

# Unfair Competition Prevention Act

(Act No. 47 of May 19, 1993)

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## Chapter I General Provisions

(Purpose)

Article 1 The purpose of this Act is to provide measures, etc. for the prevention of unfair competition and for the compensation of damages caused by unfair competition, in order to ensure fair competition among companies, and proper implementation of international agreements related thereto, thereby contributing to the sound development of the national economy.

(Definitions)

Article 2 (1) The term "Unfair Competition" as used in this Act means any of the following:

- (i) the act of creating confusion with another person's goods or business by using an Indication of Goods or Business (meaning a name, trade name, Trademark, Markings, containers or packaging for goods belonging to a business, or any other indication of a person's goods or business; the same applies hereinafter) that is identical or similar to the another person's Indication of Goods or Business that is well-known among consumers as belonging to that person, or by transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing or providing through a

- telecommunications line goods that use the same indication;
- (ii) the act of using an Indication of Goods or Business that is identical or similar to another person's famous Indication of Goods or Business as one's own, or of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line goods that use the same indication;
  - (iii) the act of transferring, leasing, displaying for the purpose of transfer or lease, exporting or importing goods that Imitate the configuration of another person's goods (excluding that which is indispensable to its functioning);
  - (iv) the act of acquiring by theft, fraud, duress, or other wrongful means (hereinafter referred to as an "Act of Wrongful Acquisition"), or the act of using or disclosing (including disclosing in confidence to a specific person or persons; the same applies hereinafter) Trade Secrets through an Act of Wrongful Acquisition;
  - (v) the act of acquiring Trade Secrets with the knowledge, or through gross negligence in not knowing, that there has been an intervening Act of Wrongful Acquisition, or the act of using or disclosing Trade Secrets acquired in such a way;
  - (vi) the act of using or disclosing an acquired Trade Secret after having learned, or through gross negligence in not having learned subsequent to their acquisition, that there had been an intervening Act of Wrongful Acquisition;
  - (vii) the act of using or disclosing Trade Secrets disclosed by the company that owns them (hereinafter referred to as the "Owner") for the purpose of wrongful gain, or causing damage to the Owner;
  - (viii) the act of acquiring Trade Secrets with the knowledge, or with gross negligence in not knowing, that the Trade Secret's disclosure is an Act of Improper Disclosure (meaning, in the case prescribed in the preceding item, the act of disclosing Trade Secrets for the purpose prescribed in the same item, or the act of disclosing Trade Secrets in breach of a legal duty to maintain secrecy; the same applies hereinafter) or that there has been an intervening Act of Improper Disclosure with regard to the relevant Trade Secret, or the act of using or disclosing Trade Secrets acquired in such a way;
  - (ix) the act of using or disclosing acquired Trade Secrets after having learned, or through gross negligence in not having learned, subsequent to their acquisition, that disclosing them was an Act of Improper Disclosure or that there had been an intervening Act of Improper Disclosure with regard to the relevant Trade Secrets;
  - (x) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line Things created by the acts listed in item (iv) to the preceding item (limited to acts of using a Technical Secret (meaning Trade Secrets which

constitute technical information; the same applies hereinafter); hereinafter referred to as an "act of unauthorized use" in this item) (excluding an act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line the Things by a person who has received the Things by transfer (limited to persons who, at the time of receiving the Things by transfer, had no knowledge that they were created by an act of unauthorized use, and such lack of knowledge was not due to gross negligence));

(xi) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, or importing, a device (including a machine that incorporates the device and a set of parts for the device that can be easily assembled) which makes it possible to view images, hear sound, or run Programs, or record images, sound, or Programs (hereinafter referred to as "to view images, etc." in this item) which are restricted by Technological Restriction Measures that are used for business purposes (excluding Technological Restriction Measures used by another person to restrict all but specific persons from viewing images, hearing sound, or running Programs, or recording images, sounds, or Programs), by interfering with the effectiveness of the Technological Restriction Measures, or a recording medium on which a Program with the function (including a combination of the Program with other Programs) has been recorded or a machine on which a Program with the function (including a combination of the Program with other Programs) has been stored; or the act of providing a Program with the function through a telecommunications line (if the device or Program has a combination of functions other than the relevant function, this is limited to acts done in order to provide the device or Program for the purpose of making it possible to view images, etc. by interfering with the effectiveness of the Technological Restriction Measures);

(xii) the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting or importing, other than to specific persons, a device (including a machine that incorporates the device and a set of parts for the device that can be easily assembled) with a function that makes it possible to view images, hear sound, or run Programs, or record images, sound, or Programs (hereinafter referred to as "to view images, etc." in this item) which are restricted by Technological Restriction Measures that are used by another person for business purposes to restrict all but specific persons from viewing images, hearing sound, or running Programs, or recording images, sound, or Programs, by interfering with the effectiveness of the Technological Restriction Measures or a recording medium on which a Program with the function (including a combination of the Program with other Programs) has been recorded or machines on which a Program with the function (including

- a combination of the Program with other Programs) has been stored; or the act of providing a Program with the function through a telecommunications line, other than to specific persons (if the device or Program has a combination of functions other than the relevant function, this is limited to an act done in order to provide the device or Program for the purpose of making it possible to view images, etc. by interfering with the effectiveness of the Technological Restriction Measures);
- (xiii) the act of acquiring or holding a right to use a Domain Name that is identical or similar to another person's Specific Indication of Goods or Business (meaning a name, trade name, Trademark, Markings, or any other indication of goods or business belonging to a business), or the act of using any of such Domain Name, for the purpose of wrongful gain or causing damage to another person;
- (xiv) the act of using an indication on goods or services, in an advertisement thereof, or in trade documents or electronic correspondence thereof, in a way that is likely to mislead as to the place of origin, quality, content, manufacturing process, purpose, or quantity of the goods, or the quality, content, purpose, or quantity of the services, or the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line goods so indicated, or the act of providing services so indicated;
- (xv) the act of making or circulating false allegations that harm the business reputation of another person who is a business competitor;
- (xvi) an act by the agent or representative, or a person who was, within one year of the date of the act, an agent or representative of the holder of a right to a Trademark (the right is limited to a right that is equivalent to a Trademark right; hereinafter simply referred to as a "right" in this item) in a country belonging to the Union established by the Paris Convention (meaning the Paris Convention as defined in Article 4, paragraph (1), item (ii) of the Trademark Act (Act No. 127 of 1959)) or in a country which is a member of the World Trade Organization or in a country which is a contracting party to the Trademark Law Treaty, without justifiable grounds and without the consent of the holder of the right; which constitutes the use of a Trademark that is identical or similar to the Trademark under the right on identical or similar goods or services regarding the right; which constitutes the transfer, delivery, display for the purpose of transfer or delivery, export, import or provision through a telecommunications line of goods that are similar or identical to the goods regarding the right and on which the Trademark has been used; or which constitutes the provision of services that are identical or similar to the services regarding the right, using the Trademark.

- (2) The term "Trademark" as used in this Act means a trademark as defined in Article 2, paragraph (1) of the Trademark Act.
- (3) The term "Markings" as used in this Act means markings as defined in Article 2, paragraph (1) of the Trademark Act.
- (4) The term "Configuration of Goods" as used in this Act means the external and internal shape of goods and the pattern, color, gloss, and texture combined with the shape, which can be perceived by consumers when they use the goods in an ordinary way.
- (5) The term "Imitate" as used in this Act means the act of creating goods that are substantially similar to another person's goods, based on the Configuration of the Goods.
- (6) The term "Trade Secret" as used in this Act means technical or business information useful for business activities, such as manufacturing or marketing methods, that are kept secret and that are not publicly known.
- (7) The term "Technological Restriction Measures" as used in this Act means measures which restrict images from being viewed, sound from being heard, or Programs from being run, or images, sound, or Programs from being recorded, by electronic or magnetic means (meaning in electronic form, magnetic form, or other form that is impossible to perceive through the human senses alone), by means of recording onto a recording medium along with the image, sound, or Program or transmitting signals to which a Viewing Device, etc. (meaning a device used for viewing images, hearing sound, or running Programs, or recording images, sound, or Programs; the same applies hereinafter) has a specific response, or by means of converting images, sound, or Programs and recording onto a recording medium or transmitting them, in a way that requires specific conversion by the Viewing Device, etc.
- (8) The term "Program" as used in this Act means a set of instructions to a computer so that a specific result can be obtained.
- (9) The term "Domain Name" as used in this Act means letters, numbers, signs, or other symbols or a combination thereof that correspond to the combination of numbers, signs, letters assigned to identify individual computers on the Internet.
- (10) The term "Things" as used in this Act includes Programs.

