

# **Cabinet Office Ordinance on Surcharge Pursuant to the Provisions of the Certified Public Accountants Act**

(Cabinet Office Ordinance No. 82 of December 7, 2007)

Based on the provisions of Articles 31-2, 34-21-2 and 34-62 of the Certified Public Accountants Act (Act No. 103 of 1948) and to implement the same Act, the Cabinet Office Ordinance on Surcharge Pursuant to the Provisions of the Certified Public Accountants Act is established as follows.

Chapter 1 Order for Payment of a Surcharge (Article 1)

Chapter 2 Hearing Procedure

Section 1 General Provisions (Articles 2 to 14)

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Subsection 1 General Provisions (Articles 32 to 36)

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Supplementary Provisions

## **Chapter 1 Order for Payment of Surcharge**

(Cases Where Order for Payment of Surcharge Need Not Be Issued, etc.)

Article 1 (1) The case categorized by a Cabinet Office Ordinance prescribed in Article 31-2, paragraph (2), item (i) and Article 34-21-2, paragraph (2), item (i) of the Certified Public Accountants Act (hereinafter referred to as the "Act") is cases where changes of numbers or other content specified in the financial documents (meaning the financial documents prescribed in Article 1-3, paragraph (1) of the Act; hereinafter the same applies in this Article) set forth in Article 30, paragraph (1) or Article 34-21, paragraph (2), item (i) of the Act through misstatements, mistakes or omissions pertaining to said financial documents are minor.

- (2) The case categorized by a Cabinet Office Ordinance prescribed in Article 31-2, paragraph (2), item (ii) and Article 34-21-2, paragraph (2), item (ii) of the Act is cases where auditing or attesting of financial documents conducted by a certified public accountant (including registered foreign certified public accountants prescribed in Article 16-2, paragraph (5) of the Act) or an audit corporation is significantly deficient in light of generally accepted audit standards and practices.
- (3) The item categorized by a Cabinet Office Ordinance prescribed in Article 31-2, paragraph (2), item (iii) and Article 34-21-2, paragraph (2), item (iii) of the Act is the services set forth in Article 2, paragraph (1) of the Act that are based on a contract already concluded with the audit client company, etc. (meaning the audit client company, etc. prescribed in Article 34-10-4, paragraph (4) of the Act ).

## **Chapter 2 Hearing Procedure**

### **Section 1 General Provisions**

(Purpose)

Article 2 With regard to a hearing procedure under the provisions of Chapter 5-5 of the Act, in addition to what is provided for in said Chapter, the provisions of this Chapter apply.

(Matters to Be Specified in a Document Submitted in a Hearing Procedure)

Article 3 (1) A written answer, brief and any other document submitted by the respondent (meaning the respondent prescribed in Article 34-41, paragraph (3) of the Act; the same applies hereinafter) or the respondent's agent in a hearing procedure is to specify the following matters, and the respondent or the respondent's agent is to affix the respective name and seal thereto:

- (i) Individual or business name and address of the respondent, and the name and address of the respondent's agent
- (ii) Indication of the case
- (iii) Indication of annexed documents
- (iv) Date, month and year

(2) Notwithstanding the provisions of the preceding paragraph, if a document set forth in the preceding paragraph specifying the address of the respondent or respondent's agent has been submitted thereby, the respondent is not required to specify in a document to be submitted in a hearing procedure thereafter the address of the respondent and the respondent's agent from the matters listed in item (i) of the preceding paragraph.

(3) A brief and any other document that is submitted by a designated official (meaning a designated official prescribed in Article 34-43, paragraph (2) of the

Act; the same applies hereinafter) in a hearing procedure are to specify the individual or business name of the respondent and the matters listed in paragraph (1), items (ii) to (iv), and the designated official is to affix the name and seal thereto.

(Submission of Document by Facsimile)

Article 4 (1) A document submitted in a hearing procedure may be submitted by transmitting it by facsimile except for the following:

- (i) A written answer prescribed in Article 34-45, paragraph (2) of the Act
  - (ii) A document for proving the authority of statutory representation or the authority of the agent set forth in Article 34-43, paragraph (1) of the Act, or any other document for proving important matters in the hearing procedure
- (2) If a document has been submitted by facsimile, said document is deemed to have been submitted to a hearing examiner at the time the hearing examiner received it .
- (3) If a hearing examiner finds it necessary in the case prescribed in the preceding paragraph, such examiner may have the submitter submit the document used for the transmission.

