Merger, Company Split, Share Exchange and Share Transfer under the Japanese Companies Act—Effective Way of Understanding §§ 748～816 in English

Yasuharu Yoneda[1]

Table of Contents

I. Introduction

The enactment of the Japanese Companies Act of 2005[2] (hereinafter referred to as "Act") and its revision of 2014[3] have made most of rules governing Merger, Company Split, Share Exchange and Share Transfer (hereinafter referred to as "reorganization[4]") more explicitly stated in the Act itself. As the result, it became an effective way for English users to obtain updated and accurate information about most of such rules just by reading the English translation of the Act[5]. To read the Act without any guidance, however, is rather difficult[6]. The purpose of this paper is to help such readers of the Act to understand its contents effectively, by explaining the main parts of such rules with precise reference to the relevant provisions of the Act. The readers[7] of this paper are expected to check the details of the rules by actually reading the referred provisions of the Act. Please note that this paper mainly deals with the cases in which all parties involved are Stock Companies.

II. Merger, Company Split, Share Exchange and Share Transfer

1. Six Forms of Reorganizations

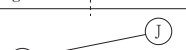
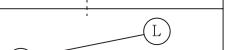
Under the Act, reorganizations are classified into the following six forms (see〔Table 1〕[8]). In the following explanation, each of the alphabets "A～L" refers to the company indicated by such alphabet in〔Table 1〕.

(1) Absorption-type Merger

Absorption-type Merger is a merger that a Company (A) effects with another Company (B) which causes the Company (B) surviving the merger to succeed all of the rights and obligations of the Company (A) that Disappears in the merger (§ 2(xxvii)).

In the Absorption-type Merger, the Company (A) which disappears in the merger is called "Company Disappearing in the Absorption-type Merger" (§ 749(1)(i)) and the Company (B) surviving the merger is called "Company

〔Table 1〕 Six Forms of Reorganizations

	Absorption-type Merger, etc.				Consolidation-type Merger, etc.			
	Before the Effective Day		After the Effective Day		Before the Day of Effectuation		After the Day of Effectuation	
	Disappearing Company, etc.	Surviving Company, etc.	Disappearing Company, etc.	Surviving Company, etc.	Disappearing Company, etc.		Disappearing Company, etc.	Incorporated Company
Marger	(1) Absorption-type Marger				(2) Consolidation-type Marger			
	Company Disappearing in the Absorption-type Marger	Company Surviving the Absorption-type Marger	Company Disappearing in the Absorption-type Marger	Company Surviving the Absorption-type Marger	Company Disappearing in the Consolidation-type Merger			Company Incorporated in the Consolidation-type Merger
								
Company Split	(3) Absorption-type Company Split				(4) Incorporation-type Company Split			
	Company Splitting in the Absorption-type Split	Company Succeeding in the Absorption-type Split	Company Splitting in the Absorption-type Split	Company Succeeding in the Absorption-type Split	Company Splitting in the Incorporation-type Split		Company Splitting in the Incorporation-type Split	Company Incorporated in the Incorporation-type Split
								
Share Exchange and Share Transfer	(5) Share Exchange				(6) Share Transfer			
	Wholly Owned Subsidiary Company Resulting from the Share Exchange	Wholly Owning Parent Company Resulting from the Share Exchange	Wholly Owned Subsidiary Company Resulting from the Share Exchange	Wholly Owning Parent Company Resulting from the Share Exchange	Wholly Owned Subsidiary Company Resulting from the Share Transfer		Wholly Owned Subsidiary Company Resulting from the Share Transfer	Wholly Owning Parent Company Incorporated in the Share Transfer
								

-Surviving the Absorption-type Merger" (§ 749(1)).

(2) Consolidation-type Merger

Consolidation-type Merger is a merger effected by two or more Companies (C1 and C2) which causes the Company (D) incorporated in the merger to succeed to all of the rights and obligations of the Companies (C1 and C2) that disappear in the merger (§ 2(xxviii)).

In the Consolidation-type Merger, the Company (C1 or C2) which disappears is called "Company Disappearing in the Consolidation-type Merger" (§ 753(1)(i)) and the Company (D) which is newly incorporated and succeeds to all of the rights and obligations of the Companies (C1 and C2) that disappear in the merger is called "Company Incorporated in the Consolidation-type Merger" (§ 753(1)).

In this paper, Company (A) Disappearing in the Absorption-type Merger and Company (C1 or C2) Disappearing in the Consolidation-type Merger are collectively called "Disappearing Company" (A, C1·C2)

(3) Absorption-type Company Split

Absorption-type Company Split is an action of causing another Company (F) to succeed to all or part of the rights and obligations that a Stock Company (E) or a Limited Liability Company (E) holds in connection with its business undertakings (§ 2(xxix)).

In the Absorption-type Company Split, the Company (E) which splits its rights and obligations is called "Company Splitting in the Absorption-type Split" (§ 758(1)(i)) and the Company (F) which succeeds such rights and obligations is called "Company Succeeding in the Absorption-type Split" (§ 757).

(4) Incorporation-type Company Split

Incorporation-type Company Split is an action of causing the Company (H) incorporated in a company split to succeed to all or part of the rights and

obligations that one or multiple Stock Companies (G) or Limited Liability Companies (G) hold in connection with their business undertakings (§ 2(xxx)).

In the Incorporation-type Company Split, the Company (G) splitting its rights and obligations is called "Company Splitting in the Incorporation-type Split" (§ 763(1)(v)) and the Company (H) which is newly incorporated and succeeds all or part of such rights and obligations is called "Company Incorporated in the Incorporation-type Split" (§ 763(1)).

In this paper, the Company (E) Splitting in the Absorption-type Split and the Company (G) Splitting in the Incorporation-type Split are collectively called "Splitting Company".

(5) Share Exchange

Share Exchange is an action whereby a Stock Company (I) causes all of its Issued Shares[9] to be acquired by another Stock Company (J) or Limited Liability Company (J) (§ 2(xxxi)).

In the Share Exchange, the Company (I) all of whose Issued Shares are acquired is called "Wholly Owned Subsidiary Company Resulting from the Share Exchange" (§ 768(1)(i)) and the Company (J) which acquires all of such shares is called "Wholly Owning Parent Company Resulting from the Share Exchange" (§ 767).

(6) Share Transfer

Share Transfer is an action whereby one or multiple Companies (K) cause all of the Issued Shares to be acquired by a newly incorporated Stock Company (L) (§ 2(xxxii)).

In the Share Transfer, the company (K) all of whose Issued Shares are acquired is called "Wholly Owned Subsidiary Company Resulting from the Share Transfer" (§ 773 (1) (v)) and the company (L) which is newly incorporated and acquires all of such shares is called as "Wholly Owning Parent Company Incorporated in the Share Transfer" (§ 773(1)(i)).

In this paper, the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange and the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer are collectively called "Wholly Owned Subsidiary Company" (I, K), and the Wholly Owning Parent Company (J) Resulting from the Share Exchange and the Wholly Owning Parent Company (L) Incorporated in the Share Transfer are collectively called "Wholly Owning Parent Company" (J, L).

2. What kind of Company can be the Party of Reorganizations?

In the Act, "Company" means Stock Company, General Partnership Company, Limited Partnership Company or Limited Liability Company (§ 2 (i)). The definitions of the six forms of reorganization (§ 2(xxvii)～(xxxii)) indicates the kind of company which can become the party of each reorganization, as follows:

	Stock Company	General Partnership Company	Limited Partnership Company	Limited Liability Company
A: Company Disappearing in the Absorption-type Merger	○	○	○	○
B: Company Surviving the Absorption-type Merger	○	○	○	○
C1・C2: Company Disappearing in the Consolidation-type Merger	○	○	○	○
D: Company Incorporated in the Consolidation-type Merger	○	○	○	○
E: Company Splitting in the Absorption-type Split[10]	○	×	×	○
F: Company Succeeding in the Absorption-type Split	○	○	○	○
G: Company Splitting in the Incorporation-type Split[10]	○	×	×	○
H: Company Incorporated in the Incorporation-type	○	○	○	○

Split				
I: Wholly Owned Subsidiary Company Resulting from the Share Exchange[11]	○	×	×	×
J: Wholly Owning Parent Company Resulting from the Share Exchange[12]	○	×	×	○
K: Wholly Owned Subsidiary Company Resulting from the Share Transfer[11]	○	×	×	×
L: Wholly Owning Parent Company Resulting from the Share Transfer[12]	○	×	×	×

In this paper, unlike the Act, the term "Company" is used to mean Stock Company unless specifically indicated otherwise.

3. Collective Naming of the Six Forms of Reorganizations

(1) "Merger" , "Company Split" and "Share Exchange and Share Transfer"

The Absorption-type Merger and the Consolidation-type Merger are collectively called "Merger" (title of Chapter II, Part V).

The Absorption-type Company Split" and the Incorporation-type Company Split are collectively called "Company Split" (title of Chapter III, Part V).

Share Exchange and Share Transfer are collectively called " Share Exchange and Share Transfer" (title of Chapter IV, Part V).

(2) "Absorption-type Merger, etc." and "Consolidation-type Merger, etc."

The Absorption-type Merger, the Absorption-type Company Split and the Share Exchange are collectively called "Absorption-type Merger, etc." (§ 782 (1)).

The Consolidation-type Merger, the Incorporation-type Company Split and the Share Transfer are collectively called "Consolidation-type Merger, etc." (§ 804(4)).

4. Collective Naming of the Parties of the Six Forms of Reorganizations

(1) "Disappearing Company, etc." and "Surviving Company, etc." in the Absorption-type Merger, etc.

In the Absorption-type Merger, etc., the Company (A) Disappearing in the Absorption-type Merger, the Company (E) Splitting in the Absorption-type Split and the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange are collectively called "Disappearing Company, etc." (§ 782(1)).

The Company (B) Surviving the Absorption-type Merger, the Company (F) Succeeding in the Absorption-type Split and the Wholly Owning Parent Company (J) Resulting from the Share Exchange are collectively called "Surviving Company, etc." (§ 794(1)).

(2) "Disappearing Company, etc." and "Incorporated Company" in the Consolidation-type Merger, etc.

In the Consolidation-type Merger, etc., the Company (C1 or C2) Disappearing in the Consolidation-type Merger, the Company (G) Splitting in the Incorporation-type Split and the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer are collectively called "Disappearing Company, etc." (§ 803(1)).

The Company (D) Incorporated in the Consolidation-type Merger, the Company (H) Incorporated in the Incorporation-type Split and the Wholly Owning Parent Company (L) Incorporated in the Share Transfer are collectively called "Incorporated Company" (§ 803(1)).

5. Common Features of the Absorption-type Merger, etc.

The Absorption-type Merger, etc. has the following features in common:

(1) All parties of the Absorption-type Merger, etc. (A and B, E and F, I and J) exist before such reorganizations become effective.

(2) The Absorption-type Merger, etc. becomes effective on the "Effective

Day" (§§ 750(1), 759(1), 769(1)), which must be stated in the agreements of such reorganizations (§§ 749(1)(vi), 758(vii), 768(1)(vi)).

(3) Proceeds of the Absorption-type Merger, etc. to be paid by the Surviving Company, etc.(B, F, J) to the shareholders of the Company (A) Disappearing in the Absorption-type Merger, the Company (E) Splitting in the Absorption-type Split or the shareholders of the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange can be any property[13] (§§ 749(1)(ii), 758(iv), 768(1)(ii), 151(1)).

Please note that in the Company Split, proceeds are not received by the shareholders of the Splitting Company (E, G) but received by such company (E, G) itself (§§ 758(iv), 763(1)(viii)).

Please also note that in the Absorption-type Merger, if the Company (B) Surviving the Absorption-type Merger holds the shares of the Company (A) Disappearing in the Absorption-type Merger, such company (B) does not receive the proceeds from itself (B) concerning such shares (§ 749(1)(iii) parenthesis (3) parenthesis). In the Merger, if the Disappearing Company (A, C1・C2) holds its own shares, such company (A, C1・C2) does not receive the proceeds from the counterparty (B, D) concerning such shares (§§ 749(1)(iii) parenthesis (3) parenthesis, 753(1)(vii) parenthesis (4) parenthesis). In the Share Exchange, if the Wholly Owning Parent Company (J) Resulting from the Share Exchange holds shares of the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange, such company (J) does not receive the proceeds from itself (J) concerning such shares (§ 768(1)(iii) parenthesis (3) parenthesis). The reason for these restrictions is to avoid the situation that the party who delivers the proceeds (B, D, J) receives its own shares as Treasury Shares through reorganization, and comes to be able to increase the "Distributable Amount" (§ 461(2)) by later disposing such Treasury Shares[14].

