

# Ministerial Order on Trade-Related Invisible Trade

(Order of the Ministry of International Trade and Industry No. 8 of March 4, 1998)

With the entry into effect of the Act Partially Amending the Foreign Exchange and Foreign Trade Control Act (Act No. 59 of 1997) and the Cabinet Order Partially Amending the Foreign Exchange Control Order (Cabinet Order No. 383 of 1997), and for the purpose of implementing the provisions of that Order, the Ministerial Order on Trade-Related Invisible Trade is hereby amended, in its entirety, as follows, pursuant to the provisions of Article 69-5 of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) and the provisions of Article 6, Article 6-2, Article 15 to Article 18, Article 18-3, Article 18-4, Article 18-6 and Article 18-8 of the Foreign Exchange Order (Cabinet Order No. 260 of 1980).

(Procedures for Applying for Permission)

Article 1 (1) A person as set forth in one of the following items that seeks the permission of the Minister of Economy, Trade and Industry must submit two copies of a written application for permission in the form prescribed in the relevant item to the Minister of Economy, Trade and Industry:

- (i) a person applying for permission to make or receive a payment as set forth in (a) to (c) below: a written application for permission to make or receive a payment based on Appended Form 1:
  - (a) a resident or non-resident seeking the permission of the Minister of Economy, Trade and Industry under the provisions of Article 6, paragraph (2) of the Foreign Exchange Order (hereinafter referred to as the "Order");
  - (b) a resident or non-resident seeking to file a combined application for permissions under two or more of the relevant provisions pursuant to Article 6, paragraph (3) of the Order on the occasion of getting the permission of the Minister of Economy, Trade and Industry under the provisions of paragraph (2) of that Article; or
  - (c) a person that, pursuant to the provisions of Article 6-2, paragraph (3) of the Order, has been placed under the obligation to get permission to make or receive a payment, and that is seeking the permission of the Minister of Economy, Trade and Industry under to the provisions of paragraph (4) of that Article;
- (ii) a person applying for permission to conduct a specified capital transaction as set forth in (a) to (c) below: a written application for permission for the specified capital transaction based on Appended Form 2:

- (a) a resident seeking the permission of the Minister of Economy, Trade and Industry under the provisions of Article 15, paragraph (2) of the Order;
  - (b) a resident seeking to file a combined application for the permissions under the provisions of Article 24, paragraph (1) and paragraph (2) of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949; hereinafter referred to as "the Act") pursuant to the provisions of Article 15, paragraph (3) of the Order, on the occasion of getting the permission of the Minister of Economy, Trade and Industry under the provisions of paragraph (2) of that Article; or
  - (c) a person that, pursuant to the provisions of Article 16, paragraph (1) of the Order, has been placed under the obligation to get permission for a specified capital transaction, and that is seeking the permission of the Minister of Economy, Trade and Industry under the provisions of paragraph (2) of that Article;
- (iii)-1 a person applying for permission to conduct a service transaction as set forth in (a) or (b) below: a written application for permission for a service transaction based on Appended Form 3:
- (a) a resident or non-resident seeking the permission of the Minister of Economy, Trade and Industry under the provisions of Article 25, paragraph (1) or paragraph (5) of the Act, or Article 18, paragraph (4) of the Order (limited to the parts that pertain to service transactions); or
  - (b) a person that, pursuant to the provisions of Article 18-3, paragraph (1) of the Order, has been placed under the obligation to get permission for a service transaction, and that is seeking the permission of the Minister of Economy, Trade and Industry under the provisions of paragraph (2) of that Article;
- (iii)-2 a person applying for permission to take an action prescribed in Article 25, paragraph (3), item (i) of the Act pursuant to the provisions of Article 17, paragraph (2) of the Order: a written application for permission for an export or similar transaction involving a document, picture, or storage medium containing specified information based on Appended Form 3-2;
- (iv) a person applying for permission to conduct a transaction that is connected with the buying and selling, leasing, or donation of goods, and that involves the transfer of goods between foreign states (referred to as a "brokerage transactions" in this item) as set forth in (a) and (b) below: a written application for permission for the brokerage transactions based on Appended Form 4:
- (a) a resident seeking the permission of the Minister of Economy, Trade and Industry under the provisions of Article 25, paragraph (4) of the Act or Article 18, paragraph (4) of the Order (limited to the part that pertains to brokerage transactions); or

- (b) a person that, pursuant to the provisions of Article 18-3, paragraph (1) of the Order, has been placed under the obligation to get permission for a brokerage transaction, and that is seeking the permission of the Minister of Economy, Trade and Industry under the provisions of paragraph (2) of that Article.
- (2) A person must attach one copy of a document stating the reason for the application and one copy of a document evidencing the relevant facts to a written application as referred to in the preceding paragraph.
- (3) Having given the permission for which a person has applied as referred to in paragraph (1) (unless the person has applied through the procedures referred to in Article 3), the Minister of Economy, Trade and Industry is to make a notation indicating this on the copies of the written application and deliver one copy to the applicant as proof of permission.
- (4) Having given the permission for which a person has applied as referred to in paragraph (1) of this Article through the procedures prescribed in Article 3, the Minister of Economy, Trade and Industry is to make a notation indicating this in a proof of permission that is based on Appended Form 6, and deliver it to the applicant, accompanied by a document giving the information recorded on the floppy disk that has been submitted pursuant to the provisions of Article 3.