## **Chapter II Claims for Injunctions, Damages**

(Right to Claim for an Injunction)

Article 3 (1) A person whose business interests have been infringed on or are likely to be infringed on due to Unfair Competition may make a claim to suspend or prevent that infringement, against the person that infringed or is likely to infringe on the business interests.

(2) When making the claim under the preceding paragraph, the person whose business interests have been infringed on or are likely to be infringed on due to Unfair Competition may make a claim to have Things that constitute the act of infringement destroyed (including Things created through the act of infringement; the same applies in Article 5, paragraph (1)), to have equipment used for in act of infringement removed, or others actions necessary for suspending or preventing the infringement.

(Damages)

Article 4 A person who intentionally or negligently infringes on the business interests of another person through Unfair Competition is held liable to compensate damages resulting therefrom; provided, however, that this Article does not apply to damages resulting from the act of using Trade Secrets after the rights prescribed in Article 15 have extinguished pursuant to the same Article.

(Presumption of Amounts for Damages)

Article 5 (1) When a person whose business interests have been infringed due to the Unfair Competition listed in Article 2, paragraph (1), items (i) to (x) or (xvi) (with regard to the Unfair Competition listed in items (iv) to (ix) of the same paragraph, limited to Unfair Competition that involves a Technical Secret) (hereinafter referred to as the "infringed party" in this paragraph) makes a claim for compensation for damages suffered due to the infringement, from a person who has intentionally or negligently infringed on the business interests, if the infringer has transferred Things that constituted the act of infringement, the quantity of the Things transferred (hereinafter referred to as the "transferred quantity" in this paragraph) multiplied by the amount of profit per unit of the Things that the infringed party could have sold in the absence of the act of infringement may be fixed as the amount of damages suffered by the infringed party, within the limits of an amount proportionate to the infringed party's ability to sell or conduct other acts concerning the Things; provided, however, that if there are circumstances that would have prevented the infringed party from selling a number of Things equivalent to all or part of the transferred quantity, an amount proportionate to the number of Things corresponding to the circumstances is deducted.

(2) When a person whose business interests have been infringed on due to Unfair Competition makes a claim for compensation for damages suffered by it from a person who intentionally or negligently infringed on the business interests, if the person has made a profit through the act of infringement, the amount of profit is presumed to be the amount of damages that the person whose business interests were infringed on has suffered.

- (3) A person whose business interests have been infringed on due to the Unfair Competition listed in Article 2, paragraph (1), items (i) to (ix), (xiii) or (xvi) may make a claim for compensation for damages against a person who has intentionally or negligently infringed on the business interests, in an amount equivalent to the amount of money that the infringed party should have been entitled to receive for the act prescribed in the relevant of the following items for the classification of Unfair Competition listed therein, as the amount of damages suffered by the infringed party:
- (i) Unfair Competition listed in Article 2, paragraph (1), items (i) or (ii) - use of an Indication of Goods or Business pertaining to the infringement;
  - (ii) Unfair Competition listed in Article 2, paragraph (1), item (iii) - use of a Configuration of Goods pertaining to the infringement;
  - (iii) Unfair Competition listed in Article 2, paragraph (1), items (iv) to (ix) - use of Trade Secrets pertaining to the infringement;
  - (iv) Unfair Competition listed in Article 2, paragraph (1), item (xiii) - use of a Domain Name pertaining to the infringement; and
  - (v) Unfair Competition listed in Article 2, paragraph (1), item (xvi) - use of a Trademark pertaining to the infringement.
- (4) The provisions of the preceding paragraph do not preclude a claim for compensation of damages exceeding the amount prescribed in that paragraph. In such a case, if the person who infringed on the business interests did not do so intentionally or through gross negligence, the court may take this into consideration in determining the amount of damages to be compensated.

(Presumption of a Person Using a Technical Secret they Acquired)

Article 5-2 If any of the acts prescribed in Article 2, paragraph (1), item (iv), (v), or (viii) (limited to acts of acquiring Trade Secrets) have been conducted with regard to a Technical Secret (limited to a Technical Secret regarding manufacturing methods or other information specified by Cabinet Order; the same applies hereinafter in this Article) and a person who has conducted the act produces Things through using Technical Secrets, or conducts other acts specified by Cabinet Order as that from which it can be clearly understood that the Technical Secret has been used (hereinafter referred to as the "production, etc." in this Article), the person is presumed to have conducted production, etc. as an act prescribed in each item (limited to acts of using Trade Secrets).

(Obligation to Clarify Specific Conditions)

Article 6 In litigations involving the infringement of business interests through Unfair Competition, if the opponent denies the specific conditions of the Things or process which is being asserted by the person alleging that their business interests have been infringed on, or are likely to be infringed on by Unfair

Competition, the opponent must clarify the specific conditions of their own actions; provided, however, that this does not apply when the opponent has adequate grounds for not being able to clarify this.

(Submission of Documents)

Article 7 (1) In litigation involving the infringement of business interests due to Unfair Competition, the court may, at the request of a party, order another party to submit any documents necessary for proving the act of infringement or calculating the amount of damages caused by the act of infringement; provided, however, that this does not apply if the holder of the documents has justifiable grounds for refusing to submit them.

(2) If the court finds it necessary for determining the presence of justifiable grounds as prescribed in the proviso to the preceding paragraph, it may have the holder of the documents present them. In such a case, no person may request disclosure of the presented documents.

(3) In the case referred to in the preceding paragraph, if the court finds it necessary to disclose the documents prescribed in the second sentence of the preceding paragraph and to hear opinions with regard to whether justifiable grounds prescribed in the proviso to paragraph (1) are present, the court may disclose the documents to the Parties, etc. (meaning the parties (or if a party is a corporation, its representative) or the parties' agents (excluding counsel or assistants in court), employees, or other workers; the same applies hereinafter), their counsel, or their assistants in court.

(4) The provisions of the preceding three paragraphs apply mutatis mutandis to the presentation of the object of any inspection that is necessary for proving the act of infringement in litigation involving the infringement of business interests due to Unfair Competition.

(Expert Opinions for the Calculation of Damages)

Article 8 In litigation involving the infringement of business interests due to Unfair Competition, if the court, at the request of a party, orders an expert opinion on the matters necessary for calculating damages caused by the act of infringement, the parties must explain the matters necessary for forming an expert opinion to the expert.

(Determination of Reasonable Damages)

Article 9 In litigation involving the infringement of business interests due to Unfair Competition, if the court finds that damage has actually incurred but it is extremely difficult for the court to prove the facts necessary for proving the amount of damage due to the nature of the facts, the court may determine a reasonable amount for damages based on the entire purport of oral argument



and the results of the examination of evidence.

(Confidentiality Protective Orders)

Article 10 (1) In litigation involving the infringement of business interests due to Unfair Competition, if a prima facie showing has been made that Trade Secrets owned by a party to the litigation fall under both of the following grounds, the court may, at the request of the party and by means of a ruling, order a party, etc., counsel, or an assistant in court not to use the Trade Secret for any purpose other than conducting the litigation, or to disclose it to any person other than one subject to the order under this paragraph which relates to the Trade Secret; provided, however, that this does not apply if the party, etc., counsel, or assistant in court had already acquired or owned the Trade Secret by means other than the reading of the brief prescribed in item (i) or the examination or disclosure of evidence prescribed in the same item by the time at which the request was made:

(i) the Trade Secret owned by the party is written in an already-submitted or a to-be-submitted brief, or is included in the contents of already-examined or to-be-examined evidence (including documents disclosed pursuant to Article 7, paragraph (3) or a document disclosed pursuant to Article 13, paragraph (4)); and

(ii) the party's business activities that are based on the Trade Secret under the preceding item are likely to become hindered by the use of the Trade Secret for any purpose other than those for conducting the litigation or by the disclosure of the Trade Secret, and it is necessary to restrict the use or disclosure of the Trade Secret in order to prevent this.

