* pursuant to Article 244) without justifiable grounds, he/she shall be punished by a non-penal fine of not more than 100,000 yen.