

Act on Regulation of Transmission of Specified Electronic Mail

(Act No. 26 of April 17, 2002)

Chapter I General Provisions (Articles 1 and 2)

(Purpose)

Article 1 The purpose of this Act, in light of the recognized need to prevent hindrances to transmission and reception of electronic mails due to simultaneous transmission, etc. of specified electronic mails to many persons, is, by specifying measures, etc. for regulating transmission of specified electronic mails, to prepare a preferable environment for the use of electronic mails, and thereby to contribute to the sound development of an advanced information and communications society.

(Definitions)

Article 2 In this Act, the meaning of the terms listed in the following items is as prescribed respectively in those items.

- (i) the term "electronic mail" means telecommunications (referring to telecommunications as specified under Article 2 item (i) of the Telecommunications Business Act (Act No. 86 of 1984)) to transmit information, including texts, to specified persons by having screens of communications terminals (including input/output devices; the same applies in the following Article) used by the specified persons that display the information, and which uses communications methods specified by the Ministry of Internal Affairs and Communications (hereinafter referred to as "MIC") Order;
- (ii) the term "specified electronic mail" means electronic mail, which a person who sends electronic mail (limited to an organization for profit and an individual in cases where the individual is engaged in business; hereinafter referred to as a "sender"), sends persons other than the following persons as a means of advertisement for their own sales activities or those for others.
 - (a) a person who has notified the sender of the request or of the consent to send specified electronic mail prior to the transmission thereof (except a person who has notified the sender of the request not to send the electronic mail after the notification)
 - (b) a person who has a business relationship with the person engaged in sales activities relating to advertisement thereof
 - (c) other persons who are specified by Cabinet Order

- (iii) the term "electronic mail address" means characters, numerical characters, marks, and other codes for identifying a user of electronic mail;
- (iv) the term "fictitious electronic mail address" means an electronic mail address falling under all of the following:
 - (a) an electronic mail address as produced by using a program (referring to a set of directives to a computer, which are combined for obtaining a single result) with a function to automatically generate many electronic mail addresses
 - (b) an electronic mail address actually not being used by anyone as an electronic mail address
- (v) the term "electronic mail service" means telecommunications service pertaining to electronic mail as provided for in Article 2, item (iii) of the Telecommunications Business Act.

Chapter II Measures for Regulating Transmission of Specified Electronic Mail

(Obligation of Labeling)

Article 3 A sender must, as specified by MIC Order, upon transmission of specified electronic mails, make such a specified electronic mail correctly display the following matters on a screen of a communications terminal being used by a person who receives the specified electronic mail:

- (i) the fact that the mail is a specified electronic mail
- (ii) name and address of the sender
- (iii) electronic mail address of the sender for receiving the notification under the following Article
- (iv) other matters specified by MIC Order

(Prohibition of Transmission to Persons Who Refuse to Receive Specified Electronic Mail)

Article 4 A sender must not send specified electronic mails to persons, who received specified electronic mails from the sender, and who, as specified by MIC Order, have notified the sender of the request not to send specified electronic mails (in cases where requesting the sender not to send specified electronic mails pertaining to certain matters, to that effect), against their wish.

(Prohibition of Transmission Using Fictitious Electronic Mail Address)

Article 5 A sender must not send electronic mails to fictitious electronic mail addresses for the purpose of sending many electronic mails for their own or others' sales activities.

(Prohibition of Transmission under False Sender Information)

Article 6 A sender must not send electronic mails, as a means of advertisement for their own or others' sales activities, falsifying the following information on the sender (hereinafter referred to as "sender information") for sending or receiving electronic mails:

- (i) electronic mail address used for sending those electronic mails;
- (ii) characters, numerical characters, marks, and other codes for identifying telecommunications facilities (referring to telecommunications facilities stipulated in Article 2 item (ii) of the Telecommunications Business Act) used for sending those electronic mails.

(Administrative Order)

Article 7 Where the Minister for Internal Affairs and Communications (hereinafter referred to as "Minister") finds that with respect to transmission of electronic mails, including simultaneous transmission of specified electronic mails to many persons, a sender does not comply with the provisions of Article 3 or Article 4, or where the Minister finds that a sender has sent electronic mails to fictitious electronic mail addresses or electronic mails using false sender information, and when the Minister finds that it is necessary for preventing disturbances upon transmission and reception of electronic mails, the Minister may order that sender to take necessary measures for improving the methods for electronic mail transmission.