(2) A petition for the order under the preceding paragraph (hereinafter referred to as the "Protective Order") must be made in writing and include the following particulars:

(i) the person to whom the Protective Order would be issued;

(ii) facts that are sufficient for identifying the Trade Secret that would be made the subject of the Protective Order; and

(iii) facts that fall within the grounds listed in the respective items of the preceding paragraph.

(3) When issuing a Protective Order, the court must serve a written ruling on the person to whom the Protective Order has been issued.

(4) A Protective Order takes effect when a written ruling is served on the person to whom the Protective Order has been issued.

(5) If the court dismisses a petition for a Protective Order, the party may file an immediate appeal against the judicial decision.

(Rescission of Protective Orders)

- Article 11 (1) A person who filed a petition for a Protective Order or a person to whom a Protective Order has been issued may file a motion to rescind the Protective Order with the court where the case record is kept (when no such court exists, the court that issued the Protective Order) on the grounds that a requirement prescribed in the preceding Article, paragraph (1) has not been met or is no longer being met.
- (2) When the court makes a judicial decision on a motion to rescind a Protective Order, it must serve a written ruling on the person who filed the motion and the opponent.
- (3) An immediate appeal may be filed against a judicial decision on the motion to rescind a Protective Order.
- (4) A judicial decision to rescind a Protective Order does not take effect until it becomes final and binding.
- (5) If a court has made a judicial decision rescinding a Protective Order, and, during the same litigation in which the Protective Order was issued, a Protective Order for the protection of the Trade Secret was issued against any person other than the person who filed the motion for the rescission of the Protective Order or the opponent, the court must immediately notify that person of the judicial decision rescinding the Protective Order.

(Notice of Requests to Inspect Case Records)

- Article 12 (1) If a court has made a ruling under Article 92, paragraph (1) of the Code of Civil Procedure (Act No. 109 of 1996) with regard to the case record in a litigation in which a Protective Order has been issued (excluding a litigation in which all the Protective Orders have been rescinded), and a party has requested to inspect, etc. a portion of the record that contains the secret prescribed under the same paragraph, if the person who followed the procedures for filing the request has not had a Protective Order issued against them in the litigation, the court clerk must, immediately after the request has been filed, notify the party who filed the motion under the same paragraph (excluding the person filing the request; the same applies in paragraph (3) of the fact that the request has been filed).
- (2) In a case referred to in the preceding paragraph, the court clerk must not allow the person who followed the procedures for filing the request under the same paragraph to inspect, etc. the part of the record that contains the secret under the same paragraph until two weeks have elapsed since the date of the request (if a petition is filed for a Protective Order against the person who followed the procedures for filing the request on or before the date, until the date on which the judicial decision on the motion becomes final and binding).
- (3) The provisions of the preceding two paragraphs do not apply if there is consent among all parties who have filed a motion under Article 92, paragraph

(1) of the Code of Civil Procedure to allow the person who filed the request under paragraph (1) to inspect, etc. the part of the record that contains the secret.

(Suspension of the Open Examination of Parties)

Article 13 (1) In litigation involving the infringement of business interests due to Unfair Competition, if a Party, etc. is to be examined as a party to the case, statutory agent, or witness with regard to a matter that serves as the basis for determining the presence or absence of the infringement and falls under Trade Secrets held by the party, and if the court, by the unanimous consent of the judges, finds that the party, etc. is unable to give a sufficient statement regarding the matter because it is clear that giving a statement regarding the matter in open court would significantly hinder the party's business activities based on the Trade Secret, and that, without the statement by the party, etc., the court will be unable to make the appropriate judicial decision solely from other evidence on the presence or absence of the infringement of business interests due to Unfair Competition which should be made based on the determination of the matter, the court may, rule to conduct an examination on the matter without opening it to the public.

- (2) The court must hear the opinions of the Parties, etc. in advance before making the ruling under the preceding paragraph.
- (3) In the case referred to in the preceding paragraph, if the court finds it necessary, it may order a Party, etc. to present a document that outlines the matters to be stated. In such a case, no person may request disclosure of the presented document.
- (4) If the court finds it necessary to disclose the documents under the second sentence of the preceding paragraph and to hear the opinions of the Parties, etc., the counsel, or the assistant in court, the court may disclose the document to the person.
- (5) If the court will conduct an examination on a matter without opening it to the public pursuant to the provisions of paragraph (1), it must make a statement to that effect along with the reason therefor to the members of the public before having them leave the courtroom. When the examination on the matter ends, the court must allow the members of the public to re-enter the courtroom.

(Measures to Restore Business Reputation)

Article 14 Upon the request of a person whose business reputation has been harmed, the court may order the person who has intentionally or negligently engaged in Unfair Competition and thereby injured the business reputation of that person to take the necessary measures for restoring the business reputation of that person, in lieu of or in addition to compensation of damages.

(Extinctive Prescription)

Article 15 The right to claim the suspension or prevention of infringement under the provisions of Article 3, paragraph (1), against the act of using Trade Secrets among the acts of Unfair Competition listed in Article 2, paragraph (1), items (iv) to (ix), is extinguished by prescription if the person conducting the act does so continuously and the Owner whose business interests have been infringed or are likely to be infringed on by the act does not exercise the right within three years from the time when the person comes to know of the fact and the identity of the person conducting the act. The same applies when twenty years have elapsed from the time the act began.

### **Chapter III Acts Prohibited pursuant to International Agreements**

(Prohibition on the Commercial Use of the National Flag of Foreign States)

Article 16 (1) No person may use anything that is identical or similar to a foreign state's national flag, coat of arms, or any other emblem specified by Order of the Ministry of Economy, Trade and Industry as their Trademark (hereinafter referred to as the "Foreign State's National Flag, etc.") (such identical or similar items are hereinafter referred to as the "Emblems Similar to a Foreign State's National Flag, etc."), nor may any person transfer, deliver, display for the purpose of transfer or delivery, export, import, or provide through a telecommunications line goods that use an Emblem Similar to a Foreign State's National Flag, etc. as their Trademark, or provide services while using an Emblem Similar to a Foreign State's National Flag, etc. as a Trademark; provided, however, that this does not apply when permission has been obtained from the government agency of the foreign state that is authorized to grant permission (including an administrative disposition similar to permission; the same applies hereinafter) for use of the Foreign State's National Flag, etc.

(2) Beyond what is prescribed in the preceding paragraph, no person may use a foreign state's coat of arms specified by Order of the Ministry of Economy, Trade and Industry which is referred to in the preceding paragraph (hereinafter referred to as the "Coat of Arms of a Foreign State") in a manner that is likely to mislead as to the place of origin of goods; nor may any person transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through a telecommunications line goods that use the Coat of Arms of a Foreign State; or provide services while using the Coat of Arms of a Foreign State in the same manner; provided, however, this does not apply when permission has been obtained from the government agency of the foreign state that is authorized to grant permission to use the Coat of Arms of a

Foreign State.

- (3) No person may use anything that is identical or similar to the seal or sign that the national or local government of a foreign state uses for supervision or certification purposes which is specified by Order of the Ministry of Economy, Trade and Industry (hereinafter referred to as the "Official Markings of a Foreign National Government, etc.") (such identical or similar items are hereinafter referred to as the "Official Markings Similar to that of a Foreign National Government, etc.") as a Trademark on goods or for services that are identical or similar to goods or services for which the Official Marking of a Foreign National Government, etc. is used; nor transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through a telecommunications line, goods that use an Official Marking Similar to that of a Foreign National Government, etc. as their Trademark or provide services while using an Official Marking Similar to that of a Foreign National Government, etc. as a Trademark; provided, however, that this does not apply when permission has been obtained from the government agency of the foreign state that is authorized to grant permission for use of the Official Marking of a Foreign National Government, etc.

(Prohibition of the Commercial Use of Markings of International Organizations)

Article 17 No person may use anything that is identical or similar to a Marking representing an international organization (meaning an intergovernmental international organization or an equivalent organization specified by Order of the Ministry of Economy, Trade and Industry; the same applies hereinafter in this Article) which is specified by Order of the Ministry of Economy, Trade and Industry (such identical or similar items are hereinafter referred to as the "Markings Similar to that of an International Organization") as a Trademark, in a manner that is likely to mislead as to the existence of a relationship with that international organization; or transfer, deliver, display for the purpose of transfer or delivery, export, import or provide through a telecommunications line, goods that use Markings Similar to that of an International Organization as their Trademark or provide services while using Markings Similar to that of an International Organization as a Trademark, in the same manner; provided, however, that this does not apply when the permission of the relevant international organization has been obtained.

