

Commercial Act (Republic of Korea)

By Ministry of Legislation

INTRODUCTION

Details of Enactment and Amendment

- Enactment: The Commercial Act is a law that regulates the existence and the relationships of the enterprises that have the purpose of profit-making, is composed of five parts, such as General Provisions, Commercial Activities, Companies, Insurance, and Maritime Commerce, was enacted on January 20, 1962 as Act No. 1000, and entered into force on January 1, 1963.
- Amendment: This Act has arrived at its present form as the result of being amended eleven times, and the latest amendment was on December 29, 2001.

Main Contents

- Companies are grouped into four categories: *hapmyong-hwesa* (partnership companies), *hapja-hwesa* (limited partnership companies), *joosik-hwesa* (stock companies) and *yuhan-hwesa* (limited liability companies).
- A *hapmyong-hwesa* (partnership company) shall be incorporated jointly by at least two members, and no member of a *hapmyong-hwesa* may, without the consent of the other members, transfer his shares to other persons, effect any transaction which falls within the class of business carried by the company, or become a member with unlimited liability at, or a director of, another company whose business purpose is the same kind of business as the company. If no managing member is designated, each member shall represent the company, and if the assets of the company are insufficient to fully satisfy all its obligations, each member shall be jointly and severally liable to discharge the obligations. With the consent of all of the members the company may be transformed into a *hapja-hwesa* (limited partnership company).
- A *hapja-hwesa* (limited partnership company) shall be composed of members with limited liability and members with unlimited liability. Members with limited liability may not provide personal services or credits as a form of contributions, and every member with unlimited liability shall have the responsibility and duty to manage the affairs of the company unless otherwise provided in the articles of incorporation. A member with limited liability may effect a transaction which falls within the class of business carried on by the company without the consent of the other members and become a member with unlimited liability, or a director, of another company of which the business purpose is the same kind of business as the company. Also, he may transfer shares to other persons with the consent of all of the members with unlimited liability and be transformed into a *hapmyong-hwesa* (partnership company) with the consent of all of the members the company, .

● A *joosik-hwesa* (stock company) shall be incorporated jointly by at least one person, and the total number of shares authorized to be issued, the par value per share, and the total number of shares to be issued at the time of incorporation shall be determined. The number of shares to be issued at the time of incorporation shall be no less than one fourth of the total number of shares authorized to be issued by the company, and the capital shall be no less than fifty million won. The par value per share shall be at least one hundred won, and shares may be transferred. A *joosik-hwesa* shall have a general shareholders' meeting, directors and the board of directors, auditors and an audit committee. The general shareholders' meeting shall be the highest organ, and the minority shareholders (shareholders who hold no less than three hundredths of the total issued and outstanding shares) may propose certain matters as issues to be resolved at the general shareholders' meeting. Directors and the board of directors shall manage the affairs of the company.

● A *yuhan-hwesa* (limited liability company) shall be incorporated jointly by at least one member, the total number of members of which shall not exceed fifty, total amount of capital of which shall be at least ten million won, and the amount of each unit of contribution to which shall be no less than five thousand won and shall be equal. The liability of a member shall be limited to the amount of his contribution to the company. A member may transfer his shares pursuant to the resolution of a general members' meeting, and the company shall have one or more directors who shall represent the company.

** The Commercial Act originally consists of 5 parts, 998 articles. Due to limited space, we are forced to print only part 3 "companies", which contains the key points of the Korean corporate law. You can download the context in full at the Korea Legislation Research Institute homepage. (<http://www.klri.re.kr>)

Jan. 20, 1962 Act No. 1000

Amended by Dec. 12, 1962 Act No. 1212

Apr. 10, 1984 Act No. 3724

May 31, 1991 Act No. 4372

Dec. 31, 1991 Act No. 4470

Dec. 22, 1994 Act No. 4796

Dec. 29, 1995 Act No. 5053

Dec. 28, 1998 Act No. 5591

Feb. 5, 1999 Act No. 5809

Dec. 31, 1999 Act No. 6086

Jul. 24, 2001 Act No. 6488

Dec. 29, 2001 Act No. 6545

PART III COMPANIES

CHAPTER I COMMON PROVISIONS

■ Article 169 (Definition)

The term "company" as used in this Act means an association incorporated for the purpose of engaging in commercial activities and/or any other profitmaking activities.

■ Article 170 (Kinds of Companies)

Companies are categorized into four kinds, namely, partnership companies, limited partnership companies, stock companies and limited liability companies.

■ Article 171 (Company as Juristic Person and Domicile of Company)

(1) A company shall be a juristic person.

(2) The domicile of a company shall be at the place of its principal office.

■ Article 172 (Incorporation of Company)

A company shall come into existence upon the registration of its incorporation at the place of its principal office.

■ Article 173 (Restriction on Legal Capacity)

A company shall not become a member with unlimited liability of another company.

■ Article 174 (Merger of Companies)

(1) A merger of companies shall be permissible.

(2) In case where one side of the constituent companies of a merger is a stock company or a limited liability company or both sides of them are stock companies or limited liability companies, the surviving company or the newly incorporated company in consequence of the merger shall be a stock company or a limited liability company.

(3) A company after its dissolution may be involved in a merger only where it is merged into an existing company and the latter company survives after the merger.

■ Article 175 (~~Idem~~–Incorporators)

(1) In case where a new company is to be incorporated in consequence of a merger, the execution of its articles of incorporation and the performance of any other activities relating to its incorporation shall be effected jointly by incorporators appointed by each of the constituent companies.

(2) Articles 230, 434 and 585 shall apply *mutatis mutandis* to the appointment under paragraph (1).

■ Article 176 (Dissolution Order against Company)

(1) The court may, upon the application by an interested person or by the public prosecutor or *ex officio*, order that a company be dissolved, in any of the following cases:

1. Where the company was incorporated for an illegal purpose;
2. Where a company, without justifiable reasons, failed to commence its business within one year after its establishment or discontinued its business for a period of at least one year; or
3. In case where a director or a member managing the affairs of the company violated acts or subordinate statutes or the articles of incorporation of the company, as a result of which it is deemed impermissible for the company to continue its existence.

(2) In case where an application mentioned in paragraph (1) has been filed, the court may, at the request of an interested person or of the public prosecutor or *ex officio*, appoint an administrator or take any other necessary measures for the preservation of the company' properties, even before issuing the dissolution order.

(3) In case where an application mentioned in paragraph (1) has been filed by an interested person, the court may, upon the request of the company, order the applicant to furnish adequate security.

(4) In order to make the request mentioned in paragraph (3), the company shall meet the minimal showing with respect to the fact that the application was filed in bad faith.

■ Article 177 (Starting Point of Reckoning of Registration Period)

If any matter to be registered in accordance with this Part requires permission or authorization of government authorities, the period within which the registration should be made shall commence to run from the date of the arrival of the document of such permission or authorization.

CHAPTER II PARTNERSHIP COMPANY

SECTION 1 Incorporation

■ Article 178 (Execution of Articles of Incorporation)

In order to incorporate a partnership company, articles of incorporation shall be executed jointly by at least two members of the company.

■ **Article 179 (Absolute Particulars to Be Entered in Articles of Incorporation)**

The articles of incorporation of a partnership company shall contain the following items and all members shall write their names and affix their seals or shall sign thereon:

1. Purpose;
2. Trade name;
3. Name, resident registration number and domicile of each member;
4. Subject-matter, value, or the basis for valuation of the contribution to be made by each member;
5. Place of the principal office; and
6. Date of execution of the articles of incorporation.

■ **Article 180 (Registration of Incorporation)**

The registration of incorporation of a partnership company shall contain the following particulars:

1. Matters set forth in subparagraphs 1 through 3 and 5 of Article 179 and the place of a branch office, if any: *Provided*, That if a member representing the company was designated, the domicile of other members shall be excluded;
2. Subject-matter of the contribution of each member and, in case of a contribution in kind, its value and the part already effected;
3. Period of duration or the reasons for dissolution, if such period or such reasons were determined;
4. Name of the member representing the company, if such member was designated; and
5. A provision, if any, to the effect that the company are represented jointly by two or more members.

■ **Article 181 (Registration of Establishment of Branch Office)**

(1) If a branch office is established simultaneously with the incorporation of the company, matters set forth in Article 180 (excluding the places of other branch offices) shall be registered at the place of such branch office within two weeks after the registration of incorporation.

(2) If a branch office is established after the incorporation of the company, the place and establishment date of such branch office shall be registered within two weeks at the place of the principal office, and the matters set forth in Article 180 (excluding the places of other branch offices) shall be registered within three weeks at the place of such branch office.

(3) Deleted.

■ Article 182 (Registration of Transfer of Principal Office and Branch Office)

(1) If a company transfers its principal office, the new place and the transfer date shall be registered within two weeks at the previous place and the matters set forth in Article 180 (excluding the places of other branch offices) shall be registered within two weeks at the new place.

(2) If a company transfers its branch office, the new place and the transfer date shall be registered within two weeks at the place of the principal office and at the previous place of such branch office and the matters set forth in Article 180 (excluding the places of other branch offices) shall be registered within two weeks at the new place.

(3) Deleted.

■ Article 183 (Registration of Alteration)

If an alteration has occurred in any of the matters mentioned in Article 180, such alteration shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office.

■ Article 183-2 (Registration of Temporary Disposition, etc. on Suspension of Business Management)

Where a temporary disposition to suspend the employees' business management or to appoint an agent for business management is made, or the temporary disposition is altered or revoked, the registration thereof shall be made at the registry office in a place where the head and branch offices are located.

■ Article 184 (Action for Nullification or Revocation of Incorporation)

(1) The nullity of the incorporation of a company may be asserted only by a member of the company and the revocation of the incorporation of a company may be asserted only by a person who has the right to revoke the incorporation, in both cases only by means of an action to be filed within two years after the date of the incorporation.

(2) Article 140 of the Civil Act shall apply *mutatis mutandis* to the revocation of the incorporation mentioned in paragraph (1).

■ Article 185 (Action for Revocation of Incorporation by Creditors)

If a member has incorporated a company with the knowledge that he would thereby prejudice his creditors, the creditors may demand the revocation of the incorporation of the company by means of an action filed against the member and the company.

■ **Article 186 (Exclusive Jurisdiction)**

The actions mentioned in Articles 184 and 185 shall be subject to the exclusive jurisdiction of the district court governing the place of the principal office of the company.

■ **Article 187 (Public Notice of Filing of Action)**

If an action has been filed for nullification or revocation of the incorporation of a company, the company concerned shall give public notice thereof without delay.

■ **Article 188 (Combined Hearing of Actions)**

If two or more actions have been filed for nullification or revocation of the incorporation of a company, the court shall hear the actions jointly.

■ **Article 189 (Correction of Defects and Dismissal of Action)**

The court may dismiss an action for nullification or revocation of the incorporation of a company, if the defects which were the cause for such action have been remedied in the course of the hearing and the court considers it improper to nullify or revoke the incorporation of the company in light of the present condition of the company and all other circumstances.

■ **Article 190 (Effect of Judgment)**

A judgment affirming the nullification or revocation of the incorporation of a company shall be effective against any third person: *Provided*, That it shall not affect the rights and duties which have arisen between any member of the company and any third person before the judgment becomes final and conclusive.

■ **Article 191 (Liability of Plaintiff who Lost)**

If the plaintiff in an action for nullification or revocation of the incorporation of a company has lost in such action and it is found that he willfully or by gross negligence filed such action, he shall be jointly and severally liable for damages incurred by the company.

■ **Article 192 (Registration of Nullification or Revocation of Incorporation)**

In case where a judgment affirming the nullification or revocation of the incorporation of a company has become final and conclusive, such fact shall be registered at the place of the principal office and branch offices of the company.

■ **Article 193 (Effect of Judgment Affirming Nullification or Revocation of Incorporation)**

(1) In case where a judgment affirming the nullification or revocation of the incorporation of a company has become final and conclusive, the company shall be liquidated as if the company had been dissolved.

(2) In case of paragraph (1), the court may appoint a liquidator upon the application by any member of the company and by any other interested person.

■ Article 194 (Nullification or Revocation of Incorporation and Continuance of Company)

(1) If a judgment affirming the nullification or revocation of the incorporation of a company has become final and conclusive and the cause for such nullification or revocation involves only a particular member, the company may continue to exist with the unanimous consent of all the other members.

(2) In case of paragraph (1), the member in respect of whom the cause for the nullification or revocation involves shall be deemed to have retired from the company.

(3) Article 229 (2) and (3) shall apply *mutatis mutandis* to the cases under paragraphs (1) and (2) above.

SECTION 2 Internal Relationship of a Company

■ Article 195 (Applicable Provisions)

Unless otherwise *provided* by the articles of incorporation or by this Act, the provisions concerning partnerships of the Civil Act shall apply *mutatis mutandis* to the internal relationship of a partnership company.

■ Article 196 (Contribution of Claim Rights)

A member who has contributed a claim right shall be responsible for the performance of such claim, if the obligor fails to perform the obligation thereof by the time for performance. In this case, the member shall not only pay for the interests but also shall be liable for any damages sustained thereby.

■ Article 197 (Transfer of Share)

No member shall, without the consent of all the other members, transfer all or a part of his share in the company to another person.

■ Article 198 (Prohibition of Competitive Business by Members)

(1) No member shall, without the consent of all the other members, effect for his own account or for the account of a third person, any transaction which falls within the class of business carried on by the company or become a member with unlimited liability or a director of another company whose business purpose is the same kind of business as the company.

(2) In case where any member has effected a transaction violating paragraph (1), the company may regard such transaction as effected for the account of the company if such transaction was effected for such member's own account, and the company may demand such member to transfer any profit accrued therefrom if such transaction was effected for the account of a third person.

(3) Paragraph (2) shall not affect any claim for damages by the company against the member concerned.

(4) The rights mentioned in paragraph (2) shall be exercised by a resolution of the majority of other members of the company and shall lapse after the passage of two weeks from the date on which any one of other members has become aware of such transaction or after the passage of one year from the date on which such transaction was effected.

■ Article 199 (Self-Transaction of Members)

A member may effect a transaction with the company for his own account or for the account of a third person only if a resolution approving such transaction has been adopted by the majority of other members of the company. In this case, Article 124 of the Civil Act shall not apply.

■ Article 200 (Right and Duty of Management of Affairs)

(1) Unless otherwise *provided* by the articles of incorporation, each member has the right and duty to manage the affairs of the company.

(2) If other members raise an objection with respect to the management of affairs by a member, the member shall immediately cease such act and follow the decision by the majority of all the members.

■ Article 200-2 (Authority of Agent for Business Management)

(1) Except as otherwise stipulated in the temporary disposition order, an agent for business management under Article 183-2 shall not perform any act which does not fall under regular business of a corporation: *Provided*, That the same shall not apply to any case where a permit has been obtained from the court.

(2) Where an agent for business management has committed an act in contravention of the provisions of paragraph (1), the company shall be liable to a third person acting in good faith for any act.

■ Article 201 (Managing Members)

(1) If one or more members are designated by the articles of incorporation as managing members, those members shall have the right and duty to manage the affairs of the company.

(2) If other managing members raise an objection with respect to the management by a managing member, the managing member shall immediately cease such act and follow the decision of the majority of all the managing members.

■ **Article 202 (Joint Managing Members)**

In case where several members are designated by the articles of incorporation to jointly manage the affairs of the company, any act of management shall not be taken without the consent of all such joint managing members: *Provided*, That this shall not apply if there is a fear of delay.

■ **Article 203 (Appointment and Dismissal of Manager)**

Unless otherwise *provided* by the articles of incorporation, the appointment and dismissal of a manager shall be decided by a majority of all the members, even where managing members have been designated.

■ **Article 204 (Amendment of Articles of Incorporation)**

The consent of all the members shall be required in order to amend the articles of incorporation.

■ **Article 205 (Adjudication of Forfeiture of Power against Managing Member)**

(1) If a managing member is clearly unfit for performing his duties or he has breached his material duties, the court may, upon the application of a member, adjudicate the forfeiture of the power against such managing member.

(2) When a judgment mentioned in paragraph (1) has become final and conclusive, such fact shall be registered at the place of the principal office and branch offices of the company.

■ **Article 206 (Applicable Provision)**

Article 186 shall apply *mutatis mutandis* to an action mentioned in Article 205.

SECTION 3 External Relationship of a Company

■ **Article 207 (Representation of Company)**

If a company has not designated managing members in charge of the management of affairs by the articles of incorporation, each of the members shall represent the company. If several managing members have been designated to take charge of the management, each of them shall represent the company: *Provided*, That the company may specifically designate a person who shall represent the company from among such managing members, by the articles of incorporation or with the unanimous consent of all the members.

■ **Article 208 (Joint Representation)**

(1) A company may, either by the articles of incorporation or with the unanimous consent of all the members, provide that two or more members shall jointly represent the company.

(2) Even in case of paragraph (1), any declaration of intention made by a third person to the company shall be effective by giving such declaration of the intention to any one of the joint representative members.

■ Article 209 (Authorities of Representative Member)

(1) The representative member is authorized to do all judicial or extra-judicial acts relating to the business of the company.

(2) Any restriction placed on the authorities mentioned in paragraph (1) may not be asserted against a third person acting in good faith.

■ Article 210 (Liability for Damages)

In case where the representative member has caused damages to another person by his act of the business administration of the company, the company and such representative member shall be jointly and severally liable for such damages.

■ Article 211 (Representation in Legal Actions between Company and Members)

If no representative member exists in case of an action filed by a company against its member or an action filed by a member of a company against the company, a member who shall represent the company on such action shall be selected by a resolution of a majority of all the other members.

■ Article 212 (Liability of Members)

(1) If the assets of a company are insufficient to fully satisfy its obligations, all the members shall be jointly and severally liable for the performance of the obligations.

(2) Paragraph (1) shall also apply if a compulsory execution of judgement on the company's assets has proved ineffective.

(3) Paragraph (2) shall not apply if any member proves that the company is capable of performing its obligations and that the execution can easily be effected.

■ Article 213 (Liability of Incoming Members)

A member admitted to a company after its establishment shall assume the same liability as other members with respect to the obligations of the company incurred prior to his admission.

■ Article 214 (Defenses of Members)

(1) In case where a claim is raised against a member with respect to the company's obligations, the member may raise, against the claimant, any defense which the company might have asserted.

(2) If the company has a right of set-off, cancellation or rescission against the claimant, the member may refuse performance in respect of a claim under paragraph (1).

■ **Article 215 (Liability of a self styled Member)**

In case where a person who is not a member of a company has acted in a manner to induce others to misconceive him as a true member, he shall assume the same liability as if he were a true member against any person who has effected a transaction with the company due to such misconception.

■ **Article 216 (Applicable Provisions)**

Articles 205 and 206 shall apply *mutatis mutandis* to the representative members of a company.

SECTION 4 Retirement of Members

■ **Article 217 (Member's Right to Retire from Company)**

(1) In case where the articles of incorporation of a company do not fix the duration of the company or they provide that the company shall continue to exist during the life of a particular member, any member may retire at the end of any business year: *Provided*, That he shall give an advance notice six months prior to the retirement.

(2) In case where unavoidable reasons exist, any member may retire at any time.

■ **Article 218 (Reasons for Retirement of Members)**

In addition to Article 217, a member shall retire from the company for any of the following reasons:

1. Occurrence of any event specified in the articles of incorporation;
2. Consent of all the members;
3. Death;
4. Incompetency;
5. Bankruptcy; or
6. Expulsion.

■ **Article 219 (Notice of Succession of Rights at Death of Member)**

(1) In case where the articles of incorporation provide that if a member dies, his successor may succeed to the deceased member's rights and duties against the company to become a member, the successor shall dispatch a notice of either succession or renunciation to the company within three months from the date on which he has become aware of the commencement of succession.

(2) If three months have elapsed without the successor's notice mentioned in paragraph (1), the successor shall be deemed to have renounced the right to become a member.

■ Article 220 (Adjudication of Expulsion)

(1) If any of the following reasons exists in respect of a member, the company may, by a resolution of the majority of all the other members, demand that the court adjudicate the expulsion of such member:

1. Where such member has failed to perform a duty to contribute;
2. Where such member has acted in violation of Article 198 (1);
3. Where such member has committed a dishonest act with respect to the management of the affairs or the representation of the company, or where such member has managed the affairs of the company or represented the company without authority; or
4. Where there is any other important reason.

(2) Articles 205 (2) and 206 shall apply *mutatis mutandis* to the cases under paragraph (1).

■ Article 221 (Settlement of Accounts between Expelled Member and Company)

The settlement of accounts between the expelled member and the company shall be effected according to the status of the company's property when an action for expulsion was filed, and legal interest shall accrue therefrom.

■ Article 222 (Refund of Share)

A retired member shall be entitled to refund of his share even where his contribution was in the form of personal services or credit: *Provided*, That this shall not apply if provided otherwise by the articles of incorporation.

■ Article 223 (Seizure of Share)

A seizure of a member's share of the company shall be effective with regard to his right to demand a dividend and a refund on the share for the future.

■ Article 224 (Demand of Retirement of Member by Creditor who Seized Member's Share)

(1) A creditor who seized a member's share in the company may cause the member to retire at the end of a business year: *Provided*, That he shall give an advance notice to the company and the member concerned six months prior to the retirement.

(2) The advance notice mentioned in the proviso of paragraph (1) shall lose its effect when the member concerned performs his obligations or furnishes an adequate security.

■ Article 225 (Liability of Retired Member)

(1) A retired member shall be liable, as if he continued to be a member, for the obligations of the company incurred before the registration of his retirement has been effected at the place of the principal office, for the period of two years subsequent to the above registration.

(2) Paragraph (1) shall apply *mutatis mutandis* to a member who has transferred his share in the company to other persons.

■ Article 226 (Retired Member's Right to Demand Change in Trade Name)

In case where the name of a retired member has been used in the company's trade name, such member may demand the company to cease the use of such name.

SECTION 5 Dissolution of Company

■ Article 227 (Reasons for Dissolution)

A company shall be dissolved for any of the following reasons:

1. Expiration of the duration of the company or occurrence of any events specified in the articles of incorporation;
2. Consent of all the members;
3. Where there is only one member left;
4. Merger;
5. Bankruptcy; or
6. Order or judgment of the court.

■ Article 228 (Registration of Dissolution)

In case of the dissolution of a company for reasons other than merger or bankruptcy, such fact shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office, both period starting from the date on which the reason for dissolution comes into existence.

■ Article 229 (Continuance of Company)

(1) In cases of subparagraphs 1 and 2 of Article 227, the company may continue to exist with the consent of all or some of the members: *Provided*, That the dissenting members shall be deemed to have retired.

(2) In case of subparagraph 3 of Article 227, the company may continue to exist by admitting a new member.

(3) In case of paragraphs (1) and (2), if the registration of dissolution was already effected, the continuance of existence of a company shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office.

(4) Article 213 shall apply *mutatis mutandis* to the liabilities of an incoming member pursuant to paragraph (2).

■ Article 230 (Resolution of Merger)

The consent of all the members shall be required for a merger of a company.

■ Article 231 Deleted.

■ Article 232 (Objections by Creditors)

(1) Within two weeks from the date of the resolution on a merger, the company shall give to its creditors a public notice demanding the submission of an objection, if any, against the merger within a specified period of time and shall give a peremptory notice to the respective creditors known to the company. In this case, the said period shall be no less than one month.

(2) A creditor who fails to raise an objection within the period set forth in paragraph (1) shall be deemed to have approved the merger.

(3) If a creditor has raised an objection, the company shall perform its obligations to the creditor or furnish adequate security, or entrust a property of reasonable value to a trust company to the same purpose.

■ Article 233 (Registration of Merger)

In case of a merger, the registration of alteration by the surviving company, the registration of dissolution by the merged company and the registration of incorporation by the newly incorporated company in consequence of a merger shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office.

■ Article 234 (Effective Date of Merger)

A merger of companies shall take effect when the surviving company or the newly incorporated company in consequence of a merger has effected registration set forth in Article 233 at the place of its principal office.

■ **Article 235 (Effect of Merger)**

The surviving company or the newly incorporated company in consequence of a merger shall succeed to the rights and duties of the merged company.

■ **Article 236 (Filing of Action for Nullification of Merger)**

(1) The nullification of a merger of companies shall be asserted only by means of an action, which may be brought by the members, liquidators, trustee in bankruptcy of each company or by those creditors of each company who do not approve such merger.

(2) The action under paragraph (1) shall be filed within six months from the date of the registration under Article 233.

■ **Article 237 (Applicable Provisions)**

Article 176 (3) and (4) shall apply *mutatis mutandis* where the creditors of a company have filed an action under Article 236.

■ **Article 238 (Registration of Nullification of Merger)**

When a judgment affirming the nullification of merger has become final and conclusive, the registration of alteration by the surviving company, the registration of restitution by the merged company and the registration of dissolution by the newly incorporated company shall be effected at the place of the principal office and each branch office.

■ **Article 239 (Final Judgment of Nullification and Reversion of Rights and Duties of Companies)**

(1) When a judgment affirming the nullification of merger has become final and conclusive, the companies which have effected a merger shall be jointly and severally liable to perform any obligation that the surviving company or the newly incorporated company in consequence of the merger has incurred after the merger.

(2) Any property which has been acquired after the merger by the surviving company or the newly incorporated company in consequence of the merger shall be owned in common by the companies which have effected the merger.

(3) If, in case of paragraphs (1) and (2), the companies have failed to determine the proportions of assumption of liabilities or the proportions of the common ownership, the court shall, upon the application of such companies, determine those proportions, by taking into account the status of the property of each company as of the time of the merger and all other circumstances.

■ Article 240 (Applicable Provisions)

Articles 186 through 191 shall apply *mutatis mutandis* to the action for nullification of merger.

■ Article 241 (Demand for Dissolution by Members)

(1) Where unavoidable reasons exist, any member may apply to the court for dissolution of the company.

(2) Articles 186 and 191 shall apply *mutatis mutandis* to the case under paragraph (1).

■ Article 242 (Change of Organization)

(1) With the consent of all the members a partnership company may be transformed into a limited partnership company either by making a particular member become a member with limited liability or by admitting a new member with limited liability.

(2) Paragraph (1) shall apply *mutatis mutandis* to the continuance of existence of a company pursuant to Article 229 (2).

■ Article 243 (Registration of Change of Organization)

When a partnership company has been transformed into a limited partnership company, the registration of dissolution by the partnership company and the registration of incorporation by the limited partnership company shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office.

■ Article 244 (Liability of Person who Has Become Member with Limited Liability in Consequence of Change of Organization)

A person who has been a member of a partnership company but now becomes a member with limited liability in accordance with Article 242 (1) shall not be relieved of the unlimited liability with respect to the obligations of the company which had been incurred before the registration under Article 243 was effected at the place of the principal office, for the period of two years subsequent to the said registration.

SECTION 6 Liquidation

■ Article 245 (Company in Process of Liquidation)

To the extent of the objectives of the liquidation, a company shall be deemed to continue to exist even after its dissolution.

■ Article 246 (Where Several Successors of Share Exist)

In case where there are two or more successors upon the death of a member after dissolution of a company, they shall designate one person from among themselves to exercise the rights of a member in connection with the liquidation. If there is no such designation, the company's notice or peremptory notice made upon any one of the successors shall be effective upon all the successors.

■ Article 247 (Voluntary Liquidation)

(1) The method of disposal of the properties of a dissolved company may be determined by the articles of incorporation or with the consent of all the members. In this case, an inventory and a balance sheet shall be prepared within two weeks from the date on which the reason for dissolution occurred.

(2) Paragraph (1) shall not apply in case of the dissolution of a company pursuant to subparagraph 3 or 6 of Article 227.

(3) Article 232 shall apply *mutatis mutandis* to the case under paragraph (1).

(4) If, in case of paragraph (1), there is any person who has seized a member's share in the company, the consent of such person shall be required.

(5) The company under paragraph (1) shall register the completion of liquidation within two weeks at the place of its principal office and within three weeks at the place of its branch office after the disposal of properties is completed.

■ Article 248 (Voluntary Liquidation and Protection of Creditors)

(1) If a company has harmed its creditors by disposing of its properties in violation of Article 247 (3), the creditors may apply to the court for the revocation of such disposal.

(2) Article 186 of this Act and the proviso of Article 406 (1), Articles 406 (2) and 407 of the Civil Act shall apply *mutatis mutandis* to the application for the revocation mentioned in paragraph (1).

■ Article 249 (Protection of Creditors who Have Seized Share)

If a company has disposed of its properties in violation of Article 247 (4), the creditor who has seized a member's share in the company may demand that the company pay an amount equivalent to the value of such share. In this case, Article 248 shall apply *mutatis mutandis*.

■ Article 250 (Legal Liquidation)

If the method of disposal of the properties of a dissolved company has not been determined pursuant to Article 247 (1), liquidation shall be carried out in accordance with Articles 251 through 265 except for the cases of a merger or a bankruptcy.

■ Article 251 (Liquidator)

(1) In case of the dissolution of a company, a liquidator shall be appointed by a resolution of the majority of all the members.

(2) When a liquidator has not been appointed, the managing member shall become a liquidator.

■ Article 252 (Liquidator Appointed by Court)

In case of the dissolution of a company pursuant to subparagraph 3 or 6 of Article 227, the court shall appoint a liquidator on the application of any member, any interested person or the public prosecutor or *ex officio*.

■ Article 253 (Registration of Liquidators)

(1) The following particulars shall be registered within two weeks at the place of the principal office and within three weeks at the place of each branch office, which periods shall commence to run from the date of appointment of a liquidator if a liquidator has been appointed or from the date of the dissolution if the managing member has become a liquidator:

1. Name, resident registration number and address of the liquidator: *Provided*, That if a representative liquidator has been appointed from among several liquidators, addresses of liquidators other than the representative liquidators shall be excluded;
2. Name of the representative liquidator if such has been appointed; and
3. Provisions to the effect that two or more liquidators shall jointly represent the company, if so determined.

(2) Article 183 shall apply *mutatis mutandis* to the registration under paragraph (1).

■ Article 254 (Duties and Powers of Liquidators)

(1) A liquidator shall have the following duties:

1. To wind up pending affairs;
2. To collect claims and to perform obligations;
3. To dispose of assets for realization; and
4. To distribute surplus assets.

(2) In case where there are two or more liquidators, acts in connection with the duties of liquidation shall be determined by a resolution of the majority of the liquidators.

(3) The representative liquidator is authorized to do all judicial or extra-judicial acts in connection with the duties mentioned in paragraph (1).

(4) Article 93 of the Civil Act shall apply *mutatis mutandis* to a partnership company.

■ **Article 255 (Representation of Company by Liquidator)**

(1) In case where the managing member has become a liquidator, he shall represent the company as heretofore provided.

(2) In case the court appoints two or more liquidators, the court may designate one who is to represent the company or may decide upon joint representation by several of them.

■ **Article 256 (Duties of Liquidator)**

(1) A liquidator shall, without delay after his inauguration, investigate the status of the company's properties, prepare an inventory list and a balance sheet and deliver copies thereof to respective members.

(2) A liquidator shall report on the progress of the liquidation at any time that any member requests him to do so.

■ **Article 257 (Transfer of Business)**

In case where a liquidator intends to transfer all or part of the business of a company, a resolution of a majority vote of all the members shall be required.

■ **Article 258 (Impossibility of Full Satisfaction of Obligations and Demand for Contribution)**

(1) If the existing properties of a company are insufficient to fully satisfy its obligations, a liquidator may demand the members to make their contributions irrespective of the time for performance.

(2) The amount of contribution in paragraph (1) shall be determined in proportion to the ratio of the share by each member.

■ **Article 259 (Performance of Obligations)**

(1) A liquidator may perform the obligations of the company which have not yet come due.

(2) In case of paragraph (1), an obligation in respect of which no interest was stipulated, the amount of the obligation deducted by the legal interest up to the time for performance shall be paid.

(3) Paragraph (2) shall apply *mutatis mutandis* to an obligation in respect of which the stipulated interest is less than the legal interest rate.

(4) In case of paragraph (1), conditional obligations, obligations with uncertain duration and any other obligations whose value is uncertain shall be performed according to the valuation of an expert appointed by the court.

■ **Article 260 (Distribution of Surplus Assets)**

A liquidator shall not distribute the properties of the company to its members until all the obligations of the company have been performed completely: *Provided*, That he may distribute the surplus assets after reserving the properties necessary for the performance of such obligation in dispute.

■ **Article 261 (Dismissal of Liquidator)**

A liquidator appointed by the members may be dismissed by a resolution of a majority vote of all the members.

■ **Article 262 (Idem)**

If a liquidator is clearly unfit for performing his duties or he has breached his material duties, the court may, upon the application of a member or any interested person, dismiss such liquidator.

■ **Article 263 (Termination of Duties of Liquidator)**

(1) When the duties of a liquidator have been completed, he shall without delay prepare a statement of account and deliver a copy thereof to each member for approval.

(2) If a member who has received the statement of account in paragraph (1) has failed to raise an objection thereto within one month, he shall be deemed to have approved it: *Provided*, That this shall not apply where a liquidator has committed some dishonest act.