(Notice)

- Article 5 (1) If an official who carries out clerical work relating to a hearing procedure prescribed in Article 8, paragraph (2) has given a notice pursuant to the provisions of this Chapter, such official must clarify in the case record that notice was so given as well as the method of the notice.
- (2) When the location of the person who is to receive the notice is unknown or when such person is located in a foreign state, there is no requirement to give a notice under the provisions of this Chapter (excluding a notice under the provisions of Article 13, paragraph (3) and Article 23, paragraph (4)). In this case, an official who carries out clerical work relating to a hearing procedure pursuant to the provisions of Article 8, paragraph (2) must clarify the grounds therefor in the case record.

(Decision of Hearing Examiners)

Article 6 If a hearing procedure is carried out by a panel, the decision of the hearing examiners is to be made by a majority vote.

(Execution of Duties)

- Article 7 (1) A hearing examiner must execute the duties fairly, promptly and independently.
- (2) A public prosecutor, an attorney at law or a person who is qualified to become an attorney at law is to be added to a person who is eligible, pursuant to the

provisions of Article 34-42, paragraph (2) of the Act, to be designated as a hearing examiner constituting a panel prescribed in the main text of paragraph (1) of the same Article or a sole examiner prescribed in the proviso to the same paragraph.

(Officials Carrying Out Clerical Work Relating to a Hearing Procedure)

Article 8 (1) The Commissioner of the Financial Services Agency is to have such commissioner's officials carry out clerical work relating to a hearing procedure.

(2) An official set forth in the preceding paragraph (hereinafter referred to as an "official carrying out clerical work relating to a hearing procedure") is to carry out clerical work relating to preparing, storing, serving and sending records and other documents in a hearing procedure and a notice under the provisions of this Chapter under the direction of the Commissioner of the Financial Services Agency or a hearing examiner.

(Capacity of an Adult Ward to Perform Act in a Hearing Procedure, etc.)

Article 9 (1) An adult ward may not perform any act in a hearing procedure except through such adult ward's statutory agent.

(2) The authority of statutory representation must be proven in writing.

(Agent)

Article 10 (1) The authority of an agent who is an attorney at law or a legal professional corporation must be proven in writing.

(2) When the respondent intends to seek the approval set forth in Article 34-43, paragraph (1) of the Act, such respondent must submit to the Commissioner of the Financial Services Agency a document specifying the name, address and occupation of the person whom such respondent intends to appoint as the agent, the relationship between said person and the respondent and any other matter by which whether or not said person is suitable as an agent can be sufficiently determined.

(3) The document set forth in the preceding paragraph must attach a document clearly indicating the authority and scope of authority of the agent.

(4) If the Commissioner of the Financial Services Agency has received a document set forth in paragraph (2) and made a decision on the approval set forth in Article 34-43, paragraph (1) of the Act or disapproval, such commissioner must notify the respondent thereof.

(5) If the respondent has dismissed the agent, such respondent must notify the hearing examiner in writing thereof without delay.

(Form of Copy of Case Record)

Article 11 An official carrying out clerical work relating to a hearing procedure

who has prepared a copy required to be prepared pursuant to the provisions of Chapter 5-5 of the Act or this Chapter must specify, subsequent to its content, that the copy is a true copy of the original, and affix such official's name and seal to the copy, and affix an impression of a seal over each joint of pages or take similar measures.

(Calculation of a Period)

Article 12 (1) Calculation of a period is governed by the provisions of the Civil Code (Act No.89 of 1896) pertaining to a period.

(2) When the last day of a period falls under the day listed in any of the items of Article 1, paragraph (1) of the Act on Holidays of Administrative Organs (Act No. 91 of 1988), the period expires on the following day.

(Service)

Article 13 (1) If a substituted service under the provisions of Article 106, paragraph (2) of the Code of Civil Procedure (Act No. 109 of 1996) as applied *mutatis mutandis* pursuant to Article 34-55 of the Act is made, an official carrying out clerical work relating to a hearing procedure must notify the person who has received the service thereof.

(2) If a service has been made under the provisions of Article 107, paragraph (1) of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 34-55 of the Act, the official carrying out clerical work relating to a hearing procedure must notify the person who has received the service of such fact and the fact that the service of said document is deemed to have been made at the time of sending thereof by registered mail, etc. pursuant to the same paragraph.

(3) The Commissioner of the Financial Services Agency or a hearing examiner may publish in the Official Gazette or newspaper the fact that service by publication has been made. With respect to a service to be made in a foreign state, the Commissioner of the Financial Services Agency or a hearing examiner may give a notice of the fact that the service by publication has been made in lieu of publishing the same in the Official Gazette or newspaper.

(Language )

Article 14 (1) The Japanese language is to be used in a hearing procedure.

(2) If a person who participates in a hearing procedure is unable to communicate in Japanese, such person is to have an interpreter attend the hearing procedure.