(Prohibition against the Provision of Wrongful Gains to Foreign Public Officials)

Article 18 (1) No person may give, or offer or promise to give, any money or other benefit to a Foreign Public Official, etc. in order to have them act or refrain

from acting in relation to the performance of official duties, or in order to have the Foreign Public Officials, etc., use their position to influence another Foreign Public Official, etc. to act or refrain from acting in relation to the performance of official duties, in order to make any wrongful gain in business with regard to international commercial transactions.

- (2) The term "Foreign Public Official, etc." as used in the preceding paragraph means any of the following persons:
- (i) any person who engages in public service for national or local foreign governments;
  - (ii) any person who engages in the business affairs of an entity established under foreign special laws to carry out specific business affairs in the public interest;
  - (iii) any person who engages in the business affairs of an enterprise in which one or more of the national or local governments of foreign states directly owns a number of voting shares or an amount of capital subscription that exceeds 50 percent of that enterprise's total issued voting shares or total amount of capital subscription, or in which the majority of the Officers (meaning directors, auditors, council members, inspectors, liquidators, and other persons engaged in management of the business) are appointed or designated by one or more of the national or local foreign governments, and to which special rights and interests are granted by the national or local government of the foreign states for performance of its business, or a person specified by Cabinet Order as an equivalent person;
  - (iv) any person who engages in public services for an international organization (meaning an international organization which is formed by governments or intergovernmental international organizations); or
  - (v) any person who engages in the business affairs under the authority of the national or local government of a foreign state or an international organization and is delegated by them.

#### **Chapter IV Miscellaneous Provisions**

(Exclusion from Application)

Article 19 (1) The provisions of Articles 3 to 15, Article 21 (excluding the part under Article 21, paragraph (2), item (vii)), and Article 22 does not apply to the acts prescribed in each of the following items for the classification of Unfair Competition listed in the relevant item:

- (i) Unfair Competition listed in Article 2, paragraph (1), items (i), (ii), (xiv), and (xvi): the act of using or indicating a generic term for goods or business (excluding the name of a place of origin of Goods made from grapes or using grapes as an ingredient, which has become a generic term) or an Indication

- of Goods or Business that is in common usage for identical or similar goods or business (hereinafter collectively referred to as a "Generic Term, etc.") in the way that this is normally done, or the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line goods that use or indicate a generic name in the way that this is normally done (including the act of providing services while indicating or using a Generic Term, etc. in the way that this is normally done, in the case of Unfair Competition listed in items (xiv) and (xvi) of the same paragraph);
- (ii) Unfair Competition listed in Article 2, paragraph (1), items (i), (ii), and (xvi): the act of using one's own name with no wrongful purpose (meaning the purpose of making any wrongful gain, the purpose of causing damage to others, or any other wrongful purpose; the same applies hereinafter), or the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line goods that use one's own name with no wrongful purpose (including an act of providing services while using one's own name with no wrongful purpose, in the case of Unfair Competition listed in the same items);
  - (iii) Unfair Competition listed in Article 2, paragraph (1), item (i): the act by a person who has used an Indication of Goods or Business that is identical or similar to another person's Indication of Goods or Business, since before the other person's Indication of Goods or Business became well-known among consumers; or by a person who has succeeded to a business regarding the Indication of Goods or Business , of using the Indication of Goods or Business with no wrongful purpose, or in transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line goods that use the Indication of Goods or Business with no wrongful purpose;
  - (iv) Unfair Competition listed in Article 2, paragraph (1), item (ii) - the act by a person who has used an Indication of Goods or Business that is identical or similar to another person's Indication of Goods or Business, since before the other person's Indication of Goods or Business became famous; or by a person who has succeeded to a business regarding the Indication of Goods or Business, in using the Indication of Goods or Business with no wrongful purpose, or in transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, or providing through a telecommunications line goods that use the Indication of Goods or Business with no wrongful purpose;
  - (v) Unfair Competition listed in Article 2, paragraph (1), item (iii): any of the following acts:
    - (a) the act of transferring, leasing, displaying for the purpose of transfer or

- lease, exporting or importing goods that Imitate the Configuration of Goods for which three years have elapsed since the date they were first sold in Japan; or
- (b) the act by a person who has received goods that Imitate the Configuration of another person's Goods through transfer (limited to a person who, at the time of receiving the goods through transfer, was without knowledge that the goods Imitated the Configuration of another person's Goods, and was without gross negligence in not knowing the fact) in transferring, leasing, displaying for the purpose of transfer or lease, exporting, or importing the goods;
- (vi) Unfair Competition listed in Article 2, paragraph (1), item (iv) to (ix) - the act by a person who has acquired Trade Secrets through a transaction (limited to a person who, at the time of acquiring the Trade Secret, was without knowledge that the disclosure of the Trade Secret was an Act of Improper Disclosure or that there had been an intervening Act of Wrongful Acquisition or Act of Improper Disclosure with regard to that Trade Secret, and was without gross negligence in not knowing the fact), of using or disclosing the Trade Secret within the scope of title acquired through the transaction;
- (vii) Unfair Competition listed in Article 2, paragraph (1), item (x) - the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing or providing through a telecommunications line Things created by the act of using Trade Secrets after the rights prescribed in Article 15 have extinguished pursuant to the same Article;
- (viii) Unfair Competition listed in Article 2, paragraph (1), items (xi) and (xii) - the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing or providing through a telecommunications line, a Device prescribed in items (xi) and (xii) of the same paragraph or a recording medium on which a Program prescribed in those items has been recorded or a Machine on which a Program prescribed in the same items has been stored, which is used for testing or research for Technological Restriction Measures.
- (2) A person whose business interests have been infringed or are likely to be infringed through any of the acts listed in item (ii) or (iii) of the preceding paragraph may request the person specified in each of the following items for the classification of acts listed in the relevant item, to use an appropriate indication in order to prevent confusion with their own goods or business:
- (i) acts listed in item (ii) of the preceding paragraph: the person using their own name (including the person who personally assigns, delivers, displays for the purpose of transfer or delivery, exports, imports, or provides through a telecommunications line goods that use their own name); or



(ii) acts listed in item (iii) of the preceding paragraph: the person using the Indication of Goods or Business that is identical or similar to other person's Indication of Goods or Business, and the person who has succeeded to a business regarding the Indication of Goods or Business (including the person who personally assigns, delivers, displays for the purpose of transfer or delivery, exports, imports or provides through a telecommunications line, goods that use the Indication of Goods or Business).

(Delegation to Cabinet Order)

Article 19-2 (1) Beyond what is provided for in this Act, matters necessary for the adjustment of procedures between preservation for confiscation and a disposition of delinquency that relate to disposition of delinquency are specified by Cabinet Order.

(2) Beyond what is provided for in this Act, matters necessary for procedures concerning intervention of a third party and a judicial decision under Article 32, procedures concerning preservation of confiscation and preservation of collection under Chapter VIII, and procedures for international mutual legal assistance under Chapter IX (excluding matters prescribed in the preceding paragraph) are specified by the Rules of the Supreme Court.

(Transitional Measures)

Article 20 If Cabinet Orders or Orders of the Ministry of Economy, Trade and Industry pursuant to the provisions of this Act are enacted, revised, or abolished, the Cabinet Order or Ministerial Order may, to the extent deemed reasonably necessary for the enactment, revision or abolition, specify required transitional measures (including transitional measures concerning penal provisions).