■ **Article 264 (Registration of Completion of Liquidation)**

Upon the completion of liquidation, a liquidator shall register such fact within two weeks at the place of the principal office and within three weeks at the place of each branch office from the date of approval of all the members in accordance with Article 263.

■ **Article 265 (*Mutatis Mutandis* Applicable Provisions)**

The provisions of Articles 183-2, 199, 200-2, 207, 208, 209 (2), 210, 382 (2), 399 and 401 shall apply *mutatis mutandis* to liquidators.

■ **Article 266 (Preservation of Books and Documents)**

(1) The books and records as well as important documents relating to the business and liquidation of a company shall be preserved for ten years after the completion of liquidation is registered at

the place of the principal office: *Provided*, That the slips or similar documents shall be preserved for five years.

(2) In case of paragraph (1), the custodian and the method of preservation shall be determined by a resolution of a majority vote of all the members.

■ **Article 267 (Extinction of Member's Liability)**

(1) A member's liability under Article 212 shall extinguish when five years have elapsed from the date of the registration of dissolution at the place of the principal office.

(2) Even after the lapse of the period mentioned in paragraph (1) if there remains surplus assets which have not been distributed, creditors of a company may demand the performance of obligations in respect of such surplus assets.

CHAPTER III LIMITED

PARTNERSHIP COMPANY

■ **Article 268 (Organization of Company)**

A limited partnership company shall be composed of members with unlimited liability and members with limited liability.

■ **Article 269 (Applicable Provisions)**

Unless otherwise provided in this Chapter, the provisions governing partnership companies shall apply *mutatis mutandis* to limited partnership companies.

■ **Article 270 (Absolute Particulars to Be Entered in Articles of Incorporation)**

The articles of incorporation of a limited partnership company shall state all the particulars mentioned in Article 179 and shall additionally specify whether the liability of each member is limited or unlimited.

■ **Article 271 (Matters to Be Registered)**

With respect to the registration of incorporation of a limited partnership company, it shall be registered whether each partner's liability is limited or not, in addition to the matters as set forth in Article 180.

■ **Article 272 (Contribution by Member with Limited Liability)**

Members with limited liability shall not contribute personal credits or services.

■ **Article 273 (Right and Duty of Management of Affairs)**

Unless otherwise provided by the articles of incorporation, each member with unlimited liability shall have the right and duty to manage the affairs of the company.

■ **Article 274 (Appointment and Dismissal of Manager)**

The appointment and dismissal of a manager shall be decided by a resolution of a majority vote of members with unlimited liability even where managing members have been designated.

■ **Article 275 (Freedom to Engage in Competitive Business by Member with Limited Liability)**

A member with limited liability may, without the consent of the other members, effect for his own account or for the account of a third person any transaction which falls within the class of business carried on by the company or become a member with unlimited liability or a director of another company whose business purpose is the same kind of business as the company.

■ **Article 276 (Transfer of Share of Member with Limited Liability)**

With the consent of all the members with unlimited liability, a member with limited liability may transfer to another person the whole or part of his share in the company. The same shall apply even where such transfer is to be accompanied by an amendment of the articles of incorporation.

■ **Article 277 (Right to Monitor by Member with Limited Liability)**

(1) A member with limited liability may, at the end of each business year but only during business hours, inspect the account books, balance sheets and other documents of the company and may investigate its business and the state of its property.

(2) In case where any material reason exists, a member with limited liability may, with the permission of the court, conduct the inspection and investigation mentioned in paragraph (1) at any time.

■ **Article 278 (Prohibition on Management and Representation by Member with Limited Liability)**

A member with limited liability shall neither manage the affairs of the company nor represent the company.

■ **Article 279 (Liability of Member with Limited Liability)**

(1) A member with limited liability shall be liable to perform the obligations of the company to the extent of the amount of his contribution deducting the amount which has been already paid.

(2) If any dividends have been distributed, notwithstanding the fact that the company accrued no profit, such amount shall be added in determining the liability for performance.

■ **Article 280 (Liability in Case of Decrease in Contribution)**

In case where the contribution of a member with limited liability has been reduced, he shall not be relieved of the liabilities under Articles 279 with regard to any obligation of the company which has been incurred prior to the registration of such reduction at the place of the principal office, for the period of two years after such registration.

■ **Article 281 (Liability of a Self-Styled Member with Unlimited Liability)**

(1) In case where a member with limited liability has acted in a manner to induce others to misconceive him as a member with unlimited liability, he shall assume the same liability as if he were a member with unlimited liability against any person who has effected a transaction with the company due to such misconception.

(2) Paragraph (1) shall apply *mutatis mutandis* where a member with limited liability has acted in a manner to mislead others as to the extent of his liability.

■ **Article 282 (Liability of Member whose Liability Has Been Changed)**

Article 213 shall apply *mutatis mutandis* where a member with limited liability has become a member with unlimited liability and Article 225 shall apply *mutatis mutandis* where a member with unlimited liability has become a member with limited liability.

■ **Article 283 (Death of Member with Limited Liability)**

(1) Upon the death of a member with limited liability, his successor shall succeed to the share of the deceased in the company and shall become a member.

(2) Where, in case of paragraph (1), there are two or more successors, they shall appoint from among themselves one person who shall exercise the right of the member. If there is no such appointment, the company's notice or peremptory notice made upon any one of the successors shall be effective upon all the successors.

■ **Article 284 (Incompetence of Member with Limited Liability)**

A member with limited liability shall not be subject to retirement, even if he is adjudged incompetent.

■ **Article 285 (Dissolution and Continuance of Company)**

(1) A limited partnership company shall be dissolved if either all the members with unlimited liability or all the members with limited liability have retired from the company.

(2) The members, either with unlimited liability or with limited liability, remaining in case of paragraph (1), may, with the unanimous consent among themselves, continue the company by admitting a member with limited liability or a member with unlimited liability.

(3) Articles 213 and 229 (3) shall apply *mutatis mutandis* to the cases under paragraph (2).

■ Article 286 (Change of Organization)

(1) With the consent of all the members, a limited partnership company may transform its organization to a partnership company and continue to exist.

(2) In case where all the members with limited liability have retired from the company, the members with unlimited liability may, with the unanimous consent among themselves, transform its organization to a partnership company and continue to exist.

(3) In cases of paragraphs (2) and (3), the registration of dissolution shall be effected by the limited partnership company, and the registration of incorporation shall be effected by the partnership company, within two weeks at the place of the principal office and within three weeks at the place of each branch office.

■ Article 287 (Liquidator)

A liquidator of a limited partnership company shall be appointed by a resolution of the majority of the members with unlimited liability. If there is no such appointment, the managing member who has been in charge of the management shall become a liquidator.

CHAPTER IV STOCK COMPANY

SECTION 1 Incorporation

■ Article 288 (Promoters)

In order to incorporate a stock company, the promoters shall prepare the articles of incorporation.

■ Article 289 (Preparation of Articles of Incorporation, Absolute Particulars to Be Entered Therein)

(1) Each promoter shall prepare, write his name and affix his seal or sign on, the articles of incorporation, in which the following particulars shall be contained:

1. Purpose;
2. Trade name;
3. Total number of shares authorized to be issued;
4. Par value per share;
5. Number of shares to be issued at the time of incorporation;
6. Place of principal office;

7. Method of public notice;

8. Name, residence registration number and address of each promoter; and

9. Deleted.

(2) The number of shares to be issued at the time of incorporation shall be no less than a fourth of the total number of shares authorized to be issued by the company.

(3) Public notices by a company shall be given by inserting them in the Official Gazette or in a daily newspaper in which matters relating to current events are published.

■ Article 290 (Particulars of Abnormal Incorporation)

The following matters shall be effective by being stated in the articles of incorporation:

1. Any special benefits to be received by promoters and names of such promoters;
2. Name of the person who is to make a contribution in kind, the type, quantity and value of the subject-matter of such contribution in kind and the class and number of shares to be given in consideration thereof;
3. The class, number and value of the property which has been agreed to be transferred to the company after its incorporation and the name of the transferor; and
4. The expenses for incorporation which are to be borne by the company and the amount of promoter's compensation.

■ Article 291 (Determination of Matters Concerning Issuance of Shares at Time of Incorporation)

Unless otherwise provided in the articles of incorporation, the following matters in connection with the shares to be issued at the time of incorporation shall be determined with the unanimous consent among the promoters:

1. Class and number of shares; and
2. If the company is to issue shares at the price higher than the par value, the number of such shares and the price.

■ Article 292 (Authentication of Articles of Incorporation)

The articles of incorporation shall take effect upon authentication by a notary public.

■ Article 293 (Subscription of Shares by Promoters)

Each promoter shall subscribe for shares in writing.

■ **Article 294 Deleted.**

■ **Article 295 (Payment of Subscription Price and Performance of Contribution in Kind in Promotion of Incorporation)**

(1) In case where the promoters have subscribed for all of the shares to be issued at the time of incorporation, they shall without delay make full payment of the subscription price. In this case, they shall designate the bank or other financial institution at which the subscription price is to be paid and the place of payment.

(2) A promoter who is to make a contribution in kind shall, without delay, on the date fixed for the payment of the subscription price, deliver the pertinent property and, if registration, recording or the creation or transfer of a right is required, the promoter shall completely prepare the documents thereon and deliver them to the company.

■ **Article 296 (Appointment of Officers in Promotion of Incorporation)**

(1) When the payment of subscription price and the performance of contribution in kind have been completed in accordance with Article 295, the promoters shall without delay appoint the directors and auditors by a majority vote.

(2) The promoters shall have one vote per each share which they have subscribed for.

■ **Article 297 (Preparation of Minutes by Promoters)**

The promoters shall prepare and write their names and affix their seals or sign on the minutes of the meeting, in which the proceedings of deliberation and the results thereof shall be entered.

■ **Article 298 (Investigation and Reporting by Director and Auditor, and Request for Appointment of Inspector)**

(1) The director and auditor shall, without delay after their appointment, investigate whether or not all matters concerning the incorporation of the company have complied with the relevant acts, subordinate statutes and the articles of incorporation, and report the results thereof to the promoters.

(2) Any director and auditor who was a promoter, or is now a contributor in kind or a party to a contract whereby the company is to take over a property after its incorporation shall not participate in the investigation and reporting mentioned in paragraph (1).

(3) If all of the directors and auditors are subject to paragraph (2), the directors shall have a notary public make the investigation and reporting mentioned in paragraph (1).

(4) In case where the articles of incorporation provide for any matter set forth in Article 290, the directors shall request the court to appoint an inspector for the purpose of conducting the investigation on such matter: *Provided*, That this shall not apply to the case of Article 299-2.

■ **Article 299 (Investigation and Reporting by Inspector)**

(1) The inspector shall investigate any matter set forth in Article 290 and whether or not the contribution in kind has been performed pursuant to Article 295 and shall report the results thereof to the court.

(2) The inspector shall, without delay after he has prepared a report of investigation under paragraph (1), deliver a copy of it to each promoter.

(3) Where any statement in the report of investigation is contrary to the true fact, the promoters may submit an explanatory note thereon to the court.

■ **Article 299-2 (Certification of Contribution in Kind, etc.)**

With respect to the matters set forth in subparagraphs 1 and 4 of Article 290 the investigation and reporting by a notary public may substitute for the investigation of the inspector mentioned in Article 299 (1) and with respect to the matters set forth in subparagraphs 2 and 3 of Article 290 and the performance of contribution in kind pursuant to Article 295, the appraisal by a certified appraiser may substitute for the investigation of the inspector mentioned in Article 299 (1). In this case, the notary public or appraiser shall report on the results of the investigation or appraisal to the court.

■ **Article 300 (Disposition of Alteration by Court)**

(1) If the court has found any of the matters falling under Article 290 to be improper after examining the investigation reports by an inspector or notary public or the results of appraisal by an appraiser and an explanatory note by the promoters, it may alter such matters and notify each promoter thereof.

(2) A promoter who disagrees to an alteration under paragraph (1) may revoke the subscription of his shares. In this case, the procedures for the incorporation may be continued by amending the articles of incorporation.

(3) If no promoter revokes the subscription of his shares within two weeks after receiving the notification from the court, the articles of incorporation shall be deemed to have been amended in accordance with the notification.

■ **Article 301 (Offer of Shares in Case of Subscriptive Incorporation)**

Where the promoters do not subscribe for all the shares issued at the time of incorporation, they shall offer shares for subscription.

■ **Article 302 (Offer of Share Subscription and Particulars to Be Entered in Subscription Form)**

(1) A person who intends to subscribe for shares shall complete two copies of subscription form, in which the class and number of shares for which he is to subscribe and his address are stated, and shall write his name and affix his seal or shall sign thereon.

(2) The promoters shall prepare the subscription form, in which the following particulars shall be stated:

1. Date on which the articles of incorporation were authenticated, and the name of the notary public;
2. Matters set forth in Articles 289 (1) and 290;
3. Duration or reasons for dissolution of the company, if determined;
4. Class and number of shares subscribed by promoters;
5. Matters set forth in Article 291;
- 5-2. A provision that transfer of shares shall be subject to the approval of the board of directors, if so determined;
6. Distribution of interest prior to the commencement of business, if determined;
7. Redemption of shares out of profits to be distributed to shareholders, if determined;
8. A statement to the effect that the subscription of shares may be cancelled if the inaugural general meeting is not closed by a fixed date;
9. Bank and any other financial institution in charge of the payment of the subscription price and the place of payment; and
10. Name, address and business office of a transfer agent, if any.

(3) The proviso of Article 107 (1) of the Civil Act shall not apply to the offer of share subscription.

■ **Article 303 (Duties of Subscribers)**

A person who has subscribed for shares shall be responsible for the payment of the subscription price in accordance with the number of shares allotted to him by the promoters.

■ **Article 304 (Notice or Peremptory Notice to Subscribers, etc.)**

(1) Any notice or peremptory notice to a person who has subscribed for shares or who has applied for subscription for shares may be delivered to his address stated in the certificate of the share

subscription or the subscription form for shares or to the address notified to the company by such person.

(2) The notice or peremptory notice under paragraph (1) shall be deemed to have delivered at the time when it would normally have arrived.

■ Article 305 (Payment of Subscription Price for Shares)

(1) When all the shares to be issued at the time of incorporation have been subscribed for, the promoters shall without delay have the subscription price be fully paid by the subscribers.

(2) The payment under paragraph (1) shall be made at the place as prescribed in the subscription form for shares.

(3) Article 295 (2) shall apply *mutatis mutandis* to the cases under paragraph (1).

■ Article 306 (Change of Depository, etc. of Payment)

A change of the depository at which the subscription price shall be kept and of the place of payment shall be subject to approval of the court.

■ Article 307 (Procedures for Forfeiture of Subscriber's Rights)

(1) In case where a person who has subscribed for shares fails to make the payment in accordance with Article 305, the promoters shall fix a certain date and shall, before two weeks prior to such date, give such person a notice to the effect that such person's right shall be forfeited if he fails to make the payment by such date.

(2) If the person who has received the notice under paragraph (1) fails to perform the payment by such date, his rights shall be forfeited. In this case, the promoters may again offer such shares for subscription.

(3) Paragraphs (2) and (3) shall not affect any claim for damages against the person concerned who has subscribed for shares.

■ Article 308 (Inaugural General Meeting)

(1) In case where the payment pursuant to Article 305 and the performance of the contribution in kind have been completed, the promoters shall without delay convene an inaugural general meeting.

(2) Articles 363 (1) and (2), 364, 368 (3) and (4), 368-2, 369 (1), 371 (2), 372, 373, 376 through 381 and 435 shall apply *mutatis mutandis* to the inaugural general meeting.

■ Article 309 (Resolutions at Inaugural General Meeting)

At the inaugural general meeting, resolutions shall be adopted by affirmative votes of at least two-thirds of the total votes of attending subscribers and also by affirmative votes representing a majority of the total number of shares which have been subscribed.

■ **Article 310 (Investigation in Case of Abnormal Incorporation)**

(1) If any matter set forth in Article 290 has been determined by the articles of incorporation, the promoters shall request the court for the appointment of an inspector to investigate such matters.

(2) A written report of the inspector mentioned in paragraph (1) shall be submitted to the inaugural general meeting.

(3) The proviso of Article 298 (4) and Article 299-2 shall apply *mutatis mutandis* to the investigation under paragraph (1).

■ **Article 311 (Reporting by Promoters)**

(1) The promoters shall report in writing on the matters relating to the incorporation of the company, at the inaugural general meeting.

(2) The written report under paragraph (1) shall specify the following:

1. General circumstances concerning subscription of shares and payment of subscription price; and
2. Actual conditions regarding matters mentioned in Article 290.

■ **Article 312 (Election of Officers)**

At the inaugural general meeting, directors and auditors shall be elected.

■ **Article 313 (Investigation and Reporting by Directors and Auditors)**

(1) The directors and auditors shall, without delay after their inauguration, investigate whether all matters concerning the incorporation of the company have complied with the relevant acts, subordinate statutes and the article of incorporation and shall report the results thereof to the inaugural general meeting.

(2) Article 298 (2) and (3) shall apply *mutatis mutandis* to the investigation and reporting under paragraph (1).

(3) Deleted.

■ **Article 314 (Alteration of Matters Concerning Abnormal Incorporation)**

(1) If the inaugural general meeting finds any of the matters falling under Article 290 to be improper, it may alter them.

(2) Article 300 (2) and (3) shall apply *mutatis mutandis* to the cases under paragraph (1).

■ Article 315 (Claim for Damages against Promoters)

Article 314 shall not affect any claim for damages against the promoters.

■ Article 316 (Resolution for Amending Articles of Incorporation and Abandoning Incorporation)

(1) At the inaugural general meeting, a resolution calling for amending the Articles of incorporation or abandoning the incorporation of the company may be adopted.

(2) A resolution under paragraph (1) may be adopted even where such matter has not been stated in the convocation notice for the meeting.

■ Article 317 (Registration of Incorporation)

(1) The registration of incorporation of a stock company shall be effected within two weeks from the date on which the procedures in accordance with Articles 299 and 300 have been completed, in case where the promoters subscribed for all the shares issued at the time of incorporation, and within two weeks from the date on which the inaugural general meeting has been closed or from the date on which the procedures in accordance with Article 314 have been completed, in case where the promoters have offered shares for subscription.

(2) For the registration under paragraph (1), the following matters shall be registered:

1. Matters set forth in Article 289 (1) 1 through 4, 6 and 7;
2. Total amount of the capital;
3. Total number and class of the outstanding shares and contents and number of each class of shares;
- 3-2. Provision that the transfer of shares shall be subject to the approval of the board of director, if so determined;
- 3-3. Provision under which stock option is granted, if determined;
- 3-4. Places of branch offices;
4. Duration or reasons for dissolution of the company, if determined;
5. Dividend of interest prior to the commencement of business, if determined;

6. Redemption of shares out of profits to be distributed to shareholders, if determined;
7. Matters set forth in Article 347, if convertible shares are issued;
8. Name and residence registration number of each director and auditor;
9. Name, residence registration number and address of the representative director;
10. Provision that two or more representing directors shall jointly represent the company, if so determined;
11. Trade name and the principal office of a transfer agent, if any; and
12. Name and resident registration number of each auditor of the audit committee, if such committee has been set up.

(3) Matters set forth in paragraph (2) 1, 4, 9 and 10 shall be included in the registration to be made in case of establishing a new branch or transferring a branch, at the place of such newly established branch or the changed place of such transferred branch.

(4) Articles 181 through 183 shall apply *mutatis mutandis* to the registration of a stock company.

■ Article 318 (Certification and Liability by Depository for Paid Subscription Price)

(1) A bank and other financial institution which have had the custody of the subscription price paid shall deliver the certificate as to the amount of money which are in its custody on demand by a promoter or a director.

(2) The bank and other financial institution under paragraph (1) may not assert, in respect of the amount of money duly certified to be in its custody, non-performance, in whole or in part, of such payment or any restriction upon the return of such amount against the company.

■ Article 319 (Transfer of Rights Deriving from Share Subscription)

The transfer of any right deriving from the subscription of shares shall not be effective against the company.

■ Article 320 (Restrictions on Asserting Nullity or Revocation of Share Subscription)

(1) After the company comes into existence, no subscriber of shares may assert the nullity of his subscription by reason of defects in any requirement for the subscription form for shares, nor may revoke his subscription on the ground of fraud, duress or mistake.

(2) The same shall apply even before the company comes into existence, if the subscriber has attended, and has exercised his rights at, the inaugural general meeting.

■ **Article 321 (Promoter's Warranty Liability for Subscription and Payment)**

(1) In case where, after the company comes into existence, any shares issued at the time of incorporation of the company have not been subscribed or the subscription for certain shares has been revoked, the promoters shall be deemed to have subscribed for such shares jointly.

(2) In case where, after the company comes into existence, shares upon which payment of the subscription price in accordance with Article 295 (1) or 305 (1) has not been completed, the promoters shall make such payment jointly and severally.

(3) Article 315 shall apply *mutatis mutandis* to the cases under paragraphs (2) and (3).

■ **Article 322 (Promoter's Liability for Damages)**

(1) If promoters have neglected to perform their duties in connection with the incorporation of the company, they shall be jointly and severally liable for damages to the company.

(2) If promoters have failed to perform their duties willfully or by gross negligence, they shall be jointly and severally liable for damages to third persons.

■ **Article 323 (Joint and Several Liability of Promoters and Officers)**

If directors or auditors have neglected to perform their duties under Article 313 (1) and are thereby liable for damages to the company or to third persons and if promoters are also liable therefor, the directors, auditors and promoters shall be liable for such damages jointly and severally.

■ **Article 324 (Release of Promoter's Liability and Derivative Suits by Shareholders)**

Articles 400, and 403 through 406 shall apply *mutatis mutandis* to promoters.

■ **Article 325 (Inspector's Liability for Damage)**

If an inspector appointed by the court has failed to perform his duties willfully or by gross negligence, he shall be liable for damages to the company or to third persons.

■ **Article 326 (Promoter's Liability where Company Fails to Come into Existence)**

(1) If the company fails to come into existence, the promoters shall be jointly and severally liable for all acts conducted in connection with the incorporation of the company.

(2) In case of paragraph (1), the promoters shall be responsible for any expenditures incurred in connection with the incorporation of the company.

■ **Article 327 (Liability of Self-styled Promoter)**

A person who has consented to have his name and any statement indicating his participation in the incorporation of the company entered in the application form for subscription and/or in any other documents which have been issued in connection with the offering of shares for subscription shall assume the same liability as that of a promoter.

■ **Article 328 (Action for Nullity of Incorporation)**

(1) The nullity of the incorporation of a company may be asserted only by the shareholders, directors or auditors and only by means of an action which shall be filed within two years from the date on which the company comes into existence.

(2) Articles 186 through 193 shall apply *mutatis mutandis* to the action mentioned in paragraph (1).

SECTION 2 Shares

Sub-Section 1 Shares and Share Certificates

■ **Article 329 (Formation of Capital and Par Value per Share)**

(1) The capital of a stock company shall be no less than fifty million won.

(2) The capital of a stock company shall be divided into shares.

(3) The par value per share shall be equal.

(4) The par value per share shall be at least one hundred won.

■ **Article 329-2 (Share Split)**

(1) A company may split shares by a resolution of a general meeting of shareholders in accordance with Article 434.

(2) In case of paragraph (1), the par value per share after the split shall not be less than the amount under Article 329 (4).

(3) The provisions of Articles 440 through 444 shall apply *mutatis mutandis* to a share split under paragraph (1).

■ **Article 330 (Restriction on Issuance of Share, Below Par)**

Shares may not be issued at a price less than the par value: *Provided*, That this shall not apply to the case of Article 417.

■ **Article 331 (Liability of Shareholder)**

The liability of a shareholder shall be limited to the subscription price which he has paid for his shares.

■ **Article 332 (Liability of Person who Subscribed for Shares under Fictitious Name or Another Person's Name)**

(1) A person who has subscribed for shares either in the name of a fictitious person or in the name of another person without such another person's consent shall assume the liability as a subscriber.

(2) A person who has subscribed for shares in the name of another person with such another person's consent shall have joint and several liability with such another person for the payment of subscription price for shares.

■ **Article 333 (Ownership of Shares in Common)**

(1) Persons who have subscribed for shares jointly shall be jointly and severally liable for the payment of the subscription price.

(2) In case where a share belongs to an ownership in common of two or more persons, they shall designate one from among themselves who is to exercise the rights of a shareholder.

(3) In case where no one is designated to exercise the rights of a shareholder, a notice or peremptory notice required to be given to the owners in common may be given to any one of them.

■ **Article 334 (Prohibition of Set-off by Shareholder against Company)**

A shareholder may not assert a set-off against the company with respect to payment of the subscription price for shares.

■ **Article 335 (Transferability of Shares)**

(1) Shares may be transferred to other persons: *Provided*, That the articles of incorporation may subject the transfer of shares to be approved by the board of directors.

(2) The transfer of shares which is not approved by the board of directors in contravention of the proviso of paragraph (1) shall have no effect against the company.

(3) The transfer of shares made before the issuance of share certificates shall have no effect against the company: *Provided*, That it shall not be the case if six months have passed after the existence of the company or the date of the payment of the subscription price for new shares.

■ **Article 335-2 (Request for Approval of Transfer)**

(1) In case where the transfer of shares requires the approval of the board of directors, the shareholder intending to transfer his shares may request in writing the company to approve the transfer, by specifying the contemplated transferee and the class and number of the shares to be transferred.

(2) The company shall notify in writing the shareholder of whether or not it approves the transfer, within one month after the request under paragraph (1) is made.

(3) If the company fails to notify the shareholder of its refusal within the period set forth in paragraph (2), the board of directors shall be deemed to have approved the transfer of shares.

(4) The shareholder who has received the notification of the refusal to approve the transfer in accordance with paragraph (2) may request the company to designate the alternative transferee or to purchase the shares, within twenty days after receiving the notification.

■ Article 335-3 (Request for Designation of Alternative Transferee)

(1) If a shareholder requests the company to designate an alternative transferee, the board of directors shall designate one and notify in writing the shareholder and the designated person thereof, within two weeks after the request is made.

(2) If the board of directors fails to notify the shareholder of the designation of the alternative transferee within the period set forth in paragraph (1), the board of directors shall be deemed to have approved the transfer of shares.

■ Article 335-4 (Claim for Sale by Designated Transferee)

(1) Any person designated as the alternative transferee in accordance with Article 335-3 (1) may request in writing the shareholder who made the request for such designation to sell the shares to him within ten days after he receives the notification of such designation.

(2) Article 335-3 (2) shall apply *mutatis mutandis* to the case where the person designated as the alternative transferee fails to make the request for sale within the period set forth in paragraph (1).

■ Article 335-5 (Determination of Sale Price)

(1) In case of Article 335-4, the sale price of the shares concerned shall be determined through a negotiation between the shareholder and the person requesting the sale.

(2) In case where a negotiation under paragraph (1) is not effected within 30 days from the date of receiving the request under Article 335-4 (1), the provisions of Article 374-2 (4) and (5) shall apply *mutatis mutandis*.

■ Article 335-6 (Right of Shareholders to Request Purchase of Share)

Article 374-2 (2) through (5) shall apply *mutatis mutandis* where the shareholder requests the company to purchase the shares in accordance with Article 335-2 (4).

■ **Article 335-7 (Request for Approval by Transferee of Shares)**

(1) In case where the transfer of shares is subject to the approval of the board of directors, any person who has acquired the shares may request the company in writing to approve such acquisition, by specifying the class and number of the acquired shares.

(2) Article 335-2 (2) through (4), and 335-3 through 335-6 shall apply *mutatis mutandis* to the cases under paragraph (1).

■ **Article 336 (Method of Transfer of Shares)**

(1) Share certificates shall be delivered for the transfer of shares.

(2) A possessor of a share certificate shall be presumed to be a due holder thereof.

■ **Article 337 (Requirements for Setting up of Transfer of Registered Shares against Company)**

(1) The transfer of a registered share shall not be asserted against the company, unless the name and address of the transferee have been entered in the register of shareholders.

(2) A company may designate a transfer agent in accordance with the articles of incorporation. In this case, if the transfer agent has entered the name and address of the transferee in the register of shareholders, the entry of a change of shareholders under paragraph (1) shall be deemed to have been duly effected.

■ **Article 338 (Pledging of Registered Shares)**

(1) In order to have a registered share pledged, the share certificate shall be delivered to the pledgee.

(2) Unless the pledgee possesses the share certificate, he shall not assert his pledge right against third persons.

■ **Article 339 (Subrogation of Pledge)**

In case of redemption, consolidation, split or conversion of shares, a pledge over the original shares may be extended to the money or shares which the original shareholder is to receive in consequence thereof.

■ **Article 340 (Registered Pledge on Registered Shares)**

(1) If, with respect to a pledge created over a registered share, the company has, at the request of the pledgee, entered the name and address of the pledgee in the register of shareholders and

entered his name in the share certificate, the pledgee may receive from the company the dividends of profits or interest, the distribution of surplus assets or money mentioned in Article 339, and may apply them to the satisfaction of his claims due to him in preference to other creditors.

(2) Article 353 (3) of the Civil Act shall apply *mutatis mutandis* to the case under paragraph (1) above.

(3) A pledgee under paragraph (1) may demand that the company deliver the share certificate of the share mentioned in Article 340.

■ Article 340-2 (Stock Option)

(1) The company may, in accordance with the articles of incorporation, grant by the resolution of the general shareholders' meeting in accordance with Article 434 the option to purchase new shares or shares it owns (hereinafter referred to as "stock option") at a fixed price established in advance (hereinafter referred to as "fixed price for stock option") to its directors, auditors or other employees who have contributed or will be able to contribute to the promotion of its incorporation and management, technological innovation and the like. *Provided*, That, in case the fixed price for the stock option is lower than the current price of the stock concerned, the company may compensate for the difference between the two prices with cash or its own shares which are equivalent to the difference. In this case, the current stock price shall be appraised as of the date of the exercise of the stock option.

(2) The stock option mentioned in paragraph(1) shall not be granted to persons who fall under any of the following subparagraphs:

1. A shareholder who holds 10/100 or more of the total outstanding shares of the company excluding the shares without voting rights;
2. A person who in reality exercises his influence over important matters relating to the management of the company such as the appointment or dismissal of directors and auditors and the like; and
3. The spouse, lineal ascendants or descendants of the person falling under subparagraph 1 or 2.

(3) The number of new shares to be issued or the company's own shares to be assigned under paragraph(1) shall not exceed 10/100 of the total outstanding shares of the company.

(4) The fixed price for the stock option shall be no less than the prices mentioned in the following subparagraphs:

1. In the case of issuing new shares, either their current price or their face value, whichever is higher as of the date of the granting of the stock option

2. In the case of assigning the company's own shares, their current price as of the date of the granting of the stock option.

■ **Article 340-3 (Granting of Stock Option)**

(1) The following particulars shall be entered in the provisions of the articles of incorporation concerning the stock option under paragraph(1) of Article 340-2:

1. A statement to the effect that stock option may be granted in specified cases;
2. Classes and number of shares to be issued or assigned in consequence of the exercise of stock option;
3. Qualifications of a person who may be granted stock option;
4. Period within which stock option may be exercised; and
5. A statement to the effect that the granting of the stock option may be revoked by the resolution of the board of directors under certain conditions.

(2) In adopting a resolution concerning the granting of stock option at the general shareholders' meeting, the following matters shall be determined:

1. Names of persons who are to be granted the stock option;
2. Method by which the stock option is granted;
3. Matters concerning a fixed price for stock option and an adjustment thereof;
4. Period within which the stock option may be exercised; and
5. Classes and number of shares to be issued or assigned to each of the persons to be granted the stock option in case he exercises the stock option.

(3) The company shall enter into contract with the optionee who has been granted the stock option and prepare a written contract thereon within a reasonable time frame.

(4) The company shall keep the written contract as set forth in paragraph(3) at its principal office until the expiration of the period within which the stock option may be exercised in order that its shareholders may inspect the contract during its office hours.

■ **Article 340-4 (Exercise of Stock Option)**

(1) The stock option under Article 340-2(1) may be exercised only when the stock optionee has been in the service of the company for two years or more from the date when the matters relating

to subparagraphs of Article 340-3(2) were determined by the resolution of the general shareholders' meeting.

(2) The stock option under Article 340-2(1) shall not be transferable to another person: *Provided*, That, in the case of the death of the optionee entitled to exercise the stock option under Article 340-2(1), his heir thereto may exercise it.

■ Article 340-5 (Applicable Provisions)

Article 350(2), the latter part of article 350(3), Articles 351 and 516-8(1), (3) and (4), and the former part of Article 516-9 shall apply *mutatis mutandis* where new shares are to be issued in consequence of the exercise of the stock option.

■ Article 341 (Acquisition of Company's Own Shares)

A company may not acquire its own shares on its own account, except in the following cases:

1. In case of the redemption of shares;
2. In case of a merger of companies or an acquisition of the entire business of another company;
3. Where it is necessary to do so for achieving the objective in the course of exercising the rights of the company;
4. Where it is necessary to deal with the fractional shares; and
5. Where a shareholder exercises the right to request the company to purchase his shares.