(Procedures for Applying for Permission Using an Electronic Data Processing System)

Article 1-2 (1) Notwithstanding the provisions of paragraph (1) of the preceding Article, a person seeking to apply for the permission of the Minister of Economy, Trade and Industry pursuant to the provisions of Article 25, paragraph (1) of the Act using an electronic data processing system as prescribed in Article 3, paragraph (1) of the Act on the Use of Information and Communications Technologies in Administrative Processes (Act No. 151 of 2002) (meaning an electronic data processing system as prescribed in Article 2, item (i) of the Act on the Use of Electronic Data Processing Systems for Processing and Other Handling of Business Related to Imports and Exports (Act No. 54 of 1977), which, pursuant to the provisions of Article 3, paragraph (1) of that Act, is deemed to be an electronic data processing system as prescribed in Article 3, paragraph (1) of the Act on the Use of Information and Communications Technologies in Administrative Processes; the same applies hereinafter), must enter the particulars that are required to be included in an application form for permission for service transactions that can be accessed through a file set up on a computer meant for the use of the Nippon Automated Cargo and Port Consolidated System, Inc. (inclusive of its input/output devices; hereinafter referred to as a "dedicated computer"), through an input/output device meant for the use of the person filing that application (limited to one

that conforms to the standards publicized by the Minister of Economy, Trade and Industry; hereinafter referred to as a "specified input/output device").

- (2) If filing an application as referred to in the preceding paragraph, a person must enter information that allows the relevant facts to be confirmed through a specified input/output device and record it in a file set up on a dedicated computer, or must submit a document evidencing the relevant facts to the Minister of Economy, Trade and Industry.
- (3) When a person applying as prescribed in paragraph (1) has entered information as referred to in the preceding paragraph, the Minister of Economy, Trade and Industry may have the person submit documents evidencing the facts connected the information the person has entered, to the extent necessary, during the period from the date on which the applicant has filed the application to the date on which the applicant is notified either in the affirmative or negative of the result of the application.
- (4) Having given the permission for which a person has applied as referred to in paragraph (1), the Minister of Economy, Trade and Industry is to record the particulars that are required to be specified in a proof of permission for service transactions based on Appended Form 6-2 into a file set up on a dedicated computer.
- (5) Notwithstanding the provisions of the preceding paragraph, having given the permission for which a person has applied as referred to in paragraph (1), the Minister of Economy, Trade and Industry is to make a notation indicating this in a proof of permission for service transactions based on Appended Form 6-2 and deliver it to the applicant, if the applicant so requests.

(Applicant's Filing of a Notification)

- Article 1-3 (1) A person that has filed advance notification by submitting a written applicant notification based on Appended Form 6-3 and a document evidencing the relevant facts to the Minister of Economy, Trade and Industry must be the one to enter the information prescribed in paragraph (1) of the preceding Article.
- (2) If there has been a change involving a particular that was part of a notification filed by person that has filed a notification as referred to the preceding paragraph, or if that person seeks to stop using an electronic data processing system (meaning an electronic data processing system connecting a dedicated computer and a specified input/output device over a telecommunications line; the same applies in the following paragraph), the person must make a notation indicating this on a written applicant notification that is based on Appended Form 6-3 and file it with the Minister of Economy, Trade and Industry promptly.
  - (3) On finding that it is inappropriate for a person that has filed a notification as

referred to in paragraph (1) to continue to use an electronic data processing system, the Minister of Economy, Trade and Industry may suspend that person's use of electronic data processing systems.

- (4) A notification submitted pursuant to the provisions of Article 1-3, paragraph (1) of the Regulation on Export Trade Control (Order of the Ministry of International, Trade and Industry No. 64 of 1949) or a notification submitted pursuant to the provisions of Article 2-3, paragraph (1) of the Regulation on Import Trade Control (Order of the Ministry of International, Trade and Industry No. 77 of 1949) is deemed to be a notification submitted pursuant to the provisions of paragraph (1).

(Procedures for Extending a Valid Period; Related Matters)

- Article 2 (1) The permission of the Minister of Economy, Trade and Industry under the provisions of Article 25, paragraph (1), paragraph (4), or paragraph (5) of the Act, or Article 6, paragraph (2), Article 6-2, paragraph (4), Article 15, paragraph (2), Article 16, paragraph (2), Article 17, paragraph (2), Article 18, paragraph (4) or Article 18-3, paragraph (2) of the Order is valid for six months from the date on which the minister granted that permission.
- (2) On finding that there is a particular necessity to do so with respect to a permission prescribed in the preceding paragraph, the Minister of Economy, Trade and Industry may set a valid period that differs from the period referred to in that paragraph or may extend that valid period.
- (3) A person as set forth in one of the following items must submit two copies of a written application based on Appended Form 5 to the Minister of Economy, Trade and Industry in a case as set forth in that item:
- (i) if a person that has gotten permission as prescribed in paragraph (1) seeks to apply for an extension of the valid period under the provisions of the preceding paragraph; or
  - (ii) if a person that has gotten permission as prescribed in paragraph (1) seeks to apply to alter the substance of a transaction or the substance of the making or receipt of a payment to which the permission pertains (limited to a particular specified in the proof of permission).
- (4) A person must attach one copy of a proof of permission issued pursuant to the provisions of Article 1, paragraph (3) or paragraph (4), or Article 1-2, paragraph (5), or paragraph (4) of the following Article, one copy of a document giving the reason for the application, and one copy of a document evidencing the relevant facts to a written application as referred to in the preceding paragraph.
- (5) Having given the permission for which a person has applied as referred to in paragraph (3) (unless the person has applied through the procedures referred to in the following Article), the Minister of Economy, Trade and Industry is to

make a notation indicating this on the copies of the written application and deliver one copy to the applicant accompanied by a proof of permission submitted pursuant to the provisions of the preceding paragraph, as proof of the extended permission or as proof of altered permission.

- (6) Having given the permission for which a person has applied as referred to in paragraph (3) of this Article through the procedures prescribed in the following Article, the Minister of Economy, Trade and Industry is to make a notation indicating this in a proof of permission that is based on Appended Form 6 and deliver it to the applicant as proof of the extended permission or as proof of altered permission, accompanied by any document giving information recorded on a floppy disk that has been submitted pursuant to the provisions of the following Article and any proof of permission that has been submitted pursuant to paragraph (4) of this Article.