(Petition to the Minister)

- Article 8 (1) A person who has received specified electronic mail or electronic mail using false sender information may, when the person finds that electronic mail has been sent in violation of the provisions of Article 3, Article 4 or Article 6, petition the Minister to take appropriate measures.
- (2) A person who is offering electronic mail services may, when the person finds that electronic mail has been sent to fictitious electronic mail addresses in violation of the provisions of Article 5, petition the Minister to take appropriate measures.
- (3) The Minister must, when they have received a petition pursuant to the provisions of the preceding two paragraphs, implement necessary investigation, and when they find it necessary based upon results of the investigation, take measures based upon this Act and other appropriate measures.

(Processing of Complaints)

Article 9 A sender of specified electronic mails must, in good faith, process complaints, inquiries, etc. on their transmission of specified electronic mails.

(Information Provision and Technological Development by Telecommunications Carriers)

- Article 10 (1) A telecommunications carrier (meaning a telecommunications carrier stipulated in Article 2 item (v) under the Telecommunications Business Act; the same applies hereinafter) offering electronic mail services must endeavor to provide users of the services with information on services that contribute to prevention of disturbances upon transmission and reception of electronic mails caused by specified electronic mails, electronic mails to be sent to fictitious electronic mail addresses, or electronic mails using false sender information (hereinafter referred to as "specified electronic mail, etc.").
- (2) A telecommunications carrier offering electronic mail services must endeavor to develop or introduce technologies for contributing to prevention of disturbances upon transmission and reception caused by specified electronic mail, etc.

(Refusal of Provision of Telecommunications Services)

- Article 11 A telecommunications carrier may, in cases where many electronic mails addressed to fictitious electronic mail addresses have been simultaneously sent and therefore it is considered that there is a risk of causing disturbances in smooth offering of its electronic mail services, or where it is considered that there is reasonable grounds to refuse the provision of electronic mail services for prevention of disturbances upon transmission and reception of electronic mails, refuse to provide a person who sends electronic mails that have a risk of causing the disturbances with electronic mail services to the extent of preventing the disturbances.

(Instruction and Advice to Associations of Telecommunications Carriers)

- Article 12 The Minister is to endeavor to give necessary instructions and advices to a juridical person incorporated pursuant to the provisions of Article 34 of the Civil Code (Act No. 89 of 1896), that conduct operations including provision of information and services contributing to prevention of disturbances upon transmission and reception of electronic mails caused by specified electronic mails, etc. for its member telecommunications carriers.

(Disclosure of Status of Research and Development)

- Article 13 The Minister, at least once a year, discloses the status of research and development on technologies that contribute to prevention of disturbances upon transmission and reception of electronic mails caused by specified electronic mails, etc. and the introduction status of the technologies by telecommunications carriers that offer electronic mail services.

Chapter III Registered Agency for Regulating Transmission

(Registration of Registered Agency for Regulating Transmission)

Article 14 (1) The Minister may have a person who has obtained registration from the Minister (hereinafter referred to as the "registered agency for regulating transmission") conduct the following services (hereinafter referred to as the "services for regulating transmission of specified electronic mail, etc."):

- (i) to give instructions or advices to a person who intends to file a petition with the Minister pursuant to the provisions of Article 8 paragraph (1) or paragraph (2);
 - (ii) to conduct investigations on facts pertaining to the petition in Article 8 paragraph (3), when requested by the Minister;
 - (iii) to collect and provide information or materials concerning specified electronic mail, etc.
- (2) The registration in the preceding paragraph is to be made upon request from a person who intends to conduct the services for regulating transmission of specified electronic mail, etc.

(Disqualification Clause)

Article 15 A person who falls under any of the following items may not be registered under paragraph (1) of the preceding article

- (i) a person who has been sentenced to a fine or severer punishment for violation of this Act or an order based upon this Act, and a period of two years has not elapsed from the day the sentence was completed or the day on which the person ceased to be subject to execution of the sentence.
- (ii) a person whose registration was rescinded pursuant to the provisions of Article 25, and a period of two years has not elapsed from the day of the rescission.
- (iii) where the applicant is a corporation, any of whose officers who execute its business falls under any of the preceding two items.