6. Common Features of the Consolidation-type Merger, etc.

The Consolidation-type Merger, etc. has the following features in common:

(1) Only the Disappearing Company, etc. (C1・C2, G, K) exists before such reorganizations become effective. The Incorporated Company (D, H, L) does not exist before such reorganizations become effective, and is incorporated as the result of such reorganization.

(2) The Consolidation-type Merger, etc. becomes effective on the day when registration is completed concerning the incorporation of the Incorporated Company (D, H, L) (§§ 754, 922; 764, 924; 774, 925). In this paper, the day the Consolidation-type Merger, etc. becomes effective is called the "Day of Effectuation" in order to distinguish it from the "Effective Day".

(3) Proceeds of the Consolidation-type Merger, etc. to be paid by the Incorporated Company (D, H, L) to the shareholders of the Company (C1 or C2,) Disappearing in the Consolidation-type Merger, the Company (G) Splitting in the Incorporation-type Split or the shareholders of the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer must include shares of the Incorporated Company (D, H, L) (§§ 753(1)(vi), 763(1)(vi), 773(1)(v)) because there must be shareholders when the Incorporated Company (D, H, L) is incorporated as the result of the reorganization[15].

In addition, such proceeds can include only Bonds, Share Options and/or Bonds with Share Options of the Incorporated Company (D,H,L) (§§ 753(1)(viii), 763(1)(viii), 773(1)(vii)) because the Incorporated Company (D, H, L) has no other property than shares, Bonds, Share Options or Bonds with Share Options to be delivered as proceeds when it is incorporated as the result of the reorganization[16].

(4) The agreement (between C1 and C2) or a plan (of G or K) of the Consolidation-type Merger, etc. must contain the matters to be provided for in the articles of incorporation of the Incorporated Company and the

names of Directors at Incorporation (§ 38(1)), Accounting Advisors at Incorporation (§ 38(3)(i)) if any, Company Auditors at Incorporation (§ 38(3)(ii)) if any and Financial Auditors at Incorporation (§ 38(3)(iii)) if any. (§§ 753(1)(ii)~(v)(2), 763(1)(i)~(iv)(2), 773(1)(i)~(iv)(2)).

7. Structure of the Provisions of §§ 748～816 of the Act

Provisions regarding reorganizations are given in §§ 748~816 of the Act in the following order.

First, contents of agreements or plans and the effects of the six forms of reorganizations are provided in order. (1) §§ 748, 749 and 750 cover the Absorption-type Merger, (2) §§ 748, 753 and 754 cover the Consolidation-type Merger, (3) §§ 757, 758 and 759 cover the Absorption-type Company Split, (4) §§ 762, 763 and 764 cover the Incorporation-type Company Split, (5) §§ 767, 768 and 769 cover the Share Exchange and (6) §§ 772, 773 and 774 cover the Share Transfer.

Then, the procedures of the reorganizations are stated in order based on the four groups of the parties, ① the Disappearing Company, etc. (A, E, I) in the Absorption-type Merger, etc.(§§ 782~792), ② the Surviving Company, etc. (B, F, J) in the Absorption-type Merger , etc. (§ 794~801), ③ the Disappearing Company, etc. (C1・C2, G, K) in the Consolidation-type Merger, etc. (§§ 803~812) and ④ the Incorporated Company, etc. (D, H, L) in the Consolidation-type Merger, etc. (§§ 814, 815)) .

III. Procedures of Reorganizations

〔Table 2〕 Maior Procedures of Reorganizations

<Table 2-1> Procedures of the Absorption-type Merger, etc.

	Disappearing Company, etc.(A, E, I)	Surviving Company, etc.(B, F, J)
1	Concluding an Agreement (§§ 748, 749; 757, 758; 767, 768)	Concluding an Agreement (§§ 748, 749; 757, 758; 767, 768)
2	Pre-Reorganization Disclosure(§ 782)	Pre-Reorganization Disclosure(§ 794)
3	Parallel Five Procedures: (1) Approval of the Agreement by Shareholders Meeting (§§ 783, 784) (2) Approval of the Agreement by Class Shareholders Meeting (§§ 783(4), 322(1)(vii)(viii)(xi)(2), 324(2)(iv), 108(viii)) (3) Dissenting Shareholders' Appraisal Rights (§§ 785, 786) (4) Appraisal Rights on Share Options (§§ 787, 788) (5) Creditiors' Objections (§§ 789, 790)	Parallel Four Procedures: (1) Approval of the Agreement by Shareholders Meeting (§§ 795, 796) (2) Approval of the Agreement by Class Shareholders Meeting (§§ 795(4), 322(1)(vii)(ix)(xii)(2), 324(2)(iv),108(viii)) (3) Dissenting Shareholders' Appraisal Rights (§§ 797, 798) (4) Creditiors' Objections (§ 799)
4	Reorganization becomes effective on Effective Day (§§ 750, 759, 769)	Reorganization becomes effective on Effective Day (§§ 750, 759, 769)
5	Registration (A, E) (§§ 921, 923)	Registration (B, F) (§§ 921, 923)
6	Post-Reorganization Disclosure (E, I) (§ 791)	Post-Reorganization Disclosure (B, F, J) (§ 801)

<Table 2-2> Procedures of the Consolidation-type Merger, etc.

	Disappering Company, etc. (C1·C2, G, K)	Incorporated Company (D, H, L)
1	Concluding an Agreement (C1・C2) or Preparing a Plan (G, K) (§§ 748, 753; 762, 763; 772, 773)	
2	Pre-Reorganization Disclosure (§ 803)	
3	Parallel Five Procedures: (1) Approval of the Agreent (C1·C2) or of the Plan (G, k) by Shareholdes Meeting (§§ 804(1), 805) (2) Approval of the Agreent (C·C2) or of the Plan (G, K) by Class Shareholdes Meeting (§§ 804(3), 322(1)(vii)(x)(xiii)(2), 324(2)(iv),	

	108(viii)) (3) Dissenting Shareholdes' Appraisal Rights (§§ 806. 807) (4) Appraisal Rights on Share Options (§§ 808. 809) (5) Creditors' Objetions (§ 810)	
4	Registration (C1・C2, G) (§§ 922, 924) Reorganization becomes effective on the day of registration (§§ 754, 764, 774)	Registration (D, H, L) (§§ 922, 924, 925) Reorganization becomes effective on the day of registration (§§ 754, 764, 774)
5	Post-Reorganization Disclosuve (G, K) (§ 811)	Post-Reorganization Disclosuve (D, H, L) (§ 815)

The procedures which take place before the Effective Day in the Absorption-type Merger, etc. or before the Day of Effectuation in the Consolidation-type Merger, etc. (Procedures 1~3 of <Table2-1> and <Table 2-2>) apply only to the party which exists before such date (A, E, I; B, F, J; C1・C2, G, K) (hereinafter referred to as "pre-existing party") excluding the Incorporated Company (D, H, L).

The procedures which take place on or after the Effective Day in the Absorption-type Merger (Procedures 4~6 of <Table 2-1>) or on or after the Day of Effectuation in the Consolidation-type Merger, etc. (Procedures 4 and 5 of <Table 2-2>) apply only to the parties existing on or after such date(E, I; B, F, J; G, K; D, H, L) (hereinafter referred to as the "post-existing party") excluding the Company Disappearing in the Absorption-type Merger (A) and the Company Disappearing in the Consolidation-type Merger (C1・C2).

Procedure 1 Concluding an Agreement or Preparing a Plan

(1) Agreements or Plans

In the Absorption-type Merger, etc., the first step is for the parties to conclude an agreement between parties (A and B, E and F, I and J). Such agreement is called Absorption-type Merger agreement (between A and B) (§ 749), Absorption-type Company Split agreement (between E and F) (§

758) or Share Exchange agreement (between I and J) (§ 768). These three types of agreements are collectively called "Absorption-type Merger Agreement, etc." (§ 782(1)).

In the Consolidation-type Merger, etc., the first step in the Consolidation-type Merger is for the two or more Companies (C1·C2) Disappearing in a Consolidation-type Merger to conclude an agreement between themselves and the first step in the Incorporation-type Company Split or the Share Transfer is for the Company (G) Splitting in the Incorporation-type Split or the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer to prepare a plan of the reorganization by itself.

Such agreement or plans are called Consolidation-type Merger agreement (between C1 and C2) (§ 753(1)), Incorporation-type Company Split plan (G alone) (§ 763 (1)) or Share Transfer plan (K alone) (§ 772 (1)). Those agreement and plans are collectively called "Consolidation-type Merger Agreement, etc.," (§ 803(1)).

Matters which are required to be stated in such agreements and plans are provided in § § 749, 753, 758, 763, 768, and 773 of the Act. Careful reading of these provisions is recommended to understand the characteristics of each form of the reorganizations.

(2) Approval by the Board of Directors

In a Stock Company with the Board of Directors (§ 2(vii)), such agreement or plan must be approved by the resolution of the Board of Directors (§ § 362(4), 399-13(4)(xiii)~(xvii), 416(4)(xvi)~(xx)) with the following exceptions:

The board of directors of a Company with Nominating Committee, etc. (§ 2(xii)) may, by the resolution of the board, delegate to executive officers to decide the content of the agreement or the plan, if such an agreement or a plan is not required to be approved by the resolution of the shareholders meeting (§ 416(4)(xvi)~(xix) parentheses). Also, the board of directors of a

Company with Audit and Supervisory Committee (§ 2(xi)-2) may, by the resolution of the board of directors, delegate to directors to decide the content of the agreement or the plan, if such an agreement or a plan is not required to be approved by the resolution of the shareholders meeting in case where a majority of directors are Outside Directors (§ 2(xv)) or such company stipulates in the articles of incorporation that all or part of decisions of execusions of important operations (excluding matters listed in items of § 399-13(5)) can be delegated to directors by the resolution of the board of directors (§ 399-13(5)(xiii)~(xvi) parentheses (6))[17].

In a Stock Company without the Board of Directors, such an agreement or a plan must be agreed by the majority of the Directors (§ 348(2)).

Procedure 2 **Pre-Reorganization Disclosure**

Each pre-existing party (A, E, I; B, F, J; C1・C2, G, K) needs to keep, at its head office, documents (or electronic or magnetic records) detailing the particulars specified in the Absorption-type Merger Agreement, etc. (A and B, E and F, I and J) or Consolidation-type Merger Agreement. etc., (A1 and A2, G alone, K alone) and other relevant matters including the appropriateness of the terms of the reorganization[18], from the earliest of the following days until six months after the day when such reorganization becomes effective, except that, for the Disappearing Company (A, C1・C2), the end of the disclosure is the day when such reorganization becomes effective (§§ 782(1)(2), 794(1)(2), 803(1)(2), Ordinance §§ 182~184, 191~193, 204~206).

① the day two weeks before the shareholders meeting (including the class shareholders meeting) to approve the agreement or the plan of the reorganization (§§ 782(2)(i), 794(2)(i), 803(2)(i)).

② the day of notice or public notice to the shareholders who has the Dissenting Shareholders' Appraisal Rights (§§ 782(2)(ii), 794(2)(ii), 803(2)

(ii)).

③ the day of notice or public notice to the Share Option holders (§§782(2)(iii), 803(2)(iii)).

④ the day of notice or public notice to the creditors who are entitled to the Creditors' Objections (§§782(2)(iv), 794(2)(iii), 803(2)(iv)).

⑤ in cases other than above, the day on which two weeks after the day of conclusion of the agreement or the day of preparation of the plan (§§782(2)(v), 803(2)(v)).

Relevant shareholders, creditors and Share Option holders of each pre-existing party (A, E, I; B, F, J; C1・C2, G, K) may request for inspection of the documents, delivery of a transcript or extract of the documents (§§782(3), 794(3), 803(3)).

The purposes of the Pre-disclosure is to give materials for the shareholders to judge the fairness of the terms of the reorganization and for the creditors to judge if they should object to the reorganization. The reason why the end of disclosure is six months after the reorganization becomes effective is that these materials can also be used to judge whether an action seeking the invalidation of the reorganization should be filed[19].

Procedure 3 Parallel Five Procedures: (1) Approval by Shareholders Meeting, (2) Approval by Class Shareholders Meeting, (3) Dissenting Shareholders' Appraisal Rights, (4) Appraisal Rights on Share Options and (5) Creditors' Objections

(1) Approval by Shareholders Meeting

〔Table 3〕[20] shows the overview of the necessary resolutions of the shareholders meetings and the class shareholders meetings to approve the agreement or the plan of the reorganization. Please see〔Table 3〕while reading the following explanation.

〔Table 3〕 Resolutions by Shareholders Meeting and Class Shareholderts Meeting

<Table 3-1>

Disapperaing Company, etc. in the Absorption-type Merge, etc.