■ Article 341-2 (Acquisition of Its Own Shares for Granting of Stock Option)

(1) In the case of the acquisition of its own shares either for the purpose of assigning them under Article 340-2(1) or by the transfer of shares from its outgoing directors, auditors or other employees, the company may, on its account, acquire such shares of its own within the limits not exceeding 10/100 of the total outstanding shares: *Provided*, That the total amount to be paid for the acquisition shall be within such limits as shall not affect the availability of dividends to shareholders in accordance with Article 462(1)

(2) In case the company, under paragraph(1), acquires its own shares for value from a shareholder who holds shares exceeding 10/100 of the total outstanding shares, a resolution in accordance with Article 434 shall be adopted in the general shareholders' meeting with respect to the matters set forth in the following subparagraphs. In this case, the company shall acquire the foregoing shares of its own within six months after the resolution by the general shareholders' meeting:

1. Name of the shareholder who desires to assign his shares;

2. Classes and number of shares to be acquired; and

3. Amount to be paid for the acquisition of its own shares.

(3) In case of the acquisition of its own shares under paragraph(1), the company shall dispose of the shares within a reasonable period of time.

(4) Article 433(2) shall apply *mutatis mutandis* to the general shareholders' meeting under paragraph(2).

■ Article 341-3 (Receipt of Company's Own Shares as Pledge)

A company may not take its own shares as an object of a pledge in excess of a twentieth of the total number of outstanding shares: *Provided*, That such limit shall not apply in case of subparagraph 2 or 3 of Article 341.

■ Article 342 (Disposition of Company's Own Shares)

In case of subparagraph 1 of Article 341, the company shall, without delay, cancel the shares, and in the cases of subparagraphs 2 through 5 of Article 341, and the proviso of Article 341-3, it shall dispose of the shares or the pledge within reasonable period.

■ Article 342-2 (Acquisition of Parent Company's Shares by Subsidiary Company)

(1) In case where a company (hereinafter referred to as "the parent company") holds more than 50/100 of the total outstanding shares of another company (hereinafter referred to as "the subsidiary company"), the subsidiary company may not acquire shares of the parent company, except in the following cases:

1. In case of the all-inclusive exchange and all-inclusive transfer of stocks, the merger of companies or the acquisition of the entire business of another company; and

2. Where it is necessary to do so for achieving the objective in the course of exercising the rights of the company.

(2) In case of respective subparagraphs of paragraph (1), the subsidiary company shall dispose of the shares of the parent company within six months after its acquisition.

(3) If a parent company and its subsidiary company in aggregate hold, or a subsidiary company by itself holds, more than 50/100 of the total outstanding shares of another company, such another company shall be deemed to be subsidiary company of the parent company for the purpose of the application of this Act.

■ Article 342-3 (Acquisition of Another Company's Shares)

If a company acquires more than 10/100 of the total outstanding shares in another company, it shall without delay notify such another company thereof.

■ **Article 343 (Retirement of Shares)**

(1) Shares may be retired only in accordance with the provisions of this Act relating to the reduction of capital: *Provided*, That this shall not apply to the case of the retirement of shares effected out of profits to be distributed to shareholders in accordance with the articles of incorporation.

(2) Articles 440 and 441 shall apply *mutatis mutandis* in case of the retirement of shares.

■ **Article 343-2 (Retirement of Shares by Resolution of General Meeting)**

(1) A company may retire the shares after purchasing them under a resolution of the regular general meeting pursuant to Article 434, in addition to a case under Article 343.

(2) The kind and total number of shares to be purchased, the total sum of acquired values and the available period for share purchases shall be determined by a resolution at the general meeting under paragraph (1).

(3) In case of paragraph (2), the total sum of acquired values of shares to be purchased shall not exceed the amount obtained by subtracting the amount under each subparagraph of Article 462 (1) from the net assets value on the balance sheet.

(4) In case of paragraph (2), the available period for share purchase shall not pass the closing date of the general meeting regarding the first period of settlement of accounts after the resolution under paragraph (1).

(5) A company shall not purchase shares under paragraph (1) in case where it is feared that the net assets value on the balance sheet for the period of settlement of accounts in the relevant business year falls short of the total sum of each subparagraph of Article 462 (1).

(6) Notwithstanding the net assets value on the balance sheet for the period of settlement of accounts in the relevant business year falls short of the total sum of each subparagraph of Article 462 (1), if a company retires the shares after purchasing them under paragraph (1), the directors are jointly and severally liable to indemnify the company against the relevant insufficient amount. In such case, the provisions of Article 462-3 (4) (proviso) shall apply *mutatis mutandis*.

■ **Article 344 (Different Classes of Shares)**

(1) A company may issue two or more classes of shares which are different in respect of their particulars as to the dividends of profits or interest or the distribution of the surplus assets.

(2) In case of paragraph (1), the articles of incorporation shall provide for the contents and number of each class of shares and shall also provide the minimum dividend rate with respect to a class of shares having any preferential right as to the dividend of profits.

(3) If the company issues different classes of shares, special provisions may be made from class to class with respect to the subscription for new shares, the consolidation, split, or redemption of shares or the allotment of shares in consequence of a merger or split of companies, even where no such matters have been provided in the articles of incorporation.

■ Article 345 (Redeemable Shares)

(1) In case of Article 344, the company may provide that a class of shares, having preferential right as to a dividend may be redeemed out of profits.

(2) In case of paragraph (1), the price, time and method of the redemption of shares and the number of redeemable shares shall be stated in the articles of incorporation.

■ Article 346 (Issuance of Convertible Shares)

(1) If a company issues different classes of shares, the articles of incorporation may provide that a shareholder may demand the shares subscribed by the shareholder to be converted into shares of another class. In this case, the conditions of conversion, the period within which the conversion may be demanded, and the number and contents of the shares to be issued in consequence of the conversion shall be prescribed.

(2) The number of shares to be issued in consequence of the conversion shall be reserved in each class of shares under Article 344 (2) within the period mentioned in paragraph (1).

■ Article 347 (Procedures of Issuance of Convertible Shares)

In case of Article 346 (1), the following particulars shall be stated in the subscription form for shares or the certificate of preemptive rights to new shares:

1. A statement to the effect that the shares concerned may be converted into shares of another class;
2. Conditions of conversion;
3. Contents of the shares to be issued in consequence of the conversion; and
4. Period within which the conversion may be demanded.

■ Article 348 (Issue Price of Shares to be Issued in Consequence of Conversion)

If shares are to be issued in consequence of the conversion, the issue price of such new shares shall be that of the shares which existed before the conversion.

■ Article 349 (Demand for Conversion)

(1) A person demanding the conversion shall submit to the company two copies of written demand together with the share certificates.

(2) The written demand mentioned in paragraph (1) shall contain the class and number of shares to be converted and the date of the demand. The shareholder demanding conversion shall write his name and affix his seal or sign on it.

(3) Deleted.

■ Article 350 (Effective Date of Conversion)

(1) Conversion of shares shall take effect at the time when it is demanded.

(2) Any shareholder of the shares converted during the period mentioned in Article 354 (1) may not exercise the voting right at the general shareholders' meeting held during such period.

(3) With regard to a dividend of profit or interest to be distributed to the shares converted pursuant to paragraph (1), the conversion shall be deemed to have been effected at the end of the business year in which the conversion is demanded. However, the articles of incorporation may provide that with respect to a dividend of profit or interest to be distributed to the new shares, the conversion shall be deemed to have been effected at the end of the business year immediately before the business year in which the conversion is demanded.

■ Article 351 (Registration of Conversion)

The registration for changes caused by the conversion of shares shall be made at the place of the principal office, within two weeks from the last day of the month in which the conversion is demanded.

■ Article 352 (Particulars to Be Entered in Register of Shareholders)

(1) In case where registered shares are issued, the following particulars shall be entered in the register of shareholders:

1. Name and address of each shareholder;

2. Class and number of shares held by each shareholder;

2-2. Serial number of the share certificates when the share certificates have been issued for shares held by each shareholder; and

3. Date of acquisition of each share.

(2) If bearer share certificates are issued, the register of shareholders shall state the class, number, serial number and issuance date of such certificates.

(3) If, in case of paragraphs (1) and (2), convertible shares are issued, the register of shareholder shall also contain the particulars set forth in Article 347.

■ Article 353 (Effect of Register of Shareholders)

(1) Any notice or peremptory notice to a shareholder or a pledgee may be effective if sent to the address entered in the register of shareholders or other address notified to the company by such person.

(2) Article 304 (2) shall apply *mutatis mutandis* to the notice or peremptory notice under paragraph (1).

■ Article 354 (Suspension of Alteration of Register of Shareholders and Record Date)

(1) In order to determine the person who shall exercise the voting right, receive dividends or exercise other rights as a shareholder or a pledgee, the company may suspend the alteration of entry in the register of shareholders for a specified period or it may deem any shareholder or pledgee whose name appears in the register of shareholders on a specified date to be the shareholder or pledgee who shall be entitled to exercise such rights.

(2) The period mentioned in paragraph (1) shall not exceed three months.

(3) The date mentioned in paragraph (1) shall be determined to be a day within three months prior to the date on which the person may exercise the rights as a shareholder or pledgee.

(4) If a company has determined the period or the date mentioned in paragraph (1), it shall give public notice thereof two weeks in advance: *Provided*, That this shall not apply where such period or date has been determined by the articles of incorporation.

■ Article 355 (Time to Issue Share Certificates)

(1) A company shall without delay issue share certificates after it has come into existence or after the date of payment on new shares.

(2) No share certificate may be issued before the existence of the company or the date of payment for new shares.

(3) Share certificates issued in contravention of paragraph (2) shall be null and void: *Provided*, That this shall not affect any claim for damages against those who have issued them.

■ Article 356 (Particulars to Be Entered in Share Certificates)

Each share certificate shall contain the following particulars and a serial number and the representative director shall write his name and affix his seal or shall sign thereon:

1. Trade name of the company;
2. Date on which a company has come into existence;
3. Total number of shares authorized to be issued by the company;
4. Par value per share;
5. If the shares are issued after the existence of the company, date of issuance of such certificates.
6. Class and contents of shares, if there are different classes of shares;
- 6-2. Provision that any transfer of shares shall be subject to the approval of the board of directors, if determined;
7. Matters set forth in Article 345 (2), if redeemable shares have been issued; and
8. Matters set forth in Article 347, if convertible shares have been issued.

■ **Article 357 (Issuance of Bearer Share Certificates)**

(1) A bearer share certificate may be issued only if it is so provided in the articles of incorporation.

(2) A shareholder may at any time demand of the company that a bearer share certificate be converted into a registered share certificate.

■ **Article 358 (Exercise of Rights by Shareholders Holding Bearer Share Certificates)**

The owner of a bearer share certificate may not exercise his rights as a shareholder unless he deposits his share certificate with the company.

■ **Article 358-2 (Non-bearing of Share Certificates)**

(1) Unless otherwise provided in the articles of incorporation, any shareholder may declare to the company that he will not bear share certificates as to his registered shares.

(2) Upon receiving the declaration mentioned in paragraph (1), the company shall without delay enter in the register of shareholders and part of a set thereof its statement that it will not issue the share certificates and notify the shareholder thereof. In this case, the company may not issue the share certificates concerned.

(3) In case of paragraph (1), any share certificates issued previously shall be submitted to the company and the company shall invalidate them or deposit them with a transfer agent.

(4) Notwithstanding paragraphs (1) through (3), a shareholder may demand at any time that the company issue or return the share certificates.

■ **Article 359 (Bona Fide Acquisition of Share Certificates)**

Article 21 of the Check Act shall apply *mutatis mutandis* to share certificates.

■ **Article 360 (Judgment of Nullification and Re-issuance of Share Certificates)**

(1) A share certificate may be invalidated by undergoing the procedures of public summons.

(2) A person who has lost his share certificates shall not request the company to re-issue them, unless he has obtained a judgment of nullification with respect thereto.

Sub-Section 2 All-inclusive Share Exchange

■ **Article 360-2 (Incorporation of Complete Parent Company by All-inclusive Exchange of Shares)**

(1) A company may become the company (hereinafter referred to as the "complete parent company") possessing the total number of issued shares of another company by an all-inclusive share exchange under the provisions of this Sub-Section. In such case, the said another company shall be called the "complete subsidiary".

(2) The shares owned by the shareholders of the company becoming the complete subsidiary by an all-inclusive share exchange (hereafter in this Sub-Section, referred to as the "share exchange") shall be transferred to the company becoming the complete parent company by the share exchange on the day of share exchange; and the shareholders of the company becoming the said complete subsidiary shall become the shareholders of the company becoming the said complete parent company by receiving the allocation of new shares to be issued by the company becoming the said complete parent company for the share exchange.

■ **Article 360-3 (Preparation of Contract for Share Exchange and Approval of Shareholders' General Meeting)**

(1) A company which intends to make a share exchange shall prepare a contract for share exchange and obtain an approval of the shareholders' general meeting.

(2) The resolution for an approval under paragraph (1) shall be governed by the provisions of Article 434.

(3) Matters falling under any of the following subparagraphs shall be entered on the share exchange contract:

1. Where the company becoming a complete parent company alters the articles of incorporation due to the share exchange, the relevant provisions;
2. Matters on the total number and kinds of new shares to be issued by the company becoming a complete parent company, and the number of such shares by kind, and on the allocation of new shares to the shareholders of the company becoming a complete subsidiary;
3. Matters on the amount of capital to be increased for the company becoming a complete parent company, and on the capital reserves;
4. Where the amount to be paid to the shareholders of the company becoming a complete subsidiary is determined, the relevant provisions;
5. Date of the shareholders' general meeting of each company to make a resolution under paragraph (1);
6. Date to make a share exchange;
7. Where each company pays a dividend not later than the date of share exchange or makes a payment of dividend in cash under Article 462-3, the relevant limit amount;
8. Where a company transfers its own stocks under Article 360-6, the total number and kinds of stocks to be transferred, and the number of such stocks by kind; and
9. Where the directors, auditors or members of audit committee who are to be appointed by the company becoming a complete parent company are determined, their names and resident registration numbers.

(4) A company shall enter the matters falling under any of the following subparagraphs on the notification and public notice under Article 363:

1. Major details of a share exchange contract;
2. Details and exercising methods of the appraisal right under Article 360-5 (1); and
3. Where one company has a regulation in its articles of incorporation to the effect that a share transfer requires an approval of the board of directors, and the articles of incorporation of other company do not carry such regulations, the purport thereof.

■ **Article 360-4 (Public Notification of Share Exchange Contract, etc.)**

(1) The directors shall keep the documents falling under any of the following subparagraphs at the head office from two weeks prior to the meeting day of the shareholders' general meeting under Article 360-3 (1) to the date on which six months elapse since the date of share exchange:

1. Contract for share exchange;

2. Documents carrying the reasons for an allocation of stocks to the shareholders of the company becoming a complete subsidiary; and

3. Final balance sheets and profit and loss statements of each company making a share exchange prepared on a certain date within six months prior to the meeting day of the shareholders' general meeting under Article 360-3 (1) (in a case of simplified share exchange under Article 360-9, the date on which the public notice or notification is made under paragraph (2) of the same Article).

(2) The provisions of Article 391-3 (3) shall apply *mutatis mutandis* to the documents under paragraph (1).

■ Article 360-5 (Appraisal Right of Opposing Shareholders)

(1) The shareholders opposed to a resolution of the board of directors on the matter to be approved under Article 360-3 (1) may, if they informed in writing the company of their intents to oppose to the said resolution prior to the shareholders' general meeting, claim to the company for the purchase of shares owned by them in writing, indicating the kind and number of such shares, within 20 days since the date of resolution of such general meeting.

(2) The shareholders informed the company in writing of their intents to be opposed to the share exchange within two weeks since the date of public notice or notification under Article 360-9 (2) may claim to the company for the purchase of shares owned by them in writing, indicating the kind and number of such shares, within 20 days since the expiration of such period.

(3) The provisions of Article 374-2 (2) through (5) shall apply *mutatis mutandis* to the claims for purchase under paragraphs (1) and (2).

■ Article 360-6 (Transfer of Treasury Shares Substituting Issue of New Shares)

The company becoming a complete parent company may transfer the treasury shares owned by it substituting an issue of new shares in making a share exchange, which are to be disposed of in a considerable period under Article 342, to the shareholders of the company becoming a complete subsidiary.

■ Article 360-7 (Maximum Limit of Capital Increase of Complete Parent Company)

(1) The capital of the company becoming a complete parent company shall not be increased in excess of the amount obtained by subtracting the amount falling under each of the following subparagraphs from the current net assets amount of the company becoming a complete subsidiary on the date of share exchange:

1. Amount to be paid to the shareholders of the company becoming a complete subsidiary; and
2. Total sum of book values of the shares to be transferred to the shareholders of the company becoming a complete subsidiary under Article 360-6.

(2) In case where the company becoming a complete parent company already owns the shares of the company becoming a complete subsidiary prior to share exchange, the capital of the company becoming the complete parent company shall not be increased in excess of the limit of amount obtained by subtracting the amount falling under each subparagraph of paragraph (1) from the amount derived from multiplying the current net assets value of the company becoming the complete subsidiary on the date of share exchange by the rate of the number of shares to be transferred to the company becoming the complete parent company due to a share exchange with the total number of shares issued by the relevant company.

■ Article 360-8 (Procedures for Invalidation of Share Certificates)

(1) The company becoming a complete subsidiary due to a share exchange shall, where its shareholders' general meeting has made an approval under Article 360-3 (1), make a public notice on the matters falling under each of the following subparagraphs one month before the date of share exchange, and notify the shareholders listed in the share register and the pledgees respectively:

1. Purport of an approval under Article 360-3 (1);
2. Purport that the share certificates shall be submitted to the company not later than the day preceding the date of share exchange; and
3. Purport that the share certificates shall become invalid on the date of share exchange.

(2) The provisions of Articles 442 and 444 shall apply *mutatis mutandis* to the case where an approval is made under Article 360-3 (1),

■ Article 360-9 (Simplified Share Exchange)

(1) In case where there exists a consent by all shareholders of the company becoming a complete subsidiary or where the company becoming a complete parent company owns 90/100 or more of the total number of shares issued by the company becoming the complete subsidiary, an approval of the shareholder's general meeting of the company becoming the complete subsidiary may substitute for an approval of the board of directors.

(2) The company becoming a complete subsidiary shall, in the case of paragraph (1), make a public notice to the effect that a share exchange is to be made without obtaining an approval of the shareholders' general meeting within two weeks since the preparation of a share exchange contract, or notify the shareholders thereof: *Provided*, That this shall not apply to the case where there exists a consent of all shareholders.

■ Article 360-10 (Small-Scale Share wap)

(1) In case where the total number of new shares issued for a share swap by the company becoming a complete parent company is not in excess of 5/100 of the total number of shares

issued by the relevant company, an approval of the shareholders' general meeting under Article 360-3 (1) of the relevant company may substitute for an approval of the board of directors: *Provided*, That this shall not apply to the case where the amount to be paid to the shareholders of the company becoming a complete subsidiary, if so determined, is in excess of 2/100 of the current net assets value of the company becoming the complete parent company on its final balance sheet as provided in Article 360-4 (1) 3.

(2) The shares to be transferred to the shareholders of the company becoming a complete subsidiary under Article 360-6 shall be deemed the new shares to be issued for a share exchange, in applying the provisions of paragraph (1).

(3) In a case of the text of paragraph (1), the share exchange contract shall include the purport that the company becoming a complete parent company may make a share exchange without obtaining an approval of the shareholders' general meeting under Article 360-3 (1), and shall not include the matters listed in paragraph (3) 1 of the said Article.

(4) The company becoming a complete parent company shall make a public notice on the business title and head office of the company becoming a complete subsidiary, the date of share exchange and the purport that a share exchange is to be made without obtaining an approval under Article 360-3 (1), or notify the shareholders thereof, within two weeks since the preparation of a share exchange contract.

(5) In case where the shareholder possessing the shares equivalent to 20/100 or more of the total number of shares issued by the company becoming a complete parent company notifies of his intent to be opposed to the share exchange under the text of paragraph (1), the share exchange under this Article shall not be made.

(6) In a case of the text of paragraph (1), where the provisions of Article 360-4 (1) is applicable to the company becoming a complete parent company, the term "two weeks prior to the meeting days of shareholders" general meeting under Article 360-3 (1)" in other portions than each subparagraph of the same paragraph of same Article, and "the meeting days of shareholders" general meeting under Article 360-3 (1)" in subparagraph 3 of the same paragraph of same Article shall be "the date of a public notice or notification under paragraph (4) of this Article", respectively.

(7) In a case of the text of paragraph (1), the provisions of Article 360-5 shall not be applicable.

■ Article 360-11 (*Mutatis Mutandis* Application of Regulations for Fractional Shares)

(1) The provisions of Article 443 shall apply *mutatis mutandis* to the case of share exchange of a company.

(2) The provisions of Articles 339 and 340 (3) shall apply *mutatis mutandis* to the pledge for the shares of the company becoming a complete subsidiary in a case of share exchange.

■ **Article 360-12 (Post Public Notice of Documents Carrying Matters on Share Exchange)**

(1) The directors shall keep the documents carrying the matters falling under each of the following subparagraphs at the head office for six weeks from the date of share exchange:

1. Date of share exchange;
2. Current net assets value of the company becoming a complete subsidiary on the date of share exchange;
3. Number of shares of a complete subsidiary transferred to a complete parent company due to a share exchange; and
4. Other matters on the share exchange.

(2) The provisions of Article 391-3 (3) shall apply *mutatis mutandis* to the documents under paragraph (1).

■ **Article 360-13 (Tenure of Director and Auditor of Complete Parent Company)**

The directors and auditors of the company becoming a complete parent company due to a share exchange who have taken office before the share exchange shall retire from office on the closing date of the general meeting on the first period of settlement of accounts after the date of the share exchange.

■ **Article 360-14 (Litigation over Invalidation of Share Exchange)**

(1) Any shareholder, director, auditor, member of audit committee or liquidator of each company may claim the invalidation of share exchange by only a litigation within six months since the date of such share exchange.

(2) The litigation under paragraph (1) shall be under an exclusive jurisdiction of the district court having jurisdiction over the location of head office of the company becoming a complete parent company.

(3) When the judgment invalidating a share exchange becomes final, the company becoming a complete parent company shall transfer the shares of the company becoming a complete subsidiary, which have been owned by it, to holders of new shares issued for a share exchange or shares transferred under Article 360-6.

(4) The provisions of Articles 187 through 189, 190 (text), 191, 192, 377 and 431 shall apply *mutatis mutandis* to the litigation under paragraph (1), and those of Articles 339 and 340 (3) to the case of paragraph (3), respectively.

Sub-Section 3 All-inclusive Transfer of Shares

■ Article 360-15 (Establishment of Complete Parent Company due to All-inclusive Share Transfer)

(1) A company may establish a complete parent company due to an all-inclusive share transfer under this Sub-Section (hereafter in this Sub-Section, referred to as the "share transfer"), and become a complete subsidiary.

(2) The shares of a company becoming a complete subsidiary due to the share transfer, which are owned by its shareholders, shall be transferred to a complete parent company established due to the share transfer, and the shareholders of the relevant complete subsidiary shall become the shareholders of the relevant complete parent company by receiving an allocation of shares issued by the relevant complete parent company for the share transfer.

■ Article 360-16 (Approval of Share Transfer by Shareholders' General Meeting)

(1) A company intending to transfer the shares shall prepare a plan for share transfer stating matters falling under each of the following subparagraphs, and obtain an approval of the shareholders' general meeting:

1. Provisions of the articles of incorporation of a complete parent company to be established;
2. Kind and number of the shares issued for a share transfer by a complete parent company to be established, and matters on the share allocation to the shareholders of a company becoming a complete subsidiary;
3. Matters on the equity capital value and capital reserves of a complete parent company to be established;
4. Where the amount to be paid to the shareholders of a company becoming a complete subsidiary is determined, the provisions therefor;
5. Time of the share transfer;
6. Where a company becoming a complete subsidiary distributes profits not later than the date of share transfer, or makes the profit distribution by cash under Article 462-3, the relevant limit;
7. Names and resident registration numbers of the directors, auditors or the members of the audit committee of a complete parent company to be established; and
8. Where a company jointly establish a complete parent company due to the share transfer, the purport thereof.

(2) The resolution for an approval under paragraph (1) shall be governed by Article 434.

(3) The provisions of Article 360-3 (4) shall apply *mutatis mutandis* to the approval of shareholders' general meeting in the case of paragraph (1).

■ **Article 360-17 (Public Notice of Documents Such as Plans for Share Transfer, etc.)**

(1) The directors shall keep the documents falling under any of the following subparagraphs at the main office from two weeks prior to the meeting days of shareholders' general meeting under Article 360-16 (1) to the date on which six months elapse since the date of share transfer:

1. Plans for share transfer under Article 360-16 (1);
2. Documents stating the reasons for share allocation to the shareholders of a company becoming a complete subsidiary; and
3. Final balance sheet and profit and loss statement of a company becoming a complete subsidiary which are prepared on a certain date within six months prior to the meeting days of shareholders' general meeting under Article 360-16 (1).

(2) The provisions of Article 391-3 (3) shall apply *mutatis mutandis* to the documents under paragraph (1).

■ **Article 360-18 (Limit of Equity Capital of Complete Parent Company)**

The equity capital of a complete parent company to be established shall not exceed the amount obtained by subtracting the amount to be paid to the shareholders of a company becoming a complete subsidiary on the date of share transfer from the current net assets value of the said company.

■ **Article 360-19 (Procedures for Invalidation of Share Certificates)**

(1) The company becoming a complete subsidiary due to share transfer shall, where it has made a resolution under Article 360-16 (1), publicly notify the matters falling under each of the following subparagraphs, and notify the shareholders and pledgees listed in the share registry, respectively:

1. Purport that a resolution has been made under Article 360-16 (1);
2. Purport that the share certificates shall be submitted to a company within the period specified for over one month; and
3. Purport that the shares shall become invalid on the date of share transfer.

(2) The provisions of Articles 442 and 444 shall apply *mutatis mutandis* to the case where a resolution under Article 360-16 (1) has been made.

■ **Article 360-20 (Registration due to Share Transfer)**

Where a share transfer is made, the matters provided in Article 317 (2) shall be registered within two weeks at the location of main office of the established complete parent company, and within three weeks at the location of its branch offices.

■ **Article 360-21 (Effective Period of Share Transfer)**

Any transfer of shares shall become effective by a registration under Article 360-20 by the complete parent company established due to such transfer at the location of its main office.

■ **Article 360-22 (*Mutatis Mutandis* Application of Share Transfer Provisions)**

The provisions of Articles 360-5, 360-11 and 360-12 shall apply *mutatis mutandis* to the case of share transfer.

■ **Article 360-23 (Litigation over Invalidation of Share Transfer)**

(1) Any shareholder, director, auditor, member of audit committee or liquidator of each company may claim the invalidation of share transfer by only a litigation within six months since the date of share transfer.

(2) The litigation under paragraph (1) shall be under an exclusive jurisdiction of the district court having jurisdiction over the location of head office of the company becoming a complete parent company.

(3) When the judgment invalidating a share transfer becomes final, the company becoming a complete parent company shall transfer the shares of the company becoming a complete subsidiary, which have been owned by it, to such shareholders of new shares issued for a share transfer.

(4) The provisions of Articles 187 through 193 and 377 shall apply *mutatis mutandis* to the litigation under paragraph (1), and those of Articles 339 and 340 (3) to the case of paragraph (3), respectively.

SECTION 3 Organs of Company

Sub-Section 1 General Shareholders' Meeting

■ **Article 361 (Power of General Shareholders' Meeting)**

At general shareholders' meetings, resolutions may be adopted as to matters provided by this Act or the articles of incorporation.

■ **Article 362 (Decision of Convocation)**

The convocation of a general meeting shall be determined by the board of directors unless otherwise provided by this Act.

■ Article 363 (Notice and Public Notice of Convocation)

(1) The notice for convocation of a general meeting shall be dispatched in writing or by an electronic documents to each shareholder at least two weeks prior to the date set for such meeting: *Provided*, That if such notice has not arrived at the address of a shareholder entered on the register of shareholders consecutively for three years, the company shall not be required to give such notice to that shareholder.

(2) The written notice under paragraph (1) shall state the subject-matters of the meeting.

(3) If the company has issued bearer share certificate, it shall give public notice stating its intention that the general meeting is to be held and the subject-matters of the meeting, at least three weeks prior to the date set for such meeting.

(4) Paragraphs (1) through (3) shall not apply with respect to the shareholders who are not entitled to vote.

■ Article 363-2 (Shareholders' Right to Make Proposal)

(1) Shareholders who hold no less than 3/100 of the total outstanding shares other than nonvoting shares may propose to make a matter a subject matter of a general shareholders meeting (hereinafter referred to as "a shareholders' proposal") to directors in writing at least six weeks prior to the date set for such meeting.

(2) Shareholders under paragraph (1) may request in writing that directors record the summary of the proposal submitted by the shareholders in addition to the subject-matters of the meeting in a notice and public notice under Article 363 at least six weeks prior to the date set for such meeting.

(3) Where there is a shareholders' proposal under paragraph (1), directors shall report to the board of directors, which shall accept the proposal as a subject-matter of the general meeting of shareholders, unless its contents are in breach of the relevant acts, subordinate statutes or the articles of incorporation. In this case, the shareholders who made the proposal shall, on their request, be given an opportunity to explain the proposal at the general meeting.

■ Article 364 (Place of Convocation)

Unless otherwise provided in the articles of incorporation, a general meeting shall be convened at the place of the principal office or at some place adjacent thereto.

■ Article 365 (Convocation of General Meeting)

(1) An ordinary general meeting shall be convened at least once a year at a fixed time.

(2) In case where a company has determined the settlement of accounts to take place more than two times in a year, a general meeting shall be convened with respect to each of such period for the settlement of accounts.

(3) An extraordinary general meeting shall be convened from time to time whenever necessary.

■ Article 366 (Demand for Convocation by Minority Shareholders)

(1) Shareholders who hold no less than 3/100 of the total outstanding shares may demand the convocation of an extraordinary general meeting, by submitting to the board of directors a written statement of the proposed subject-matters of the meeting together with the reasons for the proposed convocation.

(2) If the steps for the convocation of a general meeting are not taken promptly after the demand mentioned in paragraph (1), the shareholder who made such demand may convene such meeting with the permission of the court.

(3) At a general meeting held in accordance with paragraphs (1) and (2), an inspector may be appointed to investigate the affairs of the company and the status of its property.

■ Article 366-2 (Maintenance of Order of General Meeting)

(1) The president of the general meeting shall be elected at the general meeting unless otherwise provided by the articles of incorporation.

(2) The president of the general meeting shall maintain the order and control the proceedings of the general meeting.

(3) The president of the general meeting may order anyone, who obviously gives rise to disorder by attempting a filibuster, to stop speaking or to leave the meeting hall.

■ Article 367 (Appointment of Inspector)

At a general meeting, an inspector may be appointed to examine the documents submitted by the directors and the report of the auditors.

■ Article 368 (Method of Adopting Resolutions and Exercise of Voting Rights)

(1) Unless otherwise provided by this Act or articles of incorporation, resolutions shall be adopted at the general meetings by affirmative votes of the majority of the voting rights of shareholders present thereat and of at least 1/4 of the total outstanding shares.

(2) Persons holding bearer share certificates shall deposit them with the company one week prior to the date set for the meeting.

(3) A shareholder may have a proxy exercise the voting rights on his behalf. In this case, the proxy shall submit a document proving his power of representation at the general meeting.

(4) A person who has special interest in the resolution of a general meeting may not exercise his voting rights thereupon.

■ Article 368-2 (Exercise of Voting Right in Disunity)

(1) If a shareholder has two or more votes, he may exercise them in disunity. In this case, he shall notify the company in writing of his intention to do so and the reasons therefor three days prior to the date set for the meeting.

(2) The company may reject an exercise of vote in disunity by a shareholder, unless he has accepted a trust of shares or he holds the shares on behalf of another person.

■ Article 368-3 (Exercise of Voting Right in Writing)

(1) Shareholders may exercise their voting rights in writing in lieu of attending the general meeting.

(2) Notice for the convocation of the general meeting shall be accompanied by reference materials and documents necessary for shareholders to exercise their voting rights under paragraph(1).

■ Article 369 (Votes)

(1) A shareholder shall have one vote for each share.

(2) The company shall not be entitled to vote in respect of its own shares.

(3) In case where a company, its parent company and its subsidiary company together or its subsidiary company alone holds more than 1/10 of the total outstanding shares of another company, the shares of the company or of the parent company held by such another company shall not be entitled to vote.

■ Article 370 (Non-voting Shares)

(1) In case where a company issues different classes of shares, the articles of incorporation may provide that a shareholder of a certain class of shares having preferential rights as to the dividend of profits shall not be entitled to vote: *Provided*, That such shareholder shall be entitled to vote from the general meeting subsequent to the general meeting where a resolution disallowing the preferred dividend as provided in the articles of incorporation is adopted until the time of closing of the general meeting where a resolution allowing such dividend is adopted.

