

Corporate Reorganization Act (Tentative translation)

(Act No. 154 of December 13, 2002)

The Corporate Reorganization Act (Act No. 172 of 1952) shall be fully revised.

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Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to appropriately coordinate the interests of creditors, shareholders and other interested parties of stock companies in financial difficulties by specifying the procedures concerning formulating reorganization plans and implementing such plans, with the aim of ensuring the maintenance and reorganization of such stock companies' businesses.

(Definitions)

Article 2 (1) The term "reorganization proceedings" as used in this Act means the proceedings for formulating a reorganization plan for a stock company, and implementation of a reorganization plan if such plan is formulated, as provided for in this Act (including the proceedings for conducting a trial and making a judicial decision on whether or not to make an order of commencement of reorganization proceedings in response to a petition for commencement of reorganization proceedings).

- (2) The term "reorganization plan" as used in this Act means a plan that specifies clauses for modifying some or all of the rights of reorganization creditors, etc. or shareholders and any other clauses prescribed in Article 167.
- (3) The term "reorganization case" as used in this Act is a case pertaining to reorganization proceedings.
- (4) The term "reorganization court" as used in this Act means a district court before which a reorganization case is pending.
- (5) The term "court" as used in this Act (excluding Article 6, Article 41, paragraph (1), item (ii), Article 155, paragraph (2), Article 159, Article 246, paragraph (1) to paragraph (3), Article 248, paragraph (1) to paragraph (3), Article 250, and Article 255, paragraph (1) and paragraph (2)) means a single judge or a panel of judges who deal with a reorganization case.
- (6) The term "company awaiting commencement" as used in this Act means a stock company whose reorganization case is pending at a reorganization court but against which an order of commencement of reorganization proceedings has not yet been made.
- (7) The term "reorganization company" as used in this Act means a stock company whose reorganization case is pending at a reorganization court and against which an order of commencement of reorganization proceedings has been made.
- (8) The term "reorganization claim" as used in this Act means a claim on property arising against the reorganization company from a cause that has occurred before the commencement of reorganization proceedings as well as the following claims, which do not fall within the scope of secured reorganization claim or common benefit claim:
 - (i) A claim for interest arising after the commencement of reorganization proceedings;
 - (ii) A claim for damages or a penalty for a default arising after the commencement of reorganization proceedings;
 - (iii) A claim for expenses for participation in reorganization proceedings
 - (iv) A claim prescribed in Article 58, paragraph (1) (including cases where applied mutatis mutandis pursuant to paragraph (2) of said Article);
 - (v) the other party's claim for damages arising in cases where a bilateral contract is cancelled pursuant to the provision of Article 61, paragraph (1);
 - (vi) A claim for damages under the provision of Article 58, paragraph (2) of the Bankruptcy Act (Act No. 75 of 2004) as applied mutatis mutandis pursuant to Article 63;
 - (vii) A claim under the provision of Article 59, paragraph (1) as applied mutatis mutandis pursuant to Article 63 (excluding such claim held by the reorganization company); and
 - (viii) A right prescribed in Article 91-2, paragraph (2), item (ii) or item (iii);

- (9) The term "reorganization creditor" as used in this Act means a person who holds a reorganization claim.
- (10) The term "secured reorganization claim" as used in this Act means a claim secured by any security interest (limited to a special statutory lien, pledge, mortgage, or a right of retention under the provisions of the Commercial Code (Act No. 48 of 1899) or the Companies Act (Act No. 86 of 2005)) that exists on the property of the reorganization company as of the time of commencement of reorganization proceedings, which arises from a cause that has occurred before the commencement of reorganization proceedings or which falls under the items of paragraph (8) (excluding a common benefit claim), to the extent that the claim is secured by the security interest on the assumption that the property that is the subject matter of the security interest retains the market value thereof as of the time of commencement of reorganization proceedings; provided, however, that any claim for interest, or damages or a penalty for a default arising after the commencement of reorganization proceedings, which forms part of the secured claim (excluding a company bond), shall be limited to such claim that has arisen before one year elapses after the commencement of reorganization proceedings (or before an order of confirmation of the reorganization plan is made if it is made within such one-year period).
- (11) The term "secured reorganization creditor" as used in this Act means a person who holds a secured reorganization claim.
- (12) The term "reorganization claim(s), etc." as used in this Act means a reorganization claim or a secured reorganization claim; provided, however, that in Section 2 of the following Chapter, the term means any claim that would become a reorganization claim or a secured reorganization claim if an order of commencement of reorganization proceedings is made against a company awaiting commencement.
- (13) The term "reorganization creditor(s), etc." as used in this Act means a reorganization creditor or a secured reorganization creditor; provided, however, that in Section 2 of the following Chapter, the term means any person who would become a reorganization creditor or a secured reorganization creditor if an order of commencement of reorganization proceedings is made against a company awaiting commencement.
- (14) The term "reorganization company's assets" as used in this Act means any and all property which belongs to the reorganization company.
- (15) The term "claim for tax, etc." as used in this Act means a claim that may be collected as provided for by the National Tax Collection Act (Act No. 147 of 1959) or by the same procedure as that for collecting national tax, which does not fall within the scope of common benefit claims.

(Status of Foreign Nationals)

Article 3 A foreign national or foreign juridical person shall have the same status as a Japanese national or Japanese juridical person, respectively, with respect to reorganization proceedings.

(Jurisdiction over Reorganization Cases)

Article 4 A petition for commencement of reorganization proceedings under the provisions of this Act may be filed only if a stock company has a business office in Japan.

Article 5 (1) A reorganization case shall be subject to the jurisdiction of the district court that has jurisdiction over the location of a stock company's principal business office (if a stock company has a principal business office in a foreign state, the location of its principal business office in Japan).

(2) Notwithstanding the provision of the preceding paragraph, a petition for commencement of reorganization proceedings may be filed with the district court that has jurisdiction over the location of a stock company's head office.

(3) Notwithstanding the provision of paragraph (1), where a stock company 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, paragraph (3) of the Companies Act; the same shall apply hereinafter) of all shareholders of another stock company, if a reorganization case is pending against such other stock company (hereinafter referred to as a "subsidiary stock company" in this paragraph and the following paragraph), a petition for commencement of reorganization proceedings against the former stock company (hereinafter referred to as a "parent stock company" in this paragraph and the following paragraph) may also be filed with the district court before which the reorganization case against the subsidiary stock company is pending, and if a reorganization case is pending against the parent stock company, a petition for commencement of reorganization proceedings against the subsidiary stock company may also be filed with the district court before which the reorganization case against the parent stock company is pending.

(4) Where the subsidiary stock company independently holds or the parent stock company 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 stock company.

(5) Notwithstanding the provision of paragraph (1), 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 stock company, and reported the contents thereof at an annual shareholders meeting of the former stock company, if a reorganization case is pending against such other stock company, a petition for commencement of reorganization proceedings against the former stock company may also be filed with the district court before which the reorganization case against such other stock company is pending, and if a reorganization case is pending against the former stock company, a petition for commencement of reorganization proceedings against such other stock company may also be filed with the district court before which the reorganization case against the former stock company is pending.

- (6) Notwithstanding the provision of paragraph (1), a petition for commencement of reorganization proceedings may be filed with the Tokyo District Court or the Osaka District Court.
- (7) If two or more district courts have jurisdiction over a reorganization case pursuant to the provisions of the preceding paragraphs, the reorganization case shall be subject to the jurisdiction of the district court with which the first petition for commencement of reorganization proceedings is filed.

(Exclusive Jurisdiction)

Article 6 The court jurisdiction prescribed in this Act shall be exclusive.

(Transfer of Reorganization Cases)

Article 7 The court, when it finds it necessary in order to avoid substantial detriment or delay, by its own authority, may transfer a reorganization case to any of the following district courts:

- (i) The district court that has jurisdiction over the location of the business office of the stock company against which a petition for commencement of reorganization proceedings is filed;
- (ii) The district court that has jurisdiction over the location of the property of the stock company set forth in the preceding item (in the case of a claim, the place where demand by litigation may be made); and
- (iii) Any of the district courts prescribed in Article 5, paragraph (2) to paragraph (6).

(Optional Oral Argument, etc.)

Article 8 (1) A judicial decision concerning reorganization proceedings may be made without oral argument.

- (2) The court, by its own authority, may conduct necessary investigation on a reorganization case.

- (3) The court, when it finds it necessary, may request the administrative agency that has jurisdiction over the business of the company awaiting commencement or the reorganization company and the person who has the power to collect a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance prescribed in Article 11, paragraph (1) of the Act on Special Provisions, etc. of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Attendant upon the Enforcement of Tax Treaties, etc. (Act No. 46 of 1969; hereinafter referred to as the "Act on Special Provisions for the Enforcement of Tax Treaties, etc.") (hereinafter such foreign tax shall be referred to as a "foreign tax subject to mutual assistance")) to state their opinions concerning the reorganization proceedings against the company awaiting commencement or the reorganization company.
- (4) The administrative agency or the person who has the power of collection prescribed in the preceding paragraph may state their opinions to the court concerning the reorganization proceedings against the company awaiting commencement or the reorganization company prescribed in said paragraph.

(Appeal)

Article 9 A person who has an interest in a judicial decision concerning reorganization 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 given, shall be two weeks from the day on which such public notice becomes effective.

(Public Notice, etc.)

- Article 10 (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 given pursuant to the provisions of this Act.
- (4) When a public notice of a judicial decision is given 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.

(Inspection, etc. of Case Documents)

Article 11 (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 reorganization proceedings:
 - (i) An interested person other than the company awaiting commencement: A stay order under the provision of Article 24, paragraph (1) or paragraph (2), comprehensive prohibition order prescribed in Article 25, paragraph (2), temporary restraining order under the provision of Article 28, paragraph (1), permission under the provision of Article 29, paragraph (3), provisional administration order prescribed in Article 30, paragraph (2), supervision order prescribed in Article 35, paragraph (2), temporary restraining order under the provision of Article 39-2, paragraph (1) or judicial decision on a petition for commencement of reorganization proceedings;
 - (ii) The company awaiting commencement: A judicial decision to designate the date for oral argument or date for interrogation on which the company awaiting commencement is to be summoned to appear with respect to a petition for commencement of reorganization proceedings, or any order, temporary restraining order, permission or judicial decision specified in the preceding item.

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

Article 12 (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 reorganization of the business of the reorganization company (including the

company awaiting commencement and any stock company that has been the company awaiting commencement or reorganization company; hereinafter the same shall apply in this Article) or serious damage to the reorganization company'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 provisional administrator, trustee or examiner who submitted the documents, etc. in question, may limit persons who may make a request for inspection, etc. of the detrimental part to the person who has filed the petition and the reorganization company (or a trustee or provisional administrator if any trustee or provisional administrator is appointed; hereinafter the same shall apply in the following paragraph):

- (i) Documents, etc. submitted to the court for the purpose of obtaining permission under the proviso to Article 32, paragraph (1), the first sentence of Article 46, paragraph (2) or Article 72, paragraph (2) (including cases where applied mutatis mutandis pursuant to Article 32, paragraph (3)); and
 - (ii) Documents, etc. pertaining to the report under the provision of Article 84, paragraph (2), or an examination or statement of opinions prescribed in Article 125, paragraph (2).
- (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 reorganization company; 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 reorganization 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.

(Application Mutatis Mutandis of the Code of Civil Procedure)

Article 13 With respect to reorganization proceedings, except as otherwise provided, the provisions of the Code of Civil Procedure (Act No. 109 of 1996) shall apply mutatis mutandis.

(Rules of the Supreme Court)

Article 14 In addition to what is provided for in this Act, the necessary matters concerning reorganization proceedings shall be specified by the Rules of the Supreme Court.

Article 15 Deleted

Article 16 Deleted

Chapter II Petition for Commencement of Reorganization Proceedings and Provisional Measures

Section 1 Petition for Commencement of Reorganization Proceedings

(Petition for Commencement of Reorganization Proceedings)

Article 17 (1) When there is a fact constituting the grounds for commencement of reorganization proceedings (meaning any of the facts listed in the following items) in relation to a stock company, the stock company may file a petition for commencement of reorganization proceedings against itself:

- (i) Where there is the risk that a fact constituting the grounds for commencement of bankruptcy proceedings would occur; or
- (ii) Where the stock company is likely to experience significant hindrance to the continuation of its business if it pays its debts that are due.

(2) When there is a fact that falls under item (i) of the preceding paragraph in relation to a stock company, the following persons may also file a petition for commencement of reorganization proceedings against the stock company:

- (i) A creditor who holds claims that account for one-tenth or more of the amount of the stated capital of the stock company; and
- (ii) A shareholder who holds one-tenth or more of the voting rights of all shareholders of the stock company.

(Obligation to File Petition for Commencement of Bankruptcy Proceedings , etc. and Petition for Commencement of Reorganization Proceedings)

Article 18 Even where a liquidator of a stock company shall be required to file a petition for commencement of bankruptcy proceedings or commencement of special liquidation against the stock company pursuant to the provisions of other Acts, this shall not preclude the filing of a petition for commencement of reorganization proceedings.

(Petition for Commencement of Reorganization Proceedings against Stock Company after Dissolution)

Article 19 In order for a stock company to file a petition for commencement of reorganization proceedings against itself during the liquidation or special

liquidation or after the commencement of bankruptcy proceedings, such filing shall be approved by a resolution prescribed in Article 309, paragraph (2) of the Companies Act.

(Prima Facie Showing)

Article 20 (1) When filing a petition for commencement of reorganization proceedings, a petitioner shall make a prima facie showing of the fact constituting the grounds for commencement of reorganization proceedings prescribed in Article 17, paragraph (1).

(2) Where a creditor or shareholder files a petition under the provision of Article 17, paragraph (2), the creditor or shareholder shall also make a prima facie showing of the amount of the claim or the number of his/her 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, paragraph (3) of the Companies Act).

(Prepayment of Expenses)

Article 21 (1) When filing a petition for commencement of reorganization proceedings, a petitioner shall prepay an amount designated by the court as expenses for reorganization proceedings.

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

(Hearing, etc. of Opinions)

Article 22 (1) Where a petition for commencement of reorganization proceedings is filed under the provision of Article 17, the court, before making an order on said petition, shall hear opinions of the labor union consisting of the majority of the employees of the company awaiting commencement, if there is any such labor union, or the person representative of the majority of the employees of the company awaiting commencement, if there is no labor union consisting of the majority of the employees of the company awaiting commencement, except where it is obvious that the court should dismiss said petition with prejudice on the merits or make an order of commencement of reorganization proceedings.

(2) Where a creditor or shareholder has filed a petition for commencement of reorganization proceedings pursuant to the provision of Article 17, paragraph (2), the court, when making an order on said petition, shall interrogate the representative of the company awaiting commencement (or its representative for Japan if the company has its head office in a foreign state).

(Restriction on Withdrawal of Petition for Commencement of Reorganization Proceedings)

Article 23 A person who has filed a petition for commencement of reorganization proceedings may withdraw the petition only prior to an order of commencement of reorganization proceedings being made. In this case, after a stay order under the provision of paragraph (1) or paragraph (2) of the following Article, comprehensive prohibition order prescribed in Article 25, paragraph (2), temporary restraining order under the provision of Article 28, paragraph (1), permission under the provision of Article 29, paragraph (3), provisional administration order prescribed in Article 30, paragraph (2), supervision order prescribed in Article 35, paragraph (2), or temporary restraining order under the provision of Article 39-2, paragraph (1), permission of the court shall be required.

**Section 2 Provisional Measures upon Petition for Commencement of
Reorganization Proceedings
Subsection 1 Stay Order, etc. for Other Procedures and Proceedings
relating to Company Awaiting Commencement**

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

Article 24 (1) Where a petition for commencement of reorganization 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, proceedings or disposition until an order is made on the petition for commencement of reorganization proceedings; provided, however, that this shall only apply, in the case of the procedure set forth in item (ii) or the disposition set forth in item (vi), if the stay order is not likely to cause undue damage to the reorganization creditor, etc. who filed the petition for the procedure or the person who made the disposition:

- (i) Bankruptcy proceedings, rehabilitation proceedings or special liquidation proceedings against the company awaiting commencement;
- (ii) A procedure for compulsory execution, etc. (meaning compulsory execution, provisional seizure, provisional disposition or exercise of any security interest based on a reorganization claim, etc., or auction by reason of a right of retention that is intended to secure a reorganization claim, etc.), which has already been initiated against the property of the company awaiting commencement;
- (iii) Procedure already initiated against the company awaiting commencement for the exercise of an enterprise mortgage;
- (iv) Litigation proceedings relating to the property of the company awaiting commencement; and

- (v) Procedure for a case relating to the property of the company awaiting commencement that is pending before an administrative agency.
 - (vi) Disposition of foreign tax delinquency (meaning a disposition to be made by a procedure for making a disposition of national tax delinquency based on a claim for a foreign tax subject to mutual assistance (excluding such disposition intended to collect a common benefit claim)), which has already been made against the property of the company awaiting commencement.
- (2) Where a petition for commencement of reorganization proceedings is filed, the court, when it finds it necessary, by its own authority, may order stay of any disposition of national tax delinquency (excluding such disposition to be made to collect a common benefit claim, and including any disposition to be made by the same procedure as that for making a disposition of national tax delinquency (excluding such disposition to be made to collect a common benefit claim and a claim for a foreign tax subject to mutual assistance)), which has already been made against the property of the company awaiting commencement; provided, however, that it shall hear opinions from the person who has the power of collection in advance.
 - (3) The stay order under the provision of the preceding paragraph shall cease to be effective when an order is made on the petition for commencement of reorganization proceedings or when two months have elapsed since the day on which the stay order was made.
 - (4) The court may change or revoke a stay order issued under the provisions of paragraph (1) and paragraph (2).
 - (5) The court, when it finds it particularly necessary for the continuation of the business of the company awaiting commencement, upon the petition of the company awaiting commencement (or a provisional administrator if any provisional administrator is appointed), may order the revocation of the procedure for compulsory execution, etc. prescribed in paragraph (1), item (ii) which has been stayed pursuant to the provision of said item, the disposition of foreign tax delinquency prescribed in item (vi) of said paragraph which has been stayed pursuant to the provision of item (vi) of said paragraph or the disposition of national tax delinquency prescribed in paragraph (2) which has been stayed pursuant to the provision of paragraph (2), while requiring the provision of security; provided, however, that where the court orders the revocation of the disposition of national tax delinquency, it shall hear opinions from the person who has the power of collection in advance.
 - (6) An immediate appeal may be filed against a stay order under the provisions of paragraph (1) or paragraph (2), order under the provision of paragraph (4), and revocation order 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.

(8) Where a judicial decision prescribed in paragraph (6) 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.

(Comprehensive Prohibition Order)

Article 25 (1) Where a petition for commencement of reorganization 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 reorganization proceedings satisfactorily only by issuing a stay order under the provision of paragraph (1), item (ii) or item (vi) of the preceding Article or paragraph (2) of said Article, the court, upon the petition of an interested person or by its own authority, may issue an order to prohibit all reorganization creditors, etc. from enforcing the compulsory execution, etc. prescribed in paragraph (1), item (ii) of said Article, disposition of foreign tax delinquency prescribed in item (vi) of said paragraph and the disposition of national tax delinquency prescribed in paragraph (2) of said Article, until an order is made on the petition for commencement of reorganization 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 28, paragraph (1) with respect to the principal property of the company awaiting commencement or issues a provisional administration order prescribed in Article 30, paragraph (2) or supervision order prescribed in Article 35, paragraph (2).

(2) Upon issuing a prohibition order under the provision of the preceding paragraph (hereinafter referred to as a "comprehensive prohibition order"), the court, when it finds it appropriate, may exclude a certain range of the compulsory execution, etc. prescribed in paragraph (1), item (ii) of the preceding Article, the disposition of foreign tax delinquency prescribed in item (vi) of said paragraph or the disposition of national tax delinquency prescribed in paragraph (2) of said Article from the scope of subject of the comprehensive prohibition order.

(3) Where a comprehensive prohibition order is issued, any of the procedures listed in the following items which has already been initiated against the property of the company awaiting commencement (limited to such procedure that is to be prohibited by the comprehensive prohibition order) shall be stayed until the time specified in the respective items:

(i) The procedure for compulsory execution, etc. prescribed in paragraph (1), item (ii) of the preceding Article and the disposition of foreign tax delinquency prescribed in item (vi) of said paragraph: The time when an order is made on the petition for commencement of reorganization proceedings; and

(ii) The disposition of national tax delinquency prescribed in paragraph (2) of

the preceding Article: The time specified in the preceding item or the time when two months have elapsed since the date of the comprehensive prohibition order, whichever comes earlier.

- (4) The court may change or revoke a comprehensive prohibition order.
- (5) The court, when it finds it particularly necessary for the continuation of the business of the company awaiting commencement, upon the petition of the company awaiting commencement (or a provisional administrator if any provisional administrator is appointed), may order revocation of any of the procedures listed in the items of paragraph (3) which has been stayed pursuant to the provision of said paragraph, while requiring the provision of security; provided, however, that where the court orders the revocation of the disposition of national tax delinquency prescribed in paragraph (2) of the preceding Article, it shall hear opinions from the person who has the power of collection in advance.
- (6) An immediate appeal may be filed against a comprehensive prohibition order, an order made under the provision of paragraph (4) and a revocation order issued 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.
- (8) When a comprehensive prohibition order is issued, the prescription shall not be completed with regard to a reorganization claim, etc (limited to such claim for which compulsory execution, etc. prescribed in paragraph (1), item (ii) of the preceding Article or disposition of national tax delinquency prescribed in paragraph (2) of said Article is prohibited by the comprehensive prohibition order) 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.

(Public Notice and Service, etc. concerning Comprehensive Prohibition Order)

- Article 26 (1) Where a comprehensive prohibition order is issued and an order to change or revoke said order is made, a public notice shall be given to that effect, the written orders shall be served upon the company awaiting commencement (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 reorganization creditors, etc. and the company awaiting commencement (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 company awaiting commencement.
 - (3) Where a revocation order under the provision of paragraph (5) of the preceding Article is issued and a judicial decision on an immediate appeal set

forth in paragraph (6) 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.

(Cancellation of Comprehensive Prohibition Order)

- Article 27 (1) The court, when it finds, after issuing a comprehensive prohibition order, that the order is likely to cause undue damage to a reorganization creditor, etc. who filed a petition for compulsory execution, etc. prescribed in Article 24, paragraph (1), item (ii), upon the petition of said reorganization creditor, etc., may make an order that the comprehensive prohibition order shall be cancelled only with regard to said creditor. In this case, the creditor may enforce said compulsory execution, etc. against the property of the company awaiting commencement, and the procedure for compulsory execution, etc. initiated by said creditor prior to the issuance of the comprehensive prohibition order shall be continued.
- (2) The provision of the preceding paragraph shall apply mutatis mutandis where the court finds that a comprehensive prohibition order is likely to cause undue damage to a person who enforces the disposition of foreign tax delinquency prescribed in Article 24, paragraph (1), item (vi) or the disposition of national tax delinquency prescribed in paragraph (2) of said Article.
- (3) For the purpose of application of the provision of Article 25, paragraph (8) to a person who obtains a cancellation order under the provision of paragraph (1) (including cases where applied mutatis mutandis pursuant to the preceding paragraph; the same shall apply in the following paragraph and paragraph (6)), the phrase "the day on which the comprehensive prohibition order ceases to be effective" in Article 25, paragraph (8) shall be deemed to be replaced with "the day on which a cancellation order under the provision of Article 27, paragraph (1) (including cases where applied mutatis mutandis pursuant to paragraph (2) of said Article) is made."
- (4) An immediate appeal may be filed against a judicial decision on the petition set forth in paragraph (1).
- (5) The immediate appeal set forth in the preceding paragraph shall not have the effect of stay of execution.
- (6) Where a judicial decision on the petition set forth in paragraph (1) and a judicial decision on the immediate appeal set forth in paragraph (4) are made, the written decisions shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.

Subsection 2 Temporary Restraining Order, etc. concerning Business and Property of Company Awaiting Commencement

(Temporary Restraining Order concerning Business and Property of Company
Awaiting Commencement)

Article 28 (1) Where a petition for commencement of reorganization proceedings is filed, the court, upon the petition of an interested person or by its own authority, may issue a provisional disposition that prohibits the disposition of the property of the company awaiting commencement or any other necessary temporary restraining order concerning the business and property of the company awaiting commencement until an order is made on the petition for commencement of reorganization 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, paragraph (3) shall not apply.

(6) Where the court, pursuant to the provision of paragraph (1), has issued a temporary restraining order to prohibit the company awaiting commencement from making payment to a reorganization creditor, etc. or conducting any other act with the reorganization creditor, etc. to cause its debt to be extinguished, the reorganization creditor, etc. may not assert, in relation to the reorganization 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 reorganization creditor, etc. knows, at the time of such act, the fact that the temporary restraining order was issued.

(Demand for Extinguishment of Right of Retention under Commercial Law
prior to Commencement of Reorganization Proceedings)

Article 29 (1) Where there exists any right of retention under the provisions of the Commercial Code or the Companies Act on the property of the company awaiting commencement, if said property is indispensable for the continuation of the business of the company awaiting commencement, the company awaiting commencement (or a provisional administrator if any provisional administrator is appointed) may make a demand to the holder of the right of retention that the right be extinguished, before an order is made on the petition for commencement of reorganization proceedings.

- (2) In order to make demand under the provision of the preceding paragraph, it is required to pay the amount of money equivalent to the value of the property set forth in said paragraph to the holder of the right of retention set forth in said paragraph.
- (3) In order to make demand set forth in paragraph (1) and to make payment set forth in the preceding paragraph, it is required to obtain permission of the court.
- (4) Where the permission set forth in the preceding paragraph is granted, if the amount of payment set forth in paragraph (2) satisfies the value of the property set forth in paragraph (1), the right of retention set forth in paragraph (1) shall be extinguished at the time when such payment is made or at the time when demand is made as set forth in paragraph (1), whichever occurs later.
- (5) In an action to request return of the property set forth in paragraph (1) by reason that the right of retention set forth in said paragraph is extinguished pursuant to the provision of the preceding paragraph, even if the amount of payment set forth in paragraph (2) does not satisfy the value of the property, upon the plaintiff's petition and when the court in charge of the action finds it appropriate, said court may order the holder of the right of retention set forth in paragraph (1) to return the property, on the condition that the amount of any shortage shall be paid within a reasonable period of time.

Subsection 3 Provisional Administration Order

(Provisional Administration Order)

- Article 30 (1) Where a petition for commencement of reorganization proceedings is filed, when the court finds it necessary in order to achieve the purpose of reorganization proceedings, the court, upon the petition of an interested person or by its own authority, may make a disposition to order that the business and property of the company awaiting commencement be administered by a provisional administrator until an order is made on the petition for commencement of reorganization proceedings.
- (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; provided, however, that the person prescribed in Article 67, paragraph (3) may not be appointed as a provisional administrator.
 - (3) The court may change or revoke a provisional administration order.
 - (4) An immediate appeal may be filed against a provisional administration 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.

(Public Notice and Service concerning Provisional Administration Order)

Article 31 (1) The court, when it has issued a provisional administration order, shall give 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 (3) of the preceding Article is made, and a judicial decision on the immediate appeal set forth in paragraph (4) of said Article is made, the written orders/decision shall be served upon the parties concerned.

(3) The provision of Article 10, paragraph (4) shall not apply to the case referred to in paragraph (1).

(Powers of Provisional Administrator)

Article 32 (1) When a provisional administration order is issued, the right to manage the business of the company awaiting commencement and to administer and dispose of the company's property (irrespective of whether or not it exists in Japan) 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 ordinary business of the company awaiting commencement.

(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 provisions of Article 72, paragraph (2) and paragraph (3) shall apply mutatis mutandis to a provisional administrator.

(Provisional Administrator Representative)

Article 33 (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; provided, however, that the person prescribed in Article 67, paragraph (3) may not be appointed as a provisional administrator representative .

(2) The appointment of a provisional administrator representative set forth in the provision of the preceding paragraph shall require permission of the court.

(Application Mutatis Mutandis)

Article 34 (1) The provisions of Article 54, Article 57, Article 59, Article 67, paragraph (2), Article 68, Article 69, Article 73, Article 74, paragraph (1), Article 76 to Article 80, Article 81, paragraph (1) to paragraph (4), and Article 82, paragraph (1) to paragraph (3) shall apply mutatis mutandis to a

provisional administrator, and the provisions of Article 81, paragraph (1) to paragraph (4) shall apply mutatis mutandis to a provisional administrator representative. In this case, the phrase "public notice given under the provision of Article 43, paragraph (1)" in the Article 59 shall be deemed to be replaced with "public notice given under the provision of Article 31, paragraph (1)," the term "successor trustee" in Article 82, paragraph (2) shall be deemed to be replaced with "successor provisional administrator or trustee" and the term "successor trustee" in Article 82, paragraph (3) shall be deemed to be replaced with "successor provisional administrator, trustee."

- (2) The provisions of Article 52, paragraph (1) to paragraph (3) shall apply mutatis mutandis where a provisional administration order is issued, and the provisions of paragraph (4) to paragraph (6) of said Article shall apply mutatis mutandis where a provisional administration order ceases to be effective (excluding cases where an order of commencement of reorganization proceedings is made).
- (3) In the cases listed in the following items, the provisions specified in the respective items shall apply mutatis mutandis to a case relating to the property of the company awaiting commencement that is pending before an administrative agency:
 - (i) Where a provisional administration order is issued: Article 52, paragraph (1) to paragraph (3); and
 - (ii) Where a provisional administration order ceases to be effective (excluding cases where an order of commencement of reorganization proceedings is made): Article 52, paragraph (4) to paragraph (6).
- (4) The provision of Article 65 shall apply mutatis mutandis where a director, executive officer or liquidator of the company awaiting commencement intends to conduct a transaction that falls within the line of the business of the company for him/herself or a third party during the period in which an appointed provisional administrator is in office.
- (5) The provision of the main clause of Article 66, paragraph (1) shall apply mutatis mutandis to a director, accounting advisor, auditor, executive officer and liquidator of the company awaiting commencement during the period in which an appointed provisional administrator is in office.

Subsection 4 Supervision Order

(Supervision Order)

Article 35 (1) Where a petition for commencement of reorganization proceedings is filed, the court, when it finds it necessary in order to achieve the purpose of reorganization proceedings, upon the petition of an interested person or by its own authority, may make a disposition to order supervision by a supervisor

until an order is made on the petition for commencement of reorganization proceedings.

- (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 company awaiting commencement may not conduct without obtaining their consent.
- (3) Any act conducted without the supervisor's consent prescribed in the preceding paragraph shall be void; provided, however, that this may not be asserted against a third party without knowledge.
- (4) The court may change or revoke a supervision order.
- (5) An immediate appeal may be filed against a supervision 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.

(Public Notice and Service concerning Supervision Order)

- Article 36 (1) The court, when it has issued a supervision order, shall give 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 (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, paragraph (4) shall not apply to the case referred to in paragraph (1).

(Investigation on Qualification of Director, etc. as Trustee)

Article 37 The court may order a supervisor to investigate whether or not a person designated by the court from among the directors, accounting advisors, auditors, executive officers, accounting auditors or liquidators of the company awaiting commencement or persons who held those posts or the incorporators, directors at incorporation or auditors at incorporation is qualified to perform the duties of a trustee or trustee representative, and to report the results of the investigation to the court within a period specified by the court.

(Application Mutatis Mutandis)

Article 38 The provisions of Article 67, paragraph (2), Article 68, Article 69, paragraph (1), Article 77, Article 80, and Article 81, paragraph (1) to paragraph (4) shall apply mutatis mutandis to a supervisor.

Subsection 5 Examination Order, etc. prior to Commencement of

Reorganization Proceedings

(Examination Order prior to Commencement of Reorganization Proceedings)

Article 39 Even during the period after a petition for commencement of reorganization proceedings is filed until an order is made on the petition for commencement of reorganization proceedings, the court, when it finds it necessary, upon the petition of an interested person or by its own authority, may issue an examination order prescribed in Article 125, paragraph (2), targeting the whole or part of the following matters:

- (i) Whether or not there is a fact constituting any of the grounds for commencement of reorganization proceedings prescribed in Article 17, paragraph (1) and there are any of the grounds listed in Article 41, paragraph (1), item (ii) to item (iv), the status of the business and property of the company awaiting commencement and other matters necessary for making determination on the petition for commencement of reorganization proceedings, and whether or not it is appropriate to commence reorganization proceedings;
- (ii) Whether or not there are any circumstances requiring a temporary restraining order under the provision of Article 28 paragraph (1) , provisional administration order ,supervision order, a temporary restraining order under the provisions of next Article or Article 40 or assessment order on liability of officer, etc. prescribed in Article 100, paragraph (1), and whether or not it is necessary to issue any of these orders; and
- (iii) Other matters for which it is necessary for an examiner to conduct examination or state his/her opinions concerning the reorganization case.

(Temporary Restraining Order for Right of Avoidance)

Article 39-2 (1) The court, when it finds it necessary in order to preserve a right of avoidance during the period after a petition for commencement of reorganization 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, paragraph (3) shall not apply.

(Temporary Restraining Order upon Property of Officer, etc. prior to Commencement of Reorganization Proceedings)

- Article 40 (1) Even during the period after a petition for commencement of reorganization proceedings is filed until an order on said petition is made, the court, when it finds urgent necessity, upon the petition of the company awaiting commencement (or a provisional administrator if any provisional administrator is appointed) or by its own authority, may issue a temporary restraining order set forth in each item of Article 99, paragraph (1).
- (2) The provisions of Article 99, paragraph (2) to paragraph (5) shall apply mutatis mutandis where a temporary restraining order is issued under the provision of the preceding paragraph.

Chapter III Order of Commencement of Reorganization Proceedings and Effect, etc. arising therefrom
Section 1 Order of Commencement of Reorganization Proceedings

(Order of Commencement of Reorganization Proceedings)

- Article 41 (1) Where a petition for commencement of reorganization proceedings is filed under the provision of Article 17, the court, when it finds a fact constituting the grounds for the commencement of reorganization proceedings, shall make an order of commencement of reorganization proceedings, except in any of the cases listed in the following items:
- (i) Where expenses for reorganization proceedings are not prepaid;
 - (ii) Where bankruptcy proceedings, rehabilitation 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 reorganization plan providing the continuation of the business is unlikely to be prepared or approved or a reorganization plan providing the continuation of the business is unlikely to be confirmed; or
 - (iv) Where the petition for commencement of reorganization proceedings is filed for an unjustifiable purpose or it is not filed in good faith.
- (2) The order made under the preceding paragraph shall become effective as from

the time when it is made.

(Matters to be Specified upon Making Order of Commencement of Reorganization Proceedings)

Article 42 (1) The court, upon making an order of commencement of reorganization proceedings, shall appoint one or more trustees and specify a period during which proofs of reorganization claims, etc. should be filed and a period for conducting an investigation of reorganization claims, etc.

(2) In the case referred to in the preceding paragraph, the court, if there are 1,000 or more known reorganization creditors, etc. and it finds it appropriate, may make an order not to give a notice to known reorganization creditors, etc. under the provision of paragraph (3), item (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 44, paragraph (3), and not to summon, on the date of a stakeholders meeting (excluding one aimed for adopting a resolution on a proposed reorganization plan), reorganization creditors, etc. who have filed proofs of their reorganization claims, etc. pursuant to the provisions of Article 138 to Article 140 or Article 142 (hereinafter referred to as "holders of filed reorganization claims, etc.").