Disapperaing. Company, etc.	Kind of Proceeds for Sharholders	Stock Company with no Class Shares with Restriction on Transfer	Stock Company with Class Shares with Restriction on Transfer	
		Shareholders Meeting	Shareholders Meeting	Class Shareholders Meeting
Company DIsappearing in the Abbsorp-type Merge (A)	Other than Below	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR(§ 784(1))	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR(§ 784(1))	None
	Shares with Restriction on Transfer, etc.	〔in case of a Public Company〕 Stricter Resolution (§ § 783(1), 309(3)(ii)) × SFR (§ 784(1) proviso)	〔in case of a Public Company〕 Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	〔in case of a Public Company〕 Stricter Resolution (§ § 783(3), 324(3)(ii)) 〔No Class Shareholders Meeting is necessry for the holders of Class Shares with Restriction on Transfer〕
		〔in case of a Non-public Company〕 Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	〔in case of a Non-public Company〕 Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	〔in case of a Non-public Company〕 None
	Equity Interests, etc.	Consent of all Shareholders (§ 783(2)) × SFR (§ 783(2))	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	Consent of all Class Shareholders who receive Equity Interest, etc. (§ 783(4))
Company Splitting in the Absorption-type Split (E)	None (Splitting Company reeceves the proceeds)	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1)) ○ SSR (§ 784(2))	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1)) ○ SSR (§ 784(2))	None
Wholly Owned Subsidary Company Resulting from the Share Exchange (I)	Other than Below	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	None
	Shares with Restriction on Transfer, etc.	〔in case of a Public Company〕 Stricter Resolution (§ § 783(1), 309(3)(ii)) × SFR (§ 784(1) proviso)	〔in case of a Public Company〕 Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	〔in case of a Public Company〕 Stricter Resolution (§ § 783(3), 324(3)(ii)) 〔No Class Shareholders Meeting is necessry for the holders of Class Shares with Restriction on Transfer〕
		〔in case of a Non-public Company〕 Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	〔in case of a Non-public Company〕 Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	〔in case of a Non-public Company〕 None
	Equity Interests, etc.	Conssent of all Shareholders (§ 783(2)) × SFR (§ 783(2))	Special Resolution (§ § 783(1), 309(2)(xii)) ○ SFR (§ 784(1))	Consent of all Class Shareholders who receive Equity Interests, etc. (§ 783(4))

"SFR" stands for Short From Reorganization and "SSR" stans for Small Scale Reorganization.

"○ SFR" (or "○ SSR") means SFR (or SSR) is applicable and "× SFR" (or "× SSR") means SFR (or SSR) is not applicable.

<Table 3-2>

Surviving Company, etc. in the Absorption-type Merger, etc.

Surviving Company, etc.	Kind of Proceeds for Shereholders	Stork Company with no Class Shares with Restriction on Transfer	Stork Company with Class Shares with Restriction on Transfer	
		Shareholders Meeting	Shareholders Meeting	Class Shareholders Meeting
Company Surviving in the Abbsorption-type Merge (B)	Other than Below	Special Resolution (§§ 795(1), 309(2)(xii)) ○ SFR (§ 796(1)) ○ SSR (§ 796(2))	Special Resolution (§§ 795(1), 309(2)(xii)) ○ SFR (§ 796(1)) ○ SSR (§ 796(2))	None
Company Succeeding in the Absorption-type Split (F) Wholly Owning Parent Company Resulting from the Share Exchange (J)	Shares with Restriction on Transfer, etc.	〔in case of a Public Company〕 Not Applicable	〔in case of a Public Company〕 Special Resolution (§§ 795(1), 309(2)(xii)) ○ SFR (§ 796(1)) ○ SSR (§ 796(2))	〔in case of a Public Company〕 Special Resolution (§§ 795(4)(i)(ii)(iii), 324(2)(vi)) 〔Class Shareholders Meeting is necessry only for the holders of Shares with Restriction on Transfer〕
		〔in case of a Non-public Company〕 Special Resolution (§§ 795(1), 309(2)(xii)) × SFR (§ 796(1) proviso) × SSR (§ 796(2) proviso)	〔in case of a Non-public Company〕 Not Applicable	〔in case of a Non-public Company〕 Not Applicable

<Table 3-3>

Disapperaing Company, etc. in the Cnsolidation-type Merger, etc.

Disapperaing Company, etc	Kind of Proceeds for Shereholders	Stork Company with no Class Shares with Restriction on Transfer	Stork Company with Class Shares with Restriction on Transfer	
		Shareholders Meeting	Shareholders Meeting	Class Shareholders Meeting
Company Disapperaing in the Consolidation-type Merge (C1 or C2)	Other than Below	Special Resolution (§§ 804(1), 309(2)(xii))	Special Resolution (§§ 804(1), 309(2)(xii))	None
	Shares with Restriction on Transfer, etc.	〔in case of a Public Company〕 Stricter Resolution (§§ 804(1), 309(3)(iii))	〔in case of a Public Company〕 Special Resolution (§ 804(1), 309(2)(xii))	〔in case of a Public Company〕 Stricter Resolution (§§ 804(3), 324(3)(ii)) 〔No Class Shareholders Meeting is necessry for the holders of Class Shares with Restriction on Transfer〕
		〔in case of a Non-public Company〕 Special Resolution (§§ 804(1), 309(2)(xii))	〔in case of a Non-public Company〕 Special Resolution (§§ 804(1), 309(2)(xii))	〔in case of Non-public Company〕 None
	Equity Interests, etc.	Consent of all Shareholders (§§ 804(2))	Consent of all Shareholders (§§ 804(2))	None
Company Splitting in the Consolidation-type Split (G)	None (Splitting Company reeceives the proceeds)	Special Resolution (§§ 804(1), 309(2)(xii)) ○ SSR (§ 805)	Special Resolution (§§ 804(1), 309(2)(xii)) ○ SSR (§ 805)	None
Wholly Owned Subsidiary Company Resulting from the Share Transfer (K)	Other than Below	Special Resolution (§§ 804(1), 309(2)(xii))	Special Resolution (§§ 804(1), 309(2)(xii))	None
	Shares with Restriction on Transfer, etc.	〔in case of a Public Company〕 Stricter Resolution (§§ 804(1), 309(3)(iii))	〔in case of a Public Company〕 Special Resolution (§§ 804(1), 309(2)(xii))	〔in case of a Public Company〕 Stricter Resolution (§§ 804(3), 324(3)(ii)) 〔No Class Shareholders Meeting is necessry for the holders of Class Shares with Restriction on Transfer〕
		〔in case of a Non-public Company〕 Special Resolution (§§ 804(1), 309(2)(xii))	〔in case of a Non-public Company〕 Special Resolution (§§ 804(1), 309(2)(xii))	〔in case of a Non-public Company〕 None

(A) General Rule

As a general rule, each pre-existing party (A, E, I; B, F, J; C1・C2, G, K) must obtain the approval of the agreement or the plan by the Special Resolution (§ 309(2)) of shareholders meeting on or before the day immediately preceding the day on which such reorganization becomes effective (§§ 783(1). 795(1), 804(1), 309(2)(xii)).

This basic rule has the following exceptions:

(a) Short Form Reorganization

If a party of the reorganization is 90% (if a higher proportion is provided in the articles of incorporation, such proportion) or more owned by the counter party together with the wholly owned subsidiaries of such counter party (A owned by B, E owned by F, I owned by J; B owned by A, F owned by E, J owned by I), the agreement of the reorganization does not need to be approved by the shareholders meeting of such owned party (§§ 784(1), 796 (1), Ordinance § 136). This case is called the "Short Form Reorganization[21]". The controlling company in this case is called "Special Controlling Company" (§ 468(1)).

The purpose of the Short Form Reorganization is to simplify the procedure because the Special Resolution (§ 309(2)) would have been obtained anyway if the shareholders meeting were held[22].

The Short Form Reorganization is applicable to the Disappearing Company, etc. (A, E, I) in the Absorption-type Merger, etc. and the Surviving Company, etc. (B, F, J) but it does not apply to the Disappearing Company, etc. (C1・C2, G, K) in the Consolidation-type Merger, etc. because no counterparty exists before the reorganization becomes effective.

(b) Small Scale Reorganization

If the influence of the reorganization on shareholders is small, the resolution of the shareholders meeting is not required[23]. This case is called

the "Small Scale Reorganization[24]"

① **Small Scale Reorganization in the Splitting Company (E, G)**

In the Company Split, if the sum of the book value of the assets succeeded by the Company (F) Succeeding in the Absorption-type Split or by the Company (H) Incorporated in the Incorporation-type Split does not exceed 20% (if a lessor proportion is provided in the articles of incorporation, such proportion) of the amount calculated by the method specified by the applicabe Ordinance of the Ministry of Justice as the total assets of the Splitting Company (E, G), such company (E, G) does not need to obtain the approval of the agreement or the plan by the shareholders meeting (§§ 784(2), 805, Ordinance §§ 187, 207).

② **Small Scale Reorganization in the Surviving Company, etc. (B, F, J)**

In the Absorption-type Merger, etc., if the amount of the proceeds (calculated as the sum of (i) the amount of net asset per share multiplied by the number of shares in proceeds and (ii) the book value of all other proceeds) to be delivered by the Surviving Company, etc. (B, F, J) to the shareholders of the counter party (A, I) or to the counter party (E) does not exceed 20% (if a lessor proportion is provided in the articles of incorporation, such proportion) of the amount calculated by the method specified by the applicabe Ordinance of the Ministry of Justice as the net assets of the Surviving Company, etc. (B, F, J), such company (B, F, J) does not need to obtain the approval of the agreement by shareholders meeting (§ 796(2), Ordinance § 196), with the following two exceptions which are applicable only to this Small Scale Reorganization in the Surviving Company, etc. (§ 796(2) proviso):

Exception 1: In cases where a loss is succeeded (applicable to B, F, J)

In one of the following three cases, the approval by the Special Resolution (§ 309(2)) of the shareholders meeting is required and at that meeting, a director must explain that it is in such case, even if the Small Scale

Reorganization formula is satisfied (§§ 795(2), 796(2) proviso):

(i) In the Absorption-type Merger or in the Absorption-type Company Split, the amount of obligations succeed by the Company (B) Surviving the Absorption-type Merger or by the Company (F) Succeeding in the Absorption-type Split exceeds the amount of assets succeeded by it (B, F) (§ 795(2)(i), Ordinance § 195(1)~(4)).

(ii) In the Absorption-type Merger or in the Absorption-type Company Split, the book value of the proceeds (excluding Stocks, Share Options, Bonds, and Bonds with Share Options) delivered by the Company (B) Surviving the Absorption-type Merger or by the Company (F) Succeeding in the Absorption-type Split exceeds the amount obtained by deducting the amount of the succeeded obligations from the amount of the succeeded assets by such company (B, F) (§ 795(2)(ii)).

(iii) In the Share Exchange, the book value of the proceeds (excluding Stocks, Share Options, Bonds, and Bonds with Share Options) delivered to the shareholders of the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange exceed the amount of the value of the shares to be acquired by the Wholly Owning Parent Company (J) Resulting from the Share Exchange (§ 795(2)(iii), Ordinance § 195(5)).

The reason of this exception is that in the above cases the Surviving Company, etc. (B, F, J) essentially succeeds the loss incurred by the counterparty (A, E, I) before the reorganization[25].

Exception 2: In cases where a certain number of the shareholders notify to dissent (applicable to B, F, J)

Even though the Small Scale Reorganization formula is satisfied, the approval by the Special Resolution (§ 309(2)) of the shareholders meeting is still required if shareholders holding shares in the number prescribed by the applicable Ministry of Justice Ordinance notify the Surviving Company, etc.

(B, F, J) to the effect that they dissent from the Absorption-type Merger (§ 796(3)).

As such number, the Ministry of Justice Ordinance provide (1) the number which is enough to make the resolution fail if such number of the shareholders dissent in the shareholders meeting (Ordinance § 197(i)~(iii)) or (2) the number prescribed in the articles of incorporation (Ordinance § 197(iv))[26].

(B) Three Exceptions to the General Rule based on the Common Principles of the Act

There are three exceptions to the above general rule. These are reflections of the general principles which are commonly applicable throughout the Act.

① Consent of all shareholders is required when shareholders come to hold Equity Interests, etc.

As a principle commonly applied throughout the Act, the consent of all shareholders is required when shareholders come to hold Equity Interests, etc.[27] For instance, when a Stock Company is converted into a Membership Company, the consent of all shareholders is required (§ 776(1)).

The following is the reflection of this common principle in the reorganization situation.