(2) The total number of non-voting shares mentioned in paragraph (1) shall not exceed 1/4 of the total outstanding shares.

■ **Article 371 (Calculation of Quorum and Number of Votes)**

(1) With respect to resolutions of a general meeting, the number of non-voting shares shall be excluded from the calculation of the total number of the issued and outstanding shares.

(2) With respect to resolutions of a general meeting, the number of votes which cannot be exercised in accordance with Article 368 (4) shall be excluded from the calculation of the number of votes of the shareholders present at the meeting.

■ **Article 372 (Resolution to Postpone or Continue General Meeting)**

(1) A general meeting may adopt a resolution to postpone or continue the meeting.

(2) In case of paragraph (1), Article 363 shall not apply.

■ **Article 373 (Minutes of General Meeting)**

(1) Minutes shall be prepared for the proceedings of a general meeting.

(2) The minutes shall record the summary of proceedings of the meeting and the results thereof and the president as well as the directors who were present at the meeting shall write their names and affix their seals or shall sign thereon.

■ **Article 374 (Resolution for Transfer, Takeover or Lease of Business)**

(1) A resolution in accordance with Article 434 shall be required for a company to effect the following acts:

1. Transfer of the whole or an important part of the business of the company;
2. Conclusion, alteration or rescission of a contract for leasing the whole business for giving a mandate to manage such business or for sharing with another person the entire profits and losses from the business or of a similar contract; and
3. Takeover of the whole business of another company.
4. Takeover of parts of business of another company which significantly affect the company's business.

(2) In a notice or public notice of the convocation of the general shareholders' meeting for any act under paragraph (1), the contents and exercising method of rights under Article 374-2 (1) and (2) shall be specified.

■ **Article 374-2 (Rights of Dissenting Shareholders to request the purchase of shares)**

(1) If a shareholder who dissents from the subject-matters of resolution set forth in Article 374 has notified the company in writing of his intention of such dissent before the general shareholders' meeting, he may request the company in writing to purchase the shares owned by him, which request shall be made within twenty days after the resolution is adopted at the general meeting and shall specify the class and number of such shares.

(2) The company shall purchase the shares within two months after receiving the request under paragraph (1).

(3) The purchase price of the shares pursuant to paragraph (2) shall be determined through a negotiation between the shareholder and the company.

(4) Where the negotiation under paragraph (3) has not been attained within 30 days since the receipt of a request under paragraph (1), the company or the shareholder requesting for the purchase of shares may request the court to determine the purchase price.

(5) Where a court makes a decision on the purchase price of shares under paragraph (4), the said court shall compute it by a fair value in view of the assets status of the company and other situations.

■ Article 375 (Ex Post Facto Incorporation)

Article 374 shall apply *mutatis mutandis* to a contract whereby a company acquires, within two years from its existence, a certain property which existed prior to its existence and is to be continuously used for purposes of its business, for value of no less than 5/100 of the capital.

■ Article 376 (Action for Revocation of Resolution)

(1) If the procedures for the convocation of a general meeting or the manner of a resolution are in violation of the relevant acts, subordinate statutes or the articles of incorporation or are remarkably unfair or if the substantive contents of a resolution are contrary to the articles of incorporation, the shareholders, directors or auditors may file an action for revocation of the resolution, within two months from the date of such resolution.

(2) Articles 186 through 188, the main sentence of Article 190 and Article 191 shall apply *mutatis mutandis* to the actions under paragraph (1).

■ Article 377 (Duty to Furnish Security by Shareholder Filing Action)

(1) If a shareholder files an action for revocation of a resolution, the court may, upon request of the company, order him to furnish an appropriate security, unless he is a director or auditor of the company.

(2) Article 176 (4) shall apply *mutatis mutandis* to the request mentioned in paragraph (1).

■ Article 378 (Registration of Revocation of Resolution)

If the matters with respect to which a resolution was adopted have been registered and a judgment revoking such resolution has become final and conclusive, registration thereof shall be effected at the place of the principal office and each branch office.

■ **Article 379 (Dismissal of Action by Court at Discretion)**

The court may dismiss an action for revocation of a resolution if it considers the revocation would be improper by taking into consideration the contents of the resolution, the current status of the company and all other circumstances.

■ **Article 380 (Action for Affirming Nullity and Non-existence of Resolution)**

Articles 186 through 188, 190 (the main sentence), 191, 377, and 378 shall apply *mutatis mutandis* to an action for affirming the nullity of a resolution on the grounds that the contents of the resolution adopted at a general meeting are contrary to Acts and subordinate statutes and to an action for affirming the non-existence of a resolution on the grounds that such material defects exist in the procedures for the convocation of a general meeting or in the method of resolution that no resolution of the general meeting is deemed to have been existed.

■ **Article 381 (Action for Revocation or Alteration of Improper Resolution)**

(1) In case where a remarkably improper resolution is adopted at a general meeting in which a certain shareholder was unable to vote in accordance with Article 368 (4) and the adoption of such resolution could have been avoided if he had exercised the voting right, the shareholder may file an action for the revocation or alteration of such resolution within two months from the date of such resolution.

(2) Articles 186 through 188, 190 (the main sentence), 191, 377 and 378 shall apply *mutatis mutandis* to the action under paragraph (1).

Sub-Section 2 Directors and Board of Directors

■ **Article 382 (Election, Relationship with Company)**

(1) Directors shall be elected at a general shareholders' meeting.

(2) Provisions relating to mandates shall apply *mutatis mutandis* to the relationship between the company and the directors.

■ **Article 382-2 (Concentrated Vote)**

(1) In case where a general meeting of a company is convened to elect two directors or more, shareholders who hold no less than 3/100 of the total outstanding shares other than nonvoting shares may request that the company elect directors by means of a concentrated vote, except as otherwise provided by the articles of incorporation.

(2) A request under paragraph (1) shall be made in writing at least seven days prior to the date set for the meeting.

(3) In case where there is a request under paragraph (1), each shareholder shall have voting rights per share in the same number as the number of directors to be elected, with respect to a resolution for election of directors, and the voting rights may be exercised by means of a concentrated vote for one or several candidates for directors.

(4) In case where directors are to be elected by a vote under paragraph (3), the directors shall be elected in the order of candidates who obtain the most votes.

(5) In case where there is a request under paragraph (1), the president of the meeting shall inform the members thereof.

(6) A written request under paragraph (2) shall be kept at the principal office until the general meeting is completed and offered for the inspection of the shareholders during the business hours.

■ Article 382-3 (Duties of Directors to be Faithful)

Directors shall perform their duties faithfully for the good of the company in accordance with the relevant acts, subordinate statutes and the articles of incorporation.

■ Article 382-4 (Duties of Directors to Keep Secret)

Directors shall not divulge the business secret of the company, which has come to his knowledge during his duties, not only while in office but also after the retirement.

■ Article 383 (Number, Term of Office)

(1) Directors shall be at least three in number: *Provided*, that in case of a company of which the total capital is less than five hundred million won, the number of the directors may be one or two.

(2) The terms of office of directors may not exceed three years.

(3) The terms of office under paragraph (2) may be extended by the articles of incorporation up to the closing of the ordinary general shareholders' meeting convened in respect of the last period for the settlement of accounts within their terms of office.

(4) In case where the number of a director is one under the proviso of paragraph (1), in the provisions of Articles 302 (2) 5-2, 317 (2) 3-2, 335 (1) (proviso) and (2), 335-2 (1) and (3), 335-3 (1) and (2), and 335-7 (1), subparagraph 5 of Article 340-3(1), subparagraph 6-2 of Article 356, and Articles 397 (1) and (2), 398, 416 (main sentence), 461 (1) (main sentence) and (3), 462-3 (1), 464-2 (1), 469, 513 (2) (main sentence), and 516-2 (2) (main sentence) (including where this provision shall apply *mutatis mutandis*), the term "board of directors" shall be read as "general meeting of shareholders" respectively, and in the provisions of Article 522-3 (1), the term "where

the board of directors has made a resolution" shall be read as "where the notice for convocation of a general meeting has been made under Article 363 (1)".

(5) In case where the number of a director is one under the proviso of paragraph (1), Articles 390 through 392, 393 (2), 399 (2), 526 (3), 527 (4), 527-2, 527-3 (1), and 527-5 (2) shall not apply.

(6) In case where the number of a director is one under the proviso of paragraph (1), the director shall represent the company and perform the functions of the board of directors under Articles 362, 363-2 (3), 366 (1), 393 (1), and 412-3 (1).

■ **Article 384 Deleted.**

■ **Article 385 (Dismissal)**

(1) A director may be dismissed from office at any time by a resolution at a general shareholders' meeting in accordance with Article 434: *Provided*, That in case where the term of office of a director was fixed and he is dismissed without cause before the expiration of such term, he may claim for damages caused thereby.

(2) If the dismissal of a director is rejected at a general shareholders' meeting notwithstanding the existence of dishonest acts or any grave fact in violation of the relevant acts, subordinate statutes or the articles of incorporation in connection with his duties, any shareholder who holds no less than 3/100 of the total outstanding shares may demand the court to dismiss the director, within one month from the date on which the above resolution of the general meeting was made.

(3) Article 186 shall apply *mutatis mutandis* in case of paragraph (2).

■ **Article 386 (Vacancy)**

(1) A director retiring from office due to the expiration of his term of office or due to resignation shall continue to have the rights and duties as a director until newly elected director inaugurates office, if the directors remaining in office would otherwise become fewer than the minimum number provided by law or by the articles of incorporation,

(2) The court may, if deemed necessary in case of paragraph (1), appoint a person who is to temporarily perform the duties of a director, upon application by a director, auditor or any other interested person. In this case, registration thereof shall be effected at the place of the principal office.

■ **Article 387 (Qualification Shares)**

If the articles of incorporation provide that any director shall have a certain number of shares, the directors shall deposit such number of share certificates with the auditors, unless otherwise provided by the articles of incorporation.

■ **Article 388 (Remuneration for Director)**

If the amount of remuneration to be received by directors has not been determined by the articles of incorporation, it shall be determined by a resolution at a general shareholders' meeting.

■ Article 389 (Representative Director)

(1) A company shall appoint, by the resolution of the board of directors, a director who shall represent the company: *Provided*, That the articles of incorporation may provide that such representative director shall be elected at a general shareholders' meeting.

(2) In the event of paragraph (1), it may be provided that two or more representative directors shall jointly represent the company.

(3) Articles 208 (2), 209, 210 and 386 shall apply *mutatis mutandis* to the representative directors.

■ Article 390 (Convocation of Board Meeting)

(1) A meeting of the board of directors shall be convened by each director: *Provided*, That this shall not apply where the board of directors has designated the director who is to convene such meeting.

(2) Any directors who have not been designated as eligible to convene the board under the proviso of paragraph (1) may request the director so designated to convene it. Where the director so designated refuses the convocation of board meeting without any justifiable reasons, other directors may convene it.

(3) In convening a meeting of the board of directors, the date of such meeting shall be fixed and a notice of convocation shall be dispatched to each director and auditor at least one week prior to such date: *Provided*, That the above period may be shortened by the articles of incorporation.

(4) When all the directors and auditors agree, a meeting of the board of directors may be held at any time without undergoing the procedures set forth in paragraph (3).

■ Article 391 (Method of Resolution by Board of Directors)

(1) A resolution of the board of directors shall be adopted by the presence of the majority of directors in office and the affirmative votes of the majority of directors present at the meeting: *Provided*, That the voting requirement may be increased by the articles of incorporation.

(2) The board of directors may, unless otherwise provided by the articles of incorporation, allow all its directors to join in discussion on the adoption of a resolution by means of a communication system transmitting and receiving visual images and sounds simultaneously without the personal attendance of all or part of them. In this case the director or directors concerned shall be deemed to have attended the meeting.

(3) Articles 368 (4) and 371 (2) shall apply *mutatis mutandis* to the cases under paragraph (1) above.

■ **Article 391-2 (Auditor's Power to Attend Board Meeting and State Opinion)**

(1) Auditors may attend meetings of the board of directors and state his opinion thereat.

(2) When any auditor deems that a director acts or is likely to act in contravention of the relevant acts, subordinate statutes or the articles of incorporation, the auditor shall report such act to the board of directors.

■ **Article 391-3 (Minutes of Board of Directors)**

(1) Minutes shall be prepared with regard to the proceedings of a meeting of the board of directors.

(2) There shall be recorded in the minutes the agenda, the summary of the proceedings of the meeting, the results thereof, dissenters and reason for their objection. Directors as well as auditors present at the meeting shall write their names and affix seals or sign thereon.

(3) Shareholders may, during office hours, make a request either for their perusal of the minutes of the board of directors or for the copy thereof.

(4) The company may reject the request under paragraph(3) explaining reasons therefor. In this case shareholders may, with the permission of the court, read or copy the minutes of the board of directors.

■ **Article 392 (Postponement and Continuation of Board Meeting)**

Article 372 shall apply *mutatis mutandis* to meetings of the board of directors.

■ **Article 393 (Authorities of Board of Directors)**

(1) The management of affairs such as the disposal and transfer of important properties, the borrowing of large-scale assets, the appointment or dismissal of managers and the establishment, transfer or abolition of branch offices shall be made by the resolution of the board of directors.

(2) The board of directors shall supervise the performance of duties by the directors.

(3) Directors may request that the representative director file a report on the affairs of other directors or employees with the board of directors.

(4) Directors shall file a report on the progress of his duties with the board of directors more than once in every three months.

■ **Article 393-2 (Committees in Board of Directors)**

(1) The board of directors may, under the conditions as set forth in the articles of incorporation, establish committees within the board.

(2) The board of directors may delegate to the committees its power other than the matters set forth in the following subparagraphs:

1. Proposal of matters subject to the approval of the general shareholders' meeting;
2. Appointment or dismissal of the representative director;
3. Establishment of committees and appointment or dismissal of their members; and
4. Any other matters as set forth by the articles of incorporation.

(3) The committee shall be composed of no less than two directors.

(4) The committee shall notify each of directors of the resolutions it has adopted. In this case, any of the directors may, upon receipt of the notification, request the convocation of a meeting of the board of directors and in the meeting the resolutions of the committee may be subject to the decision of the board of directors.

(5) Articles 386(1), 390, 391, 391-3 and 392 shall apply mutatis mutandis to the committees.

■ Article 394 (Representation in Action between Company and Directors)

(1) When a company files an action against a director or vice versa, the auditors shall represent the company in connection with such action. The same shall apply where a claim is made upon a company in accordance with Article 403 (1).

(2) In case a member of the audit committee is a party to an action against the company and vice versa, the audit committee or a director of the committee shall request the court to elect a person to represent the company in the action.

■ Article 395 (Acts by Apparent Representative Director and Liability of Company)

A company shall be liable to a third person acting in good faith for any act done by a director who has used any title such as president, vice president, executive director, managing director, etc. from which it may be assumed that such director has an authority to represent the company even where such director has no such authority.

■ Article 396 (Obligation to Keep Articles of Incorporation, etc. and Open to Public Access)

(1) Directors shall keep the articles of incorporation and the minutes of the general shareholders' meetings at the principal office and each branch office and shall keep the register of shareholders,

the register of bonds at the principal office. If there is a transfer agent, the register of shareholders and the register of bonds or the parts of a set thereof may be kept in the business office of the transfer agent.

(2) Any shareholder or any creditor of the company may demand, at any time during business hours, to inspect or copy the documents mentioned in paragraph (1).

■ Article 397 (Prohibition of Competitive Business)

(1) No director shall, without the approval of the board of directors, effectuate for his own account or for the account of a third person any transaction which falls within the class of businesses of the company or become a member with unlimited liability or a director of any other company whose business purposes are the same as those of the company.

(2) If any director has effectuated a transaction for his own account in contravention of paragraph (1), the company may, by the resolution of the board of directors, deem such transaction as effectuated for the account of the company and if he has effectuated a transaction for the account of a third person in contravention of paragraph (1), the company may demand the pertinent director to transfer any profit accrued therefrom.

(3) The rights under paragraph (2) shall be extinct with the lapse of one year after the date on which such transaction has been effectuated.

■ Article 398 (Transaction between Director and Company)

A director may effectuate a transaction with the company for his own account or for the account of a third person only if he has obtained the approval of the board of directors. In this case, Article 124 of the Civil Act shall not apply.

■ Article 399 (Liability to Company)

(1) If directors have acted in violation of any Acts and subordinate statutes or the articles of incorporation or has neglected to perform their duties, they shall be jointly and severally liable for damages to the company.

(2) If any act mentioned in paragraph (1) has been done in accordance with the resolution of the board of directors, the directors who have assented to such resolution shall be subject to the same liability.

(3) The directors who have participated in the resolution mentioned in paragraph (2) and whose dissenting opinion has not been entered in the minutes shall be presumed to have assented to such resolution.

■ Article 400 (Release of Liability to Company)

The liability of directors under Article 399 may be released by the consent of all shareholders.

■ Article 401 (Liability to Third Persons)

(1) If directors have neglected to perform their duties wilfully or by gross negligence, they shall be jointly and severally liable for damages to third persons.

(2) Article 399 (2) and (3) shall apply *mutatis mutandis* in case of paragraph (1).

■ Article 401-2(Liability of Person who Instructs Another Person to Perform Duties)

(1) A person who falls under any of the following subparagraphs shall be deemed to be a director in the application of Articles 399, 401, and 403 with respect to the duties which he instructs or conducts:

1. A person who instructs a director to perform duties by using his influence on the company;
2. A person who performs duties in person under the name of a director; and
3. A person other than a director who performs the duties by using a title which may be recognized as authorized to perform the duties, such as honorary chairman, chairman, president, vice-president, executive director, managing director, or director.

(2) In case of paragraph (1), a director who is liable for damages to a company or third person shall be jointly and severally liable therefor with the person under paragraph (1).

■ Article 402 (Right to Injunction)

If a director commits an act in contravention of the relevant acts, subordinate statutes or the articles of incorporation and the act is likely to cause irreparable damage to the company, the auditor or a shareholder who holds no less than 1/100 of the total outstanding shares may demand on behalf of the company that the director stop such act.

■ Article 403 (Derivative Suit by Shareholders)

(1) Any shareholder who holds no less than 1/100 of the total outstanding shares may demand that the company file an action against directors to enforce their liability.

(2) The demand under paragraph (1) shall be made in writing and shall state the reasons thereof.

(3) If the company has failed to file such action within 30 days from the date of the receipt of the demand under paragraph (2), the shareholder mentioned in paragraph (1) may immediately file such action on behalf of the company.

(4) If irreparable damage may be caused to the company with the lapse of the period set forth in paragraph (3), the shareholder mentioned in paragraph (1) may immediately file such action notwithstanding paragraph (3).

(5) The effect of commencement of an action shall not be prejudiced even where the number of shares held by a shareholder who files an action under paragraphs (3) and (4) comes to be less than 1/100 of the total outstanding shares after the commencement of the action (excluding where he no longer holds the issued shares).

(6) In case where an action is filed under paragraphs (3) and (4), the parties concerned shall not withdraw the action, renounce or admit the claim, or compromise, without permission from a court.

(7) Articles 176 (3) and (4), and 186 shall apply *mutatis mutandis* to the action under this Article.

■ Article 404 (Derivative Suit and Intervention, Notice of Action)

(1) The company may intervene in the actions under Article 403 (3) and (4).

(2) The shareholder who has filed an action under Article 403 (3) and (4) shall immediately effect a notice of an action to the company.

■ Article 405 (Rights and Duties of Shareholder Filing Action)

(1) If the shareholder who has filed an action pursuant to Article 403 (3) and (4) wins the case, he may demand the reimbursement by the company for the action cost and a reasonable amount of other expenses disbursed for the action. In such case, the company which has paid the expenses for action shall have a right to indemnity against the directors or auditors.

(2) If the shareholder who has filed an action in accordance with Article 403 (3) and (4) loses the case, he shall not be liable for damages to the company, unless he has acted in bad faith.

■ Article 406 (Derivative Suit and Action for Retrial)

(1) In case where the plaintiff and defendant in an action mentioned in Article 403 have caused a certain judgment to be rendered by their collusion for the purpose of prejudicing the right of the company, which is the cause of the action, the company or shareholders may file an action for retrial against the final and conclusive judgment.

(2) Article 405 shall apply *mutatis mutandis* to the action under paragraph (1).

■ Article 407 (Suspension of Exercise of Duties and Appointment of Acting Directors)

(1) In case where an action for nullifying or revoking a resolution for election of a director or for dismissing a director is filed, the court may, upon the application by the parties concerned, render a provisional injunction suspending the exercise of duties by such director or appointing an acting director. Such injunction may be rendered even before the principal suit is filed, if urgent circumstances exist.

(2) The court may, upon the application by the parties concerned, alter or revoke the provisional injunction mentioned in paragraph (1).

(3) If any injunction set forth in paragraphs (2) and (3) has been issued, registration thereof shall be effected at the place of the principal office and each branch office.

■ Article 408 (Powers of Acting Director)

(1) Acting directors under Article 407 may not perform any act falling outside the ordinary course of business of the company, unless otherwise provided in the order of provisional injunction: *Provided*, That this shall not apply where permission has been obtained from the court.

(2) The company shall be liable to a third person acting in good faith, even if acting directors have violated paragraph (1).

Sub-Section 3 Auditors and Audit Committee

■ Article 409 (Election)

(1) Auditors shall be elected at a general shareholders' meeting.

(2) Any shareholder who holds more than 3/100 of the total outstanding shares, exclusive of non-voting shares, may not exercise his vote in respect of the shares in excess of the above limit, in the election of auditors under paragraph (1).

(3) The articles of incorporation may provide for a lower ratio than that mentioned in paragraph (2).

■ Article 409-2 (Right to State Opinion in Removal of Auditor)

An auditor may state his opinion on the dismissal of an auditor at a general shareholders' meeting.

■ Article 410 (Term of Office)

The term of office of an auditor shall expire upon the closing of the ordinary general shareholders' meeting convened in respect of the last period for the settlement of accounts within three years after his inauguration.

■ Article 411 (Prohibition of Concurrently Assuming Offices)

An auditor may not concurrently assume the office of a director, a manager or an employee of the company or its subsidiary company.

■ Article 412 (Duty and Authority to Demand Reports and to Investigate)

(1) Auditors shall audit directors' performance of duties.

(2) Auditors may at any time demand the directors to report on the business and may investigate the affairs and the financial status of the company.

■ **Article 412-2 (Director's Duty to Report)**

If a director finds any fact that is likely to inflict a substantial loss on the company, he shall immediately report such fact to the auditors.

■ **Article 412-3 (Request for Convocation of General Meeting)**

(1) An auditor may request the board of directors to convene an extraordinary general shareholders' meeting by presenting a written statement specifying the proposed subject-matters of the meeting and the reason for the convocation.

(2) Article 336 (2) shall apply *mutatis mutandis* where an auditor convenes a general shareholders' meeting.

■ **Article 412-4 (Authority to Investigate Subsidiary Company)**

(1) An auditor of the parent company may demand the subsidiary company to report on its business, if it is necessary for carrying out his duties.

(2) If, in case of paragraph (1), the subsidiary company fails to make a demanded reporting without delay or it is necessary to verify the contents of such reporting, an auditor of the parent company may investigate the affairs of the subsidiary company and the status of its property.

(3) The subsidiary company may not refuse the reporting set forth in paragraph (1) or the investigation set forth in paragraph (2), unless there is any justifiable reason.

■ **Article 413 (Duty to Examine and Report)**

Auditors shall examine the agenda and documents to be submitted by directors to a general shareholders' meeting and shall at the general shareholders' meeting state his opinion as to whether such agenda or documents include any matter contrary to the relevant acts, subordinate statutes or the articles of incorporation or any remarkably unfair matter.

■ **Article 413-2 (Preparation of Audit Record)**

(1) Auditors shall prepare a record of the audit.

(2) The summary of audit process and the results thereof shall be recorded in the audit record. The auditors who have carried out such audit shall write their names and affix their seals or shall sign thereon.

■ **Article 414 (Liability of Auditor)**

(1) If auditors have neglected any of their duties, they shall be jointly and severally liable for damages to the company.

(2) If auditors have neglected their duties wilfully or by gross negligence, they shall be jointly and severally liable for damages to third persons.

(3) If, in case where auditors are liable for damages either to the company or to third persons, directors are likewise liable therefor, the auditors and the directors shall be jointly and severally liable for the damages.

■ Article 415 (Applicable Provisions)

Articles 382 (2), 382-4, 385, 386, 388, 400, 401, and 403 through 407 shall apply *mutatis mutandis* to auditors.

■ Article 415-2 (Audit Committee)

(1) The company may, in accordance with the articles of incorporation, establish an audit committee constituted by the committee under Article 393-2, in place of auditors. In the case of the establishment of an audit committee, the company shall not appoint any auditors.

(2) Notwithstanding Article 393-2(3), the audit committee shall consist of not less than three directors: *Provided*, That persons falling under any of the following subparagraphs shall not exceed 1/3 of the total members of the committee.

1. Any director or employee in the active service of the company or any person who was a director or employee thereof within the period of two years before the date of appointment as a member of the committee;

2. In case the largest shareholder of the company is an individual, the individual himself, his spouse, his lineal ascendants or descendants;

3. In case the largest shareholder is a corporation, any director, auditor or employee of the corporation;

4. Spouse of any director of the company, his lineal ascendants or descendants;

5. Any director, auditor or employee in the service of the parent or a subsidiary company with which the company is affiliated;

6. Any director, auditor or employee of a corporation which has an important interest in the company including the business relations; and

7. Any director, auditor or employee of another company in which a director or an employee of the company serves concurrently as a director of such other company.

(3) A resolution of the board of directors for the dismissal of a member of the audit committee shall require the affirmative votes of two thirds or more of the total members of the board of directors.

(4) The audit committee shall, from among its members, elect a member to represent the committee. In this case more than one member may be elected to jointly represent the committee.

(5) The committee may use professional assistance at the expense of the company.

(6) Articles 296, 312, 367, 387, 391-2(2), 394(1), 400, 402 through 407, 412 through 414, 447-3, 447-4, 450 and 527-4, subparagraph 9 of Article 530-5 (1), subparagraph 10 of Article 530-6(1) and Article 534 shall apply *mutatis mutandis* to the audit committee. In this case the term "auditor" as prescribed in the subparagraph 9 of Article 530-5(1) and subparagraph 10 of Article 530-6(1) shall be read as "member of audit committee".

SECTION 4 Issuance of New Shares

■ Article 416 (Determination of Particulars for Issuance)

In case where a company issues shares after its existence, the following matters, which are not provided by the articles of incorporation, shall be determined by the board of directors: *Provided*, That this shall not apply if it is otherwise provided by this Act or the articles of incorporation provide that they shall be determined at a general shareholders's meeting:

1. Class and number of new shares;
2. Issue-price of new shares and the date set for the payment thereof;
3. Method of subscribing for new shares;
4. Name of the persons who are to make contributions in kind and the type, quantity, value of such property and the class and number of shares to be given therefor;
5. Transferability of the shareholder's preemptive rights; and
6. Statement that a certificate of preemptive right is to be issued only upon request of the shareholder and the period within which such request may be made.

■ Article 417 (Issuance of Shares at Price Below Par)

(1) In case where a company issues shares after two years have elapsed since its existence, the company may issue shares at a price which is less than the par value with a resolution of the general shareholders' meeting in accordance with Article 434 and with the permission of the court.

(2) The minimum issue-price of shares shall be determined by the resolution of the general shareholders' meeting mentioned in paragraph (1).

(3) The court may render the permission after altering the minimum issue-price by taking into account the present conditions of the company and all the circumstances. In this case, the court may appoint an inspector to investigate the status of the company's property and any other necessary matters.

(4) The shares mentioned in paragraph (1) shall be issued within one month from the date on which the authorization of the court has been obtained. The court may extend the above period in its authorization.

■ Article 418 (Contents of Preemptive Rights, Designation and Public Notice of Record Date for Allotment)

(1) Each shareholder shall be entitled to the allotment of new shares in proportion to the number of shares which he holds.

(2) The company may make an allotment of new shares to other persons than the shareholders under the provisions of articles of incorporation, notwithstanding the provisions of paragraph (1): *Provided*, That in such case, it shall be limited to the case necessary for the achievement of the company's operational objectives, such as an introduction of new technology, improvement of financial structures, etc.

(3) The company shall fix a certain record date and shall, at least two weeks before such record date, give public notice to the effect that shareholders entered on the register of shareholders as of such record date shall be entitled to the rights under paragraph (1) and to the effect that such preemptive rights are transferable: *Provided*, That if the above record date is within the period set forth in Article 354 (1), the public notice shall be given at least two weeks before the first day of such period.

■ Article 419 (Peremptory Notice to Holders of Preemptive Rights)

(1) The company shall notify the holders of preemptive rights of the class and number of shares subject to such preemptive rights and the statement that their rights shall be forfeited if they fail to apply for the subscription for new shares on or before a fixed date. In this case, if the matters set forth in subparagraphs 5 and 6 of Article 416 have been determined, the contents thereof shall also be notified.

(2) If the company has issued bearer share certificates, a public notice on matters set forth in paragraph (1) shall be given.

(3) The notification under paragraph (1) and the public notice under paragraph (2) shall be given at least two weeks before the date set forth in paragraph (1).

(4) In case where a holder of preemptive rights fails to apply for the subscription for new shares on or before the specified date notwithstanding the notification under paragraph (1) or the public notice under paragraph (2), his rights shall be forfeited.

■ **Article 420 (Subscription Form for Shares)**

Directors shall prepare a subscription form for shares, in which the following matters shall be contained:

1. Particulars set forth in Article 289 (1) 2 through 4;
2. Matters set forth in Article 302 (2) 7, 9 and 10;
3. Matters set forth in subparagraphs 1 through 4 of Article 416;
4. If the company issues shares in accordance with Article 417, the conditions of such issuance and the amount yet to be amortized pursuant to Article 455;
5. Restrictions on the preemptive rights of shareholders or a provision that the preemptive rights are to be given to a particular third person, if applicable; and
6. Date of the resolution on the issuance of shares.

■ **Article 420-2 (Issuance of Certificates of Preemptive Rights)**

(1) In case where a company has provided for the matters set forth in subparagraph 5 of Article 416, the company shall issue certificates of preemptive rights in accordance with subparagraph 6 of Article 416, if applicable or issue them at least two weeks before the date under Article 419 (1), as the case may be.

(2) Certificates of preemptive rights shall contain the serial number in addition to the following and the directors shall write their names and affix their seals or shall sign thereon:

1. Manifestation of certificates of preemptive rights;
2. Matters set forth in Article 420;
3. Class and number of shares subject to the preemptive rights; and
4. A statement to the effect that the rights shall be forfeited if the subscription for shares is not applied for on or before the specified date.

■ **Article 420-3 (Transfer of Preemptive Rights)**

(1) Preemptive rights shall be transferred only by the delivery of certificates thereof.

(2) Article 336 (2) of this Act and Article 21 of the Cheques Act shall apply *mutatis mutandis* to certificates of preemptive rights.

■ **Article 420-4 (Application for Subscription by Certificates of Preemptive Rights)**

(1) If certificates of preemptive rights have been issued, the subscription for shares shall be applied for by use of the certificates. In this case, Article 302 (1) shall apply *mutatis mutandis*.

(2) A person who has lost certificates of preemptive rights may apply for the subscription for shares by the subscription form for shares: *Provided*, That such offer shall become ineffective if the application for subscription for shares is made by certificates of preemptive rights.

■ **Article 421 (Payment for New Shares)**

Directors shall have the person who has subscribed for new shares pay the full subscription price with respect to each share allotted to him on or before the date set for such payment.

■ **Article 422 (Investigation on Contribution in Kind)**

(1) In case of a contribution in kind, directors shall request the court for the appointment of an inspector who is to investigate the particulars set forth in subparagraph 4 of Article 416. In this case, an appraisal by a certified appraiser may substitute for the investigation by an inspector.

(2) If the court considers the particulars set forth in paragraph (1) to be improper after examining the report on investigation prepared by the inspector or the results of appraisal conducted by an appraiser, it may give necessary alteration and inform directors and the person who has made the contribution in kind of such alteration.

(3) If the person who has made the contribution in kind has an objection to the alteration mentioned in paragraph (2), he may cancel his subscription for shares.

(4) If the person who has made the contribution in kind does not cancel his subscription for shares within two weeks after the court informed him of alteration, the particulars set forth in paragraph (1) shall be deemed to have been altered accordingly.

■ **Article 423 (Time to Become Shareholder, Effect of Failure of Payment)**

(1) If a person who has subscribed for new shares pays for the subscription price or performs the contribution in kind, he shall have the rights and duties of a shareholder from the day after the date set for the payment. In this case, the second sentence of Article 350 (3) shall apply *mutatis mutandis*.

(2) If a person who has subscribed for new shares fails to pay for the subscription price or to perform the contribution in kind on or before the date set for the payment, his right shall be forfeited.

(3) Paragraph (2) shall not affect any claim for damages against the person who has subscribed for new shares.