(Procedures for Extending a Valid Period Undertaken Using an Electronic Data Processing System; Related Matters)

Article 2-2 (1) In a case as set forth in one of the following items, a person that has gotten the permission of the Minister of Economy, Trade and Industry pursuant to the provisions of Article 1-2, paragraph (4) (including permission under the provisions of paragraph (3)) (except for a person who has received a proof of permission for service transactions pursuant to the provisions of Article 1-2, paragraph (5) in connection with that permission) must enter those of the particulars recorded with respect to that permission that the person seeks to extend or change, in a file set up on a dedicated computer through a specified input/output device:

- (i) if the person seeks to file an application for an extension of the valid period under the provisions of paragraph (2) of the preceding Article; or
  - (ii) if the person seeks to file an application for a change to the contents of a transaction or the making or receipt of a payment subject to that permission (limited to matters recorded with respect to the permission in a file set up on a dedicated computer).
- (2) If filing an application as referred to in the preceding paragraph, a person must enter information evidencing the relevant facts through a specified input/output device and record it in a file set up on a dedicated computer, or must submit a document evidencing the relevant facts to the Minister of Economy, Trade and Industry.
- (3) Having given the permission for which a person has applied as referred to in paragraph (1), the Minister of Economy, Trade and Industry is to record the particulars to be specified in a proof of permission for service transactions that is based on Appended Form 6-2 in a file set up on a dedicated computer.
- (4) Notwithstanding the provisions of the preceding paragraph, having given the

permission for which a person has applied as referred to in paragraph (1), the Minister of Economy, Trade and Industry is to make a notation indicating this in a proof of permission for service transactions that is based on Appended Form 6-2 and deliver it to the applicant, if the applicant so requests.

(Procedures Undertaken Through Floppy Disks)

Article 3 An applicant may submit the documents set forth in the left-hand column of the following table (unless an applicant seeks the permission of the Minister of Economy, Trade and Industry under the provisions of Article 25, paragraph (1) or paragraph (4) of the Act, or Article 17, paragraph (2) of the Order) by submitting a floppy disk onto which the particulars that are required to be specified in the relevant document have been recorded in the form set forth in the right-hand column of that table for the category of document set forth in the left-hand column of that table, as well as a floppy disk submission slip prepared based on Appended Form 7.

a written application for permission to make or receive a payment as referred to in Article 1, paragraph (1), item (i) and an accompanying document giving the reason for the application as referred to in paragraph (2) of that Article:	Appended Form 8
a written application for permission for a specified capital transactions as referred to in Article 1, paragraph (1), item (ii) and an accompanying document giving the reason for the application as referred to in paragraph (2) of that Article:	Appended Form 9
a written application for permission for a service transactions as referred to in Article 1, paragraph (1), item (iii) and an accompanying document giving the reason for the application as referred to in paragraph (2) of that Article:	Appended Form 10
a written application for permission for a brokerage transaction as referred to in Article 1, paragraph (1), item (iv) and an accompanying document giving the reason for the application as referred to in paragraph (2) of that Article:	Appended Form 11
a written application as referred to in paragraph (3) of the preceding Article and an accompanying document giving the reason for the application as referred to in paragraph (4) of that Article:	Appended Form 12

(Structure of Floppy Disks)

Article 4 The floppy disk referred to in the preceding Article must be one that falls under one of the following items:

- (i) a 90-mm flexible disk cartridge that conforms to standard X6221 of the Japanese Industrial Standards under the Industrial Standardization Act (Act

- No. 185 of 1949) (hereinafter referred to as "JIS"); or  
(ii) a 90-mm flexible disk cartridge that conforms to JIS X6223.

(Floppy Disk Recording Formalities)

Article 5 (1) Information must be recorded onto a floppy disk as referred to in Article 3 in accordance with the following formalities:

- (i) in terms of track format, the formalities prescribed in JIS X6222 if information is being recorded onto a floppy disk as referred to in item (i) of the preceding Article, or the formalities prescribed in JIS X6225 if information is being recorded onto a floppy disk as referred to in item (ii) of that Article;
  - (ii) in terms of volume and file configuration, the formalities prescribed in JIS X0605; and
  - (iii) in terms of character coded representation, the formalities prescribed in Annex 1 to JIS X0208.
- (2) Information must be recorded onto a floppy disk as referred to in Article 3 using graphic characters as prescribed in JIS X0201 and X0208 and the "carriage return (CR)" and "line feed (LF)" from among the control characters prescribed in JIS X0211.

(Document to Be Attached to a Floppy Disk)

Article 6 A person must attach a document giving the following information to a floppy disk as prescribed in Article 3, on the label area prescribed in JIS X6221 or X6223:

- (i) the first and last name of the submitter (or, for a corporation, its name); and
- (ii) the date of submission.

(Special Procedures for Applying for Permission)

Article 7 Notwithstanding the provisions of this Ministerial Order, the Minister of Economy, Trade and Industry may, if necessary, establish special procedures for a resident or non-resident to get the permission of the Minister of Economy, Trade and Industry under Article 25, paragraph (1), paragraph (4), or paragraph (5) of the Act, or Article 6, paragraph (2), Article 6-2, paragraph(4), Article 15, paragraph (2), Article 16, paragraph (2), Article 17, paragraph (2), Article 18, paragraph (4) or Article 18-3, paragraph (2) of the Order.

(Implementation Procedures for Banks' and Other Financial Institutions' and Funds Transfer Service Providers' Confirmation Functions)

Article 8 (1) If it is found that a payment to be made or received by the customer of bank or other financial institution (meaning a bank or other financial institution as prescribed in Article 16-2 of the Act; the same applies

hereinafter) or by the customer of a funds transfer service provider (meaning a funds transfer service provider as prescribed in Article 2, paragraph (3) of the Payment Services Act (Act No. 59 of 1999); the same applies hereinafter) would constitute the making or receipt of a payment as prescribed in Article 17, paragraph (1), item (i) of the Act or would constitute the making or receipt of a payment in connection with a transaction as prescribed in Article 7, item (i) or item (ii) of the Order under Article 17, paragraph (1), item (iii) of the Act, the bank or other financial institution or the funds transfer service provider is to ask the customer to present a proof of permission, a proof of extended permission, or a proof of altered permission for the transaction or the making or receipt of that payment (hereinafter referred to as "proof of the relevant permission" in paragraph (3)) and is to confirm that the customer has gotten the permission of the Minister of Economy, Trade and Industry before undertaking any exchange transaction with that customer that involves the making or receipt of such a payment.