In the Merger and the Share Exchange, if shareholders of a party (A, C1・C2, I) come to hold Equity Interest, etc. as the results of the reorganization, the consent of all shareholders of such party (A, C1・C2, I) must be obtained with regard to the agreement of such reorganization (§§ 783(2), 804(2)).

Please note that this case occurs only in the Disappearing Company (A, C1・C2) in the Merger or to the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange, because proceeds are received by the Splitting Company (E, G) itself in the Company Split, and shareholders of the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer never receive Equity Interests, etc., for the Wholly Owning Parent Company (L)

Incorporated in the Share Transfer must be a Stock Company (§ 2(xxxii)).

In this case the Short Form Reorganization exception does not apply (§ 783(2)) because the change from Stocks to Equity Interests, etc. has a so substantial effect that minority shareholders' rights need to be protected by requiring the consent of all shareholders.

The Small Scale Reorganization exemption is irrelevant in this case because the Small Scale Reorganization is possible only in the Splitting Company (E, G) or the Surviving Company, etc. (B, F, G) and is not possible in the Disappearing Company (A, C1・C2) in the Merger or in the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange.

② Stricter Resolution of the shareholders meeting is required when shareholders of the Unrestricted Shares become shareholders of the Restricted Shares

In the following explanation, "Shares with Restriction on Transfer" means the shares in cases where a Stock Company provides, as a feature of all or part of its shares, that the approval of the Stock Company is required for the acquisition of such shares by transfer (§ 2(xvii)). In this paper, Shares with Restriction on Transfer are called "Restricted Shares" and shares which are not Shares with Restriction on Transfer are called "Unrestricted Shares".

"Stricter Resolution" of the shareholders meeting means the resolution procedure stipulated in § 309(3), which requires at least half (or a higher proportion if required by the articles of incorporation) of the shareholders entitled to vote as well as the majority of two third (or higher proportion if required by the articles of incorporation) or more of the votes of shareholders entitles to vote.

As a principle commonly applied throughout the Act, the Stricter Resolution (§ 309(3)) of the shareholders meeting is always required when shareholders of the Unrestricted Shares become shareholders of the

Restricted Shares.

For example, this principle is applied when articles of incorporation are amended creating a provision to the effect that, as the features of all shares issued by the Stock Company, the approval of the Stock Company is requited for the acquisition of such shares by transfer (§ 309(3)(i)).

The following is the reflection of this common principle in the reorganization situation.

If shareholders who hold Unrestricted Shares come to hold, as a part or in whole, Restricted Shares as the result of the reorganization, the approval of the agreement or plan by the Stricter Resolution in the shareholders meeting is always required (§ 309(3)(ii)(iii)).

This case occurs only in the Company (A) Disappearing in the Absorption-type Merger (§§ 783(1), 309(3)(ii)), the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange (§§ 783(1), 309(3)(ii)), the Company (C1・C2) Disappearing in the Consolidation-type Merger (§§ 804(1), 309(3)(iii)) and the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer (§§ 804(1), 309(3)(iii)), because in the Company Split, the recipient of the proceeds is the Splitting Company (E, G) itself, not its shareholders.

In this case, the Short Form Reorganization exception does not apply (§ 784(1) proviso), because Stricter Resolution cannot necessarily be obtained even if 90% or more of the shares are owned by the counterparty (B, J)[28].

The Small Scale Reorganization exemption is irrelevant, in this case because the Small Scale Reorganization is possible only in the Splitting Company (E, G) or the Surviving Company, etc. (B, F, J) and this case occurs only in the Disappearing Company (A, C1・C2), the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange, or the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer.

③ Special Resolution of the shareholders meeting is required if the number of outstanding Restricted Shares increases when shareholders hold Restricted Shares

In the following explanation, the "Public Company" means any Stock Company the articles of incorporation of which does not require, as a feature of all or a part of its shares, the approval of the Stock Company for the acquisition of such shares by transfer (§ 2(v)). In this paper, the "Non-public Company" means a stock company which is not a Public Company. In other words, a Non-public Company is a Stock Company all the shares of which are Restricted Shares.

As a principle commonly applied throughout the Act, the Special Resolution (§ 309(2)) of the shareholders meeting is required if the number of the outstanding Restricted Shares increases when shareholders hold Restricted Shares.

This principle is based on the idea that the shareholders of the Restricted Shares have interests in keeping a certain percentage of the outstanding shares to maintain their influence in their company and such interests should be protected by requiring the Special Resolution of the shareholders meeting[29].

For example, the Special Resolution of the shareholders meeting is required in a Non-public Company when it issues new Restricted Shares (§§ 199(2), 309(2)(v)) unless shareholders are granted entitlement to the allotment of the shares (§ 202(5)).

The following is the reflection of this common principle in the reorganization situation.

If the Surviving Company, etc. (B, F, J) is a Non-public Company, and the proceeds of the reorganization includes the Restricted Shares of such company (B, F, J), such company must always obtain the approval of the

agreement by the Special Resolution of the shareholders meeting. (§ § 796(1) proviso).

In this case the Short Form Reorganization exception does not apply (§ 796 (1) proviso) in order to keep balance with the case that the Special Resolution of the shareholders meeting is required in a Non-public Company when it issues new Restricted Shares (§ § 199(2), 309(2)(v))[30].

The Small Scale Reorganization exemption also does not apply (§ 796(2) proviso) in this case in order to keep balance with the case that the Special Resolution of the shareholders meeting is required in a Non-public Company when it issues new Restricted Shares (§ § 199(2), 309(2)(v))[31].

(2) Approval by Class Shareholders Meeting

In the following explanation the "Company with Class Shares" means any Stock Company which issues two or more classes of shares with different features as to the matters listed in the items of § 108(1), including but not limited to, the Dividend of Surplus (§ 2(xiii)). "Class Shareholders" means the shareholders of any class of shares of a Company with Class Shares (§ 2 (xiv)). "General Meeting of Class Shareholders" means a meeting of Class Shareholders (§ 2(xiv)). In this paper, the Company with Class Shares is referred to as "class share company" and the "General Meeting of Class Shareholders" is referred to as "class shareholders meeting".

In this paper, "Stricter Resolution" in the class shareholder meeting means the decision making procedure stipulated in § 324(3), which requires at least half (or higher proportion if required by the articles of incorporation) of the shareholders entitled to vote as well as the majority of two third (or higher proportion if required by the articles of incorporation) or more of the votes of shareholders entitled to vote.

"Special Resolution" in the class shareholder meeting means the decision

making procedure stipulated in § 324(2), which requires a majority of two-third (or higher proportion if required by the articles of incorporation) or more votes of the shareholders present at the meeting where the shareholders who hold a majority of the vote (or if one-third or more proportion is provided in the articles of incorporation, such proportion) of the shareholders entitled to vote are present.

Please see〔Table 3〕while reading the following explanation.

(A) Three Rules based on the Common Principles of the Act

The following three rules are the reflection of the tree principles commonly applicable throughout the Act as mentioned above (III. Procedure 3 (1)(B)) in the situations of reorganization in which a class share company is involved.

① Consent of all class shareholders is required when class shareholders come to hold Equity Interests, etc.

As mentioned above (III. Procedure3(1)(B)①), it is a principle commonly applied throughout the Act that the consent of all shareholders is required when shareholders come to hold Equity Interests, etc. This principle applies even if the shareholders are class shareholders. The following rule is the reflection of this common principle in the reorganization situation of a class share company.

If holders of class shares come to hold, as a part or in whole, Equity Interests, etc. as the result of a reorganization, such reorganization does not become effective without the consent of all class shareholders of such class shares (§ 783(4)).

This case occurs only in the Company (A) Disappearing in the Absorption-type Merger (§ 783(4)) or in the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange (§ 783(4)), because (i) the recipients of proceeds are the Splitting Company (E, G) in case of Company Split[32], (ii) in the Company (C1・C2) Disappearing in the Consolidation-type Merger

approval of all shareholders is required if the Company Incorporated in the Consolidation-type Merger (D) is a Member Company (§ 804(2)) and (iii) the Wholly Owned Parent Company (L) Incorporated in the Share Transfer must be a Stock Company (§ 2(xxxii)).

② Stricter Resolution of the class shareholders meeting is required when a class shareholder of the Unrestricted Shares come to hold Restricted Shares

As mentioned above (III.Procedure3(1)(B)②), it is a principle commonly applied throughout the Act that if shareholders who hold Unrestricted Shares come to hold, as a part or in whole, Restricted Shares, the Stricter Resolution in the shareholders meeting is required. This principle applies even if the shareholders are class shareholders.

For example, this principle is applied when articles of incorporation are amended creating a provision to the effect that, as the features of a certain class of shares of a stock company, the approval of the company is requited for the acquisition of such class shares by transfer (§§ 111(2), 324(3)(i)).

The following rule is the reflection of this common principle in the reorganization situation of a class share company.

If class shareholders who hold Unrestricted Shares come to hold, as a part or in whole, Restricted Shares as the result of the reorganization, the approval of the agreement or the plan by the Stricter Resolution in the class shareholders meeting is required. (§§ 783(3), 804(3), 324(3)(ii)).

This case occurs only in the Company (A) Disappearing in the Absorption-type Merger (§§ 783(3), 324(3)(ii)), the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange (§§ 783(3), 324(3)(ii)), the Company (C1・C2) Disappearing in the Consolidation-type Merger (§§ 804(3), 324(3)(ii)) and the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer (§§ 804(3), 324(3)(ii)), because the recipients of proceeds are the

Splitting Company (E, G) itself, not its shareholders in the Company Split[33].

③ Special Resolution of the class shareholders meeting is required when the number of outstanding Restricted Class Shares increases when class shareholders hold Restricted Shares

As mentioned above (III. Procedure3(1)(B)③), it is a principle commonly applicable throughout the Act that a Special Resolution of the shareholders meeting is required when the number of the outstanding Restricted Shares increases when shareholders hold Restricted Shares. This principle is applied even if the shareholders are class shareholders.

For example, when a class share company issues new Restricted Shares of a certain class, the Special Resolution in the class shareholders meeting of the class shareholders of such Restricted Shares is required (§§ 199(4), 324(2)(ii)).

The following rule is the reflection of this common principle in the reorganization situation of a class share company.

If the proceeds of reorganization include, as a part or in whole, Restricted Shares of a certain class shares, an approval of the agreement by the Special Resolution in the class shareholders meeting of such class shareholders is required, unless the articles of incorporation provides such approval is not required (§§ 795(4)(i)(ii)(iii), 324(2)(vi)).

This case occurs in any Surviving Company, etc. (B, F, J) (§§ 795(4)(i)(ii)(iii), 324(2)(vi)).

(B) In case the Reorganization is likely to cause Detriment to Class Shareholders

If the reorganization is likely cause detriment to the class shareholders of any class of shares, the Special Resolution of the class shareholders meeting of such class shareholders is required, unless the articles of incorporation provides such approval is not required (§§ 322(1)(vii)~(xiii)(2), 324(2)(iv))[34].

(C) Class Shares with Veto Power

If the reorganization is the matter that require, in addition to the resolution of a shareholders meeting, the resolution of a specific class shareholders meeting, the resolution of such class shareholders meeting is required (§§ 323, 108(1)(viii))[35].

(D) Special Resolution of the Shareholders Meeting is still required

In all of the above cases, whether Special Resolution of shareholders meeting is required or not, in addition to the resolution of the class shareholders meeting, must be decided based on the rules concerning the resolution of the shareholders meeting stated above (III. Procedures3(1)).

(3) Dissenting Shareholders' Appraisal Rights

(A) Dissenting Shareholders

In the following explanation, "Dissenting Shareholders" means as follows (§§ 785(2), 797(2), 806(2)):

(i) In cases where a resolution of a shareholders meeting (including a class shareholders meeting) is required to effect the reorganization, the following shareholders:

  (a) shareholders who gave notice to the company, the shares of which they hold, to the effect that they dissented from the reorganization prior to such shareholders meeting, and who dissented from such reorganization at such shareholders meeting if they can exercise voting rights at such shareholders meeting.

  (b) shareholders who are unable to exercise voting rights at such shareholders meeting; and

(ii) in cases other than those prescribed in (i) above, all shareholders

(B) Who has the Dissenting Shareholders' Appraisal Rights?

The Dissenting Shareholders of all pre-existing party (A, E, I; B, F, J; C1・C2,

G, K) may demand such company (A, E, I; B, F, J; C1・C2, G, K), the shares of which they hold, to purchase their shares at a fair price unless the reorganization is the Small Scale Reorganization (applicable only to E, G, B, F, J) (§§ 785(1), 797(1), 806(1)) with the following there exceptions:

Exception 1: When the Resolution of the Shareholders Meeting is required (applicable only to B, F, J):

If the resolution of the shareholders meeting is still required even though the formula for the Small Scale Reorganization of the Surviving Company, etc. (B, F, J) is satisfied, the shareholders of such Surviving Company, etc. (B, F, J) have the Dissenting Shareholders'Appraisal Rights. There are three cases in this exemption.