■ **Article 424 (Right to Injunction)**

If a company is to issue shares in violation of the relevant acts, subordinate statutes or the articles of incorporation or in a remarkably unfair manner and shareholders are likely to suffer disadvantages thereby, such shareholders may demand that the company stop such issuance.

■ **Article 424-2 (Liability of Subscriber of Shares at Unfair Price)**

(1) A person who has subscribed for shares at a remarkably unfair issue price in collusion with the directors shall be liable to pay to the company the amount equivalent to the difference between such issue price and the fair price.

(2) Article 403 through 406 shall apply *mutatis mutandis* to an action for payment pursuant to paragraph (1).

(3) Paragraphs (1) and (2) shall not affect the directors' liability to compensate for damage to the company or shareholders.

■ **Article 425 (Applicable Provisions)**

(1) Article 302 (1) and (3), 303, 305 (2) and (3), 306, 318, and 319 shall apply *mutatis mutandis* to the issuance of new shares.

(2) Article 305 (2) shall apply *mutatis mutandis* where certificates of preemptive rights are issued.

■ **Article 426 (Registration of Amount Yet to Be Amortized)**

If shares were issued in accordance with Article 417, the registration of alteration thereby shall contain the amount yet to be amortized pursuant to Article 455.

■ **Article 427 (Restrictions on Assertion of Nullification or Revocation of Subscription)**

After one year has elapsed from the date of the registration of alteration concerning the issuance of new shares, no person who has subscribed for new shares may assert the nullity of his subscription by reason of defects in the requirements as to the subscription form for shares or certificates of preemptive rights or revoke his subscription by reason of fraud, duress or mistake. The same shall apply where he has exercised his rights with respect to such shares.

■ **Article 428 (Director's Warranty Liability for Subscription)**

(1) In case where shares have not yet been subscribed or the subscription of shares has been revoked after the registration of alteration concerning the issuance of new shares, directors shall be deemed to have jointly subscribed for such shares.

(2) Paragraph (1) shall not affect any claim for damages against directors.

■ **Article 429 (Action for Nullification of Issuance of New Share)**

The nullity of the issuance of new shares may be asserted only by means of an action which shall be brought only by shareholders, directors or auditors within six months from the date of the issuance of such new shares.

■ **Article 430 (Applicable Provisions)**

Articles 186 through 189, the main sentence of Article 190, Articles 191, 192 and 377 shall apply *mutatis mutandis* to the action under Article 429.

■ **Article 431 (Effect of Judgment Nullifying Issuance of New Shares)**

(1) When a judgment nullifying the issuance of new shares becomes final and conclusive, such new shares shall be invalidated for the future.

(2) In case of paragraph (1), the company shall without delay give public notice that the new share certificates shall be surrendered to the company within a fixed period and shall separately notify each shareholder and pledgee entered in the register of shareholders of the same: *Provided*, That such period shall be at least three months.

■ **Article 432 (Judgment of Nullification and Refund to Shareholders)**

(1) When a judgment nullifying the issuance of new shares becomes final and conclusive, the company shall refund to each shareholder the amount paid by him for new shares.

(2) If the amount mentioned in paragraph (1) is remarkably unreasonable in view of the status of the company's property as of the time when the judgment mentioned in Article 431 (1) becomes final and conclusive, the court may order either the increase or decrease in such amount, upon the application of the company or such shareholder mentioned in paragraph (1).

(3) Articles 339 and 340 (1) and (2) shall apply *mutatis mutandis* in case of paragraph (1).

SECTION 5 Amendment of the Articles of Incorporation

■ **Article 433 (Method of Amendment of Articles of Incorporation)**

(1) The articles of incorporation shall be amended by a resolution of the general shareholders' meeting.

(2) The summary of agenda relating to the amendment of the articles of incorporation shall be stated in the notice and public notice under Article 363.

■ **Article 434 (Special Resolution for Amendment of Articles of Incorporation)**

The resolution set forth in Article 433 (1) shall be adopted by the affirmative votes of no less than 2/3 of the voting rights of the shareholders present at the general meeting and of no less than 1/3 of the total outstanding shares.

■ **Article 435 (General Meeting of Shareholders of Certain Class of Shares)**

(1) If a company has issued two or more classes of shares and a certain class of shareholders is to be prejudiced by the amendment of the articles of incorporation, the resolution of a general meeting of such specific class of shareholders shall be required for effecting such amendment in addition to that of a general shareholders' meeting.

(2) The resolution under paragraph (1) shall be adopted by the affirmative votes of no less than 2/3 of the voting rights of the shareholders present at the general meeting and of no less than 1/3 of the total outstanding shares of such class.

(3) The provisions relating to a general shareholders' meeting shall apply *mutatis mutandis* to the general meeting mentioned in paragraph (1), except for those provisions relating to non-voting shares.

■ **Article 436 (*Idem*–General Meeting of Shareholders of Certain Class of Shares)**

Article 435 shall apply *mutatis mutandis* where special provisions are to be made with regard to each class of shares in accordance with Article 344 (3) and where the shareholders of certain classes are to be prejudiced by the exchange or transfer of shares or the merger of the company.

■ **Article 437 Deleted.**

SECTION 6 Reduction of Capital

■ **Article 438 (Resolution for Reduction of Capital)**

(1) In order to reduce capital, the resolution in accordance with Article 434 shall be required.

(2) The summary of agenda relating to the reduction of capital shall be stated in notices and public notices in accordance with Article 363.

■ **Article 439 (Method of Reduction of Capital, its Procedures)**

(1) In the resolution for reduction of capital, the method of effecting such reduction shall be determined.

(2) Article 232 shall apply *mutatis mutandis* to the reduction of capital.

(3) Any objection by bondholders may be raised subject to the resolution of a meeting of bondholders. In this case, the court may, upon the application of any interested person, extend in favor of the bondholders the period within which such objection shall be raised.

■ **Article 440 (Procedures of Consolidation of Shares)**

If shares are to be consolidated, the company shall determine a period of no less than one month and shall give public notice to the effect that shares shall be consolidated and that share certificates shall be submitted to the company within such period and shall separately give notice to such effect to each of the shareholders and the pledgees who are entered in the register of shareholders.

■ **Article 441 (*Idem*-Procedures of Consolidation of Shares)**

The consolidation of shares shall take effect upon the expiration of the period mentioned in Article 440: *Provided*, That if the procedures set forth in Article 232 have not been completed, it shall take effect upon the completion of such procedures.

■ **Article 442 (Delivery of New Share Certificates)**

(1) If, in case of the consolidation of share, there is any person who cannot submit his old share certificates, the company may, upon the application of such person, determine the period of no less than three months and give public notice to the effect that any interested person shall raise his objection, if any, to such old share certificates within such period and the company may deliver new share certificates to such person after the lapse of such period.

(2) Expenses for the public notice mentioned in paragraph (1) shall be borne by the applicant.

■ **Article 443 (Disposition of Fractional Shares)**

(1) If there are shares the number of which is unfit for the consolidation, the new share issued for such portion unfit for the consolidation shall be sold by means of auction the proceeds from which shall be delivered to the former shareholders in proportion to the number of their shares:

Provided, That the shares which are transacted on an exchange at the price quoted thereat may be sold through such exchange and shares without an exchange quotation may be sold in a manner other than auction with the permission of the court.

(2) Article 442 shall apply *mutatis mutandis* to the case of paragraph (1).

■ **Article 444 (*Idem*-Disposition of Fractional Shares)**

Article 443 shall apply *mutatis mutandis* to bearer share certificates which have not been submitted in accordance with Article 440.

■ **Article 445 (Action for Nullifying Reduction of Capital)**

The nullity of reduction of capital may be asserted only by means of an action which shall be brought only by a shareholder, director, auditor, liquidator, bankruptcy trustee or creditor disapproving such reduction of capital, within six months from the date on which the registration of alteration due to such reduction of capital has been effected.

■ **Article 446 (Applicable Provisions)**

Articles 186 through 189, the main sentence of Article 190, Articles 191, 192 and 377 shall apply *mutatis mutandis* to the action under Article 445.

SECTION 7 Accounting of Company

■ **Article 447 (Preparation of Financial Statements)**

Directors shall prepare, at each period for the settlement of accounts, the following documents and supplementary schedules and obtain the approval of the board of directors:

1. Balance sheet;
2. Profit and loss statement; and
3. Statements of appropriation of earned surplus or statements of disposition of deficit.

■ **Article 447-2 (Preparation of Business Report)**

(1) Directors shall prepare, at each period for the settlement of accounts, a business report and shall obtain the approval of the board of directors.

(2) The business report shall include important matters concerning the business as set forth in the Presidential Decree.

■ **Article 447-3 (Submission of Financial Statement)**

Directors shall submit to auditors the documents set forth in Articles 447 and 447-2 six weeks before the date of the ordinary general meeting.

■ **Article 447-4 (Audit Report)**

(1) Auditors shall submit to directors an audit report within four weeks from the date on which he receives the documents under Article 447-3.

(2) The audit report under paragraph (1) shall include the followings:

1. Outline of audit method;
2. If the matters required to be entered in the account books are not recorded or are recorded falsely or the entry into the balance sheet or profit and loss statement does not coincide with that of the account books, a statement to such effect;

3. If the balance sheet and the profit and loss statement show exactly the status of the company's financial conditions and the company's profits and losses according to the relevant acts, subordinate statutes and the articles of incorporation, a statement to such effect;
4. If the balance sheet or the income statement fails to show exactly the situation of the company's property holding and the company's profits and losses, in contravention of the relevant acts, subordinate statutes and the articles of incorporation, a statement to such effect and the reasons therefor;
5. Whether it is proper or not to change the accounting method relating to the preparation of the balance sheet or the profit and loss statement and, if so, the reasons therefor;
6. Whether or not the business report shows exactly the situation of the company in accordance with the relevant acts, subordinate statutes or the articles of incorporation;
7. Whether or not the statements of appropriation of earned surplus or the statements of disposition of deficit is prepared in conformity with the relevant acts, subordinate statutes and the articles of incorporation;
8. If the statements of appropriation of earned surplus or the statements of disposition of deficit is obviously improper in the light of the company's financial conditions and other circumstances, a statement to such effect;
9. If the supplementary schedules mentioned in Article 447 does not include the matters required to be stated or includes incorrect record therein or includes what does not conform with the account books, the balance sheet, the profit and loss statement or the business report, a statement to such effect;
10. If a dishonest act or an act of conduct which is in material contravention of the relevant acts, subordinate statutes or the articles of incorporation is found with regard to a director's performance of duties, a statement to such effect; and
11. If an investigation necessary for the audit could not be carried out, a statement to such effect and the reasons thereof.

■ **Article 448 (Keeping and Public Inspection of Financial Statements, etc.)**

(1) Directors shall keep the documents set forth in Articles 447 and 447-2 as well as the audit report at the principal office of the company for five years from one week prior to the date of the ordinary general meeting and shall keep copies thereof at the branch offices for three years.

(2) Any shareholder or creditor of the company may, at any time during business hours, inspect the documents set forth in paragraph (1) and may demand the delivery of copies or abstracts of such documents by paying such fees as fixed by the company.

■ **Article 449 (Approval and Public Notice of Financial statements, etc.)**

(1) Directors shall submit to the ordinary general meeting the documents mentioned in subparagraphs 1 through 3 of Article 447 and shall demand the the approval of the ordinary general meeting.

(2) Directors shall submit to the ordinary general meeting the documents set forth in Article 447-2 and shall report on the contents thereof.

(3) If directors have obtained the approval of the general meeting in respect of documents set forth in paragraph (1), they shall give, without delay, public notice of the balance sheet.

■ Article 450 (Release of Liability of Directors and Auditors)

If any contrary resolution has not been adopted within two years after the ordinary general meeting at which the approval mentioned in Article 449(1) was given, the company shall be deemed to have released the directors and auditors from their liability: *Provided*, That this shall not apply where any of the directors or auditors has committed some dishonest act.

■ Article 451 (Capital)

Unless otherwise provided in this Act, the capital of a company shall be equal to the total sum of the par value of total outstanding shares.

■ Article 452 (Method for Valuation of Assets)

Assets to be entered in the account books of a company shall be valued in the following manner, in addition to the application of subparagraph 2 of Article 31:

1. Current assets shall be valued at acquisition cost or at manufacturing cost thereof: *Provided*, That they shall be valued at the current price if the current price is remarkably lower than the acquisition price or the manufacturing cost;
2. Deleted;
3. Monetary claims shall be valued at the amount of claim. If, however, the monetary claims have been acquired at the price lower than the amount of claims or in any other similar case, a reasonable reduction may be effected. In case of monetary claims the collection of which might be impossible, the estimated amount of uncollectable credits shall be deducted;
4. Bonds having exchange quotations shall be valued by the average price during one month prior to the period for the settlement of accounts and bonds having no exchange quotations shall be valued at acquisition cost: *Provided*, That if the acquisition cost is different from the face amount of bonds, the reasonable increase or decrease may be effected. The latter part of subparagraph 3 shall apply *mutatis mutandis* to the bonds the collection of which might be impossible. This shall apply to any other things similar to bonds;

5. Shares having exchange quotations shall be valued at the acquisition cost: *Provided*, That they shall be valued at the current price if the average price during one month prior to the period for the settlement of accounts is lower than the acquisition cost. Shares which were acquired for long-term holding because of transactional or other necessity shall be valued at acquisition cost, irrespective of whether or not they have exchange quotations: *Provided*, That the status of property of the issuing company has been remarkably deteriorated, the reasonable deduction of the amount shall be effected. The same shall apply to the valuation of contributions made into a limited liability company or any other entity; and

6. In case of goodwill of business, the acquisition cost may be entered, only if it has been acquired by succession for value. In this case, at least an equal portion out of the above-mentioned cost shall be amortized at each period for the settlement of accounts within five years after the acquisition of goodwill of business.

■ Article 453 (Account of Organization Cost)

(1) The costs defrayed in accordance with subparagraphs 4 of Article 290 and any amount of tax paid for the registration of incorporation may be accounted on the assets side of the balance sheet.

(2) If it has been determined that interest shall be distributed after the incorporation of the company or before the commencement of the operation of a business, at least equally divided portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within five years after the distribution of such interest.

■ Article 453-2 (Account of Pre-operating Cost)

(1) Any cost disbursed for commencement of the operation of a business may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within three years after the commencement of the operation of business.

■ Article 454 (Account of New Share Issue Cost)

(1) If new shares are issued, the cost disbursed for such issuance may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within three years after the company has issued the new shares.

■ Article 455 (Account of Discount on Share Issuance)

(1) If shares are issued in accordance with Article 417, the amount of discount below the par value may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within three years after the company has issued the shares.

■ **Article 456 (Account of Bonds Margins)**

(1) If, in case of the offering of bonds, the total amount which is to be paid on redemption exceeds the actual amount received from such offering, the balance may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within the period set for the redemption of the bonds.

(3) Article 454 shall apply *mutatis mutandis* to the case of new bonds issue cost.

■ **Article 457 (Account of Accrued Interest Dividend During Construction)**

(1) Any amount distributed in accordance with Article 463 may be accounted on the assets side of the balance sheet.

(2) If the dividend is made after the commencement of the operation of business at the rate higher than six percent per annum, a sum no less than the amount in excess of six percent shall be amortized out of such accounted amount under paragraph (1).

■ **Article 457-2 (Account of Research and Development Cost)**

(1) The cost incurred specially in connection with the research on or development of any new products or new technology may be accounted on the assets side of the balance sheet.

(2) At least an equal portion out of such accounted amount under paragraph (1) shall be amortized at each period for the settlement of accounts within five years after disbursement thereof.

■ **Article 458 (Earned Surplus Reserve)**

A company shall accumulate, as the earned surplus reserve, the amount of at least 1/10 of the cash dividend at each period for the settlement of accounts until reserve reaches half of the company's capital.

■ **Article 459 (Capital Surplus Reserve)**

(1) The company shall accumulate the following, as the capital surplus reserve:

1. If shares are issued at the price higher than the par value, such amount in excess;
 - 1-2. If, in case of an all-inclusive share exchange, the limit of capital increase under Article 360-7 exceeds the increased equity capital of a complete parent company, such amount in excess;
 - 1-3. If, in case of an all-inclusive transfer of shares, the limit of capital under Article 360-18 exceeds the increased equity capital of the established complete parent company, such amount in excess;
2. If, in case of reduction of capital, the reduced amount exceeds the amount used for the redemption of shares, for the refund of share prices and/or for recovery of deficit, such amount in excess;
3. If, in case of a merger of companies, the value of property succeeded to from the company which ceased to exist exceeds the amount of the obligation succeeded to from such company, the amount refunded to the shareholders of such company and the amount of the increase in the capital of the surviving company or the amount of the capital of the newly incorporated company in consequence of the merger, as the case may be, such amount in excess;
 - 3-2. If the value of property which is invested in a company newly incorporated or a surviving company due to division or merger through division under Article 530-2 exceeds the amount of the obligation inherited from the investment company, the amount refunded to the shareholders of such company, and the amount of the capital of the newly incorporated company or the amount of the increase in the capital of the surviving company, such amount in excess; and

4. Any other surplus in the capital transaction

(2) Out of the excess amount under paragraph (1) 3 and 3-2, the earned surplus reserve and other legal reserves of the company which ceased to exist or has been divided may be succeeded to by the surviving company or the newly incorporated company due to a merger, division, or merger through division.

■ **Article 460 (Use of Legal Reserve)**

(1) The legal reserve set forth in Articles 458 and 459 shall not be disposed of, except for recovery of deficit of the capital.

(2) The capital surplus reserve shall not be used for recovery of deficit of the capital, unless the earned surplus reserve is fully used for recovery of deficit.

■ **Article 461 (Capitalization of Reserves)**

(1) A company may capitalize the whole or a part of the reserve subject to a resolution of the board of directors: *Provided*, That this shall not apply where the articles of incorporation provide that such shall be determined at a general shareholders' meeting.

(2) In case of paragraph (1), the company shall issue the shares to the shareholders in proportion to the number of shares which they hold. In this case, Article 443 (1) shall apply *mutatis mutandis* to fractional shares.

(3) When a resolution is made by the board of directors in accordance with paragraph (1), the company shall fix a date and give public notice two weeks before such date to the effect that new shares under paragraph (2) shall be allotted to the shareholders entered on the register of shareholders on such date: *Provided*, That if such date falls within the period under Article 354 (1), the public notice shall be given two weeks before the first day of such period.

(4) In case of the proviso of paragraph (1), the shareholders shall become those of new shares under paragraph (2) from the date of the resolution of the general shareholders' meeting.

(5) When the shareholders become those of new shares pursuant to paragraph (3) or (4), directors shall immediately notify the shareholders to whom such new shares are allotted and the pledgees entered on the register of shareholders of the class and number of such shares. If bearer share certificates have been issued, a public notice of the contents of resolution under paragraph (1) shall be given.

(6) The latter part of Article 350 (3) shall apply *mutatis mutandis* to the case of paragraph (1).

(7) Article 339 shall apply *mutatis mutandis* to the issuance of shares pursuant to paragraph (2).

■ Article 462 (Dividends)

(1) A company may pay dividends within the limit of the amount of net assets stated on the balance sheet after deducting the followings:

1. Amount of the capital;
2. Total amount of the capital surplus reserve and the earned surplus reserve which are accumulated till the pertinent period for the settlement of accounts of the company; and
3. Amount to be accumulated as the earned surplus for the pertinent period for the settlement of accounts of the company.

(2) If dividends have been paid in violation of paragraph (1), any creditors of the company may demand that such dividends be returned to the company.

(3) Article 186 shall apply *mutatis mutandis* to an action relating to the demand under paragraph (2).

■ Article 462-2 (Stock Dividends)

(1) A company may pay dividends by means of issuing new shares, subject to a resolution of the general shareholders' meeting: *Provided*, That such stock dividends may not exceed half of the total amount of dividends.

(2) The dividends under paragraph (1) shall be made based on the par value of the shares and if the company have issued different classes of shares, such dividend may be made in the same classes of shares, respectively.

(3) Article 443 (1) shall apply *mutatis mutandis* where, out of the total amount of dividend to be made by means of stock, there remains a fraction which is less than the par value of a share.

(4) A shareholder who has received stock dividend shall become a shareholder of the new shares from the closing of the general shareholders' meeting at which the resolution mentioned in paragraph (1) is adopted. In this case, the latter part of Article 350 (3) shall apply *mutatis mutandis*.

(5) When the resolution under paragraph (1) has been adopted, directors shall notify, without delay, the shareholders entitled to receive the stock dividends and the pledgees entered on the register of shareholders of the class and number of shares to be distributed to them. If bearer share certificates have been issued, a public notice of the contents of the resolution under paragraph (1) shall be given.

(6) The right of a pledgee under Article 340 (1) shall extend to the shares to be received by a shareholder pursuant to paragraph (1). In this case, Article 340 (3) shall apply *mutatis mutandis*.

■ Article 462-3 (Interim Dividend)

(1) A company which has set one period for settlement of accounts per a year may determine in the articles of incorporation that the company may pay a dividend (hereinafter in this Article referred to as "the interim dividend") by means of money to the shareholders as of a specified date which has been set by a resolution of the board of directors only one time during a business year.

(2) The interim dividend shall be made within the limit of the amount of net asset on the balance sheet of the immediately previous period for settlement of accounts, after deducting the following:

1. The amount of capital of the previous period for settlement of accounts;
2. The total amount of the capital surplus reserve and earned surplus reserve accumulated until the previous period for settlement of accounts;
3. The amount which is to be distributed as a profit or paid at the regular general meeting of the previous period for settlement of accounts; and

4. The earned surplus reserve which is to be accumulated in the pertinent period for settlement of accounts in connection with the interim dividend.

(3) If it is deemed that the amount of net asset on the balance sheet of the pertinent period for settlements of account is unlikely to reach the total sum of the amounts under respective subparagraphs of Article 462 (1), the company shall not pay the interim dividend.

(4) In case where, although the amount of net asset on the balance sheet of the pertinent period for settlements of account fails to reach the total sum of the amounts under respective subparagraphs of Article 462 (1), the interim dividend has been paid, the directors shall be jointly and severally liable to compensate for the balance (where the dividend is less than the balance, the dividend) to the company: *Provided*, That the same shall not apply where it is proved that the directors did not neglect their care in judging on paragraph (3).

(5) With respect to the application of Articles 340 (1), 344 (1), 350 (3) (including where this shall apply *mutatis mutandis* under Articles 423 (1), 516 (2), and 516-9; hereinafter in this paragraph the same shall apply), 354 (1), 370 (1), 457 (2), 458, and 464 and subparagraph 3 of Article 625, the interim dividend shall be deemed to be the dividend under Article 462 (1), and with respect to the application of Article 350 (3), a specified date under paragraph (1) shall be deemed to be the end of the business year.

(6) Articles 399 (2) (3) and 400 shall apply *mutatis mutandis* with respect to the liability of directors under paragraph (4), and Article 462 (2) and (3), with respect to the interim dividend made in violation of paragraph (3).

■ Article 463 (Accrued Interest Dividend during Construction)

(1) If it is deemed impossible, in view of the nature of the undertaking which forms the company's purpose, to commence the whole of the business for more than two years after its incorporation, the company may provide in the articles of incorporation that a certain amount of interest shall be distributed to the shareholders of certain shares during a specified period prior to the commencement of the whole of business: *Provided*, That the rate of such interest shall not exceed five percent per annum.

(2) The provisions of the articles of incorporation mentioned in paragraph (1) or amendment thereof shall require the authorization of the court.

■ Article 464 (Standard for Distribution of Profits, etc.)

The distribution of profits or interest shall be made in proportion to the number of shares owned by each shareholder: *Provided*, That this shall not apply to the case of Article 344 (1).

■ Article 464-2 (Time for Payment of Dividends)

(1) A company shall pay dividends under Article 464 no later than one month after the date of approval under Article 449 (1) or a resolution under Article 462-3 (1): *Provided*, That this shall not apply where the time for payment of dividend is differently determined at the general meeting under Article 449 (1) or the board of directors under Article 462-3 (1).

(2) The claim for dividends under paragraph (1) shall be extinguished if it is not exercised within five years.

■ **Article 465 Deleted.**

■ **Article 466 (Shareholder's Right to Inspect Account Books)**

(1) Any shareholder who hold no less than 3/100 of the total outstanding shares may demand, in writing with the reasons therefor specified, to inspect or copy the account books and related documents.

(2) A company shall not refuse the shareholder's demand mentioned in paragraph (1) unless it proves that such demand is improper.

■ **Article 467 (Inspection on Affairs and Status of Company's Property)**

(1) If there is any reason to suspect of dishonest act or of material fact in contravention of any relevant acts, subordinate statutes or the articles of incorporation in connection with the management of affairs, any shareholder who holds no less than 3/100 of the total outstanding shares may apply to the court for the appointment of an inspector to investigate the affairs of the company and the status of its property.

(2) The inspector shall report on the results of the investigation to the court.

(3) If the court deems it necessary according to the report mentioned in paragraph (2), it may order the representative director to convene a general shareholders' meeting. In this case, Article 310 (2) shall apply *mutatis mutandis*.

(4) Directors and auditors shall examine without delay whether or not the report of the inspector mentioned in paragraph (3) is accurate and shall report on the results thereof to the general shareholders' meeting.

■ **Article 467-2 (Prohibition against Granting Benefit)**

(1) A company may not grant to any person a proprietary benefit in connection with the exercise of rights as a shareholder.

(2) If a company has given gratuitously any proprietary benefit to a specified shareholder, such benefit shall be presumed to have given in connection with the exercise of a shareholder's rights. If a company has given for value any proprietary benefit to a specified shareholder but if the

benefits obtained by the company is remarkably less than such benefit granted to the shareholder, the same shall be applicable.

(3) If a company has granted any proprietary benefit in contravention of paragraph (1), the person who has received such benefit shall return it to the company. In this case, if the person has paid to the company anything in compensation for such benefit, the company may return it to him.

(4) Articles 403 through 406 shall apply *mutatis mutandis* to an action for the return of benefit under paragraph (3).

■ Article 468 (Right to Preferential Payment of Employee)

A person who has a claim for the return of money as a guarantee for fidelity of an employee or any other claim arising out of the relations of employment between a company and its employees shall be entitled to preferential payment from the company's whole property: *Provided*, That such right shall not have priority over the pledge or mortgage.

SECTION 8 Bonds

Sub-Section 1 Common Provisions

■ Article 469 (Offering of Bonds)

A company may offer bonds for subscription subject to a resolution of the board of directors.

■ Article 470 (Limitation on Total Amount)

(1) The total amount of bonds shall not exceed four times the amount of net assets of the company stated in the latest balance sheet.

(2) Deleted.

(3) If the offering of bonds are made for the purpose of redeeming old bonds, the amount of the old bonds shall not be included in calculation of the total amount of the bonds. In this case, the old bonds shall be redeemed within six months from the payment date of new bonds or from the first payment date if such payment is to be made in installments.

■ Article 471 (Restrictions on Offering of New Bonds)

A company shall not offer new bonds for subscription until the amount of bonds previously offered for subscription has been fully paid.

■ Article 472 (Face Amount of Bond)

(1) The face amount of each bond shall not be less than ten thousand won.

(2) The face amount of each bond shall, in respect of the same class of bonds, either be equal or be such as is an integral multiple of the minimum amount of the bond of the same class.

■ **Article 473 (Restrictions on Redemption in Excess of Par Value)**

If a decision is made to repay to bondholders an amount in excess of the par value of the bond, such amount in excess shall be paid at an equal rate for each bond.

■ **Article 474 (Public Offering, Subscription Form for Bonds)**

(1) A person who intends to subscribe for bonds shall prepare two copies of subscription forms, stating the number of bonds for which he intends to subscribe and his address, and shall write his name and affix his seal or sign thereon.

(2) The subscription form for bonds shall be prepared by the directors and contain the following:

1. Trade name of the company;
2. Total amount of the capital and the reserve;
3. Amount of the net assets of the company as shown by the latest balance sheet;
4. Total amount of the bonds;
5. Face amount of each bond;
6. Issue-price or minimum issue-price of each bond;
7. Rate of interest payable on each bond;
8. Method and time of redemption of the bonds and the payment of interest;
9. Amount and time of each payment for the subscription price of bonds, if payments are to be made in installments;
10. If a determination is made to restrict the bonds certificates either in bearer form or in registered form, a statement to that effect;
11. If bonds have been previously issued, the amount yet to be redeemed;
12. If an offering of bonds for the purpose of redeeming old bonds are made in excess of the limits prescribed in Article 470 (1), a statement to that effect;
13. If there is a company which has been commissioned to offer bonds for subscription, the trade name and address of such company;

14. If the company mentioned in subparagraph 13 has undertaken to subscribe for any portion of the total amount of the bonds which has not been subscribed for through the offering, a statement to that effect; and

15. If a transfer agent is designated, his full name, address and business office.

(3) In case where the minimum issue-price has been determined, the subscriber for bonds shall state in the subscription form the amount at which he intends to subscribe for.

■ Article 475 (Subscription for All Bonds)

Article 474 shall not apply where all the bonds are subscribed for under a contract. The same shall apply to such part of the bonds as may be subscribed for by a company which has been commissioned to offer bonds for subscription.

■ Article 476 (Payment)

(1) When the subscription for all the bonds has been completed, the directors shall, without delay, have any person who has subscribed for bonds make the full payment or the first installment payment on each bond.

(2) A company commissioned to offer bonds for subscription may in its own name perform the acts set forth in Article 474 (2) and 475 on behalf of the company.

■ Article 477 Deleted.

■ Article 478 (Issuance of Bond Certificates)

(1) No certificate may be issued for a bond until its full amount has been paid up.

(2) Each bond certificate shall contain the following particulars and the representative director shall write his name and affix his seal or shall sign thereon:

1. Serial number of each bond; and
2. Particulars set forth in Article 474 (2) 1, 4, 5, 7, 8, 10 and 13.

■ Article 479 (Transfer of Registered Bonds)

(1) Transfer of registered bonds shall not be asserted against the company or any third person unless the name and address of the transferee have been entered in the register of bonds and his full name is entered in the bond certificates.

(2) Article 337 (2) shall apply *mutatis mutandis* to the transfer of registered bonds.

■ Article 480 (Exchange between registered Certificate and Bearer Certificate)

A bondholder may at any time request the company to change a registered certificate into a bearer certificate and, otherwise, a bearer certificate into a registered certificate: *Provided*, That this shall not apply where the form of the bond certificate is restricted to either in registered or bearer form.

■ **Article 481 (Resignation of Commissioned Company)**

A company which has been commissioned to offer bonds for subscription may resign with the consent of the issuing company and a meeting of bondholders. It may do so with the permission of the court where there are unavoidable reasons therefor.

■ **Article 482 (Dismissal of Commissioned Company)**

If a company which has been commissioned to offer bonds for subscription is unfit for dealing with the business or if there exists any other justifiable cause, the court may dismiss such company at the request of the issuing company or a meeting of bondholders.

■ **Article 483 (Successor to Business of Commissioned Company)**

(1) If, in case of Articles 481 and 482, the company which has been commissioned to offer bonds for subscription does not exist, a successor to its business may be appointed by agreement between the issuing company and a meeting of bondholders.

(2) If unavoidable reasons exist, any interested person may demand the court to appoint such successor to the business.

■ **Article 484 (Authority of Commissioned Company)**

(1) A company which has been commissioned to offer bonds for subscription shall have authority to do on behalf of the bondholders all judicial or extra-judicial acts which are necessary for the redemption of bonds.

(2) When the company under paragraph (1) is requested to redeem the bonds, it shall without delay give public notice thereof and give a separate notice to each bondholder known to the company.

(3) In case of paragraph (2), bondholders may demand the payment of the redemption price in exchange for their bond certificates.

■ **Article 485 (Authority and Duty in Case of Two or more Com- missioned Company)**

(1) If two or more companies have been commissioned to offer bonds for subscription, all acts within the scope of their authority shall be jointly performed.

(2) In case of paragraph (1), each company shall be jointly and severally liable to the bondholders to pay redemption price.

■ **Article 486 (Missing Coupon)**

(1) If, in case of redemption of bearer bonds to which coupons are attached, any coupon is missing, a sum equal to the amount of the coupon shall be deducted from the redemption price.

(2) Any holder of the coupon mentioned in paragraph (1) may at any time demand the payment of such deducted amount in exchange for such coupon.

■ **Article 487 (Extinctive Prescription for Right to Demand Redemption)**

(1) The right to demand redemption of the bonds shall be extinguished if it is not exercised within ten years.

(2) The same shall apply to the right under Article 484 (3).

(3) The right to demand payment of interest of the bonds and the rights mentioned in Article 486 (2) shall be extinguished, if it is not exercised within five years.

■ **Article 488 (Register of Bonds)**

The register of bonds shall be prepared by the company and the following particulars shall be entered in such register:

1. Name and address of each bondholder;
2. Serial number of each bond certificate;
3. Particulars set forth in Article 474 (2) 4, 5, 7 through 9 and 13;
4. Amount paid in for each bond and date of each payment;
5. Date of issuance of the bond certificates;
6. Date of acquisition of each bond; and
7. In case of issuance of bearer bonds, the class, number, serial number and date of issuance

■ **Article 489 (Applicable Provisions)**

(1) Article 353 shall apply *mutatis mutandis* to notices and peremptory notices to subscribers for bonds and to bondholders.