## **Section 2 Commencement of a Hearing Procedure**

(Ruling for the Commencement of a Hearing Procedure)

Article 15 (1) A ruling for the commencement of a hearing procedure under the provisions of Article 34-40, paragraph (1) of the Act is to be rendered by serving a copy of a document specifying the following matters (hereinafter referred to as the "written ruling for commencement of a hearing procedure "):

- (i) The amount of a surcharge required to be paid
  - (ii) The fact prescribed in Article 31-2, paragraph (1) or 34-21-2, paragraph (1) of the Act pertaining to the surcharge
  - (iii) Application of laws and regulations
  - (iv) The basis of calculation of the surcharge
  - (v) The date and place of the initial hearing
- (2) When the service of the written ruling for commencement of a hearing procedure is made, a written notice specifying the following matters is to be attached:
- (i) The fact that the respondent or the respondent's agent is required to appear on the date of hearing
  - (ii) The time limit for the submission of a written answer

(Change of Date of Initial Hearing, etc.)

Article 16 If a hearing examiner finds that there are reasonable grounds therefor, such examiner may, on a motion or by such examiner's own authority, change the date or place of the initial hearing, or postpone the time limit for the submission of a written answer.

(Matters to Be Specified in a Written Answer)

Article 17 (1) A written answer must specify the following matters:

- (i) Response to the amount of a surcharge required to be paid
  - (ii) Acceptance or denial of the matter listed in Article 15, paragraph (1), item (ii)
  - (iii) Assertions pertaining to the matters listed in items (iii) and (iv) of Article 15, paragraph (1)
  - (iv) Assertions of the respondent (excluding those listed in the preceding item)
- (2) In addition to what is listed in each item of the preceding paragraph, a written answer must specify the postal code and telephone number (including facsimile number) of the respondent or the respondent's agent.

(Designation of a Hearing Examiner)

Article 18 (1) If the Commissioner of the Financial Services Agency has designated a hearing examiner to be in charge of a hearing case pursuant to the provisions of Article 34-42, paragraph (2) of the Act, such commissioner must notify the respondent or the respondent's agent of the name of the

hearing examiner.

- (2) If the Commissioner of the Financial Services Agency has designated the chief hearing examiner to be in charge of a hearing case pursuant to the provisions of Article 34-42, paragraph (3) of the Act, such commissioner must notify the respondent or the respondent's agent of the name of the chief hearing examiner.

### **Section 3 Assertions, etc. At a Hearing and Preparation Thereof**

(Tribunal)

Article 19 A hearing is conducted at a tribunal of the Financial Services Agency; provided, however, that a hearing examiner may select a place suitable for a hearing as a tribunal if such examiner finds it necessary.

(Request to Be Closed)

- Article 20 (1) A request that a hearing be closed to the public must be made by expressly indicating the scope, reasons and period of the hearing to be closed to the public.
- (2) If a hearing examiner intends to make a hearing closed to the public, such examiner must state such fact and the reasons therefor.

(Designation and Change of Date of Hearing and Summons for Appearance Date)

- Article 21 (1) The chief hearing examiner is to designate the dates of the second and subsequent hearings.
- (2) The dates of the hearings set forth in the preceding paragraph may not be changed unless there are unavoidable reasons.
- (3) Summons for an appearance date set forth in paragraph (1) are to be made by serving a writ of summons, giving a notice of the date to a person who has appeared for the case in question, or any other method that is found to be appropriate.

(Control and Maintenance of Order of a Hearing)

- Article 22 (1) The chief hearing examiner is to control the hearing.
- (2) The chief hearing examiner may permit a person to speak or prohibit a person who does not comply with the chief hearing examiner's directions from speaking.
- (3) The chief hearing examiner may order necessary matters or take necessary measures to maintain order of the tribunal.

(Authority to Ask for Explanation, etc.)

Article 23 (1) During or outside of the hearing, the chief hearing examiner may

ask questions of a designated official, or the respondent or the respondent's agent, or request them to carry out necessary acts with regard to factual or legal matters in order to clarify matters related to the case.

- (2) A hearing examiner other than the chief hearing examiner, after notifying the chief hearing examiner, may take the measures prescribed in the preceding paragraph.
- (3) During or outside of the hearing, a designated official, or the respondent or the respondent's agent may request the chief hearing examiner to ask necessary questions.
- (4) During or outside of the hearing, if the chief hearing examiner or a hearing examiner other than the chief hearing examiner has taken the measures under the provisions of paragraph (1) or (2) with regard to a matter which could cause a material change in the assertions or evidence, such examiner must notify the opponent of the content of such change.

(Consolidation etc. of a Hearing Procedure)

Article 24 (1) A hearing examiner may order a restriction on offering assertions or evidence in a hearing procedure or separation or consolidation of a hearing procedure, or may revoke such order.