## **Chapter V Penal Provisions**

(Penal Provisions)

Article 21 (1) A person who falls under any of the following items will be punished by imprisonment with required labor for not more than ten years, a fine of not more than twenty million yen, or both:

(i) a person who acquires Trade Secrets through an act of fraud, etc. (meaning the act of deceiving, assaulting, or intimidating a person; the same applies hereinafter in this Article) or through the usurpation of management (meaning the act of stealing assets, breaking into a facility, making unauthorized access (meaning the act of unauthorized access prescribed in Article 2, paragraph (4) of the Unauthorized Computer Access Act (Act No. 128 of 1999)), or in any other way prejudicing the management that the

- Owner of Trade Secrets maintains; the same applies hereinafter in this Article) for the purpose of wrongful gain or causing damage to the Owner;
- (ii) a person who uses or discloses Trade Secrets acquired through an act of fraud, etc. or through the usurpation of management, for the purpose of wrongful gain or causing damage to the Owner;
  - (iii) a person to whom the Owner of Trade Secrets has disclosed a Trade Secret, and who, for the purpose of wrongful gain or causing damage to the Owner, obtains a Trade Secret by any of the following means, in breach of the legal duties regarding the management of the Trade Secret:
    - (a) misappropriating a recording medium containing trade secrets, etc. (meaning a document, a drawing, or a recording medium on which Trade Secrets are described or recorded; the same applies hereinafter in this item) or an object that represents Trade Secrets;
    - (b) reproducing a description or a record from a recording medium containing trade secrets, etc., or an object that represents Trade Secrets;
    - (c) not deleting a description or a record that should be deleted from a recording medium containing trade secrets, etc., and disguising this act as if the description or record in the recording medium containing the Trade Secret, etc. had been deleted.
  - (iv) a person to whom the Owner of Trade Secrets has disclosed the Trade Secret and who, for the purpose of wrongful gain or causing damage to the Owner, uses or discloses Trade Secrets obtained through the means set forth in "a" to "c" of the preceding item, in breach of the legal duty regarding the management of the Trade Secret;
  - (v) a person who is the Officer (meaning a council member, director, executive officer, executive member, inspector or auditor, or other equivalent person; the same applies in the following item) or employee of the Owner of Trade Secrets, to whom the Owner has disclosed the Trade Secret and who, for the purpose of wrongful gain or causing damage to the Owner, uses or discloses the Trade Secret, in breach of the legal duty regarding the management of the Trade Secret (excluding the person listed in the preceding item);
  - (vi) a person who was the Officer or employee of the Owner of Trade Secrets, to whom the Owner had disclosed a Trade Secret and who, for the purpose of wrongful gain or causing damage to the Owner, has offered to disclose the Trade Secret, or received a request to use or disclose the Trade Secret, while holding that position, in breach of the legal duty regarding the management of the Trade Secret, and uses or discloses it after leaving that position (excluding the person listed in item (iv));
  - (vii) a person who, for the purpose of wrongful gain or causing damage to the Owner, uses or discloses Trade Secrets acquired by a disclosure that constitutes an offence prescribed in item (ii) or the preceding three items or

- paragraph (3), item (ii) (limited to the part regarding a disclosure that constitutes an offence prescribed in item (ii) and the preceding three items);
- (viii) a person who, for the purpose of wrongful gain or causing damage to the Owner, uses or discloses Trade Secrets acquired, knowing that there has been an intervening disclosure that constitutes an offence prescribed in item (ii) or items (iv) through the preceding item or paragraph (3), item (ii) (limited to the part regarding a disclosure that constitutes an offence prescribed in item (ii) or items (iv) through the preceding item); or
- (ix) a person who, for the purpose of wrongful gain or causing damage to the Owner, assigns, delivers, displays for the purpose of transfer or delivery, exports, imports, or provides through a telecommunications line Things created by an act conducted by the same person or another person that constitutes an offence prescribed in item (ii) or items (iv) through the preceding item or paragraph (3), item (iii) (limited to an act of using a Technical Secret; hereinafter referred to as an "act of illegal use" in this item and paragraph (1), item (ii) of the following Article) (excluding a person who has received the Things by transfer without knowing that the Things were created by an act of illegal use and transferred, delivered, displayed for the purpose of transfer or delivery, exported, imported, or provided through a telecommunications line).
- (2) A person who falls under any of the following items will be punished by imprisonment with work for not more than five years, a fine of not more than five million yen, or both:
- (i) a person who, for a Wrongful Purpose, commits any act of Unfair Competition listed in Article 2, paragraph (1), item (i) or (xiv);
  - (ii) a person who, for the purpose of wrongful gain through the use of the reputation or fame of another person's famous Indication of Goods or Business, or for the purpose of injuring the reputation or fame, commits any act of Unfair Competition listed in Article 2, paragraph (1), item (ii);
  - (iii) a person who, for the purpose of wrongful gain, commits any act of Unfair Competition listed in Article 2, paragraph (1), item (iii);
  - (iv) a person who, for the purpose of wrongful gain, or for the purpose of causing damage to another person who is using Technological Restriction Measures for their business purposes, commits any act of Unfair Competition listed in Article 2, paragraph (1), item (xi) or (xii);
  - (v) a person who makes a false indication on goods or services or in an advertisement thereof or in trade documents, or electronic correspondence, that is likely to mislead as to the place of origin, quality, contents, manufacturing process, purpose, or quantity of the goods, or the quality, contents, purpose, or quantity of the services (excluding a person listed in item (i));

- (vi) a person who violates a Protective Order; or
  - (vii) a person who violates any of the provisions of Article 16, 17, or 18, paragraph (1).
- (3) A person who falls under any of the following items will be punished by imprisonment with work for not more than ten years, a fine of not more than thirty million yen, or both:
- (i) a person who commits offences prescribed in paragraph (1), item (i) or (iii) for the purpose of use outside Japan;
  - (ii) a person who makes a disclosure that constitutes offences prescribed in paragraph (1), item (ii) or items (iv) through (viii) knowing that the receiving party has the purpose of use outside Japan that constitutes the offences; or
  - (iii) a person who uses Trade Secrets of an Owner conducting business within Japan in a way that constitutes offences prescribed in paragraph (1), item (ii) or items (iv) through (viii).
- (4) An attempt of offences prescribed in paragraph (1) (excluding item (iii)) and items (i) (excluding the part regarding paragraph (1), item (iii)), (ii), and (iii) of the preceding paragraph will be punished.
- (5) The offences prescribed in paragraph (2), item (vi) may not be prosecuted without a complaint.
- (6) The offences prescribed in each item of paragraph (1) (excluding item (ix)), paragraph (3), item (i) or (ii) or paragraph (4) (excluding the part regarding paragraph (1), item (ix)) also apply to a person who commits the offences outside Japan in connection with Trade Secrets of an Owner conducting business within Japan.
- (7) The offence prescribed in paragraph (2), item (vi) also applies to a person who commits the offence outside Japan.
- (8) The offence prescribed in paragraph (2), item (vii) (limited to the part under Article 18, paragraph (1)) will be governed by Article 3 of the Penal Code (Act No. 45 of 1907).
- (9) The provisions of paragraphs (1) through (4) do not preclude the application of penal provisions under the Penal Code or any other Act.
- (10) The assets listed in the following items may be confiscated:
- (i) assets resulting from or acquired by means of a criminal acts, or acquired as reward for the criminal acts which constitute the offences prescribed in paragraphs (1), (3), and (4); and
  - (ii) assets acquired as profits from the assets listed in the preceding item, assets acquired as consideration for the assets listed in the same item, assets received in exchange for such assets, and other assets acquired pursuant to the holding or disposition of the assets listed in the same item.
- (11) The provisions of Articles 14 and 15 of the Act on Punishment of Organized Crime and Control of Crime Proceeds (Act No. 136 of 1999; hereinafter referred

to as the "Organized Crime Punishment Act") apply mutatis mutandis to the confiscation under the preceding paragraph. In such a case, "each item of paragraph (1) or each item of paragraph (4) of the preceding Article" in Article 14 of the Organized Crime Punishment Act will be replaced with "each item of Article 21, paragraph (10) of the Unfair Competition Prevention Act".

(12) When the assets listed in each item of paragraph (10) cannot be confiscated or it is deemed inappropriate to confiscate the assets due to their nature, the condition of its use, existence or non-existence of rights of any person other than the offender regarding the assets or other circumstances, the equivalent value thereof may be collected from the offender.