(2) Article 333 shall apply *mutatis mutandis* where bonds belong to ownership in common of two or more persons.

Sub-Section 2 Meetings of Bondholders

■ **Article 490 (Matters Subject to Resolution)**

Unless otherwise provided in this Act, a meeting of bondholders may adopt resolutions, with the permission of the court, in respect of any matter which seriously affects the interests of bondholders.

■ **Article 491 (Person Authorized to Convene)**

(1) A meeting of bondholders shall be convened by the issuing company which issued the bonds or by a company which has been commissioned to offer bonds for subscription.

(2) Bondholders representing at least 1/10 of the total amount of the bonds may demand the convocation of a meeting of bondholders by submitting to either of the companies mentioned in paragraph (1) a written application containing the proposed subject-matters of the meeting and the reasons for convening such meeting.

(3) Article 366 (2) shall apply *mutatis mutandis* in case of paragraph (1).

(4) The holder of bearer bond certificates may not exercise the right under paragraphs (2) and (3) unless he has deposited his bond certificates.

■ **Article 492 (Votes)**

(1) Each bondholder shall have one vote for each minimum face amount of the bonds.

(2) The holder of bearer bond certificates may not exercise his voting rights unless he has deposited his bond certificates at least one week prior to the date set for the meeting.

■ **Article 493 (Attendance of Representative of Issuing or Commissioned Company)**

(1) The issuing company or the company which has been commissioned to offer bonds for subscription may have its representative attend a meeting of bondholders or may produce its opinion in writing.

(2) The convocation of a meeting of bondholders shall be notified to the companies mentioned in paragraph (1).

(3) Article 363 (1) and (2) shall apply *mutatis mutandis* to the notification under paragraph (2).

■ **Article 494 (Right to Demand Issuing Company to Make its Representative Attend)**

A meeting of bondholders or the person who has convened such meeting may, if deemed necessary, demand the issuing company to have its representative attend the meeting.

■ **Article 495 (Method of Resolution)**

(1) Article 434 shall apply *mutatis mutandis* to the resolutions of a meeting of bondholders.

(2) The consent or demand mentioned in Articles 481 through 483 and 494 may, notwithstanding paragraph (1) above, be decided by the majority of the votes of the bondholders present.

■ **Article 496 (Application for Approval of Resolution)**

Persons who have convened a meeting of bondholders shall apply to the court for the approval of the resolutions within one week from the date on which such resolutions have been adopted.

■ **Article 497 (Reasons for Non-Approval of Resolution)**

(1) The court shall not approve the resolution of a meeting of bondholders in the following cases:

1. If the procedures for convening the meeting of bondholders or the manner of adopting the resolution was in contravention of any relevant acts, subordinate statutes or of any statement contained in the prospectus for offering of bonds;

2. If the resolution was adopted in an improper manner;

3. If the resolution was remarkably unfair; and

4. If the resolution was contrary to the interests of the bondholders in general.

(2) In case of paragraph (1) 1 and 2, the court may approve such resolution by taking into account the details of the resolution and all other circumstances.

■ **Article 498 (Effect of Resolution)**

(1) A resolution of a meeting of bondholders shall take effect subject to the approval of the court.

(2) A resolution of a meeting of bondholders shall be effective against all the bondholders.

■ **Article 499 (Public Notice of Approval or Non-Approval of Resolution)**

When a decision has been made either to approve or not to approve a resolution of a meeting of bondholders, the company which issued the bonds shall without delay give public notice thereof.

■ **Article 500 (Representatives of Meeting of Bondholders)**

(1) A meeting of bondholders may elect one or more representatives from among the holders of bonds representing no less than 1/500 of the total amount of the bonds and may delegate him or them to decide subject matters which are to be dealt with in the meeting.

(2) If there are two or more representatives, the decision under paragraph (1) shall be made by the majority of their votes.

■ **Article 501 (Execution of Resolution)**

The resolution of a meeting of bondholders shall be executed either by a company commissioned to offer bonds for subscription or, in the absence of any such company, by the representatives mentioned in Article 500: *Provided*, That this shall not apply where a person has been appointed to execute by a resolution of a meeting of bondholders.

■ **Article 502 (Two or more Representatives of Meeting or Executors of Resolution)**

Article 485 (1) shall apply *mutatis mutandis* where there are two or more representatives or executors.

■ **Article 503 (Execution of Resolution relating to Redemption)**

Articles 484, 485 (2) and 487 (2) shall apply *mutatis mutandis* where either the representatives of meeting or the executors of the resolution execute a resolution relating to the redemption of the bonds.

■ **Article 504 (Dismissal of Representative of Meeting or Executor of Resolution, etc.)**

The meeting of bondholders may at any time dismiss any representative of the meeting or executor of the resolution and may alter details of any matter delegated to such person.

■ **Article 505 (Acceleration)**

(1) If a company has neglected to pay interest on the bonds or has neglected to redeem them where a part of the bonds are to be redeemed within a fixed period, the bondholders may by a resolution of a meeting of bondholders give notice to the company to the effect that payment thereof must be made within a fixed period of time and that if the company fails to make payment within such period, it shall accelerate payment of the whole amount of the bonds: *Provided*, That such period shall not be shorter than two months.

(2) The notice mentioned in paragraph (1) shall be given in writing.

(3) If a company fails to pay within the period mentioned in paragraph (1), it shall accelerate the payment of the whole amount of the bonds.

■ **Article 506 (Public Notice and Notice of Acceleration)**

When a company is subject to acceleration in accordance with Article 505, the person who executes of the resolution under Article 505 (1) shall without delay give public notice to that effect and give a separate notice to each bondholders known to such person thereof.

■ **Article 507 (Remuneration and Expenses for Commissioned Com- pany)**

(1) Unless otherwise provided in the contract made with the issuing company, any remuneration payable to a company commissioned to offer bonds for subscription, representatives or executors or any expenses necessary for the execution of their duties may be borne by the company, with the permission of the court.

(2) Any company commissioned to offer bonds for subscription, any representative of a meeting or executor of a resolution may receive remuneration and expenses mentioned in paragraph (1) out of the redemption amount, in preference to bondholders.

■ Article 508 (Expenses relating to Meetings of Bondholders)

(1) Any expenses relating to meetings of bondholders shall be borne by the issuing company.

(2) Any expenses relating to the demand under Article 496 shall be borne by the company. The court may, however, upon the application of any interested person or *ex officio*, specially determine a person who shall bear such expenses in whole or in part.

■ Article 509 (Meetings of Certain Classes of Bondholders)

If two or more classes of bonds have been issued, a meeting of bondholders shall be convened for each class of bonds respectively.

■ Article 510 (Applicable Provisions)

(1) Articles 363, 368 (3) and (4), 369 (2), and 371 through 373 shall apply *mutatis mutandis* to a meeting of bondholders.

(2) The minutes of meetings of bondholders shall be kept by the issuing company at its principal office.

(3) A company commissioned to offer bonds for subscription and any bondholder may, at any time during business hours, demand inspection of the minutes mentioned in paragraph (2).

■ Article 511 (Action for Revocation by Commissioned Company)

(1) If payment, settlement or any other act effected by a company to a certain bondholder is remarkably unfair, a company commissioned to offer bonds for subscription may demand the revocation thereof, only by means of action to court.

(2) The action mentioned in paragraph (1) shall be brought within six months from the date on which the company becomes aware of the facts constituting a cause for revocation or within one year from the date when such acts have been effected.

(3) Article 186 of this Act and the proviso of Article 406 (1) and Article 407 of the Civil Act shall apply *mutatis mutandis* to the action mentioned in paragraph (1).

■ **Article 512 (Action for Revocation by Representative, etc.)**

When a resolution has been adopted by a meeting of bondholders, any representative of a meeting or executor of a resolution may also bring the action mentioned in Article 511 (1): *Provided*, That such action shall be brought within one year from the date when such acts have been effected.

Sub-Section 3 Convertible Bonds

■ **Article 513 (Issuance of Convertible Bonds)**

(1) A company may issue convertible bonds.

(2) In case of paragraph (1), any of the following matters not provided for in the articles of incorporation shall be determined by the board of directors, unless the articles of incorporation provides that it shall be determined by a general meeting of shareholders' meeting:

1. Total amount of convertible bonds;
2. Conditions of conversion;
3. Contents of the shares to be issued upon conversion;
4. Period during which a claim for conversion may be demanded;
5. Effect that the preemptive rights to subscribe for convertible bonds is granted to shareholders, and the amount of convertible bonds subject to such rights; and
6. Particulars as to the issuance of convertible bonds to the persons other than shareholders, and the amount of such convertible bonds to be issued.

(3) If, in case where convertible bonds are issued to those who are not shareholders of the company, the articles of incorporation do not provide for the amount of convertible bonds to be issued, conditions of conversion, contents of the shares to be issued upon conversion and the period during which the conversion may be demanded, such matters shall be determined by resolution pursuant to Article 434. In such case, the proviso of Article 418 (3) shall apply *mutatis mutandis*

(4) In case of resolution in accordance with paragraph (3), the summary of agenda relating to the issuance of convertible bonds shall be stated in the notice and public notice under Article 363.

■ **Article 513-2 (Rights of Shareholders to Subscribe for Convertible Bonds)**

(1) Any shareholder who has a right to subscribe for convertible bonds shall be entitled to bonds in proportion to the number of shares which he holds: *Provided*, That this shall not apply to an fractional bond the amount of which is less than the minimum face amount of each convertible bond.

(2) Article 418 (2) shall apply *mutatis mutandis* where a shareholder has a right to subscribe for the convertible bonds.

■ Article 513-3 (Peremptory Notice to Shareholders Having Right to Subscribe for Convertible Bonds)

(1) If shareholders have the preemptive right to subscribe for convertible bonds, the company shall notify each shareholder of the amount of convertible bonds which he is entitled to subscribe for, issue price, conditions of conversion, contents of the shares to be issued upon conversion, period within which he may demand conversion and a statement to the effect that if he fails to subscribe for the convertible bonds on or before a specified date, he shall lose his right.

(2) Article 419 (2) through (4) shall apply *mutatis mutandis* in case of paragraph (1).

■ Article 514 (Procedures for Issuance of Convertible Bonds)

(1) With respect to convertible bonds, the following particulars shall be stated in the subscription form for bonds, the bond certificates and the register of bonds:

1. A statement to the effect that the bonds may be converted into shares;
2. Conditions of conversion;
3. Contents of the shares to be issued upon conversion;
4. Period during which conversion may be demanded; and
5. Provision that the transfer of shares should be subject to the approval of the board of directors, if determined.

(2) Deleted.

■ Article 514-2 (Registration of Convertible Bonds)

(1) When a company has issued convertible bonds, the company shall register them at the place of its principal office within two weeks from the date when the payment in accordance with Article 476 is completed.

(2) The particulars to be registered in accordance with paragraph (1) shall be as follows:

1. Total amount of convertible bonds;
2. Face amount of each convertible bond;
3. Amount paid for each convertible bond; and

4. Matters set forth in subparagraphs 1 through 4 of Article 514.

(3) Article 183 shall apply *mutatis mutandis* to the registration mentioned in paragraph (2).

(4) If, in case where convertible bonds have been issued overseas, the matters to be registered take place in a foreign country, the period within which registration shall be made shall start to run from the date when the notification thereof has arrived.

■ Article 515 (Demand for Conversion)

(1) Any person who demands conversion shall submit to the company two copies of a written application form together with the bond certificates.

(2) The written application form mentioned in paragraph (1) shall state the bonds to be converted and the date of application and contain a name and a seal or signature of the person demanding conversion.

■ Article 516 (Applicable Provisions)

(1) Articles 346 (2), 424 and 424-2 shall apply *mutatis mutandis* to the issuance of convertible bonds.

(2) Articles 339, 348, 350 and 351 shall apply *mutatis mutandis* to the conversion of bonds.

Sub-Section 4 Bonds with Warrants to Subscribe for New Shares

■ Article 516-2 (Issuance of Bonds with Warrants)

(1) A company may issue bonds with warrants to subscribe for new shares.

(2) In case of paragraph (1), any of the following matters which are not provided for in the articles of incorporation shall be determined by the board of directors, unless the articles of incorporation provide that it shall be determined by a general of shareholders meeting:

1. Total amount of bonds with warrants;
2. Details of the warrants vested in such bonds;
3. Period within which the warrants are to be exercised;
4. A statement on the transferability of only the warrants;
5. A statement to the effect that upon request of the person who intends to exercise his warrant rights, the issue price of the bonds with warrants shall be deemed as payment under Article 516-8 (1), in lieu of the redemption of such bonds;

6. Deleted;

7. A statement to the effect that the pre-emptive right to subscribe for the bonds with warrants is granted to shareholders and the amount of bonds subject to such rights; and

8. Details on issuance of bonds with warrants to persons other than shareholders and the amount of such bonds with warrants to be issued.

(3) The total amount of issue price of the shares to be issued upon the exercise of warrant rights vested to each bonds shall not exceed the total amount of such bonds with warrant.

(4) If, in case where the bonds with warrants are issued to those who are not shareholders, the articles of incorporation do not provide for the amount of such bonds, contents of the warrant rights and the period within which the warrant rights are to be exercised, such matters shall be determined by a resolution in accordance with Article 434. In such case, the proviso of Article 418 (3) shall apply *mutatis mutandis*.

(5) Article 513 (4) shall apply *mutatis mutandis* to the case of paragraph (4).

■ Article 516-3 (Peremptory Notice to Shareholders Having Right to Subscribe for Bonds with Warrants)

(1) If shareholders have the preemptive rights to subscribe for bonds with warrants, the company shall notify each shareholder of the amount of bonds with warrants which he is entitled to subscribe for, the issue price, the particulars of warrant rights, the period within which he may exercise his warrant rights and a statement to the effect that if he fails to subscribe for the bonds with warrants on or before the specified date, he will lose his right. In this case, if the matters set forth in Article 516-2 (2) 4 or 5 have been determined, the details of such matters shall also be notified.

(2) Article 419 (2) through (4) shall apply *mutatis mutandis* to the case of paragraph (1).

■ Article 516-4 (Particulars to Be Entered in Subscription Form for Bonds, Bond Certificates and Register of Bonds)

The following matters shall be entered in the subscription form for bonds, the bond certificates and the register of bonds in case of bonds with warrants: *Provided*, That when the company issues the certificates of warrants set forth in Article 516-5 (1), it shall not be required to enter them in the bond certificates:

1. A statement to the effect that they are bonds with warrants;

2. Particulars set forth in Article 516-2 (2) 2 through 5;

3. The banks and other financial institutions that will be responsible to receive the payment according to Article 516-8 and the places where such payments are to be made; and

4. Provision that the transfer of shares should be subject to the approval of the board of directors, if determined.

■ **Article 516-5 (Issuance of Certificates of Warrants)**

(1) If a company has determined the particulars set forth in Article 516-2 (2) 4, it shall issue the certificates of warrants in addition to the bond certificates.

(2) Certificates of warrants shall contain the following particulars in addition to the serial number and directors shall write their names and affix their seals or shall sign thereon:

1. A statement to the effect that it is a certificate of warrant;
2. Trade name of company;
3. Matters set forth in Article 516-2 (2) 2, 3 and 5;
4. Matters set forth in subparagraph 3 of Article 516-4; and
5. Provision that the transfer of shares should be subject to the approval of the board of directors, if determined.

■ **Article 516-6 (Transfer of Warrant Rights)**

(1) If certificates of warrants have been issued, transfer of the warrant rights shall be made only by the delivery of such certificates of warrants.

(2) Articles 336 (2) and 360 of this Act and Article 21 of the Cheques Act shall apply *mutatis mutandis* to the certificates of warrants.

■ **Article 516-7 (Registration of Bonds with Warrants)**

(1) When a company has issued bonds with warrants, it shall register the following:

1. A statement to the effect that they are bonds with warrants;
2. Total amount of issue price of the shares to be issued upon the exercise of warrant rights;
3. Face amount of each bond with warrants;
4. Amount paid in for each bond with warrants; and
5. Matters set forth in Article 516-2 (2) 1 through 3.

(2) Article 514-2 (1), (3) and (4) shall apply *mutatis mutandis* to the registration under paragraph (1).

■ **Article 516-8 (Exercise of Warrant Rights)**

(1) Any person who intends to exercise his warrant right shall submit to the company two copies of a written application form therefor and shall pay the total amount of issue price of the new shares.

(2) When written application forms are submitted pursuant to paragraph (1), the certificates of warrants, if they have been issued, shall be submitted together with the application forms, but if such certificates have not been issued, the bond certificates shall instead be presented.

(3) The payment under paragraph (1) shall be made to the banks or other financial institutions stated in the bond certificates or in the certificates of warrants.

(4) Article 302 (1) shall apply *mutatis mutandis* to the written application forms mentioned in paragraph (1) and Articles 306 and 318 shall apply *mutatis mutandis* to the banks and other financial institutions responsible for receipt of payment mentioned in paragraph (3).

■ **Article 516-9 (Time of Becoming Shareholder)**

A person who has exercised his warrant rights in accordance with Article 516-8 (1) shall become a shareholder at the time when he makes payment in accordance with the above Article. In this case, Article 350 (2) and (3) shall apply *mutatis mutandis*.

■ **Article 516-10 (Applicable Provisions)**

Article 351 shall apply *mutatis mutandis* to the exercise of warrant rights and Articles 513-2 and 516 (1) shall apply *mutatis mutandis* to bonds with warrants.

SECTION 9 Dissolution

■ **Article 517 (Reasons for Dissolution)**

A stock company shall be dissolved for any of the following reasons:

1. Reasons set forth in subparagraphs 1, 4 through 6 of Article 227;
- 1-2. Division or merger through division of a company under Article 530-2; and
2. A resolution of a general shareholders' meeting.

■ **Article 518 (Resolution for Dissolution)**

The resolution for dissolution shall be adopted in accordance with Article 434.

■ **Article 519 (Continuance of Company)**

In case where a company has been dissolved by reason of the expiration of the duration, the occurrence of any other events specified in the article of incorporation or the resolution of a general shareholders' meeting, the company may continue to exist by such resolution in accordance with Article 434.

■ Article 520 (Judgment for Dissolution)

(1) If, in the cases mentioned below, there exist unavoidable reasons, any shareholder who holds shares representing no less than 10/100 of the total outstanding shares may apply to the court for the dissolution of the company:

1. When the company's business operation continues to be remarkably in deadlock and as a result irreparable injury to the company is suffered or threatened; and
2. When the managing or disposing of the company's property is remarkably improper and the existence of the company is thereby in danger.

(2) Articles 186 and 191 shall apply *mutatis mutandis* to the application under paragraph (1).

■ Article 520-2 (Dissolution of Dormant Company)

(1) If, in case where the administrator of the Office of Court Administration has given a public notice in the Official Gazette that any company whose last registration was made five years ago shall make a report to the effect that it has not yet closed its business to the court that has the jurisdiction over the place of its principal office, a company for which five years has already lapsed since its last registration as of the date of public notice fails to report within two months from the date of public notice in accordance with the Presidential Decree, the company shall be deemed to have been dissolved at the expiration of the period set for such report: *Provided*, That this shall not apply if the company has effected a registration during the period.

(2) In case of a public notice under paragraph (1), the court shall also send to the company concerned a separate notice informing that such public notice has been given.

(3) A company which is deemed to have been dissolved pursuant to paragraph (1) may continue to exist by a resolution under Article 434 within three years thereafter.

(4) If a company which is deemed to have been dissolved pursuant to paragraph (1) fails to continue to exist as a company in accordance with paragraph (3), it shall be deemed to have been liquidated when the period of the three years mentioned in paragraph(3) has lapsed.

■ Article 521 (Notice and Public Notice of Dissolution)

Upon the dissolution of a company, except in the case of bankruptcy, the directors shall without delay dispatch notice thereof to the shareholders and, in cases where bearer share certificates have been issued, shall give public notice thereof.

■ **Article 521-2 (Provisions to be Applied *Mutatis Mutandis*)**

The provisions of Articles 228 and 229 (3) shall apply *mutatis mutandis* to the dissolution of a stock company.

SECTION 10 Merger

■ **Article 522 (Written Agreement of Merger and Resolution of Approval)**

(1) In order to effect a merger of companies, a written agreement for merger shall be prepared and be approved by a general shareholders' meeting.

(2) The summary of the written agreement of a merger shall be stated in notices and public notices under Article 363.

(3) The resolution of approval mentioned in paragraph (1) shall be adopted in accordance with Article 434.

■ **Article 522-2 (Public Notice of Written Agreement of Merger)**

(1) Directors of a company shall keep the following documents in its principal office from two weeks before the date on which the general shareholders' meeting is to be held under Article 522

(1) until six months after the merger.

1. A written agreement of such merger;

2. A document specifying the reasons for the allotment of shares which are issued to the shareholders of a company which ceases to exist in consequence of a merger; and

3. The latest balance sheet and statement of profit and loss of each company.

(2) Any shareholder or creditor of the company may, at any time during business hours, request the inspection of a document under any subparagraph of paragraph (1) or request the delivery of the copies or abstracts of them, by paying the cost as determined by the company.

■ **Article 522-3 (Rights of Shareholders Dissenting Merger to Request the Purchase of Shares)**

(1) If, in case where the board of directors has made a resolution on the matters set forth in Article 522 (1), a shareholder dissenting from such resolution has notified in writing the company of his intention of dissent before the general meeting, he may demand in writing that the company purchase his shares, with the class and number of such shares specified in the written demand, within twenty days after the general meeting has adopted the resolution.

(2) A shareholder who made a written notification of the intention of dissent from a merger to the company within two weeks from the date on which a public notice or notice under Article 527-2

(2) has been made may demand that the company purchase his own shares in a written statement specifying the class and number of shares within 20 days after the period passed.

■ Article 523 (Written Agreement of Merger)

If one of the constituent companies of a merger survives after the merger, the written agreement of such merger shall contain the following particulars:

1. If the surviving company which is to continue to exist increases, due to the merger, the total number of shares authorized to be issued, the total number of shares authorized to be increased, the class and the number;
2. Total amount of the capital and the reserve of the surviving company to be increased;
3. Total number, class, number per class of shares to be issued by the surviving company at the time of the merger as well as any other particulars relating to the allotment of new shares to the shareholders of the company which is to cease to exist;
4. The amount which is to be paid by the surviving company to the shareholders of the merged company, if determined;
5. Date set for the general members' meeting or general shareholders' meeting at which the resolution of the approval for the merger shall be adopted;
6. Date on which the merger is to be effected; and
7. Matters on the amendment of the articles of incorporation which is to be effected by the surviving company in consequence of the merger, if determined.
8. The limit where each company makes a profit distribution due to the merger or the profit distribution in cash under Article 462-3 (1); and
9. Where the directors, auditors or members of the audit committee who are to take office in the company surviving after the merger are determined, their names and resident registration numbers.

■ Article 524 (Written Agreement of Consolidation)

If a new company is to be incorporated due to a merger, the written agreement of such merger shall contain the following particulars:

1. With regard to the company to be incorporated, the matters set forth in Article 289 (1), 1 through 4, the class and the number if different classes of shares are to be issued and the place of the principal office;

2. Total number, class, number per class of shares which are to be issued by the company to be incorporated as well as any other particulars relating to the allotment of shares to the shareholders of each constituent company;
3. Total amount of the capital and the reserve of the company to be incorporated;
4. The amount to be paid to the shareholders of each constituent company, if determined;
5. Particulars set forth in subparagraphs 5 and 6 of Article 523; and
6. Where the directors, auditors or members of the audit committee who are to take office in the company formed by a merger are determined, their names and resident registration numbers.

■ Article 525 (Written Agreement of Merger of Partnership Company or Limited Partnership Company)

(1) If, in case where the surviving company or the newly incorporated company is a stock company, either or both of the constituent companies are a partnership company or limited partnership company, the written agreement of such merger shall be prepared subject to the consent of all the members.

(2) Articles 523 and 524 shall apply *mutatis mutandis* to the written agreement of a merger mentioned in paragraph (1).

■ Article 526 (General Meeting for Reporting in Case of Merger)

(1) If one of the constituent companies survives after the merger, its directors shall without delay convene a general shareholders' meeting at which they shall make a report on matters relating to the merger, after the procedures set forth in Article 527-5 has been completed, or after the consolidation of shares has taken effect if shares have been consolidated in consequence of the merger, or after disposal set forth in Article 443 has been effected by the surviving company if there are shares which are not fit for consolidation, or, in case of a small-scale merger, after the procedures under Article 527-3 (3) and (4) has been completed.

(2) A person who has subscribed for the new shares issued at the time of merger shall have the same rights as a shareholder at the general shareholders' meeting under paragraph (1).

(3) In case of paragraph (1), the board of directors may make a public notice in lieu of a report to the general shareholders' meeting.

■ Article 527 (Inaugural General Meeting in Case of Consolidation)

(1) If a new company is to be incorporated due to a merger, members of the organizing committees shall without delay convene an inaugural general meeting after the procedures set forth in Article 527-5 have been completed, or after the consolidation of shares has taken effect

if shares have been consolidated in consequence of the merger, or after the disposal mentioned in Article 443 has been effected if there are shares which are not fit for consolidation.

(2) At the inaugural general meeting, a resolution for the amendment of the articles of incorporation may be adopted: *Provided*, That the resolution may not contradict the agreement of such merger.

(3) Articles 308 (2), 309, 311, 312 and 316 (2) shall apply *mutatis mutandis* to the inaugural general meeting mentioned in paragraph (1).

(4) In case of paragraph (1), the board of directors may make a public notice in lieu of a report to the general shareholders' meeting.

■ Article 527-2 (Simplified Merger)

(1) In case where one of the constituent companies of a merger survives, if there is the agreement of the total shareholders of a company to be extinguished due to the merger or if 90/100 or more of the total outstanding shares in such company are to be held by the surviving company, the approval of the general shareholders' meeting of the company to be extinguished may be replaced by the approval of the board of directors of such company.

(2) In case of paragraph (1), a company to be extinguished due to a merger shall give public notice or make notification to the shareholders that the company shall be merged without approval by the general meeting of shareholders within two weeks after the written agreement of such merger has been prepared: *Provided*, That the same shall not apply where the consents of the total shareholders have been obtained.

■ Article 527-3 (Small-Scale Merger)

(1) In case where the total number of new shares to be issued by the surviving company due to a merger does not exceed 5/100 of the total issued shares of the surviving company, the approval of the general shareholders' meeting of the company may be replaced by the approval of the board of directors of such company: *Provided*, That where there is a fixed amount to be paid to shareholders of a company to be extinguished in consequence of the merger, if the amount exceeds 2/100 of the amount of net assets existing on the latest balance sheet of the surviving company, this shall not apply.

(2) In case of paragraph (1), the written agreement of the merger of the surviving company shall include that the merger shall be effected without approval of the general meeting of shareholders.

(3) In case of paragraph (1), the surviving company shall make a public notice or notification to the shareholders of the trade name and address of the principal office of the company to be extinguished, the date of the merger, and the statement that the merger shall be effected without approval of the general meeting of shareholders within two weeks after the written agreement of the merger has been prepared.

(4) In case where shareholders who hold no less than 20/100 of the total outstanding shares of the surviving company which continues to exist after a merger notify, in writing, the company of their intention of dissent from the merger under paragraph (1) within two weeks after they received a public notice or notification under paragraph (3), the merger shall not be effected under the main sentence of paragraph (1).

(5) Article 522-3 shall not apply in case of the main sentence of paragraph (1).

■ Article 527-4 (Terms of Office of Director and Auditor)

(1) In case where one of the constituent companies of a merger survives, a director or auditor of the surviving company who took office before the merger shall be retired when the ordinary general meeting, held in the period for settlement of accounts which comes first after the merger, is closed, except as otherwise provided by the written agreement of the merger.

(2) Deleted.

■ Article 527-5 (Procedures for Protection of Creditors)

(1) Within two weeks after a resolution of approval by the general meeting of shareholders is adopted under Article 522, a company shall give its creditors a public notice that an objection, if any, against the merger should be raised within a period of no less than one month and shall give a separate peremptory notice to the creditors known to the company.

(2) In the application of paragraph (1), a resolution of approval by the board of directors shall, in case of Articles 527-2 and 527-3, be deemed to be that by the general meeting of shareholders.

(3) The provisions of Article 232 (2) and (3) shall apply *mutatis mutandis* in case of paragraphs (1) and (2).

■ Article 527-6 (*Ex Post Facto* Notice of Documents on Merger)

(1) Directors shall keep in the principal office written documents stating the progress of procedures under Article 527-5, the date of merger, the value of property and amount of debts succeeded to from a company which ceases to exist due to the merger, and other matters concerning the merger, for six months from the date of the merger.

(2) Article 522-2 (2) shall apply *mutatis mutandis* to documents under paragraph (1).

■ Article 528 (Registration of Merger)

(1) In case of a merger, the registration of alteration by the surviving company, the registration of the dissolution by the company which ceases to exist in consequence of the merger or the registration set forth in Article 317 by the newly incorporated company, shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office, from the date of the closing of the general shareholders' meeting or the date of a public

notice in lieu of a report under Article 526, or from the date of the closing of the inaugural general meeting or the date of a public notice in lieu of a report under Article 527, as the case may be.

(2) If a surviving company or a company which is newly incorporated in consequence of a merger succeeds to convertible bonds or bonds with warrants, the registration of bonds shall be effected simultaneously with the registration under paragraph (1).

■ Article 529 (Action for Nullification of Merger)

(1) The nullity of a merger may be asserted only by means of an action which shall be filed by each company's shareholder, director, auditor, liquidator or bankruptcy trustee or creditor who has opposed the merger.

(2) The action under paragraph (1) shall be brought within six months from the date on which the registration under Article 528 has been effected.

■ Article 530 (Applicable Provisions)

(1) Deleted.

(2) Articles 234, 235, 237 through 240, 329-2, 374 (2), 374-2 (2) through (5) and 439 (3) shall apply *mutatis mutandis* to the merger of a stock company.

(3) Articles 440 through 444 shall apply *mutatis mutandis* to the consolidation or split of shares by reason of a merger of companies.

(4) If shares are not to be consolidated, Articles 339 and 340 (3) shall apply *mutatis mutandis* to the pledges created over the shares of the company which ceases to exist in consequence of a merger.

SECTION 11 Division of Company

■ Article 530-2 (Division and Merger through Division of Company)

(1) A company may incorporate one or several new companies by means of division.

(2) A company may merge with one or several existing companies by means of its division (hereinafter referred to as "the merger through division").

(3) A company may be divided to incorporate one or several new companies, which, in succession, may merge with other existing companies.

(4) A company after dissolution may be divided or merged through division only when an existing company becomes the surviving company or when a new company is to be incorporated by such division or merger through division.

■ **Article 530-3 (Approval for Division Plan and Written Agreement of Merger through Division)**

(1) A company which is to be divided or merged through division shall prepare a division plan or a written agreement of a merger through division, which shall be approved by the general meeting of shareholders.

(2) A resolution of approval under paragraph (1) shall be adopted in accordance with Article 434.

(3) With respect to a resolution under paragraph (2), a shareholder mentioned in Article 370 (1) shall also have a voting right.

(4) A summary of a division plan or a written agreement of a merger through division shall be entered in a notice and public notice under Article 363.

(5) In case where a company which issued several classes of shares comes to inflict a loss to a certain class of shareholders due to division or a merger through division, the division or merger through division shall be subject to a resolution of the general meeting of such class of shareholders under Article 435.

(6) In case where the liability of shareholders of each constituent company of division or a merger through division is to be increased due to such division or merger through division, such division or merger through division shall be subject to an consent from all of such shareholders in addition to a resolution under paragraphs (2) and (5).

■ **Article 530-4 (Incorporation of Company by Division)**

(1) Section 1 of this Chapter concerning the incorporation of a company shall apply *mutatis mutandis* to the incorporation of a company under Article 530-2.

(2) Notwithstanding paragraph (1), a company to be incorporated through division may be so incorporated only by the contribution of the company to be divided. In this case, Article 299 shall not apply where the shares of the company to be incorporated are issued to the shareholders of the company to be divided in proportion to their shares.

■ **Article 530-5 (Particulars to be Entered in Division Plan)**

(1) In case where a company is to be incorporated through division, the following matters shall be entered in the division plan:

1. Trade name, objective, and address of the principal office of the company to be incorporated, and the method of public notice;

2. Total number of shares which are to be issued by the company to be incorporated, and the par value per share;

3. Total number, classes, and number per class of shares which are to be issued by the company to be incorporated at the time of such division;
4. Matters concerning the allotment of shares by the company to be incorporated to the shareholders of a company to be divided, and the merger or split of shares in connection with to such allotment, if determined;
5. Amount to be paid to the shareholders of a company to be divided, if determined;
6. Matters concerning the capital and reserve of the company to be incorporated;
7. Property to be transferred to the company to be incorporated and the value thereof;
8. Matters determined pursuant to Article 530-9 (2), if any;
9. Name and resident registration number of the director and auditor of the company to be incorporated, if determined; and
10. Other matters to be entered in the articles of incorporation of the company to be incorporated.