- (2) A hearing examiner may order the resumption of a hearing procedure that has been concluded.

(Time for Submission of Assertions or Offering of Evidence)

Article 25 Submission of assertions or offering of evidence must be made at an appropriate time depending on the status of progress of a hearing.

(Formal Matters to Be Specified in a Hearing Record)

Article 26 (1) An official carrying out clerical work relating to a hearing procedure must prepare a record on each date of a hearing. Such record must specify the following matters:

- (i) Indication of the case
  - (ii) Names of hearing examiners and officials carrying out clerical work relating to the hearing procedure
  - (iii) Names of designated officials
  - (iv) Names of the respondent, the agent, and interpreter who appeared
  - (v) Date, time and place of the hearing
  - (vi) The fact that the hearing was held publically, or, if it was not held publically, a statement to that effect and the reasons therefor
- (2) An official carrying out clerical work relating to a hearing procedure must affix such official's name and seal on the record set forth in the preceding paragraph, and the chief hearing examiner must affix a seal of approval

thereto.

- (3) In the case set forth in the preceding paragraph, if the chief hearing examiner is unable to affix a seal of approval, a hearing examiner other than the chief hearing examiner must affix a seal of approval while appending a supplementary note about the grounds therefor. If any other hearing examiner is unable to affix a seal of approval, it is sufficient for an official carrying out clerical work relating to a hearing procedure to include a description to that effect in the record.

(Substantial Matters to Be Specified in a Hearing Record)

Article 27 A record of a hearing must contain descriptions of the summary of assertions and offering and examination of evidence, while clarifying, in particular, the following matters:

- (i) Statements by witnesses, the respondent and expert witnesses
- (ii) Whether or not witnesses and expert witnesses took oath, and reasons for not having had witnesses or expert witnesses take oath
- (iii) Results of on-site inspection
- (iv) Matters that were ordered by the chief hearing examiner to be specified and matters that were allowed to be specified at the request of a designated official, or the respondent or the respondent's agent

(Citation in a Record)

Article 28 A document, photograph or any other object that is found to be appropriate by a hearing examiner may be cited in a hearing record and attached to the case record as part of said hearing record.

(Brief)

Article 29 (1) Assertions in a hearing procedure must be prepared in writing.

- (2) A brief must be submitted to a hearing examiner while allowing a period necessary for the opponent to make preparations with regard to the matters specified therein.
- (3) Two copies (or, when there are two or more opponents to whom said document should be sent, the number of copies is to be the number of such opponents plus one) of the brief set forth in the preceding paragraph must be submitted.
- (4) The materials cited in the brief must be attached to each copy of the brief as annexed documents.
- (5) An official carrying out clerical work relating to a hearing procedure must send the brief submitted to the hearing examiner to the opponent of the person who submitted the brief.

(Period for Submission of Brief, etc.)

Article 30 (1) The chief hearing examiner may specify a period in which a brief may be submitted or evidence may be offered.

(2) If the period set forth in the preceding paragraph has expired, a designated official, or the respondent or the respondent's agent may not submit new assertions or offer new evidence; provided, however, that this does not apply when the chief hearing examiner finds it appropriate.

(Preparatory Procedure)

Article 31 (1) When a hearing examiner finds it necessary in order to arrange issues and evidence, such examiner may take a preparatory procedure, after hearing the opinion of a designated official, or the respondent or the respondent's agent .

(2) A hearing examiner may request a designated official, or the respondent or the respondent's agent to submit a brief.

(3) The provisions of Article 21 apply mutatis mutandis to the date of a preparatory procedure, and the provisions of Article 22, paragraphs (1) and (2) and Articles 23 to 28 apply mutatis mutandis to a preparatory procedure.

(4) A hearing examiner may, on a motion of the respondent or the respondent's agent, request a designated official to permit said respondent or said respondent's agent to inspect or copy all or part of the materials proving the matters listed in items (ii) and (iv) of Article 15, paragraph (1); provided, however, that this does not apply when the interests of a third party are likely to be harmed or there are reasonable grounds therefor.

**Section 4 Evidence**

**Subsection 1 General Provisions**

(Offer of Evidence)

Article 32 (1) A designated official, or the respondent or the respondent's agent may offer evidence.

(2) Evidence must be offered by specifically and clearly indicating the fact to be proven thereby and the relationship between such fact and the evidence.

(3) Evidence may be offered prior to the date of hearing.

(4) The provisions of Article 29, paragraphs (2), (3) and (5) apply mutatis mutandis to the document specifying an offer of evidence.

(Examination of Evidence by Own Authority)

Article 33 A hearing examiner may conduct examination of evidence by such examiner's own authority.