① **In cases where a loss is succeeded**

In the Surviving Company, etc. (B, F, J), if one of the three conditions provided in § 795(2) (i) (ii) (iii) (see III. Procedure3(1)(A)(b) ② Exception1 (i)(ii)(iii)) is satisfied, the approval by the Special Resolution (§ 309(2)) of the shareholders meeting is required and at that meeting, a director must explain that it is in such case, even though the formula for the Small Scale Reorganization is satisfied (§§ 795(2), 796(2) proviso). In such cases, the shareholders of the Surviving Company, etc., (B, F, J) always have the Dissenting Shareholders' Appraisal Rights (§ 797(1) parenthesis) because shareholders' interests are impaired in such cases by essentially succeeding the loss of the counterparty (A, E, I)[36]:

② **In cases where a certain number of the shareholders notify to dissent**

The approval by the Special Resolution (§ 309(2)) of the shareholders meeting is required if shareholders in a certain number (which is enough to make the resolution fail if such number of the shareholders dissent in the shareholders meeting or the number prescribed in the articles of incorporation) notify the Surviving Company, etc. (B, F, J) to the effect

that they dissent from the Absorption-type Merger, etc. (§ 796(3), Ordinance § 197(i)~(iv)) (see III. Prodedure3(1)(A)(b) ② Exception2).

In such cases, shareholders of the Surviving Company, etc. (B, F, J) always have the Dissenting Shareholders' Appraisal Right (§§ 797(1) parenthesis, 796(3)).

③ In cases where the number of outstanding Restricted Shares increases when shareholders hold Restricted Shares

If the Surviving Company, etc. (B, F, J) is a Non-public Company, and the proceeds of the reorganization includes the Restricted Shares of such company (B, F, J), such company (B, F, J) must always obtain the approval of the agreement by the Special Resolution of a shareholders meeting (§§ 796(1) proviso) (see III. Procedure3(1)(B)③).

In such case, shareholders of the Surviving Company, etc. (B, F, J) always have the Dissenting Shareholders' Appraisal Rights (§ 797(1) parenthesis) because the shareholders of the Restricted Shares have interests in keeping a certain percentage of the outstanding shares to maintain their influence in their company (B, F, J)[37] and such interests of the shareholders should be protected by requiring the Special Resolution of a shareholders meeting and by giving them the Dissenting Shareholders' Appraisal Rights.

Exception 2: When Shareholders become holders of Equity Interests, etc.

If shareholders become the holders of Equity Interests, etc. as the result of the reorganization, such shareholders do not have the Dissenting Shareholders' Appraisal Rights (§§ 785(1)(i), 806(1)(i)), because the consent of all shareholders is required in such case (§§ 783(2), 804(2)) (see III. Procedure3(1)(B)①).

Such case occurs for the shareholders of the Company (A) Disappearing in the Absorption-type Merger (§ 785(1)(i)), the Wholly Owned Subsidiary

Company (I) resulting from the Share Transfer (§ 785(1)(i)) and the Company (C1・C2) Disappearing in the Consolidation-type Merger (§ 806(1)(i)).

Exception 3: Special Controlling Company

In case of the Short Form Reorganization in the Absorption-type Merger, etc., the Special Controlling Company (B controlling A, F controlling E, J controlling I; A controlling B, E controlling F, I controlling J) does not have the Dissenting Shareholders' Appraisal Rights (§§ 785(2)(ii) parenthesis, 784(1); 797(2)(ii) parenthesis, 796(1)) because it is unlikely that the Special Controlling Company dissents from the reorganization[38].

(C) Procedures of the Dissenting Shareholders' Appraisal Rights

① Notice to all shareholders

Each pre-existing company (A, E, I; B, F, J; C1・C2, G, K) notifies its shareholders that it will effect the reorganization and the trade name and address of the other parties involved by 20 days prior to the Effective Day in case of the Absorption-type Merger, etc. (A, E, I; B, F, J) (§§ 785(3), 797(3)) and within two weeks from the shareholders meeting in case of the Consolidation-type Merger, etc. (C1・C2, G, K) (§§ 806(3)).

In case of the Absorption-type Merger, etc. (A, E, I; B, F, J), such notice may be substituted by the public notice if such company is a Public Company or if the agreement is approved by the shareholders meeting (§§ 785(4), 797(4)).

In the Consolidation-type Merger, etc. (C1・C2, G, K) such notice may always be substituted by the public notice (§ 806(4)).

② Prior-notices and objections

If shareholders meeting is held and the shareholders have the rights to vote, such shareholders must first give a notice to the company that they are going to dissent from the reorganization at the shareholders meeting, and they must actually object at the shareholders meeting. These prior

notice and the actual objection are not necessary, if the shareholders meeting is not held, or the shareholders do not have voting rights even if the shareholders meeting is held (§§ 785(2), 797(2), 806(2)).

③ **Demands for appraisal**

If shareholders exercise the Dissenting Shareholders' Appraisal Rights, they must indicate the number of shares with regard to which they are exercising the Appraisal Rights between 20 days prior to the Effective Day and the day immediately preceding the Effective Day in case of the Absorption-type Merger, etc. (§§ 785(5), 797(5)) and within 20 days from the day of the notice or the public notice to the shareholders in case of the Consolidation-type Merger, etc. (§ 806(5)).

Shareholders exercising the Appraisal Rights may not withdraw their demands for appraisal without the approval of the company (§§ 785(7), 797(7), 806(7)). The demands of the shareholders exercising the Appraisal Rights loose effect if the reorganization is cancelled (§§ 785(8), 797(8), 806(8)).

④ **Determination of the share price**

(i) If a shareholder and the company (A, E, I; B, F, J; C1・C2, G, K) (or the Company (B) Surviving the Absorption-type Merger or the Company (D) Incorporated in the Consolidation-type Merger instead of the Disappearing Company (A, C1・C2) after the Merger becomes effective) agree on the share price, the company must pay that price to the shareholder within 60 days from the day on which such reorganization becomes effective (§§ 786(1), 798(1), 807(1)).

(ii) If the shareholder and the company cannot agree on the share price within 30 days from the day on which such reorganization becomes effective, the shareholder or the company may file a petition for the court to determine the share price within 30 days after the expiration

of such term (§§ 786(2), 798(2), 807(2)).

The court should decide the "fair price" (§§ 785(1), 797(1), 806(1)) of the shares. The Act does not give the definition of the "fair price" but the "fair price" under the Act is considered to mean the price of the shares after reflecting the synergy effect of the reorganization, because, before the enactment of the Act, the price for the Shareholders' Appraisal Rights was stated as the "fair price of the shares without the shareholders meeting resolution to approve the reorganization" (§ 408-3 (1) of the Commercial Act before the enactment of the Companies Act of 2005) and that statement was changed to the "fair price" in the Act[39].

(iii) If a petition for the court to determine the share price is not filed within 60 days from the day on which such reorganization becomes effective, the shareholders may withdraw the demands for appraisal at any time after the expiration of such period (§§ 786(3), 798(3), 807(3)).

⑤ **Interest payment**

The company must pay 6% interest on the price determined by the court from and including the day of the expiration of the 60 days from the day on which such reorganization becomes effective (§§ 786(4), 798(4), 807(4)). The company may pay the amount it considers as fair price to the shareholder before the share price is decided (§§ 786(5), 798(5), 807(5)).

⑥ **Effectuation**

The share purchase connected with the exercise of the Dissenting Shereholders' Appraisal Rights becomes effective on the day on which such reorganization becomes effective (§§ 786(6), 798(6), 807(6)).

(4) Appraisal Rights on Share Options

In the following explanation, "Share Option" means any right which entitles

the holder to acquire shares in a Stock Company by exercising the right against such Stock Company (§ 2(xxi)).

(A) Who has the Appraisal Rights on Share Options?[40]

(a) Share Option holders of the Surviving Company, etc. (B, F, J) do not have the Appraisal Rights on Share Options, because they are not affected by the reorganization.

(b) In the Merger, if the Company (A) Disappearing in the Absorption-type Merger or the Company (C1・C2) Disappearing in the Consolidation-type Merger has issued Share Options, such Share Options are extinguished on the day when such reorganization becomes effective (§§ 750(4), 754(4)) and the counterparty (B, D) must deliver to such Share Option holders either (i) the monies or (ii) the Share Options of the counterparty (B, D) (§§ 749(1)(iv)(v), 753(1)(x)(xi)).

In the above case, Share Option hordes of such company (A, C1・C2) has the Appraisal Rights on Share Options unless the conditions of the counterparty's (B, D) delivery of its (B, D) Share Options at the time of the Merger are the same as the conditions set forth by such company (A, C1・C2) when the Share Options of such company (A, C1・C2) were issued (§§ 236(1)(viii)(a), 787(1)(i), 808(1)(i)).

(c) In the Company Split, the Share Exchange and the Share Transfer, if the Company (E) Splitting in the Absorption-type Split, the Company (G) Splitting in the Incorporation-type Split, the Wholly Owned Subsidiary Company (I) Resulting from the Share Exchange or the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer has issued Share Options, such Share Options remain unaffected by the reorganization, but the counterparty (F, H; J, L) may choose to substitute such Share Options with its (F, H; J, L) Share Options (§§ 758(v)(vi), 763(1)(x)(xi), 768(1)(iv)(v), 773(1)(ix)(x)).

The Share Options of such company (E, G; I, K) may also be substituted by the counterparty's (F, H; J, L) Share Options if there are provisions set forth when the Share Options of such company (E, G; I, K) were issued, to the effect that counterparty's (F, H; J, L) Share Options are delivered to the Share Option holders of such company (E, G; I, K) when reorganizations are effected (§§ 236(1)(viii)(b)~(e), 787(1)(ii)(b)(iii)(b), 808(1)(ii)(b)(iii)(b)).

If the Share Options of the above company (E, G; I, K) are substituted by the counterparty's (F, H; J, L) Share Options, Share Option holders of such company (E, H; I, K) have the Appraisal Rights on Share Options unless the conditions of the counterparty's (F, H; J, L) delivery of its Share Options at the time of the reorganization are the same as the conditions set forth by such company (E, H; I, K) when the Share Options of such company (E, H; I, K) were issued (§§ 236(1)(viii)(b)~(e), 787(1)(ii)(iii), 808(1)(ii)(iii)).

(B) Procedures to exercise the Appraisal Rights on Share Options

① Notice to all Share Option holders

The Disappearing Company, etc. (A, E, I) in the Absorption-type Merger, etc. and the Disappearing Company, etc. (C1·C2, G, K) in the Consolidation-type Merger, etc. notifies its Share Option holders that it will effect the reorganization and the trade name and address of the other parties involved by 20 days prior to the Effective Day in case of the Absorption-type Merger, etc. (A, E, I) (§ 787(3)) and within two weeks from the shareholders meeting in case of the Consolidation-type Merger, etc. (C1·C2, G, K) (§ 808(3)).

Such notices may be substituted by the public notices (§§ 787(4), 808(4)).

② Demands for appraisal

If Share Option holders exercise the Appraisal Rights on Share Options, they must indicate the features and number of the Share Options with respect to which they are exercising the Appraisal Rights on Share Options between 20 days prior to the Effective Day and the day immediately preceding the Effective Day in case of the Absorption-type Merger, etc. (§ 787(5)) and within 20 days from the day of the notice or the public notice to the Share Option holders in case of the Consolidation-type Merger, etc. (§ 808(5)).

Share Option holders exercising the Appraisal Rights on Share Options may not withdraw their demands for the appraisal without the approval of the company (§§ 787(8), 808(8)). The demands of the Share Option holders exercising the Appraisal Rights on Share Options loose effect if the reorganization is cancelled (§§ 787(9), 808(9)).

③ In case of the Share Options attached to the Bonds with Share Options

If Share Option holders of the Share Options attached to the Bonds with Share Options intend to exercise the Appraisal Rights on Share Options, the Share Option holders must demand that the company purchase the Bonds pertaining to the Bonds with Share Options unless otherwise provided for with respect to such Share Options(§§ 787(2), 808(2)).

④ Determination of the Share Option price

(i) If Share Option holders and the company (or the Company (B) Surviving the Absorption-type Merger or the Company (D) Incorporated in the Consolidation-type Merger instead of the Disappearing Company (A, C1・C2) after the Merger becomes effective) agree on the Share Option price, the company must pay that price to the Share Option holders within 60 days from the day on which

such reorganization becomes effective (§§788(1), 809(1)).