- (2) If it is found that a payment to be made or received by its customer would constitute the making or receipt of a payment connected with the importing of goods prescribed in Article 7, item (iv) of the Order under Article 17, paragraph (1), item (iii) of the Act, a bank or other financial institution or a funds transfer service provider is to ask the customer to present a certificate of import approval for the import of those goods, and is to confirm that the customer has gotten the approval of the Minister of Economy, Trade and Industry for the import before undertaking any exchange transaction with that customer that involves the making or receipt of such a payment.
- (3) Having undertaken an exchange transaction with its customer that involved the making or receipt of a payment following the confirmation under the provisions of the preceding two paragraphs, a bank or other financial institution or a fund transfer service provider is to enter the date and the amount of the exchange transaction that involved the making or receipt of the relevant payment in the space marked "Bank or Other Financial Institution/Fund Transfer Service Provider Notations" on the reverse side of the proof of the relevant permission or the certificate of approval for import presented to it by the customer, affix a seal of confirmation, and return the proof of the relevant permission or certificate of approval for import to the customer.

(Service Transactions Not Requiring Permission; Related Matters)

Article 9 (1) The actions that the Minister of Economy, Trade and Industry designates which are provided for in Article 17, paragraph (2) of the Order means any action falling under one of the following items:

- (i) an action connected with a transaction as set forth in the items of the

following paragraph; or

- (ii) an action, by a person to which a resident that has gotten the permission referred to in Article 25, paragraph (1) of the Act has provided technology through a permitted transaction, that the person undertakes in connection with a transaction associated with that permission.
- (2) The transactions that the Minister of Economy, Trade and Industry designates which are provided for in Article 17, paragraph (5) of the Order means any transaction falling under one of the following items:
- (i) a transaction conducted by the Minister of Economy, Trade and Industry;
  - (ii) a transaction conducted by the Minister of Defense for the purpose of providing the technology set forth in the middle column of the Appended Table of the Order (except for technology which has been transferred to Japan based on the exchange of official documents concerning the cooperation in space exploration between Japan and the United States) to a resident or to a non-resident of a foreign state (meaning a foreign state that falls under the regions set forth in Appended Table 3 of the Export Trade Control Order (Cabinet Order No. 378 of 1949; hereinafter referred to as the "Export Order;" hereinafter the same applies in this item) in Japan or in a foreign state;
  - (ii)-2 a transactions that is conducted by a resident for the purpose of providing the technology set forth in the middle column of the Appended Table of the Order to the Minister of Defense in a foreign state;
  - (iii) a service transaction conducted by a resident or a non-resident based on an agreement concerning compensation or free economic cooperation or technical cooperation to be granted by the Japanese Government to a foreign government;
  - (iii)-2 a transaction conducted for the purpose of providing technology to the International Atomic Energy Agency in order to implement the Agreements between the Government of Japan and the International Atomic Energy Agency in Implementation of Paragraphs 1 and 4 of Article III of the Treaty on the Non-Proliferation of Nuclear Weapons and the Protocol Additional to the Agreements between the Government of Japan and the International Atomic Energy Agency in Implementation of Paragraphs 1 and 4 of Article III of the Treaty on the Non-Proliferation of Nuclear Weapons;
  - (iii)-3 a transaction that is conducted for the purpose of providing technology to a person designated by an international organization as prescribed in Article 30 of the Act on Prohibition of Chemical Weapons and Control, etc. of Specific Chemicals, etc. (Act No. 65 of 1995) in the event that a person designated by that international organization will enter a place where toxic substances or substances with equivalent levels of toxicity, or raw materials therefor are treated within the scope specified by the Convention on the

- Prohibition of the Development, Manufacture, Stockpiling and Use of Chemical Weapons or other places designated by an international organization, and inspect account books, documents, and any other articles; ask the relevant persons questions; or take samples of chemical substances in the smallest quantities necessary for testing, without charge;
- (iv) a transaction that takes place after a person seeking to conduct a transaction as prescribed in Article 25, paragraph (1) of the Act has clarified in advance, when filing the application associated with the transaction, that the person to be provided with the technology through the transaction to which the application pertains would conduct a transaction for the purpose of providing the technology to a person that would use that technology; and that is conducted by the person that has been provided with technology through the permitted transaction, for the purpose of providing the technology to the person that will use that technology;
  - (v) a transaction involving the technology set forth in the middle column of row 1 of the Appended Table of the Order with which a person has been provided in a foreign state (except for technology provided through the export of documents, pictures, or media in which information containing that technology has been stated or recorded; through the use of telecommunications to transmit information containing that technology from a telecommunications facility in Japan; or through the departure from Japan of a person in Japan who has the technology), and which does not involve the export, at the time of the transaction, of documents, pictures, or media in which information containing that technology has been stated or recorded; the use of telecommunications to transmit information containing that technology from a telecommunications facility in Japan; or the departure from Japan, at the time of the transaction and for the purpose of that transaction, of a person in Japan who has that technology (hereinafter such a transaction is referred to as a "transaction involving technology conducted between persons in foreign states"); provided, however, that this excludes a transaction conducted by a resident that involves the movement between foreign states of documents, pictures, or media in which information containing that technology has been stated or recorded, or that involves the transmission of information containing that technology and that is meant to be received in a foreign state but that is sent from a telecommunications facility in another foreign state;
  - (vi) a transaction involving technology conducted between persons in foreign states in connection with the technology set forth in the middle column of rows 2 to 16 of the Appended Table of the Order that has been provided in foreign states (except for the technology provided through the exporting of documents, pictures, or media in which information containing that

technology has been stated or recorded; through the use of telecommunications to transmit information containing that technology from a telecommunications facility in Japan; or through the departure from Japan of a person in Japan who has that technology); provided, however, that this excludes a transaction conducted by a resident and falling under either (a) or (b), below, that involves the movement between foreign states (meaning foreign states other than the regions set forth in Appended Table 3 of the Export Order; hereinafter the same applies in this item) of documents, pictures, or media in which information containing that technology has been stated or recorded, or that involves the transmission of information containing that technology that is meant to be received in a foreign state but that is sent from a telecommunications facility in another foreign state:

- (a) if it has been specified by the Minister of Economy, Trade and Industry in a public notice as a case in which the technology is likely to be used for the development, manufacture, use, or storage (hereinafter referred to as "development, manufacture, use, or storage") of a nuclear weapon; of a chemical warfare agent, a biological warfare agent, or a device for spraying one of these agents; or of a rocket or unmanned aerial vehicle capable of transporting one of these, with a range or flight range of at least 300km (hereinafter referred to as an "NBC or associated device"); or
- (b) if the person has been notified by the Minister of Economy, Trade and Industry that an application for permission should be filed because the technology is likely to be used for the development, manufacture, use, or storage of an NBC or associated device;

(vii) a transaction, beyond as set forth in the preceding item, that is conducted for the purpose of providing a person with the technology set forth in row 16 of the Appended Table of the Order, that does not involve the provision of documents, pictures, or media in which information containing that technology has been stated or recorded or the use of telecommunications to transmit information containing that technology; and that does not fall under any of (a) to (d) below (or either (a), (b), or (d), for a transaction conducted for the purpose of providing the technology to a resident or to a non-resident of a foreign state (meaning a foreign state other than the regions set forth in Appended Table 3-2 of the Export Order; hereinafter the same applies in this item) in Japan or a foreign state:

- (a) if it has been specified by the Minister of Economy, Trade and Industry by public notice as a case in which the technology is likely to be used for the development, manufacture, use, or storage of an NBC or associated device;
- (b) if the person has been notified by the Minister of Economy, Trade and Industry that an application for permission should be filed because the technology is likely to be used for the development, manufacture, use, or

- storage of an NBC or associated device;
- (c) if it has been specified by the Minister of Economy, Trade and Industry by public notice as a case in which the technology is likely to be used for the development, manufacture, or use of the goods set forth in the middle column of row 1 of Appended Table 1 of the Export Order (except for goods falling under the category of an NBC or associated device; the same applies in (d)); and
  - (d) if the person has been notified by the Minister of Economy, Trade and Industry that an application for permission should be filed because the technology is likely to be used for the development, manufacture, or use of the goods set forth in the middle column of row 1 of Appended Table 1 of the Export Order;
- (viii) deleted;
- (ix) a transaction through which a person provides technology that is in the public domain or a transaction through which a person provides technology in order to put it in the public domain (excluding a transaction through which the person puts the technology into the public domain for the purpose of providing it to any specific person), that falls under any of (a) to (e) below:
    - (a) a transaction through which a person provides technology that has already been disclosed to a large number of unspecified persons through, for example, newspapers, account books, magazines, catalogues, or files on a telecommunications network;
    - (b) a transaction through which a person provides technology that is available to a large number of unspecified persons, contained, for example, in an academic journal, public patent information, or the minutes of a public symposium;
    - (c) a transaction through which a person provides technology that is available to or can be audited by a large number of unspecified persons through, for example, factory tour courses, lectures, or exhibitions;
    - (d) a transaction through which a person provides a program whose source code is open to the public; or
    - (e) a transaction that a person conducts for the purpose of making the technology available, or available for inspection, to a large number of unspecified persons, by, for example, sending copies of a presentation at an academic conference or of a material handed out at an exhibition or on another such occasion, or by contributing an article to a magazine;
  - (x) a transaction through which a person provides technology for basic scientific research;
  - (xi) a transaction that a person conducts for the purpose of filing an application for or registering an industrial property right, through which the person provides the minimum technology necessary for that application or

- registration;
- (xii) a transaction through which, incidental to the export of goods, a person provides the buyer, consignee, or user with technology for use with those goods (except for a program or other technology that the Minister of Economy, Trade and Industry specifies by public notice) within the scope of what is minimally necessary for their installation, operation, maintenance, or repair (limited to transactions through which the person provides that technology on or after either the date on which the permission for export was granted or the date on which the contract for the export of the goods came into effect, whichever date comes later); provided, however, that the provision of any such technology for maintenance or repair is excluded if the technology falls under any of (a) to (c) below:
- (a) technology that improves the operational performance or characteristics of the goods to exceed those they had when they were provided initially;
  - (b) technology that is for the repair of goods but whose substance is equivalent to technology for the design or production of those goods; or
  - (c) technology as set forth in the middle column of the Appended Table of the Order that includes the technology necessary for the design or production of goods;
- (xiii) a transaction through which, incidental to the provision of a program, a person provides the other party to the transaction involving that program or the persons using that program with technology for use with that program (except for a program or other technology that the Minister of Economy, Trade and Industry specifies by public notice) within the scope of what is minimally necessary for the installation, operation, maintenance, or repair of the program (limited to a transaction through which the person provides that technology on or after either the date on which the permission for service transactions was granted or the date on which the contract for the provision of the program came into effect, whichever date comes later); provided, however, that the provision of any such technology for maintenance or repair is excluded the technology falls under any of (a) to (c) below:
- (a) technology that improves the functions or characteristics of the program to exceed those it had when it was provided initially;
  - (b) technology that is for the repair of the program but whose substance is equivalent to the technology for the design or production of the program; or
  - (c) technology as set forth in the middle column of the Appended Table of the Order that includes the technology necessary for the design or production of a program;
- (xiv) a transaction through which a person provides a program that falls under any of (a) to (d) below:
- (a) a transaction through which a person provides a program that is set forth

in the middle column of the Appended Table of the Order (except for a program that the Minister of Economy, Trade and Industry specifies by public notice) and that falls under 1. and 2. below; provided, however, that this excludes a transaction falling under any of (a), (b), or (d) of item (vii) through which the person provides a program in a foreign state (meaning a foreign state other than a region set forth in Appended Table 3 of the Export Order; hereinafter the same applies in this item) (limited to a transaction in which the program is sold) or through which the person provides a program to a non-resident of a foreign state (this also excludes a transaction falling under any of (a) to (d) of item (vii) through which the person provides a program in a foreign state falling under a region set forth in Appended Table 3-2 of the Export Order (limited to a transaction in which the program is sold) or through which the person provides the program is to a non-resident of a foreign state falling under such a region):