Article 22 (1) When the representative of a corporation, or the agent, employee, or other worker of a corporation or of any person has committed a violation listed in any of the provisions of the following items with regard to the business of the corporation or the person, in addition to the offender being subject to punishment, the corporations will be punished by the fine prescribed in the relevant items, and the person will be punished by the fine prescribed in the relevant Article:

(i) paragraph (3), item (i) of the preceding Article (limited to the part regarding paragraph (1), item (i) of the same Article), (ii) (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article), or (iii) (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article) or paragraph (4) (limited to the part regarding paragraph (3), item (i) (limited to the part regarding paragraph (1), item (i) of the same Article), (ii) (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article) and (iii) (limited to the part regarding paragraph (1), items (ii), (vii), and (viii) of the same Article) of the same Article) of the same Article - a fine not more than one billion yen;

(ii) paragraph (1), item (i), (ii), (vii), (viii), or (ix) (excluding cases where a person who has committed an act of illegal use concerning the offences prescribed in items (iv) through (vi) of the same paragraph or paragraph (3), item (iii) of the preceding Article (limited to the part regarding paragraph (1), items (iv) through (vi) of the same Article) (hereinafter referred to as a "specified act of illegal use" in this item and paragraph (3)) falls under the category) or paragraph (4) (limited to the part regarding paragraph (1), item (i), (ii), (vii), (viii), or (ix) of the same Article (excluding cases where a person who has committed a specified act of illegal use falls under the category)) of the same Article - a fine not more than five hundred million yen;

(iii) paragraph (2) of the preceding Article - a fine not more than three hundred million yen.

(2) In a case referred to in the preceding paragraph, a complaint prescribed in

paragraph (5) of the preceding Article which is filed against the offender for an offence prescribed in paragraph (2), item (vi) of the same Article also has effect with respect to the corporation or the person, and a complaint filed against the corporation or the person also has effect with respect to the offender.

- (3) The period of prescription for the punishment by fine to which a corporation or person is subject pursuant to the provisions of paragraph (1) in regard to violation under paragraph (1), item (i), (ii), (vii), (viii), or (ix) (excluding cases where a person who has committed a specified act of illegal use falls under the category), paragraph (2), paragraph (3), item (i) (limited to the part regarding paragraph (1), item (i) of the preceding Article), (ii) (limited to the part regarding paragraph (1), item (ii), (vii), or (viii) of the same Article), or (iii) (limited to the part regarding paragraph (1), item (ii), (vii), or (viii) of the same Article) or paragraph (4) (limited to the part regarding paragraph (1), item (i), (ii), (vii), (viii), or (ix) of the same Article (excluding cases where a person who has committed a specified act of illegal use falls under the category) or paragraph (3), item (i) (limited to the part regarding paragraph (1), item (i) of the same Article), (ii) (limited to the part regarding paragraph (1), item (ii), (vii), or (viii) of the same Article), or (iii) (limited to the part regarding paragraph (1), item (ii), (vii), or (viii) of the same Article) of the same Article) of the same Article, is the same as that for the offences referred to in the provisions of the same Article.

## **Chapter VI Special Provisions on Criminal Proceedings**

(Protective Rulings for Trade Secrets)

- Article 23 (1) When the court is handling a case involving a crime prescribed in Article 21, paragraph (1), (3) or (4) or a crime prescribed in paragraph (1) of the preceding Article (excluding item (iii)), the victim, the victim's statutory agent, or the attorney entrusted by either of these persons files a petition not to reveal a matter in open court that will identify all or part of the information that constitutes the Trade Secret regarding the case, and the court finds it to be appropriate, upon hearing the opinions of the accused or defense counsel, the court may rule that the matters will not be revealed in open court, and set the scope for this.
- (2) The petition referred to in the preceding paragraph must be made to the public prosecutor in advance. In such a case, the public prosecutor is to notify the court of this together with the prosecutor's opinion.
- (3) When the court is handling a case prescribed in paragraph (1) and the public prosecutor, the accused, or defense counsel files a petition to not reveal a matter in open court that would allow all or part of the information that constitutes Trade Secrets held by the accused or other persons to be identified,

if the court finds that the matter is indispensable as proof of the offence or for the defense of the accused but that there is a risk that revealing the matter in open court would significantly hinder the accused's or other persons' business activities that are based on a Trade Secret, and if the court finds it to be appropriate, upon hearing the opinions of the opponent, the court may rule that the matters will not be revealed in open court, and set the scope for this.

(4) When the court has made a ruling prescribed in paragraph (1) or the preceding paragraph (hereinafter referred to as a "Protective Ruling"), and the court finds it to be necessary, upon hearing the opinions of the public prosecutor and the accused or defense counsel, the court may decide, in a ruling, on a term of address or other expression, to use in lieu of the name or other expression for the matter that allows trade secrets to be identified ("Matter that Allows Trade Secrets to be Identified" means a matter that allows all or part of the information that constitutes Trade Secrets to be identified, which will not be revealed in open court pursuant to a Protective Ruling; the same applies hereinafter).

(5) If the court has issued a Protective Ruling but has come to find that it is inappropriate for the Matter that Allows Trade Secrets to be Identified not to be revealed in open court, or the case has no longer come under the case prescribed in paragraph (1) because applicable penal statutes have been withdrawn or altered pursuant to Article 312 of the Code of Criminal Procedure (Act No. 131 of 1948), the court must in a ruling rescind all or part of the Protective Ruling and the all or part of the ruling prescribed in the preceding paragraph regarding the Protective Ruling (hereinafter referred to as a "Ruling on a Term of Address, etc.") .

(Special Provisions on the Manner of Reading Out Charging Instruments)

Article 24 If a Protective Ruling has been issued, the charging instrument must be read out, under Article 291, paragraph (1) of the Code of Criminal Procedure, in a manner that does not reveal the Matter that Allows Trade Secrets to be Identified. In this case, the public prosecutor must show the charging instrument to the accused.

(Limiting Examinations)

Article 25 (1) If a Protective Ruling has been issued and examinations or statements by persons concerned in the case include the Matter that Allows Trade Secrets to be Identified, unless limiting the examinations or statements could materially interfere with proof of the offence or could be substantially detrimental to the defense of the accused, the presiding judge may limit the questions or statements. The same applies to questions for the accused by persons concerned in the case.

(2) The provisions of Article 295, paragraphs (4) and (5) of the Code of Criminal Procedure apply mutatis mutandis when the public prosecutor or attorney acting as defense counsel has disobeyed an order under the provisions of the preceding paragraph.

(Examination of Witnesses on Days Other Than Trial Dates)

Article 26 (1) When the court has issued a Protective Ruling, if the court examines a witness, expert, interpreter, or translator, or if the accused makes a statement voluntarily; and, upon hearing the opinions of the public prosecutor and the accused or defense counsel, the court finds that there is a risk that examinations or statements of the witness, the expert, the interpreter, or the translator, or questions for the accused or statements of the accused will include Matters that Allows Trade Secrets to be Identified and that revealing the matters in open court would significantly hinder the victim's, accused's, or other persons' business activities based on the Trade Secret; and the court finds that doing so is unavoidable in order to prevent the risk, the court may conduct the examination or the proceedings for asking the accused questions provided in Article 311, paragraphs (2) and (3) of the Code of Criminal Procedure on a day other than a trial date.

(2) The provisions of Article 157, paragraphs (1) and (2), Article 158, paragraphs (2) and (3), Article 159, paragraph (1), Article 273, paragraph (2), Article 274 and Article 303 of the Code of Criminal Procedure apply mutatis mutandis to the proceedings for asking for a statement of the accused under the provisions of the preceding paragraph. In this case, the phrase "the accused or defense counsel" in Article 157, paragraph (1), Article 158, paragraph (3) and Article 159, paragraph (1) of the Code of Criminal Procedure will be replaced with "defense counsel, the co-defendants, or their defense counsel"; "the accused and defense counsel" in Article 158, paragraph (2) of the same Code will be replaced with "defense counsel, the co-defendants, and their defense counsel"; "the trial date" in Article 273, paragraph (2) of the same Code will be replaced with "the date of the proceedings for asking statements of the accused under the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; "the trial date" in Article 274 of the same Code will be replaced with "the date, time, and location of the proceedings for asking statements of the accused under the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; "documents which contain the results of the examination of witnesses or other persons, inspections, seizure or search, and objects seized" in Article 303 of the same Code will be replaced with "documents which contain the results of the proceedings for asking statements of the accused under the provisions of Article 26, paragraph (1) of the Unfair Competition Prevention Act"; and "documentary or material evidence" in the same Article will be



replaced with "documentary evidence".