(Criterion for Registration)

Article 16 (1) The Minister must grant registration to any person who has applied for registration pursuant to the provisions of Article 14 paragraph (2), if the applicant for registration complies with all of the following requirements. In this case, the procedures necessary for registration is to be specified by MIC Order.

- (i) a person who has graduated from a university, or technical college, provided for in the School Education Act (Act No. 26 of 1947) as having mastered

- subjects concerning telecommunications and has one year or longer of experience in the business of electronic mail services, or a person who has knowledge and experiences equivalent thereto or higher, and is engaged in the services for regulating transmission of specified electronic mail, etc.;
- (ii) the following measures are taken in order to properly implement the services for regulating transmission of specified electronic mail, etc.:
 - (a) a full-time administrator is appointed at a unit to implement the services for regulating transmission of specified electronic mail, etc.;
 - (b) documents are prepared for ensuring management and proper implementation of the services for regulating transmission of specified electronic mail, etc.;
 - (c) in accordance with the descriptions in the documents under (b), a dedicated unit is set up for ensuring management and proper implementation of the services for regulating transmission of specified electronic mail, etc.
- (2) The registration is to be made by entering the following matters in the registration book of registered agencies for regulating transmission:
- (i) date of registration and registration number
 - (ii) name and address of a registered agency for regulating transmission and, in the cases where the person is a juridical person, name of the representative
 - (iii) name and address of the office where a registered agency for regulating transmission conducts the services for regulating transmission of specified electronic mail, etc.

(Renewal of Registration)

- Article 17 (1) If the registration under Article 14 paragraph (1) is not renewed every three years, the registration ceases to be effective by passage of the period.
- (2) The provisions of Article 14 paragraphs (2) and the preceding two Articles apply mutatis mutandis to the renewal of registration under the preceding paragraph.

(Obligation Pertaining to Implementation of Services for Regulating Transmission of Specified Electronic Mail)

- Article 18 A registered agency for regulating transmission must conduct the services for regulating transmission of specified electronic mail, etc. fairly and by methods complying with requirements listed in each item of Article 16 paragraph (1) and the standards specified by MIC Order.

(Notification of Changes)

Article 19 A registered agency for regulating transmission must, when intending to change matters listed in item (ii) or item (iii) of Article 16 paragraph (2), notify the Minister to that effect two weeks prior to the date on which changes are to be made.

(Operational Rules and Procedures)

Article 20 (1) A registered agency for regulating transmission must establish its operational rules and procedures (referred to as operational rules in the following paragraph) concerning the services for regulating transmission of specified electronic mail, etc., and must notify the Minister of the rules and procedures prior to the commencement of the services for regulating transmission of specified electronic mail, etc. The same applies when the rules and procedures are to be revised.

(2) The operational rules must specify the methods of carrying out the services for regulating transmission of specified electronic mail, etc. and other matters specified by MIC Order.

(Suspension and Discontinuation of Services)

Article 21 A registered agency for regulating transmission must, when intending to suspend its entire services or part of services, or discontinue the services for regulating transmission of specified electronic mail, etc., notify the Minister to that effect in advance, as specified by MIC Order.

(Preparation of Financial Statements and their Inspection)

Article 22 (1) A registered agency for regulating transmission must, within three months after the end of every business year, prepare an inventory of assets, a balance sheet and a profit and loss statement or income and expenditure account statement, and an operating report or a business report (including an electronic or magnetic record (any record which is produced by electronic, magnetic, or any other means unrecognizable by natural perceptive function, and is used for data-processing by a computer; hereinafter the same applies in this Article) in cases where electronic or magnetic records are produced instead of those paper documents. In the following paragraph and Article 35, referred to as "financial statements, etc.") and retain thereof for a five-year period at its office.

(2) A person or other interested person who received specified electronic mail, may, whenever within the business hours of a registered agency for regulating transmission, make the following requests. However, when making the request in item (ii) or item (iv), fees set forth by the registered agency for regulating transmission must be paid.