(ii) If Share Option holders and the company cannot agree on the Share Option price within 30 days from the day on which such reorganization becomes effective, the Share Option holder or the company may file a petition for the court to determine the Share Option price within 30 days after the expiration of such period (§§788(2), 809(2)).

(iii) If a petition for the court to determine the Share Option price is not filed within 60 days from the day on which such reorganization becomes effective, the Share Option holders may withdraw the demand for appraisal at any time after the expiration of such period (§§788(3), 809(3)).

⑤ **Interest payment**

The company must pay 6% interest on the price determined by the court from and including the day of the expiration of the 60 days from the day on which such reorganization becomes effective (§§788(4), 809(4)).

The company may pay the amount it considers to be a fair price to the Share Option holder before the Share Option price is decided (§§788(5), 809(5)).

⑥ **Effectuation**

The Share Option purchase connected with the exercise of the Appraisal Rights on Share Options becomes effective on the day on which such reorganization becomes effective (§§788(6), 809(6)).

(5) Creditors' Objections

(A) Which Creditors can State Objections?

(a) In the Merger, any creditor of all pre-existing parties (A, B, C1·C2) can state an objection (§§789(1)(i), 799(1)(i), 810(1)(i)).

(b) In the Company Split, any creditor of all existing parties (E, F, G) can

state an objection except the following one case (§§ 789(1)(ii), 799(1)(ii), 810(1)(ii)):

The creditors of the Splitting Company (E, G) cannot state the objections if ① it is not the case that the shares of the counter party (F, H) which the Splitting Company (E, G) receives as proceeds are distributed to its (E, G) shareholders on the day on which such reorganization become effective (§§ 758 (viii), 763 (1) (xii)) and ② creditors can request to the Splitting Company (E, G) to perform the obligation.

The reason of this exception is that the creditors' rights are not considered impaired if the proceeds received by the Splitting Company (E, G) are kept in such company (E, G) and the creditor can request such company (E, G) to perform the obligation, assuming that the value of the proceeds is equivalent to the value of the rights and obligations succeeded by the counterparty (F, H)[41].

(c) In the Share Exchange and the Share Transfer, as a general rule, no creditors of the pre-existing party (I, J, K) can state objections because the credit conditions of each party (I, J, K) remain unchanged because the Share Exchange or the Share Transfer results in the change of the shareholders only.

This general rule has the following two exceptions:

Exception1:

In the Share Exchange or the Share Transfer, if the Wholly Owned Subsidiary Company (I, K), has the outstanding Bonds with Share Options and the obligations relating the Bonds pertaining to such Bonds with Share Options are succeeded to by the counter party (J, L), while Share Options attached to such Bonds with Share Options are substituted by the Share Options of the counterparty (J, L), bond holders of such Bonds with Share

Options can state objections (§§789(1)(iii), 810(1)(iii)), because the debtor of such Bonds with Share Options changes from the Wholly owned Subsidiary Company (I, K) to the Wholly Owning Parent Company (J, L).

In this case, creditors of the Wholly Owning Parent Company (J) Resulting from the Share Exchange can state objections (§799(1)(iii)), because the amount of the debts of such company (J) increases by succeeding to the obligations relating the Bonds pertaining to such Bonds with Share Options[42].

Please note that when the Wholly Owned Subsidiary Company (I, K) has outstanding Bonds with Share Options, there are following two alternatives:

(i) To keep the Bonds with Share Options as they are. If so, the debtor (I, K) of such Bonds with Share Options remains the same as before the Share Exchange or the Share Transfer. In this case there is a possibility that holders of such Bonds with Share Options exercise the Share Options and become shareholders of the debtor (I, K), then such debtor (I, K) no more is the wholly owned subsidiary of the parent company (J, L). In order of avoid such result, the following alternative (ii) can be chosen.

(ii) To have the Share Options attached to the Bonds with Share Options to be substituted by the Share Options of the Wholly Owning Parent Company (J, L).

In such case, the parent company (J, L) must succeed to the obligations relating the Bonds pertaining to such Bonds with Share Options (§§768(1)(iv)(c), 773(1)(ix)(c)).

Exception 2:

In the Share Exchange, creditors of the Wholly Owning Parent Company (J) Resulting from Share Exchange can state the objections, if the proceeds of the Share Exchange delivered to the Wholly Owned Subsidiary

Company (I) Resulting from the Share Exchange include properties other than shares of the parent company (J) or those prescribed by the Ministry of Justice Ordinance as equivalent to such shares (§ 799(1)(iii), Ordinance § 198), because there is a possibility that the value of the parent company (K) decreases in such case[43].

(B) Procedures of Creditors' Objections

① Notice by the debtor company to creditors

A debtor company (A, E, I; B, F, J; C1・C2, G, K) must give notices to the creditors who can state objections of the following matters (§§ 789(2), 799(2), 810(2)):

(i) a statement that such reorganization will be effected,

(ii) the trade name and address of the counterparty of the reorganization,

(iii) matters regarding the Financial Statements (Ordinance §§ 188, 199, 208) and

(iv) a statement to the effect that creditors may state objections within a certain period, which may not be less than one month.

Such notice must be by one of the following methods:

(i) Public notice in the official gazette and give notices separately to each known creditor who can state an objection (§§ 789(2), 799(2), 810(2)) or

(ii) Public notice in the official gazette as well as either the public notice in a daily newspaper that publishes matters on currents affairs or the electronic public notice in accordance with the provisions of articles of incorporation (§§ 789(3), 799(3), 810(3); 939(1)(ii)(iii)).

In addition, in case of the Company Split, the Splitting Company (E, G) must always give notices separately to each known creditor of the obligations of the Splitting Company (E, G) that have arisen due to a

tort (§§ 789(3) parenthesis, 810(3) parenthesis), because it is difficult to require tort creditors to check public notices in the official gazette or dairy newspaper or electronic public notices[44].

② **If creditors do not raise objections**

If creditors do not raise objections, within the set period, such creditors are deemed to have approved the reorganization (§§ 789(4), 799(4), 810(4)).

③ **If creditors raise objections**

If creditors raise objections within the set period, the debtor company (A, E, I; B, F, J; C1・C2, G, K) must (i) make payment to such creditors, (ii) provide reasonable security to such creditors or (iii) entrust equivalent property to a Trust Company, etc. (§ 449(5)) for the purpose of having such creditors receive the payment unless there is no risk of harm to such creditors by the reorganization (§§ 789(5), 799(5), 810(5)).

④ **Completion before the effectuation of the reorganization**

In the Absorption-type Merger, etc., the reorganization does not become effective unless the Creditors' Objection procedures are completed (§§ 750(6), 759(10), 769(6)). Therefore, if the Creditors' Objections procedures are not completed by the Effective Day, the Disappearing Company, etc. (A, E, I) must change the Effective Day by agreement with the Surviving Company, etc. (B, F, J) (§ 790(1))[45],

In the Consolidation-type Merger, etc. the Disappearing Company, etc. (§ C1・C2, G, K) must complete the Creditors' Objections procedure before they file the registration of the reorganization (§§ 922(1)(i)(e), 924(1)(i)(e), 925(5))[46].

(C) Protection of the Creditors in the Company Split who are entitled to the Creditors' Objections but did not receive Separate Nnotices[47]

The following protections apply only to the Company Split.

First, if notice was given by the public notice in the official gazette only, and creditors entitled for the Creditors' Objections were not given separate notices, whether such creditors were known to the Splitting Company (E, G) or not, such creditors are protected in the following way (§§ 759(2)(3), 789(2) ; 764(2)(3), 810(2)).

Second, if ① notices were given (i) by the public notice in the official gazette and (ii) by the public notice in a daily newspaper that publishes matters on current affairs or by the electronic public notice in accordance with the provisions of the articles of incorporation (§ 939(1)(ii)(iii)) and ② creditors of the obligations caused by a tort entitled for the Creditors' Objections were not given separate notices, whether such creditors were known to the Splitting Company (E, G) or not, such tort creditors are protected in the following way (§§ 759(2) parenthesis(3), 789(3); 764(2) parenthesis (3), 810(3)).

Please note that unknown creditors of the obligations caused by a tort entitled for the Creditors' Objections are always protected in the following way (§§ 759(2) parenthesis(3), 789(3); 764(2) parenthesis(3), 810(3)) because the Splitting Company (E, G) does not know such creditors at the time of the reorganization and can never give separate notices to them.

(a) If such creditors were, before the Company Split, creditors of the Splitting Company (E, G) such creditors can request such company (E, G) to perform the obligation to the extent of the value of the property held by such company (E, G) when the Company Split became effective, even if such creditors of such company (E,G) are not allowed under the agreement or the plan to request such company (E,G) to perform the obligations after the Company Split (§§ 759(2), 764(2)).

(b) If such creditors were, before the Company Split, creditors of the Splitting Company (E, G), such creditors can request the Company (F) Succeeding in the Absorption-type Split or the Company (H) Incorporated

in the Incorporation-type Split to perform the obligations to the extent of the value of the property to which it (F, H) has succeeded, even if such creditors are not allowed under the agreement or the plan to request such company (F, H) to perform the obligations after the Company Split (§§ 759(3), 764(3)).

(D) Protection of the Remaining Creditors from the Harmful Company Splits[48]

If the Company (E) Splitting in the Absorption-type Split or the Company (G) Splitting in the Incorporation-type Company Split implemented the Company Split with the knowledge that it would harm creditors (hereinafter referred to as the "Remaining Creditors") of the obligation that would not be succeeded to the Company (F) Succeeding in the Absorption-type Split or the Company (H) Incorporated in the Incorporation-type Split, the Remaining Creditors can request the performance of such obligations from the Company (F) Succeeding in the Absorption-type Split or the Company (H) Incorporated in the Incorporation-type Split to the extent of the value of the property to which it (F, H) has succeeded (§§ 759(4), 764(4)).

The above rule does not apply if the Company (F) Succeeding in the Absorption-type Split did not know the fact that it would harm the Remaining Creditors when the Company Split became effective (§ 759(4) proviso).

The above rule also does not apply to the cases where proceeds of the Company Split received by the Splitting Company (E, G) from the counter party (F, H) are distributed to its (E, G) shareholders on the day the Company Split becomes effective (§§ 759(5), 758(viii); 764(5), 763(1)(xii)) because the Remaining Creditors are entitled to the Creditors' Objections in such case and are able to be protected through the Creditors' Objections procedures[49].

The above obligations of the Company (F) Succeeding in the Absorption-type Split or the Company (H) Incorporated in the Incorporation-type Split

are extinguished ① if the Remaining Creditors do not demand the performance or do not give advance notices of their demands within 2 years from when such creditors come to know that the Splitting Company (E, G) implemented the Company Split with the knowledge that it (E, G) would harm the Remaining Creditors or ② if 20 years elapses from the day on which such Company Split becomes effective (§§ 759(6), 764(6)).

(E) Succession to Labor Contracts upon Company Split[50]

In order to promote the protection of workers by prescribing special provisions, etc. to the Companies Act concerning succession, etc. to labor contracts in cases where a company is split, the Act on the Succession to Labor Contracts upon Company Split was enacted in 2000[51].

Procedure 4 Effectuation of the Reorganizations

(1) When do Reorganizations become Effective?

(A) The Absorption-type Merger, etc. becomes effective on the Effective Day stipulated in the agreement of such reorganization (§§ 750(1), 749(1)(vi); 759(1), 758(vii); 769(1), 768(1)(vi)).

(B) The Consolidation-type Merger, etc. becomes effective on the day when the registration is made concerning the incorporation of the Incorporated Company (D, H, L) (§§ 754(1), 922, 764(1), 924, 774(1), 925).

(2) Special Rule Concerning the Effectiveness of the Absorption-type Merger

In the Absorption-type Merger, the dissolution of the Company (A) Disappearing in the Absorption-type Merger may not be duly asserted against a third party until the registration of the Absorption-type Merger has been completed (§ 750(2)).

For example, if a Representative Director Y of the Disappearing Company (A) in the Absorption-type Merger sells a real estate of such company (A) to a

third party X after the Effective Day of the Absorption-type Merger and before the registration of such Merger is made, X can claim the Company (B) Surviving the Absorption-type Merger to deliver such real estate to X[52].

Procedure 5 **Registration**

(1) In the Absorption-type Merger, within two weeks from the Effective Day, the registration of dissolution must be completed with regard to the Company (A) Disappearing in the Absorption-type Merger and the registration of a change must be completed with regard to the Company (B) Surviving the Absorption-type Merger (§ 921).

(2) In the Consolidation-type Merger, within two weeks from the day when reorganization procedures are completed or the day decided by the agreement of the parties (C1・C2), registration of dissolution must be completed with regard to the Company (C1・C2) Disappearing in the Consolidation-type Merger and the registration of incorporation must be completed with regard to the Company (D) Incorporated in the Consolidation-type Merger (§ 922).