(Order to Produce or Show Documents that Outline Matters for Examination)

Article 27 If the court finds it to be necessary in issuing a Ruling on a Term of Address, etc. or in deciding that the examination or the proceedings for asking statements of the accused will be conducted on a day other than a trial date pursuant to the provisions of the preceding Article, paragraph (1), the court may order the public prosecutor and the accused or defense counsel to produce a document that outlines the matters involved in the examination or statements to be made by the persons concerned in the case or the questions for the accused.

(Special Provisions on the Manner of Reading Out Documentary Evidence)

Article 28 If a Protective Ruling has been issued, the documentary evidence must be read out, under the provisions of Article 305 paragraph (1) or (2) of the Code of Criminal Procedure, in a manner that does not reveal the Matter that Allow Trade Secrets to be Identified.

(Rulings in Pretrial Conference Procedures)

Article 29 The following acts may be taken in pretrial conference procedures and interim conference procedures:

- (i) a Protective Ruling, a Ruling on a Term of Address, etc., or a ruling rescinding these rulings; or
- (ii) a decision that the examination or the proceedings for asking statements of the accused will be conducted on a day other than a trial date pursuant to the provisions of Article 26, paragraph (1).

(Requests for Protective Handling of Trade Secrets in the Disclosure of Evidence)

Article 30 (1) If the public prosecutor or defense counsel finds that, in providing an opportunity to inspect documentary or material evidence pursuant to the provisions of Article 299, paragraph (1) of the Code of Criminal Procedure in a case prescribed in Article 23, paragraph (1), there is a risk that revealing a matter that allows all or part of the information that constitutes Trade Secrets to be identified as prescribed in Article 23, paragraph (1) or (3) would significantly hinder the victim's, accused's, or other persons' business activities based on the Trade Secret, the public prosecutor or defense counsel may notify the opponent of this risk and request that the opportunity be provided in such a way that the parties concerned (including the accused) do not learn of the matters, unless the same matters are necessary for proof of the offence or investigation of the offence, or for the defense of the accused; provided,

however, that for a request that the opportunity be provided in such a way that the accused does not learn of the matters, this is limited solely to matters that are not written in the charging instrument.

- (2) The provisions of the preceding paragraph apply mutatis mutandis if the public prosecutor or defense counsel discloses evidence under the provisions of Part II, Chapter III, Section 2, Subsection 1, Division 2 of the Code of Criminal Procedure (including as applied mutatis mutandis pursuant to the provisions of Article 316-28, paragraph (2) of the same Code).

(Delegation to Rules of the Supreme Court)

Article 31 Beyond what is provided for in this Act, matters necessary for the enforcement of the provisions referred to in Articles 23 to the preceding Article are specified by Rules of the Supreme Court.

## **Chapter VII Special Provisions on Procedures Concerning Confiscation**

(Procedures for Confiscation of Assets of Third Parties)

Article 32 (1) If a Claim, etc. (meaning assets other than real assets and movables; the same applies in Article 34) which are the assets listed in each item of Article 21, paragraph (10) belongs to a person other than the accused (hereinafter referred to as a "third party" in this Article), and the third party is not allowed to participate in the proceedings of the case under public prosecution, a judicial decision for confiscation may not be made.

- (2) The provisions of the preceding paragraph also apply if the assets on which there exists superficies, a mortgage, or any other rights of a third party are to be confiscated pursuant to the provisions of Article 21, paragraph (10) and the third party is not allowed to participate in the proceedings of the case under public prosecution.

- (3) The provisions of Article 18, paragraphs (3) through (5) of the Organized Crime Punishment Act apply mutatis mutandis to cases where the assets on which there exists superficies, a mortgage, or any other rights of a third party are to be confiscated and the relevant rights should continue to exist pursuant to the provisions of Article 15, paragraph (2) of the Organized Crime Punishment Act as applied mutatis mutandis pursuant to Article 21, paragraph (11).

- (4) Beyond the matters otherwise provided by this Act, the provisions of the Act on Emergency Measures in Criminal Procedure to Confiscate Items Owned by Third Parties (Act No. 138 of 1963) apply mutatis mutandis to the procedures for confiscation of assets prescribed in paragraphs (1) and (2).

(Disposition of Confiscated Claims)

Article 33 The provisions of Article 19 of the Organized Crime Punishment Act apply mutatis mutandis to the confiscation under Article 21, paragraph (10), and the provisions of Article 20 of the Organized Crime Punishment Act apply mutatis mutandis to cases where the registration of a transfer of rights is to be made commissioned to the relevant organization based on a judicial decision to confiscate the assets for which registration is required in the case of transfer of its rights. In such a case, "Section 1 of the following Chapter" in the same Article will be replaced with "Chapter VIII of the Unfair Competition Prevention Act".

(Special Provisions on Criminal Compensation)

Article 34 The provisions of Article 4, paragraph (6) of the Criminal Compensation Act (Act No. 1 of 1950) apply mutatis mutandis to the contents of compensation under the same Act with regard to the execution of confiscation of Claims, etc.

### **Chapter VIII Procedures for Preservation**

(Order for Provisional Remedy in Anticipation of Confiscation)

- Article 35 (1) With regard to cases under public prosecution concerning the offences prescribed in Article 21, paragraphs (1), (3), and (4), if a court finds that there is probable cause to consider that the relevant assets are those which may be confiscated pursuant to paragraph (10) of the same Article (hereinafter referred to as the "Assets to be Confiscated") and it is necessary for the confiscation of the assets, the court may, at the request of a public prosecutor or by its own authority issue an order for provisional remedy in anticipation of confiscation to prohibit the disposition of the assets.
- (2) If a court has issued or intends to issue an order for provisional remedy in anticipation of confiscation with regard to assets on which there exists superficies, a mortgage, or any other rights, if the court finds that there is probable cause to consider that the rights will be extinguished through the confiscation and it is necessary for the confiscation of the assets, or if the court finds that there is probable cause to consider that the rights are fake, the court may, at the request of a public prosecutor or by its own authority issue an incidental order for provisional remedy separately to prohibit the disposition of the rights.
- (3) If a judge finds that there are the grounds and necessity prescribed in the preceding two paragraphs, even before the institution of prosecution, the judge may conduct the disposition prescribed in the preceding two paragraphs at the request of a public prosecutor or a judicial police officer (with regard to judicial police officers who are police officers, limited to a person who is a police

inspector or in a higher rank designated by the National Public Safety Commission or the Prefectural Public Safety Commission).

- (4) Beyond what is provided for in the preceding three paragraphs, the disposition under these provisions are governed by the provisions of the prohibition of the disposition pursuant to the order for provisional remedy in anticipation of confiscation and the incidental order for provisional remedy under Chapter IV, Sections 1 and 3 of the Organized Crime Punishment Act.

(Order for Provisional Remedy in Anticipation of Collection)

Article 36 (1) With regard to cases under public prosecution concerning the offences prescribed in Article 21, paragraphs (1), (3), and (4), if a court finds that there is probable cause to consider that collection should be conducted pursuant to paragraph (12) of the same Article and there is a likelihood that it will be impossible or extremely difficult to execute a judicial decision on collection, the court may, at the request of a public prosecutor or by its own authority issue an order for provisional remedy in anticipation of collection to prohibit the accused from disposing of the assets.

- (2) If a judge finds that there are the grounds and necessity prescribed in the preceding paragraph, even before the institution of prosecution, the judge may, at the request of a public prosecutor conduct the disposition prescribed in the same paragraph.

- (3) Beyond what is provided for in the preceding two paragraphs, the disposition under these provisions is governed by the provisions of the prohibition of the disposition pursuant to the order for provisional remedy in anticipation of collection under Chapter IV, Sections 2 and 3 of the Organized Crime Punishment Act.