(Public Notice, etc. of Commencement of Reorganization Proceedings)

Article 43 (1) The court, when it has made an order of commencement of reorganization proceedings, shall immediately give a public notice of the following matters; provided, however, that when there is no bond administrator, etc. prescribed in item (v), a public notice of the matter set forth in said item shall not be required:

(i) The main text of the order of commencement of reorganization proceedings;

(ii) The name of a trustee;

(iii) The periods specified pursuant to the provision of paragraph (1) of the preceding Article;

(iv) The order to the effect that a possessor of property, etc. (meaning a person who possesses the property of the reorganization company and a person who owes a debt to the reorganization company) shall not deliver the property or make payment to the reorganization company; and

(v) The statement to the effect that where there is any bond administrator, etc. (meaning a bond administrator or a trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bonds Trust Act (Act No. 52 of 1905)) with regard to company bonds issued by the reorganization company, reorganization creditors, etc. may not exercise their voting rights based on such company bonds except in any of the cases listed in the items of Article 190, paragraph (1) (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 give a public notice to the effect that it will not give a notice to known reorganization creditors, etc. under the provision 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 paragraph (3) of the following Article, and also will not summon holders of filed reorganization claims, etc. on the date of a stakeholders meeting (excluding one aimed for adopting a resolution on a proposed reorganization plan).
- (3) The following persons shall be given a notice of the matters of which a public notice shall be given pursuant to the provisions of the preceding two paragraphs:
- (i) A trustee, the reorganization company, and known reorganization creditors, etc.;
 - (ii) Known shareholders;
 - (iii) Known possessors of property, etc. prescribed in paragraph (1), item (iv); and
 - (iv) A provisional administrator, a supervisor or an examiner in cases where a provisional administration order, a supervision order or an examination order under the provision of Article 39 is issued, respectively.
- (4) Notwithstanding the provision of the preceding paragraph, in the cases listed in the following items, the notice specified in the respective items shall not be required to be given under the provision of said paragraph:
- (i) Where it is obvious that the reorganization company is unable to pay its debts in full with its property with regard to claims that take preference over consensually-subordinated reorganization claims (meaning a claim for which the reorganization creditor and the reorganization company, prior to the commencement of reorganization proceedings, reach an agreement to the effect that if bankruptcy proceedings are commenced against the reorganization company, the claim shall be subordinated to a subordinate bankruptcy claim prescribed in Article 99, paragraph (1) of the Bankruptcy Act in the order of priority for receiving a liquidating distribution in the bankruptcy proceedings; the same shall apply hereinafter): The holders of such consensually-subordinated reorganization claims if they are known; and
 - (ii) Where it is obvious that the reorganization company is unable to pay its debts in full with its property: Known shareholders.
- (5) The provisions of paragraph (1), item (ii), paragraph (3), item (i) to item (iii), and the preceding paragraph shall apply mutatis mutandis where there is a change to the matter set forth in paragraph (1), item (ii), and the provisions of paragraph (1), item (iii), paragraph (3), item (i) and item (ii), and the preceding

paragraph shall apply mutatis mutandis where there is a change to the matter set forth in paragraph (1), item (iii) (limited to cases where there is a change to the period during which proofs of reorganization claims, etc. should be filed); provided, however, that when the order set forth in paragraph (2) of the preceding Article is made, the notice shall not be required to be given to known reorganization creditors, etc.

(Appeal)

Article 44 (1) An immediate appeal may be filed against a judicial decision on a petition for commencement of reorganization proceedings.

(2) The provisions of Section 2 of the preceding Chapter 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 reorganization proceedings.

(3) The court that has made an order of commencement of reorganization proceedings, if an immediate appeal set forth in paragraph (1) is filed and an order to revoke said order becomes final and binding, shall immediately give 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 paragraph (3) of the preceding Article (excluding item (iv)) (excluding 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 42, paragraph (2) is made, the notice shall not be required to be given to known reorganization creditors, etc.

Section 2 Effect arising from Order of Commencement of Reorganization Proceedings

(Prohibition of Change to Basic Matters concerning Organization of Reorganization Company)

Article 45 (1) During the period after the commencement of reorganization proceedings until the close thereof, none of the following acts may be conducted with regard to the reorganization company unless it is provided for in a reorganization plan:

- (i) Cancellation, consolidation or splitting of shares, allotment of shares without contribution or solicitation of subscribers of shares for subscription (meaning shares for subscription prescribed in Article 199, paragraph (1) of the Companies Act; the same shall apply hereinafter);
- (ii) Solicitation of subscribers of share options for subscription (meaning share options for subscription prescribed in Article 238, paragraph (1) of the Companies Act; the same shall apply hereinafter), cancellation of share options or allotment of share options without contribution;

- (iii) Reduction of the amount of the stated capital or reserves (meaning capital reserves and retained earnings reserves; the same shall apply hereinafter);
 - (iv) Dividend of surplus and other acts listed in the items of Article 461, paragraph (1) of the Companies Act;
 - (v) Dissolution, or continuation of the stock company;
 - (vi) Solicitation of subscribers of bonds for subscription (meaning bonds for subscription prescribed in Article 676 of the Companies Act; the same shall apply hereinafter); and
 - (vii) Entity conversion into a membership company, or merger, company split, share exchange or share transfer.
- (2) During the period after the commencement of reorganization proceedings until the close thereof, the articles of incorporation of the reorganization company may not be amended unless it is provided for in a reorganization plan or it is permitted by the court.

(Business Transfer)

- Article 46 (1) During the period after the commencement of reorganization proceedings until the close thereof, the transfer of the entire business of the reorganization company or the transfer of a significant part of the business of the reorganization company (meaning the transfer of a significant part of the business prescribed in Article 467, paragraph (1), item (ii) of the Companies Act; hereinafter the same shall apply in this Article) may not be conducted unless it is provided for in a reorganization plan; provided, however, that this shall not apply where the transfer of the entire business or the transfer of a significant part of the business of the reorganization company is conducted pursuant to the provisions of the following paragraph to paragraph (8).
- (2) During the period after the commencement of reorganization proceedings until an order to refer the proposed reorganization plan to a resolution is made, a trustee, with permission of the court, may conduct the transfer of the entire business or the transfer of a significant part of the business of the reorganization company. In this case, the court may grant permission only when it finds such transfer to be necessary for the reorganization of the reorganization company's business.
- (3) The court, when granting the permission set forth in the preceding paragraph, shall hear opinions from the following persons:
- (i) Known reorganization creditors (in cases where the reorganization company, at the time of commencement of reorganization proceedings, is unable to pay its debts in full with its property with regard to claims that take preference over consensually-subordinated reorganization claims, the holders of such consensually-subordinated reorganization claims shall be excluded); provided, however, that if there is a reorganization creditors committee prescribed in

- Article 117, paragraph (2), it shall be sufficient to hear opinions from the committee;
- (ii) Known secured reorganization creditors; provided, however, that if there is a committee of holders of secured reorganization claims prescribed in Article 117, paragraph (6), it shall be sufficient to hear opinions from the committee; and
 - (iii) The labor union, etc. (meaning the labor union consisting of the majority of the employees of the reorganization company, if there is any such labor union, or the person representative of the majority of the employees of the reorganization company, if there is no labor union consisting of the majority of the employees of the reorganization company).
- (4) Where a trustee intends to conduct the transfer of the entire business or the transfer of a significant part of the business of the reorganization company pursuant to the provision of paragraph (2), he/she shall give a public notice or give notice to shareholders of the following matters in advance:
- (i) The transferee of the business, the time and value of the transfer, and the content of the transferred business; and
 - (ii) The statement to the effect that any shareholder who has an objection to the transfer should give a notice of such objection in writing to the trustee within two weeks from the day on which the public notice was given or the notice was given to the shareholder.
- (5) The notice to a shareholder under the provision of the preceding paragraph may be dispatched to the shareholder's address entered or recorded in the shareholder registry or any other place or point of contact which the shareholder has notified the reorganization company or the trustee of.
- (6) The notice to a shareholder under the provision of paragraph (4) shall be deemed to have reached the addressee at the time when the notice should have normally arrived.
- (7) The court may not grant the permission set forth in paragraph (2) in any of the following cases:
- (i) Where a petition for the permission set forth in paragraph (2) is filed after one month has elapsed since the day on which the public notice or the notice to shareholders is given under the provision of paragraph (4); or
 - (ii) Where a shareholder who holds voting rights which account for more than one-third of the voting rights of all shareholders of the reorganization company has given a notice in writing to the trustee within the period prescribed in paragraph (4), item (ii) to express that he/she has an objection to the transfer set forth in paragraph (2).
- (8) The provisions of paragraph (4) to the preceding paragraph shall not apply where the counterparty to the contract for the transfer of the entire business or the transfer of a significant part of the business of the reorganization company

under the provision of paragraph (2) is a special controlling company (meaning a special controlling company prescribed in Article 468, paragraph (1) of the Companies Act) of the reorganization company or where the reorganization company is, at the time of the permission set forth in paragraph (2), unable to pay its debts in full with its property.

(9) Any act conducted without the permission set forth in paragraph (2) shall be void; provided, however, that this may not be asserted against a third party without knowledge.

(10) The provisions of Chapter VII, Part II of the Companies Act shall not apply where the transfer of the entire business or the transfer of a significant part of the business of the reorganization company is conducted with the permission set forth in paragraph (2).

(Prohibition of Payment of Reorganization Claim, etc.)

Article 47 (1) With regard to a reorganization claim, etc., after the commencement of reorganization 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 reorganization plan.

(2) If a small or medium-sized enterprise operator whose major trading partner is the reorganization company is likely to experience significant hindrance to the continuation of his/her business unless he/she receives payment of his/her reorganization claim, etc., the court, even before it makes an order of confirmation of the reorganization plan, upon the petition of a trustee 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 reorganization company and the small or medium-sized enterprise operator set forth in said paragraph, the reorganization company's financial standing, the interest of any interested person and all other circumstances concerned.

(4) A trustee, when requested by a reorganization creditor, etc. to file the petition set forth in paragraph (2), shall report to the court to that effect immediately. In this case, if the trustee 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 reorganization proceedings progress smoothly by paying a small reorganization claim, etc. promptly or significant hindrance would be caused to the continuation of the reorganization company's business unless a small reorganization claim, etc. is paid promptly, the court, even before it makes an order of confirmation of the reorganization plan, upon the petition of a trustee, may permit payment of such claim.

(6) The provisions of paragraph (2) to the preceding paragraph shall not apply to

a reorganization claim that is a consensually-subordinated reorganization claim.

- (7) The provision of paragraph (1) shall not apply where a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance) that is a reorganization claim, etc. is extinguished on any of the following grounds:
- (i) The disposition of national tax delinquency prescribed in Article 24, paragraph (2) (only where the disposition of national tax delinquency or the continuation thereof is permissible);
 - (ii) The payment voluntarily made by the third party debtor of a claim of the reorganization company that has been seized through the disposition of national tax delinquency prescribed in Article 24, paragraph (2) (including any claim subject to the effect of the seizure), to the person who has the power of collection, during the stay of the disposition of national tax delinquency;
 - (iii) The appropriation of the money refunded or money paid by mistake, which is conducted by the person who has the power of collection; or
 - (iv) The payment made by the trustee with permission of the court.

(Set-off by Trustee)

Article 47-2 If a set-off of a claim that belongs to the reorganization company's assets against a reorganization claim, etc. conforms to the common interests of reorganization creditors, etc., a trustee may effect such set-off with permission of the court.

(Right of Set-Off)

- Article 48 (1) Where a reorganization creditor, etc. owes a debt to the reorganization company at the time of commencement of reorganization proceedings, the reorganization creditor, etc., 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 138, paragraph (1), may effect a set-off only within said period for filing proofs of claims, even if it is not provided for in a reorganization plan. The same shall apply where the debt of the reorganization creditor, etc. is subject to a time limit.
- (2) Where the debt owed by a reorganization creditor, etc. to the reorganization company at the time of commencement of reorganization proceedings is a rent debt, the reorganization creditor, etc. may effect a set-off with regard to any rent debt that is to become due after the commencement of reorganization 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 reorganization 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 reorganization plan.

- (3) In the case referred to in the preceding paragraph, when the reorganization creditor, etc., with regard to his/her rent debt that is to become due after the commencement of reorganization proceedings, has made payment of the debt after the commencement of reorganization proceedings, the claim of the reorganization creditor, etc. 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 reorganization proceedings (in cases where a set-off is effected under the provision of said paragraph, the amount of the rent debt from which the reorganization creditor, etc. 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.

(Prohibition of Set-Off)

Article 49 (1) A reorganization creditor, etc. may not effect a set-off in the following cases:

- (i) Where the reorganization creditor, etc. has assumed a debt to the reorganization company after the commencement of reorganization proceedings;
- (ii) Where the reorganization creditor, etc. has assumed a debt to the reorganization company by, after the reorganization company became unable to pay debts (the condition in which the reorganization company, due to the lack of ability to pay, is generally and continuously unable to pay its debts as they become due; the same shall apply hereinafter), concluding a contract for disposing of the reorganization company's property with the reorganization company with the intent to set off any debt to be assumed by the reorganization creditor, etc. under the contract exclusively against reorganization claims, etc., or concluding a contract for assuming any debt owed by another person to the reorganization company, and the reorganization creditor, etc. knew, at the time of conclusion of the contract, that the reorganization company was unable to pay debts;
- (iii) Where the reorganization creditor, etc. has assumed a debt to the reorganization company after the reorganization company suspended payments, and the reorganization creditor, etc. knew, at the time of assumption of the debt, the fact that the reorganization company had suspended payments; provided, however, that this shall not apply if the reorganization company was not unable to pay debts at the time when the reorganization company suspended payments; and

- (iv) Where the reorganization creditor, etc. has assumed a debt to the reorganization company after a petition for commencement of reorganization proceedings, commencement of bankruptcy proceedings, commencement of rehabilitation proceedings or commencement of special liquidation (hereinafter referred to as a "petition for commencement of reorganization proceedings, etc." in this Article and the following Article) was filed, and the reorganization creditor, etc. knew, at the time of assumption of the debt, of the fact that a petition for commencement of reorganization 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 reorganization creditor, etc. came to know the fact that the reorganization company had been unable to pay debts, that the reorganization company had suspended payments or that a petition for commencement of reorganization proceedings, etc. had been filed; or
 - (iii) A cause that had occurred not less than one year before a petition for commencement of reorganization proceedings, etc. was filed.

Article 49-2 (1) A person who owes a debt to the reorganization company may not effect a set-off in the following cases:

- (i) Where the person has acquired another person's reorganization claim, etc. after the commencement of reorganization proceedings;
 - (ii) Where the person has acquired a reorganization claim, etc. after the reorganization company became unable to pay debts, and the person knew, at the time of acquisition of the claim, the fact that the reorganization company was unable to pay debts;
 - (iii) Where the person has acquired a reorganization claim, etc. after the reorganization company suspended payments, and the person knew, at the time of acquisition of the claim, the fact that the reorganization company had suspended payments; provided, however, that this shall not apply if the reorganization company was not unable to pay debts at the time when the reorganization company suspended payments; and
 - (iv) Where the person has acquired a reorganization claim, etc. after a petition for commencement of reorganization proceedings, etc. was filed, and the person knew, at the time of acquisition of the claim, the fact that a petition for commencement of reorganization 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 reorganization claim, etc. 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 reorganization company came to know the fact that the reorganization company had been unable to pay debts, that the reorganization company had suspended payments or that a petition for commencement of reorganization proceedings, etc. had been filed;
- (iii) A cause that had occurred not less than one year before a petition for commencement of reorganization proceedings, etc. was filed; or
- (iv) A contract concluded between the reorganization company and the person who owes a debt to the reorganization company.

(Stay, etc. of Other Procedures and Proceedings)

- Article 50 (1) Where an order of commencement of reorganization proceedings is made, it is not allowed to file a petition for commencement of bankruptcy proceedings, commencement of rehabilitation proceedings, commencement of reorganization proceedings or commencement of special liquidation, enforce compulsory execution, etc. prescribed in Article 24, paragraph (1), item, (ii), exercise of an enterprise mortgage or disposition of foreign tax delinquency prescribed in item (vi) of said paragraph against the reorganization company's property, or file a petition for an assets disclosure procedure based on a reorganization claim, etc., and the bankruptcy proceedings, the rehabilitation proceedings, the procedure for compulsory execution, etc. prescribed in item (ii) of said paragraph, procedure for the exercise of an enterprise mortgage and the disposition of foreign tax delinquency prescribed in item (vi) of said paragraph which have already been initiated against the reorganization company's property, and the assets disclosure procedure based on a reorganization claim, etc. shall be stayed, and the special liquidation proceedings shall cease to be effective.
- (2) When an order of commencement of reorganization proceedings is made, the disposition of national tax delinquency prescribed in Article 24, paragraph (2) may not be enforced against the reorganization company's property for one year from the date of the order (or, if the reorganization proceedings are closed with no reorganization plan confirmed or a reorganization plan is confirmed before one year has elapsed from the date of the order, for the period until the proceedings are closed or the plan is confirmed), and the disposition of national tax delinquency already initiated against the reorganization company's property shall be stayed.
- (3) The court, when it finds it necessary, upon the petition of a trustee or by its own authority, may extend the one-year period set forth in the preceding paragraph; provided, however, that the court shall obtain consent from the person who has the power of collection in advance.

- (4) The person who has the power of collection may give consent as set forth in the preceding paragraph.
- (5) The court, when it finds it unlikely to cause hindrance to reorganization, upon the petition of a trustee or the person who has the power to collect a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance) or by its own authority, may order the continuation of the following procedures:
 - (i) The procedure for compulsory execution, etc. prescribed in Article 24, paragraph (1), item (ii), procedure for the exercise of an enterprise mortgage or disposition of foreign tax delinquency prescribed in item (vi) of said paragraph, which have been stayed pursuant to the provision of paragraph (1); and
 - (ii) The disposition of national tax delinquency prescribed in Article 24, paragraph (2), which has been stayed pursuant to the provision of paragraph (2).
- (6) The court, when it finds it necessary for reorganization, upon the petition of a trustee or by its own authority, may order the continuation of the procedures listed in the items of the preceding paragraph, while requiring or not requiring the provision of security.
- (7) When the court finds, until an order to refer the proposed reorganization plan to a resolution is made, any property which is the subject matter of the security interest pertaining to a secured reorganization claim and which is obviously unnecessary for the reorganization of the reorganization company's business, the court, upon the petition of a trustee or by its own authority, may make an order to cancel the prohibition of the exercise of the security interest against such property under the provision of paragraph (1).
- (8) A trustee, when requested by a secured reorganization creditor to file the petition set forth in the preceding paragraph, shall report to the court to that effect immediately. In this case, if the trustee has decided not to file a petition, he/she shall report the reason to the court without delay.
- (9) When an order of commencement of reorganization proceedings is made, the following claims shall be common benefit claims:
 - (i) A claim on the estate involved in the bankruptcy proceedings stayed pursuant to the provision of paragraph (1) (excluding the claim set forth in Article 148, paragraph (1), item (iii) of the Bankruptcy Act, and including the claims prescribed in Article 55, paragraph (2) and Article 148, paragraph (4) of said Act in cases where bankruptcy proceedings are not commenced) or a common benefit claim involved in rehabilitation proceedings (including the claims prescribed in Article 50, paragraph (2) and Article 120, paragraph (3) and paragraph (4) of the Civil Rehabilitation Act (Act No. 225 of 1999) in the case where rehabilitation proceedings are not commenced));
 - (ii) A claim arising against the reorganization company from the proceedings

- that cease to be effective pursuant to the provision of paragraph (1), and a claim for expenses against the reorganization company with respect to such proceedings;
- (iii) A claim for expenses against the reorganization company with respect to the procedures continued pursuant to the provision of paragraph (5); and
 - (iv) A claim for expenses against the reorganization company with respect to the procedure for the exercise of the security interest for which a petition may now be filed by reason of a cancellation order set forth in paragraph (7).
- (10) The prescription for a claim for money to be collected through the disposition of national tax delinquency prescribed in Article 24, paragraph (2) shall not run during the period in which the disposition of national tax delinquency is prohibited or stayed pursuant to the provisions of paragraph (2) and paragraph (3).
- (11) When an order of commencement of reorganization proceedings is made, the prescription for a fine, petty fine and collection of equivalent value shall not run until the reorganization proceedings are closed (when an order of confirmation of the reorganization plan is made, the prescription shall not run until the payment period specified in the reorganization plan as prescribed in Article 204, paragraph (2) expires (or until payment based on the reorganization plan is completed if this occurs 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.

(How to treat Money to be Appropriated for Liquidating Distribution, etc. in Continued Procedure for Compulsory Execution, etc.)

- Article 51 (1) In the procedures continued pursuant to the provision of paragraph (5) of the preceding Article and the procedure for the execution of the security interest for which a petition may now be filed by reason of a cancellation order set forth in paragraph (7) of said Article, liquidating distribution or delivery of payment money (hereinafter referred to as "liquidating distribution, etc." in this Article) may not be implemented; provided, however, that this shall not apply to liquidating distribution, etc. in relation to the claim for tax, etc. involved in the procedure continued pursuant to the provision of paragraph (5), item (ii) of the preceding Article.
- (2) In the procedures prescribed in the main clause of the preceding paragraph (excluding the procedure of an auction to be conducted by reason of a right of retention that is intended to secure a reorganization claim, etc. under the provisions other than those of the Commercial Code or the Companies Act; the same shall apply in the following paragraph), when any money to be appropriated for liquidating distribution, etc. arises (or when an order of

confirmation of the reorganization plan is made if no such order has been made by the time when such money arises), an amount of money equivalent to the amount of such money to be appropriated (if liquidating distribution, etc. has been implemented pursuant to the provision of the proviso to the preceding paragraph, the amount of such liquidating distribution, etc. shall be deducted) shall be delivered to a trustee (or the reorganization company where the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4) or where the reorganization proceedings are closed).

- (3) When the reorganization proceedings have been closed before an order of confirmation of the reorganization plan is made, notwithstanding the provision of the main clause of paragraph (1), in the procedures prescribed in the main clause of said paragraph, liquidating distribution, etc. shall be implemented with regard to any money to be appropriated for liquidating distribution, etc. (excluding such money appropriated for liquidating distribution, etc. pursuant to the provision of the proviso to said paragraph), unless it is not contrary to the nature of the procedure.

(How to treat Actions relating to the Reorganization Company's Property)

Article 52 (1) When an order of commencement of reorganization proceedings is made, any action relating to the reorganization company's property shall be discontinued.

- (2) A trustee may take over the action discontinued under the provision of the preceding paragraph which does not relate to any reorganization claim, etc. 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 reorganization company shall be a common benefit claim.
- (4) When the reorganization proceedings are closed, any action relating to the reorganization company's property in which a trustee stands as a party shall be discontinued.
- (5) A stock company which has been the reorganization company shall take over an action discontinued pursuant to the provision of the preceding paragraph (excluding an action set forth in Article 97, paragraph (1) in cases where the grounds set forth in Article 234, item (iii) or item (iv) occurred). In this case, a petition for taking over of action may also be filed by the opponent.
- (6) If the reorganization proceedings are closed before the action discontinued pursuant to the provision of paragraph (1) is taken over under the provision of paragraph (2), the stock company that has been the reorganization company shall automatically take over the action.

(How to treat Action for Obligee's Subrogation Right, Action for Avoidance of Fraudulent Act, etc.)

Article 52-2 (1) If an action filed by a reorganization 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 or the Civil Rehabilitation Act is pending at the time of commencement of reorganization proceedings, the respective action shall be discontinued.

(2) A trustee may take over the action discontinued pursuant to the provision of the preceding paragraph. 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 reorganization creditor, a bankruptcy trustee, or a trustee or supervisor empowered to avoid (meaning a supervisor empowered to avoid prescribed in Article 128, paragraph (2) of the Civil Rehabilitation Act; the same shall apply in paragraph (5)) in rehabilitation proceedings shall be a common benefit claim.

(4) If the reorganization proceedings are closed after the action discontinued pursuant to the provision of paragraph (1) was taken over under the provision of paragraph (2), the action shall be discontinued.

(5) In the case referred to in the preceding paragraph, the reorganization creditor, a bankruptcy trustee, a trustee or supervisor empowered to avoid in rehabilitation proceedings 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 reorganization proceedings are closed before the action discontinued pursuant to the provision of paragraph (1) is taken over pursuant to the provision of paragraph (2), any of the persons prescribed in the first sentence of the preceding paragraph shall automatically take over the action.

(Treatment of Case pending before Administrative Agency)

Article 53 The provision of Article 52 shall apply mutatis mutandis to a case relating to the reorganization company's property that is pending before an administrative agency.

(Effect of Juridical Act by Reorganization Company)

Article 54 (1) A juridical act conducted by the reorganization company after the commencement of reorganization proceedings with respect to the reorganization company's assets may not be asserted as effective in relation to the reorganization proceedings.

(2) A juridical act conducted by a stock company on the date of commencement of reorganization proceedings against the stock company itself shall be presumed

to be conducted after the commencement of reorganization proceedings.

(Effect of Acquisition of Right by Reorganization Creditor, etc. not by way of Act by Trustee, etc.)

Article 55 (1) Where a reorganization creditor, etc. has acquired a right based on a reorganization claim, etc. after the commencement of reorganization proceedings with respect to the reorganization company's assets, if it is not by way of the act conducted by a trustee or the reorganization company, the reorganization creditor, etc. may not assert such acquisition of the right as effective in relation to the reorganization proceedings.

(2) The provision of paragraph (2) of the preceding Article shall apply mutatis mutandis to the acquisition of a right set forth in the preceding paragraph that takes place on the day on which an order of commencement of reorganization proceedings is made.

(Effect of Registration)

Article 56 (1) A registration or a provisional registration under the provision of Article 105, item (i) of the Real Property Registration Act (Act No. 123 of 2004), which is made with respect to real property or a vessel after the commencement of reorganization proceedings based on a cause of registration that occurred prior to the commencement of reorganization proceedings, may not be asserted as effective in relation to the reorganization 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 reorganization 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.

(Effect of Payment to Reorganization Company)

Article 57 (1) Payment made to the reorganization company after the commencement of reorganization proceedings without knowledge of the fact of the commencement may also be asserted as effective in relation to the reorganization proceedings.

(2) Payment made to the reorganization debtor after the commencement of reorganization proceedings with knowledge of the fact of the commencement may be asserted as effective in relation to the reorganization proceedings only to the extent that the reorganization company's assets have been enriched.

(Acceptance or Payment, etc. of Bill of Exchange)

Article 58 (1) Where a reorganization proceeding is commenced against a stock company which 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 reorganization 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.

(Presumption of the Existence or Absence of Knowledge)

Article 59 For the purpose of application of the provisions of the preceding three Articles, the absence of knowledge of the commencement of reorganization proceedings shall be presumed prior to a public notice given under the provision of Article 43, paragraph (1), and the existence of knowledge of the commencement of reorganization proceedings shall be presumed after a public notice of the commencement of reorganization proceedings.

(Co-ownership)

Article 60 (1) Where the reorganization company holds a property right jointly with another or other persons, if a reorganization proceeding is commenced, a trustee 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 reorganization company's co-ownership interest in the property by paying reasonable compensation.

(Bilateral Contract)

Article 61 (1) If both the reorganization company and its counterparty under a bilateral contract have not yet completely performed their obligations by the time of commencement of reorganization proceedings, a trustee may cancel the contract or may perform the reorganization company's obligation and request the counterparty to perform his/her obligation.

(2) In the case referred to in the preceding paragraph, the counterparty may set a reasonable period and make a demand on a trustee 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 trustee 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 reorganization company's obligation is to be performed pursuant to the provision of paragraph (1), the claim held by the counterparty 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 "reorganization creditor"; in paragraph (2) of said Article, the term "bankrupt" shall be deemed to be replaced with "reorganization company"; the term "bankruptcy estate" shall be deemed to be replaced with "reorganization company's assets"; and the term "holder of claim on the estate" shall be deemed to be replaced with "holder of common benefit claim."

(Bilateral Contract for Continuous Performance)

- Article 62 (1) The counterparty to a bilateral contract who has an obligation to provide continuous performance to the reorganization company, after the commencement of reorganization proceedings, may not refuse to perform the obligation on the grounds that no payment is made with regard to the reorganization claim, etc. arising from the performance provided prior to the filing of a petition for commencement of reorganization proceedings.
- (2) A claim arising from the performance that is provided by the counterparty to a bilateral contract set forth in the preceding paragraph after the filing of a petition for commencement of reorganization proceedings and prior to the commencement of reorganization 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.

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

Article 63 The provisions of Article 56, Article 58 and Article 59 of the Bankruptcy Act shall apply mutatis mutandis where a reorganization proceeding is commenced. In this case, in Article 56, paragraph (1) of said Act, the phrase "Article 53, paragraph (1) and paragraph (2)" shall be deemed to be replaced with "Article 61, paragraph (1) and paragraph (2) of the Corporate Reorganization Act," and the term "bankrupt" shall be deemed to be replaced with "reorganization company"; in Article 56, paragraph (2) of said Act, the term "claim on the estate" shall be deemed to be replaced with "common benefit

claim"; in Article 58, paragraph (1) of said Act, the phrase "commencement of bankruptcy proceedings" shall be deemed to be replaced with "commencement of reorganization proceedings"; in Article 54, paragraph (1) of said Act as applied mutatis mutandis pursuant to Article 58, paragraph (3) of said Act, the term "bankruptcy creditor" shall be deemed to be replaced with "reorganization creditor"; in Article 59, paragraph (1) of said Act, the term "bankruptcy proceedings" shall be deemed to be replaced with "reorganization proceedings"; in Article 59, paragraph (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 counterparty." shall be deemed to be replaced with "The claim under the provision of the preceding paragraph shall be a reorganization claim if it is held by the counterparty."

(Right of Segregation)

Article 64 (1) The commencement of reorganization proceedings shall not affect a right to segregate, from the reorganization company, property that does not belong to the reorganization company.

(2) The provisions of Article 63 and Article 64 of the Bankruptcy Act shall apply mutatis mutandis where a reorganization proceeding is commenced. In this case, in Article 63, paragraph (1) of said Act, the phrase "order of commencement of bankruptcy proceedings" shall be deemed to be replaced with "order of commencement of reorganization proceedings"; in the proviso to Article 63, paragraph (1) and Article 64 of said Act, the term "a bankruptcy trustee" shall be deemed to be replaced with "a trustee"; in Article 63, paragraph (2) of said Act, the phrase "Article 53, paragraph (1) and paragraph (2)" shall be deemed to be replaced with "Article 61, paragraph (1) and paragraph (2) of the Corporate Reorganization Act"; in Article 63, paragraph (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, paragraph (1) of said Act, the term "bankrupt" shall be deemed to be replaced with "stock company," and the phrase "commencement of bankruptcy proceedings" shall be deemed to be replaced with "commencement of reorganization proceedings."

(Restriction on Competition by Director, etc.)

Article 65 (1) When a director, executive officer or liquidator of the reorganization company intends to conduct a transaction that falls within the line of the business of the reorganization company for him/herself or a third party during the period after the commencement of reorganization proceedings until the close thereof, notwithstanding the provision of Article 356, paragraph

- (1) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 419, paragraph (2) or Article 482, paragraph (4) of said Act), he/she shall disclose the important facts concerning the transaction to a trustee and obtain approval; provided, however, that this shall not apply for the period in which the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4).
- (2) The director, executive office or liquidator who has conducted the transaction set forth in the main clause of the preceding paragraph, without delay after the transaction, shall report the important facts concerning the transaction to a trustee.
- (3) When a director, executive officer or liquidator of the reorganization company has conducted the transaction set forth in the main clause of paragraph (1) in violation of the provision of the main clause of said paragraph, the amount of the profit obtained by the director, executive officer, liquidator or third party as a result of the transaction shall be presumed to be the amount of the damage suffered by the reorganization company.

(Remuneration for Director, etc.)

Article 66 (1) No director, accounting advisor, auditor, executive officer or liquidator of the reorganization company may claim remuneration, etc. (meaning remuneration, etc. prescribed in Article 361, paragraph (1) of the Companies Act; the same shall apply in the following paragraph) from the reorganization company for the period after the commencement of reorganization proceedings until the close thereof; provided, however, that this shall not apply for the period in which the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4).

- (2) The content of remuneration, etc. that an individual director, accounting advisor, auditor, executive officer and liquidator are to receive in the case referred to in the proviso to the preceding paragraph shall be, notwithstanding the provisions of Article 361, paragraph (1) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 482, paragraph (4) of said Act), and Article 379, paragraph (1) and paragraph (2), Article 387, paragraph (1) and paragraph (2), and Article 404, paragraph (3) of said Act, determined by a trustee with permission of the court.

Section 3 Trustee

Subsection 1 Appointment and Supervision of Trustee

(Appointment of Trustee)

Article 67 (1) A trustee shall be appointed by the court.

(2) A juridical person may serve as a trustee.

(3) The court may not appoint, as a trustee, a person who is likely to receive an assessment order on liability of officer, etc. prescribed in Article 100, paragraph (1).

(Supervision, etc. of Trustee)

Article 68 (1) A trustee shall be supervised by the court.

(2) The court, upon the petition of an interested person or by its own authority, may dismiss a trustee if the trustee does not appropriately perform the administration of the reorganization company's business and property, or there are any other material reasons. In this case, the court shall interrogate the trustee.

(Performance of Duties by Two or More Trustees)

Article 69 (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.

(Trustee Representative)

Article 70 (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; provided, however, that the person prescribed in Article 67, paragraph (3) may not be appointed as a trustee representative.

(2) The appointment of a trustee representative set forth in the preceding paragraph shall require permission of the court.

(Legal Advisor)

Article 71 A trustee shall obtain permission of the court in order to appoint a person as his/her advisor on legal issues that may arise in reorganization proceedings (excluding those concerning legal cases) (hereinafter referred to as a "legal advisor").

Subsection 2 Powers, etc. of Trustee

(Powers of Trustee)

Article 72 (1) Where an order of commencement of reorganization proceedings is made, the right to manage the reorganization company's business and to administer and dispose of the company's property (irrespective of whether or

not it exists in Japan; the same shall apply in paragraph (4)) shall be vested exclusively in a trustee appointed by the court.

- (2) The court, when it finds it necessary after the commencement of reorganization proceedings, may require a trustee 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 61, paragraph (1);
 - (v) Filing of an action;
 - (vi) Settlement or arbitration agreement (meaning an arbitration agreement prescribed in Article 2, paragraph (1) of the Arbitration Act (Act No. 138 of 2003));
 - (vii) Waiver of a right;
 - (viii) Admittance of a common benefit claim or right prescribed in Article 64, paragraph (1);
 - (ix) Substitution of the security pertaining to a secured reorganization claim; and
 - (x) Any other act designated by the court.
- (3) 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.
- (4) It may be provided in the reorganization plan or ordered by the court that the provisions of the preceding three paragraphs shall not apply to the reorganization company for which an order of confirmation of the reorganization plan has been made. In this case, a trustee shall supervise the management of the reorganization company's business and the administration and disposition of the company's property.
- (5) Where the reorganization plan does not contain the provision as set forth in the first sentence of the preceding paragraph, the court, when it finds it necessary, upon the petition of a trustee or by its own authority, shall make an order as provided for in the first sentence of said paragraph.
- (6) The court, upon the petition of a trustee or by its own authority, may revoke an order made under the provision of the preceding paragraph.
- (7) When an order is made under the provisions of the preceding two paragraphs, a public notice shall be given to that effect and the written order shall be served upon a trustee and the reorganization company. In this case, the provision of Article 10, paragraph (4) shall not apply.

(Administration of Reorganization Company's Business and Property)

Article 73 A trustee shall commence the administration of the reorganization

company's business and property immediately after assuming office.

(Standing to Sue or to be Sued, etc.)

Article 74 (1) In an action relating to the reorganization company's property, a trustee shall stand as a plaintiff or defendant.

(2) The provision of the preceding paragraph shall not apply to an action relating to the reorganization company's property filed during the period in which the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4).

(3) The provisions of Article 52, paragraph (1), paragraph (2) and paragraph (6) shall apply mutatis mutandis to an action set forth in the preceding paragraph in cases where a provision of a reorganization plan or an order of the court under the provision of the first sentence of Article 72, paragraph (4) is revoked.

(Management of Postal Items, etc.)

Article 75 (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 or letter item prescribed in Article 2, paragraph (3) of the Act on Correspondence Delivery by Private Business Operators (Act No. 99 of 2002) (referred to as a "postal item, etc.") that is addressed to the reorganization company.

(2) The court, upon the petition of the reorganization company or by its own authority, may cancel or change the commission prescribed in the preceding paragraph, after hearing opinions from a trustee.

(3) Upon the close of reorganization proceedings, the court shall cancel the commission prescribed in paragraph (1). The same shall apply when the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4).

(4) The reorganization company or a trustee may file an immediate appeal against an order made under the provision 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 76 (1) A trustee, upon receiving a postal item, etc. addressed to the reorganization company, may open it and view its contents.

(2) The reorganization company may request a trustee to let the company inspect the postal item, etc. set forth in the preceding paragraph, received by the trustee, or deliver it to the company, if such postal item, etc. does not relate to

the reorganization company's assets.