(Cases Where Examination of Evidence Is Not Required)

Article 34 A hearing examiner is not required to conduct an examination of evidence that is offered by a designated official, the respondent, or the respondent's agent, if such examiner finds it unnecessary.

(Examination of Evidence by an Authorized Hearing Examiner)

Article 35 (1) When a hearing examiner examines evidence, such examiner may order a member of the panel to examine the evidence.

(2) If a hearing examiner has a member of the panel examine evidence pursuant to the provisions of the preceding paragraph, the chief hearing examiner is to designate such hearing examiner.

(Period for Submission of Documents and Other Objects)

Article 36 Documents and other objects that are planned to be used in the examination of a witness, expert witness, or the respondent must be submitted by allowing a reasonable period before the time of the commencement of said examination of the witness, expert witness or respondent, except for those that are to be used as evidence for denying the credibility of statements by the witness, expert witness, or respondent ; provided, however, that when it is not possible to submit such documents or other objects, it is sufficient to submit a photocopy thereof.

## **Subsection 2 Examination of a Witness**

(Request for Examination of a Witness)

Article 37 A request for examination of a witness must be made by designating the witness and clearly indicating the expected time for examination.

(Statement of Matters for Examination)

Article 38 (1) When requesting the examination of a witness, three copies (or, when there are two or more opponents to whom said document should be sent, the number of copies is to be the number of such opponents plus two) of a statement of matters for examination (meaning a document stating the matters for examination; the same applies hereinafter) must be submitted at the same time ; provided, however, that if there are unavoidable grounds therefor, it is sufficient to submit such copies within a period specified by the chief hearing examiner.

(2) A statement of matters for examination must be specified individually and specifically insofar as possible.

(3) An official carrying out clerical work relating to a hearing procedure must send a statement of matters for examination to the opponent of the person who made a request set forth in paragraph (1).

(Matters to Be Specified in a Writ of Summons, etc.)

Article 39 A writ of summons for a witness must specify the following matters and must have attached a statement of matters for examination:

- (i) Indication of the respondent
- (ii) Date, time and place for appearance
- (iii) Legal sanction against a failure to appear

(Ensuring Appearance of a Witness)

Article 40 If a ruling to the effect that a witness be examined has been rendered, a designated official, or the respondent or the respondent's agent who requested the examination must endeavor to have the witness appear on the appearance date.

(Notification of Non-Appearance)

Article 41 If circumstances that prevent a witness from appearing on the appearance date have arisen, such witness must report such fact while clarifying the circumstances.

(Oath)

Article 42 (1) A witness must be directed to take oath before examination.

(2) Taking oath must be conducted solemnly while standing.

(3) The chief hearing examiner must have a witness read aloud the written oath and have such witness sign and seal it. When a witness is unable to read the written oath aloud, the chief hearing examiner must have an official carrying out clerical work relating to a hearing procedure read it aloud.

(4) The written oath set forth in the preceding paragraph must contain a description to the effect that the person swears to tell the truth according to the dictates of conscience, without withholding anything or adding anything.

(5) The chief hearing examiner must, before a witness takes oath, explain the purpose of taking oath and notify the punishment against any perjury.

(Order of Examination)

Article 43 (1) A witness is to be examined in the order of the person who requested the examination, the opponent, and the chief hearing examiner.

(2) When the chief hearing examiner finds it appropriate, such examiner may change the order set forth in the preceding paragraph, after hearing the opinion of a designated official, or the respondent or the respondent's agent.

(3) A witness is to be examined by a designated official, or the respondent or the respondent's agent in the following order:

- (i) Examination by the person who has requested the examination (direct

- examination)
- (ii) Examination by the opponent (cross examination)
- (iii) Further examination by the person who has requested the examination (redirect examination)
- (4) A designated official, or the respondent or the respondent's agent may conduct a further examination with the permission of the chief hearing examiner.
- (5) The chief hearing examiner may examine a witness, or allow examination by a designated official, or the respondent or the respondent's agent not only under the provisions of paragraphs (1) and (2), but whenever such examiner finds it necessary.
- (6) A hearing examiner other than the chief hearing examiner may examine a witness after notifying the chief hearing examiner.

(Limitation on Questions)

Article 44 (1) The examinations listed in the following items are to be conducted for the matters specified in these respective items:

- (i) Direct examination – Matters to be proven and any matters related thereto
- (ii) Cross examination – Matters raised in the direct examination and any matters related thereto, and matters concerning credibility of statements
- (iii) Redirect examination – Matters raised in the cross examination and any matters related thereto.
- (2) The chief hearing examiner may, either on a motion or without any party's request, limit a question asked in any of the examinations listed in the items under the preceding paragraph, if such examiner finds that said question relates to a matter other than the matters specified in the items under the preceding paragraph and is inappropriate.