(2) In case where a company continues to exist after its division, the following matters shall be entered in the division plan with respect to the surviving company:

1. Amount of the capital and reserve to be decreased;
2. Method of the decrease of capital;
3. Property to be transferred due to the division and the value thereof;
4. Total number of shares issued after the division;
5. If the total number of shares authorized to be issued by the company is decreased, the total number, classes, and number per class of shares to be decreased; and
6. Other matters which cause any amendment in the articles of incorporation.

■ **Article 530-6 (Particulars to be Entered in Written Agreement of Merger through Division)**

(1) In case where part of a company to be divided merges with another company and such another company (hereinafter referred to as "the other party to merger through division") survives, the following matters shall be entered in the written agreement of the merger through division:

1. If the other party to merger through division increases the total number of shares authorized to be issued due to the merger through division, the total number, classes, and number per class of such shares to be increased;

2. The total number, classes, and number per class of new shares to be issued by the other party to merger through division at the time of such merger;
3. Matters concerning the allotment of shares by the other party to merger through division to the shareholders of the company to be divided, and the merger or split of shares pursuant to such allotment, if determined;
4. The amount to be paid by the other party to merger through division to the shareholders of the company to be divided, if determined;
5. Matters concerning the total amount of the capital and the reserve of the other party to merger through division to be increased;
6. Property to be transferred by the company to be divided to the other party to merger through division and the value thereof;
7. The matters determined pursuant to Article 530-9 (3), if so determined;
8. The date of the general meeting of shareholders on which the companies concerned are to make a resolution under Article 530-3 (2);
9. The date on which a merger through division is to be effected;
10. Name and resident registration number of the director and auditor of the other party to merger through division, if determined; and
11. Other matters which cause the amendment of the articles of incorporation of the other party to merger through division.

(2) In case where part of a company to be divided merges with another company or part of another company through division to incorporate a company, the following matters shall be entered in the written agreement of the merger through division:

1. Matters provided for in Article 530-5 (1) 1, 2, and 6 through 10;
2. The total number, classes, and number per class of shares to be issued by the company to be incorporated at the time of the merger through division;
3. Matters concerning the allotment of shares by the company to be incorporated to the shareholders of the constituent companies, and provisions concerning the merger or split of shares in connection with such allotment, if determined;
4. Property to be transferred respectively by each constituent company to the company to be incorporated and the value thereof;

5. The amount to be paid respectively by each constituent company to its shareholders, if determined;
6. The date of the general meeting of shareholders on which the companies concerned are to make a resolution under Article 530-3 (2); and
7. The date on which the merger through division is to be effected.

(3) Article 530-5 shall apply *mutatis mutandis* to an entry in the written agreement of merger through division, concerning any part which is not the object of the merger through division in case of paragraphs (1) and (2).

■ Article 530-7 (Public Notice of Division Balance Sheet)

(1) The director of a company to be divided shall keep the following documents in the principal office from two weeks before the general meeting of shareholders has been held under Article 530-3 (1), until six months after the registration of division or the merger through division :

1. A division plan or written agreement of a merger through division;
2. A balance sheet concerning the part to be divided;
3. In case of a merger through division, the balance sheet of the other party to merger through division; and
4. A document stating reasons for the allotment of shares to be issued to the shareholders of a company to be divided.

(2) The director of the other party to merger through division under Article 530-6 (1) shall keep the following documents in the principal office from two weeks before the opening day of the general meeting of shareholders which has approved the merger through division, until six months after the registration of the merger through division:

1. A written agreement of the merger through division;
2. A balance sheet concerning the divided part of a company to be divided; and
3. A document stating reasons for the allotment of shares to be issued to the shareholders of a company to be divided.

(3) The provisions of Article 522-2 (2) shall apply *mutatis mutandis* to a document mentioned in paragraphs (1) and (2).

■ Article 530-8 (Account concerning Division and Merger through Division)

In case where a company which is incorporated due to a division or a merger through division or the other party to such merger through division acquires goodwill of business, the acquisition value may be counted in the assets side of the balance sheet. In this case, at least an equally divided portion out of such amount shall be amortized in each period for settlement of accounts within five years after the registration of incorporation or merger through division.

■ **Article 530-9 (Liability of Company after Division and Merger through Division)**

(1) Companies which are incorporated or continue to exist due to a division or a merger through division shall be jointly and severally liable for the performance of the obligation of the company before the division or merger through division.

(2) Notwithstanding paragraph (1), where a company to be divided incorporates another company by means of division upon a resolution under Article 530-3 (2), it may be determined that the incorporated company bears only the obligations related to property contributed thereto from among the debts of the company to be divided. In this case, if the company to be divided continues to exist after the division, the company shall bear only the obligations which the company incorporated due to the division fails to take over.

(3) In case of a merger through division, a company to be divided may, upon a resolution under Article 530-3 (2), determine that the existing company bears only the debts, from among those of the company to be divided, related to property contributed due to the merger through division invests. In this case, the provisions of the latter part of paragraph (2) shall apply *mutatis mutandis*.

(4) Articles 439 (3) and 527-5 shall apply *mutatis mutandis* in case of paragraph (2).

■ **Article 530-10 (Effect of Division or Merger through Division)**

A company which is incorporated or continues to exist due to a division or a merger through division shall succeed to the rights and duties of the company to be divided in accordance with a division plan or written agreement of merger through division.

■ **Article 530-11 (Applicable Provisions)**

(1) Articles 234, 237 through 240, 329-2, 440 through 444, 526, 527, 528, and 529 shall apply *mutatis mutandis* to division or a merger through division: *Provided*, That a member of the organizing committee under Article 527 shall be the representing director.

(2) Articles 374 (2), 439 (3), 522-3, 527-2, 527-3 and 527-5 shall apply *mutatis mutandis* to a merger through division.

■ **Article 530-12 (Real Division)**

This Section shall apply *mutatis mutandis* where a company to be divided acquires the total number of shares of a company to be incorporated due to a division or a merger through division.

SECTION 12 Liquidation

■ Article 531 (Appointment of Liquidators)

(1) Upon the dissolution of a company, except for the cases of a merger, division, merger through division, or bankruptcy, directors shall become the liquidators: *Provided*, That this shall not apply if otherwise provided in the articles of incorporation or if other persons have been appointed at a general shareholders' meeting.

(2) If there is no liquidator pursuant to paragraph (1), the court shall appoint a liquidator upon the application of any interested person.

■ Article 532 (Liquidator's Report)

The liquidator shall make a report on the following matters to the court within two weeks from the date on which he has assumed office:

1. Reason and date of dissolution; and
2. Name, residence registration number and address of the liquidator.

■ Article 533 (Liquidator's Duty to Investigate Company's Property and to Report)

(1) After the liquidator has assumed office, he shall without delay investigate the status of the company's property and shall prepare an inventory list and a balance sheet and submit them to a general shareholders' meeting for approval.

(2) The liquidator shall without delay submit the inventory and balance sheet to the court after he has obtained the approval set forth in paragraph (1).

■ Article 534 (Submission, Audit, Disclosure and Approval of Balance Sheet, Business Report and Supplementary Schedules)

(1) The liquidator shall prepare a balance sheet, supplementary schedules and a business report four weeks before the date of the ordinary shareholders' general meeting and submit them to the auditor.

(2) The auditor shall submit to the liquidator the audit report on the documents set forth in paragraph (1) one week before the date of the ordinary general shareholders' meeting.

(3) The liquidator shall keep the documents set forth in paragraph (1) and the audit report set forth in paragraph (2) at the principal office of the company from one week before the date of the ordinary general shareholders' meeting.

(4) Article 448 (2) shall apply *mutatis mutandis* to the documents set forth in paragraph (3).

(5) The liquidator shall submit the balance sheet and business report to the ordinary general shareholders' meeting for approval.

■ Article 535 (Peremptory Notice to Creditors)

(1) The liquidator shall give peremptory notice to creditors of the company, by means of a public notice, at least two times within two months after he has assumed office, to the effect that the creditors present their claims within a fixed period and that any creditor failing to do so will be excluded from the liquidation: *Provided*, That such period shall be no less than two months.

(2) The liquidator shall give a peremptory notice demanding the presentation of claims separately to each creditor known to the company, and such creditor shall not be excluded from the liquidation, even if he has failed to present his claim.

■ Article 536 (Performance During the Period for Presenting Claims)

(1) The liquidator shall not effect performance in favor of creditors during the period for presenting their claims pursuant to Article 535 (1): *Provided*, That the company shall not be relieved of any such liability for damages as may be caused by the delay of performance.

(2) Notwithstanding paragraph (1), the liquidator may, with the permission of the court, effect performance in respect of small claims, secured claims or any claims the performance for which is not likely to prejudice any other creditors.

■ Article 537 (Performance to Excluded Creditors)

(1) Creditors who have been excluded from the liquidation may demand performance only out of the surplus assets which have yet to be distributed.

(2) If distribution has been made to a part of shareholders, property which is necessary for distribution to other shareholders in equal proportion thereto shall be excluded from the surplus assets mentioned in paragraph (1).

■ Article 538 (Distribution of Surplus Assets)

The surplus assets shall be distributed among the shareholders in proportion to the number of shares held by each shareholder: *Provided*, That this shall not apply in case of Article 344 (1).

■ Article 539 (Dismissal of Liquidator)

(1) A liquidator, except for when he has been appointed by the court, may be dismissed at any time by a resolution of a general shareholders' meeting.

(2) If a liquidator is remarkably unfit for administrating the affairs of liquidation or has acted in contravention of his material duties, any shareholder who holds no less than 3/100 of the total outstanding shares may apply to the court for dismissal of such liquidator.

(3) Article 186 shall apply *mutatis mutandis* to the action relating to the application under paragraph (2).

■ **Article 540 (Completion of Liquidation)**

(1) When the affairs of liquidation have been completed, the liquidator shall without delay prepare a statement of the settlement of accounts and submit it to a general shareholders' meeting for approval.

(2) When the approval under paragraph (1) has been given, the company shall be deemed to have released the liquidator from his liability: *Provided*, That this shall not apply where the liquidator have committed any dishonest act.

■ **Article 541 (Preservation of Documents)**

(1) The books of a company and all important documents relating to its business and liquidation shall be kept for ten years from the registration of the completion of liquidation at the place of the principal office: *Provided*, That the slips and similar documents shall be kept for five years.

(2) With regard to the preservation set forth in paragraph (1), the court shall appoint the custodian and shall determine the method of preservation, upon the application of the liquidator or any other interested person.

■ **Article 542 (Applicable Provisions)**

(1) Articles 245, 252 through 255, 259, 260 and 264 shall apply *mutatis mutandis* to a stock company.

(2) Articles 362, 363-2, 366, 367, 373, 376 and 377, 382 (2), 386, 388 through 394, 396, 398 through 408, 411 through 413, 414 (3), 449 (3), 450 and 466 shall apply *mutatis mutandis* to the liquidator.

CHAPTER V LIMITED LIABILITY COMPANY

SECTION 1 Incorporation

■ **Article 543 (Preparation of Articles of Incorporation and Absolute Particulars to Be Entered Therein)**

(1) Members shall prepare the articles of incorporation for the establishment of a limited liability company.

(2) The articles of incorporation shall contain the following particulars and each member shall write his name and affix his seal or shall sign thereon:

1. Matters set forth in subparagraphs 1 through 3 of Article 179;

2. Total amount of capital;
3. Amount of each contribution unit;
4. Number of contribution units by each member; and
5. Place of the principal office.

(3) Article 292 shall apply *mutatis mutandis* to a limited liability company.

■ **Article 544 (Particulars concerning Abnormal Incorporation)**

The following particulars shall be effective upon being stated in the articles of incorporation:

1. Name of the persons who is to make a contribution in kind and the type, quantity and value of the subject-matter of the contribution and the number of contribution units to be given in consideration thereof;
2. Type, quantity and value of the property which was agreed to be transferred to the company after its incorporation and name of the transferor; and
3. Expenses of incorporation which are to be borne by the company.

■ **Article 545 (Limit Action on Total Number of Members)**

(1) The total number of members of a company shall not exceed fifty: *Provided*, That this shall not apply if the authorization of the court has been obtained where any special circumstances exist.

(2) Paragraph (1) shall not apply where the number of members is altered by succession or testamentary gift.

■ **Article 546 (Limit Action on Total Amount of Capital and Amount of Each Contribution Unit)**

(1) The total amount of capital of a company shall be at least ten million won.

(2) The amount of each contribution unit shall be no less than five thousand won and shall be equal.

■ **Article 547 (Appointment of First Directors)**

(1) Where the directors have not been designated by the articles of incorporation, a general members' meeting shall be convened before the incorporation of the company and such directors shall be elected at such meeting.

(2) Each member may convene a general meeting mentioned in paragraph (1).

■ Article 548 (Payment for Contribution)

(1) Directors shall have the members pay the full amount of contributions or furnish the whole of the property which is the subject-matter of the contributions in kind.

(2) Article 295 (2) shall apply *mutatis mutandis* to the contributions in kind made by members.

■ Article 549 (Registration of Incorporation)

(1) The registration of incorporation of a limited liability company shall be effected within two weeks from the date on which payment for contribution or performance of the contribution in kind set forth in the Article 548 has been performed.

(2) In connection with the registration under paragraph (1), the following particulars shall be registered:

1. Particulars set forth in subparagraphs 1, 2 and 5 of Article 179 and the place of branch office, if any;
2. Particulars set forth in Article 543 (2) 2 and 3;
3. Name, residence registration number and address of each director: *Provided*, That if the director representing the company is appointed, addresses of other directors shall be excluded;
4. Name of the representative director, if any;
5. Provisions pertaining to the joint representation of the company by two or more directors, if any;
6. Duration or any other reason of dissolution of the company if any; and
7. Name and residence registration number of auditors, if any.

(3) In connection with the registration to be made at the place of the branch office or new branch office in the event that a limited liability company establishes or transfers a branch office, the matters mentioned in paragraph (2) 1 and 3 through 6 shall be registered.

(4) Articles 181 through 183 shall apply *mutatis mutandis* to the registration of a limited liability company.

■ Article 550 (Liability of Members as of Incorporation concerning Contribution in Kind)

(1) If the actual value of the property mentioned in subparagraphs 1 and 2 of Article 544 as of the incorporation of a company is remarkably less than the value stated by the articles of incorporation, members as of incorporation shall be jointly and severally liable to pay such shortage to the company.

(2) The liability of members set forth in paragraph (1) may not be exempted.

■ Article 551 (Liability of Members as of Incorporation concerning Unpaid Amount of Contribution)

(1) If it is found after the incorporation of the company that the payment of the amount of contributions and the performance of contributions in kind has not been completed, the members, directors and auditors as of incorporation shall be jointly and severally liable to pay the amount unpaid or the value of property which has not been contributed to the company.

(2) The liability of members set forth in paragraph (1) may not be exempted.

(3) The liability of directors and auditors set forth in paragraph (1) may not be exempted without the consent of all members.

■ Article 552 (Action for Nullification or Revocation of Incorporation)

(1) The nullity of incorporation of a company may be asserted only by means of an action which shall be brought only by the members, directors or auditors and the revocation of incorporation of a company may be asserted only by means of an action which may be brought only by the persons having the right of revocation, within two years from the date on which the company has come into existence.

(2) Articles 184 (2) and 185 through 193 shall apply *mutatis mutandis* to the action under paragraph (1).

SECTION 2 Rights and Duties of Members

■ Article 553 (Liability of Member)

Unless otherwise provided in this Act, the liability of a member shall be limited to the amount of his contribution to the company.

■ Article 554 (Share of Member)

Each member shall have share in the company in proportion to the number of his contribution units.

■ Article 555 (Instruments of Share)

A limited liability company may not issue instruments to order or bearer instruments with regard to the respective share of members.

■ Article 556 (Transfer of Share)

(1) A member may transfer the whole or a part of his share to any other person only if a resolution of a general members' meeting is made pursuant to Article 585: *Provided*, That the restriction on transfer may be aggravated by the articles of incorporation.

(2) If the total number of members exceeds the limit mentioned in Article 545, such transfer shall not be effective except in case of testamentary gift.

(3) Notwithstanding paragraph (1), the articles of incorporation may provide otherwise with regard to the transfer of share between members.

■ **Article 557 (Requirement for Asserting Transfer of Share against Company and Third Person)**

The transfer of share shall not be asserted against the company and third persons unless the full name and address of the transferee and the number of contribution units subject to the transfer have been entered in the register of members.

■ **Article 558 (Ownership in Common of Share)**

Article 333 shall apply *mutatis mutandis* where share belongs to the ownership of two or more persons in common.

■ **Article 559 (Pledging of Share)**

(1) Share may be pledged.

(2) Articles 556 and 557 shall apply *mutatis mutandis* to the pledge of share.

■ **Article 560 (Applicable Provisions)**

(1) Articles 339, 340 (1) and (2), 341, 341-3, 342 and 343 (1) shall apply *mutatis mutandis* to the share of members.

(2) Article 353 shall apply *mutatis mutandis* to the notice or peremptory notice to members.

SECTION 3 Management of Company

■ **Article 561 (Directors)**

A limited liability company shall have one or more directors.

■ **Article 562 (Representation of Company)**

(1) A director shall represent the company.

(2) If there are two or more directors, the director who is to represent the company shall be elected at a general members' meeting unless otherwise provided in the articles of incorporation.

(3) It may be determined by the articles of incorporation or a general members' meeting that two or more directors shall jointly represent the company.

(4) Article 208 (2) shall apply *mutatis mutandis* to the cases under paragraph (3).

■ Article 563 (Representation in Action between Director and Company)

If a company files an action against any of its directors or where a director files an action against the company, a person who shall represent the company with regard to such action shall be elected at a general members' meeting.

■ Article 564 (Decision on Management of Business, Transactions between Director and Company)

(1) If there are several directors, management of the company's business, appointment or dismissal of a manager and establishment, transfer or closure of branch offices shall be determined by a majority vote of the directors, unless otherwise provided by the articles of incorporation.

(2) Manager may be elected or dismissed at a general members' meeting, notwithstanding paragraph (1).

(3) A director may enter into transactions with the company for his account or for the account of a third person only if he has obtained approval from the auditor or, in case of absence of auditor, from the general members' meeting. In this case, Article 124 of the Civil Act shall not apply.

■ Article 564-2 (Right to Injunction)

In case a director acts in violation of Acts and subordinate statutes or the articles of incorporation and thereby an irreparable damage is likely to be caused to the company, the auditor or any member who holds contribution units representing no less than 3/100 of the total amount of capital may demand on behalf of the company that the director stop such an act.

■ Article 565 (Derivative Suits by Members)

(1) Any member who holds contribution units representing no less than 3/100 of the total amount of the capital may demand that the company institute an action to enforce the liability of a director.

(2) Articles 403 (2) through (7) and 404 through 406 shall apply *mutatis mutandis* in case of paragraph (1).

■ Article 566 (Keeping and Inspection of Documents)

(1) Directors shall keep at the principal office and at each branch office copies of the articles of incorporation and the minutes of the general members' meetings and shall keep the register of members at the principal office.

(2) The full name and address of members and number of contributions unit shall be entered in the register of members.

(3) Any member or creditor of the company may demand, at any time during business hours, the inspection or copying of the documents set forth in paragraph (1).

■ Article 567 (Applicable Provisions)

Articles 209, 210, 382, 385, 386, 388, 395, 397, 399 through 401, 407 and 408 shall apply *mutatis mutandis* to directors of a limited liability company. In this case, the term "board of directors" in Article 397 shall be read as "the general members' meeting".

■ Article 568 (Auditors)

(1) A limited liability company may have one or more auditors in accordance with the articles of incorporation.

(2) Article 547 shall apply *mutatis mutandis* where the articles of incorporation provide that the company shall have auditors.

■ Article 569 (Auditor's Authority)

An auditors may at any time investigate the status of property and the affairs of the company and may request directors to report on the business operation.

■ Article 570 (Applicable Provisions)

Articles 382, 385 (1), 386, 388, 400, 407, 411, 413, 414 and 565 shall apply *mutatis mutandis* to auditors.

■ Article 571 (Convocation of General Members' Meeting)

(1) A general members' meeting shall be convened by directors unless otherwise provided in this Act: *Provided*, That an extraordinary general members' meeting may be convened by auditor.

(2) In convening a general meeting, a notice in writing shall be dispatched to each member at least one week prior to the date set for such meeting: *Provided*, That this period may be shortened by the articles of incorporation.

(3) Articles 363 (2) and 364 shall apply *mutatis mutandis* to the convocation of a general members' meeting.

■ **Article 572 (Demand for Convocation of General Meeting by Minority Members)**

(1) Any member who holds contribution units representing no less than 3/100 of the total amount of the capital may demand the convocation of a general meeting by filing with directors a written application which states the proposed subject-matters of such meeting and the reasons for which it is to be convened.

(2) Paragraph (1) may be provided otherwise by the articles of incorporation.

(3) Article 366 (2) and (3) shall apply *mutatis mutandis* in case of paragraph (1).

■ **Article 573 (Omission of Convocation Procedures)**

A general meeting may be convened without the procedures set forth in Article 572, with the consent of all the members.

■ **Article 574 (Quorum of General Meeting and Method of Resolution)**

Unless otherwise provided by the articles of incorporation or this Act, all resolutions of a general members' meeting shall be adopted with the attendance of members holding a majority of votes and by the majority of affirmative votes of the members present.

■ **Article 575 (Member's Right to Vote)**

Each member shall have one vote for each contribution unit: *Provided*, That the articles of incorporation may provide otherwise with regard to the number of votes.

■ **Article 576 (Transfer of Business and Ex Post Facto Incorporation)**

(1) A resolution of a general meeting under Article 585 shall be required for a limited liability company to effect the matters set forth in subparagraphs 1 through 3 of Article 374.

(2) paragraph (1) shall apply *mutatis mutandis* where a limited liability company enters, within two years from its coming into existence, into an agreement to acquire, for value equivalent to no less than 1/20 of the capital, a property existing prior to its incorporation, which is purported to be continuously used for purposes of its business.

■ **Article 577 (Resolution in Writing)**

(1) If a resolution of a general meeting is required, resolution in writing may be adopted, with the consent of all the members.

(2) If all the members have consented in writing to the matters constituting the subject-matter of a resolution, such resolution shall be deemed to have been adopted in writing.

(3) A resolution in writing shall have the same effect as a resolution of a general meeting.

(4) The provisions regarding the general meeting shall apply *mutatis mutandis* to the resolutions in writing.

■ **Article 578 (Applicable Provisions)**

Articles 365, 367, 368 (3) and (4), 369 (2), 371 (2), 372, 373 and 376 through 381 shall apply *mutatis mutandis* to general members' meeting.

■ **Article 579 (Preparation of Financial Statements)**

(1) Directors shall, at each period for the settlement of accounts, prepare the following documents and annexed statements thereto:

1. Balance sheet;
2. Loss and profit statement; and
3. Statement of appropriation of earned surplus or statements of disposition of deficit.

(2) If there are auditors, directors shall submit to auditors the documents under paragraph (1) four weeks before the date set for the ordinary general meeting.

(3) Auditors shall submit an audit report to directors within three weeks from the date on which they receive the documents under paragraph (2).

■ **Article 579-2 (Preparation of Business Report)**

(1) Directors shall prepare a business report at each period for the settlement of accounts.

(2) Article 579 (2) and (3) shall apply *mutatis mutandis* to the business report under paragraph (1).

■ **Article 579-3 (Keeping and Public Notice of Financial Statements)**

(1) Directors shall keep the documents under Articles 579 and 579-2 and the business report at the principal office of the company for five years from a week before the date set for the ordinary general meeting.

(2) Article 448 (2) shall apply *mutatis mutandis* to the documents under paragraph (1).

■ **Article 580 (Standard for Dividend)**

Unless otherwise provided in the articles of incorporation, a dividend shall be made in proportion to the number of contribution units of each member.

■ **Article 581 (Member's Right to Inspect Account Books)**

(1) Any member who hold contribution units representing no less than 3/100 of the total amount of the capital may demand the inspection or copying of the account books and related documents.

(2) A company may provide in the articles of incorporation that any member may make the demand under paragraph (1). In this case, the supplementary schedules need not be prepared, regardless of Article 579 (1).

■ Article 582 (Inspection of Business Affairs and Status of Property)

(1) If there is any dishonest act or any material fact in contravention of any relevant acts, subordinate statutes or the articles of incorporation in connection with the management of the company's affairs, any member who holds contribution units representing no less than 3/100 of the total amount of the capital may apply to the court for the appointment of an inspector to investigate the affairs of the company and the status of its property.

(2) The inspector shall report in writing on the results of the investigation to the court.

(3) The court may, if it deems it necessary after examining the report mentioned in paragraph (2), order auditors, or directors in the absence of auditors, to convene a general members' meeting. In this case, Article 310 (2) shall apply *mutatis mutandis*.

■ Article 583 (Applicable Provisions)

(1) Articles 449 (1) and (2), 450, 452, 453, 453-2, 457-2, 458 through 460, 462, 462-3 and 466 shall apply *mutatis mutandis* to the accounting of a limited liability company.

(2) Article 468 shall apply *mutatis mutandis* to the claim rights arising out of the relations of employment between a limited liability company and its employees.

SECTION 4 Amendment of Articles of Incorporation

■ Article 584 (Method of Amendment of Articles of Incorporation)

In order to amend the articles of incorporation, a resolution of a general members' meeting is required.

■ Article 585 (Special Resolution for Amendment of Articles of Incorporation)

(1) The resolution mentioned in Articles 584 shall be adopted by the affirmative votes of the majority number of all the members as well as of no less than 3/4 of the total votes.

(2) In the application of paragraph (1), a member who is not allowed to exercise his vote shall not be included to the number of all the members and the vote which may not be exercised shall not be included to the number of the total votes.

■ Article 586 (Resolution for Capital Increase)

Even where the articles of incorporation does not provide for the following matters, they may be determined by a resolution for capital increase:

1. Name of the persons who is to make contribution. Type and the class, quantity and value of the subject-matter of such contribution in kind and the number of contribution units to be given in consideration thereof;
2. Type, quantity and value of the property which was agreed to be transferred to the company after the capital increase is effected and the name of the transferor; and
3. Name of the persons to whom the preemptive right to the capital contribution is granted and the substance of such right.

■ **Article 587 (Granting of Preemptive Right in Case of Capital Increase)**

If a limited liability company promises to give a specified person the preemptive right to the capital contribution in case of the capital increase in the future, the resolution set forth in Article 585 shall be required.

■ **Article 588 (Member's Preemptive Right to Capital Contribution)**

A member is entitled to subscribe for capital contribution with respect to the capital increase, in proportion to his share: *Provided*, That this shall not apply where certain persons who shall subscribe for the capital contribution have been determined by the resolutions mentioned in Articles 586 and 587.

■ **Article 589 (Method of Subscription for Capital Contribution)**

(1) In case of the capital increase, any person who intends to subscribe for the capital contribution shall enter the number of contribution units to be subscribed for and his address on a document certifying such subscription and he shall write his name and affix his seal or shall sign.

(2) A limited liability company shall not offer the capital contributions in public for subscription by means of advertisement or otherwise.

■ **Article 590 (Status of New Subscribes of Contribution)**

In case of the capital increase, the person who has subscribed for the capital contribution shall have the same rights as the existing member with regard to the dividend from the time of payment for the capital contribution or the transfer of property which is the subject-matter of the contribution in kind.

■ **Article 591 (Registration of Capital Increase)**

A limited liability company shall effect the registration of alteration due to the capital increase within two weeks at the place of the principal office, from the date on which the payment for the

capital contribution or the performance of the contributions in kind in connection with such capital increase has been completed.

■ **Article 592 (Effective date of Capital Increase)**

The increase in the capital shall take effect when the registration under Article 591 is effected at the place of the principal office.

■ **Article 593 (Member's Liability concerning Contribution in Kind)**

(1) If the actual value of the property mentioned in subparagraphs 1 and 2 of Article 586 as of the capital increase is remarkably less than the value determined by the resolution for the capital increase, the members who have agreed to the resolution shall be jointly and severally liable to pay such shortage to the company.

(2) Articles 550 (2) and 551 (2) shall apply *mutatis mutandis* in case of paragraph (1).

■ **Article 594 (Liability of Directors, etc. concerning Unsubscribed Capital Contributions, etc.)**

(1) If there are contributions which have not yet been subscribed for after the capital increase, directors and auditors shall be deemed to have subscribed for such contributions jointly.

(2) If full payment of the capital contributions or the transfer of property which is the subject-matter of contribution in kind has not been completed after the capital increase, directors and auditors are jointly and severally liable to pay such incomplete amount or the value of property yet to be transferred.

(3) Article 551 (3) shall apply *mutatis mutandis* in case of paragraph (1).

■ **Article 595 (Action for Nullifying Capital Increase)**

(1) The nullity of an capital increase may be asserted only by means of an action which shall be brought only by members, directors or auditors within six months from the date on which the registration under Article 591 has been effected at the place of the principal office.

(2) Articles 430 through 432 shall apply *mutatis mutandis* in case of paragraph (1).

■ **Article 596 (Applicable Provisions)**

Articles 334, 548, and 576 (2) shall apply *mutatis mutandis* to the increase in the capital.

■ **Article 597 (Applicable Provisions)**

Articles 439 (1) and (2), 443, 445 and 446 shall apply *mutatis mutandis* to the reduction of the capital.

SECTION 5 Merger and Change of Organization

■ Article 598 (Method of Merger)

A resolution of the general members' meeting pursuant to Article 585 shall be required for a merger involving a limited liability company.

■ Article 599 (Appointment of Members of Organizing Committee)

The members of the organizing committee pursuant to Article 175 shall be appointed by a resolution of a general members' meeting set forth in Article 585.

■ Article 600 (Merger of Limited Liability Company and Stock Company)

(1) A merger between a limited liability company and a stock company, as a result of which a stock company survives or is newly incorporated, shall not take effect unless it has obtained the authorization of the court.

(2) In case of a merger between a limited liability company and a stock company which has not completed the redemption of the bonds, the surviving company or the company which is to be newly incorporated shall not be a limited liability company.

■ Article 601 (Subrogation)

(1) In case of a merger between a limited liability company and a stock company as a result of which a limited liability company survives or is newly incorporated, Article 339 shall apply *mutatis mutandis* to the pledge created over the pre-existing shares of the stock company.

(2) In case of paragraph (1), a pledge over share shall not be asserted against the company or any other third person unless the number of contribution units and the name and address of the pledgee have been entered in the register of members.

■ Article 602 (Registration of Merger)

In case of a merger involving a limited liability company, the registration of alteration by the limited liability company surviving after the merger, the registration of dissolution by the limited liability company which ceases to exist in consequence of the merger and/or the registration pursuant to Article 549 (2) by the limited liability company which is newly incorporated in consequence of the merger shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office, from the date of the closing of the general members' meeting held pursuant to Article 526 or 527, which are applied *mutatis mutandis* by Article 603.

■ Article 603 (Applicable Provisions)

Articles 232, 234, 235, 237 through 240, 443, 522 (1) and (2), 522-2, 523, 524, 526 (1) and (2), 527 (1) through (3), and 529 shall apply *mutatis mutandis* to the merger of a limited liability company.

■ **Article 604 (Change of Organization of Stock Company to Limited Liability Company)**

(1) By a resolution adopted at a general meeting by the unanimous consent of all the shareholders, a stock company may change its organization into a limited liability company: *Provided*, That this shall not apply where the redemption of the bonds has not been completed.

(2) In case of the change of organization mentioned in paragraph (1), the total amount of capital shall not exceed the amount of net assets existing in the company.

(3) The articles of incorporation and any other particulars necessary for the change of organization shall be determined by the resolution mentioned in paragraph (1).

(4) Article 601 shall apply *mutatis mutandis* to the change of the organization under paragraph (1).

■ **Article 605 (Liability of Directors and Shareholders for Shortage in Amount of Net Assets)**

(1) If, in case of change of the organization under Article 604, the amount of net assets which exists in the company is less than the total amount of the capital, directors and shareholders at the time of the resolution mentioned in Article 604 (1) shall be liable to pay jointly and severally such amount of shortage to the company.

(2) Articles 550 (2), and 551 (2) and (3) shall apply *mutatis mutandis* in case of paragraph (1).

■ **Article 606 (Registration of Change of Organization)**

When a stock company has changed its organization in accordance with Article 604, the registration of the dissolution by the stock company and the registration pursuant to Article 549 (2) by the limited liability company shall be effected within two weeks at the place of the principal office and within three weeks at the place of each branch office.

■ **Article 607 (Change of Organization of Limited Liability Company to Stock Company)**

(1) By a resolution adopted at a general meeting by the unanimous consent of all the members, a limited liability company may change its organization into a stock company.

(2) In case of paragraph (1), the total amount of the issue price of shares which are to be issued at the time of change of the organization shall not exceed the amount of net assets existing in the company.

(3) The change of organization under paragraph (1) shall not take effect unless it obtains the authorization of the court.