(Investigation on Reorganization Company and its Subsidiary Company)

Article 77 (1) A trustee may request any of directors, accounting advisors, auditors, executive officers, accounting auditors, liquidators, and employees and other workers of the reorganization company and persons who held those posts as well as the incorporators, directors at incorporation or auditors at incorporation, to report on the status of the reorganization company's business and property, or may inspect the reorganization company's books, documents and any other objects

(2) A trustee, when necessary in order to perform his/her duties, may request a subsidiary company (meaning a subsidiary company prescribed in Article 2, item (iii) of the Companies Act) of the reorganization company, to report on the status of its business and property, or may inspect its books, documents and any other objects.

(Transactions conducted by Trustee with Reorganization Company)

Article 78 (1) A trustee, without permission of the court, may not accept the reorganization company's property or assign his/her own property to the reorganization company, or conduct any other transaction with the reorganization company for 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.

(Restriction on Competition by Trustee)

Article 79 (1) When a trustee intends to conduct a transaction that falls within the line of the business of the reorganization company for him/herself or a third party, he/she shall disclose the important facts concerning the transaction to the court and obtain approval.

(2) The trustee who has conducted the transaction set forth in the preceding paragraph, without delay after the transaction, shall report the important facts concerning the transaction to the court.

(3) When a trustee has conducted the transaction set forth in paragraph (1) in violation of the provision of said paragraph, the amount of the profit obtained by the trustee or a third party as a result of the transaction shall be presumed to be the amount of the damage suffered by the reorganization company.

(Trustee's Duty of Care)

Article 80 (1) A trustee shall perform his/her duties with the due care of a prudent manager.

(2) If a trustee fails to have the due care set forth in the preceding paragraph, the trustee shall be jointly and severally liable to compensate damage to any interested person.

(Trustee's Duty to Strive to Provide Information)

Article 80-2 A trustee shall strive to provide a person who has a claim for salary or claim for retirement allowance, both of which are reorganization claims, etc., with information necessary for their participation in the reorganization proceedings.

(Remuneration, etc. for Trustee)

Article 81 (1) A trustee may receive advance payments of expenses as well as remuneration determined by the court.

(2) A trustee shall obtain permission of the court in order to accept or assign, after assuming office any claims against the reorganization company or a company incorporated pursuant to the provisions of the reorganization plan, or shares or equity of the reorganization company or the company thus incorporated.

(3) A trustee 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).

(5) The provisions of the preceding paragraphs shall apply mutatis mutandis to a trustee representative and a legal advisor.

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

Article 82 (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 reorganization company is able to administer property.

(4) Where any of the grounds listed in Article 234, item (ii) to item (iv) have occurred, a trustee shall pay common benefit claims, except in the cases prescribed in Article 254, paragraph (6) or Article 257; provided, however, that with regard to a common benefit claim which is in dispute in terms of its existence or nonexistence or its amount, a trustee shall make a statutory

deposit of such payment in the interest of the person who holds such claim.

Subsection 3 Investigation on the Status of the Reorganization Company's Property

(Evaluation, etc. of Property)

Article 83 (1) A trustee, without delay after the commencement of reorganization proceedings, shall evaluate the value of any and all property that belongs to the reorganization company.

(2) The evaluation under the provision of the preceding paragraph shall be made on the basis of the market value as of the time of commencement of reorganization proceedings.

(3) A trustee, when he/she has completed the evaluation under the provision of paragraph (1), shall immediately prepare a balance sheet and an inventory of assets as of the time of commencement of reorganization proceedings and submit these to the court.

(4) When an order of confirmation of the reorganization plan is made, a trustee shall prepare a balance sheet and an inventory of assets as of the time of the order of confirmation of the reorganization plan and submit these to the court.

(5) The evaluation of the property to be stated or recorded in the balance sheet and inventory of assets set forth in the preceding paragraph shall be governed by the provisions of Ordinance of the Ministry of Justice.

(Report to the Court)

Article 84 (1) A trustee, without delay after the commencement of reorganization proceedings, shall submit to the court a written report stating the following matters:

(i) The circumstances that have resulted in the commencement of reorganization proceedings;

(ii) The past and existing status of the reorganization company's business and property;

(iii) Whether or not there are circumstances that require a temporary restraining order under the provision of Article 99, paragraph (1) or an assessment order on liability of officer, etc. prescribed in Article 100, paragraph (1); and

(iv) Other necessary matters concerning reorganization proceedings.

(2) In addition to what is prescribed in the preceding paragraph, a trustee, as provided for by the court, shall report to the court the status of the administration of the reorganization company's business and property and any other matters as ordered by the court.

(Report to Meeting for Reporting the Status of Property)

- Article 85 (1) At a stakeholders meeting convoked to report the status of the reorganization company's property, a trustee shall report the gist of the matters listed in the items of paragraph (1) of the preceding Article.
- (2) At a stakeholders meeting set forth in the preceding paragraph, the court shall hear opinions from a trustee, the reorganization company, holders of filed reorganization claims, etc. or shareholders with regard to the appointment of a trustee as well as the matters concerning the administration of the reorganization company's business and property.
- (3) At a stakeholders meeting set forth in paragraph (1), the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) may state its opinions with regard to the matters prescribed in the preceding paragraph.
- (4) The court, when it has decided not to convoke a stakeholders meeting set forth in paragraph (1), shall give a notice to the persons prescribed in the preceding two paragraphs (excluding a trustee) to the effect that they may state their opinions in writing concerning the appointment of a trustee within a period specified by the court.

Section 4 Right of Avoidance

(Avoidance of Acts Prejudicial to Reorganization Creditors, etc.)

- Article 86 (1) The following acts (excluding acts concerning the provision of security or extinguishment of debt) may be avoided in the interest of the reorganization company's assets after the commencement of reorganization proceedings:
- (i) An act conducted by the reorganization company while knowing that it would prejudice reorganization creditors, etc.; 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 reorganization creditor, etc.; and
- (ii) An act that would prejudice reorganization creditors, etc. conducted by the reorganization company after suspension of payments or filing of a petition for commencement of reorganization proceedings, commencement of bankruptcy proceedings, commencement of rehabilitation 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 reorganization creditor, etc.
- (2) With respect to an act concerning the extinguishment of debt conducted by

the reorganization company, 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 reorganization company's assets after the commencement of reorganization 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 reorganization company after or within six months prior to suspension of payments, etc. may be avoided in the interest of the reorganization company's assets after the commencement of reorganization proceedings.

(Avoidance of Acts of Disposing of Property conducted while Receiving Reasonable Value)

Article 86-2 (1) When the reorganization company, after conducting an act of disposing of its property, has received a reasonable value from the other party to said act, the act may be avoided in the interest of the reorganization company's assets after the commencement of reorganization proceedings, if it satisfies all of the following requirements:

- (i) The act has the actual risk that the reorganization company would conceal, gratuitously convey or otherwise dispose of the property in a manner prejudicial to reorganization creditors, etc. (hereinafter referred to as "concealment or other disposition" in this Article and Article 91-2, paragraph (2) and paragraph (3)) by realizing real property or otherwise changing the type of property by way of such disposition;
 - (ii) The reorganization company, at the time of the act, had the intention of conducting concealment or other disposition of the money or any other property that it received as a value for the act; and
 - (iii) The other party, at the time of the act, knew that the reorganization company 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 reorganization company had the intention of conducting concealment or other disposition set forth in item (ii) of said paragraph:
- (i) A director, accounting advisor (if an accounting advisor is a juridical person, its employees who are to perform its duties shall be included), auditor, executive officer, accounting auditor (if an accounting auditor is a juridical person, its employees who are to perform its duties shall be included) or liquidator of the reorganization company;

- (ii) A person who holds the majority of voting rights of all shareholders of the reorganization company; or
- (iii) Parent company (meaning a juridical person which holds the majority of voting rights of all shareholders of a stock company that is its subsidiary stock company), in cases where the majority of voting rights of all shareholders of the reorganization company are held independently by its subsidiary stock company (meaning a stock company in which a juridical person holds the majority of voting rights of all shareholders; hereinafter the same shall apply in this item) or parent company and its subsidiary stock company.

(Avoidance of Provision, etc. of Security to Specific Creditors)

Article 86-3 (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 reorganization company's assets after the commencement of reorganization proceedings:

- (i) An act conducted by the reorganization company after it became unable to pay debts or a petition for commencement of reorganization proceedings, commencement of bankruptcy proceedings, commencement of rehabilitation proceedings or commencement of special liquidation was filed (hereinafter referred to as the "filing of a petition for commencement of reorganization 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 reorganization company became unable to pay debts: the fact that the reorganization company was unable to pay debts or suspended payments; or
 - (b) Where the act was conducted after a petition for commencement of reorganization proceedings, etc. was filed: the fact that a petition for commencement of reorganization proceedings, etc. was filed; and
 - (ii) An act that is not included in the scope of the reorganization company's obligation in terms of the act itself or the time of performance of the act, which was conducted within 30 days before the reorganization company 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 reorganization creditors, etc.
- (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 reorganization company was

unable to pay debts and that the reorganization company suspended payments):

- (i) Where the creditor is any of the persons listed in the items of paragraph (2) of the preceding Article; and
 - (ii) Where the act set forth in item (i) of the preceding paragraph is not included in the scope of the reorganization company'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 reorganization proceedings, etc.), the reorganization company shall be presumed to have been unable to pay debts.

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

Article 87 (1) The provision of paragraph (1), item (i) of the preceding Article shall not apply where a person who has received payment of a negotiable instrument from the reorganization company 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 trustee may have these persons redeem the money paid by the reorganization company 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 reorganization company with regard to a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance) or a claim for a fine, etc. arising prior to the commencement of reorganization proceedings as prescribed in Article 142, item (ii), for the person who has the power to collect the claim.

(Avoidance of Requirements of Perfection of Changes in Rights)

Article 88 (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.

(Avoidance of Acts of Execution)

Article 89 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.

(Restriction on Avoidance by Reason of Suspension of Payments)

Article 90 Any act conducted not less than one year before the date of filing of a petition for commencement of reorganization proceedings, etc. (excluding the act prescribed in Article 86, paragraph (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.

(Effect of the Exercise of Right of Avoidance)

Article 91 (1) The exercise of a right of avoidance shall restore the reorganization company's assets to the original state thereof.

(2) Where an act prescribed in Article 86, paragraph (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 reorganization creditor, etc., it shall be sufficient for the other party to return the actual enrichment that he/she enjoys.

(Rights, etc. held by the Other Party over Counter-Performance received by the Reorganization Company)

Article 91-2 (1) When an act prescribed in Article 86, paragraph (1) or paragraph (3) or Article 86-2, paragraph (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 reorganization company actually exists within the reorganization company's assets: A right to claim return of the counter-performance; and

(ii) Where the counter-performance received by the reorganization company does not actually exist within the reorganization company'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 reorganization company, at the time of the act in question, had the intention of conducting concealment or other disposition of the property that it received as a value for the act and the other party knew

that the reorganization company had such intention, 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 enrichment arising from the counter-performance received by the reorganization company actually exists in whole within the reorganization company'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 reorganization company does not actually exist within the reorganization company's assets: A right to claim, as a reorganization creditor, reimbursement of the value of the counter-performance; and
 - (iii) Where the enrichment arising from the counter-performance received by the reorganization company actually exists in part within the reorganization company'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 reorganization 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 86-2, paragraph (2), the other party shall be presumed to have known, at the time of the act, that the reorganization company had the intention of conducting concealment or other disposition set forth in the preceding paragraph.
- (4) When a trustee intends to avoid an act prescribed in Article 86, paragraph (1) or paragraph (3) or Article 86-2, paragraph (1), in lieu of requesting return of the property that should be returned to the reorganization company's assets pursuant to the provision of paragraph (1) of the preceding Article, he/she 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), item (i), the value of the counter-performance received by the reorganization company) from the value of said property to be returned.

(Restoration of the Other Party's Claim)

Article 92 Where an act prescribed in Article 86-3, paragraph (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.

(Right of Avoidance against Subsequent Acquirers)

Article 93 (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 respective predecessors;
 - (ii) Where each of the subsequent acquirers is any of the persons listed in the items of Article 86-2, paragraph (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 respective predecessors; and
 - (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 respective predecessors.
- (2) The provision of Article 91, paragraph (2) shall apply *mutatis mutandis* where a right of avoidance is exercised pursuant to the provision of item (iii) of the preceding paragraph.

(How to treat Continuation of Procedure Pertaining to Temporary Restraining Order and Treatment of Security)

Article 94 (1) Where a temporary restraining order under the provision of Article 39-2, paragraph (1) (including cases where applied *mutatis mutandis* pursuant to Article 44, paragraph (2)) is issued, if an order of commencement of reorganization proceedings is made, a trustee may continue the procedure pertaining to the temporary restraining order.

- (2) If a trustee does not continue the procedure pertaining to a temporary restraining order set forth in the preceding paragraph pursuant to the provision of said paragraph within one month after an order of commencement of reorganization proceedings is made, the temporary restraining order shall cease to be effective.
- (3) Where 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 Article 39-2, paragraph (2) (including cases where applied *mutatis mutandis* pursuant to Article 44, paragraph (2)) does not belong to the reorganization company's assets, he/she shall substitute, for the whole or part of such security, another security by way of property that belongs to the reorganization company's assets.
- (4) The provision of Article 18 of the Civil Provisional Remedies Act (Act No. 91 of 1989) and Chapter II, Section 4 (excluding Article 37, paragraph (5) to paragraph (7)) and Section 5 of said Act shall apply *mutatis mutandis* to a temporary restraining order for the procedure to be continued by a trustee pursuant to the provision of paragraph (1).

(Exercise of Right of Avoidance)

- Article 95 (1) A right of avoidance shall be exercised by a trustee by filing an action, making a request for avoidance or filing a defense.
- (2) Cases of the action and request for avoidance set forth in the preceding paragraph shall be subject to the jurisdiction of the reorganization court.

(Request for Avoidance and Order Thereon)

- Article 96 (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 written order shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.
- (5) The proceedings for a request for avoidance shall be closed upon the close of reorganization proceedings.

(Action to Oppose Order Upholding Request for Avoidance)

- Article 97 (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 reorganization 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 an order upholding a request for avoidance.
- (4) When a judgment which approves the whole or part of an order upholding a request for avoidance becomes final and binding, the order (limited to the part approved by the judgment) shall have the same effect as a final and binding judgment. The same shall apply to an order upholding a request for avoidance in cases where the action set forth in the preceding paragraph is not filed within the period prescribed in said paragraph, is withdrawn 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 may declare provisional execution, as provided for by Article 259, paragraph (1) of the Code of Civil Procedure.
- (6) The action set forth in paragraph (1), notwithstanding the provision of Article

52, paragraph (4), shall be concluded if any of the grounds listed in Article 234, item (ii) or item (v) have occurred.

(Period for Exercise of Right of Avoidance)

Article 98 A right of avoidance may not be exercised if two years have elapsed since the date of commencement of reorganization proceedings (in cases where bankruptcy proceedings or rehabilitation proceedings have been commenced prior to the date of commencement of reorganization proceedings, this period shall start from the date of commencement of bankruptcy proceedings or rehabilitation proceedings). The same shall apply where 20 years have elapsed since the date of the act to be avoided.

Section 5 Pursuing the Liabilities of Officers, etc. of Reorganization Company

(Temporary Restraining Order upon Property of Officer, etc.)

Article 99 (1) Where an order of commencement of reorganization proceedings is made, the court, when it finds it necessary, upon the petition of a trustee or by its own authority, may issue the following temporary restraining orders:

- (i) A temporary restraining order to preserve a claim for damages based on the liabilities of the reorganization company's incorporator, director at incorporation or auditor at incorporation, director, accounting advisor, auditor, executive officer, accounting auditor or liquidator (hereinafter referred to as "officer, etc." in this Section), which may be issued upon the property of such officer, etc.; and
 - (ii) A temporary restraining order to preserve a claim for payment of any shortage against the reorganization company's officer, etc. (excluding its auditor at incorporation, accounting advisor, accounting auditor and liquidator) under the provisions of Article 52, paragraph (1), Article 213, paragraph (1) or Article 286, paragraph (1) of the Companies Act, which may be issued upon the property of such officer, etc.
- (2) The court may change or revoke a temporary restraining order issued under the provisions of the preceding paragraph.
 - (3) An immediate appeal may be filed against a temporary restraining order issued under the provision of paragraph (1) or 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, paragraph (3) shall not apply.

(Petition, etc. for Assessment on Liability of Officer, etc.)

- Article 100 (1) Where an order of commencement of reorganization proceedings is made, when any of the claims prescribed in the items of paragraph (1) of the preceding Article exists and the court finds it necessary, the court, upon the petition of a trustee or by its own authority, may make a judicial decision, by an order, to assess the amount of the claim and other matters (hereinafter referred to as an "assessment order on liability of officer, etc." in this Section).
- (2) When filing the petition set forth in the preceding paragraph, the petitioner shall make a prima facie showing of the fact constituting the cause of the claim.
- (3) Where the court commences proceedings for an assessment order on liability of officer, etc. by its own authority, it shall make an order to that effect.
- (4) When a petition set forth in paragraph (1) is filed or an order set forth in the preceding paragraph is made, for the purpose of interruption of prescription, it shall be deemed that demand by litigation is made.
- (5) The proceedings for an assessment order on liability of officer, etc. shall be closed upon the close of reorganization proceedings (excluding the case where an assessment order on liability of officer, etc. is already made prior to the close of reorganization proceedings).

(Assessment Order, etc. on Liability of Officer, etc.)

- Article 101 (1) An assessment order on liability of officer, etc. and an order to dismiss with prejudice on the merits the petition set forth in paragraph (1) of the preceding Article shall state the reasons therefor.
- (2) The court, when making an order set forth in the preceding paragraph, shall interrogate the officer, etc. in question.
- (3) Where an assessment order on liability of officer, etc. is made, the written order shall be served upon the parties concerned. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.

(Action to Oppose Assessment Order on Liability of Officer, etc.)

- Article 102 (1) A person who disagrees with an assessment order on liability of officer, etc. 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 reorganization court.
- (3) In an action set forth in paragraph (1), a trustee shall stand as a defendant if it is filed by an officer, etc., and an officer, etc. shall stand as a defendant if it is filed by a trustee.
- (4) 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 assessment order on liability of officer, etc.

- (5) A judgment that approves or changes an assessment order on liability of officer, etc., for the purpose of compulsory execution, shall have the same effect as a judgment to order performance.
- (6) With regard to a judgment that approves or changes an assessment order on liability of officer, etc., the court in charge of the case may declare provisional execution, as provided for by Article 259, paragraph (1) of the Code of Civil Procedure.

(Effect of Assessment Order on Liability of Officer, etc.)

Article 103 If an action set forth in paragraph (1) of the preceding Article is not filed within the period set forth in said paragraph, is withdrawn or is dismissed without prejudice, the assessment order on liability of officer, etc. shall have the same effect as a final and binding judgment to order performance.

Section 6 Request, etc. for Extinguishment of Security Interests

Subsection 1 Request for Extinguishment of Security Interests

(Order of Permission of Extinguishment of Security Interest)

- Article 104 (1) Where there exists a special statutory lien, pledge, mortgage, or a right of retention under the provisions of the Commercial Code or the Companies Act (hereinafter referred to as a "security interest" in this Subsection) on the reorganization company's property as of the time of commencement of reorganization proceedings, the court, when it finds it necessary for the reorganization of the reorganization company's business, upon the petition of a trustee, may make an order to permit 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 order set forth in the preceding paragraph may not be made after an order to refer the proposed reorganization plan to a resolution is made.
- (3) The petition set forth in paragraph (1) 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;
 - (ii) The value of the property set forth in the preceding item; and
 - (iii) The indication of the security interest to be extinguished.
- (4) Where an order 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 who holds the security interest set forth in item (iii) of said paragraph as stated in said written petition (hereinafter referred to as the "designated security interest holder(s)" in this Subsection). In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.

- (5) A designated security interest holder may file an immediate appeal against an order set forth in the provision of paragraph (1).
- (6) Where a judicial decision on the immediate appeal set forth in the preceding paragraph is made, the written decision shall be served upon the designated security interest holder. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.
- (7) Where the security interest set forth in paragraph (3), item (iii), which is stated in a written petition, 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 (4), the principal to be secured by the revolving mortgage shall be fixed.
- (8) The provision of Article 398-20, paragraph (2) of the Civil Code shall apply mutatis mutandis where a petition set forth in paragraph (1) is withdrawn or an order set forth in said paragraph is revoked.

(Request for Valuation)

Article 105 (1) A designated security interest holder, if he/she has an objection to the value set forth in paragraph (3), item (ii) of the preceding Article as stated in the written petition (hereinafter referred to as the "offered price" in Article 107 and Article 108), 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 designated 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 108) shall be subject to the jurisdiction of the reorganization court.
- (4) A person who makes a request for valuation shall prepay an amount designated by the reorganization court as expenses for the proceedings for the request.
- (5) If prepayment of expenses prescribed in the preceding paragraph is not made, the reorganization court shall dismiss without prejudice the request for valuation.

(Valuation of Property)

- Article 106 (1) Where a request for valuation is made, the reorganization 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 reorganization court, by an order, shall value the property as of the time of the order based on the valuation made by a valuator.
- (3) Where there are two or more designated 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 108, paragraph (1), item (i)) has expired for all designated 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 designated security interest holder who has not made a request for valuation.
- (5) A trustee and any designated 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 the preceding paragraph is made, the written order/decision shall be served upon a trustee and the designated security interest holder. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.

(Burden of Expenses)

- Article 107 (1) The expenses incurred for the proceedings for a request for valuation shall be borne by the reorganization company 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 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 reorganization company, and the remaining part shall be borne by the person 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 reorganization company pursuant to the provision of paragraph (1) shall have a right to receive

payment of the expenses in preference to other designated security interest holders from the money paid under the provisions of paragraph (1) of the following Article or Article 112, paragraph (2).

- (4) In the case referred to in paragraph (5) of the following Article, the expenses set forth in paragraph (1) and paragraph (2), notwithstanding these provisions, shall be borne by the reorganization company. In this case, a claim for expenses against the reorganization company shall be a common benefit claim.

(Payment, etc. of Money Equivalent to Value)

Article 108 (1) A trustee shall pay to the court, by the time limit set by the court, the money specified in each of the following items for the categories listed in the respective items:

- (i) If no request for valuation is made within the period of request or all requests for valuation are withdrawn or dismissed without prejudice: Money equivalent to the offered price; or
 - (ii) If the order set forth in Article 106, paragraph (2) becomes final and binding: Money equivalent to the value determined by said order.
- (2) The court may change the time limit set forth in the preceding paragraph before said time limit comes.
- (3) The security interest held by designated security interest holder shall be extinguished at the time when money is paid under the provisions of paragraph (1) or Article 112, paragraph (2).
- (4) Where money is paid under the provisions of paragraph (1) or Article 112, paragraph (2), a court clerk shall commission cancellation of the registration of the security interest extinguished.
- (5) If a trustee fails to pay money under the provisions of paragraph (1) or Article 112, paragraph (2), or an order of confirmation of the reorganization plan is made before a trustee pays money under these provisions, the court shall rescind the order set forth in Article 104, paragraph (1).

(How to Treat Paid Money when Order of Confirmation of Reorganization Plan is Made)

Article 109 When an order of confirmation of the reorganization plan is made, the court shall deliver to a trustee (or the reorganization company if the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4)) the amount of money equivalent to the money paid pursuant to the provision of paragraph (1) of the preceding Article (if money has been delivered under the provision of Article 111, paragraph (6), the amount thus delivered shall be deducted) or the amount of money equivalent to the money paid pursuant to the provision of Article 112, paragraph (2).

(How to Treat Paid Money when Reorganization Proceedings are closed prior to Confirmation of Reorganization Plan)

Article 110 (1) When the reorganization proceedings are closed before an order of confirmation of the reorganization plan is made, the court, according to a distribution list, shall implement liquidating distribution of the money paid pursuant to the provisions of Article 108, paragraph (1) or Article 112, paragraph (2), to designated security interest holders, except in the case prescribed in the following paragraph.

(2) Where there is only one designated security interest holder or where there are two or more designated security interest holders and the money paid pursuant to the provisions of Article 108, paragraph (1) or Article 112, paragraph (2) is sufficient for paying the claims secured by the security interests held by the designated respective holders and the expenses borne by the reorganization company pursuant to the provision of Article 117, paragraph (1), the court shall prepare a statement of delivery of said money, and deliver payment money to the designated security interest holder and deliver any surplus to the reorganization company.

(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.

(Delivery of Surplus, etc. to Trustee prior to Confirmation of Reorganization Plan)

Article 111 (1) Before an order of confirmation of the reorganization plan is made, the court, in any of the cases listed in the following items, upon the petition of a trustee, may make an order to deliver the amount specified in the respective items to the trustee:

- (i) Where there is any surplus after deducting the amount that is likely to be distributed (or delivered as payment money) to the designated security interest holders pursuant to the provision of the preceding Article (hereinafter referred to as the "estimated amount of distribution, etc." in the following paragraph), from the amount of money equivalent to the money to be paid pursuant to the provision of Article 108, paragraph (1): The amount of such surplus; or
- (ii) Where all designated security interest holders consent to deliver the whole or part of the amount of money equivalent to the money to be paid pursuant to the provision of Article 108, paragraph (1) to the trustee: The amount to

which they consent.

- (2) The estimated amount of distribution, etc. prescribed in item (i) of the preceding paragraph shall be the sum of the following amounts:
 - (i) The amount of the reorganization claim, etc. filed by each designated security interest holder (excluding such claim that has been determined), and which falls within both categories set forth in (a) and (b) below:
 - (a) A claim that proves to be, in light of the content of the proof, a claim secured by the security interest held by each designated security interest holder (in the case of a secured claim for interest or for damages or a penalty for a default, limited to such claim that arises within two years after the commencement of reorganization proceedings; the same shall apply in (b) of the following item); and
 - (b) The claim to the extent that it is secured by the security interest set forth in (a);
 - (ii) The determined amount of the reorganization claim, etc. filed by each designated security interest holder, and which falls within both categories set forth in (a) and (b) below:
 - (a) A claim that proves to be, in light of the content of the determined reorganization claim, etc., a claim secured by the security interest held by each designated security interest holder; and
 - (b) The claim to the extent that it is secured by the security interest set forth in (a); and
 - (iii) The amount prepaid pursuant to the provision of Article 105, paragraph (4).
- (3) The court may not make an order set forth in paragraph (1) until after the period for filing proofs of claims prescribed in Article 138, paragraph (1) has expired and the case now falls under any of the items of Article 108, paragraph (1).
- (4) A trustee and a designated security interest holder may file an immediate appeal against an order on the petition set forth in paragraph (1).
- (5) Where a judicial decision on the petition set forth in paragraph (1) or on the immediate appeal set forth in the preceding paragraph is made, the written decision shall be served upon a trustee and designated security interest holder. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.
- (6) When the order set forth in paragraph (1) has become final and binding, the court, except where money has been delivered under the provision of paragraph (2) of the following Article, shall deliver money equivalent to the amount specified by the order to a trustee (or the reorganization company if the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4)).

(Payment of Balance)

Article 112 (1) The court may make an order set forth in paragraph (1) of the preceding Article even before a trustee pays money under the provision of Article 108, paragraph (1).

(2) When an order set forth in paragraph (1) of the preceding Article becomes final and binding before a trustee pays money under the provision of Article 108, paragraph (1), it shall be sufficient for the trustee, notwithstanding the provision of Article 108, paragraph (1), to pay to the court the amount of money payable pursuant to Article 108, paragraph (1) after deducting therefrom the amount specified by the order, by the time limit prescribed in Article 108, paragraph (1).

Subsection 2 Statutory Deposit by Third Party Debtor of Pledge over Claim

Article 113 (1) The debtor of a monetary claim that is the subject matter of a pledge for a secured reorganization claim may be released from the debt by making a statutory deposit of money equivalent to the full amount of the monetary claim.

(2) When a statutory deposit is made under the provision of the preceding paragraph, the secured reorganization creditor who has held the pledge set forth in said paragraph shall have the same right as the pledgee to the deposited money.

Section 7 Stakeholders Meetings

(Convocation of Stakeholders Meetings)

Article 114 (1) The court shall convoke a stakeholders meeting upon the petition of any of the persons listed in the following items. The court may convoke a stakeholders meeting without these petitions when it finds it appropriate:

- (i) A trustee;
- (ii) The reorganization creditors committee prescribed in Article 117, paragraph (2);
- (iii) The secured reorganization creditors committee prescribed in Article 117, paragraph (6);
- (iv) The shareholders committee prescribed in Article 117, paragraph (7);
- (v) A reorganization creditor, etc. who holds a reorganization claim, etc. that accounts for one-tenth or more of the value of all filed reorganization claim, etc. as estimated by the court; or
- (vi) A shareholder who holds one-tenth or more of the voting rights of all shareholders of the reorganization company.

(2) Notwithstanding the provision of the first sentence of the preceding paragraph, when the reorganization company is unable to pay its debts in full with its property at the time of commencement of reorganization proceedings, the persons set forth in item (iv) and item (vi) of said paragraph may not file a petition set forth in the first sentence of said paragraph.

(Summon, etc. on the Date of Stakeholders Meeting)

Article 115 (1) On the date of a stakeholders meeting, a trustee, the reorganization company, holders of filed reorganization claims, etc., shareholders, and any person who has assumed a debt or provided security for the reorganization of the reorganization company's business shall be summoned; provided, however, that when the order set forth in Article 42, paragraph (2) is made, holders of filed reorganization claims, etc. shall not be required to be summoned, except on the date of a stakeholders meeting aimed for adopting a resolution on a proposed reorganization plan.

(2) Notwithstanding the provision of the main clause of the preceding paragraph, it is allowed not to summon holders of filed reorganization claims, etc. or shareholders who may not exercise their voting rights.

(3) A notice of the date of a stakeholders meeting shall be given to the labor union, etc. prescribed in Article 46, paragraph (3), item (iii).

(4) The court shall give a public notice of the date of a stakeholders meeting and the matters that are the purposes of the meeting.

(5) If it is rendered, on the date of a stakeholders meeting, that the meeting shall be postponed or continued, the provisions of paragraph (1) and the preceding two paragraphs shall not apply.

(Direction of Stakeholders Meetings)

Article 116 Stakeholders meetings shall be directed by the court.

Section 8 Reorganization Creditors Committee and Creditors'/Shareholders' Representative, etc.

(Reorganization Creditors Committee, etc.)

Article 117 (1) Where there is a committee consisting of reorganization creditors, the court, upon the petition of an interested person, may give approval to the participation of said committee in reorganization proceedings as provided for in 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 reorganization creditors consent to the

- committee's participation in reorganization proceedings; and
- (iii) It is found that the committee will properly represent the interest of reorganization 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 "reorganization creditors committee") to state its opinions in reorganization proceedings.
- (3) The reorganization creditors committee may state its opinions to the court or a trustee (or a trustee or the reorganization company if the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4)) in reorganization proceedings.
- (4) When it is found that the reorganization creditors committee has carried out activities that contribute to ensuring the reorganization of the reorganization company's business, the court, upon the petition of a reorganization creditor who has incurred necessary expenses for said activities, may permit reimbursement of the amount of expenses, which it finds reasonable, to said reorganization creditor from the reorganization company'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.
- (6) The provision of paragraph (1) shall apply mutatis mutandis where there is a committee consisting of secured reorganization creditors, and the provisions of paragraph (2) to the preceding paragraph shall apply mutatis mutandis where there is a committee approved under the provision of paragraph (1) as applied mutatis mutandis pursuant to this paragraph (hereinafter referred to as the "secured reorganization creditors committee").
- (7) The provision of paragraph (1) shall apply mutatis mutandis where there is a committee consisting of shareholders, and the provisions of paragraph (2) to paragraph (5) shall apply mutatis mutandis where there is a committee approved under the provision of paragraph (1) as applied mutatis mutandis pursuant to this paragraph (referred to as the "shareholders committee" in Article 121).

(Hearing of Opinions of the Reorganization Creditors Committee)

- Article 118 (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 a trustee (or the reorganization company if the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4)) to that effect.
- (2) A trustee, upon receiving the notice under the provision of the preceding paragraph, without delay, shall hear opinions from the reorganization creditors

committee with regard to the matters concerning the administration of the reorganization company's business and property.

(Duty to Report of Trustee to the Reorganization Creditors Committee)

Article 119 (1) A trustee, 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 83, paragraph (3) or paragraph (4) or Article 84, without delay, shall also submit said written reports, etc. to the reorganization creditors committee.

(2) When a trustee, in the case referred to in the preceding paragraph, has filed a petition set forth in Article 12, paragraph (1), alleging that the written reports, etc. in question contain a detrimental part prescribed in Article 12, paragraph (1), it shall be sufficient for him/her to submit the written reports, etc. excluding such part to the reorganization creditors committee.

(Report Order to Trustee)

Article 120 (1) The reorganization creditors committee, when it is necessary for the interest of reorganization creditors as a whole, may request the court to order that a trustee make a report under the provision of Article 84, paragraph (2) with regard to the status of the administration of the reorganization company's business and property and other necessary matters concerning the reorganization of the reorganization company'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 a trustee make a report under the provision of Article 84, paragraph (2).

(Application Mutatis Mutandis)

Article 121 The provisions of the preceding three Articles shall apply mutatis mutandis where there is a secured reorganization creditors committee or a shareholders committee.

(Creditors'/Shareholders' Representative)

Article 122 (1) Reorganization creditors, etc. or shareholders, with permission of the court, may jointly or independently appoint one or more creditors'/shareholders' representatives.

(2) The court, when it finds it necessary in order to ensure smooth progress in reorganization proceedings, may specify a reasonable period and recommend that reorganization creditors, etc. or shareholders appoint a creditors'/shareholders' representative.

(3) A creditors'/shareholders' representative may perform any and all acts involved in reorganization proceedings in the interest of the reorganization

creditors, etc. or shareholders who appoint him/her.

- (4) If there are two or more creditors'/shareholders' 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 creditors'/shareholders' representative to be extremely unfair.
- (6) Reorganization creditors, etc. or shareholders may dismiss at any time the creditors'/shareholders' representative that they have appointed.

(Appointment of Creditors'/Shareholders' Representative by Court)

- Article 123 (1) Where there are an extremely large number of reorganization creditors, etc. or shareholders who have common interest, if any of these reorganization creditors, etc. or shareholders, despite the recommendation made under paragraph (2) of the preceding Article, does not appoint a creditors'/shareholders' representative within the period set forth in said paragraph, and the court finds that the progress of reorganization proceedings would be hindered unless a creditors'/shareholders' representative is appointed, the court, on behalf of such reorganization creditors, etc. or shareholders, may appoint a creditors'/shareholders' representative whom it considers suitable.
- (2) When appointing a creditors'/shareholders' representative under the provision of the preceding paragraph, the court shall obtain consent of the creditors'/shareholders' representative in question.
 - (3) Where a creditors'/shareholders' representative is appointed under the provision of paragraph (1), the creditors'/shareholders' representative shall be deemed to be appointed by the principal (the person for whom the creditors'/shareholders' 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 creditors'/shareholders' representative appointed under the provision of paragraph (1) may resign with permission of the court if there are justifiable grounds.
 - (5) A creditors'/shareholders' representative appointed under the provision of paragraph (1) may receive payment of the following from the reorganization company'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 any payment or expenses already paid; and
 - (ii) The amount of remuneration that the court finds reasonable.
 - (6) With regard to the relationships between a creditors'/shareholders'

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.

(Compensation, etc.)

- Article 124 (1) The court, if it is found that a reorganization creditor, etc., shareholder or creditors'/shareholders' representative or their agent has contributed to ensuring the reorganization of the reorganization company's business, upon the petition of a trustee 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 reorganization company's assets.
- (2) An immediate appeal may be filed against an order made under the provision of the preceding paragraph.

Section 9 Examination Order

(Examination Order)

- Article 125 (1) After the commencement of commencement of reorganization proceedings, 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 that an examiner conduct examination or state his/her opinions, targeting the whole or part of the following matters:
- (i) Whether or not there are any circumstances requiring a temporary restraining order under the provision of Article 99, paragraph (1) or assessment order on liability of officer, etc. prescribed in Article 100, paragraph (1), and whether or not it is necessary to issue any of these orders;
 - (ii) Whether or not the balance sheet and inventory of assets prepared by a trustee are appropriate, as well as whether or not a trustee's report on the status of the administration of the reorganization company's business and property and any other matters as ordered by the court is appropriate;
 - (iii) Whether or not the proposed reorganization plan or the reorganization plan is appropriate; and
 - (iv) Other matters for which it is necessary for an examiner to conduct examination or state his/her opinions concerning the reorganization case.
- (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 for which the examiner/examiners should conduct examination or state their opinions, and the period during which they should submit the report or state their opinions 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. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.