1. a program that is sold without any restrictions on purchase, from stock at a retail selling point, or that is provided for free to users without any restrictions, that is ordered in-store, by postal mail, through the correspondence delivery services as prescribed in Article 2, paragraph (2) of the Act on Correspondence Delivery by Private Businesses Operators (Act No. 99 of 2002; hereinafter referred to as the "Correspondence Delivery Act") of a correspondence delivery company (meaning a general correspondence delivery company as prescribed in paragraph (6) of that Article or specified correspondence delivery company as prescribed in paragraph (9) of that Article; the same applies hereinafter) (hereinafter referred to as "correspondence delivery"), or through the transmission of telecommunications; and

2. a program that is designed to be used without requiring any further technical support from the supplier or retail selling point;

(b) deleted;

(c) a transaction through which a person provides a program that has been specially designed for use with goods set forth in the middle column of Appended Table 1 of the Export Order (except for goods that the Minister of Economy, Trade and Industry specifies by public notice), at the same time as those goods are provided, if the source code is not provided in any form;

(d) a transaction through which a person provides a program falling under either of 1. or 2. below for the first time, after having gotten permission for a service transaction, to the other party to the permitted transaction or to a person using that program:

1. a program whose functions have been modified or which is designed for the purpose of modifying its functions, within the scope of the permission;

- or
2. a program being provided at the same time as goods that have been exported from Japan and that will be exported again after having been repaired in Japan, which is the same as a program that the person has provided after getting permission for a service transaction; or
- (e) a transaction through which a person, incidental to the export of goods, provides the buyer, consignee, or user of those goods with a program set forth in the middle columns of rows 4 to 15 of the Appended Table of the Order (limited to those of object codes and excluding those that the Minister of Economy, Trade and Industry specifies by public notice) that represents what is minimally necessary for their installation, operation, maintenance, or repair (limited to those set forth in the middle columns of 4 to 15 of Appended Table 1 of the Export Order) (limited to transactions through which the person provides that program on and after either the date on which the permission for export was granted or the date on which the contract of export of the goods came into effect, whichever date comes later; and excluding transactions involving a program which improves the operational performance or characteristics of the goods to exceed those they had when they were provided initially or transactions concerning a program which provides new functions or characteristics to the goods); and
- (f) a transaction through which a person, incidental to the provision of a program that has previously been provided (limited to one set forth in the middle column of 4 to 15 of the Appended Table of the Order), provides the other party to the transaction involving the previously provided program or the persons using that previously provided program with a program as set forth in the middle column of rows 4 to 15 of the Appended Table of the Order (limited to those of object codes and excluding those that the Minister of Economy, Trade and Industry specifies by public notice) that represents what is minimally necessary for the installation, operation, maintenance, or repair of the previously provided program (limited to transactions through which the person provides the program in question on or after either the date on which the permission for service transactions was granted or the date on which the contract for the provision of the previously provided program came into effect, whichever date comes later; and excluding transactions that increase the operational performance or characteristics of the previously provided program to exceed those it had when it was provided initially or transactions that provide a previously provided program with new functions or characteristics);
- (xv) a transaction through which a person provides, incidental to an export of the relevant goods in order to return them upon completion of the assistance in question, technology that is for use with, and has been provided incidental

- to, goods that have been imported from a foreign government, an international organization, or the like, for the purpose of providing assistance in the event of the occurrence in Japan of a nuclear emergency as prescribed in Article 2, item (ii) of the Act on Special Measures Concerning Nuclear Emergency Preparedness (Act No. 156 of 1999) or a disaster such as the nuclear disaster prescribed in item (i) of that Article; and
- (xvi) a transaction through which a person provides a cryptographic mechanism, cryptographic algorithm, or reference code for one of these, which is necessary in order for a person to attend, make a proposal at, or present an opinion at an international conference that is aimed at developing international standards.
- (3) The service transactions specified by Order of the Ministry of Economy, Trade and Industry that are provided for in Article 18, paragraph (1) of the Order means a transaction as set forth in Article 1, item (1), (a) of the Cabinet Order Establishing the Competent Ministers in the Foreign Exchange and Foreign Trade Control Act (Cabinet Order No. 259 of 1980; hereinafter referred to as the "Cabinet Order Establishing the Competent Ministers" in paragraph (1) of the following Article) or a service transaction constituting a transaction set forth in (b) of the same item, which falls under any of the following items:
- (i) a service transaction as set forth in Article 18, paragraph (1) of the Order that involves the processing or storage of minerals (except for nuclear source materials and nuclear fuel materials), if the consideration of the service transaction is less than an amount equivalent to 10,000,000 yen; or
- (ii) a transaction as set forth in item (i) to item (iii) of the preceding paragraph.

(Reports)

- Article 10 (1) The making or receipt of a payment specified by Order of the Ministry of Economy, Trade and Industry that is provided for in Article 18-4, paragraph (1), item (iii) of the Order means the making or receipt of a payment directly incidental to a transaction as set forth in Article 1, item (i) of the Cabinet Order Establishing the Competent Ministers or the making or receipt of a payment directly incidental to an act as set forth in item (iii), (b) and (c) of that Article.
- (2) The specified capital transactions specified by Order of the Ministry of Economy, Trade and Industry that are provided for in Article 18-6, paragraph (1) of the Order means a transaction based on a contract as set forth in the items of Article 14 of the Order.
- (3) When requesting a report pursuant to the provisions of Article 18-8, paragraph (1) of the Order, the Minister of Economy, Trade and Industry, by way of notifying a person as prescribed in that paragraph or any related person, is to clarify the particulars that the person is being requested to report and

order the person to submit the necessary written report.