(3) In the Absorption-type Company Split, within two weeks from the Effective Day, the registration of a change must be completed with regard to the Company (E) Splitting in the Absorption-type Split and the Company (F) Succeeding in the Arbitration-type Split (§ 923).

(4) In the Incorporation-type Company Split, within two weeks from the day when reorganization procedures are completed or the day decided by the Company (E) Splitting in the Incorporation-type Split, registration of a change must be completed with regard to the Company (E) Splitting in the Incorporation-type Split and the registration of incorporation must be completed with regard to the Company (D) Incorporated in the Incorporation-type Split (§ 924).

(5) In the Share Exchange, no registration is required.

(6) In the Share Transfer, no registration is required with regard to the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer and the registration of incorporation is required with regard to the Wholly Owning Parent Company (L) Resulting from Share Transfer within two weeks from the date when reorganization procedures are completed or the day decided by the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer (§ 925).

Procedure 6 **Post-Reorganization Disclosure**

Each post-existing party (E, I; B, F, J; G, K; D, H, L) must without delay after the reorganization becomes effective, prepare, jointly with its counterparty, documents detailing the rights and obligations succeeded (in case of the Merger or the Company Split) or the number of shares acquired (in case of the Share Exchange or the Share Transfer) by the Surviving Company, etc. (B, F, J) or the Incorporated Company (D, H, L) from the counter party (A, E, I; C1・C2, G, K) and any other information prescribed by the Ministry of Justice Ordinance (§§ 791(1), 801(1), 811(1), 815(1), Ordinance §§ 189, 190, 200, 201, 209~213). Please note that the Disappearing Company (A, C1・C2) are excluded because such company does not exist after the reorganization.

The post-existing party (E, I; B, F, J; G, K; D, H, L) must keep such documents at their head office for a period of six months from the day on which the reorganization becomes effective (§§ 791(2), 801(3), 811(2), 815(3)).

The relevant shareholders, creditors, Share Option holders and, in case of the Company Split, interested parties of the relevant post-existing party may make request for inspection, delivery of transcript or extracts of the documents (§§ 791(3)(4), 801(4)～(6), 811(3)(4), 815(4)～(6)).

The purpose of this disclosure after the reorganization is to give

information to the relevant persons such as shareholders and creditors so that they can decide whether they should file the Actions Seeking Invalidation of the Reorganizations as well as to assure the fair execution of the reorganization procedures by disclosing the process of the reorganization[53].

IV. Injunctions

1. Injunction applicable to the Shareholders of any Pre-existing Party

The shareholders of the pre-existing party (A, E, I; B, F, J; C1・C2, G, K) may demand such party (A, E, I; B, F, J; C1・C2, G, K), shares of which they hold, to cease the reorganization unless the reorganization is the Small Scale Reorganization, if both of the following conditions are satisfied:

① such reorganization violates the applicable laws and regulations or the articles of incorporation (§§ 784-2(i), 796-2(i), 805-2); and

② such shareholders are likely to suffer disadvantages (§§ 784-2, 796-2, 805-2)

The above rule has the following exception:

Exception :

Even if the formula for the Small Scale Reorganization of the Surviving Company, etc. (B, F, J) is satisfied, shareholders of the Surviving Company, etc. (B, F, J) may demand to cease the Absorption-type Merger, etc., if it is one of the following three cases in which the resolution of shareholders meeting is required (§ 796-2 proviso, parenthesis):

① **In cases where a loss is succeeded**

In the Surviving Company, etc. (B, F, J), if one of the three conditions provided in § 795(2)(i)(ii)(iii) (see III. Procedure3(1)(A)(b) ② Exception1(i)(ii)(iii)) is satisfied, shareholders of the Surviving Company, etc. (B, F, J) may demand to cease the Absorption-type Merger, etc. (§§ 796-2

proviso, parenthesis, § 795(2)(i)(ii)(iii)), because shareholder's interests are impaired in such cases by essentially succeeding the loss of the counterparty (A, E, I)[54]:

② **In case where a certain number of the shareholders notify to dissent**

Shareholders of the Surviving Company, etc. (B, F, J) may demand to cease the Absorption-type Merger, etc. if shareholders in a certain number (which is enough to make the resolution fail if such number of the shareholders dissent in the shareholders meeting or the number prescribed in the articles of incorporation) notify the Surviving Company, etc. (B, F, J) to the effect that they dissent from the Absorption-type Merger, etc. (§ § 796-2 proviso, parenthesis, § 796(3), Ordinance, § 197 (i)~(iv)) (see III. Prodedure3(1)(A)(b) ② Exception2).

③ **In case that if the number of outstanding Restricted Shares increases when shareholders hold Restricted Shares**

Shareholders of the Surviving Company, etc, (B, F, J) may demand to cease the Absorption-type Merger, etc. if the Surviving Company, etc. (B, F, J) is a Non-public Company, and the proceeds of the reorganization includes Restricted Shares of such company (B, F, J) (§ § 796-2 proviso, parenthesis, 796(1) proviso)(see III. Procedure3(1)(B)③).

The reason why the shareholders of the Splitting Company (E, G) and the Surviving Company, etc. (B, F, J) may not demand to cease the Company Split or the Absorption-type Merger, etc. in case of the Small Scale Reorganization (§ § 784-2 proviso, 796-2 proviso, 805-2 proviso) is because the impact to shareholders are not so large in such case[55].

2. Injunction applicable to shareholders in case of the Short Form Reorganizations

In case of the Short Form Reorganization (see III. Procedure 3 (1)(A)(a)), the

shareholders of the Disappearing Company, etc. (A, E, I) or the Surviving Company, etc. (B, F, J) may demand such company (A, E, I; B, F, J), shares of which they hold, to cease the reorganization unless the reorganization is the Small Scale Reorganization, if

①-1 such reorganization violates the applicable laws and regulations or the articles of incorporation (§§ 784-2(i), 796-2(i)), or

①-2 proceeds are extremely improper in light of the financial status and other conditions of the Disappearing Company, etc. (A, E, I) or the Surviving Company, etc. (B, F, J) (§§ 784-2(ii), 796-2(ii)), ; and

② such shareholders are likely to suffer disadvantages (§§ 784-2, 796-2).

The above rule has the same exception regarding the Small Scale Reorganization of the Surviving Company, etc. (B, F, J) as the rule of the injunction applicable to shareholders of any pre-existing party (see IV.1.).

V. Actions Seeking Invalidation of the Reorganizations

1.Six Actions Seeking Invalidation of the Reorganizations

Once a reorganization becames effective, only way to invalidate it is by bringing an action provided in the Act. Six actions are stipulated in the Act corresponding to each form of the reorganization as follows:

① An action seeking invalidation of an Absorption-type Merger of a Company (§ 834(vii))

② An action seeking invalidation of a Consolidation-type Merger of a Company (§ 834(viii))

③ An action seeking invalidation of an Absorption-type Company Split of a Company (§ 834(ix))

④ An action seeking invalidation of an Incorporation-type Company Split of a Company (§ 834(x))

⑤ An action seeking invalidation of a Share Exchange of a Stock Company.

〔Table 4〕 Six Actions Seeking Invalidation of the Reorganization

	Name of an Action	Action must be filed within the following period from the day on which the reorganization become effective:	The following person can file the action		Defendants
			as of the day on which the reorganization become efective, if the peron was	as of the day on which such action is filed, if the person is:	
1	an action seeking invalidation of an Absorption-type Merger of a Company (§ 834(vii))	six (6) months (§ 828(1)(vii))	a Shareholder, etc. or a Member, etc. of the Company Disappearing in the Absorption-type Merger (A) (§ 828(2)(vii))	a Shareholder, etc., a Member, etc., the trustee in bankruptcy or a creditor who did not approve the reorganization of the Company Surviving the Absorption-type Merger (B) (§ 828(2)(vii))	the Company Surviving the Absorption-type Merger (B) (§ 834(vii))
2	an action seeking invalidation of a Consolidation-type Merger of a Company (§ 834(viii))	six (6) months (§ 828(1)(viii))	a Shareholder, etc. or a Member, etc. of the Company Disappearing in the Consolidation-type Merger (C1・C2) (§ 828(2)(viii))	a Shareholder, etc., a Member, etc., the trustee in bankruptcy or a creditor who did not approve the reorganization of the Company Incorporated in the Consolidation-type Merger (D) (§ 828(2)(viii))	the Company Incorporated in the Consolidation-type Merger (D) (§ 834(viii))
3	an action seeking invalidation of an Absorption-type Company Split (§ 834(ix))	six (6) months (§ 828(1)(ix))	a Shareholder, etc. or a Member, etc. of each Party (E, F) (§ 828(2)(ix))	a Shareholder, etc., a Member, etc., the trustee in bankruptcy or a creditor who did not approve the reorganization of each Party (E, F) (§ 828(2)(ix))	Both Parties of the Absorption-type Company Split (E and F) (§ 834(ix))
4	an action seeking invalidation of an Incorporation-type Company Split (§ 834(x))	six (6) months (§ 828(1)(x))	a Shareholder, etc. or a Member, etc. of the Company Splitting in the the Incorporation-type Split (G) (§ 828(2)(x))	a Shareholder, etc., a Member, etc., the trustee in bankruptcy or a creditor who did not approve the reorganization of each Party (G, H) (§ 828(2)(x))	Both Parties of the Incorporation-type Company Split (G and H) (§ 834(x))
5	an action seeking invalidation of a Share Exchange of a Stock Company (§ 834(xi))	six (6) months (§ 828(1)(xi))	a Shareholder, etc. or a Member, etc., of each Paty (I, J) (§ 828(2)(xi))	a Shareholder, etc., a Member, etc., the trustee in bankruptcy or a creditor who did not approve the reorganization of each Party (I, J) (§ 828(2)(xi))	Both Parties of the Share Exchange (I and J) (§ 834(xi))
6	an action seeking invalidation of a Share Transfer of a Stock Company (§ 834(xii))	six (6) months (§ 828(1) (xii))	a Shareholder, etc. of the Wholly Owned Subsidary Company Resulting from the Share Transfer (K) (§ 828(2) (xii))	a Shareholder, etc., the trustee in bankruptcy or a creditor who did not approve the reorganization of the Wholly Owning Parent Company Incorporated in the Share Transfer (L) (§ 828(2)(xii))	Both Parties of the Share Transfer (K and L) (§ 834(xii))

(§ 834(xi))

⑥ An action seeking invalidation of a Share Transfer of a Stock Company. (§ 834(xii))

In this paper, above six actions are collectively referred to as the "Reorganization Invalidation Actions".

2. Who may file the Action?

The person who may file the action is limited depending on the form of the action. Please see〔Table 4〕[56] for the detail. In〔Table 4〕, "a Shareholder, etc." means a shareholder, a director, a liquidator, a company auditor (if any) or an executive officer (if any) of a Stock Company (§ 828(2)(i)) and "a Member, etc." means a member or a liquidator of a Membership Company (§ 828(2)(i)).

3. Who should be the Defendants?

All parties (B, D, E and F, G and H, I and J, K and L) of the reorganization existing at the time of the filing of the action must be defendants. Please see〔Table 4〕 for the detail.

4. Effectiveness of the Action

(A) Effectiveness to the third party

A final and binding judgement upholding a claim relating to each of the Reorganization Invalidation Actions is effective against third parties as well as between the plaintiff and the defendant (§ 838).

A final and binding judgment dissenting a claim relating to each of the Reorganization Invalidation Actions is effective only between the plaintiff and the defendant based on the general rule of the civil procedures (Code of Civil Procedure § 115(1)).

(B) Invalidation is not retroactive

When a judgement upholding a claim relating to each of the Reorganization Invalidation Actions becomes final and binding, the reorganization that is held to be invalid by such judgement (if a Company was incorporated by such reorganization, it shall include such incorporation, and if shares or Share Options were delivered at the time of the reorganization, it shall include such shares or Share Options) becomes ineffective from then on (§ 839).

(C) Special rules applicable when a reorganizations is invalidated

Special rules applicable to the case where reorganization is invalidated are provided in § § 843 and 844.

5.Basis for invalidation

(1) Basis for invalidation

The Act is silent about the basis for the invalidation of the reorganization. Some examples of the basis for the invalidation recognized by the courts and commentators are as follows[57]:

① Lack of the statements in the agreement or plan which is required by law.

② Absence, invalidation or revocation of the resolution in the shareholders meeting approving the agreement or the plan.

③ Lack of Creditors' Objections procedures.

④ Omission or misstatement about the items to be disclosed.