(Applications Mutatis Mutandis)

Article 126 The provisions of Article 67, paragraph (2), Article 68, the main clause of Article 69, paragraph (1), Article 77, Article 80, and Article 81, paragraph (1) to paragraph (4) shall apply mutatis mutandis to an examiner.

Chapter IV Common Benefit Claims and Post-Commencement Claims **Section 1 Common Benefit Claims**

(Claims in the Scope of Common Benefit Claims)

Article 127 The following claims shall be common benefit claims:

- (i) A claim for expenses for court proceedings performed for the common interest of reorganization creditors, etc. and shareholders;
- (ii) A claim for expenses for the management of the reorganization company's business and the administration and disposition of the company's property after the commencement of reorganization proceedings;
- (iii) A claim for expenses for the implementation of a reorganization plan (excluding one arising after the close of reorganization proceedings);
- (iv) A claim for expenses, remuneration and compensation payable under the provisions of Article 81, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38, Article 81, paragraph (5) and the preceding Article), Article 117, paragraph (4) (including cases where applied mutatis mutandis pursuant to paragraph (6) and paragraph (7) of said Article), Article 123, paragraph (5), Article 124, paragraph (1), and Article 162;
- (v) A claim arising from the borrowing of funds or any other act conducted by a trustee or the reorganization company (limited to cases where the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4)) with respect to the reorganization company's business and property based on his/her or its authority;
- (vi) A claim arising against the reorganization company after the

- commencement of reorganization proceedings from benevolent intervention in another's business or unjust enrichment; and
- (vii) A claim for unavoidable expenses that should be paid for the interest of the reorganization company, which has arisen after the commencement of reorganization proceedings (excluding those listed in the preceding items).

(Borrowings, etc. prior to Commencement)

- Article 128 (1) A claim arising from the borrowing of funds or any other act conducted by a provisional administrator with respect to the business and property of the company awaiting commencement based on his/her authority shall be a common benefit claim.
- (2) Where the company awaiting commencement (excluding cases where a provisional administrator is appointed; hereinafter the same shall apply in this paragraph and paragraph (4)), after a petition for commencement of reorganization proceedings is filed and before reorganization proceedings are commenced, borrows funds, purchases raw materials or conducts any other act indispensable for the continuation of the business of the company awaiting commencement, the court may grant permission to the effect that the other party's claim arising from such act shall be a common benefit claim.
- (3) The court may empower a supervisor to give approval in lieu of the permission set forth in the preceding paragraph.
- (4) When the company awaiting commencement has conducted any of the acts prescribed in paragraph (2) with permission set forth in paragraph (2) or approval set forth in the preceding paragraph, the other party's claim arising from such act shall be a common benefit claim.

(Withholding Income Tax, etc.)

- Article 129 Claims for withholding income tax, consumption tax, liquor tax, tobacco tax, gasoline tax, local road tax, petroleum gas tax, petroleum and coal tax, local consumption tax, prefectural tobacco tax (including metropolitan tobacco tax) and municipal tobacco tax (including special ward tobacco tax) to be collected by filing a return and for local tax payable through collection by a person in charge of special collection, which arise against the reorganization company from causes that have occurred before the commencement of reorganization proceedings, shall be common benefit claims if they are not yet due at the time of commencement of reorganization proceedings.

(Salaries, etc. for Employees)

- Article 130 (1) Where an order of commencement of reorganization proceedings is made against a stock company, a claim for salary of an employee of the stock company for the six months preceding the commencement of reorganization

proceedings and a claim for refund of fidelity guarantee deposit of an employee of the stock company which arises from a cause that has occurred prior to the commencement of reorganization proceedings shall be common benefit claims.

- (2) In the case prescribed in the preceding paragraph, a claim for retirement allowance of an employee of the stock company who has retired before an order of confirmation of the reorganization plan is made shall be a common benefit claim for an amount equivalent to the total amount of the employee's salaries for the six months preceding retirement or one-third of the amount of the retirement allowance, whichever is larger.
- (3) Notwithstanding the provision of the preceding paragraph, a claim for retirement allowance set forth in said paragraph, if it is a claim for periodic payments, shall be a common benefit claim for an amount equivalent to one-third of the amount of each periodic payment.
- (4) The provisions of the preceding two paragraphs shall not apply to a claim for retirement allowance which shall be a common benefit claim pursuant to the provision of Article 127.
- (5) In the case prescribed in paragraph (1), a claim for refund of any deposit of an employee of the stock company which arises from a cause that has occurred prior to the commencement of reorganization proceedings shall be a common benefit claim for an amount equivalent to the total amount of the employee's salaries for the six months preceding the commencement of reorganization proceedings or one-third of the amount of the deposit, whichever is larger.

(Expenses and Remuneration for Bond Administrator, etc.)

- Article 131 (1) Where a bond administrator, etc. prescribed in Article 43, paragraph (1), item (v) intends to administer the affairs concerning the administration of company bonds that are reorganization claims, etc., the court, when it finds it necessary in order to achieve the purpose of reorganization proceedings, may grant permission to the effect that the claim of the bond administrator, etc. for expenses to be incurred for the administration of said affairs against the reorganization company shall be a common benefit claim.
- (2) Even where a bond administrator, etc. set forth in the preceding paragraph has administered the affairs concerning the administration of company bonds that are reorganization claims, etc. without the permission set forth in said paragraph, the court, if it is found that the bond administrator, etc. has contributed to ensuring the reorganization of the reorganization company's business, may grant permission to the effect that a claim for reimbursement 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 claim of a bond

- administrator, etc. set forth in paragraph (1) for remuneration arising from a cause that has occurred after the commencement of reorganization 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).

(Treatment of Common Benefit Claims)

Article 132 (1) Common benefit claims may be paid at any time even if it is not provided for in a reorganization plan.

- (2) Common benefit claims shall be paid in preference to reorganization claims, etc.
- (3) Where compulsory execution or provisional seizure is enforced against the reorganization company's property based on a common benefit claim, if the compulsory execution or provisional seizure would cause significant hindrance to the reorganization of the reorganization company's business and the reorganization company additionally has adequate property that is easy to realize, the court, after the commencement of reorganization proceedings, upon the petition of a trustee (or the reorganization company if the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4); the same shall apply in paragraph (3) of the following Article) or by its own authority, may order the stay or revocation of the procedure for compulsory execution or provisional seizure, while requiring or not requiring the provision of security. The same shall apply to the stay or revocation of a disposition made by the same procedure as that for making a disposition of national tax delinquency, based on a claim for a foreign tax subject to mutual assistance that is a common benefit claim against the reorganization company's property.
- (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.

(Method, etc. for Payment from Insufficient Reorganization Company's Assets)

Article 133 (1) Common benefit claims, where it has become obvious that the reorganization company's assets are insufficient for payment of the total amount of common benefit claims, shall be paid from such reorganization

company's assets, notwithstanding any priorities specified in laws and regulations, in proportion to the amount of each claim; provided, however, that this shall not preclude the effect of any right of retention, special statutory lien, pledge and mortgage that exist on common benefit claims.

- (2) In the case prescribed in the main clause of the preceding paragraph, the provision of paragraph (1) of the preceding Article shall not apply.
- (3) In the case prescribed in the main clause of paragraph (1), the court, upon the petition of a trustee or by its own authority, may order revocation of the procedure for compulsory execution or provisional seizure that has already been initiated against the reorganization company's property based on a common benefit claim. The same shall apply to the revocation of a disposition made by the same procedure as that for making a disposition of national tax delinquency, based on a claim for a foreign tax subject to mutual assistance that is a common benefit claim against the reorganization company's property.
- (4) An immediate appeal may be filed against 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.

Section 2 Post-Commencement Claims

Article 134 (1) A claim on property arising from a cause that has occurred after the commencement of reorganization proceedings (excluding one that is a common benefit claim or reorganization claim, etc.) shall be a post-commencement claim.

- (2) With regard to a post-commencement claim, during the period after a reorganization proceeding is commenced until the payment period specified in a reorganization plan expires (or until reorganization proceedings are closed if the close of reorganization proceedings occurs before an order of confirmation of the reorganization plan becomes final and binding, or until payment based on the reorganization plan is completed if this occurs 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, exercise any security interest or exercise an enterprise mortgage against the reorganization company's property, or file a petition for an assets disclosure procedure based on a post-commencement claim. The same shall apply to a disposition to be made by same procedure as that for making a disposition of national tax delinquency, based on a claim for a foreign tax subject to mutual assistance that is a post-commencement claim against the reorganization

company's property.

Chapter V Reorganization Creditors and Secured Reorganization Creditors
Section 1 Participation in Proceedings by Reorganization Creditors and
Secured Reorganization Creditors

(Participation in Proceedings by Reorganization Creditors, etc.)

Article 135 (1) A reorganization creditor, etc. may participate in reorganization proceedings by reason of a reorganization claim, etc. that he/she holds.

(2) The provisions of Article 104 and Article 105 of the Bankruptcy Act shall apply mutatis mutandis to the exercise of rights by a reorganization creditor, etc. in cases where a reorganization proceeding is commenced. In this case, in the provisions of Article 104 and Article 105 of said Act, the phrase "commencement of bankruptcy proceedings" shall be deemed to be replaced with "commencement of reorganization proceedings"; in Article 104, paragraph (1), paragraph (3) and paragraph (4), and Article 105 of said Act, the term "bankruptcy proceedings" shall be deemed to be replaced with " reorganization proceedings"; the terms "bankrupt" in the provisions of Article 104, paragraph (3) to paragraph (5) of said Act shall be deemed to be replaced with " reorganization company"; and in Article 104, paragraph (4) of said Act, the term "bankruptcy creditor" shall be deemed to be replaced with "reorganization creditor or secured reorganization creditor".

(3) Notwithstanding the provision of paragraph (1), in order to participate in reorganization proceedings by reason of a claim for a foreign tax subject to mutual assistance, a decision of implementation of mutual assistance (meaning a decision of implementation of mutual assistance prescribed in Article 11, paragraph (1) of the Act on Special Provisions for the Enforcement of Tax Treaties, etc.; the same shall apply in Article 164, paragraph (2)) shall be required.

(Voting Right of Reorganization Creditor, etc.)

Article 136 (1) A reorganization creditor, etc. has a voting right for his/her reorganization claim, etc. according to the amount specified in each of the following items for the categories listed in the respective items:

(i) A claim with a fixed due date that is to become due after the commencement of reorganization 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 reorganization proceedings until the due date (any fraction of less than one year during that period shall be rounded off);

- (ii) A 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); and
 - (iii) The following claims: The amount of the claim estimated as of the time of commencement of reorganization proceedings:
 - (a) A claim with an uncertain due date that is to become due after the commencement of reorganization proceedings and bears no interest;
 - (b) A claim for periodic payments the amount and duration of which are not fixed;
 - (c) A claim not intended for payment of money;
 - (d) A monetary claim the amount of which is not fixed or the amount of which is fixed in a foreign currency;
 - (e) A claim with condition; and
 - (f) A claim which may arise in the future and be enforced against the reorganization company;
 - (iv) A claim other than those listed in the preceding three items: The amount of the claim.
- (2) Notwithstanding the provision of the preceding paragraph, a reorganization creditor, etc. shall not have any voting right for his/her reorganization claim, etc. which falls under any of the following:
- (i) A claim for interest arising after the commencement of reorganization proceedings;
 - (ii) A claim for damages or a penalty for a default arising after the commencement of reorganization proceedings;
 - (iii) A claim for expenses for participation in reorganization proceedings;
 - (iv) A claim for tax, etc.; or
 - (v) A claim for a fine, etc. arising prior to the commencement of reorganization proceedings prescribed in Article 142, item (ii).
- (3) Notwithstanding the provision of paragraph (1), where the reorganization company, at the time of commencement of reorganization proceedings, is unable to pay its debts in full with its property with regard to claims that take preference over consensually-subordinated reorganization claims, the holders of such consensually-subordinated reorganization claims shall not have any voting right.

(Payment Received by Reorganization Creditor, etc. in Foreign State)

Article 137 (1) A reorganization creditor, etc., even where he/she, by exercising his/her right against the reorganization company's property that exists in a

foreign state, has received payment of his/her reorganization claim, etc. after an order of commencement of reorganization proceedings is made, may participate in reorganization proceedings with regard to the amount of all reorganization claims, etc. that he/she holds as of the time before receiving such payment.

- (2) The reorganization creditor, etc. set forth in the preceding paragraph may not receive payment as provided for in a reorganization plan until any other reorganization creditor, etc. with the same priority as his/hers receives payment at the same proportion as he/she has received payment.
- (3) The reorganization creditor, etc. set forth in paragraph (1) may not exercise his/her voting right with regard to the part of the reorganization claims, etc. for which he/she has received payment in the foreign state.

Section 2 Filing of Proofs of Reorganization Claims and Secured Reorganization Claims

(Filing of Proofs of Reorganization Claims, etc.)

Article 138 (1) A reorganization creditor who intends to participate in reorganization proceedings shall file a proof of the following matters to the court within a period for filing proofs of claims (meaning a period during which proofs of reorganization claims, etc. should be filed as specified pursuant to the provision of Article 42, paragraph (1)):

- (i) The content and cause of each reorganization claim;
 - (ii) If the claim in question is a claim with general priority or consensually-subordinated reorganization claim, a statement to that effect;
 - (iii) The amount of the voting right for each reorganization claim; and
 - (iv) Matters other than those listed in the preceding three items specified by the Rules of the Supreme Court.
- (2) A secured reorganization creditor who intends to participate in reorganization proceedings shall file a proof of the following matters to the court within a period for filing proofs of claims:
- (i) The content and cause of each secured reorganization claim;
 - (ii) The property that is the subject matter of the security interest and the value thereof;
 - (iii) The amount of the voting right for each secured reorganization claim; and
 - (iv) Any other matters specified by the Rules of the Supreme Court.

(Filing of Proofs, etc. after the Expiration of the Period for Filing Proofs of Claims)

Article 139 (1) Where a reorganization creditor, etc. was unable to file a proof of his/her reorganization claim, etc. within the period for filing proofs of claims

prescribed in paragraph (1) of the preceding Article due to grounds not attributable thereto, he/she may file a proof only within one month after such grounds cease to exist.

- (2) The one-month period prescribed in the preceding paragraph may not be extended or shortened.
- (3) With regard to a reorganization claim, etc. arising after the expiration of the period for filing proofs of claims prescribed in paragraph (1) of the preceding Article, 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 reorganization plan to a resolution is made.
- (5) The provisions of paragraph (1), paragraph (2) and the preceding paragraph shall apply mutatis mutandis where a reorganization creditor, etc. makes a change to any filed matter, which is prejudicial to the interest of other reorganization creditors, etc., due to grounds not attributable thereto.

(Special Provisions for Filing of Proofs of Claim for Retirement Allowance)

Article 140 (1) A proof of a reorganization claim, etc. with regard to a claim for retirement allowance of an employee of the reorganization company shall be filed after the retirement.

- (2) When an employee of the reorganization company has retired after the period for filing of proofs of claims prescribed in Article 138, paragraph (1) expired and before an order of confirmation of the reorganization plan is made, he/she may file a proof of a reorganization claim, etc. with regard to his/her claim for retirement allowance only within an unextendable period of one month after the retirement.
- (3) The provisions of the preceding two paragraphs shall apply mutatis mutandis to a claim for retirement allowance of a director, accounting advisor, auditor, representative director, executive officer, representative executive officer, liquidator or representative liquidator of the reorganization company.

(Change of Name of Holder of Filed Claim)

Article 141 A person who has acquired a filed reorganization claim, etc. 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 prescribed in Article 138, paragraph (1).

(Filing of Proofs of Claims, etc. for Tax, etc.)

Article 142 A person who holds any of the following claims shall file with the court a proof of the amount and cause of the claim and the content of the

security interest, and if the claim in question is a claim for a foreign tax subject to mutual assistance, a statement to that effect, without delay:

- (i) A claim for tax, etc.; or
- (ii) A claim for fine, etc. arising prior to the commencement of reorganization proceedings (meaning 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 reorganization proceedings; excluding such claim that is a common benefit claim).

Article 143 Deleted

Section 3 Investigation and Determination of Reorganization Claims and Secured Reorganization Claims

Subsection 1 Investigation of Reorganization Claims and Secured Reorganization Claims

(Preparation, etc. of Schedule of Reorganization Creditors and Schedule of Secured Reorganization Creditors)

Article 144 (1) A court clerk shall prepare a schedule of reorganization creditors and schedule of secured reorganization creditors with regard to filed reorganization claims, etc.

(2) In the schedule of reorganization creditors set forth in the preceding paragraph, for each reorganization claim, the matters listed in Article 138, paragraph (1), item (i) to item (iii) and any other matters specified by the Rules of the Supreme Court shall be entered.

(3) In the schedule of secured reorganization creditors set forth in paragraph (1), for each secured reorganization claim, the matters listed in Article 138, paragraph (2), item (i) to item (iii) and any other matters specified by the Rules of the Supreme Court shall be entered.

(4) If there are any errors in the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors, a court clerk, upon petition or by his/her own authority, may make a disposition to correct the entries at any time.

(Investigation of Reorganization Claims, etc.)

Article 145 An investigation of reorganization claims, etc. by the court shall be conducted, with regard to the matters prescribed in paragraph (2) and paragraph (3) of the preceding Article, based on a statement of approval or disapproval prepared by a trustee, as well as written objections made by reorganization creditors, etc., shareholders and the reorganization company.

(Preparation and Submission of Statement of Approval or Disapproval)

Article 146 (1) A trustee shall prepare a statement of approval or disapproval to state, with regard to each reorganization claim, etc. filed during the period for filing proofs of claims prescribed in Article 138, paragraph (1), his/her approval or disapproval of the matters specified in the following items for the categories listed in the respective items:

(i) A reorganization claim: The content thereof, the statement that it is a claim with general priority or consensually-subordinated reorganization claim, and the amount of the voting right; or

(ii) A secured reorganization claim: The content thereof, the value of the property that is the subject matter of the security interest, and the amount of the voting right.

(2) A trustee, with regard to a reorganization claim, etc. which is filed pursuant to the provision of Article 139, paragraph (1) or paragraph (3) or for which a change is made to any filed matter pursuant to the provision of paragraph (5) of said Article, may also state his/her approval or disapproval of the matters specified in the following items for the categories listed in the respective items, in the statement of approval or disapproval set forth in the preceding paragraph:

(i) A reorganization claim: The matters specified in item (i) of the preceding paragraph (if there is a change to any filed matter, the matter set forth in said item as changed); or

(ii) A secured reorganization claim: The matters specified in item (ii) of the preceding paragraph (if there is a change to any filed matter, the matter set forth in said item as changed).

(3) A trustee shall submit a statement of approval or disapproval prepared pursuant to the provisions of the preceding two paragraphs by the time limit set by the court prior to the ordinary period for investigation (meaning the period for conducting an investigation of reorganization claims, etc. prescribed in Article 42, paragraph (1)).

(4) If, with regard to any matter of which approval or disapproval should be stated in a statement of approval or disapproval set forth in paragraph (1) pursuant to the provision of said paragraph, neither approval nor disapproval is stated in the statement of approval or disapproval submitted pursuant to the provision of the preceding paragraph, it shall be deemed that a trustee approves the matter.

(5) If, with regard to a reorganization claim, etc. for which approval or disapproval of the matters specified in the items of paragraph (2) may be stated in a statement of approval or disapproval pursuant to the provision of said paragraph, the statement of approval or disapproval submitted pursuant to the provision of paragraph (3) states approval or disapproval of part of the

matters, it shall be deemed that a trustee approves such matters of which neither approval nor disapproval is stated in the statement of approval or disapproval.

(Investigation during the Ordinary Period for Investigation)

Article 147 (1) Holders of filed reorganization claims, etc. and shareholders may make an objection in writing to the court, within the ordinary period for investigation prescribed in paragraph (3) of the preceding Article, with regard to the matters specified in the items of paragraph (1) or the items of paragraph (2) of said Article for the categories listed in the respective items concerning a reorganization claim, etc. prescribed in paragraph (1) or paragraph (2) of said Article.

(2) The reorganization company may make an objection in writing to the court, within the ordinary period for investigation set forth in the preceding paragraph, with regard to the content of the reorganization claim, etc. prescribed in said paragraph.

(3) When an order is made to change the ordinary period for investigation prescribed in paragraph (1), the written order shall be served upon a trustee, the reorganization company, and holders of filed reorganization claims, etc. and shareholders (prior to the expiration of the period for filing proofs of claims prescribed in Article 138, paragraph (1), a trustee, the reorganization company, and known reorganization creditors, etc. and shareholders).

(4) The service under the provision of the preceding paragraph may be made by sending the necessary documents by ordinary mail or by services of correspondence delivery prescribed in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Business Operators that are provided by a general correspondence delivery operator prescribed in paragraph (6) of 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, etc. sent thereby should have normally reached the addressee.

(Investigation during the Special Period for Investigation)

Article 148 (1) The court, with regard to a reorganization claim, etc. which is filed pursuant to the provision of Article 139, paragraph (1) or paragraph (3) or for which a change is made to any filed matter under the provision of paragraph (5) of said Article, shall specify a period for conducting an investigation of such claim (hereinafter referred to as a "special period for investigation" in this Article); provided, however, that this shall not apply where a trustee states, in a statement of approval or disapproval submitted

pursuant to the provision of Article 146, paragraph (3), his/her approval or disapproval of any of the matters specified in the items of paragraph (2) of said Article for the categories listed in the respective items pursuant to the provision of said paragraph.

- (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 reorganization claim, etc. investigated.
- (3) A trustee, with regard to a reorganization claim, etc. 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 matters specified in the items of Article 146, paragraph (2) for the categories listed in the respective items, 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 paragraph (4) of said Article shall apply *mutatis mutandis*.
- (4) A holder of filed reorganization claim, etc. and a shareholder, as well as the reorganization company may make an objection in writing to the court within the special period for investigation, with regard to the matters specified in the items of Article 146, paragraph (2) for the categories listed in the respective items, or the content of the reorganization claim, etc., 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.

(Prepayment of Expenses for the Special Period for Investigation)

- Article 148-2 (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 reorganization claim, etc. 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 reorganization claim, etc. 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 reorganization claim, etc. 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.

(Special Provisions for Investigation of Claim for Retirement Allowance arising from Retirement after Expiration of Period for Filing Proofs of Claims)

Article 149 (1) The provisions of Article 145 to the preceding Article shall not apply to the investigation of a reorganization claim, etc. filed under the provision of Article 140, paragraph (2) (including cases where applied mutatis mutandis pursuant to paragraph (3) of said Article). The same shall apply where a change is made to any filed matter of such reorganization claim, etc. under the provision of Article 139, paragraph (5).

(2) Where a proof of claim or change of any filed matter is filed as set forth in the preceding paragraph, the court shall immediately give a notice of such filing to a trustee and the reorganization company in order to conduct an investigation of the reorganization claim, etc. set forth in said paragraph.

(3) A trustee, within three days from the day on which he/she receives a notice under the provision of the preceding paragraph, may make an objection in writing to the court with regard to the matters specified in the items of Article 146, paragraph (2) for the categories listed in the respective items concerning the reorganization claim, etc. set forth in paragraph (1). The same shall apply where the reorganization company makes an objection with regard to the content of such reorganization claim, etc.

(4) When an objection is made under the provision of the first sentence of the preceding paragraph, a court clerk shall immediately give a notice of such objection to the reorganization creditor, etc. who has filed a proof of claim or change of any filed matter as set forth in paragraph (1).

(Determination of Reorganization Claim, etc. without Objection, etc.)

Article 150 (1) The matters specified in the items of Article 146, paragraph (2) shall be determined if, in the investigation of reorganization claims, etc., they are approved by a trustee and no objection is made by any holder of filed reorganization claim, etc. or shareholder during the period for investigation (or no objection is made by a trustee under the provision of the first sentence of paragraph (3) of the preceding Article during the period for the investigation of reorganization claims, etc. set forth in paragraph (1) of said Article).

(2) A court clerk shall make an entry of the results of the investigation of reorganization claims, etc. in the schedule of reorganization creditors and scheduled of secured reorganization creditors.

(3) The entries in the schedule of reorganization creditors and schedule of secured reorganization creditors with regard to the matters that are determined pursuant to the provision of paragraph (1) shall have the same

effect as a final and binding judgment against all reorganization creditors, etc. and shareholders.

Subsection 2 Court Proceedings for Determination of Reorganization Claims and Secured Reorganization Claims

(Assessment Order on Reorganization Claim, etc.)

- Article 151 (1) A reorganization creditor, etc. who holds a denied/disputed reorganization claim, etc. (meaning a reorganization claim, etc. for which, in the investigation thereof, a trustee has disapproved the content thereof (including whether it is a claim with general priority or consensually-subordinated reorganization claim) or made an objection to it under the provision of the first sentence of Article 149, paragraph (3), or an objection has been made by any holders of filed reorganization claim, etc. or shareholders with regard to such content) may file a petition for assessment with the court against all denying/disputing parties, etc. (meaning the trustee and the reorganization creditor and shareholder who made the objection) with regard to the content of the denied/disputed reorganization claim, etc. (including whether it is a claim with general priority or consensually-subordinated reorganization claim) (hereinafter referred to as a "petition for assessment of reorganization claim, etc." in this Subsection); provided, however, that this shall not apply in the cases referred to in Article 156, paragraph (1) and Article 158, paragraph (1) and paragraph (2).
- (2) The petition for assessment of reorganization claim, etc. shall be filed within an unextendable period of one month from the last day of the period for investigation for the denied/disputed reorganization claim, etc. prescribed in the main clause of the preceding paragraph or from the day on which the notice set forth in Article 149, paragraph (4) is given.
- (3) Where a petition for assessment of reorganization claim, etc. is filed, the court, by an order, shall make a judicial decision to assess the existence or nonexistence of the denied/disputed reorganization claim, etc. prescribed in the main clause of paragraph (1) and the content thereof (including whether it is a claim with general priority or consensually-subordinated reorganization claim) (hereinafter referred to as a "assessment order on reorganization claim, etc." in this Subsection), except where it dismisses the petition as unlawful without prejudice.
- (4) The court, when making an assessment order on reorganization claim, etc, shall interrogate the denying/disputing parties, etc. prescribed in the main clause of paragraph (1).
- (5) Where an order is made on a petition for assessment of reorganization claim, etc., the written order shall be served upon the parties concerned. In this case,

the provision of the main clause of Article 10, paragraph (3) shall not apply.

(6) If, with regard to a denied/disputed reorganization claim, etc. prescribed in the main clause of paragraph (1) (excluding one prescribed in Article 158, paragraph (1)), a petition for assessment of reorganization claim, etc. or petition for the taking over of action under the provision of Article 156, paragraph (1) has not been filed within the period set forth in paragraph (2) (including cases where applied *mutatis mutandis* pursuant to Article 156, paragraph (2)), it shall be deemed that no proof is filed with regard to said denied/disputed reorganization claim, etc.

(Action to Oppose Order on Petition for Assessment of Reorganization Claim, etc.)

- Article 152 (1) A person who disagrees with an order on a petition for assessment of reorganization claim, etc. may file an action to oppose (hereinafter referred to as an "action to oppose assessment of reorganization claim, etc." in this Subsection) within an unextendable period of one month after the day on which the person received the service of the order.
- (2) An action to oppose assessment of reorganization claim, etc. shall be subject to the jurisdiction of the reorganization court.
- (3) The court of the first instance with which an action to oppose assessment of reorganization claim, etc. is filed, when it finds it necessary in order to avoid substantial detriment or delay in cases where the reorganization court's jurisdiction over the reorganization case is based on no provisions of laws or regulations other than the provision of Article 5, paragraph (6) (including cases where the reorganization court has accepted the reorganization case transferred thereto pursuant to the provision of Article 7, item (iii) and the acceptance of the transferred case is based on no provision other than the provision of Article 5, paragraph (6) among the provision prescribed in Article 7, item (iii)), by its own authority, may transfer the suit pertaining to said action to oppose assessment of reorganization claim, etc. to the district court prescribed in Article 5, paragraph (1), notwithstanding the provision of the preceding paragraph.
- (4) In an action to oppose assessment of reorganization claim, etc., all of the denying/disputing parties, etc. prescribed in the main clause of paragraph (1) of the preceding Article shall stand as defendants if it is filed by the reorganization creditor, etc. who holds the denied/disputed reorganization claim, etc. prescribed in the main clause of said paragraph, and such reorganization creditor, etc. shall stand as a defendant if it is filed by such denying/disputing party, etc.
- (5) Oral argument for an action to oppose assessment of reorganization claim, etc. may not be commenced until the period set forth in paragraph (1) has expired.

- (6) If two or more actions to oppose assessment of reorganization claim, etc. are pending with respect to the same reorganization claim, etc. concurrently, oral arguments and judicial decisions of these actions shall be made in a consolidated manner. In this case, the provisions of Article 40, paragraph (1) to paragraph (3) of the Code of Civil Procedure shall apply mutatis mutandis.
- (7) A judgment rendered with regard to an action to oppose assessment of reorganization claim, etc., except where the action is dismissed as unlawful without prejudice, shall approve or change the order on the petition for assessment of reorganization claim, etc.

(Petition for Valuation of Property that is Subject Matter of Security Interest)

Article 153 (1) Where a secured reorganization creditor has filed a petition for assessment of reorganization claim, etc. in order to determine the content of his/her secured reorganization claim, if any denying/disputing party, etc. prescribed in the main clause of Article 151, paragraph (1) disapproves or makes an objection to the value of the property that is the subject matter of his/her security interest in the investigation for said secured reorganization claim, the secured reorganization creditor may file a petition for valuation of said property (hereinafter referred to as a "petition for valuation" in this Subsection) with the court against all of such denying/disputing parties, etc. within two weeks from the day on which he/she filed the petition for assessment of reorganization claim, etc.

- (2) The court, only where there is any unavoidable ground, upon the petition of the secured reorganization creditor set forth in the preceding paragraph, may extend the period set forth in said paragraph.
- (3) A secured reorganization creditor who files a petition for valuation shall prepay an amount designated by the court as expenses for valuation proceedings.
- (4) If prepayment of expenses prescribed in the preceding paragraph is not made, the court shall dismiss without prejudice the petition for valuation.

(Valuation of Property that is Subject Matter of Security Interest)

Article 154 (1) Where a petition for valuation is filed, the court, except where it dismisses the petition without prejudice, shall appoint a valuator and order him/her to value the property set forth in paragraph (1) of the preceding Article.

- (2) In the case referred to in the preceding paragraph, the court, by an order, shall value the property set forth in said paragraph based on the valuation made by a valuator.
- (3) A party to a valuation case may file an immediate appeal against an order on the petition for valuation.

- (4) Where an order on the petition for valuation or a judicial decision on the immediate appeal set forth in the preceding paragraph is made, the written order/decision shall be served upon the party prescribed in said paragraph. In this case, the provision of the main clause of Article 10, paragraph (3) shall not apply.
- (5) The expenses incurred for the proceedings for a petition for valuation shall be borne as specified in the following items for the categories listed in the respective items:
- (i) Where the value based on the order (meaning the value determined by an order set forth in paragraph (2)) is equal to or larger than the value based on the filed proof (meaning the value set forth in Article 138, paragraph (2), item (ii) concerning a secured reorganization claim set forth in paragraph (1) of the preceding Article): The expenses shall be borne by the denying/disputing party, etc. prescribed in the main clause of Article 151, paragraph (1) who is the opponent to the petition for valuation;
 - (ii) Where the value based on the order set forth in the preceding item is equal to or smaller than the undenied/undisputed value (meaning the smallest value of the property set forth in paragraph (1) that the denying/disputing party, etc. set forth in the preceding item has indicated in the investigation of the secured reorganization claim): The expenses shall be borne by the secured reorganization creditor set forth in paragraph (1) of the preceding Article; or
 - (iii) Cases other than those listed in the preceding two items: The expenses shall be borne by all or some of the persons prescribed in the preceding two items at the amounts determined by the discretion of the court.
- (6) The expenses incurred for the proceedings for an immediate appeal set forth in paragraph (3) shall be borne by the person who filed the immediate appeal.

(Relationship between Proceedings for Valuation and Proceedings, etc. for Assessment Order on Reorganization Claim, etc.)

Article 155 (1) No order may be made with regard to a petition for assessment of reorganization claim, etc. filed by a secured reorganization creditor until after the period set forth in Article 153, paragraph (1) (in cases where the period has been extended pursuant to the provision of paragraph (2) of said Article, the period as extended) expires (or if a petition for valuation is filed, until after the petition for valuation is withdrawn or is dismissed without prejudice or an order set forth in paragraph (2) of the preceding Article becomes final and binding).

- (2) The value of the property that is the subject matter of a secured reorganization claim as specified in each of the following items in the cases listed in the respective items shall be binding on the court before which the

petition for assessment of reorganization claim, etc. filed by the secured reorganization creditor who holds the secured reorganization claim is pending or the action to oppose assessment of reorganization claim, etc. against the order on such petition is pending:

- (i) Where there is a final and binding order set forth in paragraph (2) of the preceding Article: The value determined by said order; or
- (ii) Where there is no order prescribed in the preceding item: The undenied/undisputed value prescribed in paragraph (5), item (ii) of the preceding Article.

(Taking Over of Action relating to Denied/Disputed Reorganization Claim, etc.)

Article 156 (1) Where an action is pending in relation to a denied/disputed reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) at the time of commencement of reorganization proceedings, when a reorganization creditor, etc. intends to determine the content of the claim (including whether it is a claim with general priority or consensually-subordinated reorganization claim), he/she shall file a petition for taking over of action, designating all of the denying/disputing parties, etc. prescribed in the main clause of said paragraph as the opponents to the action.

(2) The provision of Article 151, paragraph (2) shall apply mutatis mutandis to the petition set forth in the preceding paragraph.

(Limitation to Assertion)

Article 157 In the proceedings for a petition for assessment of reorganization claim, etc., an action to oppose assessment of reorganization claim, etc. and an action taken over under the provision of paragraph (1) of the preceding Article, a reorganization creditor, etc. may assert the matters listed in Article 138, paragraph (1), item (i) and item (ii) and paragraph (2), item (i) and item (ii), only as entered in the schedule of reorganization creditors or schedule of secured reorganization creditors.

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

Article 158 (1) With regard to a denied/disputed reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) which is accompanied by an enforceable title of obligation or final judgment, the denying/disputing party prescribed in the main clause of said paragraph may assert an objection only through the litigation proceedings that the reorganization company may carry out.

(2) Where an action is pending in relation to a denied/disputed reorganization claim, etc. prescribed in the preceding paragraph at the time of commencement of reorganization proceedings, when the denying/disputing party, etc.

prescribed in said paragraph intends to assert an objection under the provision of said paragraph, the denying/disputing party, etc. shall take over the action in which the reorganization creditor, etc. who holds the reorganization claim, etc. in question stands as the opponent.

- (3) The provision of Article 151, paragraph (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 152, paragraph (5) and paragraph (6) and the preceding Article shall apply mutatis mutandis to the cases referred to in the preceding two paragraphs. In these cases, the phrase "the period set forth in paragraph (1)" in Article 152, paragraph (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 reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) or the day on which the notice set forth in Article 149, paragraph (4) is given."
- (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 151, paragraph (2) as applied mutatis mutandis pursuant to the preceding paragraph, if the denying/disputing party, etc. prescribed in the main clause of paragraph (1) of said Article is a reorganization creditor, etc. or shareholder, it shall be deemed that no objection set forth in Article 147, paragraph (1) or Article 148, paragraph (4) has been made, and if such denying/disputing party, etc. is a trustee, it shall be deemed that the trustee has approved the reorganization claim, etc. in question.

(Special Provisions for Multiple Secured Reorganization Claims having the Same Property as Subject Matter of Security Interest)

Article 159 Where there are two or more secured reorganization claims that have the same property as the subject matter of the security interests, the following matters concerning any one of these claims that has been determined shall not be binding on the court before which a petition for assessment of reorganization claim, etc. or action for determining a reorganization claim, etc. (meaning an action to oppose assessment of reorganization claim, etc., action taken over under the provision of Article 156, paragraph (1) or paragraph (2) of the preceding Article, and action to assert an objection under the provision of paragraph (1) of the preceding Article; hereinafter the same shall apply in this Subsection) is pending with regard to one or more other secured reorganization claims:

- (i) The content of the secured reorganization claim;
- (ii) The value of the property that is the subject matter of the security interest;

and

(iii) In cases where the secured reorganization claim has been determined by a judicial decision, the matters stated in the reasons attached to the judicial decision, in addition to the matters listed in the preceding two items.