- (4) If unable to ascertain the domicile, residence, or location of the business office or office of a person to be notified under the preceding paragraph, the Minister of Economy, Trade and Industry, in lieu of notifying that person as under the preceding paragraph, may identify the person being requested to make the report, clarify the particulars that the person is being requested to report, and order the person to submit the necessary written report, by way of public notice.
- (5) A person who has been issued an order as prescribed in the preceding two paragraphs must submit a written report without delay.

(Service of Notice; Related Matters)

Article 11 (1) A person is notified under the provisions of Article 6-2, paragraph (3), Article 16, paragraph (1) or Article 18-3, paragraph (1) of the Order or paragraph (3) of the preceding Article through service of a document giving the substance of which the person is being notified, at the domicile, residence, business office, or office, of the person upon whom this must be served, by way of postal mail, correspondence delivery, or personal service.

- (2) When a document as prescribed in the preceding paragraph has been sent by ordinary postal mail or correspondence delivery, the postal item or the correspondence item as prescribed in Article 2, paragraph (3) of the Correspondence Delivery Act that the correspondence delivery company delivers is presumed to have been served at the time it would normally reach the person in question.
- (3) When sending a document as prescribed in paragraph (1) by ordinary postal mail or correspondence delivery, the Minister of Economy, Trade and Industry must prepare sufficient records to allow the verification of the first and last name of the person (or, for a corporation, its name) to be served with the document, that person's address, and date on which the document was sent.
- (4) Personal service as referred to in paragraph (1) is effected by an official of the relevant administrative organ, through the delivery of a document as prescribed in that paragraph to the person to be served at the place where that document is to be served; provided, however, that the document may be delivered to another place if the person to be served has no objection.
- (5) In a case as set forth in one of the following items, personal service as referred to in paragraph (1) may be effected through the action prescribed in the relevant item, in lieu of delivery under the preceding paragraph:
  - (i) if the person to be served with a document as prescribed in paragraph (1) cannot be found at the place where the document is to be served: delivery of that document to the employee or other worker of the person to be served, or to a person living with the person to be served, who has reasonable discretion concerning the receipt of the document (hereinafter referred to as "worker or

- cohabitant" in the following item); or
- (ii) if the person to be served with a document as prescribed in paragraph (1) or the worker or cohabitant thereof is not present in the place where the document is to be served, or if any of these persons refuses to receive the document, without a legitimate reason: leaving the document at the place where the document is to be served.
- (6) The provisions of paragraph (1) to paragraph (5) apply mutatis mutandis if the Minister of Economy, Trade and Industry seeks to notify a person under Article 6-2, paragraph (5), Article 16, paragraph (3) or Article 18-3, paragraph (3) of the Order.

(Directors-General of Customs-Houses Notifying the Minister of Economy, Trade and Industry)

Article 12 Pursuant to the provisions of Article 18-2, paragraph (2) of the Order, the Directors-General of Customs-Houses are to promptly notify the Minister of Economy, Trade and Industry of the particulars set forth in the following items with respect to goods that require the permission of the Minister of Economy, Trade and Industry under Article 17, paragraph (2) of the Order; provided, however, that if the Minister of Economy, Trade and Industry finds that it is not necessary to notify the minister of any particulars set forth in those items, the minister may allow the directors-general to not notify the minister of the particulars that the minister finds not to be necessary:

- (i) the name and address of the exporter of a document, picture, or storage medium containing specified information;
- (ii) the destination of a document, picture, or storage medium containing specified information;
- (iii) the name or registration number of the ship or aircraft on which a document, picture, or storage medium containing specified information is to be loaded; and
- (iv) the customs declaration number, permission number for the permission under Article 17, paragraph (2) of the Order, and other particulars of the export declaration to the Director-General of a Customs-House, beyond the particulars set forth in the preceding items.

### **Supplementary Provisions**

(Effective Date)

- (1) This Ministerial Order comes into effect as of April 1, 1998.

(Transitional Measures for Penal Provisions)

- (2) Previous laws continue to govern the applicability of penal provisions to

actions in which a person has engaged before this Ministerial Order comes into effect.

### **Supplementary Provisions**

- (1) This Ministerial Order comes into effect as of the date of promulgation.
- (2) Notifications that have already been filed as of the time this Ministerial Order comes into effect pursuant to the provisions of Article 1-2, paragraph (1) of the Regulation on Export Trade Control prior to the amendment by this Ministerial Order pursuant to Article 13, paragraph (2) of the Export Trade Control Order (Cabinet Order No. 378 of 1949) are deemed to be notifications filed pursuant to the provisions of Article 1-3, paragraph (1) of the Regulation on Export Trade Control amended by this Ministerial Order pursuant to Article 13, paragraph (2) of the Export Trade Control Order (Cabinet Order No. 378 of 1949), notifications filed pursuant to the provisions of Article 2-3, paragraph (1) of the Regulation on Import Trade Control amended by this Ministerial Order pursuant to Article 20, paragraph (2) of the Import Trade Control Order (Cabinet Order No. 414 of 1949), and notifications filed pursuant to Article 1-3, paragraph (1) of the Ministerial Order on Trade-Related Invisible Trade amended by this Ministerial Order pursuant to Article 28, paragraph (2) of the Foreign Exchange Order (Cabinet Order No. 260 of 1980), and the provisions of the respective Ministerial Orders amended by this Ministerial Order apply.

### **Supplementary Provisions**

This Ministerial Order comes into effect as of January 6, 2001.

### **Supplementary Provisions**

(Effective Date)

- (1) This Ministerial Order comes into effect as of April 1, 2002.

(Transitional Measures for Penal Provisions)

- (2) Previous laws continue to govern the applicability of penal provisions to actions in which a person has engaged before this Ministerial Order comes into effect.

### **Supplementary Provisions**

This Ministerial Order comes into effect as of the effective date of the Act on the Utilization of Information and Communications Technology in

Administrative Processes. (February 3, 2003).

**Supplementary Provisions**

This Ministerial Order comes into effect as of April 1, 2003.

**Supplementary Provisions**

This Ministerial Order comes into effect as of April 1, 2003.

**Supplementary Provisions**

(Effective Date)

(1) This Ministerial Order comes into effect as of January 20, 2004.