(4) If, in the case of a change of organization mentioned in paragraph (1), the amount of net assets which exists in the company is less than the total amount of the issue-price of shares which are issued at the time of the change of organization, directors, auditors and members of the company at the time of the resolution under paragraph (1) shall be jointly and severally liable to pay such amount of shortage to the company. In this case, Article 550 (2), and 551 (2) and (3) shall apply *mutatis mutandis*.

(5) Articles 340 (3), 601 (1), 604 (3) and 606 shall apply *mutatis mutandis* to the change of organization under paragraph (1).

■ Article 608 (Applicable Provisions)

Article 232 shall apply *mutatis mutandis* to the change of organization under Articles 604 and 607.

SECTION 6 Dissolution and Liquidation

■ Article 609 (Reasons for Dissolution)

(1) A limited liability company shall be dissolved for any of the following reasons:

1. Reasons set forth in subparagraphs 1, and 4 through 6 of Article 227; and
2. A resolution of a general members' meeting.

(2) A resolution mentioned in paragraph (1) 2 shall be adopted in accordance with Article 585.

■ Article 610 (Continuance of Company)

(1) Where a company has been dissolved for any of the reasons mentioned in subparagraph 1 of Article 227 or Article 609 (1) 2, the company may continue to exist by such resolution of the general members' meeting as set forth in Article 585.

(2) Deleted.

■ Article 611 (Applicable Provisions)

Article 229 (3) shall apply *mutatis mutandis* to the continuance of a company under Article 610.

■ Article 612 (Distribution of Surplus Assets)

Unless otherwise provided in the articles of incorporation, the surplus assets shall be distributed among the members in proportion to the number of contribution units of each member.

■ Article 613 (Applicable Provisions)

(1) Articles 228, 245, 252 through 255, 259, 260, 264, 520, 531 through 537, 540 and 541 shall apply *mutatis mutandis* to a limited liability company.

(2) Articles 209, 210, 366 (2) and (3), 367, 373 (2), 376, 377, 382 (2), 386, 388, 399 through 402, 407, 408, 411 through 413, 414 (3), 450, 466 (2), 539, 562 and 563, 564 (3), 565, 566, 571, 572 (1) and 581 shall apply *mutatis mutandis* to the liquidator of a limited liability company.

CHAPTER VI FOREIGN COMPANIES

■ Article 614 (Appointment of Representative, Establishment of Business Office and Registrations thereof)

(1) A foreign company intending to engage in business in the Republic of Korea shall appoint a representative in the Republic of Korea and shall establish a business office.

(2) In case of paragraph (1), such foreign company shall, in respect of the establishment of its business office, effect the same registration as that of a branch office of a company incorporated in the Republic of Korea either of the same kind or of the kind which it most closely resembles.

(3) For the registration under paragraph (1), such foreign company shall register the governing law under which it was incorporated and the name and address of its representative in the Republic of Korea.

(4) Articles 209 and 210 shall apply *mutatis mutandis* to the representative of a foreign company.

■ Article 615 (Starting Point of Registration Period)

If the matters required to be registered in accordance with Article 614 (2) and (3) has taken place in a foreign country, the period for registration shall start to run from the date on which a notice thereof has arrived.

■ Article 616 (Prohibition of Conducting Continuous Transactions before Registration)

(1) A foreign company shall not engage in continuous transactions at the place of its business office before it has effected the registration set forth in Article 614.

(2) Any person who has engaged in transactions in contravention of paragraph (1) shall be jointly and severally liable with the company for such transactions.

■ Article 617 (Applicable Laws)

A company incorporated in a foreign country shall, if it has established its principal office in the Republic of Korea or its main purpose is to engage in business in the Republic of Korea, be subject to the same provisions as a company incorporated in the Republic of Korea.

■ Article 618 (Applicable Provisions)

(1) Articles 335 through 338, 340 (1), 355 through 357, 478 (1), 479 and 480 shall apply *mutatis mutandis* to the issuance of share certificates or certificates of bonds and to the transfer or pledging of such shares or the transfer of bonds conducted in the Republic of Korea by a foreign company.

(2) In case of paragraph (1), the first business office established in the Republic of Korea by a foreign company shall be deemed as its principal office.

■ Article 619 (Order to Close Business Office)

(1) In case where a foreign company has established its business office, the court may order such business office to be closed, on the application of any interested person or public prosecutor, for any of the following reasons:

1. If the objective of establishment of such business office is illegal;
2. If such business office has, without justifiable reasons, failed to commence business within one year after the registration of establishment thereof, discontinued business for a period of no less than one year or if it has suspended payment without justifiable reasons; or
3. If the representative of such foreign company or any other person managing the affairs thereof has violated Acts and subordinate statutes or good morals and other social orders.

(2) Article 176 (2) through (4) shall apply *mutatis mutandis* in case of paragraph (1).

■ Article 620 (Liquidation of Properties Existing in Republic of Korea)

(1) If the court has ordered a business office of a foreign company to be closed in accordance with Article 619 (1), it may order the commencement of proceedings for liquidation in respect of the whole of the company's property existing in the Republic of Korea, upon the application of any interested person or *ex officio*. In this case, the court shall appoint a liquidator.

(2) Articles 535 through 537 and 542, except for those which are by nature inapplicable, shall apply *mutatis mutandis* to the liquidation under paragraph (1).

(3) Paragraphs (1) and (2) shall apply *mutatis mutandis* where a foreign company has voluntarily closed its business office.

■ Article 621 (Status of Foreign Company)

In connection with the application of other acts, a foreign company shall be deemed to be a same kind or most similar kind of company which comes into existence in the Republic of Korea, unless otherwise provided by acts.

CHAPTER VII PENAL PROVISIONS

■ **Article 622 (Crimes of Special Misappropriation by Promoters, Directors, and Other Officers, etc.)**

(1) If a promoter, managing member, director, member of audit committee, auditor or acting director under Article 386 (2), 407 (1), 415 or 567, manager or other employee commissioned to undertake a certain class of matters or specified matters related to the business affairs of the company has obtained, or made another person obtain, any pecuniary benefit by acting in breach of his duty and has thereby inflicted loss on the company, he shall be subject to an imprisonment not exceeding ten years or to a fine not exceeding thirty million won.

(2) The same shall apply where a liquidator, acting liquidator under Article 542 (2) and incorporator under Article 175 have committed an act mentioned in paragraph (1).

■ **Article 623 (Crimes of Special Misappropriation by Representatives of Meeting of Bondholders, etc.)**

If a representative of a meeting of bondholders or a person who was authorized to execute the resolutions thereof has obtained, or made another person obtain, any pecuniary benefit by acting in breach of his duty and has thereby inflicted loss on the bondholders, he shall be subject to an imprisonment not exceeding seven years or to a fine not exceeding twenty million won.

■ **Article 624 (Attempted Crimes of Special Misappropriation)**

An attempt to commit any of the acts set forth in Articles 622 and 623 shall be punishable.

■ **Article 625 (Crimes of Endangering Company's Property)**

If any person set forth in Article 622 (1), inspector, notary public mentioned in Article 298 (3), 299-2, 310 (3) or 313 (2) (including managing attorney of an incorporated law firm and of a joint law & notary office; the same shall apply hereinafter in this Chapter) or appraiser mentioned in Article 299-2, 310 (3), or 422 (1) has committed any of the following offenses, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won:

1. Making of a false report to, or concealing facts from, the court, the general meeting or promoters in respect of the subscription for shares or capital contribution, payment therefor, performance of contributions in kind, or any matter set forth in Article 290, subparagraph 4 of Article 416, or Article 544;
2. Wrongful acquisition of the ownership of share or shares in the company or of the pledge right with respect thereto, for the account of the company, irrespective of the name they have used in doing so;
3. Distribution of profits or interests in contravention of the relevant acts, subordinate statutes or the articles of incorporation; and

4. Disposal of the company's property for speculative transactions, outside the ordinary course of the company's business.

■ **Article 625-2 (Crimes of Violating Share Acquisition Restriction, etc.)**

If a person set forth in Article 635 (1) has violated Article 342-2 (1) or (2), he shall be subject to a fine not exceeding twenty million won.

■ **Article 626 (Crimes of False Reporting)**

If a director, auditor or acting director under Article 386 (2), 407 (1), 415 or 567 has made a false reporting to, or has concealed facts from, the court or the general meeting with respect to the amount of net assets under Article 604 (2) or 607 (2) in case of a change of organization pursuant to Article 604 or 607, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

■ **Article 627 (Crimes of Using Documents Containing Misstatements)**

(1) If a person set forth in Article 622 (1), representative of a foreign company or person who is commissioned to offer shares or bonds has used the subscription forms for shares or bonds, prospectus, advertisements or any other documents relating to an offering of shares or bonds, which contained misstatements as to material facts in connection with such offering, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

(2) The same shall apply where a persons who offers shares or bonds for sale has used documents related to such sale containing misstatements as to material facts pertaining to such sale.

■ **Article 628 (Crimes of Disguised Payment)**

(1) If a person set forth in Article 622 (1) has committed an act of disguising the payment for the subscription price or the fulfillment of the contribution in kind, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

(2) The same shall apply to a person who have consented to or has mediated an act mentioned in paragraph (1).

■ **Article 629 (Crimes of Excessive Issuance)**

If promoters, directors or acting directors under Article 386 (2) or 407 (1) have issued shares in excess of the total number of shares authorized to be issued by the company, they shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

■ **Article 630 (Crimes of Corruption in Office by Promoters, Directors or Other Officers)**

(1) If a person set forth in Articles 622 and 623, inspector or notary public under Article 298 (3), 299-2, 310 (3) or 313 (2) or appraiser under Article 299-2, 310 (3), or 422 (1) has received, demanded or promised any pecuniary benefit, in response to unlawful solicitation in connection with their duties, he shall be subject to an imprisonment not exceeding five years or to a fine not exceeding fifteen million won.

(2) The same shall apply to a person who has promised, delivered or manifested an intention for delivery of pecuniary benefits mentioned in paragraph (1).

■ **Article 631 (Crimes of Bribery in Relation to Disturbing Exercise of Rights, etc.)**

(1) If any person has received, demanded or promised pecuniary benefits in response to unlawful solicitations in connection with the following matters, he shall be subject to an imprisonment not exceeding one year or to a fine not exceeding three million won:

1. Making a statement or exercising voting rights at the inaugural general meeting, general members' meetings, general shareholders' meetings or meetings of bondholders;
2. Bringing an action set forth in Part 3 or exercising the rights of shareholders representing no less than 1/100 or 3/100 of the total outstanding shares, the rights of bondholders representing no less than 10/100 of the total amount of the bonds or the rights of members having contribution units representing no less than 5/100 of the capital; and
3. Exercising any right set forth in Article 402 or 424.

(2) The same shall apply to a person who has promised, delivered or manifested an intention for delivery of pecuniary benefits mentioned in paragraph (1).

■ **Article 632 (Concurrent Imposition of Imprisonment and Fine)**

Punishments of Imprisonment and fine set forth in Articles 622 through 631 may be concurrently imposed.

■ **Article 633 (Confiscation and Additional Collection)**

In case of Article 630 (1) or 631 (1), the benefits received by the offender shall be confiscated. If it is wholly or partly impossible to confiscate such, the value thereof shall be collected from the offender.

■ **Article 634 (Crimes of Evading Liability for Payment on Shares)**

If a person who has subscribed for shares or contribution units by using another person's name or a fictitious name in order to evade the liability for payment of the subscription price, he shall be subject to an imprisonment not exceeding one year or to a fine not exceeding three million won.

■ Article 634-2 (Crimes of Granting Benefits in Connection with Exercise of Shareholder's Rights)

(1) If a director, auditor, acting director under Article 386 (2), 407 (1) or 415, manager or other employee has granted pecuniary benefits on the company's account in connection with the exercise of shareholder's rights, he shall be subject to an imprisonment not exceeding one year or to a fine not exceeding three million won.

(2) The same shall apply to a person who has received, or made another person deliver, the benefits under paragraph (1).

■ Article 635 (Offences Subject to Fine for Negligence)

(1) If a promoter, incorporator, managing member, director, auditor, member of audit committee, representative of a foreign company, inspector, notary public under Article 298 (3), 299-2, 310 (3) or 313 (2), appraiser under Article 299-2, 310 (3), or 422 (1), manager, liquidator, transfer agent, company which was commissioned to offer bonds for subscription, its successor or acting director under Article 386 (2), 407 (1), 415, 542 (2) or 567 has committed any of the following offenses, he shall be subject to a fine for negligence not exceeding five million: *Provided*, That this shall not apply where a criminal penalty is imposed against such an act:

1. Neglecting to effect any of the registrations set forth in this Part;
2. Neglecting to give any public notices or any other notices prescribed in this Part or making a dishonest public or other notices;
3. Disturbing any inspection or investigation pursuant to this Part;
4. Refusal to permit the inspection or copying of documents or to deliver a transcript or an abstract thereof in contravention of this Part, without justifiable reason;
5. Making a false reporting to, or concealing facts from, the government authorities, general meetings or meetings of bondholders;
6. Failure to state in share certificates, certificates of bonds or certificates for preemptive rights any of the required particulars or making a misstatement therein;
7. Failure to effect entry of a change of holders in the register of shareholders, without justifiable reason;
8. Neglecting to take procedure for the appointment of directors and auditors, if the remaining directors or auditors in office become fewer than the minimum number prescribed in the Acts or in the articles of incorporation;
9. Failure to state any particulars required to be stated in the articles of incorporation, the register of shareholders or the part of a set thereof, the register of members, the register of

bonds or the part of a set thereof, the minutes, the property list, the balance sheet, the business report, the operation report, the income statements, the statements of appropriation of retained earnings or the statements of disposition of deficits, the reports on the settlement of accounts, account books, the supplementary schedules mentioned in Articles 447, 534, 579 (1) or 613 (1) or the audit report or making miss statements therein;

10. Neglecting or refusing to hand over the business undertaking to a liquidator appointed by the court;

11. Fixing the unduly prolonged period set forth in Article 247 (3), 535 (1) or 613 (1), for the purpose of delaying the completion of liquidation;

12. Neglecting to apply for an adjudication of bankruptcy in contravention of Article 254 (4), 542 (1) or 613 (1);

13. Inviting public subscriptions for contribution in contravention of Article 589 (2);

14. Merger, division, or merger through division of companies, change of organization, disposal of the company's property or reduction of its capital, in contravention of Article 232, 247 (3), 439 (2), 527-5, 530 (2), 530-9 (4), 530-11 (2), 597, 603 or 608;

15. Distribution of the properties of a company in contravention of Article 260, 542 (1) or 613 (1);

16. Failure to prepare subscription forms for shares or bonds, certificates of preemptive rights or to state therein the required particulars or making misstatements therein, in contravention of Article 302 (2), 347, 420, 420-2, 474 (2) or 514 (1);

17. Neglecting to take the procedures for cancellation of shares or contribution units or to effect the disposition of pledge rights over the shares or contribution units, in contravention of Article 342 or 560 (1);

18. Retirement of shares or contribution units in contravention of Article 343 (1) or 560 (1);

19. Issuance of share certificates in contravention of Article 355 (1) and (2) or 618;

19-2. Failure to enter in the register of shareholders, in contravention of Article 358-2 (2);

19-3. Failure to make a subject-matter of the general meeting of shareholders the matters which shareholders propose, in contravention of Article 363-2 (1) or 542 (2);

20. Failure to convene a general meeting in contravention of an order of the court rendered in accordance with Article 365 (1) and (2), 578, 467 (3) or 582 (3) or convening a general meeting at a place other than that set forth in the articles of incorporation or convening such meeting in contravention of Article 363, 364 or 571 (2) and (3);

20-2. Failure to give the notice or public notice on the contents and method of exercise of the appraisal right or giving a false notice or public notice, in contravention of Article 374 (2), 530 (2), or 530-11 (2);

21. Failure to keep books or documents in contravention of Article 396 (1), 448 (1), 510 (2), 522-2 (1), 527-6 (1), 530-7, 534 (3), 542 (2), 566 (1), 579-3, 603 or 613;

21-2. Refusal of the investigation of the auditor or the member of audit committee without any justifiable reason, in contravention of Article 412-4 (3);

22. Failure to set aside a reserve or misuse thereof, in contravention of Articles 458 through 460 or 583;

22-2. Failure to pay the dividend within the period set forth in Article 464-2 (1);

23. Offering bonds or failure to redeem old bonds, in contravention of Article 470;

24. Issuance of bond certificates in contravention of Article 478 (1) or 618;

25. Discharge of any obligation in contravention of Article 536 or 613 (1);

26. Failure to comply with an order of the court rendered pursuant to Article 619 (1); and

27. Issuance of instruments in bearer or non-bearer form with respect to contribution units, in contravention of Article 555.

(2) The same shall apply where a promoter or director has transferred any right deriving from the subscription of shares.

■ Article 636 (Business in Name of Company prior to its Registration, etc.)

(1) A person who has engaged in business in the name of a company before its incorporation shall be subject to a fine for negligence equivalent to two times the sum of the registration tax for the registration of incorporation of the company.

(2) paragraph (1) shall apply *mutatis mutandis* where a person has violated Article 616 (1).

■ Article 637 (Application of Penal Provisions to Juristic Person)

If any person set forth in Article 622, 623, 625, 627, 628 or 630 (1) is a juristic person, the penal provisions under this Chapter shall apply to the directors or auditors who have committed such acts or other members or managers who has managed the affairs of the company.

ADDENDA

■ Article 1 (Mandatory Provisions)

The scope of petty merchants shall be determined by a Cabinet Order.

■ **Article 2 (Idem)**

The lakes, rivers, ports and bays under Article 125 shall be determined by a Cabinet Order.

■ **Article 3 (Deferment of Giving Public Notice on Commercial Registration)**

(1) The provisions relating to the public notices mentioned in Article 36 shall no longer apply after a reasonable period. Such period shall be determined by the Supreme Court Regulations.

(2) If, in the case of the preceding paragraph, the registration has been effected in the period mentioned in the preceding paragraph, public notice shall be deemed to have been made.

■ **Article 4 (Prohibition on Issuance of Share Certificate in Bearer Form Company to be Organized only by Nationals of Republic of Korea)**

The stock company which should be organized by only nationals of the Republic of Korea in accordance with the Acts and subordinate statutes, and a stock company having special rights. on the condition that it is to be organized by only nationals of the Republic of Korea, shall not issue share certificates in bearer form. If the above mentioned provisions have been contravened, such share certificates shall be null and void and the last non-bearer shareholder shall be a shareholder.

■ **Article 5 Deleted.**

■ **Article 6 (Qualification of Company Commissioned to Offer Bonds for Subscription)**

No person other than a bank, trust or securities company shall be commissioned to offer bonds for subscription or become a successor of the business under Article 483.

■ **Article 7 (Method to Deposit Bearer Bond Certificate by Holder thereof)**

If the holder of bearer bond certificates has not deposited his bond certificates with the public official who is in charge of deposit in accordance with the provisions of Articles 491 (4) and 492 (2) or provisions to be applied *mutatis mutandis*, he shall deposit such bond certificates in the bank or trust company which is to be designated by the Chief Justice of the Supreme Court.

■ **Article 8 (Manner of Public Notice relating to Meetings of Bondholders)**

The public notice with regard to convocation of meeting of bondholders, payment of redemption amount or execution of resolution of meeting of bondholders relating to payment of redemption amount shall be given of public notice determined by Articles of incorporation of issuing company according to the manner.

■ **Article 9 (Mandatory Provisions)**

The Form of the inventory of equipments mentioned in Article 742 shall be determined by a Cabinet Order.

■ **Article 10 (Idem)**

The scope of coastal navigations mentioned in the proviso of Article 839 (2) shall be determined by a Cabinet Order.

■ **Article 11 (Idem)**

The matters concerning the enforcement of this Act shall be determined by separate Act.

■ **Article 12 (Enforcement Date and Effect of Old Act)**

(1) This Act shall enter into force on Jan. 1, 1963.

(2) The Commercial Act, Limited Liability Company Act, Act on Implementation Commercial Act, Act for Enforcement of Amendment of the Commercial Act applied in accordance with Article 1 of the Chosun Civil Affairs Ordinance shall be effective until the date of enforcement of this Act.

ADDENDUM

This Act shall enter into force on January 1, 1963.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on September 1, 1984.

■ **Article 2 (Principles of Transitional Measures)**

Except as otherwise *Provided*, this Act shall be applicable to the matters which have taken place before the enforcement of this Act: *Provided*, That any effect given by the previous provisions shall not be affected.

■ **Article 3 (Transitional Measures as to Trade Books, etc.)**

The previous provisions shall apply with respect to trade books and supplementary schedules, which a person who is a merchant when this Act enters into force should prepare before the fixed time under the revised provisions of Article 30 (2) (for the company, this date means the period for settlement of accounts; hereinafter referred to as the same in this Article), to the accounts to be made before and at the fixed time.

■ **Article 4 (Transitional Measures as to Minimum Amount of Capital of Stock Company)**

(1) A company which has been formed as a stock company before the enforcement of this Act, and the capital of which is less than fifty million won at the enforcement date of this Act, shall increase its capital to fifty million won or more, or alter its organization into a limited liability company within three years from the enforcement date of this Act.

(2) If the company fails to take such a procedure in the period as prescribed in paragraph (1), it shall be regarded as being dissolved.

(3) The companies which are as considered to have been dissolved under paragraph (2) but the liquidation of which is not closed, may continue their operation by a special resolution as prescribed in Article 434, according to the procedure in paragraph (1) within one year from the enforcement date of this Act.

■ Article 5 (Transitional Measures as to Par Value of Shares)

(1) With respect to the par value of shares of stock company issued formed before the enforcement of this Act, the previous provisions shall be applicable for three years from the enforcement date of this Act regardless of the revised provisions of Article 329 (4).

(2) A stock company formed before the enforcement of this Act shall consolidate the shares by a resolution under Article 434, in order to make the shares the par value of which is less than five thousand won into those above five thousand won, within three years from the enforcement date of this Act. In this case, the provisions of Articles 440 through 444 shall be applicable *mutatis mutandis*.

■ Article 6 (Transitional Measures as to Transfer of Shares before Issuing Share Certificates)

The revised provisions of the proviso of Article 335 (2) shall also be applicable to a transfer of shares which has been made without issuing the share certificates before the enforcement of this Act.

■ Article 7 (Transitional Measures as to Transfer of Shares by Delivery of Share Certificates)

(1) With respect to a transfer or acquisition of shares before the enforcement of this Act, the previous provisions of Articles 336 and 359 shall be applicable even after the enforcement of this Act: *Provided*, That with regard to a possession of share certificates after the enforcement of this Act, the revised provisions of Article 336 (2) shall be applicable.

(2) Even though a person who has, after the enforcement of this Act acquired share certificates issued before the enforcement of this Act, has not investigated as to the uninterrupted series of endorsements or the propriety of instrument for conveyance, the failure of such investigation shall not be considered as an act of bad faith or gross negligence, for the purpose of application of the revised provisions of Article 359.

■ Article 8 (Transitional Measures as to Transfer Agent)

(1) A transfer agent who was appointed before the enforcement of this Act, under Article 11-6 of the Capital Market Promotion Act, shall be regarded to have been appointed under the revised provisions of Article 337 (2) of this Act.

(2) The qualification of the transfer agent under this Act shall be determined by a Presidential Decree.

■ Article 9 (Transitional Measures as to Acquisition of Shares of Parent Company by Subsidiary Company)

(1) If a subsidiary company which is subject to Article 342-2, has the shares of a parent company which is subject to the said Article, at the time this Act enters into force, the former shall dispose of such shares within three years from the enforcement date of this Act.

(2) The provisions of Article 625-2 shall be applicable *mutatis mutandis* to the case of non-disposition of shares in contravention of the provisions of paragraph (1).

■ Article 10 (Transitional Measures as to Non-bearing of Share Certificates)

A measure pertaining to the non-issue of share certificates, which was taken before the enforcement of this Act, under the provisions of Article 11-7 of the Capital Market Promotion Act, shall be considered to have been taken under the revised provisions of Article 358-2 of this Act.

■ Article 11 (Transitional Measures as to Period of Closure of Register of Shareholders and Record Date)

If a day within two weeks from the day of enforcement of this Act is determined as the period of closure of shareholders' register or the record date, the previous provisions shall be applicable.

■ Article 12 (Transitional Measures as to Exercise Vote in Disunity)

The revised provisions of Article 368-2 (including the cases to which this Article is applied *mutatis mutandis* by Articles 308 (2) and 527 (3)) shall not be applicable to the exercise of a vote at a general shareholders' meeting or inaugural general meeting which is held on a day within two weeks from the enforcement date of this Act.

■ Article 13 (Transitional Measures as to Action for Affirming Non-existence of Resolution of General Meeting)

The revised provisions of Article 380 (including the cases to which this Article is applied *mutatis mutandis* by Articles 308 (2) and 578) shall also be applicable to the cases pending to the court at the time when this Act enters into force: *Provided*, That the effect of an action brought before the enforcement of this Act shall not be affected.

■ Article 14 (Transitional Measures as to Term of office of Directors and Auditors)

With respect to the term of office of directors and auditors of a stock company who are in office at the time this Act enters into force, the previous provisions shall be applicable, regardless of the revised provisions of Articles 383 (2) and 410.

■ **Article 15 (Transitional Measures as to Duty and Power of Auditors)**

With respect to the duty and power of an auditor of a stock company appointed before the enforcement of this Act, and is in office before closing of a ordinary general meeting relating to the period for the settlement of accounts which arrives first after the enforcement of this Act, the previous provisions shall be applicable.

■ **Article 16 (Transitional Measures as to Representative of Company for Action between Company and Directors)**

With respect to the person who is to represent a company in an action brought by a stock company against a director (including a liquidator, and hereinafter referred to the same in this Article) and vice versa, the previous provisions shall be applicable until the ordinary general meeting relating to the period for the settlement of accounts which arrives first after the enforcement of this Act, is closed.

■ **Article 17 (Transitional Measures as to Allotment of New Shares)**

When a resolution to issue new shares is adopted before the enforcement of this Act, the revised provisions of Article 418 (2) shall not be applicable.

■ **Article 18 (Transitional Measures as to Time of Effecting New Shares)**

When a resolution to issue new shares is made before the enforcement of this Act, the time when a person becomes a shareholder shall be determined according to the previous provisions, regardless of the revised provisions of Article 423.

■ **Article 19 (Transitional Measures as to Reduction of Capital)**

When a resolution concerning the reduction of capital is made before the enforcement of this Act, the fractional shares shall be disposed of according to the previous provisions, regardless of the revised provisions of Article 443 (1).

■ **Article 20 (Transitional Measures as to Time to Pay Dividend)**

The revised provisions of Article 464-2 shall not be applicable to the dividend which has been decided to be paid by a resolution under Article 449 (1) before the enforcement of this Act.

■ **Article 21 (Transitional Measures as to Issuance of Convertible Bonds)**

When a resolution to issue convertible bonds has been made before the enforcement of this Act, such bonds shall be issued according to the previous provisions.

■ **Article 22 (Transitional Measures as to Prohibition against Granting Benefits)**

The revised provisions of Article 467-2 shall not be applicable to an act performed before the enforcement of this Act.

■ **Article 23 (Transitional Measures as to Disclosure of Balance Sheet for Merger)**

The revised provisions of Article 522-2 (including the cases to which this Article is applied *mutatis mutandis* by Article 603) shall not be applicable to a case where the general shareholders' meeting under paragraph (1) of the said Article is to be held on a day within two weeks after the enforcement of this Act.

■ **Article 24 (Transitional Measures as to Total Amount of Capital of Limited Liability Companies)**

(1) A company which was a limited liability company before the enforcement of this Act, and whose total amount of capital and amount of one contribution unit at the time of enforcement of this Act are less than the amount as prescribed in the revised provisions of Article 546, shall raise the amount, in the case of the total amount of capital, to ten million won or more, and, in the case of the amount of contribution unit, to five thousand won or more, within three years from the enforcement date of this Act.

(2) The company which fails to raise its total amount of capital within the period as prescribed in paragraph (1) shall be deemed to have been dissolved.

(3) The companies which as considered to have been dissolved under paragraph (2), but the liquidation of which is not completed, may continue their operation by a special resolution as prescribed in Article 585, according to the procedure as referred to in paragraph (1) within one year from the enforcement date of this Act.

■ **Article 25 (Revision of Relevant Acts and Relations with Other Acts)**

(1) through (7) Omitted.

(8) In the cases where the previous provisions of the Commercial Act are cited in the Acts other than those prescribed in paragraphs (1) through (7), at the time this Act enters into force, if the provisions corresponding to them are included in this Act, such corresponding provisions of this Act shall be considered to have been cited in lieu of the previous provisions.

ADDENDUM

This Act shall enter into force on the date of its promulgation.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 1993.

■ **Article 2 (Transitional Measures)**

(1) The provisions of Part IV of this Act shall also be applicable to any insurance contract concluded before this Act enters into force: *Provided*, That the effect given by the previous provisions shall not be affected.

(2) The provisions of Part V of this Act shall not be applicable to any obligation on damages caused by any accident taken place before this Act enters into force, but the previous provisions shall be applicable.

■ **Article 3 (Transitional Measures concerning Application of Limitation Tonnage)**

In application of Article 751, the gross tonnage shall be applicable in lieu of the international gross tonnage to a ship which is engaged in an international navigation, and fails to be delivered an international tonnage certificate or written international tonnage confirmation by the Administrator of the Korea Maritime and Port Administration under Article 13 of the Vessels Act.

■ **Article 4 (Relation with Other Acts)**

In case where other Acts cite the previous provisions of the Commercial Act at the time this Act enters into force, if the provisions corresponding to them are included in this Act, such corresponding provisions of this Act shall be considered to have been cited in lieu of the previous provisions.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on January 1, 1995.

■ **Articles 2 through 4 Omitted.**

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on October 1, 1995.

■ **Article 2 (Principles of Transitional Measures)**

Except as provided otherwise by this Act, this Act shall also apply to the matters taken place before this Act enters into force: *Provided*, That it shall not affect any effect taken pursuant to the previous provisions.

■ **Article 3 (Transitional Measures concerning Trade Books, etc.)**

The previous provisions shall apply with respect to trade books and supplementary schedules, which a person who is a merchant at the time this Act enters into force should prepare before the fixed time under the revised provision of Article 30 (2) (for the company, this date means the period for settlement of accounts; hereinafter referred to as the same in this Article) which arrives for the first time after the enforcement of this Act, and to the accounts to be made before and at the fixed time.

■ **Article 4 (Transitional Measures concerning Class of Shares Having Preferential Rights)**

Any class of shares having preferential rights, issued before this Act enters into force, shall be subject to the previous provisions.

■ **Article 5 (Transitional Measures concerning Term of Office of Auditor)**

The term of any auditor of a stock company, who is in office at the time this Act enters into force, shall be subject to the previous provisions.

■ **Article 6 (Relation with Other Acts)**

In case where other Acts cite the provisions of the previous Commercial Act at the time this Act enters into force, if the provisions corresponding to them are included in this Act, such corresponding provisions of this Act shall be considered to have been cited in lieu of the previous provisions.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation: *Provided*, That the amended provisions of Article 382-2 shall enter into force six months after its promulgation.

■ **Article 2 (Principles of Transitional Measures)**

Except as otherwise prescribed by this Act, this Act shall also apply to matters which took place before this Act enters into force: *Provided*, That it shall not affect any effect taken pursuant to the previous provisions.

■ **Article 3 (Transitional Measures concerning Merger)**

With respect to a merger effected pursuant to a merger contract concluded prior to the enforcement of this Act, the previous provisions shall continue to apply even after this Act enters into force: *Provided*, That the period of institution of an objection by creditors under Articles 232 and 527-5 shall apply to that publicly notified on or after the enforcement date of this Act.

■ **Article 4 (Transitional Measures concerning Application of Penal Provisions)**

The application of penal provisions to an act conducted prior to the enforcement of this Act, and to acts conducted after the enforcement of this Act which are subject to the previous provisions under Article 3, shall follow the previous provisions.

■ **Article 5** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force six months after its promulgation. (Proviso Omitted.)

■ **Articles 2 through 6** Omitted.

ADDENDA

■ **Article 1 (Enforcement Date)**

This Act shall enter into force on the date of its promulgation.

■ **Article 2 (Principles of Transitional Measures)**

Except as otherwise *Provided*, this Act shall also apply to the matters which occurred before the enforcement of this Act: *Provided*, That this shall be without prejudice to any effect given by the previous provisions.

■ **Article 3 (Transitional Measures concerning Division)**

The previous provisions shall continue to govern even after the enforcement of this Act with respect to the division of a corporation effected under a division agreement that was concluded before this Act enters into force.

■ **Article 4** Omitted.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Application Examples for Request for Action Cost by Shareholders Instituting Action Who Won the Case) The amended provisions of Article 405 (1) shall apply also to the pending case at the court at the time of enforcement of this Act.

(3) (General Transitional Measures) This Act shall apply also to the case occurred prior to the enforcement of this Act unless otherwise prescribed by this Act: *Provided*, That this shall not affect the validity accrued by the previous provisions.

ADDENDUM

This Act shall enter into force on July 1, 2002.

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