(Entry of the Outcome of Action concerning the Determination of Reorganization Claim, etc.)

Article 160 A court clerk, upon the petition of a trustee, a reorganization creditor, etc. or shareholder, shall make an entry, in the schedule of reorganization creditors or schedule of secured reorganization creditors, of the outcome of an action concerning the determination of a reorganization claim, etc. (in cases where an action to oppose assessment of reorganization claim, etc. against the order on a petition for assessment of reorganization claim, etc. is not filed within the period prescribed in Article 152, paragraph (1), is withdrawn or is dismissed without prejudice, the content of said order).

(Effect of Judgment, etc. on Action concerning the Determination of Reorganization Claim, etc.)

Article 161 (1) A judgment made upon an action concerning the determination of a reorganization claim, etc. shall be effective against all reorganization creditors, etc. and shareholders.

(2) If an action to oppose assessment of reorganization claim, etc. against the order on a petition for assessment of reorganization claim, etc. is not filed within the period prescribed in Article 152, paragraph (1), is withdrawn or is dismissed without prejudice, said order shall have the same effect as a final and binding judgment against all reorganization creditors, etc. and shareholders.

(Reimbursement of Court Costs)

Article 162 When the reorganization company's assets have been enriched from an action concerning the determination of a reorganization claim, etc. (including an order on a petition for assessment of reorganization claim, etc.), the reorganization creditor, etc. or shareholder who asserted an objection may claim reimbursement of court costs from the reorganization company's assets to the extent that the reorganization company's assets have been enriched.

(Treatment of the Proceedings for Determination of Reorganization Claim, etc. upon Close of Reorganization Proceedings)

Article 163 (1) The proceedings for a petition for assessment of reorganization claim, etc. and proceedings for a petition for valuation which are pending at the time of close of reorganization proceedings shall be closed if the

reorganization proceedings are closed before an order of confirmation of the reorganization plan is made, and shall continue to be pending if the reorganization proceedings are closed after an order of confirmation of the reorganization plan is made.

- (2) The provisions of Article 52, paragraph (4) and paragraph (5) shall apply mutatis mutandis to proceedings for a petition for assessment of reorganization claim, etc. and proceedings for a petition for valuation in which a trustee stands as a party in cases where reorganization proceedings are closed after an order of confirmation of the reorganization plan is made.
- (3) Where reorganization proceedings are closed after an order of confirmation of the reorganization plan is made, if an order is made on a petition for assessment of reorganization claim, etc. after the close of reorganization proceedings, an action to oppose assessment of reorganization claim, etc. may be filed pursuant to the provision of Article 152, paragraph (1).
- (4) An action to oppose assessment of reorganization claim, etc. which is pending at the time of close of reorganization proceedings and in which a trustee does not stand as a party shall be discontinued if the reorganization proceedings are closed before an order of confirmation of the reorganization plan is made, and shall continue to be pending if the reorganization proceedings are closed after an order of confirmation of the reorganization plan is made.
- (5) An action pending at the time of close of reorganization proceedings (excluding an action prescribed in Article 52, paragraph (4)), which is taken over under the provision of Article 156, paragraph (1) or Article 158, paragraph (2), shall be discontinued if the close of reorganization proceedings occurs before an order of confirmation of the reorganization plan is made, and shall not be discontinued if the close of reorganization proceedings occurs after an order of confirmation of the reorganization plan is made.
- (6) Where an action is discontinued pursuant to the provision of the preceding paragraph, the provision of Article 52, paragraph (5) shall apply mutatis mutandis.

Subsection 3 Special Provisions for Claim, etc. for Tax, etc.

- Article 164 (1) With regard to a claim for tax, etc. and a claim for a fine, etc. arising prior to the commencement of reorganization proceedings prescribed in Article 142, item (ii), the provisions of the preceding two Subsections (excluding Article 144) shall not apply.
- (2) Where the cause of a claim (excluding claims for a fine, petty fine and court costs for a criminal case) filed under the provision of Article 142 (in the case of a claim for a foreign tax subject to mutual assistance, a decision of implementation of mutual assistance) is a disposition against which a request

for administrative review, action (excluding a criminal action; the same shall apply in the following paragraph) or any other appeal may be filed, a trustee may assert an objection with regard to said filed claim by a method of filing such an appeal.

- (3) In the case referred to in the preceding paragraph, if an action is pending in relation to the filed claim at the time of commencement of reorganization proceedings, a trustee who intends to assert an objection prescribed in said paragraph shall take over the action in which the reorganization creditor, etc. who holds the filed claim stands as the opponent. The same shall apply where a case relating to the reorganization company's property is pending before an administrative agency with regard to the filed claim at the time of commencement of reorganization 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 trustee came to know the fact of the filing of a claim prescribed in paragraph (2).
- (5) The provision of Article 150, paragraph (2) shall apply mutatis mutandis to a claim filed under the provision of Article 142, and the provisions of Article 157, Article 160, and Article 161, paragraph (1) shall apply mutatis mutandis to cases where the objection under the provision of paragraph (2) or the taking over of action under the provision of paragraph (3) has taken place.

Chapter VI Shareholders

(Participation in Proceedings by Shareholders)

Article 165 (1) A shareholder may participate in reorganization proceedings by reason of a share that he/she holds.

- (2) The scope of persons who may participate in reorganization proceedings as shareholders shall be determined based on the entries or records in the shareholder registry.
- (3) The court, upon the petition of a shareholder who is not entered or recorded in the shareholder registry, may permit such shareholder to participate in reorganization proceedings. In this case, notwithstanding the provision of the preceding paragraph, no person other than the person who has obtained such permission may participate in reorganization proceedings as the shareholder with respect to the share for which the permission is granted.
- (4) The court, upon the petition of an interested person or by its own authority, may change or revoke the order of permission made under the provision of the first sentence of the preceding paragraph.
- (5) An immediate appeal may be filed against a judicial decision on the petition

set forth in the first sentence of paragraph (3) and an order under the provision of the preceding paragraph.

- (6) Where a judicial decision prescribed in the preceding paragraph 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, paragraph (3) shall not apply.

(Voting Rights of Shareholders)

Article 166 (1) Shareholders shall have one voting right for each one share they hold; provided, however, that if the reorganization company provides for a share unit in its articles of incorporation, they shall be entitled to one voting right for each one unit of shares.

- (2) Notwithstanding the provision of the preceding paragraph, when the reorganization company is unable to pay its debts in full with its property at the time of commencement of reorganization proceedings, shareholders shall not have any voting right.

Chapter VII Preparation and Confirmation of Reorganization Plan

Section 1 Clauses of Reorganization Plan

(Matters Specified by Reorganization Plan)

Article 167 (1) A reorganization plan shall specify clauses concerning the following matters:

- (i) Modification of the rights of some or all of reorganization creditors, etc. or shareholders;
- (ii) The directors, accounting advisors, auditors, executive officers, accounting auditors and liquidators of the reorganization company;
- (iii) Payment of common benefit claims;
- (iv) The method for procuring funds to repay debts;
- (v) The use of earnings beyond the amount expected in the reorganization plan;
- (vi) The amount or estimated amount of money listed in (a) and (b) below and the use thereof;
 - (a) The amount or estimated amount of money to be appropriated for liquidating distribution, etc. in the procedures prescribed in the main clause of Article 51, paragraph (1); and
 - (b) The amount of money paid to the court pursuant to the provision of Article 108, paragraph (1) (in the case referred to in Article 112, paragraph (2), the sum of the amount of money paid to the court pursuant to the provision of paragraph (2) of said Article and the amount determined by an order set forth in Article 111, paragraph (1)); and
- (vii) The content of known post-commencement claims, if there are any.

(2) In addition to the matters specified in the first sentence of Article 72, paragraph (4), a reorganization plan may specify clauses concerning the acts listed in the items of Article 45, paragraph (1), the amendment of the articles of incorporation, business transfer, etc. (meaning business transfer, etc. prescribed in Article 468, paragraph (1) of the Companies Act; the same shall apply in Article 174, item (vi)), the incorporation of a stock company and other matters necessary for reorganization.

(Modification of Rights based on Reorganization Plan)

Article 168 (1) The content of a reorganization plan concerning the persons holding the following types of rights shall be equal between such persons who hold the same type of rights; provided, however, that this shall not apply where any person who will suffer detriment has given consent or where equity will not be undermined even if the plan otherwise provides for a small reorganization claim, etc. or any of the claims listed in Article 136, paragraph (2), item (i) to item (iii) or where equity will not be undermined even if any other difference is set in treatment of the persons who hold the same type of rights:

(i) A secured reorganization claim;

(ii) A reorganization claim with a general statutory lien or any other general priority;

(iii) A reorganization claim other than those listed in the preceding item and the following item;

(iv) A consensually-subordinated reorganization claim;

(v) A share the class of which is preferred in terms of the distribution of residual assets; and

(vi) A share other than the one set forth in the preceding item.

(2) In the case of a reorganization claim set forth in item (ii) of the preceding paragraph, where a priority exists with regard to the amount of claim arising within a specific period of time, such period shall be calculated from the time of commencement of reorganization proceedings retroactively.

(3) In a reorganization plan, a fair and equitable difference must be provided with respect to the content of the reorganization plan between persons who hold different types of rights, while taking into consideration the order of priority for the types of rights listed in the items of paragraph (1). In this case, the order of priority for those rights shall be the order of said items.

(4) The provision of the preceding paragraph shall not apply to a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance) or a claim for a fine, etc. arising prior to the commencement of reorganization proceedings prescribed in Article 142, item (ii).

(5) If a debt is to be assumed or the term of a debt is to be extended based on a

reorganization plan, the term of such debt shall not exceed the following periods:

- (i) Where there is any collateral (limited to collaterals the useful life of which can be ascertained), the useful life thereof or a period of 15 years (or 20 years where the content of the reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances), whichever is shorter; and
 - (ii) In cases other than the case prescribed in the preceding item, 15 years (or 20 years where the content of the reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances).
- (6) The provision of the preceding paragraph shall not apply where company bonds are issued pursuant to the provisions of a reorganization plan.
- (7) With regard to a claim for a fine, etc. arising prior to the commencement of reorganization proceedings prescribed in Article 142, item (ii), a reorganization plan may not provide for reduction and release of debts or any other measures that would affect the claim.

(Treatment of Claims for Tax, etc.)

Article 169 (1) When providing for any measures that may affect a claim for tax, etc. in a reorganization plan, consent shall be required from the person who has the power of collection of such claim; provided, however, that where the reorganization plan provides for a grace period for payment of not more than three years or provides for a grace period for realization of property through the disposition of tax delinquency with regard to such claim or where it provides for any measures that may affect any rights with regard to the claims for the following taxes and charge, it shall be sufficient to hear opinions from the person who has the power of collection:

- (i) Delinquent tax, interest tax or delinquent charge arising before one year elapses after the date of the order of commencement of reorganization proceedings (or before the date of the order of confirmation of the reorganization plan if the order is made within such one-year period); and
 - (ii) Delinquent tax or delinquent charge arising during the grace period where a grace period is provided for the payment of tax or for the realization of property through the disposition of tax delinquency.
- (2) The person who has the power of collection may give consent as set forth in the main clause of the preceding paragraph.
- (3) Notwithstanding the provisions of the preceding two paragraphs, where the reorganization plan provides for any measures that would affect rights with regard to a claim for a foreign tax subject to mutual assistance, it shall be sufficient to hear opinions of the person who has the power to collect the claim.

(Modification of Rights of Reorganization Creditors, etc.)

Article 170 (1) Clauses for modifying the rights of some or all of the reorganization creditors, etc. or shareholders shall clearly indicate rights held by holders of filed reorganization claims, etc. and shareholders which are to be modified, and also provide for the content of rights as modified; provided, however, that this shall not apply to reorganization claims, etc. prescribed in Article 172.

(2) If there is a right held by a holder of filed reorganization claim, etc. or shareholder which will not be affected by a reorganization plan, such right shall be clearly indicated.

(Owing of Debts and Provision of Security)

Article 171 (1) If a person other than the reorganization company owes a debt or provides security for the reorganization of the reorganization company's business, a reorganization plan shall clearly indicate such person and provide for the content of such debt and security interest. The same shall apply when providing security from the reorganization company's property.

(2) In order to provide for the matters in a reorganization plan under the provision of the preceding paragraph, consent shall be required from the person who will owe the debt or provide the security.

(Treatment of Reorganization Claims, etc. not yet Determined)

Article 172 If there is a denied/disputed reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) for which determination proceedings have not yet been closed, a reorganization plan shall provide for appropriate measures for such claim, while taking into consideration the possible outcome of the determination of the claim.

(Directors, etc. of Reorganization Company)

Article 173 (1) The clauses listed in the following items shall provide for the matters specified in the respective items:

(i) The clauses on directors of the reorganization company (excluding the clauses listed in the following item and item (iii)): The names of the directors or the method for election and term of office thereof;

(ii) The clauses on directors of the reorganization company in cases where the reorganization company appoints representative directors at the time of an order of commencement of confirmation of the reorganization plan (excluding the clauses set forth in the following item): The names of the directors and the representative directors or the methods for election or appointment and terms of office thereof;

- (iii) The clauses on directors of the reorganization company in cases where the reorganization company becomes a company with committees at the time of an order of commencement of confirmation of the reorganization plan: The names of the directors and the members of the respective committees (meaning the committees prescribed in Article 2, item (xii) of the Companies Act; the same shall apply hereinafter) or the methods for election or appointment and terms of office thereof;
 - (iv) The clauses on accounting advisors of the reorganization company in cases where the reorganization company becomes a company with accounting advisors at the time of an order of confirmation of the reorganization plan: The names of the accounting advisors or the method for election and term of office thereof;
 - (v) The clauses on auditors of the reorganization company in cases where the reorganization company becomes a company with auditors (including a stock company the articles of incorporation of which provide that the scope of the audit by its auditors shall be limited to an audit related to accounting; The same shall apply in item (iii) of the following paragraph) at the time of an order of confirmation of the reorganization plan: the names of the auditors or the method for election and term of office thereof;
 - (vi) The clauses on accounting auditors of the reorganization company in cases where the reorganization company becomes a company with accounting auditors at the time of an order of confirmation of the reorganization plan: The names of the accounting auditors or the method for election and term of office thereof; and
 - (vii) the clauses on executive officers of the reorganization company in cases where the reorganization company becomes a company with committees at the time of an order of confirmation of the reorganization plan: the names of the executive officers and the representative executive officers or the methods for election or appointment and terms of office thereof.
- (2) Where the reorganization company becomes a liquidating stock company at the time of an order of confirmation of the reorganization plan, the clauses listed in the following items shall provide for the matters specified in the respective items:
- (i) The clauses on liquidators of the reorganization company (excluding the clauses set forth in the following item): The names of the liquidators or the method for election or term of office thereof;
 - (ii) The clauses on liquidators of the reorganization company in cases where the reorganization company appoints representative liquidators at the time of an order of commencement of the reorganization plan: The names of the liquidators and the representative liquidators or the methods for election or appointment and terms of office thereof; and

(iii) The clauses on auditors of the reorganization company in cases where the reorganization company becomes a company with auditors at the time of an order of confirmation of the reorganization plan: The names of the auditors or the method for election and term of office thereof.

(Cancellation, Consolidation or Splitting, etc. of Shares)

Article 174 Clauses concerning the following acts shall provide for the matters which would require a resolution of the shareholders meeting or a decision of any other organ of a stock company in order to conduct said acts if the company were not subject to reorganization proceedings:

- (i) Cancellation, consolidation or splitting of shares, or allotment of shares without contribution;
- (ii) Cancellation of share options or allotment share options without contribution;
- (iii) Reduction of the amount of the stated capital or reserves;
- (iv) Dividend of surplus and other acts listed in the items of Article 461, paragraph (1) of the Companies Act;
- (v) Amendment of the articles of incorporation;
- (vi) Business transfer, etc.; and
- (vii) Continuation of the stock company.

(Reorganization Company's Acquisition of its Shares)

Article 174-2 Clauses concerning the acquisition by the reorganization company of its shares shall provide for the following matters:

- (i) The number of shares to be acquired by the reorganization company (in the case of a company with class shares, the classes of shares and the number of shares of each class); and
- (ii) The date on which the reorganization company is to acquire the shares set forth in the preceding item.

(Solicitation of Subscribers for Shares for Subscription)

Article 175 Clauses concerning the solicitation of subscribers for shares for subscription shall provide for the following matters:

- (i) The subscription requirements prescribed in Article 199, paragraph (2) of the Companies Act;
- (ii) Where some or all of the rights of reorganization creditors, etc. or shareholders have been extinguished as provided for in the reorganization plan pursuant to the provision of Article 205, paragraph (1), if it is provided that when such person has filed an application set forth in Article 203, paragraph (2) of the Companies Act, he/she shall be deemed to have paid the whole or part of the amount to be paid in for shares for subscription, such

provision;

- (iii) If it is provided that if reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of shares for subscription of the reorganization company by filing an application set forth in Article 203, paragraph (2) of the Companies Act, such provision and the due date for application for subscription of the shares for subscription; and
- (iv) In the case prescribed in the preceding item, the matters concerning the allotment of shares for subscription to reorganization creditors, etc. or shareholders.

(Solicitation of Subscribers for Share Options for Subscription)

Article 176 Clauses concerning the solicitation of subscribers for share options for subscription (in cases where the share options for subscription are attached to bonds with share options, the bonds with respect to such bonds with share options shall be included; the same shall apply hereinafter) shall provide for the following matters:

- (i) The subscription requirements prescribed in Article 238, paragraph (1) of the Companies Act;
- (ii) Where some or all of the rights of reorganization creditors, etc. or shareholders have been extinguished as provided for in the reorganization plan pursuant to the provision of Article 205, paragraph (1), if it is provided that when such person has filed an application set forth in Article 242, paragraph (2) of the Companies Act, he/she shall be deemed to have paid the whole or part of the amount to be paid in for share options for subscription, such provision;
- (iii) If it is provided that if reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of share options for subscription of the reorganization company by filing an application set forth in Article 242, paragraph (2) of the Companies Act, such provision and the due date for application for subscription of the share options for subscription;
- (iv) In the case prescribed in the preceding item, the matters concerning the allotment of share options for subscription to reorganization creditors, etc. or shareholders; and
- (v) Where share options for subscription are attached to bonds with share options, if the bonds with respect to such bonds with share options are secured bonds, the content of the security interest and the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bonds Trust Act.

(Solicitation of Subscribers for Bonds for Subscription)

Article 177 Clauses concerning the solicitation of subscribers for bonds for

subscription (excluding such bonds with respect to bonds with share options; the same shall apply hereinafter) shall provide for the following matters:

- (i) The matters listed in the items of Article 676 of the Companies Act;
- (ii) If the bonds for subscription are secured bonds, the content of the security interest and the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bonds Trust Act;
- (iii) Where some or all of the rights of reorganization creditors, etc. or shareholders have been extinguished as provided for in the reorganization plan pursuant to the provision of Article 205, paragraph (1), if it is provided that when such person has filed an application set forth in Article 677, paragraph (2) of the Companies Act, he/she shall be deemed to have paid the whole or part of the amount to be paid in for bonds for subscription, such provision;
- (iv) If it is provided that if reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of bonds for subscription of the reorganization company by filing an application set forth in Article 677, paragraph (2) of the Companies Act, such provision and the due date for application for subscription of the bonds for subscription; and
- (v) In the case prescribed in the preceding item, the matters concerning the allotment of bonds for subscription to reorganization creditors, etc. or shareholders.

(Issue of Shares, etc. in Exchange for Extinguishment of Rights of Reorganization Creditors, etc. or Shareholders)

Article 177-2 (1) Clauses concerning the issue of shares in exchange for the extinguishment of some or all of the rights of reorganization creditors, etc. or shareholders shall provide for the following matters:

- (i) The number of the shares to be issued (in the case of a company with class shares, the classes of shares and the number of shares of each class);
 - (ii) The matters concerning the stated capital and capital reserves to be increased; and
 - (iii) The matters concerning the allotment of the shares to be issued to reorganization creditors, etc. or shareholders.
- (2) Clauses concerning the issue of share options (in cases where the share options are attached to bonds with share options, the bonds with respect to such bonds with share options shall be included; hereinafter the same shall apply in this Article, Article 183, item (xiii) and Article 225, paragraph (5)) in exchange for the extinguishment of some or all of the rights of reorganization creditors, etc. or shareholders shall provide for the following matters:
- (i) The content and the number of the share options to be issued;
 - (ii) The day on which the share options to be issued are to be allotted;

- (iii) If the share options to be issued are attached to bonds with share options, the matters listed in the items of Article 676 of the Companies Act;
 - (iv) In the case prescribed in the preceding item, if the reorganization plan otherwise provides for the method for making demand for purchase of share options attached to bonds with share options set forth in said item under the provisions of Article 118, paragraph (1), Article 777, paragraph (1), Article 787, paragraph (1) or Article 808, paragraph (1) of the Companies Act, such provision;
 - (v) In the case prescribed in item (iii), if the bonds with respect to the bonds with share options are secured bonds, the content of the security interest and the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bonds Trust Act; and
 - (vi) The matters concerning the allotment of share options to be issued to reorganization creditors, etc. or shareholders.
- (3) Clauses concerning the issue of bonds (excluding those with respect to bonds with share options; hereinafter the same shall apply in this Article, Article 183, item (xiii) and Article 225, paragraph (5)) in exchange for the extinguishment of some or all of the rights of reorganization creditors, etc. or shareholders shall provide for the following matters:
- (i) The total amount of the bonds to be issued;
 - (ii) The amount of each bond to be issued;
 - (iii) The interest rate for the bonds to be issued;
 - (iv) The method and due date for the redemption of the bonds to be issued;
 - (v) The matters listed in Article 676, item (v) to item (viii) and item (xii) of the Companies Act;
 - (vi) If the bonds to be issued are secured bonds, the content of the security interest and the trade name of the trustee company under a trust agreement prescribed in Article 2, paragraph (1) of the Secured Bonds Trust Act; and
 - (vii) The matters concerning the allotment of the bonds to be issued to reorganization creditors, etc. or shareholders.

(Dissolution)

Article 178 Clauses concerning dissolution shall provide for dissolution and the scheduled time for dissolution; provided, however, that this shall not apply in the case of dissolution as a result of a merger.

(Entity Conversion)

Article 179 Clauses concerning the entity conversion into a membership company shall provide for the matters that should be prescribed in an entity conversion plan.

(Absorption-Type Merger)

Article 180 (1) Clauses concerning an absorption-type merger (limited to an absorption-type merger in which the reorganization company becomes extinct and the company that survives the absorption-type merger (hereinafter referred to as the "company surviving the absorption-type merger") is a stock company; hereinafter the same shall apply in this paragraph) shall provide for the following matters:

- (i) The matters that should be prescribed in an absorption-type merger agreement;
 - (ii) If the company surviving the absorption-type merger delivers money or other property (hereinafter referred to as "money, etc.") to reorganization creditors, etc. upon the absorption-type merger, the following matters concerning such money, etc.:
 - (a) If such money, etc. are shares of the company surviving the absorption-type merger, the number of such shares (in the case of a company with class shares, the classes of shares and the number of shares of each class) or the method for calculating such number, and the matters concerning the amount of the stated capital and reserves of the company surviving the absorption-type merger;
 - (b) If such money, etc. are bonds of the company surviving the absorption-type merger (excluding those with respect to bonds with share options), the classes of such bonds and the total amount for each class of bonds, or the method for calculating such total amount;
 - (c) If such money, etc. are share options of the company surviving the absorption-type merger (excluding those attached to bonds with share options), the content and number of such share options, or the method for calculating such number;
 - (d) If such money, etc. are bonds with share options of the company surviving the absorption-type merger, the matters prescribed in (b) concerning such bonds with share options and the matters prescribed in (c) concerning the share options attached to such bonds with share options; or
 - (e) If such money, etc. are property other than shares, etc. (meaning shares, bonds and share options; the same shall apply hereinafter) of the company surviving the absorption-type merger, the content and number or amount of such property, or the method for calculating such number or amount;
 - (iii) In the case prescribed in the preceding item, the matters concerning the allotment of the money, etc. set forth in said item to reorganization creditors, etc.
- (2) Clauses concerning an absorption-type merger (limited to an absorption-type merger in which the reorganization company becomes extinct and the company surviving the absorption-type merger is a membership company; hereinafter

the same shall apply in this paragraph) shall provide for the following matters:

- (i) The matters that should be prescribed in an absorption-type merger agreement;
 - (ii) If reorganization creditors, etc. become partners of the company surviving the absorption-type merger upon the absorption-type merger, the matters specified in (a) to (c) below for the categories of the company surviving the absorption-type merger listed in (a) to (c), respectively:
 - (a) General partnership company: the names and addresses of the partners and the value of their contributions;
 - (b) Limited partnership company: the names and addresses of the partners, whether the partners have unlimited liability or limited liability, and the value of their contributions; or
 - (c) Limited liability company: the names and addresses of the partners and the value of their contributions;
 - (iii) If the company surviving the absorption-type merger delivers money, etc. (excluding the equity interests of the company surviving the absorption-type merger) to reorganization creditors, etc. upon the absorption-type merger, the following matters concerning such money, etc.:
 - (a) If such money, etc. are bonds of the company surviving the absorption-type merger, the classes of such bonds and the total amount for each class of bonds, or the method for calculating such total amount;
 - (b) If such money, etc. are property other than bonds of the company surviving the absorption-type merger, the content and number or amount of such property, or the method for calculating such number or amount;and
 - (iv) In the case prescribed in the preceding item, the matters concerning the allotment of the money, etc. set forth in said item to reorganization creditors, etc.
- (3) Clauses concerning an absorption-type merger (limited to such merger in which the reorganization company becomes the company surviving the absorption-type merger) shall provide for the matters that should be prescribed in an absorption-type merger agreement.

(Consolidation-Type Merger)

Article 181 (1) Clauses concerning a consolidation-type merger (limited to a consolidation-type merger in which the reorganization company becomes extinct and the company that is incorporated through the consolidation-type merger (hereinafter referred to as the "company incorporated through the consolidation-type merger") is a stock company; hereinafter the same shall apply in this paragraph) shall provide for the following matters:

- (i) The matters that should be prescribed in a consolidation-type merger

- agreement;
- (ii) If the company incorporated through the consolidation-type merger delivers shares, etc. to reorganization creditors, etc. upon the consolidation-type merger, the following matters concerning such shares, etc.:
 - (a) If the shares, etc. are shares of the company incorporated through the consolidation-type merger, the number of such shares (in the case of a company with class shares, the classes of shares and the number of shares of each class), or the method for calculating such number, and the matters concerning the amount of the stated capital and reserves of the company incorporated through the consolidation-type merger;
 - (b) If such shares, etc. are bonds of the company incorporated through the consolidation-type merger (excluding those with respect to bonds with share options), the classes of such bonds and the total amount for each class of bonds, or the method for calculating such total amount;
 - (c) If such shares, etc. are share options of the company incorporated through the consolidation-type merger (excluding those attached to bonds with share options), the content and number of such share options, or the method for calculating such number;
 - (d) If such shares, etc. are bonds with share options of the company incorporated through the consolidation-type merger, the matters prescribed in (b) concerning such bonds with share options and the matters prescribed in (c) concerning the share options attached to such bonds with share options; or
 - (iii) In the case prescribed in the preceding item, the matters concerning the allotment of the shares, etc. set forth in said item to reorganization creditors, etc.
- (2) Clauses concerning a consolidation-type merger (limited to a consolidation-type merger in which the reorganization company becomes extinct and the company incorporated through the consolidation-type merger is a membership company; hereinafter the same shall apply in this paragraph) shall provide for the following matters:
- (i) The matters that should be prescribed in a consolidation-type agreement;
 - (ii) If reorganization creditors, etc. become partners of the company incorporated through the consolidation-type merger, the matters listed in Article 755, paragraph (1), item (iv) of the Companies Act;
 - (iii) If the company incorporated through the consolidation-type merger delivers bonds to reorganization creditors, etc. upon the consolidation-type merger, the classes of such bonds and the total amount for each class of bonds, or the method for calculating such total amount; and
 - (iv) In the case prescribed in the preceding item, the matters concerning the allotment of the bonds set forth in said item to reorganization creditors, etc.

(Absorption-Type Company Split)

Article 182 Clauses concerning an absorption-type company split shall provide for the matters that should be prescribed in an absorption-type company split agreement.

(Incorporation-Type Company Split)

Article 182-2 Clauses concerning an incorporation-type company split shall provide for the matters that should be prescribed in an incorporation-type company split plan.

(Share Exchange)

Article 182-3 (1) Clauses concerning a share exchange (limited to a share exchange in which the reorganization company is the stock company that effects the share exchange (hereinafter referred to as the "wholly owned subsidiary company in share exchange") and the company that acquires all of its issued shares (hereinafter referred to as the "wholly owning parent company in share exchange") is a stock company; hereinafter the same shall apply in this paragraph) shall provide for the following matters:

- (i) The matters that should be prescribed in a share exchange agreement;
- (ii) If the wholly-owning parent company in the share exchange delivers money, etc. to reorganization creditors, etc. upon the share exchange, the following matters concerning such money, etc.:
 - (a) If such money, etc. are shares of the wholly-owning parent company in the share exchange, the number of such shares (in the case of a company with class shares, the classes of shares and the number of shares of each class) or the method for calculating such number, and the matters concerning the amount of the stated capital and reserves of the wholly-owning parent company in the share exchange;
 - (b) If such money, etc. are bonds of the wholly-owning parent company in the share exchange (excluding those with respect to bonds with share options), the classes of such bonds and the total amount for each class of bonds, or the method for calculating such total amount;
 - (c) If such money, etc. are share options of the wholly-owning parent company in the share exchange (excluding those attached to bonds with share options), the content and number of such share options, or the method for calculating such number;
 - (d) If such money, etc. are bonds with share options of the wholly-owning parent company in the share exchange, the matters prescribed in (b) concerning such bonds with share options and the matters prescribed in (c) concerning the share options attached to such bonds with share options; or

- (e) If such money, etc. are property other than shares, etc. of the wholly-owning parent company in the share exchange, the content and number or amount of such property, or the method for calculating such number or amount;
 - (iii) In the case prescribed in the preceding item, the matters concerning the allotment of the money, etc. set forth in said item to reorganization creditors, etc.
- (2) Clauses concerning a share exchange (limited to a share exchange in which the reorganization company becomes the wholly owned subsidiary company in share exchange and the wholly owning parent company in share exchange is a limited liability company; hereinafter the same shall apply in this paragraph) shall provide for the following matters:
- (i) The matters that should be prescribed in a share exchange agreement;
 - (ii) If reorganization creditors, etc. become, upon the share exchange, partners of the wholly owning parent company in share exchange, the names and addresses of the partners and the value of their contributions;
 - (iii) If the wholly owning parent company in share exchange delivers money, etc. (excluding the equity interests of the wholly owning parent company in share exchange) to reorganization creditors, etc. upon the share exchange, the following matters concerning such money, etc.:
 - (a) If such money, etc. are bonds of the wholly owning parent company in share exchange, the classes of such bonds and the total amount for each class of bonds, or the method for calculating such total amount;
 - (b) If such money, etc. are property other than bonds of the wholly owning parent company in share exchange, the content and number or amount of such property, or the method for calculating such number or amount; and
 - (iv) In the case prescribed in the preceding item, the matters concerning the allotment of the money, etc. set forth in said item to reorganization creditors, etc.
- (3) Clauses concerning a share exchange (limited to such share exchange in which the reorganization company becomes the wholly owning parent company in share exchange) shall provide for the matters that should be prescribed in a share exchange agreement.

(Share Transfer)

Article 182-4 Clauses concerning a share transfer shall provide for the following matters:

- (i) The matters that should be prescribed in a share transfer plan;
- (ii) If the company that is incorporated through the share transfer (hereinafter referred to as the "wholly-owning parent company incorporated through the share transfer") delivers shares, etc. of the wholly-owning parent company

incorporated through the share transfer to reorganization creditors, etc. upon the share transfer, the following matters concerning such shares, etc.:

- (a) If the shares, etc. are shares of the wholly-owning parent company incorporated through the share transfer, the number of such shares (in the case of a company with class shares, the classes of shares and the number of shares of each class), or the method for calculating such number, and the matters concerning the amount of the stated capital and reserves of the wholly-owning parent company incorporated through the share transfer;
- (b) If such shares, etc. are bonds of the wholly-owning parent company incorporated through the share transfer (excluding those with respect to bonds with share options), the classes of such bonds and the total amount for each class of bonds, or the method for calculating such total amount;
- (c) If such shares, etc. are share options of the wholly-owning parent company incorporated through the share transfer (excluding those attached to bonds with share options), the content and number of such share options, or the method for calculating such number;
- (d) If such shares, etc. are bonds with share options of the wholly-owning parent company incorporated through the share transfer, the matters prescribed in (b) concerning such bonds with share options and the matters prescribed in (c) concerning the share options attached to such bonds with share options; or
- (iii) In the case prescribed in the preceding item, the matters concerning the allotment of the shares, etc. set forth in said item to reorganization creditors, etc.

(Incorporation of New Company)

Article 183 Clauses concerning the incorporation of a stock company shall provide for the following matters; provided, however, that this shall not apply to the incorporation of a stock company through a consolidation-type merger, incorporation-type company split or share transfer:

- (i) The matters listed in Article 27, item (i) to item (iv) of the Companies Act concerning the stock company to be incorporated (hereinafter referred to as the "new company" in this Article), the total number of shares that may be issued by the new company, and the matters concerning the amount of the stated capital and capital reserves of the new company;
- (ii) The matters provided for in the articles of incorporation of the new company (excluding those pertaining to the matters listed in the preceding item);
- (iii) If subscribers for shares solicited at incorporation (meaning shares solicited at incorporation prescribed in Article 58, paragraph (1) of the Companies Act; the same shall apply hereinafter) of the new company are

- solicited, the matters listed in the items of said paragraph;
- (iv) Where some or all of the rights of reorganization creditors, etc. or shareholders have been extinguished as provided for in the reorganization plan pursuant to the provision of Article 205, paragraph (1), if it is provided that when such person has filed an application set forth in Article 59, paragraph (3) of the Companies Act, he/she shall be deemed to have paid the whole or part of the amount to be paid for shares solicited at incorporation of the new company, such provision;
 - (v) If it is provided that if reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of shares solicited at incorporation of the new company by filing an application set forth in Article 59, paragraph (3) of the Companies Act, such provision and the due date for application for subscription of the shares solicited at incorporation;
 - (vi) In the case prescribed in the preceding item, the matters concerning the allotment of shares solicited at incorporation to reorganization creditors, etc. or shareholders;
 - (vii) The property to be transferred from the reorganization company to the new company and the value thereof;
 - (viii) The names of directors at incorporation of the new company or the method for election thereof;
 - (ix) The matters specified in (a) to (e) below for the cases listed in (a) to (e), respectively:
 - (a) Where the new company appoints representative directors (excluding cases where the new company is a company with committees): the names of the representative directors at incorporation or the method of appointment thereof;
 - (b) Where the new company is a company with accounting advisors: the names of the accounting advisors at incorporation or the method for election thereof;
 - (c) Where the new company is a company with auditors (including a stock company the articles of incorporation of which provide that the scope of the audit by its auditors shall be limited to an audit related to accounting): the names of the auditors at incorporation or the method for election thereof;
 - (d) Where the new company is a company with accounting auditors: the names of the accounting auditors at incorporation or the method for election thereof; or
 - (e) Where the new company is a company with committees: the names of the committee members at incorporation, executive officers at incorporation and representative executive officers at incorporation or the methods for election or appointment thereof;
 - (x) Where the new company's directors at incorporation, accounting advisors at

incorporation, auditors at incorporation, representative directors at incorporation, committee members at incorporation, executive officers at incorporation, representative executive officers at incorporation or accounting auditors at incorporations (referred to as "directors, etc. at incorporation" in Article 225, paragraph (5)) become, after the incorporation of the new company, its directors, accounting advisors, auditors, representative directors, members of respective committees, executive officers, representative executive officers or accounting auditors (referred to as "new company's directors, etc." in said paragraph), the respective terms of office of the new company's directors, etc.;

- (xi) If the new company solicits subscribers for share options for subscription, the matters listed in the items of Article 176;
- (xii) If the new company solicits subscribers for bonds for subscription, the matters listed in the items of Article 177; and
- (xiii) If the new company issues shares issued at incorporation, share options or bonds of the new company in exchange for the extinguishment of some or all of the rights of reorganization creditors, etc. or shareholders, the matters specified in Article 177-2.