(2) Unfairness of the value of proceeds

Unfairness of the value of proceeds in reorganizations is not considered to be a basis for the invalidation because damages from the unfair proceeds can be compensated by exercising the Dissenting Shareholders' Appraisal Rights or by claiming "Officers, etc." (§ 423(1)) for damages (§ 429(1)).

If, however, the resolution of the shareholders meeting deciding such unfair

result is considered to be a grossly improper resolution which is made as a result of a person with a special interest exercising a voting right, the resolution of such shareholders meeting shall be revoked (§ 831(1)(iii)) and such reorganization can be invalidated because of the lack of the necessary resolution of the shareholders meeting[58].

IV. Closing

In studying Japanese corporate law, as a first step, it is very important to read each provision of the Act carefully and to understand the precise meaning of each sentence, including provisos and words in parenthesis. The reader of the Act should also understand the reasons why such provisions are enacted.

〔Table 1〕 is provided to help readers of the provisions in Part V of the Act to visually understand the difference among the six forms of the reorganizations and to easily find out the individual and collective names of the reorganizations and the parties. Please keep referring to 〔Table 1〕 in reading the relevant provisions of the Act so that you can always identify the form of the reorganization and the party involved that each provision is dealing with.

I hope this paper is of some help for English users who try to acquire an accurate and updated knowledge about how the Merger, the Company Split, the Share Exchange and the Share Transfer are treated under the Japanese corporate law by reading the English translation of the Act.

Notes

1. Yasuharu Yoneda, Professor Emeritus of Shinshu University (since 2016), former Dean of Shinshu University School of Law (2005-2012) and Professor of Law of Shinshu University (2004-2016), was graduated from Harvard Law School (LL. M.) in 1980 and University of Tokyo (Bachelor of Laws) in 1974.

2. Act No. 86 of July 26, 2005 which became effective on May1, 2006. In this paper, "§", meaning "Article" , without the name of the law means the provision of the Companies Act of 2005 as amended. The article of the Ordinance for Enforcement of the Companies Act (hereinafter referred to as "Ordinance") is shown as "Ordinance §".
3. Amendment Act No. 90 of 2014 which became effective on May1, 2015.
4. The English term "reorganization" is used in this paper to mean the Japanese term "Soshiki-saihen（組織再編）" as used in Ito et al., infra note (6) p.387 and Kanda, infra note (6) p.340 or "Soshiki-saihen-koi（組織再編行為）" as used in Yanaga, infra note (6) p. 354, which means "Merger, Company Split, Share Exchange and Share Transfer".

   The term "reorganization" in this paper does not include either Entity Conversion , which is defined as any change, through conversion, from a Stock Company to a Membership Company or from a Membership Company to a Stock Company (§ 2 (xxvi)), nor "Business Transfer, etc." defined in § 468(1). A "Membership Company" is defined as a term collectively refers to a General Partnership Company, a Limited Partnership Company or a Limited liability Company (§ 575).

   The Act does not use a term equivalent to the "reorganization" as defined above. Part V of the Act, which includes Entity Conversion, has the title of "Entity Conversion, Merger, Company Split, Share Exchange and Share Transfer".

   Please note that the English term "reorganization" is sometimes used for a totally different meaning from the one defined above. For example, the Japanese "Kaisha-kosei Ho（会社更生法）" is translated into "Corporate Reorganization Act". The purpose of such Act is to appropriately coordinate the interests of creditors, shareholders and other interested parties of stock companies in financial difficulties by specifying the procedures concerning formulating reorganization plans and implementing such plans, with the aim of ensuring the maintenance and reorganization of such stock companies' businesses.

   Readers of this paper should distinguish such different meaning of the "reorganization" from the meaning used in this paper.
5. English translation of the Act is available at the following URL (① covers from Part I to Part IV and ② covers from Part V to Part VIII of the Act):
   ①
   http: //www. japaneselawtranslation. go. jp/law/detail/? ft=1&re=01&dn=1&x=76&y=16&co=01&ia=03&ky=%E4%BC%9A%E7%A4%BE%E6%B3%95&page=16
   ②
   http: //www. japaneselawtranslation. go. jp/law/detail/? printID=&ft=1&re=01&dn=1&x=76&y=16&co=01&ia=03&ky=%E4%BC%9A%E7%A4%BE%E6%B3%95&page=17&vm=02
6. General explanation in English of the Japanese corporate law are contained in the following materials:

① Hiroshi Oda, Japanese Law, Third Edition, Oxford University Press, 2009, London, pp. 217-284.

② Curtis J. Milhaupt, J. Mark Ramseyer and Mark West, The Japanese Legal System ; Cases, Codes, And Commentary, Second Edition, Foundation Press, 2012, New York, pp. 705-822.

Pages concerning Merger, Company Split, Share Exchange and Share Transfer in some of the major textbooks written in Japanese are as follows:

③ Kenjiro Egashira, Kabushiki-Kaisha-Ho (Stock Company Law), Sixth Edition, (Yuhikaku, 2015, Tokyo), pp. 843-948.

④ Yasushi Ito, Kenichi Osugi, Wataru Tanaka and Hideyuki Matsui, Legal Quest Kaisha-Ho (Legal Quest Corporate Law), Third Edition (Yuhikaku, 2015, Tokyo), pp. 387-432.

⑤ Masao Yanaga, Legal Mind Kaisha-Ho (Legal Mind Corporate Law), 14th Edition (Yuhikaku, 2015, Tokyo), pp. 354-395.

⑥ Hideki Kanda, Kaisha-Ho (Corporate Law) 18th Edition (Kobunsha, 2016, Tokyo), pp. 350-391.

Explanation in Japanese by the government officials who worked for the enactment of the Japanese Companies Act of 2005 is provided in the following material:

⑦ Tetsu Aizawa and Mitsuru Hosokawa, Soshiki-saihen-koi (reorganization); Bessatsu-Shoji-Homu No.295 (2006), pp.180-207.

7. The expected readers of this paper are mainly practitioners, scholars and students who use English materials to study rules concerning the Merger, Company Split, Share Exchange and Share Transfer under the Act. This paper will also be helpful for those who need to explain to or discuss with English speaking persons about such rules.
8. 〔Table 1〕shows the minimum number of the parties required under the Act. This table helps readers to visually understand the difference of the six forms of the reorganizations and to find the individual and collective names of reorganizations and parties of each reorganization.
9. "Issued Shares"mean the shares issued by a Stock Company (§ 2(xxxi)).
10. The reason why the General Partnership Company and the Limited Partnership Company cannot be the Splitting Company (E, G) is to avoid the situation that creditors are too much harmed (if general partners' obligations are not succeeded) or that legal relationship becomes too complicated (if general partners' obligations are succeeded) (Aizawa and Hosokawa, supra note (6) p.183).
11. The Wholly Owned Subsidiary Company (I, K) must be a Stock Company because of the characteristics of the Share Exchange and Share Transfer (Aizawa and Hosokawa, supra note (6) p.183).
12. The reason why General Partnership Company and Limited Partnership Company

cannot be the Wholly Owning Parent Company (J, L) is that there is no actual merit to be expected (Aizawa and Hosokawa, supra note (6) p.183).

The reason why the Limited Liability Company cannot be the Wholly Owning Parent Company (L) Incorporated in the Share Transfer is that there is no practical difference from the case in which all shareholders of the Wholly Owned Subsidiary Company (K) Resulting from the Share Transfer newly incorporate a limited Liability Company by contributing their shares (Aizawa and Hosokawa, supra note (6) p.183).

13. § § 749(1)(ii), 758(iv) and 768(1)(ii) use the term "Monies, etc." which is defined as "monies and other properties." in § 151(1). As for the proceeds of the reorganizations, the Act uses the terms of "Monies, etc.", "Shares, etc." and "Bonds, etc." to include certain properties as follows:

	Monies, etc.	Shares, etc.	Bonds, etc.	Properties other than Shares, etc.
Definition in the Act	§ 151(1)	§ 107(2)(ii)(e)	§ 746(1)(vii)(d)	
Definition in the Ordinance	§ 2(2)(xxxvii)	§ 2(2)(xxv)	§ 2(2)(lxxxv)	
Money	○	×	×	○
Shares	○	○	×	×
Bonds	○	○	○	×
Share Options	○	○	○	×
Bonds with Share Options	○	○	○	×
Properties other than above	○	×	×	○

"Bond" is defined in § 2(xxiii), "Share Option" is defined in § 2(xxi) and "Bond with Share Options" is defined in § 2(xxii).

14. Ito et al., supra note (6) pp.400-401.
15. Ito et al., supra note (6) p.391.
16. Ito et al., supra note (6) p.391.
17. Yanaga, supra note (6) p.360.
18. Egashira, supra note (6) pp.865-868.
19. Egashira, supra note (6) p.865.
20. 〔Table 3〕 is created based on the Charts 3, 4 and 5 in Aizawa and Hosokawa, supra note (6) pp.195-197 with some modifications made by Yoneda, including the addition of the number of the provisions of the Act.
21. The Act does not provide a specific name to mean this case. In Japanese, this case is commonly called "Ryaku-shiki Soshiki-saihen（略式組織再編）" but its English transla-

tion is not fixed. "Short Form Reorganization" is the English term often used to mean this case but Oda, supra note (6) p.260 uses the term "Summary Procedure".

22. Aizawa and Hosokawa, supra note (6) p.198.
23. Aizawa and Hosokawa, supra note (6) pp.196-197.
24. The Act does not provide a specific name to mean this case. In Japanese, this case is commonly called "Kan-i Soshiki-saihen（簡易組織再編）", but its English translation is not fixed. "Small Scale Reorganization" is a the English term often used to mean this case but Oda, supra note (6) p.260 uses the term "Simplified Procedure".
25. Aizawa and Hosokawa, supra note (6) p.197.
26. Egashira, supra note (6) pp.881-882; Aizawa and Hosokawa, supra note (6) p.198.
27. "Equity Interests, etc." is defined as (i) equity interests of a Membership Company and (ii) those the transfer or execution of rights of which is subject to the consent of a third party such as a debtor (excluding equity interests of a Membersip Company and Shares with Restriction Ttansfer) (§ 783(2), Ordinance § 185).
28. Egashira, supra note (6) p.881.
29. Egashira, supra note (6) pp.731-734 ; Ito et al., supra note (6) p.310.
30. Yanaga, supra note (6) p.380.
31. Aizawa and Hosokawa, supra note (6) p.197-198; Yanaga, supra note (6) p.379.
32. Yanaga, supra note (6) p.364.
33. Yanaga, supra note (6) p.364.
34. Aizawa and Hosokawa, supra note (6) p.195.
35. Aizawa and Hosokawa, supra note (6) p.195.
36. Aizawa and Hosokawa, supra note (6) p.197.
37. Egashira, supra note (6) pp.731-734; Ito et al., supra note (6) p.310.
38. Ito et al., supra note (6) p405.
39. Egashira, supra note (6) p.872; Ito et al., etc., supra note (6) pp.406-413; Yanaga, supra note (6) p.382; Kanda, supra note (6) pp. 365-367.
40. Aizawa and Hosokawa, supra note (6) pp.186-187.
41. Egashira, supra note (6) p.909; Yanaga, supra note (6) p.367.
42. Egashira, supra note (6) p.940.
43. Aizawa and Hosokawa, supra note (6) p.203; Egashira, supra note (6) p.940; Yanaga, supra note (6) p.368.
44. Egashira, supra note (6) p.911.
45. Aizawa and Hosokawa, supra note (6) p.193.
46. Aizawa and Hosokawa, supra note (6) p.194.
47. Egashira, supra note (6) pp.911-912; Ito et al., supra note (6) pp.419-420; Kanda, supra note (6) pp.381・383.
48. Ito et al., supra note (6) pp.420-422.; Egashira, supra note (6) pp.909-910.
49. Ito et al., supra note (6) p.421.

50. Egashira, supra note (6) pp.912-914; Ito, et al. supra note (6) pp.422-423.
51. Act No.103 of May31, 2000. English translation of the Act on the Succession to Labor Contracts upon Company Split is available at the following URL: http: //www.japaneselawtranslation.go.jp/law/detail/?printID=&id=110&re=01&vm=02
52. Aizawa and Hosokawa, supra note (6) pp.189-190; Ito et al., supra note (6) pp.424-425.
53. Egashira, supra note (6) p.878; Ito et al., supra note (6) p.425.
54. Aizawa and Hosokawa, supra note (6) p.197.
55. Ito et al., supra note (6) p.413.
56. 〔Table 4〕 is based on the Table 8-4 of Yanaga, supra note (6), p. 386 with some modifications made by Yoneda, including the addition of the number of the provisions of the Act.
57. Ito et al., supra note (6) p.428.
58. Ito et al., supra note (6) pp.429-430.

End