(i) where financial statements, etc. are written documents, a request for

- inspection of the document or a copy thereof;
- (ii) a request for certified transcript or abstract of the documents under the preceding item;
- (iii) where financial statements, etc. are produced as electronic or magnetic records, a request for inspection of or to copy the matters recorded on the electronic or magnetic records which are displayed in a manner stipulated in the applicable MIC Order;
- (iv) a request to provide the matters recorded on the electronic or magnetic records under the preceding item in an electronic or magnetic manner stipulated by MIC Order or a request for issuance of written documents containing those matters.

(Order for Compliance)

Article 23 When the Minister finds that a registered agency for regulating transmission has failed to comply with any of the items in Article 16 paragraph (1), the Minister may order the registered agency for regulating transmission to take necessary measures for compliance with those provisions.

(Order to Improve Business Activities)

Article 24 The Minister may, when they find that a registered agency for regulating transmission is violating the provisions of Article 18, order the registered agency for regulating transmission to implement the services for regulating transmission of specified electronic mail, etc. pursuant to the provisions of the same Article or to take necessary measures for improving the methods of regulating transmission of specified electronic mail, etc.

(Rescission of Registration)

Article 25 The Minister may rescind the registration or order the suspension in whole or in part of the services for regulating transmission of specified electronic mail, etc. for a specified period, if a registered agency for regulating transmission falls under any of the following items:

- (i) when an agency becomes applicable to Article 15 item (i) or item (iii);
- (ii) when an agency violates the provisions of Article 19 through Article 21, Article 22 paragraph (1) or the following Article;
- (iii) when an agency rejects the request pursuant to the provisions of each item of Article 22 paragraph (2) without reasonable grounds;
- (iv) when an agency violates the order pursuant to the provisions of the preceding two Articles;
- (v) when an agency obtains the registration under Article 14 paragraph (1) by wrongful means.

(Maintenance of Record Book)

Article 26 A registered agency for regulating transmission must, as specified by MIC Order, prepare and maintain a record book, on which matters specified by MIC Order related to the services for regulating transmission of specified electronic mail, etc. are entered.

(Public Notice)

Article 27 The Minister must, in the following cases, issue a public notice to that effect in the Official Gazette:

- (i) when registering an agency under Article 14 paragraph (1);
- (ii) when receiving a notification pursuant to the provisions of Article 19;
- (iii) when receiving a notification pursuant to the provisions of Article 21;
- (iv) when pursuant to the provisions of Article 25, rescinding a registration of Article 14 paragraph (1), or ordering the suspension of the services for regulating transmission of specified electronic mail, etc.

Chapter IV Miscellaneous Provisions

(Report and On-site Inspection)

- Article 28 (1) Within the limit necessary for the enforcement of this Act, the Minister may order a sender of specified electronic mail, etc. to report on the state of transmission thereof, or delegate ministerial employee to enter the office of the sender to inspect record books, documents and other objects.
- (2) Within the limit necessary for ensuring proper operations of the services for regulating transmission of specified electronic mail, etc., the Minister may order a registered agency for regulating transmission to report on the state of the services for regulating transmission of specified electronic mail, etc. or of its assets, or delegate ministerial employee to enter the office of the registered agency for regulating transmission to inspect the state of the services for regulating transmission of specified electronic mail, etc., or record books, documents and other objects.
- (3) Any ministerial employee who conducts on-site inspection in accordance with the provisions of the preceding two paragraphs must carry an identification card and show it to persons concerned.
- (4) The authority of on-site inspection under the provisions of paragraph (1) or paragraph (2) must not be construed as being legitimate for the purpose of criminal investigations.

(Administrative Work to Be Conducted by Prefectures)

Article 29 As specified in Cabinet Order, part of the administrative work under the authority of the Minister stipulated in this Act may be conducted by

prefectural governors.

(Transitional Measures)

Article 30 When orders are established, amended or abolished in accordance with the provisions of this Act, necessary transitional measures (including those concerning penal provisions) may be stipulated in those orders to such extent as determined to be reasonably necessary in establishing, amending or abolishing those orders.