Section 2 Submission of Proposed Reorganization Plan

(Period for Submission of Proposed Reorganization Plan)

- Article 184 (1) A trustee, within the period specified by the court after the expiration of the period for filing proofs of claims prescribed in Article 138, paragraph (1), shall prepare a proposed reorganization plan and submit it to the court.
- (2) The reorganization company, a holder of filed reorganization claim, etc. or shareholder may prepare a proposed reorganization plan and submit to the court within the period specified by the court.
 - (3) The last day of each of the periods set forth in the preceding two paragraphs (excluding any period as extended under the provision of the following paragraph) shall be within one year from the date of the order of commencement of reorganization proceedings.
 - (4) Where there are special circumstances, the court, upon petition or by its own authority, may extend the period specified thereby pursuant to the provision of paragraph (1) or paragraph (2).

(Proposed Reorganization Plan aiming for Discontinuation of Entire Business)

- Article 185 (1) If it becomes obvious, after the commencement of reorganization proceedings, that it is difficult to prepare a proposed reorganization plan which aims for the continuation of the reorganization company's business by the

reorganization company itself or by any other person through the business transfer, merger, company split or incorporation of a stock company, the court, upon the petition of any of the persons prescribed in paragraph (1) or paragraph (2) of the preceding Article, may permit preparation of a proposed reorganization plan which aims for the discontinuation of the entire business of the reorganization company; provided, however, that this shall not apply if the discontinuation of the entire business harms the common interests of creditors.

(2) The court may rescind the permission set forth in the main clause of the preceding paragraph at any time until it makes an order to refer the proposed reorganization plan to a resolution.

(Revision of Proposed Reorganization Plan)

Article 186 The person who has submitted a proposed reorganization plan may revise the proposed reorganization plan with permission of the court; provided, however, that this shall not apply after an order is made to refer a proposed reorganization plan to a resolution.

(Opinions of Administrative Agency)

Article 187 In the case of a proposed reorganization plan which provides for the matters that require permission, authorization, license or any other disposition by an administrative agency, the court shall hear opinions from the administrative agency concerned with regard to such matters. The same shall apply to a proposed reorganization plan as revised under the provision of the preceding Article.

(Opinions of the Reorganization Company's Labor Union, etc.)

Article 188 The court shall hear opinions from the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) with regard to a proposed reorganization plan. The same shall apply to a proposed reorganization plan as revised under the provision of Article 186.

Section 3 Resolution on Proposed Reorganization Plan

(Order to Refer to Resolution)

Article 189 (1) Where a proposed reorganization plan is submitted, the court shall make an order to refer the proposed reorganization plan to a resolution, except in any of the cases listed in the following items:

- (i) Where the general period for investigation prescribed in Article 146, paragraph (3) has not yet expired;
- (ii) Where a trustee has not submitted a written report under the provision of Article 84, paragraph (1) or made a report at a stakeholders meeting under

- the provision of Article 85, paragraph (1);
- (iii) Where the court finds that the proposed reorganization plan fails to satisfy any of the requirements listed in the items of Article 199, paragraph (2) (excluding item (iv)); and
 - (iv) Where the court discontinues reorganization proceedings pursuant to the provision of Article 236, item (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 reorganization creditors, etc. or shareholders who may exercise voting rights (hereinafter referred to as "voting right holders" in this Section) 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 193, paragraph (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 for exercising a voting right on the date of a stakeholders meeting;
 - (ii) The method for 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; or
 - (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 stakeholders 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 give 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 content of the proposed reorganization plan or the gist thereof to the persons prescribed in the main clause of Article 115, paragraph (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), item (ii) or item (iii) as the method for exercising a voting right, shall give a public notice to that effect, and shall give a notice to voting right holders to the effect 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), item (ii) as the method for exercising a voting right, if any of the persons listed in the items of Article 114, paragraph (1) (excluding such person who may not file a petition set forth in the first sentence of paragraph (1) of said Article pursuant to the provision of paragraph (2) of said Article) has filed, within the period set forth in the preceding paragraph, a petition for convocation of a

stakeholders meeting aimed for adopting a resolution on a proposed reorganization plan, the court shall rescind the designation of the method for exercising a voting right, and designate the method set forth in paragraph (2), item (i) or item (iii) instead.

(Restriction on Exercise of Voting Rights by Bondholders)

Article 190 (1) A bondholder who holds a company bond which is a reorganization claim, etc., if there is any bond administrator, etc. prescribed in Article 43, paragraph (1), item (v) for said company bond, may exercise his/her voting right based on said company bond, only in any of the cases listed in the following items:

- (i) Where the bondholder has filed a proof of reorganization claim, etc. or received a change of the name of the holder of filed claim with regard to the company bond in question;
- (ii) Where the bond administration company, etc. has filed a proof of reorganization claim, etc. with regard to the company bond in question, and before an order is made to refer a proposed reorganization plan to a resolution, has made an offer to the court to the effect that the company has the intention of exercising its voting right based on said company bond (including cases where the bond administration company, etc., with regard to a company bond which is a reorganization claim, etc. 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 which is a reorganization claim, etc. 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) A bondholder 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 reorganization plan in cases where, with regard to the exercise of a voting right for a resolution on a proposed reorganization plan based on a company bond which is a reorganization claim, etc. , a resolution at a bondholders meeting set forth in Article 706, paragraph (1) of the Companies Act is adopted or there exists a provision set forth in the proviso to Article 706, paragraph (1) of said Act.

(Method, etc. for Determination of the Amount or Number of Voting Rights where Stakeholders Meeting is to be held)

Article 191 (1) Where the court designates either of the methods set forth in Article 189, paragraph (2), item (i) or item (iii) as the method for exercising a voting right, a trustee, a holder of filed reorganization claim, etc. or

shareholder may make an objection on the date of a stakeholders meeting with regard to the voting rights of holders of filed reorganization claims, etc. or shareholders; provided, however, that this shall not apply to a voting right held by a holder of filed reorganization claim, etc. the amount of which has been determined pursuant to the provision of Article 150, paragraph (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 or number specified in each of the following items for the categories listed in the respective items:

- (i) A holder of filed reorganization claim, etc. who holds a voting right the amount of which has been determined pursuant to the provision of Article 150, paragraph (1): The amount thus determined;
- (ii) A holder of filed reorganization claim, etc. who holds a voting right without objection set forth in the main clause of the preceding paragraph: The amount filed;
- (iii) A shareholder who holds a voting right without objection set forth in the main clause of the preceding paragraph: The number entered or recorded in the shareholder registry or specified by the permission set forth in Article 165, paragraph (3); and
- (iv) A holder of filed reorganization claim, etc. or shareholder who holds a voting right subject to objection set forth in the main clause of the preceding paragraph: The amount or number specified by the court; provided, however, that such a holder of filed reorganization claim, etc. or shareholder 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 (iv) of the preceding paragraph at any time.

(Method, etc. for Determination of the Amount or Number of Voting Rights where Stakeholders Meeting is not to be held)

Article 192 (1) Where the court designates the method set forth in Article 189, paragraph (2), item (ii) as the method for exercising a voting right, voting right holders may exercise their voting rights in accordance with the amount or number specified in each of the following items for the categories listed in the respective items:

- (i) A holder of filed reorganization claim, etc. who holds a voting right the amount of which has been determined pursuant to the provision of Article 150, paragraph (1): The amount thus determined;
- (ii) a holder of filed reorganization claim, etc. (excluding one set forth in the preceding item): The amount specified by the court; provided, however, that

such a holder of filed reorganization claim, etc. may not exercise his/her voting right if the court has decided not to allow him/her to exercise the voting right; and

(iii) A shareholder: The number entered or recorded in the shareholder registry or specified by the permission set forth in Article 165, paragraph (3).

(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.

(Methods, etc. for Exercising Voting Rights)

Article 193 (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 189, paragraph (2).

(3) The provision of the preceding paragraph shall apply mutatis mutandis where the proxy prescribed in paragraph (1) diversely exercises voting rights vested therein (if the proxy has his/her own voting right, such voting right shall be included).

(Determination of Voting Right Holders as of Record Date)

Article 194 (1) The court, when it finds it appropriate, upon making an order to refer a proposed reorganization plan to a resolution, may designate a certain day (hereinafter referred to as the "record date" in this Article) and determine the reorganization creditors, etc. or shareholders recorded in the schedule of reorganization creditors or schedule of secured reorganization creditors or the shareholder registry as of the record date as voting right holders.

(2) The court shall give 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.

(Persons who may not Exercise Voting Rights)

Article 195 Persons who hold rights that will not be affected by a reorganization plan or rights that are protected pursuant to the provision of Article 200, paragraph (2) may not exercise their voting rights.

(Requirements for Approval of Proposed Reorganization Plan)

Article 196 (1) A resolution on a proposed reorganization plan shall be adopted separately by the persons who hold the types of rights listed in the items of Article 168, paragraph (1) or by the persons who hold the types of rights specified under the provision of the following paragraph.

(2) The court, when it finds it appropriate, may categorize two or more types of

- rights listed in the items of Article 168, paragraph (1) as one type of right, or categorize each of the types of rights listed in said items into two or more types of rights; provided, however, that reorganization claims, secured reorganization claims or shares shall be treated as separate types of rights.
- (3) The court may modify or revoke the order set forth in the main clause of the preceding paragraph until it makes an order to refer the proposed reorganization plan to a resolution.
- (4) Where an order is made under the provisions of the preceding two paragraphs, the written order shall be served upon the voting right holders; provided, that this shall not apply where the order is rendered on the date of a stakeholders meeting.
- (5) In order to approve a proposed reorganization plan, consents shall be required from the persons specified in the following items for the categories listed in the respective items for each of the types of rights prescribed in paragraph (1)
- (i) Reorganization claims: Persons who hold voting rights that account for more than half of the total amount of voting rights held by reorganization creditors who may exercise their voting rights;
 - (ii) Secured reorganization claims: The persons specified in (a) to (c) below for the categories listed in (a) to (c) respectively:
 - (a) Proposed reorganization plan which provides for the extension of the terms of secured reorganization claims: Persons who hold voting rights that account for not less than two-thirds of the total amount of voting rights held by secured reorganization creditors who may exercise their voting rights;
 - (b) Proposed reorganization plan which provides for the reduction and release of debts for secured reorganization claims or provides for measures that may affect the rights of secured reorganization creditors other than the extension of terms: Persons who hold voting rights that account for not less than three-fourths of the total amount of voting rights held by secured reorganization creditors who may exercise their voting rights; and
 - (c) Proposed reorganization plan which aims for the discontinuation of the entire business of the reorganization company: Persons who hold voting rights that account for not less than nine-tenths of the total amount of voting rights held by secured reorganization creditors who may exercise their voting rights; and
 - (iii) Shares: Persons who hold voting rights that account for the majority of the total number of voting rights held by shareholders who may exercise their voting rights.

(Modification of Reorganization Plan)

Article 197 Where either of the methods set forth in Article 189, paragraph (2),

item (i) or item (iii) is designated as the method for exercising a voting right, the person who has submitted a proposed reorganization plan, with permission of the court, may modify the proposed reorganization plan at a stakeholders meeting as long as it does not adversely affect reorganization creditors, etc. and shareholders.

(Continuance of the Date of Stakeholders Meeting)

Article 198 (1) Where either of the methods set forth in Article 189, paragraph (2), item (i) or item (iii) has been designated as the method for exercising a voting right on a proposed reorganization plan, and the proposed reorganization plan has not been approved, if consents for the continuation of the stakeholders meeting are obtained from the persons specified in the following items for the categories listed in the respective items for each of the types of rights prescribed in Article 196, paragraph (1), the court, upon the petition of a trustee, the reorganization company or a voting right holder 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 reorganization plan is unlikely to be approved on the further date:

(i) Reorganization claims: Persons who hold voting rights that account for not less than one-third of the total amount of voting rights held by reorganization creditors who may exercise their voting rights;

(ii) Secured reorganization claims: Persons who hold voting rights that account for more than half of the total amount of voting rights held by secured reorganization creditors who may exercise their voting rights;

(iii) Shares: Persons who hold voting rights that account for not less than one-third of the total number of voting rights held by shareholders who may exercise their voting rights.

(2) In the case referred to in the main clause of the preceding paragraph, approval of a proposed reorganization plan set forth in the main clause of said paragraph shall be made within two months from the date of the first stakeholders meeting to which the proposed reorganization 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 reorganization 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.

Section 4 Order of Confirmation or Disconfirmation of Reorganization Plan

(Requirements, etc. for Confirmation of Reorganization Plan)

- Article 199 (1) Where a proposed reorganization plan is approved, the court shall make an order of confirmation or disconfirmation of the reorganization plan.
- (2) The court shall make an order of confirmation of the reorganization plan if all of the following requirements are met:
- (i) The reorganization proceedings or the reorganization plan comply with provisions of laws and regulations as well as the Rules of the Supreme Court;
 - (ii) The content of the reorganization plan is fair and equitable;
 - (iii) The reorganization plan is feasible for implementation;
 - (iv) The resolution on the reorganization plan has been adopted in a fair and sincere manner;
 - (v) In the case of a reorganization plan which aims for conducting the act set forth in Article 45, paragraph (1), item (vii) jointly with another company, such other company is able to conduct said act at the time when the order is made under the provision of the preceding paragraph; and
 - (vi) In the case of a reorganization plan which provides for the matters that require permission, authorization, license or any other disposition by an administrative agency, the reorganization plan is not in conflict with the opinions on important points heard from the administrative agency concerned under the provision of Article 187.
- (3) Even where the reorganization proceedings contravene provisions of laws and regulations or the Rules of the Supreme Court, the court may make an order of confirmation of the reorganization plan when it finds it inappropriate not to confirm the reorganization plan, while taking into consideration the degree of such contravention, the current status of the reorganization company and any other circumstances concerned.
- (4) The court shall make an order of disconfirmation of the reorganization plan except where it makes an order of confirmation of the reorganization plan pursuant to the provisions of the preceding two paragraphs or paragraph (1) of the following Article.
- (5) The persons prescribed in the main clause of Article 115, paragraph (1) and the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) may state their opinions with regard to whether or not the reorganization plan should be confirmed.
- (6) Where an order of confirmation or disconfirmation of the reorganization plan is made, a public notice shall be given with regard to the main text of the order and the gist of the reasons attached thereto, and the reorganization plan or the gist thereof.
- (7) In the case prescribed in the preceding paragraphs, the labor union, etc. prescribed in Article 46, paragraph (3), item (iii) shall be given a notice to the effect that the order set forth in the preceding paragraph is made.

(Confirmation made without Consent obtained among Holders of a Certain Type of Rights)

Article 200 (1) Even where a proposed reorganization plan is not approved due to the fact that consent has not been obtained as required under Article 196, paragraph (5) among holders of any of the types of rights prescribed in paragraph (1) of said Article, the court may make an order of confirmation of the reorganization plan by modifying the proposed reorganization plan and specifying, in the interest of the holders of such type of rights among whom consent has not been obtained, a clause to protect such rights by any of the following methods:

- (i) In the interest of secured reorganization creditors, by having the whole of each secured reorganization claim continue to exist as a claim to be secured by the security interest, or by selling the property that is the subject matter of the security interest at a fair market price determined by the court (evaluated as if there were no security interest) or higher price, and paying the secured reorganization claim with the money that remains after deducting the expenses for the sale from the proceeds or making a statutory deposit of such remaining money;
 - (ii) In the interest of reorganization creditors, by paying the amount of distribution that they are expected to receive if bankruptcy proceedings are commenced; in the interest of shareholders, by paying the amount of profit that they are expected to obtain from the distribution of the residual assets upon liquidation;
 - (iii) By paying the persons who hold the type of rights in question a fair market price of the rights determined by the court; or
 - (iv) By taking other measures to protect the persons who hold the type of rights in question in a fair and equitable manner in line with the preceding three items.
- (2) Where it is obvious that for a proposed reorganization plan, consent will not be obtained as required under Article 196, paragraph (5) among holders of any of the types of rights prescribed in paragraph (1) of said Article, the court, upon the petition of the person who is to prepare a proposed reorganization plan, may permit that a proposed reorganization plan will be prepared by specifying, in advance, in the interest of the holders of such type of rights among whom consent will not be obtained, a clause to protect such rights by any of the methods listed in the items of the preceding paragraph.
- (3) When the petition set forth in the preceding paragraph is filed, the court shall hear opinions from the petitioner and at least one of the holders of the type of rights among whom consent obviously will not be obtained.

(Time when Reorganization Plan becomes Effective)

Article 201 A reorganization plan shall become effective as from the time when an order of confirmation is made.

(Immediate Appeal against Order, etc. of Confirmation of Reorganization Plan)

Article 202 (1) An immediate appeal may be filed against an order of confirmation or disconfirmation of the reorganization plan.

(2) Notwithstanding the provision of the preceding paragraph, in the cases listed in the following items, the persons specified in the respective items may not file an immediate appeal except on the grounds that the content of the reorganization plan is in violation of Article 168, paragraph (1), item (iv) to item (vi):

(i) Where the reorganization company, at the time of commencement of reorganization proceedings, is unable to pay its debts in full with its property with regard to claims that take preference over consensually-subordinated reorganization claims: Holders of consensually-subordinated reorganization claims; or

(ii) Where the reorganization company, at the time of commencement of reorganization proceedings, is unable to pay its debts in full with its property: Shareholders.

(3) A reorganization creditor, etc. or shareholder 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 reorganization creditor, etc. or shareholder.

(4) The immediate appeal set forth in paragraph (1) shall not affect the implementation of the reorganization plan; provided, however, that if a prima facie showing is made with regard to the obvious circumstances under which the order set forth in said paragraph should be revoked as well as the urgent necessity to avoid any damage which may be caused by the implementation of the reorganization plan to the extent that compensation cannot be made, the appellate court or the court that made the order of confirmation of the reorganization plan, upon the petition of the appellant, may stay the implementation of the whole or part of the reorganization plan or make any other necessary disposition, while requiring or not requiring the provision of security, until an order is made on the immediate appeal.

(5) The provisions of the preceding two paragraphs shall apply mutatis mutandis to an appeal under the provision of Article 336 of the Code of Civil Procedure and to a petition for permission for appeal under the provision of Article 337 of said Code, both provisions applied mutatis mutandis pursuant to Article 13, which are filed against a judicial decision on the immediate appeal set forth in paragraph (1).

Chapter VIII Procedures after Confirmation of Reorganization Plan
Section 1 Effect of Order of Confirmation of Reorganization Plan

(Scope of Effect of Reorganization Plan)

Article 203 (1) A reorganization plan shall be effective in the interest of and against the following persons:

- (i) The reorganization company;
- (ii) All reorganization creditors, etc. and shareholders;
- (iii) Any person who has assumed a debt or provided security for the reorganization of the reorganization company's business;
- (iv) The membership company into which the reorganization company has been converted pursuant to the provisions of the reorganization plan; and
- (v) The company to be incorporated through an incorporation-type company split (excluding one conducted jointly with another company), share transfer (excluding one conducted jointly with another company) or under the clauses prescribed in Article 183, pursuant to the provisions of the reorganization plan.

(2) A reorganization plan shall not affect any rights held by reorganization creditors, etc. against the reorganization company's guarantor or any other person who owes debts jointly with the reorganization company, and any security provided by persons other than the reorganization company in the interest of reorganization creditors, etc.

(Discharge, etc. from Reorganization Claims, etc.)

Article 204 (1) When an order of confirmation of the reorganization plan is made, the reorganization company shall be discharged from its liabilities for all reorganization claims, etc., except for the following rights, and all of the shareholders' rights and security interests existing on the reorganization company's property shall be extinguished:

- (i) Rights approved pursuant to the provisions of the reorganization plan or provisions of this Act;
- (ii) Claims for retirement allowance held by persons who were, as of the time after the commencement of reorganization proceedings, the reorganization company's directors, etc. (meaning directors, accounting advisors, auditors, representative directors, executive officers, representative executive officers, liquidators or representative liquidators) or employees, and who continue to hold these posts after the order of confirmation of the reorganization plan;
- (iii) Claims for a fine, etc. arising prior to the commencement of reorganization proceedings prescribed in Article 142, item (ii); and
- (iv) Claims for tax, etc. (excluding a claim for foreign taxes subject to mutual assistance), for which the reorganization company has been punished by

imprisonment with work or a fine after the commencement of reorganization proceeding for avoiding or attempting to avoid payment of the claim, receiving a refund or collecting and paying the claim by wrongful conduct, or failing to pay the claim which shall be paid, or the reorganization company, in cases where it received notice under the provision of Article 14, paragraph (1) of the National Tax Violations Control Act (Act No. 67 of 1900) (including cases where applied mutatis under the Local Tax Act (Act No. 226 of 1950)), has avoided or attempted to avoid payment of the claim, received refund or failed to pay the claim, if such claims have not been filed.

- (2) When an order for confirmation of the reorganization plan is made, with regard to the claims listed in item (iii) and item (iv) of the preceding paragraph, it is not allowed to make or receive payment or conduct any other act to cause the claim to be extinguished (excluding a release) until the payment period specified in the reorganization plan expires (or until payment based on the reorganization plan is completed if this occurs prior to the expiration of said period).
- (3) Notwithstanding the provision of paragraph (1), the effect of discharge and extinguishment of security interests under the provision of said paragraph with regard to a claim for a foreign tax subject to mutual assistance may be asserted only in relation to the mutual assistance under the provision of Article 11, paragraph (1) of the Act on Special Provisions for the Enforcement of Tax Treaties, etc.

(Modification of Rights of Holders of Filed Reorganization Claims, etc.)

- Article 205 (1) When an order of confirmation of the reorganization plan is made, the rights of holders of filed reorganization claims, etc. and those of shareholders shall be modified as provided for in the reorganization plan.
- (2) Holders of filed reorganization claims, etc., only where their claims have been determined, may exercise their rights approved pursuant to the provisions of the reorganization plan.
 - (3) Where rights of shareholders are approved pursuant to the provisions of the reorganization plan, shareholders who did not participated in the reorganization proceedings may also exercise their rights approved pursuant to the provisions of the reorganization plan.
 - (4) The provisions of Article 151 to Article 153 of the Companies Act shall apply mutatis mutandis to money, etc. to be received by shareholders as a result of the modification of rights as set forth in paragraph (1).
 - (5) Notwithstanding the provision of paragraph (1), the effect of modification of rights under the provision of said paragraph with regard to a claim for a foreign tax subject to mutual assistance may be asserted only in relation to the mutual assistance under the provision of Article 11, paragraph (1) of the Act on

Special Provisions for the Enforcement of Tax Treaties, etc.

(Entry, etc. of Clauses of Reorganization Plan in Schedule, etc. of Reorganization Creditors)

Article 206 (1) When an order of confirmation of the reorganization plan becomes final and binding, a court clerk shall make an entry of the clauses of the reorganization plan in the schedule of reorganization creditors and the schedule of secured reorganization creditors.

(2) In the case referred to in the preceding paragraph, with regard to the rights approved pursuant to the provisions of the reorganization plan based on reorganization claims, etc., the relevant entries in the schedule of reorganization creditors or the schedule of secured reorganization creditors shall have the same effect as a final and binding judgment against the reorganization company, the membership company set forth in Article 203, paragraph (1), item (iv), the company set forth in item (v) of said paragraph, reorganization creditors, etc., the reorganization company's shareholders, and any person who assumes a debt or provides security for the reorganization of the reorganization company's business.

(Suspension of Prescription for Tax, etc.)

Article 207 When an order of confirmation of the reorganization plan is made, the prescription for a claim for tax, etc. (excluding a claim for a foreign tax subject to mutual assistance) shall not run during the grace period for payment of such claim or for realization of property through the disposition of delinquency pursuant to the provision of Article 169, paragraph (1).

(Loss of Effect of Stayed Procedures or Proceedings, etc.)

Article 208 When an order of confirmation of the reorganization plan is made, the bankruptcy proceedings, the rehabilitation proceedings (including the bankruptcy proceedings, the procedure for compulsory execution, etc. based on a rehabilitation claim prescribed in Article 26, paragraph (1), item (ii) of the Civil Rehabilitation Act and the disposition of foreign tax delinquency based on a rehabilitation claim prescribed in item (v) of said paragraph, which have been stayed during the rehabilitation proceedings pursuant to the provision of Article 39, paragraph (1) of said Act), the procedure for compulsory execution, etc. prescribed in Article 24, paragraph (1), item (ii), the procedure for the exercise of an enterprise mortgage, the disposition of foreign tax delinquency prescribed in item (vi) of said paragraph, and the assets disclosure procedure, all of which are stayed pursuant to the provision of Article 50, paragraph (1), shall cease to be effective; provided, however, that this shall not apply to the procedures or disposition continued pursuant to the provision of Article 50,

paragraph (5).

Section 2 Implementation of Reorganization Plan

(Implementation of Reorganization Plan)

Article 209 (1) When an order of confirmation of the reorganization plan is made, a trustee shall promptly commence the implementation of the reorganization plan or the supervision of the management of the reorganization company's business and the administration and disposition of the company's property.

(2) A trustee shall supervise the execution of the reorganization plan by the company set forth in Article 203, paragraph (1), item (v).

(3) A trustee may request any of directors at incorporation, auditors at incorporation, directors, accounting advisors, auditors, executive officers, accounting auditors, partners who execute the business, liquidators, and employees and other workers of the company prescribed in the preceding paragraph and persons who held those posts, to report on the status of the company's business and property, or may inspect the company's books, documents and any other objects.

(4) The court, when it finds it necessary in order to ensure the implementation of the reorganization plan, shall order a trustee (or the reorganization company if the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4)) or any person who assumes a debt or provides security for the reorganization of the reorganization company's business, to provide reasonable security in the interest of the following persons:

(i) Persons who hold the rights approved pursuant to the provisions of the reorganization plan or provisions of this Act; and

(ii) Persons who hold the denied/disputed reorganization claims, etc. prescribed in the main clause of Article 151, paragraph (1) for which determination proceedings have not yet been closed.

(5) 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.

(Exclusion of Provisions, etc. of Laws and Regulations on Resolutions, etc. of Shareholders Meetings)

Article 210 (1) In the course of the implementation of a reorganization plan, notwithstanding the provisions of the Companies Act and other laws and regulations or the articles of incorporation, neither a resolution of the shareholders meeting nor a decision of any other organ of the reorganization company or the stock company to be incorporated under the clauses prescribed

in Article 183 shall be required.

- (2) In the course of the implementation of a reorganization plan, notwithstanding the provisions of the Companies Act and other laws and regulations, no shareholders or holders of share options of the reorganization company or the stock company to be incorporated under the clauses prescribed in Article 183 may demand that the reorganization company or the stock company to be incorporated under the clauses prescribed in said Article purchases their shares or share options.
- (3) In the course of the implementation of a reorganization plan, notwithstanding the provisions of Article 828 and Article 829 of the Companies Act, no shareholders, etc. (meaning shareholders, etc. prescribed in Article 828, paragraph (2), item (i) of said Act), holders of share options, bankruptcy trustee or creditors of the reorganization company or the stock company to be incorporated under the clauses prescribed in Article 183 may file an action seeking invalidation of any of the acts listed in the items of Article 828, paragraph (1) of said Act or an action for declaratory judgment of absence of any of the acts listed in the items of Article 829 of said Act.

(Special Provisions for Directors, etc. of Reorganization Company)

- Article 211 (1) If a reorganization plan, pursuant to the provision of Article 173, provides for the names of the directors, accounting advisors, auditors, representative directors, members of respective committees, executive officers, representative executive officers, accounting auditors, liquidators or representative liquidators, these persons shall, at the time of the order of confirmation of the reorganization plan, become directors, accounting advisors, auditors, representative directors, members of respective committees, executive officers, representative executive officers, accounting auditors, liquidators or representative liquidators, respectively.
- (2) If a reorganization plan, pursuant to the provision of Article 173, provides for the methods for election of directors, accounting advisors, auditors, executive officers, accounting auditors or liquidators, the election of these persons shall be carried out by the methods provided for in the reorganization plan.
 - (3) If a reorganization plan, pursuant to the provisions of Article 173, paragraph (1), item (ii), item (iii) or item (vii) or paragraph (2), item (ii), provides for the methods for appointment of representative directors, members of respective committees, representative executive officers or representative liquidators, the appointment of these persons shall be carried out by the methods provided for in the reorganization plan.
 - (4) The former directors, accounting advisors, auditors, executive officers, accounting auditors or liquidators of the reorganization company shall resign at the time of the order of confirmation of the reorganization plan; provided,

however, that this shall not preclude these persons from continuing to serve as directors, accounting advisors, auditors, executive officers, accounting auditors or liquidators pursuant to the provision of paragraph (1).

- (5) The provision of the preceding paragraph shall apply mutatis mutandis to the former representative directors, members of respective committees, representative executive officers or representative liquidators of the reorganization company.
- (6) The terms of office of the persons elected as directors, accounting advisors, auditors, executive officers, accounting auditors or liquidators pursuant to the provisions of paragraph (1) to paragraph (3) and the terms of office of the persons appointed as representative directors, members of respective committees, representative executive officers or representative liquidators pursuant to these provisions shall be set as provided for in the reorganization plan.

(Special Provision for Reduction of Amount of Stated Capital or Reserves)

Article 212 Where a reorganization plan, pursuant to the provision of Article 174, item (iii), provides that the amount of the reorganization company's stated capital or reserves will be reduced, the provisions of Article 449 and Article 740 of the Companies Act shall not apply.

(Special Provision for Amendment of Articles of Incorporation)

Article 213 Where a reorganization plan, pursuant to the provision of Article 174, item (v), provides that the reorganization company's articles of incorporation will be amended, the amendment of the articles of incorporation shall become effective at the time of the order of confirmation of the reorganization plan; provided, however, that if the reorganization plan otherwise provides for the time of such amendment taking effect, such provision shall prevail.

(Special Provision for Reorganization Company's Acquisition of its Shares)

Article 214 Where a reorganization plan, pursuant to the provision of Article 174-2, provides that the reorganization company will acquire its shares, the reorganization company shall acquire the shares set forth in item (i) of said Article on the day set forth in item (ii) of said Article.

(Special Provisions for Solicitation of Subscribers for Shares for Subscription)

Article 215 (1) Where a reorganization plan, pursuant to the provision of Article 175, provides that the reorganization company will solicit subscribers for shares for subscription, the reorganization company may issue shares for subscription without granting entitlement to the allotment of shares for subscription set forth in Article 202, paragraph (1), item (i) of the Companies

Act to shareholders, even when there is a provision in the articles of incorporation that shareholders shall be granted such entitlement.

- (2) Where a reorganization plan, pursuant to the provision of Article 175, item (iii), provides that reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of shares for subscription set forth in said item, the reorganization company shall give a notice of the following matters to these persons, and if bearer share option certificates or bearer bond certificates are issued for the reorganization claims, etc. held by those entitled reorganization creditors, etc. or the provisions of Chapter IV of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (Act No. 75 of 2001) (including cases where applied mutatis mutandis pursuant to said Act and other laws and regulations) shall apply to such reorganization claims, etc., the reorganization company shall also give a public notice of the following matters:
- (i) The number of the shares for subscription to be allotted to the reorganization creditors, etc. or shareholders (in the case of a company with class shares, the class and number of shares for subscription);
 - (ii) The due date set forth in Article 175, item (iii); and
 - (iii) The statement that entitlement to the allotment of shares for subscription set forth in Article 175, item (iii) may be assigned to others.
- (3) The notice or public notice given under the provisions of the preceding paragraph shall be given two weeks prior to the due date set forth in item (ii) of said paragraph.
- (4) Persons who have entitlement to the allotment of shares for subscription set forth in Article 175, item (iii) shall lose their entitlement if, despite the notice or public notice given by the reorganization company under the provision of paragraph (2), they have not applied for subscription for shares for subscription by the due date set forth in item (ii) of said paragraph.
- (5) In the case prescribed in paragraph (2), if the number of the shares for subscription to be allotted to the reorganization creditors, etc. or shareholders who have entitlement to the allotment of shares for subscription set forth in Article 175, item (iii) includes a fraction of less than one share, it shall be rounded off.
- (6) In the case prescribed in paragraph (1), the provisions of Article 199, item (v), Article 207, Article 210, and Part II, Chapter II, Section 8, Subsection 6 of the Companies Act shall not apply.

(Special Provisions for Solicitation of Subscribers for Share Options for Subscription)

Article 216 (1) The provision of paragraph (1) of the preceding Article shall apply mutatis mutandis where there is a provision in the articles of incorporation that shareholders shall be granted entitlement to the allotment

- of share options for subscription set forth in Article 241, paragraph (1), item (i) of the Companies Act.
- (2) Where a reorganization plan, pursuant to the provision of Article 176, item (iii), provides that reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of share options for subscription set forth in said item, the reorganization company shall give a notice of the following matters to these persons, and if bearer share option certificates or bearer bond certificates are issued for the reorganization claims, etc. held by those entitled reorganization creditors, etc. or the provisions of Chapter IV of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including cases where applied *mutatis mutandis* pursuant to said Act and other laws and regulations) shall apply to such reorganization claims, etc., the reorganization company shall also give a public notice of the following matters:
- (i) the content and number of the share options for subscription to be allotted to reorganization creditors, etc. or shareholders;
 - (ii) the due date set forth in Article 176, item (iii); and
 - (iii) the statement that entitlement to the allotment of share options for subscription set forth in Article 176, item (iii) may be assigned to others.
- (3) The notice or public notice given under the provisions of the preceding paragraph shall be given two weeks prior to the due date set forth in item (ii) of the preceding paragraph.
- (4) Persons who have entitlement to the allotment of share options for subscription set forth in Article 176, item (iii) shall lose their entitlement if, despite the notice or public notice given by the reorganization company under the provision of paragraph (2), they have not applied for subscription for share options for subscription by the due date set forth in item (ii) of said paragraph.
- (5) In the case prescribed in paragraph (2), if the number of the share options for subscription to be allotted to the reorganization creditors, etc. or shareholders who have entitlement to the allotment of share options for subscription set forth in Article 176, item (iii) includes a fraction of less than one share, it shall be rounded off.
- (6) Where a reorganization plan, pursuant to the provisions of Article 176, provides that the reorganization company will solicit subscribers for share options for subscription, the provisions of Article 238, paragraph (5), Article 247, Article 285, paragraph (1), item (i) and item (ii), and Article 286 of the Companies Act shall not apply.
- (7) In the case prescribed in the preceding paragraph, when share options, for which the matters set forth in Article 236, paragraph (1), item (iii) of the Companies Act are provided for, are exercised prior to the close of reorganization proceedings, the provision of Article 284 of said Act shall not apply.

(Special Provisions for Solicitation of Subscribers for Bonds for Subscription)

Article 217 (1) Where a reorganization plan, pursuant to the provision of Article 177, item (iv), provides that reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of bonds for subscription set forth in said item, the reorganization company shall give a notice of the following matters to these persons, and if bearer share option certificates or bear bond certificates are issued for the reorganization claims, etc. held by those entitled reorganization creditors, etc. or the provisions of Chapter IV of the Act on Book-Entry Transfer of Company Bonds, Shares, etc. (including cases where applied mutatis mutandis pursuant to said Act and other laws and regulations) shall apply to such reorganization claims, etc., the reorganization company shall also give a public notice of the following matters:

- (i) The classes of the bonds to be allotted to the reorganization creditors, etc. or shareholders and the total amount for each class of bonds;
 - (ii) The due date set forth in Article 177, item (iv);
 - (iii) The statement that entitlement to the allotment of bonds for subscription set forth in Article 177, item (iv) may be assigned to others.
- (2) The notice or public notice given under the provisions of the preceding paragraph shall be given two weeks prior to the due date set forth in item (ii) of the preceding paragraph.
- (3) Persons who have entitlement to the allotment of bonds for subscription set forth in Article 177, item (iv) shall lose their entitlement if, despite the notice or public notice given by the reorganization company under the provision of paragraph (1), they have not applied for subscription for bonds for subscription by the due date set forth in item (ii) of said paragraph.
- (4) In the case prescribed in paragraph (1), if the number of the bonds for subscription to be allotted to the reorganization creditors, etc. or shareholders who have entitlement to the allotment of bonds for subscription set forth in Article 177, item (iv) includes a fraction of less than one share, it shall be rounded off.