Article 45 (1) Questions must be asked individually and specifically insofar as possible.

- (2) A designated official, the respondent, and the respondent's agent must not ask the following questions; provided, however, that this does not apply to the questions listed in items (ii) to (v) if justifiable grounds exist:
  - (i) A question that insults or confuses the witness
  - (ii) A leading question
  - (iii) A question that overlaps with any previous question
  - (iv) A question unrelated to the issues
  - (v) A question seeking a statement of opinion
- (3) If the chief hearing examiner finds it to be in violation of the provisions of the preceding paragraph, such examiner may, on a motion or by such examiner's own authority, limit a question.

(Use of Document, etc. in Questions)

Article 46 (1) A designated official, or the respondent or the respondent's agent may, with the permission of the chief hearing examiner, ask questions of a witness while using a document, drawing, photograph, model, equipment, or any other appropriate object (hereinafter referred to as a "document, etc." in this Article).

(2) In the case set forth in the preceding paragraph, if the document, etc. has not been subject to the examination of evidence, the opponent must be given an opportunity to inspect it before the asking of said questions; provided, however, that this does not apply if the opponent has no objection.

(3) If the chief hearing examiner finds it necessary for attaching a copy to the record or for any other purpose, such examiner may request a designated official, or the respondent or the respondent's agent to submit a photocopy of a document, etc..

(Prohibition on Making Statements Based on a Document)

Article 47 A witness may not make statements based on a document; provided, however, that this does not apply if such witness has obtained permission of the chief hearing examiner.

(Simultaneous Examination)

Article 48 (1) If the chief hearing examiner finds it necessary, such examiner may direct a simultaneous examination of a witness and another witness.

(2) When having directed a simultaneous examination pursuant to the provisions of the preceding paragraph, the chief hearing examiner must have a description to that effect included in the record.

(3) When carrying out a simultaneous examination, the chief hearing examiner may examine the witnesses first.

(Powers of an Authorized Hearing Examiner)

Article 49 When an authorized hearing examiner examines a witness, said authorized hearing examiner is to perform the duties of the chief hearing examiner.

### **Subsection 3 Examination of the Respondent**

(Procedure for Examination of the Respondent)

Article 50 (1) When carrying out the examination of a witness and the respondent, the witness is to be examined first; provided, however, that, if it is found appropriate, the respondent may be examined first, after hearing the

- opinion of a designated official, or the respondent or the respondent's agent.
- (2) If the chief hearing examiner finds it necessary, such examiner may direct a simultaneous examination of the respondent and another respondent or a witness.
- (3) The provisions of the preceding subsection (excluding Article 42 and Article 48, paragraph (1)) apply mutatis mutandis to the examination of the respondent.

#### **Subsection 4 Examination of Documentary Evidence and Articles of Evidence**

(Submission, etc. of Documentary Evidence or Articles of Evidence)

- Article 51 (1) When submitting documentary evidence, two photocopies (or, when there are two or more opponents to whom said document should be sent, the number of copies is to be the number of such opponents plus one) of the documentary evidence, and except where apparent from the description in the documentary evidence, two copies (or, when there are two or more opponents to whom said document should be sent, the number of copies is to be the number of such opponents plus one) of the description of evidence clarifying the title of the documentary evidence, the person who prepared the documentary evidence and the facts to be proven must be submitted by the time of submitting the documentary evidence; provided, however, that it is sufficient to submit such copies within a period specified by the chief hearing examiner, if there are unavoidable grounds.
- (2) When submitting articles of evidence, two copies (or, when there are two or more opponents to whom said document should be sent, the number of copies is to be the number of such opponents plus one) of the description of evidence clarifying the titles of the articles of evidence and the facts to be proven must be submitted; provided, however, that it is sufficient to submit such copies within a period specified by the chief hearing examiner, if there are unavoidable grounds therefor.
- (3) An official carrying out clerical work relating to a hearing procedure must send a photocopy of documentary evidence set forth in paragraph (1) and the description of evidence related to said documentary evidence or the description of evidence related to the articles of evidence set forth in the preceding paragraph to the opponent to whom said document should be sent.

(Attaching a Translation, etc.)

- Article 52 (1) When submitting documentary evidence prepared in a foreign language, a translation of the part of the documentary evidence for which examination is sought must be attached thereto. In this case, if an official

carrying out clerical work relating to a hearing procedure sends the documentary evidence pursuant to the provisions of paragraph (3) of the preceding Article, such official must also send such translation at the same time.

- (2) If the opponent wishes to state an opinion on the accuracy of the translation set forth in the preceding paragraph, such opponent must submit a document specifying such opinion to a hearing examiner.

(Motion Requesting an Order to Submit a Document, etc.)