Chapter V Penal Provisions

Article 31 Any person who has violated the order to suspend business operations in accordance with the provisions of Article 25 is punished by imprisonment with work for a term not exceeding one year or by a fine not exceeding 1,000,000 yen, or both.

Article 32 A person that falls under any of the following items is punished by imprisonment with work for a term not exceeding one year or by a fine not exceeding 1,000,000 yen:

- (i) a person who has violated the provisions of Article 6;
- (ii) a person who has violated the order in accordance with the provisions of Article 7.

Article 33 A person that falls under any of the following items is punished by a fine not exceeding 300,000 yen:

- (i) a person who has failed to submit a notification or submitted a false notification in accordance with the provisions of Article 21;
- (ii) a person who has failed to enter matters or made false entries, or failed to maintain an account book, in violation of the provisions of Article 26;
- (iii) a person who has failed to submit a report, or submitted a false report, in accordance with the provisions of Article 28, paragraph (1) or (2), or has refused, hindered or evaded the inspection pursuant to those provisions.

Article 34 When any representative of a corporation, or an agency, staff or other employee of a corporation or an individual, has committed an act of violation listed in the preceding three Articles with regard to the business of the corporation or the individual, not only the offender is punished but also the juridical person or the individual is punished by a fine prescribed in the respective Articles.

Article 35 Any person who has failed to retain financial statements, etc., has

failed to enter the matters that should be entered in financial statements, etc., or has made false entries in financial statements, etc., in violation of the provisions of Article 22 paragraph (1), or has refused without reasonable grounds a request under paragraph (2) of the same Article, is punished by a civil fine not exceeding 200,000 yen.

Supplementary Provisions

(Effective Date)

- (1) This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation.

(Review)

- (2) The government, within three years from the enforcement of this Act, after taking into account of the level of technologies pertaining to telecommunications and other circumstances, reviews the enforcement status of this Act, and takes necessary measures based upon the results thereof.

Supplementary Provisions [Act No. 125 of July 24, 2003] [Extract]

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding nine months from the date of promulgation; provided, however, that the provisions listed in the following items come into effect as of the day specified respectively in those items.

Supplementary Provisions [Act No. 46 of May 20, 2003] [Extract]

(Effective Date)

Article 1 This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding six months from the date of promulgation; provided, however, that the provisions of the following Article and Article 6 of the Supplementary Provisions come into effect as of the day of promulgation.

(Transitional Measures)

Article 2 A person who intends to be registered under Article 14 paragraph (1) of the Act on Regulation of Transmission of Specified Electronic Mail (hereinafter referred to as the "New Act") after amended by this Act may, even before the enforcement of this Act, apply for the registration. The same applies to the notification of administrative rules in accordance with the provisions of Article 14 paragraph (1) of the New Act.

Article 3 A person who is actually designated upon the enforcement of this Act under Article 13 paragraph (1) of the Act on Regulation of Transmission of Specified Electronic Mail before the amendment by this Act (referred to as the "Former Act" in the following Article), until the day when six months has elapsed from the day on which this Act came into effect, is deemed as being registered under Article 14 paragraph (1) of the New Act.

Article 4 In addition to what is provided for in the preceding Article, acts committed prior to the enforcement of this Act, including disposition and procedures based on the provisions of the Former Act (including orders based on the Former Act), that fall under the provisions in the New Act equivalent to those in the Former Act, are deemed as being acts committed, including disposition and procedures, based on the provisions of the New Act.

(Transitional Measures Concerning Penal Provisions)

Article 5 With respect to the application of the penal provisions to any act committed before the enforcement of this Act, the provisions then in force remain applicable.

(Delegation to Cabinet Order)

Article 6 In addition to what are specified under Article 2 through the preceding Article of the Supplementary Provisions, transitional measures necessary for the enforcement of this Act (including transitional measures concerning penal provisions) are specified by Cabinet Order.

(Review)

Article 7 The government, within three years from the date of enforcement of this Act, after taking into account of the level of technologies pertaining to telecommunications and other circumstances, reviews the enforcement status of this Act, and takes necessary measures based upon the results thereof.

Supplementary Provisions [Act No. 87 of July 26, 2005] [Extract]

This Act comes into effect as of the effective date of the Companies Act.