(Special Provisions for Issue of Shares, etc. in Exchange for Extinguishment of Rights of Reorganization Creditors, etc. or Shareholders)

Article 217-2 (1) Where a reorganization plan, pursuant to the provision of Article 177-2, paragraph (1), provides that shares will be issued in exchange for the extinguishment of some or all of the rights of reorganization creditors, etc. or shareholders, reorganization creditors, etc. or shareholders shall, at the time of the order of confirmation of the reorganization plan, become shareholders set forth in item (iii) of said paragraph pursuant to the provisions on the matters set forth in said item.

- (2) Where a reorganization plan, pursuant to the provision of Article 177-2, paragraph (2), provides that share options will be issued in exchange for the extinguishment of some or all of the rights of reorganization creditors, etc. or shareholders, reorganization creditors, etc. or shareholders shall, at the time of the order of confirmation of the reorganization plan, become subscribers for share options set forth in item (vi) of said paragraph (if the share options to be issued are attached to bonds with share options, bondholders of bonds with respect to such bonds with share options and holders of the share options attached to such bonds with share options) pursuant to the provisions on the matters set forth in said item.
- (3) Where a reorganization plan, pursuant to the provision of Article 177-2, paragraph (3), provides that bonds will be issued in exchange for the extinguishment of some or all of the rights of reorganization creditors, etc. or shareholders, reorganization creditors, etc. or shareholders shall, at the time of the order of confirmation of the reorganization plan, become bondholders of the bonds set forth in item (vii) of said paragraph pursuant to the provisions on the matters set forth in said item.

(Special Provision for Dissolution)

Article 218 Where a reorganization plan, pursuant to the provision of the main clause of Article 178, provides that the reorganization company will be dissolved, the reorganization company shall be dissolved at the scheduled time specified in the reorganization plan.

(Special Provision for Entity Conversion)

Article 219 Where a reorganization plan, pursuant to the provision of Article 179, provides that the reorganization company will effect an entity conversion, the provisions of Article 740, Article 775 and Article 779 of the Companies Act shall not apply.

(Special Provisions for Absorption-Type Merger)

Article 220 (1) Where a reorganization plan, pursuant to the provision of Article 180, paragraph (1), provides that the reorganization company will effect an absorption-type merger set forth in said paragraph, in the cases listed in the following items, reorganization creditors, etc. shall become the persons specified in the respective items on the day on which the absorption-type merger becomes effective (hereinafter referred to as the "effective date" in this Article) pursuant to the provisions on the matters set forth in item (iii) of said paragraph:

- (i) Where there are provisions on the matters set forth in Article 180, paragraph (1), item (ii)(a): The shareholders of the shares set forth in item

- (ii)(a);
 - (ii) Where there are provisions on the matters set forth in Article 180, paragraph (1), item (ii)(b): The bondholders of the bonds set forth in item (ii)(b);
 - (iii) Where there are provisions on the matters set forth in Article 180, paragraph (1), item (ii)(c): The holders of the share options set forth in item (ii)(c); and
 - (iv) Where there are provisions on the matters set forth in Article 180, paragraph (1), item (ii)(d): The bondholders of bonds with respect to the bonds with share options set forth in item (ii)(d) and holders of the share options attached to such bonds with share options.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article 740, Article 782 and Article 789 of the Companies Act shall not apply to the reorganization company.
- (3) Where a reorganization plan, pursuant to the provision of Article 180, paragraph (2), provides that the reorganization company will effect an absorption-type merger set forth in said paragraph, if there are provisions on the matters set forth in item (ii) of said paragraph, reorganization creditors, etc. shall become partners of the company surviving the absorption-type merger on the effective date pursuant to the provisions on the matters set forth in said item. In this case, the company surviving the absorption-type merger shall be deemed to have amended its articles of incorporation with regard to the partners set forth in said item.
- (4) Where a reorganization plan, pursuant to the provision of Article 180, paragraph (2), provides that the reorganization company will effect an absorption-type merger set forth in said paragraph, if there are provisions on the matters set forth in item (iii)(a) of said paragraph, reorganization creditors, etc. shall become bondholders of the bonds set forth in item (iii)(a) of said paragraph on the effective date pursuant to the provisions on the matters set forth in item (iv) of said paragraph.
- (5) Where a reorganization plan, pursuant to the provision of Article 180, paragraph (2), provides that the reorganization company will effect an absorption-type merger set forth in said paragraph, the provisions of Article 740, Article 782 and Article 789 of the Companies Act shall not apply to the reorganization company.
- (6) Where a reorganization plan, pursuant to the provision of Article 180, paragraph (3), provides that the reorganization company will effect an absorption-type merger set forth in said paragraph, the provisions of Article 740, Article 794 and Article 799 of the Companies Act shall not apply to the reorganization company.

(Special Provisions for Consolidation-Type Merger)

Article 221 (1) Where a reorganization plan, pursuant to the provision of Article 181, paragraph (1), provides that the reorganization company will effect a consolidation-type merger set forth in said paragraph, in the cases listed in the following items, reorganization creditors, etc. shall become the persons specified in the respective items on the date of incorporation of the company incorporated through the consolidation-type merger pursuant to the provisions on the matters set forth in item (iii) of said paragraph:

- (i) Where there are provisions on the matters set forth in Article 181, paragraph (1), item (ii)(a): The shareholders of the shares set forth in item (ii)(a);
 - (ii) Where there are provisions on the matters set forth in Article 181, paragraph (1), item (ii)(b): The bondholders of the bonds set forth in item (ii)(b);
 - (iii) Where there are provisions on the matters set forth in Article 181, paragraph (1), item (ii)(c): The holders of the share options set forth in item (ii)(c); and
 - (iv) Where there are provisions on the matters set forth in Article 181, paragraph (1), item (ii)(d): The bondholders of bonds with respect to the bonds with share options set forth in item (ii)(d) and holders of the share options attached to such bonds with share options.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article 740, Article 803 and Article 810 of the Companies Act shall not apply to the reorganization company.
- (3) Where a reorganization plan, pursuant to the provision of Article 181, paragraph (2), provides that the reorganization company will effect a consolidation-type merger set forth in said paragraph, if there are provisions on the matters set forth in item (ii) of said paragraph, reorganization creditors, etc. shall become partners of the company incorporated through the consolidation-type merger on the date of incorporation of the company incorporated through the consolidation-type merger pursuant to the provisions on the matters set forth in said item.
- (4) Where a reorganization plan, pursuant to the provision of Article 181, paragraph (2), provides that the reorganization company will effect a consolidation-type merger set forth in said paragraph, if there are provisions on the matters set forth in item (iii) of said paragraph, reorganization creditors, etc. shall become bondholders of the bonds set forth in said item on the date of incorporation of the company incorporated through the consolidation-type merger pursuant to the provisions on the matters set forth in item (iv) of said paragraph.
- (5) Where a reorganization plan, pursuant to the provision of Article 181,

paragraph (2), provides that the reorganization company will effect a consolidation-type merger set forth in said paragraph, the provisions of Article 740, Article 803 and Article 810 of the Companies Act shall not apply to the reorganization company.

(Special Provisions for Absorption-Type Company Split)

Article 222 (1) Where a reorganization plan, pursuant to the provision of Article 182, provides that the reorganization company will effect an absorption-type company split (limited to such split in which the reorganization company becomes the company effecting the absorption-type company split), the provisions of Article 740, Article 782 and Article 789 of the Companies Act shall not apply to the reorganization company.

(2) Where a reorganization plan, pursuant to the provision of Article 182, provides that the reorganization company will effect an absorption-type company split (limited to such split in which the reorganization company becomes the company succeeding to all or part of the rights and obligations held by the company effecting the absorption-type company split in connection with its business by transfer from such company), the provisions of Article 740, Article 794 and Article 799 of the Companies Act shall not apply to the reorganization company.

(3) In the cases prescribed in the preceding two paragraphs, the provisions of Article 759, paragraph (2) and paragraph (3) and Article 761, paragraph (2) and paragraph (3) of the Companies Act shall not apply to creditors of the reorganization company.

(Special Provisions for Incorporation-Type Company Split)

Article 223 (1) Where a reorganization plan, pursuant to the provision of Article 182-2, provides that the reorganization company will effect an incorporation-type company split, the provisions of Article 740, Article 803 and Article 810 of the Companies Act shall not apply to the reorganization company.

(2) In the case prescribed in the preceding paragraph, the provisions of Article 764 paragraph (2) and paragraph (3) and Article 766, paragraph (2) and paragraph (3) of the Companies Act shall not apply to creditors of the reorganization company.

(Special Provisions for Share Exchange)

Article 224 (1) Where a reorganization plan, pursuant to the provisions of Article 182-3, paragraph (1), provides that the reorganization company will effect a share exchange set forth in said paragraph, in the cases listed in the following items, reorganization creditors, etc. shall become the persons specified in the respective items on the day on which the share exchange

becomes effective (hereinafter referred to as the "effective date" in this Article) pursuant to the provisions on the matters set forth in item (iii) of said paragraph:

- (i) Where there are provisions on the matters set forth in Article 182-3, paragraph (1), item (ii)(a): The shareholders of the shares set forth in item (ii)(a);
 - (ii) Where there are provisions on the matters set forth in Article 182-3, paragraph (1), item (ii)(b): The bondholders of the bonds set forth in item (ii)(b);
 - (iii) Where there are provisions on the matters set forth in Article 182-3, paragraph (1), item (ii)(c): The holders of the share options set forth in item (ii)(c); and
 - (iv) Where there are provisions on the matters set forth in Article 182-3, paragraph (1), item (ii)(d): The bondholders of bonds with respect to the bonds with share options set forth in item (ii)(d) and holders of the share options attached to such bonds with share options.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article 740, Article 782 and Article 789 of the Companies Act shall not apply to the reorganization company.
- (3) Where a reorganization plan, pursuant to the provisions of Article 182-3, paragraph (2), provides that the reorganization company will effect a share exchange set forth in said paragraph, if there are provisions on the matters set forth in item (ii) of said paragraph, reorganization creditors, etc. shall become partners of the wholly owning parent company in share exchange on the effective date pursuant to the provisions on the matters set forth in said item. In this case, the wholly owning parent company in share exchange shall be deemed to have amended its articles of incorporation with regard to the partners set forth in said item.
- (4) Where a reorganization plan, pursuant to the provisions of Article 182-3, paragraph (2), provides that the reorganization company will effect a share exchange set forth in said paragraph, if there are provisions on the matters set forth in item (iii)(a) of said paragraph, reorganization creditors, etc. shall become bondholders of the bonds set forth in item (iii)(a) on the effective date pursuant to the provisions on the matters set forth in item (iv) of said paragraph.
- (5) Where a reorganization plan, pursuant to the provisions of Article 182-3, paragraph (2), provides that the reorganization company will effect a share exchange set forth in said paragraph, the provisions of Article 740, Article 782 and Article 789 of the Companies Act shall not apply to the reorganization company.
- (6) Where a reorganization plan, pursuant to the provision of Article 182-3,

paragraph (3), provides that the reorganization company will effect a share exchange set forth in said paragraph, the provisions of Article 740, Article 794 and Article 799 of the Companies Act shall not apply to the reorganization company.

(Special Provisions for Share Transfer)

- Article 224-2 (1) Where a reorganization plan, pursuant to the provisions of Article 182-4, provides that the reorganization company will effect a share transfer, in the cases listed in the following items, reorganization creditors, etc. shall become the persons specified in the respective items on the date of incorporation of the wholly-owning parent company in the share transfer pursuant to the provisions on the matters set forth in item (iii) of said article:
- (i) Where there are provisions on the matters set forth in Article 182-4, item (ii)(a): The shareholders of the shares set forth in item (ii)(a);
 - (ii) Where there are provisions on the matters set forth in Article 182-4, item (ii)(b): The bondholders of the bonds set forth in item (ii)(b);
 - (iii) Where there are provisions on the matters set forth in Article 182-4, item (ii)(c): The holders of the share options set forth in item (ii)(c); and
 - (iv) Where there are provisions on the matters set forth in Article 182-4, item (ii)(d): The bondholders of bonds with respect to the bonds with share options set forth in item (ii)(d) and holders of the share options attached to such bonds with share options.
- (2) In the case prescribed in the preceding paragraph, the provisions of Article 740, Article 803 and Article 810 of the Companies Act shall not apply to the reorganization company.

(Special Provisions of Incorporation of New Company)

- Article 225 (1) Where a reorganization plan, pursuant to the provision of the main clause of Article 183, provides that a stock company will be incorporated, a trustee shall perform the duties of the incorporators of such stock company (hereinafter referred to as the "new company" in this Article).
- (2) In the case prescribed in the preceding paragraph, the articles of incorporation of the new company shall not be effective unless certified by the court.
- (3) In the case prescribed in paragraph (1), a resolution may be adopted at the organizational meeting of the new company as long as its content is not contrary to the purport of the reorganization plan.
- (4) In the case prescribed in paragraph (1), when the incorporation of the new company has failed, the reorganization company shall be responsible for the acts conducted by a trustee for the incorporation of the new company pursuant to the provision of said paragraph, and shall pay expenses incurred for the

incorporation of the new company.

- (5) The provisions of Article 211, paragraph (1) to paragraph (3) shall apply mutatis mutandis to the election or appointment of directors at incorporation, etc. in the case of the incorporation of the new company; the provision of Article 211, paragraph (6) shall apply mutatis mutandis to the terms of office of the new company's directors, etc. in the case where the directors at incorporation, etc. of the new company become the new company's directors, etc. after the incorporation of the new company; the provisions of Article 215, paragraph (2) to paragraph (5) shall apply mutatis mutandis where reorganization creditors, etc. or shareholders shall be granted entitlement to the allotment of shares solicited at incorporation of the new company set forth in Article 183, item (v); the provisions of Article 216 and Article 217 shall apply mutatis mutandis to the solicitation of subscribers for share options for subscription or bonds for subscription of the new company; and the provision of Article 217-2 shall apply mutatis mutandis to the issue of shares issued at incorporation, share options or bonds of the new company in exchange for the extinguishment of rights of reorganization creditors, etc. or shareholders.
- (6) In the case prescribed in paragraph (1), the following provisions of the Companies Act shall not apply: Article 25, paragraph (1), item (i) and paragraph (2), Article 26, paragraph (2), Article 27, item (v), Article 30, Part II, Chapter I, Section 3 (excluding Article 37, paragraph (3)), Section 4 (excluding Article 39), Section 5 and Section 6, Article 50, Article 51, Chapter I, Section 8, Article 58, Article 59, paragraph (1), item (i) (limited to the part pertaining to the name of the notary), item (ii) (limited to the part pertaining to the matters listed in Article 27, item (v) and the items of Article 32, paragraph (1)) and item (iii), Article 65, paragraph (1), Article 88 to Article 90, Article 93 and Article 94 (limited to parts pertaining to the matters listed in Article 93, paragraph (1), item (i) and item (ii)) and Article 103.

(Treatment of Retirement Allowance for Persons who moved to New Company)
Article 226 (1) A person who was any of the reorganization company's directors, etc. or the company's employees prescribed in Article 204, paragraph (1), item (ii) as of the time after the commencement of reorganization proceedings, and then retired the reorganization company upon the incorporation of the new company prescribed in paragraph (1) of the preceding Article and has remained to serve as any of the new company's directors, etc. or the company's employee prescribed in said item may not receive payment of retirement allowance from the reorganization company.

- (2) The period of service of the person prescribed in the preceding paragraph at the reorganization company shall be deemed to be his/her period of service at the new company prescribed in said paragraph in the calculation of his/her

retirement allowance.

(Special Provision for Jurisdiction)

Article 227 Where a reorganization plan provides for the splitting or consolidation of shares of the reorganization company or the allotment of shares without contribution, a case pertaining to the petition for permission under the provision of Article 234, paragraph (2) of the Companies Act (including cases where applied mutatis mutandis pursuant to Article 235, paragraph (2) of said Act) shall be subject to the jurisdiction of the reorganization court until reorganization proceedings are closed, notwithstanding the provision of Article 868, paragraph (1) of said Act.

(Assignment of Entitlement to Allotment of Shares for Subscription, etc.)

Article 228 Where reorganization creditors, etc. or shareholders are granted, pursuant to the provisions of a reorganization plan, entitlement to the allotment of shares for subscription or shares solicited at incorporation, share options for subscription, or bonds for subscription of the reorganization company or the new company prescribed in Article 225, paragraph (1), such entitlement may be assigned to others.

(Special Provision of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade)

Article 229 Where reorganization creditors, etc. or shareholders acquire, pursuant to the provisions of a reorganization plan, shares of the reorganization company or the stock company to be incorporated pursuant to the provisions of the reorganization plan, such acquisition of shares shall, for the purpose of application of Article 11 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No, 54 of 1947), be deemed to be acquisition as a result of substitute performance.

(Special Provision for Restriction on Disposition in the case of Foundation)

Article 230 Where the reorganization company's property is to be disposed of pursuant to the provisions of a reorganization plan, the provisions of the laws and regulations concerning the restriction on the disposition of factory foundations and any other foundations or any property that belongs to foundations shall not apply.

(Succession to Rights based on Permission, Authorization, etc.)

Article 231 If a reorganization plan provides that rights and obligations based on permission, authorization, license or any other disposition that the reorganization company obtained from an administrative agency will be

transferred to the new company prescribed in Article 225, paragraph (1), the new company shall succeed to such rights and obligations, notwithstanding the provisions of other laws and regulations.

(Special Provisions of the Corporation Tax Act, etc.)

Article 232 (1) If a reorganization plan provides that the new company prescribed in Article 225, paragraph (1) will succeed to the reorganization company's debts arising from the claims for tax, etc., the new company shall be obliged to pay such debts and the reorganization company shall be released from the debts.

(2) When an order of commencement of reorganization proceedings is made, the reorganization company's business year shall end at the time of the commencement, and its business year that follows shall end at the time of confirmation of the reorganization plan (or the date of the close of reorganization proceedings if this occurs prior to the time of confirmation); provided, however, that this shall not preclude the application of the provisions of the proviso to Article 13, paragraph (1) of the Corporation Tax Act (Act No. 34 of 1965) and Article 72-13, paragraph (4) of the Local Tax Act.

(3) With regard to the corporation tax, prefectural inhabitants tax, enterprise tax and municipal inhabitants tax for the reorganization company's business year or consolidated business year that follows the time of commencement of reorganization proceedings, the provisions of Article 71 of the Corporation Tax Act (including cases where applied mutatis mutandis pursuant to Article 145, paragraph (1) of said Act) or Article 81-19 of said Act, and the provisions of Article 53, paragraph (2), Article 72-26 or Article 321-8, paragraph (2) of the Local Tax Act shall not apply.

Section 3 Modification of Reorganization Plan

Article 233 (1) If, after an order of confirmation of the reorganization plan is made, the need to modify any matters specified in the reorganization plan arises due to unavoidable grounds, the court, only prior to the close of reorganization proceedings, upon the petition of a trustee, the reorganization company, holder of filed reorganization claim, etc. or shareholder, may modify the reorganization plan.

(2) Where a petition is filed pursuant to the provision of the preceding paragraph for any modification of a reorganization plan that is found to adversely affect reorganization creditors, etc. or shareholders, the provisions concerning the procedure to be performed upon the submission of a proposed reorganization plan shall apply mutatis mutandis; provided, however, that it shall not be required to have reorganization creditors, etc. or shareholders who will not be

adversely affected by the modification of the reorganization plan participate in the modification procedure, and those who do not exercise their voting rights on the proposed modification (excluding those who attended the stakeholders meeting aimed for adopting a resolution on the proposed modification) and have consented to the initial reorganization plan shall be deemed to consent to the proposed modification.

- (3) If a debt is to be assumed or the term of a debt is to be extended based on the modified reorganization plan, the term of such debt shall not exceed the following periods:
 - (i) Where there is any collateral (limited to collaterals the useful life of which can be ascertained), the useful life thereof or a period of 15 years (or 20 years where the content of the modified reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances) from the time of the initial order of confirmation of the reorganization plan, whichever is shorter; or
 - (ii) In cases other than the case prescribed in the preceding item, 15 years (or 20 years where the content of the modified reorganization plan would be particularly advantageous to reorganization creditors, etc. or there are other special circumstances) from the time of the initial order of confirmation of the reorganization plan.
- (4) The provision of the preceding paragraph shall not apply where, pursuant to the provisions of the modified reorganization plan, company bonds are issued or the terms of the company bonds already issued pursuant to the provisions of the reorganization plan are extended.
- (5) The modified reorganization plan shall become effective as from the time when an order of modification under the provision of paragraph (1) or an order of confirmation under the provision of paragraph (2) is made.
- (6) An immediate appeal may be filed against the order prescribed in the preceding paragraph. In this case, the provisions of Article 202, paragraph (2) to paragraph (5) shall apply *mutatis mutandis*.
- (7) The provision of Article 72, paragraph (7) shall apply *mutatis mutandis* where the provisions of the reorganization plan under the provision of the first sentence of Article 72, paragraph (4) are rescinded as a result of the modification of the reorganization plan.

Chapter IX Close of Reorganization Proceedings

Section 1 Grounds for Close of Reorganization Proceedings

Article 234 Reorganization proceedings shall be closed when any of the following events occur:

- (i) An order to dismiss with prejudice on the merits a petition for

- commencement of reorganization proceedings becomes final and binding;
- (ii) An order to revoke the order of commencement of reorganization proceedings becomes final and binding in cases where an immediate appeal is filed under the provision of Article 44, paragraph (1);
 - (iii) An order of disconfirmation of the reorganization plan becomes final and binding;
 - (iv) An order of discontinuance of reorganization proceedings becomes final and binding; or
 - (v) An order of termination of reorganization proceedings is made.

Section 2 Close of Reorganization Proceedings before Confirmation of Reorganization Plan

Subsection 1 Order of Disconfirmation of Reorganization Plan

(Effect of Entries in Schedule of Reorganization Creditors, etc. upon Order of Disconfirmation becoming Final and Binding)

- Article 235 (1) When an order of disconfirmation of the reorganization plan becomes final and binding, the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors with regard to reorganization claims, etc. determined shall have the same effect as a final and binding judgment against the stock company that has been the reorganization company. In this case, reorganization creditors, etc. may enforce compulsory execution against said stock company with regard to the determined reorganization claims, etc. based on the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors.
- (2) The provision of the preceding paragraph shall not apply where the stock company prescribed in said paragraph has made an objection under the provision of Article 147, paragraph (2), Article 148, paragraph (4) or the second sentence of Article 149, paragraph (3).

Subsection 2 Discontinuance of Reorganization Proceedings before Confirmation of Reorganization Plan

(Discontinuance of Reorganization Proceedings due to Difficulty of Reorganization)

- Article 236 In any of the cases listed in the following items, the court, by its own authority, shall make an order of discontinuance of reorganization proceedings:
- (i) Where it has become obvious that a proposed reorganization plan worthy to be referred to a resolution is unlikely to be prepared;
 - (ii) Where no proposed reorganization plan is submitted within the period specified by the court or any extension thereof, or all proposed reorganization

plans submitted within such period or extension are not worthy to be referred to a resolution; or

- (iii) Where a proposed reorganization plan is rejected, or where a further date for a stakeholders meeting is designated pursuant to the provisions of the main clause of Article 198, paragraph (1), and the proposed reorganization plan is not approved within the period that conforms to the provisions of paragraph (2) and paragraph (3) of said Article.

(Discontinuance of Reorganization Proceedings due to Extinction of Grounds for Commencement of Reorganization Proceedings)

Article 237 (1) If, after the period for filing proofs of claims prescribed in Article 138, paragraph (1) has expired and before an order of confirmation of the reorganization plan is made, it has become obvious that none of the facts constituting grounds for commencement of reorganization proceedings prescribed in Article 17, paragraph (1) exist, the court, upon the petition of a trustee, the reorganization company, or a holder of filed reorganization claim, etc., shall make an order of discontinuance of reorganization proceedings.

- (2) When filing a petition set forth in the preceding paragraph, the petitioner shall make a prima facie showing of the absence of any fact constituting the grounds for commencement of reorganization proceedings.

(Public Notice, etc. of Discontinuance of Reorganization Proceedings)

Article 238 (1) The court, when it has made an order of discontinuance of reorganization proceedings under the provisions of the preceding two Articles, shall immediately give 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 202, paragraph (3) shall apply mutatis mutandis to an immediate appeal set forth in the preceding paragraph, and to an appeal against a judicial decision on said immediate appeal under the provision of Article 336 of the Code of Civil Procedure and a petition for permission for appeal against a judicial decision on said immediate appeal under the provision of Article 337 of said Code, both provisions applied mutatis mutandis pursuant to Article 13.
- (4) When an order to revoke the order of discontinuance of reorganization proceedings made under the provisions of the preceding two Articles becomes final and binding, the court that made the order of discontinuance of reorganization proceedings shall immediately give 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 provision of Article 235 shall apply mutatis mutandis where an order of discontinuance of reorganization proceedings made under the provisions of the preceding two Articles becomes final and binding.

**Section 3 Close of Reorganization Proceedings after Confirmation of
Reorganization Plan**

Subsection 1 Termination of Reorganization Proceedings

(Order of Termination of Reorganization Proceedings)

Article 239 (1) In the following cases, the court, upon the petition of a trustee or by its own authority, shall make an order of termination of reorganization proceedings:

- (i) Where the reorganization plan has been implemented;
 - (ii) Where there is no default in terms of the reorganization plan at the time when payment is made for not less than two-thirds of the total amount of monetary claims approved pursuant to the provisions of the reorganization plan; provided, however, that this shall not apply when the court finds that the reorganization plan is unlikely to be implemented; and
 - (iii) Where it is found that the reorganization plan will surely be implemented (excluding the case that falls under the preceding item).
- (2) The court, when it has made an order of termination of reorganization proceedings, shall give a public notice of the main text of the order and the gist of the reasons attached thereto.

(Effect of Entries in Schedule of Reorganization Creditors, etc. after
Termination of Reorganization Proceedings)

Article 240 After the termination of reorganization proceedings, a reorganization creditor, etc. may enforce compulsory execution, with regard to his/her rights approved based on his/her reorganization claim, etc. pursuant to the provisions of the reorganization plan, against the stock company that has been the reorganization company and any person who has assumed a debt for the reorganization of the reorganization company's business, based on the entries in the schedule of reorganization creditors or schedule of secured reorganization creditors; provided, however, that this shall not preclude the application of the provisions of Article 452 and Article 453 of the Civil Code.

**Subsection 2 Discontinuance of Reorganization Proceedings after
Confirmation of Reorganization Plan**

Article 241 (1) If, after an order of confirmation of the reorganization plan is made, it has become obvious that the reorganization plan is unlikely to be

implemented, the court, upon the petition of a trustee or by its own authority, shall make an order of discontinuance of reorganization proceedings.

- (2) An order of discontinuance of reorganization proceedings made under the provision of the preceding paragraph shall not become effective unless it becomes final and binding.
- (3) The discontinuance of reorganization proceedings under the provision of paragraph (1) shall not affect any effects arising from the implementation of the reorganization plan and the provisions of this Act
- (4) The provisions of Article 238, paragraph (1) to paragraph (3) shall apply mutatis mutandis where an order of discontinuance of reorganization proceedings is made under the provision of paragraph (1), the provision of paragraph (4) of said Article shall apply mutatis mutandis where an order to revoke the order of discontinuance of reorganization proceedings set forth in paragraph (1) becomes final and binding, and the provision of the preceding Article shall apply mutatis mutandis where an order of discontinuance of reorganization proceedings made under the provision of paragraph (1) becomes final and binding, respectively.

Chapter X Special Provisions where Foreign Insolvency Proceedings exist

(Cooperation with Foreign Trustees)

Article 242 (1) A trustee, 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 reorganization company, may request a foreign trustee (meaning a person who has a right to administer and dispose of the stock company's property in foreign insolvency proceedings; the same shall apply hereinafter) in said foreign insolvency proceedings to provide cooperation and information necessary for the reorganization of the reorganization company.

- (2) In the case prescribed in the preceding paragraph, a trustee shall endeavor to provide a foreign trustee set forth in said paragraph with cooperation and information necessary for the reorganization of the reorganization company.

(Presumption of the Grounds for Commencement of Reorganization Proceedings)

Article 243 Where foreign insolvency proceedings are enforced against a stock company, a fact constituting the grounds for the commencement of reorganization proceedings prescribed in Article 17, paragraph (1) shall be presumed to exist with regard to the stock company.

(Powers, etc. of Foreign Trustee)

Article 244 (1) Where a fact that falls under the case set forth in Article 17, paragraph (1), item (i) exists with regard to a stock company, a foreign trustee may file a petition for commencement of reorganization proceedings against the stock company.

(2) In the case prescribed in Article 242, paragraph (1), a foreign trustee prescribed in said paragraph may attend a stakeholders meeting and state his/her opinions in reorganization proceedings against the reorganization company.

(3) In the case prescribed in Article 242, paragraph (1), in reorganization proceedings against the reorganization company, a foreign trustee prescribed in said paragraph may prepare a proposed reorganization plan and submit it to the court within the period prescribed in Article 184, paragraph (1) (in cases where it is extended pursuant to the provision of paragraph (4) of said Article, within the period as extended.)

(4) Where a foreign trustee has filed a petition for commencement of reorganization 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 reorganization proceedings is made, the matters for which a public notice shall be given pursuant to the provision of Article 43, paragraph (1); when there is a change to the matters listed in item (ii) or item (iii) of said paragraph, a statement to that effect; when an order to revoke the order of commencement of reorganization proceedings becomes final and binding, the main text of the order.

(Mutual Participation in Proceedings)

Article 245 (1) A foreign trustee, while representing a reorganization creditor, etc. who has not filed a proof of claim but has participated in foreign insolvency proceedings against the reorganization company, may participate in reorganization proceedings against the reorganization company; 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) A trustee, while representing a holder of filed reorganization claim, etc. who has not participated in foreign insolvency proceedings, may participate in said foreign insolvency proceedings.

(3) A trustee, 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 reorganization creditors, etc. whom he/she represents; provided, however, that

delegation of powers from said reorganization creditors, etc. 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 the reorganization creditors, etc.

**Chapter XI Transfer, etc. between Reorganization Proceedings and Other
Insolvency Proceedings
Section 1 Transfer from Bankruptcy Proceedings to Reorganization
Proceedings**

(Petition for Commencement of Reorganization Proceedings filed by
Bankruptcy Trustee)

- Article 246 (1) A bankruptcy trustee, when a fact constituting the grounds for commencement of reorganization proceedings prescribed in Article 17, paragraph (1) exists with regard to the stock company that is the bankrupt, may file a petition for commencement of reorganization proceedings against the stock company, 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 reorganization 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 from the labor union, etc. (meaning the labor union consisting of the majority of the stock company's employees, if there is any such labor union, or the person representative of the majority of the stock company's employees, if there is no labor union consisting of the majority of the stock company's employees), before making an order on the petition.
- (4) The provision of Article 20, paragraph (1) shall not apply to a petition for commencement of reorganization proceedings filed under the provision of paragraph (1).

(Order not to require Filing of Proofs of Reorganization Claims)

- Article 247 (1) Where the court makes an order of commencement of reorganization 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 50, paragraph (1), the number of denied/disputed bankruptcy claims prescribed in the main clause of Article 125, paragraph (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 reorganization proceedings, to the effect that reorganization creditors who hold reorganization claims that have been filed as bankruptcy claims in said bankruptcy proceedings (excluding claims for tax, etc. prescribed in Article 97, item (iv) of said Act and claims for a fine, etc. prescribed in item (vi) of said Article; hereinafter the same shall apply in this Article) shall not be required to file proofs of such reorganization 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 given under the provision of Article 43, paragraph (1), that reorganization creditors who hold reorganization 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 reorganization claims, and give a notice to known reorganization 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 reorganization claims on the first day of the period for filing proofs prescribed in Article 138, paragraph (1).
- (4) In the case referred to in the preceding paragraph, for each of the categories of filing proofs of matters listed in the following items regarding such claim that has been filed as a bankruptcy claim, it shall be deemed that persons set forth in the preceding paragraph have filed proofs of the matters specified in the respective items as filing proofs of reorganization claims:
 - (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, paragraph (1) of the Bankruptcy Act, filing proofs of the amount of the bankruptcy claim set forth in Article 111, paragraph (1), item (i) of said Act (or the amount of the bankruptcy claim for which payment is not expected to be received by exercising the right of separate satisfaction set forth in paragraph (2), item (ii) of said Article, if proofs of such amount are filed; the same shall apply in the following item) and the cause of the bankruptcy claim: Filing proofs of the amount of the reorganization claim, as an element of the content of the reorganization claim set forth in Article 138, (1) item (i), and the cause of the reorganization claim set forth in said item;
 - (ii) With regard to such claim that has been filed as a bankruptcy claim, except

- for the claim set forth in the preceding item, filing proofs of the amount and cause of the bankruptcy claim set forth in Article 111, paragraph (1), item (i) of the Bankruptcy Act: Filing proofs of the amount of the reorganization claim, as an element of the content of the reorganization claim set forth in Article 138, paragraph (1), item (i), the amount of the voting right for the reorganization claim set forth in item (iii) of said paragraph, and the cause of the reorganization claim set forth in item (i) of said paragraph;
- (iii) With regard to a claim that has been filed with a statement that the claim is a preferred bankruptcy claim prescribed in Article 98, paragraph (1) of the Bankruptcy Act, filing proofs of such statement set forth in Article 111, paragraph (1), item (ii) of said Act: Filing proofs of the statement that the claim is a claim with general priority set forth in Article 138, paragraph (1), item (ii); or
- (iv) With regard to a claim that has been filed with a statement that the claim is a consensually-subordinated bankruptcy claim prescribed in Article 99, paragraph (2) of the Bankruptcy Act, filing proofs of such statement set forth in Article 111, paragraph (1), item (iii) of said Act: Filing proofs of the statement that the claim is a consensually-subordinated reorganization claim set forth in Article 138, paragraph (1), item (ii).
- (5) Where the person who filed a proof of a claim as a bankruptcy claim has filed a proof of reorganization claim within the period for filing proofs of claims prescribed in Article 138, paragraph (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.

Section 2 Transfer from Rehabilitation Proceedings to Reorganization Proceedings

(Petition for Commencement of Reorganization Proceedings filed by Trustee in Charge of Rehabilitation Proceedings)

- Article 248 (1) A trustee in charge of rehabilitation proceedings, when a fact constituting the grounds for commencement of reorganization proceedings prescribed in Article 17, paragraph (1) exists with regard to the stock company that is the rehabilitation debtor, may file a petition for commencement of reorganization proceedings against the stock company, with permission of the court (meaning a judge or panel of judges in charge of the rehabilitation 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 reorganization 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 from the labor union, etc. prescribed in Article 246, paragraph (3), before making an order on the petition.
- (4) The provision of Article 20, paragraph (1) shall not apply to a petition for commencement of reorganization proceedings filed under the provision of paragraph (1).