Article 53 (1) A motion requesting an order to submit a document or any other object (hereinafter referred to as the "document, etc." in this Article) must be presented in writing by clarifying the following matters:

- (i) Indication of the document, etc.
- (ii) Purport of the document, etc.
- (iii) Holder of the document, etc.
- (iv) Facts to be proven

- (2) If the opponent wishes to state an opinion on the motion set forth in the preceding paragraph, such opponent must submit a document specifying such opinion to a hearing examiner.
- (3) If a hearing examiner finds that there are grounds for the motion requesting an order to submit the document, etc., such examiner is to order the holder of the document, etc. to submit it.
- (4) If a hearing examiner intends to order a third party to submit the document, etc., such examiner must hear the opinion of such third party.

(Method of Submission of Documentary Evidence)

Article 54 (1) Documentary evidence must be submitted by way of the original, an authenticated copy, or a certified transcript of the document.

- (2) Notwithstanding the provisions under the preceding paragraph, a hearing examiner may order the submission of the original.

### **Subsection 5 Expert Opinion**

(Matters for Expert Opinion)

Article 55 (1) When requesting an expert opinion, two copies (or, when there are two or more opponents to whom said document should be sent, the number of copies is to be the number of such opponents plus one) of a document specifying the matters for which an expert opinion is sought must be submitted at the same time; provided, however, that it is sufficient to submit such copies within a period specified by the chief hearing examiner, if there are unavoidable grounds therefor.

- (2) An official carrying out clerical work relating to a hearing procedure must send the document set forth in the preceding paragraph to the opponent of the person who made the request set forth in the preceding paragraph.
- (3) If the opponent wishes to state an opinion on the document set forth in paragraph (1), such opponent must submit a document specifying such opinion to a hearing examiner.
- (4) A hearing examiner is to specify the matters for an expert opinion based on the document set forth in paragraph (1) while also giving consideration to the opinion set forth in the preceding paragraph. In this case, a document specifying the matters for an expert opinion must be sent to the expert witness.

#### (Method of Taking Oaths)

- Article 56 (1) A written oath must contain a description to the effect that the person swears to give an expert opinion sincerely according to the dictates of conscience.
- (2) It is also acceptable to have an expert witness take an oath through the method of submitting a written oath to a hearing examiner. In this case, the chief hearing examiner must explain the purpose of taking the oath and notify the punishment against any false expert opinion through the method of sending a document specifying such matters to the expert witness.

#### (Method of Making Statements by an Expert Witness)

- Article 57 (1) The chief hearing examiner may have an expert witness state an opinion orally or in writing.
- (2) If a hearing examiner has had an expert witness state an opinion, and finds it necessary in order to clarify the content of the opinion or confirm the grounds therefor, the hearing examiner may have the expert witness state an additional opinion either on a motion or without any party's request.

#### (Questioning of an Expert Witness)

- Article 58 (1) If a hearing examiner has an expert witness state an opinion orally, the hearing examiner may ask questions of the expert witness after the expert witness has stated such opinion.
- (2) The questioning set forth in the preceding paragraph is to be conducted by the chief hearing examiner, the person who has requested the expert opinion, and the opponent, in that order.
  - (3) If the chief hearing examiner finds it appropriate, such examiner may change the order set forth in the preceding paragraph, after hearing the opinion of a designated official and respondent or the respondent's agent.

#### (Application Mutatis Mutandis of the Provisions Concerning Examination of a

Witness)

Article 59 The provisions of Article 39 apply mutatis mutandis to a writ of summons for an expert witness, the provisions of Article 41 apply mutatis mutandis to cases where circumstances that prevent an expert witness from appearing on the appearance date have arisen, the provisions of Article 42, paragraphs (2), (3) and (5) apply mutatis mutandis to cases of having an expert witness take oath, the provisions of Article 43, paragraphs (4) to (6) inclusive, Article 46 and Article 48 apply mutatis mutandis to cases of having an expert witness state an opinion orally, and the provisions of Article 49 apply mutatis mutandis to cases where an authorized hearing examiner has an expert witness state an opinion.

### **Subsection 6 On-site inspection**

(Method of Requesting On-site Inspection)

Article 60 A request for an on-site inspection must be made by indicating the purpose and place of the on-site inspection.

### **Section 5 Decision**

(Conclusion of a Hearing Procedure)

Article 61 (1) A hearing examiner is to conclude a hearing procedure, when such examiner finds the assertions and evidence that have been submitted is sufficient for the Commissioner of the Financial Services Agency to make a decision as set forth in Article 34-53, paragraphs (1) to (6) of the Act.