(Transitional Measures for Penal Provisions)

(2) Previous laws continue to govern the applicability of penal provisions to actions in which a person has engaged before this Ministerial Order comes into effect.

**Supplementary Provisions**

This Ministerial Order comes into effect as of March 1, 2005.

**Supplementary Provisions**

(Effective Date)

(1) This Ministerial Order comes into effect as of June 1, 2005.

(Effective Date)

(2) Until otherwise provided for by law, the forms prescribed by Appended Table 1, Appended Table 1-2, and Appended Table 2 of the Regulation on Export Trade Control, and the form prescribed by Appended Form 3 of the Ministerial Order on Trade-Related Invisible Trade, prior to the amendment by this Ministerial Order, may be used in lieu of the forms prescribed by Appended Table 1 to Appended Table 1-3, Appended Table 1-4 and Appended Table 2 of the Regulation on Export Trade Control, and the form prescribed by Appended Form 3 of the Ministerial Order on Trade-Related Invisible Trade amended by this Ministerial Order, respectively.

**Supplementary Provisions**

This Ministerial Order comes into effect as of June 1, 2007.

### **Supplementary Provisions**

This Ministerial Order comes into effect as of the effective date of the Act Partially Amending the Defense Agency Establishment Act and Other Acts. (Act No. 118 of 2006).

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

(Effective Date)

(1) This Ministerial Order comes into effect as of October 1, 2007.

### **Supplementary Provisions**

This Ministerial Order comes into effect as of November 1, 2008.

### **Supplementary Provisions**

This Ministerial Order comes into effect as of the effective date of the Act Partially Amending the Act on Special Measures for the Undertaking of Customs Procedures Using Electronic Data Processing Systems (October 1, 2008).

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

(Effective Date)

Article 1 This Ministerial Order comes into effect as of November 1, 2009.

(Transitional Measures for Penal Provisions)

Article 2 Previous laws continue to govern the applicability of penal provisions to actions in which a person has engaged before this Ministerial Order comes into effect.

### **Supplementary Provisions**

(Effective Date)

Article 1 This Ministerial Order comes into effect as of February 21, 2010; provided, however, that the provisions in Article 3 that amend Article 2, paragraph (1) of the Ministerial Order on Trade-Related Invisible Trade and Appended Form 3-2 come into effect as of the date of promulgation.

(Transitional Measures)

Article 2 (1) Until otherwise provided for by law, forms from prior to the amendment by this Ministerial Order (except for those set forth in Appended Table 6 of the Regulation on Export Trade Control, Appended Table 3 of the Regulation on Import Trade Control, and Appended Form 6-3 of the Ministerial Order on Trade-Related Invisible Trade) are deemed to be based on the forms from after the amendment by this Ministerial Order.

(2) Notifications that have already been filed as of the time this Ministerial Order comes into effect pursuant to the provisions of Article 1-3, paragraph (3) of the Regulation on Export Trade Control, Article 2-3, paragraph (3) of the Regulation on Import Trade Control, and Article 1-3, paragraph (3) of the Ministerial Order on Trade-Related Invisible Trade, prior to amendment by this Ministerial Order, are respectively deemed to be notifications that have been filed pursuant to the provisions of Article 1-3, paragraph (2) of the Regulation on Export Trade Control, Article 2-3, paragraph (2) of the Regulation on Import Trade Control, and Article 1-3, paragraph (2) of the Ministerial Order on Trade-Related Invisible Trade, after the amendment by this Ministerial Order.

### **Supplementary Provisions**

(Effective Date)

Article 1 This Ministerial Order comes into effect as of April 1, 2010.

(Transitional Measures)

Article 2 Previous laws continue to govern the applicability of penal provisions to actions in which a person has engaged before this Ministerial Order comes into effect.

Article 3 (1) Until otherwise provided for by law, forms from prior to the amendment by this Ministerial Order (except for forms set forth in the Ministerial Order Providing Forms of Identification Cards as prescribed in Article 68, paragraph (2) of the Foreign Exchange and Foreign Trade Act) are deemed to be based on the forms from after the amendment by this Ministerial Order.

(2) Documents already being used as of the time of this Ministerial Order comes into effect, that are based on the forms set forth in the Ministerial Order Providing Forms of Identification Cards as prescribed in Article 68, paragraph (2) of the Foreign Exchange and Foreign Trade Act prior to the amendment by this Ministerial Order are deemed to be documents based on the forms set forth

in Ministerial Order Providing Forms of Identification Cards as prescribed in Article 68, paragraph (2) of the Foreign Exchange and Foreign Trade Act after the amendment by this Ministerial Order.

### **Supplementary Provisions**

This Ministerial Order comes into effect as of the date of promulgation.

### **Supplementary Provisions**

(Effective Date)

Article 1 This Ministerial Order comes into effect as of July 1, 2011.

(Transitional Measures for Penal Provisions)

Article 2 Previous laws continue to govern the applicability of penal provisions to actions in which a person has engaged before this Ministerial Order comes into effect.

### **Supplementary Provisions**

This Ministerial Order comes into effect as of the date of promulgation.

### **Supplementary Provisions**

(Effective Date)

(1) 1. This Ministerial Order comes into effect as of August 1, 2012.

(Transitional Measures for Penal Provisions)

(2) Previous laws continue to govern the applicability of penal provisions to actions in which a person has engaged before this Ministerial Order comes into effect.

Appended Form 1 (re: Article 1)

Appended Form 2 (re: Article 1)

Appended Form 3 (re: Article 1)

Appended Form 3-2 (re: Article 1)

Appended Form 4 (re: Article 1)

Appended Form 5 (re: Article 2)

Appended Form 6 (re: Article 1 and Article 2)

Appended Form 6-2 (re: Article 1-2)

Appended Form 6-3

Appended Form 7 (re: Article 3)

Appended Form 8 (re: Article 3)

Appended Form 9 (re: Article 3)

Appended Form 10 (re: Article 3)

Appended Form 11 (re: Article 3)

Appended Form 12 (re: Article 3)