(Order not to require Filing of Proofs of Reorganization Claims)

Article 249 (1) Where the court makes an order of commencement of reorganization proceedings, when it finds it appropriate while taking into consideration the content and cause of each rehabilitation claim that has been filed in the rehabilitation proceedings to be stayed pursuant to the provision of Article 50, paragraph (1), the number of denied/disputed rehabilitation claims prescribed in the main clause of Article 105, paragraph (1) of the Civil Rehabilitation Act, 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 reorganization proceedings, to the effect that reorganization creditors who hold reorganization claims that have been filed as rehabilitation claims in said rehabilitation proceedings (excluding claims for a fine, etc. arising prior to the commencement of rehabilitation proceedings prescribed in Article 97, item (i) of said Act.; hereinafter the same shall apply in this Article) shall not be required to file proofs of such reorganization 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 given under the provision of Article 43, paragraph (1), that reorganization creditors who hold reorganization 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 reorganization claims, and give a notice to known reorganization 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 the 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 (5)) have filed proofs of reorganization claims on the first day of the period for filing proofs prescribed in Article 138, paragraph (1).
- (4) In the case referred to in the preceding paragraph, for each of the categories

of filing proofs of matters listed in the following items regarding such claim that has been filed as a rehabilitation claim, it shall be deemed that persons set forth in the preceding paragraph have filed proofs of matters specified in the respective items as filing of proofs of reorganization claim:

- (i) With regard to a claim that has been filed with the proof of the amount of the claim for which payment is not expected to be received by exercising the right of separate satisfaction prescribed in Article 94, paragraph (2) of the Civil Rehabilitation Act, filing proofs of the amount of the claim, and the cause of the rehabilitation claim and the amount of the voting right prescribed in paragraph (1) of said Article: Filing proofs of the amount of the reorganization claim, as an element of the content of the reorganization claim set forth in Article 138, (1) item (i), the cause of the reorganization claim set forth in said item, and the amount of the voting right for the reorganization claim set forth in item (iii);
 - (ii) With regard to such claim that has been filed as a rehabilitation claim, except for the claim set forth in the preceding item, filing proofs of the content and cause of the rehabilitation claim and the amount of the voting right prescribed in Article 94, paragraph (1) of the Civil Rehabilitation Act: Filing proofs of the content and cause of the reorganization claim set forth in Article 138, paragraph (1), item (i), and the amount of the voting right for the reorganization claim set forth in item (iii) of said paragraph;
 - (iii) With regard to a claim filed with a statement that the claim is a consensually-subordinated rehabilitation claim prescribed in Article 35, paragraph (4) of the Civil Rehabilitation Act, filing proofs of such statement prescribed in Article 94, paragraph (1) of said Act: Filing proofs of the statement that the claim is a consensually-subordinated reorganization claim set forth in Article 138, paragraph (1), item (ii).
- (5) Where the person who filed a proof of a claim as a rehabilitation claim has filed a proof of reorganization claim within the period for filing proofs of claims prescribed in Article 138, paragraph (1), the provisions of the preceding two paragraphs shall not apply to any claim filed as a rehabilitation claim set forth in paragraph (3), which is held by such person who has filed a proof of a claim as a rehabilitation claim.

Section 3 Transfer from Reorganization Proceedings to Bankruptcy Proceedings

(Transfer of Bankruptcy Case where Order of Commencement of Reorganization Proceedings has been made)

Article 250 Where, before or after the commencement of bankruptcy proceedings, an order of commencement of reorganization proceedings has been 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 reorganization court.

(Petition, etc. for Commencement of Bankruptcy Proceedings prior to Close of Reorganization Proceedings)

Article 251 (1) Where, with regard to the reorganization company against which bankruptcy proceedings have not yet been commenced, an order of revocation of the order of commencement of reorganization proceedings, an order of discontinuance of reorganization proceedings, or an order of disconfirmation of the reorganization plan is made, notwithstanding the provision of Article 50, paragraph (1), a petition for commencement of bankruptcy proceedings may be filed with the reorganization court against said reorganization company even before the respective order becomes final and binding. The same shall apply where, with regard to the reorganization company against which bankruptcy proceedings have been commenced, an order of discontinuance of reorganization proceedings under the provision of Article 241, paragraph (1) is made after the bankruptcy proceedings have ceased to be effective as a result of an order of confirmation of the reorganization plan being made.

(2) The provision of the first sentence of the preceding paragraph shall not apply where rehabilitation proceedings have already been commenced against the reorganization company prescribed in the first sentence of said paragraph.

(3) An order of commencement of bankruptcy proceedings based on the petition for commencement of bankruptcy proceedings filed under the provision of paragraph (1) may not be made unless an order prescribed in the first sentence of said paragraph or an order of discontinuance of reorganization proceedings set forth in the second sentence of said paragraph becomes final and binding.

(Order of Commencement of Bankruptcy Proceedings by Court's Authority upon Close of Reorganization Proceedings)

Article 252 (1) Where any of the grounds listed in Article 234, item (i) to item (iv) occur with regard to a stock company against which bankruptcy proceedings have not yet been commenced, the court, when it finds that a fact constituting the grounds for commencement of bankruptcy proceedings exists with regard to such stock company, 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 rehabilitation proceedings have already been commenced against said stock company.

(2) Where, after the bankruptcy proceedings commenced against the reorganization company have ceased to be effective as a result of an order of

confirmation of the reorganization plan being made, an order of discontinuance of reorganization proceedings under the provision of Article 241, paragraph (1) becomes final and binding, the court, by its own authority, shall 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

(Temporary Restraining Order, etc. prior to Commencement of Bankruptcy Proceedings upon Close, etc. of Reorganization Proceedings)

Article 253 (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, paragraph (1) of the Bankruptcy Act, comprehensive prohibition order prescribed in Article 25, paragraph (2) of said Act, temporary restraining order under the provision of Article 28, paragraph (1) of said Act, provisional administration order prescribed in Article 91, paragraph (2) of said Act or temporary restraining order under the provision of Article 171, paragraph (1) of said Act (hereinafter referred to as "temporary restraining order, etc." in this Article and Article 256, paragraph (4)):

- (i) Where, with regard to a stock company against which bankruptcy proceedings have not yet been commenced, an order of dismissal with prejudice on the merits of a petition for commencement of reorganization proceedings is made;
 - (ii) Where, with regard to the reorganization company against which bankruptcy proceedings have not yet been commenced, an order of revocation of the order of commencement of reorganization proceedings, an order of discontinuance of reorganization proceedings or an order of disconfirmation of the reorganization plan becomes final and binding;
 - (iii) Where, after the bankruptcy proceedings commenced against the reorganization company have ceased to be effective as a result of an order of confirmation of the reorganization plan being made, an order of discontinuance of reorganization proceedings under the provision of Article 241, paragraph (1) becomes final and binding.
- (2) If the court, after issuing a temporary restraining order, etc. under the provision of item (i) or item (ii) of the preceding paragraph, has decided not to make an order of commencement of bankruptcy proceedings under the provision of the main clause of paragraph (1) of the preceding Article, it shall revoke the temporary restraining order, etc. without delay.
- (3) The temporary restraining order, etc. issued under the provision of paragraph (1), item (i) shall cease to be effective when an order to revoke said order

prescribed in said item is made.

- (4) Notwithstanding the provisions of Article 24, paragraph (4), Article 25, paragraph (6), Article 28, paragraph (3), Article 91, paragraph (5) and Article 171, paragraph (4) of the Bankruptcy Act, no immediate appeal may be filed against an order made under the provision of paragraph (2).

(Application of the Bankruptcy Act in Bankruptcy Proceedings upon Close of Reorganization Proceedings)

- Article 254 (1) In the following cases concerning a stock company against which 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, paragraph (1), item (iv) and paragraph (2), item (ii) and item (iii), Article 72, paragraph (1), item (iv) and paragraph (2), item (ii) and item (iii), Article 160 (excluding paragraph (1), item (i)), Article 162 (excluding paragraph (1), item (ii)), Article 163, paragraph (2), Article 164, paragraph (1) (including cases where applied mutatis mutandis pursuant to paragraph (2) of said Article), Article 166, and Article 167, paragraph (2) (including cases where applied mutatis mutandis pursuant to Article 170, paragraph (2)); the same shall apply in paragraph (3)), a petition for commencement of reorganization proceedings, etc. (meaning a petition for commencement of reorganization 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 reorganization proceedings, petition for commencement of rehabilitation proceedings in the rehabilitation proceedings that have ceased to be effective as a result of the order of confirmation of the reorganization plan, or any act conducted by the stock company's director, executive officer or any other person equivalent thereto, which shall constitute the crime set forth in Article 265 of the Bankruptcy Act; 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 reorganization proceedings, etc:
- (i) Where an order of commencement of bankruptcy proceedings is made under the provision of the main clause of Article 252, paragraph (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 reorganization 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 reorganization proceedings is made,

- an order of commencement of bankruptcy proceedings is made after any of the grounds listed in Article 234, item (ii) or item (iii) occur or after an order of discontinuance of reorganization proceedings made under the provisions of Article 236 or Article 237, paragraph (1) becomes final and binding; or
- (iv) Where, based on a petition for commencement of bankruptcy proceedings filed under the provision of the first sentence of Article 251, paragraph (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 reorganization proceedings as a result of an order of disconfirmation of the reorganization plan or order of discontinuance of reorganization proceedings becoming final and binding, the date of any of the following orders shall be deemed to be the date of commencement of bankruptcy proceedings set forth in the first sentence of said Article:
- (i) The order of commencement of reorganization proceedings; or
- (ii) The order of commencement of rehabilitation proceedings in the rehabilitation proceedings that have ceased to be effective as a result of the order of confirmation of the reorganization plan.
- (3) For the purpose of application of the relevant provisions of the Bankruptcy Act in cases where, with regard to the reorganization company against which 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 251, paragraph (1) or an order of commencement of bankruptcy proceedings is made under the provision of Article 252, paragraph (2), it shall be deemed that a petition for commencement of bankruptcy proceedings is filed at the time when the petition for commencement of bankruptcy proceedings is filed in the bankruptcy proceedings that have ceased to be effective as a result of an order of confirmation of the reorganization plan being made.
- (4) 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 preceding paragraph is made, 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 reorganization plan being made 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 148, paragraph (1), item (iii) 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, the phrase "a disposition of national tax delinquency may not be enforced for a certain part of the one-year period due to the issuance of a comprehensive prohibition order during said period" in Article 148, paragraph (1), item (iii) of said Act shall be deemed to be replaced with "a disposition of national tax delinquency may not be enforced for a certain part of the one-year period due to the issuance of a comprehensive prohibition order or a comprehensive prohibition order prescribed in Article 25, paragraph (2) of the Corporate Reorganization Act during said period, or where a disposition of national tax delinquency may not be enforced for a certain part of the one-year period under Article 50, paragraph (2) of said Act."

- (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 62, paragraph (2) and Article 128, paragraph (1) and paragraph (4) in cases where reorganization proceedings are not commenced; the same shall apply in Article 257) shall be claims on the estate. The same shall apply where bankruptcy proceedings commenced against a stock company are continued as a result of the occurrence of any of the grounds listed in Article 234, item (i) to item (iii) or an order of discontinuance of reorganization proceedings under the provisions of Article 236 or Article 237, paragraph (1) becoming final and binding.

(Order not to require Filing of Proofs of Bankruptcy Claims)

- Article 255 (1) Where the court (meaning a judge or panel of judges in charge of the bankruptcy case; the same shall apply in the following paragraph) 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 reorganization claim, etc. as well as the amount of the voting right as filed in the reorganization proceedings that have been closed, the number of denied/disputed reorganization claims, etc. prescribed in the main clause of Article 151, paragraph (1), whether or not any right will be modified by a reorganization 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 the proofs of which have been filed as reorganization claims, etc. in said reorganization proceedings (excluding claims for tax, etc. and claims for fine, etc. arising prior to the commencement of reorganization proceedings prescribed in Article 142, item (ii); 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 given under the provision of Article 32, paragraph (1) of the Bankruptcy Act, that bankruptcy creditors who hold bankruptcy claims the proofs of which have been filed as reorganization claims, etc. in the reorganization 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 the proofs of which have been filed as reorganization claims, etc. in the reorganization proceedings set forth in said paragraph, it shall be deemed that the persons who have filed proofs of such reorganization claims, etc. (or persons who have received a change of the name of holder of filed claim with regard to such claims filed in said reorganization 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, paragraph (1), item (iv) of the Bankruptcy Act) on the first day of the period for filing proofs of claims prescribed in Article 111, paragraph (1) of said Act.
- (4) In the case referred to in the preceding paragraph, for each of the categories of filing proofs of matters listed in the following items regarding such claims that have been filed as a reorganization claim, etc., it shall be deemed that a person set forth in the preceding paragraph has filed the matters specified in the respective items as filing proofs of bankruptcy claim:
- (i) With regard to any of the claims listed in Article 136, paragraph (1), item (iii)(b) to (d), filing proofs of the amount of the voting right for the reorganization claim, etc. set forth in Article 138, paragraph (1), item (iii) or paragraph (2), item (iii), and the cause of the reorganization claim, etc. set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i): Filing proofs of the amount and cause of the bankruptcy claim set forth in Article 111, paragraph (1), item (i) of the Bankruptcy Act;
 - (ii) With regard to such claim that has been filed as a reorganization claim, etc., except for the claim set forth in the preceding item, filing proofs of the amount of the reorganization claim, etc., as an element of the content of the reorganization claim, etc., set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i), and the cause of the reorganization claim, etc. set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i): Filing proofs of the amount and cause of the bankruptcy claim set forth in Article 111, paragraph (1), item (i);
 - (iii) With regard to any of the claims listed in Article 136, paragraph (1), item (i), item (ii) or item (iii)(a), filing proofs of the amount of the reorganization claim, etc., as an element of the content of the reorganization claim, etc., set forth in Article 138, paragraph (1), item (i) or paragraph (2), item (i), and the

- amount of the voting right for the reorganization claim, etc. set forth in Article 138, paragraph (1), item (iii) or paragraph (2), item (iii): Filing proofs of the statement that the claim in question is a subordinate bankruptcy claim set forth in Article 111, paragraph (1), item (iii) of the Bankruptcy Act for its part corresponding to the amount obtained by deducting the amount of the voting right for the filed reorganization claim, etc. from the amount of the filed reorganization claim, etc., which is an element of the content thereof;
- (iv) With regard to any of the claims listed in Article 136, paragraph (2), item (i), to item (iii), filing proofs of the content of the reorganization claim, etc. listed in Article 138, paragraph (1), item (i) or paragraph (2), item (i): Filing proofs of the statement that the claim is a subordinated bankruptcy claim prescribed in Article 111, paragraph (1), item (iii) of the Bankruptcy Act;
 - (v) With regard to a claim that has been filed with a statement that the claim is a claim with general priority, filing proofs of such statement set forth in Article 138, paragraph (1), item (ii): Filing proofs of the statement that the claim is a preferred bankruptcy claim prescribed in Article 111, paragraph (1), item (ii) of the Bankruptcy Act;
 - (vi) With regard to a claim that has been filed with a statement that the claim is a consensually-subordinated reorganization claim, filing proofs of such statement set forth in Article 138, paragraph (1), item (ii): Filing proofs of the statement that the claim is a consensually-subordinated bankruptcy claim prescribed in Article 111, paragraph (1), item (iii) of the Bankruptcy Act; or
 - (vii) With regard to a reorganization claim secured by any security interest (limited to a special statutory lien, pledge, mortgage, and right of retention under the provisions of the Commercial Code or the Companies Act; the same shall apply in the following paragraph) that exists on the reorganization company's property as of the time of commencement of reorganization proceedings, filing proofs of the amount of the voting right set forth in Article 138, paragraph (1), item (iii): Filing proofs of the amount of the claim for which payment is not expected to be received by exercising the right of separate satisfaction set forth in Article 111, paragraph (2), item (ii) of the Bankruptcy Act.
- (5) In the cases referred to in the preceding two paragraphs, the amount of the bankruptcy claim, which is secured by any security interest that exists on the reorganization company's property as of the time of commencement of reorganization proceedings and which shall be deemed to have been filed both as a reorganization claim and a secured reorganization claim, shall be the sum of the amount of the reorganization claim and the amount of the secured reorganization claim each of which shall be deemed to have been filed as the

amount of the bankruptcy claim pursuant to the provision of the preceding paragraph.

- (6) Where the person who filed a proof of a claim as a reorganization claim, etc. has filed a proof of bankruptcy claim within the period for filing proofs of claims prescribed in Article 111, paragraph (1) of the Bankruptcy Act, the provisions of the preceding three paragraphs shall not apply to any claim filed as a reorganization claim, etc. set forth in paragraph (3), which is held by such person who filed a proof of a claim as a reorganization claim, etc.

(How to Treat an Action, etc. to Oppose Order upholding Request for Avoidance)

Article 256 (1) Where any of the grounds listed in Article 234, item (iii) or item (iv) occur, if an order of commencement of bankruptcy proceedings prescribed in the items of Article 254, paragraph (1) or in paragraph (3) of said Article is made, a bankruptcy trustee may take over an action set forth in Article 97, paragraph (1) that is discontinued pursuant to the provision of Article 52, 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 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 97, paragraph (1) discontinued pursuant to the provision of Article 52, paragraph (4) is taken over under the provision of paragraph (1), the action shall be closed.

(4) An action set forth in Article 97, paragraph (1), which is discontinued pursuant to the provision of Article 52, paragraph (4) and pertains to a reorganization case involving the stock company against which bankruptcy proceedings have not yet been commenced, shall be closed if an order of commencement of bankruptcy proceedings prescribed in the items of Article 254, paragraph (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 253, paragraph (1), item (i) or item (ii) 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 254, paragraph (2), such part of the period shall be excluded).

(5) The proceedings for a petition for assessment of reorganization claim, etc. prescribed in the main clause of Article 151, paragraph (1) and the proceedings for a petition for valuation prescribed in Article 153, paragraph (1), both of which shall continue to be pending pursuant to the provision of Article 163, paragraph(1), shall be closed when an order of commencement of bankruptcy

proceedings prescribed in the items of Article 254, paragraph (1) or in paragraph (3) of said Article is made. In this case, the provision of Article 163, paragraph (3) shall not apply.

- (6) The provision of paragraph (4) shall apply mutatis mutandis to an action to oppose assessment of reorganization claim, etc. prescribed in Article 152, paragraph (1), which is discontinued pursuant to the provision of Article 163, paragraph (4) and pertains to a reorganization case involving the stock company against which bankruptcy proceedings have not yet been commenced.

Section 4 Continuation of Rehabilitation Proceedings upon Close of Reorganization Proceedings

Article 257 Where a rehabilitation case is pending against a stock company, when the rehabilitation proceedings are continued as a result of the occurrence of any of the grounds listed in Article 234, item (i) to item (iii) or an order of discontinuance of reorganization proceedings under the provisions of Article 236 or Article 237, paragraph (1) becoming final and binding, common benefits claims in the reorganization proceedings shall be common benefit claims in the rehabilitation proceedings.

Chapter XII Miscellaneous Provisions

(Commission of Registration, etc. on Reorganization Company)

Article 258 (1) Where an order of commencement of reorganization proceedings is made, a court clerk, by his/her own authority, without delay, shall commission the registry office having jurisdiction over the location of the head office of the reorganization company (if the company has its head office in a foreign state, its business office in Japan; the same shall apply in paragraph (4), and paragraph (1) of the following Article) to make a registration of the commencement of reorganization proceedings.

- (2) When making the registration set forth in the preceding paragraph, the name and address of each trustee, if permission set forth in the proviso to Article 69, paragraph (1) is granted for independent performance of duties by each trustee, a statement to that effect, and if permission set forth in the proviso of said paragraph is granted for division of duties among trustees, a statement to that effect and the contents of the duties assigned to each trustee shall also be registered.
- (3) The provision of paragraph (1) shall apply mutatis mutandis where there is a change to any of the matters prescribed in the preceding paragraph.
- (4) When a provisional administration order or supervision order is issued against the company awaiting commencement, a court clerk, by his/her own

authority, without delay, shall commission the registry office having jurisdiction over the head office of the company awaiting commencement to make a registration of such order.

- (5) 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 provisional administration order prescribed in the preceding paragraph: The names and addresses of the provisional administrators, if permission set forth in the proviso to Article 69, paragraph (1), as applied mutatis mutandis pursuant to Article 34, paragraph (1), is granted for independent performance of duties by each provisional administrator, a statement to that effect, and if permission set forth in the proviso of Article 69, paragraph (1), as applied mutatis mutandis pursuant to Article 34, paragraph (1), is granted for division of duties among provisional administrators, a statement to that effect and the contents of the duties assigned to each provisional administrator; and
 - (ii) Registration of a supervision order prescribed in the preceding paragraph: The names and addresses of supervisors, and the acts designated pursuant to the provision of Article 35, paragraph (2).
- (6) The provision of paragraph (4) shall apply mutatis mutandis where a judicial decision prescribed in said paragraph is changed or revoked or there is a change to any of the matters prescribed in the preceding paragraph.
- (7) The provision of paragraph (1) shall apply mutatis mutandis where an order of confirmation of the reorganization plan is made or where any of the grounds listed in Article 234, item (ii) to item (v) occur.
- (8) A registrar, when making a registration of the commencement of reorganization 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 reorganization company, if there is any such registration.
- (9) A registrar, when making a registration of the revocation of an order of commencement of reorganization proceedings pursuant to the provision of paragraph (7), by his/her own authority, shall restore a registration cancelled under the provision of the preceding paragraph, if there is any such registration.
- (10) The provision of paragraph (8) shall apply mutatis mutandis to a registration of the commencement of bankruptcy proceedings or commencement of rehabilitation proceedings in the case of making a registration of the confirmation of the reorganization plan, and the provision of the preceding paragraph shall apply mutatis mutandis to a registration cancelled pursuant to the provision of paragraph (8), as applied mutatis mutandis pursuant to this

paragraph, in the case where an order to revoke the order of confirmation of the reorganization plan becomes final and binding.

- Article 259 (1) When the organs of the reorganization company have restored their powers pursuant to the provision of the first sentence of Article 72, paragraph (4), a court clerk, by his/her own authority, without delay, shall commission the registry office having jurisdiction over the location of the reorganization company's head office to make a registration to that effect.
- (2) The provision of the preceding paragraph shall apply mutatis mutandis where a provision of a reorganization plan or an order of the court under the provision of the first sentence of Article 72, paragraph (4) is revoked.

(Commission of Registration, etc. on Registered Rights)

- Article 260 (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 28, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 44, paragraph (2)) is issued with respect to any registered right that belongs to the company awaiting commencement; or
 - (ii) Where a temporary restraining order under the provision of Article 39-2, paragraph (1) or Article 40, paragraph (1) (including cases where these provisions are applied mutatis mutandis pursuant to Article 44, paragraph (2)) or Article 99, paragraph (1) 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 reorganization proceedings is made, a court clerk, when he/she becomes aware that there is a registration under the provision of Article 938, paragraph (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 reorganization company shall commission cancellation of the registration by his/her own authority without delay.
- (4) Where a registration is cancelled under the provision of the preceding paragraph, when an order to revoke the order of commencement of reorganization 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.

(Commission of Registration, etc. on Implementation, etc. of Reorganization

Plan)

- Article 261 (1) The provision of Article 258, paragraph (1) shall apply mutatis mutandis where any matter to be registered has arisen from the implementation of the reorganization plan or the provisions of this Act, before the close of reorganization proceedings, with regard to the reorganization company or the company to be incorporated pursuant to the provisions of the reorganization plan. In this case, when any matter to be registered has arisen with regard to the matters listed in the items of Article 930, paragraph (2) of the Companies Act, the term "the head office" in Article 258, paragraph (1) shall be deemed to be replaced with "the head office and the branch office(s)."
- (2) Where the reorganization company effects a merger with another company, when a court clerk commissions the following registrations, he/she shall also commission a registration of the dissolution of such other company that is the partner of the merger:
- (i) A registration of change due to an absorption-type merger, in relation to the reorganization company that survives the absorption-type merger; or
 - (ii) A registration of incorporation due to a consolidation-type merger, in relation to the company that is incorporated through the consolidation-type merger.
- (3) The provision of paragraph (1) shall not apply to a registration of dissolution of the reorganization company in cases where another company effects an absorption-type merger with the reorganization company and survives the absorption-type merger.
- (4) Where the reorganization company effects an absorption-type company split with another company, when a court clerk commissions a registration of change due to an absorption-type split in relation to the reorganization company, he/she shall also commission a registration of change due to an absorption-type company split in relation to such other company.
- (5) Where the reorganization company effects an incorporation-type company split jointly with another company, when a court clerk commissions a registration of incorporation due to an incorporation-type company split, he/she shall also commission a registration of change due to an incorporation-type company split in relation to such other company.
- (6) The provision of paragraph (1) of the preceding Article shall apply mutatis mutandis where acquisition, loss or modification of any registered right occurs prior to the close of reorganization proceedings as a result of the implementation of the reorganization plan; provided, however, that this shall not apply to a registration of any right if the right holder is a person other than the reorganization company, reorganization creditors, etc., shareholders or the company to be incorporated pursuant to the provisions of the reorganization plan.

(Registration of Avoidance)

Article 262 (1) Where any act constituting the cause of registration is avoided, a trustee shall apply for a registration of avoidance. The same shall apply where a registration is avoided.

- (2) A registrar, when making a registration of 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 the cause of which is the avoided act, or the avoided registration; and
 - (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 which is avoided was conducted until a registration of avoidance is made, a registration of a third party's right (limited to such registration the effect of which may be asserted in relation to reorganization proceedings; the same shall apply in paragraph (5)), the subject matter of which is the right pertaining to the registration set forth in item (ii) of said paragraph, is made, a registrar, notwithstanding the provision of said paragraph, 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 reorganization company.
- (4) Where a registration of avoidance set forth in paragraph (1) is made, if, with regard to the reorganization company, an order of confirmation of the reorganization 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), item (ii) and item (iii) by his/her own authority. In this case, if, after any act which is avoided was conducted until a registration of avoidance is made, a registration of 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, is made, 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 reorganization company, 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 reorganization company, any of the grounds listed in Article 234,

item (ii) or item (iii) occur or an order of discontinuance of reorganization proceedings under the provisions of Article 236 or Article 237, paragraph (1) becomes final and binding, a court clerk, by his/her own authority, without delay, shall commission cancellation of said registration of avoidance.

(Documents, etc. to be attached to Written Commission, etc.)

Article 263 The necessary information to be provided along with the commission information or application information regarding registrations under the provisions of this Act or the documents and other objects that should be attached to written commissions or written applications shall be prescribed by Cabinet Order.

(Special Provisions for Registration and License Tax)

- Article 264 (1) Registration and license tax shall not be imposed on the registrations under the provisions of Article 258 to Article 260 and Article 262.
- (2) Where a reorganization plan provides that the reorganization company will issue shares (excluding cases that fall under the following paragraph, paragraph (5) and paragraph (6)), notwithstanding the provision of Article 9 of the Registration and License Tax Act (Act No. 35 of 1967), the tax rate for registration and license tax to be applied to a registration of the increase of the stated capital shall be 1/1000 (or 3.5/1000 for the part of the amount of such increase in the stated capital, which remains after excluding the amount equivalent to the part of the amount which is derived by issuing shares to reorganization creditors, etc. or shareholders without requiring them to make any further payment or provide any further performance).
- (3) Where a reorganization plan provides that the reorganization company will effect a share exchange, notwithstanding the provision of Article 9 of the Registration and License Tax Act, the tax rate for registration and license tax to be applied to a registration of the increase of the stated capital through the share exchange shall be 1/1000 (or 3.5/1000 for the part of the amount of such increase in the stated capital through the share exchange, which remains after excluding the amount equivalent to the part of the amount which is derived by delivering shares or equity interests to reorganization creditors, etc. or shareholders).
- (4) Where a reorganization plan provides that the reorganization company will effect a share transfer, notwithstanding the provision of Article 9 of the Registration and License Tax Act, the tax rate for registration and license tax to be applied to a registration of the incorporation of a stock company through the share transfer shall be 1/1000 (or 3.5/1000 for the part of the amount of the stated capital, which remains after excluding the amount equivalent to the part of the amount which is derived by delivering shares to reorganization

creditors, etc. or shareholders).

- (5) Where a reorganization plan provides that the reorganization company will effect a company split, notwithstanding the provision of Article 9 of the Registration and License Tax Act, the tax rate for registration and license tax to be applied to a registration of the incorporation of a stock company or limited liability company or of the increase of the stated capital through the incorporation-type company split or absorption-type company split shall be 1/1000 (or 3.5/1000 for the part of the amount of the stated capital or the amount of such increase in the stated capital through the absorption-type company split, which is equivalent to the part prescribed in Appended Table 1 of said Act, item (xxiv)-(1)(g) or (h) in the tax rate column).
- (6) Where a reorganization plan provides that the reorganization company will effect a consolidation-type merger or absorption-type merger or entity conversion, notwithstanding the provision of Article 9 of the Registration and License Tax Act, the tax rate for registration and license tax to be applied to a registration of the incorporation of a stock company or limited liability company through the consolidation-type merger or entity conversion or of the increase of the stated capital through the absorption-type merger shall be 1/1000 (or 3.5/1000 for the part of the amount of the stated capital or the amount of such increase in the stated capital through the absorption-type merger, which is equivalent to the part prescribed in Appended Table 1 of said Act, item (xxiv)-(1)(e) or (f) in the tax rate column) (excluding the amount equivalent to the part which is derived by issuing shares or equity interests to reorganization creditors, etc.)
- (7) Where a reorganization plan provides that the new company prescribed in Article 225, paragraph (1) will be incorporated, notwithstanding the provision of Article 9 of the Registration and License Tax Act, the tax rate for registration and license tax to be applied to a registration of the incorporation of the new company shall be 1/1000 (or 3.5/1000 for the part of the amount of the stated capital which remains after excluding the amount equivalent to the part of the amount which is derived by issuing shares to reorganization creditors, etc. or shareholders without requiring them to make any further payment or provide any further performance).
- (8) Where a reorganization plan provides that the stock company incorporated based on the provisions of the reorganization plan will receive the transfer or establishment of any right relating to real property or a vessel from the reorganization company, notwithstanding the provisions of Article 9 of the Registration and License Tax Act and Article 72 of the Act of Special Measures Concerning Taxation (Act No. 26 of 1957), the tax rate for registration and license tax to be applied to a registration of transfer or establishment of such right shall be 1.5/1000 in the case of a registration of a right relating to real

property (or 4/1000 in the case of any of the registrations listed in Appended Table 1 of the Registration and License Tax Act, item (i)-(5) to (7)), or 4/1000 in the case of a registration of a right relating to a vessel; provided, however, that this shall not apply if the amount of registration and license tax calculated by applying these tax rates to these respective registrations exceeds the amount of registration and license tax calculated by applying said provisions.

(Applications Mutatis Mutandis)

Article 265 The provisions of Article 260, Article 261, paragraph (6), Article 262, Article 263, and paragraph (1) of the preceding Article shall apply mutatis mutandis to registered rights.

Chapter XIII Penal Provisions

(Crime of Fraudulent Reorganization)

Article 266 (1) A person who, before or after the commencement of reorganization proceedings, for the purpose of harming creditors, security interest holders (meaning holders of a special statutory lien, pledge, mortgage, or right of retention under the provisions of the Commercial Code or the Companies Act; hereinafter the same shall apply in this Chapter) or shareholders, 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 reorganization proceedings against the stock company 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 reorganization proceedings becomes final and binding:

(i) An act of concealing or damaging the stock company's property;

(ii) An act of faking the transfer of the stock company's property or assumption of debts;

(iii) An act of altering the existing status of the stock company's property, thereby reducing its value; or

(iv) An act of disposing of the stock company's property in a manner disadvantageous to creditors, security interest holders or shareholders, or an act, committed by the stock company, of assuming debts disadvantageous to creditors, security interest holders or shareholders.

(2) In addition to what is prescribed in the preceding paragraph, said paragraph shall also apply to a person who, knowing that an order of commencement of reorganization proceedings is made or a provisional administration order is issued against a stock company, for the purpose of harming creditors, security interest holders or shareholders, has acquired the stock company's property or

has had a third party acquire it, without consent of a trustee or any other justifiable grounds.

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

Article 267 Where a representative person, agent, employee or other worker of a stock company, before or after the commencement of reorganization proceedings, in connection with the stock company's business, with regard to the stock company's debt to a specific creditor or security interest holder, for the purpose of harming other creditors or security interest holder, has conducted an act concerning the provision of security or extinguishment of debt that is not included in the scope of the stock company's obligation in terms of the act itself or the method or time of performance of the act, and an order of commencement of reorganization proceedings has become final and binding, such person 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.

(Crime of Special Breach of Trust by Trustee, etc.)

Article 268 (1) Where a trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor or examiner, for the purpose of promoting his/her own interest or the interest of a third party, or inflicting damage on creditors, security interest holders or shareholders, has committed an act in breach of his/her duty and caused financial loss to creditors, security interest holders or shareholders, 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 trustee, provisional administrator, supervisor or examiner (hereinafter referred to as a "trustee, etc." in this paragraph) is a juridical person, the provision of the preceding paragraph shall apply to its officer or employee who performs the duties of a trustee, etc.

(Crime of Refusal, etc. of Report and Inspection)

Article 269 (1) Where any of the persons prescribed in Article 77, paragraph (1) or Article 209, paragraph (3) has refused to make a report under the provision of Article 77, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38 or Article 126) or Article 209, paragraph (3) or made a false report, such person 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 any of the persons

prescribed in Article 77, paragraph (1) or Article 209, paragraph (3), in connection with the business of a person prescribed in Article 77, paragraph (1) or Article 209, paragraph (3), has refused to make a report under the provision of Article 77, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38 or Article 126) or Article 209, paragraph (3) or made a false report.

- (3) The provision of paragraph (1) shall also apply where any of the persons prescribed in Article 77, paragraph (1) (excluding persons who held those posts prescribed in said paragraph) or Article 209, paragraph (3) (excluding persons who held those posts prescribed in said paragraph), in connection with the reorganization company's business, has refused an inspection under the provision of Article 77, paragraph (1) (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38 or Article 126) or Article 209, paragraph (3).
- (4) The provision of paragraph (1) shall also apply where a representative person, etc. of the reorganization company's subsidiary company prescribed in Article 77, paragraph (2), in connection with the business of the reorganization company's subsidiary company, has refused to make a report or refused an inspection under the provision of said paragraph (including cases where applied mutatis mutandis pursuant to Article 34, paragraph (1), Article 38 or Article 126) or made a false report.

(Crime of Spoliation, etc. of Objects concerning the Status of Business and Property)

Article 270 A person who, before or after the commencement of reorganization proceedings, for the purpose of harming creditors, security interest holders or shareholders, has spoliated, forged or altered books, documents or any other objects concerning the status of a stock company'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 reorganization proceedings against the stock company becomes final and binding.

(Crime of Obstruction of Duties against Trustee, etc.)

Article 271 A person who, by the use of fraudulent means or force, has obstructed the performance of duties of a trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor or examiner 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.

(Crime of Acceptance of Bribe)

- Article 272 (1) Where a trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor, examiner or legal advisor, 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 trustee, trustee representative, provisional administrator, provisional administrator representative, supervisor, examiner or legal advisor 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 trustee, provisional administrator, supervisor or examiner (hereinafter referred to as a "trustee, etc." in this Article) is a juridical person, if its officer or employee who performs the duties of a trustee, etc., in connection with the duties of a trustee, 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 trustee, etc. is a juridical person, and its officer or official, in connection with the duties of a trustee, etc., has caused the trustee, etc. to accept a bribe, or solicit or promise to accept a bribe.
- (4) In the case referred to in the preceding paragraph, where the officer or employee 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 reorganization creditor, etc., shareholder or creditors'/shareholders' representative or an agent, officer or employee thereof, in connection with the exercise of a voting right on the date of a stakeholders meeting or exercise of a voting right by voting by document, etc. prescribed in Article 189, paragraph (2), item (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 trustee, etc. who is a juridical person shall be confiscated. When the whole or part of the bribe cannot be confiscated, an equivalent value thereof shall be collected.

(Crime of Offer of Bribe)

- Article 273 (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.

(Crimes committed outside Japan)

Article 274 (1) The crimes set forth in Article 266, Article 267, Article 270, Article 271 and the preceding Article 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 268 and Article 272 (excluding paragraph (5)) shall be governed by the provision of Article 4 of the Penal Code.

(3) The crime set forth in Article 272, paragraph (5) shall also apply to a person who has committed the crime set forth in said paragraph outside Japan.

(Dual Criminal Liability Provision)

Article 275 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 266, Article 267, Article 269 (excluding paragraph(1)), Article 270, Article 271, or Article 273, 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.

(Non-Criminal Fine)

Article 276 Where the reorganization company or a person who owes a debt or provides security for the purpose of the reorganization of the reorganization company's business has violated an order issued by the court under the provision of Article 209, paragraph (4), the company or the person shall be punished by a non-criminal fine of not more than one million yen.

Supplementary Provisions

(Effective Date)

Article 1 This Act shall come into effect as from the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

(Transitional Measures concerning Reorganization Cases)

Article 2 With regard to reorganization cases of stock companies based on petitions for commencement of reorganization proceedings filed before this Act

comes into effect, the provisions then in force shall remain applicable.

(Transitional Measures concerning Application of Penal Provisions)

Article 3 With regard to the application of penal provisions to acts committed before this Act comes into effect, and acts committed after this Act comes into effect in the case where the provisions then in force shall remain applicable pursuant to the provision of the preceding Article, the provisions then in force shall remain applicable.