(2) If the respondent has not appeared on the hearing date, or has not offered any assertions or evidence before leaving the hearing, a hearing examiner may conclude the hearing procedure, when such examiner finds it appropriate in consideration of the existing status of the hearing and the status of conduct of the designated official and respondent of the hearing procedure.

(3) If the respondent has not appeared on the hearing date on two consecutive occasions, or has not offered any assertions or evidence before leaving the hearing, a hearing examiner is to conclude the hearing procedure; provided, however, that this does not apply when a hearing examiner finds it appropriate.

(Decision by Which the Fact That a Payment of a Surcharge Cannot Be Ordered Is Clarified)

Article 62 When the proviso to paragraph (3) or (5) of Article 34-53 of the Act is applicable, the Commissioner of the Financial Services Agency must render a decision clarifying to that effect.

(Matters to Be Specified in a Decision)

Article 63 (1) A decision set forth in Article 34-53, paragraphs (1) to (5) of the Act must specify the following matters:

- (i) Main text
  - (ii) Facts and reasons
  - (iii) The respondent and the respondent's agent
- (2) The matter listed in item (i) of the preceding paragraph must contain the amount of a surcharge to be paid and the due date for payment.
- (3) The matter listed in paragraph (1), item (ii) must contain the facts, application of laws and regulations and the basis of calculation of a surcharge prescribed in Article 31-2, paragraph (1) of the Act or Article 34-21-2, paragraph (1) of the Act pertaining to a surcharge. In this case, the written ruling for commencement of a hearing procedure may be cited.
- (4) The decision or ruling set forth in Article 34-53, paragraph (6) of the Act and the preceding Article must specify the fact that either of the following items is applicable and the reasons therefor:
- (i) There is no fact prescribed in Article 31-2, paragraph (1) of the Act or Article 34-21-2, paragraph (1) of the Act
  - (ii) The fact that the proviso to paragraph (3) or (5) of Article 34-53 of the Act is applicable.

(Proportionate Amount If Two or More Decisions Are Rendered in Relation to an Order to Pay a Surcharge Related to a Certified Public Accountant)

Article 64 The amount obtained by dividing proportionately in accordance with the amounts calculated for the individual decisions pursuant to the provisions of a Cabinet Office Ordinance prescribed in Article 34-53, paragraph (2) of the Act is to be the amount obtained by multiplying the highest of the amounts calculated for the individual decisions (meaning the amount calculated for the individual decisions prescribed in the same paragraph; hereinafter the same applies in this Article and the following Article) by the proportion of the amount calculated for said individual decisions to the total of the amounts calculated for the individual decisions.

(Proportionate Amount If There Is an Existing Decision on an Order to Pay a Surcharge Related to a Certified Public Accountant)

Article 65 The amount obtained by dividing proportionately in accordance with the amounts calculated for the individual decisions on the facts pertaining to the respective new decisions (meaning the new decision set forth in Article 34-53, paragraph (3) of the Act) pursuant to a Cabinet Office Ordinance prescribed in the same paragraph is to be the amount obtained by multiplying the amount obtained by subtracting the amount listed in item (ii) of the same paragraph

from the amount listed in item (i) of the same paragraph by the proportion of the amount of said individual decisions to the total amount of the amounts calculated for the individual decisions.

(Proportionate Amount If Two or More Decisions Are Rendered in Relation to an Order to Pay a Surcharge Related to an Audit Corporation)

Article 66 The amount obtained by dividing proportionately in accordance with the amounts calculated for the individual decisions pursuant to the provisions of a Cabinet Office Ordinance prescribed in Article 34-53, paragraph (4) of the Act is to be the amount obtained by multiplying the highest of the amounts calculated for the individual decisions (meaning the amount calculated for the individual decisions prescribed in the same paragraph; hereinafter the same applies in this Article and the following Article) by the proportion of the amount of said individual decisions to the total amount of the amounts calculated for the individual decisions.

(Proportionate Amount If There Is an Existing Decision on an Order to Pay a Surcharge Related to an Audit Corporation)

Article 67 The amount obtained by dividing proportionately in accordance with the amounts calculated for the individual decisions on the facts pertaining to the respective new decisions (meaning the new decision set forth in Article 34-53, paragraph (5) of the Act) pursuant to a Cabinet Office Ordinance prescribed in the same paragraph is to be the amount obtained by multiplying the amount obtained by subtracting the amount listed in item (ii) of the same paragraph from the amount listed in item (i) of the same paragraph by the proportion of the amount of said individual decisions to the total amount of the amounts calculated for the individual decisions.

(Rounding-down of Fractional Figures)

Article 68 When the amount of a surcharge calculated pursuant to the provisions of Article 34-53, paragraphs (2) to (5) of the Act includes a fractional figure of less than one yen, such fractional figure is to be rounded down.