## **Chapter IX Procedures for International Mutual Legal Assistance in the Execution of Judicial Decisions and Preservation for Confiscation and Collection**

(Provision of Mutual Assistance)

Article 37 (1) If a foreign state makes a request for assistance for execution of a final and binding decision on confiscation or collection, or preservation of assets for confiscation or collection with regard to a criminal case of the relevant foreign state (limited to cases where the act constituting the offence which is alleged to have been committed in the case constitutes the offences prescribed in Article 21, paragraph (1), (3), or (4) if the act were to be committed in Japan), unless the relevant case falls under any of the following items, assistance may be provided for the request:

- (i) when it would be deemed impossible to impose a punishment under

- Japanese laws and regulations if the act constituting the offence for which assistance is requested (meaning an offence which is alleged to have been committed in a request for assistance; the same applies hereinafter in this paragraph) were to be committed in Japan;
- (ii) when a case constituting the offence for which assistance is requested is pending before a Japanese court, or when a final and binding judgment has been issued thereon by a Japanese court;
  - (iii) with regard to assistance for execution of a final and binding decision concerning confiscation or assistance through preservation for confiscation, when the assets regarding the request would not be subject to a judicial decision on confiscation or preservation for confiscation concerning the offence for which assistance is requested under Japanese laws and regulations, if the act constituting the offence for which assistance is requested were to be committed in Japan;
  - (iv) with regard to assistance for execution of a final and binding decision concerning collection or assistance through preservation for collection, when the case would not be one that a court may issue a judicial decision on collection or preservation for collection concerning the offence for which assistance is requested under Japanese laws and regulations, if the act constituting the offence for which assistance is requested were to be committed in Japan;
  - (v) when it is deemed that, with respect to assistance for execution of a final and binding decision concerning confiscation, a person who has probable cause to consider that the person has the assets regarding the request or superficies, a mortgage, or any other rights thereon, or with respect to assistance for execution of a final and binding decision concerning collection, a person who is subject to the judicial decision, was unable to claim the person's rights in the proceedings for the judicial decision due to grounds not attributable to the person; or
  - (vi) with regard to assistance through preservation for confiscation or collection, except for a request based on a judicial decision on preservation for confiscation or collection which was rendered by a court or a judge of a requesting country or a request after the final and binding decision on confiscation or collection, when there is no probable cause to suspect that the act constituting the offence for which assistance is requested has been committed or when it is deemed that there are no grounds prescribed in Article 35, paragraph (1) or paragraph (1) of the preceding Article if the act were to be committed in Japan.
- (2) In providing assistance for execution of a final and binding decision on confiscation regarding assets on which there exists superficies, a mortgage, or any other rights, if the right was to be continued to exist upon confiscation of

the assets under Japanese laws and regulations, the rights will continue to exist.

(Confiscation Considered as Collection)

Article 38 (1) In cases of a request for assistance for execution of a final and binding decision to confiscate, in lieu of assets listed in each item of Article 21, paragraph (10), assets whose value is equivalent to the value of the assets and which is held by a person who was subject to the judicial decision, the final and binding decision will be a final and binding decision to collect the value of the assets from the person, in providing assistance pursuant to this Act.

(2) The provisions of the preceding paragraph apply mutatis mutandis to a request for assistance through preservation for confiscation of assets, in lieu of the assets listed in each item of Article 21, paragraph (10), whose value is equivalent to the value of the assets.

(Transfer of Assets in Providing Assistance to a Requesting Country)

Article 39 If a foreign state, which has made a request for assistance for execution of a final and binding decision on confiscation or collection prescribed in Article 37, paragraph (1), makes a request for transfer of assets or an equivalent sum of money in providing the assistance, all or part of the assets or an equivalent sum of money may be transferred.

(Treatment of Assistance Pursuant to the Organized Crime Punishment Act)

Article 40 Beyond what is provided for in the preceding three Articles, assistance under Article 37 and transfer under the preceding Article is governed by the provisions of assistance and transfer under Chapter VI of the Organized Crime Punishment Act.

### **Supplementary Provisions [Extract]**

(Effective Date)

Article 1 This Act comes into effect on the day specified by Cabinet Order, within a period not exceeding one year from the day of its promulgation. (In effect as of May 1, 1994, by Cabinet Order No. 44 of 1994)

(Transitional Measures)

Article 2 Except as otherwise provided, the provisions of the post-revised Unfair Competition Prevention Act (hereinafter referred to as the "New Act") also apply to matters that arose before this Act came into effect; provided, however, that this does not preclude any effect that had arisen based on the pre-revised Unfair Competition Prevention Act (hereinafter referred to as the "Former

Act").

Article 3 The provisions of Article 3, the main clause of Article 4, and Article 5 do not apply to the continuation of any of the following acts that commenced before this Act came into effect:

- (i) an act that falls under the act listed in Article 2, paragraph (1), item (ii) (excluding an act that falls under item (i) of the same paragraph); or
- (ii) among the acts listed in Article 2, paragraph (1), item (xiv), the act of using an indication on services, in an advertisement thereof, or in trade documents or electronic correspondence thereof, in a way that is likely to mislead as to the quality, contents, purpose, or quantity of the services, or the act of providing services while using the indication.

Article 4 The provisions of Articles 3 to 5, Article 14, and Article 15 of the New Act do not apply to acts of Unfair Competition listed in Article 2, paragraph (1), items (iv) to (vi), item (viii), and item (ix) of the New Act in connection with an Act of Wrongful Acquisition prescribed in item (iv) of the same paragraph or an Act of Improper Disclosure prescribed in item (viii) of the same paragraph that took place before June 15, 1991, if the acts of Unfair Competition are committed on or after the date (excluding an act that falls under the following items), or to the continuation of the act of using Trade Secrets prescribed in item (vii) of the same paragraph that commenced before the date:

- (i) the act of disclosing Trade Secrets as prescribed in Article 2, paragraph (1), items (iv) to (vi), item (viii), and item (ix) of the New Act; or
- (ii) the act of acquiring Trade Secrets as prescribed in Article 2, paragraph (1), item (v) and (viii) of the New Act, and the act of using Trade Secrets acquired through the act.

Article 5 The provisions of Article 7 of the New Act apply to litigation filed after this Act comes into effect, and with regard to litigation filed before this Act comes into effect, prior provisions are to continue to apply.

Article 6 The provisions of Article 14 do not apply to the continuation of an act that falls under the act listed in Article 2, paragraph (1), item (ii) or (xiv) that commenced before this Act comes into effect (excluding an act that falls under item (i) of the same paragraph).

Article 7 A person who has obtained permission as prescribed in Article 4, paragraphs (1) to (3) or Article 4-2 of the Former Act before this Act comes into effect is deemed to have obtained a permission respectively prescribed in the provisos to Article 16, paragraphs (1) to (3) or the proviso to Article 17 of the

New Act.

Article 8 The provisions of Article 16 of the New Act do not apply to a person who has obtained the permission prescribed in Article 4, paragraph (4) of the Former Act as of the time this Act comes into effect.

Article 9 The provisions of Article 17 of the New Act do not apply to the continuation of anything that falls under the category of the act of using a Marking Similar to that of an International Organization (excluding a Marking identical or similar to the emblem, flag, or other insignia, abbreviation, or name of an international intergovernmental organization that is designated by the competent minister as prescribed in Article 4-2 of the Former Act; hereinafter referred to as the "Marking Similar to that of a Private International Organization") as a Trademark, or the act of transferring, delivering, displaying for the purpose of transfer or delivery, exporting, importing, providing through a telecommunications line goods that use a Marking Similar to that of a Private International Organization as a Trademark or providing services using a Marking Similar to that of a Private International Organization as a Trademark, which is prescribed in Article 17 of the New Act, if the act commences before this Act comes into effect.

Article 10 The provisions of Article 21 (excluding the part under Article 21, paragraph (2), item (vi)) and Article 22 of the New Act do not apply to the continuation of an act that falls under the act listed in Article 3, item (ii) of the Supplementary Provisions of this Act, if the act commenced before this Act comes into effect.

Article 11 With regard to a request prescribed in Article 3 of the Former Act made by a foreign national prescribed in the same Article against an act that was committed before this Act comes into effect, prior provisions are to continue to apply.

(Transitional Measures for the Application of Penal Provisions)

Article 13 With regard to application of penal provisions to an act that was committed before this Act comes into effect, prior provisions are to continue to apply.

(Delegation to Cabinet Order)

Article 14 Beyond what is provided for in Articles 2 to 11 and Article 13 of the Supplementary Provisions of this Act, the transitional measures necessary for enforcement of this Act are specified by Cabinet Order.